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**CHALLENGES TO DEMOCRATISATION:
PERSPECTIVES OF STRUCTURAL
MALGOVERNANCE IN BANGLADESH**

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- Dr. Sumaiya Khair

Introduction

The history of Bangladesh reveals progressive struggles for democracy and representation in order to ensure the freedom of people, the rule of law, equality and justice. In a country where there is endemic poverty evident in the paucity of food, shelter, health care, education and employment opportunities, governance is not simply about the rigid hierarchies of State organs; rather, it is about ensuring accountability, transparency, commitment, participation and access to justice. In other words, good governance essentially involves elements that are mutually supportive.

While the external facets of a democratic order may appear consistent and in place, arbitrariness in governance, absence of accountability, impartiality and transparency in decision making, partisan and weak law enforcement and a confrontational political culture have consistently plagued the process of democratisation in Bangladesh. Today, governance or rather the lack of it, is deemed as one of the principal threats to the democratic system. An attempt is made in this paper to understand better the dynamics that actively contribute to the erosion of democracy and democratic values. Accordingly, this paper explores some of the critical aspects of malgovernance that are currently impeding democratisation in Bangladesh.

The Political Culture

A constitutional government is essentially strengthened by a sound party system. Political parties represent not only the views of the people but also play a crucial role in enabling them to choose their own government. Sadly, political parties in Bangladesh have come to be known to pursue their own well being instead of articulating broader public interests. Bangladesh has an all-pervasive political culture that is characterized by centralization and patronage that basically breed partisanship. Partisanship in this context does not indicate the more subtle practice of supporting or siding one political party or

another. Rather, it implies the distribution of spoils, assurance of jobs, approval of contracts or commissions to friends or relatives, regardless of the fact that the recipients are totally incompetent or unqualified.

The political parties are themselves want democratic practices. In the majority of cases all powers are vested either in the leader of the party or a coterie of leaders within the party. They thrive on clandestine donations including funding from abroad. All expenditures are disbursed on the authorization of the party leader. Books of accounts and incomes are not maintained and there is virtually no audit of their expenses.¹ The political parties are rife with factionalism and internal conflicts and are fluid in terms of loyalty and commitments as evident from the succinct portrayal below:

....they cluster around dominant personalities and have a tendency to splinter as regroup under ad hoc arrangements...[They] reappear, chameleon-like, in temporary positions under different party labels at various times. A party's victory or defeat in the elections does not necessarily [indicate] a radical change in personnel or [shifts] in ideological direction....[but] only signifies a new configuration of the ruling elite in a particular, often opportunistic and unstable, manifestation.²

The present political scenario is dominated by a two party polity that commands considerable support of the voters at the grassroots. This system has introduced some measure of stability in that the party once elected to office does not have to depend on shifting loyalties and at the same time be mindful of the fact that it does not have security of tenure beyond five years as mandated by the Constitution. This bipolar system has seen three elections in 1991, 1996 and 2001, successfully held under caretaker governments in a relatively free and fair manner.³

The bipolar system has however, also instigated the practice of confrontational politics, that is, an antithesis to sustained democracy. Bickering between the ruling party and the opposition are the order of the day. Interaction between the leaders, that is, if at all, tends

¹ Muhith, AMA, *Bangladesh in the Twenty-First Century. Towards an Industrial Society*, UPL, Dhaka, 1999, p. 402.

² Ahmad, Ahrar, "Bangladesh between Promise and Reality: Current Tendencies and Theoretical Explorations" in Ali, Ashraf et al. (eds.), *Development Issues of Bangladesh II*, UPL, Dhaka, 2003, pp. 41-69, at p. 46.

³ Sobhan, Rehman, "Structural Dimensions of Malgovernance in Bangladesh", *Economic and Political Weekly*, September 4, 2004, pp. 4101- 4108, at p. 4102.

to be embarrassing both in terms of language and content. Party leaders are increasingly regarding themselves not as political opponents but as mortal foes. In other words, ‘the “slash and burn” tactics of our political leaders expose the vacuity of a system that has been reduced to a sneering, threatening, vindictive and violent theatre of the absurd’. ⁴ Attempts by the Opposition to unseat the government is premised around conformational techniques that include strikes, *hartals* and more seriously, parliamentary boycotts. The existing bipolarity within the political system has indeed destroyed some of the benefits that might have been gained from a competitive and accountable two-party political system. Instead, it has eroded the pluralism within the political system resulting in the weakening of the parties as well as reducing the choices of the electorate. ⁵

Criminalisation of Politics

The involvement of political parties in extra-legal activities is a common phenomenon in Bangladesh. The current political scenario is clouded by the rise of a certain class of hired groups of hoodlums, popularly known as ‘*mastans*’, who work individually or collectively for political parties. It all begins with the entry of young students into the political cadres at the university and ends with their involvement with armed politics. The vanguard of political movements in Bangladesh is the student community. Politicisation of students is well recognised where students join party cadres and engage in party campaigns. These campaigns often lead to militant encounters on university and college campuses where clashes with lethal weapons between rival student cadres are a common phenomenon. These inter-party feuds often result in strikes, the suspension of classes and postponement of examinations that essentially disrupt normal academic development. Student leaders engage in anti-social activities with the blessings of their political patrons, which makes it difficult to isolate their activism from criminal acts. Members of the student cadres are known to extort commissions from shops, construction companies and business establishments under threat of violence in different areas.

It has been common for both ruling parties and oppositions at different stages of the country’s political history to resort to using armed musclemen to fulfil their political

⁴ Ahmad, Ahrar, *op.cit*, p. 49.

⁵ Sobhan, Rehman, *op.cit.*, p.4103.

ambitions. Although political parties are the chief patrons of *mastans*, they do not have any political allegiance as such and frequently switch to the side that will benefit them most. As a result of their political affiliations *mastans* carry out killings, extortion, intimidation, threats and violence with impunity. The distinctions between politically motivated murders and purely criminal acts become somewhat indistinct due to the active involvement, with impunity, of many politicians and party activists in organised crime.⁶

The abuse of political power is also perceived when influential quarters use the police for personal gain. They include bureaucrats, businessmen, black money holders and black-marketers many of whom have active links with politicians.⁷ The police are used extensively in furthering corrupt practices. Consequently, they enjoy the shared protection of their administration and people with political clout when they engage in corrupt activities with impunity.

The Electoral Process

Democracy essentially implies people's representation in the governance of a country. Elections are central to the forming of democratic representative governments. Although a free and fair election is fundamental for smooth democratic process, the electoral culture in Bangladesh until 1991 was subverted by various mechanisms that range from corruption and unaccountability to the obnoxious use of money, musclemen and illegal arms.

It is contended that even after 1991 one of the major impediments to free and fair elections are the confrontational attitude of political parties and the flagrant violation of elections laws and procedures. When election campaigns reach their heights, candidates are no longer bothered about rules and regulations and instead indulge in many illegal forms of expenditure to manipulate and coerce the electorate along partisan lines. There is a growing involvement of moneyed businessmen in the election process who primarily view it as a means of acquiring wealth when the party it backs comes to power. Consequently, elections have become an expensive business in which ordinary people with modest resources find it nearly impossible to compete.

⁶ U.S. State Department Report on Human Rights in Bangladesh, 1997, p.4.

⁷ Ahmad, Muzaffer for Transparency International Bangladesh Chapter, undated, p.7.

Violation of rules regarding election expenses is commonplace. Although failure to conform to acceptable financial limits and to submit statements regarding the sources of funds incurs criminal liability under the *Representation of the People Order (RPO) 1972*, it is believed that to date no case has been filed in any criminal court for violation of election expenses.⁸ The expenses incurred during election campaigns include donations to clubs, *samities*, market-committees, charitable and religious institutions, purchasing votes, gifts, loans, pre-poll commitments and promises.⁹ Political activists at the local and national levels reportedly engage in extortion from business houses and individuals. Thus, elections in Bangladesh are marred by violence, intimidation of voters and rigging of votes—on every occasion however, the perpetrators are free from punishment. In such a situation the whole purpose of holding elections is vitiated where public interests are sacrificed for promotion of private gains.

The last three elections conducted by the Election Commission under the auspices of the Caretaker Government were relatively free from corruption and intimidation as stated by both national as well as international observers. The absence of coercive forces enabled voters, particularly women, to exercise their franchise freely and without fear of repercussion. The huge turn out of women voters was indeed welcome change from previous elections. A lot of the credit goes to the respective caretaker governments for their vigilance and firm action against illegal and disruptive elements as a result of which the Election Commission could conduct the polls without undue hassle.

Nevertheless, many believe that the Election Commission does not function as a ‘Commission’ in the true sense of the word; rather, its role is more similar to that of a senior leader of an administrative agency entrusted to conduct elections in the country with the Chief Election Commissioner (Chairman) functioning as its director. In the absence of specific regulatory requirements the Commission tends to operate in a casual fashion that is not likely to be conducive to ensuring transparency, efficiency and professionalism in its work. There has also been criticism of the present system of appointing people at the lower administrative structure of the Election Commission for

⁸ *Legislative Advocacy for the Regulation of Election Expenses in Bangladesh*, Occasional Paper 1, LAPCS Project, BLAST, 1997, p.11.

⁹ *Ibid.*, p.3.

conducting polls. The mechanism for discharging their election duties is seen as impeding the neutrality of the electoral process.¹⁰

The Legislature

The re-establishment of parliamentary democracy in 1991 saw the emergence of Bangladesh as a multi-party, pluralistic democracy headed by a unitary form of Government where the party holding majority in the Parliament has the prerogative form the government. The Parliament of Bangladesh termed as the *House of the Nation* in the Constitution is unicameral and comprises 300 directly elected members whose tenure runs for five years. Since 1991 there were successive parliamentary elections that essentially facilitated the sustenance of a democratic system through peaceful transfer of power.

The Parliament has the primary responsibility of monitoring the performance of executive organs of the government, ensuring compliance with laws and regulations and implement policies, seeing to the implementation of plans and policies in the greater interests of the people. However, although the Parliament is the highest seat of electoral representatives its functions are impeded by institutional weaknesses. Although the parliamentary committee system is the most effective instrument for oversight functions, Parliamentary Standing Committees are virtually non-functioning and have not been playing their oversight role as expected.

There have been allegations about the composition and operational procedures of the parliamentary standing committees, which allegedly lacked any real authority.¹¹ The current ruling party argues that the Opposition refuses to nominate their members unless the ruling alliance agrees to give them a chance to chair some of the committees; this is ironic considering that in the last Parliament when the present Opposition was in power all PCs were chaired by members from their party. These petty disagreements have severely handicapped the Parliamentary Committees in discharging their responsibilities. For

¹⁰ “Governance, Fair Elections and Administrative Reforms” in *Developing a Policy Agenda for Bangladesh. Civil Society’s Task Force Reports 2001*, pp.348-367, CPD and UPL, 2003, at p.349-350.

¹¹ *Plans and Programmes. Towards a New Millennium*, excerpts from Workshop on Conscientization of the Civil Society and the Transparency International Chapters in Strategic Planning within the Context of Strengthening Integrity, July 14-15, 1998, Transparency International—Bangladesh, p.5.

example, the Public Accounts Committee of the Parliament faces a huge backlog of audit reports that are due to be debated and discussed. While delayed formation of the Committee is certainly a cause for this inertia, the fact that concerned Ministries do not readily respond to PAC recommendations and often take years for reaching a settlement greatly contributes to the malfunction of the Committee.

The confrontational culture of politics discussed earlier has eroded the effectiveness of the Parliament in more ways than one. There is a conspicuous absence of accountability of MPs. Their time is spent more on lobbying the executive for funds for their constituencies instead monitoring the state of governance therein¹² and the needs of the people. Their dealings are not transparent and there is no audit and statement of assets and liabilities of MPs, ministers and political parties; there is also a conspicuous absence of perjury laws for MPs who 'indulge in playing to the gallery'.¹³ More importantly, the Parliament in Bangladesh is no longer a forum for informed dialogue and constructive debates amongst MPs; rather, it has become an arena for mud-flinging and provocative oration. The current Parliament is plagued by the sustained absence of the Opposition in Parliament. Instead of taking the Government to task the Opposition is more prone to staging walk-outs at the slightest of pretexts. Consequently, the concerns of the electorate are not represented and their voices remain unheard.

The Judicial Process

A democratic society is one, which functions on the basis of the rule of law. This necessitates the existence of a sound judicial system whereby citizens may challenge arbitrary executive decisions and exercise their rights as guaranteed by law and the Constitution. Unfortunately, the apparatus for justice delivery has historically remained beyond the reach of the common people for whom the procedure for rights redress is complicated, cumbersome, time-consuming and often incomprehensible.

Access to justice connotes more than bare entry into courts; it involves a host of factors that include the means of reaching lawyers, police, court officials and shouldering costs

¹² Sobhan, Rehman, *op.cit.*, p. 4104.

¹³ *Ibid.*, p.6.

of processing and litigation. Despite the existence of a formal legal base, proper use of the system and implementation of the law are constrained by an environment that is plagued by bureaucratic malaise, political terrorism, corruption and rights violation with impunity.

The existing legal system in Bangladesh is resource-based, and generally geared towards serving those with money, influence and social clout. The costs of engaging a lawyer and obtaining professional legal services are exorbitantly high. Besides, the process of providing court fees, producing witnesses and procuring relevant documents place litigants, particularly those who are impoverished, in a critical situation. Where litigants do manage to reach the courts they are beset with procedural complications and long adjournments.

Although the right to be released from jail on bail in criminal cases is a fundamental aspect of human rights, bail justice appears to be one of the most misused and illusive of processes in the current criminal justice system in Bangladesh. In most cases it is not the merit of the case but the money spent on police, court officials and judicial functionaries that is important.¹⁴ The poor and the disadvantaged suffer acutely as they are not in a position to secure the required surety. Consequently, it is common for them to suffer detention/incarceration for long periods without trial.

Law Enforcement

The integrity of the legal system is impaired when law-enforcing agencies miscarry their duties and misuse the power vested in them by law. Indifferent to people's needs, the police in Bangladesh are slack and inefficient in discharging their jobs. There is pervasive corruption amongst the police who are inclined to misuse their power. Despite Constitutional guarantees of life, liberty and security, arbitrary arrests under the cover of repressive security laws, torture and deaths in custody are carried out by the police with impunity. Consequently, the police are no longer viewed as the vanguard of peace and security but rather as perpetrators of crimes against citizens.

¹⁴ Ahmad, Muzaffer in association with Khan, A.M.Rasheduzzaman and Nazneen, Sohela, *Corruption As People See It*, Transparency International Bangladesh Chapter, p.9.

There is a marked disinclination of the government to punish perpetrators of violence who are on their payroll. The provisions for punishment of police officers for neglecting or miscarrying their duties are rarely used. Moreover, the extensive moneymaking power of the police adds to the culture of malpractice. The situation is augmented as the incentive and punishment structure in police administration is based more on their servitude to people with power and influence rather than on their service to the community. Consequently, most police abuses go unpunished which reveals not only a corrupt disregard for the well-being of the victim and but also an institutional acceptance of police maltreatment.

The Bureaucracy

Although transparency and openness are fundamental to sound governance, activities of public officials and institutions largely remain outside public scrutiny. Operating within a close system, public servants in Bangladesh are not held individually accountable for their performance. The use of *tadbirs* (requests) by influential personalities frequently weakens regulatory and accounting controls over activities of public officials. Democratic values are eroded by direct acts of omission or commission like suspended or undelivered services, corruption and disregard for citizens' rights and welfare. The overall scenario is further complicated when government functionaries turn into political sycophants who only work for personal gain. The joining of certain, very senior bureaucrats into politics immediately after the completion of leave preparatory to retirement and vying for parliament membership, is considered as detrimental to the impartial discharge of public duties during the tertiary stage of their service. Officers use their offices to do ground work in their respective constituencies for winning in the parliamentary elections. Furthermore, they become overtly keen on developing relations with political parties of their choice in order to secure their candidatures.

Having retained much of the colonial legacy the civil service produces an administrative culture that is inappropriate to meet the needs of the modern times. The regulatory controls within the system being vague and discretionary are ideal for generating corruption. There has been no consistent effort to democratise decision-making in local governments. Every government has experimented with own version of local government in an attempt to garner support of the rural population. Nevertheless, the dominance of

the civil bureaucracy, dependence on the central government for funds and uncertainties of tenure and functions have greatly hindered the growth of democratic local self-governments.¹⁵

It is a sign of good governance when civil servants explain their decisions to the public as to how public services are run, who is in charge, how much they cost and whether they are meeting their standards. Sadly, bureaucracy in Bangladesh is neither responsive nor corruption-free, nor financially transparent. Over the years, misappropriation and wastage of public funds have risen. Despite its constitutional status the office of the Comptroller and Auditor General is reputed for delays and non-performance. It is also reported that audit objections to major financial irregularities in the country's defence sector remain indisposed for many years thereby creating grounds for increased acts of financial indiscipline in relevant institutions.¹⁶

Thus, a major problem throughout Bangladesh's public sector is not only lack of accountability, but also the nature of accountability; in general, government agencies are subject to weak accounting controls, escape serious scrutiny by the Legislature and are above financial discipline of the marketplace. This lack of accountability is perceived at every level of the government, ranging from the low-ranking bureaucrats who deal with the general public, up to those who engage in policy and decision-making.

Citizens' Right to Information

A democratic system is one that is essentially premised on accountability and good governance and which operates for the benefit of the people. However, good governance is hampered when government agencies withhold information to increase its scope for control, patronage and arbitrary exercise of power. Over the years there has been a growing pressure on governments to facilitate citizens' participation in governance by allowing them to access to public records. The fundamental elements of people's right to information include:

- i. A right to have access to governmental records by the public in order to have information;

¹⁵ Jahan, Rounak, "Bangladesh: Promise and Performance" in Jahan, Rounak (ed.), *Bangladesh: Promise and Performance*, UPL, Dhaka, 2002 (second impression), pp. 3-41, at p. 28.

¹⁶ 'Defence Corruption Cases Ignored for Years', The Daily Star, 18 June 1999.

- ii. Using this information to hold the government accountable for their actions;
- iii. A duty of the government to proactively keep the public informed on issues important for their well being;¹⁷

Although there is no mention of the Right to Information as such in the Constitution this right is inherent in the right to freedom of speech and expression as in order to speak freely and express an opinion one has to have the requisite information at hand. In the circumstances, there is no denying that as depository of all powers of the Republic, the people have a right to information that have a direct bearing on them.

Nonetheless, Government officials in Bangladesh are generally reluctant to involve the public in informed debates over plans and policies. Retaining the colonial practice of keeping the people in the dark about the matters that affect their lives, government officials are obsessed with secrecy and are generally unwilling to divulge information to the public. To some extent this is a routine practice, more so because public servants are apparently restricted in their dealings by the Official Secrets Act 1923 and the Government Servants Conduct Rules 1979 that even forbid them to exchange information between various departments of the government. This practice greatly erodes the foundations of accountability, i.e., transparency and openness, thereby inhibiting people's access to information and service.

Citizens have very little knowledge about government processes and decisions, which enhances their inability to obtain redress when officials abuse their power. While citizens may normally lack the capacity to challenge injustices and affect any change, knowledge often assists citizens in gaining an understanding of how to take action based on information received. The practice of maintaining secrecy in official undertakings engenders a culture of corruption, which further undermines the already weak structures of checks and balances. As Justice P.N. Bhagwati observed in *Menoka Gandhi's Case* [1978 (1) S.C.C. 248]:

Democracy is based essentially on free debate and open discussion for that is the only corrective of governmental action in a democratic set-up. If democracy means

¹⁷ Publication at the South Asian Conference on Right to Information, Commonwealth Human Rights Initiative, 5-7 July, 1999, Dhaka, p.1.

government of the people, by the people, it is obvious that every citizen must be entitled to participate in the democratic process and in order to enable him to intelligently exercise his right of making a choice, free and general discussion of public matters is absolutely essential.¹⁸

It is the people who elect the government to power. The members who sit in the Parliament and engage in parliamentary deliberations and functions are voted directly by the people and are expected to represent them there. Since all governmental functions are apparently carried out for the benefit of the people it is essential for the people to know about the processes whereby decisions are made on their behalf. Access to such information would on the one hand, make the government more responsive to people's needs, and on the other, enable citizens to assess the performance and competence of the Government. An appreciation of the actual context facilitates citizens to develop the capacity needed to take greater social and political action.¹⁹

Conclusion

The above discussion underscores the salient contexts in which the national integrity systems operate in Bangladesh. It also highlights the critical links between the state machinery and politics and the ways they collude to undermine the process of governance in the country. It is evident that whereas people form the core of a democratic system, their relevance in the political and governance processes is nominal except at the time of elections, when party manifestos bulge with rich promises for the common people. Once the elections are over, the people are thrown into oblivion, their needs go unaddressed and they remain unseen and unheard. Ultimately, it is the people who are the key to a just and equitable society based on democracy and good governance. It is time our politicians, policy makers and people in governance acknowledged this fact in initiating structural reforms; otherwise, parliamentary democracy will be severely constrained and the citizens marginalized.

¹⁸ Quoted from Islam, Amirul, 'Right to Know is Right to Liberty', paper presented at the South Asia Conference on Right to Information under the Commonwealth Human Rights Initiative, 5-7 July Dhaka 1999.

¹⁹ *Ibid.*, p.6.