

CONSTITUTIONAL AMENDMENTS IN BANGLADESH: POLITICAL TRENDS AND DEBATES

Md. Emdadul Haque¹

¹Assistant Professor at the Department of Law and Justice of Southeast University, Independent Human Rights Researcher and Freelance Journalist based in Dhaka, Bangladesh. Email: haqtoday@yahoo.com

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ABSTRACT

Since inception, the constitution and constitutional amendments in Bangladesh have encountered multifarious controversies. Immature political culture and confrontational political practices have now plunged the nation into deep crisis grappling with bad governance. Democratic deficiency in political parties and overt politicisation of democratic institutions targeting political maneuvering has been the most serious impediment for nurturing and raising the ‘third wave of democracy’ emerged with the 12th amendment of the constitution in 1991. The sharp manipulation of constitutional amendments for political gain in the country is carried out by Awami League (AL), Bangladesh Nationalist Party (BNP) and Jatiya Party (JP). These trios are more or less equally responsible for the present status of constitutional politics and fragile democracy. However, as a guardian of constitution, the Supreme Court (SC) under the constitutional mandates has tried to protect the sacred document emanated from the will of the people. Like the legislatures the political value loaded role of judges in deciding the constitutionality of some amendments is not beyond question. Now it is a daunting challenge for the lawmakers, politicians, judges, other intelligentsia to overcome the existing political hurdles and constitutional crisis of the nation. This study analyses the political context of the constitutional amendments in Bangladesh and their impacts along with

their aftermaths. This study also sheds light on the past and present trends of politicisation and ramifications of the deleted and existing amendments with some recommendations for the amelioration of the present crisis.

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INTRODUCTION

Politicisation of constitutional amendments in the name of constitutional power has created furious debates and dilemmas from the constitutional birth of Bangladesh. Using constitution for dubious political purpose has been in practice soon after the journey of the nation. In almost all the constitutional amendments except a few from the period of 1973 to 2014 there is a smell of politicisation. Lawmakers as politicians have been dependent on the political whims and fancies in amending constitution other than focusing the rights based approach. Judges while interpreting constitution sometimes have relied on law not on values. Lawmakers in most cases have attempted amendments with a view to lingering ruling power and legitimizing the unconstitutional means of getting power in the guise of voting politics. The root of politics in the country lies in the inherent belief of dynastic political leadership, blame game, conspiracy theory for yielding political dividends (Islam, 2013). In amending constitution, the legislatures have also resorted to blackmailing the religious sentiments of majority as well as minority people sensing their orthodox and unorthodox religious beliefs. Even, the nation is divided by the politicians for their own interest in the name of the secularist and anti-secularists ideals leading the state to the brink of democratic collapse and economic loss. Some constitutional amendments were challenged in the Supreme Court (SC) over the time. The SC as the guardian of the constitution has exercised its vested power to justify the spirit of those amendments in line with the spirit of the constitution. The apex court as the last resort to justice has revealed the truth of infringement of constitutional spirit by the lawmakers and political tricks behind some amendments.

Ultimately, the Supreme Court has declared the 5th, 7th, 8th, 13th, and 16th amendments unconstitutional. It is acknowledged that in times of political crisis, the justice system plays a decisive role in protecting the rule of law and preventing oppression by the state (Elsner, 2017). The political hue and cry for and against the highest court regarding the declaration of unconstitutionality of some amendments has put it in tough situation despite the constitutional backup of judicial independence. This

study is an attempt to explore the trends of politicisation of the constitutional amendments in Bangladesh and their aftermath shedding light on the role of the SC in dealing with the debated amendments.

RESEARCH METHODOLOGY

The research article is grounded on the outcome of comprehensive observation and analysis of various primary and secondary sources based literature. As part of primary sources, the Constitution of the People's Republic of Bangladesh 1972 and the subsequent 16 amendments along with relevant judicial decisions of the Supreme Court (SC) of Bangladesh on relevant matters have been reviewed. Simultaneously, secondary data has been collected and analyzed from noted books, peer reviewed journal articles, research reports, newspaper articles, and also relevant materials from websites. In completing the research, mainly qualitative approach has been adopted to make an analytical reasoning in identifying the trends of politicisation of the constitutional amendments in the country and their consequences. Qualitative approach has been adopted to explore the idea and in assessing an understanding of underlying reasons, opinions and socio-political consequences of the research.

IDEA ON CONSTITUTION

Constitution is a dynamic document and treated like a living tree. Constitution in every country is designed for liberty, order, and justice of people (McClellan, 1989). The term constitution has diverse meaning to different people depending on social structure, culture, politics, and needs of people apart from philosophical underpinnings (Muigai, 2006). Generally, it denotes certain rules, norms and principles, precedents, dealing with three broad ideas namely freedom, equality and justice. It entails the basic structure, powers, functions, and limitations of the government bodies as well as fosters relationship between the rulers and the ruled. Bangladesh after its hard earned independence in 1971 defeating Pakistan framed a constitution on 4 November 1972 and it came into effect on 16 December 1972. It has 153 articles and 16 Amendments. The founding fathers dreamed of a better written constitution for the war ravaged nation. Accordingly a 34-member Constitution Committee headed by Dr. Kamal Hossain, took immense pains to learn from the constitutional experiences from around the world especially from the UK, USA, and India and meticulously drafted the constitution.

There are three dimensional functions of a constitution. Firstly, constitution as an aggregate of laws, theories, and interpretations envisages the limitation of government powers. Secondly, it clarifies the identity of a nation with its goals. Thirdly, it demarcates the pattern of authority and lays out the set up of government institutions. Constitutional jurists also broadened the idea of constitution. Greek Philosopher Aristotle branded constitution as a way of life the state has chosen for itself. Judge

of the Constitutional Court of South Africa and a noted anti-apartheid leader Albie Sachs terms constitution as an autobiography of a nation reflecting its historical struggle and experience (Sachs, 1990). It is something that involves people from all walks of life with a view to obtaining rights through struggle not by grace. Windeyer J. referred the Australian Constitution as the birth certificate of a nation and that has been frequently quoted by the judges of the country's High Court (Cooray, 1979). The length and breadth of a constitution and also whether it is large or tiny, rigid or flexible, unitary or federal with constitutional or parliamentary supremacy have little significance in its success or failure. Indian constitution is the biggest one with 395 articles while the U.S. constitution is the shortest one with only seven articles bearing around 4,000 words. In UK ordinary law and constitutional law are treated in almost similar way except the Human Rights Act 1998 and few other constitutional documents. But in India, USA and in Bangladesh, Constitutional law and ordinary laws are treated with different scales.

CONCEPT OF CONSTITUTIONAL AMENDMENT

There are debates and discourse for and against the necessity, procedure, and outcome of constitutional amendment. Sometimes, the changing needs of circumstances and time instigate the legitimate authority for necessary amendments of a constitution. For most constitutionalists, constitutional amendments are designed to fix imperfection and to allow for the correction or improvement of a constitution evolving political experience or understandings (Denning and Vile 2002). The existence of an amending clause in a constitution shows a belief that the fundamental law is a human apparatus subject to human refinement and better function of state machinery (Gray, 1999). The purposes of amendments include protection of basic rights for people, expediting the rule of law, accountability, transparency, and public participation in decision making. The method of amendment is typically written into the constitution itself. The amendment process is indispensable to the velocity and stability of a constitution over time, but it can also open up scope for abuse by legislatures and constitutions can be amended in a way that they begin to reflect the will of particular political interests rather than the will of the people (Dellinger, 1983). There are either rigid or flexible provisions for constitutional amendment with two-third or three-fourth support of the legislature. The proportion of rigid constitutions surpasses the number of flexible ones. However, a constitutional amendment refers to the modification, change or alteration of the constitution. In USA, an amendment means only addition but no modification, substitution, and repeal while in Bangladesh the term amendment as per article 142 implies four means i.e. addition, alteration, substitution, and repeal by two-third majority of parliament members (MPs).

The U.S. is treated as the most rigid constitution in the world with 27 amendments in 230 years. But the Constitution of the Kingdom of Denmark in 165 years has been amended only for four times since its inception in 1849. The Australian constitution adopted in 1990 was amended only for eight times and forty-four proposals to amend the constitution have been rejected by referendums. Even the constitution of Japan was enacted in 1947 but it is yet to be amended. The following view of Yanib Roznai depicts the nature of global constitutions and their amendability:

Using a data set of 742 world constitutions enacted from 1789 to 2015, Roznai demonstrates that the recent constitutions are more likely to include unamendable provisions. He shows that only 17% of the world's constitutions from 1789 to 1944 had unamendable provisions while 27% constitutions enacted from 1945 to 1988 had such provisions. In recent years from 1989 to 2015, 54% included unamendable provisions (Roznai, 2017).

The British constitution is considered as a very flexible one as the Brits can amend any part of it with simple majority like other ordinary laws. Indian Constitution adopted in 1950 is rigid but a total of 101 amendments have been made so far while 122 amendment bills have been attempted to pass. The most amended constitution in the world is the constitution of the U.S. state of Alabama with over 800 times since 1901. The Norwegian constitution was amended for 400 times in 200 years since its enactment in 1814. Bangladesh constitution amended for 16 times so far from 1973 to 2014. The constitution is rigid from the very outset of its journey. However, the 15th amendment in 2011 has made the constitution so rigid that around 50 articles are not amendable now.

SIXTEEN CONSTITUTIONAL AMENDMENTS OF BANGLADESH AT A GLANCE

From 1973 to 2014 Bangladesh constitution has been amended 16 times which are given below:

Amendments	Enactment Dates	Synopsis of the Amendments
1 st Amendment	15 July 1973	To make way for prosecution of crime against humanity and war crimes committed in the liberation war of 1971.
2 nd Amendment	22 September 1973	Inclusion emergency provision, suspension of fundamental rights and preventive detention.
3 rd Amendment	28 November	To give effect to the boundary line

	1974	treaty between Bangladesh and India.
4 th Amendment	25 January 1975	One party system and Presidential form of government were introduced replacing multi-party system.
5 th Amendment	6 April 1979	Legalizing all acts done by the first Military Authority in the name of Islamisation Added utmost trust and faith in the almighty in the preamble scrapping secularism Bismillah-ar-Rahman-ar-Rahim also added
6 th Amendment	10 July 1981	To make way for the Vice President to be a candidate in president election.
7 th Amendment	10 November 1986	Legalizing all acts done by the 2 nd Military Authority.
8 th Amendment	9 June 1988	Setting up six permanent Benches of the High Court Division Islam as a religion declared as the state religion
9 th Amendment	11 July 1989	Direct election of the president and the Vice-President simultaneously.
10 th Amendment	23 June 1990	Period for reservation of 30 women members seats in the parliament was extended for 10 years.
11 th Amendment	10 August 1991	Legalizing the appointment of Shahabuddin Ahmed, Chief Justice (CJ) of Bangladesh as Vice President of Bangladesh and his all activities as the Acting President and then the return to his previous position of the CJ.
12 th Amendment	18 September 1991	Reintroducing the Parliamentary System
13 th Amendment	28 March 1996	Provision for Caretaker Government (CTG)
14 th Amendment	16 May 2004	Increase of women reserve seat to 45 from 30, Increase of retirement age of Supreme Court Judges from 65 to 67 years

15 th Amendment	25 June 2011	Abolition of Caretaker Government (CTG). Increased women reserve seats to 50 from 45. Inserted articles 7(a) and 7(b) in a bid to end takeover of power through extra-constitutional means. Restored secularism and freedom of religion but Islam remained as state religion. Nationality of people as Bangladeshi but identity as Bangalee as a nation Acknowledged Sheikh Mujibur Rahman as the Father of the Nation.
16 th Amendment	17 September 2014	Impeachment of Supreme Court Judges by Parliament in lieu of Supreme Judicial Council (SJC)

TRENDS AND DEBATES ON CONSTITUTIONAL AMENDMENTS

The legislature in disguise of political affiliation has shown a cunning attitude in amending the constitution since its beginning. The dominant debates on politicisation of constitution and constitutional amendments include secularization of constitution, Islamisation of constitution, one party government to multi-party democracy, basic structure doctrine, military intervention and martial law, provision to referendum to amend the constitution, insertion and abolition of caretaker government, appointment and impeachment of the SC Judges.

SECULARIZATION OF CONSTITUTION

Firstly, the incorporation of secularism in the preamble of the original constitution of 1972 turned to be a hot issue of political debate for people of pro-Islamic groups but welcomed by leftist and progressive groups. Islamists criticized the overnight secularization of Awami League (AL) as a political party from Awami Muslim League in 1949 and blamed AL for secularization of the constitution despite 90% Muslim majority population. It is observed that the constitution of 1972 incorporated secularism as a sine qua non to root out communalism, orthodox religious bigotry, and religious discrimination. The manipulation of Islam in the name of state religion in the Islamic Republic of Pakistan by military rulers and the idea of freedom of religion for all prompted the framers to induce the ethos of secularism. It is also alleged that four principles of AL namely nationalism, democracy, socialism, and secularism reflected in the

constitution by Dr. Kamal Hossain as he was a leading AL leader. Other argument suggested that the layers of society had a distinct culture in Bengal with coexistence between old and new religious practices (Anisuzzaman, 2002).

The AL claimed them to be the pioneer of secularist transition in the country. They were probably right as the Indian constitution got the flavour of secularism in 1976 by its 42nd amendment. Here, some conservative critics in Bangladesh say that to woo the vote banks of minority religious community especially the Hindu community, secularism was inserted. Still, some radical Islamic political parties and clerics misinterpret secularism as cycle of naturalism, rationalism and secularism exposing atheism. But the real nature of Bangladeshi secularism can be traced in the words of father of the nation Bangabandhu Sheikh MujiburRahman. He said:

“Secularism does not mean the absence of religion. Hindu will observe their religion; Muslims will observe their own; Christians and Buddhists will observe their religions. No one will be allowed to interfere in other’s religions. The people of Bengal do not want any interference in religious matters. Religion cannot be used for political ends...” (Bangladesh Parliament Debates, 1972).

Moreover, Bangabandhu at a Non Aligned Movement (NAM) summit of 1973 in Algeria, in response to a query of Libyan dictator and President Gaddafi on inserting secularism in the constitution of 1972 said:

“Our secularism is not against religion. Our secularism stands for harmony among members of all religions. Indeed, in the opening of the Quran Allah is described as Rabbul Alamin, the head of all creation and not of Rabbul Muslimin, the head of only of the Muslim. This is the spirit which underlines our secularism” (Hossain, 2013).

After the repeal of the 5th, 7th, and 13th amendments, the AL led government made the 15th amendment in 2011 restoring many provisions of 1972 constitution. Unfortunately after this amendment, the true spirit of secularism as enshrined in 1972 lost its virginity and the word Allah was secularized by creator. Secularism has been revived keeping Islam as state religion with provision for equal respect of other religions. In fact, Bangladesh is a country of communal harmony but amalgamation of state religion and secularism by the AL is cleverly designed to please both secularists and anti-secularists voters. AL has not forgot that it deleted the ‘Muslim’ from the Awami Muslim League and turned to be secular but what it is doing now to grab vote banks (Ahsan, 2017).

ISLAMISATION OF CONSTITUTION

Similar to secularism, the idea of Islamisation of the constitution also has a shocking background. After the tragic death of Bangabandhu in 1975 the military ruler turned President Ziaur Rahman added utmost trust and faith in Almighty Allah in the Preamble in lieu of secularism. He also added Bismillah-ar-Rahman-ar-Rahim (In the name of Allah, the most gracious, the most merciful) above preamble of the constitution. Then the criticism was reversed by the leftist and progressive groups of people against the Islamisation.

It is alleged that after the tragic demise of Ziaur Rahman on May 30, 1981 his successor Hussain Muhammad Ershad did the unfinished task of using religion to stay in power grasping same popular public sentiments. President Ershad as a military turned ruler was also tactful in amending the constitution using majority Muslim people's religious sentiments. He set up six permanent benches of the High Court Division (HCD) outside the capital Dhaka and made Islam as the state religion by the 8th amendment seeking mass support during a campaign by major political parties to oust him from power (Hossain, 2016). Before that he cleared his ways to state power through the 6th amendment and by the 7th amendment he legalized all the actions taken during his military regime from 1981 to 1986. In the wake of movement, he was forced to leave the autocratic regime on December 6, 1990 by rarest unity in mass agitation by the AL, BNP, and Jamaat heralding the new bud of democracy which was strangled in 1975. The 8th amendment was partially declared unconstitutional by the SC in 1989 because of its clash with the basic structure doctrine and the six benches of the HCD was removed from the constitution but Islam as a state religion kept unchanged. It is believed that judges also understand the sensibility of religious issues in the country and as a result they have kept the religious issue untouched. The AL led government by the 15th amendment on June 25, 2011 added Islam as a state religion with the provision of equality for other religions. It may be mentioned that the HCD of the SC of Bangladesh in 2016 rejected the locus standi (right to sue) of a petitioner who filed a writ in 1988 challenging the legality of Islam as a state religion (Bergman, 2016).

ONE PARTY TO MULTI PARTY DEMOCRACY

Despite few controversies, Bangabandhu as father of the nation is regarded as the main dreamer and architect of independent and prosperous Bangladesh. Amid scores of constraints after the liberation war in 1971, Bangabandhu as the first elected Prime Minister after the election in 1973 took the steering of ruling of the war ravaged nation which was exploited by the Pakistani rulers from 1947 to till independence in 1971. From 1973 to 1975 Bangabandhu made four changes in the constitution. The 1st amendment took place in 1973 with a provision of trial of war criminals

and was hailed by majority people except. But the 2nd amendment in the same year empowered the government to declare the state of emergency and to allow preventive detention for tackling political instability and natural disaster. This amendment was misused by both the elected government and military rulers by curtailing some fundamental rights. The 3rd amendment with the demarcation of border and exchange of enclaves between India and Bangladesh was a touchy issue for both the countries and also for AL as a close friend of India. To implement the 3rd amendment in 1974 Bangabandhu and Indira Gandhi signed an enclave exchange agreement in the same year, but it was not implemented until 2015 with the visit of Narendra Modi to Bangladesh.

During the first ruling of AL, huge debate stimulated with the passage of the draconian Special Powers Act in 1974 for detention of people without limit in the name of state security and public interest. The flurry of diverse controversy took place after the 4th amendment on January 25, 1975 and it surpassed all the previous debates because it changed the democratic norms and spirits of the constitution. It inculcated BAKSHAL (Bangladesh Krishok Sramik Awami League), a one party political system vesting unfettered executive powers to president dissolving the multi-party democracy. By the 4th amendment AL government kicked off the Westminster system or parliamentary democracy for which AL as political party struggled for 24 years (Islam, 2014). This amendment destroyed the doctrine of separation of powers and checks and balances from the constitutional jurisprudence. Absolute veto power was given to president curtailing the power of parliament. Even the power of the SC as the highest judiciary was subjugated. Unexpectedly, the power of impeachment of SC judges was laid to the hands of president from the parliament. It undermined the concept of local government and galvanized a fatal blow to press freedom despite its constitutional protection (Ahmed, 2009).

There were debates and arguments for and against the 4th amendment but majority proportion of people including some AL politicians were against that because it clashed with the earlier commitment of unprecedented leader Bangabandhu and its party. Despite manifold criticisms on the 4th amendment, there are some AL leaders who still believe that one party political system like China based on communism was an opportunity to rebuild the country but the dream of Bangabandhu was nipped in the bud with his tragic demise on 15 August 1975 by some disgruntled military personnel. Mahmudul Islam, a noted constitutional jurist and former Attorney General (AG) of Bangladesh while commenting on the 4th amendment opined that after the amendment, the president emerged as the all powerful authority in the republic distorting the ethos of the republic (Islam, 2002). The High Court Division (HCD) of the Bangladesh SC observed that by the 4th amendment, the basic and essential features of the constitution were altered and destroyed (Hamidul Huq Chowdhury vs. Bangladesh, 1992). In the same case the Appellate Division (AD) of the SC observed that the first three amendments do not

appear to have altered the basic structure of the constitution while the 4th amendment clearly altered the basic structure of the constitution.

After 15 August 1975, the military turned president Ziaur Rahman and Ershad ruled the country till 1990. During this tenure, Bangladesh aligned itself with most Islamic countries and less with India, with which Sheikh Mujib had signed a treaty of friendship (Indira-Mujib Treaty, 1972). Apart from Islamisation of the constitution, the 5th amendment in 1979 introduced a multi-party democratic system removing the one party system. It deleted the absolute veto power of the president over the parliament and restored the press freedom to a limited extent bringing vibrancy to media houses. It also introduced the referendum system for amending the basic structure of the constitution and citizens were given nationality as Bangladeshi replacing the idea of Bangalee. Moreover, it abolished the impeachment procedure of the SC judges by the president and introduced a three member new body called the Supreme Judicial Council (SJC) under the leadership of Chief Justice (CJ) and two senior most judges of the AD to impeach SC judges on the grounds of incapacity and misconduct. Some AL leaders criticized the SJC and still criticize it as the savior of judiciary from the subjugation of the president after the 4th amendment. However, a black law named the Indemnity Ordinance 1975 was declared by Ziaur Rahman with a purpose of saving the self declared killers of Bangabandhu. But, the AL led government assuming to power in 1996 repealed that Ordinance and criminal proceedings have been drawn against the killers of Bangabandhu (Rahman 2012).

BASIC STRUCTURE DOCTRINE AND REFERENDUM

The doctrine of basic structure of the constitution is a well known constitutional concept. The term was first introduced in 1963 by the High Court of East Pakistan (Abdul Haque vs. Fazlul Quder Chowdhury, 1963). This term was recognized by the Pakistan Supreme Court in the same year in (Fazlul Quder Chowdhury vs. Md. Abdul Haque, 1963) held:

“...franchise and form of government are fundamental features of a constitution and the power conferred upon the presidency by the Constitution of Pakistan to remove difficulties does not extend to making an alteration in a fundamental feature of the constitution.”

The doctrine was first expressed in India in a case (Kesavananda Bharati vs. The State of Kerala case, 1973). Before this case, the concept of the basic structure was applied indirectly in (Golak Nath vs. State of Punjab, 1967) case where it was held that parliament had no power to amend fundamental rights so as to take away or abridge any of them. The then Chief Justice (CJ) of India Subba Rao said that fundamental rights were assigned transcendental place under our constitution and therefore,

they were kept beyond the political reach of parliament. Perhaps no constitutional issue in India has received more scholarly attention than the basic structure doctrine (Krishnaswamy, 2009).

The Indian Supreme Court in the *Kesavananda Bharati vs. The State of Kerala* overruling the case of *Golak Nath vs. State of Punjab* held:

“Parliament had the power to amend any or all the provisions of the constitution including those relating to fundamental rights but this power of amendment was subject to certain implied and inherent limitations and that Parliament could not amend those provisions of the constitution which affected the basic structure or framework of the constitution.”

In Bangladesh the doctrine of basic structure was incorporated by the 8th amendment case as a milestone in the constitutional history. In the case, the former Chief Justice (CJ) Shahabuddin Ahmed found that the constitution stands on certain fundamental principles, which are its structural pillars and if those pillars are demolished or damaged, the whole constitutional edifice will break down. The same amendment also replaced Dhaka in lieu of Dacca and Bangla for Bengali which are hailed by people. The court observed that the power of amendment of the constitution of Bangladesh under Article 142 is not an unlimited power if it conflicts with the concept of supremacy of the constitution provided by Article 7, 26, and 65(1). Article 7 of the Constitution has put an implied limitation on the power of amendment and therefore Article 7 is basic and unalterable (*Anwar Hossain Chowdhury v Bangladesh*, 1989). The SC also observed that in the name of constitutional amendment, it cannot amend such part of the constitution that will weaken the spirit of the constitution. The court contended that article 7 and 26 of Bangladesh constitution exercise authority over Article 142. Therefore an amendment under article 142 will be invalid if it is inconsistent with article 7, 26, 44, 65(1), and 102. It is also said that the legislature are the creature of the constitution, and they are given the power of amendment, but it is a power given not to subvert the constitution, but to make it suitable to the changing situations. Through invocation of the doctrine of basic structure the parliament is restrained from amending certain basic structure but the parliament has infringed the doctrines many times even after the 8th amendment. (Chowdhury, 2014).

Former CJ ABM Khairul Haque in the 5th amendment case observed that sovereignty of the people, supremacy of the constitution, rule of law, democracy, republican form of the government, unitary state, separation of powers, independence of judiciary, fundamental rights and secularism are the basis of the Constitution. The court observed that the 5th amendment validated all illegal acts of the usurpers from 15 August 1975 to 9 April 1979, under the clout of Martial Law, which not only changed the basic structure but also character of the constitution in its totality. It also

uprooted the constitution altogether, and this amendment is ultra vires to the constitution (Khondhker Delwar Hossain vs. Bangladesh Italian Marble Works Ltd and Others, 2010). Following the same root of unconstitutionality of the 5th amendment, the 7th amendment was also declared unconstitutional and encroacher of the basic structure (Siddique Ahmed vs. Bangladesh, 2011). The basic structure was clarified in the 15th amendment by the parliament. After the 15th amendment, the preamble and around 50 articles relating to fundamental principles of state policy (FPSP), fundamental rights (FR) under parts I, part II and part III and also article 150 are not amendable.

ELECTION AND NON-PARTY CARETAKER GOVERNMENT

Holding of free and fair election is a major challenge of democracy since the birth of Bangladesh. No political party in power has lost election staying in power as every party has used the state power, mechanism, and political influences for winning election. The elections of 1973, 1979, 1986, 1988, February 1996, and 2014 bear the testimony of vote rigging and manipulation of the elections by the party in power. As a result the provision for the non-political caretaker government (CTG) emerged on 28 March 1996 by the 13th amendment. The enactment of the CTG was a result of contentious politics as opposition parties were never agreed in taking part in national elections under ruling party (Haque, 2015). The CTG system was the result of AL movement during 1995 to 1996 for a free and fair election. This system was a violation of the basic spirit of constitution because all ten members of CTG are to be unelected. The CTG was polluted by the BNP through the 14th amendment in 2004 through increase the retirement age of Chief Justice (CJ) from 65 to 67 to take advantage of the system. Following the controversy after the 14th amendment the state of emergency was declared in 2007 and lasted until the 10th election in December 2008. Despite some loopholes of the CTG, it served as a benchmark of credible election for three times. As the interim non-partisan and non-elected 10-member body the CTG was headed by two former chief justices and former head of Bangladesh Bank (BB) convincing the general mass about its effectiveness. AL won two elections during the 1996 and 2008 with the CTG system while BNP won one the general election in 2001.

The 13th amendment containing the CTG system was first challenged in 1996 (Writ Petition No. 1729 of 1996) in the HCD of the SC. The HCD rejected the petition. In January 2000 a SC lawyer challenged it again in the HCD in a writ petition saying the change distorts the principle that the republic will be governed by an elected government. The HCD rejected that writ petition (Saleem Ullah vs. Bangladesh, 2005) in 2004. However, after the death of the petitioner, another SC lawyer filed an appeal to the AD in June 2005 against the HCD decision. In 2011, the Supreme Court heard the appeal beginning 1 March. For 10 days opinions and arguments from eight amici curiae, (friends of the court) and the counsels for both

sides of the appeal were heard before the verdict on unconstitutionality of CTG was reached in 2011. Of the eight amici curiae, five were in favour while three were against it.

In the process of declaration of unconstitutionality the SC overlooked the perception of common people in favour of the CTG. In the 13th amendment case the SC as an institution for protecting constitutionalism turned to be more damaging and politically motivated than ever before for the hindrance of democracy in the constitutional republic (Hoque, 2013). The AD of the SC in the 13th amendment case (Abdul Mannan Khan vs. Bangladesh, 2012) observed the voided system may be used for another two parliamentary elections for the sake of safety of state and its people. The SC created a normative jurisprudence opining of holding two subsequent elections under the defunct system sensing the political volatility in the country and weakness of election commission. After the verdict, the senior advocates of the country opined that parliament has to play a responsible role in finding an alternative to the CTG system. Regarding the fate of present political situation and election in 2014, AL appointed Attorney General Mahbubey Alam said:

The verdict of the unconstitutionality of the 13th amendment is "right in principle". The next two parliamentary elections will be held under caretaker governments if the constitutional provisions are not amended. If the next two elections are not held under caretaker governments, chaos and unrest will take place in the country" (Sarkar, 2011).

But after the repeal of the 5th, 7th, and 13th amendments of the constitution, AL government very cleverly made the 15th amendment of the constitution on 30 June 2011 ignoring the normative jurisprudence that sparked huge doubt to all for a free and fair election. As trustee of judicial power the role of judges were widely criticized after the judgment of the 13th amendment. Critics questioned the fidelity, courage and integrity of them. Opinion poll suggested that 90 percent of people supported the neutrality and role of the CTG for the free and fair election (The ProthomAlo, 2013). Critics point finger to the politicisation of judiciary for the wounds of democracy resulting from the repeal of the 13th amendment. The truth is, as the SC judges are appointed and promoted on the consideration of political backgrounds, they in many occasions try to favour the government in decision making. Even there are widespread allegations of corruption against the judges of Bangladesh (bdnews24.com, 2010). A noted economist and political think tank of Bangladesh Dr. Akbar Ali Khan while quoting Bangabandhu said that there is such a law in our country where the accused cannot be punished without false statement in true case. If a law suit begins with lie and ends with lie then there is a doubt whether it is possible to get justice (The Daily Manab Zamin, 2017).

On the contrary, without the CTG, the holding the general election in 2014 was like walkover of a football match in absence of the main opposition party BNP. In 2014 election, AL won 153 political seats without any voting due to absence of opponent. Now, it has been a billion dollar question to the entire nation that the election in the late 2018 or early 2019 will be free, fair, and credible or not. People are not worried about who will win or lose but whether they can exercise franchise without any interference. Undoubtedly, the abolition of CTG has divided the nation and caused a tense situation in politics (Riaz, 2013). Lack of political dialogue or negotiation is serious crisis for the growth of politics, political culture, and democracy in the country (Sobhan, 2000).

APPOINTMENT AND REMOVAL OF THE SUPREME COURT JUDGES

The president of Bangladesh is empowered in appointing judges of the SC. In appointing the CJ, the president will be independent as per article 95(1) while in appointing judges of the AD and HCD s/he will consult with the CJ as per article 94(2). The problem is in appointing judges in both the divisions of the SC there is huge influence of politics of the ruling party. No fixation of number of judges is another discrepancy to the provision. In line with the prescription of the constitution, there may be a separate law in appointing the judges of the SC. It is ridiculous to change the constitution for impeachment of judges without making firm provision for their merit based and non-partisan appointment. This shows the true image of political trends in amending the constitution. However, through the 15th amendment the president was empowered to appoint the SC judges by consultation with the CJ. Previously s/he was to consult with the prime minister for the same purpose. Since, president is devoid of having real executive power; the changes after the 15th amendment do not have any impact on neutrality or quality change in the process.

The constitution of 1972 had the provision impeachment of SC judges by the parliament. The 4th amendment passed in 1975, vested the power of impeaching SC judges to the president. The 5th amendment, brought on during the regime of military strongman Ziaur Rahman, made way for the formation of the SJC to impeach judges. The 16th amendment was passed by parliament on September 17, 2014, empowering the members of parliament (MPs) to impeach the top court judges for incapability or misconduct. The HCD of the SC on May 5, 2016 declared the 16th amendment unconstitutional (Asaduzzaman Siddiqui and Others vs. Bangladesh, 2014).

The most political controversy and conflicts emerged with the declaration of unconstitutionality of the 16th amendment by the AD of the SC in July 2017. The Chief Justice S K Sinha along with other judges of the AD of the SC sided with the SJC for impeaching judges of the SC and scrapping the power of parliament in impeaching them (Government of

Bangladesh and Others vs. Asaduzzaman Siddiqui and Others, 2017). The SC appointed 12 senior lawyers as amici curiae, seeking their opinions over the legality of the 16th amendment. Out of 12 amici curiae 10 submitted their views and 9 were against the provision of the 16th amendment while one supported it. The saddest part in the judiciary is that the Chief Justice S K Sinha has to leave the country as a result of the repeal of 16th amendment as part of irony of fate. During 1972, the leading framers of the constitution like Dr. Kamal Hossain and Barrister Amirul Islam were in favour of the parliament for the impeachment of the SC judges but now they are against it because they believe that parliament has lost its credibility and may be vindictive to impeach judges. They opined that during the 1972 constitution they had more trust on parliament but now they shifted their trust and faith on the SJC following the political instability and wrangling in the country. Moreover, the interventionist role of the parliament in removal of judges stands against judicial independence due to the socio-political scenario of the country (Chowdhury, 2015). The AD of the SC observed that ruling party lawmakers cannot vote against their party's decisions due to Article 70 of the constitution, even if they disagree with the said decisions. The court apprehended that the same fate may occur in case of the impeachment of a SC judges. Political thinkers in the country opined that without any doubt, article 70 is a bar to the democratic practice in the parliament (Jahan, 2015).

ABM Khairul Haque as a Judge of the HCD of the SC in a case (Bangladesh Italian Marble Works Ltd. vs. Bangladesh, 2006) opined that the original article 70 of 1972 constitution puts a reasonable restriction on the function of a member of parliament, but the amended article 70 in 1991 by the 12th amendment makes him or her a prisoner of his party. But in 2017 while giving personal opinion on the 16th amendment verdict ABM Khairul Haque as the chairman of Bangladesh Law Commission (BLC) reversed his earlier opinion because his present post is a political gift after his retirement from the post of Chief Justice of the country. Even in the 13th amendment judgement he was against holding government office of profit for the retired judges but now he holds it violating his own judgement. It is opined that for the sake of judicial independence, the practice of the re-employment of retired judges must be stopped (The New Age, 2017). Now, following the unconstitutionality of the 16th amendment, the power for the impeachment of judges goes to SJC. But uncertainty grips the fate of the SJC as the AL government is preparing to review the unconstitutionality of the 16th amendment.

CONSTITUTIONAL SPIRIT AND POLITICS

The constitutional spirit of Bangladesh is basically enshrined in the preamble of the constitution emanating from the struggle-sum socio-political and economic background coupled with the will of the people of all strata. Besides, the constitutional spirit is embodied in part II of the

constitution titled as the fundamental principles of state policy (FPSP) and also in fundamental rights (FR) under part III of the constitution. As a touchstone of constitutional spirit and part of long term goal for the nation, the preamble started like American constitution with the “Power of We” (American Constitution, 1789) and recognized the sacrifice of indomitable heroic people and martyrs for the historical struggle in the liberation war. The four foundational principles namely nationalism, democracy, socialism, and secularism are enshrined in paragraph two of the preamble as core principles and guidelines for the rulers and the ruled. The seeds of Bengali nationalism were sown in 1948 when Muhammad Ali Jinnah, the father of the nation of Pakistan, declared in Dhaka that Urdu will be the state language of the entire Pakistan despite Bengali language was spoken by 54% of the population of Pakistan. Jinnah believed that Bengali language and culture were influenced by Hinduism and according to his wish the central Minister for education in 1949 proposed the introduction of Arabic scripts for Bengali (Salik, 1977). The Bengali intellectuals doing politics during that period of time were influenced by theories of modernism, liberal socialism, and Marxism. They argued for an independent Bangladeshi state, where a fusion of liberalism and communism had triggered them to endorse the four principles in 1972 constitution as guidelines for the nation (The Daily Star, 2015). Along with the ideals of these four basic principles, the preamble in its paragraph three also pledges to establish parliamentary democracy, exploitation free socialist society, rule of law, human rights with dignity implying freedom, equality and justice for all in political, economic and social aspects. In attaining the goals of a state the legislative organ is the main player and the repository of the supreme will of society (Binkley and Moos, 1952). The constitution recognized people as the supreme power house for state functions as per article 7. Moreover, the supremacy of the constitution is ensured in Articles 7, 26(1), and 65(1) entailing the constitutional spirit and expectations of the founding fathers and all people.

Alike the political trends of other South Asian countries, the politics and politicians of Bangladesh are using political power for personal, family and party gain undermining the interest of the common people and state as a whole. It is alleged that corrupt and power mongering politicians are engaged in 3-M model of politics i.e. money, muscle and machine and using these to realize self-centred political dividends. Even in USA, the modern politics is assumed to be power, not principle (Whittington, 2000). Moreover, the mud-slinging of the blame game and conspiracy theory are aggravating the political trends. Allegedly, the zero-sum politics between the ruling and the opposition parties in the guise of serving people is a major threat to constitutional development. A systematic misuse of political power and criminalization of politics over the last 47 years has stagnated the politics of the country. All parties basically AL and BNP led by two battling Begums (The Economist, 2013) are liable for the current political dismay with lack of political tolerance, respect, values and ethics. Politics is used here as money making business with the

attitude of less investment but more achievement. It is gradually becoming commercial and money driven in the cause of action and destination. It is lamented that the country's 80% politicians are now business persons and it is a stigmatized chapter in politics (The Daily Star, 2015).

The following chart shows the gradual increase of involvement of business persons into politics in Bangladesh:

Parliament Elections	Businessmen Elected
1954	4%
1973	13%
1979	34%
1996	48%
2001	51%
2008	63%
2014	80%

Source: The Daily Star, 14 October 2014.

CONSTITUTIONAL AMENDMENTS: EXPECTATION VS. REALITY

Jurisprudential development of constitution in Bangladesh has not been very easy and smooth. The constitutional baby was born healthy but grew up with illness and wounds due to unhealthy social, economic and political development of the nation (The Daily Star, 2015). The constitution had undergone massive alterations, manipulations, suspension, and amendments in the last 47 years. The original constitution of Bangladesh in 1972 was characterised by genuinely true norms and principles of democratic governance. But the socio-economic and political development of post-liberation Bangladesh rendered the constitution almost unworkable. Harsh realities dictated the 2nd amendment providing for declaration of state emergency, suspension of fundamental rights, and preventive detention apparently failed to fulfill the objectives for which it was enacted. The emergency imposed by the military dictator Ayub Khan from 1965 to 1969 had a bitter impression and experience of AL government for the suppression and imprisonment of hundreds of citizens leading the party to make an avowed commitment to repeal not only black laws but also remove any scope which can retard the process of democracy (Maniruzzaman, 1988). Subsequently, the AL government passed the Special Powers Act 1974 which was more misused than used by successive governments in the name of public interest and state security (Ahmed, 1991).

Increasingly worsening political situations in the post-liberation Bangladesh ultimately led to adoption of the 4th amendment which was almost absurd in nature. It was termed as the revision of the constitution rather than the amendment. The 5th and 7th amendment started with militarization of the constitution in the name of Islamisation. Both the

military rulers tactfully sensing the perception of general people brought some changes in the constitution. However, inclusion of the referendum system and supreme judicial council (SJC) for impeachment of judges by the 5th amendment were hailed by most people. The 1st amendment applauded by the people as it added the provision of trial for war criminals and put restriction on some fundamental rights to them. The AL government can take the full credit the trial of war criminals. By amendments during the authoritarian years from 1975 to 1990, military rulers used to manipulate the basis of the formation of the nation in order to promote each leader's vision of Bangladesh identity. A qualitative change in the constitutional development occurred after a popular movement had overthrown General Ershad's autocracy in December 1990. As a result Bangladesh joined what Samuel P. Huntington called the 'third wave of democracy (Huntington, 1991). The parliamentary form of democracy was restored under the 12th amendment in 1991. But unfortunately rigged polls on February 15, 1996 again posed a threat undermining the democratic provisions of the constitution. Subsequently, a Non-party caretaker government (CTG) was inculcated in the constitution and the CTG was successful from 1996 to 2009 in holding free and fair polls. But with the repeal of the CTG the hope of free and fair election has been the most excruciating challenge for the democracy. The election in 2014 is a glaring example of historical vote rigging, absence of voter, and unfair competition selecting a total of 153 MPs out of 300.

The 5th amendment was repealed but it retained the SJC for the removal of SC judges but retained the nationality of people as Bangladeshi in lieu of Bangalee as per 1972 constitution. The AD of the SC used trick of beneficent construction of constitution as to nationality, otherwise the Bangladehi people living in the country and abroad from 1975 to 2010 had to change their legal documents as to names, deeds, and certificates spending lots of money. The court also reflected its sagacity as to retention of the SJC as the similar provision is staying in many counties including USA, UK, Canada, Hongkong, Germany, Sweden, Pakistan, Malaysia, Singapore, Israel, Zambia, Trinidad and Tobago, New South Wales, Victoria and others (The Independent, 2017).

As the insertion of the 13th amendment has ensured three elections with credibility and fairness, it also embodied the unique feature in the growth of democratic culture. Justice Abdul Wahab Miah, (the then judge of the AD of SC) in a case (Abdul Mannan Khan vs. Government of Bangladesh, 2012) opined that there were widespread allegations of vote rigging and manipulation of the elections by the party in power in the Parliament election held in 1973, 1979, 1986, 1988 and February 1996. The 14th amendment with 50 reserve seats for women has galvanized the idea of positive discrimination towards women empowerment in compliance with constitutional mechanism under articles 19(3) and 28(4). The provision for 30 reserve seats for women was added by the 10th amendment on 23 June 1990 by the 10th amendment. The 11th amendment on 10 August 1991 legalized the appointment of the Chief Justice (CJ)

Shahabuddin Ahmed as Vice President of the country and his activities as the Acting President and then the return to his previous position of the CJ. Justice Shahabuddin Ahmed faced many critical political situations during that time.

The 15th amendment brought some positive changes to the constitution that include conservation of biodiversity and environment, positive discrimination for women and as to national culture under articles 18A, 19(3) and 23A respectively. As a result of the 15th amendment articles 7A and 7B is a bold step to stop military intervention of political powers by extra-judicial means. The grabbing of state power through unconstitutional means is tantamount to sedition for which the convicted to face death penalty. But the same provision has increased the basic structure to such a wider extend for which the legislature may face difficulty to amend constitution with the changing needs of people and society. One should not only focus on the all the ill deeds were carried out during the martial law regimes. The separation of judiciary from the executives following the 12-point directives of the landmark judgement of Masdar Hossain case (Secretary, Ministry of Finance vs. Masdar Hossain, 1999) was done by the military government whereas both AL and BNP government during their tenure ignored it fearing losing control on judges to gain political benefits. Lack of institutionalization of democracy and the culture of political influence in appointing Chief Justice, military chief, and chief election commissioner has a great impact in the politics in the country. As per the constitutional framework the president is entitled to appoint them. The post of president is the most dignified one but his position is like a rubber stump as nominal head of the state. On the other hand, the post of prime minister is like an elected dictator who controls president in validating his or her all tasks. Moreover, only institutionalization of democracy is not a panacea for proper functionality of democratic norms and principles. Influential economist and philosopher Amartya Sen echoed the same sentiment in the following words:

“...There is no automatic guarantee of success by the mere existence of democratic institutions...The success of democracy is not merely a matter of having the most perfect institutional structure that we can think of. It depends inescapably on our actual behaviour patterns and the working of political and social interactions. There is no chance of resting the matter in the ‘safe’ hands of purely institutional virtuosity. The working of democratic institutions, like all other institutions, depends on the activities of human agents in utilizing opportunities for reasonable realization...” (Sen, 2009).

FINDINGS

Most constitutional amendments in the country have been enacted in the name of constitutional need and service towards people but serve little

interests of people rather serve political purposes of the ruling class. Bangabandhu is highly lauded for his outstanding charismatic leadership in attaining independence of Bangladesh and starting of democratic journey with high hopes amid four core principles. The purpose of the 1st amendment has been successful to some extent with the trials of some war criminals. The political controversy reached to its climax because of the 4th amendment as it has broken the backbone of constitutional spirit and tarnished the image democracy. It empowered the president to be an elected dictator absorbing most state powers underestimating the value of parliamentary democracy, rule of law, independence of judiciary, checks and balances, and the power of people offered by the constitution itself. The 5th amendment played double game with secularism and Islamized the constitution. The ultimate Islamisation of the constitution ended with the 8th and 15th amendment. However, president Zia is praised for restoring the multi-party democracy abolishing the one party government while president Ershad is criticized for his autocracy. The 5th and 7th amendments made the country a banana republic. During the martial law ruling, the role of the Supreme Court as guardian, guarantor and protector of the constitution was subservient. During the 15 years of dictatorship from 1975 to 1990 the SC failed to protect constitutionalism and democracy. In the year of 1990 president Ershad was searching the political way of lingering power. But the rare united movement of the major political parties including AL, and BNP ousted the military dictator Ershad in December 1990 and restored the third wave of democracy in 1991 by the 12th amendment. From that period, the two major political parties namely AL and BNP have thwarted the paths of democracy time and again.

Insertion of death penalty in the constitution after the 15th amendment in 2011 created obstacle for military personnel to grab the ruling power through military coup. The 16th amendment in 2014 gave back power of impeaching SC judges by the parliament members despite the existence of 35 year old Supreme Judicial Council (SJC) and dysfunctional parliament after the controversial election in 2014. The repeal of the 16th amendment is the reflection of judicial resilience against the politicisation of constitutional amendment.

The tussle on constitutional amendments between lawmakers as statespersons and politicians and the SC as the guardian and custodian of the constitution end up either in subsequent amendment or in judicial declaration of unconstitutionality in most cases of the amended part paving the way for further amendment. Out of sixteen amendments from 1973 to 2014, the SC has declared the 5th, 7th, 8th (partially), 13th and 16th amendments unconstitutional and against the spirit of the constitution. Arguably, these judgements project an image that the political forces in the country are dysfunctional corroding democratic values (Islam, 2016). In declaring the unconstitutionality of the 16th amendment the AD of the SC raised questions on the credible functionality of the parliament. With the change of AL government there is a possibility to declare the 4th

amendment unconstitutional. Interestingly, the 4th amendment issue was discussed in a case (Hamidul Huq Chowdhury vs. Bangladesh, 1981) during an autocratic regime but the issue of unconstitutionality was out of touch. Also, the possibility cannot be ignored that the SC can be used to declared the tenure of AL led government from 2014 to 2018 undemocratic and unconstitutional as 153 MPs were unelected infringing the spirit of parliamentary democracy.

The achievement of the country for economic and infrastructural development is tremendous because it has emerged as Asian tigers flouting the stigma of bottomless basket in less than 50 years of liberation. But still massive politicisation of government, semi-government and autonomous institutions, confrontation among political parties, and endemic corruption (Hasmi, 2017) are the major obstacles in achieving the dreamy pledges inserted in the constitution but the politicians are leading the nation towards abusive constitutionalism (The Daily Star, 2017). It is noted that the precondition of empowerment of people is the complete independence of judiciary. Besides, the Election Commission (EC), Anti Corruption Commission (ACC), Public Service Commission (PSC), and other constitutional as well as statutory bodies must have to be kept free from the influence of the executive branch of the government but accountability and transparency of these institution must be ensured.

In democracy the process is more important than outcome. So, who is going to win or lose in the election whether in national or in local level is immaterial rather whether the process is free, fair, credible, and transparent are more significant. So, in the present situation, political parties, including the major ones - AL and BNP should hold discussion addressing the ongoing political crisis relating to election mechanism paving the way for a free and fair election. Both the parties should come forward with sacrificing mentality staying away with bureaucratic mindset in resolving the weaknesses of the Election Commission (The Dhaka Tribune, 2017). Democracy as a form of government works better in the presence of strong opposition political party or parties but it functions worse in absence of it. Bangabandhu stressed the need for strong opposition and uttered that this system is not functional without strong opposition (Rahman, 2012). AL government designed a domestic opposition party in the parliament after 2014 controversial election.

Like politicians judges have duty to respect the value of general mass above politics. Judges perceived that the CTG system is not a panacea for democracy rather strengthening of election commission (EC) is the demand of time but suggested the CTG for next two elections but this issue is overlooked by the AL led government. Reforms of the EC is must for the proper functionality of electoral democracy but almost all reforms efforts were incremental in nature and were made to meet the demands of the party in power (Hossain, 2012). There are some very useful provisions, namely the requirement of disclosures of antecedents of candidates, the registration of political parties, an independent secretariat for the election commission. However, they lack some provisions that are conducive for

free, fair and meaningful elections (The Daily Star, 2013). No government has attempted to enact law for the neutral appointment of the personnel of the EC. Similarly, by the 16th amendment the AL led government was curious to impeach the Supreme Court judges without making law for the appointment of the judges in the SC. However, some constitutional amendments like the 4th, 5th, 7th, 8th, 15th, and 16th have been used in an instrumental way for political expediency especially electoral advantages to the ruling party. Democratic institutions and institutions of accountability have been utilized by successive governments with a view to passing constitutional amendments favouring the ruling party (Khan, 2015).

LIMITATION AND FURTHER SCOPE FOR RESEARCH

This paper has touched all the sixteen amendments of Bangladesh constitution whereas every amendment has huge impacts on the constitutionalism of the country. So, there is a scope of doing research relating to each amendment of the constitution by narrowing down specific idea. Qualitative approach has been chosen for this research but there is a further scope for applying quantitative approach. As the concept of this research is comparatively new in the country, there may be more research based studies and reports considering the practical social significance and academic interest. As the topic covers constitution, politics, and society, there is a further opportunity for an interdisciplinary research.

RECOMMENDATIONS

- i) Constitutional amendment should focus the needs of people along with the needs of constitutional institutions and institutions of accountability rather than narrow political interests.
- ii) Referendum system for the amendment of constitution may be brought back to the constitution so that before or after initiation of the need assessment of constitutional amendment people can express their free consent through voting. In most of the democratic countries the idea of referendum is actively functioning for empowering people into the process of democracy.
- iii) Enactment of separate law for the appointment of chief election commissioner (CEC) and other election commissioners (ECs) along with other personnel for the proper functioning of electoral democracy needs to be ensured. Independence and accountability of the EC should be guaranteed.
- iv) Enactment of separate law in line with the prescription of the constitution for the appointment, promotion, transparency, and accountability of the SC judges is needed. Independence of judiciary should be ensured in true sense.
- v) Ruling government should shun the habit of interfering with the independent, autonomous and semi-government institutions which are

responsible for nourishing, developing, and checking democratic norms and practices leading to good governance involving participation, predictability, accountability, and transparency.

vi) In the constitution the tenure is fixed for the post of president up to ten years which is hailed by people but the same provision could have applied for prime minister for creating more leaders and generating leadership to meet the existing gaps in this aspects.

vii) Rethinking of the provision on article 70 as to cancellation of membership for voting against own political party in the parliament as after 47 years of independence of the country it seems a barrier to the practice of democracy with free consent and spontaneity.

viii) Students' leadership should be encouraged through holding of student bodies in all public universities with regular interval. It can help to reduce the involvement of business people in the political set up of the country.

ix) Change of mindset of people and politicians are required to change the present political culture. People from all walks of life should work with the sense unity and fraternity forgetting personal and political rivalry to reshape the country with stability, prosperity, and peace.

x) A general education focusing constitution, government, politics, and ethics may be introduced in the curricula of schools, colleges, and universities for stimulating students with ethical leadership.

CONCLUSION

The journey of constitution amid democratic norms and practices in Bangladesh has confronted severe stresses and strains. The crisis has been deepened owing to gaps in political leadership paving the way for military intervention in couple of times. It is stated that where there is a defeat of rule of law there emerge tyranny. It is the fervent hope of the millions who fought for the establishment of a sovereign democratic republic for the promotion, protection, and conservation of freedom, equality and justice for all. This faith need to be restored, failing to which the independence of the country through sacrifice of a sea of blood will be meaningless. Thirst for power and money, blame game and conspiracy theory based political culture, endemic corruption, and mindset of people, are the key impediments for the backwardness of the constitution and constitutional amendments in the country. The above mentioned issues have serious impact on the politicisation of the most constitutional amendments. Involvement of business persons into politics is an ominous sign for leadership development. In fact, the existing standard of people, economy, and politics have mutual linkage. The derailment from the constitutional spirit coupled with the self seeking interest of politicians has been a bane for the nation leading the constitutional democracy into deep crisis. The success of a constitution does not depend on rigidity or flexibility rather depends on its commitment and services towards people and society. Similarly, the success of a constitutional amendment entirely depends on the gaps of the constitution based on the needs of people not on the

implementation of political agenda in the name of people. Political maneuvering of public interest will neither create a sign of good omen for the nation nor will heal the wounds of constitution to ensure rule of law and good governance. The prudence of the judges can also show the right way for politicians for the rectification of ongoing political trends. In tackling the present crisis and controversy due to over politicisation of the constitution and constitutional amendments, the nation should be united and work together. Three major political parties like AL, BNP, and JP can construct the crisis as an opportunity to build the nation as dreamt by the founding fathers, martyrs, and people of all classes forgetting the obsolete rivalry.

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