



Accord CHAMBERS

INSIGHTS

LEGAL & REGULATORY UPDATES, ANALYSIS AND COMMENTARY

An Appraisal of the 13th Amendment Review Judgment: The Appellate Division's Perspective on Restoring Caretaker Government

By Ananno Raihan Chowdhury

In a landmark unanimous decision rendered on 20th November 2025, a full seven-member bench of the Appellate Division of the Supreme Court of Bangladesh in *Dr. Badiul Alam Mojumder and others v. Abdul Mannan Khan and others* (Civil Appeal No. 112 of 2025 with CA No. 113 of 2025 and connected Review Petitions) set aside its 2011 majority judgment in *Abdul Mannan Khan v. Government of Bangladesh* (64 DLR (AD) 169). Re-evaluating foundational constitutional doctrines, the Supreme Court held that the Non-Party Caretaker Government (NPCG) framework that was originally inserted via the 13th Amendment Act, 1996, is fully constitutional, activating and restoring Chapter IIA (Articles 58B–58E) of the Constitution. The judgment provides an authoritative re-examination of popular sovereignty, basic structure jurisprudence, and procedural integrity in constitutional adjudication.

1. Constituent Power and the Lockean Social Contract

The Appellate Division dismantled the formalist narrative that an unelected interim administration inherently violates the democratic character of the Republic. Chief Justice Syed Refaat Ahmed invoked John Locke's theory of the social contract and limited government to contextualize the relationship between the sovereign state and sovereign citizens. Under Article 7 of the Constitution, all power belongs to the people, and the Constitution acts as a solemn compact where citizens delegate legislative and executive authority to elected representatives as trustees.

The Court drew a fundamental distinction between the derivative amending power under Article 142—which is a delegated fiduciary trust reposed in Parliament—and the residual constituent power residing permanently in the people under Article 7. The 13th Amendment was not a routine legislative alteration; rather, it was born out of an overwhelming national consensus and a broad political compromise following severe crises of electoral credibility. The Court held that when the political process fails to guarantee free elections, the sovereign electorate retains the constituent authority to modify governance terms. Consenting to a temporary 90-day interim administration by non-partisan advisers is not a suspension of popular sovereignty, but its ultimate substantive exercise to preserve the sanctity of the franchise.

2. Reinforcing the Basic Structure Through Substantive Democracy

Revisiting the basic structure doctrine established in *Anwar Hossain Chowdhury v. Bangladesh* (8th Amendment Case), the Court criticized an anachronistic, purely textualist model of democracy. The Court emphasized that democracy cannot be reduced to procedural legalism; it demands a realist and functional understanding that prioritizes substantive outcomes.

The Appellate Division established that free, fair, and impartial elections constitute an inviolable pillar of the basic structure. Consequently, an institutional mechanism specifically designed to secure electoral integrity assumes the protected character of the foundational value it safeguards. The Court noted that the previous decision failed to apply the "impact test"—ignoring empirical evidence that removing neutral election oversight degraded the body politic into a dysfunctional, one-sided electoral process. Drawing parallels to the Supreme Judicial Council revived in the 16th Amendment Case, the Court concluded that the NPCG mechanism acted as an indispensable structural support to democracy rather than a destructive alteration.

3. Procedural Inviolability and Judicial Self-Restraint

The judgment identified fatal procedural infirmities in the prior 2011 adjudication that vitiated its legal efficacy. The short order pronounced in open court on 10th May 2011 permitted the next two national elections to be conducted under a caretaker model. However, the full reasoned judgment published sixteen months later, after the retirement of the authoring Chief Justice, conspicuously omitted this operative direction. The Court held that substantive modifications between a short order and a full text violate Order X, Rule 2 of the Supreme Court (Appellate Division) Rules, 1988, which strictly prohibits post-pronouncement alterations beyond clerical corrections.

Furthermore, the Court panned the decision for transgressing into legislative policy formulation by suggesting alternative electoral schemes. Reaffirming the doctrine of judicial self-restraint and the separation of powers, the Appellate Division stressed that courts must maintain constitutional equilibrium rather than dictate polycentric political choices.

The decision of the Appellate Division highlights several legal jurisprudences:

- i. The Court established that constituent sovereignty must prevail, holding that constitutional amendments born out of broad national consensus to safeguard voting rights reflect original

constituent power under Article 7, thereby transcending routine statutory amendments enacted under Article 142.

- ii. The Appellate Division adopted a functional reading of the basic structure doctrine, ruling that procedural mechanisms designed to operationally guarantee free, fair, and impartial elections form an integral, unalterable component of the Constitution's basic structure.
- iii. The judgment mandated prospective auto-restoration coupled with legal dormancy, affirming that while Chapter IIA (Articles 58B–58E) is revived forthwith, its operation remains legally dormant until triggered by parliamentary dissolution, taking effect prospectively under the domain of the 13th Parliament.
- iv. The decision strictly enforced procedural integrity in judicial determinations, holding that short orders pronounced in open court are inviolable and that substantive variations in subsequent full texts published post-retirement breach Appellate Division procedural rules.

How can we assist?

Successfully navigating succession proceedings requires uncompromising procedural compliance. Accord Chambers provides comprehensive legal support, from drafting precise succession petitions and executing effective trial management to facilitating the final transmission of corporate shares and bank funds. For any strategic assistance, please feel free to reach us any time.

For any query, feel free to contact us: assistance@accordchambers.com.

This publication is the property of Accord Chambers and may not be distributed without expressly attributing it to the author and publisher. Accord Chambers fully reserves the rights of disclosure, publication and/or distribution of the contents of this publication. This is not a piece of legal advice.

For any query or legal advice on this topic, feel free to contact us: assistance@accordchambers.com