

Parliament of Bangladesh: Constitutional Position and Contributions

M. Jashim Ali Chowdhury*

Abstract

Bangladesh’s original constitutional scheme of 1972 adopted a Westminster parliamentary system. The choice was influenced, among others, by post-colonial political elites’ over-appreciation of the British parliamentary system as the most adaptable institution for Commonwealth countries. In the case of newly independent Bangladesh, a desire to reverse the decades-long suppression by Pakistani authoritarian presidentialism also provided strong motivation. However, fifty years into its constitutional beginning, Bangladesh had undergone different cycles of constitutional changes involving one-party presidentialism, military dictatorships, unelected non-political caretaker governments, illiberal bipartisanships, and, again, the latest ongoing round of one-party monopoly. Curiously, the vicious cycle of constitutional dismemberment and restoration, realised through several constitutional amendments, shows that the 1972 scheme of the parliamentary system has a remarkable level of perseverance. Given this paradox of constitutional design and its political mishandling, this chapter evaluates the institutional value that the Parliament of Bangladesh (*Jatiya Sangsad*) carries within the body politic. It is argued that the decline of principled liberal-conservative bipartisanship and the emergence of an overtly dominating and dynastic party system has made the parliamentary system’s constitutional design a hollow device. Therefore, the mere existence of a Westminster-style parliament adds very little to constitutionalism in Bangladesh.

1. Introduction

At the end of British colonial rule in 1947, Bangladesh became a part of Pakistan. It declared independence in March 1971, fought a nine-month-long war and emerged as an independent state in December 1971. At independence, Bangladesh adopted the Westminster Parliamentary System of government. Like their sub-continental forerunners in India and Pakistan, the framers of the Bangladesh Constitution had a natural orientation with the Westminster traditions.¹ Pakistani military’s authoritarian, presidential and “internal colonial rule”² also contributed to the preference. However, the fifty years of Bangladesh’s political history recorded a roller coaster ride through a one-party regime (1972-1975) followed by several phases of direct or indirect military rule (1975-1990 and 2006-2007), a phase of “competitive authoritarian governance”³ by two rival political parties (1991-2006)⁴ and lastly, another phase of a one-party monopoly (2014-present).⁵

* A substantial part of this chapter is adapted from my PhD thesis titled “The “Westminster” Parliament of Bangladesh: A Critical Evaluation” (Submitted to the King’s College London in December 2021).

¹ Ridwanul Hoque, ‘The Founding and Making of Bangladesh’s Constitution’, in Kevin YL Tan and Ridwanul Hoque (eds.), *Constitutional Foundations in South Asia*, 91-119 (London: Hart Publishing 2021) 106, 115.

² Nizam Ahmed, ‘In Search of Institutionalisation: Parliament in Bangladesh’ (1998) 4(4) *The Journal of Legislative Studies* 34, 35.

³ In a system of “competitive authoritarianism” nominally democratic institutions such as opposition parties and periodic elections are allowed to exist. Yet, the ruling parties manage to hold onto power through brute force,

The political constitutionalism that followed Bangladesh's independence was highly executive-minded. The constitution-making and the state-building process were heavily conditioned by the charismatic leadership of the country's founder President, Bangabandhu Sheikh Mujibur Rahman (from now on, Bangabandhu).⁶ Although the Constitution preferred a Cabinet government drawn from, and responsible to, the parliament, the legislative branch did not get as much importance as a typical Westminster parliament deserved. The political forces perceived the legislature as a deliberative forum and an enabling, rather than accountability, institution.⁷ This chapter tries to make sense of this trivialisation of the legislative branch by referring to Bangladesh Parliament's "*Three Eastminster Traits*" that distinguish its position and stature from its Westminster progenitor - the British Parliament. The *Three Eastminster Traits* are identified from what Kumarasingham calls the South Asian region's "Five Eastminster Deviations"⁸ from the Westminster system.

The next part of this chapter (Part 2) will summarise the history of parliamentary politics in Bangladesh. Part 3 then will briefly outline Kumarasingham's "Five Eastminster Deviations" from the Westminster model and identify three of those - "*Three Eastminster Traits*" - that constitute the focus of this chapter. Parts 4-6 will then consider how those three deviations - the dynastic and hereditary rule of political selection, absence of internal party democracy and the crude majoritarian tendency of politics - weaken the Bangladesh parliament's constitutional position and limit its contribution to the country's constitutionalism. Part 7 concludes the chapter by summing up the findings.

2. A brief history of the Bangladesh parliament

During the liberation war of 1971, the Bangladeshi revolutionaries issued a Proclamation of Independence⁹, formed a Constituent Assembly and opted for an absolutist presidential government as a wartime arrangement. Understandably, the Assembly lacked the legislative power, and the President was given a blank check in conducting the war. After the war, the Provisional Constitution Order of 1972¹⁰ replaced the presidential system with a parliamentary government. Under the new arrangement, the Prime Minister and his Cabinet were made accountable to the Constituent Assembly. The Assembly, however, did not gain the general legislative power. It was confined to the sole task of framing the Constitution. The President retained his wartime legislative power. By the time the Constitution was adopted on 4 November 1972, a large body of Bangladesh's administrative and public law was built by presidential orders and executive regulations.¹¹

manipulative and fraudulent use of the electoral process. The process reverses when the opposition side manages to be in power. See: Steven Levitsky and Lucan Way, 'The Rise of Electoral Authoritarianism.' (2002) 13(2) *Journal of Democracy* 51.

⁴ SM Mostofa and DB Subedi, "Rise of Competitive Authoritarianism in Bangladesh" (2021) 14 *Politics and Religion* 431.

⁵ Ali Riaz, *Bangladesh: A Political History since Independence* (London: IB Tauris 2016).

⁶ Moudud Ahmed, *Bangladesh: Era of Sheikh Mujibur Rahman* (Dhaka: University Press Ltd, 1983) 6-8.

⁷ M Jashim Ali Chowdhury and Raihan Rahman Rafid, 'Parliaments during the Pandemic: A Dual State Explanation of Bangladesh *Jatiya Sangsad*' (2020) 18(1-2) *Bangladesh Journal of Law* 25, 44-45.

⁸ Harshan Kumarasingham, 'Eastminster: The Westminster Model in British Asia' (The Constitution Unit, Department of Political Science, University College London, 22 September 2016).

⁹ The Proclamation of Independence of 10 April 1971 (with effect from 26 March 1971), annexed to the Constitution as the Seventh Schedule <http://bdlaws.minlaw.gov.bd/upload/act/367_Schedule.pdf> accessed 5 May 2022.

¹⁰ The Provisional Constitution of Bangladesh Order 1972.

¹¹ Justice Mustafa Kamal, *Bangladesh Constitution: Trends and Issues* (Dhaka: University of Dhaka 1994) 6.

Election to the first parliament was held in March 1973. Shortly, the fourth amendment of February 1975 converted it into a servile legislature under a one-party presidential government.¹² Parliament's role was substantially curtailed.¹³ While a significant number of the ruling party members were reportedly not in favour of the proposed amendment,¹⁴ they had to give way to the preference of Bangabandhu, the leader of the ruling party.¹⁵ The decision to radically transform the system was taken outside the parliament and presented to its members as a *fait accompli*.¹⁶

Months later, a brutal *coup* on 15 August 1975 killed Bangabandhu and most of his family members. Power was passed on to the military, and a series of coups and countercoups ultimately placed Major General Ziaur Rahman (from now on, Zia) in the presidency in 1977. Zia continued with the presidential system introduced by the fourth amendment but permitted multiple political parties to exist. Election to the second parliament (1979-81) was held in 1979. Zia's hastily constituted Bangladesh Nationalist Party (from now on, BNP) got an absolute majority over Bangabandhu's party, the Awami League (from now on, AL). However, the status of parliament under Zia's presidential government remained unclear. While Zia's supporters boosted it as "independent" and "sovereign", the parliament's inability to make the government answerable, the President's absolute authority to dissolve it and consistent suppression of its lawmaking power by excessive use of presidential ordinances created a situation where the legislature was arguably legitimising rather than legislating.¹⁷

Zia was assassinated in April 1981 by a dissident section of the army. The Army Chief Hossain Mohammad Ershad (from now on, Ershad) seized power in March 1982. After four years of absolute military rule, Ershad followed his predecessor Zia's footsteps and sought to civilianise his regime. As part of the process, Ershad formed his political party - Jatiya Party (from now on, JP). Election to the third parliament was held in 1986. The result was considered rigged in favour of JP,¹⁸ which, despite the rigging, got only a simple majority in parliament. Later, the third parliament (1986-88) legitimised Ershad's accession to power through a constitutional amendment. However, Ershad found the presence of a strong parliamentary opposition unhelpful. In the face of a brewing anti-government movement, Ershad dissolved the third parliament in 1988 and called the election to the fourth parliament the same year. The fourth parliament (1988-1990) was notorious for hosting unknown political parties collectively labelled as the Combined Opposition Party (COP). This coalition of unknown political parties was hurriedly coalesced together just days before the election, which the leading opposition parties boycotted. The collation was mockingly termed "domesticated opposition parties".¹⁹ However, in the face of violent street agitation and

¹² Famously known as BAKSAL (*Bangladesh Krishak Sramik Awami League*), the party was placed at the helm of a soviet-style socialist system.

¹³ Zillur R. Khan, 'Bangladesh's Experiments with Parliamentary Democracy' (1997) 37(6) *Asian Survey* 575, 580.

¹⁴ Ahmed (n 6) 208-209.

¹⁵ Md. Morshedul Islam, 'The Politics behind the Passage of Fourth Amendment to the Constitution of the People's Republic of Bangladesh and Its Provisions: A Modest Analysis' (2014) 4(9) *Public Policy and Administration Research* 55.

¹⁶ Ahmed (n 6) 217, 233.

¹⁷ Azizul Haque, 'Bangladesh 1979: Cry for a Sovereign Parliament' (1980) 20(2) *Asian Survey* 217, 221-222.

¹⁸ Staff Correspondence, 'Violence Mares Election in Bangladesh 1985' *The New York Times* (5 August 1986) <<https://www.nytimes.com/1986/05/08/world/violence-mars-bangladesh-election.html>> accessed 5 January 2022.

¹⁹ Syed Rahman, 'Bangladesh in 1988: Precarious Institution-Building Amid Crisis Management' (1989) 29(2) *Asian Survey* 216, 217.

growing public resentment against his rule, Ershad had to dissolve it in December 1990 and quit.

Operating under presidents hailing from the garrison, the second, third and fourth parliaments had little to offer in democratic legislation and parliamentary oversight.²⁰ Apart from being used as a legitimising tool for the presidents, those parliaments barely had a role in the policy discourse. Presidential ordinances massively outnumbered the laws passed by those parliaments.²¹ In 1990, the parties mobilising against Ershad's regime promised to forestall the parliament in the centre of democratic governance once the regime changed.

A non-political caretaker government was formed after the resignation of Ershad, and it held the fifth parliamentary election in 1991, which returned the BNP to power under the leadership of Zia's wife, Begum Khaleda Zia (from now on, Begum Zia). During its initial two years, the fifth parliament experienced a livelier, participatory, vigilant opposition and meaningful instances of backbench assertiveness.²² This parliament passed the twelfth amendment that restored the parliamentary system sixteen years after it was abolished in 1975.²³ Unfortunately, the fifth parliament's encouraging vibe could not be carried through. In 1994, a parliamentary by-election was widely rigged in favour of the ruling party, BNP.²⁴ The opposition parties then started boycotting parliament. Later, the opposition MPs resigned *en masse* from parliament, demanding the introduction of an election-time non-party caretaker government. As soon as the opposition parties resigned and started agitating in the streets, the backbenchers strongly coalesced behind their respective party leadership.²⁵ With politics being taken back to the street again, the fifth parliament had to be dissolved before its tenure.

An uncompromising BNP went for a one-party election to the sixth parliament in February 1996 and returned with a landslide victory.²⁶ The stubborn opposition (AL, JP and their allies) then increased the scale of violent agitations. Therefore, the sixth parliament lived a life of months.²⁷ Before dissolution, it enacted the thirteenth amendment to the Constitution and introduced an election-time non-party caretaker government.²⁸

The seventh parliament, established through a general election in 1996, saw *Bangabandhu's* daughter (Sheikh Hasina) and his party (AL) back in power. BNP secured more than one

²⁰ Nizam Ahmed, 'Parliamentary Committees and Parliamentary Government in Bangladesh' (2001) 10(1) *Contemporary South Asia* 11, 13-14.

²¹ Md. Abdul Halim, *Constitution, Constitutional Law and Politics: Bangladesh Perspective* (2nd Ed, Dhaka: Md. Yusuf Ali Khan 2003) 261 -164; M Habibur Rahman, 'Our Experience with Constitutionalism' (1998) 2(2) *Bangladesh Journal of Law* 115, 126.

²² Nizam Ahmed, 'Parliamentary Opposition in Bangladesh: A Study of its Role in the Fifth Parliament' (1997) 3(2) *Party Politics* 147.

²³ Ahmed (n 20) 15.

²⁴ Golam Hossain, 'Bangladesh in 1994: Democracy at Risk' (1995) 35(2) *Asian Survey* 172.

²⁵ Nizam Ahmed, *The Parliament of Bangladesh* (Ahsgate 2002 Routledge reprint 2018) 226-227.

²⁶ Adeeba Aziz Khan, 'Electoral Institutions in Bangladesh: A Study of Conflicts between the Formal and the Informal' (PhD Dissertation, London: SOAS 2015) 27, 29 <https://eprints.soas.ac.uk/23587/1/Khan_4280.pdf> accessed 5 October 2021.

²⁷ Craig Baxter, 'Bangladesh: Can Democracy Survive?' (1996) 95(600) *Current History* 182.

²⁸ The Caretaker Government headed by a retired Chief Justice of the Supreme Court would take charge of the government during the election and provide the logistic and administrative support to the Election Commission. For details on the history and role of the caretaker government system, see Chapter XX in this volume.

hundred seats and became the largest opposition party in the history of parliament.²⁹ The seventh parliament also became the first parliament since independence to complete its full tenure (1996-2001). One of this parliament's major successes was the committee system's consolidation.³⁰ Apart from establishing the parliamentary standing committees, the seventh parliament started sending the bills to special select committees charged with scrutinising particular bills.³¹ However, BNP continued to raise questions about the Speaker's partisan role and staged a continuous boycott and walk-out of parliament during its tenure.

BNP and its coalition partner Jamaat-e-Islami (from now on, JI) dominated the eighth parliament (2001-2006). Despite several committees working on a bipartisan basis,³² this parliament also was hit by a continuous opposition boycott and a dysfunctional committee system. The ninth parliament (2009-2013), dominated by AL, showcased a relative success in institutionalising the committee system. The weakened and consistently boycotting opposition, however, remained a continuing concern. Most disturbingly, this parliament abolished the non-party caretaker system.³³ BNP boycotted the tenth parliamentary election held under the AL government. In the one-party election of 5 January 2014, AL returned to power with a landslide victory.³⁴ Since then, AL has continued to successfully manipulate its ally JP to play the role of the official opposition. With an ally pretending to be an opposition, the tenth (2014-2018) parliament showed weak conviction towards government accountability. In the eleventh parliament (2019-present), the country's second-largest political party, BNP, holds a handful of parliamentary seats and remains politically doomed. The parliament continues to be servile to an invincible Cabinet government.

3. "Deviations" of the Westminster Parliamentary System in the East

Kumarasingham used the "Eastminster" coinage to theorise the working of the Westminster system in the Indian subcontinent. His studies explain how the formal constitutional institutions of these countries are largely circumscribed by informal and cultural value systems that nurture a personalisation, rather than institutionalisation, of powers.³⁵ Kumarasingham identifies five cultural traits that differentiate a Westminster-idealised from an "Eastminster"-in-action. He argues that an Eastminster-in-action is identifiable through the presence of a) elite-controlled "selective dictatorship" (opposed to Westminster's "elective dictatorship"), b) a personalised perception of public power (opposed to Westminster's institutionalised perception), c) crude majoritarianism intolerant of the opposition (opposed to the Westminster's bipartisanship), d) an interfering Presidency (opposed to the Westminster's disengaged Monarchy), and e) an "abusive viceregalism" (opposed to the Westminster's conventional norm of exercising the prerogative powers in a politically accountable way).³⁶

²⁹ In the seventh parliamentary election, the main opposition party, BNP secured 116 seats against the 146 seats of the government party AL. For statistical data on parliamentary elections, see: Nizam Ahmed, *The Bangladesh Parliament: A Data Handbook* (Dhaka: BRAC University Press 2013).

³⁰ Muhammad Mustafizur Rahman, 'Parliament and Good Governance: A Bangladeshi Perspective' (2008) 9(1) *Japanese Journal of Political Science* 39, 54.

³¹ Ahmed (n 2) 55.

³² Rahman (n 30) 54-55.

³³ Adeeba Aziz Khan, 'The Politics of Constitutional Amendments in Bangladesh: The Case of the Non-political Caretaker Government' (2015) 3 *International Review of Law* 11.

³⁴ Ali Riaz, 'Bangladesh's Failed Election' (2014) 25(2) *Journal of Democracy* 119.

³⁵ Harshan Kumarasingham, 'Eastminster – Decolonisation and State-building in British Asia', in Harshan Kumarasingham (ed.), *Constitution-making in Asia, Decolonisation and State-building in the aftermath of the British Empire*, 1-35 (London: Routledge 2016).

³⁶ Harshan Kumarasingham, 'Written Differently: A Survey of Commonwealth Constitutional History in the Age of Decolonisation', (2018) 46(5) *The Journal of Imperial and Commonwealth History* 874, 892.

The first three of these “Five Eastminster Deviations” are particularly relevant for the Bangladesh parliament.

The first deviation, the Prime Minister and Cabinet’s “selective dictatorship”, is distinguishable from Westminster’s “elective dictatorship”. Britain’s theoretical “elective dictatorship” operates within a practical chain of democratic delegation.³⁷ The authority is primarily delegated from the people to the majority party, then to the Cabinet, and finally to the Prime Minister. Within each delegation chain, there exists a corresponding chain of accountability. The Cabinet is answerable to the majority party backbench and, to some extent, the opposition. The Prime Minister’s sustenance depends on the continued confidence of his Cabinet colleagues and the party backbench. In Eastminster, Kumarasingham argues, Westminster’s “elective dictatorship” is replaced by a “selective dictatorship” system.³⁸ The selective dictators here effectively subdue their cabinet colleagues and the parties. Absolutist leaders successfully established an alternative chain of delegation and selection from the reservoir of their relatives and retainers in the family lines.³⁹

The second deviation is marked by a socially resonant fondness of personalist and clientelist, rather than institutionalist, public power.⁴⁰ Kumarasingham argues that the East’s political and legal relationships are built upon a “complex of personal relationships” different from the West’s institutional ideas of public power.⁴¹ The system operates within an “authoritarian framework of constitutionalism” where the rules of law are applied to perpetuate a particular person or group of persons’ power.⁴² Once the personalisation of power is ingrained at the top echelon of a party structure, a series of personalities or dynasties take root at the subordinate layers of the party hierarchy. In the process, the prospects of intra-party democracy and the bottom-up leadership selection wither away, and parties become entangled in a clientelist chain of top-to-bottom accountability. Members of parliament selected through the process are expected to adopt a mere partisan delegate or mercenary’s role in their parliamentary works.

Thirdly, the conditions supportive of a liberal-conservative bi-partisanship are largely absent in the East. The Westminster system essentially depends on the existence of at least two main and stable political parties that alternate in government at a reasonable frequency.⁴³ Regular and orderly alteration of power constitutes an incentive for the parties to preserve and defend the model in the expectation that all will benefit from it in the long run.⁴⁴ In Eastminster, the

³⁷ In 1976, Lord Hailsham famously labelled the British government as an “elective dictatorship” that is “absolute in theory but tolerable in practice”. The system is tolerable because the Cabinet Dictatorship over the parliament is compensated, to some extent, by the intra-party accountability of the prime minister. See: Lord Hailsham, ‘Elective Dictatorship’ (The Richard Dimbleby Lecture, 14 October 1976, BBC, London).

³⁸ Kumarasingham (n 8).

³⁹ Harahan Kumarasingham, *A Political Legacy of the British Empire: Power and the Parliamentary System in Post-Colonial India and Sri Lanka* (London: IB Tauris 2013) 19-21.

⁴⁰ Andrew Harding, ‘The Rulers and the Centrality of Conventions in Malaysia’s ‘Eastminster’ Constitution’ in Harshan Kumarasingham (ed.), *Constitution-Making in Asia - Decolonisation and State-Building in the Aftermath of the British Empire* (London: Routledge 2016) 257, 270, 272.

⁴¹ Kumarasingham (n 39) 11.

⁴² *ibid* 26.

⁴³ Peter Trubowitz and Nicole Mellow, “‘Going Bipartisan’: Politics by Other Means’ (2005) 120(3) *Political Science Quarterly* 433, 434.

⁴⁴ Gregoire Webber, ‘Loyal Opposition and the Political Constitution’ (2017) 37(2) *Oxford Journal of Legal Studies* 357.

opposition is a matter of suspicion and suppression rather than appreciation.⁴⁵ Therefore, the crude majoritarianism that results from a Westminster system minus its bipartisan framework makes the East's political competition unprincipled and mutually destructive.

The next three parts of the chapter will consider how these Westminster deviations – which I call the Bangladesh parliament's "Three Westminster Traits" – impact its existence, work, and contribution to the Bangladeshi Constitution.

4. "Selective Dictatorship" and the Ministerial Responsibility in Bangladesh

By the 1980s, Bangladesh's party system got a firmly dynastic shape. At the democratic revival of the early 1990s, Bangabandhu's daughter Sheikh Hasina was placed at the helm of the AL. Zia's widow Begum Khaleda Zia got a similar hold over the BNP. Deposed ruler Ershad got a very firm personal grip over the JP. The emergence of such a personalistic leadership style has hurt the development of intra-party democracy and inter-party relationships in the later decades.⁴⁶

The ascendancy of the executive branch has been reinforced by a near abdication of meaningful debates and deliberations in parliament and scrutiny in the committee stages. The selective dictatorship resulting from the country's clientelist, patrimonial and dynastic political party system has created an absolute dominance, not mere whipping, of the political parties and the persons or dynasties leading those.⁴⁷ It has effectively cut down the chain of vertical and horizontal governmental accountability to the people, parliament, and the judiciary. The lack of intra-party democracy has affected the parliament's capability to enforce the government's collective responsibility and the ministers' individual responsibility in numerous ways. It also has severely curtailed the parliament's legislative power and the parliamentary committees' scrutiny power.

Articles 55(3) and 57(2) of the Bangladesh Constitution require the prime minister to resign if s/he ceases to retain the support of a majority of the members of parliament.⁴⁸ However, no prime minister in Bangladesh has ever faced a no-confidence motion in the parliament, nor did they face a leadership challenge from within their parties. The Constitution contains an anti-defection clause, known as article 70. It bars the members from voting against their parties on the floor of parliament and remains a "Damocles' sword"⁴⁹ upon the backbenchers of the ruling and opposition parties. Article 70's purpose and impact have been widely debated. While the framers of the Constitution justified it as a protection against amoral defections by the MPs and the consequent fall of governments,⁵⁰ it is popularly identified as the sole troublemaker in Bangladesh's parliamentary politics.⁵¹ Though there is a perception

⁴⁵ 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 23 April 2022.

⁴⁶ Quamrul Alam and Julian Teicher, 'The State of Governance in Bangladesh: The Capture of State Institutions' (2012) 35(4) *South Asia: Journal of South Asian Studies* 858, 876-880.

⁴⁷ Nizam Ahmed, 'Parliament-Executive Relations in Bangladesh' (1997) 3(4) *The Journal of Legislative Studies* 70, 85-88.

⁴⁸ The Constitution of the People's Republic of Bangladesh, art. 58(4) <<http://bdlaws.minlaw.gov.bd/act-367.html>> accessed 13 October 2021.

⁴⁹ Justice Badrul Haider Chowdhury, Former Chief Justice of Bangladesh, quoted in AKM Shamsul Huda, *Constitution of Bangladesh, Vol 2* (Chittagong: Rita Court 1997) 560.

⁵⁰ Sabbir Ahmed, 'Article 70 of the Constitution of Bangladesh: Implications for the Process of Democratisation' (2010) 31 (1) *BISS Journal* 1, 3-7.

⁵¹ In the Sixteenth Amendment case - *Advocate Asaduzzaman Siddiqui v Bangladesh* (2016) 10 ALR (AD) 03 – for example, the Supreme Court judges considered the article 70 as an ominous threat to the parliament's

that the total removal of article 70 from the Constitution might cause sudden disintegration of the major political parties,⁵² it appears that the article is not the only reason for the lack of backbench assertiveness.⁵³ Apart from a voting restriction, it does not bar the MPs from debating their government's policies on the House floor and scrutinising the government in the committees. The internally undemocratic political parties constitute the greatest barrier to backbench autonomy. While the MPs may ask questions, call attention, seek explanation, or criticise a minister, they cannot enforce his resignation unless the prime minister so intends. Article 58(2) of the Constitution has made a Minister answerable to the prime minister rather than to the parliament. Therefore, the parliament's incapacity to enforce the collective and individual ministerial responsibility marks a "ministerial non-responsibility"⁵⁴ regime in Bangladesh.

The undemocratic and clientelist party system has affected the parliamentary committees as well. The Constitution⁵⁵ and the parliament's Rules of Procedure mandated a system comprising standing committees, select committees and special *ad hoc* committees.⁵⁶ The parliamentary standing committee system suffers structural (institutional and procedural), political and behavioural (attitudinal) setbacks.⁵⁷ Party influence over the committee agenda and hard-lined party stances of the members on key issues hamper the committees' autonomous functioning. Committees have been structurally weakened by factors like Ministers' presence in the committee as *ex officio* members⁵⁸, nominal logistic support from the parliament secretariat, and the negative attitude of the bureaucracy towards the parliamentary oversight process.⁵⁹ Partisan control over the appointment of members and chairs of the committees jeopardises the committees' assertiveness and retards their expertise.⁶⁰ Absent a political will to change the *status quo*, the parliamentary committees will continue to play only a marginal role in ensuring accountability and legislative quality.⁶¹

5. Undemocratic party system, role abdication and localisation of the MPs

Strict partisan control over the legislative process has significantly minimised the parliament's actual ability to legislate. Hoque's study shows that Bangladesh's first four constitutional amendments (1973-1975) were conceived and drafted at the sole discretion of

autonomy. See: M Jashim Ali Chowdhury and Nirmal Kumar Saha, 'Advocate Asaduzzaman Siddiqui v. Bangladesh: Bangladesh's Dilemma with Judges' Impeachment' (2017) 3(3) *Comparative Constitutional and Administrative Law Quarterly* 7, 16.

⁵² Zahed Iqbal, 'Article 70 of the Constitution: A Critical Analysis (In Bangla)' (8th Monthly General Meeting of The Asiatic Society of Bangladesh, Dhaka, 8 April 2021) 15.

⁵³ Hasanuzzaman, 'To amend Article 70 or not', *The New Age* (Dhaka, 22 April 2011) <http://cpd.org.bd/pub_attach/To%20Amend%20Article%2070%20or%20not.pdf> accessed 18 October 2021.

⁵⁴ M. Jashim Ali Chowdhury, 'Ministerial Non-responsibility' *The Daily New Age* (Dhaka, 31 May 2019) 6.

⁵⁵ The Constitution (n 48) art. 76(1)

⁵⁶ The Rules of Procedure of Bangladesh *Jatya Sangsad* 1973, r. 189(1) <<http://www.parliament.gov.bd/index.php/en/parliamentary-business/procedure/rules-of-procedure-english> > accessed 25 April 2022.

⁵⁷ Nizam Ahmed, 'Reforming the Parliament in Bangladesh: Structural Constraints and Political Dilemmas'. (1998) 36(1) *Commonwealth and Comparative Politics* 68, 71; Ahmed (n 20) 31-33; Ahmed (n 47) 77-78.

⁵⁸ M. Jashim Ali Chowdhury, '11th Parliament: Rays of hope for the Committee System' *The Daily Star Law and Our Rights* (Dhaka, 05 March 2019) <<https://www.thedailystar.net/law-our-rights/news/11th-parliament-rays-hope-the-committee-system-1710775>> accessed 27 April 2022.

⁵⁹ A.T.M. Obaidullah, 'Standing Committees on Ministries in the Bangladesh Parliament: The Need for Reorganisation', (2011) 18(2) *South Asian Survey* 317, 322.

⁶⁰ Navid Saifullah, 'Effectiveness of the Parliamentary Standing Committees in Bangladesh' (Master's in Governance and Development Thesis, Dhaka: BRAC University 2006).

⁶¹ Muhammad Mustafizur Rahaman, 'The Limits of Foreign Aid in Strengthening Bangladesh's Parliament: Analysis of the UN's Strengthening Parliamentary Democracy Project' (2010) 50(3) *Asian Survey* 474, 483-94.

the party in power.⁶² Those were later tabled and passed in parliament with almost no deliberation. The most controversial one – the fourth amendment – altered the Constitution drastically. Still, it was passed through less than 30 minutes of parliamentary deliberation.⁶³ The fifth to tenth amendments (1979-1990) were passed by three “rubber stamp parliaments”⁶⁴ working to “achieve constitutional changes desired by the military rulers”.⁶⁵ The eleventh and twelfth amendments (1992) were largely based on a political consensus outside the parliament. The eleventh amendment legitimised a Chief Justice-led government which conducted the 1991 parliamentary election. The twelfth amendment restored the parliamentary system. The thirteenth amendment (1996) included the election-time caretaker government system in the Constitution. Again, its basic principle was agreed upon through “mere élite preferences rather than deliberative and participatory decision making”.⁶⁶ With the key principles decided outside the parliament, its texts lacked any input from the government backbench or parliamentary committees.⁶⁷ The fourteenth (2001), fifteenth (2011), and sixteenth (2016) amendments represent what Hoque calls the examples of “abusive constitutional amendments”⁶⁸. The fourteenth amendment increased the retirement age of the Supreme Court judges allegedly to politicise the election-time caretaker government of 2001. The fifteenth amendment abolished the caretaker government at the sole decision of the head of the government, ignoring the views of an all-party parliamentary committee. The committee expressed a clear preference for retaining the caretaker government after consulting hundreds of constitutional experts, Supreme Court judges, civil society leaders, journalists, and people from different walks of life.⁶⁹ However, the prime minister had a different opinion, and the amendment was passed literally within minutes of its presentation to the parliament.⁷⁰

Constitutional amendments apart, the parliament’s general capability to deliberate and influence the legislation has been minimal. Until the mid-1990s, governments frequently legislated through presidential ordinances. After the demise of military rule in 1990, around one-third of laws passed by the fifth parliament (1991-1996) were the approval of presidential ordinances issued earlier.⁷¹ Most of them, including the bulk of other regular parliamentary bills, did not go through committee scrutiny either.⁷² The number of ordinances has decreased since the seventh parliament (1996-2001). However, the parliament’s legislative power did not increase. The Transparency International Bangladesh (TIB)’s study of the incumbent parliament’s legislative activities in 2019 shows that it spent an average of 32 minutes passing each bill laid on the table. The time included time for

⁶² Ridwanul Hoque, ‘Deconstructing Public Participation and Deliberation in Constitutional Amendment in Bangladesh’ 2021 21(2) *Australian Journal of Asian Law*, 7 11-13

⁶³ *ibid.*

⁶⁴ Haque (n 17).

⁶⁵ Hoque (n 62) 15.

⁶⁶ Sonia Zaman Khan, *The Politics and Law of Democratic Transition: Caretaker Government in Bangladesh* (London: Routledge, 2017) 2.

⁶⁷ Md. Shahjahan Hafez Bhuiyan, ‘The Caretaker Government in Bangladesh: An Appraisal of its Formation’, (2003) 40 *Politics Administration and Change* 33, 46-47.

⁶⁸ Hoque (n 62) 17-18.

⁶⁹ Maimul Ahsan Khan, ‘Constitutional Disaster and ‘Legal’ Impunity: Constitutional Amendments in Perspective’, Asian Human Rights Commission <<http://www.humanrights.asia/resources/journals-magazines/article2/special-report-inexistent-rule-of-law-in-bangladesh/04-2/>> accessed 18 November 2021

⁷⁰ *ibid.*

⁷¹ Halim (n 21)

⁷² Ahmed (n 2) 55.

formal presentment, MPs' discussion, the minister's speech and voting.⁷³ One of the latest examples of the trend has been the Chief Election Commissioner and other Election Commissioners' Appointment Act, 2022.⁷⁴ The Act established a Search Committee to appoint Chief Election Commissioner and other Election Commissioners.⁷⁵ While the government defiantly resisted a call to pass such a law until December 2021,⁷⁶ it suddenly changed its mind in early January 2022. In late January 2022, the bill was passed with lightning speed and without adequate deliberation.⁷⁷

The absence of democracy within political parties has also muted the MPs in parliamentary questions and debates.⁷⁸ Though regularly asked and answered, the parliamentary questions disappointingly fail to touch upon key accountability issues of the government and bureaucracy.⁷⁹ Therefore, successive parliaments invariably failed in criticising government policies and actions.⁸⁰

An additional impact of the lack of intra-party democracy has been the excessive entanglement of Bangladeshi MPs in the local government affairs, which has resulted in misgovernance at the local level and a low standard in their legislative and scrutiny roles in parliament.⁸¹ A good explanation of this tendency is that of Ahmed, who argues that the mutual interests of the MPs and their party high commands shape the MPs' constituency works.⁸² By localising the MPs, the government contributes to downgrading the quality and quantity of their legislative and oversight functions and achieving a practical immunity from parliamentary scrutiny. In return, the government compensates the MPs by allowing them wide control over local affairs.⁸³ It is easier to dominate the elected local government bodies through another set of elected representatives, the MPs, than trying to do it through the bureaucracy. Localisation helps the government centralise its power and suppress the elected local government bodies.⁸⁴ It is also necessary for efficient handling of the opposition. The ruling parties cannot rely only on the administration and the police forces to tackle the destabilising tactics of the opposition. Rather, an alert and powerful MP at the local level ensures that hard-line resistances do not arise from the bottom. It leaves the government and

⁷³ Transparency International Bangladesh, 'Parliament Watch, Eleventh Parliament (1st to 5th Sessions; January-December 2019)' (TIB, Dhaka, September 2020) 17 <https://www.ti-bangladesh.org/beta3/images/2020/report/PW/PW_Full_Report.pdf> accessed 4 May 2022.

⁷⁴ The Chief Election Commissioner and other Election Commissioners Appointment Act, 2022 (Act No 1 of 2022) <<http://bdlaws.minlaw.gov.bd/act-details-1397.html>> accessed 28 February 2022.

⁷⁵ *ibid* sec. 5, 6.

⁷⁶ Partha Pratim Bhattacharjee and Mohiuddin Alamgir, 'EC Formation: Chance of a law slim', *The Daily Star* (Dhaka: 23 December 2021) <<https://www.thedailystar.net/news/bangladesh/politics/news/ec-formation-chance-law-slim-2923456>> accessed 7 January 2022.

⁷⁷ Staff Correspondence, 'EC formation bill placed in JS amid opposition' *The New Age* (Dhaka: New Age, 23 January 2022) <<https://www.newagebd.net/article/160752/ec-formation-bill-placed-in-js-amid-oposition>> accessed 1 May 2022.

⁷⁸ Ahmed Shafiqul Hoque, 'Accountability and Governance: Strengthening Extra-bureaucratic Mechanisms in Bangladesh' (2011) 60(1) *International Journal of Productivity and Performance Management* 59, 68.

⁷⁹ Salahuddin Aminuzzaman, 'Institutional Processes and Practices of Administrative Accountability: Role of *Jatya Sangsad* in Bangladesh' (1993) 10(2) *South Asian Studies* 44, 55.

⁸⁰ Rahman (n 30) 47-48.

⁸¹ N Ahmed, T Ahmed and M Faizullah, *Working of Upazila Parishad in Bangladesh: A Study of Twelve Upazilas*, (UNDP Dhaka 2011).

⁸² Nizam Ahmed, 'Parliament and Poverty Reduction in Bangladesh: Role of the MP' (2018) 25 (1-2) *South Asian Survey* 163, 179.

⁸³ *ibid* 178.

⁸⁴ The Constitution (n 48), arts 59 and 60.

the police to focus more on the opposition activities and resistance across the country.⁸⁵ MPs also benefit in significant ways. Unlike in the UK, where constituency units of the parties play a decisive role in candidate selection, party leaders in Bangladesh often impose their candidates upon the local units.⁸⁶ Given the context, the incumbent MPs need to maintain a strong hold over the local party units so that strong leadership contenders do not rise to prominence.⁸⁷

6. Illiberal bipartisanship and the suppression of parliamentary opposition

Bangladesh has utterly failed to uphold the core Westminster norms of bipartisanship and institutionalised opposition. Bangladesh's parliamentary system is excessively harsh to the opposition.⁸⁸ As Ahmed observes, "[u]nlike other democratic systems, where the opposition is at least listened to, if not always consulted, the government in Bangladesh generally look[s] upon the opposition with suspicion".⁸⁹

Although the power has been alternated several times between the country's two major political parties, AL and BNP, the potential of liberal-conservative bipartisanship has suffered a setback due to the historical distrust between the two parties and the personal antagonism between their leaders.⁹⁰ A historical evaluation of the Bangladeshi Parliament reveals that there have been at least four modes of parliamentary opposition: no opposition, marginal opposition, strong but disruptive opposition, and domesticated opposition.

The first (1973-1975) and sixth (February – June 1996) parliaments had practically no opposition.⁹¹ In the first parliament, only seven opposition and independent members were elected to the three-hundred members' body. In the sixth parliament, only 11 opposition and independent members were elected. The second (1979-1981), eighth (2001-2006), and ninth (2009-2013) parliaments saw some marginal opposition. The numerical majorities of the ruling parties in those parliaments were absolute.⁹² The second parliament had 93 opposition and independent members elected. The eighth parliament saw only 90 opposition and independent members, while the ninth had only 43 opposition and independent members.

On the other hand, the third (1986-1988), fifth (1991-1996), and seventh (1996-2001) parliaments saw a very strong opposition presence. However, the ruling parties denied the opposition parties their rightful participation in the parliamentary process.⁹³ The opposition parties also showed excessively disruptive tendencies, boycotted the parliaments and resorted to street agitation and violence.⁹⁴ The third parliament had 147 opposition and independent

⁸⁵ Ahmed (n 82) 180.

⁸⁶ Ahmed (n 2) 34, 59-61.

⁸⁷ Zahir Ahmed, 'From Shape Shifting to Collusion in Violence: An Ethnography of Informal Relationships Between Bangladeshi Members of Parliament and Their Constituents' (2019) 42(1) *Legal and Political Anthropology Review* (PoLAR) 5, 6-7; Ahmed (n 82) 169.

⁸⁸ Mohammad Mohabbat Khan and Syed Anwar Husain, 'Process of Democratisation in Bangladesh' (1996) 5(3) *Contemporary South Asia* 319, 331

⁸⁹ Ahmed (n 47) 90.

⁹⁰ Elora Shahabuddin, 'Bangladesh in 1999: Desperately Seeking a Responsible Opposition' (2000) 40(1) *Asian Survey* 181, 185.

⁹¹ Ahmed (n 29) 31-32.

⁹² *ibid.*

⁹³ Elora Shahabuddin (n 90) 185; Nizam Ahmed, 'From Monopoly to Competition: Party Politics in the Bangladesh Parliament (1973-2001)' (2003) 76(1) *Pacific Affairs* 55; M Moniruzzaman, 'Parliamentary Democracy in Bangladesh: An Evaluation of the Parliament during 1991-2006', (2009) 47(1) *Commonwealth and Comparative Politics* 100.

⁹⁴ Ahmed (n 20).

members elected. The military ruler was uncomfortable with this and dissolved it within two years of its election. The fifth parliament had 142 elected opposition and independent members. Three years into its tenure, the opposition parties resigned and staged violent political agitations demanding the introduction of a non-partisan caretaker government. The seventh parliament had 122 opposition and independent members elected. They boycotted the parliament consistently and preferred street agitations. Absenteeism in the seventh (1996-2001), eighth (2001-2005) and ninth (2009-2013) parliaments were 43 per cent, 60 per cent and 75 per cent, respectively.⁹⁵

The fourth (19988-1990), tenth (2014-2018), and eleventh (2019-current) parliaments saw the presence of what is called domesticated opposition. These opposition parties have been the ruling party allies who filled the vacuum created by the main opposition parties who boycotted the elections. In the fourth parliament, a so-called Combined Opposition Party coalesced hurriedly at the behest of the President, participated in the election boycotted by the mainstream opposition parties, got elected in some seats and then played the dummy opposition's role in the parliament. In the tenth parliament, the ruling party's coalition partner JP contested the election boycotted by all other major parties, got elected in some seats that were left uncontested by the ruling party, and then took ministerial positions within the Cabinet. JP plays a similar role in the current eleventh parliament, with only six members elected from the actual opposition party – BNP – in the controversial election of December 2018.⁹⁶

7. Conclusion

Despite the long list of parliament's institutional failures, fifty years of parliamentary politics have witnessed occasional resilience from the backbench. In a rare show of parliamentary assertiveness, the ruling party backbench of the fifth parliament joined the opposition to force the government to rethink its policy decisions at least on two occasions.⁹⁷ On the first occasion, many ruling party MPs refrained from voting for the government's controversial presidential candidate. The government's pick barely escaped a defeat at the hand of the opposition candidate.⁹⁸ On the second occasion, the prime minister was forced to respect her electoral promise to restore the Parliamentary system and pass the Constitution (Twelfth) Amendment Act of 1991.⁹⁹

The parliamentary committee system has witnessed a limited consolidation thanks mainly to the increased pressure from international donor agencies and development partners¹⁰⁰ and sometimes to the *ex-gratia* concession of the prime minister.¹⁰¹ Until the fifth parliament (1991-1996), the ministerial standing committees were confined to scrutinising bills

⁹⁵ Rounaq Jahan and Amundsen, *The Parliament of Bangladesh: Representation and Accountability* (Dhaka and Bergen: Centre for Policy Dialogue and Chr. Michelsen Institute 2012) 54.

⁹⁶ Ali Riaz, 'Bangladesh: From an Electoral Democracy to a Hybrid Regime (1991–2018)' in Ali Riaz (ed.), *Voting in a Hybrid Regime Explaining the 2018 Bangladeshi Election, Politics of South Asia* (Singapore: Palgrave Pivot, 2019) 21-31.

⁹⁷ Ahmed (n 22).

⁹⁸ Ahmed (n 25) 233.

⁹⁹ Nizam Ahmed, 'Parliamentary Politics in Bangladesh', (1994) 32(3) *The Journal of Commonwealth and Comparative Politics* 364, 375; Zillur R. Khan, 'Bangladesh in 1992: Dilemmas of Democratisation' (1993) 33(2) *Asian Survey* 150

¹⁰⁰ A. T. M. Obaidullah, *Institutionalization of the Parliament in Bangladesh A Study of Donor Intervention for Reorganization and Development* (London: Palgrave Macmillan, 2019)

¹⁰¹ M. Jashim Ali Chowdhury, 'Working and Impact of Parliamentary Committees in the UK and Bangladesh: A Theoretical Analysis' (2021) 32(2) *Dhaka University Law Journal* 175, 194.

concerning a relevant ministry. After a 1992 amendment in the parliament's Rules of Procedure (RoP), ministerial standing committees got scrutiny power over the administration and policies of the ministries.¹⁰² Parliamentary committees now broadly shadow the ministries and departments of the government.¹⁰³ Until the ninth parliament, the committees were not formed until the lapse of a significant portion of its tenure.¹⁰⁴ However, the ninth (2009-2013), tenth (2014-2018) and eleventh (2019-present) parliaments constituted the committees within the first session.¹⁰⁵

A revision of RoP in June 1997 also ensured that ministers would not chair the committee on their ministry. Ministers now remain in the committees as *ex officio* members. However, there is an apprehension that even the *ex officio* membership of the ministers negatively impacts the committee agenda, deliberation and decisions. Ministers being the influential frontbench members of the ruling party, chairs of the committees are unlikely to be too assertive against them. It has long been proposed that ministers' membership be scrapped, and they go to the committees only when invited for questioning. Pending the proposition, the tenth and eleventh parliaments have appointed senior party leaders and former ministers as the chairs of parliamentary committees. If continued, the practice would benefit the committee system by drawing from the chairs' expertise and political superiority over the ministers.¹⁰⁶

Also, until the ninth parliament, the ruling parties used to claim the most committee chairs. Appointment of opposition members to the chair had been rare.¹⁰⁷ Since the ninth parliament, chairs are now being distributed among the parties on a *pro-rata* basis.¹⁰⁸ Though there were repeated calls for appointing the chairs of Public Accounts, Public Undertaking and Estimate Committees from the opposition parties, it was not heeded until the current parliament (2019-present). Currently, a lawmaker from the main opposition party, JP, Mr Rustam Ali Farazi, chairs the Public Accounts Committee (PAC).

As mentioned earlier, these symbolic developments in the committee system being the donor insisted ones, the parliament's overall contribution has remained limited. It continued to work within an environment of competitive authoritarianism¹⁰⁹ and dictatorial party leadership¹¹⁰. While the Constitution accommodates the core values of democratic accountability, such as the presence of a symbolic head of State with a Cabinet responsible to parliament, an institutionalised opposition, and a mandate for free and fair periodic elections, the failure of principled liberal-conservative bipartisanship and the emergence of an overtly clientelist party system has laid bare the limitations of the constitutional structure. The ruthless partisan

¹⁰² The Constitution (n 48) art 76(2)(c); Rules of Procedure (n 56) r 246-48.

¹⁰³ Ahmed (n 20); Taiabur Rahman, *Parliamentary Control and Government Accountability in South Asia: A comparative analysis of Bangladesh, India and Sri Lanka* (London: Routledge 2008).

¹⁰⁴ Jalal Firoj, 'Forty Years of Bangladesh Parliament: Trends, Achievements and Challenges' (2013) 58(1) *Journal of the Asiatic Society of Bangladesh (Humanities)* 83; Alam and Teicher (n 46); Ahmed (n 94) 68-69.

¹⁰⁵ Chowdhury (n 58).

¹⁰⁶ *ibid.*

¹⁰⁷ KM Mahiuddin, 'The Parliamentary Committee System in Bangladesh An Analysis of its Functioning' (PhD Thesis, Ruprecht-Karls-Universität Heidelberg 2009) 104-106.

¹⁰⁸ Ahmed (n 47) 85-88.

¹⁰⁹ Shelley Feldman, 'Bangladesh in 2014: Illusive Democracy' (2015) 55(1) *Asian Survey* 67.

¹¹⁰ M. Ehteshamul Bari, 'The Incorporation of the System of Non-Party Caretaker Government in the Constitution of Bangladesh in 1996 as a Means of Strengthening Democracy, Its Deletion in 2011 and the Lapse of Bangladesh into Tyranny Following the Non-Participatory General Election of 2014: A Critical Appraisal', (2018) 28(1) *Transnational Law and Contemporary Problems* 27.

drives for perpetual power have hijacked Bangladesh's electoral institutions and processes.¹¹¹ In general, the parliament's electoral legitimacy has been doubtful, and its democratic legitimacy and vertical accountability to the people questionable.¹¹² The clique of intellectual and political elites posited at the helm of public power through a farcical electoral process has diffused the Westminster system's chain of the democratic delegation from electors to the ruling parties.¹¹³ Given this paradox of constitutional design and its political mishandling, the institutional value that the Parliament of Bangladesh carries within the body politic remains extremely marginal.

¹¹¹ Nizam Ahmed, 'Critical Elections and Democratic Consolidation: The 2008 Parliamentary Elections in Bangladesh', (2011) 19(2) *Contemporary South Asia* 137, 149.

¹¹² Riaz (n 34).

¹¹³ Robert Blackburn, 'The Future of UK Constitutional Law', in Xenophon Contiades and Alkmene Fotiadou (eds.), *The Routledge Handbook of Comparative Constitutional Change* (London: Routledge 2020) 374.