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# The pathway of democratic backsliding in Bangladesh

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## ABSTRACT

In the past decade Bangladesh has witnessed incremental, yet consequential decline of democracy. Two consecutive rigged elections in 2014 and 2018, adoption of legal measures to restrict freedom of expression, increasing occurrences of extrajudicial killings and allegations of infringing on the judiciary bear testimony to the democratic backsliding. This article traces the pathway of this backsliding. As Bangladesh's democratic journey began two decades after its independence, this article focuses on the post-1990 development with special reference to the rapid debilitation of the democratic institutions and practices after Bangladesh Awami League (AL) came to power in 2009. I argue that the country has transformed from an electoral democracy to an electoral authoritarianism. Drawing on the stages of democratic backsliding offered by Steven Levitsky and Danile Ziblatt, this article shows that the process of backsliding in Bangladesh began with the constitutional amendment in 2011, followed by severe persecution of the opposition, critics of the incumbent and media through legal and extralegal measures and taming the judiciary.

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**KEYWORDS** Bangladesh; democratic backsliding; elections; hybrid regime; electoral authoritarianism

Holding two consecutive rigged elections in 2014 and 2018, adoption of legal measures to restrict freedom of expression, increasing incidences of extrajudicial killings and allegations of infringing on the judiciary in the past years position Bangladesh within the global trend of democratic backsliding. As noted in the introduction of this special issue on the democratic regressions in Asia, Bangladesh's scores in the Electoral Democracy Index and Liberal Democracy Index have experienced significant decline on four episodes since its independence in 1971. Two of these instances led to autocratic consolidation while two others are described as “democratic breakdowns”.

This article, in accordance with Croissant and Haynes, adopts the definition provided by Bermeo<sup>1</sup> that democratic backsliding is “the state-led debilitation or elimination of the political institutions sustaining an existing democracy”.<sup>2</sup> Some of the seminal features include “promissory coups”, “executive aggrandizement” and “longer-term strategic harassment and manipulation” of the electoral process. The process of backsliding, as opposed to a spectacular event of collapse, is slow and incremental. Often the process begins with the erosion of democratic qualities of the existing system and creates a system of governance combining both democratic and authoritarian traits, referred to as a hybrid regime. There is an

increasing body of knowledge on the global democratic backsliding, yet little has been explored about the particular process of backsliding. Identifying the consequential process of reversal from the democratic pathway is a challenging task, but as Bermeo aptly noted, “we need to know more about how the slide backward into hybridity takes place”.<sup>3</sup>

This article aims to trace the pathway of democratic backsliding in Bangladesh, that is how fragile democratic institutions and practices unravelled in the past decade, particularly after the country had the opportunity to chart a new course after promissory coup makers handed over power in 2009. Promissory coups “frame the ouster of an elected government as a defense of democratic legality and make a public promise to hold elections and restore democracy as soon as possible”.<sup>4</sup> It was staged in January 2007 and a military backed government ruled the country until the end of the following year. The particularity of Bangladesh’s tumultuous history has shaped the trajectory while it bears the features of a typical process of democratic backsliding.

As Bangladesh’s democratic journey began two decades after its independence, this article focuses on post-1990 developments with special reference to the rapid debilitation of the democratic institutions and practices after Bangladesh Awami League (AL) came to power in 2009. Comprehending these changes, particularly the pace after 2009, requires contextualizing it within the political development of Bangladesh since its independence in 1971.

In this article, a brief background highlighting the 1972–1990 period will be followed by a discussion on the era of semi-authoritarianism of almost two decades; during this period instead of consolidation, democracy eroded and power began to be concentrated in the hands of the executive. A two party-system produced a competitive authoritarian system and paved the way for a promissory coup and the emergence of the military-backed regime between 2007 and 2008. I argue that after the assumption of power through a fair election in 2008, the AL took steps which have transformed the country into a hegemonic authoritarian regime. While constitutional and institutional changes remain key to this transformation, it is necessary that we also explore non-institutional aspects of the process. In this exploration of the pathway I contend that in Bangladesh, the backsliding has taken course through changes in the institutions such as the electoral system, constitution and judiciary on the one hand, while constructing an ideology and using mobilizational capacity of the ruling party, on the other.

To unpack the stages of democratic backsliding after 2009, I will draw on the elements of a three-stage model offered by Steven Levitsky and Daniel Ziblatt in their much-discussed book, *How Democracy Dies*, as a framework; however, rearranging the sequences of these elements are called for in the context of Bangladesh which will allow us to retrace more fully the practices and mechanisms that comprise AL’s authoritarian turn.

### **Bangladesh: a brief background (1972–1990)**

Bangladesh emerged as an independent country in 1971, and the constitution written in 1972 introduced a unicameral parliamentary system based on First Past-The-Post (FPTP) system with 300 directly elected seats. Despite the promise of liberal democracy, the country witnessed a rigged election in 1973, moved away from a parliamentary system to the presidential system and turned into a one-party populist authoritarian state in January 1975 through the 4th Amendment of the constitution. The government was replaced through a violent military in August when then President Sheikh Mujibur

Rahman, their family members and associates were brutally killed – at their homes and inside the jail after being incarcerated. Series of coups and countercoups followed until November.

In the following 15 years, the country experienced military rule and several failed coups, witnessed assassination of another President – Ziaur Rahman – in 1981 and the rise of another military leader – H M Ershad – in early 1982. An eight-year long pro-democracy movement which brought all political parties closer and was spearheaded by three alliances culminated in a popular uprising in December 1990 and deposed the pseudo-civilian military government.<sup>5</sup> The uprising not only brought down the government but also brought an end to the era of civilian and military authoritarianism, which were the defining features of the first two decades of independent Bangladesh. The uprising raised the hopes for democratization. The expectation was based on the lessons from the pro-democracy movement, particularly an agreement signed by all political parties at the height of the movement promising to adhere to the fundamental canons of liberal democracy such as fair elections, freedom of assembly, and freedom of press among others.

### **The beginning and the erosion of electoral democracy (1991–2001)**

A fair election and peaceful transfer of power to an elected government in 1991 marked the beginning of the democratization process in Bangladesh; the transition from authoritarianism began in an almost textbook fashion. One can hardly escape the timing of the transition; democratization was sweeping across the globe, described as the “Third Wave of Democracy”.<sup>6</sup>

A competitive, multiparty political system with universal adult suffrage and regularly contested elections pointed to a promising start. Media became relatively free and promises of an independent judiciary were reiterated by all parties, particularly the two major parties – the incumbent Bangladesh Nationalist Party (BNP) and the opposition Bangladesh Awami League (AL). The constitutional amendment in 1991, to scrap the Presidential system to re-introduce the parliamentary system, was a positive step towards accountability as the Presidential system had endowed unrestrained power to an individual (ie., the President) with little or no accountability mechanism. Bangladesh’s transition from an authoritarian system was dramatic in the sense that it didn’t face any major stumbling block and the existing constitutional arrangement was sufficient for such a transition.

With these developments, Bangladesh became an electoral democracy. The defining characteristics of an electoral democracy are the following:

A competitive, multiparty political system; universal adult suffrage for all citizens (with exceptions for restrictions that states may legitimately place on citizens as sanctions for criminal offenses); regularly contested elections conducted in conditions of ballot secrecy, reasonable ballot security, and in the absence of massive voter fraud that yields results that are representative of the public will; significant public access of major political parties to the electorate through the media and through generally open political campaigning.<sup>7</sup>

Varieties of Democracy (VDem) identify five indicators of electoral democracy – suffrage, elected officials, clean elections, freedom of association, and freedom of expression, alternative sources of information<sup>8</sup> and an independent judiciary. In the initial years of democratization, Bangladesh fulfilled all these requirements.

The agreement among political parties of all persuasions – from right-wing Islamists to left-wing socialists and all parties in-between – paved the way for the emergence of an

electoral democracy. Political parties agreed that “democracy is the only game in town.” The transition process, especially the introduction of the parliamentary system, had one wrinkle; the power of the President was transferred to the Prime Minister lock stock and barrel in addition to the Prime Minister’s power under the parliamentary system, which created the opportunity for amassing unrestrained power in the hands of the Prime Minister.

After the first inclusive, fair election in 1991, which delivered a victory to the BNP, the opposition AL was unwilling to play by the rules, which unfortunately continued in the subsequent rounds of elections although the roles of the two parties – the AL and the BNP – reversed every five years.<sup>9</sup> This is a marker of authoritarian behaviour of both leaders – Sheikh Hasina and Khaleda Zia – and their respective parties. As noted by Levitsky and Ziblatt, four authoritarian behaviours which contribute to the demise of democracy includes “rejection of (or weak commitment to) democratic rules of the game”<sup>10</sup> They specifically mentioned that undermining the legitimacy of elections by refusing to accept credible election results as a test to measure a leader’s commitment to democracy. The trust deficiency among the major political parties, especially AL and the BNP, engendered acrimony, street agitation and violence, and the incessant wrangling among these two parties made the parliament dysfunctional.

In late 1994, the opposition members of the 5<sup>th</sup> parliament resigned, demanding that a non-party caretaker government system be included as a permanent arrangement in the constitution to oversee the election. This *en masse* resignation made the parliament ineffective. Incumbent BNP showed an obdurate attitude and declined to make any changes; it insisted that the opposition adhere to the existing constitutional provisions.<sup>11</sup> While the 5<sup>th</sup> parliament completed its term in late 1995, the impasse continued. In late 1995, the behaviour of the opposition led by the AL and the incumbent BNP demonstrated their penchant for authoritarianism. On the one hand, the AL launched massive street agitations, repeatedly imposed *hartal* (general strike), and endorsed violence by their supporters; a key indicator of authoritarian behaviour noted by Levitsky and Ziblatt.<sup>12</sup> The incumbent BNP’s use of heavy-handed measures against the opposition revealed its willingness to restrict or curtail civil liberties of the opposition.<sup>13</sup>

The incumbent finally went ahead with a non-inclusive election in February 1996 which elected a parliament with BNP members only. The 6th parliament incorporated the caretaker government system into the constitution through the 13th amendment to the constitution and dissolved immediately. The incorporation of the caretaker government (CTG) in the constitution in 1996, although by a parliament with questionable legitimacy, allowed establishing a system of peaceful power transition.

Despite such a significant step towards transfer of power through the October 1996 election, the parliament began to lose its importance, thanks to the boycott of the opposition, and ruling party’s proclivity towards disregarding the opposition’s demands.

Instead of consolidating democracy, building democratic institutions, creating ways for vertical and horizontal accountability, and ensuring space for dissent, an all-powerful “Prime Ministerial System” was created.<sup>14</sup> The PM remained beyond any scrutiny and accountability because she holds several offices; in addition to being the PM she is also the leader of the House, the leader of the parliamentary party of the majority party, and the chief of the party. Article 70 of the Bangladesh constitution stipulates that a member of the parliament will lose the membership if she votes against party, is present in the parliament but abstains from voting, or abstains from any sitting ignoring the direction of the party.<sup>15</sup> This provision has provided complete control of the

parliamentary party to the respective leaders. In case of the PM, it allows her to exercise unrestrained power. The concentration of power in one office created the opportunity for the emergence of a constitutionally allowed authoritarian leader. While the power became concentrated in one office at the top, politicization of administration became rampant, a phenomenon called “partyarchy”, became the order of the day. The ruling party was establishing “monopolistic partyarchal governance”. Additionally, “[P]artisan control over the civil bureaucracy, state-owned electronic media, law enforcement agencies, institutions of horizontal accountability (Public Service Commission, Anti-Corruption Commission), the lower judiciary and ... also the higher judiciary”<sup>16</sup> was normalized. These tendencies of the political parties, both the AL and the BNP, produced an intolerant political culture and resulted in a gradual tilt towards authoritarianism, which I call semi-authoritarianism. Such characterization is based on three features: first, the overall political environment was marked by “rhetorical acceptance of liberal democracy, ... (and some) political space for political parties and organizations of civil society to form, for an independent press to function to some extent, and for some political debate to take place”<sup>17</sup>, the second, the dynastic nature of leadership with unlimited power to the party chiefs (Khaleda Zia of the BNP and Sheikh Hasina of the AL); and the toleration of violence by their supporters and the denial of legitimacy of political opponents.

### The era of the competitive authoritarian regime

In 2004, when the BNP government passed the 14th amendment of the constitution, the semi-authoritarian system began to transmute into a competitive authoritarian system. The constitution stipulated that the immediate past Chief Justice will be the head of the caretaker government, the BNP raised the retirement age of the justices through the amendment to ensure that its preferred retired CJ could be appointed as the head the next CTG.

In competitive authoritarian regimes, formal democratic institutions are widely viewed as the principal means of obtaining and exercising political authority. Incumbents violate those rules so often and to such an extent, however, that the regime fails to meet conventional minimum standards for democracy.<sup>18</sup>

The two-party system which emerged through the elections between 1991 and 2001 with an almost equal support base of these two parties – about 40% of the popular vote<sup>19</sup> – made the system competitive and maintained an equilibrium. But the competition increasingly became vicious and the use of state power to persecute opponents through judicial and extrajudicial manners became the norm. Perhaps no other incidents exemplify the ruling party’s penchant for extrajudicial measures better than the assassination attempt of the opposition leader Sheikh Hasina in August 2004 in a public rally. The cover-up by the BNP government was easily discernable after the incident. The carnage was described by the court in its verdict in 2018 as “a state backed crime” and convicted among others the former Home Minister Lutfozzaman Babar and BNP Senior Vice Chairman Tarique Rahman.<sup>20</sup> The opposition, on the other hand, throughout the period had adopted the strategy of repeated street agitation instead of making the parliament as the centre of politics.

An election is an important element of democracy and democratization. But it assumes a greater significance and becomes a high-stakes event in a competitive

authoritarian system. In a competitive authoritarian system, elections become high-stake exercises because it becomes the only source of legitimacy; ensuring a “victory in elections – whether the elections are fair or not”.<sup>21</sup> turns out to be the principal objective. Machinations to influence the 2007 election by the incumbent BNP through manipulating the caretaker system bears testimony to this.

As the time to appoint the CTG arrived in October 2006, the opposition political parties under the leadership of the AL vowed not to accept the immediate past CJ and launched agitations. When the former CJ declined, the President assumed the position of the head of the government in addition to his responsibility as the head of State. Although legally permissible, it became evident that he was acting on behest of the BNP to influence the elections scheduled in early 2007.<sup>22</sup> *Hartals* (general strikes), demonstrations, heightened violence and international pressure, paved the way for the military to step in and install a caretaker government. The violence perpetrated by the activists received very little condemnation from the party leadership, instead the leaders of these parties tacitly condoned them. Although the intervention initially had public support and blessings of the international community, domestic discontent, the Asian economic crisis, inability to deliver on the promised reforms in politics, ill-conceived idea of removing two leaders (Khaleda Zia and Sheikh Hasina) from politics,<sup>23</sup> and pressure from international actors, forced the military to hold an election in late 2008 which produced a two-thirds majority victory for the Awami League, and Bangladesh returned to the competitive authoritarian system of governance. Explanation of the subsequent development requires understanding the stages of backsliding.

### **The stages of democratic backsliding: a framework**

The process of democratic backsliding is not episodic but incremental, that is, “a discontinuous series of incremental actions”<sup>24</sup> that debilitate democratic institutions. These actions “makes elections less competitive without entirely undermining the electoral mechanism, restricts participation without explicitly abolishing norms of constitutive democracy, and loosens constraints of accountability by eroding norms of answerability and punishment.”<sup>25</sup> However, how the process unfolds and how various stages play out are seldom explored in the existing literature. Bermeo’s suggestion that it occurs in three ways – promissory coups, executive aggrandizement, and strategic manipulation of election<sup>26</sup> – informs us of various aspects but leaves us with the question whether there is any sequence to these features. It is discernable from the recent incidents of backsliding that these aspects are neither mutually exclusive nor sequential. This lacuna of the existing literature is addressed by Levitsky and Ziblatt and a model has been offered. They argue that there are three stages of democratic backsliding; these stages are – Stage 1: Target the “referees”; Stage 2: Target opponents of the government; Stage 3: Change the “rules of the game.”<sup>27</sup>

Their model suggests that in the first stage, the incumbent targets the institutions which are essential to protecting the neutrality of the state and the rights of citizens. This is done with the objective of gaining control of law enforcement institutions, including the judiciary, law enforcement, tax and regulatory agencies. The ruling party, particularly its leader, intends to ensure the unconditional loyalty of these institutions. By establishing complete control over these institutions, not only does the incumbent make these institutions ineffective but also turns them into weapons against the opposition; these institutions become instruments for providing impunity

to the extrajudicial activities of ruling party activists and state institutions. The damning effect of this action is the removal of any semblance of accountability.

In the second stage, opposition parties, the media and civil society organizations are silenced. This stage ensues either concurrently with the first stage or immediately after the first stage has reached a level of comfort with the incumbent. It is in this context that we can remember Freedom House's description of what has happened in the past 13 years – “More authoritarian powers are now banning opposition groups or jailing their leaders, dispensing with term limits, and tightening the screws on any independent media that remain.<sup>28</sup>” It is important to note that these new authoritarian rulers usually neither outrightly proscribe the major opposition nor do they eliminate them. Instead, opposition parties are weakened to the extent that they are suffocated. This can be described as “strategic silencing”. Ensuring the subservience of the media has been an important aspect of the process. Freedom House has noted that beyond the electoral process, the most significant impact of democratic backsliding has been on freedom of expression.<sup>29</sup> Either they are domesticated, or they are coerced into compliance. Restrictive laws are legislated and used in this stage to create a fear among journalists. With the emergence of social media, restrictions on print or electronic media are no longer enough to control the message. That is why we have witnessed the phenomenon called “digital authoritarianism.”

The third stage of backsliding is establishing complete control of the ruling party over the state and the polity. This is achieved through changes in the constitution and legislative bodies. It is in this stage that electoral systems are shaped in such a manner that it delivers victory to the incumbent, even without any apparent electoral fraud. A schematic presentation of the argument follows (Table 1):

**Table 1.** Model of democratic backsliding.

Stage	Goals	Methods
<b>Stage 1</b> <b>Target the ‘referees’ of the state</b> The judiciary, law enforcement, tax and regulation agencies	Ensure loyalty of the institutions, so that the incumbent can protect the government (ruling party and leader) and attack opponents	<ul style="list-style-type: none"> <li>• Bribery and Blackmail</li> <li>• Replace civil servants with loyalists</li> <li>• Impeach judges</li> <li>• Court packing (appointing party people in court)</li> <li>• Create new institutions</li> </ul>
<b>Stage 2</b> <b>Targets opponents of the government</b> Political opponents, critical media, business leaders, etc.	To demoralize and weaken the opposition, to dissuade criticisms of the government	<ul style="list-style-type: none"> <li>• Bribery/Blackmail</li> <li>• Charge opponents with invented or exaggerated criminal activities</li> </ul>
<b>Stage 3</b> Change the rules of governing Legislation, constitution and electoral system	Ensure continued political dominance of the governmental political party (incumbent)	<ul style="list-style-type: none"> <li>• Gerrymandering [manipulation of electoral constituency to favour a party]</li> <li>• Alter the electoral rules</li> <li>• Introduce legislature to favour the ruling party</li> </ul>



## Sequences of backsliding in Bangladesh (2009–2018)

While I agree with Levitsky and Ziblatt about the elements of each stage and process of backsliding, I note that Bangladesh experienced a different sequencing. In the case of Bangladesh, the process started with the change in the constitution, which allowed a non-inclusive election, followed by the persecution of opposition leaders and limiting the freedom of expression and targeting the institution such as the judiciary and law enforcement agencies. The sequences of the process are shown in [Table 2](#):

The first stage of the process in Bangladesh under the incumbent AL was targeting the constitution. The 15th Amendment of the constitution passed in 2011, which removed the caretaker government (CTG) provision, and was intended to establish the dominance of the ruling Awami League. With the removal of the CTG provision the incumbent had removed the uncertainty regarding election results. As mentioned before, all elections held under the incumbent in Bangladesh between 1973 and 1990, and in February 1996 delivered victory to the ruling party. The 15th amendment made sure that the same can be repeated as under the new stipulation elections will be overseen by the incumbent. The door for unchecked electoral fraud was opened through this new arrangement.

**Table 2.** Bangladeshi pathway of democratic backsliding.

Stage	Goals	Methods
<b>Stage 1</b>		
<b>Change the rules of governing</b> Legislation, constitution and electoral system	<ul style="list-style-type: none"> <li>• Ensure dominance of the incumbent over the election;</li> <li>• ensures a subservient legislative body,</li> <li>• enhances the power of the executive body,</li> <li>• executive branch becomes free from accountability</li> </ul>	<ul style="list-style-type: none"> <li>• Introduce legislature to favour the ruling party</li> <li>• Removal of the caretaker government through constitutional amendment, 2011</li> </ul>
<b>Stage 2</b>		
<b>Targets opponents of the government</b> Political opponents, critical media, business leaders, etc	<ul style="list-style-type: none"> <li>• To demoralize and weaken the opposition,</li> <li>• to dissuade criticisms of the government</li> </ul>	<ul style="list-style-type: none"> <li>• Bribery/Blackmail</li> <li>• Charge opponents with invented or exaggerated criminal activities</li> <li>• Frivolous cases against the leaders of the opposition, particularly the BNP, 2012.</li> <li>• Amendment of the ICT Act 2006 in 2013 with harsher punitive measure and provision limiting freedom of press, 2013</li> </ul>
<b>Stage 3</b>		
<b>Target the ‘referees’ of the state</b> The judiciary, law enforcement, tax and regulation agencies	Ensure loyalty of the institutions, so that incumbent can protect the government (ruling party and leader) and attack opponents	<ul style="list-style-type: none"> <li>• Bribery and Blackmail</li> <li>• Replace civil servants with loyalists</li> <li>• Impeach judges</li> <li>• Court packing (appointing party people in court)</li> <li>• Create new institutions</li> <li>• Removal of the Chief Justice after annulling the 16th Amendment of the constitution, 2017.</li> </ul>

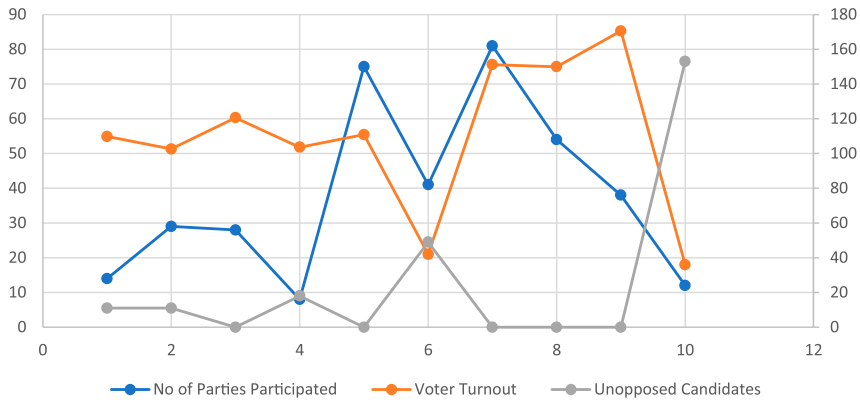
Source: Author, based on Levitsky and Ziblatt, *How Democracy Dies*, 78.

The ruling party and its allies used a summary verdict of the Supreme Court delivered in May 2010 as a pretext to bring this change, despite objections of the members of civil society and opposition political parties. On 10 May 2011, the Supreme Court issued a verdict on a case challenging the constitutionality of the existing CTG system. The summary verdict stated that “The Constitution (Thirteenth Amendment) Act, 1996 (Act 1 of 1996) is prospectively declared void and ultra vires of the Constitution.” But it also made the observation that, “The election to the Tenth and the Eleventh Parliament may be held under the provisions of the above-mentioned Thirteenth Amendment.”<sup>30</sup> The verdict, neither the summary nor the complete one made public 14 months later, unequivocally suggested a complete scrapping of the CTG system, yet the ruling party used it as a pretext for scrapping the CTG system. Interestingly, a parliamentary committee comprised of ruling party members, recommended amendments to the CTG system, not scrapping the system altogether. But the annulment decision was unilaterally made by the Prime Minister.<sup>31</sup>

The 15th amendment of the constitution removed the CTG system and stipulated that the parliamentary election would be held within 90 days prior to the completion of tenure (or within 90 days of the dissolution of parliament, if the parliament is dissolved before completion of its tenure). It was implied that the incumbents in the Cabinet would continue to serve up to the time of the election, and that the parliament would continue to function. It also stipulated that an election would be held while the previously elected parliament remained effective, which is contrary to the level playing field necessary for ensuring an acceptable election and common practice of parliamentary systems around the world.

It was a classic move to turn the country into a hegemonic electoral authoritarian regime, a regime which holds “uncompetitive multiparty elections that are not free or fair”,<sup>32</sup> where “there is never any uncertainty in the outcome of national elections”<sup>33</sup> and which “systematically ... render elections instruments of authoritarian rule rather than ‘instruments of democracy’”.<sup>34</sup> An electoral authoritarian regime, to ensure its access to power, effectively strips the efficacy of elections. As such, the 15th amendment of the Bangladeshi constitution was neither a response to the abuse of the caretaker system by the previous government nor the Supreme Court’s verdict, but a way to make the elections ineffective. The opposition parties, including the BNP, threatened to boycott the election if the CTG system was not restored;<sup>35</sup> the international community repeatedly called for ensuing an inclusive election, and an United Nations-brokered talk between the incumbent and BNP failed to yield any result.<sup>36</sup> The incumbent went ahead with the election which was boycotted by all opposition parties. The result, therefore, was a forgone conclusion. Besides, more than half of the 300-member parliament was elected unopposed, because the opposition parties didn’t file any candidates.<sup>37</sup> Various features of the election – from number of parties participating to voter turnout to election of unopposed candidates (Figure 1) – not only bear the marks of an unusual election, they show that how the removal of the CTG has impacted the electoral landscape.

Although immediately after the election Sheikh Hasina hinted at a fresh poll ahead of schedule, she later reneged. With a new system in place, Bangladesh became a hegemonic authoritarian system under which the 2018 election became a stage-managed show, although the enfeebled opposition decided to participate. The result was a foregone conclusion. But the scale of the victory – 288 of 300 seats secured by the AL coalition – made



**Figure 1.** Bangladeshi elections: party participation, voter turnout, and unopposed candidates, 1973–2014.

Sources: Compiled by the author based on information from the Election Commission and press reports.

Note: (1) Parties participated: Among the 12 parties which participated in the 2014 election, five had less than three candidates (Khelafat Majlish: 2; Islamic Front: 1; Gonofront; 1, Tariquat Federation: 3; and Gonotontri Party: 1). Only seven parties had more than five candidates and there were six parties with 10 or more candidates. Source: Compiled by the author based on information from Election Commission. (2) Voter Turnout: Note: Official sources, including the EC claimed that the turnout was 39%. But this figure is contested by the local and international press, amid reports that ballots were stuffed by party activists, particularly in the afternoon as it became evident that the turnout would be too low. The Guardian reported voter turnout at 10%, others have suggested about 22% at best. It is worth noting that in 50 polling centres no votes were cast. Considering that the election was held for 147 seats, a 39 percent turnout is about 18% of the total voters.

the international media describe it as “farcical”<sup>38</sup> and the process as “transparently fraudulent.”<sup>39</sup>

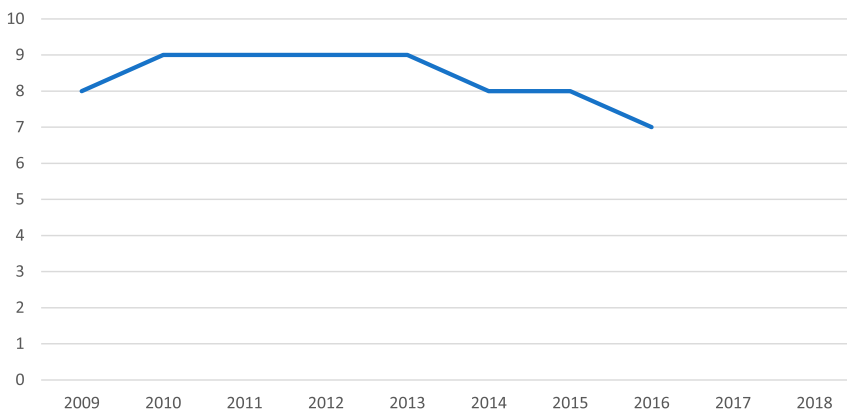
With the constitutional change completed the incumbent entered the second stage, involving the persecution of opposition leaders, particularly the BNP. By bringing frivolous charges against them and engaging them in court battles, the incumbent succeeded in weakening them. Along with the opposition, the incumbent targeted the media and civil society organization. The most telling example of the persecution of the opposition is the number of cases filed against BNP Chairperson and former PM, Khaleda Zia. Between 2012 and 2019, a staggering 36 cases have been filed against her.<sup>40</sup> Although the first signs of such an approach became visible when a series of corruption cases filed by the caretaker government against Sheikh Hasina and Khaleda Zia faced different fates. By May 2010, all fifteen cases against Sheikh Hasina – some filed during the BNP government between 2001 and 2006 and some filed by the CTG during 2007–2008 by the Anti-Corruption Commission – were dropped or quashed by courts<sup>41</sup> while cases against Khaleda Zia remained.<sup>42</sup> Khaleda Zia was sentenced to five years in prison by a special court in February 2018 in a graft case.<sup>43</sup> Her prison sentence was raised to ten years by the High Court in October 2018, an unprecedented event.<sup>44</sup> Her son, Tarique Rahman, was also convicted on these graft charges.<sup>45</sup> In the same month she was sentenced to seven years in another case.

Corruption is so endemic in Bangladesh, like many other developing countries that it was ranked the most corrupt country by Transparency International for five years in 2000–2005. But as democracy eroded, the corruption became institutionalized as neo-patrimonialism became pervasive.<sup>46</sup> In such a system, the corruption serves various purposes, from buying friends to muzzling media. But in competitive authoritarian systems, anticorruption tends to be weaponized and used against political opposition.

The persecution of opposition was very much on display when the government adopted harsh measures against the Jamaat-i-Islami soon after the International Crimes Tribunal was appointed in 2010 to try those who committed crimes against humanity in 1971.<sup>47</sup>

In addition to the change in the constitution, the government changed a law related to freedom of expression which was essentially designed to silence the critics: the act in question is the Information and Communication Act. Although the Act was formulated in 2006, it was not applied until 2008. There was an amendment made in 2009 but the most significant and far-reaching changes were brought about in 2013. The amended law not only provided the power to law enforcement agencies to arrest someone without a warrant but also to detain him/her for an indefinite period. Article 57 of the ICT Act 2006 (as amended in 2013) stated that one can be charged for publishing materials which is “false”, “prejudicial to the state or person”, and /or hurt “religious beliefs”.<sup>48</sup> None of those offences were defined yet, the steep penalty for the violation – 14 years’ imprisonment and a fine of a crore taka (\$125,000) – was set. The Act, since 2013, became a tool for curtailing freedom of speech, for allegedly hurting religious sentiment, and criticizing the government. International Commission of Jurists (ICJ) along with Human Rights Groups and groups working for freedom of media described it as draconian. The ICJ stated, “Provisions of the original ICT Act, particularly section 57, are also incompatible with Bangladesh’s obligations under Article 19 of the International Covenant on Civil and Political Rights (ICCPR)”.<sup>49</sup>

Soon after enacting the law, it was used against “secularist” bloggers on the one hand, while clamping down on Islamist websites on the other. Human rights defenders were charged under the newly amended law. Article 57 has been the key in silencing the critics and gradually establishing complete control over cyberspace resulting in the precipitous decline of freedom of expression since 2013 (Figure 2). Further legal and extra-legal measures to muzzle the press and gag the dissenting voices were taken. Eminent journalists and editors, as well as newspapers, faced the wrath of the government and its supporters. Seventy-nine cases were filed against an editor<sup>50</sup> after the PM had spoken harshly against the editor,<sup>51</sup> another editor was incarcerated for years<sup>52</sup> and was attacked at the court premise,<sup>53</sup> the government forced businesses to stop advertising



**Figure 2.** Freedom Expression in Bangladesh, 2009–2018.

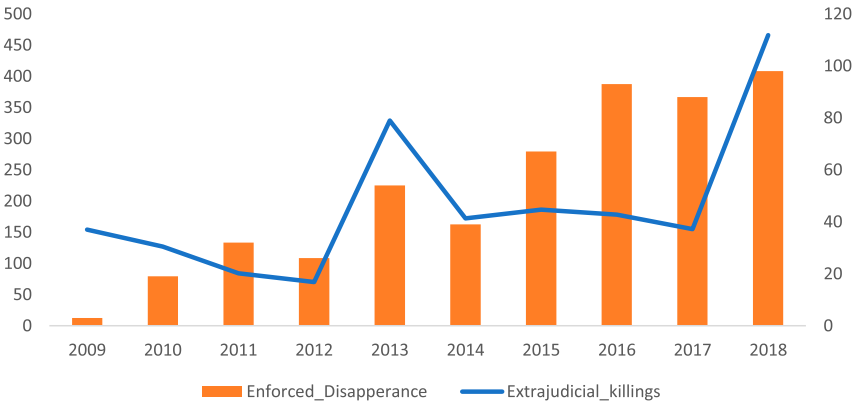
Source: Freedom House, ‘Freedom in the World: Aggregate and Subcategory Scores’, <https://freedomhouse.org/report/freedom-world-aggregate-and-subcategory-scores>.

in two newspapers to deprive them of revenue,<sup>54</sup> and a photojournalist was detained for months.<sup>55</sup> In October 2018, months before the election the government implemented a vaguely defined law with harsher punitive measures called the Digital Security Act 2018. “The Digital Security Act criminalizes many forms of freedom of expression and imposes heavy fines and prison sentences for legitimate forms of dissent. It is incompatible with international law and standards and should be amended immediately”, said Dinushika Dissanayake, Deputy South Asia Director at Amnesty International in November 2018.<sup>56</sup> The scores of Bangladesh according to the Freedom House, between 2009 and 2018, reveal the decline (Table 2).

The government used all legal and extralegal measures to silence critics, weaken the opposition and create a culture of fear. Human rights activists were systematically persecuted.<sup>57</sup> The incidences of extrajudicial killings, particularly the so-called crossfire – a term euphemistically used to describe the killings by law enforcing agencies and enforced disappearances, increased and naturalized. In 2013, the year before the election, 329 people became victims. As for the enforced disappearances, which began in 2011, they began to spike since 2014, the election year. (Figure 3).

The failed violent movement to halt the election by the BNP, and its alliance with the Islamist party Jamaat-i-Islami,<sup>58</sup> played into the hands of the ruling party. By then the regime began mutate and structurally the election was designed to favour the incumbent. Notwithstanding the pre- and post-election violence,<sup>59</sup> the 2014 election became a watershed moment in the history of the nation. Whether participation of the BNP would have made a difference has been discussed at length in subsequent years. It gained further currency after the BNP launched a movement on the anniversary of the election in 2015. But it was evident to analysts, even before the failed movement of the BNP, that the ruling party already had a game plan to decimate the BNP. Zafar Sobhan, for example, predicted in a commentary on 1 January 2015, that “There can be only One”. Sobhan wrote:

2014 marked the end of the compact of co-existence that was forged between the AL and BNP at the end of the 1980s, and that has provided the pattern for the past quarter century of political

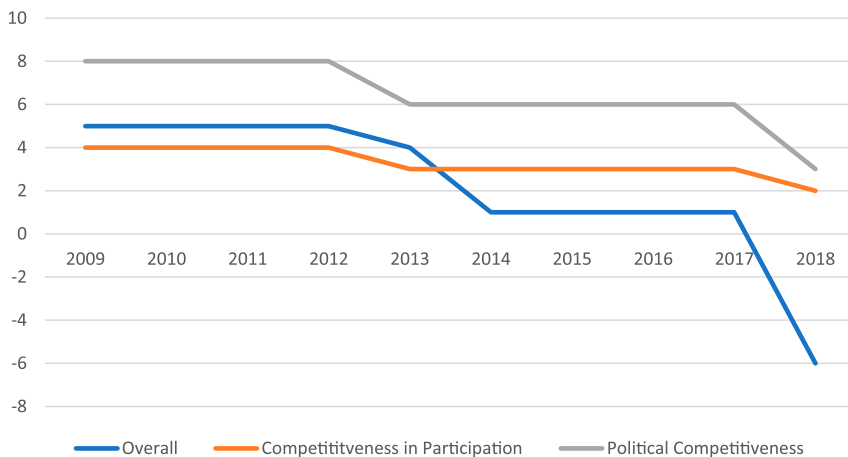


**Figure 3.** Enforced Disappearances and Extrajudicial Killings in Bangladesh, 2009–2018. Source: Odhikar, ‘Total Extra-judicial killings from 2001–2018’, [http://odhikar.org/wp-content/uploads/2019/08/Statistics\\_EJK\\_2001-2018.pdf](http://odhikar.org/wp-content/uploads/2019/08/Statistics_EJK_2001-2018.pdf) accessed 4 November 2019.

life. ... The game plan for the ruling AL is clear. ... The AL plan for the coming year is therefore straightforward: Continue to squeeze the life out of the BNP.<sup>60</sup>

It was quite evident that after the 2014 election, the road was not leading to, but rather away from, democracy. The 2014 election produced a legislature which was completely under the control of the ruling party and the executive, with the Jatiya Party declared the “official opposition” and being a part of the cabinet, it became a *de facto* one-party state. This is also borne out by the data from POLITY IV particularly about electoral process and participation (Figure 4).

Finally, in the third stage, control over various institutions, especially the court, has been imposed. In this case, the ruling party not only packed the court with its supporters, but also forced the Chief Justice out of the court and into exile. Subordination of the judicial arena is almost a prerequisite for the maintenance of the hybrid regime. Levitsky and Way argue that this is often done by means of bribery and extortion, and, if possible, by appointing and dismissing judges and officials.<sup>61</sup> According to Brown and Wise, institutions such as the supreme court or constitutional courts tend to function not only as arbiters of constitutionality and legal principles but also as advocates of the current regime.<sup>62</sup> The 16th Amendment of the Bangladesh Constitution passed by the parliament in September 2014 which has empowered the parliament to impeach judges of the Supreme Court for incapability or misconduct falls within this kind of effort. The insalubrious rhetoric of the ruling party leaders after it was struck down by the High Court (May 2016) and the Supreme Court (July 2016) is indicative of the mindset to establish complete control over the higher courts. This is what led to the “resignation” of Chief Justice S K Sinha, who also left the country.<sup>63</sup> The CJ, in his memoir published a year later, claimed that he was forced to resign and exiled.<sup>64</sup> Similarly, retaining the power of appointment, administration and removal of lower court judges in the president’s hands as opposed to the Supreme Court through the Bangladesh Judicial Service (Discipline) Rules 2017 contravenes the spirit of the separation of the executive and the judiciary.<sup>65</sup>



**Figure 4.** Democracy Score, Competitiveness in Participation, and Political Competition, 2009–2018.

Source: Polity IV, ‘Annual Polity IV Annual Time Series 1800–2018,’ Regime Authority Characteristics and Transitions Datasets, Center for Systemic Peace, <https://www.systemicpeace.org/inscrdata.html> accessed 7 October 2019.

Despite various stages and specific actions at each stage, these are not mutually exclusive, and each stage is not a watertight compartment, but rather many actions overlap. Therefore, while the incumbent AL was focused on making the constitutional changes in 2011, persecution of opposition began albeit in limited scale, but with changes in the rules related to the next election, neutering the opposition became the primary target.

## Beyond the institutional dimensions

Although the “debilitation or elimination of the political institutions” is central to backsliding, it does not explain the process as to how a country deviates from the path of democracy in its entirety. I argue that institutional measures are accompanied with, and in many instances preceded by, ideational measures creating an environment which allows and legitimizes the undemocratic actions of the incumbent. Differences and contestation on various issues are not unique to Bangladesh, but they are increasingly portrayed as the source of epistemic insecurity – that is the survival of the group is at stake. As such, a contrived “Us versus Them” mentality and discourse have been inflamed in the past decade. Such discourse has proliferated with the encouragement of the incumbent on the one hand and by so-called Islamists on the other. This has created unprecedented fissure. This has undermined tolerance, a fundamental element of democracy.

The ideational effort of the ruling Awami League to undermine democracy became palpable in 2009–2010 when the supporters of the government insisted that development should precede democracy. Some of the pro-government intellectuals introduced the notion of “democratic authoritarianism”. A false dichotomy between democracy and development was created to justify heavy handed, often extrajudicial measures, of the government. The debate itself served as a source of legitimacy of the government and helped sway support of some people.

Like many other countries where democratic backsliding has taken place in the past decade, the incumbent in Bangladesh has used “patriotism” as a weapon to create schisms and used it as a legitimizing tool since it came into power in 2009. Since 2013, the country has witnessed efforts to accentuate this division using the term *muktijudhher chetona* (the spirit of liberation war) as a marker of that division. The concept, which literally means to uphold the ideals which underlined the 1971 war, has been used by the supporters of the ruling Awami League as an indicator of patriotism and unqualified support to the incumbent government. The 2013 grassroots movement demanding capital punishment for those who were convicted of crimes against humanity perpetrated during the 1971 war of independence, was coopted by the ruling party.<sup>66</sup> While the movement initially emerged spontaneously, the government soon coopted and made “muktijudhher chetona” the battle cry. There is neither an agreed meaning to the term *muktijudhher chetona* and what it entails nor is there a way to devise a common meaning to such a nebulous idea, yet it is used as a marker of identity and as an instrument to marginalize parties, groups and individuals for their political positions. Criticism of the notion was portrayed as unpatriotic and almost treasonous. The movement, called *Gonojagorn Moncho*, gradually wound down but it created the environment for a non-inclusive election leading to the emergence of electoral authoritarianism.

Implications of the ideational element are not limited to a specific stage, although it started even before the institutional changes were made, yet it continues to serve as the source of legitimacy throughout the entire process of backsliding.

## Conclusion

Bangladesh's propitious beginning towards democratization in 1991 has taken a wrong turn, the country had metamorphosed from an electoral democracy to an electoral hegemonic authoritarianism regime by 2014. The initial pace of the transformation – from electoral democracy to competitive authoritarianism – was slow. But the pace accelerated after 2009 and was distinctly different from the gradual erosion of democracy in previous decades. In this instance, the incumbent embarked on a process which was intended to debilitate or eliminate political institutions that sustained democracy. The pathway had three stages, changing the rules of governing which included removal of the caretaker government in 2011, targeting the opposition and critics through incarceration and amending and legislating new laws such as ICT Act in 2013, and Digital Security Act of 2018, and targeting the institutions such as judiciary by expressing its displeasure of critical verdicts and the Chief Justice. This process was institutionalized through two managed elections in 2014 and 2018, which produced *de facto* one-party parliaments.

The Bangladesh case demonstrates that Levitsky and Ziblatt's framework of democratic backsliding has analytical value, however sequences may vary due to a particular political situation and strategy of the incumbent. It also shows that the democratic backsliding process succeeds not only through institutional changes but also by creating an ideology to legitimize the actions of the incumbents.

## Notes

1. Bermeo, "On Democratic Backsliding".
2. *Ibid.*, 5.
3. *Ibid.*, 14.
4. *Ibid.*, 8.
5. Maniruzzaman, "The Fall of a Military Dictator".
6. Huntington, *Third Wave of Democracy*.
7. Freedom House, "Methodology".
8. VDem, *Democracy for All?*, 71.
9. Schaffer, "Back and Forth in Bangladesh".
10. Levitsky and Ziblatt, *How Democracy Dies*, 23
11. Hossain, "Bangladesh in 1995".
12. Levitsky and Ziblatt, *How Democracy Dies*, 23.
13. *Ibid.*, 24.
14. Molla, "Democratic Institutional Building", 10.
15. Government of Bangladesh. "The Constitution of Bangladesh", Article 70.
16. Hassan, "Political Settlement Dynamics".
17. Ottawa, *Democracy Challenged*.
18. Levitsky and Way, "Elections without Democracy", 52.
19. Riaz, *Bangladesh: A Political History*, 241.
20. Liton et al.
21. Kilinc, "What We See in Venezuela".
22. Hargerty, "Bangladesh in 2006".
23. Montlake, "Bangladesh Army-backed Government Detains Ex-Prime Minister".
24. Waldner and Lust, "Unwelcome Change", 95
25. *Ibid.*



26. Bermeo, "On Democratic Backsliding", 7–8
27. Levitsky and Ziblatt, *How Democracy Dies*, 78.
28. Freedom House, "Democracy in Retreat", 9.
29. Ibid.
30. Sarkar, "Caretaker System Declared Illegal".
31. Riaz, *Voting in a Hybrid Regime*, 143.
32. Diamond, "Thinking about Hybrid Regime".
33. Roessler and Howard, "Post-Cold War Political Regimes".
34. Schedler, "The Logic of Electoral Authoritarianism", 12.
35. Economist, "The opposition BNP".
36. UN News, "Un Official Calls".
37. Ahmed, "Bangladesh Ruling Party Wins elections".
38. The New York Times, "Bangladesh's Farcical Vote".
39. Economist, "Obituary".
40. The Business Standard, "Three Dozen Cases Khaleda Zia Faces".
41. BBC, "Bangladesh Drops Leader Sheikh Hasina Corruption Case".
42. The Daily Star, "34 Cases Against Khaleda Zia".
43. Rashid, "Khaleda Jailed for 5 Years".
44. The Asian Age, "Khaleda Zia's Jail Term".
45. Al Jazeera, "Bangladesh: Tarique Rahman Jailed".
46. Islam, "The Toxic Politics of Bangladesh".
47. Islam, "Minority Islam".
48. The Daily Star, "Free Speech vs Section 57".
49. ICJ, "Bangladesh Information and Communication".
50. Sattar, "Bangladesh Editor Faces 79 Court Cases".
51. bdnews24, "Prothom Alo, Daily Star lied".
52. BBC, "Bangladesh Opposition Editor".
53. Sagor, "Amar Desh's Mahmudur Rahman Attacked".
54. DW, "Bangladesh Blocks Media Ads, Curbs Press Freedom".
55. Meixler, "Journalism Is Under Threat".
56. Amnesty International, "Bangladesh: New Digital Security Act".
57. DW, "Bangladesh Blocks Media Ads, Curbs Press Freedom".
58. The JI opposed the founding of Bangladesh during the war of independence in 1971. Some of its leaders have been convicted by the International Crimes Tribunal established by the AL in 2010, and five leaders have been executed between 2013 and 2015. The party has been deregistered by the Election Commission in 2013.
59. Riaz, "A Crisis of Democracy in Bangladesh"; Riaz, "Bangladesh's Failed Election"; Riaz, "The Troubled Democracy of Bangladesh".
60. Sobhan, "There Can Be Only One".
61. Levitsky and Way, "Elections without Democracy", 52.
62. Brown and Wise, "Constitutional Courts".
63. Dhaka Tribune, "Sinha Resigns as Chief Justice".
64. Bergman, Bangladesh: Ex-chief Justice Alleges".
65. The Daily Star, "Lower Courts' Freedom Undermined by 3 Rules/".
66. Zaman, "Agencies of Social Movements"; Riaz, *Lived Islam and Islamism*, 107–138; Roy, "Shahbag Stolen?"

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