

# **Amendments to the Constitution of Bangladesh 1973-2011:**

## **Background, Politics and Impacts**

Thesis Submitted for M Phil Degree

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**February 2016**

### **Declaration**

I declare that this thesis on ‘Amendments to the Constitution of Bangladesh 1973-2011: Background, Politics and Impacts’ is my original work and I have completed it under the supervision of Professor Dr. Shawkat Ara Husain.

I also declare that no part of the thesis has been published and submitted to be published anywhere.

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## Credentials

It is to certify that Salma Akther has completed her thesis entitled ‘Amendments to the Constitution of Bangladesh 1973-2011: Background, Politics and Impacts’ under my supervision. This is her original work. To the best of my knowledge, no part of the thesis has been published or submitted to any person or organization for publication.

I wish her success

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**(Salma Akther)**

February 2016

Title of the Thesis  
**Amendments to the Constitution of Bangladesh 1973-2011:  
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### **Abstract**

The Constitution is the guide which leads a nation to the prosperity. A modern state cannot be thought of without it. So, after nine months long blood-shedding battle in 1971, Bangladesh achieved her long awaited independence and therefore, took an instant effort to formulate a constitution rapidly, based on the ideological spirit of the war of independence. However, to accommodate the demands and will of the people and even sometimes to fulfill the narrow interests of the rulers, Bangladesh Constitution has been amended several times. Except a few cases almost every amendments has a great political impacts in the constitution. The very first amendment of the constitution about war-crimes was filled-up the hope and aspiration of the people. Indeed, the fourth, fifth, seventh and eighth amendments were enacted only achieving personal and political gain of the ruler. Moreover, reintroducing the parliament system by twelfth amendments got hail from the masses. Though the caretaker government system, is one of the finest invention by our parties for holding general election which adopted through thirteenth amendment after long chaotic process, did not last long for mistrust and distrust. The fourteenth amendment again created suspicion in the mind of the oppositions so it became worthwhile. The most aspired and comprehensive fifteenth amendment also induced a great debate among the political parties, intellectual part, constitution experts and masses. In view of all the circumstances, it is found that almost every adopted amendment in Bangladesh Constitution failed to meet the dream and the quest of the citizens for the narrow and mean interest of the rulers at different regime. Analyzing all these amendments of Bangladesh constitution it is said that for flourishing of democracy each government must undertake such rules in the constitution through amendment which are accepted by all.

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## **Chapter 1: Introduction**

## 1. Introduction

The word 'Constitution' is commonly used in at least two senses in any ordinary discussion of political affairs. First of it is used to describes the whole system of government of a country, the collection of rules which established and regulate or govern the government. These rules are partly legal, in the sense that courts of law will recognize and apply them, and partly non legal or extra legal, taking the form of usages, understanding, customs and conventions which courts do not recognize as law but which are not less effective in regulating the government than the rule of law strictly so called. In most countries of the world the system of government is composed of this mixture of legal and no legal rules and it is possible to speak of this collection of rules as 'Constitution.'<sup>1</sup>

The wider meaning of the constitution is found in the Bolingbroke writing on his essay "On Parties"- " By constitution, we mean, whenever we speak with propriety and exactness, that assemblage of laws, institutions and customs, derived from certain fixed principles of reason... that compose the general system, according to which the community hath agreed to be governed." <sup>2</sup>

Tom Ginsburg view is, Constitution, it has been said, "operate in time, seeking to regulate the future on behalf of the past."<sup>3</sup>

James Madison said "If men were angels, no government would be necessary. If angels were to govern men, no controls on government would be necessary. In framing a government of men over men, the great difficulty lies in this: You must first enable the government to control the governed, and in the next place oblige it to control itself" Just as we have civil laws to restrain men in society, so we have constitutional laws to restrain men in power.<sup>4</sup>

After all, no government, president or monarch, no institution of law or enforcement, should be created or be allowed to exist and to function without a constitution. No one should have power over others, unless and until that power and the conditions of its use have been strictly defined. In the words of Thomas Paine: "government without a constitution is power without right."<sup>5</sup>

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<sup>1</sup> K .C. Wheare, *Modern Constitution*, Oxford University Press, London, Oxford 1966, P.1

<sup>2</sup> Quoted in, K .C. Wheare, *Modern Constitution*, Oxford University Press, London, Oxford 1966, P.2

<sup>3</sup> Tom Ginsburg, *Constitutional Endurance*, in *Comparative Constitutional Law*, ed. Tom Ginsburg and Rosalind Dixon , Northampton, MA: Edward Elgar, 2011, P.112

<sup>4</sup> <http://www.politics.co.uk/opinion-formers/unlock-democracy/>

<sup>5</sup> Charles Howard Mcilwain, *Constitutionalism: Ancient and Modern*, Cornell University Press, USA, Revised Edition, 1947, P.2

A modern state cannot be thought of without a Constitution. The entire legislative, executive and judicial functions of the State are guided and regulated by the Constitution. The constitution and its development, as the supreme legal framework of a country, is a continuing process so that the hopes and aspirations of its populace can be accommodated along with socio-economic changes. In fact, Constitution writers are neither infallible nor prescient, so all constitutions must anticipate the need for change. Indeed, the process of altering the basic arrangements for governance may itself be salutary for citizens in a democracy. As Thomas Jefferson wrote in 1816, "Each generation [has]... a right to choose for itself the form of government it believes most promotive of its own happiness..."<sup>6</sup>

Justice H.R. Khanna opines that, "The word 'amendment' postulates that the old constitution survives without loss of its identity despite the change and continues even though it has been subjected to alterations."<sup>7</sup>

Justice Shahabuddin Ahmed said, 'the term amendment is a change or alteration, for the purpose of bringing improvement in the statute to make it more effective and meaningful, but it does not mean its abrogation or destruction or a change resulting in the loss of its original identity and character.'<sup>8</sup>

The power to amend the constitution is not the power to destroy it. Amendment is to reform the constitution, and it is not, as Walter F. Murphy has pointed out, re-forming a constitution. "Change should be gradual rather than sudden, and (at least in some respects) there should not be too much change overall." Amendment should be taken to mean "a moderate and temperate reform," that is to do "as little good as possible." word 'any' does not mean 'all'. Article 142 of Bangladesh Constitution provides for amending power almost in the same words.<sup>9</sup>

Justice Chandrachud looking constitution as a heritage articulates that 'amend as you may even the solemn document which the founding fathers have committed to your care, for you know best

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<sup>6</sup> Thomas Jefferson, *The Life and Selected Writings of Thomas Jefferson* 575,(Adrienne Koch and William Peden eds., 1944

<sup>7</sup> Quoted in Md. Ariful Islam Siddiquee, *Unconstitutional Constitutional Amendments in South Asia: A Study of Constitutional Limits on Parliaments*, Amending Power, Journal of Law, Policy and Globalization ISSN 2224-3240 (Paper) ISSN 2224-3259 (Online) Vol.33, 2015, P.67

<sup>8</sup> Justice Shahabuddin Ahmed, *On Bangladesh Constitutional 8<sup>th</sup> Amendment Case*, [https://www.academia.edu/7000979/On\\_Bangladesh\\_Constitutional\\_8th\\_Amendment\\_Case](https://www.academia.edu/7000979/On_Bangladesh_Constitutional_8th_Amendment_Case)

<sup>9</sup> Md. Ariful Islam Siddiquee, *op.cit.*, P.70

the needs of your generation. But, the Constitution is a precious heritage; therefore you cannot destroy its identity',<sup>10</sup>

The constitutional and democratic history of Bangladesh has never been without stresses and strains. The Constitution of Bangladesh embarked on its eventful journey from 16<sup>th</sup> December 1972. Since then all fifteen amendments have been made to Constitution. And, indeed, they have basically changed many of the important characteristics of the Constitution. There could be no objection to exercise of amending power to fulfill the need of time and of generation. But the power cannot be so construed as to turn the constitution which is the scripture of the hope of a living society and for its unfolding future, into a scripture of doom. However, a few amendments of Bangladesh constitution have fulfilled the hope and aspiration of its people. But most of the amendments have been adopted to establish the ill-will of the existing government of each regime's.

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<sup>10</sup> *Ibid*, P.73

## 2. Statement of the Problem

Immediately after the independence Bangladesh enacted and adopted her own Constitution. The Constitution received high appreciation from all quarters of the country. The Bangladesh Constitution was termed as one the best constitutions of the World. It is true that no constitution is static. One feature of all good constitutions is to accommodate the requirements of the time. To confront and adjust the necessity of time and new generations all major constitutions had to through amendments and reformations. The Constitution of the People's Republic of Bangladesh is not an exception. To accommodate the demands and will of the people and the narrow interests of the rulers Bangladesh Constitution has been amended several times. Some amendments were brought into the constitution to fulfill the mean interest of the rulers. One observer has mentioned that 'Almost all the amendments were made with political predisposition, for gaining unfair advantage by some influential quarter or for fulfillment of whim of few; and they hardly had relation with the solemn expression of the will of the people.'<sup>11</sup> So, many political statements and propogandas were made to criticize such unfair acts. If one looks at the amendments which were brought into the Constitution by Martial Law proclamation orders it would be seen that every single amendment was made for achieving unfair political purposes. The twelfth amendment was known as the most important landmark in the history of constitutional development in Bangladesh. Through this amendment the parliamentary form of government was re-introduced in Bangladesh. By the thirteenth amendment the Caretaker Government system was introduced to make the elections free from all corruptions. Under this system three general elections were held. But the present government has scrapped this system and inserted new articles to strengthening Election Commission for free, fair and credible elections. Considering overall circumstances regarding to the amendments of our Constitution this study has focused on the backgrounds, politics and consequences of amendments made to the Constitution. The study has analyzed the all fifteenth amendments and give a view of constitutional development of Bangladesh after examining the polarization emerged from the politics of these amendments.

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<sup>11</sup> Moyeen Firozee, "Constitution amendment process: Proper approach", *The Daily Star*, Dhaka, 9 July 2011, P. 9

### **3. Objectives of the Study**

The study has covered the period from 1973 to 2011 and all political debates, arguments and controversies regarding the amendments have been discussed. The main objectives of the study are to:

- Know and analyze all the fifteen amendments of the Bangladesh Constitution;
- Focus on the backgrounds, politics and consequences of the amendments in the political system of the country;
- Assess the prospects of constitutional development of Bangladesh and
- Understand the future of Bangladesh democracy in the context of the political polarization emerged from the ‘politics of amendments’.

### **4. Significance of the Study**

Bangladesh adopted its Constitution in 1972. However the first initiative of amending the Constitution was taken in 1973 and from then to till today the Constitution has been amended under different regimes. In this study it has taken an attempt to closely analyze the amendments to the Constitution enacted during the period from 1973 to 2011. The study covers the reigns of all political parties namely AL, BNP, JP and open up an opportunity to make a comparative analysis. The findings of the study is helpful to the political leaders, academics, constitutional experts, students, researchers and other enthusiastic observers to understand the dynamics and development of the Constitution and democratic evolution of the country.

### **5. Methodology**

This study has followed an extensive of qualitative method. Qualitative research focuses on specific situations and emphasizes on words rather than number. Basically it is the research based on documentary analysis. Documentary research is almost qualitative in nature however it can be utilized both qualitative or quantitative analysis. As the study demands analysis of mostly secondary data, information has been collected from various books, journals, articles, newspaper and government records etc. It has provided with comprehensive and historical information of different time which helped to get insight into what people think (especially, Constitution analyst

and people of intellectual class). Moreover, this analysis is useful for corroboration of information.

## 6. Hypothesis of the Study

The people of Bangladesh believe in constitutional politics, the political elites are resorting to controversy regarding the Constitution and the amendments to the Constitution with an adverse resultant impact upon the working of democracy in the country. However, in the midst of political controversies and crises Bangladesh's constitutional evolution is surviving despite a few interruptions.

## 7. Review of Literature

Many eminent scholars have studied and analyzed the Constitution, amendments to the constitution and other constitutional issues of the country. Dilara Choudhury's *Constitutional Development in Bangladesh: Stress and Strains* (University Press Limited, Dhaka 1995), Justice Mustafa Kamal's *Bangladesh Constitution: Trends and Issues* (University of Dhaka, 2001), Md. Abdul Halim's *Constitution, Constitutional Law and Politics* (1995), Md. Abdul Halim *Amendment of the Institution of Bangladesh: Legislative Versus Judicial* (CCB Foundation, Dhaka 2014) Mizanur Rahman Khan's *Sangbidhan O Tatabadhayak Sarkar Bitarka* (City Prokashoni, 1995) Nizam Ahmed *Non-Party Caretaker Government of Bangladesh: Experience and Prospect* (The University Press Ltd. Dhaka, 2004) are pioneering works. Some researchers have also dealt with the amendments of the Constitution. Allan C. Hutchinson and Joel Colon-Rios's "Democracy and Constitutional Change" (*Victoria University of Wellington Legal Research Papers* Paper No 16/2011 September 2011 Volume 1 Issue No 3, 2011), Dag Anckar's "Democracy and Constitutional Endurance" (*Taiwan Journal of Democracy*, Volume 10, No. 1: 23-41, July 2014), Dalem Ch. Barman's "Songbidhan Sangshuhoni abong Gonotantro: Bangladesh Prosonga" (*Somaj Nirikkon*, No. 47, Somaj Nirikkon Kendro, Dhaka) Md. Abdul Halim's "The 7<sup>th</sup> Amendment Judgment by the Appellate Division: Judicial Politics or judicial Activism" (*Council Law Journal*, Vol. 1, Issue. 1, October 2014, Dhaka) Md. Ariful Islam Siddiquee's "Unconstitutional Constitutional Amendments in South Asia: A Study of Constitutional Limits on Parliaments' Amending Power" (*Journal of Law, Policy and Globalization* ,ISSN 2224-3240 (Paper) ISSN 2224-3259 (Online) Vol.33, 2015) Sheikh Hafizur Rahman Karzon's "Secularism

and Bangladesh Constitution” (BPSR Journal, Vol. 1, No. 1, 2001) have focused on the amendments of the Constitution. But none of the works have dealt with all of the fifteenth amendments and their impacts on Bangladesh’s politics. This study has covered all the amendments and in-depth analysis has presented to understand how the amendments have influenced the political course of the country.

## **8. Chapters**

To present the findings and analyses, the study has been divided into six chapters and sections. Chapter I deals with introduction and methodological conception of the study. Chapter II depicts Constitution and amendment. It includes the meaning, history and development, and significance of the phenomena and terms like ‘Constitution’, ‘Amendment’, etc. Chapter III includes the history of the framing of Bangladesh constitution and impact of the spirit of liberation war. Chapter IV describes all of the fifteenth amendments of Bangladesh constitution. Chapter V attempts to identify the politics and impacts of the constitutional amendments. The final and Chapter VI presents an overall summary and some brief comments on the prospects of constitutional politics and democracy in Bangladesh.

## **9. Limitations of the Research**

Although this research was carefully prepared, researcher is still aware of its limitations and shortcomings. In this study it is tried to analyze various books, journals, documents etc. But the materials are not sufficient and very few pertinent research works are found in this regard. Moreover, web documents on the research area are limited; even their downloading or reading subscription is too high to have. So the non-availability of relevant materials was a limitation to this work.



## **Chapter 2: Amendment to the Constitution: An Overview**

A constitutional amendment refers to the modification of the constitution of a nation or state. In many jurisdictions the text of the constitution itself is altered; in others the text is not changed, but the amendments change its effect.

Most constitutions require that amendments cannot be enacted unless they have passed a special procedure that is more stringent than that required of ordinary legislation. Examples of such special procedures include supermajorities in the legislature, or direct approval by the electorate in a referendum, or even a combination of two or more different special procedures.

The special procedures for the amendment of some constitutions have proven to be so exacting that of proposed amendments either few, as in Australia, or none, as in Japan, have been passed over a period of several decades. In contrast, the constitution of the US state of Alabama has been amended over 800 times since 1901.<sup>1</sup> From the period 1973 to 2011 fifteen amendments have been made to the Constitution of the People's Republic of Bangladesh. The Constitution has been amended by Acts of the Parliaments and by the Marital Law Proclamation Orders as well. It is argued that in Bangladesh the Constitution has been amended for the sake of narrow party interests. Even personal benefits encouraged to make amendments to the Constitution. Almost all the amendments created serious political debates, antagonism and crises in the country. The judiciary has also made their observations and decisions on some of the amendments. Their observations and decisions have received mixed reactions from the political parties, scholars and elites. It is true that no constitution is static. One feature of all good constitutions is to accommodate the requirements of the time. To confront and adjust the necessity of time and new generations all major constitutions had to through amendments and reformations. The Constitution of the People's Republic of Bangladesh is not an exception. However with the change of the society and circumstances, except the fundamental structure of the constitution, amendment may be essential and such necessity is recognized and contemplated in article 142 of our constitution.

So in the following sections of this chapter an attempt has been made to: (a) depict an outline of the history and development of constitution, (b) define constitution from various points of view, (c) explain amendments and process of amending the constitution,

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<sup>1</sup> Constitutional amendment, [http://en.wikipedia.org/wiki/Constitutional\\_amendment](http://en.wikipedia.org/wiki/Constitutional_amendment)

## **1. Constitution**

### **1.1 Origin**

The term ‘constitution’ originates from the Latin word ‘constitutio’, used for regulations or order. In modern days ‘constitution’ refers to a set of rules and principles that define the nature and extent of government. Constitution is ‘supreme’ as the solemn expression of the people and sole authoritative symbol of ... sovereignty.<sup>2</sup> It is the embodiment of the supreme will of the sovereign people. It includes the fundamental objectives of the state and declares of the basic rights guaranteed to the people.

There is no specific time frame of constitution’s beginning. Some might say it began over 2500 years ago in the city-states of ancient Greece. Others might place its beginnings nearly three-quarters of a millennium back in the fields of Runnymede. Still others might say the Constitution had its origins three centuries or so ago during the tumultuous years of the seventeenth-century English revolutions. Or others, more patriotic perhaps, might date the beginnings of the Constitution from events in the Western Hemisphere, from the Mayflower Compact, the Massachusetts Charter of 1629, or from any number of charters and constitutional documents that the colonists resorted to during the first century and a half of American history.

### **1.2 History and Development**

#### **1.2.1 Ancient Mesopotamia**

In 1877 Ernest de Sarzec in his book ‘Excavations in modern-day Iraq’ found evidence of the earliest known code of justice, issued by the Sumerian king Urukagina of Lagash ca 2300 BC. However the earliest prototype for a law of government, this document itself has not yet been discovered; infact it is known that it provided some rights to his citizens. For example, it is known that it relieved tax for widows and orphans, and protected the poor from the usury of the rich.

After that, many governments ruled by special codes of written laws. The oldest such document still known to exist seems to be the Code of Ur-Nammu of Ur (ca 2050 BC). Some of the better-

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<sup>2</sup> Moyeen Firozee, “Constitution amendment process: Proper approach”, *The Daily Star*, Dhaka, 9 July 2011.

known ancient law codes include the code of Lipit-Ishtar of Isin, the code of Hammurabi of Babylonia, the Hittite code, the Assyrian code and Mosaic law.<sup>3</sup>

### 1.2.2 Antiquity

In 621 BC a scribe named Draco codified the cruel oral laws of the city-state of Athens; this code prescribed the death penalty for many offences (nowadays very severe rules are often called "Draconian"). In 594 BC Solon, the ruler of Athens, created the new Solonian Constitution. It eased the burden of the workers, and determined that membership of the ruling class was to be based on wealth (plutocracy), rather than by birth (aristocracy). Cleisthenes again reformed the Athenian constitution and set it on a democratic footing in 508 BC.<sup>4</sup>

Aristotle (ca 350 BC) was one of the first in recorded history to make a formal distinction between ordinary law and constitutional law, establishing ideas of constitution and constitutionalism, and attempting to classify different forms of constitutional government. The most basic definition he used to describe a constitution in general terms was "the arrangement of the offices in a state". In his works *Constitution of Athens*, *Politics*, and *Nicomachean Ethics* he explores different constitutions of his day, including those of Athens, Sparta, and Carthage. He classified both what he regarded as good and what he regarded as bad constitutions, and came to the conclusion that the best constitution was a mixed system, including monarchic, aristocratic, and democratic elements. He also distinguished between citizens, who had the right to participate in the state, and non-citizens and slaves, who did not.<sup>5</sup>

The Romans first codified their constitution in 450 BC as the Twelve Tables. They operated under a series of laws that were added from time to time, but Roman law was never reorganised into a single code until the *Codex Theodosianus* (AD 438); later, in the Eastern Empire the *Codex repetitae praelectionis* (534) was highly influential throughout Europe. This was followed in the east by the *Ecloga* of Leo III the Isaurian (740) and the *Basilica* of Basil I (878).<sup>6</sup>

The Edicts of Ashoka established constitutional principles for the 3rd century BC Maurya king's rule in Ancient India.<sup>7</sup>

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<sup>3</sup> Constitutional amendment, [http://en.wikipedia.org/wiki/Constitutional\\_amendment](http://en.wikipedia.org/wiki/Constitutional_amendment)

<sup>4</sup> *Ibid*

<sup>5</sup> *Ibid*

<sup>6</sup> *Ibid*

<sup>7</sup> *Ibid*

Many of the Germanic people that filled the power vacuum left by the Western Roman Empire in the Early Middle Ages codified their laws. One of the first of these Germanic law codes to be written was the Visigothic Code of Euric (471). This was followed by the Lex Burgundionum, applying separate codes for Germans and for Romans; the Pactus Alamannorum; and the Salic Law of the Franks, all written soon after 500. In 506, the Breviarum or "Lex Romana" of Alaric II, king of the Visigoths, adopted and consolidated the Codex Theodosianus together with assorted earlier Roman laws. Systems that appeared somewhat/rather later include the Edictum Rothari of the Lombards (643), the Lex Visigothorum (654), the Lex Alamannorum (730) and the Lex Frisionum (ca 785). These continental codes were all composed in Latin, while Anglo-Saxon was used for those of England, beginning with the Code of Ethelberht of Kent (602). In ca. 893, Alfred the Great combined this and two other earlier Saxon codes, with various Mosaic and Christian precepts, to produce the Doom book code of laws for England.<sup>8</sup>

Japan's Seventeen-article constitution written in 604, reportedly by Prince Shōtoku, is an early example of a constitution in Asian political history. Influenced by Buddhist teachings, the document focuses more on social morality than institutions of government *per se* and remains a notable early attempt at a government constitution.<sup>9</sup>

### 1.2.3 Middle Ages

The Constitution of Medina (Ṣaḥīfat al-Madīna), also known as the Charter of Medina, was drafted by the Islamic prophet Muhammad. It constituted a formal agreement between Muhammad and all of the significant tribes and families of Yathrib (later known as Medina), including Muslims, Jews, and pagans. The document was drawn up with the explicit concern of bringing to an end the bitter inter tribal fighting between the clans of the Aws (Aus) and Khazraj within Medina. To this effect it instituted a number of rights and responsibilities for the Muslim, Jewish, and pagan communities of Medina bringing them within the fold of one community—the Ummah. The precise dating of the Constitution of Medina remains debated but generally scholars agree it was written shortly after the Hijra (622). It effectively established the first Islamic state. The Constitution established: the security of the community, religious freedoms, the role of Medina as a haram or sacred place (barring all violence and weapons), the security of

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<sup>8</sup> *Ibid*

<sup>9</sup> *Ibid*

women, stable tribal relations within Medina, a tax system for supporting the community in time of conflict, parameters for exogenous political alliances, a system for granting protection of individuals, a judicial system for resolving disputes, and also regulated the paying of Blood money (the payment between families or tribes for the slaying of an individual in lieu of *lex talionis*/ law of revenge; an eye for eye).<sup>10</sup>

The Gayanashagowa, or 'oral' constitution of the Iroquois nation, has been estimated to date from between 1090 and 1150, and is also thought by some to have provided a partial inspiration for the US Constitution.<sup>11</sup>

In England, King Henry I's proclamation of the Charter of Liberties in 1100 bound the king for the first time in his treatment of the clergy and the nobility. This idea was extended and refined by the English barony when they forced John to sign the Magna Carta in 1215. The most important single article of the Magna Carta, related to "habeas corpus", provided that the king was not permitted to imprison, outlaw, exile or kill anyone at a whim -- there must be due process of law first. This article, Article 39, of the Magna Carta read:

No free man shall be arrested, or imprisoned, or deprived of his property, or outlawed, or exiled, or in any way destroyed, nor shall we go against him or send against him, unless by legal judgment of his peers, or by the law of the land.<sup>12</sup>

This provision became the cornerstone of English liberty after that point. The social contract in the original case was between the king and the nobility, but was gradually extended to all of the people. It led to the system of Constitutional Monarchy, with further reforms shifting the balance of power from the monarchy and nobility to the House of Commons. Between 1220 and 1230, a Saxon administrator, Eike von Repgow, composed the *Sachsenspiegel*, which became the supreme law used in parts of Germany as late as 1900. In 1236, Sundiata Keita presented an oral constitution federating the Mali Empire, called the *Kouroukan Fouga*. Meanwhile, around 1240, the Coptic Egyptian Christian writer, 'Abul Fada'il Ibn al-'Assal, wrote the *Fetha Negest* in Arabic. 'Ibn al-Assal took his laws partly from apostolic writings and Mosaic law, and partly

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<sup>10</sup> *Ibid*

<sup>11</sup> *Ibid*

<sup>12</sup> *Ibid*

from the former Byzantine codes. There are a few historical records claiming that this law code was translated into Ge'ez and entered Ethiopia around 1450 in the reign of Zara Yaqob. Even so, its first recorded use in the function of a constitution (supreme law of the land) is with Sarsa Dengel beginning in 1563. The Fetha Negest remained the supreme law in Ethiopia until 1931, when a modern-style Constitution was first granted by Emperor Haile Selassie I.<sup>13</sup>

#### **1.2.4 Modern constitutions**

The oldest written document still governing a sovereign nation today is that of San Marino. The *Leges Statutae Republicae Sancti Marini* was written in Latin and consists of six books. The first book, with 62 articles, establishes councils, courts, various executive officers and the powers assigned to them. The remaining books cover criminal and civil law, judicial procedures and remedies. Written in 1600, the document was based upon the *Statuti Comunali* (Town Statute) of 1300, itself influenced by the *Codex Justinianus*, and it remains in force today.<sup>14</sup>

In 1639, the Colony of Connecticut adopted the Fundamental Orders, which was the first North American constitution, and is the basis for every new Connecticut constitution since, and is also the reason for Connecticut's nickname, "the Constitution State".<sup>15</sup>

The English Protectorate that was set up by Oliver Cromwell after the English Civil War promulgated the first detailed written constitution adopted by a modern state; it was called the Instrument of Government. This formed the basis of government for the short lived republic from 1653 to 1657 by providing a legal rationale for the increasing power of Cromwell, after Parliament consistently failed to govern effectively. The constitution set up a state council consisting of 21 members while executive authority was vested in the office of "Lord Protector of the Commonwealth"; this position was designated as a non-hereditary life appointment. The Instrument had difficulty in gaining widespread acceptance as it was widely rejected by both the radicals and Royalists, and Parliament refused to accept it as the basis of its authority. It was eventually replaced by the even more short-lived "Humble Petition and Advice" in May 1657 which finally met its demise in conjunction with the death of Cromwell and the Restoration.<sup>16</sup>

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<sup>13</sup> *Ibid*

<sup>14</sup> <http://en.wikipedia.org/wiki/Constitution>

<sup>15</sup> *Ibid*

<sup>16</sup> *Ibid*

Agreements and Constitutions of Laws and Freedoms of the Zaporizian Host was the first European constitution in a modern sense. It was written in 1710 by Pylyp Orlyk, hetman of the Zaporozhian Host. This "Constitution of Pylyp Orlyk" (as it is widely known) was written to establish a free Zaporozhian-Ukrainian Republic, with the support of Charles XII of Sweden. It is notable in that it established a democratic standard for the separation of powers in government between the legislative, executive, and judiciary branches, well before the publication of Montesquieu's *Spirit of the Laws*. This Constitution also limited the executive authority of the hetman, and established a democratically elected Cossack parliament called the General Council. However, Orlyk's project for an independent Ukrainian State never materialized, and his constitution, written in exile, never went into effect. Other examples of European constitutions of this era were the Corsican Constitution of 1755 and the Swedish Constitution of 1772.<sup>17</sup>

All of the British colonies in North America that were to become the 13 original United States, adopted their own constitutions in 1776 and 1777, during the American Revolution (and before the later Articles of Confederation and United States Constitution), with the exceptions of Massachusetts, Connecticut and Rhode Island. The Commonwealth of Massachusetts adopted its Constitution in 1780, the oldest still-functioning constitution of any U.S. state; while Connecticut and Rhode Island officially continued to operate under their old colonial charters, until they adopted their first state constitutions in 1818 and 1843, respectively.<sup>18</sup>

### **1.2.5 Democratic constitutions**

What is sometimes called the "enlightened constitution" model was developed by philosophers of the Age of Enlightenment such as Thomas Hobbes, Jean-Jacques Rousseau, and John Locke. The model proposed that constitutional governments should be stable, adaptable, accountable, open and should represent the people.

The United States Constitution, ratified June 21, 1788, was influenced by the British constitutional system and the political system of the United Provinces, plus the writings of Polybius, Locke, Montesquieu, and others. The document became a benchmark for republicanism and codified constitutions written thereafter.<sup>19</sup>

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<sup>17</sup> *Ibid*

<sup>18</sup> *Ibid*

<sup>19</sup> *Ibid*



Next were the Polish–Lithuanian Commonwealth Constitution of May 3, 1791, and the French Constitution of September 3, 1791.<sup>20</sup>

On March 19, 1812 a enlightened constitution was ratified in Spain by a parliament gathered in Cadiz, the only Spanish continental city which was safe of French occupation. The Spanish Constitution served as a model for other liberal constitutions of several South-European and Latin American nations like, for example, Portuguese Constitution of 1822, constitutions of various Italian states, the Norwegian constitution of 1814, or the Mexican Constitution of 1824.<sup>21</sup> In Brazil, the Constitution of 1824 expressed the option for the monarchy as political system after Brazilian Independence. The leader of the national emancipation process was the Portuguese prince Pedro I, elder son of the king of Portugal. Pedro was crowned in 1822 as first emperor of Brazil. The country was ruled by Constitutional monarchy until 1889, when finally adopted the Republican model.<sup>22</sup>

In Denmark, as a result of the Napoleonic Wars, the absolute monarchy lost its personal possession of Norway to another absolute monarchy, Sweden. However the Norwegians managed to infuse a radically democratic and liberal constitution in 1814, adopting many facets from the American constitution and the revolutionary French ones; but maintaining a hereditary monarch limited by the constitution, like the Spanish one.<sup>23</sup>

The Serbian revolution initially led to a proclamation of a proto-constitution in 1811; the full-fledged Constitution of Serbia followed few decades later, in 1835.<sup>24</sup>

The Constitution of Canada came into force on July 1, 1867 as the British North America Act, an act of the British Parliament. The BNA Act unified the colonies of Canada East (Quebec), Canada West (Ontario), Nova Scotia and New Brunswick into the self-governing Dominion of Canada. Over a century later, the BNA Act was patriated to the Canadian Parliament and augmented with the Canadian Charter of Rights and Freedoms. Since then, the written constitution as a whole has been known as the Constitution Acts, 1867 to 1982, while the original BNA Act is called the Constitution Act, 1867. Apart from the Constitution Acts, 1867 to 1982, Canada's constitution also has unwritten elements based in common law and convention.

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<sup>20</sup> *Ibid*

<sup>21</sup> *Ibid*

<sup>22</sup> *Ibid*

<sup>23</sup> *Ibid*

<sup>24</sup> *Ibid*

Canadian author and philosopher John Ralston Saul describes the Canadian Constitution as "the second-oldest working constitution in the world."<sup>25</sup>

## 2. Constitution: A Few Scholars View

A constitution is a set of fundamental principles or established precedents according to which a state or other organization is governed.<sup>26</sup> These rules together make up, i.e. constitute, what the entity is. When these principles are written down into a single document or set of legal documents, those documents may be said to embody a written constitution; if they are written down in a single comprehensive document, it is said to embody a codified constitution.

According to Rousseau, the most important of all laws “which is not graven on tablets of marble or brass but on the hearts of the citizens” is embodied in what he calls “the real constitution.” It “takes on everyday new powers, when other laws decay or die out, restores and takes their place, keeps a whole people in the ways in which it was meant to go, and insensibly replaces authority by the force of habits.”<sup>27</sup>

Constitutions concern different levels of organizations, from sovereign states to companies and unincorporated associations. A treaty which establishes an international organization is also its constitution, in that it would define how that organization is constituted. Within states, a constitution defines the principles upon which the state is based, the procedure in which laws are made and by whom. Some constitutions, especially codified constitutions, also act as limiters of state power, by establishing lines which a state's rulers cannot cross, such as fundamental rights. An example is the constitution of the United States of America. The Constitution of India is the longest written constitution of any sovereign country in the world,<sup>28</sup> containing 444 articles in 22 parts, 12 schedules and 118 amendments,<sup>29</sup> while the United States Constitution is the shortest written constitution, at 7 articles and 27 amendments.<sup>30</sup>

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<sup>25</sup> *Ibid*

<sup>26</sup> *The New Oxford American Dictionary*, Second Edition., Oxford University Press, 2005, p- 279

<sup>27</sup> Quoted in Carl J. Friedrich, *Constitutional Government and Democracy*, Oxford & IBH publishing Co. New Delhi, 1974, p-155

<sup>28</sup> M.V. Pylee, *India's Constitution*. S. Chand & Company Pvt. Ltd, New Delhi. 1997, p. 3.

<sup>29</sup> Siuli Sarkar, *Public Administration In India*. PHI Learning Pvt. Ltd. p. 363

<sup>30</sup> <http://en.wikipedia.org/wiki/Constitution>

Thomas Paine said, “that a constitution is a thing antecedent to a government and a government is only of a constitution. The constitution of a country is not the act of its government but of the people constituting a government.”<sup>31</sup>

According to The Dictionary of Political Science- “A constitution is the fundamental law of a country which defines its social and state organization, the principles of the electoral system, the structure of government bodies and the basic rights and duties of citizens.”<sup>32</sup>

Raymond Garfield Gettell says, “A constitution therefore may be defined as a collection of norms by which the legal relations between the government and its subjects are determined and in accordance with which the power of the state is exercised, or the body of rules and maxims in accordance with which the powers of sovereignty are habitually manifested.”<sup>33</sup>

Constitution according to Jellineck, “is a body of judicial rules which determine the supreme organs of the states, prescribe their mode of creation, their mutual relation, their sphere of action and finally the fundamental place of each of them in relation to State.”<sup>34</sup>

According to Gilchrist, constitution is, “That body of rules or laws, written or unwritten which determine the organization of Government, the distribution of powers of various organs of Government and the general principles on which these powers are exercised.”<sup>35</sup>

Marxist view of Constitution,

Marxist understanding is that the main point of the Constitution is to advance the economic power of wealthy property owners against the conflicting class interests of workers, debtors, and small farmers (not to mention enslaved persons, women, and indigenous peoples).<sup>36</sup>

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<sup>31</sup> Quoted in Jalal Firoj, *Parliamentary Shabdokosh*, Bangla Academy, Dhaka 2010, pp. 57-58

<sup>32</sup> T. R. Nanda, *Dictionary of Political Science*, Anmol publications, New Delhi 1993, p. 119

<sup>33</sup> R.G. Gettel, *Political Science*, Revised Edition, The World Press Private Ltd, Calcutta, 1961.P-245

<sup>34</sup> Quoted in R.C.Agarwal, *Political Theory*, S. Chand and Company LTD, 2003, P.316

<sup>35</sup> *Ibid*, P.316

<sup>36</sup> <http://classcrits.wordpress.com/2011/03/29/the-federalist-society%E2%80%99s-marxist-view-of-the-constitution>

### 3. Amendment and Its Process: World Perspective

Amendment is a change in a legal document made by adding, altering, or omitting a certain part or term. Amended documents, when properly executed, retain the legal validity of the original document.<sup>37</sup>

According to the Oxford Dictionary, 'amendment is a minor change or addition designed to improve a text, piece of legislation, etc.'<sup>38</sup>

Each country has a separate constitution of its own and also has a different process of amending their constitution. To understand the various process of amending constitution is undertaken by different state, has been included in this paper:

#### 3.1 United States of America

The constitution of the U.S.A is rigid. The procedure of amending the constitution is mentioned in article 5. The American Constitution can be amended when both the Houses of the Congress pass the resolution of amendment and the legislatures of at least  $\frac{3}{4}$  states give their consent. According to the second procedure of amendment of American Constitution, the legislatures of at least  $\frac{2}{3}$  states should recommend the amendment to the Congress. When such a request is made by the state legislatures, the Congress calls a Convention. The Convention is elected on the basis of Adult franchise and its strength is equal to that of the Congress. This Convention passes a resolution for the amendment of the constitution. If this Constitution is ratified in  $\frac{3}{4}$  states by conventions, the amendment in the constitution takes place. Since the second procedure is cumbersome, mostly the first procedure is adopted for the amendment of the constitution.<sup>39</sup>

#### 3.2 Great Britain

Since the British constitution is unwritten and flexible no special procedure is adopted or its amendment. British constitutional law can be amended like ordinary laws. The British Parliaments amend the constitution with a simple majority. There is no need of a  $\frac{2}{3}$  majority. After the assent of a British monarch, the amended law becomes the law of the land. It means

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<sup>37</sup> <http://en.wikipedia.org/wiki/Constitution>

<sup>38</sup> *The New Oxford American Dictionary, op. cit.*, p-39

<sup>39</sup> R.C.Agarwal, *op. cit.*, P.325

that in England the Queen-in-Parliament can amend any constitutional law by a simple majority.<sup>40</sup>

### **3.3 France**

In France, the process of the amendment of the constitution of the Fifth Republic has been mentioned in article 89. According to it, the president, on the recommendation of the Prime Minister, places the proposal for amendment before the parliament. The member of the parliament can also put forward the proposal for amendment before the parliament. When the amendment proposal is accepted by both the Houses of Parliament, a referendum is held to ascertain the views of the people. If this proposal is passed by a majority vote, the amendment takes place.<sup>41</sup>

### **3.4 Switzerland**

In Switzerland, a proposal for the amendment of the constitution can be brought before the parliament by the federal council or the proposal can be brought by either of the Houses of the parliament. The proposal for the amendment of the constitution can also be brought by at least 50,000 citizens through a petition. When both the Houses of the Parliament pass the amendment resolution, its ratification by the states and people is made. The Constitution shall be amended only when the amendment has got the support of the states and a majority of the people.<sup>42</sup>

### **3.5 Soviet Russia**

In Russia both the Houses of Supreme Soviet can amend the constitution by a total 2/3 majority.<sup>43</sup>

### **3.6 India**

The procedure of amendment makes the Constitution of India neither completely rigid nor totally flexible, rather a curious mixture of both. Some provisions can be easily changed and for some others, special procedures are to be followed. Despite the fact that India is a federal state, the

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<sup>40</sup> *Ibid*, p-325

<sup>41</sup> *Ibid*, P-325

<sup>42</sup> *Ibid*, P-325

<sup>43</sup> *Ibid*, p-325

proposal for amending the constitution can be initiated only in the House of the Union Legislature and the State Legislatures have no such power.

In case of ordinary legislation, if both houses of the Parliament disagree, a joint session is convened. But in case of amendment of bills, unless both the houses agree, it cannot materialize, as in such cases there is no provision for convening the joint session of both the Houses of the Parliament.

In fact, there are three methods of amending the Constitution. But Article 368 of the constitution which lays down the procedure for amendment mentions two methods.

1) An amendment of the constitution may be initiated only by the introduction of a Bill for the purpose in either house of Parliament and when a bill is passed in each house.

i) by a majority of total membership of that house.

ii) by a majority of not less than two-thirds of the members of that house present and voting, it shall be presented to the President who shall give his assent to the Bill and there upon the Constitution shall stand amended in accordance with the term of the Bill.

Most of the provisions of the constitution can be amended by this procedure.

2) For amending certain provisions a special procedure to be followed,

(i) a Bill for the purpose must be passed in each house of Parliament by a majority of total membership of the house,

(ii) by a majority of not less than two-thirds of the members of that house present and voting and

(iii) it should be notified by the legislatures of not less than one-half of the states before the Bill is presented to the President for assent.<sup>44</sup>

### 3.7 Denmark

The Constitution of Denmark provides an example of multiple special procedures that must be followed. After an amendment has been approved by parliament, a general election must be held; the new parliament must then approve the amendment again before it is finally submitted to a referendum. There is also a requirement that at least 40% of eligible voters must vote at the referendum in order for an amendment to be validly passed.<sup>45</sup>

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<sup>44</sup> <http://www.preservearticles.com/201104235908/procedure-for-amendment-of-the-constitution-of-india.html>

<sup>45</sup> [http://en.wikipedia.org/wiki/Constitutional\\_amendment](http://en.wikipedia.org/wiki/Constitutional_amendment)

### 3.8 Estonia

The Constitution of Estonia can only be modified by three-fifths majority in two successive complements of Parliament, and a referendum for certain chapters.<sup>46</sup>

### 3.9 Bangladesh

Alike others state constitution Bangladesh also has inserted article regarding amendment of its constitution where the total process of amendment has been comprehensively discussed. The article is as follows:

Article-142 (1) Notwithstanding anything contained in this constitution-

(a) Any provision thereof may be [amended by way of addition, alteration, substitution or repeal] by act of Parliament:

Provided that-

- i. no Bill for such amendment shall be allowed to proceed unless the long title thereof expressly states that it will amended a provision of the constitution;
- ii. no such Bill shall be presented to the president for assent unless it is passed by the votes of not less than 2/3( two-thirds) of the total number of the member of the parliament;

a) when a Bill passed as aforesaid is presented to the president for his assent he shall, within the period of seven days after the bill is presented to him assent to the bill and if he fails so to do he shall be deemed to be assented to it on the expiration of that period

(1A). Notwithstanding anything contained in clause (1), when a Bill, passed as a aforesaid,, which provides for the amendment of the Preamble or any provisions of articles 8, 48 Or 56 or this article, is presented to the President for assent, the President, shall within the period of seven days, after the Bill is presented to him, cause to be referred to a referendum the question whether the bill should or should not be assented to.

1B. A referendum under this article shall be conducted by the Election Commission, within such period and in such manner as may be provided by law, amongst the person enrolled on the electoral roll prepared for the purpose of election to[Parliament].

1C. On the day on which the result of the referendum conducted in relation to a Bill under this article is declared, the President shall be deemed to have-

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<sup>46</sup>*Ibid*

(a) assented to the Bill, if the majority of the total votes cast are in favor of the Bill being assented to; or

(b) withheld assent there from, if the majority of the total votes cast are not in favor of the Bill being assented to 1D Nothing in clause (1C) shall be deemed to be an expression of confidence or non confidence to the cabinet or parliament.

2. Nothing in article 26 shall apply to any amendment made under this article.]<sup>47</sup>

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<sup>47</sup> The constitution of the people's Republic of Bangladesh, October 2011, p-55



### **Chapter 3: Making of the Bangladesh Constitution: History and the Spirit of the War of Liberation**

## 1. Bangladesh constitution

The Constitution of Bangladesh (*Bangladesher Shongbidhan*) is the supreme law of Bangladesh. It proclaims Bangladesh as a secular democratic republic,<sup>1</sup> declares the fundamental rights and freedoms of Bangladeshi citizens, spells out the fundamental principles of state policy, and establishes the structure and functions of the executive, legislative and judicial branches of the republic. Passed by the Constituent Assembly of Bangladesh on November 4, 1972, it came into effect from December 16, 1972, on the first anniversary of Bangladesh's victory over Pakistan in the Liberation War. The constitution proclaims Bangladeshi nationalism, socialism (social and economic justice), democracy and secularism as the national ideals of the republic. When adopted in 1972, it was one of the most liberal constitutions of the time.<sup>2</sup>

## 2 Liberation War and Bangladesh

The nine-month long War of Liberation waged by the people of Bangladesh in 1971 will forever remain recorded as one of the most glorious chapters in human history. The sovereign and independent People's Republic of Bangladesh, as it stands today, is the outcome of an arduous struggle of the people under the leadership of Bangabandhu Sheikh Mujibur Rahman.

### 2.1 Historical Background

Bangladesh history started from the British period. The British have ruled this region for approximately 200 years. Thousands and thousands of people have been killed, imprisoned and exile in their attempts to be free. In 1940 the 'Lahore Resolution' declared that the two areas that had the most Muslims would become two countries and the remaining area would become separate country.<sup>3</sup> But on 14<sup>th</sup> of August 1947, the two areas that had most Muslims would become one country, Pakistan, instead of two, and on 15<sup>th</sup> of August the remaining area became a different country, India. And so a very strange country was born; the two parts of the country were in two different places. What is now Pakistan was known as West Pakistan and what is Bangladesh is known as East Pakistan. After being partitioned by the British Sovereign in 1947, the constituency of Pakistan faced ongoing dilemma to constitute a favorable constitution for

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<sup>1</sup> [http://en.wikipedia.org/wiki/Constitution\\_of\\_Bangladesh](http://en.wikipedia.org/wiki/Constitution_of_Bangladesh)

<sup>2</sup> *Ibid*

<sup>3</sup> Mohammad Zafar Iqbal, *History of Liberation War*, Proteeti, Dhaka, 2008, P-1

both of its parts. Ayub Khan during his tenure set up a Constitution Commission to make recommendations for the future constitution and the constitution framed by him came into operation on 7 June 1962. This constitution introduced a system which was euphemistically called a presidential form of government where the normal checks and balances to prevent one-man rule were not incorporated in the constitution.<sup>4</sup>

Two elections were held under the constitution of 1962 which clearly demonstrated that the people could not get persons of their choice elected as their representatives. In 1965 Ayub got himself re-elected as the President. The general impression in the country was that the election was rigged. In 1966 Sk. Mujibur Rahman started a movement in East Pakistan with his 6-Point programme which reflected the genuine grievances of the people of East Pakistan. Towards the end of 1968, an agitation in political parties gradually gathered momentum and was accompanied by wide-spread disturbances throughout the country. The Agartala Conspiracy case started against Sk. Mujibur Rahman and others aborted because of massive movement in East Pakistan.<sup>5</sup>

Ayub Khan called a round table conference of political leaders to resolve the political issues which led to the crisis. A solution was near sight, when all on a sudden Ayub Khan by relinquishing his office asked the Defence Forces on 24 March 1969 to step in as, according to him, it was beyond the capacity of the civil government to deal with the then prevailing situation.<sup>6</sup>

Yahya Khan, the Commander-in-Chief, by a Proclamation issued on 26 March 1969, abrogated the constitution of 1962, dissolved the National and Provincial Assemblies and imposed Martial Law throughout the country. On 31 March 1969 he promulgated the Provisional Constitution Order which substantially followed the pattern of the Laws (Continuance in Force) Order, 1958. On 30 March 1970 Yahya Khan promulgated the Legal Framework Order and under its provisions elections were held in December, 1970 to the National and Provincial Assemblies on the basis of adult franchise. After a good deal of political maneuvering, a session of the National

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<sup>4</sup> Mahmudul Islam, *Constitutional Law of Bangladesh*, 3rd Ed, Mullik Brothers, P-15

<sup>5</sup> *Ibid*, p-16

<sup>6</sup> *Ibid*, p-17

Assembly was summoned by Yahya Khan on 3 March 1971 in Dhaka. But the Peoples Party led by Z.A. Bhutto refused to attend the session in Dhaka and Yahya Khan postponed the session indefinitely.<sup>7</sup>

The Awami League led by Sk. Mujibur Rahman which won almost all the seats in East Pakistan and a held clear Majority in the National Assembly reacted sharply and in protest of the action taken by Yahya Khan virtually took over the administration in East Pakistan. To meet the situation, Yahya Khan had talks with the important political leaders in Dhaka which subsequent events clearly indicated was a ruse. Yahya Khan started his military action with unprecedented brutality, gunning down hundreds of innocent people in Dhaka and other places in East Pakistan in the night of 25 March 1971 which was taken by the East Pakistan as an act of betrayal.

Thousands took up arms to fight against the Pakistani Armed Forces to liberate the country, Bangladesh. The members of the National and Provincial Assemblies elected in the 1970 election from East Pakistan proclaimed independence on 17 April 1971 forming the Government on 10 April, 1971 with Sk. Mujibur Rahman, then in custody in Pakistan, as the President and Syed Nazrul Islam as the Acting President till the release of Sk. Mujibur Rahman. On 16 December 1971 the Pakistan Armed Forces surrendered and Bangladesh became liberated.<sup>8</sup>

### **3. History of Constitution Making**

The constitution is the complete introduction for a country. In 16<sup>th</sup> December 1971 Bangladesh makes a Decree of General Assembly in the globe of the world. Disclosing as a sovereign state the necessity of the constitution was very important. That is why the independent government of Bangladesh drew up a constitution of Bangladesh for Bangladesh.

#### **3.1 History of Constitutional Development in Bangladesh**

Before the Constitution came into force on the 16<sup>th</sup> December 1972, Bangladesh was governed, *de jure* from the 26<sup>th</sup> March, 1971, *de facto* from 16<sup>th</sup> December 1971, by three constitutional documents:

- The Proclamation of Independence, 1971

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<sup>7</sup> Shamima, Binte Habib, "Understanding Constitutionalism: Bangladesh Perspective", *Asa University Review*, Vol-8, No 1, 2014, P-227

<sup>8</sup> *Ibid*, p-227

- Laws Continuance Enforcement Order,1971
- Provisional Constitution of Bangladesh Order,1972

### **3.1.1 The proclamation of independence**

Following the military crackdown on March 25, 1971 the Awami League leaders who could flee to India assembled in Kolkata. With their prompt initiative a formal Proclamation of Independence was drafted and adopted on 10<sup>th</sup> April, 1971. Under this Proclamation the representatives constituted themselves into a Constituent Assembly for Bangladesh and declared Bangladesh as a Sovereign People's Republic. Bangabandhu Sheikh Mujibur Rahman was made President and Syed Nazrul Islam Acting President. They thereby confirmed the declaration already made on March 26, 1971. And now it remained no longer a mere declaration; it became a formally approved document which acted as interim Constitution. It provided for a Presidential system of Government giving the President the absolute power in views of the war situation.<sup>9</sup>

### **3.1.2 Laws Continuance Enforcement Order,1971.**

On 10<sup>th</sup> April1971, along with the Proclamation of Independence, Law's Continuance Enforcement Order was issued. This Order provided that all laws that were in force in Bangladesh on March 25, 1971 and were subject to the Proclamation of Independence, continued to be in force with such consequential changes as were necessary.<sup>10</sup>

### **3.1.3 The Provisional Constitution of Bangladesh Order, 1972.**

On December 16, 1971 Bangladesh achieved its full formal independence. The State administration was being run according to the Proclamation of Independence. On January 10,1972 Bangabandhu Sheikh Mujibur Rahman returned to Bangladesh and took up the post of President. On 11<sup>th</sup> January 1972, the President promulgated the Provisional Constitution of Bangladesh Order, 1972. By virtue of this Order the entire character of the government was changed. The Presidential form was substituted by a form aiming at a Westminster type Parliamentary system.<sup>11</sup>

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<sup>9</sup> <https://www.google.com/search?q=Political+Science+Lec-4%28Constitution%29-1.doc&ie=utf-8&oe=utf-8>

<sup>10</sup> *Ibid*

<sup>11</sup> *Ibid*

### 3.2 The Constituent Assembly Order

In 23rd March, 1972 the President declared the Decree of General Assembly. It was the very first step to composing the Constitution of Bangladesh. According to this Decree from the area of Bangladesh makes an association within the elected national association members and international association members in the December of 1970 and in the January and March of 1971. The General assembly was constituted within the 169 members of national association and 300 members of international association. The assembly was responsible to produce a permanent and complete Constitution for Bangladesh.<sup>12</sup>

### 3.3 The First Session of the Constituent Assembly

The Constituent Assembly had its first meeting on 10 April 1972. The Speaker and Deputy Speaker were Mr Shah Abdul Hamid and Mr Mohammed Ullah [who later became President] respectively. In this session a Constitution Drafting Committee consisting of 34 members (including Syed Nazrul Islam, Tajuddin Ahmed and AHM Kamruzzaman) was formed under the Chairmanship of Dr Kamal Hossain (the then Law Minister). The only woman member of the Constitution Drafting Committee was Razia Banu, whereas the only opposition member was Mr Surenjit Sen Gupta.<sup>13</sup> The Drafting Committee had its first meeting on 17 April 1972. In that meeting a resolution was adopted inviting proposals and suggestions from all sections of the people. In response to this invitation, 98 memoranda were received. However the final report of the Drafting Committee did not mention at all whether any of those memoranda was accepted. The Drafting Committee had 74 meetings to draft the Constitution and on 10 June 1972 it approved the Draft Constitution. With a purpose of observing practical working of the parliamentary constitutional system, the Chair of the Committee Dr Kamal Hossain went to the UK and India. A foreign expert on drafting Constitution was reported to have brought to Dhaka and his assistance was taken in drafting the Constitution. In fact, the Constitution of Bangladesh was drafted in the light of [impliedly] British and [heavily relied on] Indian Constitution. On 11 October 1972 the last meeting of the Committee was held where the full Draft Constitution was finally approved.<sup>14</sup>

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<sup>12</sup> <http://www.parisvisionnews.com/articles/3600-origin-and-history-of-the-constitution-of-bangladesh.html>

<sup>13</sup> *Ibid*

<sup>14</sup> *Ibid*

### 3.4 The Second Session of the Constituent Assembly

The second session of the Assembly commenced on October 12, 1972. In this session the Draft Constitution of 72 pages containing 103 Articles was presented. On this day Dr Kamal Hossain introduced the Draft Constitution as a Bill. The Constituent Assembly did have general discussion for seven days, from 19 October 1972 to 3 November 1972. At the first phase of general discussion Cabinet Members Syed Nazrul Islam Tajuddin Ahmed, Khodker Mushtaq Ahmed, Monsur Ali, Professor Yousuf Ali, AHM Kamruzzaman, Abdul Malik Ukil, Mizanur Rahman Choudhury took part. The only opposition Member Surenjit Sen Gupta and independent Member Manbendra Narayan Larma also took part in the discussion. During this discussion 163 amendments were proposed. Among those, 84 amendments were adopted of which 83 were moved by Awami League Members and one was by Surenjit Sen Gupta. Interestingly most of the amendments were relating to linguistic and grammatical errors of the Bill.<sup>15</sup>

### 3.5 The Final Approval of the Draft Constitution

The Third Reading on the Bill was held on 4 November 1972 and on the same day the Assembly adopted the Constitution of Bangladesh. To commemorate this historic day, 4 November is observed as the 'Constitution Day.' It was given effect from 16 December 1972, on the first anniversary of the 'victory day' of Bangladesh.<sup>16</sup>

Bangladesh achieved her long awaited independence after a nine month long blood-shedding battle in 1971. What becomes a must to govern a state just after it becomes independent is the formulation of her Constitution. Bangladesh, therefore, took an instant effort to formulate a constitution rapidly, based on the ideological spirit of the war of independence

Nationalism was inserted as one of the main principles of the Bangladesh constitution which influenced the mass people to fight against the occupation forces of Pakistan and even sacrificed their lives for the sake of the country. The other three principles of the constitution are- Democracy, Socialism and Secularism.

To free the country from Pakistan, the people of all classes- irrespective of caste, creed, and religion took part voluntarily in the war of liberation. What got importance above all consideration was the independence of the state. There is hardly any family in our country who

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<sup>15</sup> *Ibid*

<sup>16</sup> *Ibid*

did not lose or sacrifice any of their relatives for the sake of their freedom. Since only the spirit of nationality rather than cast, creed or religion functioned as the key in gaining our independence, secularism has been placed as an outstanding principle of the constitution, which in fact fosters the ideology of the liberation war. In the preamble of the constitution the spirit of the liberation war is clearly reflected. It has been mentioned that we have established the free and sovereign Republic of Bangladesh with the declaration of independence on 26 March 1971 through a historical battle.

Again, in the preamble, pledging that it shall be a fundamental aim of the state to realize through a democratic process a socialist society, free from exploitation-a society in which the rule of law, fundamental human rights and freedom, equality and justice, political, economic and social, will be secured for all citizens.

Besides, in other articles of the constitution in which rights and responsibilities of the citizens are mentioned, the spirit of the liberation war has got substantial importance.

Constitution is the supreme law of a state. A state without constitution, however, can never run smoothly. And so those who contributed great in gaining the independence of Bangladesh, have also put significant effort in the formulation of the constitution. In fact, as the spirit of liberation being alive in their thought, they were determined to formulate the constitution of our state on the basis of that spirit.



## **Chapter 4: Amendments to the Constitution: From the First to the Fifteenth**

‘In his seminal law of constitution, A.V. Dicey stated that if a national constitution was written so as to be changeable by amendment, than it should be capable of being changed only by some authority above and beyond the ordinary legislative bodies.’<sup>1</sup> A living Constitution is one that evolves, changes over time, and adapts to new circumstances, without being formally amended, there's no realistic alternative to a living Constitution.<sup>2</sup>

Meanwhile, the world has changed in incalculable ways. The nation has grown in territory and its population has multiplied several times over. Technology has changed, the international situation has changed, the economy has changed, and social mores have changed, all in ways it is not be exaggeration to demand of constitutional amendment if necessary. And it is just not realistic to expect the cumbersome amendment process to keep up with these changes.

So it seems inevitable that the Constitution will change, too. It is also a good thing, because an unchanging Constitution would fit our society very badly. Either it would be ignored or, worse, it would be a hindrance, a relic that keeps us from making progress and prevents our society from working in the way it should. After all, a state requires to have a Constitution that is both living, adapting, and changing and, simultaneously, invincibly stable and impervious to human manipulation. As a independent nation Bangladesh and her constitution is not above constitutional changes. So it is reality that the country has gone through constitutional amendments’ of 15(fifteen) times from its birth.

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<sup>1</sup> A. V. Dicey, *Introduction to the study of the law of the Constitution*, Macmillan, London, 10th ed.1973, p. 1423.

<sup>2</sup> <http://www.law.uchicago.edu/alumni/magazine/fall10/strauss>.

The following is a brief account of these acts and orders:

**Summary of 15 Amendments:**

Amendments	Date	Summary of substance
1 <sup>st</sup> Amendment	15 <sup>th</sup> July 1973	To make way for prosecution of genetic crime against humanity and war crimes committed in the liberation war of 1971.
2 <sup>nd</sup> Amendment	22 <sup>nd</sup> September, 1973	Inclusion emergency provision suspension of fundamental rights and preventive detention.
3 <sup>rd</sup> Amendment	28 <sup>th</sup> November 1974	To give effect to the boundary line treaty between Bangladesh and India.
4 <sup>th</sup> Amendment	25 <sup>th</sup> January, 1975	One party dictatorial system was subsisted for a responsible parliamentary system.
5 <sup>th</sup> Amendment	6 <sup>th</sup> April, 1979	Legalizing all acts done by the first Military Authority
6 <sup>th</sup> Amendment	10 <sup>th</sup> July, 1981	To make way for the Vice President to be a candidate in president election.
7 <sup>th</sup> Amendment	10 <sup>th</sup> November, 1986	Legalizing all acts done by the 2 <sup>nd</sup> Military Authority.
8 <sup>th</sup> Amendment	9 <sup>th</sup> June, 1988	Setting up six permanent Benches of the High Court Division and making 'Islam' the state religion.
9 <sup>th</sup> Amendment	11 <sup>th</sup> July, 1989	Direct election of the president and the Vice-President simultaneously.
10 <sup>th</sup> Amendment	23 <sup>rd</sup> June, 1990	Period for reservation of 30 women members seats in the parliament was extended for 10 years.
11 <sup>th</sup> Amendment	10 <sup>th</sup> August 1991	Legalizing the appointment of Shahabuddin Ahmed, Chief Justice of Bangladesh as Vice President of Bangladesh and his all activities

		as the Acting President and then the return to his previous position of the Chief Justice of Bangladesh.
12 <sup>th</sup> Amendment	18 <sup>th</sup> September, 1991	Reintroducing the parliamentary system.
13 <sup>th</sup> Amendment	28 <sup>th</sup> March, 1996	Provision for Caretaker Government.
14 <sup>th</sup> Amendment	16 <sup>th</sup> May 2004	Provision regarding women in the parliament
15 <sup>th</sup> Amendment	30 <sup>th</sup> June, 2011	Provisions of caretaker government abolished; Islamic secularism; Bangladesh and Bangalee nationalism and some major changes in the constitution introduced.

## **1. First Amendment: Background**

The Constitution (First Amendment) Act 1973 was passed on 15 July 1973. This amendment was made to face a special situation. There was no special law in the country to prosecute those who committed war crimes, crime against humanity, genocide and other crimes under international law during ‘the liberation war in 1971. Again, the provisions of fundamental rights in the Constitution did not allow their separate trial. So it was the demand of time to make the first amendment of the constitution to prosecute and punish those criminals who were engaged in war crimes in the period of our liberation.<sup>3</sup>

### **1.1 Subject Matter of the Amendment:**

By this amendment a new clause in Article 47 was inserted (clause 3) which allowed the parliament to make any law for the trial of war criminals. By inserting a new Article 47A in the Constitution certain fundamental rights were made inapplicable to those who would be tried under that law. The rights which were made inapplicable to them were following.

1. Right to protection of law (Art.-31)
2. Protection against trial under ex post facto law [Art. 35(1)]
3. Right to a speedy and public trial by an independent and impartial tribunal [Art. 35(3)].
4. Right to enforce fundamental rights. (art. 44)

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<sup>3</sup> Md. Abdul Halim, *Constitution, Constitutional Law and Politics: Bangladesh Perspective*, CCB Foundation, 2014, p-107

## 2. Second Amendment: Background

The original Constitution of Bangladesh had two most significant, negative features—first, the absence of provision for preventive detention and second, absence of provisions for emergency and suspension of fundamental rights. During the British colonial role and then 23 years constitutional history of Pakistan the arbitrary application of preventive detention’ law’ and emergency was so bitter that it left a good teaching to the Awami League that such provisions which are contradictory to the concept of nourishing living democracy, would never allow to build normal democracy system. After partition the two Governor-Generals of Pakistan Golam Muhammad and Iskander Mirza used the power of emergency to perpetuate their rule and thereby destroyed all the political institutions. The emergency imposed by Ayub Khan in 1965 was not lifter till 1969 when he was forced to leave power. During this continued emergency opposition was suppressed and hundreds of citizens were put into prison for years together without trial. This bitter experience led the Awami League to make an avowed commitment since the formation of United Front in 1954 to repeal not only these black laws but also to remove any scope or prerogative enabling an individual to retard the process of democracy. With this experience and commitment in mind, the Awami League government in Bangladesh did not want to leave any scope: for such exercise of power by the president. As a result, in the original Constitution of Bangladesh no provision of emergency or any of for preventive detention was inserted. The decision was praiseworthy and conducive to the nourishment of living democracy. But sooner than 9 months had passed provisions for emergency and preventive detention were inserted in the Constitution by the 2nd Amendment to the Constitution.<sup>4</sup>

### 2.1 Subject matter of the Amendment:

Four types of fundamental changes were applied in the constitution by this amendment. They are as follows:

1. A new part IXA was added to incorporate (Article 141A, 141B, 141C) emergency provision.
2. Article 33 was substituted so as to empower the parliament to pass law relating to preventive detention.

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<sup>4</sup> *Ibid*,p-108

3. Provision for enacting laws inconsistent with fundamental rights were- incorporated by adding two new clauses—clause 3 of Article 26 and clause 3 of Article 142. This was not any illogical or undemocratic something, for the government was not given any power, without amending the constitution itself, to enact any law inconsistent with fundamental rights.

4. The interval between two sessions of the parliament was extended from 60 days to 120 day. This change virtually weakened the spirit of responsible government.

### **3. Third Amendment: Background**

Like the first one the third amendment was made to face a practical situation, it made changes in Article 2 of the Constitution and gave effect to an agreement between Bangladesh and India relating to some changes in boundary lines between these two countries.<sup>5</sup>

#### **3.1 Subject matter of the amendment**

The Constitution (Third Amendment) Act 1974 was passed to give effect to the agreement with India giving up the claim in respect of Berubari and retaining Dahagram and Angorpota.

### **4. Fourth Amendment: Background**

After the national independence the people of Bangladesh were presented a well-written and much improved constitution over all the existing constitutions of the sub-continent. The Constitution, to a large extent, reflected the aspirations of the people nurtured for nearly two decades. But only after 3 years of its life the same AL government which had adopted it transformed it, by the 4th Amendment, beyond any resemblance with the original. It virtually turned the Constitution, a best one, into the worst one in the world.

On 28th December, 1974 emergency was declared throughout the country suspending fundamental right guaranteed in the Constitution. While justifying such an action it was mentioned in the government hand on that a group of people who were opposed to the independence and Emergence of Bangladesh as a sovereign state were active in various

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<sup>5</sup> *Ibid*,p-111

subversive-activities and they were joined by others who failed to attain power through constitutional means. It also disclosed that some collaborators were subverting the state and were engaged in activities which were creating impossible conditions in the country for attaining normal political stability and orderly economic progress. Though the emergency was proclaimed with a view to bringing the deteriorated economic situation under control by arresting and punishing the hoarders, black marketers, smugglers, armed bandits etc. It was not the real reason behind. The main aspect of it way to create conditions which would be congenial for a smooth ushering of a stem which Mujib by that time had already decided to introduce the party dictatorial system in the Constitution. Accordingly, on 25th January, 1975 only 27 days after the emergency was proclaim the country went through the most significant and rascal change in the Constitution. The infamous Fourth Amendment. Bill to the Constitution was introduced in the parliament and the parliament passed the Bill into an Act at a speed unprecedented in the history of law making. Within half-an hour the crucial Bill which was of the greatest importance, was passed through- and no discussion or debate-was allowed. “The way the Bill was adopted demonstrated the omnipotence of Sheikh Mujib’s leadership. A constitutional dictatorship was established which formally buried parliamentary democracy and the growth of constitutionalism in Bangladesh”.<sup>6</sup>

#### **4.1 Subject matter of the Amendment**

- 1) The Articles 11, 66, 67, 72, 74, 76, 80, 88, 95, 98, 109, 116, 117, 119, 122, 123, 141A, 147 and 148 of the constitution had been amended;
- 2) It substituted Articles 44, 70, 102, 115 and 124 of the constitution;
- 3) It amended part III of the constitution out of existence;
- 4) It altered the Third and Fourth Schedule;
- 5) It extended the term of the first Jatiya Sangsad;
- 6) The fourth Amendment made the special provisions relating to the office of the president and its incumbent;
- 7) It inserted a new part, i.e. part VIA in the constitution, and
- 8) It inserted articles 73A and 116A in the constitution.

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<sup>6</sup>*Ibid*,p-111



## 5. Fifth Amendment: Background

In a military coup led by a group of army officers Mujib was killed brutally along with his family members on 15th August, 1975. With his killing his new system of one party BAKSAL had gone. The first martial law regime got its firm start in Bangladesh governance which continued till 6th April, 1979. Though martial law was declared on 15th August, 1975 the Constitution was not abrogated; it was kept alive in subordination, though it was the supreme law “which allowed no means of martial law. The Constitution was changed several times by various martial law proclamations and orders. From the constitutional point of view all these changes to the Constitution were illegal, for the Constitution did not allow such a process of amendments; constitutionally it is the only body parliament which can amend the Constitution. However, the Martial Law was declared and the Constitution was amended in an extra-constitutional way which has been a frequent phenomenon in politics of developing countries with new start of democracy. The second parliamentary election was held in 1979 while martial law administrator Zia’s party secured a two-third majority. The first session of the parliament was convened on 1st April, 1979 and on 6th April a constitutional Amendment Act (5th Amendment) was passed which legalized all the activities of the martial law government made and done during the period between 15th August, 1975 and 9th April, 1979. The Act amended the 4th Schedule to the Constitution by an addition of new paragraph 18 thereto which provided, inter alia, that all amendments, additions, modifications, substitutions and omissions made in the constitution during the period between the 15th August, 1975 and the 9th April, 1979 by any Proclamation or Proclamation Order of the Martial Law Authorities were ratified and confirmed and were declared to have been validly made and would not be called in question in or before any court or tribunal or authority on any ground whatsoever. Through four major Martial Law Proclamations and various Proclamation Orders made there under the Constitution was amended several times according to the wishes of the Martial Law government. After the 5th Amendment Act was adopted the overall Constitution came to be a different one, though not completely an uprooted one, from one introduced by the 4th Amendment.<sup>7</sup>

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<sup>7</sup> *Ibid*, P-156-57

### 5.1 Subject matter of the amendment

The 5th Amendment brought about, inter alia, the following important changes in the Constitution.

1. Part VIA of the Constitution dealing with one party system as introduced by the 4th Amendment was omitted.
2. The independence of judiciary which was completely destroyed by the 4th Amendment was restored partially (Articles 96 and 116).
3. The jurisdiction of the High Court Division of the Supreme Court to enforce fundamental rights was restored to its original position as was in the original constitution (Article 44 and 102).
4. Provision of Supreme Judicial Council in respect of security of tenure of the judges of the Supreme Court was inserted (Article 96).
5. The provision of absolute veto power of the President introduced by the 4th Amendment was abolished (Article 80).
6. Provisions of referendum in respect of amendment of certain provisions of the Constitution were inserted and to that end a new clause IA was created in Article 142.
7. Religious words “Bismiliahir Rahmanir Rahim” was inserted in the beginning of the Constitution i.e. above the preamble.
8. In the original Constitution it was provided in Article 6 that the citizens of Bangladesh would be known as ‘Bangalees’. But this was changed and it was provided now that citizens would be known as ‘Bangladeshis’.
9. One of four major fundamental principles of state policy ‘secularism’ was omitted and in its place a new one ‘the principle of absolute trust and faith in the Almighty Allah’ was inserted (Art. 8).
10. One of four major fundamental principles of state policy ‘socialism’ was given a new explanation to the-effect-that-socialism would mean economic and social justice (Article 8).
11. A new article 145A was created where it was provided that all international treaties would be submitted to the President who should cause them to be laid before parliament.
12. Another new Article 92A was created whereby the President was given power to expend public moneys in certain cases.
13. Article 58 was amended to the effect that four-fifths of the total number of ministers should be taken from among the members of parliament. It was also provided that the President would

appoint as Prime Minister the Member of Parliament who appeared to him to command the support of the majority of the members of parliament.

### **1. Sixth Amendment: Background**

On May 30, 1981 President Zia was brutally killed in an unsuccessful army coup. On his death justice Abdus Sattar, the then Vice-President assumed the role of Acting President. Under Article 123 of the Constitution the presidential vacancy caused by death was to be filled by an election within 180 days of the vacancy occurring, Acting President Sattar was nominated by BNP as a presidential candidate in the election. But a constitutional problem arose respecting the method of Sattar's nomination, for the Constitution did not permit him to contest the election as he was holding an office of profit. Under Article 50 of the Constitution the President could appoint Vice-President any person qualified for election as a member of parliament Under Article 66 (dd) a person would be disqualified for election as a member "of parliament if he was holding an office of profit in the service of the Republic other than an office which is declared bylaw not to disqualify-such holders. There was no law stating that the office of Vice-President was not an office of profit. On the other hand, under Article 66(2A) some persons were exempted from holding an office of profit—such as Prime Minister, Deputy Prime Minister, Minister, Minister of State and Deputy Minister. It was, therefore, clear that the office of the -Vice-President continued to be an office of profit and this debarred Sattar from contesting in the election. To overcome this problem, on July 1, 1981 a Bill called the Sixth (Constitution Amendment) Bill was introduced in the House. On 8th July the Bill was passed which now enabled Sattar to contest the election without resignation from his office. This Amendment amended Articles 51 and 60 excluding, inter alia, the office of President, Vice-President and Acting President free from being office of profit. This Amendment was, therefore, made to face a real situation. No sinister-looking political purpose worked behind it.<sup>8</sup>

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<sup>8</sup> *Ibid*, P-162-63

## **1. Seventh Amendment: Background**

After the brutal killing of Zia the presidential election was held on 15th November, 1981. Justice Abdus Sattar, the then Acting President and nominee of the ruling party BNP won a landslide victory and became the next President of Bangladesh to Zia. But in the early hours of 24th March, 1982. 128 days after the presidential election was held, a military intervention led by Hussain Muhammad Ershad, the then Chief of Army Staff took place. This is known as the bloodless coup of March, 24. Through this coup Ershad seized power ousting Sattar. Martial law was declared for the second time in Bangladesh; parliament was dissolved; the Constitution was suspended and political activities were banned. Ershad first assumed the office Chief Martial Law Administrator and he nominated Justice Ahsan Uddin Chowdhury as a phantom president. Later on Ershad assumed the offices of both CMLA and president. Ershad kept martial law in force for four years and seven months beginning from 24th March, 1982 to 11th November, 1986. On 11th November, 1986 the Seventh Amendment to the Constitution was passed in the third parliament.<sup>9</sup>

### **7.1 Subject matter of the Amendment:**

7th Amendment amended only one article and it was Article 96 where the age of the Supreme Court judges was increased from 62 to 65 years.

## **1. Eighth Amendment: Background**

General Ershad made all his military activities legalized through his elected parliament in 1988. But still then, the opposition parties did not accept him as the chief of a legal government and consequently a flame of protective movement was continuing on against him as well as for his resignation from the post. However in order to diminish this movement he chose the religion 'Islam' as a mere tool to suit his mean purpose. All of about 80% of people of the state were conservative in religious belief and the acute follower of Islam, so he declared 'Islam' as a state religion which he included in the eight amendment of the constitution with a hope that mass people might become faithful to his political ideas and, as a result, the (fierce) movement against might be soothed down to an easy extent. In this case general Ershad of course, followed the

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<sup>9</sup> *Ibid*, P-163-64

tricky political strategy by Major Zia in which he had included ‘Bismillahir Rahmanur Rahim’ and complete faith and trust on “Allah” in the constitution in order to gain the consent of the mass people of the country.<sup>10</sup>

### **8.1 Subject matter of the amendment**

The Constitution (Eighth Amendment) Act was adopted by the Fourth Parliament on 7th June, 1988. It introduced the following changes in the Constitution:

1. The word ‘Bengali’ was replaced by the word ‘Bangla’ in Article 3 of the Constitution.
2. The word ‘Dacca’ was replaced by the word ‘Dhaka’ in Article 5 of the Constitution.
3. A new Article 2A was created where it was provided that ‘the state religion of the Republic is Islam but other religions may be practised in peace and harmony in the Republic.’”
4. Two sub-clauses [30(1) & 30(3)] of Article 30 were omitted.  
.Now, therefore, there remained no bar for the state to confer title, honour or decoration.
5. Articles 100 and 107 were amended and provisions were inserted for setting up six permanent Benches of the High Court Division outside Dhaka.

### **1. Ninth Amendment: Background**

In 1975, the presidential form of government was replacing the parliamentary form of government through the fourth amendment of the constitution of Bangladesh. There was a provision of appointing a vice-president by president. But the post was not to be elected by people; rather he had to be appointed by the will of the president himself.

Again according to the fourth amendment there were no bars on the frequent election of a person for the president post rather it dependent on the will of the president candidate.

To convert these two undemocratic systems into democratic the following provision had been included in ninth amendment:

1. Vice- president should be elected directly by the voters.
2. Both the election for the President and the vice-president should be held on the same day.
3. The tenure for both the above posts would cover five years.
4. No person should hold any of the above posts for two times consecutively.

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<sup>10</sup> Md. Abdul Halim, *Sangabidha, Sangbidhanik Ain O Rajniti: Bangladesh Prasanga*, Dhaka, 1996, p-109

5. Vice-president could be impeached through three fourth of the votes against by the numbers of the parliament.

This Amendment was passed on 10th July 1989 and it became a law on 11th July. But it was to come into effect on 1st March 1991.<sup>11</sup>

### **9.1 Subject matter of the amendment**

This Amendment amended Articles 49, 50, 51, 53, 54, 72, 119, 122, 123, 124, 148, 152 of and 4th Schedule to the Constitution. It also inserted a new article 53A in the Constitution.

### **1. Tenth Amendment: Background**

The original Constitution provided for 15 reserved seats for women members and this provision was to remain in force for 10 years. But in 1979 through the 5th Amendment the number of reserved seats was increased from 15 to 30 and the period this provision was to remain in force was extended from 10 to 15 years. This period expired on 10th December 1987 and as such the 4th parliament did not have any reserved women seats. There were, therefore, debates and discussions within Ershad's ruling party whether such a reservation was necessary or desirable. The mode of election for the women's reserved seats and their role in the parliament had prompted a weekly to term these 30 ladies as 30 seats ornaments in parliament". However Ershad and his ruling party decided to keep such reservation for another period of 10 years. To that end the Constitution (Tenth Amendment) Bill was introduced on 10th June and passed on 12th June, 1990.<sup>12</sup>

### **10.1 Subject matter of the Amendment:**

This Amendment reinserted clause (3) to Article 65 providing for 30 reserved women seats for a further period of 10 years beginning with the commencement of the next parliament i.e. from the 5th April, 1991 which was first day of the 5th parliament.

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<sup>11</sup> *Ibid*, p-110

<sup>12</sup> Md. Abdul Halim, *op.cit.*,2014,p-166

## **1. Eleventh and Twelfth Amendment: Background**

On 2nd July, 1991 two Bills, the Constitution (Eleventh Amendment) Bill, 1991 and the Constitution (Twelfth Amendment) Bill, 1991 were introduced in parliament by the BNP government. The Opposition Amendment Bill was introduced on July 4, 1991 by Abdus Samad Azad. On the same day four Amendment Bills were introduced by the Worker's Party leader Rashed Khan Menon. In order to areas of difference Parliament decided on July 9 to send all these Bills to a 15 member Select Committee comprising the Treasury and opposition members. After much deliberation and discussion in 36 meetings the committee finalized its report and come to a unanimous decision on 28 July. 1991 and on that very day two Bills, the Constitution (Eleventh Amendment) Bill and the Constitution (Twelfth Amendment) Bill were introduced in the parliament. Then amidst cheers and jubilation they were passed shortly after midnight at 6th August, 1991. The Twelfth Amendment Bill was passed with 307—0 votes and the Eleventh Amendment Bill was passed with 278—0 votes. After the Bills were placed before the Acting President he, according to the amendment procedure under Article 142 of the Constitution, sent the Twelfth Amendment Bill for referendum before his assent. Referendum was held on 15th September. Though, the turnout of voters in the referendum was very low, 84% of those who voted favored the Amendment. The official results of the referendum through a gazette notification came out at 18th September. Thus the Twelfth Amendment came to be effective on 18th September, 1991. A fresh start of constitutionalism had begun in Bangladesh.<sup>13</sup>

### **11.1 Subject Matter of the Eleventh Amendment**

The Constitution (Eleventh Amendment) Bill, 1991 was passed with a view to removing the Constitutional hurdles to the Acting President's return to his previous position in the Supreme Court. While assumed the office of Vice President and then Acting President, he was constitutionally not in a position to hold that post. Because he was holding-a post of profit as he was the Chief Justice which debarred him from holding office of Vice President [Article 147(4)]. But without resigning from the post of Chief Justice Sahabuddin Ahmed, in accordance with the positive assurance given by the three alliances, welcomed the post of Acting President for an

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<sup>13</sup> <http://www.assignmentpoint.com/arts/law/report-on-amendments-of-bangladesh-constitution-and-their-impact-in-legal-history.html>

interim period on condition that after the transfer of power to a duly elected government he would be allowed to get back to his original post of Chief Justice. Therefore to legalize his appointment as Vice-President and his subsequent actions and to find out ways and means for his return to his former office the Eleventh Amendment Act was passed. This Amendment added a new paragraph 21 which, inter alia, legalized the appointment and oath of Sahabuddin Ahmed, Chief Justice of Bangladesh, as Vice-President of the Republic and also the resignation tendered to him on December 6, 1990, by the then President Ershad. Besides, this Act ratified, confirmed and validated all powers exercised, all laws, ordinances promulgated, all orders made, acts and things done and actions and proceedings taken by the Vice-President as Acting President during the period between the 6th December, 1990, and the day of taking over the office of the President by the new President Abdur Rahman Biswas, duly elected under amended provisions of the Constitution.

### **11.2 Subject Matter of the Twelfth Amendment**

This Amendment Act, known as the most important landmark in the history of constitutional development in Bangladesh, was passed on 6 August 1991.

It amended Articles 48, 55, 56, 57, 58, 59, 60, 70, 72, 109, 119, 124, 141A and 142.

Through this amendment:

- a) The parliamentary form of government was re-introduced in Bangladesh;
- b) The president became the constitutional head of the state;
- c) The PRIME MINISTER became the executive head;
- d) The cabinet headed by the prime minister became responsible to the Jatiya Sangsad;
- e) The post of the vice-president was abolished;
- f) The president was required to be elected by the members of the Jatiya Sangsad.

Moreover, through Article 59 of the constitution this act ensured the participation of the people's representatives in local government bodies, thus stabilizing the base of democracy in the country.



### **1. Thirteenth Amendment: Background**

On the way to restoration of liberal democracy from the bondage of military autocracy the historic fifth Parliamentary Election was a milestone which was held under the non party caretaker government headed by Justice Shahabuddin Ahmed on 27th February 1991 in an environment of enthusiasm and festivity. After the fall of the autocratic Ershad regime no party or political workers were in a mood of rigging manipulating the election. The caretaker government ensured a positive administrative atmosphere and provided all kinds of support to the EC. The most important feature of this election was that it was held in a peaceful environment. No major incident of rigging or malpractice was visible. Many national and international teams observed and monitored the election. An unprecedented degree of enthusiasm was shown by all quarters. The election was nationally and internationally recognized as free and fair. Winning majority seats in parliament the BNP formed government. But from the beginning of the BNP government the opposition parties in the parliament began to create pressure on the government so that it include provision for caretaker government in the Constitution. In 1993 first Jamat-e-Islam and the AL and JP submitted their respective Bills concerning caretaker government. Every Bill contained the same object-to make general elections free and fair and to make the whole process of election free from the government influence provision for caretaker government should be introduced in the Constitution. But this demand, of the opposition parties was treated by the government as unconstitutional and illegal. The Magura by election was the turning point for the movement of caretaker government. It was this Magura by-election in which the government party BNP took resort to an unprecedented-malpractice and rigging. This election manipulation of BNP government, as reported by most important dailies, defeated even the Ershad's election manipulation in 1988 and it has got a title of 'Election Magura' in the election politics of Bangladesh. Before this Magura incident all the opposition parties made walkout from parliament in protest of a statement made by Information Minister Nazmul Huda concerning 'Hebron Killing' issue of Israel. And they made commitment that they would not return to parliament if the Information Minister did not expunge his statement. To this boycotting of parliament 'Magura election' malpractices provided an extra strength and now the opposition parties got their direct way of demanding that they would not go back to parliament till a 'caretaker government' Bill was introduced in the House. The government did not pay a heed to this demand. On 28th December, 1994 about 147 MPs resigned in protest. When the government

proceeded to hold by-election in 142 vacant seats the political impasse took more outrageous condition leading to continuous country-wide strike. On 24th November, 1995 the government dissolved the 5th parliament and the 6th Parliamentary Election was scheduled on 15th February, 1996. But since the government did not pay any heed to the demand of caretaker government by the opposition, all the opposition parties boycotted election. The ruling party BNP proceeded to contest the election with sudden hand-picked parties as the military director Ershad did. The announcement of the result of the election added fuel to the fire-like opposition movement. All the opposition parties launched their country-wide non-cooperation movement and demanded the fall of the government as well as the dissolution of 6th parliament. The whole politico-economic condition of the country was leading to a complete civil war. Lastly finding no other the way out BNP government introduced the Caretaker Government Bill (the 13th Amendment of the Constitution) on 21st March at the first session of the 6th parliament. The Bill was passed on 26th March, then the 6th parliament after 7 days of its life was dissolved on 30th March and Justice Habibur Rahman was appointed, as the Chief. Adviser of the Caretaker Government as envisaged in the 13th Amendment of the Constitution.<sup>14</sup>

### **12.1 Subject matter of the Amendment:**

This Amendment was passed with 268-0 votes on 26th March, 1996 and it became law on 28th March. The Amendment added a new Chapter (Chapter IIA : Non-Party Caretaker Government) in part IV of the Constitution with 5 new Articles (58A, 58B, 58C, 58D and 58E). It also amendment Articles 61, 99, 123, 147, 152 and the Third Schedule of the Constitution.

### **12.2. Salient Features of Bangladesh's Caretaker Government**

Under such political turmoil the sixth parliament enacted the thirteenth amendment to the Constitution. The amendment inserted the new chapter IIA and the new article 58A in the Constitution. It also amended the articles 61, 99, 123, 147, 152 and the Third Schedule of the Constitution. The amendment contained provisions of keeping some articles 48 (3), 141A9(1)

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<sup>14</sup> <http://www.assignmentpoint.com/arts/law/report-on-amendments-of-bangladesh-constitution-and-their-impact-in-legal-history.html>

and 141C(1) and ineffective during the period of the caretaker government. The salient features of the amendment and the caretaker system were as follows:<sup>15</sup>

**12.2.1. Entering upon Office:** There shall be a Non-Party Care-taker Government during the period from the date on which the Chief Adviser (CA) of such government enters upon office after parliament is dissolved or stands dissolved by reason of expiration of its term till the date on which a new Prime Minister enters upon his office after the constitution of Parliament.

**12.2.2. Responsible to:** The Non-Party Care-taker Government shall be collectively responsible to the President.

**12.2.3. Executive Power:** The executive power of the Republic shall, during the period mentioned in clause (1), be exercised, subject to the provisions of article 58D(1), in accordance with the Constitution, by or on the authority of the CA and shall be exercised by CA in accordance with the advice of the Non-Party Care-taker Government.

**12.2.4. President's Power on Defence Services:** The supreme command of the defence services of Bangladesh vest in the President and the exercise thereof shall be regulated by law and such law shall, during the period of Non-Party caretaker government, be administered by the President.

**12.2.5. President's Power of Declaring Emergency:** The Thirteenth Amendment to the Constitutions allows the President to issue a proclamation of emergency without the advice of the CA.

**12.2.6. Composition of the Caretaker Government:** The caretaker government will be composed in the following way:

- (1) Non-Party Care-taker Government shall consist of the CA at its head and not more than ten others Advisors, all of whom shall be appointed by the President.
- (2) The CA and other Advisers shall be appointed within fifteen days after the Parliament is dissolved or stands dissolved, and during the period between the date on which Parliament is dissolved or stands dissolved and the date on which the CA is appointed, the Prime Minister and his cabinet who were in office immediately before the Parliament was dissolved or stood dissolved shall continue to hold office as such.

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<sup>15</sup> Jalal Firoj, *Democracy in Bangladesh: Conflicting Issues and Conflict Resolution*, Bangla Academy, Dhaka, 2012, p-146-149

- (3) The President shall appoint as CA the person who among the retired Chief Justices of Bangladesh retired last and who is qualified to be appointed as an Adviser under article 58C of the Constitution.

Provided that if such retired Chief Justice is not available or is not willing to hold the office of CA, the President shall appoint as CA the person who among the retired Chief Justices of Bangladesh retired next before the last retired Chief Justice.

- (4) If no retired Chief Justice is available or willing to hold the office of CA, the President shall appoint as CA the person who among the retired Judges of the Appellate Division retired last and who is qualified to be appointed as an Adviser under the article 58C of the Constitution:

Provided that if such retired Judge is not available or is not willing to hold the office of CA, the President shall appoint as CA the person who among the retired Judges of the Appellate Division retired next before the last such retired Judge.

- (5) If no retired Judge of the Appellate Division is available or willing to hold the office of CA, the President shall, after consultation, as far as practicable, with the major political parties, appoint the CA from among citizens of Bangladesh who are qualified to be appointed as Advisers under article 58C of the Constitution.

- (6) Notwithstanding anything contained in this Chapter, if the provisions of clauses (3), (4) and (5) cannot be given effect to, the President shall assume the functions of the CA of the Non-Party Care-taker Government in addition to his own functions under the Constitution.

**12.2.7. Eligibility of the Advisers:** The President shall appoint Advisers from among the persons who are-

- Qualified for election as members of parliament;
- Not members of any political party or of any political party;
- Not, and have agreed in writing not to be, candidates for the ensuring election of members of parliament.
- Not over seventy-two years of age.

**12.2.8. Appointment of the Advisers:** The Advisers shall be appointed by the President on the Advice of the Chief Adviser.

**12.2.9. Resignation of CA and Advisers:** The CA or an Adviser may resign his office by his own hand-written letter addressed to the President.

The CA or an Adviser shall cease to be CA or Adviser if he is disqualified to be appointed as such under article 58C of the Constitution.

**12.2.10. Status of CA and Advisers:** The CA shall have the status of and be entitled to the remuneration and privileges of a Prime Minister and an Adviser shall have the status and be entitled to the remuneration and privileges of a Minister.

**12.2.11. Dissolution of the Caretaker Government:** The Non-Party Care-taker Government shall stand dissolved on the date on which the Prime Minister enters upon his/her office after the constitution of new parliament.

**12.2.12. Functions of Caretaker Government:** The Caretaker government shall discharge the following functions:

- (1) The Non-Party Care-taker Government shall discharge its functions as an interim government and shall carry on the routine functions of such government with the aid and assistance of persons in the services of the Republic; and, except in the case of necessity for the discharge of such functions it shall not make any policy decision.
- (2) The Non-Party Care-taker Government shall give to the Election Commission all possible aid and assistance that may be required for holding the general election of members of parliament peacefully, fairly and impartially.

### **1. Fourteenth Amendment: Background**

This amendment was passed on 16 may, 2004, as mentioned above in Tenth Amendment, the last extension of 30 reserved seats for women members in parliament expired in 2001 and as a result the 8th parliament did not have reserved seats. However, after three years of the life of the 8th parliament, on 16 may 2004 the ruling BNP placed and passed the 14th constitution Amendment an Act to re-introduce reserved seats for women member have been increased from 30 to 45.<sup>16</sup>

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<sup>16</sup> Md. Abdul Halim, *op.cit.*,p-179

### **13.1 Subject matter of the Amendment:**

- 1) Insertion of new Article 4 A after Article 4 for preservation and display of the portraits of the President and the Prime Minister.
- 2) Amendment of clause (3) of Article 65 in the Constitution regarding reserved number of seats exclusively for women members in the Parliament.
- 3) Amendment of Article 96(1), 129 and 139 of the constitution enhancing the retirement age of the Judges of the Supreme Court, Auditor General and Chairman and other members of Public Service Commission.
  - 3) (i) Enhancement of retirement age of the supreme Court Judges. It becomes very controversial later.
  - 3) (ii) Enhancement of retirement age of the Auditor General and Chairman & Member of P.S.C.
- 4) Amendment of Article 148 of the Constitution making provision for administering oath of the newly elected members of the Parliament by the Chief Election Commissioner is unprecedented.

### **14. Fifteenth Amendment: Background**

There is no alternative to tiptoe to the 1972's constitution to achieve the objectives of 1971, where millions of innocent people laid their lives to the Pakistani Military Forces and lakhs of women had to consider their chastity. The fundamental spirit of that constitution was to establish a copious democratic system and the first three years and half has passed to achieve this intent. In spite of many problems, 1972's constitution has paved the way to ascertain a functional democratic system. There were possibilities of accomplishment of political aspires. Besides, it has a resemblance with the spirit of war of Independence, the principles of 1972's constitution and the ideology of Bangladesh Awame League. The foremost blunder was to incorporate the 4th amendment in 1975 which was a direct bang to the spirit of 1972's constitution. The military dictators and civil usurpers took their chances to entrench a rightist political hemisphere.

The devastation which was done to the spirit of constitution by the 4th amendment, later it turns into a deep sore and gave birth to a right-wing fundamental political insurgency. In the regime of

Ziaur Rahman, the fundamental principles- secularism, socialism and Bengali nationalism were barred from constitution and afterwards, Islam was included as a state religion which spaces a distance with 1972's constitution.

Restitution to the 1972's constitution comes to the table after a void order of 5th amendment from the highest court. The constitution of 1972 was written on the spirit of liberation war of 1971. To establish the spirit of 1971, it is a must to retrieve to that constitution where there is no collision with religion. 1972's constitution means the preservation of our culture, to set back to our history; it means to prioritize the democratic creed of the people as the supreme law.

The fundamental principles of our constitution include- nationalism, democracy, socialism, and secularism. The political philosophy of Bangladesh Awami League is also in line with constitutional principles. Awami League took initiative for the 15<sup>th</sup> Amendment when Supreme Court voids the 5<sup>th</sup>, 7<sup>th</sup> and 13<sup>th</sup> amendments in a verdict. 15<sup>th</sup> Amendment took place in 30<sup>th</sup> June, 2011 from this verdict of Supreme Court on the plea to renege to the 1972's constitution.

#### **14.1 Salient features of Fifteenth Amendment of Constitution**

Having gone through and analyzing the Fifteenth Amendment, the following main features can, briefly, be identified:<sup>17</sup>

1. The provision of caretaker system, introduced by the Thirteenth Amendment, was abolished.
2. All future General (Parliamentary) Elections would be held under incumbent cabinet.
3. Islam as the State religion was kept with some qualifications and 'Bismillah-Ar-Rahman-Ar-Rahim' was retained above the Preamble.
4. 'Absolute faith and trust in Allah' was removed from the Constitution.
5. Article 12 to restore secularism and freedom of religion was revived.
6. The provision allowing religion-based politics was maintained.
7. The indigenous people would be termed as tribal and ethnic minorities.

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<sup>17</sup> Barrister Nazir Ahmed, *Legitimacy and legality of the Fifteenth Amendment of the Constitution of Bangladesh*, <http://www.parisvisionnews.com/bangladesh-news/96-political-news/9476-fifteenth-amendment-of-the-constitution-of-bangladesh.html>

8. The people of Bangladesh shall be known as Bangalees as a nation and citizens of Bangladesh shall be known as Bangladeshis.
9. Articles 7A and 7B were inserted in the Constitution after Article 7 in a bid to end takeover of power through extra-constitutional means.
10. Basic provisions of the Constitution (more than 50 Articles) were made unamendable.
11. The original Article 70 of the 1972 Constitution was restored allowing Members of Parliament (MPs) to remain absent from the House if she or he does not want to cast vote on any issue in line with her or his party's decision.
12. The legality of trials of war crime suspects, who were not part of any armed force or auxiliary force in 1971, cannot be challenged in any court.
13. In the case of dissolution of Parliament by any reason, election shall be held within 90 days of such dissolution.
14. The numbers of women reserve seats were increased to 50 from the existing 45.
15. The Supreme Command of the defense services shall vest in the President and the exercise thereof shall be regulated by law.
16. The Chief Justice shall be appointed by the President, and the other judges shall be appointed by the President in consultation with the Chief Justice.
17. The portrait of the Sheikh Mujibur Rahman shall be preserved and displayed at the offices of the President, the Prime Minister, the Speaker, and the Chief Justice and in head and branch offices of all government and semi-government offices, autonomous bodies, statutory public authorities, government and non-government educational institutions, embassies and missions of Bangladesh abroad.
18. The speech of Sheikh Mujibur Rahman on March 7, 1971, supposed declaration of Independence by Sheikh Mujibur Rahman after midnight of March 25, 1971 and the proclamation of Independence declared at Mujibnagar on April 10, 1971 were incorporated in the Constitution.
19. A new clause for safeguarding and developing the environment and wildlife was introduced, under which the State will protect natural resources, biodiversity, water bodies, forest, and wildlife, and preserve and develop the environment for the present and future generations. According to another new clause, "The State shall take steps to protect and develop the unique local culture and tradition of the tribes, minor races, ethnic sects, and community.



## **Chapter 5: Politics and Impacts of the Constitutional Amendments**

The constitution is the supreme law of the republic. The entire legislative, executive and judicial activities of the state are guided and regulated by the constitution. Amending a constitution is not a new thing. As a human document it has required changes everywhere based on human experiences. The case of Bangladesh is different. Every political establishment in Bangladesh has left its imprint on the constitution. Every establishment has had its own political compulsion in the amendments brought in by it severally and every other establishment has had its own urge to erase what the earlier one did. The original constitution of 1972 has become a plaything to be engaged, rather shuttlecock to be hit, in their respective styles and need.

Unfortunately, both the political government and military usurpers disregarded the supremacy of the Constitution and undermined the people's sovereignty in the name of amendments since 1973. Of the total of 15 amendments made until 2011, only the eleventh and twelfth amendments got the consensus of both ruling and opposition parties. The most fundamental, and in some cases nefarious, of those changes were brought through the fourth, fifth, seventh, and eighth amendment's. Many changes made with ulterior motives largely destroyed the basic structure of the Constitution and also damaged the parliament's power and pre-eminence.

### **1. First Amendment: Evaluation**

Immediate after our victory in the war of 1971 almost every person was stood against the collaborators and their punishment. So as soon as the constitution had been made it was very necessary to bring amendment in it to ensure the punishment of the war criminals.

It is-worthy to mention here that under the authority of this amendment the parliament passed within a week the International Criminal (Tribunal) Act for the trial of 195 prisoners of wars, although it was succeeded.

### **2. Second Amendment: Evaluation**

One of the main objectives of this amendment is to enact clauses of preventive detention. If anyone gets arrest and detained under preventive laws shall not be considered as a violation of fundamental rights of the citizen. Although there is a provision that the authority making the order shall, as soon as may be, communicate to such person the grounds on which the order has been made, and shall afford him the earliest opportunity of making a representation against the order however the authority may refuse to disclose the facts if they think it can go against the

public interest to disclose. Apart from that no law providing for preventive detention shall authorize the detention of a person for a period exceeding six months unless an Advisory Board opines that there is sufficient cause for extending his or her detention period after affording him an opportunity of being heard. If we fairly consider, except a few particular cases the above mentioned provision that is enacted in the constitution is hampering the fundamental rights of a citizen.

Again in this amendment, the time frame between two sessions of the parliament is determined 120 days from 60 days. But in the parliamentary form of the democratic system such a long gap between two sessions is not accepted or justified.

In addition to that the inclusion of the provision of the state of Emergency is another important politically motivated change brought in the second amendment of the constitution. If the provision of the state of emergency is required even in the grave situation (like war or external aggression or internal disturbance), it does not go with the principles of the democracy. As during the period of the state of emergency some specific fundamental rights (articles 36-40 and 42) are restricted, citizens are deprived of enjoying their due rights.

The insertion and substitution of the articles mentioned above in the second amendment of arresting a person on executive order is equal to slaying his or her fundamental rights. As a result of that government can intentionally arrest anybody to harass whoever goes or stands against its political ideology. Therefore the otherness in ideologies in a country can be threatened which is a kind of autocratic rule and it can be termed as a blueprint of remaining the power for a longer period. Because of the insertion of that article political parties get a chance to misuse it for their own interest. If we review different regimes after passing this amendment we get clear evidences of its misuses. On the other side, in the name of existing political turmoil and unstable law and order situation of the state the undemocratic forces take a chance to come into the power based on the provision of this 'Emergency Law'.

After getting independence from British, Pakistan soon had to face the bitter experience of military intervention in politics. Likewise even after its liberation war Bangladesh also witnessed of same practices several times. So keeping the state of emergency provision in the constitution is somewhat contradictory to the ideal of democracy.

### 3. Third Amendment: Evaluation

In May 1974, Prime Minister Sheikh Mujibur Rahman and Prime Minister Indira Gandhi signed an Agreement “bearing in mind the friendly relations existing between the two countries” and “desiring to define more accurately at certain points and to complete the demarcation of the land boundary between Bangladesh and India,” (Preamble of the Agreement). One of the several clauses deals with Berubari and Angarpota-Dahagram enclaves in the following terms: “Clause 14. Berubari – India will retain the southern half of South Berubari Union No. 12 and the adjacent enclaves, measuring an area of 2.64 square miles approximately, and in exchange Bangladesh will retain the Dahagram and Angarpota enclaves. India will lease in perpetuity to Bangladesh an area of 178 metres x 85 metres ‘Tin Bigha’ to connect Dahagram with Panbari Mouza (P.S) Patgram) of Bangladesh.”<sup>1</sup>

In November 1974 Bangladesh ratified the Agreement in Parliament. Not only this, Bangladesh hastily went further. Article 2(a) of the Constitution was amended by the Constitution (Third Amendment) Act 1974. The Agreement, by a Schedule, was made part of our Constitution. Before the amendment, Article 2(a) reads as follows: “2. The territories of the Republic shall comprise – (a) The territories which immediately before the proclamation of independence on the 26th March, 1971 constituted East Pakistan.” After the amendment, new Article 2(a) reads as follows: “2. The territories of the Republic shall comprise – (a) The territories which immediately before the proclamation of independence on the 26th March, 1971 constituted East Pakistan and the territories referred to as included territories in the Constitution (Third Amendment) Act, 1974, but excluding the territories referred to as excluded territories in that Act.” The Third Amendment Act did not specifically define the “Excluded” and the “Included” territories. But it appears from the Agreement that the “Excluded” territories mean southern half of South Berubari and the “Included” territories mean Angarpota and Dahagram.

Although Bangladesh ratified the Agreement in Parliament, amended the Constitution and handed the southern half of South Berubari over to India, India neither ratified the Agreement in their Parliament nor granted lease in perpetuity to Bangladesh the ‘Tin Bigha Corridor,’ let alone amending their Constitution. Bangladesh did all these acts in a hasty mood, whereas India did

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<sup>1</sup> Nazir Ahmed, (2013) ‘Third Amendment of the Constitution of Bangladesh: The first attack on its ‘sovereignty from within, <http://www.kaagoj.com/details?id=277>

nothing .It is interesting to note that the Agreement itself was subject to ratification by the Government of Bangladesh and India and instruments of the ratification were to be exchanged soon, as Article 5 of the Agreement says “This Agreement shall be subject to ratification by the Government of Bangladesh and India and Instruments of Ratification shall be exchanged as early as possible. This Agreement shall take effect from the exchange of the Instruments of Ratification.”<sup>2</sup>

The Agreement was signed on 16 May 1974 and Bangladesh government amended the Constitution on 28 November 1974. After signing the Agreement, Bangladesh could move slowly in ratifying the Agreement, amending the Constitution and handing over by observing the manoeuvres of India. Bangladesh amends the Constitution within seven months where India did nothing from their part. Bangladesh hand over the southern half of South Berubari to India, where India had neither ratified the Agreement nor handed over the lease in perpetuity to Bangladesh.

If the government really served the national interest and genuinely protected the country’s territorial integrity, they would not have acted unilaterally for the sole benefit and interest of India. They could argue with India that as the Agreement, according to Article 5, ‘shall take effect from the date of the exchange of the Instruments of Ratification’ and since India had not yet ratified the Agreement, it had not yet become effective. By doing this the government could have avoided the ratification of the Act, amendment of the Constitution and hand over of the southern half of South Berubari to India.

After much Bangladesh government’s relatively weak diplomacy, India, instead of handing over sovereignty or lease in perpetuity, in 2011, proposed to lease the ‘Tin Bigha Corridor’ to Bangladesh for certain time. Later from September 2011 India opened the ‘Tin Bigha Corridor’ allowing 24 hour access of Bangladeshi nationals to Angarpota-Dohogram enclaves retaining its full sovereignty over the Corridor. Surprisingly, this was celebrated widely by the current government and its supporters. Ironically, they forgot that Bangladesh deserved lease in perpetuity (endless lease) instead of mere allowing access, as per the 1974 Agreement. Although India allowed access in 2011 for 24 hour, the question should have been raised as to why India deprived Bangladesh for 37 years. Instead of granting lease in perpetuity, India allowed access for 24 hour which they could stop at any time without any notice. There is no guarantee clause

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<sup>2</sup> *Ibid*

in the 2011 agreement. India can do whatever it wishes. It should be noted that the ‘Tin Bigha Corridor’ remained closed until 1992. It was kept open for six hours a day from 1992 to 1996 following an agreement between Bangladesh and India. Later, the time period was extended by another six hours during the previous Awami League government’s tenure resulting in the Corridor being kept open for 12 hours.

Separated by the ‘Tin Bigha Corridor’ of the Indian Territory, Angarpota-Dahagram has no link with mainland Bangladesh, though Bangladesh retains so called sovereignty over the land. Earlier EPR had Camp in the enclaves. People could go in and out freely. Law enforcing personnel were allowed regular passage. This was no longer the case in independent Bangladesh. The enclaves are under the Patrgam Police Station but Police now cannot go there freely, for they have to go there over Indian territories which India retains full sovereignty of. There has been no mechanism to pursue or arrest criminals there. Angarpota-Dahagram, therefore, sometimes served as a safe haven for the criminals. As a result, the people of Angarpota and Dahagram have been leading a sub-human and horrible life. Article 13 of the United Nations Declaration of Human Rights (UNDHR) to which India is also a signatory guarantees every one the right to freedom of movement and residence within the borders of each state and the right to leave any country including his own and to return to his country. But the people of Angarpota-Dahagram have not been able to enjoy those rights. Article 36 of the Constitution of Bangladesh says “.....every citizen shall have the right to move freely throughout Bangladesh, to reside and settle in any place therein and to leave and re-enter Bangladesh.” The people of Angarpota-Dahagram did not historically have freedom of movement within their own country – Bangladesh. They might have been born free but they have no longer been free citizens of a free state. Berubari became excluded from Bangladesh before the ink of the Third Amendment became dry, whereas Bangladesh for decades received nothing and what it has recently received from India (allowing Bangladeshis having mere access to the enclaves while retaining full control of India) was far from what it supposed to have received (lease in perpetuity).<sup>3</sup>

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<sup>3</sup> *Ibid*

#### **4. Fourth Amendment: Evaluation:**

Of all the amendments made so far the, 4th Amendment has been the most controversial one for it fundamentally changed the nature and character of the Constitution. This amendment has played the most devastating role in the development of Constitutionalism in Bangladesh. It altered and virtually destroyed democratic norms of our country and the spirits of our liberation struggle; the basic and essential features of the Constitution.

After the national independence, the people of Bangladesh were presented a well-written and much improved constitution over all the existing constitutions of the sub-continent. The Constitution, to a large extent, reflected the aspirations of the people nurtured for nearly two decades. Bangladesh started its journey with a parliamentary form of democracy, derailed afterwards from the fundamental aspiration of democratic governance by introducing one-party political system with an 'all powerful head of the State - the President known as Bangladesh Krishak Sramik Awami League (BAKSAL) was substituted for a responsible parliamentary system.

Amidst violent uprising of the leftist parties and the bad impact of 1974 famine, anarchy prevailed everywhere in the country. The Awami League (AL) government declared state of emergency in January 1974. Later it amended the Constitution (through Fourth Amendment) to control the immense political and economic crises in the country. In principle, the presidential form of government is not undemocratic at all. In fact, it is one of the most common and popular forms of government in the current democratic world. But the type of government introduced by the Fourth Amendment was not a true presidential system in the conventional sense. There was neither separation of power in the system nor any mechanism of maintaining check and balance between the three organs: Legislative, Executive and Judiciary. According to Mahmudul Islam, an eminent jurist, "The parliamentary form of government was replaced by a form of government which was an apology of a presidential form as the normal checks and balance of presidential form of government were not incorporated."<sup>4</sup>

He further said "The system introduced was a mishmash of parliamentary and presidential form and the upshot was that the President emerged as the all-powerful authority in the Republic". In

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<sup>4</sup> Fourth Amendment of the Constitution: A Review, The Financial Express, Saturday 20 July 2013, <http://www.thefinancialexpress-bd.com/old/index.php?ref=MjBfMDdfMjBfMTNfMV85OV8xNzcxMDI=>

Hamidul Huq Chowdhury v Bangladesh 34 DLR 381, the High Court Division observed that by the Fourth Amendment the basic and essential features of the Constitution were altered and destroyed. In the same case, the Appellate Division of Supreme Court observed: "The first three amendments do not appear to have altered the basic structure of the constitution. But the fourth amendment of the constitution clearly altered the basic structure of the constitution." <sup>5</sup>

In a presidential system the President is supposed to be directly elected by the voters. But ironically in this case it was made for an unlimited period by inserting a special provision in the Fourth Schedule which reads: "(b) Bangabandhu Sheikh Mujibur Rahman, ....., shall become, and enter upon the office of the President of Bangladesh and shall, as from such commencement hold office as President of Bangladesh as if elected to that office under the Constitution as amended by the Act."<sup>6</sup>

Introducing one-party system in place of the multi-party system was the most significant and far-reaching aspect of the Fourth Amendment. Under the new arrangement, the creation of the National Party was left with the subjective satisfaction of the President. It was provided that in order to give full effect to any of the fundamental principles of State policy set out in Part II of the Constitution, the President could "direct that there shall be only one political party in the State. Once the President made an Order for one party under Article 117A-, 1) all political parties of the State would stand dissolved and the President would take all necessary steps for the formation of the National Party....." In accordance with the provision of Article 117A as introduced by the Fourth Amendment, the President declared the formation of a new National Party for the country under the name of BAKSAL on 24 February 1975. As a result, all existing political parties instantly stood dissolved. Bangladesh became a one-party State.

The powers of the Jatiya Sangsad (National Assembly - Parliament) were curtailed. The Fourth Amendment turned Parliament into a useless forum in many respects. President was armed with an absolute veto and once vetoed a Bill that Bill could never come out as a law. The President was thus given unfettered legislative power and he was placed above Parliament. It is also noteworthy here that in the US system the President has no power to absolute veto. He has the power to use suspense veto in the sense that he may, within 10 days return a Bill, to the Congress for reconsideration. And when such a Bill is reconsidered and again passed by votes of two-thirds majority in both the Houses, it becomes automatically a law.

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<sup>5</sup> *Ibid*

<sup>6</sup> Barrister Nazir Ahmed, <https://groups.yahoo.com/neo/groups/dahuk/conversations/messages/28869>



The Judiciary lost much of its independence. In relation to the appointment procedure of the apex court, the original Constitution provided that the Chief Justice would be appointed by the President and other Judges would be appointed after consultation with the Chief Justice.

However, by the Fourth Amendment, the provision of "consultation with the Chief Justice" was deleted. The obvious purpose appeared to be to make appointments on the basis of political consideration and favoritism as opposed to merit and competence. Such an unchecked appointment and nomination for appointment of Judges by the executive was not recognized in any democratic countries. The Fourth Amendment deleted this provision of impeachment through Parliament and instead provided that the President could remove a Judge including the Chief Justice simply by an order on the ground of misbehavior. The incapacity and misbehavior did not need to be proved. President's desire and wish, no matter how malafide it might be, became the sole reason to remove a Judge. The President thus became both the sole appointing and removing authority of the Judges.

The Fourth Amendment buried the whole concept of local government. Local government is one of the most important institutions in a democracy. A modern nation State is almost unthinkable without devolution of power to local government. Due to the massive increase of population at the geometric rate (according to the theory of Malthus) and because of huge expansion of governmental activities, certain matters of policy and administration concerning national and international interests are vested for central government and the rest of the governmental functions are vested in local governments. Keeping this in mind, provisions were made in the original Constitution to devolve the responsibility for both development activities and administration into the hands of elected representatives of local government bodies.<sup>7</sup>

The Fourth Amendment was a direct attack on the press freedom. In June 1975, the government promulgated the Newspaper (Annulment of Declaration) Ordinance which allowed only four newspapers (Dainik Bangla, Bangladesh Observer, Ittefaq & Bangladesh Times - these four newspapers were, in fact, owned and managed by the State) to continue their publication and banned the rest of the press and newspaper industries. It brought the whole news media completely under the absolute control of the government.

While justifying such an action it was mentioned in the government hand on that a group of people who were opposed to the independence and Emergence of Bangladesh as a sovereign

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<sup>7</sup> Fourth Amendment of the Constitution: A Review, *op.cit.*

state were active in various subversive-activities and they were joined by others who failed to attain power through constitutional means. It also disclosed that some collaborators were subverting the state and were engaged in activities which were creating impossible conditions in the country for attaining normal political stability and orderly economic progress. Though the emergency was proclaimed with a view to bringing the deteriorated economic situation under control by arresting and punishing the hoarders, black marketers, smugglers, armed bandits etc. It was not the real reason behind. The main aspect of it way to create conditions which would be congenial for a smooth ushering of a stem which Mujib by that time had already decided to introduce the party dictatorial system in the Constitution. Accordingly, on 25th January, 1975 only 27 days after the emergency was proclaim the country went through the most significant and rascal change in the Constitution. The infamous Fourth Amendment. Bill to the Constitution was introduced in the parliament and the parliament passed the Bill into an Act at a speed unprecedented in the history of law making. Within half-an hour the crucial Bill which was of the greatest importance was passed through- and no discussion or debate-was allowed.

Thus the fundamental rights as enumerated in the Constitution lost their all significance and sanctity. In almost all legal systems with constitutional supremacy the Supreme Court is regarded as the guardian, guarantor and protector of fundamental rights. But this traditional jurisdiction of the Supreme Court – the role of a-sentinel on the qui vive for fundamental rights was snapped away. It is unprecedented in the history of the sub-continent that the jurisdiction of the Supreme Court to enforce fundamental rights was taken away.

### **5. Fifth Amendment: Evaluation**

The Fifth Amendment case is a judicial annulment of both Fourth and Fifth Amendment of the Constitution of Bangladesh. In a sense, it has more emphatically negated the Fourth Amendment, as wherever the apex court has found any alteration of Fourth Amendment by Fifth Amendment, it has condoned the provisions of the latter amendment for the sake of public interest and state necessity. But no such condonation [The act of condoning, especially the implied forgiveness of an offense by ignoring it.] is made with regard to those provisions of the Fifth Amendment which have substituted or amended the provisions of the 1972 Constitution. The Supreme Court has observed that such provisions are void ab initio and not suitable for condonation as they have

attacked the basic structure of the Constitution. It has therefore instructed reinstatement of the provisions of the 1972 Constitution altered by the Fifth Amendment.

5th Amendment introduced some important democratic provisions to pave the way, albeit in a limited sphere, for constitutionalism.<sup>8</sup>

Firstly, dictatorial one party system which had been a permanent block to constitutionalism was abolished and multi-party democratic system as was adopted in the original Constitution was restored which again opened the door of liberal democracy and constitutionalism

Secondly, all fundamental rights which were reduced into meaningless versions of the Constitution were now again given their full life and enforcement by reverting Article 44 of the Constitution to its original position of 1972.

Thirdly, the independence of judiciary specially the constitutional status and sanctity of the Supreme Court was restored. Though the unhealthy provisions introduced by the 4th Amendment relating to appointment of judges were left untouched, the provisions for security of tenure which is the first and the most important condition of independence of judiciary was restored by providing a healthy device of Supreme Judicial Council. Moreover, in respect of control including the power of posting, promotion and grant of leave and discipline of the subordinate judges and magistrates which was vested absolutely in the President under the 4th Amendment, it was provided that the President should exercise that control in consultation with the Supreme Court. Thus constitutional aspect of independence of both higher and lower judiciary was restored.

Fourthly, the undemocratic provisions of absolute veto power of the President introduced by the 4th Amendment were abolished. Thus the democratic principle of check and balance between the President and the parliament particularly in the matters of law-making was restored.

Fifthly, insertion of the provision of referendum in respect of certain important provisions of the Constitution is a healthy one. Because it now provides a check on the parliament to make any abrupt but fundamental change in the Constitution overnight as was done by the 4th Amendment. Now a party even with two-thirds majority in the parliament will have to think twice before making a fundamental change in the Constitution.

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<sup>8</sup> Md. Abdul Halim, *Constitution, Constitutional Law and Politics: Bangladesh Perspective*, CCB Foundation, 2014, p-158

On the other hand, the Fifth Amendment judgment has given rise to some confusion as well as controversy.

Firstly, as regards the composition of the parliament, the number of reserved seats for women was increased from 15 to 30 and the period this provision was to remain in force was extended from 10 to 15 years. This provision enabled the Zia Government to manage two-thirds majority in the parliament. On the other hand, this provision undermined the spirit of representative government in Bangladesh, for these reserved seats of women members in the parliament works as a balance of power and the ruling party in the parliament uses them as tools to satisfy their undemocratic political purpose.<sup>9</sup>

Secondly, this Amendment inserted a new Article 145A relating to international treaties. It provided that all treaties with foreign countries should be submitted to the President who should cause them to be laid before parliament but there was a significant sub-clause that ‘no such treaty should be so laid if the President would consider it to be against the national interest so to do. This proviso has virtually curtailed the parliament’s power in relation to international treaties, for it actually armed the President with dictatorial power to take decisions in matters of international treaties ignoring the-parliament. In a true presidential system as it exists in the USA the President cannot make any treaty without the approval of the parliament.<sup>10</sup>

Thirdly, a new Article 92A was created by this Amendment and this Article curtailed the parliament’s power over the financial matter and the President was given power to get money from the Consolidated Fund and to expend it without the parliament’s approval. In a true presidential system as it exists in the USA the parliament exercises the supreme controlling power over the public money. The US president has no power to expend even a penny from the public purse without the approval of the Congress. “This curtailment of the power of the legislature in matters of finance was, therefore, a serious set-back in the evolution of constitutionalism and democracy in Bangladesh.<sup>11</sup>

Fourthly, a religious word ‘Bismillahir Rahmanir Rahim’ was inserted in the beginning of the Constitution i.e. above the preamble. This was done necessarily with a political end. It was a constitutional tricks played by Zia especially to get quick blind support from a large

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<sup>9</sup> *Ibid.*,p-160

<sup>10</sup> *Ibid.*,p-160

<sup>11</sup> Dilara Chowdhury, *Constitutional Development of Bangladesh: Stresses and Strains*, University Press Limited, Dhaka,1995, p-130

section of people who are religious but politically unconscious. Likewise one of four major fundamental principles of state policy ‘secularism’ was omitted and in its place principles of absolute trust and faith in the Almighty Allah was inserted. This was also done with the same political end.<sup>12</sup>

Fifthly, in the preamble the words, ‘historic struggle for national liberation’ were replaced by words ‘historic war for national independence.’ Thus the spirit of the struggle which continued for long 24 years against Pakistani colonialism and exploitation, the growth and role of political parties and political leaderships, the role of cultural workers, intellectuals, teachers, students and professional groups and that of common people were undermined, ignored and concealed. The army factor in the 1973 liberation struggle was only brought into prominence though the war, in most cases, was fought by the common people.<sup>13</sup>

## **6. Sixth Amendment: Evaluation**

On July 1, 1981 a Bill called the Sixth (Constitution Amendment) Bill was introduced in the House. On 8th July the Bill was passed which now enabled Sattar to contest the election without resignation from his office. This Amendment amended Articles 51 and 60 excluding, inter alia, the office of President, Vice-President and Acting President free from being office of profit. This Amendment was, therefore, made to face a real situation. No sinister-looking political purpose worked behind it.

## **7. Seventh Amendment: Evaluation**

By this Amendment Ershad’s seizure of power in 1982 and his long term action as CMLA were legitimized. In the Fourth Schedule to the Constitution a new paragraph 19 was added which provided, inter alia, that all Proclamations, Proclamation Order, CMLA’s Order, Martial Law Regulation Order, Ordinance and other laws made during the period between 24th March, 1982 and the date of commencement of the Constitution (7th Amendment) Act, 1986 had been validly made and would not be called in question in or before any court or tribunal or authority on any ground whatsoever.

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<sup>12</sup> Md. Abdul Halim, *op.cit.*,p-160

<sup>13</sup> Hasanuzzaman, *Search for a New Dimension*, Pallab Publishers, Dhaka,1992,P-19

It is important to mention here that Ershad, unlike his two predecessors Mujib and Zia, did not, through this 7th Amendment, make any major constitutional changes. The reason behind may be that what constitutional structure Zia left was very much in favour of maintaining Ershad's dictatorial rule. He inherited a system with all powerful dictatorial executive and a rubber stamp parliament, which in no way hampered rather it helped to the continuation of limited or controlled democracy.<sup>14</sup>

### **8. Eighth Amendment: Evaluation**

In a secular state, religion is a private affair and the state pursues a neutral approach on religious matters. Having a state religion would seem to indicate the overturning of the secular nature of the state. Though the 1972 constitution of Bangladesh focused on the secular identity of the country, this amendment had not only made Islam the state religion but also allowed religion-based politics, which enabled the Jamaat-e-Islami and other religious parties to return to the position that had been denied to them under 1972 constitution. The verdicts had termed the fifth and eighth amendments as having transformed Bangladesh into a "theocratic" state. Bangladesh, which has so far been considered a moderate Muslim country, certainly has meager scope for religious extremism. This gross deviation from the original Constitution radically altered the political landscape, helping in the rise of religion-based political parties, which had been banned on charges of war crimes.<sup>15</sup>

Nevertheless, the demand and the scale of the emotion and controversy it has stirred up serve to deepen political polarization in the country. There is little doubt that the end result will be an intensification of the divide between secularists and Islamists. Islamist groups are adamant in their demand and say that they are committed to sustaining their pressure on the government to formulate laws which can award the death penalty to those found guilty of insulting Islam. However, the promotion of Bangladeshi nationalism and the declaration of Islam as the state religion by the martial law regimes of Gen Rahman and Gen Ershad aimed to provide legitimacy to their undemocratic rule.

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<sup>14</sup> Md. Abdul Halim, *op.cit.*, p-160

<sup>15</sup> Shafaqna bangladeshs-identity-crisis, <http://www.dawn.com/news/802951/bangladeshs-identity-crisis> by Shafaqna Pakistan (Shia News Agency)

The use of religion for political purposes while undermining democracy and secularism served the purpose of the country's military dictators but provided enormous space to Islamic forces. The legacy of generals Zia and Ershad still haunts Bangladeshi secularists in terms of promotion of religion and allowing religion-based parties to enter the mainstream political arena of Bangladesh. While the word Islam appears only once in the constitution, the word secularism appears four times in various constitutional provisions. The preamble to the constitution declares secularism, not Islam, as the high ideal.

The change embodied in the new Article 2A, to make Islam as the State religion, was not made with good intentions. Ershad regime was essentially a military dictator, who came to power through a bloodless coup. Most of his decade-long era was run through military rules. He did not have popular support. All of the elections held during his tenure were essentially conducted without the participation of voters. It was the norm of government officials to cast and rig votes. People were deprived of their voting rights during that time. Such a ruthless dictator needed to have some base and sympathy at the grassroots level. Around 88% of the people of Bangladesh are Muslims and most of the Muslims are pious and have a religious mentality. Keeping this in mind, he introduced a constitutional provision making Islam as the State religion. That brought him the expected political dividend: a significant number of Muslims changed their tone overnight and gave their blessings to Ershad. Making Islam the State religion was a merely political connivance rather than a genuine attempt to do something for the overwhelming majority of the population. When he brought this Amendment, there were protests both from secular political parties [i.e. Bangladesh Awami League (BAL)] as well as religious political parties (i.e. Jamaat-e-Islami Bangladesh). Secular political parties accused Ershad of playing fundamentalist and communal cards, whereas religious political forces accused him of doing politics by using religion. The assertion that Ershad's manoeuvres were not bonafide and genuine was proved in the speech made in Parliament by Barrister Moudud Ahmed, as the Prime Minister and Leader of the House at that time. He said "we made Islam as the State religion not to establish Islam. We have done it to tackle fundamentalist forces."<sup>16</sup>

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<sup>16</sup> Barrister Nazir Ahmed, Eighth Amendment of the Constitution of Bangladesh: a short overview, <http://www.parisvisionnews.com/articles/10265-eighth-amendment-of-the-constitution-of-bangladesh-a-short-overview.html>

Resistance to the changes in all conceivable ways, to deflect the ruling alliance from its avowed path, was expected from the political beneficiaries of the fifth and eighth amendment's — the fundamentalists and pro-Islamists. Yet secularizing the country by restoring the 1972 constitution to its original pillars of democracy, nationalism, socialism and secularism may open up a Pandora's box,<sup>17</sup> resulting in violent confrontation between secularists and Islamists.

These sections, the vanguard of the nation's secular ethos — freedom fighters, cultural and women activists, leading professional groups in the greater civil society spectrum — allege that while the government proposes to restore 'secularism,' it also intends retaining some provisions which are in sharp contradiction to secularism and the spirit of the Liberation War.

Indiscriminate amendments were made to the Constitution by the first military regime led by Gen Ziaur Rahman. The amendments not only changed the fundamental principles of the state but also destroyed its secular character; allowed politics based on religion, and provided political rights to the anti-Liberation War forces, even the war criminals. Besides, the secular 'Bengali nationalism,' on the basis of which the Bangladesh war was fought, was replaced with 'Bangladeshi nationalism'.

Grabbing state power in 1982, General Ershad made Islam the state religion. This gross deviation from the original Constitution radically altered the political landscape, helping in the rise of religion-based political parties, which had been banned on charges of war crimes.

'State Religion' is not the issue; the issue is the politics behind it. The military ruler of Bangladesh adopted the campaign rhetoric of Hitler, who stoked racial and ethnic sentiments in the 1930s Germany, and of the Catholic Church of Austria, which used religious sentiments to persecute the Jews. There is also a lesson to be learnt: religion, when politically manipulated, can bring about massive human destruction. The Bangladesh genocide and mass rape in 1971 by 'Islamist' Pakistan army and its collaborators are a gleaming example.

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After 1975, Bangladesh has got the opportunity to correct calculated distortions to its original Constitution framed in 1972, following independence of former East Pakistan. The ruling grand

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<sup>17</sup> [http://en.wikipedia.org/wiki/Pandora%27s\\_box](http://en.wikipedia.org/wiki/Pandora%27s_box)



alliance, led by Prime Minister Sheikh Hasina, holds a three-fourths majority in Parliament, more than the two-thirds required for bringing changes to the Constitution.

Understandably, the huge majority of the pro-liberation ruling coalition has become an irritant to the opposition Bangladesh Nationalist Party, the Jamaat-e-Islami and their fundamentalist allies, which think that they may be weakened if the distortions are corrected and secular principles restored.

The two recent landmark verdicts delivered by the Supreme Court declaring the controversial fifth and eighth amendment's brought in by military rulers General Ziaur Rahman and General Hussain Muhammad Ershad — unconstitutional and void have brightened the scope for a meaningful change. Declaring military rule unconstitutional, the court restored the four basic principles — democracy, nationalism, socialism and secularism — which were the pillars of the state.

“These changes were fundamental in nature and changed the very basis of our war for liberation and also defaced the Constitution altogether,” the Supreme Court observed, adding they transformed a secular Bangladesh into a “theocratic state” and “betrayed one of the dominant causes for the war of liberation of Bangladesh.”<sup>18</sup>

The criticism from within the government's proven support groups became louder as the parliamentary committee recommended retention of Islam as the state religion, saying at the same time that the state would be neutral on the question of religion. There are apprehensions among the liberals that if the non-secular provisions, including the right to religion-based politics, are not removed; fanatics would become more desperate to turn Bangladesh into a state similar to Pakistan. This compromise may alienate a vast majority of young generation voters who, under a new ethical awakening, voted overwhelmingly for the Awami League in the crucial 2008 elections.

The Eighth Amendment, so far as it related to the creation of permanent Benches of the High Court Division outside capital, was found to be ultra vires by the Appellate Division of the Supreme Court of Bangladesh in *Anwar Hossain Chowdhury v Bangladesh 1989 DRL (AD) 165*. The Apex Court employed the doctrine of the basic structure of the Constitution and held

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<sup>18</sup> Bangladesh: restoring secular Constitution, The Hindu, June 25,2011, <http://www.thehindu.com/opinion/lead/bangladesh-restoring-secular-constitution/article2132333.ece>

that no Parliament could alter the basic structures of the Constitution. Justice Shahabuddin Ahmed (who later became the Chief Justice of Bangladesh) said, among others, in his judgment “There is no dispute that the constitution stands on certain fundamental principles which are its structural pillars and if these pillars are demolished or damaged the whole constitutional edifice will fall down. Amendment of the Constitution means change or alteration for improvement or to make it effective or meaningful and not its elimination or abrogation. Amendment is subject to the retention of the basic structure. The Court therefore has power to undo an amendment if it transgresses its limit and alters a basic structure of the Constitution.”<sup>19</sup>

The then Chief Justice of Bangladesh Justice Bardul Haider Chowdhury said “....Now, some of the features are basic features of the Constitution and they are not amendable by amending power of the Parliament. In the scheme of Article 7 and therefore of the Constitution the structural pillars of Parliament and Judiciary are basic and fundamental. The amended sub-Article (5) has disrupted structural balance that was carefully erected in Part VI of the Constitution..... Sub-Article (5) has clearly destroyed the structural pillar of the Constitution and further brought itself within the mischief of the provisions of Article 7(2).” Justice Mohammed Habibur Rahman (who later became the Chief Justice of Bangladesh) said “Now by the impugned amendment that structure of rule of law has been badly impaired, and as a result the High Court Division has fallen into sixes and sevens – six at the seats of the permanent Benches and seven at the permanent seat of the Supreme Court.”<sup>20</sup>

The power of amendment of the Constitution of the Republic of Bangladesh under Article 142 is not an unlimited power and that power conflicts with the concept of supremacy of the constitution provided by Article 7 of the Constitution. Article 7 of the Constitution has put an implied limitation on the power of amendment and therefore Article 7 is basic and unalterable. The counter argument was independence of judiciary and separation of powers are basic features of the constitution but the impugned amendment has not affected either of the two. And the power of amendment under article 142 is a constituent power not any ordinary legislative power. Judgment of A.T. M. Afzal J. rejected the doctrine of basic structures on two grounds that it is unthinkable the makers of the constitution did not leave any option to the future generation but

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<sup>19</sup> [http://www.supremecourt.gov.bd/web/documents/241351\\_WRIT](http://www.supremecourt.gov.bd/web/documents/241351_WRIT)

<sup>20</sup> Barrister Nazir Ahmed, <http://www.parisvisionnews.com/articles/10265-eighth-amendment-of-the-constitution-of-bangladesh-a-short-overview.html>

decided on all matters for all people. And secondly the makers of the constitution envisaged the so-called 'basic features' to be 'permanent features' of the constitution. He stressed on saying that sub Article (1A) in article 142 provided the procedure of referendum which is more difficult to amend some provisions of the constitution which manifests that no other provision of the constitution is not basic that a referendum is required to be incorporated in the constitution. He feared that majority judgment in the eighth amendment case may be a 'roadblock' for the future.<sup>21</sup>

The first (the spelling of Bangla), second (the spelling of Dhaka) and fourth (conferring the titles, honours or decorations) changes listed above were not controversial. Thus, they were well received by the people of the country. Although Islam as the State religion caused some initial resentment and controversy among political and secularist forces of the country, no subsequent governments changed this - probably fearing that this was a sensitive issue and the amendment of it would not be taken easily by the overwhelming majority of the people. The High Court has inherent power, appellate and original jurisdiction upon the whole territory of Bangladesh. It is considered as the guardian of the Constitution. Dividing the High Court into seven parts and limiting its inherent territorial jurisdiction in a unitary state in the name of so called decentralization of the High Court was a malafide action and ill-conceived idea. The Apex Court had firmly shown its backbone by striking out the relevant part of the Eighth Amendment. The Eighth Amendment judgment was a mile stone judgment in the history of constitutional law of Bangladesh.

### **9. Ninth Amendment: Evaluation**

It can be assumed clearly that the ninth amendment was merely a trick by the ruling government although some visible points for democratic approach has been shown there as eye wash only.

Firstly, there was no constitutional power given to the vice-president except for the creation of the post only. He was only functional in the absence of the president which is not acceptable in civic sense at all.

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<sup>21</sup> [http://www.bangladeshsupremecourtbar.com/eighth\\_amendment\\_case.php](http://www.bangladeshsupremecourtbar.com/eighth_amendment_case.php)

Secondly, there was a provision to impeach both the president and the vice-president only by three-fourth vote of the parliament. That does mean, both of them should stay above on the constitution.

Thirdly, the ninth amendment had been passed on 11<sup>th</sup> July 1989 but was effected from 1<sup>st</sup> March, 1991. With a delaying time span of a year and seven months. The mean intention of then president was that he could hold his post for two more additional tenures. The effective date of the amendments hints that if he had been elected for the presidency, it would have been his first elected tenure. Even after that if he could be elected for the second time, he could continue holding his post up to 2001.

#### **10. Tenth amendment: Evaluation**

Certainly this Amendment was done with political purpose, for as mentioned earlier, these reserved seats work as a balance of power or a vote-bank in the parliament.

#### **11. Eleventh and Twelfth Amendment: Evaluation**

The Eleventh and Twelfth amendments are real examples in hostile political environment in Bangladesh where government party and opposition party, among others, were united and stood side by side to bring necessary amendments to the Constitution. These examples are also hope and expectation for those who frustratingly say that compromise and consensus are not possible in the hostile and rival political environment in Bangladesh. Let us see below briefly the changes the two amendments have made and brought, and the political and historical background which led and prompted the main political parties to be in one platform.

The radicalized armed forces in Bangladesh became very much prone to state power and they attempted at least 19 counter coups during the regime of Ziaur Rahman at seizure of power since the killing of Sheikh Mujib. The episode, no doubt, facilitated transition, for a short time, to civilian succession while General Ershad took over in a bloodless military coup next year (March 24, 1982 ) and forced President Sattar to "hand over power at gunpoint".<sup>30</sup> General Ershad's military administration continued till 1990 when he was forced by a militant, unified and popular countrywide mass upsurge, to resign and hand over power to a civilian Vice-President as chosen unanimously and agreeably by all political parties, to head an interim care-taker government. The occasion sounded the end of military rule in Bangladesh. Military rulers in Bangladesh

continued to dominate the politics for three-fourth of the period since independence in 1971- six years under General Ziaur Rahman (1975-1981) and nine years under General Ershad (1982-1990).<sup>22</sup>

Zia's self-made political platform - Bangladesh Nationalist Party (BNP) - was instrumental to gather his strength in the legislative house. Apart from offering substantive concessions to other political parties to bring them into the legislative race, Zia committed to the nation to ensure free, fair, impartial and peaceful elections. The chief Election Commissioner made similar pledges too.<sup>23</sup>

Having been had complete and absolute control over the reigns of administration; Ershad resorted to tune identical music, as his military predecessor Ziaur Rahman did, in his political orchestra to return to civilian rule. Election in Bangladesh failed to enlist people's participation in the political process but it was used to serve the purpose of military ruler. The overt practice of 'managing' votes in support of the regime as well as to elect facade legislature devoid of electoral support proved futile when Ershad had to dissolve the parliament on December 6, 1987 and to try for another electoral attempt to elect a new parliament.

In or around October 1990 the movement took a serious turn and the Three Alliances of political parties as well as Jamaat-e-Islami Bangladesh (JIB - the support and active participation in the movement by the JIB was ensured through liaison committee) demanded transfer of power to a caretaker government headed by a neutral person. The Alliances reached a consensus and made a public declaration setting out the mode and manner of transfer of power.

Ershad had no alternative but to surrender to the demands of the Alliances and hand over power to Justice Sahabuddin Ahmed after appointing him as the Vice President. Justice Sahabuddin Ahmed then formed the caretaker government in line with Joint Declaration of the Three Alliances and conducted the election of the Members of Parliament (commonly known as 'General Election'). The new Parliament passed the Constitution (Eleventh Amendment) Act 1991 and Constitution (Twelfth Amendment) Act 1991 respectively.<sup>24</sup>

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<sup>22</sup> Emajuddin Ahmed, *Military Rule and the Myth of Democracy*, Dhaka, Bangladesh: The University Press Limited, 1988.

<sup>23</sup> Talukder Maniruzzman, "Ziaur Rahman and Bangladesh," in his *Group Interests and Political Changes: Studies of Pakistan and Bangladesh*, South Asian Publishers, 1982

<sup>24</sup> Muhammad A. Hakim, "Legitimacy Crisis and United Opposition: The Fall of Ershad Regime in Bangladesh," *South Asia Journal*, Series-5, no.2, 1991

It is to be noted that the Bangladesh Nationalist Party (BNP) did not get absolute majority to be able to form the government, let alone getting 2/3 majority required for the amendment of the Constitution. 151 seats out of 300 needed to be able to form the government. The number of seats the BNP was able to gain was below 140. The BNP could not even form the government without the support of the JIB. Although the BNP formed the government with the JIB's support, they could not amend the Constitution unless the then main opposition party, Bangladesh Awami League (BAL), supported the BNP.

Being the two women coincidentally leading the two major political parties helped them to realize, to great extent, that the parliamentary system of government would better suit them to their personality as well as serve the country well. Since more or less 90% of the population of the country were behind the two main political parties, more specifically behind the two persons, Sheik Hasina and Begum Khaleda Zia, a national consensus had grown that prompted the then main opposition party to support the government in bringing about the above amendments.

We, as a nation, have propensity to emotion at optimum level. We have shown and proved this time and again. What we say or do today may not be remained committed to do so tomorrow. Liking one thing or two of a party or being frustrated on one party we tend to rally massively behind and vote another party overwhelmingly resulting in that particular party gaining 2/3 majority without thinking the consequence of giving such a mandate. We are even quick to take u-turn for trivial matters. Gaining such emotional mandate the government becomes ferocious, untouchable and uncontrollable. That creates political instability in the country. We have seen this at least four times in our nation's 42 years history. In those circumstances, unexpected incidents or extra constitutional intervention becomes imminent.

If there are lessons to be learned from the past history, the government should not be slow to learn those. If the government could create a momentum to create a national consensus that we had seen during the time of Eleventh and Twelfth amendments, then that would be better for the government as well as for the nation. It is worth mentioning that making the history and be in the history are not the same.

It was the Twelfth Amendment which, like an unexpected beginning, reintroduced parliamentary system in Bangladesh paving die way for a fresh start of constitutionalism. After 16 years of existing dictatorial presidential system introduced by the 4th amendment in 1975 parliamentary system was reverted to for the second time by this Amendment. Except for a few Articles the spirit and language of the Twelfth Amendment are similar to those replaced by the

Fourth Amendment. The fundamental changes to that end introduced in the constitution are following :

Under the provisions introduced by the Fourth Amendment the President could remain in office for an unlimited number of terms. These undemocratic provisions have been abolished and now after the Twelfth Amendment it is provided in Article 50(2) that no President shall hold office for more than two terms, whether or not the terms are consecutive. It has, therefore, restored the democratic provisions of the original constitution.

As to the declaration of emergency Article 141A has been amended to the effect that the proclamation of emergency shall require for its validity the counter signature of the Prime Minister before the emergency is proclaimed. Thus the whole power of declaring emergency virtually rests with the Prime Minister. This double check has also been inserted with the same view i.e. to safeguard the possible misuse of power by the president. The politics of united Pakistan left, bitter experiences of such an abuse of power by the presidents for their selfish end rendering the governmental system unworkable.

As to the suspension of enforcement of fundamental rights during emergency under Article 141C another double check has been imposed with the same view that the President shall, during emergency, suspend the enforcement of fundamental rights by order on the written advice of the Prime Minister.

Compared to the original Constitution and the 5th Amendment the Twelfth Amendment has made a sort of improvement with regard to the power of parliament in respect of international treaties. A new Article 145A has been created which now provides that all treaties with foreign countries shall be laid before parliament by the President. Earlier the President could refuse to lay before parliament any of such treaty on the ground of national interest.

It should be pointed out that in true parliamentary form of government as in practiced in UK, India, Australia etc. The power of dissolution is given to the King or President at his discretion and he uses this power in accordance with well-established traditions and conventions of parliamentary system. But as mentioned earlier this discretionary power of the President was misused during the Pakistan period which created cabinet instability and rendered government unworkable. Taking this bitter experience into consideration the framers of the constitution of Bangladesh provide for strict provisions without leaving any scope for the president to act arbitrarily.

It is also noteworthy that though the Twelfth Amendment has restored the conventional features of a parliamentary system as far as the powers of the President to dissolve parliament are concerned, that power has lost much of its importance due the barricade created by Articles 70 of the Constitution.



## 12. Thirteenth Amendment: Evaluation

Bangladesh has history of political unrest, military rule, autocracy and a glorious struggle for democracy. The introduction of a constitutional nonpartisan neutral caretaker government to oversee future elections was hailed as a milestone in Bangladesh's political history. Under the constitutionally recognized caretaker system had already witnessed three parliamentary elections during period 1996 to 2008. Many at home and abroad believed that Bangladesh's success with the system can serve a model for the developing countries facing problems similar to Bangladesh.

In the parlance of institutional government of Bangladesh, a caretaker government is one which is supposed to take care of state administration for an interim period until the regular new government is formed. In an established parliamentary system, there is a convention of transformation of the outgoing government into a caretaker government for the time being before the holding of the general election. Such temporary government is supposed to only perform day-to-day administrative jobs, and not with policy initiating functions which may influence the election results. During this period the caretaker government is supposed to maintain a neutral status for ensuring free and fair general elections. Of course, this is what it is "supposed" to do. In reality the real balance of forces between the contending parties leads to a different situation.

The reason why such a set up was established in Bangladesh is clear. The demand for neutral caretaker government largely originated from a lack of trust in the political government under which the election was held. The past tradition of Bangladesh was one of rigged and fraudulent elections, and such malpractices were usually carried out by the outgoing government in power misusing their authority. Its role was to complete the election process within three months, after which the elected government was expected to take charge.

The idea was to allow an interim authority to take over the election process once the incumbent party steps down three months prior to the election. In the constitutional development of Bangladesh the 13<sup>th</sup> Amendment of the constitution, in a sense, is a positive step for following reasons:<sup>25</sup>

Firstly, the fundamental basis of formation of government in democracy is election. If this election is not free and fair, the formation of government cannot be said to fulfill the norms of democracy; and in this case the most celebrated maxim of democracy "all power belongs to the

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<sup>25</sup> Md. Abdul Halim, *op.cit.*,p-160

people” becomes a mere farce. More the election process will be free and fair more the people will see their voting right, in other words, right to elect representatives meaningful. The most important positive merit of the 13<sup>th</sup> Amendment is that it has paved the way for making the elections free and fair, particularly free from government influence.

Secondly, it has been a common trend in the politics of almost all developing countries that during the election period the manpower makes the worst abuse of public purse and properties to get victory in their favour. This manipulation in the election process virtually creates an insurmountable stumbling block to the development of some important democratic institutions like the Election Commission, press, media and political party etc. Since the 13<sup>th</sup> Amendment provides interim separate caretaker government and no party government can continue in power during the general election, there remains no scope of manipulation of public purse and properties by the party in power.

Thirdly, coming to power every government now will have to think that once parliament is dissolved or its term is ended, it will automatically find itself out of power and then the public will have the fullest opportunity and atmosphere to exercise their right to elect representatives and of government. On the other hand, no government now will be in a position to think for manipulation in the elections; rather it will think for doing material benefit to the people. There is therefore, possibility that the government will now be more responsive than in the past.

Supporting the 13<sup>th</sup> amendment of the constitution Justice Md Abdul Wahhab Miah in his judgment on the Constitution (Thirteenth Amendment) Act 1996 has argued that the 13th amendment is *intra vires* but not *ultra vires* the constitution.<sup>26</sup>

Though care taker government system is hailed by people in home and abroad however, from the beginning of the introduction of the caretaker system scholars, observers and political leaders identified its structural deficiencies, limitations and some contradictory features. These were;<sup>27</sup> Firstly, It was alleged that the thirteenth amendment altered the basic structure of the Constitution/government of the country. Bangladesh as a parliamentary democracy normally

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<sup>26</sup> Justice Wahhab, *13th amendment constitutional necessity*, September 20, 2012, <http://news.priyo.com/judicial/2012/09/20/13th-amendment-const-60262.html>

<sup>27</sup> Jalal Firoj, *Democracy in Bangladesh: Conflicting Issues and Conflict Resolution*, Bangla Academy, Dhaka, 2012, p-149-155

practices a system where the PM enjoys the confidence of the parliament and acts as executive chief of the country and the President works as a titular head. But the thirteenth amendment empowered the government. As a result the titular President became a 'real' President when the caretaker government takes charge of the state affairs. The President was vested wider power in matters of President. A provision of the Constitution categorically mentioned that, 'The Non-Party Care-taker Government shall be collectively responsible to the president'.<sup>167</sup> During the tenure of the caretaker government the system of government took a completely different turn and the parliamentary form of government became an interim presidential form of government. Islam observed:

The thirteenth amendment has conferred some real and absolute powers on the President who is not entitled to all these powers under the Constitution. In exercising these powers, the President is beyond the reach of the caretaker government... The thirteenth amendment thus transforms the figurehead President to an all-powered President, effectively introducing an interim presidential form of government during the tenure of the caretaker government. It has created two separate but potentially conflicting sources of governmental power: the President and the caretaker government. These are affirmatively inconsistent with and repugnant to the basic structure of the Constitution.

Secondly, in normal time President acts, except appointing the PM and the Chief Justice, as per the advice of the PM. During the tenure of the caretaker government of the President did not need to act in accordance with the advice of the CA. He enjoyed more freedom in his action. The thirteenth amendment gave the President power to administer the defence services. The president power to administer the defence services. The president could also declare emergency without the concurrence of the CA if he is satisfied that a grave emergency exists in which the security or economic life of Bangladesh, or any part thereof, is threatened by war or external aggression or internal disturbance...'<sup>169</sup> The President's enhanced power aroused strong criticism from various corners. BNP supported this move by presenting since he was the only elected office holder'<sup>170</sup> during the period of interim government. Many observers found a different reason for BNP's decision to give the President such a wider power. According to them, the BNP's decision to give the President such a wider power. According to them, the BNP government gave the president such power with an ill-motive to influence the elections.

The idea of giving additional power to the President had also been criticized from the points of president's institutional capacity. Normally the President is a ceremonial head. He maintains his

office with a lean staff. But when the President exercised his enhanced power he depended on the government's infrastructure. One scholar pointed out that the ceremonial President with more power is a paradox; he lacks institutional support, and the exercise of the enhanced powers implicates the entire government.

Thirdly, the thirteenth amendment prescribed that executive powers would be exercised by the CA. On the other hand the amendment gave some powers to the President which he would exercise without the advice of the CA. It had been termed by many as a contradiction. There was thus a risk that the system of government may become dyarchic if the President and the CA fail to agree to work together and/ or to collaborate with each other.

Fourthly, as per the article 58C of the Constitution if the President had to choose a CA 'from among parties'. Though the provision mentioned that the President would appoint the CA 'after consultation as far as practicable' but how this consultation would be held and what did the consultation mean – either by agreement among the parties or by consensus – were not clearly mentioned. It was a vague and ambiguous provisions.

Fifthly, the caretaker government was an interim government was interim government. But how long it had to remain in the office was not specified in terms of days or months.

Article 58B of the Constitution read:

There shall be a Non-Party care-taker Government during the period from the date on which the Chief Adviser.. enters upon office after Parliament is dissolve or stands dissolved.. till the date on which a new Prime Minister enters... after the constitution of parliament.

In absence of the specific time-frame, some tried to interpret that the Constitution allowed an indefinite period for the caretaker government.

Sixthly, the constitutional provision allowed the President, as the last option, to assume the functions of the CA of the caretaker government in addition to his own function. This provision had been considered as something directly opposing the idea of caretaker system. The President is a political person elected from a political view. So a partisan person cannot be the chief of a non-party government.

The President as Chief Adviser makes a mockery of the constitutional and accountable government- and perhaps destroys the caretaker government as an institution.

Sevently, the caretaker provisions were applicable to national elections only. Local government polls are indispensable to ensure the grassroots democracy. It had been argued that

by ignoring by-elections and local government polls caretaker provisions left a major arena open for electoral corruptions.

Eighthly, it has been said and expected that the members of the caretaker government and the CA would be non-political and they would have no previous link with any political party. These non-political persons were given to manage the most political event, the national elections. It was a paradox. 'There is thus', one scholar has apprehended, 'a risk that a lack of experience of the NCG (Non-Party Caretaker Government) in handling party political matter may make it insensitive to politicians' problems and priorities.

Ninthly, in Bangladesh most of the appointments in HC are made from political considerations. Political maneuverings are very much active in the higher judiciary. As per the provisions of the thirteenth amendment it was emphasized that the CA and other members of the caretaker government would be taken from the judiciary. Many observers were critical about the negative impact of involving the judiciary with the demand of the caretaker government. Eminent jurist Ishtiaq Ahmed maintains: handling party political matters may make it insensitive to politicians' problems and priorities. 'in 13.9 Politicization of Higher Judiciary: In Bangladesh most of the appointments in HC are made from political considerations. Political maneuverings are very much active in the higher judiciary. As per the provisions of the thirteenth amendment it was emphasized that the CA and other members of the caretaker government would be taken from the judiciary. Many observers were critical about the negative impact of involving the judiciary with the demand of the caretaker government. Eminent jurist Ishtiaq Ahmed maintains:

The demand for a caretaker Government a little later became a demand for a 'non-partisan government composed of 'nominated' persons. Later still it was improved by the demand of the sitting Chief Justice to head such a government. As time passed, this demand was amended further by including in the list after him the immediate past Chief Justice and lastly in that order an eminent citizen. The supreme judiciary was being drawn into politics. Whether it was the sitting Chief Justice or the immediate past Chief Justice, the role of political chief executive of the republic contained the danger of distorting the constitutional scheme in which the Supreme Court exists and exercises its powers and jurisdiction.

Apprehensions were also made to the extent that higher judiciary Might be over-politicized. The incumbent government can make plan to influence the coming caretaker government by appointing a Chief Justice of their choice through the politically elected President. According to a scholar, 'The Constitution does not require the government of the day

to consult the Chief Justice while making appointments to the HCD (High Court Division) and AD (Appellate Division). On the other hand, the President, who can appoint the Chief Justice without any consultation with the PM, may in effect be influenced in his decision by the party in power as he is elected by (party) MPs. In other words, by exercising control over the appointment and promotion of the judges of the SC, the government of the day might hope to influence the formation of the NCG in the long run and, ultimately, the election process.'

Mustafa Kamal, a retired Chief Justice, once observed that the provision that the last retired Chief Justice becomes Chief Adviser has corrupted the process of selection of Justice of the Supreme Court. Two scholars observed in 2002:

In a country where the courts are inherently politicized, finding a former chief justice, supportive or sympathetic towards a particular party, would not be hard. Hypothetically, the scheme might also be used by party government to plan in advance the appointment of politically motivated judges to the Supreme Court and have them prematurely retired before an election. Thus such a party could have one of its own allies chosen as head of an NCG. In such an event, the entire edifice of neutrality would fall apart.

Tenthly, the demand of forming a caretaker government for holding free and fair elections was in fact the reflection of complete mistrust on political leaders. After enactment of the thirteenth amendment the caretaker government was responsible for holding national elections freely and fairly. Many observers felt that recurrent use of the caretaker government would inhibit the growth of democratic electoral practices and culture. Political leaders would not learn from their mistakes, and no party government would be entrusted with arranging national elections.

Above structural deficiencies of the caretaker government have arouse great controversy. Under the constitutionally recognized caretaker system three parliamentary elections took place during the period from 1996 to 2001. The seventh parliamentary election was arranged by the caretaker government headed by Justice Muhammad Habibur Rahman. It was a free and fair election although some incidents of malpractices were reported to take place. But the fairness of the election and the neutrality of the government were questioned by a section of leaders of the loosing BNP and its political allies JJ. Some of them questioned the validity of the concept of caretaker government. The influential BNP leader Saifur Rahman once said in the parliament that he would never comply with the non-party Neutral caretaker government if everybody even

his leader Khaleda Zia accepts it.<sup>28</sup> After the seventh parliamentary elections BNP claimed that a portion of administration and some NGOs played a role against them. The BNP secretary general accused the NCGs and administrative machinery as well as the EC of having totally failed to ensure fair elections. Khaleda Zia was also critical of the role of the administration and the EC claiming that her party was not defeated in the election, but was made to suffer defeat although the majority of people had voted for BNP. JI said that fair elections were held in only few centres because the administrative machinery engaged in conducting the elections was greatly influenced by political persuasion.<sup>29</sup> Despite these allegations and accusations the general impression was that the election was free and fair. The Commonwealth Observer Group (COG) visited 105 polling centers of 31 constituencies and reported:

The atmosphere was orderly and festive, although there were a few centres that were considered less organized and problematic. There could be no doubt, however, that voters were highly motivated and determined to exercise their franchise. The voters of Bangladesh came out in great numbers, confirming their strong support for the elections and democratic process. We observed that there was an especially high turnout of women voters. Our general impression was that the majority of voters felt free, and were under no pressure and intimidation.<sup>30</sup>

The eighth parliamentary election was held on 1 October 2001 under the caretaker government of Justice Latifur Rahman. AL raised various allegations against this government and blamed them for playing a partisan role. AL accused BNP of being partners of a massive rigging of the election in connivance with the nonpartisan interim government and the Election Commission.<sup>188</sup> AL president Sheikh Hasina stated that, while obtaining 38 per cent of the total number of votes in the election-1996, AL had won 146 seats, it had won only 62 seats with 41 per cent of the votes cast in favor in the October election-2001. Is it ever possible?<sup>31</sup> The last weapon of rigging the election was to resort to the media coup. This was done from the CEC's office at the time of declaring results.<sup>190</sup> AL leader Kibria was critical of the CA's role. He claimed that Latifur Rahman tarnished his image almost from the very beginning of his office....He came prepared to

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<sup>28</sup> *Ibid*, p-156

<sup>29</sup> *Ibid*, p-156

<sup>30</sup> Commonwealth Observer Group, *parliamentary Election in Bangladesh*, Commonwealth Secretariat, London, 1997, p-18-24

<sup>31</sup> Sheikh Hasina, *Democracy in Distress: Demeaned Humanity*, Agamee Prakashani, Dhaka 2003, p-57

pave the way for the electoral victory of the 4-party alliance.<sup>32</sup> Centre for Research and Information (CRI), a pro-AL research center maintained that during October elections a conspiracy was made against AL. The top high ups of the caretaker government and the state were party to it. According to them, the reason why the October elections produced 'strange, inconceivable, unbelievable, stunning, absurd, and incomprehensible' results was that the election results were rigged as part of a deep-rooted conspiracy hatched by the 4-party alliance and joined by the Caretaker Government, particularly the CA, some advisers, the CEC, and the President. Despite these accusations by AL, the election observers and the international medias commended the election as free and fair, by and large. The New York Times reported:

...monitors from the United Nations and the European Union concluded that the vote was generally fair, though the month-long campaign leading up to it saw about 150 people killed in political violence.<sup>33</sup>

After observing performances of two caretaker governments of 1996 and 2001 political leaders, experts and researchers have expressed their reactions and suggestions on the system. Some of them are doubtful about the wisdom of the system. They hold that the caretaker system is not compatible with the democratic set up. It is a slur on the capability of politicians. It can neither control black money nor make the EC independent. One proponent of this view wrote:

What can the poor Non-Party Caretaker Government do about the mighty intrusion of black money or muscle power in the electoral process? Much of what is required in this area depends on democratic culture rather than on the Non-Party Caretaker Government...the political leaders should be consciously inward-looking.<sup>34</sup>

One school of thought contains that the caretaker concept underestimates the credibility of democratic governance. This system cannot be used recurrently. It denies the party government the responsibility of conducting free and fair election. As close observer maintained:

...the NCA (Non-party Caretaker Administration) concept cannot be a permanent arrangement because it casts doubt on the ability of an elected representative government to protect the institution of free elections. It undervalues the credibility of a democratic government to uphold democratic values and points to the failure of the political community to accept 'certain rules of

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<sup>32</sup> Jalal Firoj, *op.cit.*, p-157

<sup>33</sup> *Ibid*, p-157

<sup>34</sup> *Ibid*, p-159



the game which structure and limit the struggle for power'. Its recurrent use as a constitutional mechanism to safeguard electoral integrity and ensure a violence-free election might inhibit the growth of a democratic electoral culture; party governments would be denied the opportunity to take responsibility for conducting fair elections and contesting parties would be disciplined to enforce strict electoral discipline on their own initiative by mutually agreeing to an abiding code of electoral conduct, leaving the matter instead to the NCA.

After both elections, defeated parties — BNP in 1996 and AL in 2001-- questioned the neutrality of the caretaker governments. They accused the caretaker governments of playing a partisan role. Thus who were instrumental in the introduction of the system of NCG have paradoxically become its worst critics.<sup>35</sup>

Another school contends that the caretaker system is a reality. It is a workable arrangement though it has limitations. Now it needs fine-tuning, corrections and reforms. For a meaningful reformation its flaws should be identified first.

In one of his articles Kibria maintained that there should be a mechanism to make the caretaker government accountable. It was a system based on good faith. It was simply gambling. In his words:

....can anyone guarantee that a system dependent on the good judgment, neutrality and honesty or an individual or a group of individuals without any other safeguards will work simply on the basis of good faith?...It is a gamble and if one loses there is not much that one can do about it...actually the caretaker government has no accountability to anyone. If the CA is not neutral and impartial or if he does not happen to be a man of integrity, one can only curse one's luck because no one can bring them to book...<sup>36</sup>

As election under party government is always in questioned for its credibility, rigging and unlawful activities. So Caretaker government system is one of the finest inventions by our political parties for holding general election. It was a smart decision of time. However, none of loosing party has positive remarks about caretaker government after their defeat. General election of 1996, 2001 and 2008 under caretaker government is live example. So, it is time to rethink and get the best alternatives of undemocratic caretaker system which leads the nation to prosperity.

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<sup>35</sup> *Ibid*, p-159

<sup>36</sup> Shah A M S Kibria, "The Neutral Caretaker Government: An Assessment", *Daily Star*, Dhaka, 4 November 2001  
*Dhaka University Institutional Repository*



### **13. Fourteenth Amendment: Evaluation**

This is a matter of great concern and regrets that, without taking the demands and opinions of all of the Women's, Social, Political, Professional and Human Rights Organizations, into consideration, the Government introduced the bill. The form and content of the proposal of the amendment met immediately with adverse reaction from the Women's Organizations of the country because it was totally in contradiction to the concept and perception on which the nation as a whole was discussing during the last decade. Statements, rallies, demonstrations became a daily affair. Criticism widely mounted in the press and public meetings held across the country and those became a growing concern of affairs since 8th march, 2004. But, ignoring all those criticisms and protests, the Government without taking any heed to those voices to be heard, moved ahead with the approval of the draft bill in the cabinet to be moved in the Parliament. And then today Government introduced the bill in the Parliament as an amendment to the legislation for adoption.

The 14th Amendment to the Bangladesh Constitution, brought by the Khaleda Zia government, is seen as an attempt to serve the ruling alliance's partisan ends. But the lack of Opposition unity proves to be a major stumbling block to an organized response.

Regarding the proposed number of reserved seats, the government did never come up to give any explanation to the citizens of the country, why they thought the number 45 to be appropriate. While the relevance of the number needed a clarification, the women's organizations political parties, social and human rights organizations demanded to make the number looking relevant to be proportional to the existing numbers of electoral constituencies, or to be proportionate to the administration units. But the number chosen by the government appears extremely arbitrary in nature, evidently that is the reason why the government could not present any credible relevance in choosing this number. Therefore, it is expected that the Government must choose a number which embodies a figure proportionate to electoral constituency or administrative units of the country, and in line with the nationally and internationally accepted proportion of women's representation in local government and legislative bodies, which is nearly one-third, particularly on the backdrop of the socio-economic perspectives where empowerment of women has been identified as an important paradigm and effective policy in formulation of policies and strategies for democratic and economic development of Bangladesh. It is known by every conscious person with understanding of however little sense of parliamentary democracy or democracy at all, that the inner meaning of public representation is public accountability. To establish public

accountability, it is imperative and necessary to define the constituent area of the population whom the public representatives are representing and unto whom they are accountable. In the proposed amendment no such constituency have been defined, on the other hand, it is proposed that the number of reserved seats shall be allocated to the political parties proportionate to their number strength in the existing parliament of 300 seats, and then those political parties out of their own choosing shall nominate their women members of the parliament to assume the reserved seats according to numbers they become entitled to nominate in proportion, so determined. This process clearly means that the women members in the reserved seats of the parliament will remain accountable to the respective political parties in which they belong and not the people. This system totally contradicts to the concept of public accountability embedded in the basic principles of democratic rights defined in the constitution of the People's Republic of Bangladesh, where the inevitability of the public accountability of the people's representative is clearly perceived as the fundamental principles of the constitution.

The Awami League and the Left parties alleged that the ruling alliance amended the Constitution with a partisan design, "to ensure that its own man became the chief of the next caretaker government, to manipulate the coming election". One of the new provisions empowers the Chief Election Commissioner to administer the oath to Members of Parliament in the absence of the Speaker and the Deputy Speaker. Both the Opposition and sections of civil society termed this provision "unwarranted and unnecessary"<sup>37</sup>.

The age limit of Supreme Court Judges has been increased because they want to see a particular Judge as head of the caretaker government. (Under the 13th Amendment, the Chief Justice will head the caretaker government.) The then Law Minister Moudud Ahmed argued that in the next four years 25 Supreme Court Judges would retire, creating a vacuum in the top tier of the judiciary. This justification has not satisfied critics and is likely to find favour only with Moudud Ahmed's partymen.<sup>38</sup>

As for displaying portraits of the President and the Prime Minister in government offices and diplomatic missions, the Opposition believes this has been done only to undermine the 'founding father' of the country. "The intention is clear: this will in future bar the display of the portrait of Sheikh Mujibur Rahman. They still fear Mujib, who was assassinated nearly three decades ago,"

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<sup>37</sup> Haroon Habib(in Dhaka), A Controversial amendment, Fronline ,Volume-21- issue-12, jun. 05-18,2004,  
<http://www.frontline.in/navigation/?type=static&page=flonnet&rdurl=fl2112/stories/20040618001205200.html>

<sup>38</sup> *Ibid*

said a veteran Awami League leader. However, the Law Minister maintains that the provision has been incorporated in the Constitution "just to end the long controversy". The 'controversy' revolves around the question whether to accept Mujib as the undisputed hero who led his nation to freedom from Pakistan.<sup>39</sup>

The provision reserving 45 seats for women on a proportional representation basis for the next 10 years would be effective for the residual period of the existing, eighth, Parliament, which has 300 members. The Opposition and women's organisations say the BNP violated its pre-election commitment by avoiding direct elections to the seats reserved for women. They perceive such a system of indirect representation as one that is designed to favour party loyalists, irrespective of the extent of their popular support.<sup>40</sup>

The implementation of reservations, or reserved seats in a legislature for certain under-represented groups, has a relatively long history in South Asia. As early as the 1940s, India began implementing caste-based reservations in the parliament. In Bangladesh, the first constitution, promulgated in 1972, provided for 15 indirectly elected reserved seats for women in the national parliament for a period of ten years. This gave women a minimum representation of 4.7 percent. Members elected to the general seats constituted the Electoral College for electing candidates for the reserved seats.

It is important to note that, in Article 28(2), the Constitution only explicitly calls for women and men to be treated on equal terms in 'all spheres of the State and of public life'. Arguably, the lines between public and personal life are blurred in certain areas of personal law, most noticeably so in the context of citizenship and property rights. And the Constitution appears to provide ample provision to equalize rights where there is a perception of disparity, without specifying the public or private nature of such a disparity's context.

On the issue of displaying the portraits of the President and the Prime Minister in government offices, Sheikh Hasina said: "No instance could be cited from anywhere in the world where legislation was required to be framed for hanging the portraits of the Prime Minister and the President. Why amend the Constitution when a simple executive order is sufficient?" she asked.<sup>41</sup>

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<sup>39</sup> *Ibid*

<sup>40</sup> *Ibid*

<sup>41</sup> *Ibid*

The Election Commission has recommended 33% of women's representation within registered political parties in the Representation of People's Ordinance 2008. The purpose of introducing quota system is to increase the presence of women in formal politics leading to a transformation of politics by bringing different views and values into it. An underlying objective is that woman will gain the position needed to change and renegotiate gender roles which ultimately will lead to gender equity, equality and also political empowerment.

Allegation of electoral rigging is a common phenomenon in Bangladesh. In 2006 crisis arose as to the appointment of the Head of Non-party Caretaker Government because of enhancement of the age of Justices of the High Court by 14th Amendment. It is supposed that this amendment was intended to employ a person having leaning to outgoing government as the head of Caretaker Government. Thus stormy opposition surfaced against the appointment of head of Caretaker Government. In the last days of outgoing government chaotic and anarchic situation arising out of uncompromising stand of the outgoing ruling parties and the opposition forced the President to take over the office of Non-party caretaker Government.

While constitution provisions were side stepped political issues were getting momentous and cemented gradually. It may be recalled worthwhile that when the 14th amendment to the Constitution was made it created suspicion in the 14 party alliance from May 16, 2004. They argued the retiring age of the Judges of the Supreme Court was enhanced from 65 to 67 by 14th amendment calculating a subtle plan to have the retired Chief Justice K.M. Hasan as the future Head of Non-party Caretaker government of 2006. Jatiya Party chairman H.M. Ershad said this amendment was not acceptable as it might influence the next election. Awami League claimed Chief Justice K.M. Hasan was the editor on foreign affair in BNP government in the years 1977-79.s This led the opposition to claim that Chief Justice K.M. Hasan had political affiliation with BNP for which he is disqualified for the office of Non-party Caretaker Government. With regard to enhancing retiring age of the Judges of the Supreme Court fourteenth amendment was initiated at the instance of an advice by the outgoing Chief Justice Mainul Reza Chowdhury in June, 2003.

#### **14. Fifteenth Amendment: Evaluation**

The 15<sup>th</sup> amendment of the Bangladesh constitution is perhaps the most important and debatable one in the post democratic era. After the great liberation war of 1971 Bangladesh emerges as a new country in the world history, the than it was able to make her constitution within a year, keeping the basic principles of liberation in consideration and providing reorganization of 30 lac martyred in the war of independence. Based on the direction of Bangabandhu Shikhe Mujibur Rahman constitution making committee was made a modern and delicate constitution where rights, responsibilities of the citizens and overall mass interest and welfare were ensured. However, in the flow of time, there were brought many changes in this constitution (1972's constitution) at the different regimes. Gradually, by bringing up many insertion, substitution, alteration and deletion of the constitution, it moved far away from the original constitutor of 1972. And so, maintaining commitment that included on manifesto of the election 2008 and 'needs' for returning to the spirit and contents of the founding constitution of 1972 present Awamileague government has made a comprehensive changes in the constitution in its 15<sup>th</sup> amendment in the year 2011.

15th amendment, like most of the previous amendments, also largely failed to reflect comparative constitutional studies. Such study is considered essential for learning the experiences of constitutionalism in relevant jurisprudences and borrowing or adapting them in amending a nation's own constitution.

Unfortunately Bangladesh has taken a different path from more common global trend. The first amendment of the constitution was made in 1973 for enabling and facilitating the trial of war crimes, genocide and crimes against humanity. This is one of the very few amendments which could be termed as a progression of constitutional order and citizen's rights. Most of the later amendments in Bangladesh have been done either to legitimize illegal regimes (5th and 7th amendment), or monopolizing power of the incumbent (4th amendment) or shrinking citizens' rights (2nd amendment) or to ensure re-election to power (14th amendment).<sup>42</sup>

The 15th amendment, being the most recent amendment has equally frustrated many people. Although it has some positive aspects, the negatives are too many overshadowing the achievements obtained by positive provisions. Its positive aspects include correcting the country's sense of history and identity, for example reinstating the preamble and the four fundamental principles of state policy in accordance with the 1972 Constitution and reflecting

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<sup>42</sup> Asif Nazrul, 15<sup>th</sup> amendment, Transition of power, <http://archive.thedailystar.net/beta2/news/transition-of-power/>  
*Dhaka University Institutional Repository*

contemporary development like recognizing the needs for protection of environment, biodiversity and cultural identity of ethnic minorities.<sup>43</sup> It has emphasized right of equal opportunity of the women in every sphere of life and increased number of women reserved seat of the parliament to 50, returned the right of abstention from voting in parliament in line with Article 70 of the 1972 constitution and revived, although in part, the independence of the subordinate courts in accordance with the 1972 constitution. Moreover convicted war criminals under the Bangladesh Collaborator Acts (special tribunal) Order 1972, should not become voters. It also includes, preservation and display of the portrait of the Father of the nation Bangabandhu Sheikh Mujibur Rahman at the offices of the President, the Prime Minister, the Speaker, and the Chief Justice and in head and branch offices of all government and semi-government offices, autonomous bodies, statutory public authorities, government and non-government educational institutions, embassies and missions of Bangladesh abroad; Incorporates of historic speech of the Father of the Nation Bangabandhu Sheikh Mujibur Rahman on March 7, 1971; declaration of independence by Bangabandhu after midnight of March 25, 1971 and the proclamation of Independence declared at Mujibnagar on April 10, 1971.<sup>44</sup>

However it has also retained a number of provisions of the martial law regimes in regard to tenure, mode of removal and post-retirement opportunities of the judges of the superior court. Such contradiction is more confusing in its provisions in regard to religious identity of the state. The 15th amendment has replaced 'Absolute Trust and Faith in Almighty Allah' with 'Secularism' and revived Article 12 of the 1972 Constitution which prohibits 'granting by the State of political status in favour of any religion'. But quite contradictorily, its Article 2A provides a special status to Islam by declaring it as a State religion, although in a diluted form than the way it was originally phrased by the Ershad regime in 1988. The 15th amendment has added two new clauses in Article 7 which might have significant impacts. Article 7A has declared abrogation, repeal or suspension of the constitution by any unconstitutional means as an offence of sedition. This is definitely a good addition for protecting the constitutional sanctity and democratic transition of power. Article 7B introduced by the 15th amendment has created new controversy by illegalising the power and authority of future

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<sup>43</sup> *Ibid*

<sup>44</sup> Barrister Nazir Ahmed, Legitimacy and legality of the Fifteenth Amendment of the Constitution of Bangladesh, <http://www.parisvisionnews.com/bangladesh-news/96-political-news/9476-fifteenth-amendment-of-the-constitution-of-bangladesh.html>



parliaments in amending nearly one third of the Articles of the constitution by providing that the preamble, fundamental principles, fundamental rights and the provisions relating to the basic structures of the Constitution shall not be amendable by way of insertion, modification, substitution, repeal or by any other means. Arguably, this provision thus has even shunned the scopes for future parliament to restore the 1972 constitution for example by deleting the provisions of state religion or to give enforceability to economic rights like right to education and health. This is also undemocratic in that one particular parliament should not restrain the authority of the equally powerful future parliaments in amending constitution. The 15th amendment has also repealed the rights of the citizen's to constitution-making by deleting the provisions of referendum on constitutional amendment. The necessity of referendum is getting increasingly recognized in Europe (including in the UK, a country traditionally reluctant to referendum) and also in America. On the contrary, the 15th amendment has kept no right of participation of people and curtailed such right of their elected representative in amending constitution.<sup>45</sup>

The most controversial aspect of the 15th amendment is its deletion of caretaker government (CTG). The controversy may be explained by taking account of the relation between CTG, election and democracy. In a country like Bangladesh the only scope for the general people of participating in “democracy” comes when they exercise their voting rights once every five years. A fair counting of their participation through election is a very important concern for every citizen of the country as well as for their political organizations. The ingenious device of forming a non-party caretaker government to guard the sanctity and credibility of election was therefore hailed by majority of the people as well as political parties. In addition to ensuring free and fair election, the caretaker government had gained reputation for significant improvement of law and order situation during their tenure, setting standards of good governance and undertaking pro-people legal reforms, for example in areas of election administration, human rights and anti-corruption drives. Therefore, the scrapping of the caretaker system by 15th amendment had shocked most of the people, citizen groups and political entities.

However the CTG was not immune from controversies. The opposition against CTG was founded on its not-elected nature. Further, the last CTG installed through the 1/11 incidents also

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<sup>45</sup> *Ibid*

underlined the necessity of specific provisions as to its duration, function and jurisdiction. The present government also tends to justify the deletion of the 15th amendment on the ground that the Appellate Division of the Supreme Court had declared the caretaker government as void and unconstitutional in its 13th Amendment case. The proponents of the 15th amendment often argue that free and fair election could even be held under the incumbent political government of Bangladesh.<sup>46</sup>

If we go back to nineteen years, it is clear that present government party- Awami League was in great demonstration to establish Care taker government system whereas prime minister of that time said CTG system is totally unconstitutional and illogical proposal. And so, she denied that system and was not interested to sit for dialogue in this particular issue. “No one is neutral than insane and kids”- she added about CTG Chief Advisor.<sup>47</sup> Finally it was established in 6<sup>th</sup> parliament through the 13<sup>th</sup> amendment of the constitution. People observed four parliamentary elections under CTG however this system was not above questions. The Appellate Division of the Supreme Court had declared the caretaker government as void and unconstitutional in its 13th Amendment case. Though the short order of the judgment delivered on May 10, 2011, it still directed for holding the next two parliamentary elections under non-party caretaker government in view of the age old maxims of necessity and safety of the people and the state. However it also said, if parliament is found its necessity for holding election than CTG system can be used in next 10<sup>th</sup> and 11<sup>th</sup> parliamentary election. So, present Awami league Govt. has omitted this system from the constitution. And now BNP is in demonstration to reestablishment of CTG system. Message is very clear to the people that both the parties want to use the system on be their half. Each party wish to see them in the golden seat of power by any means and so they bring changes in the constitution to sustain in power, though according to ruler, all changes are brought in for the betterment of people, in fact, change bring good luck for them and their party-men.

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<sup>46</sup> Asif Nazrul, *op.cit.*

<sup>47</sup> Mohammad Bokhtier Uddin, “Banagladesh Sangbidaner Panchodos Songshudhoni: Prokriya, Boishisto O Tatporjo”, *Somaj Nirrikhon*, No-128, January-March-2014, p-107

## **Chapter 6: Conclusion: Prospects of Constitutional Politics and Democracy in Bangladesh**

‘Constitutionalism’ is the doctrine which governs the legitimacy of government action. By constitutionalism is meant – in relation to constitutions written and unwritten – conformity with the broad philosophical values within a state. Constitutionalism implies something far more important than the idea of ‘legality’ which requires official conduct to be in accordance with prefixed legal rules. A power may be exercised on legal authority; however, that fact is not necessarily determinative of whether or not the action was ‘constitutional’. In summary, constitutionalism suggests the limitation of power, the separation of powers and the doctrine of responsible accountable government.<sup>1</sup>

Evaluation of all the fifteen amendments of Bangladesh’s constitution clearly shows that every government amends constitution repeatedly either to venture their personal dogma or to demonstrate their political nuisance to use constitution as a legal armaments. It could be a matter of great pleasure to have had a constitution within a year after nine months of freedom fight but it was also amended four times by those who prepared it. Among them, 4<sup>th</sup> amendment has changed the fundamental characteristics of the constitution. Afterwards, when the resurgence of novice leaders caused by the suffocation from the steam ruler of Military arises, then to rule the country they were amend the constitution by deducting and adding different articles. It is factual that 4<sup>th</sup> amendment was a direct smack to the spirit of constitution. Nevertheless it is also true that by toting up new principles and eliminating the existing principles, 5<sup>th</sup> amendment has entirely distorted the national identity and Fundamental principles of state’s ideological policy. It can be said that the 6<sup>th</sup>, 7<sup>th</sup>, 9<sup>th</sup>, 10<sup>th</sup> and 11<sup>th</sup> amendments were done for the sake personal concern.

By giving the constitutional acceptance to the Islamic reverence through 5<sup>th</sup> amendment, Zia Government paved the way for Ershad to impart the 8<sup>th</sup> amendment with great enthusiasm. It should not be gone wrong if we say that before Islam was accepted as the State’s Religion, people of Bangladesh did their own rituals. Fact is not like that after this event took place, religious practice of the people increased rapidly. Most of the people have the question in mind that the ruler who administered Islam as State’s Religion, how much is he religiously devoted?

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<sup>1</sup> Shamima, Binte Habib, “Understanding Constitutionalism: Bangladesh Perspective”, *ASA University Review*, Vol. 8 No. 1, January–June, 2014, p-225

Political mean-mindedness and fortune worked as much as religious devotion two military dictators added such principles in the constitution that even the antecedent governments couldn't have the courage to change them, we are clearly observing proof of this fact in the 15<sup>th</sup> Amendment.

By the 12<sup>th</sup> Amendment, constitutional democracy was restored, but it is a matter of great concern that in the name of constitutional democracy, the Prime Minister's Autocracy has deployed. Professor Abdullah Abu Sayed said in this regards that, "The military dictator was demised by the mass movement of Ninety but from last two decades it is nothing but the practice of Autocratic Philosophy which takes place. Gradually, an incredible Prime Ministership is evidenced where like Military Dictators, the first person "ME" (the Prime minister) is prioritized over everything with its devil share of corruption, increasing undemocratic practice of the state and devaluation of merit everywhere. Where fragile economy develops in a good margin with immense success by the minority entrepreneurs' pleasant efforts; there this success becomes a question to the whole world by the visionless leadership of the country."<sup>2</sup>

Undemocratic Care Taker Government System took place in the democracy only for the lack of trust, suspicion and doubt among the political parties. But interestingly, those who patronize it are not willing to deploy the system any further. Again, those who were against this are now the main claimer. Nobody will say that Care Taker Government System is the best for democracy. But in order to enroll democracy, it was a social catalyst concerning the political reality of Bangladesh.

It is also true that by the decade and a half, political parties made it contaminated and controversial for their own accord. Now, the opposition parties do whatever they can do to retrieve the Care Taker Government System, but it could not possible to establish as it was before.

Therefore, an active alternative should be introduced by all the stakeholders who will not be like as Prime Minister said, or it would not be like the claim from the leader of the opposition. This issue can only be resolved by the cordial discussion and dialogue among the leaders.

14<sup>th</sup> Amendment was a unique tactics to safeguard the power. Increasing the service period of the Juries was a part of this game. As a result, the movement of Awamileague lead 14 party's alliance took place and military backed Care Taker Government was introduced; namely, the lack of courage to hand over the power is seen in the ruling government.

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<sup>2</sup> Hossain Zillur Rahman "Nirob Shonkhagorister Kotha", *Prothom Alo*, Dhaka, December 20, 2013

Constitutional analysts see some positive signs in the 15<sup>th</sup> Amendment. Here the preservation of environment and bio-diversity, empowerment of women and protection of cultural diversity of the ethnic minority community is prioritized. Article 70 was enacted to the 1972's constitution, in order to seclude the parliament members from election. It was tried to make happy everyone. One of the political analysts said that, "To make happy BNP by keeping 'Bismillah' , keeping 'Islam' as state's religion for Jatio Party, keeping 'Socialism' for Leftists, keeping 'Secularism' for Non-Muslims and by setting back to the 1972's Constituion for Awamileague."<sup>3</sup> Amendment to the Article 7B says, "Notwithstanding anything contained in Article 142 of the constitution, the preamble, all articles of Part I, II, III and the provisions of articles relating to the basic structures of the constitution including article 150 of part XI shall not be amendable by way of insertion, modification, substitution, repeal or by any other means."<sup>4</sup> By incorporating this article, the power of National Assembly and people are restricted for future which seems to be the usurpation of the clout of the citizen.

It is incredible to think that, without getting recognition as the state religion, Islam will no longer accessible. Generally, the moral ascendancy of Islam will prevail as it has the majority followers, whether or not in constitution it is recognized as the state's religion. Therefore, it is worthless and infinitesimal to amend constitution to establish Islam as the "State's Religion".

To sum up, excluding few amendments, most of them were done for the own amelioration of ruling party and sometimes to clear the way for next election. Though, every time it was mentioned in the name of welfare of the people. While Khaleda Zia tried to have a Care Taker Government by her own choice through 14<sup>th</sup> amendment, Sheikh Hasina barred the Care Taker system by enacting 15<sup>th</sup> amendment of the constitution. To change the Fundamental Principles of constitution is a crime and the two military dictators did the same. It was meant to resolve the indiscretion of constitution of earlier periods and maybe there was chance to do so in the 15<sup>th</sup> Amendment. Honorable Prime Minister was cordial enough to do exactly as it needed by taking a middle way however, ultimately this amendment created 'questions' or 'controversies' than 'answers'. The reason is as much as weakness of the 15<sup>th</sup> amendment of the constitution, other than faithlessness among the political parties, lack of loyalty, mutual trust, ideological

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<sup>3</sup> Muhammad Yeahia Akhter, *Mohajute Sarkerer Bikalbela*, Dhaka,P-93

<sup>4</sup> The Constitution of the People's Republic of Bangladesh, October 2011, p-158

differences, individual political history, no public discretion on the issue of ‘state religion’ and after all to consider politics as a “zero-some-game”.<sup>5</sup>

In democracy, business of the government is nothing but the output of the hopes and aspirations of the people. For that reason in democratic system popular party is voted to power. When a popularly voted government fails to meet up the cherished desires of the people in her working, people start to withdraw support as well as confidence on the government.

It is observed that a few Amendments made at one time under certain compelling circumstances were subsequently removed by another Amendment, and also that several of these had a broad nationwide consensus. But a few of the Amendments were enacted without proper debates and thorough discussions involving all the stake holders including people adhering to different, sometime opposing, ideological or political views. Amendments that were the result of one-dimensional thought, lack of respect for democratic practices or expediency have obviously come under severe criticisms, sometimes for valid reasons and sometimes for sectarian political purposes.

Of course, there are deficiencies, in some cases contradictions, in the Constitution as it has evolved during the last 40 years and these should be rectified in the light of aspirations and practical needs of a modern democratic and civilized society. The Constitution should serve the people, all the people, irrespective of creed, caste, gender and ethnicity. Constitutional provisions must guarantee equal rights, privileges as well as responsibilities for all citizens of the state; none should feel marginalized and discriminated by any provision of the Constitution. And, no act of treason or murder, whether committed by individual or any state organ, should be condoned or indemnified by any Constitutional provision.

No one support that the idea that politics and state structure of a modern country should be based exclusively on a very rigid interpretation of holy books, although none has problem in accepting the basic teachings of honesty, tolerance, fellowship and humanity which are the core values of all religions. Unfortunately, some people who themselves are devoid of any moral values dominate our politics and exploit the name of religion to fool the common people.

It can write many good words and sentences in the Constitution, but this by itself does not guarantee a system of democracy and good governance, unless the rule of law and justice

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<sup>5</sup> Mohammad Bokhtier Uddin, “Banagladesh Sangbidaner Panchodos Songshudhoni: Prokriya, Boishisto O Tatporjo”, *Somaj Nirrikhon*, no-128, January-March-2014, p-112

providing equal opportunity for all religious and ethnic communities are practiced. It is needed give up emotion and half-truths and does an objective analysis based on facts. Blaming only this person or that person, this country or that country, for all ills of the country's failure to establish a genuine democratic order and just society is not good enough. There must do some soul-searching and work together to analyze the problems and find the best possible solution. In fine there are no objections in enacting another Amendment by the present or future governments, but if and when this is done, there must be full debates and participation by all the political parties, intelligentsia and concerned citizens.



## **Appendices**

## Appendix 1

### The Constitution (First Amendment) Act, 1973

(Act No. XV of 1973)

[15th July, 1973]

An Act to amend certain provisions of the Constitution of the People's Republic of Bangladesh

WHEREAS it is expedient to amend certain provisions of the Constitution of the People's Republic of Bangladesh for the purposes hereinafter appearing;

It is hereby enacted as follows:-

1. Short title and commencement.—(1) This Act may be called the Constitution (First Amendment) Act, 1973.

(2) It shall come into force at once.

2. Amendment of article 47 of the Constitution.—In the Constitution of the People's Republic of Bangladesh, hereinafter referred to as the Constitution, in article 47, after clause (2), the following new clause shall be added, namely:-

"(3) Notwithstanding anything contained in this Constitution, no law nor any provision thereof providing for detention, prosecution or punishment of any person, who is a member of any armed or defence or auxiliary forces or who is a prisoner of war, for genocide, crimes against humanity or war crimes and other crimes under international law shall be deemed void or unlawful, or ever to have become void or unlawful, on the ground that such law or provision of any such law is inconsistent with, or repugnant to, any of the provision of this Constitution."

3. Insertion of new article 47A in the Constitution.— In the Constitution, in Part III, after article 47, the following new article 47A shall be inserted, namely:-

"47A. Inapplicability of certain articles.— (1) The rights guaranteed under article 31, clause (1) and (3) of article 35 and article 44 shall not apply to any person to whom a law specified in clause (3) of article 47 applies.

(2) Notwithstanding anything contained in this Constitution, no person to whom a law specified in clause (3) of article 47 applies shall have the right to move the Supreme Court for any of the remedies under this Constitution."

**Appendix 2**  
**The Constitution (Second Amendment) Act, 1973**  
**(Act No. XXIV of 1973)**  
 [22nd September, 1973]

An Act farther to amend certain provisions of the Constitution of the People's Republic of Bangladesh

WHEREAS it is expedient further to amend certain provisions of the Constitution of the People's Republic of Bangladesh for the purposes hereinafter appearing;

It is hereby enacted as follows:-

1. Short title and commencement.—(1) This Act may be called the Constitution (Second Amendment) Act, 1973.

(2) It shall come into force at once, except sections 2 and 7 which shall be deemed to have taken effect on the 15th day of July, 1973.

2. Amendment of article 26 of the Constitution.—In the Constitution of the People's Republic of Bangladesh, hereinafter referred to as the Constitution, in article 26, after Clause (2), the following new clause shall be added, namely:-

"(3) Nothing in this article shall apply to any amendment of this Constitution made under article 142."

3. Substitution of article 33 of the Constitution.—In the Constitution, for article 33 the following shall be substituted, namely:-

"33. Safeguards as to arrest and detention.—(1) No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest, nor shall be denied the right to consult and be defended by a legal practitioner of his choice.

(2) Every person who is arrested and detained in produced before the nearest magistrate within a period of twenty-four hours of such arrest, excluding the time necessary for the joinery from the place of arrest to the court of the magistrate, and no such person shall be detained in custody the said period without the authority of a magistrate.

(3) Nothing in clauses (1) and (2) shall apply to any person-

(a) who for the time being is an enemy alien; or

(b) who is arrested or detained under any law providing for preventive detention.

(4) No law providing for preventive detention shall authorise the detention of a person for a

period exceeding six months unless an Advisory Board consisting of three persons, of whom two shall be persons who are, or have been, or are qualified to be appointed as, Judges of the Supreme Court and the other shall be a person who is a senior officer in the service of the Republic, has, after affording him an opportunity of being heard in person, reported before the expiration of the said period of six months that there is, in its opinion, sufficient cause for such detention.

(5) When any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be, communicate to such person the grounds on which the order has been made, and shall afford him the earliest opportunity of making a representation against the order:

Provided that the authority making any such order may refuse to disclose facts which such authority considers to be against the public interest to disclose.

(6) Parliament may by law prescribe the procedure to be followed by an Advisory Board in an inquiry under clause (4)."

4. Amendment of article 63 of the Constitution.— In the Constitution, in article 63, clauses (2) and (3) shall be omitted.

5. Amendment of article 72 of the Constitution. — In the Constitution, in article 72, in clause (1), in the proviso, for the words "sixty days" the words "one hundred and twenty days" shall be substituted.

6. Insertion of new Part IXA in the Constitution. —In the Constitution, after Part IX, the following new Part IXA shall be inserted, namely:-

"PART-IXA"

#### EMERGENCY PROVISIONS

141A. Proclamation of emergency.— (1) If the President is satisfied that a grave emergency exist in which the security or economic life of Bangladesh, or any part thereof, is threatened by war or external aggression or internal disturbance, he may issue a Proclamation of Emergency:

Provided that such Proclamation shall require for its validity the countersignature of the Prime Minister.

(2) A Proclamation of Emergency—

(a) may be revoked by a subsequent Proclamation;

(b) shall be laid before Parliament;

(c) shall cease to operate at the expiration of one hundred and twenty days, unless before the expiration of that period it has been approved by a resolution of Parliament:

Provided that if any such Proclamation is issued at a time when Parliament stands dissolved or the dissolution of Parliament takes place during the period of one hundred and twenty days referred to in sub-clause (c), the Proclamation shall cease to operate at the expiration of thirty days from the date on which Parliament first meets after its reconstitution, unless before that expiration of the said period of thirty days a resolution approving the Proclamation has been passed by Parliament.

(3) A Proclamation of Emergency declaring that the security of Bangladesh, or any part thereof, is threatened by war or external aggression or by internal disturbance may be made before the actual occurrence of war or any such aggression or disturbance if the President is satisfied that there is imminent danger thereof.

141B. Suspension of provisions of certain articles during emergencies.— While a Proclamation of Emergency is in operation, nothing in articles 36, 37, 38, 39, 40 and 42 shall restrict the power of the State to make any law or to take any executive action which the State would, but for the provisions contained in Part III of this Constitution, be competent to make or to take, but any law so made shall, to the extent of the incompetency, cease to have effect as soon as the Proclamation ceases to operate, except as respects things done or omitted to be done before the law so ceases to have effect.

141C. Suspension of enforcement of fundamental rights during emergencies.— (1)

While a Proclamation of Emergency is in operation, the President, may, by order, declare that the right to move any court for the enforcement of such of the rights conferred by part III of this Constitution as may be specified in the order, and all proceedings pending in any court for the enforcement of the right so specified, shall remain suspended for the period during which the Proclamation is in force or for such shorter period as may be specified in the order.

(2) An order made under this article may extend to the whole of Bangladesh or any part thereof.

(3) Every order made under this article shall, as soon as may be, be laid before Parliament."

7. Amendment of article 142 of the Constitution.—(1) In the Constitution, Article 142

shall be re-numbered as clause (1) of that article, and—

- (i) in the marginal heading to that article, the words "or repeal" shall be omitted;
- (ii) in sub-clause (a) of clause (1) as so re-numbered, for the words "amended or repealed" the words and commas "amended by way of addition, alteration, substitution or repeal" shall be substituted, and the words "or repeal", occurring twice, shall be omitted;
- (iii) after clause (1) as so re-numbered, the following new clause shall be added, namely:—
  - (2) Nothing in article 26 shall apply to any amendment made under this article.

**Appendix 3**  
**The Constitution (Third Amendment) Act, 1974**  
**(Act No. LXXIV of 1974)**

[28th November, 1974]

An Act further to amend certain provision of the Constitution of the People's Republic of Bangladesh to give effect to the Agreement entered into between the Governments of the People's Republic of Bangladesh and the Republic of India.

WHEREAS it is expedient further to amend certain provision of the Constitution of the People's Republic of Bangladesh to give effect to the Agreement entered into between the Governments of the People's Republic of Bangladesh and the Republic of India;

It is hereby enacted as follows:-

1. Short title and commencement.—(1) This Act may be called the Constitution (Third Amendment) Act, 1974.

(2) It shall come into force at once except section 3 which shall come into force on the date specified in a notification under section 4.

2. Definitions.—In this Act-

(a) "Agreement" means the Agreement between the Governments of the People's Republic of Bangladesh and the Republic of India entered into on the 16th day of May, 1974, as set out in the Schedule;

(b) "excluded territories" means the territories which are excluded from the territory of Bangladesh in pursuance of the Agreement;

(c) "included territories" means the territories which are included in the territory of Bangladesh in pursuance of the Agreement.

3. Amendment of article 2 of the Constitution.—In the Constitution of the People's Republic of Bangladesh, in article 2, in clause (a), for the semi-colon and word "; and " the words, brackets, commas, figures and semi-colon "and the territories referred to as included territories in the Constitution (Third Amendment) Act, 1974, but excluding the territories referred to as excluded territories in that Act; and" shall be substituted.

4. Notifications for inclusion and exclusion of territories.—Upon the completion of the demarcation of the land boundary between Bangladesh and India in pursuance of the Agreement such included territories shall, and such excluded territories shall not, form part of

the territory of Bangladesh with effect from such date as the Government may, by notification in the official Gazette, specify.

## SCHEDULE

[See Section 2(a)]

### AGREEMENT

BETWEEN THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF BANGLADESH AND THE GOVERNMENT OF THE REPUBLIC OF INDIA CONCERNING THE DEMARCATION

OF THE LAND BOUNDARY BETWEEN BANGLADESH AND INDIA AND RELATED MATTERS.

The Government of the People's Republic of Bangladesh and the Government of the Republic of India.

Bearing in mind the friendly relations existing between the two countries.

Desiring to define more accurately at certain points and to complete the demarcation of the land boundary between Bangladesh and India.

Have agreed as follows:-

#### Article 1

The land boundary between Bangladesh and India in the areas mentioned below shall be demarcated in the following manner:

1. Mizoram-Bangladesh Sector.— Demarcation should be completed on the basis of the latest pre-partition notifications and records.
2. Tripura-Sylhet Sector.—Demarcation which is already in progress in this area on the agreed basis, should be completed as early as possible.
3. Bhagalpur Railway Line.—The boundary should be demarcated at a distance of 73 feet parallel to the toe of the railway embankment towards the east.
4. Sibpur-Gaurangala Sector.—The boundary should be demarcated in continuation of the process started in 1951-52 on the basis of the District Settlement Maps of 1915-1918.
5. Muhuri River (Belonia) Sector.—The boundary in this area should be demarcated along, the mid-stream of the course of Muhuri River at the time of demarcation. This boundary will be a fixed boundary. The two Governments should raise embankments on their respective sides with a view to stabilising the river in its present course.



6. Remaining portion of the Tripura-Noakhali/Comilla Sector.—The demarcation in this sector should be completed on the basis of Chakla-Roshanabad Estate Maps of 1892-1894 and the District Settlement Maps of 1915-1918 for areas not covered by Chakla-Roshanabad Maps.
7. Fenny River,—The boundary should be demarcated along the mid-stream of the course at the time of demarcation of that branch of the Fenny River indicated as the Fenny River on Survey of India Map sheet No. 79 M/15, 1st Edition 1935, till it joins the stream shown as Asalong C on the said map. From that point on, downstream, the boundary should be demarcated along the mid-stream of the course of the Fenny River at the time of demarcation of the boundary. The boundary in this sector will be a fixed boundary.
8. Rest of Tripura-Chittagong Hill Tracts Sector.—The boundary will follow the mid-stream of that branch of the Fenny River, referred to in para 7 above, up to Grid reference 009779 (map sheet as in para 7 above) from where the boundary will follow the mid-stream of the eastern-most tributary. From the source of the tributary, the boundary will run along the shortest distance to the mid-stream of the stream marked Bayan Asalong, on the map referred to above, and thence will run generally northwards along the mid-stream of the river till it reaches its source on the ridge (indicated by grid reference 046810 on the map referred to above). From there it will run along the crest of this ridge up to Boghoban Trig Station. From Boghoban Trig Station up to the tri-junction of the Bangladesh-Assam-Tripura boundary (Khan Talang Trig Station), the boundary will run along the watershed of the river systems of the two countries. In case of any differences between the map and the ground, the ground shall prevail. The boundary will be a fixed boundary in this sector.
9. Beanibazar-Karimganj Sector.—The undemarcated portion of the boundary west of Umapati village should be demarcated in accordance with the agreed basis of demarcation, leaving Umapati village in India.
10. Hakar Khal.—The boundary should be demarcated in accordance with the Nehru-Noon Agreement of September, 1958, treating Hakar Khal as a geographical feature distinct from the Ichhamati River. The boundary will be a fixed boundary.
11. Baikari Khal.—In the Baikari Khal, the boundary should be demarcated on the agreed basis and principles, namely, that the ground shall prevail, i.e. as per the agreement reached between the Directors of Land Records and Surveys of West Bengal and erstwhile East Pakistan in 1949. The boundary will be a fixed boundary.

12. Enclaves.—The Indian enclaves in Bangladesh and the Bangladesh enclaves in India should be exchanged expeditiously, excepting the enclaves mentioned in paragraph 14 without claim to compensation for the additional area going to Bangladesh.

13. Hilli.—The area will be demarcated in accordance with Red-cliffe Award and the line drawn by him on the map.

14. Berubari.—India will retain the southern half of South Berubari Union No. 12 and the adjacent enclaves, measuring an area of 2.64 square miles approximately, and in exchange Bangladesh will retain the Dahagram and Angarpota enclaves. India will lease in perpetuity to Bangladesh an area of 178 meters x 85 meters near 'Tin Bigha' to connect Dahagram with Panbari Mouza (P. S. Patgram) of Bangladesh.

15. Lathitilla-Dumabari.—From point Y (the last demarcated boundary pillar position), the boundary shall run southwards along the Patheria Hills RF boundary up to the point where it meets the western boundary of Dumabari Mouza. Thence, along the same Mouza boundary up to the tri-junction of Mouzas Dumabari, Lathitilla and Bara Putnigaon through the junction of the two Mouzas Dumabari and Lathitilla. From this point it shall run along the shortest distance to meet the mid-stream of Putni Chara. Thence it shall run generally southwards along the mid-stream of the course of Putni Chara at the time of demarcation, till it meets the boundary between Sylhet (Bangladesh) and Tripura (India).

#### Article 2

The Governments of Bangladesh and India agree that territories in adverse possession in areas already demarcated in respect of which boundary strip maps are already prepared, shall be exchanged within six months of the signing of the boundary strip maps by the plenipotentiaries. They may sign the relevant maps as early as possible and in any case not later than the 31st December, 1974, Early measures may be taken to print maps in respect of other area where demarcation already taken place. These should be printed by 31st may, 1975 and signed by the plenipotentiaries thereafter in order that the exchange of adversely held possessions in these areas may take place by the 31st December, 1975. In sectors still to be demarcated transfer of territorial jurisdiction may take place within six months of the signature by plenipotentiaries on the concerned boundary strip maps.

#### Article 3

The Governments of Bangladesh and India agree that when areas are transferred, the people

in these areas shall be given the right of staying on where they are, as nationals of the State to which the areas are transferred. Pending demarcation of the boundary and exchange of territory by mutual agreement, there should be no disturbance of the status quo and peaceful conditions shall be maintained in the border regions. Necessary instructions in this regard shall be issued to the local authorities on the border by the two countries.

#### Article 4

The Governments of Bangladesh and India agree that any dispute concerning the interpretation or implementation of this Agreement shall be settled peacefully through mutual consultations.

#### Article 5

This Agreement shall be subject to ratification by the Governments of Bangladesh and India and Instruments of ratification shall be exchanged as early as possible. The Agreement shall take effect from the date of the exchange of the Instruments of Ratification.

Signed in New Delhi on May 16, 1974, in two originals each of which is equally authentic.

For the Government of the For the Government of the

People's Republic of Bangladesh Republic of India

(SHEIKH MUJIBUR RAHMAN)

Prime Minister of Bangladesh.

(INDIRA GANDHI)

Prime Minister of India

**Appendix 4**  
**The Constitution (Fourth Amendment) Act, 1975**  
**Act No. II of 1975**  
 [25th January, 1975]

An Act further to amend certain provisions of the Constitution of the People's Republic of Bangladesh

WHEREAS it is expedient further to amend certain provisions of the Constitution of the People's Republic of Bangladesh for the purposes hereinafter appearing ;

It is hereby enacted as follows :—

1. Short title.—This Act may be called the Constitution ( Fourth Amendment) Act, 1975.
2. Amendment of article 11 of the Constitution.—In the Constitution of the People's Republic of Bangladesh, hereinafter referred to as the Constitution, in article 11, the comma and words ", and in which effective participation by the people through their elected representatives in administration at all levels shall be ensured" shall be omitted.
3. Substitution of article 44 of the Constitution.—In the Constitution, for article 44 the following shall be substituted, namely :—  
 "44. Enforcement of fundamental rights.—Parliament may by law establish a constitutional court, tribunal or commission for the enforcement of the rights conferred by this Part."
4. Amendment of Part IV of the Constitution.—In the Constitution, in Part (a) for Chapters I and II the following shall be substituted, namely :—  
 "CHAPTER I—THE PRESIDENT AND VICE-PRESIDENT  
 48. The President—(1) There shall be a President of Bangladesh who shall be elected in accordance with law by direct election.  
 (2) The President shall, as Head of State, take precedence over all other persons in the state.  
 49. The Vice-President.— There shall be a Vice-President of Bangladesh who shall be appointed by the President.  
 50. Qualifications for election as President and appointment as Vice-President—A person shall not be qualified for election as President or appointment as Vice-President if he—  
 (a) is less than thirty-five years of age ; or  
 (b) is not qualified for election as a member of Parliament; or  
 (c) has been removed from the office of President or Vice-President under this Constitution.

51. Term of office of President and Vice-President.—(1) Subject to the provisions of this Constitution, a President shall hold office for a term of five years e date on which he enters upon his office :

Provided that, notwithstanding the expiration of his term, a President shall Continue to hold office until his successor enters upon his office.

(2) A Vice-President shall, unless sooner removed from his office by the President, hold office for a term of five years from the date on which he enters upon his office.

(3) A President may resign his office by writing under his hand addressed to the Vice-President and a Vice-President may resign his office by writing under his hand addressed to the President.

4) A President or a Vice-President shall not, during his term of office, be qualified for election as a member of Parliament, and if a member of Parliament is elected as President or appointed as Vice-President, he shall be deemed to have vacated his seat in Parliament on the date on which he enters upon his office as President or President.

52. Immunity of President and Vice-President.—(1) Without prejudice to the provisions of article 53, a resident or a Vice-President shall not be answerable in any court for anything done or omitted by him in the exercise or purported exercise of the ~.rations of his office, but this clause shall not prejudice the right of any person to take proceedings against the Government.

(2) During his term of office no criminal proceedings whatsoever shall be instituted or continued against a President or a Vice-President in, and no process for his Arrest or imprisonment shall issue from, any court.

53. Impeachment of President.—(1) A President may be impeached on a charge of violating this Constitution or of grave misconduct, preferred by a notice of motion signed by not less than two-thirds of the total number of members of Parliament and delivered to the Speaker, setting out the particulars of the charge, and the motion shall not be debated earlier than fourteen nor later than thirty days after the notice is so delivered ; and the Speaker shall forthwith summon Parliament if it is not in session.

(2) The conduct of the President may be referred by Parliament to any tribunal appointed by Parliament for the investigation of a charge under this article.

(3) The President shall have the right to appear and to be represented during the consideration of the charge.

(4) If after the consideration of the charge a resolution is passed by Parliament by the votes of not less than three-fourths of the total number of members declaring that the charge has been substantiated, the President shall vacate his office on the date on which the resolution is passed.

54. Removal of President on ground of incapacity.—(1) A President may be removed from office on the ground of physical or mental incapacity on a motion of h notice, signed by not Jess than two-thirds of the total number of members of Parliament, is delivered to the Speaker, setting out particulars of the alleged incapacity.

(2) On receipt of the notice the Speaker shall forthwith summon Parliament if it is not in session and shall calf for a resolution constituting a medical board (hereafter in this article called "the Board"), and upon the necessary motion being made and carried forthwith cause a copy of the notice to be transmitted to the President together with a request signed by the Speaker that the President submit himself within a period of ten days from the date of the request to an examination by the Board.

(3) The motion for removal shall not be put to the vote earlier than fourteen nor later than thirty days after notice of the motion is delivered to the Speaker, and if it is again necessary to summon Parliament in order to enable the motion to be made within that period, the Speaker shall summon Parliament.

(4) The President shall have the right to appear and to be represented during the consideration of the motion.

(5) If the President has not submitted himself to an examination by the Board before the motion is made in Parliament, the motion may be put to the vote, and if il is passed by the votes of not less than three-fourths of the total number of members of Parliament, the President shall vacate his office on the date on which the motion is passed.

(6) If before the motion for removal is made in Parliament the President has submitted himself to an examination by the Board, the motion shall not be put to the vote until the Board has been given an opportunity of reporting its opinion to Parliament.

(7) If after consideration by Parliament of the motion and of the report of the Board {which shall be submitted within seven days of the examination held pursuant to clause (2) and if not so submitted shall be dispensed with) the motion is passed by the votes of not less than three-

fourths of the total number of members of Parliament, the President shall vacate his office on the date on which the resolution is passed.

55. Acting President –(1) If a vacancy occurs in the office of President or if the President is unable to discharge the functions of his office on account of absence, illness or any other cause, the Vice-President shall act as President until a new President elected to fill such vacancy enters upon his office or until the President resumes the functions of his office, as the case may be.

(2) At any time when both the offices of President and Vice-President are vacant or when both the President and Vice-President are unable to discharge the functions of their respective offices on account of absence, illness or any other cause, the Speaker shall act as President until a new President elected or Vice-President appointed to fill a vacancy enters upon his office or until the President or the Vice-President resumes the functions of his office, as the case may be.

(3) Parliament may make such provisions as it thinks fit for the discharge of the functions of President in any contingency not provided for in this article.

56. Executive authority of the President.—(1) The executive authority of the Republic shall vest in the President and shall be exercised by him, either directly or through officers subordinate to him, in accordance with this Constitution.

(2) Notwithstanding anything contained in clause (1), the Vice-President may exercise such power of the President as the President may, by order, specify.

(3) All executive action of the Government shall be expressed to be taken in the name of the President.

(4) The President shall, by rules, specify the manner in which orders and other instruments made in his name shall be attested or authenticated, and the validity of any order or instrument so attested or authenticated shall not be questioned in any court on the ground that it is not duly made or executed.

(5) The President shall make rules for the allocation and transaction of the business of the Government.

57. Power of President to grant pardons, etc.—The President shall have power to grant pardons, reprieves and respites, and to remit, suspend or commute any sentence passed by any court, tribunal or other authority.

## CHAPTER II—THE COUNCIL OF MINISTERS

58. Council of Minister.—(1) There shall be a Council of Ministers to aid and advise (he President in the exercise of his functions.

(2) The question whether any, and if so what, advice was tendered by the Council or a Minister to the President shall not be inquired into in any court."

(3) The President shall, in his discretion, appoint from among the members of Parliament or persons qualified to be elected as members of Parliament, a Prime Minister and such other Ministers, Ministers of State and Deputy Ministers as he deems necessary :

Provided that a Minister of State or Deputy Minister shall not be a member of the Council.

(4) The President shall preside at the meetings of the Council or may direct the Vice-President or Prime Minister to preside at such meetings.

(5) The Ministers shall hold office during the pleasure of the President.

(6) A Minister may resign his office by writing under his hand addressed to the President.

(7) In this article "Minister" includes a Prime Minister, Minister of State and Deputy Minister."; and

(b) Chapter HI shall be omitted.

5. Amendment of article 66 of the Constitution.—In the Constitution, in article 66 —

(a) in clause (2),—

(i) in sub-clause (e), after the semi-colon at the end, the word "or" shall be inserted; and

(ii) sub-clause (0 shall be omitted ; and

(b) clause (3) shall be omitted.

6. Amendment of article 67 of the Constitution.—In the Constitution, in article 67, in clause (I), in sub-clause (a), the words "before Parliament" shall be omitted.

7. Substitution of article 70 of the Constitution.—^ the Constitution, for article 70 the following shall be substituted, namely :—

"70. Vacation of seat OK resignation, etc.—A person elected as a member of Parliament at an election at which he was nominated as a candidate by a political party shall vacate his seat if he resigns from that party or votes in Parliament against that party.

Explanation.—If a member of Parliament—

(a) being present in Parliament abstains from voting, or



(b) absents himself from any sitting of Parliament, ignoring the direction of the party which nominated

him at the election as a candidate not to do so, he shall be deemed to have voted against that party."

8. Amendment of article 72 of the Constitution.—In the Constitution, in article - .. a use (I), for the proviso the following shall be substituted, namely :-

"Provided that there shall be at least two sessions of Parliament in every year."

9. Insertion of new article 73A in the Constitution.—In the Constitution, after x 73, the following new article 73A shall be inserted, namely :—

"73A. Rights of Ministers as respects Parliament—(1) Every Minister shall : the right to speak in, and otherwise to take part in the proceedings of, Parliament, but shall not be entitled to vote unless he is a member of Parliament also.

(2) In this article, "Minister" includes a Prime Minister, Minister of State and • Minister."

10. Amendment of article 74 of the Constitution.—In the Constitution, in article 74, in clause (3), for the words "exercising the functions of the" the words fusing as" shall be substituted.

11. Amendment of article 76 of the constitution.—In the Constitution, in article 76, in clause (1), the words "At its first meeting in each session" shall be inserted.

12. Amendment of article 80 of the Constitution.—In the Constitution, in article 80, in clause (3), after the words "assent to the Bill" the words "or declare that he [withholds assent there from" shall be inserted.

13. Amendment of article 88 of the Constitution.—In the Constitution, in article 88, after clause (a), the following new clause shall be inserted, namely :—

"(aa) the remuneration payable to the Vice-President and other expenditure relating to his office ;".

14. Amendment of article 95 of the Constitution.—In the Constitution, in I article 95, for clause (1) the following shall be substituted, namely:—

"(1) The Chief Justice and other judges shall be appointed by the President."

15. Amendment of article 96 of the Constitution.—In the Constitution, in article 96,—

(a) for clause (2) the following shall be substituted, namely :—

"(2) A judge may be removed from his office by order of the President on the ground of misbehavior Or incapacity :

Provided that no judge shall be removed until he has been given a -reasonable opportunity of showing cause against the action proposed to be taken in regard to him."; and

(b) clause (3) shall be omitted.

16. Amendment of article 98 of the Constitution.-In the Constitution, in article 98, the commas and words ", after consultation with the Chief Justice," shall be omitted.

17. Substitution of article 102 of the Constitution.—In the Constitution, for article 102 the following shall be substituted, namely ;-

"102. Power of High Court Division to issue certain orders and directions, etc.-(1) The High Court Division may, if satisfied that no other equally efficacious remedy is provided by law-

(a) on the application of any person aggrieved, make an order-

(i) directing a person performing any functions in connection with the affairs of the Republic or of a local authority, to refrain from doing that which he is not permitted by law to do or to do that which he is required by law to do ; or

(ii) declaring that any act done or proceeding taken by a person performing functions in connection with the affairs of the Republic or of a local authority has been done or taken without lawful authority, and is of no legal effect; or

(b) on the application of any person, make an order-

(i) directing that a person in custody be brought before it so that it may satisfy itself that he is not being held in custody without unlawful authority or in an unlawful manner ; or

(ii) requiring a person holding or purporting to hold a public office to show under what authority he claims to hold that office.

(2) Notwithstanding anything contained in clause (1), the High Court Division shall have no power under this article to make an interim order or to pass any order in relation to any law to which article 47 applies.

(3) In this article, unless the context otherwise requires, "person" includes. a statutory public authority and any court or tribunal, other than a court or tribunal established under a law

relating to the defense services of Bangladesh or any disciplined force or a tribunal to which article 117 applies."

18. Amendment of article 109 of the Constitution.—In the Constitution, in article 109, the words "and tribunals" shall be omitted.

19. Substitution of article 115 of the Constitution.—In the Constitution, in article 115 the following shall be substituted, namely :-

"115. Appointments to subordinate courts.—Appointments of persons to offices In the judicial service or as magistrates exercising judicial functions shall be made by President in accordance with rules made by him in that behalf."

20. Amendment of article 116 of the Constitution.—In the Constitution, in article 116. for the words "Supreme Court" the word "President" shall be substituted.

21. Insertion of new article 116A in the Constitution.—In the Constitution, in Part VI, in Chapter II, after article 116, the following new article 116A shall be inserted, namely :-

" 116A. Judicial officers to be independent in the exercise of their functions. -

Subject to the provisions of the Constitution, all persons employed in the judicial service and all magistrates shall be independent in the exercise of their judicial functions,".

22. Amendment of article 117 of the Constitution.—In the Constitution, in article 117, in clause (1), in sub-clause (c), for the figure "3" the figure "2" shall be substituted.

23. Insertion of new Part VIA in the Constitution.—In the Constitution, after Part VI, the following new Part VIA shall be inserted, namely :-

"PART VIA THE NATIONAL PARTY

117A. National Party.—(1) If the President is satisfied that with a view to giving full effect to any of the fundamental principles of state policy set out in Part II of this Constitution it is necessary so to do, he may, by order, direct that there shall be only one political party in the State (hereinafter referred to as the National Party).

(2) When an order is made under clause.(1), all political parties in the State shall stand dissolved and the President shall take all steps necessary for the formation of the National Party.

(3) All matters relating to the nomenclature, programme, membership, organisation, discipline, finance and function of the National Party shall be determined by order made by the President

(4) Subject to the order made by the President under clause (3), a person in the service of the Republic shall be qualified to be a member of the National Party.

(5) Notwithstanding anything contained in this-Constitution, when the National Party is formed, a person shall-

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(a) in the case he is a member of Parliament on the date the National Party is formed, cease to be such member, and his seat in Parliament shall become vacant, if he does not become a member of the National Party within the time fixed by the President;

(b) not be qualified for election as President or as a member of Parliament if he is not nominated as a candidate for such election by the National Party ;

(c) have no right to form, or be a member or otherwise take part in the activities of, any political party other than the National Party.

(6) An order made under this article shall remain in force until revoked by a subsequent order."

24. Amendment of article 119 of the Constitution.-In the Constitution, in article 119, in clause (I),~

(a) for the words and commas "all elections to Parliament, the conduct of such elections and of elections to the office of President," the words "all elections to the office of President and to Parliament and the conduct of such elections" shall be substituted ;

(b) in clause (b), the word "and" shall be omitted ; and

(c) for clause-(c) the following shall be substituted, namely :-

"(c) delimit the constituencies for the purposes of elections to Parliament; and

(d) prepare electoral rolls for the purposes of elections to the office of President and to Parliament."

25. Amendment of article 122 of the Constitution.-In the Constitution, in article 122,-

(a) in clause (I), after the word "elections" the words "to the office of President and" shall be inserted; and

(b) after clause (2), the following new clause shall be added, namely :-

"(3) A person shall be entitled to be enrolled on the electoral roll for the purposes of elections to the office of President if he is entitled to be enrolled on the electoral roll for a constituency under clause (2)."

26. Amendment of article 123 of the Constitution -In the Constitution, in article 123,-

(a) in clause (1),—

- (i) for the words "ninety days" the words "one hundred and eighty days" shall be substituted ;
- and
- (ii) the proviso shall be omitted ; and

(b) in clause (2), for the words "ninety days" the words "one hundred and eighty days" shall be substituted.

27. Substitution of article 124 of the Constitution.-In the Constitution, for article 124 the following shall be substituted, namely :-

" 124. Parliament may make provision as to elections-Subject to the provisions of this Constitution, Parliament may by law make provision with respect to all matters relating to\* or in connection with, elections to the office of President or to Parliament, including-

- (a) the preparation of electoral rolls ;
- (b) in the case of elections to Parliament, the delimitation of constituencies ;
- (c) the holding of elections ; and
- (d) all other matters necessary for securing the elections to the office of President and the due constitution of Parliament."

28. Amendment of article 141A of the Constitution.-In the Constitution, in article 141A, in clause (I), the proviso shall be omitted.

29. Amendment of article 147 of the Constitution.-In the Constitution, in article 147, in clause (4), after sub-clause (a), the following new sub-clause shall be inserted, namely :-

"(aa) Vice-President;"

30. Amendment of article 148 of the Constitution.-In the Constitution, in article 148, in clause (2), the words "and for any reason it is impracticable for the oath to be made before that person" shall be omitted.

31. Omission of Second Schedule to the Constitution.-In the Constitution, the Second Schedule shall be omitted.

32. Amendment of Third Schedule to the Constitution.-In the Constitution, in the Third Schedule,-

- (a) in form I, for the words "Chief Justice" the word "Speaker" shall be substituted;

(b) after form 1, the following new form shall be inserted, namely :-

"IA. The Vice-President-An oath (or affirmation) in the following form shall be administered by the President-

"I,....., do solemnly swear (or affirm) that I will faithfully discharge the duties of the office of Vice-President of Bangladesh according to law :

That I will bear true faith and allegiance to Bangladesh : That I will preserve, protect and defend the Constitution :

And that I will do right to a/l manner of people according to law, without fear or favour, affection or ill-will." " ;

(c) in form 3, for the words "Chief Justice" the word "President" shall be substituted ;

(d) in form 4, for the words "Chief Justice" the word "President" shall be substituted; and

(e) in form 5, the words "at a meeting of Parliament" shall be omitted.

33. Amendment of Fourth Schedule to the Constitution.-In the Constitution, in the Fourth Schedule, paragraph 12 shall be omitted.

34. Extension of the term of the First Parliament-Notwithstanding anything contained in the Constitution, the Parliament functioning immediately before the commencement of this Act shall, unless sooner dissolved by the President, stand dissolved on the expiration of the period of five years from such commencement.

35. Special provisions relating to President- Notwithstanding anything contained in the Constitution, on the commencement of this Act,-

(a) the person holding office as President of Bangladesh immediately before such commencement shall cease to hold, and vacate, the office of President of Bangladesh ;

(b) Bangabandhu Sheikh Mujibur Rahman, Father of the Nation, shall become, and enter upon the office of President of Bangladesh and shall, as from such commencement, hold office as President of Bangladesh as if elected to that office under the Constitution as amended by this Act.

**Appendix 5**  
**The Constitution (Fifth Amendment ) Act, 1979**  
**Act No. I of 1979**  
[6th April, 1979]

An Act further to amend certain provision of the Constitution of the People's Republic of Bangladesh

WHEREAS it is expedient further to amend certain provision of the Constitution of the People's Republic of Bangladesh for the purpose hereinafter appearing ;

It is hereby enacted as follows :-

1. Short title.- This Act may be called the Constitution (Fifth Amendment) Act, 1979.
2. Amendment of Fourth Schedule to the Constitution.-In the Constitution' of the People's Republic of Bangladesh, in the Fourth Schedule after paragraph 17, the following new paragraph 18 shall be added, namely :—

"18. Ratification and confirmation of Proclamations, etc.-All Proclamations, Proclamation Orders, Martial Law Regulations, Martial Law Orders and other laws made during the period between the 15th August, 1975, and the 9th April, 1979 (both days inclusive), all amendments, additions, modifications, substitutions and omissions made in this Constitution during the said period by any such-Proclamation, all orders made, acts and things done, and actions and proceedings taken, or purported to have been made, done or taken, by any person or authority during the said period in exercise of the powers derived or purported to have been derived from any such Proclamation, Martial Law Regulation, Martial Law Order or any other law, or in execution of or in compliance with any order made or sentence passed by any court, tribunal or authority in the exercise or purported exercise of such powers, are hereby ratified and confirmed and are declared to have been validly made, done or taken and shall' not be called in question in or before any court, tribunal or authority on any ground whatsoever."

The Constitution (Fifth Amendment) Act, 1979 has been declared illegal, void and non-est by the Supreme Court (Civil Petition for Leave to Appeal No. 1044-1045/2009).

**Appendix 6**  
**The Constitution (Sixth Amendment) Act, 1981**  
**(Act No. XIV of 1981)**

[10th July, 1981]

An Act further to amend certain provisions of the Constitution of the People's Republic of Bangladesh

WHEREAS it is expedient further to amend certain provisions of the Constitution of the People's Republic of Bangladesh for the purposes hereinafter appearing;

It is hereby enacted as follows.—

1. Short title.—This Act may be called the Constitution (Sixth Amendment) Act, 1981.
2. Amendment of article 51 of the Constitution.—In the Constitution of the People's Republic of Bangladesh, hereinafter referred to as the Constitution, in article 51, for clause (4) the following shall be substituted, namely:—  
 "(4) If a Vice-President is elected as President, he shall be deemed to have vacated his office on the date on which he enters upon the office of President.  
 (5) If a President or a Vice-President is elected as a member of Parliament, he shall not be qualified to be such member until he ceases to hold office as President or Vice-President.  
 (6) If a member of Parliament is elected as President or appointed as Vice-President, he shall be deemed to have vacated his seat in Parliament on the date on which he enters upon his office as President or Vice-President."
3. Amendment of article 66 of the Constitution.—In the Constitution, in article 66, in clause (2A), for the words "he is a Prime Minister" the words and commas "he is a President, Vice-President, Prime Minister" shall be substituted.

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## Appendix 7

### The Constitution (Seventh Amendment) Act, 1986

#### Act No. 1 of 1986

[11th November, 1986]

*An Act further to amend certain provisions of the Constitution of the People's Republic of Bangladesh*

WHEREAS it is expedient further to amend certain provisions of the Constitution of the People's Republic of Bangladesh for the purposes hereinafter appearing;

It is hereby enacted as follows.-

**1. Short title.**—This Act may be called the Constitution (Seventh Amendment) Act, 1986.

**2. Amendment of article 96 of the Constitution.**—In the Constitution of the People's Republic of Bangladesh, hereinafter referred to as the Constitution, in article 96, in clause (1) for the word "sixty-two" the word "sixty-five" shall be *substituted*.

**3. Amendment of Fourth Schedule to the Constitution.**—In the Constitution, in the Fourth Schedule, *After* paragraph 18, the following new paragraph 19 shall be *added*, namely:—

**“19. Ratification and confirmation of the Proclamation of the 24th March, 1982, etc.**—(1) The Proclamation of the 24th March, 1982, hereinafter in this paragraph referred to as the said Proclamation, and all other Proclamations, Proclamation Orders, Chief Martial Law Administrator's Orders, Martial Law Regulations, Martial Law Orders, Martial Law Instructions, Ordinances and all other laws made during the period between the 24th March, 1982, and the date of commencement of the Constitution (Seventh Amendment) Act, 1986 (Act 1 of 1986) (both days inclusive), hereinafter in this paragraph referred to as the said period, are hereby ratified and confirmed and declared to have been validly made and shall not be called in question in or before any court, tribunal or authority on any ground whatsoever.

(2) All orders made, acts and things done, and actions and proceedings taken, or purported to have been made, done or taken, by the President or the Chief Martial Law Administrator or by any other person or authority during the said period, in exercise or purported exercise of the powers derived from the said Proclamation or from any other Proclamation, Proclamation Order, Chief Martial Law Administrator's Order, Martial Law Regulation, Martial Law Order, Martial Law Instruction, Ordinance or any other Law, or in execution of or in compliance with

any order made or sentence passed by any court, tribunal or authority in the exercise or purported exercise of such powers, shall be deemed to have been validly made, done or taken and shall not be called in question in or before any court, tribunal or authority on any ground whatsoever.

(3) No suit, prosecution or other legal proceedings shall lie in any court of tribunal against any person or authority for or on account of or in respect of any order made, act or thing done, or action or proceedings taken whether in the exercise or purported exercise of the powers referred to in sub-paragraph (2) or in execution of or in compliance with orders made or sentences passed in exercise or purported exercise of such powers.

(4) All appointments made during the said period to any office mentioned in the Third Schedule shall be deemed to have been validly made and shall not be called in question in or before any court, tribunal or authority on any ground whatsoever, and any person appointed under the said Proclamation to any such office during the said period and holding such office immediately before the date of commencement of the Constitution (Seventh Amendment) Act, 1986 (Act 1 of 1986), hereinafter in this paragraph referred to as the said Act shall, as from that date hold such office as if appointed to that office under this Constitution; and shall, as soon as practicable after that date, make and subscribe before the appropriate person an oath or affirmation in the form set out in the Third Schedule.

(5) All appointments made by the Chief Martial Law Administrator during the said period to any office or post which is continuing after the date of commencement of the said Act shall, as from that date, be deemed to be appointments made by the President.

(6) All Ordinances and other laws in force immediately before the date of commencement of the said Act shall, subject to the Proclamation revoking the said Proclamation and withdrawing the Martial Law, continue in force until altered, amended or repealed by competent authority.

(7) Upon the revocation of the said Proclamation and withdrawal of Martial Law, this Constitution shall stand fully revived and restored and shall, subject to the provisions of this paragraph, have effect and operate as if it had never been suspended.

(8) The revocation of the said Proclamation and withdrawal of Martial Law shall not revive or restore any right or privilege which was not existing at the time of such revocation and withdrawal.

(9) The General Clauses Act, 1897 shall apply to the said Proclamation, and all other

Proclamations, Proclamation Orders, Chief Martial Law Administrator's Orders, Martial Law Regulations, Martial Law Orders and Martial Law Instructions made during the said period and also to the revocation of the said Proclamation and other Proclamations and the repeal of the said Proclamation Orders, Chief Martial Law Administrator's Orders, Martial Law Regulations, Martial Law Orders and Martial Law Instructions as it applies to, and to the repeal of, an Act of Parliament as if the said Proclamation, and other Proclamations, Proclamation Orders, Chief Martial Law Administrator's Orders, Martial Law Regulations, Martial Law Orders and Martial Law Instructions and the Proclamation revoking the said Proclamation were all Acts of Parliament.

(10) In this paragraph, "law" includes rules, regulations, bye-laws, orders, notifications and other instruments having the force of law."

**Appendix 8**  
**The Constitution (Eighth Amendment) Act, 1988**

**(Act No. 30 of 1988)**

*[9th June, 1988]*

*An Act further to amend certain provisions of the Constitution of the People's Republic of Bangladesh*

WHEREAS it is expedient further to amend certain provisions of the Constitution of the People's Republic of Bangladesh for the purposes hereinafter appearing;

It is hereby enacted as follows.-

**1. Short title.**— This Act may be called the Constitution (Eighth Amendment) Act, 1988.

**2. Amendment of article 2A of the Constitution.** — In the Constitution of the People's Republic of Bangladesh, hereinafter referred to as the Constitution, after article 2 the following new article 2A shall be inserted, namely:—

**"2A. The State Religion.** — The state religion of the Republic is Islam, but other religions may be practised in peace and harmony in the Republic."

**3. Amendment of article 3 of the Constitution.** — In the Constitution, in article 3 for the word "Bengali" the word "Bangla" shall be substituted.

**4. Amendment of article 5 of the Constitution.** — In the Constitution, in article 5, in clause (1), for the word "Dacca" the word "Dhaka" shall be substituted.

**5. Amendment of article 30 of the Constitution.** — In the Constitution of the People's Republic of Bangladesh, hereinafter referred to as the Constitution, for article 30 the following article 30 shall be substituted, namely: —

**"30. Prohibition of foreign titles, etc**— No citizen shall, without the prior approval of the President, accept any title, honour, award or decoration from any foreign state."

**6. Amendment of article 68 of the Constitution.** — In the Constitution, in article 68 and its sub-title for the word "salaries" the word "remuneration" shall be substituted.

**7. Amendment of article 100 of the Constitution.**— In the Constitution of the People's Republic of Bangladesh, hereinafter referred to as the Constitution, for the article 100, the following article 100 shall be substituted, namely:-

**"100. Seat of Supreme Court.**— (1) Subject to this article, the permanent seat of the

Supreme Court shall be in the capital.

(2) The High Court Division and the Judges thereof shall sit at the permanent seat of the Supreme Court and at the seats of its permanent Benches.

(3) The High Court Division shall have a permanent Bench each at Barisal, Chittagong, Comilla, Jessore, Rangpur and Sylhet, and each permanent Bench shall have such Benches as the Chief Justice may determine from time to time.

(4) A permanent Bench shall consist of such number of judges of the High Court Division as the Chief Justice may deem it necessary to nominate to that Bench from time to time and on such nomination the judges shall be deemed to have been transferred to that Bench.

(5) The President shall, in consultation with the Chief Justice, assign the area in relation to which each permanent Bench shall have Jurisdictions, powers and functions conferred or that may be conferred on the High Court Division by this Constitution or any other law; and the area not so assigned shall be the area in relation to which the High Court Division sitting at the permanent seat of the Supreme Court shall have such jurisdictions, powers and functions.

(6) The Chief Justice shall make rules to provide for all incidental, supplemental or consequential matters relating to the permanent Benches."

**8. Amendment of article 103 of the Constitution.**—In the Constitution, in article 103, in clause (2b), for the word "transportation" the word "imprisonment" shall be substituted.

**9. Amendment of article 107 of the Constitution.**—In the Constitution, in article 107, in clause (3), for the words "Supreme Court" the words, commas and brackets "or any Bench of a permanent Bench of the High Court Division referred to in clause (3) of article 100" shall be substituted.

**Appendix 9**  
**The Constitution (Ninth Amendment) Act, 1989**  
**(Act No. 38 of 1989)**  
 [11 July, 1989]

Act further to amend certain provisions of the Constitution of the Peoples Republic of Bangladesh

WHEREAS it is expedient further to amend certain provisions of the Constitution of the People's Republic of Bangladesh for the purposes here in after appearing;

It is hereby enacted as follows : —

1. short title and commencement.- (1) This Act may be called the Constitution (Ninth Amendment) Act, 1989.

(2) It shall come into force on such date, not later than the first day of March, 1991, as the Government may, by notification in the official Gazette, appoint :

Provided that if no such date is appointed, the Act shall come into force on the first day of March, 1991.

2. Amendment of article 49 of the Constitution.-In the Constitution of the People's Republic of Bangladesh, hereinafter referred to as the Constitution, in article 49, for the words "appointed by President" the words "elected in accordance with law by direct election" shall be substituted.

3. Amendment of article 56 of the Constitution In the Constitution, in article 50 and the marginal heading thereof, the words "appointment as" shall be omitted.

4. Substitution of article 51 of the Constitution. -In the Constitution, for article 51 the following shall be substituted, namely : —

"51. Term of office of President.- (1) Subject to the provisions of this Constitution, the President shall hold office for a term of five years from the date on which he enters upon his office :

Provided that, notwithstanding the expiration of his term the President shall continue to hold office until his successor enters upon his office.

(2) No person shall hold office as President for more than two terms consecutively :

Provided that nothing in this clause shall apply to a person who has acted as President under article 55.

(3) The President may resign his office by writing under his hand addressed to the Vice-President.

(4) If the President is elected as a member of Parliament, he shall not be qualified to be such member until he ceases to hold office as President.

(5) If a member of Parliament is elected as President, he shall be deemed to have vacated his seat in Parliament on the date on which he enters upon his office as President.

51 A. Term of office of Vice-President-(1) Subject to the provisions of this Constitution, the Vice-President shall hold office for a term of five years from the date on which he enters upon his office :

Provided that if the President and Vice-President have not entered office on the same date for any reason, the term of office of the Vice-President shall expire on the date on which the term of office of the President expires :

Provided further that, notwithstanding the expiration of his term, the Vice-President shall continue to hold office until his successor enters upon his office.

(2) No person shall hold office as Vice-President for more than two terms consecutively :  
Provided that nothing in this clause shall apply to a person who has held the office of Vice-President under article 55A.

(3) The Vice-President may resign his office by writing under his hand addressed to the President..

(4) If the Vice-President is elected as a member of Parliament, he shall not be qualified to be such member until he ceases to hold office as Vice-President.

(5) If a member of Parliament is elected as Vice-President, he shall be deemed to have vacated his seat in Parliament on the date on which he enters upon his office as Vice-President."

5. Amendment of article 53 of the Constitution.-In the Constitution, in article 53,-

(a) in the marginal heading, after the word "President", the words "and Vice-President" shall be inserted;

(b) in clause (1), after the word "President", the words "or a Vice-President" shall be inserted; and

(c) in clauses (2), (3) and (4), after the word "President", wherever occurring, the words and commas "or the Vice-President, as the case may be," shall be inserted

6. Amendment of article 54 of the Constitution.-In the Constitution, in article 54,-

(a) in the marginal heading, after the word "President", the words "and Vice-President" shall be inserted;

(b) in clause (I), after the word "President", the words "or a Vice-President" shall be inserted ;  
and

(c) in clauses (2), (4), (5), (6) and (7), after the word "President", wherever occurring, the words and commas "or the Vice-President, as the case may be," shall be inserted.

7. Amendment of article 55 of the Constitution.-In the Constitution, in article 55, in clause (2), the words "or Vice-President appointed" shall be omitted,

8. Insertion of new article 55A in the Constitution.-In the Constitution, after article 55, the following new article shall be inserted namely :—

"55A. Vacancy during term of Vice-President-(1) If a vacancy occurs in the office of Vice-President by reason of his death, resignation, impeachment or removal, the President shall appoint a person qualified for election as Vice-President to be Vice-President who shall take office upon confirmation by the votes of a majority of the total number of members of Parliament and shall hold the office of Vice-President until a Vice-President elected to fill such vacancy enters upon his office.

(2) If the appointment of the Vice-President is neither confirmed nor refused confirmation by Parliament within ninety days of the submission of the appointment before Parliament, the person appointed shall take office as if his appointment had been confirmed, by Parliament."

9. Amendment of article 72 of the Constitution.-In the Constitution, in article 72, after clause (4), the following new clause shall be inserted, namely :-

"(4A) If any contingency as mentioned in clause (3) of article 55 arises at any time when Parliament stands dissolved or is not in session, it shall, notwithstanding anything contained in this Constitution, stand summoned to meet at the Parliament House at noon on the day following the day on which such contingency arises, and the Parliament so summoned to meet shall stand prorogued or dissolved as before, as the case may be, after it has made necessary provisions for the discharge of the functions of the President."



10. Amendment of article 119 of the Constitution.-In she Constitution, in article 119, for the words "office of President", wherever occurring, the words "offices of President and Vice-President" shall be substituted.

11. Amendment of article 122 of the Constitution.-In the Constitution, in article 122, for the words "office of President", wherever occurring, the words "offices of President and Vice-President" shall be substituted.

12. Amendment of article 123 of the Constitution.-In the Constitution, in article 123, for clauses (i) and (2) the following shall be substituted, namely :-

"(1) The elections to the offices of President and Vice-President shall be held simultaneously and at the same time.

(2) An election to fill a vacancy in the office of President occurring by reason of the expiration of his term or by reason of his death, resignation, impeachment or removal shall be held within the period of one hundred and eighty days prior to the date on which his term shall expire or his term would have expired if there were no such death, resignation, impeachment or removal.

(2A) An election to fill a vacancy in the office of Vice-President occurring by reason of the expiration of his term or by reason of his death, resignation, impeachment or removal shall be held on the date on which the election to fill the vacancy in the office of President shall be held under clause (2).

(2B) If both the offices of President and Vice-President have fallen vacant by reason of their death, resignation, impeachment or removal, the elections to fill the vacancies shall be held within the period of one hundred and eighty days after the occurrence of the last of the two vacancies."

13. Amendment of article 124 of the Constitution,-In the Constitution, in article 124, for the words "office of President", wherever occurring, the words "offices of President and Vice-President" shall be substituted.

14. Amendment of article 125 of the Constitution.-In the Constitution, in article 125, in clause (b), for the words "office of President" the words "offices of President and Vice-President" shall be substituted.

15. Amendment of article 148 of the Constitution.-In the Constitution, in article 148, after clause (1), the following new clause shall be inserted, namely :-

"(I A) A person elected to the office of President and a person elected to the office of Vice-President shall make the oath on the same date, the person elected to the office of President making the oath first:

Provided that if for any reason both the persons cannot make the oath on the same date, the person elected to the office of President shall make the oath on the first date and the person elected to the office of Vice-President on the next date."

16. Amendment of article 152 of the Constitution.-the Constitution, in article 152, in clause (I), for the full-stop at the end a semi-colon shall be substituted and thereafter the following shall be added, namely :-

"the Vice-President" means the Vice-President of Bangladesh elected or appointed under this Constitution."

17. Amendment of Fourth Schedule to the Constitution.-In the Constitution, in the Fourth Schedule, after paragraph 19, the following new paragraph 20 shall be added, namely :-

"20. Provisions relating to Vice-President- (1) The person holding office as Vice-President immediately before the commencement of the Constitution (Ninth Amendment) Act, 1989, shall continue to hold such office and the term of office of such Vice-President shall expire on the date on which the term of office of the person holding office as President immediately before such commencement expires.

(2) If there is a vacancy in the office of Vice-President at the time of commencement of the Constitution (Ninth Amendment) Act, 1989, a Vice-President shall be appointed by the President under article 55A and the term of office of such Vice-President shall expire on the date on which the term of office of the President who appointed him expires."

**Appendix 10**  
**The Constitution (Tenth Amendment) Act, 1990**  
**(Act No. 38 of 1990)**

*[23th June, 1990]*

*An Act further to amend certain provisions of the Constitution of the People's Republic of Bangladesh*

WHEREAS it is expedient further to amend certain provisions of the Constitution of the People's Republic of Bangladesh for the purposes hereinafter appearing;

It is hereby enacted as follows.—

**1. Short title.**—This Act may be called the Constitution (Tenth Amendment) Act, 1990.

**2. Amendment of article 65 of the Constitution.**—In the Constitution of the People's Republic of Bangladesh, in article 65, for clause (3) the following shall be *substituted*, namely:-

"(3) Until the dissolution of Parliament occurring next after the expiration of the period of ten years beginning from the date of the first meeting of the Parliament next after the Parliament in existence at the time of commencement of the Constitution (Tenth Amendment) Act, 1990, there shall be reserved thirty seats exclusively for women members, who shall be elected according to law by the members aforesaid:

Provided that nothing in this clause shall prevent a woman from being elected to any of the provided for in clause (2)." .

**Appendix 11**  
**The Constitution (Eleventh Amendment) Act, 1991**  
**(Act No. 24 of 1991)**

*[10th August, 1991]*

*An Act further to amend Fourth Schedule to the Constitution of the People's Republic of Bangladesh*

WHEREAS in the face of the country-wide popular upsurge for overthrowing the illegal and undemocratic government and giving democracy an institutional shape the then President was compelled to tender resignation;

AND WHEREAS after the historic success of the students, peasants, workers, employees, the people in general, the Main Political Alliances and parties and all professional organisation, regardless of their political affiliation, belief and leanings, the three Main Political Alliances and parties made an ardent call to the Chief Justice of Bangladesh, Mr. Justice Shahabuddin Ahmed to take the reins of a neutral and impartial government as its head;

AND WHEREAS the then President appointed Chief Justice Mr. Shahabuddin Ahmed as Vice-President in the vacancy caused by the resignation of the then Vice-President and tendered his resignation to him;

AND WHEREAS upon a positive assurance of the three Main political Alliances and parties of the country to the effect that after having run the government temporarily till the establishment of an elected democratic government through a free, fair, and impartial election to Parliament he would be eligible to return to the office of the Chief Justice of Bangladesh and with the noble purposes of restoring democracy the Chief Justice, on the 21st day of Agrahayan, 1397 B. S. corresponding to the 6th day of December, 1990, assumed the onerous responsibility of running an impartial government as Acting President;

AND WHEREAS during the period in which Chief Justice Mr. Shahabuddin Ahmed exercised the powers and performed the functions of the President in his capacity as Vice-President, a Parliament comprising people's representatives and a people's government have been established through a free, fair and impartial election;

AND WHEREAS it is expedient to make provisions for ratification and confirmation of the appointment of Chief Justice Mr. Shahabuddin Ahmed as Vice-President, the exercise and performance by him of all powers and functions of the President acting as such and all laws and

Ordinances made by him and acts and things done and all actions taken by him in that capacity and for his return to the office of the Chief Justice of Bangladesh in accordance with the assurances of the People and the Main Political Alliances and parties.

It is hereby enacted as follows.-

**1. Short title.**—This Act may be called the Constitution (Eleventh Amendment) Act, 1991.

**2. Amendment of the Fourth Schedule Constitution.**—In the Constitution, after paragraph 20, the following new paragraph 21 shall be added, namely:-

**'21. Ratification and Confirmation of The Appointment of Vice-President, etc.**—(1)

The appointment of, and the administration of oath to the Chief Justice of Bangladesh as Vice-President on the 21st day of Agrahayan, 1397 B.S. corresponding to the 6th day of December, 1990, and the resignation tendered to him by the then President and all powers exercised, all laws and Ordinances made and all orders made, acts and things done, and actions taken, or purported to have been made, done or taken by the said Vice President acting as President during the period between the 21st day of Agrahayan, 1397 B. S. corresponding to the 6th day of December, 1990, and the date of commencement of the Constitution (Eleventh Amendment) Act, 1991 (Act No. XXIV of 1991) (both days inclusive) or till the new President elected under article 48(1) of the Constitution has entered upon his office (whichever is later), are hereby ratified and confirmed and declared to have been validly made, administered, tendered, exercised, done and taken according to law.

(2) The said Vice-President shall, after the commencement of the Constitution (Eleventh Amendment) Act, 1991 (Act No. XXIV of 1991), and after the new President elected under this Constitution has entered upon his office, be eligible to resume the duties and responsibilities of the Chief Justice of Bangladesh and the period between the 21st day of Agrahayan, 1397 B.S. corresponding to the 6th day of December, 1990 and the date of which he resumes such duties and responsibilities shall be deemed to be the period of actual service within the meaning of section 2(a) of the Supreme Court Judges (Leave, Pension and Privileges) Ordinance, 1982 (Ordinance No. XX of 1982)."

**Appendix 12**  
**The Constitution (Twelfth Amendment) Act, 1991**  
**(Act No. 28 of 1991)**

*[18th September, 1991]*

*An Act further to amend certain provisions of the Constitution of the People's Republic of Bangladesh*

WHEREAS it is expedient further to amend certain provisions of the Constitution of the People's Republic of Bangladesh for the purposes hereinafter appearing;

It is hereby enacted as follows:—

**1. Short title and Commencement.**—(1) This Act may be called the Constitution (Twelfth Amendment) Act, 1991.

(2) The provisions of this Act, except the provisions of section 14(b), shall come into force at once and the provisions of section 14(b) shall be deemed to have come into force on the 1st day of Chaitra, 1397 corresponding to the 16th day of March, 1991.

**2. Amendment of article 11 of the Constitution.**—In the Constitution of the People's Republic of Bangladesh, hereinafter referred to as the Constitution, in article 11, after the word "guaranteed" the comma and words", and in which effective participation by the people through their elected representatives in administration at all levels shall be ensured" shall be *inserted*.

**3. Amendment of Part IV of the Constitution.**—In the Constitution in Part IV, for Chapters I and II the following Chapters I, II and III shall be substituted, namely:—

**"CHPATER-I -THE PRESIDENT**

**"48. The President.**—(1) There shall be a President of Bangladesh who shall be elected by members of Parliament in accordance with law.

(2) The President shall, as Head of State, take precedence over all other persons in the State, and shall exercise the powers and perform the duties conferred and imposed on him by this Constitution and by any other law.

(3) In the exercise of all his functions, save only that of appointing the Prime Minister pursuant to clause (3) of article 56 and the Chief Justice pursuant to clause (1) of article 95, the President shall act in accordance with the advice of the Prime Minister:

Provided that the question whether any, and if so what, advice has been tendered by the Prime

Minister to the President shall not be enquired into in any court.

(4) A person shall not be qualified for election as President if he-

(a) is less than thirty-five years of age; or

(b) is not qualified for election as a member of Parliament; or

(c) has been removed from the office of President by impeachment under this Constitution.

(5) The Prime Minister shall keep the President informed on matters of domestic and foreign policy, and submit for the consideration of the Cabinet any matter which the President may request him to refer to it.

**49. Prerogative of Mercy.**—The President shall have power to grant pardons, reprieve and respites and to remit, suspend or commute any sentence passed by any court, tribunal or other authority.

**50. Term of Office of President.**—(1) Subject to the provisions of this Constitution, the President shall hold office for a term of five years from the date on which he enters upon his office:

Provided that notwithstanding the expiration of his term the President shall continue to hold office until his successor enters upon office.

(2) No person shall hold office as President for more than two terms, whether or not the terms are consecutive.

(3) The President may resign his office by writing under his hand addressed to the Speaker.

(4) The President during his term of office shall not be qualified for election as a member of Parliament, and if a member of Parliament is elected as President he shall vacate his seat in Parliament on the day on which he enters upon his office as President.

**51. President's Immunity.**—(1) Without prejudice to the provisions of article 52, the President shall not be answerable in any court for anything done or omitted by him in the exercise or purported exercise of the functions of this office, but this clause shall not prejudice the right of any person to take proceedings against the Government.

(2) During his term of office no criminal proceedings whatsoever shall be instituted or continued against the President in, and no process for his arrest or imprisonment shall issue from, any court.

**52. Impeachment of The President.**—(1) The President may be impeached on a charge of violating this Constitution or of grave misconduct, preferred by a notice of motion signed by a

majurity of the total number of members of Parliament and delivered to the Speaker, setting out the particulars of the charge, and the motion shall not be debated earlier than fourteen nor later than thirty days after the notice is so delivered; and the Speaker shall forthwith summon Parliament if it is not in session.

(2) The conduct of the President may be referred by Parliament to any court, tribunal or body appointed or designated by Parliament for the investigation of a charge under this article.

(3) The President shall have the right to appear and to be represented during the consideration of the charge.

(4) If after the consideration of the charge a resolution is passed by Parliament by the votes of not less than two-thirds of the total number of members declaring that the charge has been substantiated, the President shall vacate his office on the date on which the resolution is passed.

(5) Where the Speaker is exercising the functions of the President under article 54 the provisions of this article shall apply subject to the modifications that the reference to the Speaker in clause (1) shall be construed as a reference to the Deputy Speaker, and that the reference in clause (4) to the vacation by the President of his office shall be construed as a reference to the vacation by the Speaker of his office as Speaker; and on the passing of a resolution such as is referred to in clause (4) the Speaker shall cease to exercise the functions of President.

**53. Removal of President of ground of incapacity.** (1) The President may be removed from office on the ground of physical or mental incapacity on a motion of which notice, signed by a majority of the total number of members of Parliament, is delivered to the Speaker, setting out particulars of the alleged incapacity.

(2) On receipt of the notice the Speaker shall forthwith summon Parliament if it is not in session and shall call for a resolution constituting a medical board (hereinafter in this article called "the Board") and upon the necessary motion being made and carried shall forthwith cause a copy of the notice to be transmitted to the President together with a request signed by the Speaker that the President submit himself within a period of ten days from the date of the request to an examination by the Board.

(3) The motion for removal shall not be put to the vote earlier than fourteen nor then thirty days after notice of the motion is delivered to the Speaker, and if it is again necessary to



summon Parliament in order to enable the motion to be made within that period, the Speaker shall summon Parliament.

(4) The President shall have the right to appear and to be represented during the consideration of the motion.

(5) If the President has not submitted himself to an examination by the Board before the motion is made in Parliament, the motion may be put to the vote, and if it is passed by the votes of not less than two-thirds of the total number of members of Parliament, the President shall vacate his office on the date on which the motion is passed.

(6) If before the motion for removal is made in Parliament, the President has submitted himself to an examination by the Board, the motion shall not be put to the vote until the Board has been given an opportunity of reporting its opinion to Parliament.

(7) If after consideration by Parliament of the motion and of the report of the Board (which shall be submitted within seven days of the examination held pursuant to clause (2) and if not so submitted shall be dispensed with the motion is passed by the votes of not less than two-thirds of the total number of members of Parliament, the President shall vacate his office on the date on which there solution is passed.

**54. Speaker to Act as President During Absence, etc.**—If a vacancy occurs in the office of President or if the President is unable to discharge the functions of his office on account of absence, illness or any other cause the Speaker shall discharge those functions until a President is elected or until the President resumes the functions of his office, as the case may be.

## **CHAPTER-II-THE PRIME MINISTER AND THE CABINET**

**55. The Cabinet.**—(1) There shall be a Cabinet for Bangladesh having the Prime Minister at its head and comprising also such other Ministers as the Prime Minister may from time to time designate.

(2) The executive power of the Republic shall, in accordance with this Constitution, be exercised by or on the authority of the Prime Minister.

(3) The Cabinet shall be collectively responsible to Parliament.

(4) All executive actions of the Government shall be expressed to be taken in the name of the President.

(5) The President shall by rules specify the manner in which orders and other instruments

made in his name shall be attested or authenticated, and the validity of any order of instrument so attested or authenticated shall not be questioned in any court on the ground that it was not duly made or executed.

(6) The President shall make rule for the allocation and transaction of the business of the Government.

**56. Ministers.**— (1) There shall be a Prime Minister, and such other Ministers, Ministers of State and Deputy Ministers as may be determined by the Prime Minister.

(2) The appointments of the Prime Minister and other Ministers and of the Ministers of State and Deputy Ministers, shall be made by the President:

Provided that not less than nine-tenths of their number shall be appointed from among members of Parliament and not more than one-tenth of their number may be chosen from among persons qualified for election as members of Parliament.

(3) The President shall appoint as Prime Minister the member of Parliament who appears to him to command the support of the majority of the members of Parliament.

(4) If occasion arises for making any appointment under clause (2) or clause (3) between a dissolution of Parliament and the next following general election of members of Parliament, the persons who were such members immediately before the dissolution shall be regarded for the purposes of this clause as continuing to be such members.

**57. Tenure of Office of Prime Minister.**—(1) The office of the Prime Minister shall become vacant—

a) if he resigns from office at any time by placing his resignation in the hands of the President; or

b) if he ceases to be a member of Parliament.

(2) If the Prime Minister ceases to retain the support of a majority of the members of Parliament, he shall either resign his office or advise the President in writing to dissolve Parliament, and if he so advises the President shall, if he is satisfied that no other member of Parliament commands the support of the majority of the members of Parliament, dissolve Parliament accordingly.

(3) Nothing in this article shall disqualify the Prime Minister for holding office until his successor has entered upon office.

**58. Tenure of Office of Other Ministers.**—(1) The office of a Minister other than the Prime

Minister shall become vacanta)

if he resigns from office by placing his resignation in the hands of the Prime Minister for submission to the President;

b) if he ceases to be a member of Parliament, but this shall not be applicable to a Minister chosen under the proviso to article 56(2);

c) if the President, pursuant to the provisions of clause (2), so directs; or

d) as provided in clause (4).

(2) The Prime Minister may at any time request a Minister to resign, and if such Minister fails to comply with the request, may advise the President to terminate the appointment of such Minister.

(3) Nothing in sub-clauses (a), (b) and (d) of clause (1) shall disqualify a Minister for holding office during any period in which Parliament stands dissolved.

(4) If the Prime Minister resigns from or ceases to hold office each of the other Ministers shall be deemed also to have resigned from office but shall, subject to the provisions of this Chapter, continue to hold office until his successor has entered upon office.

(5) In this article "Minister" includes Minister of State and Deputy Minister.

### CHAPTER-III- LOCAL GOVERNMENT

**59. Local Government.**—(1) Local Government in every administrative unit of the Republic shall be entrusted to bodies, composed of persons elected in accordance with law.

(2) Everybody such as is referred to in clause (1) shall, subject to this Constitution and any other law, perform within the appropriate administrative unit such functions as shall be prescribed by Act of Parliament, which may include functions relating to

a) administration and the work of public officers;

b) the maintenance of public order;

c) the preparation and implementation of plans relating to public services and economic development.

**60. Powers of Local Government Bodies.**—For the purposes of giving full effect to the provisions of article 59 Parliament shall, by law, confer powers on the local government bodies

referred to in that article, including power to impose taxes for local purposes, to prepare their budgets and to maintain funds."

**4. Amendment of article 66 of the Constitution.**—In the Constitution, in article 66, in clause (2A), the words and commas "Vice-President," and "Deputy Prime Minister," shall be omitted.

**5. Substitution of article 70 of the Constitution.**—(1) In the Constitution for article 70 the following shall be substituted, namely:—

**"70. Vacation of Seat on Resignation, etc.**—(1) A person elected as a member of Parliament at an election at which he was nominated as a candidate by a political party shall vacate his seat if he resigns from that party or votes in Parliament against that party.

**Explanation.**—If a member of Parliament

- a) being present in Parliament abstains from voting, or
  - b) absents himself from any sitting of parliament. ignoring the direction of the party which nominated him at the election as a candidate not to do
- so, he shall be deemed to have voted against that party.

(2) If, at any time, any question as to the leadership of the Parliamentary party of a political party arises, the Speaker shall, within seven days of being informed of it in writing by a person claiming the leadership of the majority of the members of that party in Parliament, convene a meeting of all members of Parliament of that party in accordance with the Rules of procedure of Parliament and determine its Parliamentary leadership by the votes of the majority through division and if, in the matter of voting in Parliament, any member does not comply with the direction of the leadership so determined, he shall be deemed to have voted against that party under clause (1) and shall vacate his seat in the Parliament.

(3) If a person, after being elected a member of Parliament as an independent candidate, joins any political party, he shall, for the purpose of this article, be deemed to have been elected as a nominee of that Party."

**6. Amendment of article 72 of the Constitution.**—In the Constitution, in article 72,-

- a) in clause (1), for the proviso the following provisos shall substituted, namely:

“Provided that a period exceeding sixty days shall not intervene between the end of one session and the first sitting of Parliament in the next session.”

**7. Amendment of article 73A of the Constitution.**—In the Constitution, in article 73A,-

a) in clause (1), after the words "entitled to vote", the words or to speak on any matter not related to his Ministry" shall be inserted; and

b) in clause (2), the words "Deputy Prime Minister" shall be omitted.

**8. Amendment of article 88 of the Constitution.**—In the Constitution, in article 88, clause (aa) shall be omitted.

**9. Amendment of article 92 of the Constitution.**—In the Constitution, in article 92, after clause (2), the following new clause shall be added, namely:-

"(3) Notwithstanding anything contained in the foregoing provisions of this Chapter, if, in respect of a financial year, Parliament—

a) has failed to make the grants under article 89 and pass the law under article 90 before the beginning of that year and has not also made any grant in advance under this article; or

b) has failed to make the grants under article 89 and pass the law under article 90 before the expiration of the period for which the grants in advance, if any, were made under this article, the President may, upon the advice of the Prime Minister, by order, authorise the withdrawal from the Consolidated Fund moneys necessary to meet expenditure mentioned in the financial statement for that year for a period not exceeding sixty days in that year, pending the making of the grants and passing of the law."

**10. Amendment of article 92A of the Constitution.**—In the Constitution, article 92A shall be omitted.

**11. Amendment of article 109 of the Constitution.**—In the Constitution, in article 109 after the word "courts" the words "and tribunals" shall be inserted.

**12. Amendment of article 19 of the Constitution.**—In the Constitution, in article 19, for clause (1) the following shall be substituted, namely:—

"(1) The superintendence, direction and control of the preparation of the electoral rolls for elections to the office of President and to Parliament and the conduct of such elections shall vest in the Election Commission which shall, in accordance with this Constitution and any other law—

a) hold elections to the office of President;

b) hold elections of members of Parliament;

c) delimit the constituencies for the purposes of elections to Parliament; and

d) prepare electoral rolls for the purposes of elections to the office of President and to Parliament."

**13. Amendment of article 122 of the Constitution.**—In the Constitution, in article 122-

a) in clause (1), the words "to the offices of President and Vice-President and" shall be omitted;

b) clause (3) shall be omitted.

**14. Amendment of article 123 of the Constitution.**—In the Constitution, in article 123,-

a) for clauses (1), (2), (2A) and (2B) the following shall be substituted, namely:-

"(1) In the case of a vacancy in the office of President occurring by reason of the expiration of his term of office an election to fill the vacancy shall be held within the period of ninety to sixty days prior to the date of expiration of the term:

Provided that if the term expires before the dissolution of the Parliament by the members of which he was elected the election to fill the vacancy shall not be held until after the next general election of members of Parliament, but shall be held within thirty days after the first sitting of Parliament following such general election.

(2) In the case of a vacancy in the office of President occurring by reason of the death, resignation or removal of the President, an election to fill the vacancy shall be held within the period of ninety days after the occurrence of the vacancy."; and

(b) in clause (4), for the full-stop at the end a colon shall be substituted and thereafter the following proviso shall be added, namely:

"Provided that in a case where, in the opinion of the Chief Election Commissioner, it is not possible, for reasons of an act of God, to hold such election within the period specified in this clause, such election shall be held within ninety days following next after the last day of such period."

**15. Substitution of article 124 of the Constitution,**—In the Constitution, in article 124 the following shall be substituted, namely:-

**"124. Parliament May Make Provision as to Elections.**— Subject to the provisions of this Constitution, Parliament may by law make provision with respect to all matters relating to or in connection with elections to Parliament, including the delimitation of constituencies, the preparation of electoral rolls, the holding of elections, and all other matters necessary for securing the due Constitution of Parliament."

**16. Amendment of article 125 of the Constitution.**—In the Constitution, in article 125, in clause (b), the words "and Vice-President" shall be omitted.

**17. Amendment of Article 141A of the Constitution.**— In the Constitution, in article 141A, in clause (1), the following proviso shall be added, namely:-

"Provided that such Proclamation shall require for its validity the prior counter signature of the Prime Minister."

**18. Amendment of article 141C of the Constitution.**—In the Constitution, in article 141C, in clause (1), for the words "by order" the words and comma "on the written advice of the Prime Minister, by order" shall be substituted.

**19. Amendment of article 142 of the Constitution.**—In the Constitution, in article 142,-

a) in clause (1A) for the comma before the figure "56" the word "or" shall be substituted and the commas and figures ", 58,80,92A" shall be omitted;

b) in clause (1B), for the words "the office of President" the word "Parliament" shall be substituted; and

c) after clause (1C), the following new clause shall be inserted, namely:- "(ID) Nothing in clause (1C) shall be deemed to be an expression of confidence or no-confidence in the Cabinet or Parliament."

**20. Amendment of article 145A of the Constitution.**—In the Constitution, in article 145A for the proviso the following proviso shall be substituted, namely:-

"Provided that any such treaty connected with national security shall be laid in a secret session of Parliament."

**21. Amendment of article 147 of the Constitution.**—In the Constitution, in article 147, in clause (4),—

a) sub-clause (aa) shall be omitted; and

b) in sub-clause (b), the words "or Deputy Prime Minister" shall be omitted.

**22. Amendment of article 148 of the Constitution.**—In the Constitution, in article 148, in clause (1A) shall be omitted.

**23. Amendment of article 152 of the Constitution.**—In the Constitution, in article 152, in clause (1), the words "the Vice-President" means the Vice-President of Bangladesh elected or appointed under this Constitution" shall be omitted.

**24. Amendment of the Third Schedule to the Constitution.**—In the Constitution, in the

third schedule,—

a) form 1A shall be omitted; and

b) in form 2, in the heading, the comma and words ",Deputy Prime Ministers" shall be omitted.

**25. Amendment of the Fourth Schedule to the Constitution.**—In the Constitution, in the fourth schedule,—

a) paragraph 20 shall be omitted; and

b) after paragraph 21, the following new paragraph 22 shall be added, namely, -

"22. Notwithstanding anything contained in the Constitution, the Parliament functioning immediately before the commencement of the Constitution (Twelfth Amendment) Act, 1991 (XXVIII of 1991) shall be deemed to have been duly elected and constituted in accordance with the Constitution and Law and shall continue to function under the provisions of article 72 of the constitution.



**Appendix 13**  
**The Constitution (Thirteenth Amendment) Act, 1996**  
**(Act no 1 of 1996)**  
 [28 March, 1996]

An Act further to amend certain provisions of the Constitution of the People's Republic of Bangladesh

WHEREAS it is expedient further to amend certain provisions of the Constitution of the People's Republic of Bangladesh for the purposes hereinafter appearing ;

It is hereby enacted as follows :—

1. **Short title.**- This Act may be called the Constitution (Thirteenth Amendment) Act, 1996.
2. **Insertion of new article 58A in the Constitution**-In the Constitution of (he People's Republic of Bangladesh, hereinafter referred to as the Constitution, after article 58, the following new article shall be inserted, namely :-  
 "58A. **Application of Chapter**-Nothing in this Chapter, except the provisions of article 55 (4), 15) and (6), shall apply during the period in which Parliament is dissolved or stands dissolved :  
 Provided that notwithstanding anything contained in Chapter HA, where the President summons Parliament that has been dissolved to meet under article 72(4), this Chapter shall apply."
3. **Insertion of new Chapter IIA in the Constitution**.-In the Constitution, in Part IV, after Chapter II, the following new Chapter shall he inserted, namely :-

**"CHAPTER II A-NON-PARTY CARE-TAKER GOVERNMENT**

58B . The Non-Party Care-talker Government.-(J) There shall be a Non Party Care-taker Government during' the period from the date on which the Chief Adviser of such government enters upon office after Parliaments dissolved or stands dissolved by reason of expiration of its term till the date on which a new Prime Minister enters upon his office after the constitution of Parliament.

- (2) The Non-Party Care-taker Government shall be collectively responsible to the President.
- (3) The executive power of the Republic shall, during the period mentioned in clause (I), be exercised, subject to the provisions of article 58D (I), in accordance with this Constitution, by or on the authority of the Chief Adviser and shall -be exercised by him in accordance with the advice of the Non-Parly Care-taker Government.

The Constitution (Thirteenth Amendment) Act, 1996 has been declared illegal and unconstitutional by the Supreme Court in the Constitution Thirteenth Amendment case.

(4) The provisions of article 55(4), (5) and" (6) shall (with the necessary adaptations) apply to similar matters during the period mentioned in clause (I).

58C. Composition of the Non-Party Care-taker Government, appointment of Advisers, etc. :—(I)

The Non-Party Care-taker Government shall consist of the Chief Adviser at its head and not more than ten other Advisers, all of whom shall be appointed by the President.

(2) The Chief Adviser and other Advisers shall be appointed within fifteen days after Parliament is dissolved or stands dissolved, and during the period between the date on which Parliament is dissolved or stands dissolved and the date on which the Chief Adviser is appointed, the Prime Minister and his cabinet who were in office immediately before Parliament was dissolved or stood dissolved shall continue to hold office as such.

(3) The President shall appoint as Chief Adviser the person who among the retired Chief Justices of Bangladesh retired last and who is qualified to be appointed as an Adviser under this article :

Provided that if such retired Chief Justice is not available or is not willing to hold the office of Chief Adviser, the President shall appoint as Chief Adviser the person who among the retired Chief Justices of Bangladesh retired next before the last retired Chief Justice.

(4) If no retired Chief Justice is available or willing to hold the office of Chief Adviser, the President shall appoint as Chief Adviser the person who among the retired Judges of the Appellate Division retired last and who is qualified to be appointed as an Adviser under this article :

Provided that if such retired Judge is not available or is not willing to hold the office of Chief Adviser, the President shall appoint as Chief Adviser the person who among the retired Judges of the Appellate Division retired next before the last such retired Judge.

(5) If no retired Judge of the Appellate Division is available or willing to hold the office of Chief Adviser, the President shall, after consultation, as far as practicable, with the major political parties, appoint the Chief Adviser from among citizens of Bangladesh who are qualified to be appointed as Advisers under this article.

(6) Notwithstanding anything contained in this Chapter, if the provisions of clauses (3), (4) and (5) cannot be given effect to, the President shall assume the functions of the Chief Adviser of the Non-Party Care-taker Government in addition to his own functions under this Constitution.

(7) The President shall appoint Advisers from among the persons who are—

(a) qualified for election as members of Parliament;

(b) not members of any political party or of any organisation associated with or affiliated to any political party ;

(c) not, and have agreed in writing not to be, candidates for the ensuing election of members of Parliament;

(d) not over seventy-two years of age.

(8) The Advisers shall be appointed by the President on the advice of the Chief Adviser.

(9) The Chief Adviser or an Adviser may resign his office by writing under his hand addressed to the President.

(10) The Chief Adviser or an Adviser shall cease to be Chief Adviser or Adviser if he is disqualified to be appointed as such under this article.

(11) The Chief Adviser shall have the status, and shall be entitled to the remuneration and privileges, of a Prime Minister, and an Adviser shall have the status, and shall be entitled to the remuneration and privileges, of a Minister.

(12) The Non-Party Care-taker Government shall stand dissolved on the date on which the Prime Minister enters upon his office after (he constitution of new Parliament.

58D. Functions of Non-Party Care-taker Government.-<sup>^</sup> 1) The Non-Party Care-taker Government shall discharge its functions as an interim government and shall carry on the routine functions of such government with the aid and assistance of persons in the services of the Republic; and, except in the case of necessity for the discharge of such functions its shall not make any policy decision.

(2) The Non-Party Care-taker Government shall give to the Election Commission all possible aid and assistance that may be required for holding the general election of members of Parliament peacefully, fairly and impartially.

58E. Certain provisions of the Constitution to remain ineffective-

Notwithstanding anything contained in articles 48(3), I4IA(J) and I4IC(1) of the Constitution, during the period the Non-Party Care-taker Government is functioning, provisions in the Constitution requiring the President to act on the advice of the Prime Minister or upon his prior counter-signature shall be ineffective."

4. Amendment of article 61 of the Constitution.-In the Constitution, in article 61, after the word "law" at the end, the commas, words and figure "and such law shall, during the period in which there is a Non-Party Care-taker Government under article 58B, be administered by the President."

5. Amendment of article 99 of the Constitution.-In the Constitution, in article 99, in clause (I), after the words "quasi-judicial office", the words "or the office of Chief Adviser or Adviser" shall be inserted.

6. Amendment of article 123 of the Constitution.-In the Constitution, in article 123, for clause (3) the following shall be substituted, namely:—

"(3) A general election of members of Parliament shall be held within ninety days after Parliament is dissolved, whether by reason of the expiration of its term or otherwise than by reason of such expiration."

7. Amendment of article 147 of the Constitution.-In the Constitution, in article 147, in clause (4),-

(a) for sub-clause (.b) the following sub-clause shall be substituted, namely:—

(b) Prime Minister or Chief Adviser, "and

(b) for sub-clause (d) the following sub-clause shall be substituted, namely;—

(d) Minister, Adviser, Minister of State or Deputy Minister;"

8. Amendment of article 152 of the Constitution.-In the Constitution, in article 152, in clause (I)—

(a) after the definition of the expression "administrative unit", the following definition shall be inserted namely :—

"Adviser" means a person appointed to that office under article 58C;"and

(b) after the definition of the expression "the capital", the following definition shall be inserted, namely :—

' "Chief Adviser" means a person appointed to that office under article 58C".

9. Amendment of the Third Schedule to the Constitution.-<sup>^</sup> I) In the Constitution, in the Third Schedule, after form I, the following new form IA shall be inserted, namely :—

"IA. The President in the case of performing the functions of the Chief Adviser.-Oaths (or affirmations) in the following forms shall be administered by the Chief Justice-

(a) Oath (or affirmation) of office :

"I....." do solemnly swear (or affirm) that

I will faithfully discharge the duties of the office of Chief Adviser of the Non-Party Care-taker Government according to law :

That I will bear true faith and allegiance to Bangladesh : That I will preserve, protect and defend the Constitution :

And that I will do right to all manner of people according to law, without fear or favour, affection or ill-will.";

(b) Oath (or Affirmation) of secrecy:

"I..... do solemnly swear (or affirm) that I will not directly or indirectly communicate or reveal to any person any matter which shall be brought under my consideration or shall become known to me as Chief Adviser of the Non-Party Care-taker Government except as may be required for the due discharge of my duty as Chief Adviser."

(2) In the Constitution, in the Third Schedule, after form 2, the following new form shall be inserted, namely :- . -

"2A. The Chief Adviser.....-..... and Advisers.—Oaths (or affirmations) in the following- forms shall be administered by the President—

(a) Oath (or affirmation) of office :

"I..... do solemnly swear (or affirm)that I will faithfully, discharge the duties of the office of the Chief Adviser (or Adviser) of the Non-Party Care-taker Government, according to law :

That I will bear true faith and allegiance to Bangladesh ; That I will preserve, protect and defend the Constitution :

That I will do right to all manner of people according to law, without fear or favour, affection or ill-will.";

(b) Oath (or affirmation) of secrecy :

"I,....., do solemnly swear (or affirm) that I will not directly or indirectly communicate or reveal to any person any matter which shall be brought under my consideration or shall become known to me as Chief Adviser (or Adviser) of the-Non-Party Care-taker Government, except as may be required for the due discharge of my duty as Chief Adviser (or Adviser).".

**Appendix 14**  
**The Constitution Fourteenth Amendment Act, 2004**  
**(Act No. of 2004)**  
 [17, 2004]

An Act Further to amend certain provisions of the Constitution of the People's Republic of Bangladesh.

WHEREAS it is expedient further to amend certain provisions of the Constitution of the People's Republic of Bangladesh for the purposes hereinafter appearing ;

It is hereby enacted as follows :-

1. Short title and commencement . — (1) This Act may be called the Constitution (Fourteenth Amendment) Act, 2004.

(2) This Act shall come into force at once.

2. Insertion of article 4A in the Constitution . — In the Constitution of the People's Republic of Bangladesh, hereinafter referred to as the Constitution, after article 4, the following new article shall be inserted, namely :—

"4A. Portrait .-(1) Portrait of the President shall be preserved and displayed at the offices of the President, Prime Minister and Speaker, and all embassies and missions of Bangladesh abroad.

(2) In addition to clause (1), Portrait, of only the prime Minister, shall be preserved and displayed at the offices of the President and the Speaker, and in head and branch offices of all government and semi-government offices, autonomous bodies, statutory public authorities, government educational institutions, embassies and missions of Bangladesh abroad."

3. Amendment of article 65 of the Constitution . — In the Constitution, in article 65 for clause (3), the following clause (3) shall be substituted, namely :-

"(3) Until the dissolution of Parliament occurring next after the expiration of the period of ten years beginning from the date of the first meeting of the Parliament next after the Parliament in existence at the time of the commencement of the Constitution (Fourteenth Amendment) Act, 2004, there shall be reserved forty five seats exclusively for women members and they will be elected by the aforesaid members in accordance with law on the basis of procedure of proportional representation in the Parliament through single transferable vote :

Provided that nothing in this clause shall be deemed to prevent a woman from being elected to any of the seats provided for in clause (2) of the article,"

4. Amendment of article 96 of the Constitution .—In the Constitution, in Clause of article 96, for the word "sixty-Five", the word "sixty-seven" shall be substituted.

5. Amendment of article 129 of the Constitution .—In the Constitution, in article 129, for clause (1), the following clause shall be substituted, namely :

"(I) The Auditor-General shall, subject to the provisions of the article, hold office for five years from the date on which he entered upon his office, or until he attains the age of sixty-five years, whichever is earlier."

6. Amendment of article 139 of the Constitution .—In the Constitution, in clause (1) of article 139, for the word "sixty-two", the word "sixty-five" shall be substituted.

7. Amendment of article 148 of the Constitution .—In the Constitution, in article 148, after clause (2), the following new clause shall be inserted, namely :-

"(2A) If, within three days next after publication through official Gazette of the result of a general election of members of Parliament under clause (3) of article 123, the person specified under the Constitution of the purpose or such other person designated by that person for the purpose, is unable to, or does not, administer oath to the newly elected members of Parliament, on any account, the Chief Election Commissioner shall administer such oath within three days next thereafter, as if, he is the person specified under the Constitution for the purpose,"

8. Amendment of the Fourth Schedule to the; Constitution .—In the Constitution, in the Fourth Schedule, after paragraph 22, the new following paragraph 23 shall be added, namely :—

"(23) Temporary special provision regarding women members in the Parliament :—(1) For the residual period of the Parliament in existence at • the time of the commencement of the Constitution (Fourteenth Amendment) Act, 2004, there shall be reserved forty five seats exclusively for women members and they will be elected by members of the Parliament in accordance with law on the basis of procedure. of proportional representation in the Parliament through single transferable vote,

(2) During the period mentioned in sub-paragraph (1), the Parliament shall consist of the three hundred members mentioned in clause (2) of article 65 and the forty five women members mentioned in sub-paragraph (1) of this



## Appendix 15

### The Constitution Fifteenth Amendment Act, 2011

#### An Act further to amend certain provisions of the Constitution of the People's Republic of Bangladesh

WHEREAS it is expedient and necessary further to amend certain provisions of the Constitution of the People's Republic of Bangladesh for the purposes hereinafter appearing;

It is hereby enacted as follows:—

1. **Short title and commencement.**—(1) This Act may be called the Constitution (Fifteenth Amendment) Act, 2011.

(2) It shall come into force at once.

2. **Amendment in the beginning of the Constitution, above the**

**Preamble.**—In the beginning of the Constitution of the People's Republic of Bangladesh (hereinafter referred to as the Constitution), above the preamble, for the words, commas, signs and brackets "BISMILLAH-AR-RAHMAN-ARRAHIM (In the name of Allah, the Beneficent, the Merciful)", the following words, commas, signs and brackets shall be substituted, namely:—  
"BISMILLAH-AR-RAHMAN-AR-RAHIM (In the name of Allah, the Beneficent, the Merciful)/ In the name of the Creator, the Merciful."

3. **Amendment of the Preamble of the Constitution.**—In the Preamble of the Constitution—

(a) in the first paragraph, for the words "a historic war for national independence" the words "a historic struggle for national liberation" shall be substituted; and

(b) for the second paragraph, the following paragraph shall be substituted, namely:—

Pledging that the high ideals of nationalism, socialism, democracy and secularism, which inspired our heroic people to dedicate themselves to, and our brave martyrs to sacrifice their lives in, the national liberation struggle, shall be the fundamental principles of the Constitution;"

4. **Substitution of article 2A of the Constitution.**—In the Constitution, for article 2A, the following article 2A shall be substituted, namely:—

"2A. **The State religion.**—The State religion of the Republic is Islam, but the State shall ensure equal status and equal right in the practice of the Hindu, Buddhist, Christian and other religions."

5. **Substitution of article 4A of the Constitution.**—In the Constitution, for article 4A, the following article 4A shall be substituted, namely:—

**Ò4A. Portrait of the Father of the Nation.**—The portrait of the Father of the Nation, Bangabandhu Sheikh Mujibur Rahman shall be preserved and displayed at the offices of the President, the Prime Minister, the Speaker and the Chief Justice and in head and branch offices of all government and semi-government offices, autonomous bodies, statutory public authorities, government and non-government educational institutions, embassies and missions of Bangladesh abroad.”.

**6. Substitution of article 6 of the Constitution.**—In the Constitution, for article 6, the following article 6 shall be substituted, namely:—

**Ò6. Citizenship.**—(1) The citizenship of Bangladesh shall be determined and regulated by law.  
(2) The People of Bangladesh shall be known as Bangalees as a nation and the citizens of Bangladesh shall be known as Bangladeshies.”.

**7. Insertion of new articles 7A and 7B in the Constitution.**—In the Constitution, after article 7 the following two new articles 7A and 7B shall be inserted, namely:—

**Ò7A. Offence of abrogation, suspension, etc. of the Constitution.**—

(1) If any person, by show of force or use of force or by any other un-constitutional meansÍ

(a) abrogates, repeals or suspends or attempts or conspires to abrogate, repeal or suspend this Constitution or any of its article; or

(b) subverts or attempts or conspires to subvert the confidence, belief or reliance of the citizens to this Constitution or any of its

article, his such act shall be sedition and such person shall be guilty of sedition.

(2) If any person—

(a) abets or instigates any act mentioned in clause (1); or

(b) approves, condones, supports or ratifies such act, his such act shall also be the same offence.

(3) Any person alleged to have committed the offence mentioned in this article shall be sentenced with the highest punishment prescribed for other offences by the existing laws.

**7B. Basic provisions of the Constitution are not amendable.**— Notwithstanding anything contained in article 142 of the Constitution, the preamble, all articles of part I, all articles of Part II, subject to the provisions of Part IXA all articles of Part III, and the provisions of articles relating to the basic structures of the Constitution including article 150 of Part XI shall not be amendable by way of insertion, modification, substitution, repeal or by any other means.” .

**8. Amendment of article 8 of the Constitution.**—In the Constitution, in

article 8, for clauses (1) and (1A), the following clause (1) shall be substituted, namely:–

Ò(1) The principles of nationalism, socialism, democracy and secularism, together with the principles derived from those as set out in this Part, shall constitute the fundamental principles of state policy.”.

**9. Substitution of article 9 of the Constitution.**–In the Constitution, for article 9, the following article 9 shall be substituted, namely:–

Ò9. **Nationalism.**–The unity and solidarity of the Bangalee nation, which, deriving its identity from its language and culture, attained sovereign and independent Bangladesh through a united and determined struggle in the war of independence, shall be the basis of Bangalee nationalism.”.

**10. Substitution of article 10 of the Constitution.**–In the Constitution, for article 10, the following article 10 shall be substituted, namely:–

Ò10. **Socialism and freedom from exploitation.**–A socialist economic system shall be established with a view to ensuring the attainment of a just and egalitarian society, free from the exploitation of man by man.”.

**11. Substitution of article 12 of the Constitution.**–In the Constitution for article 12, the following article 12 shall be substituted, namely :–

Ò12. **Secularism and freedom of religion.**–The principle of secularism shall be realised by the elimination of–

- (a) communalism in all its forms;
- (b) the granting by the State of political status in favour of any religion;
- (c) the abuse of religion for political purposes;
- (d) any discrimination against, or persecution of, persons practicing a particular religion.”.

**12. Insertion of new article 18A.**–In the Constitution, after article 18, the following new article 18A shall be inserted, namely:–

Ò18A. **Protection and improvement of environment and biodiversity.**– The State shall endeavour to protect and improve the environment and to preserve and safeguard the natural resources, biodiversity, wetlands, forests and wild life for the present and future citizens.”.

**13. Amendment of article 19 of the Constitution.**–In the Constitution, in article 19, after clause (2), the following new clause (3) shall be added, namely:–

“(3) The State shall endeavour to ensure equality of opportunity and participation of women in all spheres of national life.”.

**14. Insertion of new article 23A in the Constitution.**—In the Constitution, after article 23, the following new article 23A shall be inserted, namely:—

**Ò23A. The culture of tribes, minor races, ethnic sects and communities.**—The State shall take steps to protect and develop the unique local culture and tradition of the tribes, minor races, ethnic sects and communities.”.

**15. Amendment of article 25 of the Constitution.**—In the Constitution, in article 25,—

(i) in clause (1), the figure and brackets æ(1)” shall be omitted; and (ii) clause (2) shall be omitted.

**16. Substitution of article 38 of the Constitution.**—In the Constitution, for article 38, the following article 38 shall be substituted, namely:—

**Ò38. Freedom of association.**ÍEvery citizen shall have the right to form associations or unions, subject to any reasonable restrictions imposed by law in the interests of morality or public order: Provided that no person shall have the right to form, or be a member of the said association or union, if —

(a) it is formed for the purposes of destroying the religious, social and communal harmony among the citizens;

(b) it is formed for the purposes of creating discrimination among the citizens, on the ground of religion, race, caste, sex, place of birth or language;

(c) it is formed for the purposes of organizing terrorist acts or militant activities against the State or the citizens or any other country;

(d) its formation and objects are inconsistent with the Constitution.”.

**17. Amendment of article 42 of the Constitution.**—In the Constitution, for clauses (2) and (3) of article 42, the following clause (2) shall be substituted, namely:—

“(2) A law made under clause (1) of this article shall provide for the acquisition, nationalisation or requisition with compensation and shall fix the amount of compensation or specify the principles on which, and the manner in which, the compensation is to be assessed and paid; but no such law shall be called in question in any court on the ground that any provision of the law in respect of such compensation is not adequate.”.

**18. Substitution of article 44 of the Constitution.**—In the Constitution, for article 44, the following article 44 shall be substituted, namely:—

**Ò44. Enforcement of fundamental rights.**—(1) The right to move the High Court Division in accordance with clause (1) of article 102, for the enforcement of the rights conferred by this Part is guaranteed.

(2) Without prejudice to the powers of the High Court Division under, article 102, Parliament may by law empower any other court, within the local limits of its jurisdiction, to exercise all or any of those powers.”.

**19. Amendment of article 47 of the Constitution.**—In the Constitution, in article 47,—

(i) in clause (2), for the proviso, the following proviso shall be substituted, namely:— ÒProvided that nothing in this article shall prevent amendment, modification or repeal of any such law.”; and (ii) in clause (3), after the words Òauxiliary forces” the words and comma æor any individual, group of individuals or organisation” shall be inserted.

**20. Omission of article 58A of the Constitution.**—In the Constitution, article 58A shall be omitted.

**21. Omission of CHAPTER IIA - NON-PARTY CARE-TAKER GOVERNMENT of the Constitution.**—In the Constitution, ÒCHAPTER IIA NON-PARTY CARE-TAKER GOVERNMENT” shall be omitted.

**22. Substitution of article 61 of the Constitution.**—In the Constitution, for article 61, the following article 61 shall be substituted, namely:—

**Ò61. Supreme command.**—The supreme command of the defence services of Bangladesh shall vest in the President and the exercise thereof shall be regulated by law.”.

**23. Amendment of article 65 of the Constitution.**—In the Constitution in article 65,—

(i) in clause (3), for the words Òforty five seats” the words Òfifty seats” shall be substituted; and (ii) after clause (3), the following new clause (3A) shall be inserted, namely:—

**Ò(3A)** For the remaining period of the Parliament in existence at the time of the commencement of the Constitution (Fifteenth Amendment) Act, 2011, Parliament shall consist of three hundred members elected by direct election provided for in clause (2) and fifty women members provided for in clause (3)”.

**24. Amendment of article 66 of the Constitution.**— In the Constitution, in article 66,—

- (i) in clause (2), in sub-clause (d), the word ‘or’ and sub-clause (dd) shall be omitted;  
 (ii) after the omitted sub-clause (dd), the following new sub-clauses (e) and (f) shall be inserted, namely:–

Ò(e) has been convicted of any offence under the Bangladesh Collaborators (Special Tribunals) Order, 1972;

(f) holds any office of profit in the service of the Republic other than an office which is declared by law not to be disqualified its holder; or”; and

- (iii) for clause (2A), the following clause (2A) shall be substituted, namely:–

Ò(2A) Notwithstanding anything contained in sub-clause (c) of clause (2) of this article, if any person being a citizen of Bangladesh by birth acquires the citizenship of a foreign State and thereafter such person–

(i) in the case of dual citizenship, gives up the foreign citizenship; or

(ii) in other cases, again accepts the citizenship of Bangladesh–

for the purposes of this article, he shall not be deemed to acquire the citizenship of a foreign State.

- (iv) after clause (2B), the following clause (3) shall be inserted, namely:–

Ò(3) For the purposes of this article, a person shall not be deemed to hold an office of profit in the service of the Republic by reason only that he is the President, the Prime Minister, the Speaker, the Deputy Speaker, a Minister, Minister of State or Deputy Minister.”.

**25. Substitution of article 70 of the Constitution.**–In the Constitution, for article 70, the following article 70 shall be substituted, namely:1–

**70. Vacation of seat on resignation or voting against political**

**party.**– A person elected as a member of Parliament at an election at which he was nominated as a candidate by a political party shall vacate his seat if heÍ

(a) resigns from that party; or

(b) votes in Parliament against that party;

but shall not thereby be disqualified for subsequent election as a member of Parliament.”.

**26. Amendment of article 72 of the Constitution.**–In the Constitution in first proviso of clause (1) of article 72 after the word Òprovided that” the following words Òexcept the period of ninety

days as mentioned in sub-clause (a) of clause (3) of article 123 for remaining term” shall be inserted.

**27. Amendment of article 80 of the Constitution.**—In the Constitution, in article 80,—

(i) For clause (3) the following clause (3) shall be substituted, namely:

“(3) The President within fifteen days after a Bill is presented to him, shall assent to the Bill or, in the case of a Bill other than a Money Bill, may return it to Parliament with a message requesting that the Bill or any particular provisions thereof be reconsidered, and that any amendments specified by him in the message be considered; and if he fails so to do he shall be deemed to have assented to the Bill at the expiration of that period.”;

(ii) in clause (4), the words “by the votes of a majority of the total number of members of Parliament” shall be omitted.

**28. Amendment of article 82 of the Constitution.**—In the Constitution, in article 82, in the proviso, after the words “provided that” the words “in any Money Bill” shall be inserted.

**29. Amendment of article 88 of the Constitution.**—In the Constitution, in article 88,

(a) in para (b), for sub-para (ii), the following sub-para (ii) shall be substituted, namely :

“(ii) the Judges of the Supreme Court;”;

(b) for para (c), the following para (c) shall be substituted, namely :

“(c) the administrative expences of, including remuneration payable to, officers and servants of Parliament, the Supreme Court, the Comptroller and Auditor-General, the Election Commission and the Public Service Commissions.”.

**30. Amendment of article 93 of the Constitution.**—In the Constitution, in article 93, in clause (1), for the words “Parliament stands dissolved or is not in session” the following words “Parliament stands dissolved or is not in session” shall be substituted.

**31. Substitution of CHAPTER I of PART VI of the Constitution.**—In the Constitution, in Part VI, for the CHAPTER I, the following CHAPTER I shall be substituted, namely:

“CHAPTER I-THE SUPREME COURT

**94. Establishment of Supreme Court.**—

(1) There shall be a Supreme Court for Bangladesh (to be known as the Supreme Court of Bangladesh) comprising the Appellate Division and the High Court Division.

(2) The Supreme Court shall consist of the Chief Justice, to be known as the Chief Justice of Bangladesh, and such number of other Judges as the President may deem it necessary to appoint to each division.

(3) The Chief Justice, and the Judges appointed to the Appellate Division, shall sit only in that division, and the other Judges shall sit only in the High Court Division.

(4) Subject to the provisions of this Constitution the Chief Justice and the other Judges shall be independent in the exercise of their judicial functions.

**95. Appointment of Judges.–**

(1) The Chief Justice shall be appointed by the President, and the other Judges shall be appointed by the President after consultation with the Chief Justice.

(2) A person shall not be qualified for appointment as a Judge unless he is a citizen of Bangladesh and–

(a) has, for not less than ten years, been an advocate of the Supreme Court; or

(b) has, for not less than ten years, held judicial office in the territory of Bangladesh; or

(c) has such qualifications as may be prescribed by law for appointment as a Judge of the Supreme Court.

(3) In this article, “Supreme Court” includes a Court which at any time before the commencement of this Constitution, exercised jurisdiction as a High Court in the territory of Bangladesh.

**96. Tenure of office of Judges.–**

(1) Subject to the other provisions of this article, a Judge shall hold office until he attains the age of sixty-seven years.

(2) A Judge shall not be removed from his office except in accordance with the following provisions of this article.

(3) There shall be a Supreme Judicial Council, in this article referred to as the Council, which shall consist of the Chief Justice of Bangladesh, and the two next senior Judges:

Provided that if, at any time, the Council is inquiring into the capacity or conduct of a Judge who is a member of the Council, or a member of the Council is absent or is unable to act due to illness or other cause, the Judge who is next in seniority to those who are members of the Council shall act as such member.

(4) The function of the Council shall be–



- (a) to prescribe a Code of Conduct to be observed by the Judges; and
  - (b) to inquire into the capacity or conduct of a Judge or of any other functionary who is not removable from office except in like manner as a Judge.
- (5) Where, upon any information received from the Council or from any other source, the President has reason to apprehend that a Judge—
- (a) may have ceased to be capable of properly performing the functions of his office by reason of physical or mental incapacity, or
  - (b) may have been guilty of gross misconduct, the President may direct the Council to inquire into the matter and report its finding.
- (6) If, after making the inquiry, the Council reports to the President that in its opinion the Judge has ceased to be capable of properly performing the functions of his office or has been guilty of gross misconduct, the President shall, by order, remove the Judge from office.
- (7) For the purpose of an inquiry under this article, the Council shall regulate its procedure and shall have, in respect of issue and execution of processes, the same power as the Supreme Court.
- (8) A Judge may resign his office by writing under his hand addressed to the President.

**97. Temporary appointment of Chief Justice.—**

If the office of the Chief Justice becomes vacant, or if the President is satisfied that the Chief Justice is, on account of absence, illness, or any other cause, unable to perform the functions of his office, those functions shall, until some other person has entered upon that office, or until the Chief Justice has resumed his duties, as the case may be, be performed by the next most senior Judge of the Appellate Division.

**98. Additional Supreme Court Judges.—** Notwithstanding the provisions of article 94, if the President is satisfied that the number of the Judge of a division of the Supreme Court should be for the time being increased, the President may appoint one or more duly qualified persons to be Additional Judges of that division for such period not exceeding two years as he may specify, or, if he thinks fit, may require a Judge of the High Court Division to sit in the Appellate Division for any temporary period:

Provided that nothing in this article shall prevent a person appointed as an Additional Judge from being appointed as a Judge under article 95 or as an Additional Judge for a further period under this article.

**99. Disabilities of Judges after retirement.–**

(1) A person who has held office as a Judge (otherwise than as an Additional Judge pursuant to the provisions of article 98), shall not, after his retirement or removal therefrom, plead or act before any court or authority or hold any office or profit in the service of the Republic not being a judicial or quasi-judicial office.

(2) Notwithstanding anything contains in clause (1), a person who has held office as a Judge of the High Court Division may, after his retirement or removal therefrom, plead or act before the Appellate Division.

**100. Seat of Supreme Court.–** The permanent seat of the Supreme Court shall be in the capital, but sessions of the High Court Division may be held at such other place or places as the Chief Justice may, with the approval of the President, from time to time appoint.

**101. Jurisdiction of High Court Division.–**

The High Court Division shall have such original, appellate and other jurisdictions and powers as are conferred on it by this Constitution or any other law.

**102. Powers of High Court Division to issue certain orders and directions, etc.–**

(1) The High Court Division on the application of any person aggrieved, may give such directions or orders to any person or authority, including any person performing any function in connection with the affairs of the Republic, as may be appropriate for the enforcement of any of the fundamental rights conferred by part III of this Constitution.

(2) The High Court Division may, if satisfied that no other equally efficacious remedy is provided by law–

(a) on the application of any person aggrieved, make an order–

(i) directing a person performing any functions in connection with the affairs of the Republic or of a local authority, to refrain from doing that which he is not permitted by law to do or to do that which he is required by law to do; or

(ii) declaring that any act done or proceeding taken by a person performing functions in connection with the affairs of the Republic or of a local authority, has been done or taken without lawful authority and is of no legal effect; or

(b) on the application of any person, make an order–

(i) directing that a person in custody be brought before it so that it may satisfy itself that he is not being held in custody without lawful authority or in an unlawful manner; or

(ii) requiring a person holding or purporting to hold a public office to show under what authority he claims to hold that office.

(3) Notwithstanding anything contained in the foregoing clauses, the High Court Division shall have no power under this article to pass any interim or other order in relation to any law to which article 47 applies.

(4) Whereon an application made under clause (1) or sub-clause (a) of clause (2), an interim order is prayed for and such interim order is likely to have the effect of—

(a) prejudicing or interfering with any measure designed to implement any development programme, or any development work; or

(b) being otherwise harmful to the public interest, the High Court Division shall not make an interim order unless the Attorney- General has been given reasonable notice of the application and he (or an advocate authorised by him in that behalf) has been given an opportunity of being heard, and the High Court Division is satisfied that the interim order would not have the effect referred to in sub-clause (a) or sub-clause (b).

(5) In this article, unless the context otherwise requires, “person” includes a statutory public authority and any court or tribunal, other than a court or tribunal established under a law relating to the defence services of Bangladesh or any disciplined force or a tribunal to which article 117 applies.

### **103. Jurisdiction of Appellate Division.—**

(1) The Appellate Division shall have jurisdiction to hear and determine appeals from judgments, decrees, orders or sentences of the High Court Division.

(2) An appeal to the Appellate Division from a judgment, decree, order or sentence of the High Court Division shall lie as of right where the High Court Division—

(a) certifies that the case involves a substantial question of law as to the interpretation of this Constitution; or

(b) has confirmed a sentence of death or sentenced a person to death or to imprisonment for life; or

(c) has imposed punishment on a person for contempt of that division; and in such other cases as may be provided for by Act of Parliament.

(3) An appeal to the Appellate Division from a judgment, decree, order or sentence of the High Court Division in a case to which clause (2) does not apply shall lie only if the Appellate Division grants leave to appeal.

(4) Parliament may by law declare that the provisions of this article shall apply in relation to any other court or tribunal as they apply in relation to the High Court Division.

**104. Issue and execution of processes of Appellate Division.—**

The Appellate Division shall have power to issue such directions, orders, decrees or writs as may be necessary for doing complete justice in any cause or matter pending before it, including orders for the purpose of securing the attendance of any person or the discovery or production of any document.

**105. Review of Judgments or orders by Appellate Division.—** The Appellate Division shall have power, subject to the provisions of any Act of Parliament and of any rules made by that division to review any judgment pronounced or order made by it.

**106. Advisory jurisdiction of Supreme Court.—** If at any time it appears to the President that a question of law has arisen, or is likely to arise, which is of such a nature and of such public importance that it is expedient to obtain the opinion of the Supreme Court upon it, he may refer the question to the Appellate Division for consideration and the divisions may, after such hearing as it thinks fit, report its opinion thereon to the President.

**107. Rule making power of the Supreme Court.—**

(1) Subject to any law made by Parliament the Supreme Court may, with the approval of the President, make rules for regulating the practice and procedure of each division of the Supreme Court and of any court subordinate to it.

(2) The Supreme Court may delegate any of its functions under clause (1) and article 113 and 116 to a division of that Court or to one or more Judges.

(3) Subject to any rules made under this article the Chief Justice shall determine which Judges are to constitute any Bench of a division of the Supreme Court and which Judges are to sit for any purpose.

(4) The Chief Justice may authorise the next most senior-Judge of either Division of the Supreme Court to exercise in that division any of the powers conferred by clause (3) or by rules made under this article.

108. **Supreme Court as court of record.**– The Supreme Court shall be a court of record and shall have all the powers of such a court including the power subject to law to make and order for the investigation of or punishment for any contempt of itself.

109. **Superintendence and control over courts.**– The High Court Division shall have superintendence and control over all courts and tribunals subordinate to it.

110. **Transfer of cases from subordinate courts to High Court**

**Division.**– If the High Court Division is satisfied that a case pending in a Court subordinate to it involves a substantial question of law as to the interpretation of this Constitution, or on a point of general public importance, the determination of which is necessary for the disposal of the case, it shall withdraw the case from that court and may

(a) either dispose of the case itself; or

(b) determine the question of law and return the case to the court from which it has been so withdrawn (or transfer it to another subordinate court) together with a copy of the judgment of the division on such question, and the court to which the case is so returned or transferred shall, on receipt thereof, proceed to dispose of the case in conformity with such judgment.

111. **Binding effect of Supreme Court judgments.** The law declared by the Appellate Division shall be binding on the High Court Division and the law declared by either division of the Supreme Court shall be binding on all courts subordinate to it.

112. **Action in aid of Supreme Court.** All authorities, executive and judicial, in the Republic shall act in aid of the Supreme Court.

113. **Staff of Supreme Court.**

(1) Appointments of the staff of the Supreme Court shall be made by the Chief Justice or such other judge or officer of that Court as he may direct, and shall be made in accordance with rules made with the previous approval of the President by the Supreme Court.

(2) Subject to the provisions of any Act of Parliament the conditions of service of members of the staff of the Supreme Court shall be such as may be prescribed by rules made by that court.”.

32. **Substitution of article 116 of the Constitution.** In the Constitution, for article 116, the following article 116 shall be substituted, namely:

Ò116. **Control and discipline of subordinate courts.** The control (including the power of posting, promotion and grant of leave) and discipline of persons employed in the judicial service

and magistrates exercising judicial functions shall vest in the President and shall be exercised by him in consultation with the Supreme Court.”.

**33. Amendment of article 117 of the Constitution.** In the Constitution, in article 117, in clause (1), for sub-clause (c), the following sub-clause (c) shall be substituted, namely :  
“(c) any law to which clause (3) of article 102 applies.”;

**34. Omission of PART VIA of the Constitution.** In the Constitution, Part VIA shall be omitted.

**35. Amendment of article 118 of the Constitution.** In the Constitution, in article 118,

(a) in clause (1), for the words and commas “a Chief Election Commissioner and such number of other Election Commissioners if any, as the President may from time to time direct,” the following words “the Chief Election Commissioner and not more than four Election Commissioners” shall be substituted; and (b) in clause (5), for the words “Supreme Court”, the following words “Supreme Court” shall be substituted.

**36. Amendment of article 122 of the Constitution.** In the Constitution, in article 122, in clause (2), for the sub-clauses (c) and (d), the following sub-clauses (c), (d) and (e) shall be substituted, namely:

“(c) does not stand declared by a competent court to be of unsound mind;

(d) is or is deemed by law to be a resident of that constituency; and

(e) has not been convicted of any offence under the Bangladesh Collaborators (Special Tribunals) Order, 1972.”.

**37. Amendment of article 123 of the Constitution.**– In the Constitution, in article 123, for clause (3), the following clause (3) shall be substituted, namely:

“(3) A general election of the members of Parliament shall be held

(a) in the case of a dissolution by reason of the expiration of its term, within the period of ninety days preceding such dissolution; and

(b) in the case of a dissolution otherwise than by reason of such expiration, within ninety days after such dissolution: Provided that the persons elected at a general election under subclause

(a) shall not assume office as members of Parliament except after the expiration of the term referred to therein.”.

**38. Amendment of article 125 of the Constitution.** □ In the Constitution, in article 125, at the end of the clause (d) for the full stop, the semi colon shall be substituted, and, after clause (d) the following new clause (e) shall be added, namely :

“(e) A court shall not pass any order or direction, ad interim or otherwise, in relation to an election for which schedule has been announced unless the Election Commission has been given reasonable notice and an opportunity of being heard.”.

**39. Amendment of article 129 of the Constitution.**— In the Constitution, in article 129, in clause (2), for the words “the Supreme Court”, the following words “Supreme Court” shall be substituted.;

**40. Amendment of article 139 of the Constitution.**— In the Constitution, in article 139, in clause (2), for the words “Supreme Court”, the following words “Supreme Court” shall be substituted.;

**41. Amendment of article 141A of the Constitution.**— In the Constitution, in article 141A □  
 (a) in clause (1), after the word “Emergency” the words “for one hundred twenty days” shall be added; (b) in clause (2), in sub-clause (c), the words and comma “,unless before the expiration of that period it has been approved by a resolution of Parliament” shall be omitted; (c) in the proviso of clause (2), after the words “passed by Parliament” the words and comma “Or at the expiration of one hundred and twenty days, whichever occurs first” shall be added.

**42. Substitution of article 142 of the Constitution.** □ In the Constitution, for article 142, the following article 142 shall be substituted, namely: □

“(142. **Power to amend any provision of the Constitution.** □ Notwithstanding anything contained in this Constitution □ (a) any provision thereof may be amended by way of addition, alteration, substitution or repeal by Act of Parliament:

Provided that □

(i) no Bill for such amendment shall be allowed to proceed unless the long title thereof expressly states that it will amend a provision of the Constitution;

(ii) no such Bill shall be presented to the President for assent unless it is passed by the votes of not less than two-thirds of the total number of members of Parliament;

(b) when a Bill passed as aforesaid is presented to the President for his assent he shall, within the period of seven days after the Bill is presented to him assent to the Bill, and if he fails so to do he

shall be deemed to have assented to it on the expiration of that period.”.

**43. Substitution of article 145A of the Constitution.** In the Constitution, for article 145A, the following article 145A shall be substituted, namely:

145A. **International treaties.** All treaties with foreign countries shall be submitted to the President, who shall cause them to be laid before Parliament: Provided that any such treaty connected with national security shall be laid in a secret session of Parliament.”.

**44. Amendment of article 147 of the Constitution.** In the Constitution, in article 147, in clause (4), (i) for sub-clause (b), the following sub-clause (b) shall be substituted, namely: (b) Prime Minister;”;

(ii) for sub-clause (d), the following sub-clause (d) shall be substituted, namely:

(d) Minister, Minister of State or Deputy Minister;”.

**45. Substitution of article 150 of the Constitution.** In the Constitution, for article 150, the following article 150 shall be substituted, namely:

150. **Transitional and temporary provisions.** (1) The provisions set out in the Fourth Schedule of the Constitution at the time of the commencement of this Constitution on the 16th day of December, 1972 shall have effect as transitional and temporary provisions notwithstanding anything contained in any other provisions of this Constitution.

(2) In the period between the 7th day of March, 1971 and the date of commencement of this Constitution on the 16th day of December, 1972, the historical speech delivered by Bangabandhu Sheikh Mujibur Rahman, the Father of the Nation, in the Rescource Moidan on the 7th day of March, 1971, set out in the Fifth Schedule of the Constitution, the telegram of the declaration of independence of Bangladesh made by Sheikh Mujibur Rahman, the Father of the Nation on the 26th day of March, 1971 set out in the Sixth Schedule and the proclamation of independence of the Mujibnagar Government on the 10th day of April, 1971 set out in the Seventh Schedule are the historical speech and instruments of the independence and the struggle of freedom of Bangladesh which shall be deemed to be the transitional and the temporary provision for the said period.”.

**46. Amendment of article 152 of the Constitution.** In this Constitution, in article 152, in clause (1), (a) The expression “Advisor” shall be omitted;



(b) for the words and expressions "the Appellate Division" means the Appellate Division of the Supreme Court" and "The Chief Justice" means the Chief Justice of Bangladesh", the following words and expressions "The Chief Justice" means the Chief Justice of Bangladesh" and "the Appellate Division" means the Appellate Division of the Supreme Court" shall be substituted respectively.

(c) after the expression "clause", the following new expression shall be inserted, namely: "court" means any court of law including Supreme Court"; and

(d) the expression "Chief Advisor" shall be omitted.

**47. Amendment of First Schedule of the Constitution.** In Constitution, in the First Schedule, after the words, figures, comma, brackets and full stop "The Bangladesh (Taking over of Control and Management of Industrial and Commercial Concerns) Order, 1972 (A.P.O No.1 of 1972) the words, figures, comma, brackets and full stop "The Bangladesh Collaborators (Special Tribunals) Order, 1972 (P.O.No.8 of 1972)." shall be inserted.

**48. Amendment of the Third Schedule of the Constitution.** In the Constitution, in the Third Schedule (a) In Form 1, for the words "Chief Justice" the word "Speaker" shall be substituted;

(b) Form 1A shall be omitted;

(c) In Form 2, for the words "Prime Minister", The following words "Prime Minister" shall be substituted;

(d) Form 2A shall be omitted;

(e) for Form 6, the following Form 6 shall be substituted, namely :

**6. Chief Justice or Judges.** An oath (or affirmation) in the following forms shall be administered, in the case of the Chief Justice by the President, and in the case of a Judge appointed to a division, by the Chief Justice

I, ....., having been appointed Chief Justice of Bangladesh (or Judge of the Appellate/High Court Division of the Supreme Court) do solemnly swear (of affirm) that I will faithfully discharge the duties of my office according to law :

That I will bear true faith and allegiance to Bangladesh : That I will preserve, protect and defend the Constitution and the laws of Bangladesh :

And that I will do right to all manner of people according to law, without fear of favour,

affection or ill-will."; and (f) in Form 8, for the words "Chief Justice" the words "Chief Justice"

shall be substituted.

**49. Amendment of the Fourth Schedule of the Constitution.** In the Constitution, in the Fourth Schedule,

(a) For the word and figure "Article 150", the word, figure and brackets "Article 150(1)" shall be substituted; and

(b) for Articles 12, the following Article 12 shall be substituted, namely :

**12. Local government.** Until elections are held to constitute the local government bodies referred to in article 59, the administrative arrangements existing in the different administrative units of the Republic immediately before the commencement of this Constitution shall continue, subject to such changes as may be made by law."; and

(c) Articles 3A, 6A, 6B, 18, 19, 20, 21, 22 and 23 shall be omitted.

**50. Addition of certain new Schedules in the Constitution.** In the Constitution, after the Fourth Schedule the following new Schedules respectively Fifth, Sixth and Seventh shall be added, namely:

#### FIFTH SCHEDULE

[Article 150(2)]

HISTORIC SPEECH OF THE FATHER OF THE NATION, BANGABANDHU

SHEIKH MUJIBUR RAHMAN OF THE 7TH MARCH, 1971

My brothers,

I have come before you today with a heart laden with sadness. You are aware of everything and know all. We have tried with our lives. And yet the sadness remains that today, in Dhaka, Chittagong, Khulna, Rajshahi and Rangpur the streets are soaked in the blood of my brothers.

Today the people of Bengal desire emancipation, the people of Bengal wish to live, the people of Bengal demand that their rights be acknowledged. What wrong have we committed? Following the elections, the people of Bangladesh entrusted me and the Awami League with the totality of their electoral support. It was our expectation that the Parliament would meet, there we would frame our Constitution, that we would develop this land, that the people of this country would achieve their economic, political and cultural freedom. But it is a matter of grief that today we are constrained to say in all sadness that the history of the past twenty three years has been the history of a persecution of the people of Bengal, a history of the blood of the people of

Bengal. This history of the past twenty three years has been one of the agonising cries of men and women.

The history of Bengal has been a history where the people of this land have made crimson the streets and highways of this land with their blood. We gave blood in 1952; in 1954, we won the elections and yet were not permitted to exercise power. In 1958, Ayub Khan imposed Martial Law and kept the nation in a state of slavery for ten long years. On 7 June 1966, as they rose in support of the Six-Point movement, the sons of my land were mown down in gunfire. When Yahya Khan took over once Ayub Khan fell in the fury of the movement of 1969, he promised that he would give us a Constitution, give us democracy. We put our faith on him. And then history moved a long way, the elections took place. I have met President Yahya Khan. I appealed to him, not just as the majority leader in Bengal but also as the majority leader in Pakistan, to convene the National Assembly on 15 February. He did not pay heed to my appeal. He paid heed to Mr. Bhutto. And he said that the assembly would be convened in the first week of March. I went along with him and said we would sit in the parliament. I said that we would discuss matters in the Assembly. I even went to the extent of suggesting that despite our being in a majority, if anyone proposes anything that is legitimate and right, we would accept his proposal. Mr. Bhutto came here. He held negotiations with us, and when he left, he said that the door to talk had not closed, that more discussions would take place. After that, I spoke to other political leaders. I told them to join me in deliberations so that we could give shape to a Constitution for the country. But Mr. Bhutto said that if members elected from West Pakistan came here, the Assembly would turn into a slaughter house, an abattoir. He warned that anyone who went to the Assembly would end up losing his life. He issued dire warnings of closing down all the shop from Peshawar to Karachi if the Assembly Session went ahead. I said that the Assembly Session would go ahead. And then, suddenly, on the first of March the Assembly Session was put off. Mr. Yahya Khan, in exercise of his powers as president, had called the National Assembly into Session; and I had said that I would go to the Assembly. Mr. Bhutto said he would not go. Thirty five members came here from West Pakistan. And suddenly the Assembly was put off. The blame was placed squarely on the people of Bengal, the blame was put at my door. Once the Assembly meeting was postponed, the people of this land decided to put up resistance to the act. I enjoined upon them to observe a peaceful general strike. I instructed them to close down all factories and industrial installations. The people responded positively to my directives. Through

sheer spontaneity they emerged on to the streets. They were determined to pursue their struggle through peaceful means. What have we attained? The weapons we have bought with our money to defend the country against foreign aggression are being used against the poor and down-trodden of my country today. It is their hearts the bullets pierce today. We are the majority in Pakistan. Whenever we Bengalis have attempted to ascend to the heights of power, they have swooped upon us. I have spoken to him over telephone. I told him, æMr. Yahya Khan, you are the President of Pakistan. Come, be witness to the inhuman manner in which the people of my Bengal are being murdered, to the way in which the mothers of my land are being deprived of their sons.” I told him, Òcome, see and dispense justice”. But he construously said that I had agreed to participate in a Round Table Conference to be held on 10 March. I have already said a long time ago, what RTC? With whom do I sit down to talk? Do I fraternise with those who have taken the blood of my people? All of a sudden, without discussing matters with me and after a secret meeting lasting five hours, he has delivered a speech in which he has placed all responsibility for the impasse on me, on the people of Bengal. My brothers, They have called the Assembly for the twenty-fifth. The marks of blood have not yet dried up. I said on the tenth that Mujibur Rahman would not walk across that blood to take part in a Round Table Conference. You have called the Assembly. But my demands must be met first. Martial Law must be withdrawn. All military personnel must be taken back to the barracks. An inquiry must be conducted into the manner in which the killings have been caused. And power must be transferred to the elected representatives of the people. And only then shall we consider the question of whether or not to sit in the National Assembly. Prior to the fulfilment of our demands, we cannot take part in the Assembly. I do not desire the office of Prime Minister. I wish to see the rights of the people of this country established. Let me make it clear, without ambiguity, that beginning today, in Bangladesh, all courts, magistracies, government offices and educational institutions will remain closed for an indefinite period. In order that the poor do not suffer, in order that my people do not go through pain, all other activities will continue, will not come within the ambit of the general strike from tomorrow. Rickshaws, horse carriages, trains and river vessels will ply. The Supreme Court, High Court, Judge’s Court, semi-government offices, WAPDA,- nothing will work. Employees will collect their salaries on the twenty-eighth. But if the salaries are not paid, if another bullet is fired, if any

more of the people are murdered, it is my directive to all of you: turn every house into a fortress, resist the enemy with everything you have. And for the sake of life, even if I am not around to guide you, direct you, close off all roads and pathways. We will strive them into submission. We will submerge them in water. You are our brothers. Return to your barracks and no harm will come to you. But do not try to pour bullets into my heart again. You cannot keep seventy five million people in bondage. Now that we have learnt to die, no power on earth can keep us in subjugation. For those who have embraced martyrdom, and for those who have sustained injuries we in the Awami League will do all we can to relieve their tragedy. Those among you who can please lend a helping hand through contributing to our relief committee. The owners of industries will make certain that the wages of workers who have taken part in the strike for the past week are duly paid to them. I shall tell employees of the government, my word must be heard, and my instructions followed. Until freedom comes to my land, all taxes will be held back from payment. No one will pay them. Bear in mind that the enemy has infiltrated our ranks to cause confusion and sow discord among us. In our Bengal, everyone, be he Hindu or Muslim, Bengali or non-Bengali, is our brother. It is our responsibility to ensure their security. Our good name must not be sullied. And remember, employees at radio and television, if radio does not get our message across, no Bengali will go to the radio station. If television does not put forth our point of view, no Bengali will go to television. Banks will remain open for two hours to enable people to engage in transactions. But there will be no transfer of even a single penny from East Bengal to West Pakistan. Telephone and telegram services will continue in East Bengal and news can be dispatched overseas. But if moves are made to exterminate the people of this country, Bengalis must act with caution. In every village, every neighbourhood, set up Sangram Parishad under the leadership of the Awami League. And be prepared with whatever you have. Remember: Having mastered the lesson of sacrifice, we shall give more blood. God willing, we shall free the people of this land. The struggle this time is a struggle for emancipation. The struggle this time is a struggle for independence. *Joi Bangla!*

## SIXTH SCHEDULE

[Article 150(2)]

### DECLARATION OF INDEPENDENCE

BY

THE FATHER OF THE NATION, BANGABANDHU SHEIKH MUJIBUR  
RAHAMAN SHORTLY AFTER MIDNIGHT OF 25TH MARCH, i.e. EARLY  
HOURS OF 26TH MARCH, 1971

This may be my last message, from today Bangladesh is independent. I call upon the people of Bangladesh wherever you might be and with whatever you have, to resist the army of occupation to the last. Your fight must go on until the last soldier of the Pakistan occupation army is expelled from the soil of Bangladesh and final victory is achieved.

**Sheikh Mujibur Rahman**

26 March 1971”

## SEVENTH SCHEDULE

[Article 150 (2)]

### THE PROCLAMATION OF INDEPENDENCE

MUJIBNAGAR, BANGLADESH

Dated 10th day of April, 1971.

WHEREAS free elections were held in Bangladesh from 7th December, 1970 to 17th January, 1971, to elect representatives for the purpose of framing a Constitution,

AND

WHEREAS at these elections the people of Bangladesh elected 167 out of 169 representatives belonging to the Awami League,

AND

WHEREAS General Yahya Khan summoned the elected representatives of the people to meet on the 3rd March, 1971, for the purpose of framing a Constitution,

AND

WHEREAS the Assembly so summoned was arbitrarily and illegally postponed for an indefinite period,

AND

WHEREAS instead of fulfilling their promise and while still conferring with the representatives of the people of Bangladesh, Pakistan authorities declared an unjust and treacherous war,

AND

WHEREAS in the facts and circumstances of such treacherous conduct BangaBandhu Sheikh Mujibur Rahaman, the undisputed leader of 75 million of people of Bangladesh, in due fulfilment of the legitimate right of selfdetermination of the people of Bangladesh, duly made a declaration of independence at Dacca on March 26, 1971, and urged the people of Bangladesh to defend the honour and integrity of Bangladesh,

AND

WHEREAS in the conduct of a ruthless and savage war the Pakistani authorities committed and are still continuously committing numerous acts of genocide and unprecedented tortures, amongst others on the civilian and unarmed people of Bangladesh,

AND

WHEREAS the Pakistan Government by levying an unjust war and committing genocide and by other repressive measures made it impossible for the elected representatives of the people of Bangladesh to meet and frame a Constitution, and give to themselves a Government,

AND

WHEREAS the people of Bangladesh by their heroism, bravery and revolutionary fervour have established effective control over the territories of Bangladesh,

We the elected representatives of the people of Bangladesh, as honour bound by the mandate given to us by the people of Bangladesh whose will is supreme duly constituted ourselves into a Constituent Assembly, and having held mutual consultations, and

in order to ensure for the people of Bangladesh equality, human dignity and social justice, declare and constitute Bangladesh to be a sovereign People's Republic and thereby confirm the declaration of independence already made by BangaBandhu Sheikh Mujibur Rahaman, and do hereby affirm and resolve that till such time as a Constitution is framed, BangaBandhu Sheikh Mujibur Rahaman shall be the President of the Republic and that Syed Nazrul Islam shall be the Vice-President of the Republic, and that the President shall be the Supreme Commander of all the Armed Forces of the Republic, shall exercise all the Executive and Legislative powers of the Republic including the power to grant pardon, shall have the power to appoint a Prime Minister

and such other Ministers as he considers necessary, shall have the power to levy taxes and expend monies, shall have the power to summon and adjourn the Constituent Assembly, and do all other things that may be necessary to give to the people of Bangladesh and orderly and just Government. We the elected representatives of the people of Bangladesh do further resolve that in the event of there being no President or the President being unable to enter upon his office or being unable to exercise his powers due to any reason whatsoever, the Vice-President shall have and exercise all the powers, duties and responsibilities herein conferred on the President, We further resolve that we undertake to observe and give effect to all duties and obligations that devolve upon us as a member of the family of nations and to abide by the Charter of the United Nations. We further resolve that this Proclamation of Independence shall be deemed to have come into effect from 26th day of March, 1971. We further resolve that in order to give effect to this instrument we appoint Prof. Yusuf Ali our duly Constituted potentiary and to give to the President and the Vice-President oaths of office.

**PROF. YUSUF ALI**

Duly Constituted Potentiary  
By and under the authority of  
the Constituent Assembly of  
Bangladesh.”

Ashfak Hamid  
Secretary



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