

The 'Half-done' and 'Overdone' Constitutional Reforms in Bangladesh

Jubaer Ahmed

Advocate, The Supreme Court of Bangladesh

Abstract

Bangladesh has emerged as an independent state through a historic struggle for national liberation. The Constitution of Bangladesh was adopted based on the spirit of the liberation war. The fundamental features of the original Constitution truly reflected that spirit. Those features were destroyed later by several constitutional amendments. After the general election of 1991, the journey of Bangladesh towards getting back to the original Constitution began. Several reformatory amendments were brought to the Constitution in that regard. But, none of those amendments fully reformed the Constitution. Few amendments did more reformation than needed. Those 'half-done' and 'overdone' constitutional reforms have hopelessly failed to remove the mischief from the Constitution and caused a serious constitutional crisis in Bangladesh.

Keywords: Constitution, Fundamental Features of the Constitution, Constitutional Amendment, Constitutional Reforms.

Introduction

Like a living tree, a Constitution tends to grow and evolve with time. Therefore, every Constitution, be it written or unwritten, keeps an amendment provision. A living tree grows with time; *albeit* remains anchored to the ground to its root. Similarly, despite being a living document, a Constitution should adhere to its fundamental features. It should not be amended in a way so that those fundamental features get changed. Changes in the fundamental features affect matters at the core of what the written Constitution addresses: for example, the allocation of power among the three branches of the government, the scope of individual rights against government action, and the basic rules of representative democracy.¹ Hence, while amending the Constitution, legislators should remain cautious and diligent in ensuring the same. It is noteworthy that if any of those fundamental features is demolished by any mischievous amendment, it shatters the entire edifice of the Constitution. Constitutional reforms become inevitable then by subsequent amendment. The subsequent amendment should ensure complete reformation in the Constitution by removing all the mischief of the previous amendment/s. Again, it should not bring more changes than needed. Both are dangerous. The dangers with 'half-done' and 'overdone' constitutional reforms can be better demonstrated by analyzing the constitutional amendments in Bangladesh. This article aims to do the same. To project this argument, first, it is important to pinpoint the fundamental features of The Bangladesh Constitution.

Fundamental Features of Bangladesh Constitution

¹ David A. Strauss, 'The Irrelevance of Constitutional Amendments' (2001) 114 HLR 1457 available at: https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=2986&context=journal_articles last accessed on 13 February 2021

Bangladesh has been established as an independent, sovereign People's Republic through a 'historic struggle for national liberation.'² To understand the fundamental features of the Bangladesh Constitution, it is, therefore, indispensable to go through the said 'historic struggle for national liberation.'³ From what phase the reading of that history should be started is arguable since historians suggest different timelines with regard to that question.⁴ I would rather prefer going through the post-colonial timeline of Bangladesh that began in 1947 when Pakistan was created after the partition of India and ended on March 26, 1971. The pre-constitutional legal instruments of Bangladesh also emphasized on this particular timeline while elucidating the reasons for our self-determination and political goal of achieving independence. In this regard, it is worth quoting from the historic 7th March speech of the father of the nation, Bangabandhu Sheikh Mujibur Rahman, that-

'[t]he history of the past twenty-three years has been the history of persecution of the people of Bengal, a history of the blood of the people of Bengal. This history of the past twenty-three years has been one of the agonizing cries of men and women'.⁵

The 'past twenty-three years' in his speech indicates the timeline of the post-colonial history of Bangladesh. To make it more clear, Bangabandhu consciously evoked the glorious movements of the people of Bangladesh (then East Pakistan) for their national liberation i.e. '1952's Language Movement, 1954's Election, 1958's Martial Law Proclamation, 1966's Six Points Movement, 1969's People's Uprising Movement, 1970's Election and Movement for Parliamentary Democracy'⁶ that took place during that past twenty-three years. Those glorious movements were based on the high ideals of nationalism, socialism, democracy, and secularism.⁷ After achieving independence, the members of the Constituent Assembly did their best to draft a Constitution perfectly reflecting those high ideals.

The Constitution of Bangladesh was adopted on November 04, 1972, and it came into force on December 16 of the same year. The essential features found in the original Constitution of Bangladesh are *inter alia* the republican character of the State, the unitary character of the Republic, a ministerial form of government, nationalism, socialism, democracy,

² Preamble, The Constitution of the People's Republic of Bangladesh

³ Jubaer Ahmed, 'Pre-constitutional history in interpreting the Constitution' *Law and Justice, the Daily Observer*, Dhaka, 14 December 2019, available at: <https://www.observerbdt.com/news.php?id=233362> last accessed on 10th February, 2021

⁴ According to many historians, reading of the history of our struggle for national liberation should start from the moment when Bengal ruler, Lakshman Sen was dethroned by Turkish General Muhammad Bakhtiyar Khalji. Many other suggest the timeline that started from the moment when the last independent Nawab of Bengal, Siraj ud-Daulah was defeated at the battle of Plassey in 1757. Many other are inclined to consider the partition of India and creation of Pakistan in 1947 as the beginning point of our historic struggle for national liberation.

⁵ Historic speech of the father of the nation, Bangabandhu Sheikh Mujibur Rahman of the 7th March, 1971 [Translated] at Fifth Schedule in the Constitution of the People's Republic of Bangladesh

⁶ Jubaer Ahmed, '7th March Speech and Preamble of our Constitution' *Law and Our Rights, the Daily Star* (Dhaka, 14 November 2017) <https://www.thedailystar.net/law-our-rights/law-vision/7th-march-speech-and-preamble-our-constitution-1491010> last accessed on 10 February, 2021

⁷ Preamble, The Constitution of the People's Republic of Bangladesh

secularism, the independence of the judiciary, separation of powers, parliamentary democracy, local government, constitutional supremacy, directive principles, and fundamental rights. Those features of the original Constitution are the fundamental features of our Constitution. Because, during the founding moment of national sovereignty, people and constitution-making become mutually constituted at that single moment,⁸ and that founding moment gives the Constitution a normative priority over later actions.⁹ The original Constitution is therefore reckoned as the most reliable document to determine what features are fundamental in the Constitution. Apart from that, the original Constitution of Bangladesh was made through a democratic, transparent, and responsive process, and in the next parliamentary election, it received a mandate from the people at large.¹⁰ Thus, those features got an overwhelming endorsement from the people. Most importantly, those features have not been outdated rather have strong relevance in our present time.

Changes in the Fundamental Features of the Bangladesh Constitution

Many of those fundamental features were changed and destroyed by several constitutional amendments. Some of those features were restored by subsequent constitutional reforms, whereas few of those features could not have been restored yet. To get a clear picture of this, it is necessary to throw light on all the amendments in Bangladesh Constitution. The Constitution of Bangladesh has been amended seventeen times. Those amendments can be classified into three categories, i.e. (1) amendments not affecting the fundamental features, (2) amendments destroying the fundamental features, and (3) amendments restoring the lost fundamental features by reforms. This article will argue that the third category amendments reformed the Constitution halfway (which may be termed as 'half-done' reformation) and in some cases brought too much reformation (which may be termed as 'overdone' reformation), which have caused a serious constitutional crisis. Before going to the argument, at first, I will separate those amendments that fall in the first category.

Amendments not Affecting the Fundamental Features

I will keep the first three amendments in this category. The First Amendment was brought on July 15, 1973, which added a saving clause in Article 47 providing that law relating to detention, prosecution, or punishment of any person who is a member of any armed forces or defense or auxiliary forces or who is a prisoner of war, for genocide, crimes against humanity, war crimes and other crimes under international law, shall not become void or unlawful even if inconsistent with any provisions of the Constitution.¹¹ It also provided that the aforesaid persons shall not be entitled to the rights guaranteed under article 31, article

⁸ Catherine Dupre and Jiun-rong Yeh, 'Constitutions and legitimacy over time' in Mark Tushnet and Thomas Fleiner (eds), *Routledge Handbook of Constitutional Law*, London and New York, 2015; 51, 52; Ridwanul Hoque, 'Can the Court Invalidate an Original Provision of the Constitution?' (2016) University of Asia Pacific Journal of Law and Policy, vol. 2, no. 1, 24 <http://uap-bd.edu/lhr/wp-content/uploads/2017/05/2.pdf> last accessed on 13th February 2021

⁹ Dupre and Yeh, 'Constitutions and Legitimacy' cited in Ridwanul Hoque, 'Can the Court Invalidate an Original Provision of the Constitution?' (2016) University of Asia Pacific Journal of Law and Policy, vol. 2, no. 124 <http://uap-bd.edu/lhr/wp-content/uploads/2017/05/2.pdf> last accessed 13 February 2021

¹⁰ M. Jashim Ali Chowdhury, *An introduction to the Constitutional Law of Bangladesh* (3rd edition, BookZone Publication, Chittagong, 2017, 58

¹¹ The Constitution (First Amendment) Act 1973, s 2.

35, clauses 1 and 3, and article 44 of the Constitution.¹² The second amendment was brought on September 22, 1973, which introduced 'Emergency Provision' in the Constitution.¹³ The third amendment was brought on November 28, 1974, with a view to give effect to the 'Agreement between the Government of the People's Republic of Bangladesh and the Government of the Republic of India concerning the demarcation of the land boundary between Bangladesh and India and related matters' of 1974. The tenth amendment brought on June 23, 1990 also falls in this category. It increased the number of reserved seats for women members in Parliament from 15 to 30 by amending Article 65 of the original Constitution.¹⁴ The number of reserved seats was subsequently increased to 50 by two other amendments.¹⁵ The fourteenth amendment, brought on May 17, 2004, should be kept in this category too, which amended Article 96 of the Constitution regarding the tenure of the office of the Judges of the Supreme Court by increasing the limit of retirement age from sixty-five years to sixty-seven years.¹⁶ I will also keep the seventeenth amendment in this category, which extended the period of keeping the fifty reserved seats in Parliament for a further twenty-five years from 2018.

Amendments Destroying the Fundamental Features

In this part, I will emphasize on the second category amendments which adversely affected the fundamental features of the Constitution. The fundamental features of the original Constitution received the very first blow from the fourth amendment. It hit the very foundation of democracy by omitting the provision relating to ensuring 'the effective participation of the people through their elected representatives in administration at all levels'¹⁷ from Article 11 of the original Constitution. It also omitted the Local Government System.¹⁸ It snatched away the right to move the High Court Division for enforcement of fundamental rights by omitting Article 44 and amending Article 102 of the original Constitution in that regard.¹⁹ Instead, it gave it to Parliament's discretion to establish a constitutional court, tribunal, or commission for enforcement of fundamental rights. No such court, tribunal, or commission was ever established in Bangladesh. The fourth amendment replaced the ministerial form of government with the presidential form and vested the executive authority of the Republic in the hands of the President.²⁰ It also provided for the direct election of the President.²¹ The power of appointment and removal of the judges of the Supreme Court was vested in the hands of the President.²² Prior to this amendment, Parliament exercised this power. It also took away the Supreme Court's power to appoint judges of the subordinate courts and frame Service and Disciplinary Rules for the judges of the lower judiciary. Those powers were also vested in the hands of the

¹² The Constitution (First Amendment) Act 1973, s 3.

¹³ The Constitution (Second Amendment) Act 1973, s 6.

¹⁴ The Constitution (Tenth Amendment) Act 1990, s 2.

¹⁵ The Constitution (Fourteenth Amendment) Act 2004, s. 2 and The Constitution (Fifteenth Amendment) Act 2011, s 23.

¹⁶ The Constitution (Fourteenth Amendment) Act 2004, s 4.

¹⁷ *ibid*, s 2.

¹⁸ *ibid*, s 4(b).

¹⁹ *ibid*, s (3) (17).

²⁰ *ibid*, s 4.

²¹ *ibid*

²² The Constitution (Fourth Amendment) Act 1975, s (14) (15).

President.²³ It empowered the President to declare and form one political party to be known as the 'National Party' and restrict other political parties in the State.²⁴ This controversial and authoritarian provision made the fourth amendment infamous. Still, it is considered as an example of abusive constitutionalism.

After the fourth amendment, the Constitution lost many of its original and fundamental features. The conditions worsened during military regimes, which continued one after another for a period of sixteen years from August 15, 1975, to February 27, 1991. At that time, the Constitution was changed several times by several Proclamations, Proclamation Orders, Martial Law Regulations, and Martial Law Orders. Many of the fundamental features of our Constitution were destroyed by those amendments. Insertion of 'BISMILLAH-AR-RAHMAN-AR-RAHIM' atop the Preamble of the Constitution, removal of secularism and replacing it with 'absolute trust and faith in Almighty Allah,' removal of the original concept of socialism and replacing it with 'socialism meaning economic and social justice,' replacement of words 'a historic struggle for national liberation' with the words 'a historic war for national independence,' deletion of secular 'Bengali nationalism' and replacing it with 'Bangladeshi' nationalism, the establishment of Supreme Judicial Council etcetera are few examples of those unconstitutional constitutional amendments. Those amendments were given constitutional validity later by the Constitution (Fifth Amendment) Act, 1979.²⁵

The fundamental features of the Constitution were further affected by several other Proclamations, Proclamation Orders, Chief Martial Law Administrator's Orders, Martial Law Regulations, Martial Law Orders, etcetera proclaimed from March 24, 1982, to November 11, 1986, by the longest military regime. The martial law administrator suspended the Constitution, disbanded Parliament, and prohibited all political activities in Bangladesh. Those amendments were given validity by the seventh amendment.²⁶ On June 09, 1988, the eighth amendment was brought, which made Islam the state religion of the Republic.²⁷ It also established permanent Benches of the High Court Division at Barisal, Chittagong, Comilla, Jessore, Rangpur, and Sylhet.^{28,29} The next amendment, i.e. the ninth amendment, brought several changes to the office of the President and the Vice-President, including provision for the direct election of those posts.³⁰ The incessant journey of destroying fundamental features of the Constitution of Bangladesh came to an interval in 1990 when a popular mass uprising deposed the former President H.M. Ershad (popularly known as dictator) from power. At that time, people of Bangladesh witnessed several political milestones, i.e., the appointment of Mr. Justice Shahabuddin Ahmed, the then Chief Justice of Bangladesh as the Vice-President; resignation of Hussain Muhammad

²³ *ibid*, s (19) (20).

²⁴ *ibid*, s 23.

²⁵ Supreme Court overturned the Fifth Amendment in *KhandkerDelwar v. Bangladesh Italian Marble WorksLtd.* (2010) 62 DLR (AD) 298

²⁶ Supreme Court overturned the Seventh Amendment in *Siddique Ahmed v Bangladesh* (2011) 63 DLR 565

²⁷ The Constitution (Eighth Amendment) Act 1988, s 2

²⁸ *ibid*, s 7.

²⁹ This portion of eighth amendment was declared unconstitutional by the Supreme Court in *Anwar HossainChowdhury v Bangladesh* (1989) BLD (Spl) 1

³⁰ The Constitution (Ninth Amendment) Act 1990, s 4.

Ershad, the then President to him; taking the responsibility of running an impartial government as Acting President by Mr. Shahabuddin Ahmed for restoring democracy by arranging a free, fair and impartial general election; the general election held under his authority, return of Mr. Shahabuddin Ahmed to the office of Chief Justice of Bangladesh, etcetera. Those historic events were ratified and confirmed by the eleventh amendment in 1991.³¹ In the long sixteen years, the Constitution lost almost all fundamental features that the original Constitution had.

Amendments Restoring the Lost Fundamental Features

After the end of the long martial law regime in Bangladesh, a general election was held on February 27, 1991, and a coalition government was formed, giving Bangladesh an opportunity to restore the lost features of the original Constitution. In order to bring back those lost features, Parliament gave concentration on constitutional reforms. Several amendments were brought in the Constitution to restore those lost features, but unfortunately, those reforms were 'half-done' and in some cases 'overdone.' I will illustrate this by analyzing the twelfth, thirteenth, and fifteenth amendments.

Half-done Constitutional Reforms by the Twelfth Amendment

The twelfth amendment is the first amendment of the third category that reinstated many fundamental features of the original Constitution i.e. 'effective participation by the people through their elected representatives in administration at all levels,'³² a ministerial form of government,³³ local government,³⁴ etcetera. However, it kept many provisions of the martial law regime untouched, which were directly contradictory to the fundamental features and spirit of the original Constitution. It could not restore many lost features of the original Constitution i.e. the secular values in the preamble of the Constitution,³⁵ secularism as a fundamental principle of the Constitution and State policy,³⁶ the spirit of 'historic struggle for national liberation,'³⁷ Bangalee nationalism,³⁸ removal of judges of the Supreme Court by Parliament,³⁹ judicial enforceability of fundamental rights,⁴⁰ etcetera. Therefore, the journey of Bangladesh to return to the original Constitution remained in wait.

This 'half-done' reformation of the twelfth amendment caused many unpleasant consequences. Firstly, the unaltered constitutional provisions introduced by the usurpers received validity seal from a democratic parliament. Secondly, the half-done reforms made

³¹ The Constitution (Eleventh Amendment) Act 1991, s 2.

³² The Constitution (Twelfth Amendment) Act 1991, s 2.

³³ *ibid*, s 3.

³⁴ *ibid*.

³⁵ The words 'absolute trust and faith in Almighty Allah' were not removed from preamble

³⁶ The words from Islamic origin 'BISMILLAH-AR-RAHMAN-AR-RAHIM' were kept atop the preamble, provision relating to state religion was untouched, original provision of Article 8 and 12 regarding secularism was not restored in the Constitution by the twelfth amendment

³⁷ Those words in the preamble of the original Constitution were not reinstated

³⁸ The Twelfth Amendment kept martial law regime's 'Bangladeshi nationalism' in force

³⁹ It did not abolish Supreme Judicial Council. Supreme Judicial Council is found in the presidential form of government and is inconsistent with ministerial form of government.

⁴⁰ It did not restore Article 44 of the original Constitution and original provision of Article 102. Apart from that, no constitutional court, tribunal or commission was formed for the enforcement of fundamental rights.

the entire Constitution a self-contradictory document.⁴¹ Thirdly, due to half-done reforms, the secular Constitution could not have been restored. The non-secular Constitution triggered discrimination among citizens and boosted the rise of religion-based politics in Bangladesh. Fourthly, the unfinished jobs done by the twelfth amendment created a reason for subsequent amendments to come and take the Constitution under the scissor of Parliament again.

Overdone Constitutional Reforms by the Thirteenth Amendment

The thirteenth amendment was brought on March 28, 1996, which introduced the 'Non-Party Caretaker Government' system in Bangladesh as a progressive concept.⁴² In order to do necessary reform in holding a free, fair, and impartial general election in Bangladesh and ensuring a peaceful transfer of power to the newly elected government, it introduced a system of holding a general election by an interim government comprised of the Chief Adviser and ten other Advisers who were not elected by the people.⁴³ Thus, the responsibility of protecting democracy was vested upon the undemocratic interim government. This overdone constitutional reform violated one of the fundamental features of the Constitution i.e. the republican character of the State. Besides, they were collectively responsible to the President, which was an essential feature of the presidential system.⁴⁴ Moreover, the administration of the laws relating to military service was placed in the hands of the President.^{45,46} Thus, after the thirteenth amendment, the presidential system got a scope to revisit the Constitution. Although the first two general elections (1996 and 2001) were held under Non-Party Caretaker Government successfully and the transfer of power to the subsequently elected government was done peacefully, it unleashed the evils in it in 2006, when the then President Iajuddin Ahmed became the Chief Adviser of the Caretaker Government on October 29, 2006, leapfrogging several constitutional alternatives. This caused serious political unrest in Bangladesh, and the whole country went under disguised military rule delaying the next general election. The unfinished constitutional reforms by the twelfth amendment and the bitter experience with the caretaker government after the thirteenth amendment necessitated a new reformatory amendment in the Constitution, and consequently, Parliament brought the fifteenth amendment.

Half-done Constitutional Reforms by the Fifteenth Amendment

⁴¹ After the Twelfth Amendment many provisions of the Constitution became incongruous, i.e. 'a historic war for national independence' and 'Bangladeshi nationalism' since the very foundation of that historic war for national independence was Bangalee nationalism (Bir Bangalee OstroDharo, Bangladesh Shadhin Karo); 'We the People' and Islam as state religion; removal of presidential system but keeping the Supreme Judicial Council.

⁴² Md. Mahub Alam Prodip and Golam Rabbani, *'Abolition of Non-Party Caretaker Government system in Bangladesh: Controversy and Reality'* (2014) Global Journal of Arts Humanities and Social Sciences, vol. 2, 24-42 available at:

https://www.researchgate.net/publication/262919058_Abolition_of_Non-Party_Caretaker_Government_System_in_Bangladesh_Controversy_and_Reality last accessed on 10th February 2021

⁴³ The Constitution (Thirteenth Amendment) Act 1996, s 3

⁴⁴ *ibid.*

⁴⁵ Mahmudul Islam, *Constitutional Law of Bangladesh*, 2nd edition, Mullick Brothers, 2002, p. 330

⁴⁶ The Constitution (Thirteenth Amendment) Act 1996, s 4.

The fifteenth amendment was brought with a view to returning to the original Constitution. It aimed to restore all the fundamental features of the original Constitution. In this regard, it abolished many provisions of the Constitution that could not have been removed by the twelfth amendment and reinstated many other repealed provisions of the original Constitution. The fifteenth amendment restored the original preamble in the Constitution.⁴⁷ It reinstated secularism in the preamble and Part II of the Constitution. It also restored the original socialism and Bangalee nationalism in the Constitution. It brought back the provision of Article 44 regarding judicial enforcement of the fundamental rights and gave Article 102 its original look. It then abolished the caretaker government system.

Although the fifteenth amendment played a vital role to reinstate the fundamental features of the original Constitution, it also failed to sweep away some provisions of martial law regimes contradictory to those fundamental features. The Fifteenth amendment endeavored to ensure 'equal status and equal right in the practice of the Hindu, Buddhist, Christian and other religions' but did not remove the provision regarding state religion.⁴⁸ Likewise, Islamic words from Arabic origin i.e. 'BISMILLAH-AR-RAHMAN-AR-RAHIM,' remained at the same place with little modification in their English translation.⁴⁹ It also kept the Supreme Judicial Council unamended. The half-done constitutional reforms of the fifteenth amendment further necessitated the next sixteenth amendment, which removed the supreme judicial council and restored the original provision regarding the removal of judges of the Supreme Court.⁵⁰ The fifteenth amendment was brought after the regime of a military-backed caretaker government. Therefore, it was much expected that it would remove all the controversial features injected by the military regimes in the Constitution. The half-done constitutional reform of the fifteenth amendment is therefore seen as a failure of Parliament to restore the original Constitution. Due to half-done reforms of the fifteenth amendment, proper implementation of the decisions of the Supreme Court annulling several unconstitutional constitutional amendments could not have been possible.⁵¹

Overdone Constitutional Reforms by the Fifteenth Amendment

The fifteenth amendment has also done over reformation in some cases. The 'eternity clause' introduced by Article 7B serves as a good example of overdone constitutional reforms done by the fifteenth amendment. There is a background of inserting Article 7B in the Constitution. In the past, the Constitution of Bangladesh underwent many untoward changes, especially during unconstitutional regimes.⁵² Constitution was kept suspended

⁴⁷ The Constitution (Fifteenth Amendment) Act 2011, s 3.

⁴⁸ The Constitution (Fifteenth Amendment) Act 2011, s 4.

⁴⁹ Previously it was 'BISMILLAH-AR-RAHMAN-AR-RAHIM (In the name of Allah, the Beneficent, the Merciful)', after fifteenth amendment it only added a new English translation (In the name of the Creator, the Merciful) and kept it after the previous one altogether.

⁵⁰ The Constitution (Sixteenth Amendment) Act 2014, s 2

⁵¹ Supreme Court overturned the Fifth Amendment, and the seventh amendment, but several provisions confirmed with those amendments were kept unamended by the fifteenth amendment i.e. insertion of BISMILLAH-AR-RAHMAN-AR-RAHIM, Islam as state religion etcetera.

⁵² Jubaer Ahmed, 'Article 7B and Constitutional Stalemate' *Law and Our Rights, the Daily Star* (Dhaka, 14 March 2017) <<https://www.thedailystar.net/law-our-rights/article-7b-and-constitutional-stalemate-1375540>> accessed 10 February 2021

several times by military regimes. To put an end to such unconstitutional abrogation or suspension of the Constitution by the usurpers, the fifteenth amendment brought a new provision in Article 7A.⁵³ Although it sufficiently provided a mechanism to prevent unconstitutional intrusion, the fifteenth amendment further inserted Article 7B limiting the scope of a constitutional amendment. In doing so, it has rendered quite a good number of provisions of the Constitution of Bangladesh unamendable.⁵⁴ It has ensured a deadlock in the Constitution. In the next amendment, the Parliament itself faced its consequence. The Supreme Court of Bangladesh, while invalidating the sixteenth amendment, relied on Article 7B.⁵⁵ This article has put a bar to amend a huge area of the Constitution declared as the 'basic provisions of the Constitution'⁵⁶ even by adding complementary provisions. There was a balance between 'living constitutionalism' and 'basic structure doctrine' in Bangladesh Constitution. The eternity clause has adversely affected that balanced relationship and turned the Constitution into an almost frozen document. This overdone constitutional reform by the fifteenth amendment has some dangerous consequences. Firstly, it will impede the progressive journey of our Constitution. Secondly, the removal of non-secular provisions like state religion becomes unattainable. Thirdly, it has rendered the restoration of the fundamental features of the original Constitution to impossibility now.

Conclusion

It appears from the aforementioned discussion that the ultimate purpose of bringing several amendments after the end of the military regime in Bangladesh to reform the Constitution by restoring its destroyed fundamental features and removing the mischievous provisions inserted by the usurpers in the Constitution has not been fulfilled. The effort was futile because the constitutional reforms brought by those amendments were in some cases half-done and some cases overdone in nature. This article has shown that due to the half-done constitutional reforms, many contradictory provisions imposed by the military regime are remaining in force. Conversely, overdone constitutional reforms have imported a new constitutional crisis and prolonged the ailment of our Constitution. Let me conclude this article by recommending some probable solutions to this problem. Firstly, it is important to judicially uphold that the features of the original Constitution are fundamental to our Constitution. In the review hearing of the sixteenth amendment case, the Government may argue before the Appellate Division to establish the same. Secondly, Parliament should carefully and diligently pinpoint all the provisions contradictory to the fundamental features of the original Constitution and take effective initiatives to remove those provisions.

⁵³ Article 7A has declared the abrogation, suspension etcetera of the Constitution by any unconstitutional means as offence (sedition) and imposed highest penalty for the same.

⁵⁴ Ahmed (n 52).

⁵⁵ *Government of Bangladesh and Others v. Advocate Asaduzzaman Siddiqui and Others* (2017) CLR (Spl) 1

⁵⁶ The preamble, Part I, Part II, Part III (subject to Emergency related provisions), and all Articles relating to the basic structure of the Constitution including Article 150 have been designated as basic provisions of the Constitution by Article 7B