

## **Overview of Contemporary Regime in Bangladesh: In the Context of the Constitution and the Legislature**

**Md. Riyad Siddiquei<sup>1</sup>**

**Abstract:** This study attempts to overview the contemporary regime in Bangladesh in the context of the constitution and the legislature. Constitutional complication has become an inevitability in third world politics. Bangladesh is not exceptional. If the constitution does not reflect the culture and tradition of that country then it becomes difficult for the ruler to control the subjects. Many think that a mixture of ideological thinking and reflection of the culture of that particular country can make a good constitution. Many also think that the caretaker government gradually became compatible with the political culture of Bangladesh. Independence of judiciary plays a role in progressive improvement of political culture. And in the context of Bangladesh it is also true that the independence of judiciary has a relationship with the supreme judicial council. Hence, in the context of Bangladesh, 15<sup>th</sup> and 16<sup>th</sup> amendment to the constitution refer to the constitutional complication. The study reveals that the governance system of Bangladesh now belongs to the hybrid regime. Through jurisprudence and political philosophy, it is easy to understand that a type of constitutional dictatorship prevails in Bangladesh. It is a common picture in Bangladesh like other third world countries. It is a qualitative research. The data of this research is taken from secondary sources such as books, journals, internet. This can be easily understood by analyzing political culture. Third world democracy means people's right to vote. Suffrage is the only one indicator of democracy in the third world. Therefore, an impartial caretaker government system and the independence of the judiciary are essential to ensure fair voting. Third world parliaments legislate in a way that is procedurally sound but not practical. That is called hypocrisy. Third world rulers follow the language of the law but violate the spirit of the law. Parliaments make laws, but there are complications in implementing them. Bangladesh is not exceptional of it. However, the 16<sup>th</sup> amendment to the constitution is now up for review in the appellate division following the government's review petition against the High Court judgment. However, if we juxtapose the increasingly authoritarian tendencies of the ruling party, the absence of opposition in parliament, the constitutional mechanism for the upcoming elections and above all article 70, it becomes clear that the new provision seeks to establish control over the judiciary.

**Key words:** Constitution, Amendment, Legislature, Contemporary regime in Bangladesh.

### **1. Introduction**

The study of contemporary regime in Bangladesh is very important phenomenon. This study deals with contemporary regime in Bangladesh emphasizing on the constitution

---

<sup>1</sup> Independent researcher

and the legislature. Bangladesh has experienced civilian and military authoritarianism in politics since independence in 1971. Democracy was reintroduced by a mass uprising in the late 1990s, and the country has been governed by elected political parties since 1991. But, the tenth and eleventh parliaments have been exceptions. Especially since 2010, Restrictions on civil rights and political freedoms have brought about an alarming change in the country's trajectory. It created a de facto one-party parliament, especially after the 2014 election boycotted by the opposition. Concerns of backsliding (Walder and Lust 2018) reached a new height and analysts raised questions of whether the country is "on the march to authoritarianism" (Milam 2014). By 2018, the state of governance was described by observers of Bangladeshi politics as "authoritarian", where the government was "hounding" opposition, and "assiduously" subverted democratic norms and institutions" (Chakravarty 2018). The Bertelsmann Foundation, in 2018, categorized the country as a "moderate autocracy" (BTI 2018). This study explores the role of legislature during the transition from democracy to hybrid regime, particularly during civilian rule. Over the past decade, the legislature has become increasingly complex in allowing the executive branch to accumulate enormous power. It acts as a tool to advance the authoritarian tendencies of the ruling party. Civilian governments in Bangladesh have a tendency to dominate the legislature and do so explicitly and implicitly. This trend has been reflected in various laws and constitutional amendments. Two amendments passed by the contemporary parliament clearly demonstrate this. I will focus on two constitutional amendments that many believe have had a huge impact on democratic governance. The two amendments to the constitution are the 15<sup>th</sup> and 16<sup>th</sup>. The fifteenth amendment removed the caretaker government provision that allowed incumbents to rig national elections. And the 16<sup>th</sup> amendment gives parliament the power to impeach supreme court judges. The latter ostensibly vests power in the legislature but considers other constitutional provisions that establish unbridled party control over members of parliament, essentially subordinating the judiciary to the executive.

On April 4, 1972, the first parliamentary system of government was launched in Bangladesh on January 25, 1975, in just a few minutes, the fourth amendment to the constitution was passed and one-party government was established, ignoring popular opinion. On January 24, 1975, the national party "Bangladesh Krishak Sramik Awami League" (BAKSAL) was floated and all newspapers except four, which were to be published by the state, were disbanded in June 1975 (Riaz 2005, 156-199). Parliamentary system of government was introduced on 18 September 1991 through the 12<sup>th</sup> amendment to the constitution. Then on March 28, 1996, the 13<sup>th</sup> amendment to the constitution provided for elections under a caretaker government. The system of caretaker government was abolished by the 15<sup>th</sup> amendment to the constitution on June 2011. Under the 15<sup>th</sup> amendment, 53 paragraphs of the constitution have been ineligible forever. The provision of referendum on national issues has been abolished. The prime minister and ministers themselves will continue to hold office until their successors assume office. The second amendment to the constitution of 22 September 1973, which provided for the declaration of emergency in the country and the detention act, infringed on the fundamental rights of the people. Multiparty democracy was established on 6 April 1979 by introducing the democratic system and allowing the judiciary to function independently through the formation of the supreme judicial council. According to article

56(4) of the constitution, members who were members of parliament immediately before the dissolution of parliament shall be deemed to continue as members.

## **2. The constitution and the legislature**

The constitution of Bangladesh came into effect on 16 December 1972. This constitution establishes a parliamentary system modeled on the Westminster model and a legislative body called national parliament (Jatiya Sangsad) at the center of power. Article 65 of the constitution states that the country shall have a unicameral parliament consisting of 300 members. They will be elected through the First-Past-The-Post (FPTP). Currently, additional 50 seats are reserved for women indirectly elected by members of parliament.

The constitution fixes the tenure of parliament for 5 years from the first session of each parliament after the parliament is elected. According to article 72 of the constitution, the President can dissolve parliament on the writing advice of the Prime Minister. The tenure of parliament can be extended up to a year if the country is at war. A total of 11 parliaments have been elected since the first parliament was elected in 1973. Only five of these parliaments completed their full term. The constitution gives parliament supreme authority over important matters such as declaring or participating in war and levying and collecting taxes. The constitution guarantees the fundamental rights of the people and ensures the separation of the judiciary from the executive branch of the state. However, there were other provisions which gave the government considerable powers to curtail them; for example fundamental rights could be taken away on reasonable grounds. Article 63 contains a provision that parliament may suspend the constitution essentially for public safety and protection of the state in times of war, aggression and armed insurrection. Besides, provisions were made to concentrate power in the hands of the Prime Minister through articles 55(4-6), 48(3), and 70(1-4) (Riaz 2005, 170-175).

In a Westminster-style parliamentary system, the boundaries between the executive and the legislature are weak. However, inclusive democracy ensures the independence of the legislative institution and allows it to monitor the executive branch, the commitment of the political parties, especially the ruling party. It is similar to the parliamentary systems of Britain, Canada and Australia. However, Happening gradually, power has been concentrated in the hands of the Prime Minister, because, in case of Bangladesh, both constitutional provisions and practice have reduced the potential for strong parliamentary oversight. Under the parliamentary system between 1973 and 1975 and since 1991, The Prime Minister has held several functions simultaneously : Prime Minister, leader of parliament, leader of the parliamentary party and the chief of the ruling party. Article 70 of the constitution combined with these made the Prime Minister an all-powerful person and institution. Article 70 as a floor-crossing deterrent has undergone some amendments over the past 47 years through the 4<sup>th</sup> and 12<sup>th</sup> amendments. The 15<sup>th</sup> amendment restored the beginning constitutional provisions, which imposed two conditions against defection: (1) if a member resigned from his party or (2) if he voted against his party in parliament. The article originally did not allow MPs to vote against party directives. Voting against the party will jeopardize the membership of MPs. Political analysts, such as Jahan and (Jahan 2012) and Choudhury ( Choudhury 1995) have demonstrated how the provision has curtailed the independence of MPs, established control over the members, and enhanced the PMs executive authority. The supreme court

verdict against the 16<sup>th</sup> amendment caused a backlash within the ruling party. This is why, this provision became an important issue.

### **3. Contemporary Regime in Bangladesh**

Members of parliament generally align with and support the political agenda of the party they represent. However, many Westminster style countries allow members to vote against the approved political party line in many cases. Members are bound to vote along political party lines under the constitution of Bangladesh. It undermines the sovereignty of parliament and thus involves usurping the power of the executive through constitutional means. We can easily mention, two examples can be seen in the current governance system of Bangladesh. Legislation facilitated the unlimited power of the executive branch and paved the way for authoritarianism.

An example of legislative entanglement with executive will and action accordingly was the events surrounding the 15<sup>th</sup> amendment. It abolished the system of holding elections under caretaker government. The then Bangladesh Awami League and its ally Jamaat-e-Islami and Jatiya party led by former dictator H.M. Ershad complained that the ruler could not be trusted to hold fair and free elections. The amendment inserted a provision to hold elections under an 11-members neutral caretaker government headed by the immediate past chief justice of the supreme court. The Bangladesh Nationalist party passed the fourteen amendment to the constitution in 2004, during the second term in power, raising the retirement age of supreme court judges by two years with an eye on the next head of the caretaker government. As the tenure of Bangladesh Nationalist Party ended, the opposition parties, especially the Bangladesh Awami League, objected to the appointment of the then former chief justice. Although the Bangladesh Nationalist Party indulged in intrigue and crookedness, the Bangladesh Awami league Succeeded in creating violent street movements, which led to the intervention of the army. A military-backed caretaker government was established on January 12, 2007. It remained in power for about two years. The Bangladesh Awami League returned to power with a four-fifths majority in the 2008 elections. Then they began the process of amending the constitution in July 2010. Although this was apparently due to the nullification of the fifth amendment to the constitution by the court (in May, 2010), a parliamentary committee was formed to propose amendments to update the constitution and soon became the vehicle for drastic changes to the constitution. Two points regarding the process are worth highlighting; how the executive (The PM) superseded the recommendation of the members of the parliament and how one part of an incomplete verdict of the supreme court was exploited for the changes (Khan, 2018; Khan, 2015).

A 15-member constitution amendment parliamentary committee was appointed in July, 2010. Where the opposition BNP refused to participate. The committee gathered views through 27 meetings between July, 21 2010 and May 29, 2011. Opinions were taken from the chief justice, ten constitutional lawyers / experts, representatives of political parties (including the awami League represented by the Prime Minister), 18 intellectuals and 18 newspaper editors. Accordingly, the committee on May 29, 2011 made recommendations relating to article 58(B) and 58(D). It is recommended to add not more than 90 days to 58(B) as the duration of caretaker government.

It further recommended that article 58(D) (3) be added which prohibits the CTG from signing new agreements with any foreign government. A day later, the committee met the

PM and decided to make a u- turn: Article 58 would be scrapped altogether (Majumdar, 2013). A bill to that effect, the 15<sup>th</sup> amendment to the constitution, was introduced in parliament on 29 June 2011. The bill was passed the next day by a vote of 291-1 (including reserved seats) in the absence of opposition. BNP members boycotted the sessions; The only dissenter was an independent member of parliament. The proceedings of the committee showed that it had unanimously concluded that the caretaker government system should be maintained and a strict limit of 90 days was imposed on its tenure. But the recommendation was ignored and consequently the caretaker government system was excluded. The new system stipulates that parliamentary elections will be held within 90 days of the end of the term (or within 90 days of the dissolution of the parliament if the parliament is dissolved before the end of its term). The ruling party justified the dissolution of the caretaker government on 10 May 2011 by citing the court verdict. The judgment was summary rather than a full judgment. The summary states that “The constitution (13<sup>th</sup> amendment) act, 1996 ( Act no. 1 of 1996) is declared null and void and grossly perverts the constitution.” However, it also said that elections to the 10<sup>th</sup> and 11<sup>th</sup> parliaments could be held in accordance with the provisions of the said 13<sup>th</sup> amendment. It has asked parliament to amend the constitution to ensure that a former chief justice or any other judge of the supreme court is not selected as the head of the caretaker government, if the system is kept for two more parliamentary elections. During the hearing, the court heard the views of 8 amici curiae (friends of the court), seven of whom supported the continuation of the system. The ruling party did not wait for a complete text, argued that this provision in the highest court declared unconstitutional. Therefore, it must be abolished completely. However, it became clear that there was no consensus among the justices on whether the 13<sup>th</sup> amendment was unconstitutional, 14 months later, when the full text of the verdict was published on September 16, 2012,. Four of the seven supreme court judges were in favor of declaring the caretaker provision unconstitutional. One opined that the matter should be left to the parliament and two dissented. But there was consensus on two issues. First, that the system should be kept for two more elections. Second. In their joint observation, the judges agreed with the amici curiae’s concern that an election under party government is a device for disaster.

The end of the caretaker government system pushes away the possibility of a free and fair election in Bangladesh. Until 2011, four of the nine parliamentary elections were held under a caretaker government and were considered free and fair. The previous opposition party won this election as well. The administration and executive branch became powerful in influencing election campaigns, creating an uneven playing field, and shaping the outcome. These were made possible by the abolition of the caretaker government system. The fear that a fair election was not possible under a partisan government was borne out in the 2018 election, described by the international media as farcical (see Riaz, 2019).

Understanding the shift in electoral systems within emerging hybrid regimes around the world is essential. Hybrid regime (Diamond, 2002), which are ostensibly democratic but intrinsically authoritarian, have proliferated around the world as documented by Freedom House (Freedom House 2018) and Economic Intelligence Unit’s democracy index (

Economic Intelligence Unit 2018). Key features of those regimes are establishing complete control over the legislative and judicial realms ( Ekman 2009, Levitsky and Way 2002) and manipulating the electoral system. The latter is used as a means of controlling the previous two arenas. Elections pose a serious dilemma for leaders of hybrid regimes. While contested elections bolster their claims of democracy and augment their legitimacy, they “create political uncertainty that can threaten authorities’ ability to stay in power” ( Petrov et al 2014). Under such circumstances, “hybrid regime rulers react to the dilemma of elections neither by accepting free and fair elections nor by eliminating elections. Instead, they manipulate elections and find other ways to minimize the chances that the population will oust them”(Petov et al 2014). By changing the caretaker government by the Bangladesh Awami league, it indicates that the election system is being used for their own interests. The opposition demanded the restoration of a caretaker government and boycotted the 2014 elections. Later, the opposition participated in the 2018 elections but the results were similar as the 15<sup>th</sup> amendment to the constitution was a factor.

In a hybrid regime, the independence of the legislative body is taken away and it is controlled through the executive branch. The legislative body is used to amend the constitution and thereby establish control over constituencies and the judiciary. This is exactly what happened with the 16<sup>th</sup> amendment of 2014. As in the 1972 constitution, the power to impeach judges for misconduct or incapacity has been restored to parliament by the 16<sup>th</sup> amendment. On 17 September 2014, the amendment of the constitution added a new section 2 to article 96. Where it is stated that the judges shall not be removed without the order of the president with the support of two-thirds of the total members of the parliament. The grounds for removal of judges shall be misconduct and incapacity. Under section (2) of article 93(A) the parliament shall be able by law to regulate the procedure of investigation and proven misconduct and incapacity of judges. In 1975, power was transferred to the president by the Bangladesh awami League through the fourth amendment. Later, the procedure changed under the military government. Ziaur Rahman’s military regime reformed the removal process for judges and introduced a peer-driven system of removal. The supreme judicial council consisted of the chief justice of the supreme court and the two most senior judges. The supreme judicial council investigates the removal of judges. Besides, they make recommendations to the president based on which the president can act. In 1979, the fifth amendment legalized military intervention and subsequent actions by the regime and was enshrined in the constitution. However, the supreme court struck down the fifth amendment in May, 2010 except for the supreme judicial council.

Especially, The 16<sup>th</sup> amendment caused a backlash among lawyers. On 5 November 2014, 9 supreme court lawyers filed a writ petition challenging the validity of the amendment. The amendment was ruled illegal and unconstitutional on May 2016. The High Court said the amendment was “against the principle of separation of state power and independence of judiciary.” Having challenged the High Court’s decision on 4 January 2017, the government filed an appeal. Less than a month later, on February 4, a full bench of supreme court appointed 12 senior lawyers as amici curiae for their opinion. The hearing ended on June 1, after which the High Court verdict was upheld on July 3.

Immediately after the High Court verdict, the ruling party members reacted angry at the floor. After the full text of the verdict was released on August 1, 2017, the members of the government met the chief justice several times and allegedly put pressure on him to revise the verdict; the chief justice did not yield and finally had to go on exile and resign (Riaz 2017; Riaz 2017a; Bergman 2018). Article 70 of the constitution was the main focus of the annulment of the amendment by the High Court and subsequently by the supreme court. “The main rationale for the invalidation of the 16<sup>th</sup> amendment was that it created an opportunity for parliament to exert pressure on the judges. The court took into consideration the current political culture in Bangladesh and the fact that, because of the anti-defection rule in art. 70 of the constitution, members of parliament would be unable to freely exercise their minds when deciding on a proposal to remove a judge” (Hoque and Shamin 2017, 20).

For impeaching Supreme Court judges, the 16<sup>th</sup> amendment shifted the power to Parliament. This could be misinterpreted as a strengthening of the legislature and characterized as more democratic than the existing system. However, if we juxtapose the increasingly authoritarian tendencies of the ruling party, the absence of opposition in parliament, the constitutional mechanism for the upcoming elections and above all article 70, it becomes clear that the new provision seeks to establish control over the judiciary. In hybrid regimes, the judicial arena is subordinated through various means, including appointing and dismissing judges and officials (Levitsky and Way 2002) making the higher courts advocates of the current regime (Brown and Wise 2004). The removal of the Lord President of Malaysia by Mahathir in 1988, and curtailment of the power of the Venezuelan supreme court under the Chavez government (1992-2012) (Urribarri 2011) are cases in point. The purpose of the 16<sup>th</sup> amendment to the constitution of Bangladesh (2014) fits for pattern.

#### **4. Conclusion**

Many feel that the decline of Bangladesh’s democracy and the country’s move toward hybrid regime over the past few decades have not quite lived up the expectations that liberated the country in 1971 through a bloody war. And the long pro-democracy movement in the 1980s led the country to the fall of dictatorship. Understandably, the military regimes between 1975 and 1990 rendered the legislature ineffective and used the legislature as a rubber stamp, placing the executive above the legislative branch. Unfortunately, however, during the parliamentary system under elected civilian government, the legislature failed to function as a single body that would have held the executive branch accountable to the legislative branch. The keen observation is that parliament has been used as a tool to further the authoritarian tendencies of the ruling party. And what has resulted is that the executive has amassed enormous power. The two cases discussed in this study illustrate how the constitution has been controlled to achieve the objectives of the executive branch. Non-inclusive governance and an inclination towards the use of force as the primary means of governance is detrimental to the nation’s interests. Even after the long democratic movement of the 1980s, political parties have been unable to understand this. The current regime has followed the same path since 2009. What happened with the 15<sup>th</sup> and 16<sup>th</sup> amendments is also not conducive to liberal democracy. An ineffective de facto one-party parliament was created by the 15<sup>th</sup>

amendment. The essence of the 16<sup>th</sup> amendment is that the treatment with the chief justice after the supreme court judgment sent a clear message to all dissenters. These events coincided with Bangladesh becoming a hybrid regime. Two-thirds of the seats in third world parliaments have a major influence on politics. But, getting two-thirds of parliament seats through free and fair elections does not have any gloomy effect on politics.

## References

- Bergman, D., 2018. "Bangladesh: Ex-Chief Justice Alleges He was 'Forced' to Resign." Al Jazeera English, September 28, 2018. <https://www.aljazeera.com/news/2018/9/28/bangladesh-ex-chief-justice-alleges-he-was-forced-to-resign/>.
- BTI (Bertelsmann Foundation Index). 2018. "Democracy Under Pressure : Polarization and Repression Are Increasing Worldwide." *TransformationIndex* 2018.Gütersloh, Germany : Bertelsmann Stiftung.
- Brown, T.L., and C.R. Wise. 2004. "Constitutional Courts and Legislative-Executive Relations:The Case of Ukraine." *Political Science Quarterly* 119(1):143-169.
- Chakravarty,P.R. 2018. "Shadow of India, HasinaGovt's Corruption, Repression of BNP Looms Over Bangladesh Polls." *Observer Research Foundation*, September 09, 2018. <https://www.orfonline.org/research/43844-shadow-of-india-hasina-governments-corruption-repression-of-bnp-looms-over-bangladesh-polls/>.
- Choudhury,D.1995. Constitutional Development in Bangladesh, Stresses and Strains.Dhaka : The University Press Limited(UPL).
- Diamond, L. 2002."Thinking about Hybrid Regime." *Journal of Democracy* 13(2):21-35.
- EIU(Economic Intelligence Unit). 2018. "Democracy Index 2018." [www.eiu.com/topic/democracy-index](http://www.eiu.com/topic/democracy-index).
- Ekman, J. 2009. "Political Participation and Regime Stability: A Framework for Analyzing Hybrid Regime." *International Political Science Review*30(1):7-21.
- Freedom House, 2018."Democracy in Crisis: Freedom House Releases Freedom in the World 2018." <https://freedomhouse.org/article/democracy-crisis-freedom-house-releases-freedom-world-2018>.
- Hoque, R., and S. Shamin. 2017. "Bangladesh: Development in Bangladeshi Constitutional Law." In 2016 Global Review of Constitutional Law, edited by R. Albert, D. Landau, P. Faraguna and S. Drugda, 17-21. Boston: I.CONnect and the Clough Center for the Study of Constitutional Democracy, Boston College.
- Jahan, R. 2012. "The Parliament of Bangladesh Challenges and Way Forward," CPD-CMI Brief, Issue No. 1, 1-6.
- Khan, A.A. 2015. "The Politics of Constitutional Amendments in Bangladesh : The Case of the Non-Political Caretaker Government." *International Review of Law*2015 9(3):2-16.
- Khan, S. Z. 2018. The Politics and Law of Democratic Transition: Caretaker Government in Bangladesh, London:Routledge.
- Levitski, S., and L. A. Way. 2002. "The Rise of Competitive Authoritarianism." *Journal of Democracy*13(2):51-72.

- Majumdar, B. A. 2013. "Which Constitution? Whose Constitution?" ProthomAlo, October, 28, 2013.
- Milam, W. B. 2014. "Bangladesh – On the March to Authoritarianism?" The Express Tribune, January 13, 2014. <https://tribune.com.pk/story/658535/bangladesh-on-the-march-to-authoritarianism>.
- Petrov, N., M. Lipman, and H. E. Hale. 2014. "Three Dilemmas of Hybrid Regime Governance : Russia from Putin to Putin." Post-Soviet Affairs 30(1):1-26.
- Riaz, A. 2017. "16<sup>th</sup> Amendment struck Down : More Than a Verdict." The Daily Star, August 02, 2017. <https://www.thedailystar.net/op-ed/politics/more-just-verdict-1444567>.
- Riaz, A. 2019. Election in a hybrid Regime: Explaining the 2018 Bangladeshi Election. Singapore and New York : Palgrave McMillan Pivot.
- Riaz, A. 2017a. "Sinha Saga: More Questions Than Answers." The Daily Star, October 19, 2017. <https://www.thedailystar.net/perspective/sinha-saga-more-questions-answers-1478407>.
- Riaz, A. 2005. Unfolding State : The Transformation of Bangladesh. Whitby: de Sitter Publications.
- Sarkar, A., and S. Liton. 2016. "Bangladesh High Court Scraps 16<sup>th</sup> Amendment to Constitution." The Daily Star, May 06, 2016. <https://www.thedailystar.net/frontpage/hc-scraps-16th-amendment-1219480>.
- Umar, B. 1973. "Now There is No Opposition." Weekly Holiday, March 11, 1973.
- Urribarri, R.A.S. 2011. "Courts Between Democracy and Hybrid Authoritarianism: Evidence from the Venezuelan Supreme Court." *Law & Social Inquiry* 36(4):854-884.
- Waldner, D., and E. Lust. 2018. "Unwelcome Change : Coming to Terms with democratic Backsliding." *Annual Review of Political Science* 21:93-113.

