



CONSTITUTIONAL LAW

A POWERLESS SENATE? Rethinking Bangladesh's Proposed Bicameralism

Instead of adopting a foreign model uncritically, Bangladesh has a crucial opportunity to craft a system that reflects our own unique circumstances and aspirations.

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The Constitution Reform Commission's recently published report has reignited debate about Bangladesh's democratic future. The report proposes a bicameral legislature, with a Senate as the upper house and a National Assembly as the lower house. But a fundamental question remains: will a Senate with limited powers, modelled after India's *Rajya Sabha* (Council of States), truly strengthen democracy, or will it be a costly and largely symbolic addition, given our Parliament's recent history?

This question is particularly crucial considering the current state

of parliamentary oversight. Over the past decades, Parliament has enacted laws that violate fundamental rights, including the Information and Communication Technology Act 2006, the Digital Security Act 2018, and the Cyber Security Act 2023—each used to silence dissent. One-party dominance, coupled with restrictive constitutional provisions such as Article 70, has severely weakened Parliament's ability to challenge the executive. Extensive searches of publicly available records and parliamentary proceedings from the last five years have not revealed any instances where Parliament has successfully overturned or significantly altered a major government policy

decision. This pattern reveals a critical weakness: a Parliament that not only fails to hold the executive accountable but, at times, actively undermines fundamental rights.

The Commission's report proposes a Senate with limited powers, similar to the Indian *Rajya Sabha*. This proposal raises concerns that it may fail to address the existing lack of parliamentary oversight and could, in fact, further concentrate power in the hands of the executive—contrary to the Commission's stated reform objectives.

It is a foundational principle of governance that rights enshrined on paper are only as robust as the

institutions that safeguard them. Effective democracy is not simply about proclaiming freedoms; it is about meticulously constructing a system of checks and balances that prevents any single branch of government from accumulating excessive power. The structure of the legislature—whether it is a single chamber or two—plays a pivotal role in this delicate equilibrium. Bangladesh's unicameral Parliament has failed to play this pivotal role. The question now is: what kind of bicameral system would best serve the country's interests?

The proposed Senate, with limited legislative powers, promises a chamber of review without outright obstruction. But is this model, inspired by the *Rajya Sabha*, a strength or only a potential trap? While a 'chamber of revision' sounds appealing, a closer examination reveals its potential pitfalls. A Senate without substantial power provides a weak check on the National Assembly. This is especially concerning in the context of Bangladesh, where power is already tilted towards the Prime Minister and the executive branch, and the Prime Minister, being a creature and leader of the legislature, effectively controls the legislative body. A weak upper house, like those in India or the UK, risks further centralising power. If the Senate's primary role is advisory, merely delaying bills for a few months, it risks becoming a costly, symbolic body. Its value must be demonstrable—not just assumed. Will it provide unique insights, or will it merely echo the National Assembly's debates, adding to the bureaucracy without real benefits?

The ability of an Indian-style Senate to protect minority rights is also questionable. Without veto power or the ability to significantly amend legislation, its capacity to safeguard marginalised communities is limited. In politically polarised environments, public pressure alone is often insufficient to counter majoritarian rule. Additionally, in parliamentary systems, the executive is drawn from and accountable to the legislature. This fusion of power means the Prime Minister, as leader of the majority party, wields considerable influence. A weak Senate would only amplify this influence, further weakening the separation of powers vital to a healthy democracy. As history shows, power becomes too concentrated, even the strongest constitutional guarantees become meaningless.

Bangladesh's democratic journey has seen both progress and persistent challenges. Does an Indian-style

Senate suit the country's needs? Are we adopting a familiar model without critically assessing its implications? How robust are our existing checks and balances? The reality is that Parliament often lacks the independence and resources to scrutinise the executive effectively. The Prime Minister's dominance already limits accountability. A weak upper house may not be the solution if the real need lies in strengthening Parliament and fostering a culture of parliamentary oversight.

Bangladesh is a rapidly developing nation facing complex governance challenges. Will a Senate with limited powers help or hinder progress? Will it add valuable expertise and deliberation, or merely slow legislative processes without improving the quality of laws?

Instead of adopting a foreign model uncritically, Bangladesh has a crucial opportunity to craft a system that reflects our own unique circumstances and aspirations. This might involve investing in the independence and resources of the directly elected National Assembly in the proposed bicameral system as a more effective way to ensure accountability, protect minority rights, and promote robust debate. There are other models of bicameralism that offer more substantial checks and balances. Perhaps a system with a more powerful upper house, tailored to the specific context of Bangladesh, would be more appropriate. Addressing the broader challenges of the Indian-style parliamentary system through constitutional reforms that strengthen the separation of powers and enhance checks and balances could be a more productive path towards a more robust and accountable democracy. As the late US Supreme Court Justice Antonin Scalia observed, 'When [power is centralised], the game is over.' Indeed, the future of our democracy depends on a proper balance of power.

The debate over the Senate is not merely an exercise in thinking about its institutional design. It is a fundamental question about the kind of democracy that Bangladesh aspires to build. We must move beyond the appeal of familiar models and engage in a critical discussion about what best serves the nation's interests. What kind of democracy do we aspire to build? The future of democracy depends on it.

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LAW VISION

AI and the challenges in criminal liability

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The emergence of artificial intelligence or AI technologies has transformed the existence of human beings. It has revolutionised the industries, reshaped societal operations and increased productivity both in personal and professional life. Alongside the advancements, there comes a crucial question with a legal dilemma: when AI causes harm or injures someone, who should be held responsible? The question is still unanswered as the traditional legal frameworks and enactments, particularly framed for human liability, cease to adapt to the complexities of AI.

While determining the criminal liability for AI-driven actions, one of the core issues arises as to the concept of intent. Fundamentally, the *mens rea* or the existence of a mental state such as intent or recklessness is pivotal in determining criminal liability alongside the criminal actions. However, in case of AI-driven omissions there is a lack of such consciousness or intention. Intrinsically, an AI system operates its actions based on algorithms and continuous learning process. This absence of human-like competence raises a crucial question regarding the determination of responsibility of AI systems: Shall AI be held accountable for its actions itself or is it the developers or operators or corporations using such AI tools that are to take such responsibilities?

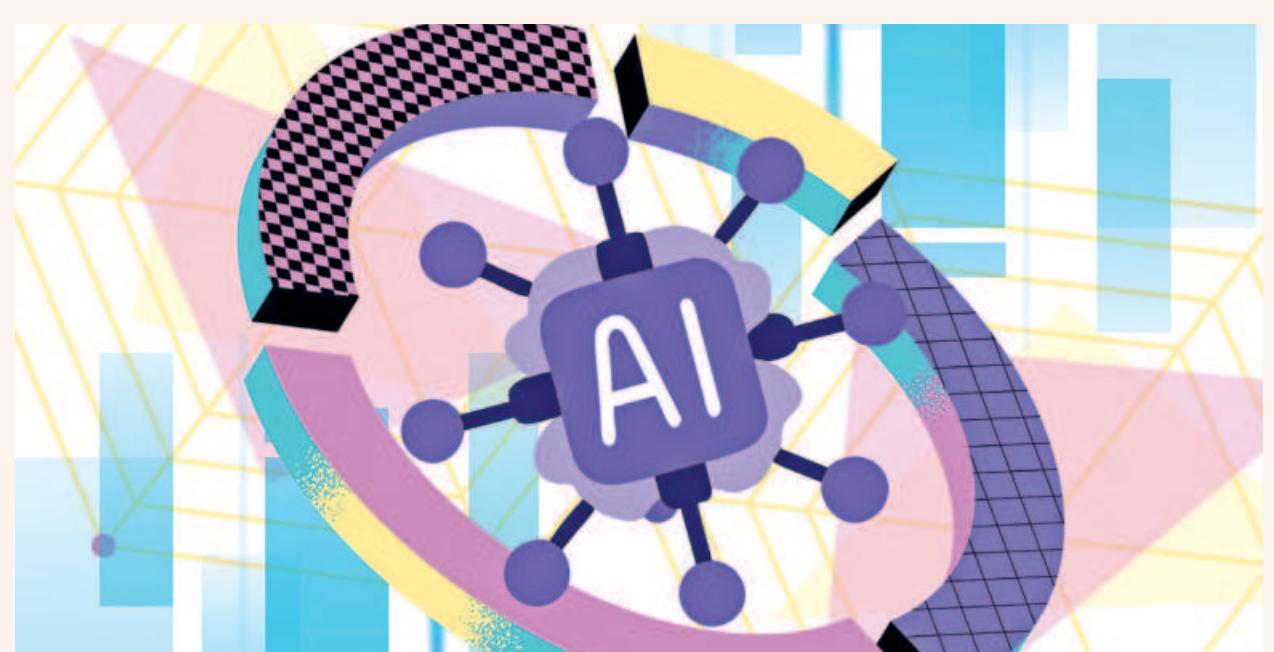
The question becomes further complicated as the AI systems encompass a distributed nature of responsibility. Most of the time, these systems involve multitudinous stakeholders such as manufacturers, programmers and end-users.

Consequently, when harm occurs, such as in the case of automated vehicles, it becomes nearly impossible to determine who shall bear the ultimate responsibility. Is it the developer who is responsible for the injury or the end-user who did not update the system or the company that marketed the product who should be liable?

Another concerning issue, in this case, is the opacity of AI working processes. Advanced AIs, especially those employing deep learning, often work as "Black Boxes" where the internal functions of such systems become difficult to interpret even by their creators. This lack of transparency makes it quite impossible to determine causation which is another fundamental factor within criminal law. Without understanding the decision-making process of AI including how it reaches a conclusion and enacts the end result derived from its functions, assigning blame becomes an uncertain and inherently complex process.

Additionally, the capacity of AI to learn and adapt things originates unpredictability. Unlike traditional machines, AI often works in a way that its developer never exclusively programmed or thought of. For example, ChatGPT-like AI systems that usually collect data from its users enriching its repository, at times may show results to be defamatory to someone or disseminate false information influencing the overall decision-making. These autonomous behaviors of AI systems raise questions regarding foreseeability and accountability.

To address these issues, legal frameworks should be developed to negotiate AI accountability.



One potential approach is holding corporations accountable for the AI systems they deploy. This strategy emphasises the importance of thorough testing, transparency, and routine audits, pushing companies to focus on safety and proactively address potential risks. Some experts have even proposed the idea of granting AI systems a form of limited legal personhood, similar to corporations. This would enable them to assume certain responsibilities, such as facing fines or operational restrictions for their actions.

Regulatory sandboxes offer a valuable solution by allowing AI systems to be tested in controlled environments under legal oversight. These setups help regulators better understand AI's implications and

fine tune liability rules as needed. Additionally, hybrid models of shared responsibility are gaining support, where accountability is distributed among developers, operators, and users based on their specific roles. This approach encourages a culture of collective accountability.

Recent incidents highlight the challenges of assigning liability for AI-related issues. For example, the 2018 fatality of Elaine Herzberg, a 49-year-old woman, involving an Uber autonomous vehicle raised debates about the responsibilities of the safety driver, the company, and the vehicle's manufacturers. Similarly, courts are addressing cases like defamation caused by AI-generated content, holding platforms accountable for moderating harmful outputs. These

situations reveal the pressing need for legal systems to tackle the unique issues AI presents.

As AI continues to advance, integrating it into the society requires balancing innovation with accountability to uphold justice and protect human rights. Legal systems must evolve thoughtfully and pragmatically, recognising both the transformative potential of AI and the ethical obligations it brings. By creating comprehensive and forward-looking frameworks, societies can fully harness AI's benefits while mitigating its risks.

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