

The Fifteenth Amendment of the Constitution of Bangladesh: A Review

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Abstract

In Bangladesh's history of constitutional amendments, the Fifteenth Amendment to the Constitution represents a major turning point. This extensive amendment provoked intense debates and discussions among stakeholders, including scholars, political parties, constitutional experts and the public. The amendment sought to align the core principles of the 1972 founding constitution with the constitutional framework but with some major modifications. This qualitative study uses document analysis to understand the wide-ranging effects of this amendment. The research aims to thoroughly assess the Fifteenth Amendment's implications, focusing on its main distinctive additions, drawbacks, competing concerns, and potential impact on the country's democratic system. The assessment concentrates on a few developments, such as the restoration of fundamental principles, environmental sustainability, fifty seats reserved for women in parliament, incorporating the speech of 7th March and declaration of independence, reformation of the election commission, and so on. However, it also delves into contentious areas, such as restrictions over amending some articles, the dissolution of the caretaker government system, and debates about secularism vs. religion so on. The study also provides pragmatic recommendations to strengthen democratic values, covering a wide range of topics from environmental preservation to gender representation in the constitution. Finally, this research sheds light on the complex correlation between religious beliefs, societal objectives, and democratic values within

Bangladesh's evolving constitutional framework, marking a significant turning point in the nation's democratic development.

Key words: Bangladesh constitution; Fifteenth amendment; Caretaker government

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1. INTRODUCTION

Bangladesh was born after a nine-month bloodsheds of liberation war against Pakistan in 1971. It then wrote a constitution in less than a year that paid tribute to the three million individuals who gave their lives to secure their freedom. The committee was tasked with creating a modern and adaptable constitution that protected the rights and duties of individuals, as well as the well-being and concerns of the public. Nevertheless, this constitution has had several amendments over different political regimes. With a multitude of additions, replacements, revisions, and removals, it swiftly deviated from the original 1972 constitution. With the ratification of the Fifteenth Amendment in 2011, the Awami League government significantly amended the constitution to fulfill a promise made during the 2008 election campaign to restore the original spirit and contents of the 1972 founding document. In its entirety, in Bangladesh's post-democratic history, the Fifteenth Amendment to the Constitution is perhaps the most important and disputed modification.

The Fifteenth Amendment is one of the most substantial transformations in the nation's history of constitutional amendments. Owing to its significant additions, subtraction, modifications, and replacements,

the highly anticipated and extensive Fifteenth Amendment sparked a heated debate among academics, constitutional experts, political parties, and the general public. Thus, examining the impacts of the Fifteenth Amendment and focusing on how it might alter the nation's democratic political framework in the future was the main objective of the study.

2. BACKGROUND OF THE STUDY

Soon after obtaining independence, Bangladesh passed and ratified its constitution which was effected from December 16, 1972. (Huq, 1973). The constitution has received accolades from all throughout the nation and is regarded as one of the considerable constitutions one in the world. Since all good constitutions are adaptable enough to change with the times, practically all countries have modified theirs to suit their current demands. It is also necessary to redistribute political power to create a constitution that is more democratic, has stronger checks and balances, and is more sensitive to public opinion (Rights, 2018). The same is true for the Constitution of the People's Republic of Bangladesh. The constitution of Bangladesh has been changed seventeen times to accommodate popular will and wants and sometimes to further the self-interest of the ruling class (Michel & Cofone, 2018). Except a few constitutional amendments most of them failed to focus the will of governed. So, Firozee, (2011:9) unlined that "almost all the adjustments were made with political preference, for getting undue benefit by certain influential decade or for fulfilling the whim of a few; and they rarely had connection with the solemn declaration of the will of the people". Again, every examination of the constitutional amendments brought about by declarations of martial law shows that they were always implemented to achieve unjust political objectives. Thus, in reaction to such abhorrent changes, a plethora of political statements and propaganda has been released.

Among all such amendments the Fifteenth Amendment is more controversial one that has made significant modifications in the constitution. It has included some elements that contribute to the state's beneficial progress and give our democratic process a new appearance. Concurrently, there has been discussion over the elimination of specific elements from the constitution among politicians, democratic analysts, constitutional specialists, and political organizations. Consequently, it is logical to conduct research to evaluate the potential effects and ramifications of the Fifteenth Amendment to the Constitution on Bangladesh's political and democratic trajectory.

3. AIM AND OBJECTIVES OF THE STUDY

The main aim of this research is to ascertain the fundamental elements of the Fifteenth Amendment and

assess them in the view of the following objectives:

- i. To figure out the notable inclusions and contentious features of the fifteenth amendment;
- ii. To assess the conflicting issues of the fifteenth amendment and evaluate these from different perspectives;
- iii. To propose a few forward-thinking recommendations and assess the nation's future political orientation and democratic pattern.

4. METHODOLOGY AND METHOD

This is qualitative research where document analysis has been used as a method. In document analysis, every document textual or electronic is methodically examined or assessed to ascertain its actual meaning. In addition, this method of study makes it possible to carefully examine and analyze data in order to derive understanding, provide empirical knowledge (Bowen, 2009), and extract meaning from the preferred phenomena. In the study, a great deal of the data collected from secondary sources. Where data is available in written form in a variety of publications, such as books, newspapers, journals, and official or organizational records. For this reason, document analysis, a qualitative research method, has been used for this study in order to collect data from the aforementioned sources and evaluate it appropriately.

5. FIFTEENTH AMENDMENT: A BACKGROUND

In December 2008, after two years of military backed caretaker government, the Awami League (AL)-led grand alliance secured 263 seats out of 300 in the elections. AL used its Charter for Change (League, 2008) as its electoral manifesto, promising to bring positive (?) changes to the nation's politics, culture, and constitution, among other important issues (Halim, 2012). Shortly after the December 2008 election, a number of court rulings were crucial in strengthening the AL's position in favor of enacting constitutional changes. Among these court orders are- i) the adoption of the 5th Amendment to the Bangladesh Constitution unauthorized and illegal (Rahman, 2009; The Supreme Court of Bangladesh, 2009); ii) the 7th Amendment case was decided in favor of the nullification of the constitution's 7th amendment (The Supreme Court of Bangladesh, 2010), therefore invalidating General Ershad's unconstitutional assumption of state power which legitimized all actions taken by his government (Hakim & Huque, 1995). The judgment in the 13th Amendment case found the caretaker government's provision "prospectively declared void and ultra vires" and unconstitutional (The Supreme Court of Bangladesh, 2011:3; Islam, 2011). Restitution to the 1972 constitution was brought into discussion after the Supreme Court's ruling that the 5th, 7th, and 13th Amendments are

unconstitutional. The people from different corners started believing that the atmosphere was shifting in favor of actual progressive secularization and constitutional democratization (Halim, 2012) and these reforms had prepared the environment for democracy to blossom, but no one has taken advantage of the opportunity (Islam, 2012). To restore the spirit of 1971, it is necessary to return to that constitution, which does not conflict with religion. The constitution of 1972 implies preserving our culture and returning to our roots; it means prioritizing the people's democratic faith as the supreme law.

Accordingly, in a parliamentary session on November 04, 2009, leader of the house Sheikh Hasina hinted in a significant announcement that some of the constitutional articles imposed by unconstitutional governments would be overthrown in accordance with public expectations. (Habib, 2009). There is no other option than to revert to the 1972 constitution to realize the goals of 1971. According to a statement by Law Minister Shafique Ahmed, the objective of this change is to provide democracy with an institutional framework and ensure good governance (The Indian Express, 25 September 2009). Despite its many flaws, the constitution of 1972 opened the ground for establishing of a functioning democratic society. There was a chance for political ambitions to be realized. It also embodies the philosophy of the independence movement, the principles of the 1972 constitution, and the Bangladesh Awami League's ideology. Finally, in 30 June 2011, Fifteenth Amendment of the Bangladesh constitution is approved with a few notable inclusion and debatable deletion.

6. FIFTEENTH AMENDMENT: AN ASSESSMENT

The Fifteenth Amendment is one of the most substantial transformations in the nation's history of the constitutional amendments. Due to its considerable additions, deletions, alterations, and substitutions, the much anticipated and comprehensive Fifteenth Amendment provoked an intense discussion among its stakeholders from various backgrounds. Consequently, the research is an attempt to evaluate this modification from several angles. Following the analysis of the main components of the Fifteenth Amendment this research has identified some noteworthy additions to the amendment along with some controversial removals and modifications. These are listed below and evaluated in light of various factors and views.

6.1 The fifteenth amendment: some notable inclusions

The Fifteenth Amendment, which has made a number of changes to the constitution, is seen as one of the most extensive constitutional revisions that Bangladesh has ever seen. Following a comprehensive evaluation of its key components, the research discovered the following

positive outcomes:

i. Explaining the nation's historical background and national identity via the adoption of the preamble and the four fundamental principles of state policy (nationalism, socialism, democracy, and secularism) in accordance with the 1972 constitution;

ii. Considering contemporary issues, such as acknowledging the need for environmental sustainability, biodiversity in article(18A);

iii. Preservation of ethnic minorities' and their multiculturalism in article (23A);

iv. It has highlighted the right to equal opportunity for women in all aspects of life in article 19(3).

v. Reinstating the power to abstain from casting votes in parliament as per Article-70 of the 1972 constitution.

vi. Raising the number of female privileged positions in parliament to 50 under Article-65;

vii. Partially restoring the independence of the subordinate courts;

viii. Following the Bangladesh Collaborators' (Special Tribunal) Order of 1972 to hold trials of those accused of collaboration with the Pakistan army in the war of 1971;

ix. It also includes, as per Article 4(A) the preservation and display of Bangabandhu Sheikh Mujibur Rahman's portrait in the offices of the President, Prime Minister, Speaker, and Chief Justice, as well as in all government and semi-government offices, autonomous bodies, statutory public authorities, government and non-government educational institutions, and embassies;

x. In addition, Schedule 5 incorporates the speech given by Bangabandhu Sheikh Mujibur Rahman on March 7, 1971; Schedule 6 includes the declaration of independence made by Bangabandhu after midnight on March 25, 1971; and Schedule 7 includes the proclamation of independence made in Mujibnagar on April 10, 1971 (The Bangladesh Gazette, 2011).

6.2 The fifteenth amendment: some contentious elements

Even though the Fifteenth Amendment has many positive aspects, its drawbacks far exceed its positive aspects. By evaluating its essential components, the research discovered several controversial constitutional amendments that are part of Bangladesh's Fifteenth Amendment. These are as follows:

i. More than fifty articles of the Constitution could not be changed due to the constraints imposed.

ii. Maintaining secularism as a cornerstone of state policy, together with Islam as the recognized religion and "Bismillah-ar- Rahman-ar-Rahim" from the outset, has resulted in a hybridized version of Islamism.

iii. Inserting up to 55 articles to the Constitution (changing Articles 8, 19, 25, 42, 47, 65, 66, 72, 80, 82, 88, 93, 118, 122, 123, 125, 129, 141A, 147, 152; replacing Chapter I of Part VI, Articles 2A, 4A, 6, 9, 10, 12, 38, 44, 61, 70, 116, 142, 145A, and 150; adding Articles 7A, 7B,

18A, and 23A, as are Schedules 5 to 7 of the Constitution (Halim, 2012);

iv. Elimination of the Caretaker Government System;

v. The current government and parliament would hold national elections

vi. The most severe punishment for constitutional sedition includes participating in, aiding, or encouraging an unconstitutional invasion of state power.

vii. It has retained several components from martial law systems, including superior court judges' post-retirement decisions, the removal process, and tenure.

7. MAJOR CONFLICTING ISSUES: AN ASSESSMENT

After a careful examination of Bangladesh's constitution's fifteenth amendment, the following topics are determined to be more contentious. These are assessed below based on differing viewpoints from different stakeholders.

7.1 Unamendable articles

Article 7B of the fifteenth amendment, which states that the Preamble, all article in Part I, Part II, and Part III (apart from the emergency rules), Article 150, and every constitutional provision pertaining to the fundamental structure of the constitution are not amendable by way of inserting, modifications, or elimination or by any other means. The idea of restricting future parliaments from amending over one-third of the constitution's clauses has generated further debate. This is also anti-democratic (Nazrul, 2013) since no parliament should have the authority to restrict subsequent parliaments' ability to amend the constitution. (Ahmed, 2014). No Parliament can impose obligations on the next Parliament (Islam, 2012, p.31). Considering fifteenth amendment and its concept of unamendable articles of the constitution, Chowdhury, 2020 stated that an extensive number of unamendable articles is likely to limit the basic constituent power of the people. This makes the Fifteenth Amendment of 2011 extremely wide and liable to future criticism. Yet, to overcome this complexity, if the referendum system have been maintained with the necessary modifications, it could have addressed most of the issues with the fundamental structure doctrines.

7.2 State religion and secularism

A contradiction about the religious character of the state is even more confusing. Bangladesh, by its first constitution became a secular state after gaining independence. The 1972 constitution enshrined secularism as one of the state's guiding principles, alongside democracy, nationalism, and socialism (Jahan, 1974). The constitution was altered in 1976 to emphasise Islamic doctrine and do away with secularism (Ahamed, 1983). By incorporating Islam into the constitution, Ershad proclaimed it to be the official state religion and the foundation of his power.

(Riaz, 2004). In 2011, the fifteenth amendment took ahead of the phrase absolute trust and faith in Almighty Allah with 'secularism.' It brought back Article 12, which forbids the state from granting any religion political status (Nazrul, 2013). However, in a bizarre turn of events, article 2A designates Islam as a state religion, giving it a unique position (Salehin, 2013)"type":"article-journal", "volume": "1", "uris": [{"http://www.mendeley.com/documents/?uuid=546d2ce0-8a83-49be-812e-076e5210fdb7"}], "mendeley": {"formattedCitation": "(Salehin, 2013, albeit in a more modified version than the Ershad regime's initial formulation in 1988. To eliminate unwavering trust and faith in Allah, Islamist groups reacted sharply to the constitution's fifteenth amendment. Maulana Abdur Rab Yousufi, Naib Ameer of Bangladesh Khilafat Majlis, said in a press conference that it is the responsibility of believers to protest against the re-introduction of secularism and socialism by removing complete reliance on and faith in Allah from the constitution. Twelve religion-based political parties and organizations staged a 30-hour strike from 6 a.m. on July 10, 2011, to 12 noon on July 11, 2011 (The Daily Star, 2011c). The Islamic Movement held a full-day hartal program in Dhaka on July 3, 2011, to protest the replacement of secularism by relying on absolute faith in Almighty in Bangladesh's Constitution, 15th Amendment (The Daily Star, 2011a). As a result, many groups have both applauded and criticized the Fifteenth Amendment for maintaining Islam as the official state religion, bringing secularism back together, and undermining total faith and confidence in Allah.

7.3 Referendum

Following the Supreme Court's ruling in the Fifth modification case, the Fifteenth Amendment Act of 2011 eliminated the referendum section and reinstated Article 142's original version, which calls for modification by a two-thirds majority only. By abolishing the provisions of a referendum on an amendment to the constitution, the 15th amendment has preserved no right of people to participate in the amendment of the constitution (Nazrul, 2013). It has limited the right of their elected representatives to do so. The constitution embodies the people's will, and must not be altered without their consent. The referendum option was added to the constitution by the Fifth Amendment, even though it was absent from the original 1972 document. The referendum clause was modified by the then-12th amendment, which was ratified in 1991 and limited to amending the preamble and a few other sections. It was based on a compromise between the Awami League and BNP and was confirmed by a referendum. As referendum is popular to settle any constitutional dispute, the public is then asked to vote in a referendum or special election. By a simple majority, the public approves or rejects any amendment that can equally answer all the institutional and the people's questions at large.

7.4 Abolition of the Caretaker Government System (CGS)

In Bangladesh, the notion of a Caretaker Government was created in 1996 by the Constitution's Thirteenth Amendment to ensure free and fair elections. The caretaker government is an interim government appointed to oversee the election process and guarantee that it is handled transparently and impartially. The caretaker government comprises non-partisan officials chosen by the President pursuant to the constitutional procedures. After its formal creation through the Thirteenth Amendment observed three elections under the supervision of Caretaker Government in 1996, 2001, and 2008 accordingly. Over time, nevertheless, worries about the viability of the Caretaker Government have been raised due to its increasingly undemocratic and authoritarian nature. Therefore, in 2011, the system was repealed through the Fifteenth Constitutional Amendment.

7.4.1 The CGS case and the Awami League and BNP's immediate reactions

The caretaker government system in Bangladesh has, however, been the subject of various disagreements and criticisms. In 1999, M Saleem Ullah, an attorney of the Supreme Court of Bangladesh, filed Writ Petition No. 4112 of 1999 to the High Court Division, contesting the constitutionality of the Constitution (Thirteenth Amendment) Act, 1996. A division bench consisting of Justice Shah Abu Nayeem Mominur Rahman and Justice Md. Abdul Awal released a Rule Nisi on January 25, 2000, outlining why the 13th Amendment should not be seen as a constitutional violation. Therefore, the Chief Justice was asked to consider expanding the bench. A wider bench made up of Justices Md. Joynul Abedin, Md. Awlad Ali and Justice Mirza Hussain Haider were constituted on June 16, 2004.

In its judgment and order dated 04.08.2004, the wider bench found the 13th amendment valid and constitutional and granted the petitioner a certificate stating that it concerns constitutional interpretation. Afterwards, the petitioner filed with the Appellate Division Civil Appeal No. 139 of 2005 and Civil Petition for Leave to Appeal No. 596 of 2005. Five years later, on May 10, 2011, the Appellate Division considered the appeal and the petition. Slightly rejecting the High Court Division's ruling, the Division declared the Thirteenth Amendment to be unconstitutional.

The Supreme Court decided in a brief ruling on May 10 that the Constitution (Thirteenth Amendment) Act, 1996 (Act 1 of 1996) is extra-constitutional and prospectively declared unlawful. It again declared that the Thirteenth Amendment's clauses may be applied to the election to the Tenth and Eleventh Parliaments. But in the meantime, the parliament may make any necessary changes, the ruling said, with the exception of the clause designating the judges of the Appellate Division or the

past Chief Justices of Bangladesh as the head of the Non-Party Caretaker Government. (Sarkar, 2011).

The Awami League, which played a major role in promoting the creation of the caretaker government in 1996, applauded the Supreme Court's decision that the current structure is unlawful. When the BNP was in power, it vehemently opposed the caretaker system. The same faction, which is now against it, seems worried (Sarkar, 2011).

The Awami League, which played a major role in promoting the creation of the caretaker government in 1996, applauded the Supreme Court's decision that the current structure is unlawful. Law Minister of then Shafique Ahmed said that if the Election Commission (EC) is powerful and independent, there would be no need for a caretaker government. The EC can conduct impartial and fair elections if it is independent (Tusher, 2011). When the BNP was in power, it vehemently opposed the caretaker system. The same faction, which is now against it, seems worried (Sarkar, 2011). Mahbubey Alam, the former attorney general, praised it and declared the decision to be right in principle (Sarkar, 2011). The nation's political and constitutional crises may worsen, according to Moudud Ahmed, the former law minister, in his personal reaction to the Supreme Court's decision. In his words, the decision was self-contradictory since it suggested holding the next two elections under caretaker government, while on the one hand the court said the caretaker government system is unconstitutional and undemocratic (Tusher, 2011).

7.4.2 Dissolution of the Caretaker Government System in the Parliament

The ruling Awami League government initiated the process of removing the caretaker government system in reaction to the Supreme Court's judgment in 2011, claiming constitutional difficulties, and subsequently included it in the constitution's Fifteenth Amendment. The decision to eliminate the caretaker system soon after the Fifteenth Amendment bill was adopted, among other alterations, prompting heavy condemnation from opposition parties, civil society organizations, and constitutional experts. It would be more challenging, according to critics, to guarantee free and fair elections. According to this change, the next parliamentary election shall be held with incumbent party administrations and will take place 90 days prior to the dissolution of the previous legislature. The most recent modification curtailed the parliament's jurisdiction and capacities for those 90 days, so while it will still exist, it will not be accomplishing anything.

7.4.3 Controversy and response

There have been varying degrees of disagreement around the nation since the collapse of the Caretaker Government System. Political parties, experts on constitutional law, academics, and the intellectual community had responded

as necessary. Following an analysis of a range of sources from that time period to the present, such as journal publications, newspaper articles, and views, the study focused on the reasonable viewpoints on that issue. which are stated as follows:

Leader of the parliament Sheikh Hasina underlines the Supreme Court's decision that the Thirteenth Amendment to the Constitution was invalid means that it should be repealed. So she spoke out readily after the measure was passed, saying that with this modification, her administration ensured empowerment of people (Firoj, 2012).

On the other hand, the opposition led by the Bangladesh Nationalist Party (BNP) reacted angrily to the cancellation of the caretaker government system, which had been implemented in 1996 by the then BNP dominated administration (Liton & Hasan, 2011). The main opposition made a rapid and definitive response. Once the parliament overturned the constitutional requirement that an impartial caretaker government oversee general elections, BNP chairperson Khaleda Zia issued a statement warning that political conflict had become imminent. She declared that there are no longer any opportunities to hold free, fair, neutral, or competitive elections (Khan, 2011). She also claimed that the party AL instantly shut down all avenues for holding a peaceful transition of power and Hasina encouraged violence and antagonism in the nation (Prodip & Rabbani, 2014).

Number of constitutional experts, researchers, politicians and members of civil society have also voiced their opinions on the court's directives and the abolishment of the CGS. Adiba Aziz Khan, a researcher, noted that "despite resistance, civil society, and voters' protest, the AL-led supermajority Parliament rejected the Court's directive that the NCG (Non-Party Caretaker Government) should remain in place for two more national elections (Khan, 2015) which allowed for three successful elections in the country. The removal of the non-political caretaker government provision resulted in countrywide violence and an election without participation by the major opposition groups in 2014. This article studies the context in which recent constitutional amendments, (in relation to the non-political caretaker government". It is anticipated that the elimination of it by the 15th amendment might result in more hostile politics (as in the 2006 scenario) or less credible elections (as in the 1986 and 1996 experiences), and that this could disrupt the nation's economy (Nazrul, 2013).

A civil society representative, Badiul Alam Majumdar, gave his perspective on abolishing the CGS by citing a professional's assessment that the Appellate Division's ruling is likewise unconstitutional (Majumdar, 2023a, October 15).

The Appellate Division is accused of violating the rule of law and the separation of powers by enacting

judicial legislation that interfered with Parliament's constitutionally mandated duties. Mahmudul Islam, a prominent lawyer and former Attorney General, says that this was done by including a rider clause that would have continued the widely discredited CGS for the next two parliamentary elections. The Appellate Division also interfered with political matters, a flagrant violation of the doctrine of a political question that this court has previously affirmed (Majumdar, 2023, February 8).

According to Akbar Ali Khan, the interim government advisor and former cabinet secretary, this choice will negatively affect politics. He continued that the upcoming polls will only be reliable with an understanding the opposition. Dr. Kamal Hossain, said the caretaker government system be reinstated and that the next two legislative elections be held by this procedure (Correspondent, 2012, January 2).

After the judgment (ruled illegal) here, Sushasaner Jonno Nagorik (Sujan) arranged a roundtable conference. Here Dr. Kamal Hossain and Shahdeen Malik harshly criticised the 15th Amendment, claiming that the government had committed a "despicable offence" by violating citizens' fundamental rights (Correspondent, 2011). Professor Moniruzzaman Mia advises that the Caretaker Government System be constituted with nominees from judges, vice chancellors of public universities, media editors, and political party organizations. Prominent constitutional expert and Lawyer Rafiqul Haque advised including some legislators from the two major political coalitions. In light of the political mistrust, the prejudiced government, and the ineffective electoral commission, the speakers pleaded for the next elections to be held under CGS. Rashid, 2009, opined against the CGS and said that democracy cannot tolerate an unelected government, and the Election Commission may come up with a plan to guarantee legitimate elections in the nation.

The Fifteenth Amendment's and dissolution of the caretaker government from the constitution sparked intense debate among political parties, the intellectual community, and academics. The following list of political statements, reactions, and suggestions highlights the significance of the Caretaker Government System and, to some degree, its shortcomings in guaranteeing credible national elections in Bangladesh. As a result, this issue is crucial to both the state's present political atmosphere and its future democratic growth. It is also quickly turning into the sole topic of discussion for Bangladesh's next political discourse.

7.5 Nationalism and citizenship

The 15th amendment has created another problem that may abet the CHT conflict. The 15th amendment creates confusion between nationalism and citizenship and between Bangladesh's people and citizens. It states that the national identity of Bangladesh will be "Bangalees,"

and the term “Bangladeshi” will refer to its residents. The tribal people argue that the 15th Amendment brings them under common citizenship – Bangladeshi, this is all right. They are not, however, recognized as “Indigenous people or Adivasi” (Jahan, 2015) by the amendment. Their lives have been destroyed by the rejection of their rights and poor development plans.

7.6 Election commission and subtle confusion

The Constitution of Bangladesh, Fifteenth Amendment substantially changed the Election Commission’s (EC) activities and organizational structure to increase the voting process’s impartiality, leading to a more extensive and inclusive Election Commission. Likewise, the Amendment introduced new provisions to strengthen the Election Commission; courts must hear the EC’s view before issuing any order in case of an election dispute. The governing Awami League backed the EC’s empowerment, arguing that the body has provided the Election Commission with the institutional support and authority to conduct free and fair elections (Firoj, 2012). To what extent, however, the Commission’s ability to hold free and fair elections under the government’s rule has been questioned by observers and political parties? Among those opposed to it was the Bangladesh Nationalist Party (BNP). They stated that the changes needed further to ensure independent and fair elections since the current government maintained significant influence. Political parties have questioned the Election Commission since they have not recognized this change brought about by the 15th Amendment and have instead condemned it. Thus, the opposition has opposed the 15th Amendment’s modification of the Election Commission. As a consequence, the EC’s ability to run elections continues to be questioned.

Nevertheless, the majority of democratic nations adhere to the practice of holding elections under incumbent rule following the dissolution of the legislature, with the election commission having sole responsibility and only very seldom being asked questions regarding the result of the vote. But a developing nation like ours is still stuck in its perplexity and contradiction over the election results. Therefore, political parties, particularly those that lose, accuse the incumbent and election commission, casting doubt on the legitimacy of the electoral process.

8. RECOMMENDATIONS

Certainly, the following recommendations for fostering a sustainable democratic pattern are predicated on the features of the Fifteenth Amendment to the Constitution of Bangladesh:

i. Balancing Secularism and State Religion: As long as Islam is the recognized state religion, everyone’s right to freedom of religion must be respected. Promote tolerance and impartial respect for all faiths.

ii. Cultural Preservation: Create laws that actively protect and preserve the various traditions and cultures of ethnic communities, tribes, and minorities. Promote cross-cultural dialogue and initiatives that celebrate diversity.

iii. Democratic Counterweights: To stop the concentration of power by unconstitutional methods, strengthen the constitutional checks and balances. To guarantee a balance of authority among the branches of government, strengthen Articles 7A and 7B.

iv. Constitutional Reforms: Analyze the rigidity of unalterable provisions to allow for necessary amendments that preserve democratic principles while adapting to changing societal needs.

v. Restore Caretaker Government or form National Government: To is reasonable to bring back the caretaker government system again or form national government to assure credibility in national election.

vi. Election Oversight: To safeguard the fairness and integrity of the democratic process and limit any possible biases, make sure that elections are publicly supervised by a national government

vii. Parliamentary Integrity: Examine the reintroduction of Article 70 to ensure that it does not compromise the efficiency of the parliament by striking a balance between party discipline and the autonomy of individual members.

viii. Effective Governance: In order to maintain democratic continuity and prevent power vacuums, measures should be put in place to ensure that votes held on schedule in the event that the parliament dissolves.

ix. Gender Representation: By keeping or increasing the number of women in parliament, we can further our efforts to advance gender equality.

x. Presidential Powers: To avoid any possible misuse of power, examine and guarantee the checks and balances on the president’s control over the military forces and judicial nominations.

xi. Environmental Protection: To promote sustainable development, bolster environmental regulations that safeguard ecosystems, natural resources, and biodiversity for future generations.

9. CONCLUSION

The Fifteenth Amendment has a distinctive place in the history of Bangladesh’s constitutional amendment due to its major additions and controversial changes. Although the main purpose of this amendment was to revert the constitution to its original form of 1972, despite that, adding and removing several clauses in the amendment had made it a worrying debating matter. Thus, the amendment’s positive modifications were highly appreciated, which included restoring the fundamental principles of the first constitution, maintaining Islam as the state religion while granting freedom to practice other religions, promoting and advancing minority culture,

supporting the advancement of women, protecting biodiversity, incorporating historic speech of 7th march and declaration of independence. Even so, due to some controversial inclusions, it continues to be a highly debated subject in a number of national contexts, such as politics, academia, the intellectual community, and constitutionalists. Significant controversies include the assertion that more than fifty constitutional articles are unamendable due to the fundamental structure doctrine, the elimination of the caretaker government system, the conduct of national elections under the existing government, debates regarding Islam and secularism, issues of nationality, the referendum process, and the reinstatement of Article 70 of the constitution.

The principal issue of the amendment that concerns the opposing political factions was abolition of the caretaker government arrangement. Despite substantial discussion surrounding caretaker administration and voter boycotts under incumbents, nothing restricted any of the three national elections utilizing the fifteenth amendment as a model. Still dissolution of caretaker government remains the primary aspect of the democratic politics of the country. Thus, it is vital to reinstate the caretaker government system or form national government with representatives from all political parties and strengthen the election commission in order to make the democracy viable, safeguard the voting rights of the citizens, and establish stability in the political structure. Working together in this manner would prepare the way for a more reliable setting in the next national election.

The influence of the amendment on election integrity and judicial independence, as well as how the general public sees secularism in a diverse society, are relevant study issues. In essence, the examination of the fifteenth amendment gives an avenue for deeper research into its long-lasting repercussions and the continuous growth of Bangladesh's democratic political framework.

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