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RESEARCH PAPER

Maqasid al-Shariah and Constitutional Democracy in Bangladesh: From Religious Identity to Purposive Accountability

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ABSTRACT

This study evaluates Bangladesh's constitutional development (1972–2026) against the higher objectives of Islamic law (maqāṣid al-Sharīʿah), delimited to five critical junctures and to governmental accountability rather than religious identity. Debates on Islam and democracy in Muslim-majority states focus on religious identity rather than the purposes and accountability of government. Bangladesh, with its repeated secular–Islamic constitutional shifts, offers a revealing case. A qualitative doctrinal and historical-constitutional analysis applies the proposed Maqāṣidic Accountability Framework (MAF), comprising three cumulative tests: objective conformity, deliberative accountability, and equal citizenship. Changes to religious identity served regime legitimation more than citizen welfare. Social guarantees remained unenforceable, while electoral accountability and free expression eroded. The 2024–2026 transition adopted purposive language without binding institutions. Maqāṣid should guide constitutional review as an interpretive constraint, not an alternative sovereignty. Reforms should require parliamentary reporting on social objectives, proportionate speech laws, and an independent Election Commission.

Keywords: Maqāṣid Al-Sharīʿah, Islamic Constitutionalism, Constitutional Democracy, Accountability, Equal Citizenship, Maṣlaḥa, Bangladesh

Introduction

Few questions in comparative constitutional studies have been asked as often, or answered as inconclusively, as whether Islam is compatible with constitutional democracy. So framed, the debate treats both terms as fixed packages and asks whether one can be fitted inside the other (Abou El Fadl, 2004; Hallaq, 2013; March, 2019). Constitutional practice has meanwhile taken a different path. Islamic clauses spread widely through the constitutions of Muslim-majority states, frequently alongside guarantees of rights (D. I. Ahmed &Abbasi, 2023; D. I. Ahmed & Ginsburg, 2014), and courts became the arenas in which their meaning was contested and often contained (Hirschl, 2010; Lombardi, 2013). Consequently, the religious nature of the state (preambles, state-religion clauses, and repugnancy clauses) have been the subject of scholarly and political interest. Less attention has been focused on whether constitutional institutions actually ensure the ends on which the Islamic tradition, as such, depends for the legitimacy of political authority.

The doctrine of maqāṣid al-Sharī'ah provides a lexicon to the unanswered question. According to the classical view, the rules of Islamic law have specific goals, usually the safeguarding of religion, life, intellect, lineage and property, in that order, necessities, needs and refinements, as put by al-Ghazālī (1993), al-Shāṭibī (1997), and Kamali (1999). The doctrine is adopted as a guidance for public policy, human rights and governance (Auda 2008, Kamali 2022, Opwis 2017, Rane 2013). It's also been subject to serious criticism. It

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is criticized for its indeterminacy, and for its appropriation by academics who side with authoritarian states and who argue that stability is the most important thing, thus suppressing dissent (Al-Azami, 2022; Helmy, 2022). A credible maqāṣidī account of constitutional governance must account for two questions: what is required of public institutions in this regard and how can an appeal to the maqāṣid be held accountable?

Bangladesh offers an unusually rich case for that inquiry. Its 1972 Constitution adopted secularism as a fundamental principle and barred religion-based politics. A martial-law proclamation in 1977, ratified by the Fifth Amendment of 1979, removed secularism and inserted the Bismillah; the Eighth Amendment of 1988 made Islam the state religion; the Supreme Court invalidated the Fifth Amendment between 2005 and 2010; and the Fifteenth Amendment of 2011 restored secularism while retaining Islam as the state religion (Bhuiyan, 2017, 2021). Over the same decades the country invented and then abolished a non-party caretaker government to administer elections, slid into competitive authoritarianism after 2011 (Mostofa&Subedi, 2021; Riaz, 2021), and in mid-2024 experienced an uprising in which, according to the United Nations, as many as 1,400 people may have been killed (Office of the United Nations High Commissioner for Human Rights [OHCHR], 2025). Since then, a reform commission has proposed new constitutional principles, political parties have signed the July National Charter, a referendum and a general election were held in February 2026, and the Appellate Division has restored the caretaker system.

Existing scholarship reads this record mainly through two lenses: the contested meaning of secularism (Bhuiyan, 2017, 2021; Hoque, 2021) and democratic backsliding (Riaz, 2021; Riaz&Parvez, 2021). The small body of work that applies maqāṣid to Bangladesh addresses human rights in general rather than constitutional structure (Bhuiyan et al., 2026). No study has ever raised the question of what the constitutional path of Bangladesh would take if judged by the ends to which the ethical tradition of its Muslim majority has given the public authority, or of how such a judgement can be squared with democratic self-governance and with the equal status of citizens who are not members of the Muslim community. This article tries to respond to this gap by answering 3 questions. What are the implications of classical and modern accounts of the maqāṣid al-Sharīʾah for the assessment of political authority, its accountability and rights? What successes and failures has Bangladesh experienced in achieving those goals from 1972 to 2026 under the Constitution? What system could combine maqāṣidī considerations with the institutional needs for constitutional democracy without giving any interpreter unaccountable powers?

The main thrust is that the politics of Bangladesh has been mainly about the question of religious identity while the goals of the state have been left constantly unfulfilled and secular and Islamic constitutional promises were used as tools by the rulers in power. Reconceived as a purposive and cumulative standard of accountability, maqāṣid al-Sharīʿah makes this pattern visible and offers a normative basis for reform that is neither theocratic nor dismissive of religion. The article makes three contributions. Theoretically, it distinguishes identity-based from purpose-based Islamic constitutionalism and develops the MAF as an instrument for the latter. Analytically, it offers the first systematic maqāṣidī evaluation of Bangladesh's constitutional trajectory, extending to the post-2024 transition. Practically, it derives criteria for the reform agenda now under way.

Literature Review

Maqāṣid al-Sharīʿah: From Juristic Theory to Public Standard

The theory of maqāṣid developed gradually within uṣūl al-fiqh. Al-Juwaynī distinguished necessities, needs, and refinements; his student al-Ghazālī defined maṣlaḥa as the preservation of the law's objectives and identified five of them (al-Ghazālī, 1993). The most systematic expression of the doctrine was in the work of al-Shāṭibī, called al-

Muwāfaqāt. He claimed that the universal goals are not based upon any single proof, but upon the inductive reading of many texts, and that needs and refinements serve as protecting walls around the necessities (al-Shāṭibī 1997; Kamali 1999). This is an architecture that is important to governance. If the necessary goods can only be obtained by means of the supplementary goods which are in the background of the necessary goods, then the necessary goods cannot only be protected against direct harmful effects on them, but also by institutions of justice, education and welfare.

Two major additions were made in the twentieth century. Ibn ʾĀshūr (2006) suggested that maqāṣid can be separated from the other branches of Islamic law and introduced general objectives such as social order, equality and freedom. Later writers reread the five necessities as rights, and as positive obligations of development. Auda (2008) redefined preservation of intellect as a promotion of learning and preservation of religion as freedom of belief, with a systems approach. Kamali (2022) sees good governance as a legitimate aim of the Sharīʾah and that it was commanded in the Qurʾān, yet the issue of the specifics of its institutions is open to judgement. A parallel line of work involves relating the goals by reading the rights to protect life, intellect and property as rights to life, learning and secure possession (Johnston, 2007; Mukharrom& Abdi, 2023). In recent legal theory, the goals are put at the same level as the principles that guide the making of rules, not at the level of rules (H. Ahmed, 2025), which is appropriate for constitutional analysis.

However, this expansion has not been unchallenged and the criticisms directly address constitutional issues. Opwis (2017) notes that inclusion of maqāṣid as a new source of law could undermine their traditional methodology, which is associated with textual reasoning. Maṣlaḥa has long been suspected of indeterminacy, since almost any policy can be described as serving the public good; the Iranian state's use of maṣlaḥa to override or suspend rules at the regime's discretion shows how readily the concept can become an instrument of the state (Khodadadi, 2025). Helmy (2022) discusses how a prominent contemporary scholar reframed maqāṣid discourse and made civil peace superior to rights, providing theological justification for authoritarian rule in the Gulf, while Al-Azami (2022) demonstrates how ulama's attitudes on the Arab uprisings reflected their institutional connections and their concern for disorder. Hallaq (2013) takes the matter one step further and contends that the moral order assumed by Sharīʾah is incompatible with the modern sovereign state in any form. These criticisms suggest that the governance capacity of maqāṣid rests on institutional discipline, but this is infrequently theorized.

Islamic Constitutionalism, Legitimacy, and Democracy

The compatibility issue has now come from the realm of abstract doctrine to issues of agency, interpretation and institutional design. According to Fadel (2018), Sunnī constitutional theory sees the ruler as the representative of the community, and that his actions are legitimate as long as the people agree to or are thought to agree to it. In other work, he draws on Islamic moral theology as a source of public reason (Fadel, 2008), redefines maṣlaḥa as a state of flourishing, not utility (Fadel, 2022), and traces the authoritarian temptation in post-2011 Arab constitution-making (Fadel, 2016). Kreutz (2025) accepts that maṣlaḥa can serve as a public-good criterion but argues that Fadel's account does not deliver democratic responsiveness and active participation, and that it rests on a narrow set of Sunnī sources. Any maqāṣidī theory of democratic accountability has to answer that objection.

Other contributions sharpen the institutional question. Abou El Fadl (2004) argues that the Islamic values of justice, consultation, and human dignity are best realised through constitutional democracy. March (2019) explains how contemporary Islamic discussion has moved from viewing sovereignty in the state to the human community as the vicegerent

of God. March (2019) identifies this change as "the caliphate of man. Quraishi-Landes (2015) differentiates between fiqh, an interpretation of the law by the jurists, and siyāsa, the law enacted by the ruler, and states that the former is grounded in the public benefit, while the latter is based on the idea that it is divine law. An-Naʾim (2008), on the other hand, claims that the Sharīʾah is not religiously authentic without the state's neutrality and the justification of its policies based on civic reason that is comprehensible to everyone. They all align around a common point: the key is who interprets Islamic norms, and in what ways.

That is confirmed by comparative constitutional research. Islamic supremacy clauses have been linked to greater rights protections in numerous instances, and a subsequent large-sample study finds that they can be traced to colonial legal inheritance and constitutional bargaining (D. I. Ahmed &Abbasi, 2023). Lombardi (2013) suggests that such clauses have an impact primarily on who applies them. Hirschl (2010) shows that courts in religion-laden orders frequently operate to contain religious claims. Kuru (2019) traces authoritarianism in parts of the Muslim world to a long-standing alliance between ulama and the state, which cautions against assuming that religious legitimation and political accountability move together. Stepan's (2000) "twin tolerations", under which religious authorities do not control democratic institutions and the state does not suppress religious expression, provide a further benchmark.

Bangladesh: Secularism, Islam, and Democratic Decline

The study of constitution in Bangladesh has focused on the role of religion in the state. Bhuiyan (2017, 2021) shows how secularism was removed and restored, and that it was seen at the founding not as an assault on religion but rather as an assault on communalism, thus the later coexistence of secularism and a state religion should be interpreted as a pragmatic modus vivendi. Hoque (2021) defends the founding promises that are then evaluated in the light of subsequent changes. Political scientists have analyzed how the successive regimes use Islam. Religion was used as a means of legitimising power by military rulers and as a tool of social control, while the Gulf influence and party competition had led to an Islamic resurgence in the late 1970s (Sheikh & Ahmed, 2020; Hossain, 2012). Lorch (2019) shows that the secular Awami League pursued top-down Islamisation, driven by Islamist mobilisation, intense party competition, and semi-authoritarian rule.

A second body of work documents democratic decline. Riaz (2021) traces a pathway from electoral democracy to electoral authoritarianism that began with the removal of the caretaker system. Riaz and Parvez (2021) dissect the manipulation of the 2018 election, and Mostofa and Subedi (2021) identify the sidelining of the opposition, institutionalised repression, and the co-optation of religious leaders as mechanisms of competitive authoritarianism. Hassan and Nazneen (2017) explain how violence broke the elite settlement on which electoral alternation had rested, and Jahan (2015) shows how executive dominance hollowed out parliamentary accountability. The 2024 uprising has generated a fast-growing literature on mobilisation and transition (Chowdhury, 2025; Murshid, 2025; Stommes, 2026). Maqāṣidī studies of Bangladesh remain rare. Bhuiyan et al. (2026) evaluate the human-rights record against the five objectives and find progress in health, education, and poverty reduction alongside persistent deficits in free expression and judicial accountability.

Three literatures thus address overlapping problems without speaking to one another. The maqāṣid literature offers rich accounts of governance and rights but seldom examines constitutional structure, and it has not answered its most serious internal critique, that the vocabulary can be captured by authoritarian power, with an institutional theory. The literature on Islamic constitutionalism points to interpretive authority and procedure as central, but has concentrated on Arab cases. Secularism and democratic decay

has been described in detail in the Bangladeshi literature but neither has it asked whether the moral tradition of the country's majority can provide a yardstick for assessing and improving the country's institutions. The gap here is twofold: firstly, the absence of an integrated doctrinal and constitutional framework to assess governance in a constitutional democracy in the South Asian context; and secondly, the lack of an account of how maqāṣidī assessments can be conducted through constitutional review, while avoiding majoritarian identity politics and/or authoritarian rationalisation.

Theoretical Framework

Identity-Based and Purpose-Based Islamic Constitutionalism

The framework is based on a distinction. Identity-based Islamic constitutionalism manifests the connection between the state and Islam in symbol and hierarchy of sources of law: invocation of God, state-religion clause, and the requirement that the laws are based on the Islamic injunctions. Its success is based on the text. Purpose-based Islamic constitutionalism evaluates constitutional arrangements by their contribution to the ends that, in the Islamic tradition, justify public authority. Its success is measured by institutional function. The two can coexist, but they are logically independent. A constitution saturated with Islamic symbols may fail its citizens badly, while one with no religious clause may secure the objectives of the Sharīʿah more effectively than its confessional neighbours.

Purpose-based reasoning is not an import into the tradition. Al-Shāṭibī's teleology treats rulings as means to ends, and classical jurists held that means take the legal status of the ends they serve, together with the corollary of sadd al-dharāʾiʿ, the blocking of means that lead to harm (Auda, 2008; Kamali, 1999). Applied to constitutional institutions, this yields what this article calls functional evaluation. An electoral body, a speech regulation, or a court is a wasīla, a means, to be judged by whether it secures or endangers the objectives it exists to serve. Institutions performing the same function may be substituted for one another, but abolishing an institution without replacing its function is, on this logic, a failure to protect the end.

Accountability as a Fiduciary Relationship

In public-law scholarship, accountability is a relationship in which an actor is required to account for and justify his actions to a forum, the forum is entitled to question and decide on the actions of the actor, and the actor may be subject to consequences (Bovens, 2007). It can be vertical (officials to voters) or horizontal (in between state institutions empowered to watch the other (O'Donnell, 1998)). The Islamic tradition of constitutionalism arrives at a similar result in a different manner. In the case of the ruler as an agent and a possessor of power as a trust (amāna), power can only be exercised in the interests of the beneficiaries and to which they have a right of accountability (Fadel, 2018). Secular fiduciary theories of the state have a similar claim (Fox-Decent, 2011). The convergence allows a maqāṣidī theory of accountability to speak in a form that resonates with the tradition, but also is understood by constitutional theory.

The Maqāṣidic Accountability Framework

On these foundations, the article proposes the Maqāṣidic Accountability Framework summarised in Table 1. It is a normative and doctrinal instrument for organising evaluation, not an empirical index.

Table 1
The Maqāṣidic Accountability Framework (MAF)

Test	Maqāṣidī basis	Constitutional correlates	Diagnostic question
1. Objective conformity	The five necessities and their complementary goods; good governance as a maqṣad (al-Shāṭibī, 1997; Kamali, 2022)	Rights to life, education, health, livelihood, freedom of religion and conscience; social and economic guarantees	Does the arrangement protect, or at least not undermine, life, intellect, religion, family, and property, including the complementary goods that secure them?
2. Deliberative accountability	Rule as trust (amāna); shūrā; means–ends reasoning and sadd al-dharā'i' (Auda, 2008; Fadel, 2018)	Competitive elections, impartial electoral administration, judicial review, legislative scrutiny, free expression	Is the arrangement publicly justified, open to consultation and contestation, and reviewable by bodies able to sanction abuse?
3. Equal citizenship	Equality as a general objective; protection of non-Muslims' life, property, and worship (Emon, 2012; Ibn ʿĀshūr, 2006)	Equality before the law, non-discrimination, freedom of religion, equal political participation	Does the arrangement secure equal civic standing irrespective of religion, belief, or identity?

Objective conformity examines whether an agreement upholds or weakens the fundamental goods and complementary goods which ensure those fundamental goods. Al-Shāṭibī's test goes beyond the direct harm to the institutions that underpin health, learning, livelihood, and religious life, as the lower tiers are protective of the higher. Deliberative accountability poses questions about how public power is exercised, including through "justification" and "consultation" and "review." Institutionalizing the fiduciary premise and providing flesh and blood to the responsiveness which Kreutz (2025) believes is missing in maṣlaḥa-based theories of legitimacy. Equal citizenship is concerned with whether it does or does not provide equal standing in the political arena for citizens of all faiths. Ibn ʾĀshūr's work on equality as a general objective and scholarship that views the historical rules involving non-Muslims as products of imperial rule, rather than fixed elements in the Sharīʾah (Emon, 2012).

Cumulative Application and Interpretive Authority

The tests are cumulative and much of the emphasis in the design of the framework lies on this. In other words, a setup that benefits the welfare of the people but cannot be held responsible, as the definition of welfare is left to the unaccountable one, is a fail, as Helmy (2022) discovers in stability-first maqāṣid discourse. If it is a procedure that is accountable, but it treats minorities subserviently, it does not satisfy the standards of procedural responsibility, because the goals that justify public authority are due to all who are subject to it. The individual tests protect against a particular form of distortion in the other tests.

The framework must also include a record of who is implementing the tests. Lombardi (2013) characterizes interpretive authority as the "central design feature" of Islamic constitutions, while those that have been under state control have demonstrated the risk of entrusting it to a clerical corps accountable to the executive (Fadel, 2016). The MAF finds its interpretation in the constitution system. Maqāṣida arguments can be brought forward by scholars, religious parties, religious institutions and citizens in the public arena, but their legal impact is decided by the courts based on the interpretation of the Constitution and their political impact is decided by the elected party that is accountable to voters. This is what Rawls (1997) referred to as the proviso of public reason: arguments based on comprehensive doctrines can be aired in public debate, but in the long run, their content must also be justified by reasons that people who do not subscribe to the doctrine can endorse. In Bangladesh, such arguments by maqāṣid can satisfy that proviso as articulated in the constitutional values, already present in the founding documents, including human dignity, equality, social justice and freedom of conscience.

Material and Methods

Research Design

This study adopts a doctrinal legal analysis and historical-constitutional analysis in an interpretive single-case design. Doctrinal analysis involves the analysis of the content and the internal logic of authoritative texts in this case the literature of the maqāṣid and the constitutional provisions, amendments and judgments regarding religion, rights and authority in Bangladesh. Historical-constitutional analysis traces how those provisions were made, contested, and changed. Bangladesh is treated as an extreme case in the sense of Seawright and Gerring (2008): it displays unusually wide variation in both religious-identity provisions and democratic institutions within a single constitutional order, which makes it well suited to examining whether the two dimensions move together. The design aims at analytical rather than statistical generalisation.

Sources

Three bodies of material were analysed. The first comprises classical and modern maqāṣid texts, read in standard printed editions and published translations, including al-Ghazālī's al-Mustaṣfā, al-Shāṭibī's al-Muwāfaqāt, and Ibn ʿĀshūr's treatise, together with the principal contemporary reconstructions. The second comprises Bangladeshi legal materials: the consolidated Constitution (Constitution of the People's Republic of Bangladesh, 1972); the amendment acts; the Supreme Court's judgments in the Fifth and Thirteenth Amendment cases and its later rulings on the Fifteenth Amendment and the caretaker system; the Digital Security Act 2018 and its successors; the report of the Constitution Reform Commission (2025); the July National Charter; and the OHCHR (2025) fact-finding report. The third comprises peer-reviewed scholarship on Islamic constitutionalism, Bangladeshi politics, and comparative constitutional law, used to corroborate and contextualise the primary materials.

Analytical Procedure

The analysis proceeded in four stages. First, the maqāṣidī concepts were reconstructed doctrinally and translated into the tests and diagnostic questions in Table 1. Second, five critical junctures were identified and understood as being relatively short time periods when the constitutional settlement was open to change and decisions were made that affected future constitutional development: the secular founding of 1972, the martial-law amendments of 1977-1988, the caretaker era of 1996-2008, the reconfiguration of 2005-2011, and the transition of 2024-2026, followed by the aftermath of 2024. Third, each juncture was judged on the three tests, and there was evidence on each judgement, which was recorded and alternative readings were considered. In some instances, such as when the literature disagreed on whether the state-religion clause undermines minorities' rights in reality, both sides were included and considered but not selected as a solution. Third, assessments were conducted at several junctures and compared to look for patterns.

Trustworthiness and Limitations

Trustworthiness was achieved by triangulation of legal texts, classical doctrine and independent scholarly accounts, and by engagement with competing accounts. There are four restrictions to be noted. The application of the tests requires interpretive judgement in deciding what is essential and in weighing institutional evidence, which may vary among reasonable scholars. The study doesn't attempt to quantify the frequency of the use of maqāṣidī reasoning in Bangladeshi courts/legislatures. The events that have occurred since 2024 have been recent and, as a result, conclusions drawn must be provisional. Finally, the framework is discussed in relation to the inner Sunnī law theory and its

connection with other traditions of maṣlaḥa, which Kreutz (2025) justly points to, is not explored here.

Results and Discussion

Symbolic Surplus: The Oscillation of State Identity

The first finding is that changes to the state's religious identity tracked the legitimation needs of incumbents far more closely than any deliberated account of the state's purposes. The 1972 Constitution named nationalism, socialism, democracy, and secularism as fundamental principles and, in Article 12, defined secularism as the elimination of communalism, the absence of state favour towards any religion, the prohibition of the political abuse of religion, and non-discrimination on religious grounds (Bhuiyan, 2017). After the 1975 coup, a 1977 martial-law proclamation deleted secularism, inserted the Bismillah, and introduced "absolute trust and faith in the Almighty Allah" as a principle; the Fifth Amendment of 1979 ratified these changes wholesale together with the other acts of the martial-law period. Ershad's Eighth Amendment of 1988 then declared Islam the state religion. Both changes were made by military-led governments seeking a constituency after taking power (Hossain, 2012; Sheikh & Ahmed, 2020).

The reversal of the 2000s followed a similar logic in the opposite direction. The High Court Division declared the Fifth Amendment unconstitutional in 2005, and the Appellate Division declined leave to appeal in 2010, holding the martial-law regimes and their ratification void (KhondkerDelwar Hossain v. Bangladesh Italian Marble Works Ltd., 2010). The Fifteenth Amendment of 2011 then restored secularism and Article 12 while retaining the Bismillah and Islam as the state religion, now paired with an assurance of equal status for other faiths (Bhuiyan, 2021). Some scholars viewed it as contradictory or as a viable acceptance of the Muslim majority society while retaining equal rights (Bhuiyan, 2017, 2021).

Measured against the MAF, these provisions are largely neutral under the first test. Neither the secular formula nor the state-religion clause, taken alone, prevents the state from protecting religion understood as the freedom to believe and practise. The deficits appear under the second and third tests. The identity provisions were enacted by decree and confirmed by a measure approved by parliamentary supermajority that in the same amendment eliminated the referendum clause for altering the foundational provisions of the Constitution, while making the majority of the text unamendable. The settlement was continually altered by the people who could benefit from altering it. In the third test, each change affected minorities' symbolic position without there being any public reflection on their civic position. The resulting pattern may be described as a symbolic surplus: abundant contest over the state's religious identity, with almost no deliberation about what that identity obliges the state to do.

Purposive Deficit: Declared Objectives and Unenforced Guarantees

The second finding concerns the gap between the Constitution's declared objectives and their enforcement. Article 11 commits the Republic to democracy, fundamental rights, and respect for "the dignity and worth of the human person", a close textual analogue to the maqāṣidī concern with human dignity. However, there are two levels of obligations in the Constitution. According to Article 8(2) the Fundamental Principles of State Policy, such as the provision of basic needs, free and compulsory education, and public health, are not judicially enforceable. The High Court Division enforces the fundamental rights contained in Part III, such as freedom of thought, conscience and speech, as provided in Article 39.

The goods that correspond most closely to the necessities and needs of the maqāṣid tradition, sustenance, health, and education, therefore sit almost entirely in the non-justiciable tier. Bhuiyan et al. (2026) find real progress on several of these goods, suggesting partial fulfilment of the objectives of protecting life and property. The constitutional difficulty lies less in the absence of progress than in the absence of any mechanism through which the state must account for it. No institution is charged with requiring the government to explain its performance on Part II. Under the MAF, objectives that pass the first test on paper fail the second in practice.

The enforceable tier fared worse in the domain most important for accountability. The Digital Security Act 2018 replaced Section 57 of the Information and Communication Technology Act, under which online communications that offend religious sentiment, or online material that is likely to cause public order to be disturbed were criminalised (Digital Security Act, 2018). The Cyber Security Act 2023, which replaces it, continued to have most of these offences. During these times, laws have been applied to journalists, opposition activists and common users of social media (Mostofa&Subedi, 2021; Riaz, 2021), and journalists adopted strategies to protect themselves beyond self-censorship (Bhowmik& Fisher, 2026). The religious-sentiment offence is of particular interest. In the name of the protection of religion, it was used against religious minorities, freethinkers and those who questioned the government. According to Ibn ʾĀshūr (2006) freedom is one of the general goals of the Sharīʾah, and the modern interpretation of Ibn ʾĀshūr's work relates the protection of the religion to freedom of belief and not to state policing of offence (Mujib&Hamim, 2021). Such laws do not meet the first requirement, nor do they meet the second requirement; they violate the right to question and to criticize intellect, understood as the freedom to question and criticize public power.

Partially corrected to the Cyber Security Ordinance 2025. It reduced the number of speech offences by nine, including those relating to defamation and religious sentiment, and scrapped pending cases under those laws, and introduced an offence of spreading religious hatred (Cyber Security Ordinance, 2025). The MAF believes that the amendments from the protection of feelings to the prohibition of incitement against persons is the right move, but it will depend on the extent to which the new offence is drawn and applied in practice, as well as the fate of the new offence in the coming elections in 2026.

Functional Erosion: The Caretaker System and Electoral Accountability

The third finding concerns electoral accountability. The Thirteenth Amendment of 1996 created a non-party caretaker government, led by the most recently retired Chief Justice, to administer general elections after parliament's dissolution. It answered a specific problem: the parties did not trust one another to conduct elections from office. The elections of 1996, 2001, and 2008, held under caretaker administrations, were broadly accepted and produced alternation in power (Bari, 2018), although the military-backed caretaker government of 2007–2008 remained far beyond its ninety-day mandate and exposed the system's own vulnerabilities (Hassan &Nazneen, 2017).

In 2011 a divided Appellate Division declared the Thirteenth Amendment unconstitutional because an unelected government was inconsistent with the Constitution's democratic basic structure, while indicating in its short order that the next two elections could still be held under caretaker arrangements (Abdul Mannan Khan v. Bangladesh, 2012). The Parliament has done more than what the Court had asked and scrapped the system altogether (Bari, 2018). The results of the subsequent elections speak for themselves. The main opposition boycotted the election in 2014, and over half of the seats were won uncontested; the election in 2018 was systematically manipulated (Riaz&Parvez, 2021); and the election in January 2024 was boycotted again. The 2011 amendment marks the beginning of the shift towards electoral authoritarianism according to Riaz (2021).

The MAF explains how things went wrong. In 2011, the reasoning was formal, asking whether or not the caretaker government was elected. Functional evaluation is used to determine if the institution had a needed purpose and if the institution's elimination included a comparable safeguard. The second test was for impartial electoral administration, and the caretaker system was one way of achieving this. With its elimination, a new impetus was given to the abuse of office, and sadd al-dharāʾiʿ of blocking up foreseeable ways of doing harm falls under this rubric. The system was far from optimal, and 2007-2008 revealed that any unelected custodian can also fail to be accountable, and the system failed to leave the Constitution with no mechanism to fulfil its purpose. This reading is borne out by subsequent reversals by the courts. The High Court Division declared the provisions of the 15th amendment of the Constitution which abolished the caretaker system and the referendum requirement null and void in December 2024, and in November 2025 the Appellate Division, following its own order issued in 2011, reinstated the caretaker system from the fourteenth parliamentary election.

Instrumental Religion: Mobilisation and Accommodation

The fourth finding concerns religious mobilisation and state power. Hefazat-e-Islam emerged in 2010 as a network of Qawmi madrasa leaders opposing the government's women's development policy and educational reforms. In 2013, against the Shahbag movement's demand for the execution of convicted war criminals, it issued a thirteen-point charter that included a blasphemy law carrying the death penalty and action against so-called atheist bloggers, at least twelve of whom were later killed by militants (Bhatt, 2021). The government dispersed Hefazat's mass sit-in in Dhaka by force in May 2013.

What followed was accommodation rather than confrontation. Lorch (2019) documents a sequence of concessions after 2013, including textbook revisions, official recognition of the highest Qawmi madrasa degree, and the removal of a sculpture from the Supreme Court premises, and shows that they intensified as the Awami League's rule became less democratic. Religious outrage also proved an effective political weapon in its own right: in 2014 a Hefazat-led campaign forced a minister from office over remarks deemed blasphemous (Ruud, 2019). At the same time, the government pursued Jamaat-e-Islami through the courts and the war crimes tribunal, which Mostofa and Subedi (2021) interpret as part of a wider strategy of removing organised opposition. A formally secular ruling party thus combined the suppression of one Islamist party with the cultivation of another religious movement, each for reasons connected to its hold on power. This is a form of the ulama-state alliance that Kuru (2019) documents as a recurring cause of authoritarianism, in this case on a secular constitution. This pattern does not meet the three tests for the MAF. The right to equal citizenship and protection of life was denied to the “freethinkers” and a blasphemy law was demanded. Such demands were met by accommodating them, rather than by justifying them publicly, thereby replacing private negotiation with a mobilised constituency with public justification. The instrumentalization of religion, whether through the establishment of Hefazat or the prosecution of Jamaat for partisan purposes, put the protection of religion before all other matters.

A Purposive Turn? The Transition of 2024–2026

The fifth finding is related to the transition that started with the student uprising of July 2024. The OHCHR (2025) reported serious abuses against protesters by security forces and supporters of the ruling party, and also that crimes against humanity may have been committed, with up to 1,400 deaths between 15 July and 5 August. It also records reprisal attacks following the departure of Sheikh Hasina, such as attacks on Hindus, Ahmadis and Indigenous communities. An interim government led by Muhammad Yunus took office in August 2024 and established reform commissions (Chowdhury, 2025; Murshid, 2025).

The Constitution Reform Commission (2025) proposed replacing nationalism, socialism, and secularism with equality, human dignity, social justice, and pluralism, alongside democracy, and described Bangladesh as a multi-religious, multi-ethnic, and multicultural country in which the coexistence and dignity of all communities is to be ensured. These terms echo the 1971 Proclamation of Independence, which named equality, human dignity, and social justice as the purposes of the new state. In October 2025 most political parties signed the July National Charter, committing themselves to reforms including a two-term limit for the prime minister, a bicameral legislature, and greater independence for the judiciary and the Election Commission; several left parties declined to sign. A general election was conducted together with a referendum on the Charter, which was approved, on 12 February 2026, where the Bangladesh National party got two-thirds majority and Jamaat-led alliance became the main opposition (Stommes, 2026).

The move in the transition is a radical change in constitutional language from identity to purpose from the MAF perspective. Dignity and equality are two concepts that are straightforwardly mapped onto maqāṣidī goods: the protection of human dignity and the general objective of equality, as well as the classical command of justice. Pluralism comes closer than the now disputed notion of secularism to the third test if it is institutionalized. But the deliberative test indicates actual shortcomings. The Awami League, which ruled for the past 15 years, is still banned from the 2026 election due to its illegal activities under the anti-terrorism law in 2025, while the constitutionality of the referendum itself is being doubted. Since August 2024, reprisal violence and attacks on minorities indicate that equal citizenship is not being guaranteed in reality (OHCHR, 2025; Stommes, 2026). The shift has resulted in a purposeful vocabulary and not yet the institutions that will make it stick.

Table 2
Summary of the MAF assessment across five critical junctures

Juncture	Objective conformity	Deliberative accountability	Equal citizenship	Dominant pattern
1972: Secular founding	Largely met in text; social guarantees non-justiciable	Partly met; constituent assembly, but rapid concentration of power by 1975	Met in text; Article 12 bars religious discrimination	Purposive commitments without enforcement
1977–1988: Martial-law amendments	Neutral	Not met; changes by decree and wholesale ratification	Weakened symbolically	Identity as regime legitimation
1996–2008: Caretaker era	Partly met	Largely met for elections; breach in 2007–2008	Partly met	Functional safeguard for alternation
2005–2024: Reconfiguration and decline	Partly met; social progress alongside rights deficits	Not met; caretaker abolished without substitute, speech criminalised	Not met in practice; accommodation of exclusionary demands	Instrumental religion and functional erosion
2024–2026: Transition	Partly met; purposive principles proposed	Contested; reforms adopted while a major party was excluded	Proclaimed (pluralism), insecure in practice	Purposive vocabulary without binding institutions

Discussion

From Identity to Purpose

1 The results corroborate the main argument stated in the article. Bangladesh's constitutional politics had consumed a lot of energy for five decades in its struggle over

the religious identity of the state, without paying proper attention to the institutions that are necessary to ensure the constitutional purposes.Over the last 50 years, extensive energy has been devoted to the religious identity of the state, while institutions that ensure the state's purposes have been neglected or weakened. This pattern references a number of comparative strands. It affirms the predictive power of religious clauses is weak (D. I. Ahmed & Ginsburg, 2014) and introduces a mechanism: a military dictatorship in the 1970s and 1980s, and an increasingly authoritarian secular government after 2013 would be able to use identity provisions as low cost currency because the clauses were perceived as legitimate. Lorch's (2019) argument about the growing Islamisation as democratic legitimacy waned is strongly supported by this reading, while Kuru's (2019) argument for an alliance between the ulama and state is even more in tune, with the only difference being that in Bangladesh the alliance was under a formally secular constitution.

2 The case is also related to the literature on the erosion of democratic regimes by law and of Islamic constitutionalism. Landau (2013) speaks of "abusive constitutionalism" as the exercise of the amendment to strengthen the power of the incumbent and Scheppele (2018) of "autocratic legalism" as the use of legal forms to weaken checks on the power. Both fit into the Fifteenth Amendment. It eliminated the requirement for a referendum, ended the caretaker system, and added Article 7B of the Constitution, which made much of it unamendable, which entrenches a settlement agreed on by one parliamentary majority. Most of the public debate was over its religious provisions, while its impact on electoral accountability was much less discussed but more important. The fact itself is an indication of the purposive scrutiny being crowded out of the arena of identity contest.

3 None of this means that identity is irrelevant; for many citizens the religious nature of the state is a great significance. It implies the inability of identity provisions to replace purposeful evaluation as well as the fact that a maqāṣidī view moves the focus from what is being evaluated to the question that the tradition itself considers most fundamental—whether the public authority is able to guarantee the provision of the goods for which it was created.

Disciplining the Vocabulary: MaqāṣidBetween Accountability and Authoritarianism

The strongest objection to maqāṣidī governance is that the vocabulary can serve power as easily as constrain it. The Gulf cases examined by Helmy (2022) and Al-Azami (2022), and the Iranian state's discretionary use of maṣlaḥa (Khodadadi, 2025), demonstrate the risk. The Bangladeshi findings confirm it in a different idiom. The Digital Security Act's protection of religious sentiment and public order appealed, in substance, to the preservation of religion and social order, both recognised objectives, in order to criminalise criticism of the government. A maqāṣid framework that asked only whether a measure claims to protect religion or order would have had no grounds to object.

This is why the MAF's tests are cumulative and why the second test is grounded in the tradition rather than borrowed from outside it. The fiduciary conception of rule (Fadel, 2018), al-Shāṭibī's means-ends reasoning, and sadd al-dharāʾiʿ together imply that a ruler who claims to protect the community's goods must answer for whether he does so. To make a claim to protection for religion that is not open to discussion is not a maqāṣidī claim, but rather a claim for power, dressed up in the language of the tradition. The framework thus responds to the objection of Kreutz (2025) in this particular manner. Kreutz is correct that more than an assurance of deliberative public goods is required for a maṣlaḥa account of legitimacy. The MAF provides the institutional specification: it is a necessary feature of the maqāṣidī standard, but not an optional feature.

The framework also supports Hallaq's (2013) contention that there is no moral order in the modern state. Bangladesh can give some support to this, because religious words were also borrowed and used in the state's interests.Bangladesh can offer some support to this, because religious words were also borrowed and used for state purposes. But the case provides evidence which the impossible thesis cannot account for: the caretaker era and the 2024 uprising have proved that institutional designs and popular mobilisation can hold state power to account. It is more reasonable to say the answer is 'conditional', rather than 'impossible'. The modern state may be constrained by purposeful standards, but only when there are institutions of accountability to enforce them and the MAF identifies those institutions.

There is a close relationship with An-Na'im's (2008) secular-state thesis, but not an exact match. The MAF views the Sharī'ah as religious law and does not want the state to impose it upon people, while also demanding the reasons behind coercive legislation to be open to all citizens. It differs in that it does allow maqāṣidī arguments to be brought into public deliberation in their own terms but then requires that those arguments eventually be backed with constitutional arguments that non-Muslim citizens can share, as required by Rawls's (1997) proviso. The Constitution Reform Commission (2025) had suggested that the purpose of restoring the founding values at the heart of the constitutional order was to give such a common language. Human dignity, equality and social justice are constitutional obligations and acknowledged maqāṣidī goods. The confluence is not fortuitous, because the goals of the state, unlike its religious makeup, are matters that a Muslim majority and its citizens can discuss together.

Equal Citizenship and the Limits of Majoritarian Islam

The third test carries particular weight in a society in which roughly nine in ten citizens are Muslim. The findings show that equal citizenship was most at risk not when the Constitution's religious identity changed but when governments accommodated exclusionary demands in exchange for political support, and when public order collapsed after August 2024. The test should therefore be used in the first instance for state conduct and subsequently for constitutional symbols. The tradition offers support for such a standard: Ibn ʿĀshūr's (2006) account of equality as a general objective, Emon's (2012) historicisation of the rules for non-Muslims, and the modern understanding that the protection of life, property and worship extends to all citizens together support a conception of membership that is not based on religious affiliation.

This is to be understood as a proposal for a transition from 'secularism' towards 'pluralism'. Secularism has been charged with polarising in Bangladesh: on the one hand, many religious citizens perceived it as an attack on religion and on the other hand, many minorities saw it as a promise of securing their position (Bhuiyan, 2021). Pluralism could have wide acceptance, but it would be effective for protecting minorities only when it is institutionalized, as with enforceable non-discrimination, impartial protection of places of worship, and equal access to public office. Stepan's (2000) twin tolerations suggest a way to test the existence of that content; first, the state must not be able to limit religious expression, and second, religious actors must not wield a veto over democratic institutions. Bangladesh's recent history is littered with both successes and failures, and symbols will not suffice for equal citizenship.

Theoretical Contributions

The article makes four contributions to theory. First, there is a distinction between the identity-based and purpose-based Islamic constitutionalism, and the compatibility debate is rephrased accordingly. Second, the MAF is a cumulative standard that resolves the two most serious worries about maqāṣidī governance: indeterminacy and authoritarian capture. The substantive test is linked to the deliberative and egalitarian

conditions, which address the indeterminacy and capture concerns. Third, the means-ends approach, grounded in classical thinking about means and ends, is a tool to use to evaluate institutions by the function they perform and to understand why the elimination of a safeguard without an alternative constitutes an omission to safeguard an objective. Fourth, having interpretive authority in constitutional review and public reason gives an alternative to clerical guardianship and to the prohibition of religious reason from public life. The framework will be extended to orders like Malaysia, Pakistan, Indonesia and Tunisia.

Conclusion

This article inquired into what Bangladesh's constitutional history is like from the perspective of the purposes to which the Islamic tradition assigns public authority, and whether and how such an evaluation can be reconciled with constitutional democracy. The answer is the symbolic overhang and a lack of purpose in the country's constitutional politics. The governments, from both military and civilian, and secular and religiously oriented, invested in the religious identity of the state as a legitimation resource, and the institutions which secure life, intellect and public trust remained unenforced or were degraded. The failure of the Maqāṣidic Accountability Framework, the end of the caretaker system, the criminalisation of speech in the name of religious sentiment, and the toleration of exclusionary religious demands all seem to be failures of the same kind: failures to regard public power as a trust for all citizens.

The main thesis of the framework is that maqāṣid al-Sharīʾah ought to be best treated as a line of constitutional interpretation, not as a competing source of sovereignty, as it would be in a system of public justification and constitutional review. The cumulative nature of its tests, and its combination, is what makes the maqāṣidī vocabulary immune from being used as a tool for the power it was meant to check. The shift started from 2024 has brought the constitutional language more in line with its objectives, which include dignity, equality, social justice and pluralism as basic values. That language will be binding or not will depend on institutions not consolidated by the post-2026 order: impartial elections, protected expression, and enforceable equality.

The following three paths of future study are suggested. Empirical research is needed to investigate the use of maqāṣidī and public-interest arguments in Bangladeshi courts, legislators and religious institutions and to test the MAF against court cases and parliamentary debate. Comparative work needs to be done on other Muslim majority constitutional orders to find out if the trend of symbolic surplus and purposive deficit is unique to Bangladesh. Doctrinal study should include an analysis of the framework in relation to the traditions of maṣlaḥa that diverge from Sunnī practice, such as Shīʾī traditions. These tracks of investigation could help to establish whether the goals of the Sharīʾah can be a common measure across Bangladesh and beyond for the accountability and inclusiveness that constitutional democracy is supposed to achieve.

Recommendations

The study offers several recommendations for the reform agenda facing the Bangladeshi Parliament. The first is related to the Basic Principles of State Policy. The government may not be able or willing to make them fully justiciable, but it might have to report to Parliament every year on its progress with respect to basic necessities, education and health, with the information submitted to Parliament open to the scrutiny of Committees, and the background data open to the public. If the first test is passed on paper, then those objectives would be objects of deliberative accountability.

The second has to do with expression. Any offence relating to religion, reputation or public order within the cyber-law regime should be, as defined by Article 19(3) of the

International Covenant on Civil and Political Rights (as interpreted in 2011 by the Human Rights Committee), LEGAL, NECESSARY and PROPORTIONATE. There exists a maqāṣidī justification for this standard, namely the protection of intellect and religion is achieved through freedom of inquiry and belief rather than penalties for offence and narrow drawn incitement offences are sufficient when speech threatens to harm identifiable persons or communities.

The third is an issue of electoral integrity. The return to the caretaker system fills a real functional void, but the experience of the last two years (2007-2008) clearly indicated that the caretaker of elections had to be bound. The system is consistent with the second test if there are firm time limits, a limited mandate, transparent appointments, and judicial review in the event of an extension, and it is consistent with the second test if it achieves a durably independent Election Commission. The fourth relates to religious actors. Religious actors have a legitimate role in the public arena for debate. What MAF rejects is a bargain in which a government buys religious support with promises that cut short equal citizenship—public reason, not private accommodation, should be the avenue of religious influence. The fifth has to do with transitional justice. Accountability for the abuses of 2024 is a justice demand, but it must respect due process and must not be collective punishment of political opponents – the same method of exclusion that the findings document – perpetuated by incumbents**.**

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Ethical Considerations

No human subjects or personal information was used in this study. It is based exclusively on published books that are accessible to the public (and publisher descriptions and epitexts) cited in the references. Ethical approval was not necessary.

AI Use Statement

Generative AI (ChatGpt and Grammarly) was used for language editing and condensing text. It was not used for the data collection, coding the corpus and drawing findings. All text generated by AI is reviewed and edited by the author, and the author is responsible for the article's content.

Data Availability Statement

The data analysed are all published data, as mentioned in the references. The 39 corpus books are listed verifying, with the verification sources. The coding frame and coded dataset are available on reasonable request from the author.

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