

How to read Supreme Court's review judgment on caretaker government



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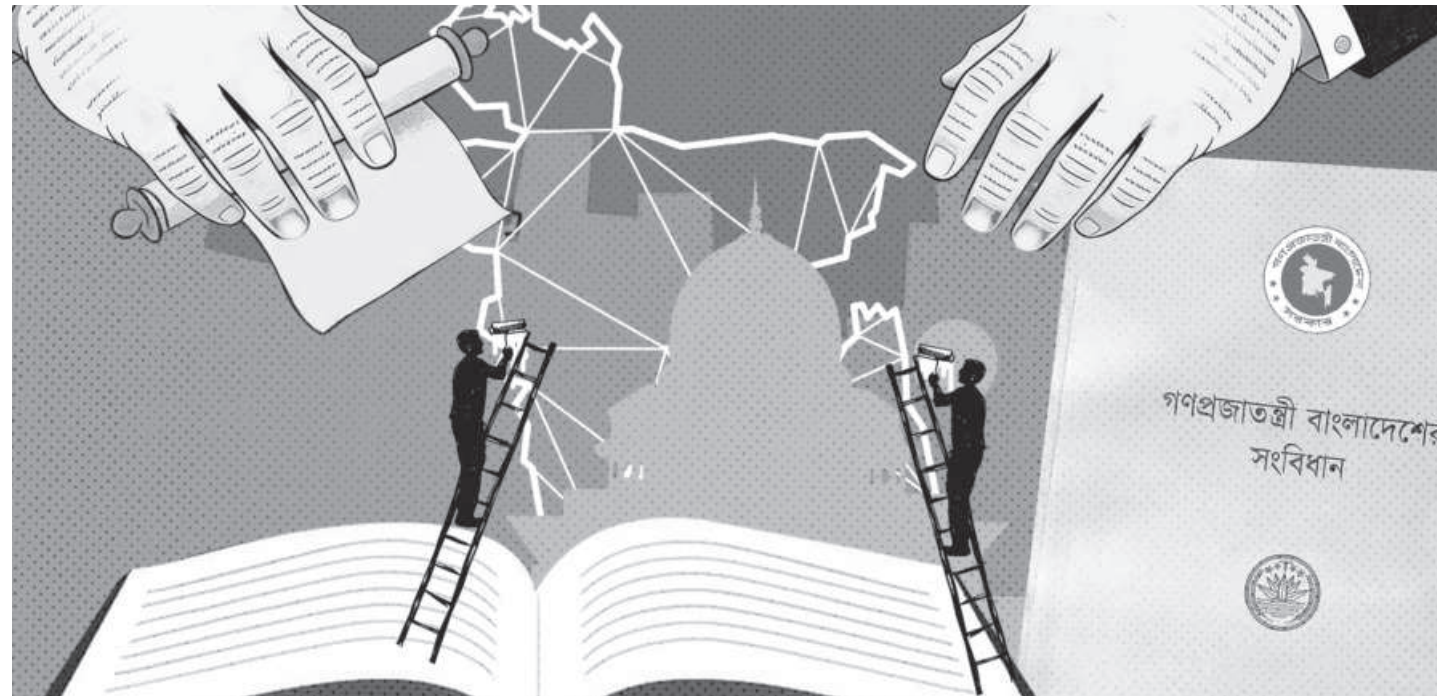
KHAN KHALID ADNAN

The short order in the 13th Amendment Review Judgment, authored by former Chief Justice Syed Rezaat Ahmed, was delivered on November 20, 2025, while the full judgment became available on March 12, 2026. The most important line in the Appellate Division's full review judgment is not the formal restoration of the caretaker government system, it is the court's own admission that its 2011 judgment—declaring the amendment unconstitutional and void—embraced a rigid and utopian model of democracy that ended up enabling "authoritarianism and dysfunctional electoral politics" and pushing the country towards a crisis of legitimacy (pp 38 to 40).

That is the real takeaway. The review bench has not merely corrected doctrine; it has acknowledged, in judicial language, that constitutional formalism helped wreck electoral credibility in Bangladesh.

What the court has actually done is quite precise. It has set aside the 2011 Appellate Division judgment "in its entirety" and revived Chapter IIA of Part IV of the constitution, meaning the old constitutional provisions on the non-party caretaker government now stand restored (pp 64, 73 to 74). But the court also insists that the revived provisions can operate only prospectively, because Articles 58B(1) and 58C(2) are triggered only after the dissolution of a sitting parliament and within 15 days of that dissolution (pp 62 to 64, 73 to 74). That is why the judgment says the restored provisions will lie dormant for the current cycle and can be invoked, at the earliest, "under the domain of the 13th Parliament" (p 63). That point matters now because the 13th parliament has already begun its first session.

The court's treatment of the caretaker system is therefore not nostalgic, even if its remedy is old. It does not say caretaker government is ideal in the abstract. It says democracy cannot be protected by clinging to the ritual that every temporary officeholder must be elected, while ignoring whether elections themselves are credible.



VISUAL: ANWAR SOHEL

The judgment ties democracy to free and fair elections, and then ties those elections to institutional safeguards that can neutralise the advantage of incumbency. It is, in effect, a rejection of the fiction that partisan control of the election time state is a sign of democratic maturity in a deeply distrustful polity. In Bangladesh, the court now says plainly that a fiction became the vehicle for democratic decay.

This is why the implications for the 15th Amendment appeals are so serious. Those appeals were previously adjourned to March 5 so that a new post-election bench could hear them. Whatever that bench now does, the review judgment has already shifted the ground beneath the case. Once the Supreme Court itself says the caretaker mechanism strengthened "the foundation of a substantive democratic architecture" (p 46), and once

it treats electoral credibility as integral to democracy, the constitutional defence of the 15th Amendment's repeal of caretaker government looks badly weakened. The blow becomes harsher when the court treats the gap between the 2011 short order and the full judgment as a fatal defect, and goes so far as to suggest that the 15th Amendment effectively preempted the judicial process and signalled to the court what outcome

records and in places appear to appreciate the argument that the principle of neutral election time administration may be constitutionally fundamental while the specific 1996 design remains open to legislative revision (pp 25 to 27, 41 to 42). This is one of the most important and under-noticeable features of the case. The court's theory of democracy is far more forceful about the need for neutrality than about

the logic of this judgment. Any attempt to gut neutrality and return the country to partisan election-time incumbency would collide head-on with the court's reasoning on democracy, popular sovereignty, and electoral integrity (pp 44 to 58). The review judgment does not forbid reform. It forbids bad faith masquerading as reform. Additionally, in undertaking any constitutional reform on this issue, parliament is required to give proper consideration to the pertinent observations made by the court.

The judgment's most ambitious move lies deeper still. The court distinguishes between parliament's amendment power under Article 142 and the constituent power of the people (pp 44 to 46; 52 to 55), which is a striking innovation. It allows the court to describe the 13th Amendment as more than an ordinary textual change, as an expression of sovereign popular will in response to a crisis of electoral legitimacy. This may pave the way for future constitutional reform by giving a stronger conceptual footing to democratic guardrails that emerge from broad public consensus. But it also carries an obvious risk. In Bangladesh, every faction sooner or later claims to speak for "the people." If constituent power becomes loose rhetoric rather than disciplined constitutional method, tomorrow's constitutional adventurism will simply borrow today's emancipatory language.

This is why the review judgment deserves thorough examination to appreciate its critical reasoning and analysis. It is right to reverse the 2011 disaster, to say that free and fair elections are not decorative to democracy but central to constitutional survival, to restore the legal possibility of a neutral election-time administration. But it also leaves parliament with the harder task, which courts are structurally reluctant to perform. The court has given no express direction to parliament to redesign the composition of the caretaker government. Its operative direction is narrower—restore Chapter IIA now, operate it later, and let the constitutional clock run from the life cycle of the current Parliament (pp 62 to 64, 73 to 74). With due respect, this does not fully reflect judicial statesmanship; rather, it may be more appropriately understood as a cautious judicial reopening.

What parliament does with that reopening will decide whether this verdict becomes a constitutional rescue or merely another chapter in Bangladesh's long habit of using law to postpone politics.

the political branches expected. That is not a minor institutional complaint; it is a judicial indictment of the constitutional sequence that abolished caretaker government in the first place.

Yet the review judgment is also more limited than many triumphalist readings suggest. It does not design a new caretaker model, tell parliament how to choose the chief adviser, or replace the old architecture with a modern one. The operative order simply revives Chapter IIA wholesale (pp 73 to 74). So the composition that now returns is not a freshly crafted judicial model; it is the old constitutional scheme by force of revival, not by force of new reasoning. To that extent, the court has restored a principle and a text, but not solved the design problem that helped destabilise the old system.

That distinction matters. The judgment

the sanctity of the retired chief justice-based appointment ladder. In other words, the judgment does not really constitutionalise every feature of the old caretaker model. It constitutionalises the need for a credible neutral safeguard.

That is where the present parliament enters. Since the 13th parliament has now begun its term, any amendment concerning the caretaker government belongs to this parliament, not to the courts and not to the expired transitional arrangement. Legally, parliament now has room to amend the revived framework before its own dissolution. Politically, however, it does not have a blank cheque. Any reform that narrows interim powers, removes retired judges from the centre of appointment politics, and gives the Election Commission a more operationally central role would be easier to defend under

How East Pakistan became Bangladesh in global media



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The Liberation War of 1971 remains one of the most consequential and painful chapters in the history of Bangladesh as well as South Asia. The immediate trigger of the war was the refusal of the Pakistani state to accept the 1970 electoral victory of Sheikh Mujibur Rahman, followed by a brutal military crackdown on the Bangalee population. As the war unfolded, international media became central to how the conflict was understood worldwide. That process, however, was not politically neutral.

As Srinath Raghavan shows in *1971: A Global History of the Creation of Bangladesh*, much of the early international discussion, especially among Western policymakers and a significant part of the media, framed the violence as an "East Pakistan crisis" or a "civil war." This framing mattered. To describe a state-run campaign of mass killing as a civil war was to hide the responsibility and make the conflict present like a symmetrical struggle between two wings of Pakistan, rather than a brutal military crackdown by the Pakistan Army against the Bangalee ethnic community. Raghavan notes that even Richard Nixon viewed the events in East Pakistan through the lens of civil war,

comparing them to Vietnam and thereby reducing the moral and political specificity of what was happening.

This early language shaped international perception in significant ways. "East Pakistan" was the language of the existing state structure. "Civil war" was the language of diplomatic caution. It also protected geopolitical convenience, allowing many in the West to see the conflict as an internal matter of Pakistan rather than as a crisis of mass atrocity, national self-determination of the Bangalee population, and colonial-style domination within a formally postcolonial state. In that sense, the battle over media representation was also a battle over political meaning.

The Pakistan authorities expelled foreign journalists from East Pakistan in late March 1971; much of the information that reached the outside world later came from refugees, scattered eyewitness testimony, and sources connected to the provisional Bangladeshi leadership. International reporting conveyed horror, but it was not always morally or conceptually precise. According to Raghavan, many reports used words such as "massacre," "slaughter," or "tragedy," while terms like

"genocide" and "holocaust" were still rare. He notes that only a few publications, such as Singapore's *The New Nation* and New York's *Saturday Review*, used that stronger language, and neither carried the influence of a major paper like the *Sunday Times*.

A major turning point came with Anthony Mascarenhas's famous report, "Genocide," published in *The Sunday Times* on June 13, 1971. In Raghavan's reading, this was the first major rupture in the earlier "civil war" frame. The report broke through the censorship and exposed the systematic character of the Pakistan Army's violence. After Mascarenhas's article came out, international media attention deepened and the moral vocabulary of the crisis began to shift. Mascarenhas helped reshape the international media framing.

At this point, the question of naming became even more important. The transformation of "East Pakistan" into "Bangladesh" in the global media was not merely semantic—it presented a significant political shift. "East Pakistan" described a province within an existing state. The name "Bangladesh" was a claim of the Bangalee people to express their political future. In this respect, Raghavan's discussion of Ravi Shankar and George Harrison's "Concert for Bangladesh" is especially significant. He does not say that the concert was the first time the name "Bangladesh" ever appeared in Western media. What he does argue is that the concert gave the name "Bangladesh" enormous visibility and used it consciously in place of more cautious alternatives such as "East Pakistan" or "East Bengal."

Raghavan writes that by invoking the name

"Bangladesh" and refusing the more cautious alternatives, Ravi Shankar and George Harrison made their political sympathies unmistakable. This was not simply a humanitarian concert—they did not use only a neutral title—but a cultural intervention into the politics of representation taking against the Bangalee population who are calling their country with a new name. To say "Bangladesh" was to reject the language of Pakistani territorial unity and to acknowledge the legitimacy of Bangalee national self-identification. The choice of name itself carried political weight.

At the same time, Raghavan is careful to show that the older frame had not fully disappeared even then. He points to contemporary television coverage in which people waiting in line for tickets still referred to "East Pakistan," and reporters described the concert as relief for refugee children from the "holocaust in East Pakistan." This detail is important because it shows that the transition in global media language was uneven. The name "Bangladesh" was emerging forcefully, but "East Pakistan" still lingered in public discourse. The struggle over naming was still going on.

The concert itself, however, was unmistakably framed around Bangladesh as a political and humanitarian reality. According to Raghavan, Ravi Shankar and Ali Akbar Khan opened with "Bangla Dhun," and Shankar told the audience that although they did not want to "do politics," they wanted people to feel "the agony, and also the pain, and a lot of sad happenings in Bangladesh." George Harrison's song "Bangla Desh" reinforced that naming. For Raghavan,

the effect was clear: audiences came to see that the Bangladesh crisis was not only a humanitarian tragedy but also a political one. The concert did more than simply collecting money for refugees: it helped recast the crisis in the Western cultural imagination.

That is why the emergence of Bangladesh in global media should be understood as a layered process rather than a single moment.

And this shift had profound consequences. Once the conflict was increasingly represented not as unrest in East Pakistan but as the struggle of Bangladesh, the terms of international perception started to shift. Newspapers such as *The New York Times* and *The Guardian*, along with broadcasters like the BBC and Voice of America, helped circulate that transformation. The international story changed because the words changed.

The role of global media in 1971 was not limited to reporting facts only. Media shaped the interpretive framework through which those facts were understood. The Liberation War of Bangladesh was not limited to military and political struggle, but also a struggle over naming and legitimacy. "East Pakistan" was the language of state preservation, while the "civil war" frame was the language of diplomatic evasion. "Genocide" was the language of moral recognition of the atrocities happening to the Bangalee population. "Bangladesh" was the language of national emergence. The transformation of East Pakistan into Bangladesh in the global media was historically decisive. Through this transformation, the world came to see that what was unfolding in 1971 was not merely a crisis within Pakistan, but the violent birth of a new nation.

CROSSWORD BY THOMAS JOSEPH

ACROSS

- 1 Lebanon trees
- 7 Racket
- 11 Like lemon juice
- 12 Infant's spot
- 13 Colombia's capital
- 14 Hindu hero
- 15 Germany's capital
- 17 Whittle down
- 20 Fossil resin
- 23 Stop N dime
- 24 Poster color
- 26 Bro's sibling
- 27 Little jump
- 28 Hosp. workers
- 29 Josephine, for one
- 31 Tear
- 32 Bank subtraction

- 33 Potato parts
- 34 Steered clear of
- 37 Farm unit
- 39 Paper worker
- 43 Cruise stop
- 44 Concert bonus
- 45 Stocking stuffers
- 46 Touched lightly

DOWN

- 1 Fare carrier
- 2 Green prefix
- 3 Use a spade
- 4 Sun-dried brick
- 5 Ceremony
- 6 Fight memento
- 7 Be frugal
- 8 Reddish fruit
- 9 Objective

- 10 CEO's deg.
- 16 Reading aids
- 17 Did some modeling
- 18 Cartoon genre
- 19 Reddish fruit
- 21 Bert's pal
- 22 Coarse files
- 24 Letter before iota
- 25 Dawn goddess
- 30 Metal fasteners
- 33 Decree
- 35 Profound
- 36 Writer Buchanan
- 37 Fitting
- 38 Dove call
- 40 Infant
- 41 Mine output
- 42 Wine choice

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WEDNESDAY'S ANSWERS

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