

# Can the July Charter override the constitution?

Proposal for a Constitutional Order revives debate over extra-constitutional authority



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The July Charter has placed Bangladesh in the midst of a constitutional conundrum: can an arrangement born outside the constitution, grounded in political consensus rather than a popular mandate, be said to carry the force of the nation's supreme law? Anchored in Section 22 of the July Declaration, the charter purports to advance core reforms of state institutions through "lawful means". The central issue, however, is what those "lawful means" entail, and whether they can be squared with the constitution's own framework of legitimacy.

A group of legal experts has proposed a possible roadmap to resolve the deadlock. They contend that the interim government can enact a Constitutional Order pursuant to Section 22 of the July Declaration, incorporating core reforms from the charter, which would take effect immediately. Subsequently, the constitutional order could be subjected to a referendum, conducted concurrently with the upcoming general election. Finally, should the referendum endorse the order, the reforms would gain retroactive legitimacy from the date of their enactment. According to a report, the National Consensus Commission (NCC) has recently forwarded this suggestion during talks with political parties.

However, this roadmap raises more constitutional questions than it answers.

Political opinions on the legitimisation and implementation of the charter also remain as fractured as before. The Jamaat-e-Islami, for instance, has backed the proposal of a constitutional order but insisted on a referendum before the polls, rather than on election day as suggested by the NCC, while Article 106 of the constitution could provide ancillary support for judicial determination of its validity. The National Citizen Party favours a constituent assembly through which the interim government could start implementing the reforms, which might also function alongside the next parliament.

The BNP has rejected the new proposal, warning that it could create "constitutional disorder". No such change should occur without an elected parliament, it insists, although it has softened its opposition to ordinance-led amendments and now seeks the Supreme Court's view on whether a Special Constitutional Order could serve as the vehicle. The BNP further warns that tying the July Charter to an election-day referendum would reinstate Article 142, reopening the door to constitutional

amendments by referendum on core issues. The prevailing deadlock may prompt judicial scrutiny of the proposed constitutional order. The juxtaposition here is strikingly vivid: the current administration is being expected to elevate a constitutional order above the constitution itself, even as it invokes Article 106 to infuse it with constitutional validity. In other words, those sworn to uphold the constitution are seeking a means to circumvent it. This scenario is less a matter of constitutional theory than a tangled assemblage of constitutional precepts—an ad hoc construction masquerading as legal necessity.

This scenario inevitably evokes *State v Dosso* (1958) in which Pakistan's Supreme Court, invoking Hans Kelsen's "revolutionary legality" concept, redescribed martial law as a "new legal order"—a precedent that undermined constitutional supremacy until repudiated in *Asma Jilani* (1972). Challenging constitutional issues were often ducked by the judiciary, labelling them "political." In *Dulichand*, the Appellate Division also avoided ruling on the validity of Yahya Khan's martial law, only to denounce him as a usurper later. After independence, Bangladesh also suffered in *Dosso*'s shadow. Post-1975, the *Halima Khatun* and *Joyal Abedin* cases upheld martial law proclamations, effectively ousting judicial

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review and subordinating the constitution to extra-constitutional authority. In *Ehtaeshamuddin*, the court went further, ruling that the constitution remained

subservient even after its revival. In short, legality was not merely suspended; it was surrendered.

The legality of extra-constitutional rule came into sharp focus again in 2005 in *Italian Marble Works Ltd. v Government of Bangladesh*. In a didactic yet searing tone, the High Court dissected Pakistan's judicial surrender in *Dosso*. It rebuked political elites, depicting them as complicit in "treachery,"

rejected such shortcuts to rewriting the fundamental law. Article 7 declares the constitution supreme; anything inconsistent with it is void. Article 142 prescribes the only amendment route—through parliament. Even parliament itself is checked by the basic structure doctrine. If an elected legislature cannot dismantle the core of the constitution, the notion that an unelected interim body can do so is—to put it plainly—

the constitution and periodically measured through elections. A constitutional order that asserts the power to amend the constitution through unelected means undermines this principle. And when abrogation of the nation's supreme law is permitted, it does not bring stability; it instead erodes the safeguards the constitution was designed to uphold.

For the judiciary, this situation constitutes



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"mishaps," and even "acts of treason." The question was finally put to rest in the Fifth and Seventh Amendment cases, which upheld the High Court's ruling and reaffirmed that the constitution—the embodiment of the sovereign will of the people—is the supreme law of the land. Any legislation or action that contravenes it is null and void; furthermore, the legislature, the executive, and the judiciary—three foundational branches of a state—are obligated to function within its parameters.

With the talk of adopting the July Charter and Declaration, the spectre of extra-constitutional legality has re-emerged. For those committed to constitutional democracy, it is exasperating. Bangladesh's judiciary now faces a familiar, wearying choice: repeat *Dosso*'s surrender, or finally uphold constitutional supremacy as affirmed in the Fifth and Seventh Amendment cases.

Authority is being sought through a constitutional order under the July Charter, but Bangladesh's jurisprudence has long

constitutional alchemy of the most dubious sort.

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Constitutionalism transcends mere legal formalities. It mandates that power be bounded, accountable, and anchored in the sovereign will of the people. The defenders of the July Charter may cast its supremacy over the constitution as an expression of the "people's will," deriving its authority from the July uprising. But in a constitutional democracy, the people's will is embodied in

a bitter irony: the very bench sworn to uphold the constitution now risks binding itself in subservience to an extra-constitutional command. In deciding the charter, the court would be determining the validity of its own existence. But constitutional supremacy demands confronting that paradox head-on. Legitimacy cannot spring from illegitimacy, and no doctrine of necessity can justify survival at the constitution's expense.

Bangladesh's constitutional framework now stands at a crossroads. The judiciary may choose to cloak the July Charter in the language of "necessity" or "political question," echoing *Dosso*'s surrender. Alternatively, it may adhere to its own precedents in the Fifth and Seventh Amendment cases. To validate the charter this way would risk normalising what the constitution forbids and undoing the safeguards built to prevent repetition of the past. The path the court chooses will decide whether Bangladesh learns from *Dosso* or repeats it.

## Myanmar's Kachin State: The new geopolitical flashpoint in China's backyard



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Most ordinary Americans would hardly know of Myanmar, or Burma, as the US calls it, let alone Kachin, Myanmar's northernmost state, which borders China to the north and east and India to the northwest. Yet, this remote region was once a crucial battleground for the Office of Strategic Services (OSS), the predecessor of today's CIA, during the Second World War. Maverick OSS pilots flew countless daring missions from their Manipur base in Northeast India, ferrying men and arms to support Allied forces engaged in fierce jungle battles against the Japanese onslaught.

OSS operatives were young and inexperienced; many had only ever seen jungles in films. Some Kachin people, then largely illiterate, had never seen a wheel. The hosts tutored the newcomers in jungle survival and, in turn, learnt modern warfare. Those US veterans are mostly gone now, and it all happened a long time ago and far away—but the bond lingers. One surviving member of the Kachin Rangers, as the indigenous troops were known, said: "It is my duty to help because the Americans liberated us from the Japanese and the British colonials."

Later, after Mao Zedong's takeover of China in 1949, Li Mi, a Chinese Kuomintang (KMT) general, moved into Myanmar with about 1,500 soldiers. The CIA armed and trained them to continue fighting against communist China, but that effort eventually

atop some of the world's richest deposits of rare earth elements. The KIA effectively cut off China's secure access to these minerals in Beijing's strategic backyard. Chinese imports of rare earth compounds from Myanmar fell sharply by 89 percent by February 2025 compared with the year before.

This turn of events is deeply significant considering the KIA's composition and leadership. It is mainly a Christian force in

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difficult choices about how far it is willing to go to protect its interests.

For Washington, the Kachin situation offers several strategic advantages. Supporting groups that can disrupt Chinese access to critical minerals aligns with broader American goals of diversifying supply chains away from Chinese control. It also demonstrates that China's sphere of influence is not as secure as it appears, potentially encouraging other regional actors to resist Beijing's pressure.

The risks are equally significant. A confrontation with Chinese interests in what Beijing considers its backyard could escalate tensions between the world's two largest economies. Myanmar's ethnic conflicts are notoriously complex and long running—the last thing US needs is to be drawn into another prolonged commitment in a region it does not fully understand.

The Kachin situation reveals a broader truth about great power competition in the 21st century. Traditional tools such as sanctions and diplomatic pressure have limited effectiveness when target countries can find alternative partners and supply routes. Instead, influence increasingly flows through relationships with non-state actors who control territory and resources.

The historical parallels are striking but not deterministic. The CIA's Cold War support for KMT forces in Myanmar's borderlands created decades of instability and drug trafficking that still affect the region today. Whether Washington's current engagement with the KIA will follow a similar path remains unclear.

Myanmar has long been a simmering battleground for rivalry between dominant world powers. This time, Beijing has much at stake. So does Washington, for it may offer considerable leverage in the existential rare earth battle.



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failed. Nonetheless, Myanmar remained on Washington's radar.

The country has since endured the world's longest-running civil war, with numerous Ethnic Armed Organisations (EAOs) fighting the government—the Kachin Independence Army (KIA) among the most prominent. In October 2024, the KIA captured two key mining towns, Chipwi and Pangwa, sitting

a Buddhist-majority country, led by people whose grandparents fought alongside US soldiers against a common enemy. The Baptist faith, brought by US missionaries in the 1870s and reinforced during the anti-Japanese resistance, remains central to Kachin identity. For Beijing, this presents a challenge beyond mere territorial control: it is dealing with a population with deep cultural and historical ties to the West—something