

Bangladesh *Jatya Sangsad* (The Parliament of Bangladesh)

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Introduction

The Parliament of Bangladesh (hereinafter, the Parliament) is officially known as The *Jatya Sangsad* (House of the Nation). It is a unicameral legislature established under Article 65 of the Constitution of the Peoples' Republic of Bangladesh (hereinafter, the Constitution). Modelled on Westminster, the Parliament is entrusted with legislative powers, the constitutional amendment power, financial and budgetary powers, and the powers of democratic oversight over the government. The Prime Minister and the Cabinet are drawn from the majority parliamentary party. The government remains in power so long as it bears the confidence of Parliament. As Bangladesh recognises constitutional supremacy, parliamentary laws and even constitutional amendments are subject to judicial review. The Supreme Court of Bangladesh is considered the guardian of the written Constitution and, hence, has the power of judicial review over executive and legislative actions. This Chapter explains the Structure, Composition, Powers, Functions, and Legislative Process of the Parliament. The Chapter also includes critical reflections on several of its institutional aspects.

I. Structure and Composition of the Parliament

Composition of the Parliament

Article 65 of the Constitution has fixed the number of directly elected Members of Parliament (hereinafter, the MPs) at three hundred. In addition, Parliament today includes fifty women MPs who are indirectly elected by the three hundred MPs.¹ Known as the 'reserved seat' women MPs, these MPs are proportionally distributed among the parties represented in the Parliament. While women's organisations have generally welcomed the reservation of women member seats, they have raised concern over the trend of ad-hoc changes made in consecutive constitutional amendments.² It has also been argued that apart from consolidating the numerical majority of the ruling parties,³ reserved seat MPs have played a negligible role in the

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¹ The Constitution of the Peoples Republic of Bangladesh 1972, art. 65(3) <<http://bdlaws.minlaw.gov.bd/act-367.html>> accessed 23 August 2021.

² In 1972, the original Article 65(3) reserved fifteen women's seats for ten years beginning in 1973. In 1978, a military ruler increased the number of seats to thirty, and the reservation was extended for another ten years. It was later made part of the Constitution through the Constitution (Fifth Amendment) Act 1979. The Constitution (Tenth Amendment) Act of 1990 extended the reservation period for another ten years. The Constitution (Fourteenth Amendment) Act of 2004 once again extended the reservation by another ten years. This time, however, the number of seats was increased to forty-five. The Constitution (Fifteenth Amendment) Act of 2011 extended the reservation for another ten years. It, however, raised the number of reserved seats to fifty. Lastly, the Constitution (Seventeenth Amendment) Act of 2018 extended the reservation for another twenty-five years.

³ In 1991, for example, Bangladesh Nationalist Party (BNP) won 140 seats out of 300. Falling 11 seats short of a majority, BNP had to rely on Jamaat-i-Islami (JI), which won 18 seats. Once the government was formed, it took twenty-eight reserved seats and gave two seats to JI. Through this process, BNP secured the required majority, and its government no longer relied on the support of JI. Similarly, in 1996, Awami League (AL) won 146 seats out of 300. Falling five seats short of a majority, AL had to rely on Jatya Party (JP), who had 32 seats. Once the AL formed the government, they took twenty-seven reserved seats and left three seats for JP. It, however, gave

parliamentary process.⁴ While the framers of the Constitution adopted the reservation policy as a temporary arrangement, the successive extensions of its tenure without any serious commitment to women's empowerment in the national political discourse did not escape criticism.⁵ A Bench of High Court Division of the Supreme Court of Bangladesh (hereinafter the HCD) questioned the reservation policy in *Shamima Sultana Seema v Bangladesh*.⁶ Though the case was related to reserved women seats in City Corporations, the petitioner also questioned the parliamentary reservation system.⁷ The Court accordingly made some *obiter* comments on the doubtful constitutionality of the reservation in Parliament.⁸ Calls for direct elections to the women's reserved seats have intensified since then.⁹

Election of the general MPs

Article 65 of the Constitution does not regulate the manner of parliamentary elections. It simply states that MPs shall be elected "in accordance with law" and "from single territorial constituencies...by direct election."¹⁰ Article 124 of the Constitution authorises the Parliament to pass laws determining constituencies, electoral rolls, and the process, manner, etc., of elections. The principal election law of Bangladesh - the Representation of the Peoples' Order 1972 (hereinafter the RPO) – was issued pursuant to Article 124 and has been amended several times.

Articles 72 and 123 of the Constitution provide some guidance about the timing of the parliamentary general election. As per Article 123(3), a general election to the Parliament is held within ninety days before the expiry of the tenure of a sitting Parliament. If the President dissolves the Parliament before the end of its tenure, election to the next Parliament is held within ninety days after such dissolution. As per Article 72(3), a parliament's tenure is five years from the date of its first sitting after a general election. In case the Republic is at war, the Parliament's tenure may be extended up to six months after the termination of the war. A limitation, however, is that the Parliament's tenure cannot be extended by more than one year at a time.¹¹ In a war situation, the President may even call a dissolved Parliament back into session.¹² Though it has not yet been applied, this provision could lead to the controversial intervention of the President in the electoral process. Recalling an already dissolved Parliament would postpone the election to the next Parliament. As per Article 48(3) of the Constitution, the President may act only in accordance with the advice of the Prime Minister. Hence, the President's decision to recall a dissolved Parliament could be the decision of the outgoing Prime Minister who, as per Article 57(3) of the Constitution, might then be waiting for his successor to be elected in the ensuing election.

AL the required majority, and its government no longer required the support of JP. For statistical data on various election results in Bangladesh, see Nizam Ahmed, 'Bangladesh' in Dieter Nohlen, Florian Grotz and Christof Hartmann (eds.) *Elections in Asia and the Pacific: A Data Handbook, Volume I* (OUP 2001), 535-538.

⁴ Nizam Ahmed and Sadik Hasan, 'Alangkar or Ahangkar? Reserved-Seat Women Members in the Bangladesh Parliament' in Nizam Ahmed (ed.) *Women in Governing Institutions in South Asia, Parliament, Civil Service and Local Government* (Springer 2018) 17-39; Pranab Kumar Panday, 'Representation without Participation: Quotas for Women in Bangladesh', (2008) 29(4) *International Political Science Review* 489; Jannatul Ferdous, 'Representation of Women in Parliament of Bangladesh: Is it Hopeful?' (2019) 6(2) *Journal of Governance and Public Policy* 110.

⁵ SM Masum Billah, 'Reserved seats for women, Constitutionality and human rights issues' *The Daily Star, Law and Our Rights* (Dhaka, 7 February 2009) <<http://archive.thedailystar.net/law/2009/02/01/index.htm>> accessed 28 August 2021.

⁶ *Shamima Sultana Seema v. Bangladesh* 57 DLR (2005) 201.

⁷ *ibid* [50].

⁸ *ibid* [58] (ABM Khairul Haque J).

⁹ Mahbuba Sultana, 'Reserved Seats and Women's Representation in Bangladesh Parliament: Gaps between Expectations and Reality' (2018) 3(1) *Premier Critical Perspective* 41 <<https://puc.ac.bd/Content/PU-Journal/PU-Critical-Perspective-Article4.pdf>> accessed 25 August 2021.

¹⁰ Constitution (n 1), art. 65(1).

¹¹ *ibid* art 72(3).

¹² *ibid* art 72(4).

Apart from the general parliamentary elections, mid-term vacancies are filled through by-elections to the concerned constituencies. Article 123(4) of the Constitution provides that a by-election to fill the vacancy in any seat will be held within ninety days of the official notification of such vacancy. In some cases, the Chief Election Commissioner (CEC) may extend that deadline by another ninety days if they think the election could not be held within the first ninety-day period due to an “Act of God”.

Election of the reserved seat women MPs

Before the introduction of the proportional distribution system in 2004, the majority parties usually took all the reserved seats unless they agreed to share some with coalition or strategic partners. This was possible because the reserved seat MPs were elected by the three hundred MPs elected in the general election.¹³ Presently, the Parliament (Reserved Women Seats) Election Act 2004, passed after the Fourteenth Amendment of 2004, provides for proportional distribution of reserved seats among the parliamentary parties. After a general election, the parties represented in Parliament nominate their assigned number of candidates through an internal nomination process. The Election Commission then takes over the electoral process. Fifty MPs nominated by the parties are elected through the votes of the directly elected MPs.

Partisan candidate selection and independent candidates

The RPO recognises partisan as well as independent candidatures in parliamentary elections. Political parties registered with the Election Commission can nominate their candidates for the election.¹⁴ A formal nomination paper duly signed by the responsible party officer is sufficient for the candidates nominated by registered parties. An independent candidate, however, requires, in addition to a sponsor and a seconder of the proposal for their nomination, supporting signatures from at least 1% of the total eligible voters in the constituency in which they might contest.¹⁵ Parties nominate their list of candidates through their internal parliamentary nomination boards. Though the nomination board formally nominates the candidates, the nature of Bangladesh politics is personalistic and patrimonial. Thus, the party chief determines the nomination of MP candidates.¹⁶

First-past-the-post system of Election

As mentioned earlier, Article 65 of the Constitution requires “direct election” to the Parliament. Members are elected through a first-past-the-post system, where a simple majority of every transferable vote counted on a universal adult suffrage basis determines which candidate wins a parliamentary seat. The party securing the most seats forms the government. Hence, the parties are not allotted seats in proportion to the popular votes they receive. The electoral history of Bangladesh shows that the number of seats the parties gain is usually disproportionate to the percentage of popular votes they receive.¹⁷ While there are concerns

¹³ The manner and form of the indirect election were then regulated by the Representation of People (Seats for Women Members) Order 1973.

¹⁴ The Representation of the Peoples’ Order 1972 (RPO) art. 90A-I, <<http://bdlaws.minlaw.gov.bd/act-details-424.html>> accessed 28 August 2021.

¹⁵ *ibid* art. 12(3A).

¹⁶ Mohammad Mozahidul Islam, ‘The Toxic Politics of Bangladesh: A Bipolar Competitive Neo-patrimonial State?’ (2013) 21(2) *Asian Journal of Political Science* 148, 149-51; Sabina Sharmin and AKM Jamal Uddin, ‘Characteristics of Political Culture in Bangladesh: A Critical Analysis from the Perspective of Political Development and Under Development’ (2013) 1(1-2) *Jagannath University Journal of Social Sciences* 74, 77.

¹⁷ Nizam Ahmed (n 3); Mohammad Mohabbat Khan and Habib Mohammad Zafarullah, ‘The 1979 Parliamentary Elections in Bangladesh’ (1979) 19 (10) *Asian Survey* 1023; Syed Serajul Islam, ‘Elections and politics in post-Ershad era in Bangladesh’ (2001) 10 (1) *Asian and African Studies* 160; Stanley A. Kochanek, ‘Bangladesh in 1996: The 25th Year of Independence’ (1997) 37(2) *Asian Survey* 136; Ahmed Shafiqul Huque and Muhammad

regarding the disproportionate distribution of seats among the political parties, there have not been serious demands for a proportional election system in Bangladesh.¹⁸

Eligibility of the Voters

Article 122(1) of the Constitution requires elections to be held “on the basis of the adult franchise.” Voters are registered in the electoral roll if they are (1) citizens of Bangladesh; (2) of eighteen years of age; (3) not declared persons of unsound mind by a competent court; and (4), not convicted for any offence under Bangladesh Collaborators (Special Tribunals) Order, 1972.¹⁹ Disenfranchisement for conviction under the Collaborators Order was inserted by the Constitution (Fifteenth Amendment) Act of 2011. It was targeted at persons accused of and convicted for collaborating with the occupying Pakistani military during Bangladesh’s Liberation War in 1971. This provision had the effect of barring the Jamat-i-Islami (JI) leaders, who were accused of collaborating with the Pakistani military, from putting forward candidates in parliamentary elections.

An eligible voter must be registered in the constituency where they are a lawful “resident”. The Electoral Rolls Act of 2009 requires a “resident” to physically live in the constituency or possess homestead or immovable property there.²⁰ The matter was challenged in *ATM Ali Reza v EC*.²¹ Mr Ali Reza, a non-resident Bangladeshi living in London, challenged the residency requirement in the Electoral Rolls Ordinance 2008. The HCD decided in his favour by holding:

It appears that the petitioner is a permanent resident of Bangladesh. Having his temporary residence in London and having attained the age of eighteen years and not having been declared by a competent court to be a person of unsound mind, he is entitled to be registered as a voter pursuant to Article 122 of the Constitution and the provision of Section 8 of the Electoral Rolls Ordinance, 2008 cannot restrict or deny the right of the petitioner conferred by Article 122 of the Constitution.²²

In light of the HCD’s verdict, the Electoral Rolls Act 2009 inserted a clause that non-resident Bangladeshis will be deemed residents of the constituencies where they had lived before emigrating or still owned ancestral homes.²³ This provision is similar to that governing prisoners. The 2009 Act requires prisoners and inmates to be registered in the constituency of their permanent residence rather than in the constituencies where they might be held in jail.²⁴ The 2009 Act, however, has made voting almost impossible for prisoners and non-resident Bangladeshis. Though the RPO allows voting by postal ballot, the practice has not gained popularity in Bangladesh. The process of requesting the postal ballot is cumbersome.²⁵ Concerns about the postal service have made voters sceptical that they will receive ballots on

A. Hakim, ‘Elections in Bangladesh: Tools of Legitimacy’ (1993) 19(4) *Asian Affairs* 248.

¹⁸ Harun Ur Rashid, ‘The case for proportional representation’ *The Daily Star* (Dhaka, 06 November 2007) <<https://www.thedailystar.net/news-detail-10414>> accessed 30 July 2021; GM Quader, ‘Proportional representation voting system: Bangladesh perspective’ *The Independent* (Dhaka, 01 February 2017) <<http://www.theindependentbd.com/arcprint/details/78771/2017-02-01>> accessed 30 August 2021; Mesbah Kamal, ‘Proportional representation is of utmost importance’ *The Daily New Age* (Dhaka, 29 November 2018) <<https://www.newagebd.net/article/57406/proportional-representation-is-of-utmost-importance>> accessed 3 August 2021; M Moniruzzaman, ‘Electoral Legitimacy, Preventive Representation, and Regularization of Authoritarian Democracy in Bangladesh’ in Ryan Merlin Yonk (ed) *Elections: A Global Perspective* (IntechOpen 2019).

¹⁹ Constitution (n 1) art 122(2).

²⁰ The Electoral Rolls Act 2009 sec. 8(1), 8(2) <<http://www.clcbd.org/document/503.html>> accessed 23 August 2021.

²¹ *ATM Ali Reza v EC* 50 DLR (HCD) 58.

²² *ibid* [21] (The Electoral Roll Act 2009 later replaced the Electoral Rolls Ordinance 2008, but section 8 remained unchanged).

²³ Electoral Rolls (n 20) s 8(6).

²⁴ *ibid* s 8(5).

²⁵ RPO (n 14) art 26.

time and that their votes will be counted. For non-resident Bangladeshis, there is no means to request ballots through Bangladesh embassies in their respective countries of residence. Hence, despite calls for reform, Bangladesh continues to disenfranchise millions of its non-resident citizens. While there was a promise by the incumbent Prime Minister in 2013 to make the necessary amendments to the RPO, these amendments never materialised.²⁶

Qualification of the MP candidates

As per Article 66(1) of the Constitution, any citizen of Bangladesh eligible to be registered in the Electoral Roll and who has attained twenty-five years of age may be a candidate in parliamentary elections. Though educational background or personal disposition are not listed as qualifications, there had been growing calls for better information sharing about the candidates' criminal, financial and educational records. This movement drew inspiration from an Indian Supreme Court decision requiring the candidates to supply information about their criminal records.²⁷ The Bangladesh Supreme Court later made the disclosure of such information compulsory.²⁸

Disqualification of the Candidates and MPs

As per Article 66(2) of the Constitution, a person shall be disqualified from serving, or to continue as, a Member of Parliament, if they are declared a person of unsound mind, an insolvent, a dual citizen of another country, or is convicted of a criminal offence involving "moral turpitude", sentenced to imprisonment for at least a two years for the offence and five years have not passed since he served a sentence. Article 66(2)(f) provides that any person holding any office of profit in the service of the Republic will be disqualified from being an MP. The Constitution (Fifteenth Amendment) Act of 2011 added that persons convicted under the Bangladesh Collaborators (Special Tribunals) Order, 1972, will also be disqualified as MPs.

Apart from the constitutional disqualifications in Article 66(2), Article 12(1) of the RPO contains additional statutory grounds for disqualifications. Any retiring civil or military officer will be disqualified from parliamentary elections until three years have passed since their retirement or resignation. Any person who might have been appointed in the service of the Republic on a contractual basis or who might have worked in executive posts of any foreign fund-receiving NGO will be disqualified until three years after their termination from such post. Any person who switched their party affiliation will be barred from running in an election on their new party's ticket until three years have passed since the switch. They may, however, contest as an independent candidate in the meantime. Article 12 of the RPO also disqualifies those who defaulted on bank loans, utility bills, etc. These disqualifications were introduced during the late 1990s and early 2000s in response to various public mobilisations for fairer politics and cleaner candidatures.²⁹

Non-credible electoral process and institutions

The fairness of the electoral process, the neutrality of the Election Commission, and the

²⁶ Najrul Khasru, 'Bangladeshi expatriates' voting rights – and wrongs' *The Daily Star* (Dhaka, 30 March 2017) <<https://www.thedailystar.net/opinion/society/bangladeshi-expatriates-voting-rights-and-wrongs-1383322>> accessed 21 August 2021.

²⁷ *Union of India v Association for Democratic Reforms* (2002) 3 SCR 294.

²⁸ *Abdul Momen Chowdhury and others v Bangladesh and others* 2005, 34 CLC (HCD); *Md. Abu Safa v Abdul Momen Chowdhury and others* V ADC (2008) 64.

²⁹ Abu Sufian Shamrat, 'Electoral Reform in Bangladesh (1972-2014): An Assessment' (South Asia Journal Blog, 23 October 2016) <<http://southasiajournal.net/electoral-reform-in-bangladesh-1972-2014-an-assessment/>> accessed 17 August 2021.

trustworthiness of election results are continuing problems in Bangladesh.³⁰ Except for the four relatively free and fair elections held under the non-partisan caretaker governments from 1991-2008,³¹ elections conducted under the party governments have been deeply flawed.³² Though the Constitution of Bangladesh envisages an independent Election Commission, successive political governments have captured the institution through their appointment power. The posts of the Chief Election Commissioner (CEC) and other commissioners are filled by the President on the advice of the Prime Minister.³³ Almost all appointments to the Commission have been political.³⁴ Political control of the electoral administration has been “the biggest problem” for the Election Commission.³⁵ The Commission must depend on the government machinery, including the law enforcing forces and the bureaucracy, to conduct the election. However, the party governments in power during the election usually make it impossible for the Commission to command the administration. Naturally, there is little, if any, faith among the opposition parties regarding the Commission’s ability to conduct a free and fair election under a party government.³⁶

Vacation of seats by the sitting MPs

Parliamentary seats may be vacated by resignations or the dissolution of Parliament. MPs may also vacate their seats when any disqualifications mentioned in Article 66(2) of the Constitution arises. Article 67(1) provides some additional grounds for vacation. Three of those deserve mention. First, an MP-elect will vacate their seat if they fail to take an oath of office within ninety days of a newly elected Parliament’s first meeting. Second, an MP will lose their seat if they remain absent from Parliament without the Speaker’s leave for ninety consecutive sitting days. Third, a seat will be vacated if an MP resigns from or votes against their political party or abstains from voting by disregarding the party instruction under Article 70(1).

The Speaker and Deputy Speaker

As per Article 74(1) of the Constitution, the Speaker and Deputy Speaker are elected at the first sitting of Parliament after every general election. The Speaker election process is governed by Rules 8-10 of the Parliamentary Rules of Procedure (hereinafter RoP). Though the RoP requires individual MPs to propose other colleagues for the post, the nomination is usually pre-determined along partisan lines. The practice is that the majority party proposes its preferred MPs as the Speaker and Deputy Speaker. Knowing that their members have no chance of winning, the opposition parties usually do not propose their candidates for the post. Formal voting then follows, and the Speaker and Deputy Speaker are elected. Article 74(3) of the Constitution permits the Deputy Speaker to assume the role in the absence of the Speaker. In the absence of both, some other member of Parliament may discharge the role. The RoP requires the Speaker to nominate, at the commencement of each parliamentary session, a panel

³⁰ Gyasuddin Molla, *Democratic Institution Building Process in Bangladesh: South Asian Experience of a New Model of a 'Care-taker Government' in a Parliamentary Framework* (University of Heidelberg Working Paper No. 3, 2000) <<https://d-nb.info/1203740239/34>> accessed 20 August 2021.

³¹ A. Rashid Moten, ‘Parliamentary Elections in Bangladesh’, (1981) 42(2) *The Indian Journal of Political Science* 58; M Moniruzzaman, ‘Parliamentary Democracy in Bangladesh: An Evaluation of the Parliament during 1991 – 2006’ (2009) 47(1) *Commonwealth & Comparative Politics* 100.

³² Ali Riaz, ‘Bangladesh’s Failed Election’ (2014) 25(2) *Journal of Democracy* 119, 129.

³³ Constitution (n 1) art 118(1).

³⁴ M Sakawat Hussain, *Electoral Reform in Bangladesh 1972-2008* (Palok Publishers 2012) 63.

³⁵ *ibid* 51.

³⁶ M Jashim Ali Chowdhury, ‘Elections in Democratic Bangladesh’ in Mark Tushnet and Madhav Khosla (eds) *Unstable Constitutionalism Law and Politics in South Asia* (CUP 2015) 192-230.

of five such MPs who would preside over the House in order of precedence if both the Speaker and Deputy Speaker are unavailable.³⁷

Powers and functions of the Speaker

As per Article 148(2) of the Constitution, the Speaker administers the oath to Members of Parliament. The RoP has detailed the powers and functions of the Speaker. When a Speaker is reelected as a member of a new Parliament, Rule 5(3) of the RoP allows them to take an oath to themselves first and then administer it to newly elected MPs.³⁸ Apart from administering the oath, the Speaker has the power to make MPs behave in an orderly and parliamentary manner. They may punish grossly disorderly behaviour by ordering an MP to withdraw immediately and for the rest of a sitting day from the House.³⁹ In extreme cases, they may name an MP who obstructs the business of the House by persistently and willfully disregarding the authority of the Chair or abusing the rules of the House and suspend that MP for the duration of a whole session after a motion being passed in the floor.⁴⁰

Subject to the President calling and proroguing the Parliament, the day-to-day sitting and adjournment of parliamentary business is directed at the discretion of the Speaker.⁴¹ The Speaker, however, may constitute a Business Advisory Committee⁴² which, if constituted, would include the Prime Minister, the Leader of the Opposition, and the Chief Whips of the majority and opposition parties. This high-powered committee could potentially contribute to more democratic management of the parliamentary business. Absent any mandatory language in the RoP, the constitution and conduct of such committee remain the Speaker's privilege. Therefore, the Business Advisory Committee has been underutilised tool in the management of the parliamentary business. While the Business Advisory committee has been framed in non-mandatory terms, several other rules require the Speaker to consult the Prime Minister in setting the parliamentary agenda.⁴³ For example, while private member businesses are scheduled for Thursdays, the Speaker, in consultation with the Prime Minister, who is also the Leader of the House, may direct that such business be conducted on any other day.⁴⁴

Overall, the Speaker represents the House. It is assumed that once elected, the Speaker shuns loyalty to their political party. Unfortunately, successive speakers in Bangladesh have served more like party members than neutral arbiters of parliamentary business. Unlike the British practice, the Speakers in Bangladesh do not resign their party affiliation after their election to the post, nor are they elected uncontested in the next election. Speakers' partisan tendencies have been a constant source of frustration for opposition parties in Bangladesh.⁴⁵ The frustration was reflected in an *obiter* comment from a Supreme Court judge in *Anwar Hossain Monju v Bangladesh*.⁴⁶ ABM Khairul Haque J urged Speakers "to risk their wooden chair to

³⁷The Rules of Procedure (RoP) of Bangladesh Jatyasangsad, r 12 <<http://www.parliament.gov.bd/index.php/en/parliamentary-business/procedure/rules-of-procedure-english>> accessed 16 August 2021.

³⁸ *Fazlur Rahman v Md Abdul Hamid and ors* (2004) 56 DLR (HCD) 448.

³⁹ RoP (n 37) r. 15.

⁴⁰ *ibid* r 16

⁴¹ *ibid*, rr 20, 22, 23.

⁴² *ibid* r 219.

⁴³ *ibid* rr 25, 26, 30.

⁴⁴ *ibid*, r 25.

⁴⁵ Jalal Firoj, 'Forty Years of Bangladesh Parliament: Trends, Achievements and Challenges' (2013) 58(1) *Journal of the Asiatic Society of Bangladesh (Humanities)* 83, 98-100.

⁴⁶ *Anwar Hossain Monju v Bangladesh* 16 BLT (HCD) 86.

uphold the dignity of their office by beginning completely impartial and remain independent and aloof of browbeating of their party bosses in conducting the proceedings of the House.”⁴⁷

II. Powers of the Parliament

Typical of a Westminster parliament, the Parliament of Bangladesh has three broad categories of powers – first, the law-making power including the constitutional amendment power; second, the power of the purse - the power to approve taxation and expenditure; and third, the power to enforce the collective and individual ministerial responsibilities of the government. Ministerial responsibility is enforced through the Parliament’s appointment, impeachment, removal, debate, question, and scrutiny powers. In pursuance of its scrutiny power, the Parliament and its committees are supplemented by parliamentary officers like the Ombudsman and the Comptroller and Auditor General. The Ombudsman investigates allegations of corruption, unfairness and illegality in the bureaucracy. The Comptroller and Auditor General, on the other hand, audits the government offices, divisions, statutory corporations and organisations.

Law Making and Constitutional Amendment Powers

The Parliament of Bangladesh possesses plenary legislative power⁴⁸ as well as the constitutional amendment power.⁴⁹ Though statute laws are passed by a simple majority of the members present in the Parliament, constitutional amendments require a two-thirds majority of the total membership. The Parliament’s law-making power is subject to constitutional limits. Statutes inconsistent with fundamental rights or any provision of the Constitution are unconstitutional. The judiciary has also gained the power to review constitutional amendments. The original Constitution of 1972 did not contain any limitation on the amendment power. Except for a procedural requirement of a two-thirds majority, the amendment power was free of any other limitation.⁵⁰ In *Anwar Hossain Chowdhury v Bangladesh*, the Supreme Court of Bangladesh borrowed the “basic structure doctrine” from the Indian Supreme Court’s *Keshavananda Bharati* judgment.⁵¹ Under this doctrine, certain parts of the Constitution constitute basic structures of the document and, therefore, could not be altered through constitutional amendments. Recently, the Constitution (Fifteenth Amendment) Act of 2011 expressly endorsed the basic structure doctrine. Article 7B of the Constitution now provides that the “basic structures” of the Constitution cannot be amended. It also identifies certain parts and provisions⁵² – an unusually long list of provisions⁵³ - which are not amendable.

Since the *Anwar Hossain Chowdhury* judgment, judicial review of constitutional amendments has been the norm rather than the exception in Bangladesh. So far, the Supreme Court has

⁴⁷ *ibid* 97.

⁴⁸ Constitution (n 1) art 65.

⁴⁹ *ibid* art 142.

⁵⁰ *ibid* art 26(3).

⁵¹ Jafar Ullah Talukder and M Jashim Ali Chowdhury, ‘Determining the Province of Judicial Review: A Re-evaluation of ‘Basic Structure of the Constitution of Bangladesh’ (2009) 2(2) Metropolitan University Journal 161.

⁵² Article 7B of the Constitution provides that apart from the “basic provisions” of the constitution, the Preamble, all articles of Part I and II, subject to the provisions of Part IXA all articles of Part III, and the article 150 of Part XI are not amendable. On a rough estimate, this list has made more than one-third of the Constitution unamendable.

⁵³ Ridwanul Hoque, ‘Eternal Provisions in the Constitution of Bangladesh: A Constitution Once and for All?’ in Richard Albert and Bertil Emrah Oder (eds) *An Unamendable Constitution?* (Springer 2018) 195, 224.

invalidated, in whole or in part, the fifth, seventh, eighth, thirteenth, and sixteenth amendments to the Constitution. The eleventh, twelfth and fourteenth amendments were challenged, but those challenges failed on substantive grounds. Parliament has almost always acquiesced to Supreme Court judgments on constitutional amendments except in the case of the sixteenth amendment. That case resulted in combative exchanges between the Parliament and the Court and caused the Chief Justice to resign.⁵⁴

Financial Powers

Article 83 of the Constitution lays down the Parliament's financial powers. It unequivocally provides that no tax may be imposed, and no revenue may be collected from the people without parliamentary authorisation.⁵⁵ Appropriation laws passed by Parliament regulate payments into and withdrawals from the public account.⁵⁶ The President may regulate this area only where the Parliament makes no law.⁵⁷

Each year, the government presents an Annual Financial Statement (budget) before the Parliament.⁵⁸ It contains the government's fiscal policy, priorities, and proposals for expenditure and taxation for the coming fiscal year.⁵⁹ Parliament engages in a general debate on the budget.⁶⁰ However, the budget as such is not passed into law. The government needs to submit separate Demands for Grant for each expenditure proposal it makes in the budget statement.⁶¹ Parliament reserves the power to discuss and vote to approve, modify, or reject these demands.⁶² There is, however, one exception. Demands for Grants related to the "Charges upon the Consolidated Fund" are debatable but not amendable. Parliament may discuss but cannot vote on those.⁶³ Charges upon the Consolidated Fund mainly include the remunerations payable to constitutional office holders like the President, Speaker, Deputy Speaker, Judges of the Supreme Court, Comptroller and Auditor General, Election Commissioners, and the Members of the Public Service Commission, and the administrative expenses of their offices.⁶⁴ This provision is an important safeguard of the institutional independence of these offices. It ensures that these constitutional institutions are secure from the arm-twisting of hostile political governments.

There are, however, some other unwelcome restraints on the Parliament. Unlike the British Parliament, Bangladesh Parliament does not send the annual budget for committee scrutiny. Also, three procedural devices known as Votes on Accounts, Votes of Credit and Withdrawal by Presidential Ordinance work to the advantage of the government. Sometimes, the government may secure advanced monetary grants through the "Votes on Accounts" process before the Parliament approves its budget.⁶⁵ The "Vote of Credit" allows a government facing an adversarial parliament to withdraw money through presidential orders for a maximum of

⁵⁴ Ashutosh Sarkar, 'Chief justice steps down' *The Daily Star* (Dhaka, 12 November 2017) <<https://www.thedailystar.net/frontpage/chief-justice-steps-down-1489819>> accessed 26 August 2021.

⁵⁵ Constitution (n 1) art 83.

⁵⁶ *ibid* art 90(3).

⁵⁷ *ibid* art 85.

⁵⁸ *ibid* art 87(1).

⁵⁹ *ibid* art 87.

⁶⁰ *ibid* art 89.

⁶¹ *ibid* arts 81-82.

⁶² *ibid* art 89(2).

⁶³ *ibid* art 89(1).

⁶⁴ *ibid* art 88.

⁶⁵ *ibid* art 92(1).

sixty days.⁶⁶ The government can thereby pressure a parliament unwilling to pass the government's demands for grants to come to terms with it. In extreme cases, the President may even dissolve the Parliament and withdraw money from the public account through their Ordinance power.⁶⁷ Though Parliament must ratify such ordinances within thirty days of its reconstitution,⁶⁸ this process may allow the governments to propose budgets and get them approved by the President for an indefinite period. Such a situation may arise when a parliament is dissolved, but the election to the next Parliament is deliberately deferred beyond the ninety day time limit. From 2007-2007, a military-backed caretaker government refused to hold elections for around two years and utilised this provision to publish their budgets in large press conferences and later approve those budgets through presidential ordinances.⁶⁹

Appointment and Removal power

The Parliament of Bangladesh has the powers of election, appointment, and removal concerning some key constitutional offices including the Prime Minister, President, and justices of the Supreme Court.

Appointment and Removal of the Prime Minister and Cabinet

The President invites the Leader of the parliamentary majority party to be the Prime Minister and form a government.⁷⁰ The PM and Cabinet have no fixed term or tenure, nor do they hold their office at the pleasure of the President. The Prime Minister serves so long as they hold the confidence of a majority of MPs.⁷¹ Suppose a motion of no confidence is passed in the Parliament. In that case, the Prime Minister has to resign, and the President must invite another MP, who might have the confidence of the majority, to form the government. If no such MP is found, the President shall dissolve the Parliament. The Prime Minister would continue in office until the next election, when a successor enters the office.⁷²

Election, Removal, and Impeachment of the President

As per Article 48(1) of the Constitution, the President is elected by the Parliament. Usually, a nominee of the majority party, the President, is elected for five years from their entry into the office. They, however, continue to hold office until a successor enters the office following a new parliamentary election.⁷³ While the majority party is likely to nominate a partisan candidate, non-partisan figures have also been chosen.⁷⁴

Parliament may impeach the President on charges of violating the Constitution or for grave misconduct under Article 52. If a majority of members moves a motion for impeachment, the Speaker must summon Parliament. After a prolonged debate, the matter may be referred by Parliament for an investigation to a court, tribunal, or any other body appointed or designated

⁶⁶ *ibid* art 92(3).

⁶⁷ *ibid* art 93(3).

⁶⁸ *ibid* art 93(4).

⁶⁹ Mashihur Rahman, 'Budget, Ordinance and Constitutional Government', *The Dhaka Courier* (Dhaka, 11 May 2007) 10, 12.

⁷⁰ Constitution (n 1) art 56.

⁷¹ *ibid* art 57(2).

⁷² *ibid* art 56(4).

⁷³ *ibid* art 50(1).

⁷⁴ Former Chief Justice Shahabuddin Ahmed, a non-partisan jurist and the head of the election time non-party caretaker government of 1991, was nominated for Presidency by the ruling Awami League in 1996.

for that purpose. The President has the right to appear before the designated investigative body and defend. Upon report of the investigation, Parliament may proceed to impeach the President by a two-thirds majority of the total members of Parliament. The President vacates the office on the date on which the impeachment resolution is passed.⁷⁵ Short of impeachment, the President may be removed from office on the grounds of physical or mental incapacity under Article 53 of the Constitution. In this instance, instead of an investigation or trial, the matter is referred to a designated Medical Board. Upon the Board's report, Parliament may pass a resolution for removal by a two-thirds majority of the total membership.⁷⁶ While an impeached President is disqualified from serving in the office again, a removed President may theoretically be appointed again in the future if their physical or mental capacity is regained.⁷⁷

Appointment and Removal of Supreme Court Judges

Parliament's authority to appoint and remove Supreme Court judges has been a matter of constitutional controversy in recent years. Article 95 of the Constitution grants Parliament law-making authority in determining the qualifications for the appointment of judges. The President formally appoints judges on the recommendation of the Prime Minister and the Chief Justice.⁷⁸ Like the appointment of Supreme Court judges, the appointment of other constitutional officers like the Election Commissioners,⁷⁹ Comptroller and Auditor General⁸⁰, and members of the Public Service Commission⁸¹ are controlled by the government. While the Parliament is given a general law-making power of prescribing the qualifications and other requirements for candidates to such offices,⁸² it is the President who appoints these office bearers as per the advice of the Prime Minister.

The original Constitution of 1972 provided for a significant parliamentary role in the removal of judges. As with presidential impeachment, judges were to be removed by a two-thirds majority in Parliament. This system was substituted in 1977 by a military ruler, who instituted the Supreme Judicial Council system. The Council comprised the Chief Justice and two of his colleagues in the Appellate Division. In 2014, the sixteenth amendment to the Constitution sought to revive the original parliamentary removal system.⁸³ In 2016, the Supreme Court declared the sixteenth amendment unconstitutional in *Advocate Asaduzzaman Siddiqui v Bangladesh*.⁸⁴ This judgement has been a matter of contentious constitutional debate in Bangladesh.⁸⁵ While the government's review petition against the judgement is still pending in

⁷⁵ Constitution (n 1) art 52.

⁷⁶ *ibid* art 53.

⁷⁷ *ibid* art. 48(4)(C).

⁷⁸ The requirement of consultation with the Chief Justice was incorporated in the original Article 95(1) of 1972. It was later omitted, but the consultation continued as a matter of convention. Later, the Supreme Court of Bangladesh declared the consultation mandatory in *Advocate Idrisur Rahman v Bangladesh* 60 DLR (2008) (HCD) 714.

⁷⁹ Constitution (n 1) art 118.

⁸⁰ *ibid* art 127.

⁸¹ *ibid* art 137.

⁸² *ibid* arts 118 (1), 127(2), 137 and 138(1).

⁸³ Asano Noriyuki and Minato Kazuki, 'Politicization of the appointment and removal of judges in a declining democracy: The case of Bangladesh' (Institute of Developing Economies, Japan External Trade Organization Discussion Paper, 2019) <<https://core.ac.uk/download/pdf/288469659.pdf>> accessed 30 August 2021.

⁸⁴ *Advocate Asaduzzaman Siddiqui v Bangladesh* 10 ALR (AD) 03 (2017).

⁸⁵ Anisur Rahman, '16th Amendment of the constitution: Another view' *The Daily Star* (Dhaka, 23 September 2014); S M Masum Billah, 'Faith, Hope and Promise' *Dhaka Tribune* (Dhaka, 17 August 2014); Md Yasin Khan Chowdhury, 'Removal of Judges under 16th Amendment of Bangladesh Constitution: A Euphemism to curb on Judiciary' (2015) 3 DIU Journal of Humanities and Social Science 89; M Jashim Ali Chowdhury and Nirmal

the Appellate Division, the invalidated sixteenth amendment remains in the printed pages of the Constitution. Unlike the previous invalidation of constitutional amendments, the government has not reprinted the Constitution by omitting the sixteenth amendment and restoring the Supreme Judicial Council system. Thus, there is confusion as to the current status of the sixteenth amendment.⁸⁶ Recently, some judges of the Supreme Court, against whom there have been allegations of misconduct, were told by the Chief Justice to refrain from judicial work. They have neither been investigated by the Supreme Judicial Council nor removed by the Parliament.⁸⁷ The fate of the sixteenth amendment is important for another reason as well. The Constitution provides that other constitutional office bearers like the Election Commissioners, Comptroller and Auditor General, Members of the Public Service Commission shall be removed on the same grounds and under the same procedures as Supreme Court judges.⁸⁸

Accountability Power

Typical of a Westminster Parliament, the Parliament of Bangladesh is dominated by the government. It is called into session by the President⁸⁹ upon written advice of the Prime Minister.⁹⁰ The Prime Minister and other ministers in the Cabinet have the “right” to speak and participate in parliamentary business. The Cabinet largely determines the parliamentary agenda. Government business has priority over private member business. While the government’s collective responsibility is expressed in the Parliament’s power of tabling a no-confidence motion, there is no express provision regarding individual ministerial responsibility in the Constitution.⁹¹ Article 58(2) of the Constitution rather makes the ministers responsible to the Prime Minister. They serve during the Prime Minister’s pleasure. Parliament, however, can make ministers answer questions, debate their actions, and scrutinise their departments through parliamentary committees.

Parliamentary Questions

Parliamentary questions are asked and answered during the first hour of each sitting day. Ministers take turns answering parliamentary questions on a rotational basis. The Prime Minister’s question time takes place on Wednesdays. The questions consist of two types –

Kumar Saha, ‘Advocate Asaduzzaman Siddiqui v. Bangladesh: Judiciary’s Dilemma with Impeachment’ (2017) 3(3) Constitutional and Administrative Law Quarterly 7; Ridwanul Hoque, ‘Can the Court Invalidate an Original Provision of the Constitution?’ (2016) 2(1) University of Asia Pacific Journal of Law and Policy 13; Po Jen Yap and Rehan Abeyratne, ‘Judicial self-dealing and unconstitutional constitutional amendments in South Asia’ (2021) 19(1) International Journal of Constitutional Law 127.

⁸⁶ Haroon Habib, ‘Bangladesh: Judiciary v. Parliament’, *The Hindu, Frontline* (New Delhi, 18 August 2017) <<https://frontline.thehindu.com/world-affairs/judiciary-vs-parliament/article9794951.ece>> accessed 25 August 2021; M Rafiqul Islam, ‘Judging apex judges by parliamentarians’, *The Daily Star, Law and Our Rights* (Dhaka, 18 July 2017) <<https://www.thedailystar.net/law-our-rights/law-vision/judging-apex-judges-parliamentarians-1434616>> accessed 25 August 2021; Tribune Report, ‘High Court hears argument over existence of contempt law’, *Dhaka Tribune* (Dhaka, 10 March 2014) <<https://www.dhakatribune.com/uncategorized/2014/03/10/high-court-hears-argument-over-existence-of-contempt-law>> accessed 25 August 2021.

⁸⁷ TBS Report, ‘A catch 22 for the Supreme Court’, *The Business Standard* (Dhaka, 25 August 2019) <<https://tbsnews.net/bangladesh/court/catch-22-supreme-court>> accessed 25 August 2021.

⁸⁸ Constitution (n 1) arts 118(5), 129(2), 139(2).

⁸⁹ Constitution (n 1) art 72(1).

⁹⁰ *ibid* art 72(1) (further proviso).

⁹¹ M Jashim Ali Chowdhury, ‘Ministerial ‘non-responsibility’’, *The Daily New Age* (Dhaka, 31 May 2019) <<https://www.newagebd.net/article/74004/ministerial-non-responsibility>> accessed 26 August 2021.

starred and unstarred. Ministers must give an oral answer to the starred questions and supplementary questions can follow those. To the unstarred questions, ministers must give written answers, and no further supplementary questions are permitted. Parliamentary questions have serious efficacy concerns in Bangladesh.⁹² There are procedural complexities in tabling questions.⁹³ Ministers have near-absolute discretion in answering or ducking questions.⁹⁴ The Speakers show a partisan attitude in entertaining questions and a tendency to refuse urgent questions.⁹⁵ Under the RoP, the Speaker has wide powers regarding the admission, rejection or amendment of Parliamentary questions.⁹⁶ The MPs also avoid accountability questions and focus on their constituency demands instead.⁹⁷ Prime Minister's Question Time has failed to generate any meaningful accountability. Questions asked to the Prime Minister usually lack a critical bent. The RoP gives the Prime Minister absolute discretion of whether or not to answer a particular question.⁹⁸ Prime Ministers have usually faced comfortable and friendly questions and used the platform to score political points by attacking the opposition rather than answering for their government's actions and policies.⁹⁹

Parliamentary Debate

As mentioned earlier, the Parliament's agenda and debates are largely dominated by the government. Individual members and opposition parties have very limited scope to initiate and sustain debate in the House unless the government allows them. Still, the MPs can serve call attention notices¹⁰⁰ on matters of public interest. These are usually directed towards a Minister. While these are usually allowed by the Speaker, MPs often use this motion to press a minister over their constituency issues. Apart from permitting a two or three-minute speech by the concerned MP, these notices rarely result in any follow-up debate in the House. MPs may also move for half-an-hour discussions on answers given by the Ministers during the question hour.¹⁰¹ Speakers rarely allow the half-an-hour discussion motions. The MPs may sometimes request short discussions¹⁰² on matters of public importance. The RoP, however, expressly requires the Speaker to consult the Prime Minister before approving such requests.

MPs may also move private member resolutions on matters of public importance.¹⁰³ These resolutions are discussed on the private member business days. Absent the endorsement of the government, they rarely pass. MPs can also move points of order. Such points of order may draw the Speaker's attention to some procedural irregularities such as a lack of quorum on the

⁹²M Jashim Ali Chowdhury, 'Parliamentary Questions in Bangladesh' *The Daily Observer, Law and Justice* (Dhaka, 20 July 2019) <<https://www.observerbd.com/details.php?id=208381>>; M. Jashim Ali Chowdhury, 'Procedural modernisation of Prime Minister's Question Time in Parliament', *The Daily Observer, Law and Justice* (Dhaka, 09 November 2019) <<https://www.observerbd.com/details.php?id=227294>> accessed August 27 2021.

⁹³ RoP (n 37) rr 41-59.

⁹⁴Nizam Ahmed, *The Parliament of Bangladesh: A Data Handbook* (Institute Governance Studies, BRAC University, Dhaka 2013) 219-20.

⁹⁵ Institute of Governance Studies, BRAC University, *State of Governance in Bangladesh 2008* (BRAC University 2008) 42.

⁹⁶ *ibid* rr 45, 55.

⁹⁷Mustafizur Rahman, 'Parliament and Good Governance: A Bangladesh Perspective' (2008) 9(1) *Japanese Journal of Political Science* 39, 48.

⁹⁸ RoP (n 37) r 48.

⁹⁹Jalal Firoj (n 45).

¹⁰⁰ RoP (n 37) . 71.

¹⁰¹ *ibid* r 60.

¹⁰² *ibid* rr 68-70.

¹⁰³ *ibid* rr 130-31.

House floor. Otherwise sidelined in parliamentary agenda setting, opposition parties in Bangladesh usually table motions for adjournment of any day's parliamentary business and demand discussion on matters they consider important and urgent.¹⁰⁴ Government parties have historically viewed these motions as disruptive tactics. Indeed, opposition parties have abused these motions to create chaos and stage walkouts and parliament boycotts.¹⁰⁵ Unlike the UK House of Commons, the Bangladesh parliament does not reserve any opposition day in parliamentary business.

The Committee System

There are three types of committees in the Bangladesh Parliament – standing, select, and special committees.¹⁰⁶ Standing committees are constituted permanently and for a parliamentary term. Special committees are constituted to handle special issues or matters coming to the Parliament from time to time.¹⁰⁷ Select committees are mainly formed to scrutinise a specific bill. However, bills may be sent to standing committees instead of a select committee. Until the seventh Parliament of 1996-2001, no select committee was ever established for scrutinising a particular bill. The seventh Parliament established a select committee dedicated to reviewing the bills tabled in the House.¹⁰⁸ Earlier parliaments would usually send bills to the relevant standing committees.

The Constitution specifically lists the public accounts and parliamentary privileges committees as two standing committees.¹⁰⁹ Other standing, select, and special committees are formed at the discretion of Parliament as per the RoP.¹¹⁰ Apart from subject-wise committees, such as parliamentary privileges, government estimates, and public accounts standing committees, there are ministerial standing committees that oversee the ministries continuously. Before a reform in the fifth Parliament (1991-1996), ministerial standing committees could only scrutinise government bills relating to the Ministry under its oversight. Since the reform, the ministerial standing committees also oversee, investigate, and report on the operation and policies of the Ministry concerned.¹¹¹ Since the ministerial standing committees mirror government ministries, their number varies from term to term.

Committee work is, however, severely compromised due to structural issues surrounding the committee system. The core of the problem is the lack of appreciation for the system itself.¹¹² Until the ninth Parliament (2009-2013), parliaments often finished more than half of their

¹⁰⁴ *ibid* rr 60-67.

¹⁰⁵ Until recently, walk-outs from sessions and boycotts of parliament by the opposition parties were a regular and painful part of Bangladesh's parliamentary practice. For more insight on this problem see Elora Shehabuddin, 'Bangladesh in 1999: Desperately Seeking a Responsible Opposition' (2000) 40(1) *Asian Survey* 181.

¹⁰⁶ RoP (n 37), r 189(1).

¹⁰⁷ *ibid*, r 266; To take an example, in 2010, a All Party Parliamentary Committee on Constitutional Amendment was formed to examine all the past amendments of Bangladesh Constitution. See: Library of Congress, 'Bangladesh: Special Parliamentary Committee on Constitution Formed to Review All Past Amendments' <<https://www.loc.gov/item/global-legal-monitor/2010-08-13/bangladesh-special-parliamentary-committee-on-constitution-formed-to-review-all-past-amendments/>> accessed 31 August 2021.

¹⁰⁸ Nizam Ahmed, *The Parliament of Bangladesh* (Ashgate Publishers 2002).

¹⁰⁹ Constitution (n 1) art 67.

¹¹⁰ *ibid* art 76(1).

¹¹¹ Constitution (n 1) art 76(2)(c); RoP (n 37) rr 246-48; Taiabur Rahman, *Parliamentary Control and Government Accountability in South Asia: A Comparative Analysis of Bangladesh, India and Sri Lanka* (Routledge 2008).

¹¹² Nizam Ahmed (n 108) 131.

tenures without constituting committees.¹¹³ In some instances, committee formation was delayed due to the opposition parties' refusal to submit their list of nominees.¹¹⁴ When formed, the committees are constituted from members on partisan lists supplied by the leadership. Members and Chairs of the committees are distributed among the parties in proportion to their seats in Parliament. The RoP also designates some *ex officio* members – the Speaker, the Leader of the House, the Leader of the Opposition, etc.¹¹⁵ The House usually adopts a resolution confirming the partisan committee placements. The RoP designates some on an *ex officio* basis. For instance, the Speaker chairs the Business Advisory Committee.¹¹⁶ Other chairs are decided by the party leadership,¹¹⁷ though, formally, either the House or the committees themselves elect the chairs.¹¹⁸ Historically, the majority parties have claimed almost all the chairs.¹¹⁹ Though the chairs are now distributed among the parties on a proportionate basis, the government party decides which committee chairs will be allotted to members of other parties. Unless the government is exceptionally generous, chairs of important committees like the Public Accounts, Public Undertaking, and Estimate committees are unlikely to be given to the opposition members.¹²⁰ Until a reform in the seventh Parliament (1996-2001), the ministerial standing committees were chaired by the Minister of the relevant Ministry.¹²¹ After the rule was amended, general MPs are appointed to the chairs, but the Ministers remain *ex officio* members of standing committees on their Ministry. There is now a perception that committee chairs – whose salaries and amenities are equal to government ministers -- are distributed among ministerial aspirants who could not be accommodated in the Cabinet. In this process, expertise and accountability are mostly ignored.¹²² Packed with partisan chairs and members, the committees rarely display an interest in holding the government accountable to Parliament.¹²³

The Comptroller and Auditor General

The Comptroller and Auditor General (CAG) of Bangladesh is a constitutional post. As an officer of Parliament, the CAG is required to report to the Parliament through the President.¹²⁴ The CAG places its audit report before the Public Accounts Committee, which considers it, recommends corrective actions, and investigates anomalies in government expenditure that the

¹¹³ Jalal Firoj (n 45); Fahreen Alamgir, Tanvir Mahmud and Iftekharuzzaman, 'Corruption and Parliamentary Oversight: Primacy of The Political Will' (Transparency International Bangladesh 2006) <<https://www.ti-bangladesh.org/research/Corruption&ParliamentaryOversight.pdf> > accessed 30 August 2021.

¹¹⁴ Nizam Ahmed, 'From Monopoly to Competition: Party Politics in the Bangladesh Parliament (1973-2001)' (2003) 76(1) *Pacific Affairs* 55, 68-69; Quamrul Alam and Julian Teicher, 'The State of Governance in Bangladesh: The Capture of State Institutions' (2012) 35(4) *Journal of South Asian Studies* 858.

¹¹⁵ RoP (n 37), rr 219, 225, 231, 239, 240, 245, 246, 249, 257, 264, 266.

¹¹⁶ *ibid* rr 219, 257, 264.

¹¹⁷ Nizam Ahmed, 'Parliament-executive relations in Bangladesh' (1997) 3(4) *The Journal of Legislative Studies* 70, 85-88.

¹¹⁸ RoP (n 37) r 191(1).

¹¹⁹ KM Mahiuddin, 'The Parliamentary Committee System in Bangladesh An Analysis of its Functioning' (PhD Thesis, Ruprecht-Karls-Universität Heidelberg 2009) 104-106.

¹²⁰ A.T.M. Obaidullah, *Institutionalization of Parliament in Bangladesh: A study of the donor intervention for reorganization and development* (Palgrave Macmillan 2019) 107-138.

¹²¹ Nizam Ahmed, 'Parliamentary committees and parliamentary government in Bangladesh' (2001) 10(1) *Contemporary South Asia* 11, 24.

¹²² Obaidulla (n 120) 338.

¹²³ Philip Norton and Nizam Ahmed, 'Legislatures in Asia: Exploring Diversity' in Philip Norton and Nizam Ahmed (eds) *Parliaments in Asia* (Frank Cass 1999) 51-52.

¹²⁴ Constitution (n 1) art 132.

report may unearth.¹²⁵ The CAG attends the PAC meetings and sends representatives to the Public Undertaking Committee and Estimate Committee meetings.

Functional autonomy and the institutional separation of the CAG from the government bureaucracy is substantially compromised in Bangladesh.¹²⁶ While their status as a parliamentary officer is expressly mentioned in the Constitution, appointment to the office has paradoxically been entrusted to the President and Prime Minister.¹²⁷ Governments have traditionally appointed senior bureaucrats to the post. While the audit mandate of CAG constitutionally extends to the public accounts of the State¹²⁸ as well as to the accounts of all courts of law and other authorities and officers of the government,¹²⁹ section 3A of the Comptroller and Auditor General (Additional Functions) Act of 1974 empowers the government to exclude any office from CAG jurisdiction. The Bangladesh government's Rules of Business (1996) also requires the CAG to contact the Prime Minister's office. Despite Article 128(4)'s express requirement that the CAG "shall not be subject to the direction or control of any other person or authority,"¹³⁰ the office is administratively dependent on the Ministry of Finance. The Ministry controls the appointment, promotion, and terms and conditions of all the staffers at the CAG office.

The Ombudsman

Article 77 of the Constitution permits the Parliament to create an office of Ombudsman who will work as a parliamentary officer and "investigate any action taken by any Ministry, a public officer or a statutory public authority." The Ombudsman receives direct complaints from citizens, investigates them, and reports to the Parliament. Though the Ombudsman Act 1980 was passed in pursuance of Article 77, the law left it to the government to decide when to allow the office to assume its function. Due to resistance from the bureaucracy, the office of the Ombudsman has not yet been created.¹³¹

III. The Legislative Process

Legislative procedure in Bangladesh broadly mirrors the Westminster process. However, as will be clear by the end of this part, the law-making process of the Bangladesh Parliament lacks meaningful scope for private members or opposition parties to have a say in legislation. Parliamentary committees also play a very formal and minimal role. The government's agenda-setting power and purely majoritarian approach to parliamentary business have not only cast it in the leading role for passing legislation, but have also circumscribed the Parliament's institutional power to influence proposed laws. In post-independence Bangladesh, only seven private member bills have been passed, indicating that backbench members lack the scope,

¹²⁵ *ibid* art 76.

¹²⁶ M Jashim Ali Chowdhury and Md Abdullah Al Mamun, 'The Comptroller and Auditor General of Bangladesh: Arguments for "Substantial Independence"' (2016) 21 *The Chittagong University Journal of Law* 159.

¹²⁷ Constitution (n 1) art 127.

¹²⁸ *ibid* art 84.

¹²⁹ *ibid* art 128(1).

¹³⁰ *ibid* art 128(4).

¹³¹ Nadim Zawad Akil, 'Absence of the office of Ombudsman: 48 years and counting', *The Daily Star, Law and Our Rights* (Dhaka, 10 November 2020) <<https://www.thedailystar.net/law-our-rights/news/absence-the-office-ombudsman-48-years-and-counting-1992461>> accessed 27 August 2021.

logistics, and interest in passing extra-governmental legislation.¹³² The legislative procedure of Bangladesh, therefore, merely serves as a legitimization tool for the executive branch.

Pre-Legislative Stage

While the President's annual speech to the Parliament would ideally include the government's upcoming legislative agenda, this is rarely the case in Bangladesh. Therefore, the general debate on the presidential speech that follows does not provide members with an opportunity to consider the broader principles of the government's legislative program.¹³³

Governments in Bangladesh instead bring forth their legislative proposals on an *ad hoc* basis. Bureaucratic proposals for law-making initiate in the relevant department or Ministry. Three departments are usually involved in the process. These are (1) the Legislative Drafting Wing of the Ministry of Law, Justice and Parliamentary Affairs; (2) the Ministry of Finance; and (3) the Cabinet Division. The Legislative Drafting Wing writes the bill. The Ministry of Finance opines on draft bills if they require government expenditure. A draft bill may travel back and forth between Law, Finance, and other relevant ministries during this process. Government departments or ministries may invite input from expert bodies such as the Law Commission, individuals, civil societies, or other stakeholders at this stage. The Cabinet Division, headed by the Prime Minister and including all the Ministers of the government, is the final body that considers the draft and signals its readiness for the bill to be placed before the Parliament.¹³⁴ After the Cabinet approves a draft bill, the relevant Minister, called the Minister-in-charge, tables the bill in the House.¹³⁵

Individual or private members have to draft their bills. However, the research assistance, office, interns, and logistics support for individual members are so inadequate that they struggle to produce high-quality legislative drafts. Parliamentary time for private member businesses is also limited. While government business is conducted throughout the week, Thursdays are reserved for private member business.¹³⁶ In consultation with the Prime Minister, the Speaker may vary the private member business days at his discretion.¹³⁷ There is a separate parliamentary committee on private member bills and resolutions. It examines and recommends the timetable for discussion of private member bills.¹³⁸

Legislative Stages

At the parliamentary stage, a bill goes through three readings.

First Reading

¹³² Abdul Latif Mondol, 'What will happen to the bills?', *The Daily Star* (Dhaka, 14 September 2009). <<https://www.thedailystar.net/news-detail-105810>> accessed 27 August 2021.

¹³³ R Jahan and I Amundsen, *The Parliament of Bangladesh: Representation and Accountability* (CPD-CMI 2012) <http://www.cpd.org.bd/pub_attach/CPD_CMI_WP2.pdf> accessed 1 March 2021.

¹³⁴ Administration of the Government of Bangladesh operates under the Rules of Business 1996 framed as per Article 55(6) of the Constitution of Bangladesh.

¹³⁵ Md A. Saleh, 'Law Making Process in Bangladesh Parliament' (2013) 6 Jahangirnagar Journal of Administrative Studies 143, 249-151.

¹³⁶ RoP (n 37) rr 74, 75.

¹³⁷ *ibid* r 25.

¹³⁸ *ibid*, rr 222-24.

A bill starts with the Minister or private member giving notice to the parliament secretariat of their intention to table a “motion for leave to introduce” the bill. For government bills, the Minister-in-charge would need to give seven days’ notice. For private member bills, the Member-in-charge must provide fifteen days’ notice.¹³⁹ They would also give a brief statement on the purposes of the bill. If the bill involves expenditure from the public purse, such as the budget, the Minister-in-charge would need to certify that it was presented before the President and that the President recommended the bill’s introduction.¹⁴⁰ On private member bills, the Member-in-charge must attach the written recommendation of the President, which they must secure through a relevant ministry.¹⁴¹ This onerous requirement means that private members are practically barred from introducing money bills or bills with monetary implications without the government’s consent.

The first reading starts on the day scheduled for tabling the motion for leave to introduce the bill. Except in cases where another member opposes this motion, the first reading is usually a mere formality. It is very brief, involving only the tabling of the motion for the introduction of the bill. When a motion for leave to introduce the bill is moved, any other member may oppose it. If any opposition is raised, the Speaker will allow the opposing member a very brief time to explain why they oppose the bill’s introduction. The Minister/Member-in-charge of the bill then replies to the objection. Without any further debate, the Speaker then puts the matter to a vote. The leave to introduce the bill will usually be decided through a voice vote. Once the leave is granted, the first reading ends and the second reading is reserved for a different day.

Second Reading

The second reading involves discussing a bill’s general principles rather than a clause-by-clause discussion on its contents. Once introduced through the first reading, a bill is published in the Parliament’s official gazette. On the day of the second reading, the Minister or Member-in-charge of the bill will propose that the House consider it on the floor, refer it to a standing or select committee or circulate it to elicit wider public opinion.¹⁴² Once they propose one of these options, any other MP may oppose it and propose one of the alternatives. During the discussion of these proposals and counter-proposals, the general purpose and principles of the legislation are discussed. No amendments or clause-by-clause reading and debate occurs at this stage.¹⁴³ Once the discussion is over, the question is put to the vote, and the appropriate course – direct consideration in the floor, sending to a committee, or circulating for public opinion – of the bill is decided.

Committee Stage

Bills are sent either to a select committee constituted to consider specific bills or to a standing committee on the Ministry that sponsored the bill. If a motion to refer the bill to a select committee is passed during the second reading, the House will constitute such a committee through a separate motion.¹⁴⁴ The House, however, may still send any bill to a ministerial

¹³⁹ *ibid* rr 72, 74, 75.

¹⁴⁰ Constitution (n 1) art. 82, 89(3); See also: Gavin Murphy, ‘How Legislation is Drafted and Enacted in Bangladesh’ (2006) 27(3) *Statute LR* 133.

¹⁴¹ RoP (n 37) r 73.

¹⁴² *ibid* r 77.

¹⁴³ *ibid* r 78.

¹⁴⁴ *ibid* r 225.

standing committee.¹⁴⁵ Private member bills are referred to the Standing Committee on Private Members' Bills. At the committee stage, the opposition and backbench members are expected to have more opportunities to debate and propose amendments. The committees can decide on any issue or agenda by simple majority, and dissenting members may note their dissents in the committees' report.¹⁴⁶

However, the overall quality of the deliberation at the committee stage remains low. Though Article 70 of the Constitution – which binds the MPs to their parties - does not apply to committee proceedings, the government backbenchers in committees tend to take a strict party-line there as well.¹⁴⁷ Backbenchers may attempt to play a role when they hold the chairmanship or any position of influence in a committee. That, however, rarely translates into significant changes in the original government proposal unless exceptionally supported by the Prime Minister. Parliamentary committees' power to take public evidence¹⁴⁸ from representatives of special interest groups has also not been widely utilised.¹⁴⁹ After a clause-by-clause deliberation, the committees may return the bill with or without any amendment proposals.¹⁵⁰

Floor Stage

Back in the House, the Minister or Member-in-charge may move for considering the bill along with the report of the Committee.¹⁵¹ Once taken for consideration, the Speaker schedules the bill for a clause-by-clause reading and debate. MPs can propose amendments to the bill at this stage.¹⁵² Members proposing amendments are allowed to explain their proposals. The Minister or Member-in-charge addresses the Parliament at the closing of the debate. Amendment proposals then are put to the vote.¹⁵³ Unless accepted by the government, amendment proposals are usually rejected by voice vote.

Filibustering and Closure and Programming Motions

The RoP does not formally recognise filibustering. Yet, opposition parties may try to put forward several amendment proposals to indefinitely prolong the debate on a bill. In such situations, the government may invoke devices like the closure motion or pre-programming of legislative business through the Business Advisory Committee. The Speaker may also intervene in certain cases.

A closure motion, when passed, halts the debate and puts the question to a vote.¹⁵⁴ While the Speaker is empowered to judge whether a closure motion is invoked by the government in an abusive way that infringes upon the Parliament's right of reasonable debate,¹⁵⁵ Bangladeshi Speakers have never questioned the ruling party's closure motions on this ground. Also, unlike

¹⁴⁵ Constitution (n 1) art 76(2)(a); RoP (n 37) r 77.

¹⁴⁶ RoP (n 37) r 228(5).

¹⁴⁷ Nizam Ahmed (n 114) 65.

¹⁴⁸ RoP (n 37) r 227.

¹⁴⁹ Nizam Ahmed (n 114).

¹⁵⁰ RoP (n 37) rr 80, 81.

¹⁵¹ *ibid* r 80.

¹⁵² *ibid*, rr 81-87.

¹⁵³ *ibid* r 88.

¹⁵⁴ *ibid* r 290(2).

¹⁵⁵ *ibid* r 290(1).

the British Parliament, there is no tradition of an informal agreement between the government and opposition parties on the timetabling of bills.¹⁵⁶

The Business Advisory Committee headed by the Speaker may decide the timeline for each stage.¹⁵⁷ The Committee, however, is dominated by ruling party members, and the opposition has little chance there. Moreover, the Speaker is not bound to form a Business Advisory Committee. The Speaker is, rather, required to consult the Leader of the House - the Prime Minister - in almost every aspect of parliamentary timetabling.¹⁵⁸

Additionally, in cases of prolonged debate on the floor, the Speaker is permitted to “take the sense of House” and vary the timetable for discussion at any stage of a bill.¹⁵⁹ It empowers the Speaker to end the debate and put the matter to voting “forthwith”.¹⁶⁰ Suppose the opposition party members propose an excessive number of amendments. In that case, the Speaker can choose and order the amendment proposals to be raised on the floor of the House.¹⁶¹ Faced with a reservation from the ruling party, successive Speakers of Bangladesh have tended to ignore opposition amendments.¹⁶²

Third Reading

The third reading involves a motion for passing the bill as presented or amended in the second reading stage or by the committee.¹⁶³ Debate at this stage, if any, concerns whether the bill as a whole should be passed or rejected. Details of the bill are not touched upon at this stage.¹⁶⁴ The Speaker usually puts the motion to a vote without further debate.

Passage and Presidential Assent

Bills considered and passed by the Parliament are sent to the President for assent.¹⁶⁵ The President’s options are very limited. They either assent to the bill within 15 days or send it for reconsideration of the Parliament.¹⁶⁶ If Parliament passes the bill again with or without modification, the President will have to sign it within seven days of such presentment.¹⁶⁷ For money bills like the Annual Appropriation Act, the President’s power is further curtailed. They must assent to the bill as sent within fifteen days.¹⁶⁸ Otherwise, the bill is considered automatically passed.¹⁶⁹ There is no veto power vested in the President.

¹⁵⁶ For a plain idea about the UK parliament’s informal communication practices, see Michael Rush and Clare Ettinghausen, *Opening up the Usual Channel* (Hansard Society 2002).

¹⁵⁷ *ibid* r 219.

¹⁵⁸ *ibid* r 220.

¹⁵⁹ *ibid* r 291(1).

¹⁶⁰ *ibid* r 291(2).

¹⁶¹ *ibid* r 286, 287.

¹⁶² Nizam Ahmed, ‘Development and working of parliaments in South Asia’ (2001) 9(1) *Asian Journal of Political Science* 18, 29.

¹⁶³ RoP (n 37) r 90.

¹⁶⁴ *ibid* r 91.

¹⁶⁵ Constitution (n 37) art 80(2).

¹⁶⁶ *ibid* art 80(3).

¹⁶⁷ *ibid* art 80(4).

¹⁶⁸ *ibid* art 81(3).

¹⁶⁹ *ibid* art 80(3).

Conclusion

While the executive-legislature relationship in the Westminster system is admittedly a dominant-dormant one,¹⁷⁰ the discussion above reveals that the Bangladesh Parliament's position *vis-à-vis* the executive branch is especially weak. Though the Constitution and the RoP have empowered the Parliament in many significant ways, the non-institutionalisation of the committee system and the MPs' lack of freedom from their partisan whips have undermined the textual powers of the institution. While a Westminster Parliament's legislative process is naturally subject to government dominance, the Bangladeshi Speakers' failure to distance themselves from their partisan bonds has further eroded the legislative autonomy of the Parliament.¹⁷¹ Moreover, the government has practically co-opted parliamentary officers like the Comptroller and Auditor General. The Ombudsman has never even been established. As the recent sixteenth amendment controversy shows, Parliament's relationship with the judiciary is antagonistic. Finally, given the lack of necessary tools and space for the parliamentary opposition to operate,¹⁷² the Parliament's capability to ensure executive, legislative, budgetary and policy scrutiny has remained largely nominal.¹⁷³

¹⁷⁰ MM Khan, *Dominant Executive and Dormant Legislature: Executive-Legislature Relations in Bangladesh* (South Asian Publishers India 2006).

¹⁷¹ Philip Norton, 'Playing by the Rules: The Constraining Hand of Parliamentary Procedure' (2011) 7(3) *Journal of Legislative Studies* 13, 15.

¹⁷² M Jashim Ali Chowdhury, 'In Search of Parliamentary Opposition in Bangladesh' IACL-AIDC Blog (21 January 2021) <<https://blog-iacl-aidc.org/2021-posts/2021/1/21/in-search-of-parliamentary-opposition-in-bangladesh>> accessed 27 August 2021.

¹⁷³ M Jashim Ali Chowdhury and Raihan Rahman Rafid, 'Parliaments during the Pandemic: A "Dual State" Explanation of Bangladesh Parliament (Jatyā Sangsad)' (2020) 18(1-2) *Bangladesh Journal of Law* 25.