

Constitution Reform in Bangladesh: Political Reconciliation in Contentious Constitutional Issues

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Abstract: Recent demand for constitutional reform in Bangladesh has highlighted the need for a constitutional framework capable of promoting democratic governance, political stability, inclusion, and public trust in state institutions. This paper contends that political reconciliation is indispensable to resolving deeply contested constitutional issues and to ensuring the legitimacy and sustainability of the ongoing constitutional reform process. Therefore, the paper, through a qualitative analysis of legal documents, political debates, previous constitutional amendments, and judicial decisions, examines how political polarisation, institutional fragility, and the partisan use of constitutional amendments have hindered consensus-driven constitutional development. Particular attention is given to three contentious constitutional issues: secularism versus state religion, the procedure for judges' removal (in the context of judicial independence), and election-time (interim/caretaker) governance. The paper further explores the challenges of achieving political reconciliation in a deeply divided political environment and evaluates the role of political parties in fostering dialogue, trust-building, and stakeholder participation. The analysis demonstrates that constitutional reforms undertaken without broad political consensus risk undermining democratic institutions, weakening public trust, and perpetuating political conflict. The study concludes that meaningful constitutional reform requires transcending partisan interests through inclusive dialogue and collaborative engagement among political actors and other stakeholders. Such an approach is essential to align constitutional frameworks with the democratic aspirations of Bangladesh's diverse populace and to promote long-term political stability.

Keywords: Caretaker Government, Constitutional Amendment, Judicial Independence, Political Reconciliation, Secularism, State Religion.

1. Introduction

Since its adoption in 1972, the Constitution of Bangladesh has undergone several amendments that reflect the country's turbulent political history, ideological shifts,

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and efforts to solidify democracy. The constitutional history has also been characterised by periods of military interventions, authoritarian rule, and controversial amendments that were frequently motivated more by the interests of influential political figures than by the will of the general populace. This has sparked ongoing discussions about the distribution of power, the place of religion in the state, the independence of the Judiciary, and the impartiality of election procedures. These discussions have focused heavily on the role of political parties, especially the Bangladesh Nationalist Party (BNP) and the Awami League (AL). Historically, both parties have consolidated power through constitutional amendments, frequently at the price of institutional integrity and democratic ideals. Efforts to achieve significant and inclusive constitutional reform have been more difficult due to Bangladesh's adversarial political landscape, marked by extreme polarisation and a lack of trust between the main parties.

However, the changed political landscape in 2024 has reignited widespread demands for comprehensive constitutional reform. Economic grievances, political repression, and public disillusionment with the existing governance framework have brought together diverse segments of society, including students, civil society organisations, ordinary people, labourers, and opposition political parties. Calls for increased accountability, transparency, and democratic governance through substantive constitutional reform have emerged as a key demand to address structural problems and rebuild public confidence in constitutional institutions. The critical areas, requiring urgent constitutional attention, include the excessive concentration of power in the executive branch, the lack of judicial independence, the politicisation of key institutions such as the Election Commission, and the unresolved tension between secularism and the state's recognition of Islam. To sum up, Bangladesh is now witnessing a growing demand for a more inclusive and participatory constitutional framework that reflects the aspirations of Bangladesh's diverse population.

Against this backdrop, this paper examines the major constitutional issues that require political reconciliation in Bangladesh's ongoing reform discourse. Since it is not possible to address every issue within the scope of a single study, the paper focuses on three of the most contentious constitutional questions: secularism versus state religion, the caretaker/interim government system, and the procedure for removing judges in the context of judicial independence. In analysing these issues, the study reviews the previous constitutional amendments, relevant judicial decisions, and contemporary political developments as reference points for understanding the current reform demands. The paper employs a qualitative analytical methodology to examine constitutional provisions, amendment processes, judicial pronouncements, political debates, and reform proposals. It further explores the challenges of achieving political reconciliation in a deeply polarised environment and evaluates the role of political parties in fostering inclusive, consensus-driven constitutional reform. The paper argues that sustainable constitutional reform in Bangladesh requires transcending partisan interests through meaningful political

dialogue, institutional accountability, and broader stakeholder participation to ensure that the constitutional framework reflects the democratic aspirations of the people.

2. Review of Previous Amendments to the Constitution

The amendments made to a country's Constitution over the years reflect the changing socio-political dynamics of that country. Carefully reviewing these amendments can help to understand how the Constitution has evolved and whether certain amendments have achieved their intended goals or inadvertently created problems. It also ensures that the Constitution remains a living document, recognising constitutional evolution and adapting to the needs and challenges of the times. Therefore, this section aims to thoroughly review the previous amendments to the Constitution of Bangladesh, as they are essential for identifying key issues and ensuring that the current reform movement addresses the country's evolving needs.

So far, the Constitution of Bangladesh has been amended seventeen times, most of which have unfortunately failed to pass the test of political inclusivity and reconciliation. An absolute party majority in the Parliament was deployed abusively in some amendments.¹ Therefore, several amendments to the Constitution have been annulled by the Supreme Court of Bangladesh on substantive grounds so far.

Although the First Amendment is considered a legitimate response to the needs of that time, i.e., to ensure the ensuing trial of war crimes and crimes against humanity committed during Bangladesh's liberation war of 1971,² it was not free from scepticism because the then-ruling party, the Bangladesh Awami League, had an absolute majority in Parliament³ and the Amendment Bill was passed in the House without sufficient internal and external deliberation.⁴ The Second Amendment was also passed with almost no deliberation or opposition, though its importing provisions on emergency and preventive/executive detention without trial had a substantial impact on the fundamental rights and constitutionalism.⁵ Critics mark this amendment as the beginning of a paternalistic or autocratic terrain in the constitutional history of Bangladesh.⁶ Compared to other amendments, the Third Amendment is unique in the constitutional history of Bangladesh as it was a court-advised amendment.⁷ It facilitated the implementation of the 1974 Land Boundary Agreement between Bangladesh and India, which aimed to resolve border disputes through exchanging some enclaves between the two countries.

¹ Ridwanul Hoque, 'Deconstructing Public Participation and Deliberation in Constitutional Amendment in Bangladesh' (2021) 21(2) Australian Journal of Asian Law 7, 8.

² Muhammad A. Hakim and Ahmed Shafiqul Huque, 'Governmental Change and Constitutional Amendments in Bangladesh' (1995) 2(2) South Asian Survey 255.

³ Bangladesh Awami League had 293 out of 300 general seats in the Parliament.

⁴ The Amendment was passed in three days (12-15 July 1973) in a 254-0 vote.

⁵ Constitution (Second Amendment) Act 1973 (Act No. XXIV of 1973) ss 3 & 6.

⁶ Hoque (n 1) 12.

⁷ *Kazi Mukhlesur Rahman v Bangladesh* [1974] 26 DLR (AD) 44.

The Fourth Amendment to the Constitution, passed in a highly expedited process bypassing routine legislative procedures, significantly altered the country's political system. It replaced the multi-party parliamentary system with a one-party presidential system, concentrating power in the hands of the President.⁸ The amendment also curtailed judicial independence, allowing for the removal of judges at the President's discretion.⁹ Additionally, it stripped the Supreme Court of its authority to enforce constitutional rights.¹⁰ Therefore, the amendment is often viewed as a 'constitutional coup' due to its drastic and undemocratic changes.¹¹ Following this Amendment, a radical political change took place through the brutal assassination of the then-president, Bangabandhu Sheikh Mujibur Rahman, on 15 August 1975. The country entered long-drawn-out military autocratic regimes that lasted until December 1990.¹² During these military regimes, the Constitution was amended six times. Among these six amendments (from the fifth to the tenth), the fifth, seventh, and eighth amendments are notable for bringing drastic constitutional changes.

The Fifth Amendment was passed to legally validate the actions taken by the martial law administrator between 15 August 1975 and 9 April 1979.¹³ It altered the fundamental principles of state policy, shifting from secularism and socialism to a more religion-based, market-oriented approach.¹⁴ Besides, the Amendment, on the one hand, reinstated the multi-party parliamentary system and, on the other, continued the centralisation of power under the President.¹⁵ The amendment also reinstated judicial independence by restoring the Judiciary's power to review constitutional matters.¹⁶ In addition, it introduced the concept of the Supreme Judicial Council, a constitutional body responsible for ensuring the accountability of judges in the higher Judiciary, particularly those of the Supreme Court.¹⁷ Though the amendment retained the President's power to remove Supreme Court judges from office, it provided a more structured process that limited the President's unchecked authority under the Fourth Amendment.

⁸ Constitution (Fourth Amendment) Act 1975 (Act No. II of 1975) ss 4 & 23.

⁹ *ibid*, s 15.

¹⁰ *ibid*, ss 3 & 17.

¹¹ Dilara Choudhury, *Constitutional Developments in Bangladesh: Stresses and Strains* (University Press Limited 1995) 45.

¹² Hoque (n 1) 13.

¹³ Constitution (Fifth Amendment) Act 1979. The Act amended the Fourth Schedule to the Constitution by an addition of new paragraph 18 thereto which provided that "all Proclamations, Proclamation Orders, Martial Law Regulations, Martial Law Orders, and other laws made during the period between August 15, 1975 and April 9, 1979 (both days inclusive), all amendments, additions, modifications, substitutions and omissions made in the Constitution during the said period by any such Proclamation, all orders made, acts and things done, and actions and proceedings taken, ...are hereby ratified and confirmed and are declared to be validly made, done or taken and shall not be called in question in or before any court, tribunal or authority on any ground whatsoever."

¹⁴ *ibid*. See also Proclamations (Amendment) Order 1977 (Proclamation Order No. 1 of 1977).

¹⁵ *ibid*.

¹⁶ *ibid*.

¹⁷ *ibid*; See also Second Proclamation (Tenth Amendment) Order 1977.

However, though the Supreme Court declared that all the Martial Law Proclamations, Regulations, and Orders promulgated/made by the usurpers, as ratified or confirmed by the Fifth Amendment, were illegal, void, and unconstitutional in the eyes of the law, the provision for the Supreme Judicial Council was upheld.¹⁸ The Court opined that removing a Judge of the Supreme Court of Bangladesh by the Supreme Judicial Council is more transparent than other methods and safeguards judicial independence.¹⁹ However, this observation was not duly considered by the eleventh Parliament. In 2014, the Sixteenth Amendment to the Constitution reinstated the original Article 96 of the Constitution of 1972, which provided for removal by the President upon a resolution passed by Parliament with a two-thirds majority for proven misconduct. The ruling political alliance tabled and passed the amendment bill without any negative votes, as the major opposition political parties boycotted the election of this eleventh Parliament. However, the amendment's constitutionality having been challenged, both the High Court Division and Appellate Division of the Supreme Court declared the Sixteenth Amendment colourable, ultra vires, and void.²⁰

Following the footsteps of the first martial law administrator, the second martial law administrator tabled and approved the Seventh Amendment to ratify and confirm all of his actions taken in the military regime, during which the Constitution was suspended. After putting a stamp of constitutionality on the regime, the Constitution was restored, and a parliamentary election was held in 1988. However, the election was boycotted by the main oppositions, the Awami League and the BNP; therefore, the Parliament was in fact in control of the ruling Jatiya Party without any real opposition.²¹ With absolute control in Parliament, the Jatiya Party passed the Eighth Amendment to the Constitution on 7 June 1988, introducing Islam as the state religion by inserting Article 2A and establishing six permanent High Court benches outside Dhaka to decentralise the Judiciary.²² It was argued that the Judiciary was decentralised to make it more accessible to people in other regions. However, the decentralisation was criticised because it rendered the top judges subservient by making them transferable from one place to another,²³ and violated the basic

¹⁸ *Khandker Delwar Hossain, Secretary, BNP & another v Bangladesh Italian Marble Works & others* [2010] 62 DLR (AD) 298.

¹⁹ *ibid.*

²⁰ *Advocate Asaduzzaman Siddiqui and others v Government of Bangladesh and Others* (Writ Petition No. 9989 of 2014) [2016] 8 ALR (HCD) 161; *Government of Bangladesh and Others v Advocate Asaduzzaman Siddiqui and others* (Civil Appeal No 06 of 2017) [2019] 71 DLR (AD) 52; *Government of Bangladesh & others v Advocate Asaduzzaman Siddiqui & others* [2024] Civil Review Petition No.751 of 2017.

²¹ The ruling Jatiya Party had won 251 out of 300 seats. Though there were 25 independent members, they were all under the ruling party's control. Please see Nizam Ahmed, *The Parliament of Bangladesh* (Ashgate 2002) 80.

²² See Constitution (Eighth Amendment) Act 1988 (Act No. XXX of 1988).

²³ *ibid.*

structure of the Constitution, particularly the independence and unitary character of the Judiciary.²⁴

The Sixth and Ninth Amendments to the Constitution were related to the elections of the Vice President and the President. The Sixth Amendment to the Constitution, passed in 1981, provides that if the Vice President is elected as President, he shall be believed to have left his office on the date on which he enters upon the office of President.²⁵ The Ninth Amendment of 1989 provided for the direct voting of the Vice-President and limited a person from holding the office of the President for two successive terms of five years each.²⁶

The Tenth Amendment to the Constitution, adopted in 1990, reserved 30 parliamentary seats for women members, who will be elected by the members of Parliament.²⁷ Initially, the original Constitution reserved 15 seats for women for 10 years, but no reserved seats were maintained from 1979 to 1986. However, the Tenth Amendment, passed by the Jatiya Party, reserved the seats for the next 10 years. Later, through the Fourteenth Amendment brought by BNP, the seats were increased to 45 and extended for the next 10 years.²⁸ The Fifteenth Amendment, presented by the AL, further increased the number of reserved seats to 50 and extended the provision until 2024.²⁹ Lastly, the Seventeenth Amendment extended the tenure of the 50 reserved seats for women for another 25 years.³⁰ Because all the parties that have ruled the country so far have reserved parliamentary seats for women, the issue has gained broader political consensus. However, it has never gone beyond the scepticism due to the indirect election process. As they are elected by other MPs rather than directly by voters, this limits women MPs' accountability to the general public.

A political consensus was also witnessed during the Twelfth Amendment of the Constitution, when all major political parties agreed to return to the parliamentary form of democracy.³¹ Therefore, the amendment was passed with overwhelming

²⁴ *Anwar Hossain Chowdhury vs. Government of the People's Republic of Bangladesh & others* (1989) 41 DLR (AD) 165.

²⁵ Constitution (Sixth Amendment) Act 1981 (Act No. XIV of 1981) s 2.

²⁶ See Constitution (Ninth Amendment) Act 1989 (Act No. XXXVIII of 1989).

²⁷ Constitution (Tenth Amendment) Act 1990, s 2.

²⁸ Constitution (Fourteenth Amendment) Act 2004 (Act No. XIV of 2004) s 3.

²⁹ Constitution (Fifteenth Amendment) Act 2011 (Act No. XIV of 2011) s 23.

³⁰ Constitution (Seventeenth Amendment) Act 2018 (Act No 29 of 2018) s 2.

³¹ Choudhury (n 11) 82. A 15-member committee comprising members from both the ruling and the opposition was formed on 9 July 1991. The committee unanimously decided on the parliamentary form of democracy and submitted its report on 28 July 1991. Following this consensus, the amendment Bill was passed on 6 August 1991. Finally, a constitutional referendum was held in Bangladesh on 15 September 1991. Voters were asked, "Should or not the President assent to the Constitution (Twelfth Amendment) Bill, 1991 of the People's Republic of Bangladesh?" The result saw 83.6% vote in favour, with a turnout of 35.2%. Thus, the amendment led to the reintroduction of parliamentary government, with the President becoming the constitutional head of state, but the

support from the opposition, and to date, it is the only amendment to pass a referendum. On the other hand, the Thirteenth Amendment to the Constitution reflected political consensus, though a one-party parliament passed it without dialogue with the opposition or other sectors of society, and without any input from parliamentary committees. The political background³² in which the amendment was brought was the reason for its wider political acceptance. The amendment provided for an apolitical caretaker government with the principal duty of conducting 'fair and free' national elections within nine months of Parliament's dissolution.³³ Under such caretaker governments, the next three general elections were held in 1996, 2001, and 2008. Another national election was held under a caretaker government in 1991, which is considered the most credible election in history. But the caretaker government of 1991 was formed through a political consensus without any constitutional arrangement,³⁴ and that is why it was later approved by an amendment to the Constitution.³⁵ Despite the political consensus, the Supreme Court of Bangladesh declared the caretaker government system unconstitutional.³⁶ Among the principal grounds of this judgement were the provisions relating to the appointment of the Chief Adviser among the retired Chief Justices or among the retired Judges of the Appellate Division who had retired last, which infringed the independence of the Judiciary.³⁷ The Constitution's Fourteenth Amendment and the subsequent political events justify this finding of the Supreme Court.

Prime Minister as the executive head. It also abolished the position of Vice-President and made provisions for the indirect election of the President by the members of Parliament.

³² Facing humiliating defeats by the Awami League in the elections to Dhaka and Chittagong city corporations, the BNP employed all its energy to win the Magura by-elections in 1994 to back their claim that their popularity had not decreased. It led the then opposition (the Awami League) to launch a strong movement demanding a constitutional system involving an interim non-party CTG for conducting elections. The BNP-led government initially rejected the demand and made a blunder by holding controversial parliamentary polls on February 15, 1996, which all major opposition parties boycotted.

³³ See Constitution (Thirteenth Amendment) Act 1996.

³⁴ Political alliances running a united movement against the Ershad regime in a joint meeting presided over by BNP leader Major (Retd) Majedul Huq unanimously nominated incumbent Chief Justice of the Supreme Court, Mr. Shahabuddin Ahmed, for the post of Vice President. They conveyed the name of their nominee to the government, and they also handed over a copy of their choice to the Chief Justice Shahabuddin Ahmed. Chief Justice Shahabuddin Ahmed accepted his nomination on condition of a necessary constitutional amendment allowing him to return to his present position after the election. Accordingly, President Ershad appointed the Chief Justice as Vice President and quit his office on December 6, 1990. Acting President Shahabuddin Ahmed urged on March 1, 1991, the new Parliament to amend the Constitution, allowing him to return to his previous post as Chief Justice of the Supreme Court. Accordingly, for greater public interest, on July 2, 1991, Law and Justice Minister Mirza Golam Hafiz introduced the Constitution (Eleventh Amendment) Bill, 1991 in the House to amend the fourth schedule of the Constitution for ratification and confirmation of the appointment of the Chief Justice Shahabuddin Ahmed as Vice-President and facilitating his return to the office of the Chief Justice of Bangladesh.

³⁵ See Constitution (Eleventh Amendment) Act 1991.

³⁶ *Abdul Mannan Khan vs. Government of Bangladesh & others* (2012) 64 DLR (AD) 169.

³⁷ *ibid.*, para 1051.

Under the Fourteenth Amendment to the Constitution, the BNP raised the retirement age of Supreme Court judges³⁸ so that a judge with a pro-BNP political view could be appointed as the Chief Advisor to the next caretaker government.³⁹ The opposition party, Awami League, boycotted the Parliament when the Amendment Bill was tabled. Due to the opposition's weak presence in Parliament, the BNP passed the amendment with an absolute majority. However, amid vehement opposition from the Awami League, the immediate past Chief Justice KM Hassan declined to accept the post of Chief Adviser. While there were four other options to follow, the then-president, in violation of constitutional provisions, assumed the functions of the Chief Adviser. Ultimately, the persistent political momentum of the Awami League compelled him to resign as Chief Adviser and to appoint a retired Governor of the Bangladesh Bank to that office. Moreover, that caretaker government unconstitutionally governed the country for two years, though the Constitution limited the term to ninety days.⁴⁰

However, following the Supreme Court's judgment in the Thirteenth Amendment case (on caretaker government system), the Awami League introduced the Constitution (Fifteenth Amendment) Act 2011 to abolish the Non-Party Caretaker Government.⁴¹ The 345-member legislature approved the amendment by a vote of 291 to 1, which the main opposition BNP boycotted. Apart from abolishing the caretaker government, this amendment is significant for several reasons. It reinstated secularism as a state principle while retaining Islam as the state religion, reflecting a compromise between Bangladesh's secular heritage and its Muslim-majority identity.⁴² Moreover, it incorporated provisions to honour the Liberation War spirit⁴³ and the contributions of Bangabandhu Sheikh Mujibur Rahman,⁴⁴ reinforcing the ruling party's political narrative. It also included certain basic structure provisions and made them unamendable, even by constitutional amendments.⁴⁵ However, the abolition of the caretaker government deepened political polarisation, as opposition parties saw it as a unilateral move that eroded trust in the electoral process and constitutional governance.

Therefore, most constitutional amendments have been used to serve the ruling party's interests, weakening checks and balances, limiting political participation, and eroding democratic norms, such as accountability, transparency, and the rule of law. Moreover, the ability of key constitutional institutions, such as the Election Commission and the Judiciary, to function impartially has been weakened by frequent amendments. Thus, the lack of consensus-driven reforms and the unilateral

³⁸ Constitution (Fourteenth Amendment) Act 2004, s 4.

³⁹ See Section 3.2 of this paper for more details.

⁴⁰ *Abdul Mannan Khan* (n 36) para 1031.

⁴¹ See Constitution (Fifteenth Amendment) Act 2011 (Act XIV of 2011).

⁴² *ibid*, ss 4, 8 & 11.

⁴³ *ibid*, s 3.

⁴⁴ *ibid*, s 5.

⁴⁵ *ibid*, s 7.

nature of amendments have created long-term challenges for political stability and democracy.

3. Key Contentious Issues Requiring Political Reconciliation

Inclusive, consensus-driven reforms are essential to achieve sustainable democratic progress, address controversial issues, and restore trust in constitutional institutions. Only then can it be ensured that the Constitution serves all the citizens equitably. The previous section shows that secularism, state religion, caretaker government, and judicial independence have been central to Bangladesh's previous constitutional amendments because these issues significantly impact the nation's political structure, governance, and social cohesion. These three issues also raise fundamental questions about democracy, the rule of law, national identity, and political stability. However, previous constitutional amendments have frequently been motivated by the desire to benefit the ruling party or limit the opposition's influence. These issues' direct impacts on the balance of power among the branches of government make them key targets for constitutional amendment.

3.1. Secularism versus State Religion

The tension between secularism and state religion has been a significant and evolving issue in Bangladesh's political and social context. The first Constitution of Bangladesh enshrined secularism as one of the country's founding visions. Secularism was envisioned to ensure that the state would not favour any religion, allowing freedom of belief and practice for all citizens, irrespective of their faith. This directly addressed the desire to create a non-theocratic state in which religious identity would not dominate public life or governance.

However, over the years, particularly during the military rule of General Ziaur Rahman and later that of General Hussain Muhammad Ershad, there was a significant shift in the political landscape. In 1977, Ziaur Rahman replaced 'secularism' with 'Absolute Trust and Faith in the Almighty Allah'.⁴⁶ Later in 1988, during Ershad's rule, Islam was declared the state religion of Bangladesh through an amendment that inserted Article 2A into the Constitution.⁴⁷ This amendment was criticised as a way to gain political support from religious groups, and it marked a departure from the secular ideals that the country was founded upon. Despite this change, the Constitution does not explicitly impose Islamic law (*Sharia*) as the basis for governance.

However, the term 'secularism' was reinserted in the Constitution through its Fifteenth Amendment.⁴⁸ The amendment removed the expression 'absolute faith and trust in Allah' from the preamble, but retained Article 2A, declaring Islam as the

⁴⁶ See Proclamations (Amendment) Order 1977 (published on 23 April 1977).

⁴⁷ See Constitution (Eighth Amendment) Act 1988 (Act No. XXX of 1988).

⁴⁸ See Constitution (Fifteenth Amendment) Act 2011.

state religion, added in 1988. To accommodate other religions, the amended Article 2A also mentions that “the state shall ensure equal status and rights to Hindus, Buddhists, Christians, and other religions.”⁴⁹

The coexistence of Islam as the state religion with secularism has had several implications for Bangladesh. Firstly, the prominence of Islam in the public sphere has increased over the years, with a notable number of religious political parties playing a more active role. Their influence has often shaped national policies, particularly education, family law, and social welfare. Secondly, while the country remains a democracy with a predominantly Muslim population, the constitutional secularism and the state’s recognition of Islam as the state religion have created tensions. The relationship between secularism and the state religion has led to clashes, especially when it comes to issues like freedom of expression and the rights of non-Muslims. Thirdly, although Bangladesh is home to a significant number of religious minorities, including Hindus, Christians, Buddhists, and indigenous communities, they have sometimes faced challenges in terms of political representation, economic opportunities, and social integration. The dominance of Islam as the state religion has occasionally marginalised these groups, although they are constitutionally guaranteed equal rights.

Therefore, the debate over secularism versus Islam as the state religion has remained prominent in political discourse. Secularists argue that the state should maintain neutrality and not favour any religion. In contrast, those who support Islam as the state religion emphasise the importance of Islam in the identity and culture of Bangladesh.

3.2. Caretaker/Interim Government

The caretaker government (CTG) is a key issue in Bangladesh’s constitutional reform due to its historical significance and its role in ensuring credible elections. Introduced in 1996 through a constitutional amendment, the CTG system was designed to oversee national elections impartially, addressing widespread allegations of vote rigging and partisan interference under elected governments. The CTG was instrumental in facilitating relatively free and fair elections in 1991, 1996, 2001, and 2008, which are seen as more credible and participatory.

However, the system faced multifaceted criticism. The main criticism is its negative impact on the Judiciary. It undermined judicial independence by inserting the provisions for appointing retired Chief Justices of Bangladesh and retired Judges of the Appellate Division as Chief Advisor to the caretaker government. While in service, the judges might be tempted to favour the authority by expecting the Chief Adviser’s office of the Caretaker Government. The apprehension became obvious when the BNP appointed K.M. Hasan and J.R. Mudassir successively as Chief Justice, superseding the senior-most judge of the Appellate Division, and then

⁴⁹ Constitution of the People’s Republic of Bangladesh, art 2A.

brought the Fourteenth Amendment to the Constitution to increase the retirement age of the Supreme Court judges from 65 to 67 years.⁵⁰ Thus, the BNP government confirmed the appointment of either of these two retired chief justices as the caretaker government's chief adviser for the next national election. Secondly, the 2007-2008 CTG, led by Fakhruddin Ahmed, overstepped its mandate, delayed elections, and created political instability.⁵¹ Lastly, allowing an unrepresentative and non-elected government to rule the country, the CTG system violates the basic concept of democracy, the fundamental structure of the Constitution.⁵²

However, the Supreme Court of Bangladesh, declaring the CTG system unconstitutional, gave the then Awami League government a golden opportunity to abolish it. In 2011, the Awami League government abolished the CTG system through a constitutional amendment, arguing that unelected bodies should not oversee elections in a democracy. Unfortunately, none of the three significant observations of the Court in this judgement was duly considered by the Parliament while passing the amendment bill.

The first observation was on the continuance of the caretaker government system for the next two national elections. In making this observation, the Chief Justice said that:

“The election of the Tenth and the Eleventh Parliament may be held under the provisions of the above-mentioned Thirteenth Amendment on the age-old principles, namely, *quod alias non est licitum, necessitas licitum facit* (That which otherwise is not lawful, necessity makes lawful), *salus populi suprema lex* (safety of the people is the supreme law) and *salus republicae est suprema lex* (safety of the State is the Supreme law).”⁵³

In his second observation, emphasising the independence of the election commission, the Chief Justice firmly reminded the democratic norm that:

“The Election Commission should be financially independent. Complete administrative power should be given to it. During the elections, the concerned officers should be under the direct control of the Election Commission.”⁵⁴

In suggesting an alternative to abolishing the CTG system, the Chief Justice opined that changes should be made to the system's formation. He said that:

“The Parliament, however, is at liberty to bring necessary amendments, excluding the provisions that make the former Chief Justices of Bangladesh

⁵⁰ Constitution (Fourteenth Amendment) Act 2004, s 4.

⁵¹ *Abdul Mannan Khan* (n 36) para 1031.

⁵² *ibid*, para 1230

⁵³ *ibid*.

⁵⁴ *ibid*, paras 1129 & 1130.

or the [retired] Judges of the Appellate Division the head of the Non-Party Caretaker Government.”⁵⁵

Neglecting all three observations, the Parliament abolished the Non-Party CTG system as an interim Government, without finding or building up any method for holding free, fair, impartial, and participatory general elections acceptable to opposition parties. Hence, the opposition parties, particularly the BNP, have since demanded restoration of CTG, claiming that elections under partisan governments lack credibility and are marred by manipulation. Moreover, since the amendment, free, fair, impartial, and participatory general elections have disappeared from Bangladesh due to common phenomena of mistrust and arbitrariness in the political process.

Major opposition parties, including the BNP, boycotted the tenth parliament election. To bring them into the election, the Awami League offered an all-party interim election cabinet government, including opposition parties, until the election, but the BNP rejected this.⁵⁶ As a result of the boycott, the Grand Alliance, led by the Awami League, secured victory in 153 uncontested seats, enough to form a government. In the eleventh parliament election, the opposition raised allegations of electoral irregularities in 94% of the constituencies.⁵⁷ The primary anomalies include sealing the ballot paper prior to the election, threatening and coercing interested voters to stay out of the polling station, occupying polling booths to cast ballots, requiring voters to cast their votes for a particular sign, filling ballot boxes with fictitious votes before the vote starts, ballot papers being completed, and prohibiting the opposition polling agent from entering the polling stations.⁵⁸ Such electoral manipulations led the opposition to boycott the 2024 twelfth parliament election. However, to avoid the embarrassing experience of securing an uncontested victory and to make the election participatory, the ruling party, Awami League, engaged its independent candidates and greater alliance partners as opposition in the polls. Nevertheless, the one-sided political competition between the ruling party and its alliance partners did not ensure satisfactory voter turnout, resulting in a non-participatory election. Though the election commission claimed about 40% voter turnout, critics alleged that the official figures may have been overstated.⁵⁹

⁵⁵ *ibid.*

⁵⁶ ‘Bangladesh PM Hasina proposes all-party election cabinet’ *BBC News* (18 October 2013) <<https://www.bbc.co.uk/news/world-asia-24583020>> accessed 22 February 2025; ‘Bangladesh ministers resign to make way for all-party government’ *ABC News* (11 November 2013) <<https://www.abc.net.au/news/2013-11-11/an-bangladesh-ministers-resign-to-allow-all-party-government/5084514>> accessed 22 February 2025.

⁵⁷ Transparency International Bangladesh, ‘Election Process Tracking: The Eleventh National Parliament Election 2018’ (Transparency International Bangladesh 2019) <https://www.ti-bangladesh.org/images/2019/report/EPT/EPT_EX_EN_2019.pdf> accessed 22 February 2025.

⁵⁸ *ibid.*

⁵⁹ Ethirajan Anbarasan and Kelly Ng, ‘Bangladesh election: PM Sheikh Hasina wins fourth term in controversial vote’ *BBC News* (8 January 2024) <<https://www.bbc.co.uk/news/world-asia-67889387>> accessed 22 February 2025.

Therefore, CTG remains contentious because it symbolises the broader struggle for electoral fairness and political trust in a deeply polarised environment. Its abolition has heightened tensions, with opposition parties often boycotting elections and accusing the ruling party of using state machinery to influence outcomes. Thus, the debate over the CTG is central to constitutional reform, as it reflects the need for a mechanism to ensure free, fair, and inclusive elections, which are foundational to democratic governance in Bangladesh.

3.3. Procedure for Removal of Judges: In the Context of Judicial Independence

The independence of the Judiciary is a cornerstone of democracy, ensuring the rule of law, accountability, and the protection of citizens' rights. Within the broader issue of judicial independence, removing judges is the critical pillar, as office security allows judges to decide cases without fear of repercussions, regardless of whether the ruling party or government approves the result. This is the most significant contribution to the Judiciary's independence. Consequently, a judge should serve for a long time after being appointed, ideally for life or until they perform their judicial duties well. He should only be dismissed for proven incapacity or misbehaviour during his term. A judge cannot acquire and develop the personal independence necessary for his position unless the procedure for removal is made challenging, requiring thorough examination by multiple neutral and judicious people.

In Bangladesh, however, this issue has always gone through a critical juncture. Several constitutional amendments have undermined the Judiciary's autonomy, leaving it vulnerable to political interference. The original Article 96 of the 1972 Constitution allowed the President to remove a judge of the Supreme Court if a resolution passed by the Parliament with a two-thirds majority found that the judge had engaged in misconduct or misbehaviour. The Fourth Amendment to the Constitution of 1975 eliminated the need for a parliamentary resolution and granted the President the unrestricted power to remove judges at his pleasure.⁶⁰ Consequently, the President could dismiss judges he did not like and thus have cases decided according to his preferences. Though the amendment imposed a condition to the effect 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,"⁶¹ the independence of the Judiciary virtually came to an end.

However, the original procedure for removing judges of the Supreme Court, which was dropped by the Constitution (Fourth Amendment) Act 1975, was reinstated when the country entered military rule under the Chief Martial Law Administrator Ziaur Rahman.⁶² Later, when Ziaur Rahman assumed the President's office, he amended Article 96 to establish the Supreme Judicial Council consisting of the Chief

⁶⁰ Constitution (Fourth Amendment) Act 1975 (Act No. II of 1975) s 15.

⁶¹ *ibid.*

⁶² Second Proclamation (Seventh Amendment) Order 1976, art 4.

Justice of Bangladesh and the next two senior Judges.⁶³ It was tasked with investigating allegations of misconduct or incapacity against Supreme Court judges and recommending removal to the President.⁶⁴ Later, when the Parliament came into being, it passed the Constitution's Fifth Amendment, ratifying and confirming the above Martial Law proclamation along with others. This Supreme Judicial Council model for removal of the Supreme Court judges conformed with the suggestion of the International Congress of Jurists held in New Delhi in 1959 that:

“The reconciliation of the principle of irremovability of the Judiciary with the possibility of removal in exceptional circumstances necessitates that the grounds for removal should be clearly laid down and that the procedure for removal should be before a body of judicial character assuring at least the same safeguards to the judge as would be accorded to an accused person in a criminal trial.”⁶⁵

Though this change may, *prima facie*, be considered a salutary step towards the independence of the Judiciary as an independent constitutional body, another legislative step undermined the very foundation of judicial independence. On 6 March 1977, a month before the creation of the Supreme Judicial Council, restrictions were imposed on the powers of the High Court and other courts to issue interim orders and to pass temporary or ad-interim injunctions.⁶⁶ The courts, including the High Court, were even prohibited from receiving or entertaining any petition, plaint, application, or prayer seeking any writ, injunction, or other order restraining the government.⁶⁷ Hence, the courts' jurisdiction was expressly curtailed when the martial law regime demanded autonomy, and judicial intervention may cause difficulties or inconvenience. Before this, such a Regulation had never been issued, restricting the jurisdiction of ordinary courts, including the superior courts, to supervise the functions of the country's civilian administration, not even during the previous martial law regimes in the Pakistan Period. Previously, only the jurisdiction of civil courts was restricted to cases challenging the legality of the martial law regime.

Also, fundamental changes were introduced in the provision during the regime of the martial law administrator, Hussain Md Ershad. Just coming into power, he replaced the President with the Chief Martial Law Administrator, granting the latter authority to remove judges from office.⁶⁸ Thus, as the Chief Martial Law Administrator, he arrogated to himself the arbitrary authority to remove judges from office. After the

⁶³ Proclamations (Amendment) Order 1977 (Proclamations Order No. I of 1977) art 2.

⁶⁴ *ibid.*

⁶⁵ International Commission of Jurists, 'The Rule of Law in a Free Society: A Report on the International Congress of Jurists, New Delhi, India, January 5-10, 1959' (International Commission of Jurists 1959) 134 <<https://www.icj.org/wp-content/uploads/1959/01/Rule-of-law-in-a-free-society-conference-report-1959-eng.pdf>> accessed 22 February 2025.

⁶⁶ See Courts' Jurisdiction (Restriction) Regulation 1977 (Martial Law Regulation No. XXXIV of 1977).

⁶⁷ *ibid.*

⁶⁸ See Martial Law Proclamation (First Amendment) Order 1982

Parliament returned in 1986, the Seventh Amendment Bill was introduced and passed within five hours on 10 November 1986, ratifying and confirming all the actions of the preceding government from 24 March 1982 to 10 November 1986. Also, under the Seventh Amendment to the Constitution, Martial Law was withdrawn, and the Constitution, including Article 96 on the Supreme Judicial Council, was restored.⁶⁹ Since then, the Supreme Judicial Council remained a constitutional body for removing judges from office until the provisions of the Supreme Judicial Council were substituted with reviving the original Article 96 of the 1972 Constitution by the Sixteenth Amendment to the Constitution in 2014.

Meanwhile, the High Court Division of the Supreme Court declared the Fifth Amendment illegal and *void ab initio*, giving effect to the abolition of the Supreme Judicial Council from the Constitution.⁷⁰ In reviewing the judgment, the Appellate Division upheld the Judgment and Order of the High Court Division with a few modifications. One of these modifications was the approval of the provisions regarding the Supreme Judicial Council, which were substituted under the amendment. The appellate division reasoned that the provisions and procedures of the Supreme Judicial Council are more transparent than those of the earlier systems and better safeguard the independence of the Judiciary.⁷¹ Nonetheless, the Sixteenth Amendment Bill abolishing the council was passed in Parliament, in which 153 members (more than half of the total seats for direct election) won uncontested seats due to the boycott by the major opposition parties. Consequently, the bill was passed without a single vote against it, which indicates the lack of political consensus.

The impugned amendment to the Constitution was challenged in the Supreme Court. First, a Special Bench of the High Court Division declared the impugned amendment colourable, void, and ultra vires the Constitution by a majority.⁷² Moreover, later, the Appellate Division and the *amicus curiae* unanimously upheld the High Court Division's majority decision.⁷³ Compared to this judgement, the things that appealed the necessity of the Supreme Judicial Council are the political events following the Appellate Division's judgement. Several ruling party politicians called for the Chief Justice to step down, and even the Prime Minister was critical of the Chief Justice.⁷⁴

⁶⁹ See Constitution Final Revival Order 1986.

⁷⁰ *Khandker Delwar Hossain, Secretary, BNP & another v Bangladesh Italian Marble Works & others* [2010] 62 DLR (AD) 298.

⁷¹ *ibid.*

⁷² *Advocate Asaduzzaman Siddiqui and others v Government of Bangladesh and Others* (Writ Petition No. 9989 of 2014) [2016] 8 ALR (HCD) 161.

⁷³ *Government of Bangladesh and Others v Advocate Asaduzzaman Siddiqui and others* (Civil Appeal No 06 of 2017) [2019] 71 DLR (AD) 52.

⁷⁴ 'PM slams CJ for comparing Bangladesh with Pakistan' *The Daily Star* (21 August 2017) <<https://www.thedailystar.net/politics/prime-minister-sheikh-hasina-slams-chief-justice-surendra-kumar-sinha-comparing-bangladesh-pakistan-16th-amendment-impeachment-judges-politics-1451923>> accessed 2 July 2025; 'AL leaders now calling for CJ to step down' *The Daily Star* (22 August 2017) <<https://www.thedailystar.net/frontpage/al-leaders-now-calling-cj-step-down-1452682>> accessed 2 July 2025.

Eventually, the Chief Justice was forced to leave the country and resign from the office.⁷⁵ However, the government filed a review petition in 2017, which was disposed of by a six-member bench of the Appellate Division of the Supreme Court.⁷⁶ With this, the council has been revived and come into action. Though the issue is now judicially settled, it still lacks political consensus.

4. Challenges of Political Reconciliation

Without inclusive political dialogue and reconciliation, constitutional changes risk perpetuating cycles of political conflict and instability. Because of the wide diversity of political views and interests, the constitutional reform process always faces the challenge of achieving political reconciliation, which is essential to the reform's legitimacy and acceptance. The challenge becomes more complex with the increasing demands placed on constitutions, as witnessed in Bangladesh now. Another factor that can make the reconciliation more challenging is the national division in play on the issue of the 1971 independence war. However, the challenges of political reconciliation vary across the different levels of the constitutional reform process: preparatory, consultation/awareness-building, drafting, and implementation.

At the preparatory level, a solid political reconciliation requires a preliminary agreement among political parties on the reform's primary goals, the key players, and the reasons for a nation's desire to implement constitutional reform. This agreement is only possible when political parties show their genuine willingness to actively participate in reaching a consensus and make a clear commitment to protecting the public interest during the reform process. Since the fundamental principles of state policy, key constitutional institutions, and their mandate are significant issues in this ongoing constitutional reform process, another preliminary agreement between the leading political actors and civic actors is necessary. An enabling environment must be created to foster a vibrant, independent civil society's active participation in constitutional reform by ensuring freedom of expression and the press.

Next, at the consultation or awareness-building level, ordinary citizens must be given access to instruments and information on the main reform issues so that people feel free and secure to express their views. Special focus should be given to the participation of minority and marginalised groups within the reform process. To ensure these, the divisive practice of 'tagging' (labelling individuals or groups with politically charged identities) must be stopped immediately. It is deeply entrenched

⁷⁵ David Bergman, 'Bangladesh: Ex-chief justice alleges he was 'forced' to resign' *Al Jazeera* (28 September 2018) <<https://www.aljazeera.com/news/2018/9/28/bangladesh-ex-chief-justice-alleges-he-was-forced-to-resign>> accessed 2 July 2025; 'Chief justice steps down' *The Daily Star* (11 November 2017) <<https://www.thedailystar.net/frontpage/chief-justice-steps-down-1489819>> accessed 2 July 2025; 'Forced to quit: BNP, No pressure: AL' *The Daily Star* (12 November 2017) <<https://www.thedailystar.net/frontpage/its-pressure-bnp-no-pressure-al-1489828>> accessed 2 July 2025.

⁷⁶ *Government of Bangladesh & others v Advocate Asaduzzaman Siddiqui & others* [2024] Civil Review Petition No.751 of 2017.

in Bangladesh's political culture and has been used to stifle opposition, discredit social movements, and curtail public critique.⁷⁷ Besides, political parties, as the principal intermediary institutions, should play a proactive role in connecting citizens with the process. Thus, the active involvement of an informed populace in the reform process can increase the Constitution's popular legitimacy.

Later, during the drafting of constitutional amendments and deliberations over their contents, the level of inclusivity and the decision-making process are crucial. For high inclusivity, both majority and minority groups (who have historically had less powerful voices in society) must be equally permitted to participate and submit their opinions. Inviting legal professionals and taking their feedback can ensure consistency across various parts of the Constitution and increase inclusivity. To resolve differences in interests and viewpoints, the decision-making process should emphasise consensus-building and the bridging of divergent views. However, a referendum can be utilised as a deadlock-breaking mechanism in extreme cases.

Finally comes the implementation phase of the reformed Constitution. Adopting or passing the Constitution Amendment Act is not the end of constitutional reform. Turning the approved amendments into subsidiary legislation is a drawn-out, delicate, and essential step in reform. In this regard, the experience of the Bangladesh Constitution is not satisfactory at all. After five decades of adopting the Constitution of Bangladesh, a law has been passed in the Parliament in 2022 regarding the appointment of the chief election commissioner and other election commissioners.⁷⁸ On the other hand, a law establishing the ombudsman as the Parliament's watchdog was passed in 1980,⁷⁹ but it has never been brought into force by any ruling party. Moreover, subclause 2(c) of article 95, introduced by the Fifth Amendment, provides that one of the qualifications for appointment as a Supreme Court judge will be prescribed by law.⁸⁰ Unfortunately, no law has yet been passed. Therefore, an agreement among the political parties is required on a deadline for translating the adopted/amended articles into action/subsidiary law.

5. Roles and Responsibilities of Political Parties in the Reconciliation Process

The functioning of political parties significantly affects whether reform processes succeed or fail in aligning the amended Constitution with citizens' aspirations and values. There are no fixed model roles and responsibilities for political parties in the constitutional reform process. They can make meaningful and constructive contributions to the process in diverse ways. This section only explores the

⁷⁷ Debrata Kumar Adhikary, 'How 'tagging' silences critical voices in Bangladesh' *the Daily Star* (24 November 2024) <<https://www.thedailystar.net/opinion/views/news/how-tagging-silences-critical-voices-bangladesh-3760421>> accessed 22 February 2025.

⁷⁸ See Chief Election Commissioner and Other Election Commissioners Appointment Act 2022 (Act No. I of 2022).

⁷⁹ See Ombudsman Act 1980 (Act No. XV of 1980).

⁸⁰ See Constitution of the People's Republic of Bangladesh, article 95(2)(c).

potentially constructive contributions the political parties can make in different capacities.

Solitarily, every political party should be committed to a core set of fundamental democratic values. It includes the intent to safeguard the public interest, readiness to consider the political and social voices of minority groups, tolerance for divergent viewpoints, and a genuine willingness to participate in consensus-building with other stakeholders.

Political parties can make more collective contributions to constitutional reform through inter-party dialogue. The Twelfth Amendment to the Constitution is a good example in this regard. Since Bangladesh is now in a conflict or post-conflict situation, distrust among political parties is high. So, a minimum level of trust among them needs to be established. In addition to trust-building, the inter-party dialogue allows political parties to agree on the modalities, technicalities, and roadmaps of constitutional reform. Due to a lack of such dialogue, a huge debate over several issues has already engaged the political players' attention. Moreover, the debate creates apprehension about whether any transformative change in the Constitution will be achieved to create a constitutional framework that strengthens democratic governance, upholds the rule of law, and ensures the rights and dignity of all its citizens.

More specifically, inter-party dialogue is necessary for political reconciliation on key contentious issues (secularism, state religion, judicial independence, and the electoral system), since these issues are deeply polarising and have far-reaching implications for democracy, governance, and national unity. Dialogue will allow opposing parties to voice concerns, negotiate compromises, and develop inclusive solutions that may reflect diverse perspectives. It can help balance religious and cultural identities with constitutional principles on secularism and state religion issues. Regarding judicial independence, political dialogue and consensus can enhance public confidence in the Judiciary and public trust in the rule of law. A transparent and acceptable electoral system can ensure fairness, transparency, and credibility in elections. Without inter-party dialogue, the reform will bear the risk of being settled unilaterally, deepening political divisions, and lacking popular legitimacy. Therefore, political parties should engage in more dialogue to build trust, reduce polarisation, and thus create a constitutional framework that serves all citizens.

6. Concluding Remarks

To summarise, democratic governance and political stability are at the centre of these issues—secularism, state religion, caretaker government, and judicial independence. Secularism relates to inclusivity and equal treatment for all citizens; the caretaker government system was designed to maintain fair elections; and judicial independence ensures that laws are applied impartially. Therefore, the current discussion on constitutional amendment must consider these issues seriously. Any constitutional amendment on these issues without political consensus must have

wide-ranging effects on the nation's democracy and rule of law. The state religion issue is especially contentious because it reflects Bangladesh's struggle to balance its Muslim-majority identity with its founding principles of secularism. This tension often emerges in debates over the role of religion in public life and the rights of religious minorities. Moreover, the amendments related to judicial independence and the caretaker government system also reflect the need to protect the rights of ordinary citizens. A neutral and independent judiciary is necessary for safeguarding individual freedoms, while the caretaker government system is essential to ensure free and fair elections at all levels.

In addition, to legitimise the constitutional changes on these contentious issues, political reconciliation is crucial. Otherwise, reforms may lead to further alienation of any particular group(s) and a protracted political conflict, making the nation-building difficult. However, reaching political reconciliation is considered the most challenging aspect of the constitutional reform process because it requires overcoming deep-rooted mistrust, historical grievances, and partisan rivalries that often dominate Bangladesh's political landscape. Reconciliation demands compromise and a willingness to prioritise national interest over partisan gains, which is often lacking in a highly polarised environment. Additionally, the absence of neutral platforms for dialogue and the ruling party's dominance further complicate consensus-building efforts.

In this circumstance, political parties are primarily responsible for fostering political reconciliation to achieve positive and sustainable constitutional reform. They must prioritise national interests over partisan agendas, engage in inclusive dialogue, and demonstrate a genuine willingness to compromise. By creating neutral platforms for negotiation, involving civil society, and addressing historical grievances, parties can build trust and collaboration among the citizens. Additionally, they must commit to ensuring transparent processes, equitable representation, and long-term institutional stability rather than short-term gains. Ultimately, political reconciliation requires parties to rise above polarisation, act as unifying forces, and work collectively to create a constitutional framework that reflects the aspirations of all citizens and strengthens democracy.

