



## Fifteen Amendment of the Constitution of Bangladesh: An Overview

Muzahidul Islam

Lecturer, Department of History, Bangabandhu Sheikh Mujibur Rahman Science and Technology University Gopalganj-8100, Bangladesh.

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**Abstract:** Bangladesh has experienced significant challenges and strains since the establishment of constitutionalism in 1972. It has gone through several amendments to the unconstitutional and constitutional process of civilian government and military rule. As a result, it lost the original features of the 1972 constitution. But the fifteen amendments of the constitution bring back the country to its original form that was established based on the dream of the freedom fighters. Several significant aspects were introduced through this amendment. Among them, it brings back the secular nature of the state and freedom of religion. It also includes the prevention of the acquisition of state power in any unconstitutional way. This amendment removes the Caretaker Government system and includes an electoral process under the elected leadership that reflects the democratic norms of the state. Moreover, the amendment introduces the doctrine of the basic structure of the state that will protect its original aspects established by the father of the nation Bangabandhu Sheikh Mujibur Rahman. This article aims to explore several aspects of the Fifteenth Amendment that will bring back the original form of the Constitution.

**Keywords:** Secularism, amendments, state power, political leadership, freedom of religion, the basic structure of the state.

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## INTRODUCTION

Bangladesh emerged as a sovereign nation in 1971 by the glorious war of independence with the bloodshed, tears and sacrifices of millions of people. Bangladesh has been a democratic People's Republic since achieving its independence, and the people have mandated that no other laws exist but the Constitution, which is a solemn statement of their will (Hoque & Chowdhury, n.d.). The paradox of the country's destiny is that, since the Constitution was adopted, it has undergone so many amendments that it hardly retains its original spirit. This spirit stimulated the drafters to create Bangladesh's first constitution following the country's victorious birth through a prolonged liberation struggle (Hossain, 2022). The 15th amendment of the Bangladesh constitution is perhaps the most debatable one in the contemporary political issues. It is frequently stated that this amendment "needs" to bring Bangladesh back to the spirit and provisions of its founding constitution from 1972 (Bhuiyan, 2017). The most recent amendment, the 15th, has similarly infuriated a lot of people. Even if it has certain advantages, the disadvantages outweigh the gains made possible by the advantageous features.

## METHODS OF THE STUDY

The study is conducted with both historical and content analysis methods. The data of this study is collected from secondary sources which include journals, newspapers, books, monographs and government documents.

## Context of the Fifteen Amendment of the Bangladesh Constitution

The BNP-led government ratified the 13th Amendment to the Constitution, paving the way for establishing the neutral caretaker government (NCG) in 1996. However, it became disputed in 2004 when the then-BNP-led government passed the 14th amendment to the constitution. The 14th Amendment extended the retirement age for justices and secured that a certain former chief justice would take on the role of chief adviser to the caretaker administration before the ninth parliamentary election (Majumdar, 2023). A harsh blow to the political settlement was delivered on May 10, 2011, when Chief Justice ABM Khairul Haque provided a divided "short order" of the Appellate Division declaring the 13th Amendment "prospectively" void following the 10th and 11th parliamentary elections, even though two benches of the High Court had earlier found the amendment to be constitutional (Majumdar, 2023). It should be mentioned that Justice Khairul Haque wrote the brief order eight days before he retired, with just ten days to hear the case and disregarding the amicus curiae's arguments (bdnews24.com, 2012). He also brought back the appeal against the High Court ruling six years after it had been filed.

Recalling that on July 21, 2010, a 15-member special parliamentary committee was set up to modify the constitution, 12 of whom were prominent members of the Awami League (Shakhawat Liton & Rashidul Hasan, 2011). On March 29, 2011, the committee unanimously recommended to amend the constitution by keeping the impartial caretaker government system with a three-month term. The committee consulted 104 distinguished citizens, including the current prime minister, a former president, three former chief justices,

political leaders, editors, and members of civil society (Shakhawat Liton & Rashidul Hasan, 2011). The committee's decision was changed after meeting with the prime minister the next day, and it was suggested that the Caretaker System be abolished by amending the constitution. On June 30, 2011, the Fifteenth Amendment to the Constitution was ratified by Parliament, bringing about the final elimination of the caretaker government system and several major constitutional amendments.

### **Major Features of the Fifteen Amendment of the Bangladesh Constitution**

The main elements of the 15th Amendment to the Constitution can be summed up as follows after examination:

1. The caretaker government System that was set up by the 13th amendment was dismantled (Bangladesh Gazette Extra, 2011). Under the political leadership, all the next parliamentary elections will be held.
2. With certain restrictions, Islam remained as the official state religion, and the phrase "Bismillah-Ar-Rahman-Ar-Rahim" was kept above the Preamble (Bangladesh Gazette Extra, 2011).
3. The statement "the full faith and confidence in Allah" was taken out of the Constitution (Bangladesh Gazette Extra, 2011).
4. The restoration of religious freedom and secularism was outlined in Article 12 (Bangladesh Gazette Extra, 2011).
5. Tribal and ethnic minority would be the phrase used to describe the indigenous people (Bangladesh Gazette Extra, 2011).
6. As a nation, Bangladesh's inhabitants will be referred to as Bangalees, and its residents will be called Bangladeshis (Bangladesh Gazette Extra, 2011).
7. The purpose of adding Articles 7A and 7B to the Constitution was to prevent the acquisition of power through unconstitutional means, as stated in Article 7 (Bangladesh Gazette Extra, 2011).
8. Several articles that make up the Constitution's fundamental provisions are non-amendable. As mentioned in Article 7B "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." (Bangladesh Gazette Extra, 2011)
9. Article 70 of the 1972 Constitution was reinstated, permitting Members of Parliament (MPs) to abstain from voting on any matter in accordance with the judgment of their political party. 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 (Bangladesh Gazette Extra, 2011).
10. If Parliament collapses for whatever reason, elections must be held within ninety days after the dissolution. The numbers of women reserve seats were increased to 50 from the existing 45 (Bangladesh Gazette Extra, 2011).
11. The President will have ultimate command over the armed forces, with legal restrictions on how he can exercise that authority (Bangladesh Gazette Extra, 2011).
12. The President will nominate the Chief Justice, and the President will appoint the other judges after discussing the Chief Justice (Bangladesh Gazette Extra, 2011).
13. The President, Prime Minister, Speaker, Chief Justice, and head and branch offices of all government and semi-government offices, autonomous bodies, statutory public authorities, government and non-government educational institutions, and Bangladeshi embassies and missions overseas are among the places where the portrait of Sheikh Mujibur Rahman will be kept and kept on display (Bangladesh Gazette Extra, 2011).
14. The March 7, 1971 speech by Sheikh Mujibur Rahman, the April 10, 1971 proclamation of independence in Mujibnagar, and the 25th of March, 1971, proclamation of independence by Sheikh Mujibur Rahman after midnight were all mentioned in the Constitution (Bangladesh Gazette Extra, 2011).
15. The State will maintain natural resources, biodiversity, water bodies, forests, and animals, as well as preserve and develop the environment for the benefit of current and future generations, according to a new provision that was adopted to protect and develop the environment and wildlife. "The State shall take steps to protect and develop the unique local culture and tradition of the tribes, minor races, ethnic sects, and communities," declares a second new provision (Bangladesh Gazette Extra, 2011).

### **Positive Aspects of the Fifteen Amendment of Bangladesh**

Fifteen amendments to the constitution of Bangladesh installed some changes which bring back the major features of the original constitution of 1972 of the Peoples Republic of Bangladesh. Those special features are discussed in the following:

#### **Secularism**

In the original constitution of Bangladesh, secularism is one of the major principles among the fundamental principles of state policy (Haque, 2004). However, these state principles have been changed by the military ruler after the 1975 bloody changeover with the fifth amendment of the constitution (Shamin, 2022). Fifteen Amendment however restored secularism as one of the four fundamental principles of the state. The removal of the 5th Amendment's "absolute trust and faith in the Almighty Allah" allowed secularism to be reinstated by the 15th Amendment. Nonetheless, it kept

"Bimillah-ar-Rahman-ar-Rahim" from the Fifth Amendment and the state religion designation of Islam from the Eighth Amendment (Shamin, 2022).

The fifteen Amendment of the Constitution clearly define the meaning of secularism in the following manner "The principles of secularism shall be realised by the elimination of -

- communalism in all its forms;
- the granting by the State of political status in favour of any religion;
- the abuse of religion for political purposes;
- any discrimination against, or persecution of, persons practicing a particular religion (GPRB, 2016).

### **Elections Under the Incumbent Cabinet**

The Fifteenth Amendment stipulates that the parliamentary election must take place ninety days prior to the dissolution of the present parliament. (Bangladesh Gazette Extra, 2011) The parliament will be in session for the next ninety days, but it won't be doing anything since the most recent amendment restricted its authority and capabilities during that time (Bangladesh Gazette Extra, 2011). The change did not, however, restrict the departing cabinet's authority during the election. The newly elected legislators won't take office until the end of the current parliament's five-year term, which will happen after the election (Bangladesh Gazette Extra, 2011). According to Article 123(3) of the constitution of Bangladesh, "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 sub-clause (a) shall not assume office as members of Parliament except after the expiration of the term referred to therein."(GPRB, 2016)

This constitutional provision strengthens the democratic spirit as the election will be held under the democratically elected government. The previous Caretaker system was an unelected nonpolitical government conflicting with the norms of democracy.

### **Prevent Acquisition of State Power in an Unconstitutional Means**

The democracy of Bangladesh suffered along with the military rule and emerged unconstitutional military rule as a challenge to democracy. After the restoration of democracy in the post-90s, several attempts were initiated to capture state power unconstitutionally. The military-backed caretaker government was one of the examples of such an unconstitutional initiative to capture state power that ruled the country for two years. In this regard, the fifteen Amendments of the Constitution were a significant step to prevent the acquisition of state power as an

unconstitutional means. The parliament firmly resisted military takeovers of state authority and their implementation of constitutional suspensions or revocations. It included a clause called such actions "sedition" and stipulated harsh penalties. Article 7A of the constitution of Bangladesh mentions it in the following means:

- 1) If any person, by show of force or use of force or by any other un-constitutional means-
  - 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" (GPRB, 2016).

### **The Doctrine of Basic Structure**

The 15th Amendment also imposed a ban on amending the Constitution's preamble, basic structure, and some other specific provisions. It strengthened the basic structure of the Constitution and made it unchangeable. In the history of Bangladesh, several military rulers changed the construction according to their desire as a result the aspiration of democracy became endangered and hindered the political development of the state. Article 7B of the constitution of Bangladesh mentions the doctrine of basic structure in the following way: "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" (GPRB, 2016).

## **CONCLUSION**

Bangladesh has experienced significant challenges and strains since the establishment of constitutionalism in 1972. Though in practice the nation's history is replete with breakdowns, suspensions, and revisions, theoretically the nation had the original 1972 constitution. After the fifteen amendments to the constitution of Bangladesh, it installed some major changes which brought back the major features of the original constitution of 1972 of the Peoples Republic of Bangladesh. Among them, secularism is one of the significant issues. It also clarifies the definition of

secularism. Moreover, the Fifteenth Amendment introduces the electoral process under the elected government which upholds the spirit of democracy and removes the unelected and non-political persons-led Caretaker Government. It also prevents the acquisition of state power in an unconstitutional means. Moreover, the fifteen amendments strengthened the basic structure of the state which will lead the country as per the dream of the millions of freedom fighters.

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