DEMOCRACY AND RULE OF LAW

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1. Introduction

The pre requisite of democracy is rule of law. Rule of law demands that power should be legitimate and that its exercise is according to law.\(^1\) While rule of law places law above every individual irrespective of any rank or station, it remains subject to the ultimate judgment of the people. Democracy fulfills the aspirations of individuals, articulations of interest and nurturing of civil society. The most recent events from the end of the year 2006 to the year 2008 in Bangladesh with regard to election has generated a plethora of dialogue on the issues of prospect of good governance, democracy and rule of law in Bangladesh.

Democracy according to Plato, cannot have both 'love for money and adequate self discipline in its citizens.'\(^2\) Politics of Bangladesh neglected the latter and opted for the former. To make money by being near to the power and having no concern for the common people has been the core goal of the politicians in the name of democratic rule in Bangladesh.\(^3\) The result has been a governance disaster destroying the ideals of

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the State institutions, which were supposed to uphold rule of law. The challenge before the present government is to bring the country back to a healthy democratic order without taking too long to deliver it.

Democracy and rule of law is a much-discussed broad subject. The modest aim of this paper is to identify the problems and prospects of democracy and rule of law in Bangladesh in relation to law related matters and legal system. For that end in view a brief survey of democracy and rule of law as enshrined in the Constitution of the People's Republic of Bangladesh, an immediate past of democratic governance of Bangladesh along with breeding of corruption including the legal system and legal environment are discussed. Intolerance of politicians and public awareness are discussed to indicate that any reform will be useless without addressing these two issues. The present paper do not intend to discuss the history of democracy in Bangladesh from the days of British India and onwards or the political hurdles faced by it in the days of Pakistan. Nor does it intend to discuss in detail the immediate past of democracy in Bangladesh. The present paper is based mainly on secondary materials and selective in its approach.

2. Democracy and Rule of Law in the Bangladesh Constitution

The preamble of Bangladesh Constitution pledges that, "It shall be fundamental aim of the state to realize through the democratic process a socialist society, free from exploitation - a society in which the rule of law, fundamental human rights and freedom, equality and justice, political economic and social, will be secured for all citizens."

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4 From now on Bangladesh Constitution or The Constitution.
In accordance with this pledge positive provisions for rule of law have been incorporated in the Constitution under Articles 27 and 31. Fundamental rights have been guaranteed in the constitutional arrangement and their effective enforcement has been ensured in Articles 44 and 102. Article 7 and 26 impose limitation on the legislature that no law which is inconsistent with any provision of the Constitution can be passed. In accordance with Article 7, 26 and 102(2) of the Constitution, the Supreme Court exercises the power of judicial review whereby it can examine the extent and legality of the actions of both executive and legislative and can declare any of their actions void if they do anything beyond their constitutional limits. Article 11 reiterates its pledge in the preamble that "the Republic shall be a democracy in which fundamental human rights and freedoms and respect for the dignity and worth of the human person shall be guaranteed and in which effective participation by the people through their elected representatives in administration at all levels shall be ensured." Right to be governed by a representative body answerable to the people have been further ensured under Articles 7(1), 55, 56, 57 and 65(2) of the Constitution. The constitutional mandate has led Bangladesh Government to make serious efforts to strengthen democratic institutions.

3. Democracy in Bangladesh

For the last fifteen years Bangladesh was a parliamentary democracy, with broad powers exercised by the Prime Minister. Many formal democratic institutions existed, such

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as parliament, an active opposition, a free print media and the judiciary. Competitive elections took place, and free speech was practiced. However, these institutions and systems often functioned with limited transparency, accountability and openness to public input. Consensus among the national leadership about policy-making process was absent. Human rights issues had figured prominently in the speeches of government leaders and in the press. There remained, however, a large gap between rhetoric and practice. Cases of abuse of police were occasionally cited in the media. Those responsible for torture or unlawful deaths were rarely convicted and punished.\(^7\) Inspite of the presence of the constitutional institutions and provisions of democracy political ethics, nationalism, patriotism and our traditional social values succumbed to varied types of corruption\(^8\) which naturally undermined democracy and rule of law.

Bangladesh Government and the people of Bangladesh remained honest to the cause of democracy to the extent of election. Elections, open, free and fair, are the essence of democracy, the inescapable \textit{sine qua non}. But governments produced by elections were often inefficient, corrupt, shortsighted, irresponsible, dominated by special interests, and incapable of adopting policies demanded by the public good. These qualities made such governments undesirable but they did not make them undemocratic. Thus, the fate of Bangladesh remained entangled to a democracy of election with very little accountability towards the welfare of the public. Democracy is one public virtue, not the only one, and

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\(^8\) Dr. Mustafizur Rahman, ‘Opportunity to set stage for development’, \textit{The Daily Star}, 16\textsuperscript{th} Anniversary Special, 20 February 2007, p. 22.
the relation of democracy to other public virtues and vices can only be understood if democracy is clearly distinguished from the other characteristics of political systems. But insidious menace of corruption leads Bangladesh to such kind of democracy where 'democracy' became analytically useless. The democratically elected regimes routinely ignored constitutional limits on their power and deprived their citizens of basic rights and freedoms. The parasitic problem of corruption entrapping the society into political turmoil reached the climax in the end of 2006.

4. Present Situation in Bangladesh

For months Bangladesh was perched on the brink of a precipice. With bated breath the nation helplessly witnessed an unfolding drama that was pushing it towards an impending political disaster of unimaginable magnitude, and an abyss of unfathomable depth. On 12 January 2007, at the height of escalating political confrontation, street violence and sliding economic collapse induction of a new government averted a serious national crisis. Since 11 January 2007, Bangladesh - a country of 147 million people has been under an official state of emergency. Election scheduled for January has been suspended indefinitely. A government backed by the army now rules the land, which claims to be dedicated, to cleaning up Bangladesh's corrupt political system so a free and fair poll can take place. Although army and bureaucracy are

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greatly responsible for successful working of democracy yet too much involvement of army in the past have proved to be detrimental to the democratic institution of Bangladesh. The newly installed government, in the beginning enjoyed broad support at home and abroad. The country was then savoring a reprieve from the chaos. To pave the way for a new poll, the present Government promised to introduce voter identification cards, depoliticize the election commission and purge voter rolls. These declarations won domestic and international praise but its noble intention is yet to gain credibility till materialization of such declarations effectively.

For the people of Bangladesh and the present Government corruption is a key national challenge. Whatever way corruption is looked at, it is a key obstacle to development and poverty reduction. It increases social injustice and human insecurity. Given that politics is the other name of investment for making quick money, and in the absence of effective deterrence against corruption it has become so widespread that even the common citizens are affected by it, whether it is political corruption, or it is in the public service delivery including the law and legal system. Corruption is like energy, which does not die out but takes different forms. There are many instances where corruption is compromised even in the disguise of administrative and judicial verdicts. One glaring example is the artifice of

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Bangladesh that was sent to France among many protests during the term of the present government. This and many other such actions give rise to many contradictions and inconsistencies.

5. The Legal System

Separation of judiciary from the executive organs is one of the fundamental principles of state policy of Bangladesh. At the same time securing the loyalty of the executive towards enforcing the independent decisions of the judiciary is of great importance for maintaining the balance between the three branches of government. Although this aspect is taken for granted in theory, in practice executive branch coerce the decisions of the judiciary at every opportunity. Democracy and rule of law requires fair legal frameworks that are enforced impartially with full protection of human rights. Impartial enforcement of laws requires an independent judiciary and an impartial and incorruptible police force. Legal system of Bangladesh is deficient in such institutions and of equipment both internally and externally. Despite lack of logistic support there are instances when the law enforcing agencies have fought unto death for the cause of justice. There are also many instances when the Supreme Court had taken bold initiative through judicial activism to provide justice to people. Yet, there are instances, which are alleged, prove, something not befitting to the judiciary. The discussions in the

15 '189 artifice are sent to France without paying heed to protests', *The Daily Naya Diganta*, December 01, 2007, pp.1-2.
16 Article 22 of the Constitution of the People’s Republic of Bangladesh.
following sub-chapters have magnified the problems of the legal system so that the predicament hanging on the nation could be set at right.

5.1 The Judicial System

The infrastructure of the lower judiciary overburdens the judges with overwork. It takes couple of years to resolve a lawsuit in Bangladesh. Backlog of cases are in a pile, vacation benches are always too few and the rule of law remains a dream. It is frequently alleged that corruption has taken root in lower judiciary and entered into higher judiciary. It is also alleged that the judges quickly enter into compromise with the authority in power. The selection of judges for higher judiciary is often considered as biased.

Lawyers are politically divided and in the higher judiciary it is often discussed that they look for the bench to present a case which will be favorable to them. Lawyers have a professional obligation to foster rule of law. But lawyers who seek justice for their clients work within the system of corruption by bribing police and law related persons. The appointment and job security of public prosecutors are not determined by their professional ability but by partisanship. The expiry of their term of office depends on the sweet will of the successive governments. The public prosecutors should also be appointed through an acceptable selection process to develop an institution of good prosecutors.

There are many who remain honest throughout his/her life but a single or few instances of corruption makes the institutions of legal system questionable. Those who try to

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remain sincere and honest to their services are often intervened unofficially by the ruling authority thus affecting their decision. It is also difficult to make any comments or raise questions about the floundering of the legal system as this could be challenged at any time in the name of contempt of court whereas contempt has never been defined in definite terms. It allows breeding corruption instead of purging the legal system of its vices.

Independence of Judiciary is one of the hallmarks to ensure democracy and rule of law, and of which the present government has already turned it into a reality officially from 01 November 2007, yet actual independence may not be possible nor could be ensured in Bangladesh. Independence of the judiciary is not limited to independence from the executive pressure but is a much wider area embracing within its scope independence from many other pressures and prejudices. In particular, the judges of the judiciary may not find themselves in a comfortable position in the absence of a democratic government. In addition to that, the selection of judges is of much fundamental importance and the selection has to be made with utmost care and in the interest of the nation.

Justice PN Bhagwati of India who presided over the Supreme Court Bench on the Judges’ case suggested forming a judicial committee for the appointment of all judicial appointments and for establishment of a judicial commission for appointment of the Judges of the Supreme Court and High


The judges of the lower judiciary in Bangladesh are now selected by the Bangladesh Judicial Service Commission. There could be a new committee for the appointment of the higher judiciary to ensure impartiality and quality similar to the suggestion of Justice Bhagwati in India. The quality of judges is an important factor in the administration of justice.

Justice in Bangladesh is a dear service. The poor people usually cannot reach the judges only because of mobility to meet the charge required for going through the complicated process of litigation. Thus, they prefer injustice than fatigue. The Legal Aid Act, 2000 is also fraught with such provisions as would allow bias or corruption. The judiciary is the only organ, which can ensure rule of law. Long delays and excessive costs due to exorbitant demand of fees by the lawyers may turn a law ineffective. The judiciary should be easily accessible. To make justice accessible to the people, High Court Benches should be established in each Division, the permanent seat of the Supreme Court remaining in the capital.

Although not entirely judicial it is important to point out to the allegation that legal personnel of the Ministry of Law,

23 AKM Shamsul Huda, *op. cit*, p. 902.
Justice and Parliamentary Affairs are also not above corruption. Often opinion is tendered from this Ministry, which is detrimental to the national policy or heritage.  

5.2 Amendment of Laws

The age old laws remain ineffective due to lack of reform corresponding with time and the need of the society. A few post independence statutes of Bangladesh curbed the rights of the people, for example, the Special Powers Act, 1974 (SPA) and the Public Safety (Special Provision) Act, 2000 (PSA) although legitimacy of these statutes is sought in Article 33 of the Constitution. S. 30 of the SPA, which barred any court from revising any order or judgment of special tribunals established under this Act, was reviewed by the High Court Division and held it unconstitutional. The constitutionality of PSA was challenged in the High Court Division and consequently it was repealed by the Parliament in 2002. Section 54(1) of the Code of Criminal Procedure, 1898 allows arrest of a person for a reasonable suspicion, which results in violation of rule of law. Similarly, the Metropolitan Police Ordinances and Acts of Dhaka, 1976 (section 86), Khulna, 1985 (section 88), Chittagong, 1978 (section 89), Rajshahi, 1992 (section 89), Sylhet, 2006 (section 89) and Barisal, 2006 (section 89) allow to arrest a person from dusk to dawn for a reasonable suspicion. Rule of law goes beyond the principle of legality when laws are enacted against the principles of natural justice and law enforcing agencies pervert the law.

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29 Sahar Ali vs. AR Choudhury 32 DLR 1980 HCD 142.
These Acts are against rule of law pledged in the Preamble of the Constitution and must be deleted. Article 33 of the Constitution should be restricted.

To weed out corruption from politics it is incumbent that, the Representation of the People Order, 1972 (RPO) read with Article 66 of the Constitution needs amendment to create a legal environment conducive to elect a fair candidate. The amendment could be done in accordance with the decision of the Appellate Division of the Supreme Court on election. The decision ordered that a candidate must supply the Election Commission with eight information to qualify for candidature. They are, his/her educational qualification, whether at present s/he is accused in a criminal case, whether s/he was accused in a criminal case in the past and if so, a detailed statement of the decision of such case, his/her profession, his/her source of income, if s/he was elected as a member of parliament before and if so, what role was played by him/her in fulfilling election mandate, wealth and debt statement of him/her and his/her dependants, whether s/he himself/herself or any member of his/her family, on his/her own or jointly took any loan from the bank, and if so, a detailed statement of its repayment. This information must be given by affidavit through Notary Public on a stamp paper. Implementation of this decision will enhance to ensure the rule of law.

In addition, free flow of information is crucial for accountability. Transparency is built on the free flow of information. Official Secrecy Act, 1935 in demand of the right


to information should be reviewed. Concealment of facts compromises with democracy. On 06 December 2007, the Chief Adviser terming free flow of information a driving force in democracy and good governance expressed the hope that the government will soon formulate the Right to Information Act.\textsuperscript{33} The cabinet approved on principle the Right to Information Ordinance 2008 on 19 June 2008 to ensure free flow of information to the people.\textsuperscript{34}

5.3 Amendment of Bangladesh Constitution

There are many provisions in the Bangladesh Constitution amendment, which are a must to ensure Rule of Law. The government has ensured separation of judiciary though judicial independence is yet questionable. Article 33 with regard to preventive detention of the Constitution allows ample opportunity to abuse fundamental right of a citizen. Provision to refuse disclosure of facts for issuing an order of detention should be deleted. It should be restricted to the time of war only. Article 70 of the Constitution is a hurdle to establish rule of law yet is necessary for stable politics. To make a compromise, this article can be restricted only to no-confidence vote in the government.\textsuperscript{35} The President may promulgate Ordinance if he is satisfied that circumstances exist which render immediate action necessary. Ordinance making power of the President under Article 93 of the Constitution should also be made restrictive to uphold democracy so that statutes are formally made after due

\textsuperscript{33} 'Bangladesh: Right to information ordinance soon said Chief Advisor', \textit{The Daily Star}, December 06, 2007.

\textsuperscript{34} 'Bangladesh: Right to information ordinance okayed', \textit{The Daily Star}, June 19, 2008.

consultation and debate in the Parliament. Ordinance making power can only be supported only in emergency situation like national crisis, national calamity, severe economic defalcation etc. At present Article 93 of the Constitution allows the President to promulgate Ordinances anytime during the recess of parliament session depending absolutely on the subjective satisfaction of the President.\textsuperscript{36} And even the provisions relating to proclamation of emergency strongly needs to be reviewed to relieve the nation of a prolonged period of emergency and to allow them to lead a normal life.

The qualification and the procedure laid down in Article 95 of the Constitution for appointment of the judges must be reviewed. The judges of the Supreme Court must be adjudged through a panel of reviewers consisting of two third retired judges of the Supreme Court and one third educationally qualified noble persons of law background. The decision of \textit{Anwar Hossain Chowdhury vs Bangladesh} \textsuperscript{37} explicitly and justifiably raised many legal reasons to discard the eighth amendment on article 100.\textsuperscript{38} The government can correct those mistakes and bring an amendment to article 100 to allow access to justice for the people at large. A debate must be opened for public discussion to eliminate the remotest doubt that in the guise of basic structure, which has not been defined anywhere, High Court Benches of the Supreme will remain in the capital for the benefit of a handful of law related persons.


\textsuperscript{37} 41DLR1989 AD 165.

5.4 Law Enforcing Agencies

People of Bangladesh get continually battered by the law enforcing agencies. The role of the law enforcing agencies in maintaining law and order situation is disenchanting. There are two things, one the law enforcing agencies fail to control the law and order situation and the other; they themselves establish a reign of terror. They are in particular considered to intimidate the ordinary citizen. Both situations are opposed to rule of law. Police officers who abuse power run little risk of punishment. A malfunctioning policing system is not merely a defect of society but a threat to the society. The reason behind both the situation is corrupt political or power greed. The law enforcing agencies are used by authority in power for some administrative end or by ruling political factions either for their own benefit or to suppress the opposition. Operation Clean Heart of 2002 was made to free the society of crime. Although it was unable to purge the society of crime yet many questions were raised about its action. As a result, the Joint Drive Indemnity Ordinance 2003 provided with indemnity to those persons who were responsible for any death from 16 October to 9 January 2002. With the same purpose Rapid Action Battalion (RAB) of 2004 was created and had its legal origin in The Armed Police Battalions (Amendment) Act, 2003. At present, RAB enjoys huge power, which is often alleged to have been abused. The Ministry of Home Affairs should take initiative to include awareness programs within the training schedule of police officials to make them conscious against executive or political influence, corruption and abuse of power. They should also be strictly made to learn about professional ethics.

40 Amending the Armed Police Battalion Ordinance, 1979.
5.5 Institutions to Uphold Rule of Law

The deficiency of a parliamentary system of administration requires alternative or additional institutions to control wrong decisions, maladministration or corruption of public officials.41 Ombudsman in Article 77 of the Constitution is one of these alternatives. The Ombudsman Act, 1980 was legislated long ago but to date it was not brought into force by notification in the official Gazette.42 This Act stipulates that Ombudsman shall be appointed by the President on the recommendation of the Parliament. The Parliament shall recommend a person of known legal and administrative ability and conspicuous integrity. Why this institution was not created and made operative is not clear. The government should take a policy decision to establish an effective office of Ombudsman and prevent any conflict of jurisdiction with the Anti Corruption Commission.43

Anti Corruption Commission was also created in 2004 to prevent and check the corruption from the administration and the society. This Commission is supposed to play an important role in the society to build good governance and conforming transparency in the administration along with preventing prevailing corruption.44 Anti Corruption Commission has already become overburdened with complaints. It is,

therefore, of utmost necessity that the office of Ombudsman is established and the function of each is demarcated.

The law and order situation of the country is a great obstacle to human security. The discussion for a decade towards establishing Human Rights Commission remained unfulfilled for a long time. The Government of Bangladesh, implemented by the Ministry of Law, Justice and Parliamentary Affairs in cooperation with the United Nations Development Programme (UNDP) undertook a pilot project in 1996 to form a national human rights monitoring organization. The present Government made a pledge to establish an independent Human Rights Commission. This promise was realized on 09 December 2007 with the approval of the National Human Rights Commission Ordinance 2007 by council of advisers. The people of Bangladesh await to see its appropriate exercise of power to investigate human rights violations. It is hoped that such organization will strengthen democratic institutions by widening and enhancing a nation’s democratic space instead of being a part of a Government’s administrative machinery to scuttle international scrutiny.

The jail situation in the country is beyond description. It is difficult to follow the provisions of the jail code strictly due to overcrowding of the jails. Presently, the total number of prisoners in jail is around 88,000. In the 11 central jails and 55


46 Sultana Razia, ‘National Human Rights Commission sees the light of the day’, available at hrcbmdfw.org/blogs/bangladesh/archive/2008/01/01/809, accessed on 05.03.2007.
district jails, the total capacity is only 27,291. Therefore, there are three times more prisoners than there is the official capacity to hold in jail.47 The jail authorities demand bribes from inmates and harass the prisoners. There is a lack of medical facilities and the living conditions are pathetic. Despite the provisions of the jail code, the food is substandard and inefficient.48 A committee may be set up to study and recommend necessary reforms, amendments, or overhauling of the institutions and laws guiding their performance.49

6. Intolerance

The political culture in Bangladesh is characterized by a very high degree of intolerance towards views, opinions and actions that differ from one’s preferred political party, group or sectarian opinion. Yet, there are instances when these bitter rivals agree and make collective decisions with surprising ease. Political leaders in Bangladesh have shown strong solidarity in some areas, which the common people wish they had not. Even in the boycotting sessions of Parliament, members of the opposition shown up for passing bills to increase their own salaries and allowances and there was great unity in accepting perks to import expensive cars without having to pay import duty on them.50 Except for that politics has remained intransigent. An honest criticism is looked into with rancor. There is little opportunity for meaningful exchange of ideas and information let alone debate on burning

48 Ibid.
49 Dr. Mustafizur Rahman, op.cit, p. 27.
national issues. Bangladesh pledges democracy but in power it remains authoritarian. The opposition views or opposition parties have always remained unheard and unnoticed. They demonstrate on the street, but their voices are not respected through implementing their views. The media is often controlled by the ruling party or vested interest groups. No government including the present non-elected government so far has shown any enthusiasm in including the individual criticism or opposition in a process of consensual policy making. When politics becomes confrontational, partisanship becomes intense. It leads to immunity for the sectarian or party followers even for their worst excesses and corrupt practices, and encourages them to acts of vengeance on the opponents. Intolerance among executive body or political parties may arise from a sense of distrust, insecurity, misunderstanding, greed, and corruption or even for losing touch with reality. Intolerance and corruption is also a result of abuse of democracy. Tolerance is a binding principle and rule of law is an instrument of democracy. There is a need to undertake a thorough review of government policy to make serious attempts for power balance between the party in power and the opposition or the ruling authority and general people depending on the form of a government.

7. Public Awareness and Belief

The people of Bangladesh are accustomed to struggle for the cause of the country but they are to a great extent unaware of the appropriate role of a citizen to prevent social chaos or corruption. There are many sections of people in Bangladesh to whom knowledge and practice of democracy is not clear. The hard working poor people remain engrossed in their daily livelihood specially the majority of rural people. The role of newspapers, radio, television and other mass media can play a significant role to create awareness among the public. The majority people of Bangladesh are loyal to socio-cultural and religious belief. The concept of democracy needs to be examined in the context of the socio-cultural and religious belief of the majority of the people. Bangladesh is overwhelmingly a Muslim populated country. Islam and democracy are compatible.\textsuperscript{55} Many democratic features and institutions are in conformity with Islam. A number of democratic features like participation, representative parliament, consultation and debate, voting, human rights, popular government, welfare activities, and accountability are also the potential features of Islamic political ideology. Realizing the importance of Islam, an amendment was made by which Islam as an ideology was incorporated in the Preamble of the Constitution. All later governments maintained the amendment without any modification. The Imams of the mosque, religious teachers, and social workers of different communities could be trained to create democratic awareness of rights and responsibilities of citizens among the

public along with the media. Democracy and rule of law would be more effective and understandable to the mass people if awareness program is conducted keeping in view of the socio-cultural and religious belief of Bangladesh. This will change the character of politics in the real sense as the focus of power will shift to the people who alone will elect the legitimate government.

8. Conclusion

Democracy is neither the best doctrine nor is it a perfect system yet it is the best system so far invented by mankind.\textsuperscript{56} Rule of Law ensures democracy as it provides the citizen with a shield of protection as he goes about his everyday life; it is a prepared line of defence against arbitrary government.\textsuperscript{57} Democracy as an institution is still fragile in Bangladesh. Over the last three decades, Bangladesh has witnessed several political tumults. The poor state of democracy in Bangladesh could not make use of the potential of its hard working people.\textsuperscript{58} The strength of democratic idea have waxed and waned in Bangladesh and the political parties so far exploited the idea of ‘rule by the people’ to legitimate their power. If election law is amended to allow the general people to choose fair candidates as members of Parliament, it is obvious that they will fight corruption, encourage the public to reject and hate corruption, and provide legal and judicial protection to

\textsuperscript{56} Moudud Ahmed, \textit{op.cit.}, p. 376.


individuals and institutions involved in fighting corruption thereby supporting the development of democracy. Such person shall fight against injustice, forceful eviction and all wrongs with the full assistance of the people.\(^{59}\)

An independent judiciary is an indispensable requisite of a free society under the rule of law. Independence of judiciary means that judges are in a position to render justice in accordance to their oath of office without submitting to any kind of pressure or influence. The present government has ensured separation of the judiciary from the executive but it failed to ensure its full independence. The judiciary is beyond comparison with any other organs of the State. There will be no liberty if judicial power is not made independent.\(^{60}\) The provision regarding appointment of higher judiciary must be reviewed. Alternative institutions like, Ombudsman and Human Rights Commission should be made effective. This will give more breathing space both to the overburdened judiciary and the public.

Politics is an art of compromise. Democracy falters if the political parties do not return for what they have earned. Mutual exchange, compromise, dialogue, understanding are the merits and force of democracy. When the political parties fail to draw a rule of the game of politics democracy hinders.\(^{61}\) Ambition, avarice, personal animosity, party opposition, and many other motives, are the characteristics of political parties


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or ruling authorities. Human shortcomings will always lean on general politics and morals. But other qualities of human nature, which has a rational dimension pointing towards freedom, peace and security, must be nurtured. Qualities of human nature to some extent have to be forced upon by the government by amending the laws on election and some other laws, which are opposed to rule of law. For the same reason, Ordinance making power of the President should be reviewed. Fair candidates are supposed to be more rational than candidates swept away by greed. People should not be punished for opposing the government. Public opinion should be allowed to assess national opinion on government proposals and particular events. Tolerance in political activities should be encouraged. The people of Bangladesh want the present government to remain focused on the delivery of democracy. The means to deliver should be sharp and on target. It should be borne in mind that means should not threaten the end. In fact, the general people of the country are eager to establish a democratic society, it is the people in power who flounder with it.

Democracy in its true sense will be achieved if men of unimpeachable integrity and character, fearless, thoroughly impartial and not purchasable at any cost come up to uphold rule of law. Such people are available in Bangladesh but to

encourage such persons to lead the nation is on the present government, which has not been able to cast aside the fear of executive pressure on such leadership. The present government should ensure rule of law in its claim of being neutral and its activities. Rule of law is neither a rule nor a law, but a persuasive guide for the legislature, executive and the judiciary to mitigate the theoretical deficiencies in the Constitution, and mould it into a living democracy.65

Democracy for Bangladesh should be a democracy based on its socio-cultural and religious beliefs, for which the government will take initiative to make all sections of people aware of it, and it will be acceptable to all.

Discussant

Democracy and Rule of Law

Dr. M. Enamul Hoque

- There is a need for upholding the supremacy of law for ensuring the rule of law. In this regard, caution should be taken against giving undue power to the executives.

- Concerted efforts needed on the part of all concern, law enforcement agencies, judiciary and the executive to establish the rule of law,

- Access to law and equality before law are reserved only for the privileged in the country. Such a situation needs to be corrected.

- Judiciary is under the effective control of the executive. So ensuring the independence of judiciary is a cardinal task.

- There persists an unholy alliance between police and the government in power at the expense of the people. This coupled with high cost involved in legal processes deprive people of justice.

- To change the situation, concerted effort on the part of all concern, law enforcement agencies, judiciary, the executives and also the common people is an essential prerequisite.
Discussant

Democracy and Rule of Law

Dr. Asif Nazrul

- As usual democracy and rule of law go together. However, flawed system of democracy can rather jeopardize the rule of law and can impede democracy.

- Article-33 (preventive detention), Article-67 (allowing absence in the parliament) and Article-70 (limiting voting rights of the MPs in the parliament) suffocate democratic process in the country.

- Non-compliance of a number of constitutional/legal provisions contributed to weakening of democracy. These are Article-76 (Parliamentary Standing Committees), Article-77 (Ombudsman) and others. An excellent set of law may even remain meaningless unless its compliance is ensured through legal, judicial and administrative system.

- Strengthening democracy and rule of law must aim at securing transparency, accountability, participation on the part of governing system and public functionaries.

- Building blocks for such strengthening may include constitutional reforms, legal reforms, and building capacity to manage information flaws, legal education, and strengthening watchdog bodies.