LAW INTERVIEW

Constitution Day Special

Getting overly fixated on drafting new constitutional texts can easily distract us from fixing the actual issues of governance

On 4 November 1972, the Constitution of the People's Republic of Bangladesh was adopted by the Constituent Assembly. To commemorate the 54th anniversary of the Constitution, ***Rafid Azad Saumik*** *from the Law Desk interviewed* ***Dr Ridwanul Hoque*** *to discuss some critical questions of constitutional reforms, popular sovereignty, and public confidence.*



Dr Ridwanul Hoque

Dr Ridwanul Hoque *is a Bangladeshi legal scholar specialising in constitutional law, comparative public law, citizenship, and judicial review. He is a former Professor of Law at the University of Dhaka and is currently part-timely teaching at Monash University in Melbourne. He is also a governance specialist with experience in universities and public sector organisations.*

LAW DESK (LD): To what extent, in your assessment, have the fundamental ideals and objectives of the Constitution of Bangladesh been realised over the past 54 years?

DR RIDWANUL HOQUE (RH): This is a question that needs to be answered objectively rather than subjectively, taking all factors into account. When the Constitution was adopted in 1972, it rested on four basic pillars: democracy, socialism, nationalism, and secularism. Beyond these four fundamentals, however, there were other fundamental aims: notably, for example, to establish a state where the rule of law is secured and the human rights and dignity of the people are recognised and respected.

Now, looking at our record, you cannot say in one sentence that we have succeeded or completely failed. On the one hand, despite periods when Bangladesh slipped away from democracy, we were still able to restore or return to democracy within the constitutional framework. Following the recent 2026 elections, we have returned to democracy once again. On the other hand, we have faced serious challenges at different times. One reason is that we adopted our Constitution within a very short time. Coming right out of the War of Independence, we expedited the process, which, arguably, led to lapses and a lack of consensus on certain concepts.

Take nationalism as an example. Dr Kamal Hossain wrote in his book that we fought the liberation war based on Bengali cultural or linguistic nationalism. While that concept has its merits, it also had exclusionary factors. By defining nationalism purely through the Bengali language and identity in the Constitution, we excluded the indigenous peoples of the Chittagong Hill Tracts and other regions who have distinct ethnic identities. Later, through the 5th Amendment, the principle of Bengali nationalism was altered so that the people would be known as Bangladeshi rather than Bengali, attempting to include those who felt left out. Again, the 15th Amendment reached another compromise: Bengali by nation, but Bangladeshi by citizenship.

When it comes to human rights and the rule of law, they have largely remained neglected throughout our history. While we made institutional efforts over the years, the immediate past regime was horrible, especially in years from 2010 to 2024. The regime was infamous for brutally destroying people's rights and lives through so-called 'crossfire' or extrajudicial killings and enforced disappearances. These actions are completely repugnant to the democratic goals of our Constitution.

Our real constitutional challenges/problems are: holding free and fair elections, ensuring parliament can hold the government accountable, and making sure the opposition is not shut out by a brute majority in the governing party.

LD: How do you interpret the coexistence of state religion and secularism within the constitutional framework? What implications does this arrangement have for communal harmony and the protection of the rights of religious and other minority groups?

RH: This is a very unusual arrangement that you do not see in other constitutions around the world. On the face of it, having secularism and a state religion side by side seems contradictory. If you say the state is founded on secularism, you cannot logically declare Islam, or any other faith, as the state religion.

However, practically, from the perspective of specificity of our own society, I support this position. Every constitution needs to serve the land and society it belongs to. If you make the Constitution purely secular and remove any reference to the religion of the Muslim majority, some might feel excluded, as if their faith has no recognition. On the other hand, if you completely drop secularism and only keep Islam as the state religion, it sends a message to other religious minorities that they do not belong.

So, this compromise has a unifying value and helps ensure the Constitution's durability, one might plausibly argue. But there is a crucial condition: the mention of Islam as the state religion must remain purely symbolic. At the same time, there must be strong, adequate protective clauses to safeguard the rights of religious and linguistic minorities against any discrimination.

Our courts have interpreted the state religion or Islamic references in the Constitution quite pragmatically in the past. Justice Mohammad Gholam Rabbani, for instance, was known for his innovative remarks on, and reference to, the constitutional faith in Almighty Allah and the state religion to interpret provisions discouraging social vices like gambling or discrimination against women. Therefore, while the coexistence of secularism and a state religion may seem ambivalent, it can work as a practical compromise in Bangladesh.

LD: What are your views on the proposal to introduce an upper house within the parliamentary system of Bangladesh? From a constitutional and institutional perspective, what considerations are relevant to assessing its necessity and feasibility?

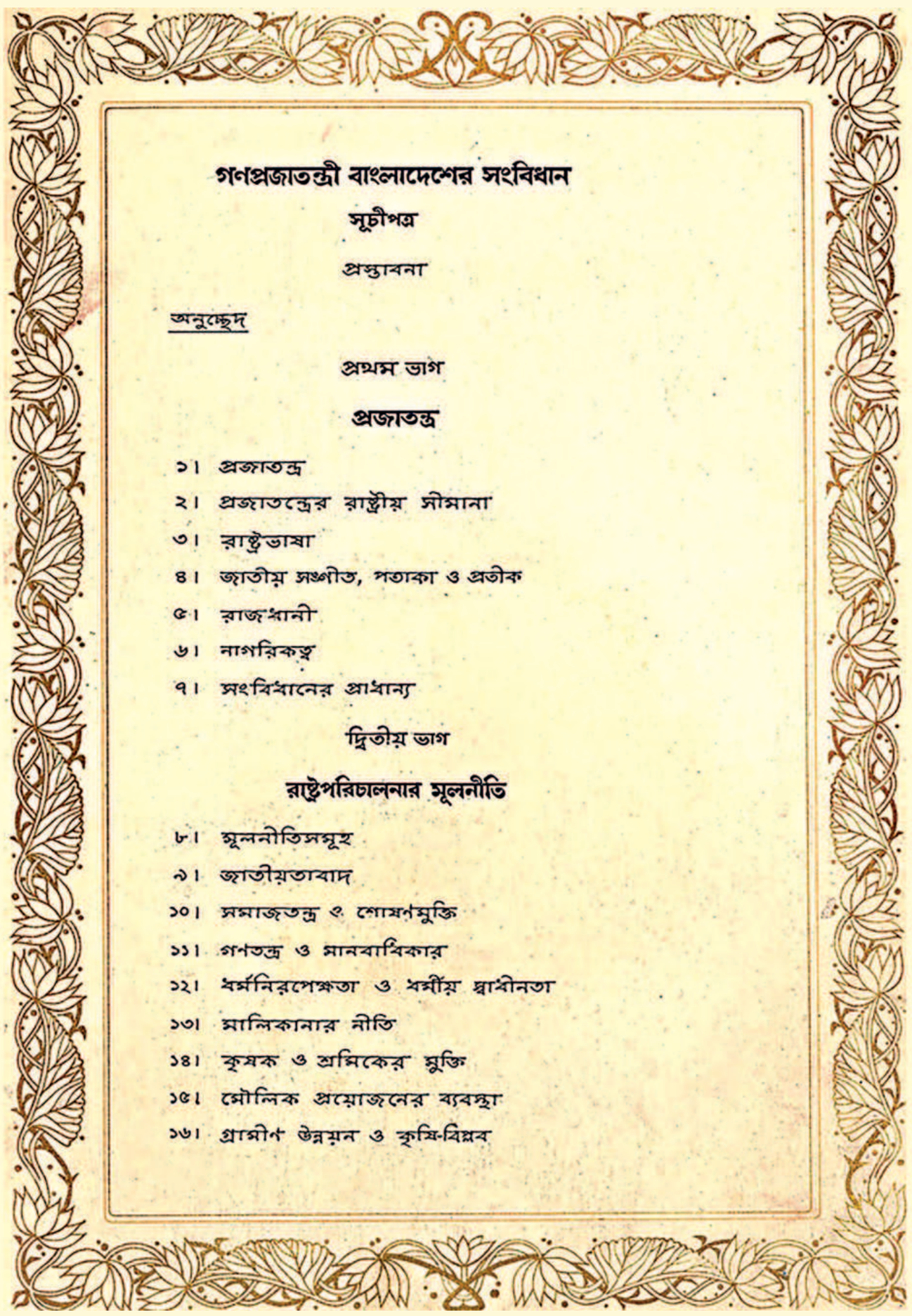
RH: My personal approach to constitutional problems is very simple: If there is no problem, do not fix it. I see no reason whatsoever to introduce an upper house or a bicameral parliament in Bangladesh.

It is very rare for a unitary state to have a bicameral parliament. You generally see upper houses in federal systems where you need to represent different states or provinces that might have ethnic concentrations. That is not the case for Bangladesh. Our crisis has never been that we lack legislative chambers or a balance of representation; our crisis is the ineffective functioning of parliament that has historically remained emasculated or subservient. Over the years, we have seen an overbearing government, completely dominating the parliament and thereby leaving it with no real say in holding the executive accountable. That is a political cultural issue.

An upper house cannot fix that problem; it will only create new ones. In our political culture, it will just become an elite club, where parties will park their favoured figures.

Look at what happened with the reserved seats for women. When we introduced them in 1972, the idea was that this would be a temporary measure and that political parties would gradually start nominating women directly for general seats. But that never happened. Instead, every regime kept extending the number of reserved women seats, because parties needed those seats simply to increase their parliamentary numbers for law-making and constitutional amendments. An upper house would be treated the same way.

Our real constitutional challenges/problems are: holding free and fair elections, ensuring parliament can hold the government accountable, and making sure the opposition is not shut out by a brute majority in the governing party. Questions about models of proportional representation for an upper house are moot. My answer is clearly no: Bangladesh does not need a second chamber.



গণপ্রজাতন্ত্রী বাংলাদেশের সংবিধান

সূচীপত্র

প্রস্তাবনা

অনুচ্ছেদ

প্রথম ভাগ

প্রজাতন্ত্র

১। প্রজাতন্ত্র
২। প্রজাতন্ত্রের রাষ্ট্রীয় সীমানা
৩। রাষ্ট্রভাষা
৪। জাতীয় সঙ্গীত, পতাকা ও প্রতীক
৫। রাজধানী
৬। নাগরিকত্ব
৭। সংবিধানের প্রাধান্য

দ্বিতীয় ভাগ

রাষ্ট্রপরিচালনার মূলনীতি

৮। মূলনীতিসমূহ
৯। জাতীয়তাবাদ
১০। সমাজতন্ত্র ও শোষণমুক্তি
১১। গণতন্ত্র ও মানবাধিকার
১২। ধর্মনিরপেক্ষতা ও ধর্মীয় স্বাধীনতা
১৩। মালিকানার নীতি
১৪। কৃষক ও শ্রমিকের মুক্তি
১৫। মৌলিক প্রয়োজনের ব্যবস্থা
১৬। গ্রামীণ উন্নয়ন ও কৃষি-বিপ্লব

LD: How would you assess the legitimacy, inclusiveness, and public participation associated with the constitutional reform initiative undertaken during the interim government?

RH: Taking up constitutional reform under an unelected, interim government is quite rare. Usually, after a revolution or uprising, a government first focuses on stabilising law and order and running the administration, while constitutional questions come later. But the initiative itself was legitimate because the July movement/uprising demanded an end to corruption, authoritarianism, and human rights violations tied to systemic constitutional flaws.

The reform process failed in its scope and composition of the reform questions. The commission took on an overly ambitious mandate, expanding its scope far beyond what was realistic for an interim period. They tried to write recommendations for everything, from police reform to caretaker arrangement, and even prepared a draft new preamble. Why would an advisory commission draft a preamble for future parliamentarians? That is the job of elected representatives, and not of a reform commission. The report ended up being very verbose - a long list of issues after issues.

More importantly, no politicians were on the commission. It turned out to be an academic research committee. While technical experts and academics should certainly be there, you cannot leave out the major political parties that have shaped the country's political history and constitutional journey over the last 50 years.

As a result, public participation became a box-ticking exercise. Holding seminars and meetings was superficial. In my opinion, ordinary people were not in the mood to read complex constitutional documents; they were busy dealing with daily struggles regarding law and order, food prices, and personal safety.

A much better approach would have been to narrow the scope of work, on day one, to a few basic provisions and leave broader changes to the next parliament. They should have included political party representatives from the beginning alongside technical experts. That would have reduced disagreement and produced a more realistic, pragmatic consensus.

LD: How do you evaluate the importance of public confidence in the Constitution? Do you see any changes regarding people's confidence in the Constitution, especially in the post-July uprising?

RH: Having public confidence in the Constitution is extremely important. After the uprising, some leaders of the movement argued that the previous Constitution simply did not work and that we needed a brand-new one.

While our Constitution certainly has flaws, many of the problems we faced stemmed not from the text itself, but from political parties and rulers refusing to follow the rules of the game already in place. Getting overly fixated on drafting new constitutional texts can easily distract us from fixing the actual issues of governance.

You cannot measure or build public confidence in a month or two. Nor can you do it through academic debates. For ordinary, hard-working people in our villages, the Constitution is not a set of complicated legal articles; to them, the Constitution means reason, good conscience, and the rule of law. To build genuine confidence in the Constitution, the state must deliver three practical things:

First, fair and credible elections: people must be able to vote freely and see that their votes can really unseat an abusive or corrupt government that they don't want to return to power.

Second, there must be an end to political impunity: people must see that politicians cannot use state power for unearned wealth, and that if a minister abuses power and indulges in corruption, they will lose their seat and face jail where required.

Third, the rule of law: The legal and judicial system must show that no one is above the law, and that crimes, including those by law enforcement and security forces, are genuinely punished.

Relevantly, my former teacher, the late Professor Shah Alam, used to emphasise that public confidence in the legal and constitutional system is what truly holds it together. Public trust in law is the basis of power of law. Without that practical trust, the Constitution is just paper. We must focus on making democracy and the rule of law work in practice, rather than getting lost in unnecessary restructuring.