

A BRIEF COMPARATIVE ANALYSIS BETWEEN THE CONSTITUTIONS OF BANGLADESH AND THE USA

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Abstract: The constitutions of Bangladesh and the United States of America (USA) are thoroughly compared in this paper. It looks at a number of topics, such as general features, key differences, constitutional problems, judicial review, federalism and devolution, rights and freedoms, principles and values, historical settings, government systems, amendment procedures, supreme court and impact of globalization in both constitutions. This study attempts to shed light on the similarities and contrasts between these two countries' constitutions in order to further our understanding of constitutional governance and its consequences in various sociopolitical circumstances..

Keywords: Comparative analysis, constitution, Bangladesh, USA.

INTRODUCTION

Constitutions are foundational documents that define the principles, structures, and limits of governmental power within a state. The Constitution of Bangladesh, adopted in 1972¹ and the Constitution of the USA, enacted in 1789², serve as critical frameworks for governance in their respective countries. This comparative analysis aims to explore the intricacies of these constitutions, examining how each document addresses the complexities of governance, individual rights, and the rule of law. Understanding these differences and similarities is essential for appreciating the broader implications of constitutional design in various sociopolitical settings.

Literature review

Comparative constitutional analysis is a well-established field of legal scholarship.

Foundational works by Bruce Ackerman³, Sujit Choudhry⁴, and Mark Tushnet⁵ provide significant insights into constitutional design and judicial review. Specific studies on the Constitution of Bangladesh by M.J. Akbar⁶ and M. Rafiqul Islam⁷, along with analyses of the US Constitution by authors like Akhil Reed Amar⁸ and Laurence Tribe⁹, offer rich perspectives that inform this comparative study. This literature review synthesizes key findings from these works, providing a foundation for the subsequent analysis.

³ Ackerman, Bruce. *We the People: Foundations*. Harvard University Press, 1991.

⁴ Choudhry, Sujit, ed. *The Migration of Constitutional Ideas*. Cambridge University Press, 2006.

⁵ Tushnet, Mark. *The Constitution of the United States of America: A Contextual Analysis*. Hart Publishing, 2009.

⁶ Akbar, M.J. *The Shade of Swords: Jihad and the Conflict between Islam and Christianity*. Routledge, 2002.

⁷ Islam, M. Rafiqul. *Constitutional Law of Bangladesh*. Mullick Brothers, 2002.

⁸ Amar, Akhil Reed. *America's Constitution: A Biography*. Random House, 2005

⁹ Tribe, Laurence H. *The Invisible Constitution*. Oxford University Press, 2008

¹ Islam, M. Rafiqul. *Constitutional Law of Bangladesh*. Mullick Brothers, 2002.

² Amar, Akhil Reed. *America's Constitution: A Biography*. Random House, 2005

Methodology

To complete this paper the qualitative methodology of research is followed. Data and information has been collected from secondary sources like books, article and judgement of cases and legal documents etc.

General features

The constitutions of Bangladesh and the USA are foundational legal documents that define the structure, functions, and guiding principles of their respective governments. The Constitution of the People's Republic of Bangladesh, enacted in 1972, establishes a unitary parliamentary republic. It emphasizes four fundamental principles: nationalism, socialism, democracy, and secularism, which are crucial to the nation's identity and governance¹⁰. The document comprises 153 articles organized into 11 parts, covering fundamental rights, the structure of government, state policy directives, and other essential aspects of governance.

In contrast, the Constitution of the United States, ratified in 1788, creates a federal republic with a strong emphasis on the separation of powers among the legislative, executive, and judicial branches¹¹. It is notably concise, consisting of a preamble and seven articles. The first three articles establish the framework for the federal government's branches, while the remaining articles address the states' powers and rights, the amendment process, federal supremacy, and the ratification process. Additionally, the US Constitution includes 27 amendments, with the first ten, known as the Bill of Rights, explicitly guaranteeing individual liberties and justice.

Key differences

There are several key differences between the constitutions of Bangladesh and the USA, reflecting their unique historical

and cultural contexts. Structurally, Bangladesh operates under a unitary system where the central government holds primary authority, and the Jatiya Sangsad (Parliament) plays a central role in governance¹². This centralization contrasts with the USA's federal system, where power is divided between the national government and the states, each with distinct powers and responsibilities¹³. The process for amending the constitution also differs significantly. In Bangladesh, constitutional amendments require a two-thirds majority in the Jatiya Sangsad, making it relatively flexible and responsive to changing political and social needs¹⁴. In the USA, the amendment process is more stringent, requiring approval by two-thirds of both houses of Congress and ratification by three-fourths of the state legislature¹⁵. This rigidity reflects the framers' intention to make amendments difficult, ensuring that changes are thoroughly considered and broadly supported.

Historical context

The historical contexts in which the US and Bangladeshi constitutions were framed are profoundly different. The US Constitution emerged from the Enlightenment and the aftermath of the American Revolution, reflecting the Founding Fathers' desire for a robust federal government and a clear separation of powers¹⁶. It was influenced by contemporary European political thought, particularly the ideas of John Locke and Montesquieu. The Constitution of Bangladesh, on the other hand, was created following the country's independence from Pakistan in 1971, shaped by the liberation struggle and a desire to

¹⁰ Article 8, The Constitution of the People's Republic of Bangladesh

¹¹ Articles I, II, and III, The Constitution of the United States

¹² Article 65, The Constitution of the People's Republic of Bangladesh

¹³ Article IV, The Constitution of the United States

¹⁴ Article 142, The Constitution of the People's Republic of Bangladesh.

¹⁵ Article V, The Constitution of the United States

¹⁶ Hoque, Ridwanul. *Judicial Activism in Bangladesh: A Golden Mean Approach*. Cambridge Scholars Publishing, 2011

establish a sovereign, democratic state¹⁷. It was influenced by the British colonial legacy, socialist principles, and the experiences of partition and political repression.

Constitutional structure

The US Constitution is concise, comprising a preamble, seven articles, and 27 amendments¹⁸. It establishes a federal system with a distinct separation of powers among the executive, legislative, and judicial branches¹⁹. The simplicity and flexibility of the US Constitution have allowed it to adapt over time²⁰. In contrast, the Constitution of Bangladesh is more detailed and prescriptive, with a preamble, 11 parts, and numerous articles. It delineates a unitary parliamentary democracy, though constitutional amendments have introduced elements of a presidential system²¹. The detailed nature of the Bangladeshi Constitution reflects the country's effort to address various sociopolitical issues explicitly.

Principles and values

Both constitutions are rooted in core principles of democracy, the rule of law, and human rights. The US Constitution emphasizes individual liberty, federalism, and a system of checks and balances²². It reflects a liberal democratic philosophy

where the protection of individual rights is paramount²³. The Constitution of Bangladesh, influenced by socialist principles, underscores equality, social justice, and secularism. It aims to promote a more collective approach to social welfare and justice, reflecting the country's postcolonial aspirations and socialist inclinations²⁴.

Rights and freedoms

The US Constitution, through the Bill of Rights and subsequent amendments, guarantees extensive civil liberties and political rights. These include freedoms of speech, religion, and assembly, as well as protections against unreasonable searches and seizures. The Constitution of Bangladesh enshrines a broad array of rights in its Part III, including fundamental rights to equality, freedom of speech, and protection of home and correspondence²⁵. However, it also includes provisions that allow for the suspension of some rights during emergencies. The scope and nature of rights protection in Bangladesh reflect its unique historical and political context.

Government system

The US government system is characterized by a presidential form of governance with a clear separation of powers. The President, Congress, and Supreme Court operate independently yet interdependently through a system of checks and balances²⁶. The President serves as both the head of state and government, elected separately from the legislature. Conversely, Bangladesh initially adopted a Westminster-

¹⁷ Hossain, Kamal. *Bangladesh: Quest for Freedom and Justice*. University Press Limited, 2013

¹⁸ Amar, Akhil Reed. *America's Constitution: A Biography*. Random House, 2005.

¹⁹ Tushnet, Mark. *The Constitution of the United States of America: A Contextual Analysis*. Hart Publishing, 2009.

²⁰ Amar, Akhil Reed. *America's Constitution: A Biography*. Random House, 2005

²¹ Islam, M. Rafiqul. *Constitutional Law of Bangladesh*. Mullick Brothers, 2002.

²² Amar, Akhil Reed. *America's Constitution: A Biography*. Random House, 2005.

²³ Tushnet, Mark. *The Constitution of the United States of America: A Contextual Analysis*. Hart Publishing, 2009.

²⁴ Islam, M. Rafiqul. *Constitutional Law of Bangladesh*. Mullick Brothers, 2002

²⁵ Amar, Akhil Reed. *America's Constitution: A Biography*. Random House, 2005.

²⁶ Hossain, Kamal. *Bangladesh: Quest for Freedom and Justice*. University Press Limited, 2013

²⁷ Tushnet, Mark. *The Constitution of the United States of America: A Contextual Analysis*. Hart Publishing, 2009

style parliamentary system, with a Prime Minister as head of government and a President as the ceremonial head of state. However, constitutional amendments have periodically shifted the balance of power, leading to a more centralized executive authority²⁷. This hybrid system reflects ongoing political dynamics and attempts to stabilize governance.

Federalism and devolution

Federalism is a cornerstone of the US Constitution, distributing power between the national and state governments. This structure allows for significant autonomy at the state level, fostering diverse policy approaches across the country. States have the authority to enact laws and policies that reflect their unique cultural, economic, and social conditions. In contrast, Bangladesh operates a unitary system where administrative divisions function under the central government's authority. Efforts at decentralization have been limited, with power predominantly concentrated in the central executive. This centralization reflects the country's historical experiences and the challenges of managing a diverse population²⁸.

Judicial review

Judicial review is a critical component of both constitutional frameworks. In the US, the Supreme Court has the authority to interpret the Constitution and invalidate legislation that contravenes constitutional provisions. Landmark cases such as *Marbury v. Madison* have cemented this role, making the judiciary a key player in shaping public policy. Similarly, the Supreme Court of Bangladesh possesses the power of judicial review, ensuring that laws and executive actions comply with constitutional

mandates²⁹. However, the judiciary in Bangladesh often faces challenges related to political interference and resource constraints. The effectiveness of judicial review in both countries reflects broader issues of judicial independence and the balance of power³⁰.

Amendment process

The amendment process in the US is notably rigorous, requiring approval by a two-thirds majority in both houses of Congress and ratification by three-fourths of the states³¹. This high threshold ensures stability and continuity, making it difficult to alter the Constitution without broad consensus³². The Constitution of Bangladesh allows for amendments through a simpler process, requiring a two-thirds majority in the Jatiya Sangsad (National Parliament)³³. This relative ease of amendment has led to numerous changes, reflecting the dynamic nature of Bangladeshi politics. The difference in amendment processes highlights varying approaches to constitutional flexibility and stability³⁴.

Supreme court

The Supreme Court of Bangladesh and the Supreme Court of the USA serve as the highest judicial authorities in their respective countries, tasked with interpreting the constitution and ensuring the rule of law. The Supreme Court of Bangladesh comprises the Appellate Division and the High Court Division, which have the authority to review laws and executive

²⁷ Islam, M. Rafiqul. *Constitutional Law of Bangladesh*. Mullick Brothers, 2002

²⁸ Hoque, Ridwanul. *Judicial Activism in Bangladesh: A Golden Mean Approach*. Cambridge Scholars Publishing, 2011

²⁹ Bernstein, Richard B. *The Founding Fathers Reconsidered*. Oxford University Press, 2009

³⁰ Tushnet, Mark. *The Constitution of the United States of America: A Contextual Analysis*. Hart Publishing, 2009

³¹ Hoque, Ridwanul. *Judicial Activism in Bangladesh: A Golden Mean Approach*. Cambridge Scholars Publishing, 2011

³² Islam, M. Rafiqul. *Constitutional Law of Bangladesh*. Mullick Brothers, 2002

³³ Hossain, Kamal. *Bangladesh: Quest for Freedom and Justice*. University Press Limited, 2013

³⁴ Article 102, *The Constitution of the People's Republic of Bangladesh*

actions for constitutionality³⁵. This court structure ensures that the judiciary can act as a check on legislative and executive powers, safeguarding the constitution and protecting individual rights.

Similarly, the US Supreme Court, composed of nine justices, holds the power of judicial review, a principle established in the landmark case *Marbury v. Madison* (1803)³⁶. This power allows the court to invalidate laws and executive actions that violate the constitution. The US Supreme Court's decisions often address issues related to federalism and the balance of power between state and federal authorities. Both courts play a critical role in upholding constitutional governance and protecting civil liberties, though they operate within different legal and political contexts. Despite these contextual differences, both courts share similarities in their foundational roles. They act as final arbiters in their respective legal systems, ensuring that all branches of government adhere to constitutional principles. Their decisions have far-reaching implications for the interpretation of laws, the protection of human rights, and the balance of power within their governments.

Impact of globalization in constitutional framework

Globalization has significantly influenced the constitutional frameworks of both Bangladesh and the USA, though in distinct ways. The Bangladeshi Constitution reflects global human rights principles and international norms through its extensive list of fundamental rights, which include equality before the law, freedom of speech, and protection from discrimination³⁷. These principles align with international human rights conventions such as the Universal

Declaration of Human Rights. The Constitution also integrates global economic and social policies to address the challenges of a rapidly globalizing world.

In contrast, the US Constitution, while originally crafted in a more isolated context, has been progressively interpreted in light of international norms and practices, especially through the influence of the judiciary. The Supreme Court of the United States has occasionally referenced international law and treaties in its decisions, particularly in cases involving human rights and international trade³⁸. Moreover, globalization has impacted the US legal system through the incorporation of international treaties and agreements ratified by the Senate, influencing domestic laws and policies.

Constitutional challenges

Both constitutions face distinct challenges. In the US, ongoing debates over federal versus state power, judicial activism, and interpretations of the Second Amendment and privacy rights continue to provoke legal and political discourse³⁹. The US faces the challenge of balancing historical constitutional principles with contemporary societal needs⁴⁰. Bangladesh grapples with issues such as the balance of power between the executive and judiciary, political instability, and ensuring secularism in a predominantly Muslim country. The country faces the challenge of maintaining democratic principles amidst political turbulence and socio-economic disparities. These challenges underscore the dynamic

³⁵ *Marbury v. Madison*, 1803

³⁶ Part III, The Constitution of the People's Republic of Bangladesh

³⁷ Henkin, Louis. *Foreign Affairs and the United States Constitution*. Oxford University Press, 1996.

³⁸ Hoque, Ridwanul. *Judicial Activism in Bangladesh: A Golden Mean Approach*. Cambridge Scholars Publishing, 2011

³⁹ Tushnet, Mark. *The Constitution of the United States of America: A Contextual Analysis*. Hart Publishing, 2009

⁴⁰ Hossain, Kamal. *Bangladesh: Quest for Freedom and Justice*. University Press Limited, 2013

and evolving nature of constitutional governance in both countries⁴¹.

Conclusion

The constitutions of Bangladesh and the United States of America exhibit notable resemblances and distinctions that can be attributed to their distinct historical, cultural, and political backgrounds. Although they both work to protect human rights and democratic ideals, they take somewhat different stances on judicial review, federalism, governance, and amendment procedures. Comprehending these distinctions enhances the conversation regarding constitutional architecture and its influence on democratic governance worldwide. This research advances our understanding of how constitutional frameworks change and reflect the particular requirements and histories of the societies in which they are enacted.

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⁴¹ Bernstein, Richard B. *The Founding Fathers Reconsidered*. Oxford University Press, 2009.