

1. What is the constitution? Write down the classification of the constitution.

A constitution is a set of fundamental principles or established precedents according to which a state or other organization is governed. It provides the framework for government functions, outlines the rights and duties of the citizens, and determines the powers and limitations of various branches of government. In Bangladesh, the **Constitution of the People's Republic of Bangladesh** is the supreme law of the country, as stated in **Article 7(2)**, which declares that any other law inconsistent with the Constitution will be void.

Classification of Constitutions

Constitutions can be classified into various categories based on different characteristics:

1. Written vs. Unwritten:

- **Written Constitution:** A formal, codified document outlining the laws, rules, and principles that form the structure and function of the government (e.g., Bangladesh, the USA).
- **Unwritten Constitution:** Composed of customs, judicial decisions, and statutes, not compiled into a single, formal document (e.g., the United Kingdom).

2. Flexible vs. Rigid:

- **Flexible Constitution:** Can be amended or changed by ordinary legislative processes, without requiring a special procedure (e.g., the UK).
- **Rigid Constitution:** Requires a special procedure for amendments, which is often more complex than ordinary lawmaking (e.g., Bangladesh, USA).

3. Unitary vs. Federal:

- **Unitary Constitution:** Centralizes power in a single central government, with local authorities having limited autonomy (e.g., Bangladesh, France).
- **Federal Constitution:** Divides power between a central authority and various regional governments, with both levels having specified powers (e.g., USA, India).

4. Presidential vs. Parliamentary:

- **Presidential Constitution:** Features a clear separation between the executive (president) and the legislature, with the president acting as both head of state and government (e.g., USA).
- **Parliamentary Constitution:** The executive is accountable to the legislature, and the head of state (monarch or president) is different from the head of government (prime minister) (e.g., Bangladesh, UK).

5. Monarchical vs. Republican

- **Monarchical Constitution:** Recognizes a monarchy (king or queen) as the head of state. Example: The U.K. Constitution.

- **Republican Constitution:** Has no monarchy, and the head of state is elected, usually a president. Example: The U.S. Constitution.

6. Supremacy vs. Subordinate

- **Supreme Constitution:** The highest law of the land, and all other laws must conform to it. Example: The U.S. and Indian Constitutions.
- **Subordinate Constitution:** Exists under another overarching authority, such as a federal state operating under a larger federation's constitution. Example: State constitutions in the U.S. or provincial constitutions in Canada.

This classification helps distinguish the form, structure, and adaptability of constitutions across different nations.

Discuss the salient features of the constitution.

The **Constitution of Bangladesh**, like many constitutions worldwide, has several **salient features** that define its nature and scope. These features reflect the foundational principles of governance, human rights, and law in the country. Below are the key salient features of the Constitution of Bangladesh:

1. Written Constitution

- Bangladesh has a written constitution that was adopted on **November 4, 1972**. It is a formal, codified document that outlines the legal framework, government structure, and citizens' rights. This is in contrast to unwritten constitutions like the UK, where laws and customs are not compiled into a single document.

2. Supremacy of the Constitution

- The Constitution is the **supreme law of the land**, as articulated in **Article 7**. Any law inconsistent with the Constitution is declared void. No individual or institution is above the Constitution, and it acts as the ultimate legal authority.

3. Unitary and Sovereign State

- Bangladesh is a **unitary state**, meaning all powers are concentrated in the central government. Unlike federal systems, such as the USA, there are no states or provinces

with autonomous powers. Bangladesh is also a **sovereign republic**, as mentioned in **Article 1** of the Constitution.

4. Parliamentary Form of Government

- Bangladesh follows a **parliamentary system**, where the **Prime Minister** is the head of government and holds the executive powers. The President is the ceremonial head of state, with limited executive powers. This form of governance is influenced by the Westminster model.

5. Fundamental Rights

- The Constitution guarantees a wide range of **fundamental rights** to the citizens, which are enforceable by the courts. These rights are outlined in **Part III** of the Constitution, covering rights such as equality before the law (**Article 27**), freedom of speech (**Article 39**), and protection of life and personal liberty (**Article 32**).

6. Directive Principles of State Policy

- The Constitution outlines **Directive Principles of State Policy** in **Part II**, which serve as guidelines for the government to promote social and economic welfare. These principles are not enforceable by courts but aim to establish a just and equitable society. For example, **Article 10** calls for a socialist economic system aimed at eliminating exploitation.

7. Secularism

- Secularism is a fundamental principle of the Constitution. It ensures equal treatment of all religions and prohibits the state from granting political status to any religion. **Article 12** emphasizes the elimination of communalism, ensuring the freedom of religion for all citizens.

8. Socialism

- The Constitution incorporates **socialist** ideals. **Article 10** mandates the establishment of a socialist economic system aimed at eradicating exploitation and ensuring equitable distribution of wealth and resources.

9. Democracy

- Bangladesh follows a **democratic** system of governance, where sovereignty rests with the people. Elected representatives exercise the powers of the state. **Article 11** highlights the importance of democracy, guaranteeing fundamental human rights and ensuring political freedom through elections.

10. Separation of Powers

- The Constitution establishes the principle of **separation of powers** among the three branches of government: **legislative, executive, and judiciary**. Each branch operates independently to prevent the abuse of power and ensure checks and balances.

11. Independent Judiciary

- The Constitution ensures an **independent judiciary** to protect citizens' rights and uphold the rule of law. **Article 22** calls for the separation of the judiciary from the executive. Courts have the authority to review laws and executive actions to ensure they comply with the Constitution.

12. Rigid Constitution

- The Constitution can be amended to reflect changes in the political and social landscape of the country. **Article 142** outlines the procedure for constitutional amendments, which require a two-thirds majority vote in the Parliament.

13. Emergency Provisions

- The Constitution provides provisions for **emergency situations**. During a state of emergency, certain fundamental rights may be suspended. The procedure for declaring an emergency and the powers of the executive during such periods are outlined in **Articles 141A to 141C**

Q. How was the constitution before amended?

Before any **amendments** are made, the Constitution of Bangladesh must follow a formal procedure outlined in **Article 142**. The process for amending the Constitution includes the following steps:

1. Proposal for Amendment

- An amendment to the Constitution can be initiated by introducing a **Bill** in **Parliament**. This bill must be proposed by a member of Parliament.

2. Approval by Parliament

- To pass the amendment, the **Bill** must be approved by at least a **two-thirds majority** of all members of Parliament. This requirement ensures that constitutional amendments reflect a broad consensus rather than a simple majority.

3. Presidential Assent

- Once the Bill is passed by Parliament, it is presented to the **President** of Bangladesh for assent. The President must either approve the Bill or return it for reconsideration with suggested amendments.
- If the President does not approve the Bill within **fifteen days**, the Bill is deemed to have been assented to by the President.

4. Publication and Implementation

- After receiving the President's assent, the Bill becomes an **Act of Parliament** and is incorporated into the Constitution. It is then published and becomes effective law.

Limitations on Amendments:

- **Article 7B** was added through the **Fifteenth Amendment** to the Constitution, which specifically prohibits amendments to certain fundamental parts of the Constitution, including the **Preamble**, **Part I (Republic)**, **Part II (Fundamental Principles of State Policy)**, and **Part III (Fundamental Rights)**. These provisions form the basic structure of the Constitution and cannot be amended or repealed.

In conclusion, amending the Constitution of Bangladesh is a rigorous process that requires broad legislative approval and adherence to constitutional principles to protect the integrity of the nation's foundational document.

2. Define the Fundamental principle of state policy. What is meant by the Fundamental principle of state policy?

The **Fundamental Principles of State Policy** refer to a set of guidelines and goals that serve as the foundation for the governance and administration of a country. These principles outline the socio-economic objectives that the state aims to achieve, guiding the making of laws, the formulation of policies, and the overall governance of the state. While these principles are essential to the governance of the country, they are not legally enforceable in court.

In the **Constitution of Bangladesh**, the **Fundamental Principles of State Policy** are laid out in **Part II** (Articles 8 to 25) and represent the core values that the state is committed to promoting. These principles provide a framework for the government's responsibilities towards its citizens and focus on ensuring social justice, equality, and overall development.

What is Meant by Fundamental Principles of State Policy?

The **Fundamental Principles of State Policy** serve as guidelines for the state's actions and decisions in Bangladesh. They reflect the long-term objectives that the state seeks to fulfill, and they are meant to:

1. **Guide Law-Making and Governance:**
 - These principles direct the government in creating laws and policies aimed at promoting the well-being of citizens and ensuring a just society.
2. **Set Social and Economic Goals:**
 - They include goals related to social justice, economic welfare, and political freedom. For example, ensuring equitable distribution of wealth, eliminating inequality, promoting rural development, and establishing a socialist economic system are emphasized.
3. **Not Judicially Enforceable:**
 - Although these principles are fundamental to the functioning of the state, they are not **judicially enforceable**. This means that citizens cannot take legal action against the government for failing to implement these principles. They act as a moral obligation rather than legal commands.
4. **Basis for Interpretation of Laws:**
 - Courts can use the Fundamental Principles to interpret the Constitution and other laws. They provide a philosophical framework that can influence judicial decisions even though they cannot be enforced by law.

Key Fundamental Principles in the Constitution of Bangladesh

Some of the most important **Fundamental Principles of State Policy** in the Constitution of Bangladesh include:

1. **Nationalism:**
 - The Constitution promotes the unity and solidarity of the Bangladeshi nation, based on shared language, culture, and history (**Article 9**).
2. **Socialism and Freedom from Exploitation:**
 - Bangladesh aims to establish a **socialist economic system** to ensure a just and egalitarian society free from exploitation (**Article 10**).
3. **Democracy and Human Rights:**
 - The state is committed to being a **democratic republic**, where human rights, dignity, and freedom are guaranteed to all citizens (**Article 11**).
4. **Secularism:**
 - The Constitution emphasizes **secularism**, ensuring that the state does not grant political favoritism to any religion and actively eliminates communalism and discrimination based on religion (**Article 12**).
5. **Rural Development and Agricultural Revolution:**

- The state is tasked with adopting effective measures to promote rural development and bring about an **agricultural revolution**, reducing the disparity between urban and rural living standards (**Article 16**).
- 6. **Provision of Basic Necessities:**
 - It is a fundamental responsibility of the state to provide citizens with the **basic necessities** of life, including food, clothing, shelter, education, and medical care (**Article 15**).
- 7. **Equality of Opportunity:**
 - The state must ensure **equality of opportunity** for all citizens in social, economic, and political spheres (**Article 19**).

Conclusion:

The **Fundamental Principles of State Policy** represent the core ideological framework of the **Constitution of Bangladesh**, outlining the state's commitment to building a just, equitable, and progressive society. While these principles are not enforceable in court, they play a vital role in shaping the policies and laws of the country, guiding the state towards achieving its constitutional goals.

Why Social, Economic, and Cultural Rights are in Chapter II (Fundamental Principles) and Not in Part III (Fundamental Rights):

Social, Economic, and Cultural Rights are placed in **Chapter II (Fundamental Principles of State Policy)** and not in **Part III (Fundamental Rights)** because these rights are **non-justiciable**, meaning they cannot be enforced through courts. They serve as **guiding principles** for the state to follow in policy-making and governance. In contrast, **Part III rights** are **justiciable** and can be legally enforced by individuals through the courts.

1. **Directive in Nature:** Social, economic, and cultural rights are **aspirational** and act as **guidelines** for state policy, aiming for long-term goals like education and healthcare. These rights depend on available resources, so they cannot be guaranteed immediately.
2. **Non-Enforceability:** **Chapter II** rights are **not enforceable in court**. They guide the government, but citizens cannot legally demand them.
3. **Part III Rights: Fundamental Rights** in **Part III** are **immediate and justiciable**. These include rights like equality and freedom of speech, which can be enforced in court, and the state must uphold them immediately.

Difference Between Fundamental Principles and Fundamental Rights:

Aspect	Fundamental Principles	Fundamental Rights
Location	Part II (Articles 8-25)	Part III (Articles 26-47)
Nature	Aspirational guidelines	Enforceable rights
Judicial Enforceability	Not enforceable in court	Legally enforceable
Examples	Social justice, rural development	Right to equality, freedom of speech
Purpose	Guides the state's policy	Protects individual rights from state infringement

Conclusion: **Fundamental Principles** guide the state's long-term goals and are not enforceable, while **Fundamental Rights** provide immediate legal protections that citizens can claim in court.

3. Write down the rights of the arrested person. Distinguish between Preventive and punitive detention according to constitution. Merits and Demerits of preventive detention.

Rights of an Arrested Person in Bangladesh (Under the Constitution):

The **Constitution of Bangladesh** guarantees several rights to a person who has been arrested. These rights ensure the protection of individual liberty and provide legal safeguards. The relevant provisions are found in **Article 32-33**.

1. **Right to Know the Grounds of Arrest:**
 - The arrested person must be **informed of the reasons for their arrest** as soon as possible.
2. **Right to Legal Representation:**
 - The arrested person has the right to **consult and be defended by a legal practitioner of their choice**.
3. **Right to be Produced Before a Magistrate:**
 - The arrested person must be **produced before the nearest magistrate** within **24 hours** of arrest, excluding the time necessary for the journey from the place of arrest to the court.
4. **Protection Against Arbitrary Detention:**
 - No one can be held in custody **beyond 24 hours** without the authorization of a magistrate, ensuring protection against unlawful detention.
5. **Exemptions for Enemy Aliens and Preventive Detention:**
 - These rights do not apply to **enemy aliens** or those arrested under laws related to **preventive detention**.

Distinction Between Preventive Detention and Punitive Detention:

Aspect	Preventive Detention	Punitive Detention
Purpose	To prevent future crimes	To punish for a crime already committed
Timing	Before the commission of any offense	After conviction through a trial
Nature	Detention is preventive, based on suspicion	Detention is punitive, imposed after conviction

Legal Process	No formal trial, based on suspicion	Follows a formal trial and conviction
Duration	Up to 6 months without judicial review	Determined by court sentence
Legal Basis	Article 33(3)–(4) of the Constitution (Preventive Detention Laws)	Article 32 of the Constitution (Right to life and personal liberty)
Example	Detaining a person suspected of terrorism	Imprisonment after conviction for theft or murder

Misuse of power in case of preventive detention- explain

Preventive detention involves detaining a person without trial, based on the anticipation that they might engage in activities harmful to public order or national security. While intended as a protective measure, it is often **misused** due to its broad and discretionary nature. Here's how misuse can occur:

1. Political Suppression

- Governments may use preventive detention **to silence political opponents**, activists, or dissenters under the pretext of maintaining public order. This allows them to curb opposition without due process or a fair trial.

2. Lack of Accountability

- Since preventive detention is **usually executed without a formal trial**, there is limited oversight. Authorities can misuse this power to detain individuals indefinitely without presenting evidence, creating an environment of abuse.

3. Violation of Fundamental Rights

- Preventive detention undermines **personal liberty** and **freedom of expression**, which are fundamental rights. Prolonged detention without trial can lead to mental, emotional, and physical harm, infringing on human dignity.

4. Targeting Minority Groups

- It is often used disproportionately against minority groups or marginalized communities, leading to social injustice and discrimination.

5. Arbitrary Use of Power

- The broad and vague definitions of "**threat to public order**" or "**national security**" allow authorities to interpret the law arbitrarily, leading to detention based on suspicion rather than concrete evidence.

6. Judicial Review Limitations

- In some cases, the scope of judicial review is limited in matters of preventive detention, making it difficult to challenge such detentions, further enabling misuse.

In summary, the misuse of preventive detention arises from its **arbitrary application**, **lack of oversight**, and potential for **political and social oppression**, making it a tool for curbing dissent rather than ensuring genuine public safety.

4. Definition writ? The term writ is found in 104 but actually discussed in 102 - Explain. Distinguish between writ and public interest litigation.

Definition of Writ:

A **writ** is a formal written order issued by a court that directs a person or entity to perform or refrain from performing a specific act. It is a tool used to enforce rights or prevent violations of the law. In Bangladesh, writs are an essential part of the judiciary's authority to ensure justice and the protection of fundamental rights. The High Court Division of the Supreme Court of Bangladesh has the power to issue writs under **Article 102** of the **Constitution**.

Article 104 vs. Article 102:

- **Article 104:** This article gives the **Appellate Division** of the Supreme Court the power to issue any necessary orders or directives in the interest of complete justice, but it **does not explicitly mention writs**. Instead, it focuses on the Supreme Court's broad powers to ensure justice.
- **Article 102:** This is the **actual provision** that discusses the **jurisdiction of the High Court Division** to issue **writs**. It empowers the High Court to issue writs to ensure the enforcement of **Fundamental Rights**, or to review the legality of actions by public officials or authorities. **Article 102(1)** provides remedies for unlawful detention, and **Article 102(2)** enables the High Court to issue writs for any action or inaction that goes beyond or abuses public authority.

Thus, while **Article 104** discusses general judicial powers, the authority to issue writs is specifically detailed under **Article 102**.

Types of Writs in Bangladesh (Article 102):

1. **Habeas Corpus:** A writ to ensure a person is not detained unlawfully.
 2. **Mandamus:** A writ directing a public official or authority to perform their duty.
 3. **Prohibition:** A writ preventing a lower court or authority from exceeding its jurisdiction.
 4. **Certiorari:** A writ to quash illegal actions or decisions made by lower courts or authorities.
 5. **Quo Warranto:** A writ challenging the legality of a person holding a public office.
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Distinction Between Writ and Public Interest Litigation (PIL):

Aspect	Writ	Public Interest Litigation (PIL)
Purpose	To seek justice for a violation of individual or specific rights	To address issues affecting the public or disadvantaged groups
Who Can File	Typically filed by a person directly affected	Can be filed by any public-spirited individual or organization on behalf of others
Scope	Focused on individual rights or specific legal issues	Focuses on broader public interest and social justice
Legal Basis	Rooted in Article 102 , specific to writ jurisdiction	A form of writ , but broader, aimed at protecting collective rights
Example	An individual filing a writ of Habeas Corpus for wrongful detention	Filing PIL for environmental protection , human rights violations, or access to education

Writ:

- Writs are typically used to address specific legal wrongs affecting individuals, such as unlawful detention or failure of a public official to perform a duty.
- **Example:** A person files a writ of **Mandamus** to compel a government officer to issue a license.

Public Interest Litigation (PIL):

- **PIL** allows any citizen or organization to approach the court for issues concerning the **public at large**, especially for marginalized or disadvantaged groups. PIL is a form of writ petition but focuses on cases that impact the public interest.
 - **Example:** A PIL can be filed to improve prison conditions or protect the environment for public welfare.
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Conclusion:

Writs are legal remedies aimed at protecting specific rights, while **Public Interest Litigation** (PIL) is broader, allowing courts to address issues that affect the public or disadvantaged sections of society. Although PIL falls under writ jurisdiction, its scope extends beyond individual grievances, focusing on public welfare and social justice.

5. Who can be the president of Bangladesh? Why & how a president is impeached or removed? Write down the Immunity of Bangladesh president.

Who Can Be the President of Bangladesh?

According to **Article 48(4)** of the **Constitution of Bangladesh**, the following are the qualifications for becoming the President:

1. **Age Requirement:** The person must be at least **35 years old**.
2. **Qualification for Parliament:** The individual must be **qualified to be elected** as a member of Parliament.
3. **Not Removed Previously:** The person must not have been previously **removed from the office of President** through impeachment.

The President of Bangladesh is elected by the **members of Parliament** for a term of **five years**.

Impeachment and Removal of the President

1. Impeachment Process:

- **Grounds for Impeachment:** A President can be impeached on the charge of violating the Constitution or committing **grave misconduct**.
- **Initiation:** A motion for impeachment must be signed by a **majority** of the total number of members of Parliament and submitted to the **Speaker**.
- **Timeframe:** The motion for impeachment must be debated between **14 and 30 days** after it is submitted.
- **Investigation:** Parliament can refer the conduct of the President to any court or body for an investigation.
- **Right to Defend:** The President has the right to **appear** and be **represented** during the proceedings.
- **Resolution and Voting:** If **two-thirds of the total members** of Parliament vote in favor of the resolution, the President must **vacate** the office from the day the resolution is passed (**Article 52**).

2. Removal for Incapacity:

- **Grounds:** The President can also be removed on the grounds of **physical or mental incapacity**.
- **Process:** A motion signed by the majority of Parliament's members must be submitted to the **Speaker**, and a **medical board** is constituted to examine the President's condition.
- **Voting:** If two-thirds of Parliament votes for the President's removal after the medical board's report, the President must vacate office (**Article 53**).

Immunity of the President of Bangladesh

The **President of Bangladesh** enjoys certain immunities under **Article 51** of the Constitution, which provides the following protections:

1. **Immunity from Legal Proceedings:**
 - The President is **not answerable in any court** for anything done or omitted to be done in the exercise or purported exercise of the functions of the office.
2. **Protection from Criminal Proceedings:**
 - During their term in office, **no criminal proceedings** can be instituted or continued against the President.
3. **Immunity from Arrest:**
 - The President cannot be **arrested or imprisoned** during their term in office. No legal process for arrest or imprisonment can be issued against the President while they hold office.

This immunity is designed to allow the President to perform their constitutional duties without the threat of legal challenges or harassment.

Summary:

- **Eligibility:** The President must be at least **35 years old**, qualified to be a member of Parliament, and not previously removed from office.
- **Impeachment:** The President can be impeached for violating the Constitution or grave misconduct, with a **two-thirds majority** in Parliament required for removal.
- **Immunity:** The President enjoys immunity from **legal and criminal proceedings** and cannot be arrested or sued while in office.

These provisions help ensure both the accountability and protection of the President in their role as the Head of State.

6. How to form parliament? What is the qualification of a Member of Parliament according to the constitution? (article 70, 66) When is the seat of Member of Parliament vacant? How is the speaker impeached?

1. Formation of Parliament in Bangladesh:

The **Parliament** of Bangladesh, known as the **Jatiya Sangsad**, is a **unicameral** legislative body formed through **direct elections**. According to **Article 65** of the Constitution, the Parliament consists of **300 members**, elected from single-member constituencies through a **first-past-the-post** system. Additionally, **50 reserved seats** for women members are filled by proportional representation from political parties. Members of Parliament (MPs) serve a term of **5 years**.

Key Points on Parliament Formation:

- **Total Seats:** 300 directly elected members + 50 reserved seats for women.
- **Election:** Members are elected by **direct popular vote**.
- **Term:** Parliament's term is **5 years** from its first session unless dissolved sooner.

2. Qualifications for a Member of Parliament (Article 66):

According to **Article 66** of the Constitution, the qualifications to be a Member of Parliament (MP) are:

1. **Citizenship:** The person must be a **citizen of Bangladesh**.
2. **Age:** The person must be at least **25 years old**.
3. **Competence:** The person must not be declared by a competent court as **unsound of mind**.
4. **Undischarged Insolvent:** The person must not be an **undischarged insolvent** (unable to repay debts).
5. **Criminal Convictions:** The person must not have been convicted of an offense involving **moral turpitude** and sentenced to at least **two years** in prison unless **five years** have passed since release.
6. **Loyalty:** The person must not have acquired or acknowledged allegiance to a **foreign state**.

Additionally, **Article 66(2A)** permits persons holding **dual citizenship** (if they renounce their foreign citizenship) to be qualified for election.

3. Article 70: Restrictions on Members of Parliament

Article 70 of the Constitution imposes restrictions on the **freedom** of MPs, specifically in matters related to voting and changing political parties:

1. **Defection:** If an MP elected from a political party:
 - **Resigns from the party**, or
 - **Votes against** the party in Parliament,
 - The MP must **vacate** their seat. This ensures party discipline and prevents MPs from crossing the floor or switching parties without consequences.
 2. **Vacancy:** The seat will automatically become vacant if the MP defies the party's directive and votes against it or resigns from the party.
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4. When is the Seat of a Member of Parliament Vacant? (Article 67)

The **seat of a Member of Parliament (MP)** becomes vacant under the following circumstances:

1. **Failure to Take Oath:** If an MP fails to **take the oath** within **90 days** from the first session of Parliament after their election.
2. **Absence Without Leave:** If an MP is absent from Parliament for **90 consecutive days** without the **permission of Parliament**.
3. **Resignation:** If the MP **resigns** in writing to the Speaker.
4. **Disqualification:** If the MP becomes **disqualified** under **Article 66** (e.g., mental incapacity, insolvency, criminal conviction, dual citizenship).
5. **Article 70:** If an MP resigns from or votes against the party that nominated them.

6. **Dissolution of Parliament:** Automatically, upon the **dissolution** of Parliament at the end of its term.
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5. Impeachment of the Speaker (Article 74):

The **Speaker of Parliament** can be impeached or removed under the following conditions:

1. **Resolution for Removal:**
 - A **resolution** for the Speaker's removal must be supported by the **majority** of all members of Parliament.
 - The resolution must be introduced with a **14-day notice** of the intent to move the resolution.
 2. **Debate:**
 - During the debate on the resolution, the Speaker is **not allowed** to preside over the session. The **Deputy Speaker** or another designated member presides.
 3. **Right to Speak:**
 - The Speaker has the right to **speak** and defend themselves in the debate and may also **vote** as a member of Parliament.
 4. **Vacancy:**
 - Once the resolution is passed by a **majority vote** of the total members, the Speaker is **removed from office**, and the position becomes **vacant**.
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7. Jurisdiction and power of the Supreme Court. (High court division and appellate division both)

Jurisdiction and Powers of the Supreme Court of Bangladesh

The **Supreme Court of Bangladesh** is the highest judicial body in the country, established under **Part VI** of the **Constitution**. It has two divisions:

1. **High Court Division**
2. **Appellate Division**

Each division has distinct powers and jurisdictions as outlined in the **Constitution of Bangladesh** and various legal provisions.

1. Jurisdiction and Powers of the High Court Division:

The **High Court Division** primarily exercises original, appellate, and revisional jurisdiction. Its powers are defined in **Articles 101 to 110** of the Constitution.

Key Jurisdictions of the High Court Division:

1. Original Jurisdiction:

- The High Court Division has the power to hear cases **originally filed** in this division, especially **writ petitions**. These petitions ensure the enforcement of **fundamental rights** and can challenge actions by public authorities under **Article 102** of the Constitution.
- Types of writs the High Court can issue include **Habeas Corpus**, **Mandamus**, **Certiorari**, **Prohibition**, and **Quo Warranto**.

2. Appellate Jurisdiction:

- The High Court Division hears **appeals** against judgments, decrees, and orders from **lower courts**. It can review both **civil** and **criminal cases** decided by subordinate courts, such as district courts and tribunals.

3. Revisional Jurisdiction:

- The High Court Division has the power to **revise** decisions made by lower courts. It can correct any significant legal errors in the judgments of subordinate courts.

4. Supervisory Jurisdiction:

- Under **Article 109**, the High Court Division exercises **supervisory authority** over all subordinate courts and tribunals within Bangladesh. It can inspect and direct lower courts to ensure the proper administration of justice.

5. Advisory Jurisdiction:

- The President of Bangladesh can seek advice from the High Court Division on **any legal question** under **Article 106**. However, this jurisdiction is consultative, and the opinion is not binding.

6. Jurisdiction in Constitutional Matters:

- The High Court Division plays a critical role in **interpreting the Constitution** and has the power to declare any law **unconstitutional** if it is inconsistent with the Constitution.

Example of High Court's Power:

- The High Court Division can issue a **writ of Habeas Corpus** to secure the release of a person unlawfully detained or issue a **writ of Mandamus** to compel a government official to perform a lawful duty.

2. Jurisdiction and Powers of the Appellate Division:

The **Appellate Division** is the highest appellate body in Bangladesh and mainly exercises appellate jurisdiction. Its powers are defined in **Articles 103 to 106** of the Constitution.

Key Jurisdictions of the Appellate Division:

1. **Appellate Jurisdiction:**

- The Appellate Division hears **appeals** from judgments, decrees, or orders of the **High Court Division**. This includes both **civil** and **criminal cases**. The Appellate Division's decisions are final and binding.
- Appeals may be made as of right (in certain cases) or with the **leave of the court** (in other cases), such as constitutional interpretation or where a substantial question of law is involved.

2. **Special Jurisdiction:**

- The Appellate Division can also hear appeals in **special cases**, such as **constitutional challenges** and cases where fundamental rights have been violated.

3. **Review of its Own Judgments:**

- Under **Article 105**, the Appellate Division has the power to **review its own judgments** or orders. This is a rare power and is usually exercised only in exceptional circumstances when an error is apparent on the face of the record.

4. **Enforcement of Decisions:**

- The Appellate Division has the authority to **enforce its decisions** and can issue directions to any person or authority to ensure compliance with its judgments.

5. **Contempt of Court Powers:**

- The Appellate Division can punish individuals or entities for **contempt of court** if they disobey or disrespect the court's orders or obstruct the administration of justice.

Distinction Between High Court Division and Appellate Division:

Aspect	High Court Division	Appellate Division
Jurisdiction	Original, appellate, and revisional jurisdiction over civil, criminal, and constitutional matters	Appellate jurisdiction over decisions of the High Court
Writ Jurisdiction	Can issue writs (Habeas Corpus, Mandamus, etc.)	No writ jurisdiction
Appeals	Hears appeals from lower courts	Hears appeals from the High Court Division

Review Powers	Can review decisions of lower courts	Can review its own judgments under exceptional circumstances
Supervision	Supervises and controls subordinate courts (Article 109)	No supervisory control over other courts

8. Write down the definition of constitutional supremacy and parliamentary supremacy. Distinguish between them. What types of supremacy prevails in Bangladesh. Discuss in details.

Definition of Constitutional Supremacy:

Constitutional Supremacy refers to the principle that the **Constitution is the supreme law** of the land, and all laws, government actions, and institutions must conform to it. Any law or act that is inconsistent with the Constitution is considered **invalid** or **void** to the extent of its inconsistency. Under this system, the judiciary, especially the Supreme Court, has the power to interpret the Constitution and strike down unconstitutional laws or executive actions.

In Bangladesh, **Article 7(2)** of the Constitution clearly establishes constitutional supremacy by stating that:

- "This Constitution is, as the solemn expression of the will of the people, the supreme law of the Republic, and if any other law is inconsistent with this Constitution that other law shall, to the extent of the inconsistency, be void."
-

Definition of Parliamentary Supremacy:

Parliamentary Supremacy (or Parliamentary Sovereignty) means that the **Parliament** is the supreme law-making body, and it has **unlimited** power to make, amend, or repeal any law. Under this system, no court can declare a law passed by Parliament to be unconstitutional, and Parliament is not bound by any constitutional limitations.

In a system with parliamentary supremacy (like the **United Kingdom**), the Parliament has the final say on all legal matters, and its laws cannot be challenged in court for being unconstitutional.

Distinction Between Constitutional Supremacy and Parliamentary Supremacy:

Aspect	Constitutional Supremacy	Parliamentary Supremacy
Source of Law	The Constitution is the highest law of the land.	The Parliament is the highest law-making body.
Judicial Review	Courts, especially the Supreme Court, have the power to review and strike down laws that are inconsistent with the Constitution.	Courts cannot invalidate laws passed by Parliament, regardless of their content.
Limitations on Legislature	The legislature is bound by the Constitution and cannot pass laws that conflict with it.	The legislature has unlimited power and can make or repeal any law without constraints.
Constitutional Amendments	Amendments must follow a specific process and may be limited by certain provisions, especially those protecting fundamental rights.	Parliament can amend or change any law, including fundamental laws, without restrictions.
Role of the Constitution	The Constitution acts as a higher law that limits Parliament and government actions.	The Constitution, if present, can be altered by Parliament without limitation.
Examples	Bangladesh, USA, India (Constitution is supreme)	United Kingdom (Parliament is supreme)

Supremacy in Bangladesh: Constitutional Supremacy

In Bangladesh, **constitutional supremacy** prevails, meaning that the **Constitution is the highest law** of the land, and all other laws must conform to it. This is evident from **Article 7(2)** of the Constitution, which explicitly declares the Constitution as the supreme law and invalidates any law that is inconsistent with it.

Key Aspects of Constitutional Supremacy in Bangladesh:

- Judicial Review:**
 - The **Supreme Court** of Bangladesh, particularly the **High Court Division**, has the power to review and strike down any law or government action that violates the Constitution. This power is enshrined in **Article 102**, which allows the court to

issue writs to enforce fundamental rights and examine the legality of actions taken by public authorities.

2. **Fundamental Rights Protection:**

- The Constitution guarantees **Fundamental Rights** under **Part III**, which are enforceable by courts. If any law or executive action infringes upon these rights, the court can declare it unconstitutional.

3. **Amendment Process:**

- Although **Parliament** has the power to amend the Constitution under **Article 142**, this power is limited by certain provisions, particularly those protecting the **basic structure** of the Constitution. For example, the **Preamble**, **Part I** (Republic), **Part II** (Fundamental Principles of State Policy), and **Part III** (Fundamental Rights) are protected under **Article 7B** and cannot be amended or repealed.

4. **Basic Structure Doctrine:**

- The Constitution of Bangladesh follows the **basic structure doctrine**, meaning that certain core elements of the Constitution cannot be altered even through the amendment process. This ensures that the fundamental principles and rights enshrined in the Constitution are preserved and protected from legislative overreach.

Example of Constitutional Supremacy in Action:

In cases where laws passed by the Parliament have been found to violate fundamental rights or other constitutional provisions, the courts in Bangladesh have exercised their power to declare such laws **void**. For instance, in the **8th Amendment Case**, the Supreme Court struck down a constitutional amendment that sought to establish permanent benches of the High Court Division outside Dhaka, ruling that it violated the constitutional scheme.

9. Write down the provision of emergency in the course of BD. What are the objectives of proclamation of emergency? (141 a, b, c).

Provisions of Emergency in the Constitution of Bangladesh:

The **Constitution of Bangladesh** provides specific provisions for declaring a **state of emergency** under **Articles 141A, 141B, and 141C**. These articles empower the President to take extraordinary measures during times of crisis, such as internal disturbances or external threats. The purpose of declaring an emergency is to safeguard the nation and maintain law and order.

Article 141A: Proclamation of Emergency

1. When the President Can Proclaim Emergency:

- The **President of Bangladesh** can proclaim a state of emergency if:
 - The **security or economic life** of Bangladesh is threatened by **war, external aggression, or internal disturbance**.
- The President can issue the proclamation based on the **advice of the Prime Minister**.

2. Approval by Parliament:

- A proclamation of emergency must be **approved by Parliament** within **120 days** of its issuance.
- If Parliament is dissolved or not in session, the approval must occur within **30 days** of its first meeting after the proclamation.

3. Duration:

- The emergency remains in effect for as long as it is approved by Parliament but can be **revoked** by the President at any time.
-

Article 141B: Effects on Fundamental Rights

- During a state of emergency, the President may **suspend the enforcement of certain Fundamental Rights**. These rights are primarily related to **freedom of movement, freedom of assembly, freedom of speech, and other fundamental rights** that might hinder maintaining law and order.
 - The rights that can be suspended are mentioned under **Articles 36 to 40**, and **Article 42** of the Constitution.
 - However, some core rights, like the right to life and personal liberty under **Article 32**, cannot be suspended.
-

Article 141C: Preventive Detention During Emergency

1. Preventive Detention:

- During an emergency, the government can enact laws that allow for **preventive detention**, meaning individuals can be detained without trial to prevent them from acting in ways that could harm national security or public order.

2. Judicial Review Suspended:

- **Article 141C(2)** allows the President to suspend the right of individuals to move the **courts** for the enforcement of their rights under the Constitution while the state of emergency is in effect. This means that **judicial review** of government actions may be restricted during emergencies.
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Objectives of Proclamation of Emergency:

The primary objectives behind the proclamation of emergency are:

1. **National Security:**

- To protect the nation from **external aggression** or **war** by granting the government special powers to take swift actions that ensure national security and defense.

2. **Maintain Public Order:**

- To respond to **internal disturbances** such as civil unrest, uprisings, or large-scale threats that may endanger the stability of the state. The government can take necessary measures to **restore law and order**.

3. **Ensure Economic Stability:**

- To safeguard the **economic life of the country** when it is threatened by crises such as war, economic blockades, or internal disturbances that disrupt the economy. This allows the government to take necessary steps to stabilize the economic situation.
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10. What is floor crossing? Write the article in detail. (Article 70)
When floor crossing is done some right is violated. Discuss it.
Write the demerits of floor crossing.

What is Floor Crossing?

Floor crossing refers to a situation where a **Member of Parliament (MP)** votes against their party, abstains from voting when the party has issued a directive, or resigns from the party on whose ticket they were elected. Floor crossing typically occurs when MPs switch allegiance from the party they belong to and either vote with another party or become independent. In many parliamentary systems, floor crossing is viewed as **party defection** and is regulated or restricted by laws to maintain party discipline and stability in governance.

Article 70 of the Constitution of Bangladesh:

Article 70 of the **Constitution of Bangladesh** deals with **restrictions on MPs** concerning floor crossing. It aims to prevent defection from political parties and maintain party discipline. The key points of **Article 70** are:

1. **Resignation or Voting Against Party:**

- If a **Member of Parliament (MP)**, elected on the **nomination of a political party**, either:
 - **Resigns from the party**, or
 - **Votes against** that party in Parliament,
- **Their seats will become vacant.**

2. Vacancy of Seat:

- The MP **loses** their seat if they defy the party's position by:
 - Voting against the party in critical decisions such as no-confidence motions, budget approval, or any other matter instructed by the party.
 - Resigning from the party that nominated them for the election.

3. Exceptions:

- Article 70 makes it clear that an MP cannot vote against their party or resign without facing the consequence of losing their parliamentary seat, **except in circumstances** like dissolving the Parliament or the end of its term.

Purpose: The article seeks to prevent political instability by ensuring that MPs remain loyal to their parties, thus avoiding government instability due to party defections.

Rights Violated by Floor Crossing Restrictions:

When **Article 70** is enforced to prevent floor crossing, some individual rights of MPs might be affected, particularly:

1. **Freedom of Speech and Expression:**
 - **Article 39** of the Constitution guarantees freedom of speech, which includes the right to express opinions, even if they differ from the party line. By restricting an MP from voting independently, **Article 70** limits their **freedom of expression** in legislative decisions.
 2. **Right to Vote:**
 - MPs are elected representatives, and their role includes voting on issues according to their judgment and conscience. **Article 70** restricts their **right to vote freely** based on personal beliefs or constituency demands, as they are bound to follow the party's instructions.
 3. **Accountability to Constituents:**
 - MPs are expected to represent the interests of their **constituents**. By enforcing **party discipline** through Article 70, an MP may be forced to vote according to the party's directive, even if it goes against the interests of the people they represent. This reduces **direct accountability** to the voters.
-

Demerits of Floor Crossing Restrictions:

While **Article 70** helps to maintain political stability, it has several demerits:

1. **Lack of Independent Decision-Making:**
 - MPs are restricted from voting independently, even when they may disagree with their party's stance. This limits the **parliamentary independence** of MPs and reduces the **quality of debates** and **legislative scrutiny**.
2. **Weakening of Democratic Accountability:**
 - MPs may be forced to act in the interest of their **political party** rather than their **constituents**. Since MPs cannot vote against party lines without losing their seat, their **accountability to the electorate** is weakened.
3. **Suppression of Dissent Within Parties:**
 - Article 70 discourages **internal dissent** within political parties. MPs who disagree with their party's policies have little room for expressing opposition. This can stifle **healthy democratic debate** within parties and lead to autocratic party leadership.
4. **Lack of Representation of Constituents' Interests:**
 - MPs may sometimes have to choose between **party loyalty** and the **wishes of their constituents**. Since they risk losing their seat if they defy their party, MPs might prioritize the party over the needs of the people who elected them.
5. **Reduction in Checks and Balances:**
 - In a parliamentary democracy, MPs are expected to scrutinize the executive and hold it accountable. **Article 70** restricts MPs from performing this role effectively, as they must follow their party's instructions, even if it means supporting the government without proper scrutiny.
6. **Potential for Party Dominance:**
 - The restriction on floor crossing can lead to **centralized control** within political parties. Party leaders can enforce strict control over MPs, reducing their ability to express dissent or propose alternative solutions. This can lead to **autocratic party leadership**.

Extra Questions:

What is Preamble? Explain the importance of Preamble in BD constitution. Can the preamble be amended? Discuss in the lights of Judgements pronounced in different cases.

What is a Preamble?

The **Preamble** is an introductory statement in a constitution that outlines the fundamental values, objectives, and guiding principles upon which the constitution is based. It serves as a declaration of the nation's intent, expressing the aspirations and vision of the people for governance, justice, equality, and liberty.

In the **Constitution of Bangladesh**, the Preamble declares the sovereign power of the people and emphasizes values such as **nationalism**, **democracy**, **socialism**, and **secularism**. These four principles are recognized as the guiding ideology for the state.

Importance of the Preamble in the Constitution of Bangladesh:

1. **Expression of Sovereignty:**
 - The Preamble begins by recognizing that all **power and authority** in the Republic of Bangladesh belongs to the **people**. It underscores the concept of **popular sovereignty**.
 2. **Guiding Principles:**
 - It lays out the **four fundamental principles** of the state: **nationalism**, **socialism**, **democracy**, and **secularism**. These values guide the formulation of laws and policies in Bangladesh.
 3. **Source of Interpretation:**
 - The Preamble serves as a **guiding tool** for courts and lawmakers to interpret the provisions of the Constitution. It provides the foundational context for understanding various articles and rights, especially when ambiguities arise.
 4. **Vision of the State:**
 - The Preamble expresses the nation's commitment to **establish a just society**, uphold **fundamental human rights**, and ensure the **rule of law**, which forms the vision for governance and justice in Bangladesh.
 5. **Symbol of Aspirations:**
 - The Preamble reflects the **aspirations** of the people, particularly in securing political, economic, and social justice for all citizens. It emphasizes that the state aims to ensure **equality** and **dignity** for every individual.
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Can the Preamble Be Amended?

The **Preamble** to the Constitution of Bangladesh is not immune to amendments, but its amendment is highly restricted and sensitive. While technically amendable, certain key elements of the Preamble form part of the "**basic structure**" of the Constitution, which cannot be altered or removed.

Key Cases and Judgments:

1. **8th Amendment Case (Anwar Hossain Chowdhury vs. Bangladesh, 1989):**
 - In this landmark case, the **Supreme Court of Bangladesh** introduced the **basic structure doctrine**, which holds that certain essential elements of the Constitution, including parts of the Preamble, cannot be amended. The court emphasized that the Preamble's core principles—such as **sovereignty of the people, rule of law, and fundamental principles** like **democracy** and **secularism**—are part of the **basic structure** and are therefore beyond the reach of amendments.
 2. **Fifteenth Amendment, 2011:**
 - The **15th Amendment** restored several fundamental principles to the Preamble, including **secularism**. This amendment reaffirmed the importance of the **four core principles** (nationalism, socialism, democracy, secularism) and solidified the idea that the Preamble holds a central position in the constitutional framework.
 - While this amendment changed the text of the Preamble, the **basic principles** were protected from alteration, demonstrating that only **minor changes** can be made without altering the Constitution's fundamental structure.
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Conclusion:

The **Preamble** to the Constitution of Bangladesh is of great importance, serving as a statement of the nation's values, aspirations, and guiding principles. While it can be technically amended, **key elements of the Preamble**—such as **sovereignty of the people, democracy, socialism, and secularism**—are part of the **basic structure** and **cannot be amended or removed**. The courts have reaffirmed that any changes to the Preamble must respect these essential principles, as seen in landmark judgments like the **8th Amendment Case**. Therefore, the Preamble plays a critical role in shaping the identity and governance of Bangladesh.

Welfare State? Is Bangladesh a welfare state?

What is a Welfare State?

A **welfare state** is a form of government in which the state plays a key role in the protection and promotion of the **economic and social well-being** of its citizens. It is based on the principles of

equality of opportunity, equitable distribution of wealth, and public responsibility for individuals unable to avail themselves of the minimal provisions for a decent life.

In a welfare state, the government takes active responsibility in areas like **healthcare, education, social security, and employment**, aiming to reduce inequalities and improve the living standards of all citizens.

Key Characteristics of a Welfare State:

1. **Social Security:** The state provides protection against unemployment, sickness, old age, and poverty.
 2. **Public Services:** The state ensures access to essential services such as education, healthcare, and housing.
 3. **Redistribution of Wealth:** Through taxation and social welfare programs, wealth is redistributed to promote equality.
 4. **Government Intervention:** The government plays an active role in the economy and public life to reduce economic disparities.
-

Is Bangladesh a Welfare State?

Yes, **Bangladesh** aspires to be a **welfare state** as expressed in the **Constitution** and through its **government policies**. While not a fully developed welfare state in the classical sense, it has committed to the **principles of a welfare state** and has undertaken various initiatives aimed at ensuring the well-being of its citizens.

Constitutional Basis for Welfare State in Bangladesh:

The **Constitution of Bangladesh**, particularly in **Part II** (Fundamental Principles of State Policy), outlines the state's commitment to building a welfare society. These principles, though not enforceable in courts, guide the government in formulating policies aimed at social and economic justice.

1. **Article 15** (Provision of Basic Necessities):
 - The Constitution requires the state to provide the **basic necessities of life**, including food, clothing, shelter, education, and medical care, ensuring that all citizens can live a decent life.
2. **Article 16** (Rural Development and Agricultural Revolution):
 - The Constitution emphasizes the need for **rural development** and the promotion of agriculture to reduce disparities between urban and rural areas.
3. **Article 19** (Equality of Opportunity):
 - It ensures **equality of opportunity** for all citizens, emphasizing the state's role in removing economic and social disparities and promoting welfare for vulnerable groups.

4. **Article 20** (Work as a Right and Duty):
 - It ensures that all citizens have the right to **work**, and the state is responsible for creating conditions where everyone can have employment opportunities.
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Welfare Policies in Bangladesh:

To achieve the constitutional vision of a welfare state, the government of Bangladesh has implemented various **social welfare programs** and policies aimed at promoting **social security** and improving the **standard of living**:

1. **Social Safety Nets:**
 - Programs like the **Old Age Allowance**, **Widow Allowance**, and **Food-for-Work** initiatives are in place to support vulnerable groups, particularly the elderly, disabled, and poor.
 2. **Healthcare and Education:**
 - Bangladesh has expanded access to **primary education** and **public healthcare**. Programs like **free textbooks** for school children and **community clinics** in rural areas aim to reduce inequalities in access to these essential services.
 3. **Poverty Reduction Programs:**
 - Programs like the **Vulnerable Group Development (VGD)** and **Vulnerable Group Feeding (VGF)** provide food assistance to impoverished households.
 - Microfinance institutions like **Grameen Bank** have also played a significant role in empowering low-income individuals, particularly women, through small loans for income-generating activities.
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Challenges to Being a Welfare State:

While Bangladesh has made progress toward becoming a welfare state, there are significant **challenges**:

1. **Resource Constraints:**
 - As a developing country, Bangladesh faces **limited resources** to fully implement welfare programs at the scale needed to support all vulnerable populations.
2. **Inequality:**
 - Despite efforts, **economic inequality** remains a major issue. Disparities between urban and rural areas, and between different social groups, persist.
3. **Corruption:**
 - The effective implementation of welfare programs is often hindered by **corruption** and inefficiencies within government structures, limiting the reach of services to those in need.

Conclusion:

Bangladesh is not yet a fully developed **welfare state**, but the **Constitution** and government policies reflect a strong commitment to the **principles of a welfare state**. Through its **social welfare programs**, the state aims to provide basic necessities, reduce poverty, and ensure equal opportunities for its citizens. However, there are still challenges related to **economic inequality**, **resource limitations**, and **corruption** that need to be addressed for Bangladesh to fully achieve its vision of a welfare state.

What is the rule of law? Qualification to be a member of parliament in bd.

What is the Rule of Law?

The **rule of law** is a fundamental principle that ensures **all individuals and institutions**, including the government, are **accountable** to the **law**. It means that laws are applied **equally** to everyone, protecting citizens from arbitrary actions by the state. Under the rule of law, no one is above the law, and laws must be **fair**, **publicly known**, and **enforced consistently**.

Key elements of the **rule of law** include:

1. **Equality before the law**: Every individual, regardless of status or position, is subject to the same legal standards.
2. **Legal certainty**: Laws must be clear, publicized, and stable, allowing citizens to understand their rights and obligations.
3. **Accountability**: The government and its officials must act within the law.
4. **Protection of fundamental rights**: The rule of law safeguards individual rights and freedoms.

In Bangladesh, the **Constitution** guarantees the **rule of law**, particularly through its provisions for **judicial review** and protection of **fundamental rights**.

Qualifications to be a Member of Parliament (MP) in Bangladesh:

According to **Article 66** of the **Constitution of Bangladesh**, the following qualifications are required to be elected as a **Member of Parliament (MP)**:

1. **Citizenship**: The candidate must be a **citizen of Bangladesh**.
2. **Age**: The candidate must be at least **25 years old**.

3. **Sound Mind:** The person must not be declared by a competent court as being of **unsound mind**.
4. **Undischarged Insolvent:** The candidate must not be an **undischarged insolvent** (unable to repay debts).
5. **Criminal Conviction:** The person must not have been convicted of an offense involving **moral turpitude** and sentenced to at least **two years** in prison. However, if **five years** have passed since their release, they may qualify.
6. **Loyalty to Bangladesh:** The person must not have acquired the **citizenship of a foreign country** or have shown allegiance to a foreign state.
7. **Other Disqualifications:** Persons holding any **office of profit** under the government, or those disqualified by law, cannot become MPs.

These qualifications ensure that candidates meet certain standards of **citizenship, integrity, and loyalty** to serve as members of Bangladesh's **unicameral Parliament (Jatiya Sangsad)**.

Independence of Judiciary? Its importance. To what extent is the judiciary independent in BD? Provision of constitution regarding removal of justice of the Supreme Court in BD.

What is the Independence of the Judiciary?

The **independence of the judiciary** refers to the principle that the judicial branch of government should function **free from external pressures or influence**, especially from the executive or legislative branches. An independent judiciary ensures that judges can make decisions **impartially**, based solely on the law and facts, without interference from other state authorities, political parties, or powerful individuals.

Key Features of Judicial Independence:

1. **Separation of Powers:** The judiciary must remain separate from the executive and legislative branches of government.
2. **Security of Tenure:** Judges should have security in their position, serving until a prescribed retirement age, ensuring they are not removed arbitrarily.
3. **Financial Independence:** Judicial salaries and resources should not be controlled by other branches, which could otherwise use financial control to influence decisions.
4. **Freedom from Influence:** Judges must decide cases based on the law and without fear of personal consequences or retaliation.

Importance of Judicial Independence:

1. **Upholding the Rule of Law:** Judicial independence is crucial to enforcing the **rule of law** and ensuring that all individuals and institutions, including the government, are accountable to the law.
 2. **Protecting Fundamental Rights:** An independent judiciary protects citizens' **fundamental rights** and liberties by ensuring fair and impartial trials and preventing abuses of power.
 3. **Checks and Balances:** It acts as a **check on the executive and legislature**, ensuring that their actions conform to the Constitution.
 4. **Public Confidence:** Independence fosters **public trust** in the legal system, as citizens believe they can receive impartial justice.
-

Extent of Judicial Independence in Bangladesh:

In Bangladesh, judicial independence is established by the **Constitution**, but its extent is influenced by the interaction between the **judiciary**, **executive**, and **legislature**.

1. **Constitutional Guarantees:**
 - **Article 94(4)** of the Constitution ensures the independence of the judiciary by providing that the judges of the Supreme Court shall be independent in the exercise of their judicial functions.
 - The **Supreme Court** of Bangladesh, comprising the **Appellate Division** and the **High Court Division**, has the power of **judicial review**, allowing it to declare any law or executive action unconstitutional.
 2. **Separation from the Executive:**
 - The **Masdar Hossain case (1999)** was a landmark judgment where the Supreme Court ordered the separation of the judiciary from the executive. Following this case, the **lower judiciary** (subordinate courts) was formally separated from the executive in 2007, marking a significant step toward greater judicial independence.
 3. **Appointment of Judges:**
 - The **President** appoints Supreme Court judges under **Article 95** based on the Prime Minister's advice. Although the judiciary has the power to review and strike down unconstitutional laws, **judicial appointments** remain somewhat influenced by the executive, potentially affecting judicial independence.
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Provisions Regarding Removal of Judges of the Supreme Court:

The removal of Supreme Court judges in Bangladesh is governed by **Article 96** of the Constitution.

1. Grounds for Removal:

- A judge of the Supreme Court can be removed only on the grounds of **misbehavior** or **incapacity**.

2. Process for Removal:

- The Constitution originally provided for the **Supreme Judicial Council** to investigate allegations against judges. This body consists of the **Chief Justice** and the **two next senior judges** of the Appellate Division.
- If the council finds the judge guilty of misconduct or incapacity, it reports the findings to the **President**, who can then remove the judge from office.

3. Fifteenth Amendment (2011):

- The **15th Amendment** replaced the Supreme Judicial Council system with a **parliamentary process** for removing judges. **Article 96(3)** now allows Parliament to remove a judge by passing a resolution with a **two-thirds majority**, based on **misbehavior** or **incapacity**.
- The change raised concerns about judicial independence, as the process involves Parliament, which could expose the judiciary to political pressures.

Conclusion:

While Bangladesh's Constitution guarantees the **independence of the judiciary**, the extent of that independence is subject to the **interaction between the branches** of government. Landmark cases like the **Masdar Hossain case** have bolstered judicial independence, especially at the lower court level. However, the **appointment and removal** processes, particularly after the **15th Amendment**, introduce some risk of **political influence** on the judiciary. Therefore, while progress has been made, ensuring **complete independence** of the judiciary remains an ongoing challenge in Bangladesh.