



**NATIONAL INTEGRITY  
SYSTEM ASSESSMENT  
BANGLADESH 2014**

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#### **Interviewees who have requested anonymity**

A former Judge of the Appellate Division of the Supreme Court of Bangladesh.

A retired Cabinet Secretary, Government of Bangladesh.

A retired Comptroller and Auditor General.

A former Inspector General of Police.

A former Deputy Inspector General of Police.

Senior Management Staff, Election Commission Secretariat.

Senior Member, Federation of Bangladesh Chamber of Commerce and Industry (FBCCI).

Former Secretary, Election Commission.

Programme Officer, Election Support Program, of a bilateral donor agency.

Three CEOs of selected private companies.

Three Additional Secretaries (OSD--officers on special duty).

Two sitting Secretaries of the Government of Bangladesh.

Three practicing lawyers (of both the lower and the higher judiciary).

Three mid-ranking officers from law enforcement agencies (police, RAB).

## **Acknowledgements**

The authors would like to express their gratitude to all the key informants for sparing their time valuable time for the extensive interviews and expert insights. Special thanks go to the research Advisory Group whose support, encouragement and validation of the research findings have enriched the assessment immensely. The authors also take this opportunity to thank Dr. Iftekharuzzaman, Executive Director, Transparency International Bangladesh (TIB) for his excellent contribution in terms of constructive critique, substantive inputs and continuous cooperation that have essentially added enormous value to the study. Thanks go to TI Secretariat colleagues, Maren Thompson and Andrew McDevitt, for their helpful observations and comments.

## Preface

Transparency International Bangladesh (TIB) has a vision of Bangladesh where government, politics, business, civil society and lives of the people would be free from corruption. Our mission is to catalyze and strengthen a participatory social movement to raise effective knowledge-based voice and demand for accountability. Our research, dissemination, campaign and advocacy initiatives are designed to strengthen institutions, laws and practices for efficient, transparent and accountable system of governance, and effective control of corruption.

One of the key strategic areas of TIB's research has always been the institutions of democracy and specialized pillars of governance and accountability, which constitute the National Integrity System (NIS), a collective of institutions and practices that are crucial to maintaining integrity and accountability in government, non-government and private sector. We have conducted a series of research, surveys and diagnostic studies on many such institutions, by which we have not only created demand, but also catalysed a number of significant legal, institutional and policy changes.

Against this background, the present study, the first ever effort to diagnose and analyze the strengths and weaknesses of the national integrity system in Bangladesh with a comprehensive approach is expected to add great value for stakeholders for three main reasons.

Firstly, it presents an in-depth analysis of the legal and resource capacity as well as governance, role and practice in each institution in a holistic frame that would facilitate comparative and mutually reinforcing exploration of strategic points for policy reform and institutional and behavioural change.

Secondly, as a part of cross-country research involving a number of parallel research under the same research framework and method it will enable learning and sharing among countries of South Asia and beyond.

And thirdly, and perhaps most importantly, as this study has been undertaken, though by coincidence, at a time when the Government of Bangladesh has adopted the National Integrity Strategy 2012 (*Jatiyo Shudhachar Koushol*), we understand and expect that it will provide extremely valuable support to the implementation process of the strategy. I may add that as a stakeholder and participant in the process that led to the adoption of the national integrity strategy TIB has undertaken another separate study to analyze the strengths and deficits of the strategy itself.

The present study has been completed thanks to the extraordinary efforts and commitment of Professor Salahuddin M Aminuzzaman and Professor Sumaiya Khair to whom TIB remains grateful. It has benefited tremendously by contributions of a distinguished Advisory Group. We have no words to express gratitude for their

extremely valuable guidance. I am equally grateful to Board of Trustees of TIB for their guidance and support. TIB is grateful to a large number of key informants and other experts who helped us with the peer review and libel check. I also put on record my gratitude to colleagues in the TI Secretariat, particularly Maren Thompson and Andrew McDevitt, whose multi-dimensional support has made this study possible. Last but not least, I am grateful to my colleagues in TIB for their tireless contributions as usual. TIB will cordially welcome any comments, critique and suggestions the readers may have.

Iftekharuzzaman  
Executive Director

## EXECUTIVE SUMMARY

It is recognised that when institutions and sectors within the National Integrity System work together and in sync, they help engender an environment that promotes democratic governance and discourages corruption. The National Integrity System assessment on which this book is based provides a benchmark for analysing the robustness and effectiveness of a country's institutions of accountability in addressing corruption. The National Integrity System in Bangladesh broadly consists of the following institutions: Parliament, Executive, Judiciary, Public Administration (bureaucracy), Local Government, Police (law enforcement agency), Comptroller and Auditor General (supreme audit institution), Election Commission, Anti-Corruption Commission, National Human Rights Commission, Information Commission, Political Parties, Civil Society, Media, and Business.

Each of the institutions in the National Integrity System (NIS) is assessed in this book in terms of its *capacity*, *governance* and *role*. The assessment examines both the legal framework and the actual institutional practice, in an attempt to highlight the gaps between law and practice. The assessment is primarily qualitative and has relied on a combination of primary and secondary data, including relevant national legislation, secondary reports and research (including media reports), and key informant interviews.

The NIS in Bangladesh is characterised by a strong legal framework (albeit with a few exceptions) as opposed to a considerably weak practice profile. This suggests that despite the existence of reasonably sound laws, their implementation is largely inadequate and/or absent and a culture of non-compliance generally prevails. While the lack of political will has been a continuing stumbling block in the process of democratic and accountable governance in Bangladesh, there are other cross cutting issues that have a direct bearing on the current NIS which include weak oversight functions, insufficient resources, lack of incentives, dearth of technical and professional competence of concerned actors, politicisation, nepotism, and corruption and an absence of exemplary punishment for corruption leading to a culture of impunity/denial. This is exacerbated by low awareness of citizens of their rights and inadequate access to information.

The Office of the Comptroller and Auditor General has been assessed to be performing better than any other pillar. This is followed by the Executive and Civil Society. Interestingly, the governance dimensions of nearly all the pillars have been found to be low in comparison to dimensions of capacity and role. Given that the governance dimension is composed of the principles of transparency, accountability and integrity, a deficiency in these areas demonstrates a dearth in institutional checks and balances which essentially raises scope for abuse of power and corruption. Again, some pillars (e.g. media, civil society) have been assessed relatively strong by virtue of their roles in addressing corruption despite relative weaknesses in terms of capacity

and governance. This suggests that in spite of operational shortcomings, change is possible as long as there prevails a strong will to initiate the change.

An attempt is made below to capture in brief the status of each pillar within the Bangladeshi NIS:

Constitutional and legal provisions in Bangladesh provide for a strong **parliamentary** form of Government. However, confrontational politics, a poor parliamentary culture and the dominant attitude of the party in power and the culture of boycott by the opposition tend to mar the spirit and modality of the operational business of the Parliament. Parliamentary control over the executive is weak and evidence suggests that critical issues are rarely discussed in Parliament. Citizens are devoid of any means to hold elected representatives to account. MPs are reportedly engaged often in patronage distribution and corruption, undermining the law making responsibility.

The Prime Minister, being the exclusive depository of absolute power exercises authority over the **executive** branch of the government. Critics have labeled it as "Prime Ministerial authoritarianism". Division of power amongst the legislative, executive and judicial branches of the government has largely been uneven and dominated by the Prime Minister. There is no formal provision requiring asset disclosure by the head of state or government or cabinet members nor is there any effective restriction on Ministers and MPs involving in business with the government.

The issue of independence of the **judiciary** has received negligible recognition in political rhetoric, and despite formal separation of the judiciary from the executive, it has not met people's expectation of a truly independent institution since the subordinate courts continue to be influenced by the executive. The judiciary has increasingly been subjected to political manipulation under successive governments to the extent that its independence is found to be often compromised by controversial appointments, promotions, removals, and conduct of judges.

The **public administration** is heavily centralised in terms of service delivery, the setting of expenditure priorities, allocation of resources, procurement of goods and services, and the implementation of projects. It faces serious challenges including poor remuneration, weak accountability and corruption. Public officials have over the years been politicised. Consequently, large numbers of civil servants have been placed as Officers on Special Duty (OSD) by respective ruling parties on political considerations. Under this arrangement officials are not formally assigned any work but are nonetheless paid salaries from public money. The integrity and recruitment procedures of public officials have been questioned. The promotion system is non-transparent and often based on arbitrary decisions of the government.

The Government of Bangladesh, from a policy perspective, has recognised the role of the **local government** as a vehicle for service delivery and good governance at the grassroots. In practice however, local government institutions are chronically resource poor, are subject to control by the central government, and bear features of

‘deconcentration’ than true decentralisation. LG activities lack transparency and accountability as the general people have no clue about their budget allocation system, income and expenditure and implementation of development and maintenance activities. Subject to direct and indirect control of the Members of the Parliament, LGI leadership is politicised and suffer from an image crisis for alleged corrupt practices.

The **police** force has over the years drawn flak for its failure to fully protect citizens and deviating from democratic policing. Instead of upholding the rule of law, the police have been indiscriminately used by governments and major political forces for self serving interests. Consequently, the police enjoy political patronage and impunity in the way they function. This state of affairs has impeded the independence of the police force, undermined accountability structures and led to deficit in public trust of their ability and willingness to function in the public interest.

Despite being a Constitutional body and a robust legal framework, the **Election Commission** has not been successful in establishing its credibility owing largely to political manipulation. While EC members are expected to be non-partisan, questions have been raised regarding their neutrality. Besides, its dependence on the government for preparing the electoral roll, setting electoral dates, maintaining law and order during elections and generally conducting the elections essentially divest it of autonomy in its work. It has often failed to address violation of electoral rules by candidates as local administration and political leaders tend to influence the electoral management process.

The office of the **Comptroller Auditor General (CAG)** acts as a major deterrent against inefficient and corrupt use of public money and it has been assessed to be delivering its role with relative success though its reports are not often effectively followed up by the relevant institutions. The CAG is free from any form of external influence (political, administrative) both from the Constitutional and practical perspectives. Transparency in activities and decisions of the CAG is practiced and all auditing is done openly and once placed before the Parliament, are made public. However, institutional factors, e.g., shortage of staff and an absence of a comprehensive audit law, often affect its performance. CAG’s audit reports can be challenged by relevant agencies.

Dubbed as a “toothless tiger”, the **Anti-Corruption Commission** is inflicted by structural, institutional and political factors which in essence have affected its overall performance and effectiveness. These include: lack of strong political will, inaction of the Commission in respect of allegations against ruling party men, unwillingness to initiate suo moto inquiries, absence of a capable prosecution team, inadequate capacity to undertake research activities, lack of transparency and accountability. Its leadership quality and the degree of professional excellence, integrity and credibility of its staff have been criticised.

Despite being a statutory body, the **National Human Rights Commission (NHRC)** is deficient in terms of staffing, infrastructure and logistical support. The legal framework is inadequate in respect of ensuring transparency, accountability and integrity of the NHRC. Investigation is weak and largely unable to respond to the growing number of complaints. The NHRC is often confronted with non-cooperation from select organs of the government. Despite its efforts to raise human rights awareness and advocate for change, their impact on the ground is not particularly noticeable.

While public expectation of the **Information Commission** was high, it has not been particularly successful in proactively seeking information from the government and others on issues of national interest, processing appeals, coordinating RTI-related activities and identifying the challenges facing both the demand and supply sides of implementation of the RTI law. Indeed, the Commission's ability to effectively play its oversight functions is often compromised by weak leadership, lack of professional skills and non-cooperation by public authorities.

**Political Parties** are characterised by centralised decision-making, personalisation of internal party structures, absence of intra-party democracy. The ruling parties in Bangladesh have almost always focused on establishing their hegemonic control over the use of public resources to further their partisan interests under the facade of public interest. Despite an elaborate legal framework that provides the basis of democratic functioning of the political parties, compliance is weak. The political system has undergone a process of "criminalisation and commercialisation". Devoid of transparency, political party funds are collected under fear or favour.

The **civil society** is known for its significant contributions to the establishment of a sound democratic system by creating demand and exerting pressure on actors in governance and political parties to conform to democratic norms and practice and more importantly, ethics of fair play. Financial sustainability has been a persistent problem for CSOs as most organisations lack explicit strategies and directions for achieving financial independence and as such, are dependent on external grants for survival and continuity. The combination of 'flexibility' and 'control' in the laws guiding the formation and registration of organisations CSOs creates opportunities for the government to control CSO activities.

With growing diversification, the **media** is freer and more open. The regulatory framework, ambiguous and restrictive, effectively constrains media freedom on pretexts of national security, official secrecy, and contempt of court, amongst other things. Largely owned by big business houses, the media has become politicised over the years evident from often biased reports and analyses reflecting the corporate interest and competition. The absence of effective self regulatory mechanisms erodes its accountability and integrity. While the media, particularly, private owned ones, are vocal regarding corruption of public officials, government irregularities, and other contentious issues, it also exercises a degree of self-censorship for fear of backlash by the government and political parties.

In Bangladesh, the legal framework related to the **business** sector is characterised by a combination of supportive and inconsistent regulations. Consequently, the establishment, operation and independence of private businesses have had a somewhat mixed experience. It is exceedingly difficult for a business to complain or file a lawsuit challenging government actions. Information on employees, investors, etc is not readily available. The sector's formal engagement in integrity initiatives has been sporadic and inadequate. Corruption in securing public contracts, utilities and licenses are commonplace.

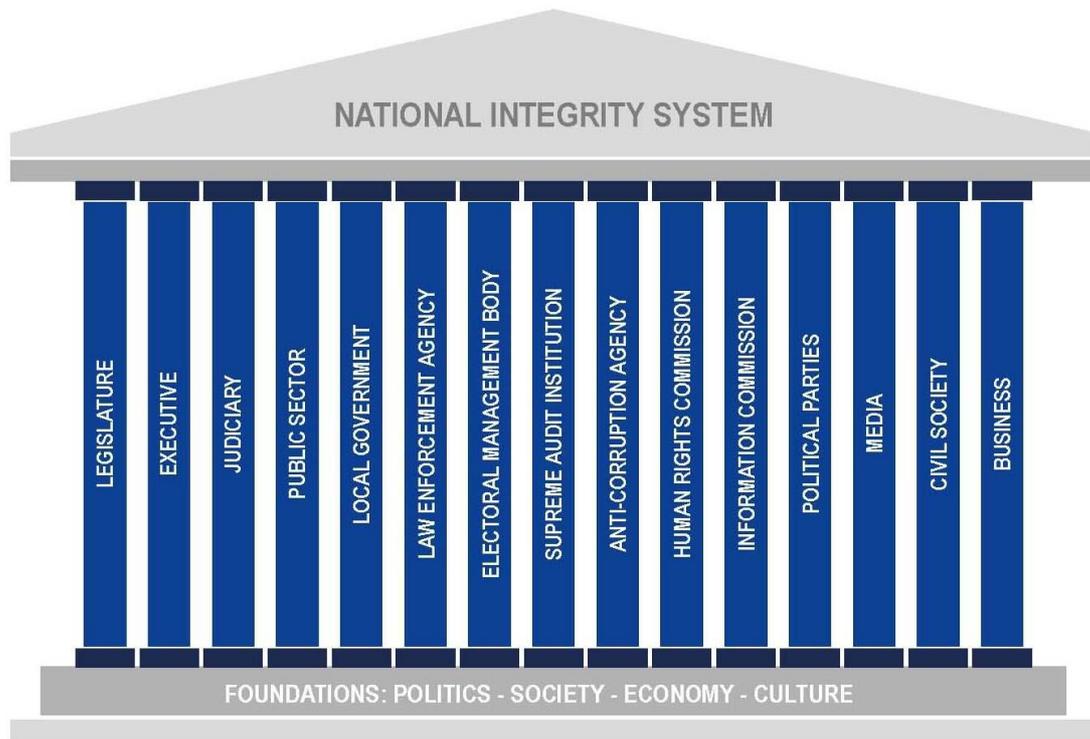
It is recognised that a strong synergy between and amongst the NIS pillars is crucial for the system's overall effectiveness. Weaknesses in one or more pillars, particularly in the public sector, directly or indirectly affect the other pillars. Within the Bangladesh NIS, a dysfunctional parliament, an all-powerful executive, an exploited judiciary, and an increasingly politicised bureaucracy and police force have essentially eroded the checks and balances that are pivotal to good governance. Questions have been raised regarding the independence and credibility of the respective Commissions (EC, ACC, NHRC & IC) which have diluted public trust on these institutions. The absence of strong internal governance in political parties, civil society and the media likewise has exacerbated the governance challenges that confront the country's integrity system today.

# CHAPTER 1

## INTRODUCTION

### 1.1 ABOUT THE NATIONAL INTEGRITY SYSTEM ASSESSMENT

The National Integrity System assessment approach used in this report provides a framework to analyse both the vulnerabilities of a given country to corruption as well as the effectiveness of national anti-corruption efforts. The framework includes all principal institutions and actors that form a state. These include all branches of government, the public and private sector, the media, and civil society (the ‘pillars’ as represented in the diagram below). The concept of the National Integrity System has been developed and promoted by Transparency International as part of its holistic approach to fighting corruption. While there is no blueprint for an effective system to prevent corruption, there is a growing international consensus as to the salient institutional features that work best to prevent corruption and promote integrity.



A National Integrity System assessment is a powerful advocacy tool that delivers a holistic picture of a country’s institutional landscape with regard to integrity, accountability and transparency. A strong and functioning National Integrity System serves as a bulwark against corruption and guarantor of accountability, while a weak system typically harbours systemic corruption and produces a myriad of governance failures. The resulting assessment yields not only a comprehensive outline of reform needs but also a profound understanding of their political feasibility. Strengthening the National Integrity System promotes better governance across all aspects of society and, ultimately, contributes to a more just society.

## 1.2 Definitions

According to Transparency International corruption can be classified as grand, petty and political, depending on the amounts of money lost and the sector where it occurs.<sup>1</sup> ‘Grand corruption’ is defined as ‘Acts committed at a high level of government that distort policies or the functioning of the state, enabling leaders to benefit at the expense of the public good.’<sup>2</sup> ‘Petty corruption’ is defined as ‘Everyday abuse of entrusted power by low- and mid-level public officials in their interactions with ordinary citizens, who often are trying to access basic goods or services in places like hospitals, schools, police departments and other agencies.’<sup>3</sup> ‘Political corruption’ is defined as ‘Manipulation of policies, institutions and rules of procedure in the allocation of resources and financing by political decision makers, who abuse their position to sustain their power, status and wealth.’<sup>4</sup>

The definition of ‘corruption’ which is used by Transparency International Bangladesh is as follows: ‘The abuse power for personal gain’.

## 1.3 Objectives

The key objectives of the National Integrity System assessment were to generate:

- an improved understanding of the strengths and weaknesses of Bangladesh’s National Integrity System within the anti-corruption community and beyond
- momentum among key anti-corruption stakeholders in Bangladesh for addressing priority areas in the National Integrity System.

The primary aim of the assessment was therefore to evaluate the effectiveness of Bangladesh’s institutions in preventing and fighting corruption and in fostering transparency and integrity. In addition, it seeks to promote the assessment process as a springboard for action among the government and anti-corruption community in terms of policy reform, evidence-based advocacy or further in-depth evaluations of specific governance issues. This assessment is expected to serve as a basis for key stakeholders in Bangladesh to advocate for sustainable and effective reform.

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<sup>1</sup> *The Anti-Corruption Plain Language Guide*, Transparency International, 2009, p.14.  
[http://www.transparency.org/whatwedo/pub/the\\_anti\\_corruption\\_plain\\_language\\_guide](http://www.transparency.org/whatwedo/pub/the_anti_corruption_plain_language_guide) [accessed 21 December 2012].

<sup>2</sup> *Ibid.*, p.23.

<sup>3</sup> *Ibid.*, p.33.

<sup>4</sup> *Ibid.* p.35.

## 1.4 Methodology

The National Integrity System of Bangladesh comprises of 15 pillars that represent key public and private institutions as shown in the matrix below.

CORE GOVERNANCE INSTITUTIONS	PUBLIC SECTOR AGENCIES	NON-GOVERNMENTAL ACTORS
Parliament	Public Administration (Bureaucracy)	Political Parties
Executive	Law Enforcement Agency (Police)	Media
Judiciary	Election Commission	Civil Society
Local Government	Office Comptroller and Auditor General	Business
	Anti-Corruption Commission	
	Information Commission	
	Human Rights Commission	

Each of the 15 pillars is assessed along three dimensions that are essential to its ability to prevent corruption:

- its overall **capacity**, in terms of resources and independence
- its internal **governance** regulations and practices, focusing on whether the institutions in the pillar are transparent, accountable and act with integrity
- its **role** in the overall integrity system, focusing on the extent to which the institutions in the pillar fulfill their assigned role with regards to preventing and fighting corruption

Each dimension is measured by a common set of indicators. The assessment examines for every dimension both the legal framework of each pillar as well as the actual institutional practice, thereby highlighting any discrepancies between the formal provisions and reality in practice.

DIMENSION	INDICATORS (LAW AND PRACTICE)
Capacity	Resources Independence
Governance	Transparency Accountability Integrity
Role (within governance system)	Pillar-specific Indicators

The assessment does not seek to offer an in-depth evaluation of each pillar. Rather it seeks breadth, covering all relevant pillars across a wide number of indicators in order to gain a view of the overall system. The assessment also looks at the interactions between pillars, as weaknesses in a single institution could lead to serious flaws in the entire system. Understanding the interactions between pillars helps to prioritise areas for reform.

In order to take account of important contextual factors, the evaluation is embedded in a concise analysis of the overall political, social, economic and cultural conditions – the ‘foundations’ – in which the 15 pillars operate.

POLITICS	SOCIETY	ECONOMY	CULTURE
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The guiding questions, used by Transparency International worldwide, for each indicator were developed by examining international best practices, as well as by using our own experience of existing assessment tools for each of the respective pillars, and by seeking input from (international) experts on the respective institutions. The full toolkit with information on the methodology is available on the Transparency International website.<sup>5</sup>

To answer the guiding questions, the research team relied on four main sources of information: national legislation, secondary reports and research, interviews with key

<sup>5</sup> [www.transparency.org/policy\\_research/nis/methodology](http://www.transparency.org/policy_research/nis/methodology).

experts, and written questionnaires. Secondary sources included reliable reporting by national civil society organisations, international organisations, governmental bodies, think tanks and academia.

To gain an in-depth view of the current situation, a minimum of two and a maximum of six key informants were interviewed for each pillar. In addition, other individuals ‘in the field’, were interviewed. Professionals with expertise in more than one pillar were also interviewed in order to get a cross-pillar view. Having undergone a peer review and libel check, the draft report was sent to a professional copy editor.

### **1.6 Consultative approach and validation of findings**

The NIS assessment process in Bangladesh has a strong consultative component, seeking to involve the key anti-corruption actors in government, civil society and other relevant sectors. This approach has two aims: to generate evidence and to engage a wide range of stakeholders with a view to building momentum, political will and civic demand for reform initiatives.

The NIS assessment was guided by a high powered Advisory Group comprising of eminent and experienced professionals representing cross-cutting disciplines. The NIS research design and the list of potential key informants were shared with them formally. Their suggestions in both respects have added great value to the study. The research findings were shared with them prior to the formal launch. Additionally, the report has undergone a peer review and libel check by experts for validation of the findings.

## CHAPTER 2

### 2.1 COUNTRY PROFILE: FOUNDATIONS FOR THE NATIONAL INTEGRITY SYSTEM

Since the National Integrity System is deeply embedded in the country's overall social, political, economic and cultural context, a brief analysis of this context is presented here for a better understanding of how these context factors impact integrity on the whole. There are four different 'foundations' of the system, namely, political, social, cultural and economic.

#### 2.1.1 POLITICS

The Constitution of Bangladesh guarantees civil and political rights of citizens and also sets out fundamental principles of state policy that are fundamental to the governance of the country. The Constitution maintains a fine balance between fundamental rights and fundamental principles of state policy in that they supplement each other in bringing about social change and ensuring democratic governance. Taken together, they pave the way for a just, free and egalitarian society. In practice however, existing legal provisions are often not applied properly, and in some instances, violated with impunity. Citizen's ability to seek redress for the infringement of their legal rights is impeded by weaknesses in the judiciary and law enforcement agencies in terms of independence, accessibility, objectivity, transparency and accountability. The rule of law<sup>6</sup>, entrenched in the legal framework, is undermined by the executive branch of the government and political forces.<sup>7</sup> This is manifest from the gross abuse of human rights through, *inter alia*, political violence, enforced disappearances, extra-judicial killings by the law enforcement agencies seemingly in police encounters and cross-fires.<sup>8</sup>

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<sup>6</sup> 'Rule of law' appears in the Preamble to the Bangladesh Constitution which states, *inter alia*, that "...it shall be a fundamental aim of the State to realise 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." To this end, the Constitution guarantees that all citizens are equal before law and are entitled to equal protection of law (Article 27), shall be treated in accordance with law, and only in accordance with law and no action detrimental to the life, liberty, body, reputation or property of their person shall be taken except in accordance with law (Article 31). These provisions and the fundamental rights guaranteed by the Constitution together underscore the importance of due process, both substantive and procedural, in any action taken by the state or any of its organs.

<sup>7</sup> Md. Rajib Hasnat Shakil and Kaniz Marzia, "Political Parties and Good Governance: Bangladesh Perspective", *IOSR Journal of Humanities and Social Science (IOSR-JHSS)*, Volume 8, Issue 5 (Mar. - Apr. 2013), pp.37-45, at p.41.

<sup>8</sup> Asian Human Rights Commission, *The State of Human Rights in Bangladesh in 2011*, available at [www.humanrights.asia/resources/hrreport/2011/AHRC-SPR-003-2011/](http://www.humanrights.asia/resources/hrreport/2011/AHRC-SPR-003-2011/) 1.

The political scenario in Bangladesh is dominated by a two party polity, which, while introducing some measure of stability in that the elected party has a fixed tenure of five years, has in effect, instigated the practice of confrontational politics that is an antithesis to sustained democracy.<sup>9</sup> Bickering between the ruling party and the opposition is commonplace. The internal conflicts of the political parties spill over into major state institutions and adversely affect their governance. Attempts by the opposition to unseat the government is premised around confrontational techniques that include strikes, sieges and more seriously, parliamentary boycotts.<sup>10</sup> 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.<sup>11</sup>

Bangladesh is increasingly moving away from what is considered a 'minimalist democracy' (transfer of power through regular, free and contested elections, fundamental freedoms, civilian control over policy and institutions) to an 'illiberal democracy', characterised by misuse of state power for partisan and personal gain and politicisation of key state institutions.<sup>12</sup> Ruling parties enjoy differential access to state resources, much of which they use to reward members and supporters through jobs, licenses and/or contracts.<sup>13</sup> Indeed, state power has been used by all regimes to intimidate or suppress political opposition, buy support of individuals and groups and make money for personal use and party building.<sup>14</sup> Political commitment to establish democracy continues to be rhetoric, since the political parties have largely failed to come to a consensus regarding the ground rules for democratic competition and dissent.<sup>15</sup>

Political parties are known to be self-serving and rarely articulate broader public interests, except during pre-election campaigns.<sup>16</sup> The common man's relevance in

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<sup>9</sup> Sumaiya Khair, "Challenges to Democratization: perspectives of structural malgovernance in Bangladesh" in Panandiker, V.A. Pai and Tripathi, Rahul (eds.), *Towards Freedom in South Asia. Democratization, Peace and Regional Cooperation*, Konark Publishers, New Delhi, 2008, pp. 47-64, at p. 49.

<sup>10</sup> *Ibid.*

<sup>11</sup> Rehman Sobhan, "Structural Dimensions in of Malgovernnace in Bangladesh", *Economic and Political Weekly*, 4 September 2004, pp.4101-08, at p.4103.

<sup>12</sup> IGS, *The State of Governance in Bangladesh 2008*, Dhaka, 2009, p. xv.

<sup>13</sup> Md. Saidur Rahman, *Institutionalization of Democracy in the Political Parties in Bangladesh. Does Culture Matter?* North South University, Dhaka, 2010, avialbale at [http://mppg-nsu.org/attachments/119\\_Institutionalization%20of%20democracy,%20by%20Saidur%20%5Bfinal%5D.pdf](http://mppg-nsu.org/attachments/119_Institutionalization%20of%20democracy,%20by%20Saidur%20%5Bfinal%5D.pdf).

<sup>14</sup> *Ibid.*

<sup>15</sup> *Ibid.*

<sup>16</sup> Khair, *op.cit.*, p.48.

the political and governance processes is nominal except at the time of elections, when party manifestos bulge with rich promises for the common people, only to be forgotten once the elections are over.<sup>17</sup> Although steady progress has been made in improving the quality of elections over the past decade and a half, there is growing recognition that elections alone cannot deliver democracy.<sup>18</sup> Political competition is largely inter-elite contestation for access to patronage resources, with voters deployed as pawns during elections and ignored afterwards.<sup>19</sup> Competition is fierce and can be violent, as it is a zero sum game and the winner takes all. Once a government is elected, there are few checks on its power, as the opposition is neutered by institutional design.<sup>20</sup>

The absence of a political culture of tolerance, the lack of willingness to compromise, and the mindset of politicians who view each event as a zero-sum game have prevented the proper functioning of democratic institutions.<sup>21</sup> Politicisation affects key institutions of governance, weakening trust in the very institutions that are meant to protect and promote the interests of the general public.<sup>22</sup> As has been rightly observed, “endemic corruption and criminality, weak rule of law, limited bureaucratic transparency, and political polarization have long undermined government accountability.”<sup>23</sup>

Weaknesses in the political regime management have been a fundamental impediment to democratic governance in Bangladesh. These have in turn limited the role and capacity of the major institutions of accountability and oversight. Political capture of state institutions has inevitably resulted in the failure of governance actors to reform state structures, take progressive policy decisions, create an enabling environment and provide leadership at different levels of the government.<sup>24</sup>

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<sup>17</sup> *Ibid.*, p.63.

<sup>18</sup> The Asia Foundation, *Strengthening Democracy in Bangladesh*, Occasional Paper No. 13, June 2012, p.1.

<sup>19</sup> *Ibid.*

<sup>20</sup> *Ibid.*

<sup>21</sup> Bertelsmann Stiftung, BTI 2012 — *Bangladesh Country Report*. Gütersloh: Bertelsmann Stiftung, 2012, p.9.

<sup>22</sup> The Asia Foundation, *op.cit.* p.9.

<sup>23</sup> Freedom House, *Freedom in the World—Bangladesh*, 2011, available at <http://www.freedomhouse.org/template.cfm?page=22&year=2011&country=7993>

<sup>24</sup> Md. Abu Nayem Miazi and Md. Nahidul Islam, “Prospect of Good Governance in Bangladesh. A Review”, *Prime University Journal*, Volume 6, Number 2, July-December, 2012, pp. 69-96, at p. 76 available at

[http://www.primeuniversity.edu.bd/070513/journals/contents\\_pdf/06\\_Prime\\_University.pdf](http://www.primeuniversity.edu.bd/070513/journals/contents_pdf/06_Prime_University.pdf)

## 2.1.2 SOCIETY

Bangladeshi society has historically been shaped by a patron-client system of governance. Under this system, patrons, largely made of hereditary aristocrats, occupy the top of the social hierarchy and as such, monopolise political and economic power by providing the clients security and access to state services in return for loyalty and the vote.<sup>25</sup> Although the old feudal system is eroding, the new democratic system is not yet fully established; this transient situation causes visible strain on the two systems, manifest from demands from a growing middle class for a greater share of power and expectations of the younger generation for better opportunities—both essentially stemming from increased exposure to the outside world through advanced communication technology.<sup>26</sup>

Bangladesh is religiously, ethnically and linguistically homogenous as Muslims account for 88.3% of the total population<sup>27</sup> and 98% are Bengalis who speak in *Bangla*.<sup>28</sup> Among the Muslims, 96% belong to the Sunni sect, 3% are Shi'a, and a nominal 1% are Ahmadiyyas.<sup>29</sup> Hindus are the largest minority religion in Bangladesh, accounting for 10.5% while other minority groups comprising Christians, Buddhists and animists constitute less than 1% of the total population. While the Constitution originally promoted secularism, an amendment in 1988 introduced Islam as the state religion. Islam continues to be the state religion although the 15th amendment to the Constitution has restored secularism as a fundamental principle and ensures equal status and equal rights in the practice of all religions.

Bangladesh is portrayed as a moderate Muslim state where people of different religions have lived in peaceful co-existence for generations, each respecting the religious and cultural beliefs of the other and very often partaking in the same. The major festivals of all religions are public holidays and are celebrated at the state level.<sup>30</sup> Social dualism is manifest in the practice of Hindu culture and rituals in social events simultaneously with strictly Islamic prescriptions and ceremonies.<sup>31</sup>

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<sup>25</sup> The Asia Foundation, *Strengthening Democracy in Bangladesh*, Occasional Paper No.13, June 2012, p.2.

<sup>26</sup> *Ibid.*

<sup>27</sup> see <http://asianhistory.about.com/od/bangladesh/p/bangladeshprof.htm>

<sup>28</sup> Bertelsmann Stiftung, BTI 2012 — *Bangladesh Country Report*. Gütersloh: Bertelsmann Stiftung, 2012, p. 5.

<sup>29</sup> see <http://asianhistory.about.com/od/bangladesh/p/bangladeshprof.htm>

<sup>30</sup> Universal Periodic Review, *Bangladesh National Report*, submitted to the UN Human Rights Council, February 2013, p.39.

<sup>31</sup> Taiabur Rahman, *Problems of Democratic Consolidation in Bangladesh: A Cultural Explanation*, paper presented at the Network of Asia-Pacific Schools and Institutes of Public Administration and Governance (NAPSIPAG) Annual Conference, Beijing, PRC, 5-7 December, 2005, p.5.

Notwithstanding, isolated incidents of hate campaign and violence against religious and ethnic minorities, for example, demands by extremist Islamist groups to ban Muslim sects like the *Ahmadiyyas* and attacks on their mosques, and aggression against members of the Hindu and Buddhist communities and desecration of their temples,<sup>32</sup> have time to time tarnished the “moderate” image of Bangladesh.

Although the Government officially recognises 27 ethnic minority groups, Bangladesh is host to some 50 such groups having diverse identities, cultures and languages.<sup>33</sup> The 15th amendment to the Constitution has inserted a provision which stipulates that the State shall undertake responsibility to protect and develop the unique local culture and tradition of tribal and ethnic communities.<sup>34</sup> However, the 15th amendment to the Constitution has been criticised for contravening the equality guarantee by designating all residents of Bangladesh as “Bangalees,” a move which is essentially deemed as marginalising indigenous peoples and undermining their identity. The relationship between ethnic minority groups and the dominant Bengali communities is characterised by tension and conflict over land ownership and use of natural resources. Human rights violations are also commonplace including harassment, killings, torture, sexual violence against women and children and land dispossession of indigenous people’s lands by Bengali settlers and military personnel.<sup>35</sup>

The linguistic minority group in Bangladesh is largely composed of the Urdu-speaking community that is varyingly referred to as Biharis, stranded Pakistanis, and left-behind Pakistanis. These people, who experience discrimination in terms of education, employment and access to basic resources are housed in ‘camps’ in deplorable conditions, with minimal access to sanitation or other facilities, and under constant threat of eviction.<sup>36</sup> A High Court judgment in 2008 declared all Urdu-speaking people born after the 26<sup>th</sup> March 1971 as Bangladeshi citizens, following which national identity cards were issued to many of them. However, the initiative has not been able to cover the entire Urdu-speaking population as a result of which they continue to be denied passports for apparently lacking “a permanent address”.<sup>37</sup>

Despite significant progress in women’s empowerment and participation, women in Bangladesh continue to face legal, social, and economic challenges and constraints. Patriarchal ideology and practice greatly undermine women’s voice, visibility and inclusion in decision-making processes in both the private and public spheres. Personal laws impinging on family matters particularly in respect of marriage, divorce,

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<sup>32</sup> BTI, *op.cit.*, p. 6.

<sup>33</sup> Universal Periodic Review, Bangladesh, *op.cit.* p.15.

<sup>34</sup> Article 23A, The Constitution of Bangladesh.

<sup>35</sup> SAHR, *Annual Minority Report. Status of Minorities in Bangladesh – 2011*, p.3.

<sup>36</sup> Universal Periodic Review, Bangladesh, *op.cit.*, p.16.

<sup>37</sup> *Ibid.*

inheritance, and child custody/guardianship greatly discriminate against women. The devaluation of women has adverse consequences on women's personal security. Rape, domestic violence, dowry related violence, acid violence, sexual harassment and trafficking in women occur regularly but are seldom prosecuted, or perpetrators receive light sentences, while police readily accept bribes to quash rape cases, and rarely enforce existing laws protecting women.<sup>38</sup>

Bangladesh has a vibrant civil society that comprises both organised professional groups at the national level as well as unorganised citizen's groups at the local level. Broadly comprising NGOs, CSOs, media, research think tanks, and various pressure groups (for example, women, human rights, minorities), the civil society has historically played a critical role in the democratisation process of the country since its independence in 1971. While the political economy in the post independence period was primarily dominated by three major urban-based actors, namely, the bureaucracy, the military and the political leadership, newer elements soon emerged as additional players in what now constitutes civil society in the form of organised and autonomous groups trying to influence the state.<sup>39</sup> Despite reservations on issues of power, the government has generally been receptive to demands of the civil society in respect of human rights protection and democratic governance:<sup>40</sup> likewise, it is the civil society that today exerts pressure on political parties to conform to democratic norms and practice and more importantly, ethics of fair play.

### 2.1.3 ECONOMY

Since independence in 1971, Bangladesh has increased its real per capita income by more than 130 percent, cut poverty by more than half, and is well set to achieve most of the millennium development goals. Some of the specific achievements in this regard include reducing of total fertility rate from 7.0 to 2.7; increasing in life expectancy from 46.2 years to 66.6 ; increasing in the rate of economic growth from an average rate of 4% in the 1970s to 6% in the 2000s; increasing in the savings and investment rates from below 10 percent each in the 1970s to 24 percent (investment rate) and 28 percent (savings rate) in 2010; achieving gender parity in primary and secondary education; and more than tripling the production of rice (from 10 million metric tons in 1973 to 32 million metric tons in 2010) thereby achieving near self-sufficiency in normal production years<sup>41</sup>.

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<sup>38</sup> The Asia Foundation, *op.cit.*, p.10.

<sup>39</sup> Harry Blair, "Civil Society, Democratic Development and International Donors" in Rounaq Jahan (ed.), *Bangladesh. Promise and Performance*, The University Press Limited, Dhaka, 2002 (second impression), pp. 181-217, and pp.192-193.

<sup>40</sup> Hossain Zillur Rahman, "Bangladesh 2015: Crossing miles", *The Daily Star*, March 06, 2006.

<sup>41</sup> Government of Bangladesh, *Sixth Five Year Plan: 2011-2015 - Accelerating Growth and Reducing Poverty*, Dhaka: Ministry of Planning, 2011.

During the 1990s and onward, Bangladesh has notably improved in terms of both economic performance and human development indicators<sup>42</sup>. A significantly reduced and declining dependence on foreign aid saw the economy transit from stabilization to growth. Paradoxically, the country has also witnessed a drop in the conventional 'governance' indicators that demonstrates a weakening of the institutions of integrity. Government inaction despite evidence of corruption by government personnel has damaged peoples' perception of and confidence in the government. For example, a Minister was retained in the Cabinet despite a scandal of his alleged involvement in bribes worth \$90,000 in April 2012 – the equivalent of nearly seven years of ministerial wages<sup>43</sup>. Such instances inevitably lead to growing concern regarding how economic growth and its momentum can withstand the impact of ineffective governance.

Bangladesh is fortunately blessed with two important elements: demographic dividend of a large youthful work force and a broad-based social consensus on social responsibility driven inclusive development strategy to harness the creative energy of the people in overcoming challenges to rapid poverty eradication<sup>44</sup>. According to a World Bank analysis,<sup>45</sup> Bangladesh's remarkable achievement in the economic sphere was triggered by a few key governance reforms, for example, a. the creation of space for the emergence of a domestic private sector, b. encouragement by successive governments in respect of migration of Bangladeshi workers, c. state recognition of its limitations in service delivery and the creation of space and the forging of partnership with NGOs for providing public services, d. relatively pro-poor public expenditure; and, e. improvements in disaster- management capacity.

The business sector in Bangladesh benefits from the country's liberal legal framework which has enabled it to penetrate into almost all spheres of the economy, from education to manufacturing to public infrastructure development. Almost 76 percent of the total investment in Bangladesh is contributed by the private sector.

In spite of impressive growth, all the estimates of governance indicators<sup>46</sup> in Bangladesh for 2010 were negative and were much below world average<sup>47</sup>. Thus,

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<sup>42</sup> Since 2000, the growth of GDP was around 5 percent, population growth rate fell from 2.4 to 1.5 percent between the last two decades. Progress in human development indicators Bangladesh ranked among the top performers in the UNDP Human Development Index. Index of human poverty shows a decline from 63.1 in 1981-83 to 34.8 in 1998-2000. Head count poverty index has declined from 70 percent in early 70s to 50 percent in 2000.

<sup>43</sup> International Crisis Group Report , *Bangladesh Back to the Future*, Asia Report N°226 – 13 June 2012.

<sup>44</sup> Atiur Rahman, *Socio-economic trends and prospects*, *The Daily Star*, August 13, 2013.

<sup>45</sup> World Bank, *Bangladesh Strategy for Sustainable Growth*. Dhaka, 2007.

<sup>46</sup> Voice and accountability, Political stability & absence of violence, Government Effectiveness, Regulatory Quality, Rule of Law and Control of Corruption.

some observers have noted that the country's current relatively high-income levels are not likely to be sustainable given its weak institutional capacity<sup>48</sup>. The annual national budget consistently allocates substantial expenditure outlays in the social sector for pro-poor human development and social safety nets to unleash the creative energies of the entire population. Bangladesh has the largest social safety net program in the developing world<sup>49</sup>. However, the Social Safety Net Programmes (SSNPs) face a number of challenges in terms of coverage, targeting beneficiaries, poor management and delivery system, and disparity in regional distribution, lack of partnerships with the local government, and leakages and corruption.<sup>50</sup>

Besides, economic inequalities persist, poverty still remains at a very high level and the number of people living below the poverty line remains almost the same as it was in 1991–1992, about 56 million.<sup>51</sup> The most startling consequence of widespread poverty is that a quarter of the country's population, about 36 million people, cannot afford an adequate diet, according to the 2005 estimates of food poverty or extreme poverty. *The unemployment rate, traditionally defined, has increased modestly, reaching 2.1 million people, which is about 4 percent of the total labour force.* Inflation continues to be volatile, touching double digits. Although food prices have declined from 13.8 percent in September 2011 to 8.1 percent in April 2012, non-food price increases have hit an unprecedented 14 percent in 2012. The growing central government deficit and its monetization and domestic financing, are exerting pressure on macroeconomic balances<sup>52</sup>.

In spite of global shocks and natural crises, Bangladesh's economy has maintained a healthy 6%-plus growth rate in past years<sup>53</sup>. The country's remarkably steady growth was possible due to a number of factors including population control, macroeconomic

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<sup>47</sup> Akbar Ali Khan, *The Relevance of "Good Governance" Concept: Revisiting Goals, Agenda and Strategies*, Key Note Paper presented at International Conference on Governance and Public Policy in South and South East Asia, North South University, Dhaka, Bangladesh, 13- 14 July, 2012.

<sup>48</sup> Fernandez and Kraay (Fernandez, Anna Margarida and Aart C. Kraay. 2007. "Property Rights Institutions, Contracting Institutions and Growth in South Asia in Macro and Micro evidence". In *South Asia: Growth and Regional Integration*, eds. Sadeq Ahmed and Ejaz Ghani. Delhi: Macmillan India.2007, p.103.

<sup>49</sup> PPRC and UNDP, *Social Safety Nets in Bangladesh*, Volume 1: Review of Issues and Analytical Inventory, <http://www.bd.undp.org/content/dam/bangladesh/docs/Publications/Social%20Safety%20Nets%20in%20Bangladesh%20Vol%201.pdf>.

<sup>50</sup> Barkat-e-Khuda, "Social Safety Net Programmes in Bangladesh: A Review", *Bangladesh Development Studies*, Vol. XXXIV, June 2011, No. 2

<sup>51</sup> Government of Bangladesh, *Sixth Five Year Plan: 2011-2015 - Accelerating Growth and Reducing Poverty*, Dhaka: Ministry of Planning, 2011, p. 148.

<sup>52</sup> World Bank, *Bangladesh Economic Update, Poverty Reduction and Economic Management*, South Asia Region, May, 2012.

<sup>53</sup> World Bank, *Towards Accelerated, Inclusive and Sustainable Growth in Bangladesh*, Dhaka, 2012.

stability, and openness in the economy. Building on its social-economic progress so far, Bangladesh now aims at becoming a middle-income country (MIC) by 2021.<sup>54</sup>

Several hurdles stand in the way of attaining this goal including weak economic governance, over-burdened land, power, port and transportation facilities; acute skills shortages; and limited success in attracting foreign direct investment in manufacturing. Cutting through all these challenges would need a political economy that enables the policy and institutional reforms that are required for enhancing and sustaining productivity growth<sup>55</sup>.

Poor performance of public institutions has a significant impact on overall improvement of economic governance. Governance failures are mainly caused by imperfect competition and non-democratic interventions in political markets as well as within the political sphere. Governance failures contribute to high tax evasion and poor recovery of non-performing loans, at present 25 per cent of total loans<sup>56</sup>. Poor Annual Development Programme (ADP) utilisation is partly due to implementation failure, which is related to some extent with governance failures, among other reasons. The institutional challenges result in corruption and poor quality of public service delivery such as education, health, issuance of passport and infrastructure<sup>57</sup>.

The economy of Bangladesh thus appears to have reached a stable state but governance deficits have significant implications for installing an effective national integrity system.

#### 2.1.4 CULTURE

In Bangladesh, the traditional socio-cultural values and the religious norms and practices strongly support a moral and just society. Religion (Islam, Hinduism, Christianity and Buddhism) have historically played a significant role in the conceptualisation and practice of ethics and norms.

The term 'corruption' is alien to *Bangla* (Bengali) language. The Bengali translation of corruption is *Durniti* (literal meaning – bad policy). Corruption is widely known as *ghoosh* or bribe; it finds expression in covert and overt ways in a host of activities which range from outright bribery to more subtle forms of patronage or *tadbir* (persuasion), abuse of power and authority, and underhand dealings. A general impression in popular discourse and the media is that ordinary people in Bangladesh

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<sup>54</sup> World Bank, 2012 *op.cit.*

<sup>55</sup> *Ibid.*

<sup>56</sup> Bishnu Kumar Adhikary, Nonperforming Loans in the Banking Sector of Bangladesh: Realities and Challenges, Dhaka: Bangladesh Institute of Bank Management (BIBM) [http://www.apu.ac.jp/rcaps/uploads/fckeditor/publications/journal/RJAPS\\_V21\\_Adhikary.pdf](http://www.apu.ac.jp/rcaps/uploads/fckeditor/publications/journal/RJAPS_V21_Adhikary.pdf). Bishnu Kumar Adhikary, Also see Banks burdened with bad loans The NPL ratio is much higher than global average: study, *The Daily Star*, December 21, 2013.

<sup>57</sup> Dilip Kumar Roy, "Governance and Development: The Challenges for Bangladesh", *The Bangladesh Development Studies*, Vol. XXXI, September-December 2005, Nos. 3 & 4.

clearly views corruption as 'a way of life'. While culturally corruption is considered to be an immoral act as opposed to a “wrong” or “bad” “policy”, with rapid economic development and capitalist mode of production, corruption has crept into the economic system of the country. It is argued that the present practice and mode of corruption started from colonial period only after the intrusion of material culture<sup>58</sup>.

Such declining moral and ethical standards have significantly contributed to the lowering of inter-personal and collective trust in Bangladeshi society. A survey carried out in 2011 reveals that only 9 percent of the respondents believe that most people can be trusted, while 62 percent observed that “considerable amount of caution” was necessary to deal with people, 18 percent said that they only trust “close friends and relatives”, while 11 percent believe “no one is trust worthy”<sup>59</sup>. The common public generally suffers from a lack of trust on public institutions. According to a recent survey, nearly 68% of urban household respondents noted that “social links” significantly helped them receive public services like education, health and utility services and 81 percent opined that “grease money” was the most efficient way to get things done in a public office<sup>60</sup>.

Bangladesh is a hierarchical society which is based on patron-client relationship; this has expanded and almost encapsulated the State and its functional organs<sup>61</sup>. Pathologies such as factionalism<sup>62</sup>, nepotism, centralization, weak accountability mechanisms, and elitism are but some manifestations of the dominant administrative culture in Bangladesh,<sup>63</sup> which has notably influenced the practice of corruption in public service.

Codes of conduct of public employees are rarely practiced. Conflicts of interest are pervasive as administrative culture is characterised by strong collectivism and masculinity as well as high power distance and uncertainty avoidance<sup>64</sup>. Collectivism is

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<sup>58</sup>Interview with Professors Akter Kamal and Saidur Rahman, Department of Bengali Literature, University of Dhaka.

<sup>59</sup> Department of Public Administration, *Whom do you trust? Opinion Survey of house hold heads of the Metropolitan cities (Dhaka, Chittagong and Rajshahi)* 2007, PA.423 Project - Department of Public Administration, University of Dhaka.

<sup>60</sup>Department of Public Administration, *Public Service Delivery System : An Opinion Survey of Selected Household Respondents Dhaka City*, PA.423 Project, Department of Public Administration, University of Dhaka, 2012.

<sup>61</sup>Raunaq Jahan and Inge Amundsen, *The Parliament of Bangladesh – Representation and accountability*, Dhaka: CPD-CMI Working Paper – 2, 2102.

<sup>62</sup>A former Principal Secretary of the Government found that seven types of factionalism have seriously compromised the quality and performance of the civil service. See Kamal Siddiqui, *Towards Good Governance in Bangladesh: Fifty Unpleasant Essays*. UPL, Dhaka, 1996.

<sup>64</sup> Taibur Rahman, *Problems of Democratic Consolidation in Bangladesh: A Cultural Explanation*, paper presented to International Conference of Network of Asia-Pacific Schools and Institutes of Public Administration and Governance (NAPSIPAG), 2006.

<sup>65</sup> Collectivism refers to a situation where one is expected to be controlled by their relatives, peer, regional identify. More collectivist societies all for greater emotional dependence on any or all of the such considerations. Masculinity refers to the predominant pattern of socialization where men to be seen as more assertive and for women to be more nurturing. Power distance is conceptually related

manifested by political and peer pressures, social connections, family and regional linkages and alliances<sup>65</sup>.

Political culture is characterised by a huge trust deficit between and among the major political parties and has resulted in "shrinking political space" for opposition parties. Furthermore, in recent years, a new culture of impunity has evolved to occupy the centre stage in the process of governance. Powerful elites like politicians, trade union leaders and a privileged section of bureaucracy have developed "informal power networks" and seemingly enjoy impunity in malgovernance or misuse public resources and interference in institutional processes. Such manifested culture of impunity also goes to the extent of changing policies and important business decisions of the government<sup>66</sup>.

In the context of weak regulatory framework, patron- clientelism provides significant opportunities for rent-seeking. There is also a new trend of horizontal patron-clientelism which links the ruling party, politicians, and public administration<sup>67</sup>. The party rewards the loyal civil servants by quick promotions, profitable postings and important contractual positions after retirement.

Although there is no significant social distance between and among the communities in mutual trust<sup>68</sup>, low trust on public institutions is commonplace. People at large do not believe in politicians and civil bureaucracy.<sup>69</sup> Consequently, in spite of legal and institutional means and measures to combat corruption and promote ethical governance, public service is considered to be highly corrupt and thereby incurs "low trust". Indeed, the widespread lack of trust has been instrumental in developing symbiotic relations within a small coterie made up of politicians, businessmen, parliamentarians, and civil-military bureaucrats to serve the interest of one another.<sup>70</sup>

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to concentration of authority (centralization). Uncertainty avoidance - is related to structuring of activities (formalization, specialization, and standardization), and indicates the lack of tolerance in a society for uncertainty and ambiguity. This expresses itself in higher levels of anxiety and energy releases, greater need for formal rules and absolute truth and less tolerance for people or groups with deviant ideas or behaviors. For detail see: G. Hofstede, *Cultures and Organizations: Software of the Mind*, McGraw Hill, New York, 1997.

<sup>65</sup>Taibur Rahman, *op.cit.*

<sup>66</sup>Mahmud, W, Sadiq Ahmed and Sandeep Mahajan, *Economic Reform, Growth and Governance The Political Economy Aspects of Bangladesh's Development Surprise*, The International Bank for Reconstruction and Development, The World Bank. Washington, 2008.

<sup>67</sup> *Ibid.*

<sup>68</sup>Olof Johansson- Stenman, Minhaj Mahmud, and Peter Martinsson, *Trust and Religion: Experimental Evidence from Rural Bangladesh*, Göteborg University, Sweden and Queen's University Belfast, UK, see <http://www.aedsb.org/Mahmud.pdf>

<sup>70</sup> Institute of Governance Studies, *The State of Governance in Bangladesh 2009 - Entitlement, Responsiveness, Sustainability*, BRAC University, Dhaka. 2010.

<sup>70</sup>Ishtiaq Jamil, *Administrative Culture in Bangladesh*, AHD Publishing House, Dhaka 2007.

The National Integrity Strategy (NIS) of Bangladesh has duly recognized the necessity to promote the culture of ethics and morality<sup>71</sup>. The prevailing socio cultural features unfortunately do not seem to be conducive for an effective and functioning national integrity system. Some observers have noted, that over the last two decades ethical and moral values of the Bangladeshi society in general have considerably declined, which in turn have affected the quality of political and administrative performance processes and in large, civic behavior<sup>72</sup>.

Notwithstanding, socio-cultural behaviour also has some positive aspects, e.g., the gradual and visible empowerment of women, poor and the vulnerable, which in effect, has enhanced the “voice and choice” of the poor and disadvantaged, who have largely been ignored or marginalized.

In the final analysis, in practice, ethics, norms and values do not appear to be too supportive of a national integrity system.

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<sup>71</sup>Government of Bangladesh, *Commitment for Golden Bengal- National Integrity Strategy of Bangladesh*, Cabinet Division, Government of People’s Republic of Bangladesh, 2012.

<sup>72</sup>Interview with Professor Abdullah Abu Sayeed, eminent literary figure and civil society leader.

## 2.2 BANGLADESH CORRUPTION PROFILE

Corruption is not new, nor is it peculiar to any particular society or country. It takes place to a greater or lesser degree in all countries, irrespective of political and economic systems, whether developed or developing.<sup>73</sup> The causes of corruption are always contextual, rooted in a country's policies, bureaucratic traditions, political development, and social history. Nonetheless, corruption perceivably flourishes when institutions of accountability have weak governance and lack integrity. While costs may vary and systemic corruption may co-exist with strong economic performance, experience suggests that corruption is one of the most severe impediments to development and growth in emerging and transitional economies.

The effect of corruption has many dimensions-- political, economic, social and environmental. In the political sphere, corruption impedes democracy and the rule of law. In a democratic system, public institutions and offices stand to lose their legitimacy when and if they misuse their power for private interest or as a result of political influence. In Bangladesh, the impact of corruption is often manifested through political intolerance, lack of accountability and transparency, low level of democratic culture, absence of consultation, dialogue and participation, rent seeking and patronage. The economic effects of corruption can be categorised as minor and major. However, both in one way or the other have serious impact on the individual, the community and the country. Corruption primarily leads to the depletion of national wealth. It leads increased costs of goods and services, funnels scarce public resources to sectors in total disregard of priority projects, e.g., schools, hospitals and roads, or the supply of potable water. Additionally, it entails diversion and misallocation of resources, conversion of public wealth to private and personal property, inflation, imbalanced economic development, weak work ethics and professionalism, hindrance to the development of fair in market structures and unhealthy competition—all of which impoverishes the country on the whole.

According to the Corruption Perceptions Index (CPI) 2013, Bangladesh scored 27, just one point higher than 2012 and the same as in 2011. In terms of ranking Bangladesh was placed 16th from the bottom in 2013, 3 steps higher than that in 2011 and 2012. Counted from the top, Bangladesh has ascended by 8 positions to 136<sup>th</sup> among 177 countries, compared to 144<sup>th</sup> in 2012 among 176 countries.

Bangladesh's score remained well below global average of 43, and was ranked as the second worst performer in South Asia, better than only Afghanistan which ranked at the bottom of the global list, having scored 8 points together with North Korea and Somalia.

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<sup>73</sup> The Corruption Perceptions Index (CPI) released annually since 1995 by Transparency International (TI) shows that no country has yet scored 100 percent indicating that corruption exists in all countries of the world. CPI provides international comparison of countries by perceived prevalence of political and administrative corruption. It is a global survey of surveys on governance and corruption related indicators conducted by reputed international organizations. CPI 2013 showed that in a scale of 0-100, the highest score of 91 was achieved by Denmark and New Zealand followed by Finland and Sweden (89), Norway and Singapore (86) and Switzerland (85), UK (76) and US (73). As many as 124 countries have scored below 50. 108 countries have scored equal or less than the global average of 43. Corruption clearly remains a global problem. See for details: [www.transparency.org](http://www.transparency.org)

Bangladesh was earlier placed at the bottom of the list for five successive years from 2001-2005.<sup>74</sup> In 2006, 2007, 2008, 2009 and 2010 Bangladesh was ranked at no 3, 7, 10, 13, and 12 respectively while in 2011 and 2012 it occupied the 13<sup>th</sup> position.

The World Bank estimated in 2000 that “if Bangladesh could reduce its corruption level to those prevailing in countries with highest reputation for honest dealing it could add between 2.1 and 2.9 percent to annual per capita GDP growth. This would contribute to a sustainable reduction in poverty”.<sup>75</sup>

The National Household Survey 2012 released by Transparency International Bangladesh (TIB) showed that 63.7% of the surveyed households have been victims of corruption in one or other selected sector of service delivery. Most important service delivery sectors affecting people's lives such as law enforcement, land administration, justice, health, education and local government, remain gravely affected by corruption. Measured in terms of bribery in the surveyed sectors, cost of corruption in 2010 was estimated at 1.4% of Gross Domestic Product (GDP) or 8.7% of annual national budget, which rose in 2012 to 2.4% of GDP and 13.4% of annual budget. Overall cost of petty corruption was estimated to be 4.8% of average annual household expenditure. For households with lowest range of expenditures the rate of loss is much higher at 5.5% compared to higher spending households for whom it is 1.3%.<sup>76</sup> In other words, while corruption affects everyone, the burden of corruption is more on the poor.

### 2.2.1 ANTI-CORRUPTION INITIATIVES BY THE GOVERNMENT

Bangladesh has over the years taken some concrete measures that essentially demonstrate the Government's commitment to setting standards and undertaking reform initiatives necessary for effectively promoting good governance and fighting corruption.

- **Enactment of laws:** A number of laws years have been enacted that have significant bearing on the promotion of good governance and preventing corruption. These include The Anti-Corruption Commission Act, 2004, The Public Procurement Act, 2006 and Public Procurement Rules 2008, The Right to Information Act, 2009, The Public Finance and Budget Management Act, 2009, The National Human Rights Commission Act, 2009, The Chartered Secretaries Act, 2010, The Whistle Blowers' (Protection) Act, 2011, The Prevention of Money Laundering Act, 2012, and The Competition Act, 2012. A new Audit Act is awaiting Cabinet approval before being sent to the Parliament.
- **UNCAC ratification:** At the international level Bangladesh has acceded to the UN Convention against Corruption in 2007. A self assessment checklist on UNCAC was completed and submitted in 2007-8. The government submitted a compliance and GAP analysis report to the CoSP in 2008. It formed an Expert Group on UNCAC and assigned the Additional Secretary to the Ministry of Law, Justice and Parliamentary Affairs as UNCAC Focal Point of GoB. In 2009 the government developed an Action Plan for UNCAC Compliance. The Ministry of Home Affairs and the Office of the

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<sup>74</sup> By 2013 Somalia has been ranked at the very bottom for the 7<sup>th</sup> successive year.

<sup>75</sup> The World Bank, *Corruption in Bangladesh: Costs and Cures*, Dhaka April 7, 2000.

<sup>76</sup> See for details, Transparency International Bangladesh, *National Household Survey on Corruption in Service Sectors 2012*, [www.ti-bangladesh.org](http://www.ti-bangladesh.org)

Attorney General Office have been assigned as the Central Authority for International Cooperation. A mechanism for the review of implementation of the UNCAC (first year of the first cycle) was undertaken in 2011. In the same year, a Peer Review Team (consisting of members of Iran and Paraguay and representatives of UNODC) visited Bangladesh and worked together with the government.

- **Development of NIS Strategy:** A National Integrity Strategy has been approved by the Cabinet in October 2012. Subsequently, an NIS unit has been formed at each ministry and a National Integrity Advisory Committee has been formed with the Prime Minister as its Chair. The overall purpose of a National Integrity Strategy is to provide a system of governance that creates trust among citizens. The Government also plans to establish an Ethics Committee composed of the heads of the institutions.
- **Establishment of the National Human Rights Commission (NHRC):** In response to long standing demand of the civil society and rights activists, the National Human Rights Commission (NHRC) has been established in 2009. A statutory body, the NHRC's primary goal is to work for the promotion and protection of human rights of the citizens of Bangladesh.
- **Establishment of the Information Commission:** The issue of right to information had been featuring prominently in civil society advocacy, public discourse and media coverage for sometime in Bangladesh. The concern was also highlighted by major political parties in their election campaigns. These various efforts finally led to the enactment of *The Right Information Act* in 2009 pursuant to which the Information Commission was set up in 2009 for receiving, inquiring into and disposing of complaints relating to the right to information.
- **Use of Citizens' Charter:** Citizen's Charters (CC) have been introduced by the Government on the recommendation of the Public Administration Reform Commission in 2000. The Government has started to work on the 2<sup>nd</sup> generation Citizen's Charter in 2010, with the objectives of providing a platform for civil servants and citizens to interact and decide democratically what services people need about and how the Civil Service can best provide those services. The CC also aims to engage the citizens in decisions that have a major impact on their daily life.
- **Introduction of performance audit system:** The government has introduced a new performance appraisal system on a pilot basis to appraise the role and function of public sector employees on the basis of mutually agreed on performance indicators.
- **Police Reform:** The Police Reform Programme (PRP), funded by international development partners, is a comprehensive capacity building initiative aimed at supporting the transformation of the Bangladesh police force into an effective and service oriented organisation. The programme broadly focuses on strengthening police capacity and service delivery through various trainings, advocating for gender friendly policing, and improving interaction with the community through model police stations and community policing forums. Progress achieved under this initiative include, amongst others, the establishment of victim supports centres for women and children, the induction of an increasing number of women into the force, preparation of the Police Strategic Plan 2012-2014, working to revise the draft Police Ordinance 2007 and introducing new ICT management structures.

- **SPEMP:** An initiative ‘Strengthening Public Expenditure Management Programme’ (SPEMP) has been undertaken with the aim of building a more strategic and performance oriented budget management process, at the same time strengthening financial accountability across the expenditure management cycle.
- **Introduction of Tax Fairs:** In order to encourage the new tax payers and address the tax evasion culture, the National Board of Revenue has taken a proactive initiative to introduce annual Tax Fairs. The prime aim of the Tax Fair is to encourage the tax payers to pay taxes in a user friendly environment through a one-stop tax assessment and collection service system.

## CHAPTER 3

### NATIONAL INTEGRITY SYSTEM OF BANGLADESH

#### 3.1 CORE GOVERNANCE INSTITUTIONS

##### 3.1.1 PARLIAMENT

The Constitution of Bangladesh envisages a single chamber (unicameral) parliament comprising of 300 directly elected members from single territorial constituencies through “first past the post system”. Constitutional provisions of the Republic provide a strong Parliamentary form of Government in Bangladesh. Rules of Procedures (ROP) of the Parliament details the functional process of the Parliament. However, confrontational politics, a poor parliamentary culture and the dominant attitude of the party in power as well as Opposition tend to mar the spirit and modality of the operational business of the Parliament.

The Parliament Secretariat Act, 1994 and other Rules provide the Parliament with adequate provisions for the Legislature to get adequate financial resources. But in reality the actual financial resources at Parliament’s disposal are considered to be inadequate to ensure its operation. Independent studies however noted that some of the vital institutions of the Parliament such as the Speaker, Parliamentary Committees and the Parliament Secretariat are relatively weak in Bangladesh. The Parliament Secretariat is under-staffed and under-resourced.<sup>77</sup>

Checks and balances on Parliaments that are already in place include executive oversight, legal acts, Parliamentary Committees and professional codes. Of these, only Parliamentary Committees seem to be performing relatively well. However, the low skill quotient of technical staff as well as lack of enforcement authority undermines the effectiveness of Parliamentary Committees<sup>78</sup>. Both the Government and Parliament often remain indifferent to what Committees suggest. Bangladesh Parliament apparently from a legal perspective is secure from any subordination to external actors but in reality suffers from strong Executive control.

Over the years the Parliament has not been able to emerge as an important site of policy-making and as scrutinizer of Government policies. The Parliament has unfortunately not

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<sup>77</sup> World Bank. 2006. Bangladesh Country Assistance Strategy 2006-2009. Dhaka and Washington, D.C.: The World Bank, and also see Rounaq Jahan and Inge Amundsen, *The Parliament of Bangladesh, Representation and Accountability*. Centre for Policy Dialogue and -CMI, Working Paper 2. CPD, Dhaka 2013, p.27.

<sup>78</sup> Rounaq Jahan and Inge Amundsen, *The Parliament of Bangladesh, Representation and Accountability*. Centre for Policy Dialogue -CMI, Working Paper 2. CPD, Dhaka, 2013, p.27.

delivered the key tasks of representation, legislation, oversight of the Executive and conflict resolution and thus has contributed insignificantly in promoting good governance<sup>79</sup>.

Despite numerous legal provisions in place to ensure Parliamentary transparency, people in general are not aware of Parliamentary processes and have very limited access to Parliament. Parliamentary data/ information are restricted and not well maintained and can only be obtained through informal channels and personal communications. The Parliament's website is not kept up-to-date and this information is not provided through other channels.

The Constitution of Bangladesh bestows the parliament with supreme powers in making laws and approving budgets. It is given wide ranging authority to scrutinise the actions of the executive which remains accountable to the parliament. Notwithstanding these constitutional powers, in reality, the parliament's performance has fallen far short of its promise of being the central institution of democracy, expressing the will of the people, and making the government regularly accountable to that will. The weakness of the parliament in Bangladesh is manifested not so much in the absence of its initiatives in formulating laws and budgets, but in the absence of real discussion, debate and scrutiny of the proposals.

### **Structure and Organisation**

Bangladesh Parliament known as *Jatiya Sangshad* is a single chamber parliament comprising of 300 directly elected members. It has 45 reserved seats for women members proportionate to members of representation of the parties representing the Parliament. Speaker is the executive head of the Parliament. The Parliament Secretariat Commission consists of the Speaker, Prime Minister, the Leader of the Opposition; the Minister in charge of the Ministry of Parliamentary Affairs and the Minister of Finance. Parliament has a number of Committees for oversight functions. There are two Chief Whips of the Parliament representing the treasury bench and the opposition. There are also a number of Whips of the Parliament.

The Parliament Secretariat is headed by the Secretary. The Secretariat has six wings (Legislative Support wing; Committee Support wing; Inter Parliamentary Affairs wing, Security & Planning wing; Administrative Support wing; Human Resource wing; Finance & Information Services wing. Heads of all these wings are deputed officers from the Government of Bangladesh

### **Capacity**

#### ***Financial, Human and Infrastructural Resources***

The Parliament Secretariat is a professional public service structure of officers and staff, headed by the Secretary. The Secretariat has six Wings:<sup>80</sup>All the Heads of the Wings are deputed officers from the Government of Bangladesh. It is also observed that in effect the

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<sup>79</sup> Taiabur Rahman, "Governance and Parliament: Does Jatiyo Sangshad Matter in Promoting good governance in Bangladesh" in Salahuddin Aminuzzaman (ed) *Governance and Development: Bangladesh and Regional Experiences*, Shraavan Publishers, Dhaka, 2006.

<sup>80</sup> These wings are : Legislative Support Wing; Committee Support Wing; Inter Parliamentary Affairs, Security & Planning Wing; Administrative Support Wing; Human Resource Wing; Finance & Information Services Wing.

Parliament Secretariat is found to be inefficient in administering the issues in accordance with Parliamentary Rules of Procedure<sup>81</sup>.

Parliament Secretariat Act, 1994, Section 8, empowers the Speaker to prepare a statement of the estimated expenditures of the Parliament Secretariat. The statement contains the remunerations and allowances of all elected officials and officers and employees and the administrative expenditures for the Parliament Secretariat<sup>82</sup>. The Budget of the Parliament Secretariat is finally approved by the Speaker who obtains the advice of the Parliament Secretariat Commission<sup>83</sup> on it before forwarding it to the Ministry of Finance for its incorporation in the annual financial statement of the Govt. The Ministry of Finance cannot scrutinize the budget of the Parliament Secretariat as it does in case of budgets of other Ministries<sup>84</sup>.

The Speaker has the supreme authority with regard to approving the expenditures of the money allotted in the budget for the Parliament Secretariat<sup>85</sup>. However, as per Section 9 of the Parliament Secretariat Act in the case of expenditure of money allotted the Parliament Secretariat, through the Controller and Auditor-General, is responsible only to Parliament”.

It is difficult to ascertain the factors hindering the workings of the Parliament Secretariat since it has been granted both administrative and financial autonomy<sup>86</sup>. During the interviews some of the Key Informants (KIs) noted that in general Bangladesh’s parliament does not have any significant problem in terms of collecting funding. But in reality sometimes the delayed disposal and disbursement of financial resources affect its operation<sup>87</sup>. A good number of the professional staff are also inadequately trained and lack professional competence to handle the technical aspects of the parliamentary processes. It is also that the shortage of qualified staff has hindered the legislature’s ability to internally review draft bills<sup>88</sup>.

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<sup>81</sup> M. Moniruzzaman, “Parliamentary Democracy in Bangladesh: An Evaluation of the Parliament during 1991–2006”, *Commonwealth & Comparative Politics*, Vol. 47, No. 1, pp.100–126.

<sup>82</sup> The Accounts Branch of Parliament is primarily responsible for the preparation of the yearly budget. The budget of Parliament is divided into the following sections: Parliament Secretariat, Speaker and Deputy Speaker including their staff, Leader and Deputy Leader of the House, Leader and Deputy Leader of the Opposition including personal staff, Chief Whip and Whips, including their personal staff; Members of Parliament.

<sup>83</sup> The Parliament Secretariat Commission consists of the following members: Speaker (Chairman), the Prime Minister or any Member of the Parliament appointed by him in this behalf; the Leader of the Opposition or any Member of the Parliament appointed by him in this behalf; the Minister in charge of the Ministry of Parliamentary Affairs or any Member of the Parliament appointed by him in this behalf; and the Minister of Finance or any Member of the Parliament appointed by him in this behalf.

<sup>84</sup> Legislative Information Centre (LIC). Available at [www.parliament.gov.bd/general-14.html](http://www.parliament.gov.bd/general-14.html)

<sup>85</sup> Section 18 of the Parliament Secretariat Act.

<sup>86</sup> Rounaq Jahan and Inge Amundsen, *The Parliament of Bangladesh, Representation and Accountability*. CPD-CMI, Working Paper 2. Dhaka: CPD, 2013, p.27.

<sup>87</sup> Interview with Senior Officers of the Parliament Secretariat (*anonymity requested*).

<sup>88</sup> Interview with an independent Senior Researcher on Parliamentary Affairs in Bangladesh, Mr. M. Abdul Alim.

It is also observed that human resources available for the Secretariat are not adequate for the Committees and there are problems with career development of officials attached to the Committee. Though the Bangladesh Parliament Secretariat has a separate set of laws regulating the recruitment of its officials, the senior management posts of the Secretariat, including the Secretary, are still filled in by deputation. Frequent changes of the deputed staff have also hindered capacity building of the Parliament Secretariat<sup>89</sup>.

The budget of the Parliament is relatively small particularly in comparison to other institutions, such as the Prime Minister's office.

*Table 1: The Budgets of the Parliament and the Prime Minister's office (in BDT million)*

Institution	FY2013-14	FY 2012-13	FY 2011-12	FY 2010-11	FY 2009-10
Parliament	1920 (23.6%)	1790 (26.5%)	1200 (22.2%)	1000 (17.8%)	660 (24.4%)
PMO	6230 (76.4%)	4960 (73.5)	4170 (77.7)	4620 (82.2%)	2040 (75.6%)
<b>Total</b>	<b>8150</b>	<b>6750</b>	<b>5370</b>	<b>5620</b>	<b>2700</b>

Source: [http://www.mof.gov.bd/en/index.php?option=com\\_content&view=article&id=235&Itemid=1](http://www.mof.gov.bd/en/index.php?option=com_content&view=article&id=235&Itemid=1)

Quality human resource is a major constraint for the Parliament. The number of staff of different Wings/Sections is inadequate and also lack capacity and skill. It is also alleged that there is no clear division of labour and job description for a section of the Parliament Secretariat staff<sup>90</sup>.

Committee resources are poor. In most cases the Ministerial Committees draw the logistic support like computers, fax machines, printers from respective Ministries. In some cases, even the Chairmen of the Committee have been using vehicles for their regular and official duties drawn from the ministry. This raises a concern of conflict of interest.

There is a Research and Documentation Wing aligned with Library. There are only two Research Assistants but no professional researcher to undertake professional research on parliamentary issues and concern. Similarly the Library is very rich but there is lack of efficient management, inappropriate staffing, and modern technology.

<sup>89</sup> Interview with a senior civil servant deputed to the Parliament (*anonymity requested*).

<sup>90</sup> Interview with a researcher (*anonymity requested*). who is currently working on a donor supported research and technical support project with the Bangladesh Parliament.

### ***Independence and Functional Autonomy***

Bangladesh Constitution provides adequate provisions to keep the Parliament free from controls and /or subordination to any external actors. Parliament elects its own Speaker and Deputy Speakers and constitutes its committees. The Speaker is also the Executive Head of the Parliament Secretary. The general procedures of Parliamentary business are outlined in the Parliamentary Rules of Procedure (ROP).

The principal legal provisions governing the Parliament in general and the MPs in particular are the Constitution, Representation of the People Order 1972, Representation of the People Order (Amendment) Act 2009, the Parliamentary Rules of Procedure etc. These provisions deal with such matters as the participation of MPs in different parliamentary activities, their roles, eligibilities and non-eligibilities of holding office, disclosure requirements and cancellation of candidature or membership. Additionally, there are laws dealing with the special privileges for MPs, their remuneration, allowances and facilities.

Legislature controls the election of the Speaker according to the ROP laid down in Chapter III (Election of the Speaker and Deputy Speaker and nomination of a Panel of Chairmen. Chapter XXVII (Rules 187-266) of the ROP deals with the establishment, functions and scope of authority of the Committees. The Rules provide guidelines for the establishment of a number of Committees.

Under the law, all decisions regarding the legislature's operation are made internally, without undue external interference. For its operational business the Parliament is guided by a 15 - member Business Advisory Committee (BAC). The BAC is headed by the Speaker and decides the stage or stages of parliamentary business in consultation with the Leader of the House.

The administrative responsibility for the Parliament Secretariat is entrusted to the Speaker. For policy decisions there is a Parliament Secretariat Commission<sup>91</sup>. The Commission gives advice on the determination, diminution and increase of the number of officers and employees of the Parliament Secretariat and on the preparation of the annual budget of the said Secretariat and the expenditure of the budget appropriations. The Speaker has been invested with all administrative and financial powers of the Secretariat and has been made accountable to Parliament in respect of all work done by the Parliament Secretariat.

Authorized by the Parliamentary Secretariat Act 1994, Legislature can appoint its own technical staff. Appointments to senior posts of the Parliament Secretariat are made by the Ministry of Public Administration with the consent of the President. However creation of new post needs necessary clearance from the Ministry of Public Administration (MOPA) and Ministry of Finance (MoF). The Parliamentary Secretariat Act 1994 invested the Speaker with all administrative and financial powers of the Secretariat.

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<sup>91</sup>The Commission is composed of : Speaker acts as Chairman; the Prime Minister or any Member of the Parliament appointed by him; the Leader of the Opposition or any Member of the Parliament appointed by her/ him; the Minister in charge of the Ministry of Law and Parliamentary Affairs or any Member of the Parliament appointed by him/her; the Minister of Finance or any Member of the Parliament appointed by him.

The Constitution ensures that the proceedings of Parliament cannot be questioned by any court” (Article 78(1). And for any conduct of business or the maintenance of order in Parliament, a member or officer of Parliament shall not be subject to the jurisdiction of any court. More specifically a Member of Parliament will not be liable to proceedings in any court in respect of anything said, or any vote given by him in Parliament or any of the parliamentary Committees (Article 78(1).

An MP is protected by the Constitution for what s/he says in Parliament. S/he has unqualified and absolute immunity in respect of any speech made by him/her in Parliament and in any Committee. Officers of the Parliament are also protected by the Constitution in discharging their duties -- to regulate the procedure in Parliament, or to conduct its business or to maintain the order in Parliament. A publication of reports, papers, votes or other proceedings are also protected when those are done by or under the authority of Parliament. There are specific laws about the criminal proceedings against the Members of the National Legislature<sup>92</sup>:

The Higher Court on its own (*suo-moto*) or in response to any writ petition can ask the Government to show cause as to why a law would not be declared null and void if it is deemed to be against the basic spirit and content of the Constitution.

The President may dissolve the Parliament under the Constitutional provision Article 57 when the Prime Minister resigns, or s/he ceases to a Member of Parliament, or ceases to retain the support of the majority Members of the Parliament.

According to the Parliamentary Powers Index (PPI), the parliament in Bangladesh is relatively well powered<sup>93</sup>. Bangladesh scores 0.59 in the PPI which is above the performance of parliaments in Malaysia, Laos, Belarus, slightly below South Africa and India (0.64 and 0.63 respectively), but well below established democracies like Canada, Germany, Denmark and Norway.

From a legal perspective the Bangladesh parliament is largely secure from any subordination to external actors. But in actuality its independence is affected negatively by the current composition of the Parliament where there an overwhelming majority of ruling party

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<sup>92</sup> Rule 172 of the Rules of Procedure of Parliament Bangladesh states that when a Member is arrested on a criminal charge or for a criminal offense, or is sentenced to imprisonment by a court, or is detained under an executive order, the committing judge, magistrate, or executive authority, as the case may be, shall immediately intimate such fact to the Speaker indicating the reasons for the arrest, detention or imprisonment of the member in the appropriate form set out in Schedule III. ROP 173 notes that when a Member is arrested and after conviction released on bail pending an appeal, or otherwise released, such fact shall also be intimated to the Speaker by the authority concerned in the appropriate form set out in Schedule III. ROP 174 states that no arrest shall be made within the precincts of the House without obtaining the permission of the Speaker. Also Rule 175 of the ROP notes that no legal process, civil or criminal, shall be served within the precincts of the house without obtaining the permission of the Speaker. Also see Global Integrity Report 2010. Available at <http://www.globalintegrity.org/report/Bangladesh/2010/scorecard>

<sup>93</sup> M.S.Fish M.Kroenig ,The Handbook of National Legislature : A Global Survey, Cambridge University Press. New York, 2009.

Bangladesh Awami League (BAL). The BAL controls 83 percent of the seats in the Parliament and the role of opposition is marginalized. The absolute majority has greatly reduced Parliament's ability to act independently from the Executive control.

The Parliamentary Secretariat Act invested the Speaker with all administrative and financial powers of the Secretariat. But the senior officers are still today seconded from general civil administration and not direct appointees of the Parliament Secretariat<sup>94</sup>.

The Constitution vests the Parliamentary Committees with provision to examine draft bills and other legislative proposals before placing them in Parliament to enact laws<sup>95</sup>. The Committees are constitutionally empowered to determine the necessity of enacting laws before they are placed as bills in Parliament. The common practice is that bureaucrats draft the laws and the Cabinet approves those after holding discussions. After obtaining the cabinet's approval, the draft bills are placed in the House as bills for turning them into laws. The bills are sent to the Parliamentary Standing Committees for scrutiny only after they are placed in Parliament. The Committees can do little in determining the necessity of the bills as Ministers, who place the bills, obtain permission from the House to specify timeframe for the Committees to submit scrutiny reports to Parliament clearing the way for their passage. Although the Parliament is the supreme law making institution in Bangladesh, the law making authority is shared with the Executive<sup>96</sup>.

The Rules of Procedure of the Parliament empowers the Leader of the House to influence the business of Parliament in many ways. The Leader of the House is consulted by the Speaker to arrange the Government's business. So whenever the Leader of the House is consulted by the Speaker, s/he has a big role to play in deciding the business of the House. Any discussion on public importance can be held in Parliament only if the Leader of the House gives consent to such proposal<sup>97</sup>.

Over the past four decades, Parliaments have passed more than 1,100 bills, but none was sent to the Committees before placing them in Parliament<sup>98</sup>. The Constitution empowers the President to make laws by promulgating ordinances at any time when the Parliament stands dissolved or is not in session<sup>99</sup>.

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<sup>94</sup> Rounaq Jahan and Inge Amundsen, Op.cit pp. 22-23.

<sup>95</sup> Article 76 (2) (a) of the Constitution says the Parliamentary Standing Committees are to examine the draft bills and other legislative proposals.

<sup>96</sup> Rules of Business, CA Government of the People's Republic of Bangladesh, Rules of Business, Cabinet Division, 1996, also see Secretariat Instructions, see

<sup>97</sup> Shakhawat Liton, "Our All-powerful PM", *The Daily Star*. April 1, 2013.

<sup>98</sup> *Ibid.*

<sup>99</sup> Article 93 Constitution of Bangladesh.

All Standing Committees were formed in the very 1<sup>st</sup> Session of the 9<sup>th</sup> Parliament. Since then the Committees had 641 meetings and forwarded over 900 recommendations, majority of which was not acted upon<sup>100</sup>.

Despite its Constitutional position, the Parliament of Bangladesh has become merely the 'law approving body'. Most MPs, as it is observed "are content to cede any policy role they may play to the central leader in exchange for protection of their commercial interests<sup>101</sup>. The Parliament has failed to hold the Executive organ of the State accountable and play the 'consensus-building' role due to a prolonged history of political turmoil. Evidences suggest that critical issues are rarely discussed in Parliament and the Committees<sup>102</sup>. Committee directions are generally being ignored by the Ministries<sup>103</sup>.

A leading parliamentary researcher<sup>104</sup> observed that all bills passed by the Parliament since the early 1990s were initiated by the Government. In fact the researcher notes that only six Private Member Bills, PMBs, have been passed in the last 38 years<sup>105</sup>. According to Parliament Secretariat from the very beginning first Parliament to 9<sup>th</sup> Parliament, there had been 250 Primate Members Bills, among which only six Bills would become law. Passing a PMB is rare in the Parliament of Bangladesh<sup>106</sup>.

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<sup>100</sup> Transparency International Bangladesh, *Positive and Negative Roles of the Members of the 9th Parliament: A Review*, October 2012.

<sup>101</sup> Salahuddin M. Aminuzzaman "Public Policy Processes and Citizen Participation in Bangladesh", in Meghna Sabharwal and Evan M. Berman (ed) *Public Administration in South Asia: India, Bangladesh, and Pakistan*, CRC Press, Taylor and Francis, New York 2013.

<sup>102</sup> According to the constitutional provision ( Art. no. 76), the Parliament appoints from its members some Standing Committees and other function specific Committees to run the Parliamentary affairs and ensure Executive oversight. There are a number of 48 Ministerial Standing Committees and little over 100 other sub-committees of the Parliament. Following are the important ones that regulate the activities of the public administration system in the republic: a. Public Accounts Committee, b. Estimates Committee, c. Public Undertakings Committee.

<sup>103</sup> Taiabur Rahman, *Governance and Parliament: Does Jatiyo Sangshad Matter in Promoting good governance in Bangladesh* in Salahuddin Aminuzzaman (ed) *Governance and Development: Bangladesh and Regional Experiences*, Shrahan Publishers, Dhaka. 2006.

<sup>104</sup> Nizam Ahmed, *The Parliament of Bangladesh*, Ashgate, Aldershot 2002.

<sup>105</sup> I.A. Iva, *Parliament Watch: Bangladesh January – July 2011*, Report by the South Asians For Human Rights (SAHR), Available at: [www.southasianrights.org/wp-content/uploads/2011/06/January-July-2011.pdf](http://www.southasianrights.org/wp-content/uploads/2011/06/January-July-2011.pdf)

<sup>106</sup> Nizam Ahmed provides some explanations for the low volume of PMB turned laws, such as individual members' lack the technical competence and specialist guidance, members are encouraged to following party initiatives and they face difficulties in terms of time constraints, procedural complications, and refusal by the Speaker to allow such bills for discussion. (See Nizam Ahmed, *op.cit.*, 2002.2003).

From the commencement of the ninth Parliament and till 2011, only 13 PMBs were raised, and of these, two were sent to the Committees for review<sup>107</sup>. This indicates that there is some more interest by non-government MPs in law making in the current Parliament but the overall prevalence is still low.

Government backbenchers usually only praise whatever legislation (and other measures) the Government proposes. In contrast, the Opposition generally does not find anything positive to say about any legislation initiated by the Government. One can rarely find any deviation from this standard practice<sup>108</sup>.

Among the MPs involved in negative activities, some 81.8% is engaged in activities related to influencing local administrative decisions, job-placement and transfer process in national and local institutions, use of development fund/projects at the local level for their own benefit, took commission for giving approval to projects or programs. There is hardly any example of effective action against the MPs involved in negative activities which has given rise to a culture of impunity. As a result MPs are not facing any significant constraints in engaging in negative activities. Although allegations of corruption have been raised frequently during the term of this Government no effective actions were taken against any Ministers or MPs<sup>109</sup>.

## **Governance**

### ***Transparency, Accountability and Integrity: Legal Framework and Practice on the Ground***

The Parliamentary Rules of Procedure generally contain some provisions for ensuring public access to information about the activities of the legislature, although there are some notable gaps with regards to the public's access to Parliamentary sessions and certain types of information about Parliament. Despite the numerous legal provisions in place to ensure parliamentary transparency, people in general are not aware of parliamentary processes and provisions of access to Parliament.

As per the Rules of Procedure (ROP) of Parliament all papers and documents laid on the table shall be considered public.<sup>110</sup> The Secretary of the Parliament is custodian of all records, documents and papers of the House and its Committees. The Secretary of the Parliament has the duty to ensure that a full report of the proceedings of the open sittings of the House is published as soon as possible. But no documents of the house can be taken out of Parliament without the permission of the Speaker<sup>111</sup>. Besides, recently the Government of Bangladesh

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<sup>108</sup> Nizam Ahmed, *From Monopoly to Competition: Party Politics in the Bangladesh Parliament (1973-2001)*, *Pacific Affairs*, Vol. 76, No. 1 Spring, 2003, pp. 55-7. Also see *Dainik Prothom Alo*, March 14, 2011.

<sup>109</sup> Transparency International Bangladesh, *Positive and Negative Roles of the Members of the 9th Parliament: A Review*, October 2012.

<sup>110</sup> Article 298 (2) of the Rules of Procedure.

<sup>111</sup> Article 310 of the Rules of Procedure.

enacted the Right to Information Act which ensures peoples' right to access legislative proceedings<sup>112</sup>.

In addition to the guests of the MPs, ordinary citizens can witness the parliamentary session with the prior permission from the office of the Speaker<sup>113</sup>.

ROP Section 199 provides that “the sittings of the Committee shall be held in private. Rule 203 provides that “Government may decline to produce a document on the ground that its disclosure would be *prejudicial to the safety and interest of the State*”. In the absence of clarity about who will be regarded as *strangers*, and who will determine what is prejudicial and on what basis to the safety and interest of the State, it leaves a huge grey area to limit the scope of objectivity, comprehensiveness and transparency of the proceedings<sup>114</sup>.

Parliament permits division by use of automatic vote recorder among other methods. The ROP mentions this procedure of division along with the procedure for using automatic vote recorder. There are details about voting procedures in the RoP (Rules 295-296) but there is nothing about the voting record to be made public.

Any member of public can attend the Parliamentary visitors' gallery with prior permission from the Secretary of the Parliament. There is a “Parliament Visit Section (PVS)” in the Bangladesh Parliament – which processes the visit to Parliament any visitors.

*Sangsad* Bangladesh Television – a Government television channel broadcast the Parliament session live. No other electronic media are allowed to live telecast the House and Committee proceedings. Committee Chairman usually gives a media briefing after the Committee meeting. But print media are allowed to cover House proceedings only, not Committee proceedings. All proceedings of the Parliament are published. Detailed verbatim of the parliamentary discussions is available in writing and is kept in the Parliamentary Library.

In accordance to Article 27A (2) of The Conduct of Election Rules, 1972, the contesting candidates in the Parliament election are supposed to submit the assets and liabilities to the Election Commission, and submit the statement of his/her assets and liabilities and his/her annual income and expenditure required under article 44AA (2). However after the election, there is no legal requirement to submit it at a regular interval. The asset declaration statements are published in the Election Commission website<sup>115</sup>.

On paper the public generally has free and unrestricted access to information about Parliament's activities although, in practice Parliament has various institutional, structural and

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<sup>112</sup> Right to Information Act 2009, Government of Bangladesh.

<sup>113</sup> Article 312 of the Rules of Procedure of Parliament.

<sup>114</sup> Fahreen Alamgir, Tanvir Mahmud, Iftekhazzaman, “*Corruption and Parliamentary Oversight: Primacy of the Political Will*” paper presented at the Seminar to mark the International Anti-Corruption Day, Dhaka, 9 December 2006, Transparency International Bangladesh (TIB).

<sup>115</sup> Global Integrity Report 2010. <http://www.globalintegrity.org/report/Bangladesh/2010/scorecard>.

logistics limitation for providing certain types of information. Experts, researchers, members of civil society and media during the interviews noted that Parliamentary data/ information are practically restricted and can only be obtained through informal channels and personal communications.

The proceedings of the Parliamentary Committee reports are not open to the public. Bangladesh Parliament has its own website but it is not updated. The website does not provide historical data and proceedings of the Parliament. It does not show any information on adopted laws and voting records, as well as proceedings/ reports of the various Committees of the Parliament<sup>116</sup>. The proceedings of the Parliament are preserved in the Parliamentary library.

Bangladesh Government television and Radio Bangladesh broadcast the parliament sessions live. Opposition Leaders however complained that in some cases while broadcasting the important speeches of the Leader of the Opposition, the authorities have intentionally created technical flaws to distort the quality and even complete disruption in the broadcasting<sup>117</sup>.

The proceedings of the Parliament are preserved in the Parliamentary library. The Parliament Secretariat is required to publish in the Gazette the contents of the Bill along with a statement of objects and reasons and a financial memorandum, if any, only after the Bill has been introduced. However some of the Ministries pilot a display of its Bill contents and invite people to give their views.

ROP in Bangladesh requires the Secretary to maintain a register indicating the attendance of every MP at every sitting (Rule 180 of RoP). Every MP is required to sign the register before entering the House for the first time during the day. Every MP has the right to inspect the register. However the attendance record is not displayed on the Website of the Parliament. There is no requirement in the ROP to publish the contents of a Bill before it is introduced in the Parliament.

Verbatim records of Parliament session are taken and after review and scrutiny it is placed in the Parliament Library. However Committee reports are not published formally and generally treated as confidential documents. Surprisingly there is no discussion on the Committee reports<sup>118</sup>.

Neither the Constitution, nor any statute of the Parliament, requires MPs to disclose their assets upon being elected to the House. However, during the general election to the Parliament, every contesting candidate must submit to the Returning Officer a detailed statement of all the election expenses and the sources of funding. Such declaration is posted to Election Commission website. MPs can face punishment for breaching discipline in Parliament. As such there is no formal code of conduct for MPs.

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<sup>116</sup> South Asians for Human Rights, *Transparency in Parliament : A Review of The Procedures and Practices in South Asia*, South Asians for Human Rights (SAHR), Colombo, Sri Lanka 2009. pp. 61-62.

<sup>117</sup> *The Daily Star* July 10, 2013.

<sup>118</sup> Interview with a senior Member of Parliament (*anonymity requested*) from the treasury bench, 21 March 2013.

But the RoP contains rules which are to be observed by MPs in the parliament (Chapter XXVII [Rules 267-77]). These are general ethical codes of conduct which seek to promote cordial behaviour of the MPs in the parliament by disallowing them from making a personal charges or using offensive, vulgar expressions against other members. Though Rule 270 (ix) talks about 'unparliamentary expressions', the term has not been elaborated in the RoP, and as a result, MPs themselves have been calling for formulating a code of ethical conduct for MPs in the *Jatiya Sangsad*.

The Constitution and the ROP do not elaborate all aspects of the accountability of the parliament and or the MPs. The President summons the parliament but he has no control or authority as such to set the agenda of discussion. It is the Parliamentary Advisory Committee that decides the issues and matters to be discussed during the session. The leader of the house (Prime Minister) on and off formally meets the President to brief him on various strategic issues and developments. The ultimate approval of a law needs the formal consent of the President. However, the President can delay the approval but cannot in practice reject any law passed by the parliament. The Highest Court can also ask questions on any act of the parliament if it is deemed to be unconstitutional either *suo moto* or in response to a writ petition.

Bangladesh Parliament is not answerable to the people as such under any way or even ROP. In Bangladesh where apart from elections, formal mechanisms of 'rendering account' to the public are absent, face-to-face interaction is regarded as an important instrument of ensuring accountability of the parliamentarians to the electorate and the citizens.

Generally MPs try to spend the weekends (Friday/Saturday) in their constituencies when constituents can meet them personally and raise their concerns. The TIB survey noted earlier found that one-third of the respondents expected the MPs to spend 4-7 days, and another one-third wanted the MPs to spend two weeks or more in a month in the constituency<sup>119</sup>.

During the visits to the constituencies, the demands are put forward both by individuals and organized groups and institutions. The political party and its affiliated organisations are the major pressure groups demanding accountability from the elected representative. Such demands range from delivering development goods and services such as building roads and bridges, supplying electricity, building schools and clinics, or enlisting schools under the MPO programme, to resolving personal problems such as getting jobs, settling land and other disputes and so on<sup>120</sup>. A study therefore concludes that "A successful MP is supposed to be the party boss in his/her constituency. He/she is accountable to the party and various organisations affiliated with the party to hold together factions/groups within the party and its affiliated organisations"<sup>121</sup>.

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<sup>119</sup> Transparency International Bangladesh (TIB), *Jatiya Sangshad o Sangshad Shadashyader Vumika : Jonogoner Prottasha* (Parliament and the Role of Parliamentarians: People's Expectation). Dhaka: 2009.

<sup>120</sup> *Ibid.*

<sup>121</sup> Rounaq Jahan and Inge Amundsen, *op.cit.*

There appears to be no effective vertical accountability system in Bangladesh. Citizens do not have strong means to hold the elected representative to account during the term for which they are elected. However the media and civil society attempt to hold the MPs accountable through various reports, analysis and advocacy initiatives.

According to Article 70 of the Constitution of Bangladesh, MPs appear to only be accountable to their parties. As a result of this the accountability to the people by public representative remains ineffective.

The Constitution grants certain privileges and immunities to the parliament and its members (Article 78).

The proceedings of the parliament cannot be questioned in any court. However there are no specific codes of conduct for legislators. The MPs are prohibited from being appointed to a parliamentary standing committee where they have a “personal, pecuniary or direct interest in any matter which may be considered by that committee (ROP 188(2)). This provision of the RoP ensures that an MP’s inclusion in a committee does not run counter to the public interest or with any class or section. However, there is also no such rule that requires dealing with the legislature ethics, like rules on gifts and hospitality for legislators. There is also at present no formal rule whereby legislators are required to record and/or disclose contact with lobbyists.

In accordance to Article 27A (2) of The Conduct of Election Rules, 1972, the contesting candidates in the Parliament election are supposed to submit the assets and liabilities to the Election Commission, and submit the statement of his/her assets and liabilities and his/her annual income and expenditure required under article 44AA (2). However after the election, there is no legal requirement to submit it at a regular interval. The asset declaration statements are published in the Election Commission website<sup>122</sup>.

The overall image of the Members of Parliament is poor. A TIB study conducted on 149 MPs reveals that a total of 97 percent lawmakers were involved in negative activities which include influencing administrative decisions in undue manner, controlling educational institutions, misusing development allocations, supporting or getting involved with criminal activities, influencing public procurement, violation of electoral rules, managing plot allotment with false information and others<sup>123</sup>. Other studies also show that the MPs are deeply engaged in patronage distribution; build personal and party support and indulge in corruption. The MPs are taking less interest in the business of the Parliament as they are more preoccupied with affairs of their constituencies and local government activities, which is considered as one of

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<sup>122</sup> Global Integrity Report 2010. <http://www.globalintegrity.org/report/Bangladesh/2010/scorecard>.

<sup>123</sup> Transparency International Bangladesh, *Positive and Negative Roles of the Members of the 9th Parliament: A Review*, October 2012.

the main sources of corruption and of a result in restricted scope for Parliamentary oversight<sup>124</sup>.

In Bangladesh, the issue of conflict of interest is being regularly discussed in various media reports. There are many allegations of parliamentarians using their influence to advance personal financial gains from certain interest groups. One much discussed case was that of an MP whom the High Court passed a rule on 15 December 2009 to explain why he was holding the post of a member of the parliamentary standing committee on Housing and Public Works Ministry as he is a real estate businessman and also the President of Real Estate and Housing Association of Bangladesh (REHAB), a trade organisation of the real estate developers.

However the concerned MP claimed that the Rule 188(2) is not applicable to him since it does not serve his direct interest and more pertinently, many law makers would not be eligible to be members of parliamentary bodies if provisions were so strictly enforced<sup>125</sup>. Not only that, the of the ruling party MP and also the president of Real Estate and Housing Association of Bangladesh (Rehab) organized a Rehab fair and illegally also showcasing and selling two unauthorised projects of his own<sup>126</sup>.

Though the election manifesto of the AL pledged disclosure of information about the income and assets of MPs and their family members on an annual basis, up to now this pledge has not been implemented.

There has been a lot of criticism as regards the special allowance and privileges given to the MPs. MPs were allowed to import tax -free cars and jeeps. This privilege has generated a lot of debate and criticism<sup>127</sup>. MPs became more controversial when they managed to persuade the government to introduce the authority to allocate discretionary grants of Tk 30 million for local development purposes. This provision has been severely criticised by the local elected leaders, civil society. It has been alleged that such discretionary grant will weaken the local government's authority and create opportunity for distribution of patronage to partisan supporters. Moreover this has also developed misunderstanding, mistrust and clashes between the MPs and elected representatives of the local government over the control of development funds and projects<sup>128</sup>.

The RoP contains rules which are to be observed by MPs in the parliament (Chapter XXVII [Rules 267-77]). These are general ethical codes of conduct which seek to promote cordial behaviour of the MPs in the parliament by disallowing them from making a personal charge or using

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<sup>124</sup> F. Alamgir, Tanvir M. and Iftekharuzzaman. 2006. "Corruption and Parliamentary Oversight: Primacy of the Political Will." Paper presented at the seminar to mark the International Anti-Corruption Day , organized by Transparency International Bangladesh, , 9 December, Dhaka.

<sup>125</sup> Various media report as cited in Rounaq Jahan & Inge Amundsen, *op.cit.*

<sup>126</sup> Tawfique Ali, 'HC verdict ignored - Realtors put illegal housing on display for sale at Rehab fair', *The Daily Star*, 16 December 2011.

<sup>127</sup> The last Care Taker Government (2007-2008) abolished this privilege, but the 9th parliament has again restored the privilege.

<sup>128</sup> Badiul Alam Majumder, 'Contours of democratic consolidation'. *The Daily Star*, 17 March, 2011.

offensive, vulgar expression against other members. Though Rule 270 (ix) talks about ‘unparliamentary expressions’, however the term has not been elaborated in the ROP. Some MPs themselves have been calling for formal set of code of conduct for the members of the parliament<sup>129</sup>.

## **Role Assessment**

### ***Executive Oversight***

The Constitution and Rules of Procedure of the Parliament provide several methods for MPs to perform their scrutiny and oversight functions<sup>130</sup>. The Parliament has all its authority and power to influence and scrutinize the national budget while it is presented to the floor. The House has the liberty to discuss the Budget as a whole or any question of principle involved with budget<sup>131</sup>. Similarly the financial accountability of the Executive in Bangladesh is discharged primarily through the work of three Parliamentary watch-dog committees namely: Public Accounts Committee (PAC), Estimates Committee (EC), and Public Undertakings Committee (PUC).

Standing Committees of the Parliamentary act as the oversight bodies to look after respective Ministries of the Government. Each of the Parliamentary Committees can appoint one or more sub-committees. The reports of the sub-committee are considered by the whole Committee [Article 196(2), ROP]. Parliamentary Committees are entitled to review the work of the Executive and other bodies accountable to the Legislature. The President also places the annual reports of all other Constitutional and statutory bodies to the Parliament<sup>132</sup>,

Furthermore, Article 77(1) provides the provision of the establishment of the office of Ombudsman. The Ombudsman is empowered to exercise powers and perform such functions to investigate any action taken by a Ministry, a public officer or a statutory public authority. Unfortunately the Office of Ombudsman was never constituted in Bangladesh.

An important means of Parliamentary oversight of the Executive, which is granted under the Constitution, regards the appointment of the Prime Minister. Parliament can cause the fall of Government as the Prime Minister and his/her Cabinet is collectively liable to the Parliament and the Prime Minister holds the office during the pleasure of Parliament [Article 55(3) and

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<sup>129</sup> Ruling Awami League lawmaker Saber Hossain Chowdhury placed the bill in January, 2010, and the parliamentary standing committee on the private members’ bills did not place it to the house.

<sup>130</sup> These include questions, discussions and motions. The MPs can ask questions to the Prime Minister, other Ministers and the Parliament Secretariat. Rule 41 of the ROP stipulates that the first hour of every sitting shall be available for the asking and answering of questions, and on every Wednesday of the session, an extra 30 minutes will be made available for Prime Minister’s Question Time (PMQT). ROP 59 provides opportunity for short notice questions on matters of public importance. Discussions in the parliament can take place in different ways. They include half an hour discussion (ROP 60) on matters of public importance, and calling attention of ministers to matters of urgent public importance (ROP 71). There are also discussion on principles of bills (ROP 78) and general discussion of the annual budget (ROP 115) See Rounaq Jahan and Inge Amundse, *op.cit.* pp. 24-25.

<sup>131</sup> ROP section 111-115.

<sup>132</sup> These bodies include Public Service Commission, Election Commission, Comptroller and Audit General, Human Rights Commission, Information Commission etc.

Article 55(2)]. Parliament can also impeach or remove the President on ground of gross misconduct, physical or mental incapacity. Parliamentary Standing Committee can review the enforcement of laws by Ministers and investigate or inquire into the activities of the administration of the Ministries.

The Constitution bestows the Parliament with almost unrestricted powers over the Executive branch. It is given wide-ranging authority to scrutinize the actions of the Executive which remains accountable to the Parliament. Notwithstanding these Constitutional powers, in reality, the Parliament's performance has fallen far short of its promise of being the central institution of democracy, expressing the will of the people, and making the Government regularly accountable to that will. There is a gap between the promise and the actual performance of Parliaments in Bangladesh. Some have argued that the Parliament is seriously disadvantaged vis-à-vis the Executive, the latter being dominant in setting the legislative and budget agendas<sup>133</sup>.

The Parliamentary Committees play an important role in scrutiny and oversight of the actions of the Executive. But it is the Opposition in Parliament who needs to play the key role as generally the Treasury Bench will tend to support the Executive. In Bangladesh, the Opposition's role is even more critical as the MPs belonging to the ruling party/alliance are discouraged from criticizing the Government, under the strict conditions of Article 70<sup>134</sup>.

In Bangladesh since the mid-1990s, the Opposition has adopted the tactics of boycotting Parliamentary sessions rather than to voice their concerns through discussion and debate in the Parliament. Nearly half of the Parliamentary working days have been boycotted by the Opposition even when both major political parties have rotated in power and also in the Opposition. The culture and practice of boycott has warranted the Parliament a negative image.<sup>135</sup>

In accordance with the Constitution, the elected Members of the Parliament approve the budget annually but the budget is not referred to any Committee for scrutiny<sup>136</sup>.

The budget power is centralized in a closed Executive branch, and the Parliament is given three weeks to debate on the budget proposals. The Parliament has never made any significant alterations to the Government's budget proposals. According to the Rule 111 (3) of

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<sup>133</sup> Nizam Ahmed, *The Parliament of Bangladesh, op.cit.*, and M.M. Khan, *Dominant Executive and Dormant Legislature: Executive - Legislative Relations in Bangladesh* South Asian Publishers; New Delhi, and A.M. Hasanuzaman, A.M M.S. Alam, (ed) *Political Management in Bangladesh*, A H Development Publishing House (AHDPH), Dhaka 2005.

<sup>134</sup> Act 70 of the Constitution note that a Member of Parliament of any party has to resign from his party if he votes in Parliament against the party he represents. Furthermore he is disqualified for subsequent election as a member of Parliament.

<sup>135</sup> Rounaq Jahan and Inge Amundsen. *op.cit.* pp. 1-2.

<sup>136</sup> Transparency International, Berlin, Germany, 2004, *National Integrity Systems Country Study Report: Bangladesh 2003*, p.22.

the ROP, the budget cannot be referred to any Committee. This makes it difficult to ascertain to what extent the non-government members can participate in the budget deliberation process. Transparency in the budget process has been weak in Bangladesh and has led to weak accountability<sup>137</sup>.

It has been argued that the budget process in Bangladesh “does not allow for any Parliamentary scrutiny of expenditure proposals before these are actually passed, thus limiting the Parliament’s ability to exercise accountability in fiscal matters”.<sup>138</sup> The World Bank likewise also argued that there are weaknesses in budget execution related to accounting, reconciliation, and reporting delays, which hinder transparency and create opportunities for mismanagement of public funds<sup>139</sup>.

The Public Accounts Committee is a very important Parliamentary Standing Committee, which is directly responsible and authorized to scrutinize the accounts of the Government and the report of the Comptroller and Auditor-General. Besides, there are other few Standing Committees, such as the Committee on Estimates, Committee on Public Undertakings, Standing Committee on Ministries, which are responsible to monitor public funds based on budget allocation. It is revealed that due to limited human resources, as well as administrative and technical constraints, the Committee could not perform at an expected level<sup>140</sup>.

One of the basic weaknesses of the most important financial oversight and control committees, the PAC, is the fact that it is still headed by a Treasury Bench MP, in contrast to other democracies. The World Bank study<sup>141</sup> noted that the PAC carried out its investigations based entirely on the Office of the Comptroller and Auditor-General’s reports, without any independent inquiries or committee investigations.

There are also a number of limitations which restrains the proper functioning of the other Parliamentary Committees. These include MPs’ lack of interest in Committee works, and lack of expertise as many MPs are relatively newcomers to Parliament and consider Parliamentary work as part-time activity. In addition, Committees suffer from lack of resources and meetings are often irregular<sup>142</sup>.

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<sup>137</sup> IBP, 2011. Bangladesh: Country Report. Available at:

<http://internationalbudget.org/wp-content/uploads/2011/04/OBI2010-Bangladesh.pdf>

<sup>138</sup> M.M. Rahaman, . “The Limits of Foreign Aid in Strengthening Bangladesh’s Parliament: Analysis of the U.N’s Strengthening Parliamentary Democracy Project.” *Asian Survey*, 50 (3): 2012, pp 474-496

<sup>139</sup> World Bank, *Bangladesh Country Assistance Strategy 2006-2009*. The World Bank. 2006. Dhaka and Washington, D.C.

<sup>140</sup> Global Integrity Report 2010. <http://www.globalintegrity.org/report/Bangladesh/2010/scorecard>.

<sup>141</sup> World Bank, Bangladesh: *Financial Accountability for Good Governance*, The World Bank. 2002, Washington, D.C.

<sup>142</sup> Institute of Governance Studies (IGS), *The State of Governance in Bangladesh 2008: Confrontation, Competition, Accountability*, Institute of Governance Studies (IGS), BRAC University, Dhaka, 2009.

According to the Parliamentary Powers Index (PPI)<sup>143</sup>, the Parliament in Bangladesh is relatively well-powered.<sup>144</sup> Although the Parliament of Bangladesh is the supreme law making authority according to the Constitution, several researchers, observers and international organisations stated that there was widespread dominance of the Executive in the Legislative process<sup>145</sup>.

The weakness of the Parliament in Bangladesh is manifested not so much in the absence of its initiatives in formulating laws and budgets, but in the absence of real discussion, debate and scrutiny of the proposals put forward by the Executive branch of the Government. Several structural factors constrain the effective functioning of the Parliament. However, it is the political practices, most notably the practice of boycotting the Parliamentary meetings by the Opposition which has created major impediments inhibiting the performance of the Parliament.

Despite some gaps, the legal framework provides Parliament with various tools for exercising executive oversight. However, these are not utilized effectively in practice. Moreover, given the strong executive dominance with all inclusive power of the Prime Minister; there are doubts as regards the ability of Parliament and its Committees to apply their broad powers in the area of executive oversight and accountability in practice. Independent reviews noted that Parliament tends to be passive in the legislative process and often fails to carry out detailed and substantial debate and discussion on the bills originating from the Executive<sup>146</sup>.

### ***Driving Anti-Corruption Legal reforms***

During the Caretaker Government (CTG) there had been a significant move to make the ACC active. TIB observed that the anti-corruption drive and institutional reforms made by the last CTG had an impact even after the political government came to power.

The present Parliament has ratified the Right to Information Ordinance 2008 promulgated by the CTG and passed The Right to Information Act 2009. Bangladesh has been a party to the United Nations Convention against Corruption, 2007. Being a State party of the Convention, it has become mandatory for Bangladesh to introduce legislation to ensure protection of

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<sup>143</sup> The PPI is constructed through a perception-based survey covering 32 items such as parliament's ability to monitor the Executive and the Bureaucracy, Parliament's freedom from Presidential/Prime Ministerial control, Parliament's authority in specific areas, and the resources that it brings to its work. The Index ranges from 1 to 0, where one suggests a total Parliamentary power over the Executive, and zero suggests a total Parliamentary subservience to the Executive (ibid). Bangladesh scores 0.59 in the PPI which is above the performance of Parliaments in Malaysia, Laos, Belarus, Cuba and many others, slightly below South Africa and India (0.64 and 0.63 respectively), but well below established democracies like Canada, Germany, Denmark and Norway.

<sup>144</sup> M.S. Fish, and Kroenig, M. *The Handbook of National Legislatures: A Global Survey*, Cambridge University Press, New York, 2009 .

<sup>145</sup> Nizam Ahmed, *op.cit.*

<sup>146</sup> For the first to seventh parliament see Nizam Ahmed, *The Parliament of Bangladesh*, Ashgate, Aldershot, 2002, and eighth and ninth parliament see, Rounaq Jahan and Inge Amundsen, *The Parliament of Bangladesh, Representation and Accountability*. CPD-CMI, Working Paper 2. Dhaka: CPD, 2013, p.35.

whistleblowers. Accordingly the Parliament passed a Whistle Blower Act called Public Interest Related Information Disclosure (Protection) Act, 2010.

Amid limitations, including lack of authority and logistic support, some Parliamentary bodies tried to perform their oversight functions and made recommendations to the Ministries on improving conditions within their purview. But the Ministries did not pay heed to the recommendations made by the Parliamentary Committees. The Chairs of some Parliamentary bodies on several occasions alleged that the Ministries had declined to provide the required documents on time to the Committees, thus impeding their oversight functions<sup>147</sup>.

At a meeting with Prime Minister, the Parliamentary bodies' Chiefs alleged that many Ministries were not sincere about implementing their recommendations to improve governance<sup>148</sup>. The Chiefs of the Parliamentary bodies presented a set of recommendations. Subsequently, the Law, Justice and Parliamentary Affairs Ministry placed the proposal with the Cabinet seeking the approval to place it in Parliament as a bill. However, the Cabinet took a strong stance against empowering the Parliamentary bodies, rejecting a proposal for the enactment of a law to this effect. The Government's refusal to enact the law and the current poor state of the Committees are a departure from the Ruling Party's electoral pledges of taking all necessary measures to make the House effective.<sup>149</sup>

The Government took a move of bringing in any changes to the Anti-Corruption Commission (ACC) Act of 2004 to curb the independence of the Anti-Corruption Commission and make it beholden to the Government. The proposed Anti-Corruption Commission (Amendment) Bill-2011 was placed in Parliament with a new Section 32A that stipulates that the provisions in Section 197 of the Code of Criminal Procedure must be followed in filing a graft case against a Judge, Magistrate or Public Servant<sup>150</sup>. There has been stern resistance, both from within the legislators, and the civil society as a whole, to the idea of bringing in any changes to the ACC Act of 2004 that would curb the independence of the ACC. Subsequently the Parliamentary Standing Committee on Law Ministry opposed the Government move to strip the Anti-Corruption Commission of its power to sue Public Servants on graft charges without permission of the Government<sup>151</sup>.

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<sup>147</sup> Shakhawat Liton, "3 Years of 9th Parliament - Half of JS bodies hibernating", *The Daily Star*, January 26, 2012.

<sup>148</sup> *Ibid.*

<sup>149</sup> *Ibid.*

<sup>150</sup> 197.(1) provides the scope for prosecution of the public servants. The code notes that when any public servant who is not removable from his office save by or with the sanction of the Government, is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction.

<sup>151</sup> Editorial – « Changes in ACC Act - Parliamentary Committee's stand commendable', *The Daily Star*, October 24, 2011

### 3.1.2 EXECUTIVE

In law as in practice, the Executive is the strongest branch of Government in Bangladesh. Executive power of the Republic in accordance with the Constitution is exercised by or on the authority of the Prime Minister. Critics label it as "Prime Ministerial authoritarianism". There is always a tendency of the executive branch to keep the committee system dysfunctional to avert the parliamentary oversight of the executive<sup>152</sup>

There is no legal provision to disclose assets either for the head of state or government. Government discloses certain important and salient aspects of cabinet decisions to the public through media or press briefings. However there is no procedure for monitoring of assets for Ministers or submission of statements of wealth of Ministers. Parliamentary control over the executive is weak and evidence suggests that critical issues are rarely discussed in Parliament.

There are rules and regulations concerning gifts and hospitality for Ministers and high-level officials. Ministers and high officials have to report to the Cabinet Division all gifts received and subsequently deposit them at a centre called the 'Toshakhana' (Public depository). However in reality the practice of deposition is almost absent. In both law and practice, there is no restriction on heads of State and Government and Ministers entering the private sector after leaving the government. Although there is a Public Interest Related Information Disclosure (Protection) Act, 2011 to protect whistleblowers, it appears to be non-functional.

There is no specific code of conduct for members of the executive such as Ministers and members of similar rank and status. However each of the Ministers while inducted to office has to take an oath as per the requirement of Article 148(1) of the Constitution. During the last few years, media and political observers have raised the question of violation of the oath as well as conflicts of interest particularly of high profile executives.

The Executive's accountability and transparency are not ensured adequately in practice due to the weakness of other bodies such as Parliament, the Anti Corruption Commission (ACC), the Human Rights Commission, and the absence of an Ombudsman and an allegedly politicised judiciary. Bangladesh has recently formulated a framework of integrity rules for the Executive branch<sup>153</sup>, but it lacks an established and functioning mechanism for their implementation.

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<sup>152</sup> Shakhawat Liton, "Our All-powerful PM", *The Daily Star*, April 1, 2013.

<sup>153</sup> The following institutions and organisations have been identified in this integrity strategy for implementation of its action plans: Executive Organ and Public Administration, Parliament, Judiciary, Election Commission, Attorney-General, Public Service Commission, Comptroller and Auditor-General, Anti-Corruption Commission and Local Government Institutions, For detail see: Chapter II: National Integrity Strategy: State Institutions and Organisations, *Commitment for Golden Bengal – National Integrity Strategy of Bangladesh*, Cabinet Division, Government of the People's Republic of Bangladesh, pp.17-40.

### **Structure and Organisation**

Executive branch of Bangladesh consists of Prime Minister and the cabinet. The President is the Head of State and exercises his power and functions, with few exceptions with the advice of the Prime Minister. The Cabinet in Bangladesh is headed by the Prime Minister and comprises of Minister, State Minister and Deputy Ministers. The Cabinet, comprised of elected and appointed Ministers, is collectively responsible for executive decisions. One-tenth of the Cabinet members can be appointed from among the non-elected persons who are qualified to be elected as Members of Parliament. The Cabinet is collectively responsible to the Parliament. The Executive arm of the Government is assisted by 34 Ministries, which are divided into Divisions/ Wings and are supported by Departments, Directorates and attached offices.

### **Role and functions**

PART IV (Chapter 1 &2) of the Constitution of Bangladesh describes the Executive wing of the Republic. The President, the Prime Minister and the Cabinet constitute the 'Executive' of Bangladesh. The President as Head of State exercises the powers and performs the duties conferred and imposed on him by the Constitution and other laws. In the exercise of all his functions, except for appointment of the Prime Minister (Article 56) and the Chief Justice (Article 85), the President shall act in accordance with the advice of the Prime Minister.

The Members of Parliament (*Jatiya Sangsad*) elect the President and he appoints the Leader of the House- the Prime Minister. All executive actions of the Government are taken in the name of the President. The President is the Constitutional Head of the State without any executive power.

The President is elected by the Parliament for a term of five years and not allowed to hold the office for more than two terms. The President may be impeached on a charge of violating the Constitution or of grave misconduct by a majority of the total number of members of the Parliament. He makes the appointments of the Prime Minister, the Chief Justice, all Ministers, Judges of the Supreme Court, Chief Election Commissioner and other Election Commissioners, Chairman and Members of the Public Service Commission, Comptroller and Auditor General and Attorney General.

The Cabinet in Bangladesh is headed by the Prime Minister and comprises Minister, State Minister and Deputy Minister as the Prime Minister may from time to time appoint. The President appoints the Prime Minister from among the members of Parliament who appears to him to command the support of the majority of the members of Parliament. However, one-tenth of the Cabinet may be drawn from persons qualified for election as Members of Parliament.

The Executive power of the Republic in accordance with the Constitution is exercised by or on the authority of the Prime Minister<sup>154</sup>. All including executive actions including all rules for

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<sup>154</sup> Bangladesh Constitution Article 55(1), 55(2).

the allocation and transaction of the business of the Government are expressed to be taken in the name of the President<sup>155</sup>.

The President is the titular Head of the Executive and is guided and advised by the Prime Minister. The Rules of Business (Schedule 2) of Government of Bangladesh authorizes a number of public officials of the Republic to make and execute orders and other instruments in the name of the President<sup>156</sup>. Most of the functional decisions are generally taken by the civil service in the name of delegated authority given by the President under the Rules of Business. Most of the policy and administrative papers are submitted to the President through the office of the Prime Minister after necessary scrutiny and vetting. Some important decisions however must get the approval and or concurrence of the President. Schedule III of the Rules of Business noted 63 specific provisions for which the approval of the President is needed<sup>157</sup>. Furthermore there are some decisions that are directly submitted to the President which deal with opportunity of showing cause to persons holding civil posts in the service of the Republic against dismissal, removal or reduction of the rank of the public service in the interest of the security of the State<sup>158</sup>.

The Prime Minister presides over Cabinet meetings. The Cabinet is collectively responsible to the Parliament. The Executive organ is organized into Ministries, which are divided into Divisions<sup>159</sup>. A politically appointed Minister heads each Ministry, with a permanent civil servant, usually a Secretary, who serves as the Ministry's administrative head and works under the policy guidelines provided by the Minister.

The Prime Minister is required to keep the President informed on matters of domestic and foreign policies. The Prime Minister and the Ministers are responsible to the Parliament and Ministers are also individually responsible to the Prime Minister. The Cabinet, comprised of elected and appointed Ministers, is collectively responsible for executive decisions. The Executive power in practice is exercised by or under the authority of the Prime Minister, not by the Cabinet<sup>160</sup>. The Prime Minister practically decides who will be in and out of the Cabinet and when.

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<sup>155</sup> Bangladesh Constitution Article 55(4), 55(6).

<sup>156</sup> These officials includes : Secretary, Additional Secretary, Joint Secretary, Deputy Secretary, Senior Assistant Secretary, Assistant Secretary to the Government of the People's Republic of Bangladesh or an officer who is granted one of these ranks ex-officio, Director-General, Director Prime Minister's Office/Ministry of Foreign Affairs, Director-General/Director/Deputy Director/Assistant Director/Research Officer, IMED, Chief, Joint Chief, Deputy Chief, Assistant Chief, Research Officer of the Planning Commission or Ministry/Division.

<sup>157</sup> Schedule IV of the Rules of Business also provides a list of the cases to be submitted to the Prime Minister for approval. A comparative assessment reveals that more substantive and policy related matters are submitted to Prime Minister rather than the President.

<sup>158</sup> In accordance to the Constitutional provisions 132(2) (iii).

<sup>159</sup> The business of National government is carried out by 34 Ministries and 51 Divisions. Each Ministry is headed by a Minister or a State Minister. A senior permanent civil servant is known as Secretary. The Cabinet Secretary is the highest ranking civil servant in the country.

<sup>160</sup> Shakhawat Liton, 'Our All-powerful PM', *The Daily Star*, April 1, 2013.

In accordance with the Constitution, the Cabinet is collectively responsible to the parliament. The Parliament is authorised to examine every action of the Government. But again it is the Prime Minister who holds the sweeping authority to dominate the Parliament's functions. As per the Rules of Procedure of the Parliament, the Prime Minister automatically becomes the Leader of the House. It is the discretion of the Prime Minister whether the Prime Minister will perform the functions of the Leader of the House or nominate a Minister to function as the Leader of the House. Since restoration of the parliamentary democracy in 1991, none of the Prime Ministers nominated any Minister to perform the function as the Leader of the House.

A Cabinet member of the present 14 Party Alliance Government made a very critical assessment of the overwhelming power of the Prime Minister. He noted that as Party Chief as well as Head of Government, the Prime Minister maintains strong control over all policy issues. Some specific clauses of the Constitution also provide the Prime Minister to retain almost all Executive powers. In effect, no work progresses without the Prime Minister's directives. Since the Prime Minister gets involved in all major decisions, all liabilities including charges of corruption, irregularities ultimately fall on her shoulders<sup>161</sup>. Similar observations have been made by the then Army Chief, during the military backed Caretaker Government. He advocated reconstructing an "own brand of democracy and the Executive system" for Bangladesh as against "Prime Ministerial authoritarianism."<sup>162</sup>

The Executive's accountability and transparency are not ensured adequately in practice due to the weakness of other bodies such as Parliament, Anti Corruption Commission (ACC), Human Rights Commission, absence of Ombudsman, and an allegedly politicised judiciary. Bangladesh has a broad framework of integrity rules for the Executive branch but it lacks established and functioning mechanisms for their implementation.

The Executive is the strongest branch of the Government with adequate authority and power and a large number of employees. The Executive arm of the Government is assisted by 34 Ministries.

For the first four years of its tenure, Awami League-led alliance Government has implemented 92 percent of 1,055 Cabinet decisions. Thirty three (33) policies and 86 memorandums of understanding (MoU) have been approved and about 180 new laws have been reviewed and placed to the parliament<sup>163</sup>.

During fiscal year (2010-11), through the Annual Development Programme (ADP)<sup>164</sup> allocation of Tk 358.80 billion (35,880 crore) against 1191 projects, the implementation rate reached 92

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<sup>161</sup> G.M. Kader " Ek Kendrik Shashon Besostha Ar Noy", (No more Centralized Administrative System) *Dainak Prothom Alo*, 11th May 2013.

<sup>162</sup> *The Daily Star* April 8, 2007.

<sup>163</sup> Press briefing of the Cabinet Secretary M Musharraf Hossain Bhuiyan, July 23 2012, *The Daily Star* 24 July 2012.

<sup>164</sup> ADP is the annual development investment programmes and projects in the light of the Five Year Plan and Mid Term Budgetary Framework of various line ministries.

percent. It is not only 1 percent higher than fiscal 2009-10, but it also witnessed Tk 69.13 billion (Tk 6,91.3 crore) more expenditure than that of fiscal 2009-10.<sup>165</sup>

## **Capacity**

### ***Financial, Human and Infrastructural Resources***

The Executive is the strongest branch of Government in Bangladesh. Executive power of the Republic in accordance with the Constitution is exercised by or on the authority of the Prime Minister. Part IV (Chapter 1 &2) of the Constitution of Bangladesh describes the Executive wing of the Republic. The Rules of Business (Schedule 2) of Government of Bangladesh authorizes a number of public officials of the Republic to make and execute orders and other instruments in the name of the President<sup>166</sup>. The responsibility for financial operations of the government and exercise of all executive authorities lies with the President whose sanction is necessary for all expenditure from the revenues of the Government. However, the extent to which powers to sanction expenditure has been delegated to various authorities<sup>167</sup>. The Executive power of the Republic in accordance with the Constitution is exercised by or on the authority of the Prime Minister.<sup>168</sup> All including executive actions including all rules for the allocation and transaction of the business of the Government are expressed to be taken in the name of the President<sup>169</sup>. In exercise of the powers conferred by Article 55(6) of the Constitution, the President through the Rules of Business, 1996 exercises his authority to allocate the business of the various ministries; transaction of business; orders, instruments, agreements and contracts of the government.

The Executive wing of the government uses various rules and orders embodied in General Financial Rules (GFR), Treasury Rules (TR), and the Delegation of Financial Orders issued by the Finance Division of the Ministry of Finance are the core legal framework for resource management and allocation. Authorizations embodied in the Appropriation Act constitute the outer framework of a control, while expenditure sanction and disbursement by executive authority at various levels follows a given pattern of delegated financial powers.

The Executive branch has adequate human resources to perform its regular functions. Total employed manpower (both officer and staff) of all Ministries including Prime Minister's office

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<sup>165</sup> IMED, Ministry of Planning, Government of Bangladesh, 2012, Also see *The News Today*, April 29 2013.

<sup>166</sup> These officials includes : Secretary, Additional Secretary, Joint Secretary, Deputy Secretary, Senior Assistant Secretary, Assistant Secretary to the Government of the People's Republic of Bangladesh or an officer who is granted one of these ranks ex-officio, Director-General, Director Prime Minister's Office/Ministry of Foreign Affairs, Director-General/Director/Deputy Director/Assistant Director/Research Officer, IMED, Chief, Joint Chief, Deputy Chief, Assistant Chief, Research Officer of the Planning Commission or Ministry/Division.

<sup>167</sup> Government of Bangladesh, *General Financial Rules – Chapter 4: Power of Sanction*, for detail see <http://www.mof.gov.bd/en/budget/gfr/ch4.pdf>.

<sup>168</sup> Bangladesh Constitution Article 55(1), 55(2).

<sup>169</sup> Bangladesh Constitution Article 55(4), 55(6).

and President's office has been increased by 7.89% from 2008-09 to 2012-13.<sup>170</sup> At present total employed manpower is 1.06 million<sup>171</sup>. But there are certain questions on their efficiency and level of commitment to the nation and as a result service delivery is not effective or satisfactory<sup>172</sup>. Besides, frequent changes in Ministry staff, corruption and extensive politicization in recruitment, posting, promotion and transfer make the service in Executive bodies less attractive to qualified persons.

The total Development and non-development Public sector Budget of Bangladesh Government is Tk. 7973.8 million, of which vital Executive agencies like President's Office, Prime Minister's Office, Cabinet Division and the Ministry of Public Administration have the following development and non development expenditures.

*Table 1: Development and non-development Public sector Budget Allocation*

*In million Taka*

	Non Development Expenditure	Development Expenditure	Total
Presidents Office	11	-	11.0
PM Office	202	331	53.3
Cabinet Division	28	1	2.9
Ministry of Public Administration	877	120	99.7
Other Ministries	22,184	55,987	7806.9
	23,302	56,439	7973.8

Source: Budget 2012-2013

The budget allocated to the Executive branch has increased over the last few years, enabling it to perform its most important functions adequately. The resources allocated as non development expenditure to various Ministries, Prime Minister Office, Cabinet Division, etc. have also increased in recent years.

### ***Independence and Functional Autonomy***

Bangladesh Constitution, Rules of Business and other legal frameworks do not have any provisions which restrict the independence of the Executive in its decision making process.

<sup>170</sup> Data Base of Ministry of Finance, 2013.

<sup>171</sup> Public sectors in Bangladesh still have a vacancy of 2,42,236 positions. *The Independent*, Tuesday, 20 November 2012.

<sup>172</sup> *Dainik Jugantar* May 9, 2013.

Rules of Business Section 4 on *Transaction of Business* provide the formal and legal provisions that empowers the Executive branch i.e. the President, the Prime Minister, the Cabinet and its Committees to act independently. All business allocated to a Ministry are disposed of by, or under the general or special directions of the Minister-in-charge. No important policy decisions are taken without the approval of the Cabinet [(Rules of Business 4(ii)).

During incumbency, the President, the Prime Minister and the Ministers enjoy immunity from prosecution with respect to acts committed during their tenure. However citizens can sue the Government for infringement of their civil rights in accordance with the Constitution<sup>173</sup>.

Executive power of the Republic lies with the Executives under the Prime Minister and the Cabinet. The Executive power is exercised by or on the authority of the Prime Minister [Article 55(2)]. Article 62(2) empowers the President to provide for regulating the raising and maintaining of the defence services of Bangladesh, the appointment of Chief of Staff of the defence services. Article 93(1) empowers the President to promulgate Ordinance if he is satisfied that circumstances exist which render immediate action necessary and Parliament stands dissolved or is not in session. Article 133 authorises the President to make rules regulating the appointment and the conditions of service persons in the Service of the Republic.

Article 115 authorizes the President to appoint persons in the Judicial Service or as Magistrates exercising judicial functions in accordance with rules made by him in that regard. Article 133 says that it shall be competent for the President to make rules regulating the appointment and the conditions of service persons in the Service of the Republic and until provision in that regard is made by or under any law, and rules so made shall have effect subject to the provisions of any such law.

In law as in practice, the Executive is the strongest branch of Government in Bangladesh. The Prime Minister is the symbol of all power. There is also no evidence where a Cabinet Minister has taken any dissenting position in the Cabinet and or resigned by disagreeing with the Cabinet decision. Over the last two and a half decades, the Prime Minister, also being the Party Chief (currently the *Bangladesh Awami League*), has enjoyed absolute power and authority over the Executive branch of the Government, which as one observer notes, “fits truly into the concept and practice of dictatorship”<sup>174</sup>. Division of power between the Legislative, Executive and Judicial branches has been uneven and mostly dominated by the office of the Chief Executive i.e. Prime Minister. The Executive organ is said to be strong and

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<sup>173</sup> According to Article 102 of the Constitution, the High Court Division may make an order (1) directing a person performing any function in connection with the affairs of the Republic or of a local authority to refrain from doing that which he is not permitted by law to do or do that which he is required by law to do; or (2) declaring that any act done or proceeding taken by a person performing functions in connections with the affairs of the Republic or of a local authority has been done or taken without lawful authority and is of no legal effect.

<sup>174</sup> Matiur Rahman, ‘Dictatorship in democracy’, *The Daily Star*, Feb 21, 2011.

omnipotent. The power in effect lies with the Executive wing and there is hardly any separation of power<sup>175</sup>.

There have been apparently no cases of undue interference by the military. But “the military in Bangladesh has never been shy about intervening in politics. Informally it is sometimes called the third party – after the AL and BNP – since it has ruled the country for half its existence. The public perceives the army to be an instrument of change, either directly or as the power behind the throne”<sup>176</sup>. Military is being mentioned in private as a plausible alternative in Bangladesh politics<sup>177</sup>.

The political system has however been interrupted several times since independence. Bangladesh has faced a series of military coups and counter coups in 1975 and 1981. There was even a move in 2004 when two former Army Chiefs approached the US Government for support to stage a coup to bring change in "dynastic politics" and install a government of national unity consisting of senior leaders from both the major parties. US Government however rejected the offer<sup>178</sup>.

Bangladesh witnessed yet another pseudo-coup when a military backed Caretaker Government assumed power after a dreadful political impasse in 2007. Through a disguised coup, a military backed Caretaker Government was installed and remained in power for two years (2007-2008). The army had also foiled a coup attempt by a band of mid-ranking officers and their retired colleagues in the past.<sup>179</sup> It is widely alleged by the media, civil society and academics that military still play “strong but invisible role” in some of the critical decisions of the Executive<sup>180</sup>.

## **Governance**

### ***Transparency, Accountability and Integrity: Legal Framework and Practice on the Ground***

There is no legal provision requiring that the Executive’s activities be recorded in any information system, although all Governmental and the Presidential decisions that are approved by the Parliament get published in the official Gazette. Besides, there are websites for every Ministry and Cabinet Division where general information is posted.

The Right to Information Act (RTI) of Bangladesh, adopted in April 2009, requires public bodies to disclose to citizens information about what they do and how they work. The Act has set up an

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<sup>175</sup> Mahmudul Islam, *Constitutional law of Bangladesh*, Bangladesh Institute of Law and International Affairs, Dhaka, 1995 p. 65.

<sup>176</sup> Cited from International Crisis Group Report entitled Bangladesh : Back to Future, Asia Report No. 226, 13 June 2011, p.13.

<sup>177</sup> Cited from International Crisis Group Report Crisis Group interviews, January-February 2012.

<sup>178</sup> The cable sent to Washington by the then US Ambassador in Dhaka Harry K Thomas in late 2004 was published by whistleblower website *WikiLeaks*, *The Daily Star* September 7, 2011.

<sup>179</sup> *The Daily Star*, Friday, January 20, 2012.

<sup>180</sup> O’ Lippert and Salahuddin Aminuzzaman, *Bangladesh Policy Formulation Assessment – How Policy is Made? Who decides What and How?* DFID Policy Paper, Dhaka ,2009.

Information Commission to ensure compliance with the law. Despite some weaknesses, the statute is a significant achievement in a country where administration is steeped in secrecy.

The RTI Act states that ...“Every public authority shall have the responsibility to maintain all its records duly catalogued and indexed in an appropriate manner so as to facilitate the right to information from any authority under this Ordinance or any other law for the time being in force; this right shall not delimit denial to furnish information or the availability of information”.

According to RTI Act every public authority is supposed to publish at least once every two years a report containing the particulars of its organizational activities, duties of its officers and employees and the process of decision making and the categories of record held by the authority including list of laws, rules, regulations, instructions, manuals used by its employees, the description of conditions under which any citizen can obtain any license, permit, grant, allocation, approval, or any other facilities, and the conditions which are required for any transaction or execution of any contract, the particulars of facilities available for ensuring peoples’ right to information, and the names, designations and other particulars of the Information Officers to whom the application for information should be made.

As per Rules of Business (Section 4), all proceedings of the Cabinet meetings and records are to be treated shall be treated as “secret documents” for twenty five years, and after such period those records will be treated as classified documents.”<sup>181</sup> The Rules of Business state that “the minutes of discussions and decision of Committees of the Cabinet shall be circulated to all members of the Cabinet by the Cabinet Secretary” (Rule 18 (4)). It further notes that “Copies of all records regarding the constitution, meetings, and decisions of the Cabinet should be kept in the safe custody of Cabinet Division [Rule 22 (5)]. The Secretary of the Ministry/Division concerned shall, on receipt of the Cabinet decision communicate it to the officials concerned. However, after every Cabinet meeting, the Cabinet Secretary or the Press Adviser to the Prime Minister provides a short briefing presenting the salient features of the major decisions of the Cabinet.

Like many other Bills passed in the Parliament, the Government budget has to be published. Once the Finance Bill (Budget) or for that matter any Bill is passed and assented by the President, it is mandatory to publish it in the Gazette as an Act of Parliament<sup>182</sup>.

There is no legal provision to disclose assets either for the Head of State or Government. However, the ruling Party (Bangladesh Awami League) in its manifesto declared that it would make the declaration of assets mandatory for Members of Parliament and all Cabinet members as soon as they get inducted to their positions. But the ruling Party has failed to enforce its commitments of the electoral manifesto to annualized declaration of assets by MPs and Ministers. None but one Minister has so far submitted the statement of his assets to the Prime Minister. However like any other citizen, MPs and Cabinet members are bound to give a separate statement of their Income Tax return on their assets and liabilities. It is mandatory for each

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<sup>181</sup> *Rules of Business 1996, Cabinet Division, Government of the People’s Republic of Bangladesh.*

<sup>182</sup> *Ibid,*

contestant for Member of Parliament to submit Personal Information Declaration. As a part of this declaration the candidates have to give a full statement of their assets and liabilities<sup>183</sup>

The existing law requires assets of every government servant to be disclosed. However,<sup>184</sup> there is nothing specific about the Executive branch officials like the PM and Cabinet members. For the members of the Executive branch (President, Prime Minister and Ministers) of the Government there is no such authority or law that can legally enforce them to make disclosure of their assets. However, by law regular income tax return is enforceable to all. The National Board of Revenue can ask any taxable citizen to submit his/her income tax return.

The Anti -Corruption Commission (ACC) also has the authority to ask anyone to give the declaration of properties (ACC Act, Section 26). Section 26(1) notes that “If the Commission is satisfied on the basis of its own information and after necessary investigation that any person or any other person on his behalf is in possession or has obtained ownership of property not consistent with his legal sources of income then the Commission through an order in writing shall ask that person to submit a statement of assets and liabilities in the manner determined by the Commission and to furnish any other information mentioned in that Order”.

One of the prime functions of the Information Commission is to “issue directives for the preservation, management, publication, publicity of and access to information by authority”<sup>185</sup>. However at the operational level, Right to Information still has not achieved its operational objectives. During 2011 as many as 2864 requests for information were received by five major Ministries. Only 36 cases (i.e 1.25%) decisions were taken to assess the information appeals and legal explanation of those decisions being made. However the right to Information has enhanced the scope of Government’s transparency and accountability<sup>186</sup>. Also there is gross lack of awareness about the RTI among public employees as well as the citizens.

The budget speech of the Finance Minister is televised live and members of the media are allowed to cover the budget sessions. A limited number of citizens are also allowed to sit in the public gallery. The approved budget is published on the Government website and a hard copy is also available as a public document.

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<sup>183</sup> Bangladesh Election Commission, *Asset Database*, 123.49.39.5/asset/index.php?lang=en.

<sup>184</sup> According to the Government Servants (Conduct) Rules 1979 every government servant has to make a declaration of his immovable and movable properties including cash and jewellery and submit annual return of assets to the government.

<sup>185</sup> According to RTI Act, for public sector the term “Authority” refers to any organization constituted in accordance with the Constitution of the People’s Republic of Bangladesh including ministry, division or office established under the Rules of Business made under article 55(6) of the Constitution of the People’s Republic of Bangladesh.

<sup>186</sup> Most. Mobassera Kadery *Right to Information Act-2009 in Bangladesh: an Analysis*, Master Thesis Insitute of Governance Studies, BRAC University, 2010 p.78.

According to Rules of Business the Cabinet meeting minutes is a secret document and it is only disclosed to all members of the Cabinet by the Cabinet Secretary. Government does disclose certain important and salient aspects of the Cabinet decisions to public through media or press briefing.

There are no procedures for monitoring of assets for Ministers or submission of statements of wealth of Ministers. The Prime Minister in a press conference however noted that she along with her Cabinet members and lawmakers have regularly submitted their wealth statements and tax returns to the National Board of Revenue (NBR). Besides, they have also submitted their wealth statements to the Election Commission prior to the December 2008 election<sup>187</sup>. The Prime Minister may also ask for an enquiry against any Minister regarding any irregularities, if committed.

During the General Election of the Parliament, every contesting candidate is bound to submit to the Returning Officer a detailed wealth statement, statement of the election expenses and the sources of its funding. The Election Commission is also empowered to investigate matters relating to election of the candidates<sup>188</sup>.

For popular understanding and larger dissemination, most of the documents on transparency, integrity and disclosure of assets declaration are in Bangla. Salient features of such documents are widely published in print media.

Parliamentary oversight is widely considered an essential pillar for ensuring the financial accountability of the Executive, and, in Bangladesh, as in many Parliaments, this responsibility is discharged primarily through the work of different Parliamentary Committees. The three public finance-related Committees in Bangladesh: Public Estimates Committee (PEC), Public Accounts Committee (PAC), and Public Undertakings Committee (PUC). Section 233-238 of the Rules of Procedures of Parliament detail the establishment and functions of the Committees on Public Accounts, Public Estimate and Public Undertakings. In addition to that there are 45 different Ministerial Committees of the Parliament to oversee the work of the Executive. Parliamentary Standing Committees can review the enforcement of laws by Ministers and investigate or inquire into the activities of the administration of the Ministries<sup>189</sup>.

Parliament can cause the fall of Government as the Prime Minister and his Cabinet are collectively liable to the Parliament and the Prime Minister holds the office as long as he holds the majority support of the Parliament<sup>190</sup>. Parliament can also impeach or remove the President on the grounds of gross misconduct, physical or mental incapacity.

Again when there is a constitutional deviation and constitutional arrangements have been interfered with or altered by the Parliament by enacting laws or by the Executive by issuing Orders, it is within the jurisdiction of the Judiciary to bring back the Parliament and Executive on

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<sup>187</sup> Abdullah A. Dewan, "Pros and Cons Irrelevance of asset disclosures unless made public" *Daily Sun*, 11 February 2011.

<sup>188</sup> Representation of the People Order, 1972 ( as amended Representation of the People Order (Amendment) Act, 2009), February 24, 2009.

<sup>189</sup> Article 76 (c) Constitution of Bangladesh.

<sup>190</sup> Article 55(2), 55(3) Constitution of Bangladesh.

track. The Court can declare such legislative measures or administrative decisions/ orders to be *ultra vires*, and can give a direction to repeal or modify it. Furthermore there is a provision of the Office of the Ombudsman<sup>191</sup> in the Constitution since 1980 (although no Ombudsman was appointed till date) who is empowered to investigate any action taken by a Ministry, a Public Officer or a statutory public authority.

Rules of Business (Section 25) state that Ministries/Divisions have to prepare monthly reports of their activities for the Cabinet. Such reports shall be circulated to the Ministers for their information and action. The Ministries need to prepare quarterly reports of implementation of Cabinet decisions and such reports are placed on the agenda of the weekly meetings of the Cabinet. Ministries also prepare a yearly report containing the comprehensive review of the activities of each Ministry. Such reports are discussed at special meetings of the Cabinet. However, such reports are not placed to the Parliamentary Committees or the Parliament as such. As per the Rules of Procedures of Parliament, each Minister including the Prime Minister has to give answers to the questions raised by any Member of Parliament.

The Executive is accountable to Parliament and so it has to be answerable for its actions. Parliament is supposed to be the important institution to control and ensure check and balance of performance of the Executive arm of the Government. There are Question and Answer hour's session in the parliament. The Question-Answer Session of the Prime Minister, Ministers and Notices on Issues of Public Importance play a significant role to ensure some form accountability of the Government. In first three years of the 9th parliament, the PM answered direct questions on 33 days, while questions were tabled for 16 days out of 50 scheduled working days<sup>192</sup>. It is observed that due to their comfortable majority in Parliament, the ruling alliance Government tends to avoid adequate parliamentary debates in enacting major laws<sup>193</sup>.

Media, civil society, oppositions in the country often raise questions on or criticize any wrong decisions taken by the Executive. During recent years both electronic and print media has played a significant role as whistleblower in identifying the "wrong doings" and other governance failure and deficits of the Executive organs of the Government<sup>194</sup>. The Standing Committees on Ministries are responsible to monitor use of public funds based on budget allocation. However, due limited human resources, as well as administrative and technical constraints, such Committees do not perform at an expected level<sup>195</sup>. Evidence suggests that critical issues are rarely discussed in Parliament and the Committees<sup>196</sup>. Committee directions are generally ignored by the Ministries. Moreover the Committees generally do not possess any executive power; what they mostly do is to recommend actions for improvement. It has been noticed that rarely reports produced by different Committees are debated in the House; hence the recommendations made in these reports do not have any chance of being implemented. Furthermore, the nature of issues raised and discussed in the Parliamentary Committee meetings generally lacks focus and depth. It has been noticed that important issues are often ignored, while members hold debates on trivial issues. Many of these

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<sup>191</sup> Art 77 of the Constitution provides the provision of the Office of Ombudsman. But the office of the Ombudsman has never been constituted during last 40 years.

<sup>192</sup> Parliament Watch, TIB Report, 2012.

<sup>193</sup> Interview with Chief Whip of the Opposition Mr. Jainul Abedin Faruk.

Committees are often seen as taking the line followed by the government lauding its performance, although the ground reality may be different. Both the Government and Parliament often remain indifferent to what Committees suggest<sup>197</sup>.

Furthermore, Transparency International Bangladesh Parliament Watch Report 2009 observed that the major Opposition Party was marginalized and did not receive due share in the Parliamentary debates and processes. Out of 237 questions put to the ministers, the shares of Ruling Party and Opposition members were 88.9% and 11.1% respectively. The study also observed that undue eulogy of leaders was uttered 251 times, objectionable and direct criticisms to opposition were made 342 times and irrelevant subjects were raised as many as 503 times. Prolonged and periodic walkouts by Opposition even on unnecessary grounds characterize the vulnerability and low level of credibility of transactions of Parliamentary Sessions<sup>198</sup>. The Parliament of Bangladesh has gradually degenerated into a mere instrument of regime maintenance and providing legitimacy to the ruling regime to govern. Parliament has unfortunately failed to deliver the key tasks of representation, legislation, oversight of the Executive and conflict resolution and thus has contributed insignificantly to promoting good governance<sup>199</sup>.

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The Executive’s accountability and transparency are not ensured adequately in practice due to the weakness of other bodies such as Parliament, Anti -Corruption Commission (ACC), Human Rights Commission, absence of Ombudsman, and allegedly politicised judiciary. Bangladesh has a broad framework of integrity rules for Executive branch but it lacks established and functioning mechanisms for their implementation.

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<sup>194</sup> Interview with Syed Abdal Ahmed, Secretary of Press Club, Dhaka.

<sup>195</sup> Global Integrity Index 2010, Page 81-82.

<sup>196</sup> According to the constitutional provision ( Art. no. 76), the Parliament appoints from its members some Standing Committees and other function specific Committees to run the Parliamentary affairs and ensure Executive oversight. There are number of 48 Ministerial Standing Committees and little over 100 other Sub-committees of the Parliament. Following are the important ones that regulate the activities of the public administration system in the republic: a. Public Accounts Committee, b. Public Estimates Committee, c. Public Undertakings Committee.

<sup>197</sup> Nizam Ahmed, “Parliamentary Oversight and Good Governance in Bangladesh: The Role of the Committees”, in Mahfuzul H. Chowdhury (ed.). *Democracy in Bangladesh: Essays in Memory of Professor R. I. Chowdhury*, AHD Publishing House, Dhaka, 2012.

<sup>198</sup> TIB, Parliament Watch Report 2009.

<sup>199</sup> T. Rahman, *op.cit*, p.77.

<sup>200</sup> Interview with Syed Abdal Ahmed, Secretary of Press Club, Dhaka.

As such there is no code of conduct for the Executive of the Bangladesh. The Prime Minister and Cabinet Ministers have to maintain some formal protocol. However for functional reasons the Executive branch follows the following rules for their day to day operations: a. Rules of Business 1996; and b. Allocation of Business Rules. There are no formally announced provisions on anti-corruption for the Executive branch of the Government. For members of the public bureaucracy the Government Servants (Conducts) Rules have specific provision for addressing corruption issues.

Nonetheless, the Parliament has its own rules of procedure, which include conflict of interest. The Rules of Procedures of the Parliament 188(2) provides that, “no Member shall be appointed to a Committee who has a personal, pecuniary or direct interest in any matter which may be considered by that Committee”. However, these rules are also not aggressively enforced with respect to Parliamentarians<sup>201</sup>.

The members of the Executive branch are defined here as Heads of State/ Government and Ministers. There is no code of conduct and/or guidelines with respect to gifts or hospitality for Heads of State or Government and Ministers<sup>202</sup>.

There are rules and regulations concerning gifts and hospitality for Ministers and high-level officials. Ministers and high officials have to report to the Cabinet Division all gifts received and deposit them at a centre called the ‘*Toshakhana*’.<sup>203</sup> In accordance with the procedures for valuation and registration of gifts received by members of the Executive, the Cabinet Division makes entry of the gifts in the two registers which are supposed to be updated. Some gifts can be disposed of at public auctions; very valuable gifts are displayed at the national museum or placed in banks for safekeeping. Recipients can retain gifts valued under Taka 1000 (US\$17.2). Upon valuation, recipients have the option to purchase certain gift items from the Government<sup>204</sup>.

There are no restrictions on Heads of State and Government and Ministers entering the private sector after leaving the Government service<sup>205</sup>. Public Interest Related Information Disclosure (Protection) Act, 2011 has been passed by the Parliament to ensure that the role of whistleblowers is very important to curb corruption. The legislation empowers a person to disclose information on Ministries, Divisions, Departments or any other Government offices and all kinds of non-government organisations. On receiving information from a whistleblower, the authorities concerned will launch investigation or take proper action<sup>206</sup>.

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<sup>201</sup> Transparency International, *National Integrity Systems - Country Study Report Bangladesh 2003*, p.21.

<sup>202</sup> Global Integrity Index 2010, p.61.

<sup>203</sup> Means government custody.

<sup>204</sup> National Integrity Systems, Transparency International, Country Study Report Bangladesh 2003, p19-20.

<sup>205</sup> Global Integrity Index 2010, p. 61

<sup>206</sup> *The Daily Star*, June 7, 2011.

Article 31 of the Anti-Corruption Commission Act, 2004 provides the indemnity for actions performed in good faith. It states: “If any person is affected or is likely to be affected by any action taken in good faith in the discharge of duties under this Act, then neither the Commission nor any Commissioner, officer or employee thereof shall be liable to action under civil or penal codes or otherwise”.

During the last few years, media and political observers have raised the question of violation of the oath as well as “conflicts of interest” particularly of high profile members of the Executive as regards allegations of corruption in Padma Bridge, big corruption scandals like Railway scam, the stock market, Destiny Group, Hall Mark and Sonali Bank and other allegations of abuse of power<sup>207</sup>. Such large scale and high volume corruption cases have “amply demonstrated that a section of the Government, appearing to be hostage to a denial syndrome, has too often failed to demonstrate the commitment and capacity to allow investigations in the due process without favour or fear”.<sup>208</sup>

No progress has been made in terms of the commitment to annual disclosure of income and wealth statement of Parliament Members, Ministers and their respective families. Abuse of power related to public contracts, illegal grabbing of land, water bodies, forest and *khas land* (public land) by the leaders, agents and activists of political leaders have continued unabated.

## **Role Assessment**

### ***Public Sector Management***

The Public Sector is directly managed by the Executive wing of the Government. Each Ministry and associated Divisions are under the direct control and supervision of a Minister or State Minister. The Ministers are guided and controlled by the Prime Minister through the Cabinet meeting and/or direct instructions and communication from the Prime Minister’s office. Each Ministry/Division has a Secretary, who acts as the administrative head of the Ministry/Division. Under the direct supervision and control of the Minister, the Secretary is responsible for the proper conduct of business of the ministry and all attached Departments and Subordinate Offices. The Secretary acts as the Principal Accounting Officer of the Ministry/Division, Attached Departments and Subordinate Offices and ensures that funds allocated to the Ministry/Division, its attached Departments and Subordinate Offices are spent in accordance with rules/laws.

Secretaries and the Head of the attached Department use tools like Annual Confidential Reports (ACR) to assess the performance of the members of the staff of the civil service. However, the ACR report ends up with the Head of the attached department and for senior positions needs to be counter signed by the Minister for validation. At the highest level and especially in the Parliamentary Committee meetings formally each Minister has to defend the performance of their respective Ministries. The performance appraisal system of Bangladesh

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<sup>207</sup> *The Daily Star*, September 24, 2012.

<sup>208</sup> *Ibid.*

is criticized for being highly subjective and not containing any objective parameters to measure the quality and effectiveness of performance<sup>209</sup>.

As per Finance Ministry's Memo dated 29/8/2007, each year subject to budget allocation, Tk 2500 is given to the Officers (Deputy Secretary, Senior Assistant Secretary, and Assistant Secretary), II,III and IV class employees. Subject to approval of Finance Division and budgetary allocation, one month's basic pay may also be given to Officers and employees in special case. The number of recipients is to be determined as per the following norm - . For Deputy Secretary to Assistant Secretary, not more than 30% of the total number of positions, for Class II and III, not more than 35% of the total number of positions, and for Class IV, the highest limit is not more than 40% of the total number of positions. Each Ministry/Division through a committee decides the list of eligible officers and staff. However one senior civil servant noted that "subjective criteria" and "humanitarian" ground sometimes dictates the terms and it often deprives the real performer.

### **Prioritising Public Accountability**

Bangladesh, over the last two decades has developed a relatively elaborate structure and institutions, including watchdog bodies like the Comptroller & Auditor General's Office, Election Commission, Anti-Corruption Commission, Human Rights Commission, and Information Commission, to ensure good governance. Bangladesh's accession to the UN Convention against Corruption; enactment of the Right to Information Act and the Whistleblower Protection Act are among major changes in which the Executive played a catalyst role. These are aimed at strengthening the capacity of the State to control corruption and stop the culture of impunity irrespective of the identity or status of the individual concerned.

The Sixth Five -Year Plan also recognized that "capacity constraints in public administration and persistent corruption lie at the heart of overall shortcoming in national governance in Bangladesh" and committed to develop "a strong anti-corruption strategy". The SFYP further noted that "All efforts will be made to reduce corruption in public services and take appropriate actions when corruption happens in an open and transparent manner."<sup>210</sup>

The Government of Bangladesh has prepared a draft law called 'Anti-Corruption Commission (Amendment) Act, 2011' to update and make the Anti-Corruption Commission more effective. But critics have noted that such amendments as adopted by the Cabinet were aimed at establishing political and administrative control over the Commission<sup>211</sup>. The amendment act is still under consideration.

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<sup>209</sup> Salahuddin Aminuzzaman, *Analysis of Performance Appraisal and Management, Career Planning of Class I Civil servants of Bangladesh*, World Bank, Dhaka 2006.

<sup>210</sup> Government of Bangladesh, Sixth Five Year Plan,p.34.

<sup>211</sup> Transparency International Bangladesh, *Call to Reconsider the Anti-corruption Commission (Amendment) Act 2011*,March 1, 2011, also see *The Daily Star*, "Editorial - Changes in ACC Act", October 24, 2011.

The Prime Minister, Ministers, Advisers and Members of the Parliament speak against corruption quite assertively. But much remains to be desired in terms of actual implementation and enforcement of such pronouncements and commitments<sup>212</sup>. The reality on the ground, on the contrary, demonstrates that corruption continues unabated and adversely affects the development prospects and people's trust in Government. In a public meeting the Prime Minister reiterated her government's position against various forms of corruption and irregularities and reminded the audience that the "Government wants to eradicate the menace from the country and establish transparency and accountability in all sectors<sup>213</sup>".

In his budget speech the Finance Minister informed the Parliament that the goal of the Government is to ensure the full independence of the Commission. But he noted "in the name of combating corruption, infringement of anyone's fundamental rights should not be lost sight of."<sup>214</sup>

Bangladesh introduced a Money Laundering Prevention Act in 2002. It was replaced by the Money Laundering Prevention Ordinance on in 2008 and subsequently the Ordinance was passed by the National Parliament as Money Laundering Prevention Act in 2009 and was enacted with effect from 15th April, 2009.

As a part of effective use of public money, the government of Bangladesh has introduced Medium-Term Budget Framework (MTBF) to empower the line ministries to formulate their own budgets within the indicative resource ceilings. This has added significantly for effective use of budgetary allocation to make development pro-poor and gender-focused.

### 3.1.3 JUDICIARY

Traditionally seen as the bastion for upholding the rule of law, restricting executive arbitrariness and providing a non-partisan institutional capacity for practicing constitutional democracy, the Judiciary in Bangladesh has increasingly been subjected to steady exploitation by political forces under successive governments.<sup>215</sup> The issue of complete independence of the judiciary has received only 'polite recognition in political rhetoric but its actual separation from executive control does not appear to be a major agenda of the main political forces'.<sup>216</sup> Despite formal separation of the judiciary from the executive, it has not met people's expectations of a truly independent institution since the subordinate courts continue to be

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<sup>212</sup> The election manifesto of the biggest party in the ruling grand alliance, the Bangladesh Awami League was in a way conceptually based on anti-corruption theme as they also made at least over a dozen specific commitments to create the capacity to control corruption.

<sup>213</sup> *The Daily Star* December 21, 2012.

<sup>214</sup> Budget Speech of Minister of Finance 2012.

<sup>215</sup> Ferdous Jahan and Asif Shahan, *The Judiciary, Background Paper, Institutions of Accountability Series*, Institute of Governance Studies (IGS), BRAC University, 2009, p. 4.

<sup>216</sup> Shahdeen Malik, "Laws of Bangladesh", in A.M. Chowdhury and Fakhrul Alam (eds.), *Bangladesh on the Threshold of the Twenty-First Century*, Asiatic Society of Bangladesh, 2002, pp. 433-480, p. 438.

influenced by the executive. Judicial independence is believed to be also often compromised by controversial appointments, promotions, removals, and conduct of judges.

### **Structure and Organisation**

The Constitution of Bangladesh provides for the establishment of both higher and lower judiciaries for the adjudication of cases and dispensation of justice. The Judiciary in Bangladesh has two levels, the Supreme Court comprising the High Court Division and the Appellate Division and the Subordinate Courts. The Supreme Court comprises the Chief Justice and other judges. The establishment of subordinate courts is provided for by Article 114 of the Constitution pursuant to which courts have been set up to adjudicate on civil and criminal matters.

The civil courts are classified as courts of Assistant Judge, Senior Assistant Judge, Joint District Judge, Additional District Judge and District Judge respectively. Criminal matters are heard by the courts of Sessions Judge, Additional Sessions Judge and Joint Sessions Judge. In metropolitan areas, sessions courts are termed as Metropolitan Court of Sessions, Additional Metropolitan Court of Sessions and the Joint Metropolitan Court of Sessions.

The judiciary also includes several Special Courts and Tribunals; for example, the Family Court hears matrimonial matters, the Special Tribunal on Violence against Women and Children deals with certain offences involving violence against women and children, the Acid Tribunal tries acid crimes, the Labour Court hears cases relating to labour and employment matters, the Anti-Corruption Tribunal tries corruption cases, the Speedy Trial Tribunal deals matters that demand immediate disposal, and so on.

### **Capacity**

#### ***Financial, Human and Infrastructural Resources***

The legal framework does not prohibit the participation of the Judiciary in the process of determining its annual budget nor does it guarantee such participation.

Salaries, allowances and other benefits of subordinate judges are determined in accordance with the pay structure prescribed by the Judicial Service Pay Commission which is empowered to review salaries, etc. of judicial officers usually every five years and send proposed pay structures to the government. Entry level judges are entitled to a salary of BDT 11000 as per the 2009 Bangladesh Judicial Service Pay scale and at par with entry civil servants in the public sector.

The remuneration and privileges of Supreme Court judges are regulated by *The Supreme Court Judges (Remuneration and Privileges) Ordinance, 1978* (as amended in 2009-2010) according to which judges are entitled to tax-free salary and allowances and other facilities including free housing, transport and medical support. The Constitution explicitly states that salaries, privileges and other terms and conditions of Supreme Court judges must not be varied to his/her disadvantage during his/her tenure of office.<sup>217</sup> This protects them against

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<sup>217</sup> Article 147 (2), The Constitution of Bangladesh.

arbitrary reduction of their income. The salary of Supreme Court judges is charged on the consolidated fund and not subject to a vote of Parliament.<sup>218</sup>

On-the-job training opportunities are available for judicial officers under *The Probationer Assistant Judges Training and Departmental Examination Order 2008*. According to Article 3 of the Order, the Ministry for Law, Justice and Parliamentary Affairs, in consultation with the Supreme Court, places newly recruited Assistant Judges under the courts of different Judges for a prescribed length of time for practical training on court and office administration, management of judicial functions and other related matters.

While the law prescribes a salary structure and training options for the judiciary, they do not meet the desired expectation of the judicial officers. The law does not require the judiciary to plan its own budget. Salaries, allowances and other benefits of subordinate judges are determined in accordance with the pay structure prescribed by the Judicial Service Pay every five years. The law regulating the remuneration and privileges of Supreme Court judges entitles them to tax-free salary and allowances and other facilities including free housing, transport and medical support. The Constitution protects Supreme Court judges against arbitrary reduction of their income.

The Judiciary does not directly participate in the budgetary process of the state although there is no legal bar. It has been opined that the judiciary lacks enthusiasm about participating in the budgetary allocation process and has largely been content to leave the matter to the executive organ of the government.<sup>219</sup> The Judicial Service Pay Commission assesses changes in socio-economic conditions, market demands and inflation rates before recommending judicial pay structures. The Ministry of Law, Justice and Parliamentary Affairs reviews these and proposes the budget for each year and the Ministry of Finance works out the allocation.

The pay scale is not commensurate with the workload of subordinate judges given the stark disparity between the number of officiating judges and the corresponding number of cases. Findings of a research report<sup>220</sup> reveal that the judge-to-case ratio is around 1:868, provided all judges are spread equally across the existing cases and all the vacancies are filled. Since many vacancies exist, the workloads are not equally distributed.<sup>221</sup> Subordinate Court judges also face acute accommodation problems as not all the districts have adequate accommodation or police security for judges.<sup>222</sup> Available transport facilities are sub-standard and inadequate, often forcing judicial officers to use public transport thereby compromising their professional detachment.<sup>223</sup>

The government has reportedly been slow to respond to proposals by the Judicial Service Pay Commission for enhanced pay for judicial officers. This demonstrates the indifference and

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<sup>218</sup> Article 88, *ibid.*

<sup>219</sup> Interview with Dr. Shahdeen Malik, Advocate, Supreme Court of Bangladesh.

<sup>220</sup> Md. Shariful Islam, *Politics-Corruption Nexus in Bangladesh: An Empirical Study of the Impacts on Judicial Governance*, Asian Legal Resource Centre, Hong Kong, 2010, p.100.

<sup>221</sup> *Ibid.*, 100.

<sup>222</sup> *Ibid.*, 105.

<sup>223</sup> *Ibid.*, 104.

sometimes, hostile attitude of the administration to requests for assistance in terms of staffing, manpower and basic resources for the Judiciary.<sup>224</sup>

Although the Supreme Court Judges enjoy higher salaries and other benefits than judges in the lower judiciary, a comparative projection of the salary scale of the Supreme Court judges in Bangladesh with that of the higher judiciary judges in India and Pakistan reveals that Judges of the Supreme Court in Bangladesh are distinctly underpaid compared to their counterparts in the sub-continent.<sup>225</sup> While salaries of Supreme Court Judges are by law drawn from a consolidated fund, the fact that disbursement is controlled by the Ministry of Finance essentially impedes financial autonomy of the Judiciary.<sup>226</sup>

Courts in Bangladesh suffer from a perennial shortage of office space, funds, basic necessities, such as stationery and other office supplies, furniture, etc. While the number of judicial officers has been steadily increasing, there has been no expansion of the infra-structure to house them properly. Consequently, junior judicial officers not only have to share chambers but also support staff and office equipments. The scenario is much the same despite external donor assistance in judicial capacity building.<sup>227</sup> To date, reform initiatives in the judicial sector have largely been donor driven and infrastructure development focused.

In addition to on-the-job training under specific courts, newly appointed judicial officers receive orientation at the Judicial Administration Training Institute (JATI) and the Public Administrative Training Centre (PATC) on court management, policy and human resource management, organisational values (leadership, motivation, honesty, integrity, etc.), creativity, partnerships, and development issues (law and order, human rights, women's empowerment, poverty alleviation, environment protection etc.).<sup>228</sup>

While the curriculum for Judicial Administration Training Course for the District and Session Judges includes a single module on "Judicial Ethics and Code of Conduct of Judicial Officers", the training contents and modalities are largely devoid of lessons on professional conduct.<sup>229</sup>

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<sup>224</sup> In conversation with judicial officers of the subordinate courts (*anonymity requested*).

<sup>225</sup> A Chief Justice in India is paid Rs.259,838 per month, the Chief Justice of Pakistan receives Rs. 100,000 per month as opposed to the Chief Justice of Bangladesh who gets BDT56, 000. An Appellate Division judge in India receives Rs. 245,457, an Appellate Division Judge in Pakistan gets Rs. 90,000 and their counterpart in Bangladesh gets BDT 53,1000. A High Court Division judge in India gets Rs. 231,563, a High Court Division judge in Pakistan gets Rs. 80,000, while their counterpart in Bangladesh receives BDT 49,000 only. Source: IGS Policy Note on *The Judiciary*, May 2010, p. 7.

<sup>226</sup> Interview with Dr. Shahdeen Malik, Advocate, Supreme Court of Bangladesh.

<sup>227</sup> The *Legal and Judicial Capacity-building Project* (2001-2007), funded by the World Bank and others, consisted of the strengthening of case management and improving court administration, phased installation of automated court-management information systems, the training of district judges and court staff and the construction or renovation of court buildings. Other initiatives included the Canadian-funded *Bangladesh Legal Reform Project*, which provided technical support to courts in the area of juvenile justice, legal aid and Alternative Dispute Resolution in two pilot districts, Jessore and Gazipur. DANIDA provided technical assistance to JATI for running its training programmes, etc.

<sup>228</sup> The Public Administration Training Policy, 2003.

<sup>229</sup> Tureen Afroz, "Independence of Judiciary ... but what next?" available at <http://www.thedailystar.net/law/2004/01/01/index.htm>

Apart from the government-mandated training courses, judicial officers have very limited access to other opportunities for professional development, partly due to lack of resources and partly because of professional jealousy and/or indifference of departmental heads. They also have rare access to scholarships for training and studies abroad which are usually available to other civil servants.<sup>230</sup> Even if they are able to secure a scholarship, the process of seeking permission and leave from the Ministry of Law, Justice and Parliamentary Affairs being convoluted and frustrating, acts as a major disincentive.

Low pay structures, poor service benefits and career development opportunities deter qualified and committed individuals from entering the judicial service just as they instigate newly-recruited judicial officers to leave the service. Continuous financial dependence of the Judiciary on the Executive seriously compromises its financial autonomy. Despite the absence of any legal bar in terms of participation in the budgetary planning process, there is no evidence of an active interest or proactive initiative in this respect on the part of the Judiciary. Notwithstanding sporadic donor support, existing infrastructure and logistical support are not conducive to professional development of judicial officers who feel discouraged by the inadequacy of incentives and institutional support. Setbacks in judicial reforms largely result from a lack of political will.

### ***Independence and Functional Autonomy***

The Constitution states that subject to its provisions, the Chief Justice and other Judges of the Supreme Court and all persons employed in the judicial service in the subordinate courts and all magistrates shall be independent in the exercise of their judicial functions.<sup>231</sup> Judicial independence has been reiterated in the landmark case of *Secretary, Ministry of Finance vs Masdar Hossain*,<sup>232</sup> where the Appellate Division of the Supreme Court held that the administration of judicial services must vest in the Supreme Court and not in the Executive branch of the Government.

The Constitution empowers the President to appoint judicial officers or magistrates exercising judicial functions in the subordinate courts in accordance with the relevant rules made by him in that regard.<sup>233</sup> The control, including the power of posting, promotion and granting of leave and discipline, of such officials lies with the President to be exercised by him in consultation with the Supreme Court.<sup>234</sup> At the functional level, however, the Bangladesh Judicial Service Commission is empowered<sup>235</sup> to hold competitive examinations from time to time for direct recruitment of Assistant Judges and judicial Magistrates at the entry level of the judicial service based on the requisition sent by the Ministry of Law, Justice and Parliamentary Affairs.

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<sup>230</sup> Shariful Islam, 2010, *op.cit.*, p. 103.

<sup>231</sup> Articles 94, 116A, The Constitution of Bangladesh.

<sup>232</sup> 52 DLR (AD)(2000), 82.

<sup>233</sup> Article 115, The Constitution of Bangladesh. As per the High Court Rules, the President shall act on the advice of the General Administration Committee (composed of the Chief Justice and a maximum of three Judges of the Supreme Court) regarding the appointment, promotion, degradation and suspension of subordinate Judges. Such recommendations need to be vetted first by the full Court.

<sup>234</sup> Article 116, The Constitution of Bangladesh.

<sup>235</sup> Rule 5, The Bangladesh Judicial Service Commission Rules, 2007.

The eligibility criteria for recruitment to the judicial service are spelt out in *The Bangladesh Judicial Service (Constitution of the Service, Appointments, Temporary Suspension, Dismissal and Removal) Rules 2007*. The names of successful candidates from the top of the merit-list are recommended for appointment by the President on the basis of the vacant posts for which the Ministry of Law, Justice and Parliamentary Affairs sends the requisition. There is a distinct order by which judicial officers are inducted in the service. Assistant Judges (the lowest tier in the judicial hierarchy) are directly recruited in accordance with *The Bangladesh Judicial Service (Constitution of the Service, Appointments, Temporary Suspension, Dismissal and Removal) Rules 2007*, while recruitment of the more senior judicial officers are done by way of promotion/appointment from a panel prepared in consultation with the Supreme Court.

There is no scope of lateral entry at any other higher tier of the judicial service. However, after having served for a certain period and performed satisfactorily at a judicial post, any member of the service may be promoted to higher posts subject to availability of vacancies. The Bangladesh Judicial Service Commission conducts periodical departmental examinations for probationer Assistant Judges for confirmation of their service.

The posts of the Judges of the High Court Division are constitutional posts and not included in the judicial service. The Constitution empowers the President to appoint the Chief Justice and other judges of the Supreme Court and lays down the eligibility criteria for Supreme Court Judges.<sup>236</sup> The constitutional provision requiring the Chief Justice to be consulted by the President was removed in 1975, the practice continued as a matter of convention. In a recent case, this practice was revived.<sup>237</sup>

The requisite qualifications for Supreme Court Judges as stated in Article 95 of the Constitution are premised on tenure-based professional experience and are unclear as to what constitutes “qualifications as may be prescribed by law for appointment as a Judge of the Supreme Court”, primarily because no such law has been enacted as yet. On the other hand, the President practically acts to reflect the choice of the executive which often makes appointments and promotions vulnerable to partisan influence. Consequently, the competence and qualifications of judges have been subject of growing concern amongst different sections of the society.

A judge of the Supreme Court is entitled to hold office until he attains the age of 67 (sixty seven) years.<sup>238</sup> A judge of the higher Judiciary may resign in writing addressed to the President or be removed from office by the President. The removal of a judge takes place only in accordance with the provisions of the Constitution and as per recommendation of the Supreme Judicial Council consisting of the Chief Justice and two immediate senior most Judges or upon receiving information from any other source.<sup>239</sup> The functions of the Supreme Judicial Council are to prescribe a Code of Conduct for Judges of the Supreme Court and to inquire into the capacity or the conduct of Judge or any functionary who is not removable

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<sup>236</sup> Article 95, The Constitution of Bangladesh.

<sup>237</sup> *Idrisur Rahman vs Bangladesh*, 60 DLR (HCD) (2008) 714.

<sup>238</sup> Article 96(1), The Constitution of Bangladesh.

<sup>239</sup> Article 96(3), *ibid*.

from office except in a like manner as a Judge.<sup>240</sup> If the President has reasons to believe that a Judge of the Supreme Court may (a) have ceased to be capable of properly performing his official functions by reason of physical or mental incapacity or may (b) have been guilty of gross misconduct, he may direct the Supreme Judicial Council to inquire into the matter and report its findings.<sup>241</sup> If the report finds the judge to be physically or mentally incapable of discharging his functions or guilty of gross misconduct, the President shall, by order, remove him from office.<sup>242</sup>

There is a comprehensive legal framework that regulates the appointment, removal, etc., of judicial officers at the subordinate courts. The prescribed procedures are practiced, with exceptions that predominantly result from political interference. The Constitutional requirement to set out specific qualifications of the Supreme Court Judges has remained unmet. The legal requirement only of tenure to the exclusion of professional and intellectual competence widens the scope for inappropriate judicial induction. The fact that there has been no move to fill this gap by any political government to date, aptly demonstrates the lack of political will to drive change that might be impede political interests in the long run.

While the Constitution enjoins upon the President to appoint Supreme Court Judges after due consultation with the Chief Justice, in practice, the Ministry of Law, Justice, and Parliamentary Affairs retains, in the name of the President, the authority to decide the number of judges who will be appointed to the Supreme Court.<sup>243</sup> The undermining of the consultation provision during judges' appointment is not new and has been practiced by successive governments in the past. Since 2002 however, the 'practice [of consultation] started to be adhered more in breach than in observance leading to protests from the members of the Bar'.<sup>244</sup> Although the provision of consultation with the Chief Justice was revived by the 15th amendment of the Constitution in June 2011, the competence and credibility of several judges appointed thereafter, apparently with the consent of the Chief Justice, came under fire on account of their involvement in criminal activities and political bias.<sup>245</sup>

The practice of supersession of Supreme Court Judges has become a usual practice rather than exception. While it is normative to appoint Chief Justices on the basis of seniority, this principle has been violated repetitively in recent years.<sup>246</sup> There is a similar concern that

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<sup>240</sup> Article 96(4), *ibid*.

<sup>241</sup> Article 96(5), *ibid*.

<sup>242</sup> Article 96(6), *ibid*.

<sup>243</sup> Farzana Nawaz, "Overview of corruption within the justice sector and law enforcement agencies in Bangladesh", *U4 Expert Answer*, Anti-Corruption Resource Center and Transparency International, CHR, Michelson Institute, 2012, p. 4.

<sup>244</sup> Kazi Ebadul Hoque, *Administration of Justice in Bangladesh*, The Asiatic Society, Dhaka, 2003, p.29.

<sup>245</sup> Interview with Mizanur Rahman Khan, Deputy Editor, Prothom Alo. Also see Zahidul Islam Biswas, "Do we have an independent Judiciary?", *Forum* (a monthly publication of *The Daily Star*), 6 September, 2012, pp. 12-15, at p.5.

<sup>246</sup> It is useful to note that the trend in supersession of Supreme Court Judges started in earnest with the inception of the Caretaker Government (CTG) system through a Constitutional amendment under which the post of the Caretaker Government head was reserved for the immediate past Chief Justice of the Supreme Court. While the spirit of the CTG was to ensure a free and fair election under direct supervision of the former Chief Justice who is supposed to be insular from political bias, this has proved to be counter-productive as successive governments began to appoint individuals of their choice to the

politically motivated judicial appointments have increased in recent years. For example, more than one-third of the 45 Supreme Court judges recruited by the previous Bangladesh Nationalist Party (BNP)-led alliance government were allegedly affiliated with the ruling alliance.<sup>247</sup> The current Awami League-led alliance government has appointed a total of 48 Judges to the Supreme Court since their assumption to power in 2009<sup>248</sup>, most of whom have been selected for their pro-government bias.<sup>249</sup>

Political considerations are also manifest from forced retirement of judges ostensibly "in order to maintain discipline in the public service" but without consultation with the Supreme Court as is required by the law. The Asian Human Rights Commission reports, for example, that on July 30, 2009 the Government issued a notification stating that the President has sent two judges into retirement accordance with Section 9(2) of *The Public Servants (Retirement) Act 1974*. This came three days after protests by nearly 100 judicial officers challenging the exercise of power by administrative officials over the judiciary. The agitating judicial officers also demanded the removal of the Secretary to the Ministry for Law, Justice and Parliamentary Affairs, who was accused of indulging in pro-executive activities and whose controversial recruitment to the service was pending before the Supreme Court. On August 3, the government in a separate notification cancelled its earlier decision to send the concerned judges into forced retirement citing that the earlier decision suffered from a 'procedural mistake'.<sup>250</sup>

Judicial independence is often curtailed when judges are transferred or benches are changed if their decisions seem unfavourable to executive organs. This leads judges to "exercise self-censorship to the extent that they do not decide against the government if the decision has the potential to harm or embarrass the government in any way"<sup>251</sup>. Consequently, judges commonly refrain from decisions that may displease the government, particularly in high-profile cases having political involvement or implications. Judges, therefore, are not "intellectually free to enjoy independence but are instead weighed down by fears of political persecution".<sup>252</sup> Indeed, "many judges exercise judicial power in anticipation of future gain".<sup>253</sup>

Although the President is vested with the power to discipline judges of the subordinate courts, the fact that he is constitutionally mandated to act on the advice of the Prime Minister

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office of the Chief Justice to ensure a favourable outcome in the elections conducted under the CTG regime.

<sup>247</sup> Syful Islam, "Bangladesh, Where the Judiciary Can Be an Obstacle to Justice", available at <http://www.youthmedia.eu/media/116429-bangladesh-where-the-judiciary-can-be-an-obstacle-to-justice>

<sup>248</sup> Information collected from the Office of the Registrar, Supreme Court of Bangladesh.

<sup>249</sup> In conversation with Supreme Court lawyers (*anonymity requested*).

<sup>250</sup> Asian Human Rights Commission (AHRC), "BANGLADESH: Bangladesh should be careful about the Judiciary's independence", statement released on 9 August, 2009 available at <http://www.humanrights.asia/news/ahrc-news/AHRC-STM-164-2009>

<sup>251</sup> Quoting Dr. Shahdeen Malik, Advocate, Supreme Court of Bangladesh.

<sup>252</sup> Quoting a former Judge of the Appellate Division (*anonymity requested*).

<sup>253</sup> *Ibid.*

places the real power of discipline in the hands of the Prime Minister. The provision that requires the President to concur with the Supreme Court on control and discipline of judges becomes redundant for the same reason; same for the provision that the opinion of the Supreme Court shall prevail over that of the executive government in case of a difference of opinion<sup>254</sup> As for Supreme Court Judges, although the law empowers the President to remove a judge from office for incapacity or misconduct based on an inquiry conducted by the Supreme Judicial Council, in practice, the Ministry of Law, Justice and Parliamentary Affairs submits the matter of removal of judges first to the Prime Minister and then to the President. Thus, the Chief Executive of the State plays a very active role in the discipline of judges of the Supreme Court. This corroborates the perception that the Supreme Judicial Council often acts under compulsion from the political executive. The fact that the Supreme Judicial Council was convened only twice in the last decade testifies its ineffectiveness.<sup>255</sup>

Political manipulation of due process in bail matters, particularly in political cases, also compromises judicial independence. The lower courts too have been found to reject bail prayers by opposition political leaders.<sup>256</sup> Findings of 2004 ADB research<sup>257</sup> reveal that infamous terrorists and criminals have obtained bails from various courts in cases involving serious non-bailable offences by involving different ministries of the government including the police, Sessions Judges and Magistrates to facilitate bail for criminals with particular political affiliations. High Court Judges often refuse to hear matters ostensibly on grounds of 'embarrassment' but fail to furnish reasons for such embarrassment. In May 2012, while some judges of the High Court Division felt "embarrassed" to hear the bail petitions of prominent opposition leaders, another bench passed dissenting orders on a bail petition.<sup>258</sup>

The government has also deployed mobile courts under the Mobile Court Act, 2009 ostensibly to prevent 'anarchy' during general strikes. These courts are empowered to arrest and sentence people after summary trials, with no scope for defence. These mobile courts are seen as assisting the government fulfill their political agenda.<sup>259</sup>

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<sup>254</sup> Rule 11, The Bangladesh Judicial Service (Posting, Promotion, Grant of Leave, Control, Discipline and Other Conditions of Service) Rules, 2007.

<sup>255</sup> In April 2004, the Supreme Judicial Council passed its first order removing a High Court judge. It was alleged that newly appointed Judge, Shahidur Rahman, had been approached by a former client who was seeking assistance for a relative. The judge had indicated that he could help, kept with him the relevant file and some payment was made. The matter was brought to the attention of the Chief Justice by the President of the Bar Association. The accused judge asked the High Court for judicial review of the order for his removal and obtained a stay. The Appellate Division then stayed the order of the High Court Division. The Council's action reflected its concern with maintaining a high standard of integrity and served as a warning that similar cases would be taken seriously [*Global Corruption Report 2007*, "Country Reports on Judicial Corruption: Bangladesh", p. 182].

<sup>256</sup> For details see Zahidul Islam Biswas, 2012, *op.cit.* p.15.

<sup>257</sup> Asif Nazrul, Law and Practice Relating to Bail Administration of Justice and Areas of Intervention, prepared for the ADB, July 2004.

<sup>258</sup> *The Daily Star*, "HC judge feels 'embarrassed'", May 3, 2012.

<sup>259</sup> Odhikar and Asian Legal Resource Center (ALRC), *Universal Periodic Review of Bangladesh*, for submission to UN Human Rights Council, Geneva, 22 April-03 May, 2013, p.5.

The appointment of Supreme Court judges has over the years seemingly become politicised leading to widespread speculation about their professionalism and the practice of moral and ethical judicial standards. This has had a seemingly distinct impact on the quality, credibility and impartiality of judges, which is reflected in mediocre and subjective judgments.<sup>260</sup> Besides, political influence over judges compromises judicial integrity, which is a cardinal feature of an independent judiciary.

## **Governance**

### ***Transparency, Accountability and Integrity: Legal Framework and Practice on the Ground***

Transparency of judicial proceedings is secured by way of open court hearings. The law also explicitly provides for public hearings of all cases and requires judicial decisions to be accompanied with reasons. For example, the Constitution lays down that every person accused of a criminal offence shall be entitled to a speedy and public trial by an independent and impartial court established by law.<sup>261</sup> Again, *The Civil Procedure Code 1908* provides that judgements must be pronounced, dated and signed in open court at the time of pronouncing it,<sup>262</sup> which is reiterated in the Civil Rules and Orders.<sup>263</sup> Similar provisions regarding open court hearings can also be found in special laws, e.g., *The Children Act 1974* and *The Suppression of Acid Crimes Act 2002*. Detailed guidelines on the content and structure of judgements are prescribed in the *Civil Rules and Orders, Civil Suits Manual, The Criminal Procedure Code 1898, Supreme Court Rules*, etc.

Judges are not required by law to *proactively* provide the general public with information on judicial spending, functions, judicial statistics, court hearing records etc., but the law does not debar a person from actively seeking such information. In addition to *The Right to Information Act 2009* which entitles citizens to seek information on any matter relating to judicial functions, there are other provisions under which they may seek information. For example, any person may apply for information from the records and registers of any court, including the High Court.<sup>264</sup> Applications for information may be made in the prescribed form to the presiding Judge of the concerned subordinate court.<sup>265</sup> The law bars the general public from accessing court records but permits public officers and lawyers to access necessary records in exchange for a fee.<sup>266</sup> At the higher judiciary, litigants, lawyers, strangers (with exception), officers and others may collect information by application in the prescribed form as laid down in *The Supreme Court (High Court Division) Rules, 1973* (Volume-I).

A plaintiff or a defendant in a suit is entitled at any stage of the suit, before or after the decree, to obtain copies of the record of any suit, including exhibits which have been furnished and finally accepted by the Court as evidence.<sup>267</sup> Ordinarily, a stranger to the suit may, after a decree has been passed, obtain copies of the plaint, written statements, affidavits and petitions filed in the suit but he can obtain such copies before the passing of the

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<sup>260</sup> Interview with a former Appellate Division Judge (*anonymity requested*).

<sup>261</sup> Article 35(3), The Constitution of Bangladesh.

<sup>262</sup> Rules 1 and 3, Order 20, Civil Rules and Orders (CRO).

<sup>263</sup> Rule 140, CRO, Vol. 1.

<sup>264</sup> Rule 513, CRO, Vol. 1 & Rule 2 (Chap. XV), High Court Rules.

<sup>265</sup> Rules 514, 469, CRO.

<sup>266</sup> Rule 469, *ibid*.

<sup>267</sup> Rule 523, *ibid*.

decree provided he can show grounds to the satisfaction of the Court.<sup>268</sup> A stranger to the suit may also obtain copies of judgments, decrees or orders at any time after they have been passed or made.<sup>269</sup> However, he has no right to obtain private documents except with the consent of the person by whom they were produced or his successor in interest.<sup>270</sup> A stranger to an appeal or other proceedings in the High Court shall not be entitled as of right to inspect any record or document. He may, however, apply for an order to inspect such order or document provided that he will not be allowed to inspect any exhibit used in evidence, except with the consent of the person for whom they were produced or his successor in interest.<sup>271</sup>

Appointments, removals, etc, of judicial officers of the subordinate courts are publicised through Government Gazette notifications. This is not practiced in the Supreme Court. Judicial officers are required to declare to the Government at the time of entering the service all properties (moveable and immoveable), including jewellery, shares, certificates, securities and insurance policy up to a prescribed value owned by him or member of his family. All officers shall submit to the Government an annual return of assets showing any increase or decrease of property as shown in the declaration.<sup>272</sup> Liquid assets are also to be disclosed, if so required by the Government.<sup>273</sup> However, the law does not require independent auditing of the asset disclosure forms of members of the national-level judiciary and there is no requirement for making the asset disclosures public. There are also no provisions in law to allow citizens' access to asset disclosure information of the judiciary which hampers their ability to hold the judiciary accountable.<sup>274</sup> There is no legal provision requiring Supreme Court Judges to disclose their assets.

The legal framework has considerable provisions that permit citizens to access information on judicial functions but there is a dearth of knowledge amongst the general public in this respect. However, experience on the ground reveals that it is only people having direct interest in a case (litigants, lawyers, etc.) who seek information on a given case. Although mandatory for judicial officers at the entry level, the fact that the law does not specifically require disclosure of assets by Supreme Court Judges raises the chances of misconduct.

The general public is largely devoid of information on court proceedings (unless they attend the court hearings in person) despite legal provisions entitling any person to information from the court records. The process of seeking information is far from easy, largely due to procedural complexities, in some cases demands for bribe, and inadequate knowledge of their right to information. Institutional unwillingness to some extent subverts efforts to secure judicial transparency; for example, although initiatives were undertaken a few years back to allow the media to constructively report and comment on court proceedings and the conduct of judges, the attempts were quashed by the High Court Division on the ground that such freedom would impede the freedom of the judiciary and the impartiality of the judges.<sup>275</sup>

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<sup>268</sup> Rule 524, *ibid.*

<sup>269</sup> Rule 525, *ibid.*

<sup>270</sup> Rule 526, *ibid.*

<sup>271</sup> Rule 5 (Chap. XV), High Court Rules.

<sup>272</sup> Rule 13, *ibid.*

<sup>273</sup> Rule 14, *ibid.*

<sup>274</sup> Farzana Nawaz, 2012, *op.cit.*, p. 4.

<sup>275</sup> *The Daily Star*, "HC declares new ordinance invalid, Says it undermines spirit of constitution, free judiciary", May 25, 2008.

However, given that judicial officers function in open courts, their performance indirectly comes under public scrutiny. Public hearing of all cases provides the general public with an interest in the proceedings with an opportunity to watch how the court functions, listen to deliberations by counsels of both parties and hear the observations of the judges. The practice of public hearings in open courts essentially restricts the arbitrary use or abuse of judicial power and encourages judges to maintain a minimum standard of judicial decorum and performance. In practice however, very few people, outside of disputing parties, their friends and relatives, attend court proceedings. However, sensational cases that are covered by the media usually attract larger audiences. Apart from the public, Judges also come under close scrutiny of the lawyers who spend a considerable amount of time in court every day. Lawyers contribute greatly to promoting public understanding of the judiciary by sharing information on courtroom activities, the demeanour of the concerned Judge, etc. with their clients and in public interest forums. Transparency in judicial functions is also secured by the judicial practice of citing reasons/grounds for judicial decisions. This element exposes judges to review and censure and encourages consistency in judicial decisions.<sup>276</sup>

Government Gazette notifications on appointments, removals, etc, of judicial officers of the subordinate courts are easily available to the public but there is no mechanism to learn about such matters in the higher judiciary. Again, while on-line sources, developed recently, provide information on Supreme Court cause list, disposals and pending matters, no such facilities exist in the lower judiciary where the bulk of cases are essentially filed at the first instance.

Courts in Bangladesh, in particular the lower judiciary, continue to function under an archaic case management system that effectively blocks information flow. The absence of an automated case management system with updated information on case status and case data combined with a large backlog of cases create opportunities for court clerks and judicial officers to harass clients and extract bribes.<sup>277</sup> Recently, some headway has been made to modernise the case management system. In 2011, the Supreme Court launched an initiative to increase access of the public to court case information. The idea is to display on the internet a list of cases pending at the Supreme Court, the information of which will now be

<sup>276</sup> Sarkar Ali Akkas, "Judicial Accountability in Bangladesh: Is Ombudsman an Option?", available at <http://www.google.com/search?q=Judicial%20accountability%20by%20Akkas%20Ali%20Sarker&ie=utf-8&oe=utf-8&aq=t&rls=org.mozilla:en-GB:official&client=firefox-a&source=hp&channel=np#hl=en&client=firefox-a&hs=hir&rls=org.mozilla:en-GB%3Aofficial&channel=np&sclient=psy>

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<sup>277</sup> Transparency International, Bangladesh, *National Household Survey 2007*, pp.38-39. Similar findings are revealed by TIB's National Household Surveys in 2010 and 2012 available at [www.ti-bangladesh.org/files/HHSurvey-ExecSum-Eng-fin.pdf](http://www.ti-bangladesh.org/files/HHSurvey-ExecSum-Eng-fin.pdf) and <http://www.ti-bangladesh.org/beta3/index.php/en/about-us/what-we-do/research-knowledge/household-survey/93-research-policy/household-survey/546-national-household-survey-2010> respectively.

available to clients via mobile phone SMS.<sup>278</sup> The Supreme Court website currently allows the Court to directly upload case information scheduled for the next working day; yet, with an estimated 72 million mobile phone users in Bangladesh, the SMS-based system can be accessed by many more people from across the country, via technology already in their hands.<sup>279</sup> Although the initiative to publish Supreme Court judgements on-line has been welcomed generally, the use of on-line resources are limited to judges, lawyers, academics and scholars and not yet ready for use by the masses.

Open court proceedings are mandated by law and carried out in practice in an open environment where the public can sit and watch the court functions. While the lower judiciary, as the court of the first instance, is considerably more crowded, public attendance is more controlled in the Supreme Court. Deficit of transparency in judicial functions results primarily from deficiencies in the infrastructure and management systems. The public does not have easy access to judicial decisions, particularly in the subordinate courts although moderate attempts at making them widely available are underway with donor support at the higher judiciary.

All subordinate courts and tribunals are ultimately accountable to the High Court Division of the Supreme Court.<sup>280</sup> The law requires subordinate courts to dispatch monthly, quarterly, half-yearly and annual statements on detailed work of each court to the District Judges who submit the same to the High Court Division of the Supreme Court, after careful scrutiny and verification of the statements.<sup>281</sup> District Judges are also required to submit to the High Court Division an Annual Confidential Report (ACR) on the work, character, qualifications, etc., of each judicial officer serving under them.<sup>282</sup> In case of bad reports, unfavourable traits are to be briefly illustrated but no adverse remark can be made without corroborative data.<sup>283</sup> The ACR of District Judges is prepared by the Supreme Court Judges. Inquiries into allegations against a judge are carried out by the executive branch of the Government, namely, the Ministry for Law, Justice and Parliamentary Affairs, despite that the Supreme Court has control over the disciplinary proceedings.

The Chief Justice supervises both divisions of the Supreme Court. Judges are required to give reasons for their decisions. Judgements have to be reasoned, detailed and specific.<sup>284</sup> Judgments of the lower courts can be challenged in the High Court Division which enjoys original, appellate and other jurisdictions. Decisions of the High Court Division may be appealed against in the Appellate Division.

The President may direct the Supreme Judicial Council to inquire into the conduct of a Supreme Court judge; this process is, however, prone to political manipulation as the

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<sup>278</sup> UNDP, “Supreme Court Cause List at Fingertips”, 2011 available at <http://www.undp.org.bd/info/events.php?d=3&newsid=944&t=>

In%20News <http://www.undp.org.bd/info/events.php?d=3&newsid=944&t=In%20News>

<sup>279</sup> *Ibid.*

<sup>280</sup> Article 109, The Constitution of Bangladesh.

<sup>281</sup> Rules 788, 794, 800, CRO, Vol.1.

<sup>282</sup> Rule 809, *ibid.*

<sup>283</sup> Rule 810, *ibid.*

<sup>284</sup> Order 20, Rules 4-5, The Code of Civil Procedure, 1908; Section 367, The Code of Criminal Procedure, 1898.

President is bound to act on the advice of the Prime Minister as per Article 48(3) of the Constitution. Besides, the constitutional leeway that the President may receive information about the incapacity or misconduct of a judge from the 'Supreme Judicial Council or any other source' presents a double-edged problem: first, although the Supreme Judicial Council enjoys ample power to discipline Supreme Court judges, it is circumscribed by the fact that the Council is composed exclusively of judges, making its task of disciplining a fellow judge difficult, and second, the expression 'any other source' is dangerously ambiguous, creating scope for motivated complaints. In the absence of a mechanism enabling citizens to access the President to inform about a judge's misconduct, 'any other source' might effectively be people with connections with the political executive.

The law grants immunity to judges and as such, there is no concrete mechanism for the public to lodge their complaints against any judge at the lower judiciary or at the Supreme Court. On the contrary, judges can hold individuals in contempt under *The Contempt of Court Act, 1926* for comments or demeanor that are likely to undermine the judiciary. Judicial officers or any other person who is bound to execute the lawful warrants or orders of any such Judge, Magistrate, or other person acting judicially are legally protected for acts done in their judicial capacity.<sup>285</sup>

The law provides various mechanisms for evaluating performance of judges and securing accountability of judges, particularly at the lower judiciary. The law also provides guidelines on how to prepare substantiated judgements, premised on reasons. However, accountability of judges is eroded by immunity from prosecution and criticism.

The Annual Confidential Reports (ACRs) constitute a major tool for practicing accountability measures at the lower judiciary. Apart from ACRs, subordinate court judges are also subjected to a performance evaluation by the District Judge on the basis of a 6-point scale according to which s/he has to deliver judgments on six contested suits, each suit earning the Assistant Judge one point.

It is customary for Judges of the Supreme Court, under directives of the Chief Justice, to undertake periodic inspections of subordinate courts throughout the country to take stock of the overall performance of courts at the district level, identify irregularities, and address complaints of misconduct by judicial officers. Since the Supreme Court has designated vacation periods in a year that do not usually overlap with the vacation of the subordinate courts, it is common for Judges of the Supreme Court to embark on inspection tours of subordinate courts during these breaks. Proactive Chief Justices have also been known to undertake surprise visits of courts. Inspection reports are lodged with the Registrar of the Supreme Court who submits them to the Chief Justice at an appropriate time for directives and orders.<sup>286</sup>

Public hearing of court proceedings ensures a certain degree of checks and balance on judicial performance. The appellate process too, offers a means of reviewing judicial performance and accountability. A decision of the subordinate court may be sent on appeal to a higher court if there is reason to believe that the decision was flawed, or was not reached in accordance with

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<sup>285</sup> Section 1, The Judicial Officer's Protection Act, 1850.

<sup>286</sup> Md. Shah Abid Hossain, "Ethics and Codes of Conduct for Judges, Prosecutors and Law Enforcement Officials : Bangladesh Perspective", pp.284-304, at p.294 available at [http://www.unafei.or.jp/english/pdf/RS\\_No80/No80\\_31PA\\_Hossain.pdf](http://www.unafei.or.jp/english/pdf/RS_No80/No80_31PA_Hossain.pdf)

law and procedural standards. On appeal, the appellate court identifies and corrects the judicial error made by the judge or upholds the decision of the subordinate court as appropriate. 'Non-speaking judgments' (unclear) are often struck out by the appellate authorities.

Judges are constantly under the scrutiny of practicing lawyers who may voice their dissatisfaction with judges' performance either by lodging formal complaints with the disciplinary authority or the Chief Justice or by boycotting the courts of judges who do not maintain minimum professional or ethical standards.<sup>287</sup> The Bar Associations also challenge judicial transgressions manifest from collective resolutions that sent to the Ministry of Law, Justice and Parliamentary Affairs and the Supreme Court for action. If the Ministry considers the allegations to be genuine, it proceeds to discipline the concerned judge.<sup>288</sup> It should be noted however, that Bar Associations are particularly vigilant when it is dominated by members in favour of the opposition political party. Disciplinary proceedings against judges are carried out internally and are not open to the public. The process lacks transparency since it does not involve any one from outside the system (lay persons) or persons from the legal profession.

There are other ways of securing Judges' accountability. For example, judicial decisions are subject to scrutiny by the appellate courts.<sup>289</sup> A look at how expeditiously, fairly, and judiciously judges decide cases brought before them, including the depth of judicial reasoning in their decisions reveals the extent of their sincerity and integrity in the discharge of their functions. Besides, critical analyses and reviews of judicial decisions by academics in books, journals and the media provide an effective means of questioning judicial accountability. The latter however, being highly technical, are largely confined to academic circles and are not widely read.

Accountability measures are also thwarted when citizens and institutions are charged with contempt orders for comments against or criticism of the judiciary in any way. While the spirit of *The Contempt of Court Act, 1926*<sup>290</sup> is to protect judicial actions from public scrutiny, the indiscriminate use of its provisions, for example, by the Supreme Court in recent times has seemingly demonstrated its intolerance to criticism, even if constructive, and disregard for the freedom of speech and expression. This is manifest from contempt orders against editors, publishers and reporters of newspapers for questioning, for example, the academic competence of officiating Judges, or the neutrality of the Supreme Court in public.<sup>291</sup> In another instance, the court issued arrest warrants against TIB officials in 2010, accusing them of tarnishing the image, honour and reputation of the judiciary, following the publication of

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<sup>287</sup> Sarker Ali Akkas, 2004, *op.cit.*, p.4.

<sup>288</sup> Interview with Dr. Shahdeen Malik, Advocate, Supreme Court of Bangladesh.

<sup>289</sup> Dato' Param Cumaraswamy, (former UN Special Rapporteur on the independence of judges and lawyers), "Tension between judicial independence and judicial accountability", a publication of the Asian Human Rights Commission (AHRC) available at [www.humanrights.asia/resources/.../asPlainPDF?...ahrc...ahrc.....](http://www.humanrights.asia/resources/.../asPlainPDF?...ahrc...ahrc.....)

<sup>290</sup> According to Section 3 of The Contempt of Courts Act 1926, a contempt of court is punishable with simple imprisonment for a term which may extend to six months, or with fine, which may extend to BDT 2000 (two thousand), or with both. However, the accused may be discharged or the punishment awarded may be remitted on apology being made to the satisfaction of the Court. Also, the High Court Division shall not impose a sentence in excess of 6 months for any contempt either in respect of itself or of a Court subordinate to it.

<sup>291</sup> Syful Islam, *op.cit.*

the results of the National Household Survey conducted by TIB which found the judiciary to be the most corrupt sector in Bangladesh.

The technical aspects of judicial accountability in terms of public hearings, appeals, judicial reviews, etc. operate well. However, court conduct has over the years been subjected to political manipulation often leading to flawed/biased decisions, misuse and/or irresponsible use of laws, all to the detriment of democratic governance. The politicisation of judicial appointments has induced selective implementation of the disciplinary measures against judges. Given that the discipline of judges of the Supreme Court is largely controlled by the judiciary itself, this system has failed to gain public confidence. Indiscriminate use of the contempt law by the judiciary is another manifestation of judicial intolerance of critique/comments about its role and function.

The President is vested with the power of disciplining judicial officers in the subordinate courts which he exercises in consultation by the Supreme Court.<sup>292</sup> There are elaborate sets of rules that seek to govern the conduct of judicial officers. Officers of the lower judiciary are subject to the same rules of conduct and disciplinary measures as other civil servants (bureaucracy) as prescribed by *The Government Servants (Conduct) Rules 1979* and *The Government Servants (Discipline and Appeal) Rules 1985* respectively. These Rules essentially provide a framework within which the conduct of government servants, including judicial officers, is regulated.<sup>293</sup>

The *Government Servants (Conduct) Rules 1979* broadly address integrity issues by prohibiting judicial officers from certain activities, for example, politics, favoritism, etc.<sup>294</sup>, disbar them from accepting or permitting any member of his family to accept any gift, award, etc., from any person the receipt of which will make him beholden to the donor<sup>295</sup> and require disclosure of assets and properties.<sup>296</sup>

Circumvention of any of the rules of conduct shall be construed as “misconduct” within the meaning of *The Government Servants (Discipline and Appeal) Rules 1985*.<sup>297</sup> The Government may impose penalties on a judicial officer on grounds of, amongst other things, misconduct or corruption.<sup>298</sup>

Inquiry procedures are spelt out by *The Government Servants (Discipline and Appeal) Rules 1985*. Penalties imposed for transgression of the conduct rules or corruption may be minor or

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<sup>292</sup> Article 116, The Constitution of Bangladesh.

<sup>293</sup> Although following separation of the Judiciary from the Executive in 2007, the work and functions of judicial officers are now guided by the Judicial Service Rules, a separate set of rules governing the conduct of judicial officers is yet to be formulated. As such, until the time when such Rules are in place Judicial Officers’ conduct continues to be governed by The Government Servants (Conduct) Rules, 1979.

<sup>294</sup> Rules 79-83, The Government Servants (Conduct) Rules 1979.

<sup>295</sup> Rule 5(1), *ibid*.

<sup>296</sup> Rules 13-14, *ibid*.

<sup>297</sup> Misconduct as defined here also includes (a) disobedience to lawful orders of superiors, (b) gross negligence of duties, (c) flouting Government orders, circulars and directives without lawful cause and submissions of petitions before any authority containing wild vexatious, false or frivolous accusation against a government servant (Rule 1(f), *The Government Servants (Discipline and Appeal) Rules 1985*).

<sup>298</sup> According to *The Government Servants (Discipline and Appeal) Rules, 1985*, a person shall be presumed to have a persistent reputation of being corrupt if allegations of corruption against him are received during his tenure of service in more than two posting stations (Rule 3 (iii), *explanation*).

major depending on the degree of the offence ranging from censure, withholding of promotion, etc. to demotion and suspension and dismissal from service.<sup>299</sup> Dismissal from service disqualifies the officer from future employment under the Government or any corporate body established by or under any law.<sup>300</sup> Provisions are in place to appeal against any such order.<sup>301</sup> Penalties are also prescribed by the *Civil Rules and Orders (CRO)* in the event of surreptitious or gratuitous supply of information in connection with a suit or proceeding by any officer of the court.<sup>302</sup>

In addition to *The Government Servants (Conduct) Rules 1979*, there exists a Code of Conduct for Judicial Officers formulated by the Ministry of Law and Justice in 1988. This Code broadly encapsulates guidelines for Judicial Officers that signify the manner in which they are expected to conduct themselves and discharge their judicial functions.

Judges of the Supreme Court are barred by law from holding any office, post or position of profit or emolument or take any part whatsoever in the management of conduct of any company, association or body the objective of which is to make a profit or gain.<sup>303</sup> Integrity issues of the Supreme Court Judges are also dealt with under a 14-point Code of Conduct formulated by the Supreme Judicial Council. Effective from May 2000, this Code stipulates a number of activities, similar to those prescribed for Judicial Officers above, that a Judge of the Supreme Court, whether in official or personal capacity, must avoid. While the law provides guidelines regarding gifts and hospitality, there is no restriction or rules regarding engagement of judicial officers in the private sector after leaving the government.

On the face of it, the rules relating to judicial officers' conduct and discipline appear vigorous. The same set of rules and regulations formulated for civil service officials is applicable to subordinate court judges. Devised specifically for officers in civil administration, these rules may not be conducive to securing judicial integrity. Disciplinary measures for Judges are largely ornamental and under-utilised, as in practice they enjoy virtual immunity from censure. Judges recruited on the basis of their partisan affiliation tend to escape disciplinary action more easily as opposed to other judges.

The conduct of the Judicial Officers comes under scrutiny when the District Judges prepare the Annual Confidential Reports (ACR). The performance of subordinate judicial officers is evaluated for incorporation in the ACR which provides a useful means of flagging unethical behavior and corrupt practices by different members of the judicial service. The ACR also contains information on the punishment awarded to corrupt officials.<sup>304</sup> Personal reflections of District Judges in the ACR and in appropriate cases, the High Court Division of the Supreme Court regarding the quality, honesty, integrity and performance of judicial officers creates a deterrent to indulging in bad practice and corruption. Adverse comments in the ACR play a significant role in monitoring and evaluation of the conduct of judicial officers. There have been instances where action has been taken against errant judicial officers on the basis of the ACR by the District Judge or Session Judge locally and by the Supreme Court and Ministry of Law Justice and Parliament Affairs, centrally.

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<sup>299</sup> Rule 4(2)(3), The Government Servants (Discipline and Appeal) Rules, 1985.

<sup>300</sup> Rule 4(4), *ibid.*

<sup>301</sup> Rules 17-22, *ibid.*

<sup>302</sup> Rule 521, CRO, Vol.1.

<sup>303</sup> Article 147(3), The Constitution of Bangladesh.

<sup>304</sup> Rule 808(19), CRO, Vol.1.

While in theory, ACRs are meant to create deterrents to bad practice and corruption, it has been found that the ACR can itself be a tool for corruption. The prevalence of *tadbir* culture (lobbying for favours) provides opportunities for lobbying for a favourable ACR. Besides, contents in the ACR might not expose the corruption of judicial officers if there is collusion with their superior judges who will be writing their ACRs.<sup>305</sup>

Although the law requires judicial officers to provide assets and wealth statements every year, this is largely absent in practice. According to the 2010 Global Integrity Report, weak conflict of interest regulations greatly contribute to the ineffectiveness of the Bangladesh judiciary. The immediate past Chief Justice of the Supreme Court reportedly disclosed his assets in December 2010, followed by submissions of wealth statements by some more senior judges in January 2011 (the information was not, however, disclosed for public knowledge) but the vast majority has not followed suit.

In Transparency International's Global Corruption Barometer 2010,<sup>306</sup> citizens rated the judiciary in a score of 3.5 on a 5-point scale (1 being 'not at all corrupt' and 5 'extremely corrupt').<sup>307</sup> These findings were corroborated by the findings of a household survey conducted by Transparency International, Bangladesh in 2010 which found that 88% of all households that sought judicial services were reportedly subjected to corruption and harassment.<sup>308</sup> The survey also found that the level of corruption had increased between 2007 and 2010, with higher rates of corruption in urban areas (90.5%) than rural areas (86.2%).<sup>309</sup> The 2012 survey showed a decline in the rate though the rate of victimisation by corruption in the sector remained as high as 57.1 percent.<sup>310</sup> Similarly, Global Integrity's 2010 report which compared accountability and integrity systems in 31 diverse countries found that in Bangladesh judicial independence, fairness and citizen's access to justice is "weak" (score of 69 out of 100).<sup>311</sup> Worse still, the performing indicators in this category that whether "in practice" judgments in the criminal system followed the law and whether judicial decisions were enforced by the state, were both classified as "very weak" (score of 50 out of 100).<sup>312</sup>

Indeed, systemic failures often flow from corrupt practices in the judiciary. According to successive reports on TIB's National Household Survey, corruption in the judiciary takes the form of bribery, nepotism, embezzlement of funds, deception, etc.<sup>313</sup> It has been contended that judges are given to doctoring their decisions in exchange for cash, land, and other

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<sup>305</sup> Shariful Islam, 2010, *op.cit.*, p. 106.

<sup>306</sup> This is a cross-country survey that collects the general public's views on and experiences of corruption.

<sup>307</sup> Transparency International, *Global Corruption Barometer*, 2010, available at [http://www.transparency.org/policy\\_research/surveys\\_indices/gcb/2010](http://www.transparency.org/policy_research/surveys_indices/gcb/2010)

<sup>308</sup> Transparency International, Bangladesh (TIB), *National Household Survey on Corruption in Service Sectors 2010*, p.4, available at [http://www.ti-bangladesh.org/research/Executive\\_Summary\\_23122010\\_FINAL.pdf](http://www.ti-bangladesh.org/research/Executive_Summary_23122010_FINAL.pdf)

<sup>309</sup> *Ibid.*

<sup>310</sup> Transparency International Bangladesh, *National Household Survey on Corruption in Service Sectors 2012*, available at [www.ti-bangladesh.org/files/HHSurvey-ExecSum-Eng-fin.pdf](http://www.ti-bangladesh.org/files/HHSurvey-ExecSum-Eng-fin.pdf)

<sup>311</sup> *Global Integrity Report 2010:Bangladesh*, available at <http://www.globalintegrity.org/report/Bangladesh/2010/>

<sup>312</sup> *Ibid.*

<sup>313</sup> TIB 2010, *op.cit.*, p. 4.

benefits. “Personal backgrounds are an important facet for ensuring professional integrity of judges. Previously, social and family backgrounds of candidates for judicial service were meticulously scrutinised. This practice has now been dispensed with; as long as a candidate is a political loyalist, his/her background is immaterial”.<sup>314</sup> Existing studies on the lower judiciary reveals that corrupt judges and magistrates apparently stay in touch with other corrupt elements in the justice system. For example, clerks responsible for registering, filing and processing court orders reportedly extort money from litigants for providing information or eliciting favours from magistrates in criminal courts. Similarly, lawyers, transmit a portion of their earnings to the magistrates or judges for a successful conclusion of their cases.<sup>315</sup> Bail matters provide judicial officers with an opportunity for extracting bribes and perks and the most frequent bail irregularities are reportedly committed in response to requests by senior judicial officers over phone or personally.<sup>316</sup>

The absence of asset declaration by judges is discouraging and creates room for speculation. Existing literature provides evidence of lobbying for favours in terms of promotion and transfer to lucrative locations, politically driven verdicts and the prevalence of corrupt networks and practices that adversely affect the integrity of the judiciary on the whole.

## **Role Assessment**

### ***Executive Oversight***

The legal framework provides considerable leverage to the judiciary to oversee executive action. The Supreme Court is empowered to review legislative enactments and executive actions to assess whether they are compatible with constitutional provisions. It has the jurisdiction to hear writ petitions and issue necessary directives to ensure justice to victims of civil rights violations. The High Court Division of the Supreme Court has the power under Article 102 (1) of the Constitution to pass necessary orders for the enforcement of fundamental rights envisaged in the Constitution (Articles 26-43). Under Article 44 (1) of the Constitution, one has the right to move the High Court Division for the enforcement of fundamental rights. An aggrieved person may resort to five different types of writs namely orders in the nature of *prohibition*, *mandamus*, *certiorari*, *habeas corpus* and *quo warranto* (Article 102 of the Constitution) in seeking relief from the High Court Division.<sup>317</sup> In addition to writ jurisdiction, the High Court Division enjoys inherent power under Section 561-A of the *Code of Criminal Procedure* that allows it to pass any order deemed necessary by it to prevent abuse of the process of any court or for the ends of justice. The inherent jurisdiction of the High Court Division, which remains intact even during Martial Law, is a crucial tool for the protection of fundamental human rights.

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<sup>314</sup> Quoting a former Appellate Division Judge (*anonymity requested*).

<sup>315</sup> Farzana Nawaz, 2012, *op.cit.*, p.2.

<sup>316</sup> Shariful Islam, 2010, *op.cit.*, p. 46.

<sup>317</sup> Writs of *certiorari* and *prohibition* are intended to prevent public functionaries from exceeding their power. The distinction between the two lies in the fact that *prohibition* is issued when the act or proceeding is not completed, whereas *certiorari* is issued when the act or proceeding has been completed. The writ of *mandamus* compels public functionaries to do what they are legally bound to do when they are refusing to do it. The writ of *habeas corpus* ensures that no person is detained or confined without lawful justification or in an unlawful manner. The writ of *quo warranto* is directed to ensure that no one occupies a public office without lawful authority. For details see, Islam, Mahmudul, *Constitutional Law in Bangladesh* (2<sup>nd</sup> ed.), 2002, Mullick Brothers, Dhaka, pp.457-552.

The lower judiciary does not have the power of judicial review but can exercise declaratory powers under different laws, for example, *The Specific Relief Act 1877*. Executive actions or decisions affecting people's rights, title, interest, status or character may be challenged in the subordinate courts. Courts have the power to declare such actions illegal and may issue temporary or permanent injunctions and grant appropriate consequential relief. There are numerous examples of judicial activism whereby the High Court Division, in response to public interest litigation (PIL) by individuals and human rights activists/organisations, and sometimes *suo motu*, issued appropriate writs to remedy a legal wrong or enforce a legal obligation.<sup>318</sup> However, one of the fundamental flaws of PIL is that unless a Bench is particularly tenacious, there is very little execution of the court decisions on the ground.<sup>319</sup> Besides, biases towards government machineries and political interference often cloud the validity of these initiatives.<sup>320</sup> Put differently, chances of winning a case against the state are low if a powerful quarter within the government or political interest is involved. Besides, court orders remain systematically unimplemented.

The legal framework is generally conducive to judicial oversight of the executive. However, this is often impeded by the Judiciary's lack of independence from government influence, a situation augmented by political appointments of judges, erosion in judicial accountability and corruption.

### **Corruption Prosecution**

The Judiciary recognises the power of the Anti-Corruption Commission to initiate corruption cases.<sup>321</sup> Corruption cases are triable by Special Judges appointed from amongst the Sessions Judges, Additional Sessions Judges and Assistant Sessions Judge under the provisions of *The Criminal Law (Amendment) Act, 1958* and *The Anti-Corruption Commission Act, 2004*. These judges have the authority to try corruption cases within their territorial jurisdictions, in

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<sup>318</sup> For example, in the case of *Bangladesh vs Mariam Begum* [63 DLR (AD)(2011), 122], the government forfeited a piece of land without any notice to the owner. Commenting on the "high-handedness" on the part of the government, the Court held that the government had exceeded their authority. Again, in *Advocate Taimur Alam Khandaker vs RAJUK* [63 DLR (HCD) 2011, 517] dispute arose regarding the cancellation of allotment of land that was granted by RAJUK to the petitioner while he was in jail. The Court observed that the fact that grantee was in jail at the time of allotment of the land does not vitiate his claim to it and held that since the allotment was not cancelled on legal terms, the petitioner was entitled to the land. Concerns over manipulation of elections in the absence of a neutral government have been expressed by the Court in *Abdul Mannan Khan vs Bangladesh* [64 DLR (AD) 2012, 169] where it categorically stated that no fair election can be held while any particular party is still in power. Irregular appointments to the office of the Civil Surgeon of third and fourth class employees have likewise been challenged by the Court in *Nuruzzaman vs Bangladesh* [64 DLR (AD) 2012, 406] where it held that since the appointments had not been made legally and it was clear from the inquiry report that the petitioners managed to their appointments through irregular and corrupt practices, they did not acquire any vested right in the office on the basis of their appointments.

<sup>319</sup> Sumaiya Khair, *Legal Empowerment for the Poor and the Disadvantaged: Strategies, Achievements, and Challenges*, Colorline, Dhaka, 2011, pp. 201-2.

<sup>320</sup> Interview with a former judge of the Appellate Division Judge (*anonymity requested*).

<sup>321</sup> In *Anti-Corruption Commission vs Monjur Morshed Khan* [64 DLR (AD) 2012, 124], the Court observed that the Commission has by law exclusive power to conduct its cases including appeals by convicts and to defend decisions of Special Judges in appeals pending in the High Court Division by the accused.

addition to their original jurisdictions as Judges of civil and criminal courts. Statistics reveal that the total number of under-trial cases in Dhaka until December 2012 was 527, the total number of convictions was 17 and acquittals 59. The total number of under-trial cases outside Dhaka in the same period was 1634, the total number of convictions was 25 and acquittals 31.<sup>322</sup>

The role and power of the judiciary in trying corruption cases is primarily undermined by political influence. In 2009, the government set up a Committee under the leadership of the State Minister for Law, Justice, and Parliamentary Affairs, to review applications for withdrawal of corruption cases filed against politicians during the Caretaker Government under different laws. Similar initiatives were taken in the past too. Terming the cases as 'politically-motivated', the Committee, withdrew, as of March 2011, some 4,687 cases, most of which involved members of the ruling party.<sup>323</sup> At its first meeting, while the Committee dropped 12 corruption cases against the Prime Minister including other cases filed against senior party leaders, known party supporters, and their relatives, it has been reluctant to drop criminal charges that were filed against Opposition party leaders and has refused to withdraw charges against journalists and human rights activists.<sup>324</sup> The Chairman of the Anti-Corruption Commission has been quoted as having publicly stated that the "court is creating barriers to resolving [sic] corruption cases. The current judicial system stands in the way of efforts to wipe out corruption"<sup>325</sup>.

Apart from political interference the judiciary has largely been ineffectual in conducting independent prosecution of corruption cases due to lack of training in anti-corruption matters, sluggish investigation, poor administrative set-up, and inefficiency of the investigating agencies. Although, the vigilance of the prosecution lawyers is crucial for sustaining the court's keenness to see that the corrupt are brought to justice, the former, being largely composed of unskilled professionals, are unable to perform efficiently.<sup>326</sup>

Independent prosecution of corruption cases remains a crucial challenge for Bangladesh. Political manipulation of the prosecution and outcome of corruption cases effectively obliterates the objectivity and neutrality of the judicial process and erodes the judicial mandate of providing checks on key public institutions. Inadequate skills and knowledge on anti-corruption matters amongst investigating agencies, inefficiency of prosecution lawyers, and dearth of administrative support are some of the other major obstacles to effective prosecution of corruption cases.

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<sup>322</sup> Source: The Anti-Corruption Commission.

<sup>323</sup> Fahimul Quadir, *Countries at the Crossroads 2011: Bangladesh*, Freedom House, 2011 available at <http://www.freedomhouse.org/report/countries-crossroads/2011/bangladesh#.U7OrM1OgZnE>.

<sup>324</sup> *Ibid.*

<sup>325</sup> Syful Islam, *op.cit.*

<sup>326</sup> Interviews with Mizanur Rahman Khan, Deputy Editor, Prothom Alo and Dr. Shadeen Malik, Advocate, Supreme Court of Bangladesh.

### 3.1.4 LOCAL GOVERNMENT

Local Government Institutions (LGIs) have strong Constitutional and legal framework in Bangladesh. Local government structure in Bangladesh is primarily more deconcentrated than devolved. Political leaderships across the regimes have highlighted the need, importance and significance of LG in the broader political and administrative context. The Government of Bangladesh, from a policy perspective has recognized the role of the local government as a vehicle for service delivery and good governance at the grassroots. However in practice LGIs are still weak and bear features more of deconcentration than true form of decentralization.

Considering fiscal perspective and the extent of control of the central government, Bangladesh can be considered as a highly centralized State. The overall accountability mechanism is diffused – it is accountable to multiple authorities of the central government. Community based accountability is weak and non-functional. Some new provisions of accountability and transparency like citizens charter, open budget system and access to LG information through right to information have been introduced but in reality LGIs do not follow such processes and in many cases are not even aware of such practices.

LGIs tend to depend heavily on the national government's fiscal transfer. Such dependency eventually forces the LGIs to compromise on their autonomy to a great extent<sup>327</sup>. Apparently, laws regarding LGIs went through changes, its structure reorganized, manuals and instructions revised. However, the same behaviour patterns continued. In spite of much political rhetoric and policy pronouncements, move for improvement of local governance initiatives resemble more of a “window dressing” rather than “real” change.

#### Local Government

##### Structure and Organization

Bangladesh is divided into many administrative units: the largest are divisions, which are divided into districts, which are in turn divided into Upazilas (sub-districts), then Unions, and finally wards. Local Government Institutions (LGIs) of Bangladesh include 10 City Corporations, 311 Pourashavas (Municipalities), 64 Zila Parishads (Districts), 485 Upazila Parishads (sub-districts) and 4502 Union Parishads (rural local governments). Besides these, there are 3 Hill District Councils. These local government institutions are served by nearly 77,000 elected representatives and 75,000 government officials. Since inception these local government institutions were given responsibilities for the maintenance of law and order, infrastructure development, promotion of health, education, and some other basic social services. By law all Local Government Institutions (LGIs), are supposed to be headed by an elected Mayor/ Chairman and Members/Commissioners. However of all the LGIs, there is a provision of 30% seats reserved for women.

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<sup>327</sup> Salahuddin Aminuzzaman, Governance at grassroots – “Myth or Reality: A Study of the Union Parishad (UP) in Bangladesh”, Ishtaiq Jamil (ed), *In Search of Better Governance in South Asia and Beyond*, Springer, New York 2013.

## **Capacity**

### ***Financial, Human and Infrastructural Resources***

In the context of Local Government, Bangladesh Constitution is perhaps unique in its kind in this part of the world<sup>328</sup>. The Constitution of Bangladesh describes about local government system and its broad generic functions in Article 59 and Article 60 (Powers of local government bodies). In addition there are a number of supplementary Acts and Rules regulating the different tiers of the local government system in Bangladesh<sup>329</sup>.

The Local Government receives various block grants from the Government. Grants are also made by various Government Ministries that include the revenue budget for salary, allowances, and contingency expenditures of staffs deputed to the LGIs. Central Government provides block grants for development assistance to finance the development activities of the LGIs. In addition, some functional contingencies are also provided by some Government agencies in respect of specialized services rendered by the LGIs such as health and family planning. In addition there are numbers of donor supported project funds also contributing a share to the LG development budget<sup>330</sup>.

Decentralization has long been a recurring policy theme of governments of all persuasions in Bangladesh. All policy documents irrespective of the regime have emphasized the importance of decentralization. Importance of local government in Bangladesh has been recognized by the Constitution and several policy documents, including the National Rural Development Policy (NRDP) and the Poverty Reduction Strategy Paper (PRSP)<sup>331</sup>. The National Rural Development Policy provides support for the development of mechanisms and the Sixth Five Year Plan (SFYP)<sup>332</sup>.

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<sup>328</sup> Justice Mustafa Kamal, Former Chief Justice of Bangladesh, in one of his historical judgements noted that the constitutional provisions on local Government namely Articles 11, 59 and 60 mark out the Constitution of Bangladesh as clearly distinctive from other Constitutions of the world. No Constitution contains any definitive provision on local government. It is the Constitution of Bangladesh which for the first time devised an integrated scheme of local Government within a constitutional pattern. This is a most distinctive and unique feature of the Constitution of Bangladesh. (Supra note 6, at 341). It is to be noted that Article 11 was later omitted by the 15<sup>th</sup> Amendment of the Constitution

<sup>329</sup> Local Government (City Corporation) (Amended) Act, 2011; Local Government (City Corporation) Election Rules 2008; Zila Parishad Act 2000; Upazila Parishad (Amended) Act 2011; Upazila Parishad (Service) Rules 2010; Upazila Parishad (Program Implementation) Rules 2010; Local Government (Paurashava)(Amended) Act, 2010; Local Government (Paurashava) Election Rules 2008; Local Government (Union Parishad) Act 2009; Union Parishad (Development Planning) Rules 2013; Union Parishad (Tax Schedule) Rules 2012; Union Parishad (Property) Rules 2012; Union Parishad (Agreement) Rules 2012; Union Parishad (Accounts & Audit) Rules 2012; Village Court Act 2006.

<sup>330</sup> <http://www.unescap.org/huset/lqstudy/country/bangladesh/bangladesh.html#fin>

<sup>331</sup> Government of the People's Republic of Bangladesh, *National Strategy for Accelerated Poverty Reduction II FY 2009 – 11*, General Economics Division, Planning Commission, 2009.

<sup>332</sup> Government of the People's Republic of Bangladesh, *Bangladesh Sixth Five Year Plan: FY2011-FY2015 - Accelerating Growth and Reducing Poverty*, General Economics Division (GED), Planning Commission, 2011.

PRSP recognized that efficient and dedicated local government bodies can deliver services and generate social and economic awareness to achieve the national goals. Along with others the PRSP emphasized more on building up capacity of the local government bodies, sensitizing the members of the local government institutions about poverty, gender balance and citizens' rights issues, allowing flexibility and operational independence to local governments to suit the local needs.

Similarly the Sixth Five -Year Plan (SFYP) has identified "promoting devolution to local governments" as one of the four pillars of development management. The Plan document further recognized that "Efficient and dedicated local government bodies can deliver services and generate social and economic awareness to achieve the national goals<sup>333</sup>". As regards the local government, the main strategic elements of the SFYP include developing a well designed legal framework for decentralized governance; increasing the transparency and improving the accountability of local governments; building the capacity of local governments, expanding and strengthening participation of the citizens in prioritizing in the implementing and monitoring of development programs and other functions of the local government.

Some reform efforts have been initiated to enhance the capacities of the LGI<sup>334</sup>, but the institution still remains weak and its functions and process of governance and the resources to govern have remained heavily centrally controlled. Critics however noted that the local government reforms in Bangladesh evolved mainly in response to the interests of the national political leadership and central bureaucracy. With changes in regimes, policies to devolve power or create new representative institutions have also changed abruptly, generally with the aim of preserving centralized authority and ensuring partisan control over local government. Thus decentralization reform efforts have been, at best, partial; any limited gains ironically have been quickly overturned by the incoming regimes<sup>335</sup>.

An overview of the political economic analysis of local governance reveals that LGIs lack the culture of community participation. There appears to be a dominance of patronage politics where the elected leaders tend to maintain strong patron-client relations with a section of the community. Local Members of the Parliament play a significant role in channeling resources as well as selection of development projects of the LGIs. Empirical evidence also suggests that the poor are generally left out of the LGIs service net and the Local government leaders' lack of capacity, integrity and commitment.

In Bangladesh, local government bodies have been chronically resource poor. The LG regulations empowered them to mobilize resources from local sources through assessment and levy of taxes but in practice, they do not receive the total resources generated from their

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<sup>333</sup> *opcit*, p.220.

<sup>334</sup> Four different commissions/committees were constituted in 1993, 1997, 1999 and 2008 respectively to reform/ reorganize and strengthen the role, structure and functions of local government in Bangladesh. However, it was observed that no significant attempt has subsequently been made to operationalize and/or implement the major recommendations of these reform commissions/committees.

<sup>335</sup> Nita Rudra and Shonali Sardesai, *Decentralization & Local Governance in Bangladesh: An Analysis of Stakeholder Perspectives*, World Bank Discussion Paper, Washington DC, 2007 .

entitled sources<sup>336</sup>. Empirical evidences however also suggest that it is not necessarily the availability of resource and technical/ management skill but that integrity, initiatives, commitment and vision are the leading factors that affect the quality and nature of the service delivery of the LGIs<sup>337</sup>.

LGIs in Bangladesh have failed to utilize this potential for various reasons. *First*, the LGIs have limited authority to collect revenues from particular sources such as rent from *jalmahals (water bodies)*, and rural markets, ferries, and toll on services and facilities maintained by the LGIs; although the sources apparently look impressive, the income from the sources is very meager; and major sources of revenue are controlled by the Central Government; elected representatives are reluctant to mobilize local resources in fear of losing their votes. Empirical evidences suggest that only 3-5 percent, sometimes as little as 0.17 percent, of development budget of any Upazila Parishads have been met by its own revenue<sup>338</sup>. The Urban local bodies raise between 55-75 per cent of the revenue from their own sources while a significant proportion comes from Government grants<sup>339</sup>.

The budget allocation of different fiscal years for local government and rural development (including Local Government Division-LGD, Rural Development and Cooperatives Division) are given below:

*Table 1: Annual budget allocation for local government and rural development*

(Amount in Crore Taka)

Institution	Type of Expenditure	Budget	Revised	Actual	Actual	Actual
		2013-14	2012-13	2011-12	2010-11	2009-10
Local Govt & Rural Development	Non-Development & Development budget	14,800	15,004	11,050	10,206	8,460

Source: [http://www.mof.gov.bd/en/index.php?option=com\\_content&view=article&id=184&Itemid=1](http://www.mof.gov.bd/en/index.php?option=com_content&view=article&id=184&Itemid=1)

<sup>336</sup> For example, in the case of UPs, of the revenue generated from the leasing of the rural market, 25 percent is retained by national government, 10 percent by the Upazila, and 15 percent is earmarked for the maintenance of the market, and the rest 50 per cent is the entitlement of the UP.

<sup>337</sup> Salahuddin Aminuzzaman, "Governance mapping: a study of the pro-poor governance in rural Bangladesh", Paper presented to the international conference on 40 years of Bangladesh: Retrospect and future prospects. Institute of Governance Studies, BRAC University in collaboration with CDS, University of Bath, 26-28 Nov 2011.

<sup>338</sup> As-Saber, S.N. & M.F. Rabbi, "Democratisation of the Upazila Parishad and Its Impact on Responsiveness and Accountability: Myths versus Realities", *JOAAG*, Vol. 4. No. 2. 2009.

<sup>339</sup> Centre for Policy Dialogues (CPD), *Finance for Local Government: An Elusive Agenda; Preliminary Findings from a Field Level Exercise*. Presented at CPD-CMI Research Colloquium at the BRAC Centre Inn Auditorium Dhaka: 10 March, 2013.

Allocation of resources to rural local government during the last ten years has ranged from .25 to .52% of the national budget. During the fiscal year 2010-2011, all Central Government agencies working at the local level (i.e., at UP and Upazila levels) have spent about 700% higher amount of resources compared to the resources allocated to local elected bodies<sup>340</sup>. The size of Annual Development Programme rose from Tk 55,000 crore to Tk 65,000 crore in fiscal year 2013, the local government's claim on the ADP however dropped to 2.01 percent from 2.44 percent in the previous year<sup>341</sup>. Though the Central grant is not very much substantive, the LGs tend to depend heavily on the National Government's transfers. This forces the LGs to compromise on their autonomy to an extent<sup>342</sup>.

The personnel system followed in the case of local government has further undermined the attempt to build a democratic local government system. On the whole, rural local governments (especially the UP and Upazila and small Pourashavas) are under-capacitated and lack adequate technical and managerial competence to perform as expected.<sup>343</sup> LG has no clear-cut training policy. Moreover the supply side of the training through the National Institute of Local Government is far too limited as compared to the demand<sup>344</sup>.

The deputed staff of the Central Government posted to LGs are guided by their respective cadres' personnel rules. Without having officials under their disposal, local government offices find it difficult to be democratic<sup>345</sup>. LGs in general lack managerial capability and resources to design and run innovative service delivery in areas like employment generation, health and education<sup>346</sup>.

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<sup>340</sup> M.M. Akash. *Shtahnio Sakarer budget—Akti bisshslashon*. (A review of budget allocations for Local Government in Bangladesh, Seminar Paper in Bangla). Governance Coalition, Dhaka, 2009. Also see M.M. Akash, *Prostabito Budget 2008-2009 O Shathhno Sarkar – Trinomuler jonogoner Prottasha* (Proposed budget 2008-2009 and local government: expectation of the grass roots people) Governance Coalition, Dhaka, 2009.

<sup>341</sup> *The Daily Star*, May 29, 2013.

<sup>342</sup> Centre for Policy Dialogues (CPD), *opcit*.

<sup>343</sup> Md. Taufiqul Islam and Koichi Fujita, (2012). *Dimension of Decentralization Process and Rural Local Government in India: A Comparison with Bangladesh*,. Kyoto Working Papers on Area Studies No. 130, October 2012, Kyoto University, Japan. p. 19.

<sup>344</sup> NILG's current level of performance in training delivery results in the Institute is catering to no more than around 8% -10% of the actual demand. For detail see World Bank, *Comparative Assessment of Local Government Capacity Building*, World Bank Dhaka, 2009.

<sup>345</sup> Abu Elias Sarker, The illusion of decentralization: evidence from Bangladesh. *The International Journal of Public Sector Management*, Vol. 16 No. 7, 2003, pp. 523-548.

<sup>346</sup> Salahuddin M Aminuzzaman, *Local Government and Development in Bangladesh Lessons Learned and Challenges for Improving Service Delivery of Union Parishad (UP)*. January, 2010. Government of Bangladesh, Local Government Division, 2010.

## ***Independence and Functional Autonomy***

The Constitution has given wider mandate to the local government. Article 59(1) provides that 'Local Government in every administrative unit of the Republic shall be entrusted to bodies, composed of persons elected in accordance with law. Article 59(2) provides the broad functions of local government as: 'administration and the work of public officers; the maintenance of public order; the preparation and implementation of plans relating to public services and economic development'. Article 60 stipulates that 'For the purpose of giving full effect to the provisions of Article 59 Parliament shall by law, confer powers on the local government bodies referred to in that Article, including power to impose taxes for local purposes, to prepare their budgets and to maintain funds'. There were two more Constitutional provisions like Article 9 and 11 which further consolidated the operational aspects local government. These two Articles were later dropped under the 15th Constitutional amendment.

However the Constitution did not mention different aspects of local government management in detail as it did for the Parliament, the Executive and the Judiciary. Consequently, the Central Government used its unfettered authority to modify laws and rules relating to local government. This practice hindered consistency in the form and functions of the local government and gave a wider space for Central Government to control the local government<sup>347</sup>. Local Government system in Bangladesh is regulated by a number of laws and an elaborate regulatory framework<sup>348</sup>.

Under the law, again, the National Government is also empowered to carry out inquiries into the affairs of local government institutions. And after such inquiry, if the Government considers that a LG unit is 'unable' to discharge its duties; or 'failed' to meet its financial obligations; or exceeds or abuses its power, then the Government may declare such LG bodies to be suspended for a period. This provision allows the Government to axe an LG unit at any time and consequently, make them extremely vulnerable to the political and administrative whims of the Central Government.

Personnel management of the local government own staff is regulated by a set of the rules, Local Council Service Rules 1968. It provides detailed instructions on methods of filling vacancies (Section 9), promotion (Section 10), selection procedures (Section 11), transfer (Section 15), and performance evaluation (Section 18).

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<sup>347</sup> M.M.Khan, Functioning of Local Government (Union Parishad): Legal and Practical Constraints, Democracy Watch, RTI International, Democratic Local Governance Program-DLGP, USAID. Available at: <http://www.dwatch-bd.org/L&P%20constraints.pdf>.

<sup>348</sup> *Local Government (City Corporation) (Amended) Act, 2011; Local Government (City Corporation) Election Rules 2008; Zila Parishad Act 2000; Upazila Parishad (Amended) Act 2011; Upazila Parishad (Service) Rules 2010; Upazila Parishad (Program Implementation) Rules 2010; Local Government (Paurashava)(Amended) Act, 2010; Local Government (Paurashava) Election Rules 2008; Local Government (Union Parishad) Act 2009; Union Parishad (Development Planning) Rules 2013; Union Parishad (Tax Schedule) Rules 2012; Union Parishad (Property) Rules 2012; Union Parishad (Agreement) Rules 2012; Union Parishad (Accounts & Audit) Rules 2012; Village Court Act 2006, Zila Parishad Act 2000.*

Historically, decentralization and reform of local government system has been a 'priority and pet area of concern' for all military regimes in Bangladesh<sup>349</sup>. Immediately after 1/11 (January 11, 2007) when a military backed Caretaker Government assumed power, the Army had constituted 17 different Think Tank Groups (TTG) to undertake research and analysis on various developmental issues/ problems. One of the TTGs headed by the Army Chief was exclusively assigned to examine the local government reform issues.<sup>350</sup>

A review of the regulatory framework of LGIs reveals that in general such rules and regulations are "highly control oriented"<sup>351</sup>. The Chief Justice of the Supreme Court of Bangladesh in one of his judgments noted "... Local government was inextricably mixed up with the Central Government's affairs, run entirely by the Government's officers with Government money; it is in fact a hybrid of the two Government entities"<sup>352</sup>.

Government control on local government bodies is all pervasive and strict. Laws and rules are made by the Government without consulting elected representatives of local bodies. Budgets are to be approved by Government officials and clearance obtained for appointment of staff. Government prescribes the heads from which revenue can be collected and the activities to be undertaken. Inspection and enquiries are made by Government officials against elected representatives. Moreover, elected chairmen and members/commissioners may be removed and the work of local bodies suspended by the government under certain circumstances. There is no independent authority to check against Government interference into the day-to-day activities of local bodies and its authoritarian supervisory role over them. Evidently, power has devolved halfheartedly and as a consequence there is only little autonomy, and the local government bodies have become mere adjuncts to the Government machinery<sup>353</sup>.

Through the regulatory framework, the Central Government also exercises substantial financial and administrative control over the local government institutions in different ways. The annual budgets of the LG units are scrutinized and approved by different levels of Central Government agencies. Again in the case of UP authority over the appointment and payment of salaries of the staff is held by Central Government bureaucracy. In the internal functioning of LG, the National Government functionaries also exercise control over them. For example, the Local Government Act requires, a UP to constitute a number of Standing Committees and for the formation of any additional committee it needs the formal approval of the Administrative authority. Bangladesh Upazila Parishad General Secretary observed that, "Although chairmen are elected by the people, no employees are accountable to the

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<sup>349</sup> One observer noted "The military regimes obviously initiated LG reforms from the perspectives of the legitimization of authoritarian army rules but subsequent development of the civilian regimes from time to time brought to power through mass movements in essence did only promote an 'illiberal brand of democracy' and did not at all willing to leave local spaces for local political forces. They tried to occupy the local spaces in a more aggressive way for achieving their centralised power mongering goals heavily relying on a patron-client relationship merely to enroll the local henchmen". Tofail Ahmed, The case of local government, *The Daily Star*, Feb 23, 2010.

<sup>350</sup> Salahuddin Aminuzzaman, *Stakeholder Perspective on Local Governance in Bangladesh: Capturing the Military's Perspective*, World Bank Research Note 2007, also see Nita Rudra and Shonali Sardesai, *opcit.*

<sup>351</sup> Salahuddin Aminuzzaman, *Review of UP Act and Regulatory framework*, UNDP 2006

<sup>352</sup> *Supra* Note Dhaka Law Report 330, Kudrat e Elahi Case.

<sup>353</sup> Interview with Dr. Badiul Alam Majumder, a leading LG Activist and Convenor, *Shujon – A Civil Society body on Good Governance.*

chairmen. Instead all UP employees follow instructions given by district officials.”<sup>354</sup> Such practices, in reality, have turned the local government institutions in Bangladesh into mere extension of the national government and of their various functionaries.

Two major factors contributing to the ambiguity of accountability of the Parishad are the existence of the Ministry of Local Government as the so-called ‘controlling ministry’ of the Parishad and the mandatory advisory role of Members of the Parliament (MPs) over the Parishad. Centre for Policy Dialogues (CPD), one of the leading think tanks of the country, in its policy paper observed that “the main enemy of decentralized local government in Bangladesh is the country’s Local Government Ministry that compromises the autonomy of the local government bodies”.<sup>355</sup> The discussion paper further argues that the existence of the Local Government Ministry acts against the democratization of local government. The CPD further notes that “It (Ministry of Local Government) also creates an unnecessary ambiguity with respect to the accountability of the elected Parishad to the Ministry. This relationship may be viewed as somewhat unconstitutional as the democratically elected representatives are brought under the control of an Executive agency of the State. There is hardly any evidence from around the world of the existence of such a Ministry.”<sup>356</sup>

Another disturbing development with respect to the LGIs accountability is the mandatory advisory role of the Members of Parliaments (MPs) for the Upazila Parishads. According to Clause 25 of The Upazila Parishad Act 1998, each MP is provided with the mandatory advisory role over the Parishad. The bill makes it obligatory for the Parishad Chairmen to accept recommendations from the local MPs as ex-officio advisers to the country's 482 Upazila Parishads. It has made the accountability issue even more intricate and ambiguous as the relationships between these two democratically elected public representatives are not clearly spelled out other than making it mandatory for the Chairmen to accept recommendations from the MPs. Nonetheless, it is not unusual in Bangladesh to see MPs unduly interfering into the activities of the local government activities<sup>357</sup>.

Lack of coordination between elected representatives and Government staff hampers normal LGIs functions. The connection between LGIs and higher levels of Government is limited to reporting and budgetary planning requirements. According to the Union Parishad guidelines, representatives of the UP are accountable to the community. However, in practice, the representatives of the UPs mostly feel accountable to the upper/Central Government bureaucratic bosses, rather than to the community<sup>358</sup>. Such system of interference from

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<sup>354</sup> Badiuzzaman Badsha, Elected but not given upazila role : Chairmen lament govt interference, once again`, *The Daily Star*, 28 July 2013.

<sup>355</sup> Centre for Policy Dialogue (2000),

<sup>356</sup> CPD, Strengthening Local Government : Recent Experiences and Future Agenda, Report NO 29. Centre for Policy Dialogues, 2000 also see CPD, Strengthening Local Government : Recent Experiences and Future Agenda, Report NO 29. Centre for Policy Dialogues, 2003.

<sup>357</sup> As-Saber, S.N. &M.F. Rabbi, *op.cit.*

<sup>358</sup> Md. Taufiqul Islam and Koichi Fujita (2012). Dimension of Decentralization Process and Rural Local Government in India: A Comparison with Bangladesh. Kyoto Working Papers on Area Studies No. 130, October 2012, Kyoto University, Japan, p.2.

upper-tier administration and Central Government is therefore categorized as “Decentralization within Centralism.”<sup>359</sup>

The dominant role of the bureaucracy clearly determines central-local relationships. Almost every aspect of local government operations is controlled by the Central Government and its field offices either through direct intervention or a plethora of rules and regulations. The Central Government has the authority to suspend a local government unit if the latter is being accused of failing to meet financial obligations or abusing its power. In reality, the legal provisions make local government units vulnerable to the political and administrative whims of the government<sup>360</sup>. Moreover, the central government through its bureaucratic arms exerts substantive control over local government budgeting, appointment of local government employees and the formation of different standing committees. All these practices have jeopardized attempts to build an effective and devolved local government system in Bangladesh<sup>361</sup>.

There is also a volatile situation in the personnel administration of local government in Bangladesh. There is no separate local government service to oversee the personnel matter of local government. Permanent staff of the Local government are recruited by Central Government and local government has little authority as regard to personnel management. As a result, local governments could not develop a personnel administration as their own that can manage their affairs autonomously. The paradox is that Central Government staff can be posted to local government but local government staff cannot be posted to Central Government offices.

The power and authority of the LGIs is substantially constrained by the strict rules and guidelines prescribed by the Central authority. The planning and budgeting process of the Parishad as well as the implementation have been subject to these numerous guidelines. These provisions constrained the scope of responsiveness to the local needs<sup>362</sup>.

## **Governance**

### ***Transparency, Accountability and Integrity: Legal Framework and Practice on the Ground***

Right to Information Act 2009 sets the provisions for all local level government institutions to disclose and share information without any cost to the members of the community<sup>363</sup>. LG Acts too have provisions of citizen charter and open budget meetings and citizens right to information. The UP Acts Section 549(1) ensures that each Union Parishad must publish a

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<sup>359</sup> Md. Taufiqul Islam and Koichi Fujita (2012), *opcit* p.20.

<sup>360</sup> CPD, Strengthening Local Government : Recent Experiences and Future Agenda, Report NO 29. Centre for Policy Dialogues, 2000 also see CPD, Strengthening Local Government : Recent Experiences and Future Agenda, Report NO 29. Centre for Policy Dialogues, 2013 p.12.

<sup>361</sup> Abu Elias Sarker (2003). The illusion of decentralization: evidence from Bangladesh. *The International Journal of Public Sector Management*, Vol. 16 No. 7, 2003, pp. 523-548.

<sup>362</sup> As-Saber, S.N. & F.M. Rabbi, *Opcit*.

<sup>363</sup> *Right to Information Act 2009*, Section 2, 4, 5.

citizen charter detailing the particulars of various services to be provided to people, conditions of available services, and the stipulated time for ensuring such services<sup>364</sup>.

By law both UP and Upazila have to display a copy of their annual budget on the notice board. For Upazila, the annual budget should be hanged on the notice board for 15 days for getting public feedback<sup>365</sup>. UZP is obligated to display a copy of its annual income-expenditure statement in such a public place so than citizens can put their feedback on it<sup>366</sup>. The City Corporation Act provides the RTI provision<sup>367</sup> but there is no provision for citizens Charter in the Act.

The relevant regulations prescribe that the LGIs are to ensure public display of the budget and major decisions of the UP meetings particularly with regard to development projects. But this practice is almost absent in almost all LGIs. Even the strong local government bodies could not practice the provisions of RTI nor practice the citizen's charter<sup>368</sup>. The Deputy Speaker of the Parliament in a press interview noted that there was "an acute deficit in people's control of and their participation in local development works"<sup>369</sup>.

Union Parishads are required by law to display on the UP notice board the budget and other major decisions particularly with regard to development projects. This is hardly practiced by the UPs and the communities in most cases are unaware of this provision<sup>370</sup>. Local government bodies in general do not display statements of accounts for public inspection, and audits are rarely done and the reports are seldom seen by even by elected members<sup>371</sup>. The mandatory provision of auditing of the UP Accounts is seldom carried out. Even if it is done, in most cases this is not made available to the members of the Parishad and the community<sup>372</sup>. It is also alleged that the disclosure of information is hindered by lack of initiative and bureaucratic unwillingness<sup>373</sup>.

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<sup>364</sup> *UP Act 2009*, Section 49.

<sup>365</sup> *Upzaila Parishad Act* Section 38(1).

<sup>366</sup> Swiss Agency for Development and Cooperation (SDC), Right to Information: Training Module for Upazila Parishad and Government Line Agency Representatives at Upazila Level. Intercooperation, Bangladesh, Swiss Agency for Development and Cooperation (SDC).

<sup>367</sup> *Local Government (City Corporation) Act 2009*, Section 110.

<sup>368</sup> Zannatun Nayem, *Problems of Implementing Citizen Charter: A Study of Upazila Land Office*, MPPG Thesis, North South University, 2008.

<sup>369</sup> *The Daily Star*, March 12, 2011.

<sup>370</sup> Salahuddin Aminuzzaman, Governance at grassroots – "Myth or Reality: A Study of the Union Parishad (UP) in Bangladesh", Ishtaiq Jamil (ed), *In Search of Better Governance in South Asia and Beyond*, New York: Springer; 2013.

<sup>371</sup> FGD session with the Upazila Female Members Forum, Goer Manikganj, August 2013.

<sup>372</sup> SDC *opcit.*

<sup>373</sup> Mohammad Shahjahan Chowdhury and Abdullah Al Hossienie, Quest for an Effective and Efficient Local Government: Local Government in Japan and Policy Implication for Local Government in Bangladesh. *BUP JOURNAL*, Volume 1, Issue 1, September 2012.

The newly promulgated Acts of LGIs have introduced provision of citizens' charter, participative planning and budgeting. LGIs by law are supposed to be audited annually. However in practice, the community consultation is generally done when the concerned LGI is involved with any specific donor driven project. The LGIs have to submit progress reports to Director Local Government (DLG) on the different projects and other information that the Ministry of Local Government occasionally asks for. Furthermore LGIs are supposed to be audited by the Department of Local Audit of the Office of the Comptroller and Auditor General.

There is no formal process to lodge complaint against the elected public representatives of the Local Government. Community members can lodge complaints to Upazila Nirbahi Office/Deputy Commissioner if they notice any integrity breach of the LGIs. In such case, with the approval of the appropriate authority, concerned officials initiates a formal inquiry and reports to the MLGRD for necessary action. However, there is hardly any public evidence which reveals the number of such complaints and the subsequent actions being taken by the LGED.

On the whole the activities of LGIs lack transparency and accountability and general people have no idea about budget allocation system, implementation of development and maintenance activities, income and expenditure of the LGIs<sup>374</sup>. In fact LGIs as political and development institutions could not build trust, confidence and mutual respect between and among the public representatives and the Government officials and broader constituencies<sup>375</sup>. There are mutual mistrust and noticeable difference of opinion and attitudes between the members of local bureaucracy and the local elected leadership. Such mistrust and attitudinal conflict further complicate the working dynamics of the LGIs. It is also to be noted that the culture of participation in formal community activities is still non-existent in rural Bangladesh<sup>376</sup>.

The Monitoring & Evaluation Wing (MEW) of the Local Government Division of the Ministry of Local Government Rural Development and Cooperatives (LGRD&C) is responsible for ensuring accountability of LGIs and monitoring of the functions of the local bodies. But it has been observed that the monitoring mechanism of the said Wing is weak, inadequate and

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<sup>374</sup> CPD, *opcit.*

<sup>375</sup> Salahuddin Aminuzzaman, Governance mapping: a study of the pro-poor governance in rural Bangladesh. Paper presented to the international conference on 40 years of Bangladesh: Retrospect and future prospects. Institute of Governance Studies, BRAC University in collaboration with CDS, University of Bath, 26-28 Nov 2011.

<sup>376</sup> *Ibid.*

ineffective<sup>377</sup>. Also the MEW monitoring does not cover some of key aspects of the performance of UPs such as development activities and accountability<sup>378</sup>.

The Local Government Audit Directorate of the Office of the Controller and Auditor General (CAG) is responsible for the statutory auditing of the financial accounts of local government bodies. The Directorate's first priority is the auditing of City, ZP and Pourashava accounts. It has no offices outside Dhaka and lacks the capacity to handle the sheer volume of work involved in auditing the accounts of some 5,000 UPs. As a result there is a huge backlog of work of LGI audit<sup>379</sup>.

LGIs, especially the rural ones, are infrequently audited. A study of selected UPs reveals that about 39% of the UPs have not been audited by the Government auditors during the last three years<sup>380</sup>. However, Ministry of LGRD undertakes regular audit for all LGIs covered by the Local Governance Support Project<sup>381</sup>.

The elected leadership of the LGIs in most cases lacks greater experience, management capacity and exposure in managing their resources. Such lack of capacity and experience make them vulnerable to cope with civil bureaucracy, development professionals, and other public leaders at the sub-national levels. Many LG representatives are unfamiliar with the contents of the relevant LG Acts and the implications for their role and responsibilities vis-à-vis their constituents. Women representatives in particular, face constraints in engaging with citizens because of their continuing marginalization from political leadership and decision-making processes of the LG<sup>382</sup>.

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<sup>377</sup> Salahuddin M. Aminuzzaman (August 2001). *Local Governance and Charland : An Overview*. Pp. 17-18 also see Salahuddin M Aminuzzaman (2010). *Local Government and Development in Bangladesh Lessons Learned and Challenges for Improving Service Delivery of Union Parishad (UP)*. January, 2010. Local Government Division.

<sup>378</sup> Salahuddin M. Aminuzzaman, *Local Governance and Charland : An Overview, DFID August 2001*. Pp. 17-18 also see Salahuddin M Aminuzzaman, *Local Government and Development in Bangladesh Lessons Learned and Challenges for Improving Service Delivery of Union Parishad (UP)*. January, 2010. Local Government Division.

<sup>379</sup> *Project Document of Local Governance and Production Programme (LGPP) In Bangladesh*, Human Development Research Centre. Prepared for Swedish International Development Agency (Sida), Swedish Embassy, Dhaka & Ministry of Local Government, Rural Development & Cooperatives Government of the People's Republic of Bangladesh, December 2002.

<sup>380</sup> Salahuddin Aminuzzaman, *Governance and politics—a study on the interface of UP, NGO and local Actors*. Institute for Environment and Development, Dhaka, 2009.

<sup>381</sup> LGSP is multi donor supported project, where Government of Bangladesh and World Bank are the major contributors.

<sup>382</sup> CPD, *opcit.*

In fact LGIs as political and development institutions could not build trust, confidence and mutual respect between and among the public representatives and the Government officials and broader constituencies<sup>383</sup>.

Open budget meetings are held where the budget is shared with the citizenry. Only the local influential people are invited. Common people of the LG unit have no idea about this practice. Councilors are not aware about the audit report or objections. Copy of the audit report, annual financial statement, tax assessment or annual budget are not displayed or shared with wider population of the LGIs. For ensuring residents participation and for public oversight of the development projects and activities and greater coordination, by law, the LGIs are supposed to form ward-level committees. LGIs in general do not constitute such committees<sup>384</sup>. Most of the UPs tend to practice a 'pseudo participatory' planning system where only handpicked persons are involved and even that is done without the knowledge of the community members at large. Such practices keep the members of community, especially the marginal poor, women and destitute, in complete dark about the projects undertaken by the UP<sup>385</sup>.

For all disciplinary and integrity matters members of the Local Council Service are guided by the Bangladesh Local Council Servants (Efficiency and Discipline) Rules, 1968. While the deputed official of the Central Government placed under the LGIs are covered by members of the National Government guided by the Government Servants (Conduct) Rules, 1979.

The local government staff are covered by the Local Council Servants (Efficiency and Discipline) Rules 1968, which provides the detailed methods and procedures in cases of inefficiency, misconduct and corruption of the local government employees.

The Municipal Council Servants (Conduct) Rules 1969 narrate various code of conduct of the municipal staff. The Conduct Rule (Section 3) notes that "No Municipal Committee servant staff, except with previous sanction of the controlling authority, accept any gift or permit any member of his family to accept, from any person any gift the receipt of which will place him under any form of official obligation to the donor". The Rule prohibits the municipal staff to join any public demonstration (Section 4). The Rules also narrate the provisions on engagement in business, trade and money lending (Section 7), buying and selling of properties (Section 8); investment (Section 11), management of company and engagement in private trading (Section 11, 12, and 13).

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<sup>383</sup> Salahuddin Aminuzzaman, Governance mapping: a study of the pro-poor governance in rural Bangladesh. Paper presented to the international conference on 40 years of Bangladesh: Retrospect and future prospects. Institute of Governance Studies, BRAC University in collaboration with CDS, University of Bath, 26-28 Nov 2011.

<sup>384</sup> CPD, *Finance for Local Government: An Elusive Agenda; Preliminary Findings from a Field Level Exercise*, Presented at CPD-CMI Research Colloquium at the BRAC Centre Inn Auditorium Dhaka: 10 March, 2013.

<sup>385</sup> Salahuddin M Aminuzzaman, *Local Government and Development in Bangladesh Lessons Learned and Challenges for Improving Service Delivery of Union Parishad (UP)*, January, 2010, Local Government Division.

UP Act 2009 (Section 34) has the provision whereby the UP Chairman or member can also be temporarily dismissed or removed by the Government if it is deemed by the special authority that the exercise of power by a Chairman or a member has gone against the interest of the Parishad. The UP Act 2009 Section 34(4) empowers the Government to remove the Chairman or a member from his office if he is involved in any activities prejudicial to the interest of the Union Parishad or of the State or be corrupt or bad mannered or sentenced by a court for moral deviation. UP Act 2009 Section 34(4)(G) also empowers the Government to remove a Chairman/ Member if he does not submit the statement of election expenditure or provide false information in the submitted statement(Section 34(4)(G)).<sup>386</sup>

The Chairperson of the Upazila can be removed if he is found to be guilty of misconduct or abuse of power or is responsible for embezzlement or for any loss of money or property of the Parishad (Upazila Act Section 10). The Chairman or any of the members of an Upazila Parishad are liable for the loss, waste or misapplication of any money or property belonging to the Parishad resulting as the direct consequence of his/her negligence or misconduct, and, such liabilities (Section 41 of Upazila Act, 2009).

*Upazila Act 2009* provides that the Chairman upon entering the office has to submit a declaration of all movable and immovable properties, which s/he or any member of his/her family owns or has in possession or in which s/he or any member of his/her family has any interest to such Authority and in such manner as the Government may specify, a declaration in writing, of all movable and immovable properties, which s/he or any member of his/her family owns or has in possession or in which s/he or any member of his/her family has any interest.

*Upazila Parishad Service Rules 2010*, Section 32 (Ga) restrict the Upazila elected representatives and its staff to receive any grants and gifts from the parties with which the Upazila has formal financial transactions and or contracts. The code of conduct of the deputed staff of the Central Government to Upazila Parishad is regulated by the *Government Servants (Conducts) Rules 1979*.

All electoral candidates of the LGIs (Pourshava and City Government) are by law bound to provide declaration of assets and properties. LGI Acts also provides the provision of external audit. However, there is no provision for internal audit for the LGIs. The external audit is done by the Local Revenue Audit Department of the office of Accountant General of Bangladesh.

Bangladesh is characterized as having generally weak rule of law, opaque institutions and persistent corruption at almost all levels<sup>387</sup>. Local Government for that matter is not significantly different. Various surveys and evaluations<sup>388</sup> reveal that LGI leadership suffers

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<sup>386</sup> Borhan Uddin Khan, *Compendium of Laws on or having bearing on Union Parishad*, SHARIQUE, Dhaka. 2007.

<sup>387</sup> DFID, *Bangladesh - Country Governance Analysis, November 2008*

<sup>388</sup> M.S. Ali, M. S. (2009). *An examination of innovations in Union Parishads: A study of local governance support project*. Unpublished MA thesis in Governance and Development, IGS, BRAC University, S.Aminuzzaman. (2009), *Governance and Politics- A Study on the interface of UP, NGO and local actors*. Dhaka: Institute for Environment and Development; S. Aminuzzaman, (2011). *Governance*

from a severe image crisis of being corrupt. A study has revealed that the Upazila Parishad system acts as a channel of patronage distribution and private accumulation of wealth which goes uninterrupted in the absence of proper accountability mechanism<sup>389</sup>. There appears to be a dominance of patronage politics. The elected chairpersons and some dominant members tend to maintain strong patron-client relations with a section of the community. LGs therefore tend to take some of its development management and distributive decisions on the basis of such patron-client dependency syndrome<sup>390</sup>.

According to Khan,<sup>391</sup> introduction of the Upazila system in Bangladesh has contributed immensely to the spread of corruption to the grassroots. It is alleged that a huge amount of development aid has been infused to Upazilas to support numerous development projects. These grants have largely been misappropriated by the party cronies and a new interest group has emerged in the rural area thriving on illicit use of Upazila funding for development contracts<sup>392</sup>. Various perception studies have noted that LGs suffered from poor institutional image<sup>393</sup> and are believed to be “corrupt”<sup>394</sup>. A recent TIB research report reveals that the suppliers/contractors of local government need to pay a specific percentage, a total of around 8.5% - 10.5%, of their bill amount as commission to various LGED officials. An estimated amount of Tk 21,728.55 to 26,841.15 went to LGED officials as commission (at the rate of 8.5% to 10.5%) during these five fiscal years. The TIB report held politicization, lack of transparency, lack of required and technical manpower, lack of monitoring and

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*mapping: A study of the pro-poor governance in rural Bangladesh.* Institute of Governance Studies, BRAC University; Hossain, Z. Rahman. (2006). *Actors and roles, community capacities and local governance.* Dhaka: Power and Participatory Research Centre; K.P. Pandey, and Asaduzzaman, M. (2011). Politics, problems and trends of decentralized local governance in Bangladesh. In Ishtiaq Jamil et al (Eds.), *Understanding governance and public policy in Bangladesh.* North South University, Dhaka, 2011.

<sup>389</sup> A.E. Sarker, Patron - Client Politics and its Implications for Good Governance in Bangladesh, *International Journal of Public Administration*, 31(12), 2008.

<sup>390</sup> K.P. Pandey, and Asaduzzaman, M. (2011). Politics, problems and trends of decentralized local governance in Bangladesh. In Ishtiaq Jamil et al (Eds.), *Understanding governance and public policy in Bangladesh.* North South University, Dhaka, 2011.

<sup>391</sup> M. M. Khan, , Paradoxes of Decentralisation in Bangladesh, *Development Policy Review*, 5, pp.407-412. 1987.

<sup>392</sup> K. Westergaard, K. & Alam, M. M. 1995, Local Government in Bangladesh: Past Experiences and Yet Another Try, *World Development*, 23 (4), pp.679-690.

<sup>393</sup> Salahuddin Aminuzzaman, *Governance and Politics : Study of the Interface of Union Parishad, NGO and Local Actors*, Dhaka: Institute of Environment and Development, 2008.

<sup>394</sup> As-Saber, S.N. & M.F. Rabbi, *op.cit*

procrastination in the works as the main reasons of corruption and irregularities in the LGED<sup>395</sup>.

## **Role Assessment**

### ***Ensuring Integrity in Public Procurement***

In order to ensure transparency and accountability in the procurement of goods, works and services using public funds and for ensuring equal treatment and a free and fair competition amongst all persons wishing to participate in public procurements, all major procurement of the local government is supposed to be covered by the Public Procurement Act 2006 and the Public Procurement Rules 2008<sup>396</sup>.

All major procurements of the LGIs are supposed to be made by the PPR 2008. However the field experiences reveal that elected officials are not fully aware of the Public Procurement Act and Public Procurement Rules<sup>397</sup>. However the most of the Pourashava Mayors and Upazila Chairmen are aware and more or less conversant about such legal framework of procurement<sup>398</sup>.

LGIs work closely with Local Government Engineer Department (LGED) for their major procurements. It is alleged that procurement and development work of LGIs in coalition with the Local Government Engineering Department are controlled by the ruling party men and local MPs. A recent study found that corruption, misuse of public resources and logistics are rampant in LGED<sup>399</sup>.

### ***Interest aggregation and representation***

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<sup>395</sup> Nahid Sharmin and Shahzada M Akram, *Local Government Engineering Department: Problems of Good Governance and Way Forward*, Transparency International Bangladesh ,

<sup>396</sup> Central Procurement Technical Unit, Public Procurement Act (PPA) of 2006 and the Public Procurement Rules 2008, Implementation Monitoring and Evaluation Division, Ministry of Planning, GoB, 2009.

<sup>397</sup> Interview with UP Chairman of Jilongza, Idgah and Khuriushkul of Cox's bazaar Sadar Upazila.

<sup>398</sup> It is to be noted that in various places Local Government Engineering Department (LGED) has organized some special raining for the Pourashava Mayor and Upazila Chairpersons. Interview with Mr. Habibul Aziz. Project Director, Greater Rajshahi Integrated Rural Development Program, LGED. However field test at Cox'sbazar reveal that none of three UP chairman, interviewed by this researcher, has attended any training nor has any idea about the PPR.

<sup>399</sup> TIB, *Problems for good-governance in Local Government Engineering Department (LGED) and Way Forward*, July 2013.

A new unconventional leadership has emerged during recent years in rural Bangladesh. The power base of such new leadership is grounded more on political linkage and support than social recognition. They tend to maintain alternative channels of privilege distribution bypassing the LGIs. In almost all cases they use the clout of the local MPs. Consequently the poor and marginalized are left out of the LGIs service net.

Mobilization of the local leaders against the central political leadership is a significant development in the politics of local government which and may substantially change the local political landscape<sup>400</sup>. In order to address various institutional crises and to promote the institutional image, efficiency and credibility, elected officials of Union Parishad, a networking body called Bangladesh Union Parishad Forum (BUPF) was established in October 2003. Similarly another umbrella body called the Municipal Association of Bangladesh (MAB) has also been formed in 2005. Both these bodies provide a mechanism for the LGIs for defining and aggregating their common interests, and channeling their collective voice on policy questions in local, regional, national and international ambits. The overall objective of BUPF and MAB is to promote policies in favor of strong, elected local governments in Bangladesh in close association with citizens and professional groups, NGOs, and donor agencies. Municipal Association of Bangladesh placed a 16-point demand which includes the formation of National Urban Development Council and formulation of National Urban Development Policy. The MAB also advocated for the formation of independent local government Commission and demanded preparation of manuals on land use, enacting urban court law to settle disputes in municipal areas and allocation of 40 per cent of national budget for national government institutions.

BUPF and MAB have been actively organizing their efforts by raising a united voice for decentralization and democratization of the local government system of Bangladesh. They have organized various seminars and workshops on decentralization and democratization aiming at creating a larger platform for policy advocacy, mobilization of public opinion for democratization and decentralization of local government system with a broader goal to ensure sustainable development and good governance in Bangladesh.

### ***Anti-corruption Commitment***

In general, the Local Governments in Bangladesh do not have any specific program or agenda to fight corruption. However some LGIs with the technical support from different NGOs/CSOs<sup>401</sup> including Transparency International Bangladesh<sup>402</sup> have started practicing a

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<sup>400</sup> Nita Rudra and Shonali Sardesai, *op.cit* .

<sup>401</sup> Leading NGOs include BRAC, Democracy watch, Khan Foundation, Governance Coalition, BNPS working with over more than 1000 UPs all over Bangladesh to activate the UP standing Committee to ensure community participation, transparency and accountability of the UPs.

<sup>402</sup> TIB introduced a tool called Integrity Pledge (IP) to ensure transparency and accountability of the Local Government and piloted it at Mogholhat Union Parishad of Lalmonirhat district. As a result of the introduction of integrity pledge, the local people are now getting hassle-free VGD/VGF services; local justice system has considerably improved; social crime such as early child marriage, dowry and smuggling are being prevented, while people are being motivated to pay local taxes more for the benefit of the community. For more see Iftekharuzzman and M. Sajjad Hussein, Integrity Pledge: Participatory Governance through Social Accountability, Paper presented at the International Seminar

micro social accountability tools to transform the LGIs into a pro-people service delivery organization. In the pilot areas LGIs are enthusiastically cooperating with the NGOs in further strengthening such watchdog bodies.

The NGO interventions have created a condition whereby the UP is opening up through participatory open budget, introducing the use of information board, and empowering the community to raise their voices for better public service deliveries from the UP.

## **3.2 PUBLIC SECTOR AGENCIES**

### **3.2.1 PUBLIC ADMINISTRATION**

The amount of resources allocated to Bangladesh public administration sector has increased considerably during the recent years. This increase in public sector spending has been a response to the higher cost of living and also a strategy to address bribery and corruption. The Sixth Five-Year Plan of Bangladesh has noted that the Public Administration system is “heavily centralized in terms of service delivery....consequently, the setting of expenditure priorities, allocation of resources, procurement of goods and services, and the implementation of projects are largely centralized at the ministry level in the capital city of Dhaka. The civil service is facing serious challenges including low quality, poor remuneration, weak accountability and corruption”<sup>403</sup>. The independence of public sector employees is not protected adequately by law or statutes. There is an alarming and increasing trend of politicization of public bureaucracy. The integrity and procedures of the recruitment system has been questioned. The promotion system is fully non-transparent and based on arbitrary decisions of the government. The legal provisions concerning transparency are not consistently applied. Awareness about the law regarding Right to Information (RTI) is lacking among the majority of government officials, many of whom refuse to accept RTI applications from people. The public sector does not presently engage in any significant efforts towards educating the general public on corruption and also does not actively collaborate either with civil society or the private sector in addressing challenges of good governance. The existing system of public procurement contains important anti-corruption safeguards but in practice these are not always implemented effectively. As a result corruption has been and continues to be an unfortunate integral part of administrative system and culture in Bangladesh. Bangladesh has recently adopted a NIS strategy<sup>404</sup> but it is yet to be operational.

#### **Structure and Organization**

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on “Integrity Pledge: Participatory Governance through Social Accountability”, organized by Transparency International Bangladesh (TIB) in Dhaka, on April 11, 2010.

<sup>403</sup> Sixth Five Year Plan (SFYP), Government of Bangladesh, P.225.

<sup>404</sup> Cabinet Division, *National Integrity Strategy of Bangladesh*, of the People’s Republic of Bangladesh, October 2012.

In Bangladesh, public service is used as a synonym of “civil service” to denote a class or classes of service to which recruitment is made on the basis of open competitive process and also competitive examination conducted by the Bangladesh Public Service Commission (PSC). Article 21(2) of the Constitution has laid down that "Every person in the service of the Republic has a duty to strive at all times to serve the people". The appointment, conditions of service, tenure of office, dismissal and reorganization of the public service have been stipulated in articles 133, 134, 135, 136 and 152 of the Constitution<sup>405</sup> respectively.

Bangladesh follows a two-tier administrative system. The upper tier is the central secretariat at the national level consisting of the ministries and divisions<sup>406</sup> to provide policies and undertake major decisions. The lower tier is the ‘line’ departments/directorates attached to the ministries and divisions that are mainly responsible for general administration, service delivery to citizens and implementation of various government development programs at the sub-national level<sup>407</sup>.

All government employees are grouped into four classes. Class I employees are officers; Class II employees are mainly the supervisory staff, while Class III and IV employees are clerical and sub-clerical staff respectively. Class I cadre -based civil servants are recruited through open competitive examinations.

There are 1.7 million civil employees of the government of Bangladesh. It appears that the number of civil servants in Bangladesh is high and the government system as such is over-sized. If the size of Bangladesh public service is compared with some of its South Asian neighbours, it appears that Government employees of Bangladesh is 6.2% of the total labor force, whereas for India the corresponding figure is 4.5 per cent, and for Pakistan it is 1.7 per cent only<sup>408</sup>.

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<sup>405</sup> Bangladesh Constitution Part 9 Chapter 1 provides the detail framework of public administration system, appointment and conditions of service. Subject to the Constitutional provisions Parliament is empowered to regulate the appointment and conditions of service of persons in the service of the Republic. President is empowered to make rules regulating the appointment and the conditions of service. As per the Constitution every public employee of the Republic shall hold office during the pleasure of the President. However no person who holds any civil service position could be dismissed or removed or reduced in rank by an authority subordinate to that by which he was appointed. Furthermore no one can be dismissed or removed or reduced in rank until he has been given a reasonable opportunity of showing cause why that action should not be taken.

<sup>406</sup> Ministry is composed of Division or a group of Divisions. Division means a self-contained administrative unit responsible for the conduct of business of the Government in a distinct and specified sphere and declared as such by the Government. Each of the division is headed by a Secretary. He is administrative head of a Division or a Ministry. Each Division has Wing, a self-contained subdivision of a Ministry Division for conducting specified duties of a distinct nature and headed by a Joint Secretary or an Additional Secretary. Wings are further divided into Sections – which is the basic working unit in a Ministry/Division and headed by an Assistant Secretary/Senior Assistant Secretary.

<sup>407</sup> *Rules of Business*, Government of Bangladesh / Allocation of Business .

<sup>408</sup> Hasanat Alamgir, How much should we pay our public servants? *The Daily Star* July 2, 2004

The table below presents the distribution of civil employees at different levels starting from Ministries to field levels. It also shows the number of civil employee working at various public corporations and autonomous bodies. However it is to be noted that except for the deputed staff of the public corporations and autonomous bodies, rest of the employees are regulated by different Acts, policy regimes and rules.

*Table 1: Distribution of civil employees at different levels*

Class	Ministries/ Divisions	Departments/ Directorates	Divisional/ Deputy Commissioner's Offices	Autonomous Bodies/ Corporation	Total	%
Class-I	2161	51594	1604	48417	103776	9.6
Class-II	1874	21121	88	30505	53588	5.0
Class-III	2252	582925	12484	87301	684962	63.5
Class-IV	2281	153410	14472	65593	235756	21.9
Total	8568	809050	28648	231816	1078082	100.0
%	<b>0.79</b>	<b>75.05</b>	<b>2.66</b>	<b>21.50</b>		<b>100.0</b>

Source: Public Administration Computer Centre, Ministry of Public Administration, 2013

## **Capacity**

### ***Financial, Human and Infrastructural Resources***

The public sector resources are managed and regulated by a set of Acts and rules<sup>409</sup>. The prime instrument is the Public Fund and Budget Management Act 2009,<sup>410</sup> which provides basic regulatory framework of resource management, contingency liabilities, equity of public recourse distribution and transparency, financial discipline and irregularities. The Act also sets the conditions of increased efficiency of the financial management system. In accordance to the Act each ministry has to form a Budget Management Committee. Part II of the Subsidiary Rule of the Ministry of Finance<sup>411</sup> spells out the general organization and working of the public resources at the field level. For development management, different ministries are guided by the Public Administration Rule Related to Financial Power for Development Projects<sup>412</sup>. As regards human resources, the public administration system as a whole is guided by different Acts, Rules and

<sup>409</sup> There are as many as 86 different Acts, Ordinance, Orders and Rules to management resources of public sector. see.

<sup>410</sup> [http://www.mof.gov.bd/en/index.php?option=com\\_content&view=article&id=109&Itemid=1](http://www.mof.gov.bd/en/index.php?option=com_content&view=article&id=109&Itemid=1)

<sup>411</sup> <http://www.mof.gov.bd/en/budget/cr/11.pdf>

<sup>412</sup> Subsidiary Rules Part II – Chapter 1: General organization and working of District and Thana Accounts Offices, Customs House and Treasury.

<sup>412</sup> Ministry of Finance, *Rule Related to Financial Power for Development Projects*, 2004.

Circulars issued by the Ministry of Public Administration<sup>413</sup>.

From the budgetary allocation, it is noticeable that high priority has been given to Public Services. The total budget allocation in 2010-11 was 7.58% which has rose up to 12.57% in year 2012-2013. Public sector wages and salary bills are also increasing over the years due to the expansion of public sector programs. The overall wage bill for the public sector is ever expansive especially with the inclusion of primary school teachers of private schools for salaries and benefits from public funds. The implementation of the new pay scale in July 2010 has caused an extra cost to the national exchequer with an additional amount of about Tk.6,222 crore in revenue expenditure. Even the Prime Minister reportedly expressed her concern in the cabinet meeting that the new pay scale might cause an inflationary spiral, leading to price-hike of essential commodities<sup>414</sup>.

Total employed manpower of Ministries/Divisions/Autonomous Bodies<sup>415</sup> has been increased 5.96% from FY 2008-09 to FY 2012-13. Total employed manpower was 1.67 million in FY 2008-09 and it has been increased to 1.77 million in FY 2012-13. Total number of approved post for officers and staffs has been increased 7.59% from FY 2008-09 to FY 2012-13. Total approved manpower was 1.85 million in FY 2008-09 and it has been increased to 1.99 million in FY 2012-13.

Total pay and allowance of all Ministries and Divisions has been increased 68.22% from FY 2008-09 to FY 2012-13. Pay of officers and staff have been increased 92.98% and 77.58% respectively from FY 2008-09 to FY 2012-13. All allowances has been increased by 55.05% from FY 2008-09 to FY 2012-13.

Empirical data reveal that delivery of public services has not improved even after the increasing investment in public sector<sup>416</sup>. A group of young civil servants working at the field level noted that due to poor resource allocation they usually do not get adequate amount of funds, logistics, and technical support from the government. The<sup>417</sup> general impression is that it is low and far less than expected demand<sup>418</sup>. More than 70% of the allocated funds go for payment of salary of the public

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<sup>413</sup> Such rules include Non- Cadre official recruitment Rules, ACR Rules, ACR Related Instructions, Salary and Other Allowance Rules, Staff Training Rules, Rules of Business, Secretariat Instruction, Establishment Manual Vol-1 & Vol-2, Training Need For Ministries Form (DOC), The Bangladesh Public Service Commission (Consultation) Regulations, 1979. The Bangladesh Civil Service (Examination for Promotion) Rules-1986; The Bangladesh Civil Service Seniority Rules-1983, The Public Servants (Retirement) Act, 1974, The Public Servants (Retirement) Rules, 1975, The Government Servants (Discipline & Appeal) Rules, 1985, The Public Employees Discipline (Punctual Attendance) Ordinance, 1982, The Government Servants (Conduct) Rules, 1979.

<sup>414</sup> *The Daily Star* November 19, 2009.

<sup>415</sup> Autonomous bodies include public sector corporations, public universities and other public enterprises.

<sup>416</sup> Action Aid International Bangladesh, *Gap Analysis of Public Service Delivery in Bangladesh*. Dhaka 2012.

<sup>417</sup> FGD session with selected group of civil servants held at MPPG Program, North South University.

<sup>418</sup> Interview with an Additional Secretary (*anonymity requested*) of Ministry of Finance, Government of Bangladesh.

sector employees. Allocation of funds for the public sector generally remains short from the actual demands<sup>419</sup>.

A survey data reveals that as high as 68% of the public sector employees of Bangladesh are “highly demotivated” because of low salary and inadequate fringe benefits<sup>420</sup>. A retired secretary noted that due to financial constraints “Bangladesh government could never pay a just and fair pay to the public sector employees. The whole process of Pay Commission becomes a “public farce as the proposed salary could never balance with need and market price. The new salaries are still far too short in meeting their living costs”<sup>421</sup>. The wages remain too low when compared to the private sector. As a matter of fact the pay structure in Bangladesh public sector had never been based on market or inflation conditions of the prevailing situation. Poor salary has also become a concern for the qualified individuals from entering public service<sup>422</sup>.

Inadequate pay has been often a deterrent factor for the qualified individuals from entering public service<sup>423</sup>. Even the senior bureaucrats observed that the quality of bureaucracy was going down the drain and time had arrived to take due cognizance and adopt remedial measures<sup>424</sup>.

Broadly speaking, public services are not delivered effectively though there are exceptions. According to the Chief Adviser of the immediate past Caretaker Government of Bangladesh, two of the major challenges of the Government of Bangladesh were, how “to encourage meritocracy in civil bureaucracy, and attacking corruption in a coordinated way”<sup>425</sup>. Similarly Prime Minister Sheikh Hasina on several occasions criticized the country's bureaucracy for unnecessary delays in taking appropriate measures to implement government decisions. Expressing her utter dismay, she mentioned the ministries were not performing their duties with the 'necessary speed' and as a result, the government was facing problems in providing committed services to the common people. She demanded to know whether such delay was willful or due to the inexperience of the bureaucrats<sup>426</sup>.

### ***Independence and Functional Autonomy***

Article 133 of the Constitution clearly spelt out that the public administration would be run as per law passed by the parliament. The Ministry of Public Administration (MOPA) is responsible for overall human resources management of civil service of Bangladesh. There are number of Acts,

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<sup>419</sup> Interview with a Secretary of Government of Bangladesh (*anonymity requested*), November 2012

<sup>420</sup> Job Satisfaction Survey of Public Sector Employees, Department of Public Administration PA 423 Project, University of Dhaka, 2011.

<sup>421</sup> Interview with a retired Cabinet Secretary (*anonymity requested*), November 2012.

<sup>422</sup> Job Satisfaction Survey of Public Sector Employees, Department of Public Administration PA 423 Project, University of Dhaka, 2011.

<sup>423</sup> Students Attitude towards Civil Service, Opinion Survey of the Graduates of Selected Public Universities of Bangladesh, PA 523 Research Monograph, Department of Public Administration, Dhaka University, 2011.

<sup>424</sup> Cited from Mamun Rashid, “Synergising the civil bureaucracy in Bangladesh”, *Daily Sun* October 2011.

<sup>425</sup> *Daily Sun*, Oct 24, 2011.

<sup>426</sup> *Daily Sun*, Oct 24, 2011.

Rules and Orders that set the overall provisions to management the role and functions and performance of the public servants<sup>427</sup>.

The Conduct Rules require all public officials to maintain professional impartiality. The Rule also emphasizes that civil servants should work without fear or favour. Section 20 of the Government Servants Conduct Rules specifically notes that “No Government servant shall, directly or indirectly, approach any member of parliament or any other non-official person to intervene on his behalf in any matter”<sup>428</sup>.

The Conduct Rule does not permit any political activities by the public officials. It has clearly barred them to participate in any political acts. The following provisions of the Government Service (Conduct) Rule clearly noted that “(1) No Government servant shall take part in, subscribe in aid of or assist in anyway, any political movement in Bangladesh or relating to the affairs of Bangladesh”.

In accordance with the provision of article 117 of the Bangladesh constitution, the Administrative Tribunals Act 1980 was passed. It has exclusive jurisdiction to hear and determine application made by any person in the service of the republic and any statutory public authority in respect of the terms and condition of his service. The government can't dismiss any civil servant or government employee without following some procedure but can abolish his employment by sending him/her to retirement if s/he completes 25 years of services. Any official can go to Administrative Tribunal if s/he is aggrieved by any decision of the Government. The official can go to the High Court to contest the verdict of the Administrative Tribunal.

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<sup>427</sup> Bangladesh Service Rules (BSR) sets the general conditions of public servants, The Government Servants (Conducts) Rules 1979 provides the basic foundation of the conducts of government servants, Bangladesh Civil Service (Recruitment) Rules 1981 sets the legal framework of the procedure for recruitment, appointment and confirmation of services; The Government Servants (Discipline & Appeal) Rules 1985 provides the detail account of penalty, provisions for punishment, procedures for inquiries, provisions for suspension, procedures for appeal, review and revision etc, BCS Officers Promotions Rules 2002 provides rules for promotion to the posts of senior positions, Bangladesh Public Administration Training Policy 2003 provides of framework, principles and approaches of capacity building of the public servants; The Public Servants (Retirement) Act 1974 provides the detailed provision of retirement of public servants, reemployment and extension, leave preparatory to retirement and provision for optional and compulsory retirement.

<sup>428</sup> Chapter IX of the Penal Code deals with offences by or relating to public officials. Section 161 addresses situations such as public servants taking gratification other than legal remuneration in respect to an official act. Sections 162 and 163 also deal with corruption of public servants. The Government Servants (Discipline and Appeal) Rules, 1985 makes a government servant liable to inquiry for the contravention of the provisions stated in the Government Servants (Conduct) Rules, 1979, and recommends measures for punishment when proved. Part II of the Rules describes the issue of discipline in civil service with procedures of inquiry in cases of major and minor penalties. Moreover, part III provides for an appeal procedure against any government order. Ministry of Establishment and the Cabinet Division are overseeing this issue. Disciplinary measures are quite regularly taken against those officers who had been accused of violating the law.

Different legal frameworks contain a number of provisions designed to ensure the independence of public servants. Article 133 of the Constitution of Bangladesh requires the state to enact laws and procedures “to regulate the appointment and conditions of service of persons in the service of the Republic.” There are other Act and rules that provide some legal independence to the civil service. These include: Bangladesh Civil Service Recruitment (BCSR) Rules, 1981, the Bangladesh Civil Service Recruitment (Age, Qualification and Examination for Direct Recruitment) Rules, 1982, the Bangladesh Public Service Commission Ordinance, 1977, the Bangladesh Civil Service (Examination for Promotion) Rules, 1986, the Administrative Tribunal Act, 1980, and the Officers and Staff (Administrative Tribunal) Recruitment Rules, 1985, the Bangladesh Civil Service Recruitment Rules, 1982 etc.<sup>429</sup> A draft Civil Service Act (2007) has been prepared by the members of Human Resources Working Group formed by the then Ministry of Establishment ( Now Ministry of Public Administration). The draft Act [Clause-7(1.a)] lays down 13 general principles to be followed by the civil servants while discharging their duties. The principles are as follows: i. Legal assurance, ii. Equality, iii. Neutrality, iv. Precision and remaining error -free, v. Not to surpass the jurisdiction and not to do anything beyond the jurisdiction, vi. Consideration, vii. Efficiency, viii. Accountability, ix. Transparency, x. Professionalism, xi. Public interest, xii. Enhancement of knowledge and decision -making based on social needs, and xiii. Lawful execution of functions<sup>429</sup>. The proposed Act however is found to be internally inconsistent and lacks clarity of focus and did not take into account the elements of human resource management, safety/guarantee clauses and process and mechanism of career progression of the civil service.

The existing conduct rule provides some legal support to the public officials to be protected from external influence, in particular political influence. But in reality the public officials are not free from political interferences. There appears to be no institutional set-up to protect the public sector employees from political interference. In the last two changeovers of political power, it was evident overtly that some cronies of political high-ups take charge of all important administrative positions and the positions. There appears to be no such institution to protect the civil servants from external influences and political interferences. Officials are humiliated, transferred and there is no recourse to legal actions<sup>430</sup>. As of date there is no comprehensive Civil Service Act in Bangladesh with adequate provision of independence of and safeguard for civil servants. It is widely believed that absence of Civil Service Act has allowed the successive governments to manoeuvre the whole structure at their will.

Public sector employees are barred from any political activities as per the conduct rules. Despite this there are increasing signs of political influence of the ruling political parties. There

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<sup>429</sup> For detail see [http://www.daily-sun.com/details\\_yes\\_09-04-2011\\_civil-service-act,-2010-\(draft\):-a-review\\_182\\_2\\_17\\_1\\_0.html#sthash.tSf2yzLl.dpuf](http://www.daily-sun.com/details_yes_09-04-2011_civil-service-act,-2010-(draft):-a-review_182_2_17_1_0.html#sthash.tSf2yzLl.dpuf)

<sup>430</sup> A recent case of political abuse and harassment can be cited as example. The Deputy Commissioner of ‘Pabna’ District was abused and insulted by political activists under control of the local Member of Parliament. Public officials were manhandled, a high powered team headed by one of the Advisers visited and enquired the incidence. Later the Deputy Commissioner was transferred and the criminal case which was filed was also dismissed for want of witnesses. There are several cases of abuse of officials but there is no institution to safeguard them. Officers are withdrawn arbitrarily, they are put as Officer on Special Duty with no work. Such abuse of public officials remain unabated.

are incidences of mass promotions and transfers of civil servants on the basis of political considerations. Such promotions and transfers are reported to be made on political considerations while a large number of officers, having requisite qualifications, were deprived of due promotions<sup>431</sup>. This has created a commotion in the civil administration and also tarnished the image of the public bureaucracy as an institution. Researchers also have complained that even the composition of Bangladesh Public Service Commission (PSC) has been made on political consideration<sup>432</sup>. PSC's credibility and objectivity to recruit the candidates have also been challenged due to several incidences of leakage of question papers<sup>433</sup>.

Due to widespread politicization, it is now generally perceived that bureaucracy has been divided into pro-AL and pro-BNP groups. This trend in politicization starts from the stage of recruitment to post-retirement contractual appointment to that group of candidates/civil servants who are perceived by the party in power to have an acceptable degree of loyalty<sup>434</sup>. It is noted that alleged supporters of the ruling party get promotion while alleged sympathizers of the opposition are being made Officer on Special Duty (OSD)<sup>435</sup>. During last five years (January 2008 to September 2012) as many as 1989 officers<sup>436</sup> of various ranks have been made Officers on Special Duty (OSD)<sup>437</sup>. Even during the last regime of BNP, as many as 978 officials were placed as OSD<sup>438</sup>. Responding to a writ petition<sup>439</sup> the Government of Bangladesh reported to the High Court that as of October 2013, there were 13 Secretaries, 166 Additional Secretaries, 490 Joint Secretaries, 790 Deputy Secretaries, 460 Senior Assistant Secretaries

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<sup>431</sup> Sadrul Hasan Mazumder, "Political spell on bureaucracy", 23 February 2010, *The Daily Star*.

<sup>432</sup> Pranab Kumar Panday, "Politicisation of bureaucracy and its consequences", *The Daily Star*, May 22, 2012, *Daily Sun*, Oct 24, 2011

<sup>433</sup> "33rd BCS written exams postponed", for detail see *Kaaler Kontho* (Bengali Daily News paper) 6th October 2012.

<sup>434</sup> AMM Shawkat Ali, "Politician-bureaucrat interface", *The Daily Star*, March 14th 2011.

<sup>435</sup> Officer on Special Duty (OSD) – an administrative provision to engage public officials to carry out extraordinary and exceptional kind of jobs withdrawing him/her from regular duties. In the early 1980s it was considered to be the matter of honour for the public officials as it would recognize their special capacity to deal with the unusual/academic/complicated issues of national/public interest or importance. The officer can be made OSD, as and when situation demands, on the following grounds: Public officials waiting for posting; Officers nominated for long-term training; Officers attached to work on any commission or assigned to a particular kind of task; For regularizing a particular period of service of any civil servant in an exceptional circumstance; and Officer under departmental proceeding/inquiry for their irregular or illegal acts. Unfortunately governments over the years have abused this provision to tame the spirited public officials for their political purpose and interest. It has been observed that soon after assuming the power, the ruling political party starts accusing a section of civil servants to be of their opposite camps and invokes the provision of OSD as the first measure against them.

<sup>436</sup> *Daily Prothom Alo* January 15, 2013.

<sup>437</sup> *Daily Prothom Alo* January 15, 2013.

<sup>438</sup> *Daily Janakantha*, May 21, 2006.

<sup>439</sup> A retired Secretary of Government of Bangladesh and a former News paper editor Mr. M. Asafuddowal lodge a writ petition on 31 May 2012 and challenged the legitimacy and demanding a specific policy on the OSD placement system.

and 70 Assistant Secretaries were posted as OSD. These officers are not working but getting full salary and other benefits. During the last five years government has paid an amount of Tk 10.3 million for these officers for their salary and other benefits with our having their services for the republic. However, another media estimates that the cost is even higher i.e. Tk. 15.03 million<sup>440</sup>. OSD officers are not only draining public resources are also highly demoralized and suffering “social humiliation” and “psychological stress”<sup>441</sup>.

It is reported that the promotion system in public bureaucracy is guided by political consideration rather than professional criteria like merit, seniority and proficiency. In doing so the public officials at the policy level are promoted against no approved and vacant positions. By now the number of posted officers as against sanctioned posts is considerably higher. For example there are 1531 officer as against 830 approved posts for Deputy Secretary (85% higher than approved) , 623 Joint Secretary as against 430 approved posts (45% higher than approved), while there are as many as 249 Additional Secretaries as against 107 approved positions (133% higher than approved)<sup>442</sup>. One senior civil servant opined that “promotion had been turned to be a system of choosing and picking from among the political loyal. But the public perception of the politically loyal section of officials is negative and they are considered to be corrupt”<sup>443</sup>.

At the field level recruitment of the Class III and IV employees are supposed to be done by the field level public officials. Recent evidence suggests that such recruitment is exclusively controlled by the local political leaders of the ruling regime. It is also reported that local MPs of the ruling party play significant role. National media these days publish lots of case studies of what they prefer to call *Niyog Banijjo* (recruitment business).

## **Governance**

### ***Transparency, Accountability and Integrity: Legal Framework and Practice on the Ground***

Broadly there are three sets of rules/ laws that ensure transparency in financial, human resource and information management of the public service. These are: i. The Official Secrets Act 1923, ii. The Government Servants (Conduct) Rules 1979, and The Right to Information Act 2009. These rules/ law tend to open things to the public. Moreover, other laws have some tenets of information management – e.g., The Public Procurement Rules, 2008 which requires some relevant information to be made public.

Disclosure of declaration of personal assets, income of the public employees is mandatory by law. Moreover incomes from assets are also mandatory in income tax return. There are also provisions in the Conduct Rule<sup>444</sup> for submission of wealth statement to the Ministry. Conduct Rule 11 provides the provision that while buying and selling of valuable property, movable

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<sup>440</sup> *Dainik Amardesh* 18 Oct 2012.

<sup>441</sup> Mamun Rashid, “Synergising the civil bureaucracy in Bangladesh;”, *The Daily Sun* October 2011.

<sup>442</sup> *Prothom Alo*, January, 17, 2013.

<sup>443</sup> Interview with a former PSC member (*anonymity requested*), January 6<sup>th</sup> 2013.

<sup>444</sup> Government of Bangladesh, Government Service Conduct Rule, 1979.

and immovable, “a government servant shall declare his intention to the head of the Department or the Secretary to the government as the case may be. All transactions with a person, who is an official subordinate of government servant, should be reported to the next higher authority”.

Conduct Rule 14 asserts that “a Government servant shall disclose his liquid assets when required to do so by the Government”. No Government servant shall construct a building whether intended to be used for residential or commercial purpose except with the previous sanction of the Government and disclose the source from which the cost of such construction be met.

The Right to Information Act provides for public sector records to be available to people interested in them. With the introduction of Right to Information Act, citizens seeking access to public information are supposed to submit a written request and the relevant public agencies are supposed to provide the information in a stipulated period. Each authority has to publish and publicise all information in an indexed manner which is easily accessible to the citizens regarding any decision taken, proceeding or activity executed or proposed. In disclosing this information, no authority shall conceal or limit access to any information<sup>445</sup>.

The Public Procurement Act 2006 was passed and subsequently the Public Procurement Rules 2008 have been framed. PRA 2006 contains a number of provisions regarding the transparency of public procurement. Public Procurement Act is quite detailed about procedures to be followed either for procurement of goods and services or even for advertising a vacant position.

All Ministries and major public agencies have public relations wing/ departments. The prime purpose of the wing is to disseminate information as regards the role, functions and changes of the respective agencies as well respond immediate public and media queries. Another new intervention is the provision of Citizens Charter – which narrates the role, responsibilities, nature and types of services of a public sector agency at various levels.

The Government Servants Conduct Rule makes it mandatory for all civil servants to submit their wealth statement to the Ministry. However in actuality it is hardly in the practice and there is also no regulatory mechanism to monitor such reporting system. Neither is there any institutional arrangement nor an agency to verify the declaration. As far as wealth statement is concerned, enforcement of the provisions of Conduct rules is not in practice. Disclosure of personal assets, income, financial interests of public sector employees only occur when government targets any public officials to bring him to task<sup>446</sup>.

The provisions on freedom of information are not thoroughly implemented. Public agencies often fail to provide information within the deadline and sometimes fail to provide any response at all. The field tests revealed that there are considerable differences of opinion and approaches of the field officials as how to treat the request for information<sup>447</sup>.

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<sup>445</sup> Government of Bangladesh, The Right To Information Act, 2009.

<sup>446</sup> Interview with an Additional Secretary (*anonymity requested*), Government of Bangladesh, January 2013.

<sup>447</sup> Interview with Dr. Sadeka Halim, Information Commissioner, October 2102.

The legal provisions concerning transparency of the public sector in paper are generally adequate but hardly in practice and moreover public agencies are not always required to open up such types of information proactively<sup>448</sup>.

Progress in the implementation of the right to information law even after two years of enforcement is rather slow. Awareness about the law is lacking among majority of government officials, many of whom reluctant to accept RTI application demands from people. According to the Information Commission of Bangladesh (ICB), only one-third of government offices have so far submitted the names of their designated officials to the ICB or made them public. One clear indication of the slow progress of RTI in Bangladesh is the fact that in over two and a half years the ICB has heard only 44 complaints out of about 100 received. Thus there is serious lacking both in the demand and supply side of the RTI regime<sup>449</sup>.

There is an internal procedure of keeping office records which are not meant for public consumption. The citizens have no access to internal process and records or opinion expressed by the decision makers while taking decision on any issue. The people are allowed to know only the decision which government intends to communicate. There is no such law that may obligate government to disclose any file even after fifty years and no separate regulation is in place to manage public procurement documents separately.

The Public Accounts Committee submits an annual report to Parliament through the President. The reports provide detail anomalies if any of the public agencies and public officials involved in the process. There are also lapses in follow up action of the CAGs and PAC reports by the concerned agencies. Till April 2010, there were a huge number of unsettled audit objection reports involving Tk 18,000 crore (US\$2.7 billion). It reported that use of conventional audit practices, lack of updated and modern auditing skills have adversely affected the quality of audit.<sup>450</sup>

A study observed that “PPR 2008 has significant positive impact on the total time of procurement of works but it has not improved quality of construction works, moreover in some cases quality has deteriorated after introduction of PPR 2008”<sup>451</sup>. Transparency of public procurement has been questioned in recent years especially with the World Bank loan based Padma Bridge scam, which has generated a lot of debate both nationally and internationally. Finally the World Bank and three other donors pulled out of the loan deal<sup>452</sup>.

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<sup>448</sup> Interview with Dr. Sadeka Halim, Information Commissioner, October 2012.

<sup>449</sup> Institute of Informatics and Development, Policy Brief, Issue 5, February 2012.

<sup>450</sup> *The Daily Star*, 20 April 2010.

<sup>451</sup> Ajay Kumar Chakraborty, Impact of the ‘Public Procurement Rules 2008’ on the Implementation of Construction Projects- A Case Study on the Public Works Department, unpublished Masters thesis on Procurement and Supply Management, Institute of Governance Studies, BRAC University, 2012 ?? I would suggest only using this reference when it is published or author has secured the Masters after submission of this thesis.

<sup>452</sup> “Padma Bridge Grat Conspiracy - WB submits probe report to govt”, *Daily Star*, June 11, 2013.

Citizens have limited access to required information as because disclosure of information is yet not a regular practice and often kept withheld, at times it is either delayed or not released at all. Websites of the ministries and public offices are not regularly updated.

In summary, it appears that though there are number of provisions and legal framework to ensure transparency, practice seems to be weak and infrequent.

Accountability of public servants are governed and maintained by the Government Servants (Discipline and Appeal) Rules, 1985 and Secretariat Instruction 2008. The Public Employees Discipline (Punctual Attendance) Ordinance, 1982 also has specific sections for internal accountability and discipline of the civil servants of the republic.

There is also an internal mechanism of ensuring accountability of public employees through its senior supervisors. Anybody can register any complaint regarding any wrong doing of public servant to his superior authorities. If the prima facie case appears to be valid, the authority may proceed with formal charges against the accused and upon enquiry can inflict a punishment ranging from censure to dismissal from the service.

The Parliament is also a strong institution to ensure accountability of the public service. There are eight core Parliamentary Committees and every ministry has one Parliamentary Standing Committee to oversee the functions of the Ministry and make the public officials accountable for their functions to Parliament. Though the Parliamentary Committees do not have any executive authority they can suggest and recommend the government and expose the offence/irregularities to public administration system and individuals<sup>453</sup>.

For financial matters there is a constitutional body called Office of the Comptroller and Auditor General (OCAG) which assigned to examine all public expenditures and submit a report of irregularities to the President. Subsequently the President sends it to the Parliament to scrutinize and fix the responsibility of wrongdoings.

The Anti-Corruption Commission (ACC) is in place to oversee the broad category of corruption in public and private sectors. It is empowered to enquire into and conduct investigation of offences, file cases on the basis of enquiry or investigation and conduct cases<sup>454</sup>. There are also provisions for placing non-descript Petitions to the Anti-Corruption Commission and the Petitions Cell at Prime Minister's Office. Furthermore any citizen can place a petition to the Speaker of the House.

A Whistle Blowers Protection Act, 2011 has been enacted by the Government of Bangladesh to "root out corruption from the country and encourage people to give information of misdeeds"<sup>455</sup>. As per the law the names of the whistle blowers will not be made public for their protection, in case of otherwise, the authorities concerned will be punished. The ACC

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<sup>453</sup> Bangladesh Parliament, *Rules of Procedures of Parliament*, The People's Republic of Bangladesh – see Chapter XXVII - Rules Regulating Committees.

<sup>454</sup> For detail see chapter on Anti Corruption Commission.

<sup>455</sup> <http://www1.bssnews.net/newsDetails.php?cat=0&id=272226&date=2012-08-13>.

Chairman also appreciated the enactment of the law and noted that “this act can play a vital role to effectively address the recent corruptions.”<sup>456</sup>

Article 77 of the Bangladesh Constitution puts the provision of Ombudsman to investigate any action taken by a Ministry, a public officer or a statutory public authority<sup>457</sup>. The Ombudsman is supposed to prepare an annual report and place it before Parliament. However, till today no Ombudsman has been appointed.

The legal framework is generally adequate in terms of accountability procedures but in practice such mechanisms are either underperforming or dysfunctional. Public sector employees are answerable to their respective superiors or at the level of Minister or Secretary. The Ministries are accountable to the Parliament; Standing Committees of the Parliament are created to make oversight on administrative ministries. But the recommendations are not mandatory or binding on the administrative ministries. Depending on the performance of the Chairman, the standing committees may make positive contribution in ensuring public accountability. But if the Chair is from opposing political party the effectiveness of the Committees is generally less.

Parliamentary Standing Committees are mere recommending bodies and such recommendations are generally ignored or overlooked. Moreover because of low image and credibility, Parliament members are also not active and less vocal in making public bureaucracy accountable<sup>458</sup>.

As of date the Office of the Ombudsman has not been constituted. However the main deficiency of the Ombudsman is that it can only investigate a case. The “acts of corruption”, “illegal acquisition of property” etc., by public functionaries are kept outside the jurisdiction of the Ombudsman.

At present ordinarily complaints are investigated depending on their nature and gravity. However, sensitive and complaints against high profile people are suppressed or bypassed or sent to a committee who will eventually provide certificate that no wrong doing has been done. There are many instances, such as the ‘Capital Market Scam’, or ‘Rail Gate Scandal’ involving the Minister for Railways. In the ‘Rail Gate Scandal’ a committee set up by a Joint Secretary investigated the complaints which involved the name of a Minister. Standard procedure is to appoint a person or a Commission higher in position and have sufficient power to investigate when reference is made to a Minister in the complaint<sup>459</sup>.

Unfortunately, ACC suffers from huge image crisis due to lack of institutional capacity and political biasness. In recent years, it has measurably failed to impress citizens for its non-

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<sup>456</sup> Interview with ACC Chairman Mr. Golam Rahman..

<sup>457</sup> Ombudsman Act, 1980 empowers the Ombudsman to investigate only such action of a Ministry, a public officer or a statutory public authority as (1) has caused injustice to any person or (2) has resulted in undue favor being shown to any person or (3) has resulted in accrual of undue personal benefit or gain to any person.

<sup>458</sup> The recent report by TIB on selected 149 MPs on their activities showed that 97% of the MPs are involved in illegal inappropriate actions such as rent seeking, interfering and threatening.

<sup>459</sup> Shakhawat Liton, “The Railgate”, *Current Affairs*, Volume.11, Issue 16, April 20, 2012.

actions on widely known and apparently proved financial crimes. The present ACC Chief himself came out with statements calling the ACC a "toothless tiger" at its present form and the government is making effort to cut its claws further. . The<sup>460</sup> Government has also drafted some reforms of ACC Rules where any formal allegation on corruption against a member of public bureaucracy would need the final approval from the government. The ACC Chair has formally recommended reforming anti-corruption laws for the quick disposal of graft cases. He observed that "the commission can investigate and it can even lodge cases against the accused but cannot hold the trial. The accused in graft cases, in many cases, remain unpunished for years because of the complex and lengthy judicial process of the country."<sup>461</sup>

For any complaints of public sector wrong doings, the general mood is playing safe. Nobody likes to take the burden of investigating and detecting fraud and become unpopular. There is a propensity to pass on the buck, so that the complaints are investigated by others and one may remain untroubled because the wrong doers are usually very powerful and have political clout. It is widely believed that a public sector employee is only charged with offences when the top political mood is not in his favor. Generally the wrong doers have political clout and are political beneficiaries and they may escape any legal actions during their preferred political regime. There are reports of files being lost or concealed to destroy evidence so that no proceeding can be initiated.

On very rare occasions any actions are taken against public servants having political clout. The recent Hall Mark scam is one example where many influential higher ups are untouched despite the fact that there had been undue influences for illegal financial advances<sup>462</sup>. There is hardly any dedicated oversight agency to look into complaints related to Public Procurement. The Central Procurement Technical Unit (CPTU) being a technical support department for Public Procurement only provides technical information. They do not have any role to investigate complaints. Thus complaints are therefore either looked into by Ministries own internal systems or sent to ACC for actions.

Bangladesh has fairly well developed integrity rules for the public sector. These are spelled out in the Public Service Conduct Rules, Establishment Manual and Service Rules. These Rules set specific principles on conflicts of interest, rules on gifts and hospitality, post-employment restrictions, unauthorized use of official property/facilities, work outside the public sector, use of official information, use of official travel, and employment of family members.

In 2007, the Government of Bangladesh acceded to the United Nations Convention against Corruption (UNCAC) and has developed its own *Framework of National Integrity Strategy*<sup>463</sup>. The NIS recognizes that the fight against corruption cannot be won by prosecution alone but an inclusive approach based on values, morals, ethics and integrity is also needed. Accordingly

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<sup>460</sup> *The Daily Star*, October 28, 2009.

<sup>461</sup> *The Daily Star*, March 30, 2012.

<sup>462</sup> M Rahman, Hallmark-Sonali Scam , Big names excluded - ACC probe report submitted, *The Daily Star*, September 13, 2013.

<sup>463</sup> Government of the People's Republic of Bangladesh ,*Framework of National Integrity Strategy: An Inclusive Approach to Fight Corruption*, Cabinet Division, , October 2008.

the Government of Bangladesh has formed a 49 -member National Integrity Advisory Council (NIAC) under the chairmanship of the Honorable Prime Minister on 29th November 2012 and an Executive Committee of the NIAC has also been formed under the chairmanship of Finance Minister<sup>464</sup>. The TOR of the Executive Committee of the NIAC along with others include implementation, monitoring and coordination of NIS, review of the status of integration of the status of the integrity of the state and society for its promotion; approval action plan of the NIS at national level<sup>465</sup>. An action plan has been prepared for the implementation of the NIS<sup>466</sup>.

There are also some specific rules to abstain public officials from receiving gifts, hospitality and other benefits using his/her office. Different sections of Public Service Conduct Rules regulated the behaviour and practices of the Government servant. Government officials are not allowed to accept or permit any member of his family to accept, from any person any gift the receipt of which will place him under any form of official obligation to the donor. The public officials are not allowed to engage in any other profiteering job without the prior approval of the Government. A public servant is not allowed to take part in the promotion, registration or management of any private bank or other company.

Chapter IX of the Penal Code also deals with offences by or relating to public officials. The Section 161 of the Penal Code restricts public servants taking gratification other than legal remuneration in respect to an official act. Sections 162 and 163 also deal with corruption of public servants.

Some other important laws for effective prevention of corruption have been passed by the Parliament. These include: 'Right to Information Act, 2009', 'Protection of Consumer Rights Act, 2009', 'Public Finance and Budget Management Act, 2009', 'National Human Rights Commission Act, 2009', 'Chartered Secretaries Act, 2010', 'Whistle Blowers' (Protection) Act, 2011', 'Prevention of Money Laundering Act, 2012', 'Competition Act, 2012' etc.

Though the Government has passed different Acts to address integrity and administrative norms and corruption issues, in most cases adequate rules and implementation strategies have not yet been formulated<sup>467</sup>. Under the NIS strategy relevant committees like the 'Ethics Committee' and the 'Integrity Focal Point' for each of the ministries are yet to be in place. The 'Integrity Award' has also not been introduced. As of date (September 2013) no meeting of the NIAC and or the Executive Committee of the NIAC has been held.

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<sup>464</sup> Cabinet Division Notification 04.611.074.00.02.2012-160, 29th November 2012, Government of Bangladesh.

<sup>465</sup> Cabinet Division Notification 04.611.074.00.02.2012-161, 29th November 2012, Government of Bangladesh.

<sup>466</sup> Major components of the Action plan includes: developing a coordination, monitoring and reporting system on NIS, promulgation of an ordinance on Right to Information, establishment of Local Government Commission, and building capacity of the Ethics Focal Points in different institutions. 'Integrity Awards' to be introduced for honoring and rewarding persons in the Government, civil society and in the private sector for their outstanding contribution to prevention of corruptions and promotion of integrity.

<sup>467</sup> Interview with a Secretary of the Government of Bangladesh (*anonymity requested*), January 2013 Please follow style guide for citing interviews.

Bangladesh Public Administration Training Centre (BPTAC) the prime training institution for all civil servants of Bangladesh organizes occasional workshops and seminars dedicated to corruption but it does not have any dedicated curricula on administrative corruption and /or integrity issues as such.

The Cabinet Division undertook a survey among 4,500 respondents to gauge their perceptions about the state of integrity and corruption in Bangladesh society<sup>468</sup>. Along with others, the study reports that:

- Only a handful of ministers were found to submit their wealth statement to the Parliament as mandated.
- Though there are codes of conducts for the sub ordinary judiciary, but they are seldom followed.
- The Office of the Comptroller and Auditor-General (OCAG), as a supreme watchdog body works in isolation. In spite of a strong public demand, it does not disclose the audit reports to the media other than the Parliament through the President.

The code of conduct is not forced upon the officials strictly without any exception leading to encourage others for further violation. It is observed that many violators and transgressors evaded official scrutiny due to their political connections and could gain over their supervisors or top management through various political means<sup>469</sup>.

The controlling ministry or department is entrusted to supervise the execution of the Code of Conduct applicable to its employees. However there is no separate wing or Integrity unit to look after the enforcement of the code. No special training is organized for the civil servants for appropriate understanding and assessment of integrity issues<sup>470</sup>.

The culture of declaring conflicts of interests by the public officials is non-existent. Misuse of power and public resources is rampant. Bribery takes place silently but no effective actions are being taken<sup>471</sup>. A recent TIB survey observed that 63.7% of the household has been the victim of corruption of various public services agencies of the government. On average, urban households had to pay Tk. 14,627 (US\$ 187) and rural households paid Tk. 12,283 (US\$ 157) as corruption money<sup>472</sup>.

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<sup>468</sup> Cabinet Division, The Government of The People's Republic of Bangladesh, *Executive Summary of Independent Expert Survey and National Perception Survey on NIS, UNCAC and Partnership Implementation—Supporting the Good Governance Program*, 2012.

<sup>469</sup> Salahuddin Aminuzzaman, "Accountability and Promotion of Ethics and Standard of Behaviour of the Public Bureaucracy in Bangladesh", *Asian Review of Public Administration*, Vol.8, No.1: 13-27, 1996 also see Mohammad Mohabbat Khan, Political and Administrative Corruption: Concepts, Comparative Experiences and Bangladesh Case - A paper prepared for Transparency International – Bangladesh Chapter, ([www.ti-bangladesh.org/oldweb/index.php?page\\_id=373](http://www.ti-bangladesh.org/oldweb/index.php?page_id=373)).

<sup>470</sup> Interview with an Additional Secretary (*anonymity requested*), January 2013.

<sup>471</sup> *The Daily Star*, 17<sup>th</sup> May 2013.

<sup>472</sup> TIB Household Survey on Service Sector Corruption 2012, Transparency International Bangladesh

A good number of civil servants of recent generation are not even aware of the specific rules regarding gift and hospitality regulations and others related integrity issues. There appears to be a “culture of impunity” that lets the members of public bureaucracy get away with corruption and integrity issues<sup>473</sup>.

A TIB report observes that Bangladesh’s legal regime is largely compatible with standards and principles of the UNCAC. However, there are a number of weaknesses with regard to gaps in both law and practice. There are also areas in which further clarification and modification of existing legislation are necessary. The report however also noted some of the significant inadequacies of the enforcement of integrity anti-corruption initiatives:

- Partisan political considerations often seem to influence the anti-corruption agenda, which often appear to target the political opponent and in turn sustain corruption and promote a culture of impunity. In many instances, laws such as the Money Laundering Prevention Act apparently have been used against political opponents.
- There are concerns regarding the credibility of some of the Anti-Corruption Commission staff, a lack of due diligence and the absence of a code of conduct, as well as the balance of positive and negative incentives. These issues are believed to have caused the ineffectiveness of the ACC and its investigative capacity.
- The Office of the Tax Ombudsman was abolished. That act was intended to create an institution to promote integrity and accountability in tax administration.
- There are inadequate resources, a shortage of staff and a lack of technical capacity in various watchdog and oversight bodies, ministries and departments of the government. This weakens the government’s capacity to enforce laws and rules related to integrity and corruption.
- The government used an act of parliament to grant immunity to any decision taken in connection with the production, sale or distribution of electricity, which is likely to jeopardise transparency and accountability in the sector.

In fact there is no concrete evidence that the government has been very successful in reducing corruption in the public service. The broad range of integrity rules for public servants are not always applied effectively, mainly because of the lack of an effective initiative, institutional capacity and poor enforcement of the rules. The members of civil service are not being appropriately trained or oriented about the cost and consequence of corruption. Although Bangladesh recently enacted new rules on whistleblower protection and anti-corruption, evidence however suggests that “ progress in the fight against corruption has slowed down under the incumbent elected government and the donors have questioned its commitment to reforms. The politicization of public administration – combined with low salaries, low morale, and the absence of appropriate, credible and or effective rules and regulations, has served to institutionalise corruption in public service further”<sup>474</sup>.

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<sup>473</sup> Interview with an Additional Secretary (*anonymity requested*).

<sup>474</sup> Joint Evaluation of Support to Anti-Corruption Efforts, Bangladesh Country Report, *June 2011, Submitted by ITAD in association with LDP.*

## **Role Assessment**

### ***Integrity in Public Procurement***

Bangladesh legal framework for public procurement is extensive and contains a number of detailed provisions designed to ensure objectivity of the process and reduce the risk of corruption. The procurement procedure of public goods and services is apparently transparent and fair. The government has enacted a detailed and highly structured law namely Public Procurement Act 2006 and a Rule namely Public Procurement Rule 2008 (PPR).

The PPA, 2006 and the PPR, 2008 aim to provide legal framework governing public sector procurement. Additionally, these laws seek to ensure greater autonomy from Cabinets and concerned Ministries though a shift to procuring entities both at the national and local levels, who have now been delegated the authority to award and approve contracts.

The PPR, 2008 (rules 13-18, 47-49, 56-60) has specified the basic procurement guidelines, including public accessibility of tendering rules, eligibility and non-discrimination criteria regarding the selection of tender, and the required qualifications of tenderers. Furthermore, Section 40 of the Act and Rule 90 (through Rules 61,62) state that an open national tendering system is the preferred system for procurements in the public sector. These rules also include provisions for the organization of any public procurement, including policy formulation, coordination, and monitoring of the procurement procedure. A detailed legal framework for complaints and appeals to ensure legal recourse and remedies incorporates both administrative and independent review mechanisms (Rules 56-60). The PPR, 2008 also provides detailed guidelines for international procurement (Rules 83-87). In addition PPR, 2008 requires the establishment of a Tender Opening Committee (TOC) and Tender Evaluation Committee (TEC)/Proposal Evaluation Committee (PEC) for goods, works and services procurement. TECs are in charge of evaluating bids and are required to furnish detailed reports for awards to the approving authority (rules 101-102).

The bidding process after the Public Procurement Act 2006 has been enacted. There are specific procedures which may be followed to avoid any allegations. But there are very little safeguards against officials involved in the tendering process. There are specific provisions in the law allowing exceptions for procurement such as procuring from a single source. But for that exception, prior permission from appropriate authority must be secured.

Procurement awards are made public. The bidders are well protected by law. Any breach of law by officials for abuse or misuse of power, officials responsible may be suspended and departmental proceeding may follow against the incumbent.

A Central Procurement Technical Unit (CPTU) has produced several documents like customized formats, guidelines. Steps have also been taken to professionalize the management of the public procurement system and improve capacity through training public officials.

However, application of the national procurement act and rules has proven to be relatively inconsistent across the Government and within individual agencies. Furthermore, implementation of the rules has severely strained the capacity of executing agencies. There is

some institutional vulnerability in relation to the management of procurement which includes lack of information and expertise. It is also found that the new system has caused delays in the procurement process. The<sup>475</sup> Government of Bangladesh has however subsequently amended a few sections of the Public Procurement Rules<sup>476</sup>.

### **Public Education on Corruption**

A number of important steps have taken place in recent years to enhance transparency and accountability in all financial transactions which includes - improving the quality and predictability of public service delivery, expanding citizens' participation in local government, introducing the 'Citizens Charter' by the ministries and agencies to ensure that their services reach the people. However, there is no concrete initiative in educating and involving the public in building integrity as a tool for preventing corruption.

The government does not carry out any regular awareness-raising or educational activities in the field of anti-corruption, limiting its efforts to press conferences held by prosecutors when corruption-related crimes are solved. The Ministry of Education, Government of Bangladesh has in principle decided to include selected articles on issues on anti -corruption in the academic syllabus of Grades IX and X in forthcoming years, but this has not been done yet.

The Ministry of Information occasionally sends Ttext messages to cell phone on various issues and concerns including corruption. One recent text message is *Ashun amra durniti protirodh kori* (Come - Let us prevent corruption).

Citizens' Charter has provisions to provide the service seekers adequate information about the process and cost of public service. However, ground reality reveals that there is inadequate preparedness on the part of the government service agencies to disseminate relevant information and provide adequate services. It is also observed that there is a gross lack of understanding and awareness among the citizens as regards the Citizens' Charter.

### **Cooperation with Stakeholders**

There has been some limited cooperation between the public sector and the civil society in Bangladesh on the anti-corruption drive. A coalition of civil society organizations has been actively engaged in helping the Government in drafting the Right to Information Act. TIB also played a consultative role in assisting the Cabinet Division of the Government of Bangladesh in drafting the NIS strategy paper. During the Caretaker Government TIB took some

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<sup>475</sup> Ajay Kumar Chakraborty, Impact of the 'Public Procurement Rules 2008' on the Implementation of Construction Projects- A Case Study on the Public Works Department, unpublished Master's thesis on Procurement and Supply Management, Institute of Governance Studies, BRAC University, 2012.

<sup>476</sup> The government has amended the public procurement rules (PPR) relaxing the provisions relating to "work experience" and "financial qualifications" of the contractors seeking bids for public purchase up to Tk 20 million. See *Financial Express* 21, 2009.

initiatives to build the capacity of the ACC<sup>477</sup>. TIB, through its annual household survey reports and various thematic sector study reports, provide the state of of corruption and integrity issues in Bangladesh. However, after publication of some survey reports on judiciary, selected sectoral ministries, performance of the MPs, national household survey, the relationship between TIB and Government turned sour and at one point a section of Members of Parliament demanded that the activities of TIB be banned in Bangladesh<sup>478</sup>.

CSOs, including TIB, organize rallies and human chains at local and national level to observe International Anti-Corruption Day to generate public awareness to fight corruption and poor governance. TIB has initiated some public awareness programs including encouraging some primary and secondary schools, grass roots -based local governments to formally take the Integrity Pledge (IP).

It is to be noted that the existing civil service Conduct Rule is somewhat contradictory to such mutual collaboration. The government officials are not allowed to speak with the press and make any public statement.<sup>479</sup> Rule 19 clearly states that “Government servants shall not, unless generally or specially empowered by the Government in this behalf, disclose directly or indirectly to Government servants belonging to other Ministries, Divisions or Departments, or to non-official persons or to the Press, the contents of any official document or communicate any information which has come into his possession in the course of his official duties or has been prepared or collected by him in the course of those duties, whether from official sources or otherwise”. Rule 19(a) notes that “ No Government servant shall, except with the previous sanction of the Head of the Department, participate in a radio or television broadcast or contribute any article or write any letter to any newspaper or periodical”.

### **3.2.2 LAW ENFORCEMENT (POLICE)<sup>480</sup>**

The police force in Bangladesh has over the years drawn flak for often failing to protect citizens and deviating from democratic policing. Undermining the rule of law, the police have been used by successive governments and major political forces to protect the arbitrary authority of the regime in power. They have been found to operate above and beyond the law, oppress and suppress political opponents, conduct mass arrests, commit torture in

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<sup>477</sup> Interview with Dr. Iftekharuzzaman, ED, TIB, 5th September 2013.

<sup>478</sup> MPs' Negative Activities - PM flays TIB, Daily Star, October 16, 2012.

<sup>479</sup> Conduct Rule Section 19 states that the Government servant shall not, unless generally or specially empowered by the Government disclose to non-official persons or to the Press, the contents of any official document or communicate any information which has come into his possession in the course of his official duties. Section Rule 19(a) further notes that no Government servant shall, except with the previous sanction of the Head of the Department, participate in a radio or television broadcast or contribute any article or write any letter to any newspaper.

<sup>480</sup> 'Law enforcement' in Bangladesh is strictly considered the forte of the police and associated forces. There is no organised and integrated prosecutorial service in Bangladesh. The Ministry of Law, Justice and Parliamentary Affairs appoints prosecutors primarily from amongst practicing lawyers. Public prosecutors have no control over investigation processes. The work of the public prosecutor begins with the appearance of the accused before the court. Taking these various factors into consideration, the research team chose to focus on the police to the exclusion of public prosecutors.

remand, carry out extra-judicial killings, and overall, enjoy impunity and political patronage by corrupt officials.<sup>481</sup> This state of affairs has seriously impeded the independence of the police force, weakened accountability structures and created public distrust of their ability and willingness to function in the public interest.

### **Structure and Organisation**

The Bangladesh Police is overseen by the Ministry of Home Affairs (MoHA) the primary responsibility of which is to ensure the law and order and internal security of the state. The Police Department comprises several specialised branches including Traffic Control, Special Branch (SB), Criminal Investigation Department (CID), Rapid Action Battalion (RAB), Metropolitan and 'Range' police. The Range police are stationed across districts, circles, *thanas* (police stations) and outposts.

### **Capacity**

#### ***Financial, Human and Infrastructural Resources***

*The Police Act 1861* provides for the establishment of the police force consisting of members recruited by the government from time to time. The law under *The Armed Police Battalions Ordinance 1979* (APBO) provides for the constitution and maintenance of an additional force composed of a class of officers and armed policemen recruited for specific purposes. The pay and other conditions of service of the law enforcement agency are determined by the Government. The laws delineate the hierarchy of officers within the police force.

Legal provisions are limited to the Constitution, hierarchy and pay of police officers. While the law focuses on law and order generally, there is no reference to crime, human rights, corruption, etc.

The Police Department is wholly dependent on the Government revenue budget for its resources. The MoHA controls the police budget. The police department needs to seek approval from MoHA and the Ministry of Finance for expending funds allocated to it. Invoices of daily expenditures in all police stations in respect of travel, food for the detainees and other daily expenses are required to be forwarded to the Deputy Commissioner's office following which the money is disbursed, a process that often takes several months.<sup>482</sup>

Although the annual budget has been increasing progressively, the funds continue to be inadequate, evident from the poor state of police buildings and barracks, the antiquated weapons carried by the police, insufficient funds for training, and shortfalls in daily operating costs that are normally needed to deliver services to an acceptable standard.<sup>483</sup> While senior officers in respective departments are usually provided with adequate resources, those at the middle and lower ranks lack even the fundamental logistical support required for their work. Officers on duty often have to pay from their pockets and claims for reimbursement often take months before they are settled. Salaries and benefits are inconsistent with cost of living

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<sup>481</sup> ASM Shahjahan, "Police and Politics", *The Daily Star*, February 23, 2010.

<sup>482</sup> ASM Shahjahan, "Police Reforms in Bangladesh", from the ADB Regional Workshop publication on *Strengthening the Criminal Justice System*, Dhaka, 30–31 May 2006, 39-50, at p.42.

<sup>483</sup> *Ibid.*, p. 44.

and raises in pay are not systematic and promotions are few and far between, and often politically biased.

Minorities and women are greatly under-represented in the police force; likewise, women and minorities in positions of authority are virtually non-existent.<sup>484</sup> Police stations are devoid of separate facilities, such as toilets for female officers. The Police Headquarters does not appear too keen on improving their working conditions or using their skills to prevent crimes, particularly violence against women; instead, the female police are largely confined to administrative positions and assisting in the apprehension and detention of women accused and the occasional presence in public functions.<sup>485</sup>

The dearth of adequate vehicles and modern arms and equipment has a serious impact on their work, whether routine or investigation-related. The police, particularly in the suburban areas, are compelled to forgo on-the-spot investigation of crimes due to the unavailability of transport facilities or, reimbursements if they use their own money to travel to the place of occurrence. Unlike in the past, investigation costs are now charged but the allocation for this is negligible. Office logistical support for police officers is also limited. For example, public complaints cannot be written because paper is frequently out of stock; moreover, irrational provisioning results in surreal situations where hardware is provided (i.e. computers, mobiles, and radio sets), but essential peripherals, maintenance contracts, or training for use are absent.<sup>486</sup> Accommodation and food, particularly in subordinate positions, are appalling and essentially contribute to the lowering of the morale of the officers.<sup>487</sup>

In all ranks, there is a miserable lack of forensic training. Forensic sections have been suffering for want of logistical support, modern facilities, transport, and inadequate budgetary allocation. Equipment used to support fingerprints analysis, although not necessarily expensive, are frequently unavailable or are antiquated and in need of either repair or replacement. No Automated Fingerprint Identification System (AFIS) is in use. The Bangladesh Police has no DNA collection capability and no access to DNA testing.<sup>488</sup>

Poor salaries are one of the principal causes for police inefficiency and corruption. According to a 2009 report by the International Crisis Group, salaries in the law enforcement system are deplorable, even by local standards, leading to low morale and erosion in professional accountability.<sup>489</sup> An Assistant Sub-Inspector of Police occupies the lowest rung in the police cadre service and is paid a basic salary of BDT 11,000, same as entry level officers in the civil service and the judiciary. Although the police often have to work round the clock, they are not compensated for the extra work.<sup>490</sup> However, they do receive an extra allowance for communications and are entitled to subsidised food rations.<sup>491</sup>

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<sup>484</sup> The total number of female police officers starting from constable to the DIG position as of 5<sup>th</sup> February, 2013 stands at 6368 with a male: female ratio of 33:4 only (Source: Police Headquarters, Dhaka).

<sup>485</sup> International Crisis Group, *Bangladesh: Getting Police Reform on Track*, Asia Report N°182, Brussels, 2009, p.9, available at [http://www.crisisgroup.org/~media/Files/asia/southasia/bangladesh/182\\_Bangladesh\\_Getting\\_Police\\_Reform\\_on\\_Track.ashx](http://www.crisisgroup.org/~media/Files/asia/southasia/bangladesh/182_Bangladesh_Getting_Police_Reform_on_Track.ashx)

<sup>486</sup> Commonwealth Human Rights Initiative, *Law Reform in South Asia*, U.K., 2008, p.13.

<sup>487</sup> International Crisis Group, 2009, *op.cit.*, p. 9.

<sup>488</sup> ASM Shahjahan, 2006, *op.cit.*, p.41.

<sup>489</sup> International Crisis Group, 2009, *op.cit.*, p.11.

<sup>490</sup> Transparency International, Bangladesh (TIB), *Working Paper on Police Stations*, 2004, p.32.

<sup>491</sup> In conversation with mid-ranking police officers in service (*anonymity requested*).

The bleak conditions in which the police operate are compounded by interminably long working hours. According to Transparency International Bangladesh (TIB) report<sup>492</sup>, police officers and constables work longer periods than any other government employee, averaging 13-18 hours a day. An officer in charge of a metropolitan police station and an officer in charge of district and thana level stations work for 18 hours and 15 hours per day respectively. The average time put in by assistant sub-inspectors and constables in all the police stations is between 13-16 hours a day.<sup>493</sup> This is largely because the total number of in-service police officers is grossly inadequate to cater to an approximate population of 140 million and the police to population ratios are well below prevalent standards in Asia.<sup>494</sup>

Trainings for police personnel at different levels are provided at the Sardah Police Academy (the oldest training institution for police officers established by the British in 1912), the Police Training Centers (PTCs), the Detective Training School, the Police Staff College<sup>495</sup> and the Public Administrative Training Centre (PATC).<sup>496</sup>

It is alleged that the quality of the training provided to law enforcement officers, particularly lower level officers and constables, is poor. The period for basic training of each recruit varies between six months to one year. Constables receive six months of physical and weapons training at various training schools around the country. The basic training courses for Constables and Sub-Inspectors emphasise on physique, weapons and drills (comprising more than 50% of the course) but focus very little on real-life policing in a transitional society. It has been noted that the curriculum used for constable training is inadequate. As a result, the junior ranks generally have a weak grasp of police procedures and the proper use of force when dealing with criminals or crowds.<sup>497</sup>

Higher ranking police officers receive training that spans over a year and includes academic course work. Training modules for senior officers concentrate on the study of law, without adequate attention to emerging concerns, for example, counter-terrorism, criminology, human rights, management and investigations.

Given that the police are the vanguard for upholding the rule of law, maintaining law and order and protecting human rights of citizens, this sector has been receiving sustained donor support and technical assistance for capacity building and training. The Bangladesh Police is now in the process of modernising the police training institutes to produce people-friendly police. The Training Directorate of Police Headquarters has recently developed some training materials, .e.g., Constable Handbook and In-service Training Manual for the ranks of constables to sub-inspectors. The Training Directorate has also reviewed the syllabus and methodology of basic training for ASP probationers to make the training programme comprehensive, well-designed, empirical and effective. A wide range of issues related to finer

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<sup>492</sup> TIB, 2004, *op.cit.*, p.17.

<sup>493</sup> *Ibid.*

<sup>494</sup> For example, in 2009, the total number of the police force in Bangladesh was 123,197 for a population of 140 million people, bringing the police-population ratio to 1:1,138. In comparison, the ratio of police –population in India was 1:728, in Pakistan 1:625 and in Malaysia 1:249 (cited from Md. Shariful Islam, *Politics-Corruption Nexus in Bangladesh. An Empirical Study of the Impacts on Judicial Governance*, Asian Legal Resource Center, Hong Kong, 2010, p.108).

<sup>495</sup> Md. Shah Abid Hossain, *op.cit.*, p.296.

<sup>496</sup> The Public Administration Training Policy, 2003.

<sup>497</sup> Farzana Nawaz, 2012, *op.cit.* p. 8.

human values, social and economic trends, human psychology, social behaviour and attitudes, scientific techniques of policing, management concepts, analytical and innovative skills, constitutional matters, commitment to the national goal, discipline, ethical and professional conduct, empathy for victims of crime, etc. have also been incorporated.<sup>498</sup>

The Police Reform Programme (PRP), which began in 2005 with support from external donors, aims at comprehensive reform of the police force. The overarching objective is to build professionalism by improving crime prevention and operations, investigations, oversight, accountability, communications and human resourcing with an emphasis on recruiting a targeted number of female personnel. Under this project model thanas with special support services for women, community policing and other institutional developments are underway.<sup>499</sup>

Police officials work in appalling and challenging conditions characterised by low pay, antiquated arms and equipment and inadequate transport facilities required for conducting effective investigation, sub-standard food, perilous accommodation, lack of motivation and overwork. Salary raises and promotions are infrequent. The police training facilities suffer from a lack of expertise and resources required to impart quality education, particularly at the lower ranks. These factors impede organisational efficacy and contribute to the lowering of the morale of the police and heightening their inability to grasp their role as public servants. This in turn makes them susceptible to corruption and manipulation by political forces. Reform initiatives are largely donor driven.

### ***Independence and Functional Autonomy***

*The Police Act of 1861*, the primary piece of legislation governing the police, outlines the constitution of the police force, its superintendence, appointments, dismissals and other conditions of service. Notwithstanding, officers are recruited to the police cadre in the same manner and under the same laws as civil servants and as such are subject to the same kind of control and supervision. Aspirants shall take an examination conducted by the Bangladesh Public Service Commission from time to time, based on a set syllabus. The written test is followed by a viva voce after which successful candidates shall submit to psychological and physical fitness tests.

*The Bangladesh Civil Service Recruitment Rules 1981* provide a broad eligibility criterion for direct recruitment to a service of the Republic including police officials.<sup>500</sup> *The Bangladesh Civil Service (Age, Qualification and Examination for Direct Recruitment) Rules 1982* provide more details on age and qualification, etc. of a person wishing to take the Public Service Commission Examination.<sup>501</sup> Citizenship criterion is similar to that prescribed by *The Bangladesh Civil Service Recruitment Rules 1981* except where it states that a candidate shall not be eligible for appearing at an examination if s/he is married to or *has without previous permission of the Government* entered into a promise of marriage with a person who is not a citizen of Bangladesh.<sup>502</sup>

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<sup>498</sup> Md. Shah Abid Hossain, *op.cit.*, p.296.

<sup>499</sup> International Crisis Group, 2009, *op.cit.*, p. 19.

<sup>500</sup> Rules 4(2)(3), *The Bangladesh Civil Service Recruitment Rules 1981*.

<sup>501</sup> Rule 13, *The Bangladesh Civil Service (Age, Qualification and Examination for Direct Recruitment) Rules 1982*.

<sup>502</sup> Rule 14, *ibid*.

Every police officer appointed to the police-force shall receive on his appointment a certificate in a prescribed form under the seal of the Inspector General or such other officer as the Inspector-General shall appoint, by virtue of which the person holding such certificate shall be vested with the powers, functions and privileges of a police-officer.<sup>503</sup> No police-officer shall engage in any other employment or office unless expressly permitted to do so in writing by the Inspector General.<sup>504</sup>

The Inspector General of Police (IGP), the highest in rank, is recruited by appointment from amongst the Additional Inspectors General of Police (AIGP). The lowest gazette rank in police administration is that of the Assistant Superintendents of Police (ASP) of whom 2/3 are directly recruited through competitive examinations as per Government Rules and 1/3 by promotion from amongst the Inspectors of Police having at least 3 years of experience. Promotions take place on the basis of length of service and competitive examinations conducted by the Bangladesh Public Service Commission under *The Bangladesh Civil Service (Examination for Promotion) Rules 1986*.

Constables, the largest group who constitute the lowest non-gazetted rank in the police force, require nominal educational qualifications but must pass written and physical tests. Sub-inspectors who occupy the next rank in the force, must be high school graduates and pass police administered exams.<sup>505</sup>

*The Armed Police Battalions Ordinance 1979* (APBO) provides for the constitution and maintenance of another force composed of a class of officers and armed policemen recruited for specific purposes.<sup>506</sup> The Rapid Action Battalion (RAB) was added to the armed police battalions, which comprises members appointed on secondment or deputation, from the police, or military or para-military service.<sup>507</sup>

The Inspector General of Police (IGP) is responsible for overall police administration. The Superintendents of Police (SP) oversee district-level management of the police force and other functions including the detection, investigation and prevention of crime. They are subject to the operational control of centrally appointed government agents, that is, the Magistrates.

Although *The Police Act 1861* continues to be the primary statute regulating the police, reform initiatives in recent years by way of *Metropolitan Police Acts* have divested Executive Magistrates of their power over the police force and vested the regulatory and licensing powers in the Inspector General of Police and Metropolitan Police Commissioners. This was

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<sup>503</sup> Section 8, The Police Act, 1861.

<sup>504</sup> Section 10, *ibid*.

<sup>505</sup> The International Crisis Group, 2009, *op.cit.*, p.3.

<sup>506</sup> The Armed Police Battalions (APB) shall engage in (a) internal security; (b) recovery of unauthorised arms, ammunitions, explosives and such other articles as the Government may, from time to time, direct (c) apprehension of armed gangs of criminals; (d) assisting other law enforcing agencies including the Police for maintaining law and order; and (e) such other duties as the Government may, from time to time, assign. Within the APB, only members of RAB, to the exclusion of all others, are empowered to engage in (i) intelligence in respect of crime and criminal activities and (ii) investigation of any offence on the direction of the Government.

<sup>507</sup> Section 3(5)(6), The Armed Police Battalions Ordinance 1979.

again reversed by the current Awami League Government when it reinstated executive control over the police by amending the Code of Criminal Procedure in 2009.<sup>508</sup>

The technical aspects of police recruitment, promotion, etc. in gazetted positions are governed by laws that apply equally to other public servants of the Republic. Promotions take place on the basis of length of service and competitive examinations. However, the laws are archaic and have no provision to keep the police force outside of political influence.

The financial dependence of the police exacerbates the historical rivalry that exists between civil administration and the law enforcement force. For example, the Ministry of Law, Justice and Parliamentary Affairs and the Ministry of Public Administration (formerly Ministry of Establishment) believe that increased autonomy to the police would reduce police accountability and erode administrative authority.<sup>509</sup>

The MoHA deals with the appointments and transfers of all officers above the rank of superintendent. Consequently, the independence of the police is greatly curtailed. Appointments, transfers, promotions and issues of tenure in the police service are frequently dictated by political considerations instead of competence or merit.<sup>510</sup> This essentially hampers police functions in terms of the maintenance of law and order, the investigation of crimes and the securing of physical security of citizens. A public perception study of security forces conducted in 2010 reveals that 62 percent of the respondents believed that politicians have far too much control over police functions.<sup>511</sup> Indeed, the police have traditionally been utilised by political parties for partisan gains. All governments tend to use the police to subdue political opponents. Postings, promotions and transfers of the police are made in ways that ensure that police officers are assigned to places from where they can serve their political bosses well.<sup>512</sup> The 2010 Global Integrity Report on Bangladesh found that nepotism, bribery and political considerations are commonly observed in the police department recruitment process. Political interference is the most significant impediment to police efficiency and has resulted in the worst forms of abuse including illegal detention, death in custody, torture and pervasive corruption.<sup>513</sup> Police excesses under political pressure are manifest from the unwarranted harassment, arrest and torture on Opposition party members, journalists, union leaders, and other political activists.<sup>514</sup> Under the current government, the ruling party parliamentarians and leaders of the party's student wings have reportedly interfered in the ranking of personnel within the police force in order to ensure the inclusion of officers loyal to the regime.<sup>515</sup>

Such political influence has existed during successive regimes. The Police are generally reluctant to receive even bona fide complaints against political leaders or activists of the ruling party for fear of executive backlash by way of punishment postings or even dismissal from the service. Contrarily, they are often compelled to register false cases against innocent

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<sup>508</sup> The International Crisis Group, 2009, *op.cit.*, p.4.

<sup>509</sup> In conversation with in service GoB officials (*anonymity requested*).

<sup>510</sup> Interview with a former Inspector General of Police (*anonymity requested*).

<sup>511</sup> Saferworld, *Security provision in Bangladesh. A public perceptions survey*, London, 2010, p. iv. Also see, Saferworld, *Human Security in Bangladesh*, 2008.

<sup>512</sup> Md. Shariful Islam, 2010, *op.cit.*, p.107.

<sup>513</sup> Saferworld, 2010, *op.cit.*, p.iv.

<sup>514</sup> Fahimul Quadir, 2011, *op.cit.*

<sup>515</sup> International Crisis Group, 2009, *op.cit.*, p. 15.

people on the instruction of political bosses. Indeed, there are instances when police officers have been awarded with undue promotions or lucrative postings because of the staunch manner in which they carried out the orders of the political executive and leaders of the ruling party.

The police are believed to work in collusion with bureaucrats, businessmen, black money holders and black-marketers, many of whom have active links with politicians.<sup>516</sup> Consequently, the police force is perceived as enjoying the shared protection of the administration and people with political clout when they engage in illegal or corrupt activities. Low salaries and government control of promotions and transfers ensure that the law enforcement personnel are dependent on the political leadership, which in turn prevents them from discharging their functions with sincerity and integrity. The moneymaking power of the police, which is extensive, only 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.<sup>517</sup> This state of affairs deeply undermines police professionalism and makes it incredibly difficult for diligent and honest officers to maintain their integrity and also expect to advance their career.<sup>518</sup>

The process of recruitment to police service is clouded by nepotism, political interference, and bribery. Once inducted, the police are hostage to the party in power. The police have been used by successive governments to further their political/personal interests and to crush political rivals. Disobedience or deviation from executive potentially incurs backlash, including dismissal from service. Low pay structures and control of promotions and transfers ensure police dependence on political patronage, which in turn, compromises their independence and choice. The fact that of late the police have also developed unholy links with influential businessmen and criminal syndicates demonstrates the emergence of multiple actors that turn the weaknesses in the police force to their own advantage. These various factors including reluctance of the bureaucracy to relinquish control over the police force have consistently thwarted attempts at police reform through the enactment of a new law.

## **Governance**

### ***Transparency, Accountability and Integrity: Legal Framework and Practice on the Ground***

Information on appointments, promotion and transfer of officers in the cadre service of the police is published in the Government gazettes and available to the public. In addition, *The Police Regulations of Bengal 1943* requires the publication of the Police Gazette and Criminal Intelligence Gazette on a regular basis.<sup>519</sup> The Police Gazette contains all government orders, the chain of command, arrivals and departures of officers, appointments, promotions and transfers, leave, changes in allotment and strength of force, pensions, gratuities, rewards, commendations, good service marks, etc. The Criminal Intelligence Gazette contains a statement of all new cases, various notices regarding arms, notorious criminals, absconders, etc., important rulings in criminal cases, gang histories, etc. Police officers, like other civil

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<sup>516</sup> Muzaffer Ahmad, *Transparency International Bangladesh Chapter*, (undated).

<sup>517</sup> Sumaiya Khair, *Role of Impunity in Rights Violation in Bangladesh*, report (unpublished) prepared for The Asia Foundation, Dhaka, 1999.

<sup>518</sup> Commonwealth Human Rights Initiative, 2008, *op.cit.*, p.13.

<sup>519</sup> Sections 69-74, *The Police Regulations of Bengal, 1943*.

servants, are required by law to disclose assets, properties, etc. at the time of entering the service.<sup>520</sup>

The police, like other government departments are legally bound to provide information to citizens on demand under The Right to Information Act (RTI) 2009.<sup>521</sup> Notwithstanding, the police are exempt from disclosure of information related to investigation of crimes, police operations to contain law and order, and police activities aimed at ensuring internal security of the country, and anything likely to harm public interest under both the RTI Act and The Evidence Act 1872.

Police officers at the upper echelon, like other gazetted officers of the Republic, are required to declare to the Government all properties, assets, etc. However, this disclosure does not extend to citizens.

The legal framework requires the police to publish certain aspects of their work but prohibits proactive disclosure of information in respect of crime investigations, maintenance of law and order and other security related operations. This essentially weakens transparency in police work and permits the police to operate with virtual impunity. Police officers are legally obliged to declare wealth and assets.

The practice of declaring assets, property, etc., by police officers is virtually non-existent in the police service. The Bangladesh Police have an active website that posts information on, amongst other things, activities, crimes statistics, complaints, human resources, procurement and human rights. The complaint section provides a format for formally lodging a grievance against police personnel but there is no data available in the public domain regarding the number or nature of complaints filed against the police to date. Given that the legal framework prohibits disclosure of any information that is likely to impede crime investigation, law and order and public interest, police work is largely carried out within closed systems. A perusal of the complaints lodged with the Information Commission as of August 2012 in respect of information on various issues reveals a stark absence of requests for information related to police work, except for a few requests for information on violence against women cases.<sup>522</sup>

Police work largely remains outside public scrutiny. As such, police activities and decision-making processes lack transparency. There is no evidence of the police handling requests for information; this partly stems from the historical reluctance of citizens to engage with the police in any form and partly because the police enjoy immense discretionary powers under the law in discharging their functions. Since the existing legal framework lacks transparency in policing operations there is rampant misuse of authority and gross manipulation and misapplication of laws where the police are not held personally accountable.

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<sup>520</sup> Rules 13-14, The Government Servants (Conduct) Rules, 1979.

<sup>521</sup> For purposes of the RTI Act, "information" includes any memo, book, design, map, contract, data, log book, order, notification, document, sample, letter, report, accounts, project proposal, photograph, audio, video, drawing, painting, film, any instrument done through electronic process, machine readable record, and any other documentary material regardless of its physical form or characteristics, and any copy thereof in relation to the constitution, structure and official activities of any authority.

<sup>522</sup> Information Commission, *Complaints Lodged with the Information Commission and Decisions*, Dhaka, August 2012, p.4.

Accountability measures in the police service are available in various laws. A legacy of the British colonial rulers, *The Police Act 1861* makes the police accountable to the executive government instead of the people they are employed to serve. The main function of police under the law is to ‘control’, rather than ‘protect’, citizens. Section 4 of *The Police Act 1861* vests the administration of the police in local jurisdictions in the District Superintendent or Assistant District Superintendents but subject to the control and direction of the concerned Magistrate of the area. Since the law is silent regarding the ambit of the Magistrate’s powers of ‘control and direction’, the police are in effect controlled by both the Police Superintendents as well as the Magistrates. Such dual controls over the force not only compromise police functions but also marginalise the Inspector General of Police and his Deputies from effective supervision of the police”.<sup>523</sup>

*The Police Regulations of Bengal 1943* empowers the Inspector General of Police and other senior officers to undertake periodic inspections of police stations in order to verify whether the police officers are functioning properly.<sup>524</sup> Deficits are recorded and conveyed in writing to the concerned officer. The rules regarding Annual Confidential Reports (ACRs) in respect of other government servants under the Civil Rules and Orders (CRO) apply equally to officers in gazetted ranks in the police service. Besides, as per *The Police Regulations of Bengal 1943*, designated officers at different levels of the police hierarchy maintain confidential reports on officers serving under them.<sup>525</sup>

*The Armed Police Battalions (APB) Ordinance 1979* obliges RAB to investigate any offence as directed by the Government at any time.<sup>526</sup> The law provides disciplinary measures by a Special Court for offences or misconduct by officers or armed police of the APB Force. The offences for which an officer or armed policeman can be tried are numerous and include, amongst others, the accepting of illegal gratification from any person.<sup>527</sup> Depending on the degree or gravity of the offence, punishment ranges from transportation for life, or rigorous imprisonment for a term of not less than ten years, or rigorous imprisonment for a term which may extend to ten years to rigorous imprisonment for a term which may extend to seven years.<sup>528</sup> The Special Court may take cognizance of an offence either of its motion or on a complaint by any person. An officer accused of an offence is entitled to conduct his own defence or be assisted by any superior or subordinate officer of his battalion or any legal practitioner of his choice.

An officer or armed policeman aggrieved by a judgment of a Special Court may prefer an appeal within thirty days of the delivery of the judgment, to the Government in the case of superior officer, and to the Inspector General of Police in the case of a subordinate officer.<sup>529</sup> In the event the officer is sentenced to life, the proceedings of the case shall be submitted to the President in the case of a superior officer and to the Inspector General of Police in the case of a subordinate officer.<sup>530</sup> A sentence shall not be executed unless it is confirmed by the President or the Inspector General of Police, as the case may be. The law also provides for a

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<sup>523</sup> Muhammad Nurul Huda, *Bangladesh Police: Issues and Challenges*, Dhaka, 2009, p.3.

<sup>524</sup> Section 47, *The Police Regulations of Bengal*, 1943.

<sup>525</sup> Sections 75-76, *ibid.*

<sup>526</sup> Section 6B (1), *The Armed Police Battalions Ordinance*, 1979.

<sup>527</sup> Section 8(1)(k), *ibid.*

<sup>528</sup> *Ibid.*

<sup>529</sup> Section 8(4), *ibid.*

<sup>530</sup> Section 8(5), *ibid.*

summary trial of offences committed by officers or armed policeman that include, amongst others, negligence to duty, unbecoming behavior, and extortion punishable with rigorous imprisonment for a term which may extend to three years.

If any officer or armed policeman is found guilty of disobedience, neglect of duty or remissness in the discharge of any duty or of rendering himself unfit to discharge his duty or of other misconduct as an officer, he shall be subject to departmental proceedings that might culminate in actions that range from dismissal from service to confinement to lines for a term not exceeding one month with or without drill, extra guard, fatigue or other duties (not applicable to officers).<sup>531</sup> An accused officer or armed policeman can be placed under suspension during the inquiry.

An officer or an armed policeman against whom action is required has the right to conduct his own defence or to have assistance of any superior or subordinate officer of his battalion. Any officer or any armed policeman aggrieved by any action may prefer an appeal within thirty days of the passing of the order or the action taken, to the Government in the case of a superior officer, and to the Inspector General of Police in the case of a subordinate officer or an armed policeman.

Any officer or armed policeman sentenced to imprisonment for a period not exceeding three months shall, when he is also dismissed from the Force, be imprisoned in the nearest or such other jail; but if he is not also dismissed from the Force, he may, if the convicting Court so directs, be confined in the quarter-guard or such other place as the Court may deem fit.<sup>532</sup>

*The Police Act 1861* empowers the Inspector General, Deputy Inspectors General, Assistant Inspectors General and District Superintendents of Police to dismiss, suspend or reduce any police officer of the subordinate ranks at any time, whom they think remiss or negligent in the discharge of his duty, or unfit for the same. Alternatively, they may award fines or confinement to quarters for a designated term or removal from any office of distinction or special emolument.<sup>533</sup>

The law generally bars any suit, prosecution or other legal proceedings against any member of the Force for anything which is done or intended to be done in good faith.<sup>534</sup> However, the Anti-Corruption Commission (ACC) is empowered to investigate and prosecute corruption committed by law enforcement agencies.<sup>535</sup> The Human Rights Commission is also legally mandated to hold the police accountable in cases of misconduct, abuse of power, or police excess,<sup>536</sup> either *suo-moto* or on the basis of a petition by an aggrieved person or his representative. Writ petitions and public interest litigations can be filed in higher courts and criminal prosecutions can be started in lower courts challenging police excesses and abuse of power. The law entitles any aggrieved person to file a criminal case with the police station or with a judicial magistrate against a police officer accused of any offence, such as brutality, harassment, and any abuse of power.<sup>537</sup>

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<sup>531</sup> Section 10, *ibid.*

<sup>532</sup> Section 11, *ibid.*

<sup>533</sup> Section 7, *The Police Act, 1861.*

<sup>534</sup> Section 13, *ibid.*

<sup>535</sup> Section 17, *The Anti-Corruption Commission Act, 2004.*

<sup>536</sup> Section 12, *The National Human Rights Commission Act, 2009.*

<sup>537</sup> Zahidul Islam Biswas, "Police accountability and the 'rule of politics'", *FORUM* (a publication of The Daily Star), Vol.6, Issue 7, July 2012, pp.39-41, at p.40.

The existence of certain laws effectively restricts police accountability. For example, the police have extensive discretionary powers of arrest and remand under *The Special Powers Act 1974*, Section 54 of *The Criminal Procedure Code 1898* and Section 86 of *The Dhaka Metropolitan Police Ordinance 1976*, which are frequently abused in furtherance of political goals of the ruling party to the detriment of innocent citizens devoid of power, money or political clout.

Bangladesh has retained many of the colonial laws which were essentially crafted to 'control and 'suppress' revolts, rather than protect citizens. Since independence, very little change has been brought about in terms of organisation of the police or the mechanisms through which they are governed; this, in turn, have done very little to alter governance , operations and process in the police force. This reflects failures by successive governments to grasp the expediency of a functional police service and instead reinforce the perception that governments generally benefit from a weak, corrupt and politicised police force that can be used to further political and often, narrow personal interests. Despite legal avenues for redress against police misconduct, people are generally afraid to complain against them.

Supervision of police officers is generally carried out by the Inspector of Police and the Inspector General. All police units except for the Police Headquarters and offices of the Deputy Inspectors General are subject to periodical and brief inspections for ensuring the standard and quality of service. In essence however, these inspections are largely advisory by nature.

Complaints against a police officer trigger an internal inquiry by the concerned authority. In appropriate cases, the authority concerned frames a charge and specifies therein the penalty proposed to be imposed and communicates it to the police-officer, requiring him or her to show cause within specified time. Then he or she is asked to explain why the penalty proposed to be imposed on him/her should not be imposed. Measures are taken to punish the accused through stringent departmental proceedings. Criminal cases are also initiated against the officer in appropriate cases.

The Police Headquarters houses a Police Security Cell for purposes of police oversight. It basically collects information regarding unethical, immoral and unlawful activities of police personnel and conducts thorough investigations. The Police Security Cell is inadequately staffed, trained and resourced to provide quality oversight services and has consequently been confined to dealing with limited complaints. There is a popular belief that the punitive system for errant police officers is ineffectual and non-functional; mere transfer is all too often conceived as 'punishment'. There is virtually no analysis of the causes of breaches in discipline.<sup>538</sup>

In order to address these lapses in oversight, the Bangladesh Police has set up a Police Internal Oversight (PIO) to remove police corruption and inefficiency. All units of the Bangladesh Police come under the purview of the PIO. The broad purpose of the PIO is to address the problem of corruption in the Force, increase police ability and efficiency, facilitate the criminal justice system, and support the rule of law and good governance

Notwithstanding these efforts, a culture of impunity exists for wrongful acts perpetrated by the police. Abuse of power, bias, corruption, illegal methods and excess use of force are, even

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<sup>538</sup> Interviews with former Inspectors General of Police (*anonymity requested*).

when well documented, left unattended and unpunished.<sup>539</sup> The most common form of police abuse include extrajudicial killings (otherwise known as deaths in “crossfire” or “encounters”), the use of torture as a premier method of investigation, unjustified arrests, the refusal to register First Information Reports, arbitrary detentions beyond permissible statutory time limits, the refusal to accept complaints or the reluctance to investigate them and the giving of false evidence. Amongst the law enforcement agencies, the RAB appear to enjoy maximum immunity from investigations into and prosecution for their illegal activities. In the last four years there has been no visible punishment against any RAB allegedly involved in extrajudicial executions.<sup>540</sup> While there is very little effective oversight or review of police conduct, the absence of a transparent and functional external (or internal) accountability mechanism essentially reduces the likelihood that police will behave lawfully.<sup>541</sup>

Although there is a Parliamentary Committee to oversee the functions of the Ministry of Home Affairs which steers the police force, there is no visible engagement of the Committee on police misconduct. The courts constitute one of the most important external mechanisms for ensuring police accountability. While writ petitions and public interest litigations can be filed in higher courts, criminal prosecutions can be launched in lower courts against abuse of power and brutality by police.<sup>542</sup> Likewise, the National Human Rights Commission is empowered to investigate police conduct and hold them accountable for malfeasance or acts *ultra vires* the law and Constitution. Unfortunately, interventions by the court or the NHRC in this context have been inadequate.

A mechanism to handle complaints has been introduced and uploaded on the website of the Bangladesh Police recently. However, this has not proved to be too effective as it is alleged the police do not act on complaints received through this system if are not offered any bribes.<sup>543</sup> Every law enforcement agency can take departmental or ministerial action against corrupt officials. For example, under the Home Ministry, there is a Counter Intelligence Unit (CIU) in the police headquarters which is responsible for collecting information on corrupt police officials across the country and taking necessary action. However, in practice this system is only partially effective due to political interference.<sup>544</sup>

There are allegations that police departments sometimes suppress incidents of misconduct by individual police officers as they believe that such disclosure might damage their image and reputation.<sup>545</sup> This seriously reduces the effectiveness of internal accountability mechanisms and erodes public trust. People are reluctant to lock horns with the police for fear of reprisals and general distrust of the process by which allegations shall be handled.<sup>546</sup> Although there are encouraging instances of judicial interventions into police abuse, court directives in response to writ petitions in this context have been flaunted by successive authorities. The government has been trying to curtail the power of the Anti-Corruption Commission to investigate and prosecute corrupt police personnel by proposing an amendment to The Anti-Corruption Act 2004 making it mandatory to obtain prior approval of the Government in case of any possible action against corruption by public officials. In the face of strong opposition by

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<sup>539</sup> Commonwealth Human Rights Initiative, 2008, *op.cit.*, 12.

<sup>540</sup> ODHIKAR and the Asian Legal Resource Centre (ALRC) 2013, *op.cit.*, p.7.

<sup>541</sup> Commonwealth Human Rights Initiative, 2008, *op.cit.*, p.12.

<sup>542</sup> Zahidul Islam Biswas, 2012, *op.cit.*, p.40.

<sup>543</sup> *Global Integrity Report*, 2010, *op.cit.*

<sup>544</sup> *Ibid.*

<sup>545</sup> Zahidul Islam Biswas, 2012, *op.cit.*, p.40.

<sup>546</sup> *Ibid.*

TIB and the media the amendment has been withheld.<sup>547</sup> The Human Rights Commission is likewise constrained in holding police accountable on account of non-cooperation from the Ministry of Home Affairs.<sup>548</sup>

Although external accountability of the police is ensured to a certain degree by vigilant NGOs, human rights activists and the media, government control over foreign donations on which many NGOs are dependent and media operations in many ways curtail their power to effectively hold the police accountable.

The police administration in Bangladesh is characterised by massive corruption, inefficiency and partiality. Police services are often highly discouraging and discriminatory, particularly in respect of the poor and the disadvantaged. Not only do the poor not receive adequate protection from the police; they are often harassed, brutalised and tortured during arrest and interrogations. There is a marked disinclination of the government to punish police personnel for wrongdoing or misconduct. Except for serious criminal cases, police personnel are subject to departmental action only. Since inquiries are not publicised there is no scope to evaluate the facts. Although existing laws provide for punishment of police officers for negligence or miscarriage of duties, the provisions are rarely used. 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 citizens.

There is no separate code of conduct for the Bangladesh Police as they are subject to the same laws that govern the procedural and behavioral aspects of civil servants, namely, *The Government Servants (Conduct) Rules 1979* and *The Government Servants (Discipline and Appeal) Rules 1985*, and *The Police Regulations of Bengal 1943*. It should be noted however that *The Government Servants (Conduct) Rules 1979* and *The Government Servants (Discipline and Appeal) Rules 1985* apply to all government servants including the police, with the exception of subordinate officers of the Metropolitan Police or members of any other police force below the rank of Inspector of Police.<sup>549</sup>

The sanctions provided in the above laws are reinforced by *The Police Officers (Special Provisions) Ordinance 1976* prescribes penalties for a police officer of any rank who is guilty of- (i) misconduct; (ii) dereliction of duty; (iii) act of cowardice and moral turpitude; (iv) corruption or having persistent reputation of being corrupt; (v) subversive activity or association with persons or organisations engaged in subversive activities; (vi) desertion from service or unauthorised absence from duty without reasonable excuse; or (vii) inefficiency. The penalties range from (a) dismissal from service; (b) removal from service; (c) discharge from service; (d) compulsory retirement; and (e) reduction to lower rank.<sup>550</sup>

According to *The Police Regulations of Bengal 1943* an allegation of misconduct may be made against a police officer in (a) a complaint before a Magistrate or (b) information lodged with a police officer and forwarded by him to the District Magistrate, following which an inquiry begins.<sup>551</sup> Police misconduct can be brought to the notice of superior officers in other ways as well. *The Police Regulations of Bengal 1943* prescribes two kinds of punishments for errant

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<sup>547</sup> Transparency International Bangladesh (TIB), *Annual Report 2010*, p. 13.

<sup>548</sup> Ain O Shalish Kendra (ASK), *NHRC is in Critical Juncture of Hype vs Real Action*, 2012, pp.17-18.

<sup>549</sup> Rule 2(b)(c), *The Government Servants (Conduct) Rules 1979* and Rule 1(4)(b)(c), *The Government Servants (Discipline and Appeal) Rules 1985* respectively.

<sup>550</sup> Sections 4, 5, *The Police Officers (Special Provisions) Ordinance 1976*.

<sup>551</sup> Section 24, *The Police Regulations of Bengal, 1943*.

police officers.<sup>552</sup> Major punishments include dismissal from service; removal from service; reduction; deprivation of approved service increment; removal from any office of distinction or special emolument; and award of black marks. Minor punishments include warnings; censures (reprimands for misconduct); extra drills; extra fatigue duty; and confinement to quarters with or without punishment drills, extra guard, or fatigue or other duty.

The law provides internal mechanisms for ensuring the integrity of police officers in the same way it addresses integrity issues of other gazetted officers of the Republic.

Political and bureaucratic interference are the most significant impediments to police efficiency that have resulted in the worst forms of abuse including illegal detention, death in custody, torture and pervasive corruption.<sup>553</sup> This has generated a massive distrust of the police force.

The 2010 Transparency, Bangladesh (TIB) survey found the law enforcement agencies to be the second most corrupt sector in Bangladesh. The survey showed that 79.6% of households who received services from law enforcement agencies were subjected to corruption and harassment. The incidence of corruption was higher in rural areas (84.4%) than urban areas (73.1%). Levels of corruption perpetrated varied. Of the total number of households who faced corruption by law enforcement agents, in 91.2% of the cases corruption was perpetrated by thana police, in 5.7% cases, it was perpetrated by traffic police and in 3.2% cases, by the RAB. Amongst the households that received services from law enforcement agencies, 68.1% of them were compelled to pay a bribe. The average amount of bribe paid was 3,352 taka or 40 USD (Transparency International Bangladesh, 2010). Bribes were paid primarily for -- lodging a complaint (74.7%), avoiding arrest (38.1%), properly lodging charge sheets (11.4%) and averting torture (11.1%). These findings have been reinforced by Transparency International's regional report on South Asia in which the Bangladeshi police have been found to be the highest bribe collectors in the whole of South Asia.<sup>554</sup>

It is alleged that the police collude with others at different levels within the Force in extracting bribes and the proceeds accruing from the process are mutually shared. The junior officers normally engage in earning "side incomes" to supplement their meager salaries, while the larger portions of cash are sent straight to higher-ups; but as an officer moves up the ranks, and engages in practices such as extortion, bribery and racketeering, corruption becomes less about making ends meet than accumulating wealth.<sup>555</sup>

Bribes are also lucrative for bureaucrats in the Ministries of Home Affairs and Establishment, which often have the final word on appointments, transfers, suitable postings and promotions.<sup>556</sup> Payment of bribes for entry into the force is widely practiced; it has been alleged that political leaders engage in brisk business by "selling" positions to entry-level and other candidates in exchange for bribes or the trading of influence. According to the 2009 International Crisis Group report, during the last BNP government the posts of officer-in-charge of a police station in the capital were reportedly being sold for BDT 800,000 (roughly USD 11,595). The price for the same positions under the current government is said to be

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<sup>552</sup> Sections 856-858, *ibid.*

<sup>553</sup> International Crisis Group, 2009, *op.cit.*, p.14.

<sup>554</sup> Transparency International, *Daily Lives and Corruption: Public opinion in South Asia*, Berlin, 2011, p.12.

<sup>555</sup> International Crisis Group, 2009, *op.cit.*, p.15.

<sup>556</sup> *Ibid.*, p.10.

around BDT 1.5-2 million (USD 21,740-\$28,985 approx.). A stint on a UN peacekeeping mission for constables can cost BDT 200,000-300,000 (USD 2,890-4,350 approx.). For senior officers with higher salaries, peacekeeping deployments can be 5-10 times higher.<sup>557</sup> In a survey 75% of police personnel admitted to paying bribes to the training authority to secure successful completion of the basic training course.<sup>558</sup> The police also negotiate bribes with accused criminals in exchange for bail or dropped charges. The amount of the bribes varies depending on the seriousness of the crime. Some officers at the top of the force routinely collect “protection money” from businessmen, shop owners’ associations and street vendors. Storekeepers who are reluctant to pay up find themselves in deep trouble.<sup>559</sup>

Police integrity is compromised by nepotism, political patronage and an absence of sanctions for wrongdoing on political considerations and personal gains. This leads to a loss of discipline, arrogance and a culture of impunity amongst police officers. The police are well known for their corrupt practices that range from accepting money from traffic rule violators to helping branded criminals escape. The reluctance on the part of the police to offer protection without bribes or pressure from some higher authority has virtually privatised state security services in favour of the rich and influential.

## **Role Assessment**

### ***Upholding the Rule of Law***

#### ***Corruption Prosecution***

In essence, the police virtually have no scope to investigate corruption cases of their own volition until the wheels of criminal justice administration are effectively put into action. Sections 154-173 of The Code of Criminal Procedure 1872 describe how offences are registered with police stations, investigations are made and the reports of investigations are submitted before the court for trial. The Anti-Corruption Commission is empowered by law to investigate into corrupt acts and lodge a First Information Report (FIR) at the police station, if there is prima facie evidence of corruption.<sup>560</sup> Pursuant to the FIR, the police launch a formal investigation in conformity with the provisions of the Code of Criminal Procedure 1872. An investigation ends with the submission of a charge sheet (if found guilty) or final report (if no guilt could be established) to the Magistrate. In the event of a charge sheet, the police can make arrests pursuant to a court order.

However, the role of the police in effectively investigating corruption cases depends on who the case is against and whether the police are allowed to operate independently.<sup>561</sup> Indeed, an independent and committed Anti-Corruption Commission can go a long way in ensuring that the police do their job well.

While the procedural aspects of police investigation of corruption cases are quite straightforward, the process often gets convoluted due to political interference and executive

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<sup>557</sup> *Ibid.*, pp.15-16.

<sup>558</sup> ASM Shahjahan, 2006, *op.cit.*, p.44.

<sup>559</sup> International Crisis Group, 2009, *op.cit.*, p.16.

<sup>560</sup> Section 17 (a)(b), The Anti-Corruption Commission Act 2004.

<sup>561</sup> In conversation with mid-ranking police officers in service (anonymity requested).

high-handedness. Selective and partisan enforcement of the law impedes police work and widens the gap between the police and citizens.

### **3.2.3 OFFICE OF THE COMPTROLLER AND AUDITOR GENERAL (CAG)**

Inherited as a legacy of the British colonial administration, the Office of the Comptroller and Auditor General in India was established in 1860 with the objective to ensure accountability and transparency of the Viceroy to the British Sovereign.

The Office of the Comptroller & Auditor General of Bangladesh commenced activities from 1973. The Office of the Comptroller and Auditor General (OCAG) of Bangladesh is the supreme authority to scrutinize public spending on behalf of the Parliament. The Constitution of the People's Republic of Bangladesh provides independence of the Office of the CAG and also spells out its role and authority<sup>562</sup>. The Comptroller and Auditor-General (Additional Functions) Act of 1974 provides the detailed responsibilities of the Constitutional body<sup>563</sup>.

Under the authority of the OCAG, audit of the Republic, government agencies, public bodies and public companies is conducted and reports are submitted to the Parliament. The Office of the CAG assists the Parliament in ensuring accountability and transparency of the government in the use of public resources. The Comptroller and Auditor General is appointed by the President of the Republic and holds the office until s/he attains the age of sixty years.

Since independence, the Public Accounts Committee (PAC) has received a total of 918 audit reports prepared by OCAG. Up to the eighth parliament, 332 reports were discussed there,

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<sup>562</sup> Constitutional provisions include Article 127– Establishment of the Office of Auditor General; Article 128 – Functions of Auditor-General, Article 129 – Term of office of Auditor-General, Article 130 – Acting Auditor-General; Article 131 – Form and manner of keeping public accounts; Article 132 - Reports of Auditor-General to be laid before Parliament. Article 128(1) states, “The public accounts of the Republic and all courts of law and all authorities and offices of the government shall be audited and reported by the auditor general and for that purpose he or any person authorized by him in that behalf [shall] have access to all records, books, vouchers, documents, cash, stamps, securities, stores of other government properties in the possession of any person in service of the Republic.”. Article 128(4) states, “ The Auditor General in the exercise of his function under clause (1) shall not be subject to direct control of any person or authority.” Under Article 128 of the constitution and clause 11 of the *Comptroller and Auditor General's Additional Functions Act, 1974*, the Auditor General may make rules and give directions in respect of all matters pertaining to the audit of any accounts he is required to audit.

<sup>563</sup> The Office of the Comptroller and Auditor General of Bangladesh was created pursuant to Article 127-132 of the constitution of the country. Apart from these constitutional provisions, the Auditor General also derives his authority from the *Comptroller and Auditor General's (Additional Functions) Act, 1974* and its subsequent amendments in 1975 and 1983.

while PAC placed 586 reports for discussion in the ninth parliament, out of which 293 have so far been discussed. The CAG has placed the Audit Report dated 2005-2006 before the PAC for settlement<sup>564</sup>. The committee till 2010 settled 570 audit observations since formation in May 2009<sup>565</sup>. A total of 600 audit reports are yet to be settled, showing the extent of slow performance and unaccountability in public spending<sup>566</sup>. During the tenure of the current parliament until February 2012, PAC and its sub-committee held 175 meetings, a record compared to that of any other parliament.

### **Structure and Organisation**

Office of the Comptroller and Auditor General is headed by the Comptroller and Auditor General (C&AG). The C&AG holds a Constitutional position. There are four major structural wing / departments of the OCAAG. These include: office of Bangladesh Railway Finance Department, Defense Finance Department, Audit Department and the Training Academy. The Audit wing has as many as 10 attached directorate - Commercial Audit, Local and Revenue Audit, Post and Telegraph & Telephone Audit, Works Audit, Railway Audit, Civil audit, Foreign Aided Project Audit, Defence Audit, Mission Audit, Performance Audit. Approximately four thousand officers and staff are presently working in the OCAAG of which thirteen percent are women. The ratio is higher in the staff level compared to the managerial level. The professional staff of the OCAAG are manned by the members of of BCS (Audit and Accounts) cadre.

### **Capacity**

#### ***Financial, Human and Infrastructural Resources***

The freedom of the CAG in executing his responsibility is approved in accordance with Article 128(4) of the Constitution. However for the sanctioning of budget allotments and personnel matters, especially of the Cadre officers, the CAG is dependent on the Finance Division of the Ministry of Finance and the Ministry of Public Administration.

As per Article 88 of the Constitution the expenditure of the CAG is charged upon the Consolidated Fund of the Republic and in terms of Article 89 'expenditure charged upon the Consolidated Fund may be discussed in, but shall not be submitted to the vote of, Parliament'. Thus the budget of the CAG as agreed upon between his office and the Ministry of Finance, is not dependent upon the vote of the Parliament.

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<sup>564</sup> *The Daily Star* April 20, 2010.

<sup>565</sup> The PAC Chairman also noted that Committee plans to settle all un-disposed audit reports involving Tk 18,000 crore in few months. See *The Daily Star*, 20<sup>th</sup> April 2010.

<sup>566</sup> *The Daily Star* 20<sup>th</sup> April 2010.

CAG's manpower situation is not satisfactory<sup>567</sup>. The CAG in fact has very limited and in some cases no power to recruit manpower, reorganize the office and restructure the combination of manpower according to the institutional needs. The OCGA has, however, recently established a training academy with adequate facilities for imparting training but a constant review of its curriculum and quality of resource persons is limited<sup>568</sup>.

As far as financial resources are concerned the CAG does not face any problem. The demand for necessary funds is generally accommodated in the national budget by the Ministry of Finance and the demand being classified as a 'charged' expenditure is not dependent upon vote in the parliament. For logistic support CAG is, to a great extent, dependent upon the Ministry of Finance.

The office of the CAG prepares its own budget. All the Directorates under it prepare their respective budgets and submit the same for approval of the CAG. The budgets so prepared are submitted to the Ministry of Finance for incorporation in the national budget to be placed in the Parliament. The Ministry of Finance scrutinizes the budget estimates as received from the CAG and its Directorates as is done in respect of budget estimates of all other ministries of the government. While scrutinizing the budget estimate consultation takes place between the officials of the ministry and the representatives of the CAG and an agreed amount is worked out. A comparative assessment of the original demand of OCGA and the amount actually agreed upon reveal that the CAG has always got more or less the same amount it had asked for and retrenchment has always been marginal<sup>569</sup>.

The budget of the CAG as approved by the Ministry of Finance is, by and large, adequate to meet the recurring expenses necessary for its performance. So far there has not occurred any situation where the CAG faced a deadlock in performing his duty for inadequate size of the budget grant<sup>570</sup>.

The CAG is free to spend the money as detailed under various heads of expenditure and no further approval from the Finance Ministry is required. The CAG can freely re-appropriate fund from one head of expenditure to another head subject to the condition that re-appropriation of fund allocated for salary and allowances to some other head is not permissible and this restriction is applicable across the government.

Human resources, however, has always been a problem for the CAG. There are some inherent structural and organizational constraints that preclude the CAG from playing the proper role in promoting good governance and effective public service. There is no built-in system of direct supervision in the Audit Directorates to establish control and create awareness among

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<sup>567</sup> Asif Ali, The Role of Supreme Audit Institutions (SAIs) in Improving Governance – The Bangladesh Perspective, <http://siteresources.worldbank.org/INTBANGLADESH/Resources/BD-C-AG-Audit-Institutions-Governance.pdf>.

<sup>568</sup> Interview with an Ex CAG, (*anonymity requested*).

<sup>569</sup> During an interview one of the ex CGAs (*anonymity requested*) noted that “while scrutinizing CAG's budget proposal a softer attitude on the part of the Finance Ministry has always been discernible”.

<sup>570</sup> *Ibid.*

the working group at field level. Moreover, regular inspection with supporting guidance from the Office of the Comptroller and Auditor General of the ongoing field level audit operations to keep an eye on the audit process is also limited.<sup>571</sup>

The CAG's organogram of manpower and logistics is fixed by the Government and any change in the set up, needed with the passage of time and changing role of CAG, requires prior approval of the Government which involves a very time consuming and difficult process. The CAG cannot increase his staff strength nor can he create/change the status of any post without prior approval of the Government. Even his office cannot fill up existing vacancies—vacancies caused by natural wear and tear without the prior approval of the Ministries of Finance and Public Administration. The sanctioned number of officers from the BCS (Audit and Accounts) cadre under the CAG is 359, against which there are at present 272 officers, the vacancy being 24%.

The CAG has adopted new public management (NPM) practices in promoting public sector accountability and effective governance<sup>572</sup>. However findings of another study reveal that in the areas of innovation in planning, development of competence, and quality reporting, OACG showed effectiveness but it was found that in ensuring follow-up measures, monitoring and supervision, OACG lags behind. Also, communication and coordination with the Public Accounts Committee (PAC) - the parliamentarian committee - was not found satisfactory<sup>573</sup>.

### ***Independence and Functional Autonomy***

The Constitution of the Republic has formally provided for full operational independence of the CAG. Articles 128(1) and 128(4) have conferred upon CAG full independence and freedom to conduct his business in the manner he decides and to discharge his constitutional responsibility of auditing the accounts of the Republic and state enterprises<sup>574</sup>.

Article 128(1) of the Constitution of the Republic stipulates that the public accounts of the Republic and of all courts of law and all authorities and officers of the Government shall be audited and reported on by the Auditor General. He shall hold office for a period of 5 years or until he attains the age of 65 years whichever is earlier and he cannot be removed from office

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<sup>571</sup> A.K.M. Jashim Uddin, Value-for-Money-Audit in Bangladesh Efforts and Challenges Office of the Comptroller and Auditor General of Bangladesh May 2002, [https://ccaf-fcvi.com/index.php?option=com\\_k2&view](https://ccaf-fcvi.com/index.php?option=com_k2&view).

<sup>572</sup> Sajjad Hossain Khan, "Improving public sector accountability and transparency in Bangladesh: the role of the comptroller and auditor general office and the public accounts committee of parliament", *Journal of Accounting & Organizational Change*, Vol. 6 Issue 3, 2010. pp. 23-29.

<sup>573</sup> Md. Zakir Hussain, Effectiveness of the Office of the Comptroller and Auditor General of Bangladesh in ensuring Accountability of Auditee Organizations: A Case Study of an MTBF Ministry, Master in Public Policy and Governance Program, North South University, Bangladesh. 2011.

<sup>574</sup> By the *Auditor General(Additional functions) Act 1974*, as subsequently amended in 1975 and 1983, expanded his audit jurisdiction to cover state enterprises, autonomous bodies and such other commercial undertakings where the Government has got minimum 50% share or interest.

except in like manner and on like grounds as a judge of the Supreme Court<sup>575</sup>. This provision provides adequate security of job of the CAG as well as acts as a shield against all sorts of interference into his activities and provides immunity to him from prosecution resulting from the normal discharge of his duties. Article 128(1) further stipulates that for the purpose of audit the C&AG or any person authorized by him in that behalf shall have access to all records, books, vouchers, documents, cash , stamps, securities, stores or other government property in the possession of any person in the services of the Republic. Most importantly, Article 128(4) provides that in the exercise of his functions the Auditor General shall not be subject to the direction or control of any other person or authority. However the PAC, if felt necessary, can request CAG to conduct special audit of any office.

The procedure for preparing audit reports on individual entities and on Appropriation and Finance Accounts is quite a lengthy one and time consuming. From Audit Inspection Report prepared on completion of initial audit to the final audit report ready for submission to the President of the Republic in terms of Article 132 it has to pass through quite a large number of stages and scrutiny and at every stage discussions with the appropriate officials of the audited entities including Secretaries of the administrative ministries are held. Only unsettled objections find place in the final Audit Reports submitted to the President. The detailed procedure has been described in a subsequent paragraph.

As provided in Article 132 the President causes the Reports to be laid before the Parliament.

The CAG has very close relationship with the Parliament through the Public Accounts Committee (PAC) <sup>576</sup>. The CAG is required to attend the meetings of the PAC to act as 'witness.' In fact the PAC is wholly dependent upon the CAG for its functions and the CAG's reports will be of no use in the absence of PAC. So functionally both are interdependent.

The service of the staff members of all categories in the CAG, excepting the CAG himself, is governed by the Government Servants (Discipline and Appeal) Rules, 1985, Government Servants Conduct Rules, 1979 and Government Servants Retirement Rules, 1974.

The CAG is completely free from any kind of external influence in the performance of his work both theoretically as provided in the Constitution and in practice as no CAG is known to have been under any external influence in carrying out his duty. Although in the appointment process of the CAG, there exists scope of political consideration but so far the convention that has been followed is that one of the senior most members of the BCS (Audit &Accounts) Cadre is selected as CAG. This convention has never been interrupted so far. But by virtue of the constitutional provision the CAG, once appointed, remains insulated against all sorts of external influence—political or otherwise. In practice so far no CAG has ever faced any obstacle in the discharge of his functions<sup>577</sup>.

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<sup>575</sup> The removal of the judges of the Supreme Court is processed by the Supreme Judicial Council constituted under Article 96 of the Constitution.

<sup>576</sup> *Article 76(1) of the Constitution.*

<sup>577</sup> Interview with former CAG Mr. M. Hafizuddin Khan.

The audit processes enable the CAG to operate in a professional and non-partisan manner. As far as experience and information are available it appears that no CAG has been under any kind of political influence while carrying out their professional duties<sup>578</sup>.

There is no report of political interference or influence in the audit process being followed by the OCAG. But the very appointment of CAG is not free from political influence. The Constitution provides that the CAG shall be appointed by the President. But while appointing the CAG the President shall have to act on the advice of the Prime Minister as stipulated under Article 48(3). The serious deficiency in the process of appointment of CAG is that no qualification, experience or background has been prescribed for appointment of the CAG. So theoretically anyone can be appointed as CAG. This leaves scope for political consideration in the appointment process of the CAG. But by convention all the succeeding CAGs have been selected from amongst the senior most members of the BCS (Audit & Accounts) Cadre and so far no interruption has taken place in this tradition. Since CAG performs a specialised job it cannot be done by any person who does not possess sufficient background of and training in auditing and accounting.

However, once appointed the CAG remains immune to political influence as shown in the previous paragraphs. CAG is not eligible for further office in the service of the Republic<sup>579</sup>. This prohibits his reappointment for another term beyond his tenure. The restriction to hold any position in the service of the Republic after ceasing office is a safeguard against compromising his independence or remaining loyal to any political master.

## **Governance**

### ***Transparency, Accountability and Integrity: Legal Framework and Practice on the Ground***

The CAG of Bangladesh is required by Article 128(1) to audit the public accounts of the Republic and of all courts of law and officers of the government. After conducting audit in terms of the Constitutional and statutory laws the CAG is required to prepare reports thereto which are submitted to the President of the Republic who causes them to be placed in the Parliament. The reports of CAG are not made public before these are tabled in the Parliament. The reports of CAG are posted in the website as soon as these are submitted to the President of the Republic. The Right to Information Act enables all to obtain any information about the activities of the CAG<sup>580</sup>.

The ultimate output of the CAG's activities is (i) audit reports on the accounts of individual entities, under the government and (ii) audited Appropriation and Finance accounts of the Republic. These two kinds of documents must be submitted to the Parliament. But these documents are only tabled in the House and there is no provision in the Parliamentary Rules of Procedure for holding any discussion or debate on these reports and in practice no debate or discussion takes place. Even the reports and recommendations prepared by the PAC after examination of the Audit Reports are also placed in the House but no discussion is held due to

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<sup>578</sup> *Ibid.*

<sup>579</sup> *Bangladesh Constitution, Article 129(4)* .

<sup>580</sup> For detail see <http://www.cagbd.org/in.php?cp=r2info>.

absence of any enabling rule. CAG has no jurisdiction to give opinion on any draft law or on the budget<sup>581</sup>.

Transparency in the activities and decisions of CAG are prevalent in practice. All auditing activities are done openly and decisions taken by CAG on the audit findings are also taken openly after a series of discussions between the audited entity and CAG's office.

All legally required documents are prepared by the CAG, albeit, not always in time. The required reports and documents are submitted to the Parliament. As soon as the reports are laid before the Parliament, all the reports are made public. CAG's internal organization, method of audit, staff and financial capacity, budget, reports, etc are all unclassified documents available in its website, annual reports and the government's budgetary documents. Of late the CAG has opened a media centre wherefrom all such information can be availed by anybody. CAG does have a website [www.cagbd.org](http://www.cagbd.org) and it generally remains up to date.

The reports prepared by CAG are not made public until these are placed in the Parliament. However, of late the reports are posted in the CAG's website as soon as these are submitted to the President and thus the reports become publicly available on a limited scale due to limited number of people having access to website. There is no prescribed time frame for making the reports available in the public domain. There is no specific provision in any law or rule to ensure or to deny public access to the reports and activities of the CAG and as mentioned earlier until the reports are placed in the Parliament no scope is created for wide dissemination of the reports among the public. However, the recently enacted Right to Information Act enables any person to obtain all information about the activities of the CAG and the reports prepared by CAG are not classified as confidential or secret.

It is pertinent to mention here that the Audit reports remain a classified document until it is laid before the Parliament. But there does not exist any law or rule, explicit or implicit, classifying the reports as confidential until these are tabled in the House. By tradition public access to the reports are not allowed until their introduction to the Parliament. Once placed in the Parliament the reports come to public domain, but since no discussion takes place it does not generally attract the attention of the media and the contents or at least the salient points do not get disseminated among the stakeholders, civil society members and the people.

There does not exist any legal provision requiring CAG to report and be answerable to any authority for his actions. He is not required to submit any periodical report on his activities to the President of the Republic or to the Parliament unlike some other institutions of the country. However, while examining the audit reports the PAC sometimes comments on the quality of work done by CAG.

Unlike some other constitutional/statutory bodies (PSC, Information Commission, Human Rights Commission, etc) there is no such requirement by law or tradition requiring the CAG to prepare and submit any report on its own activities to the Parliament or to any other

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<sup>581</sup> M. Hafizuddin, *op.cit.*

body<sup>582</sup>. However the reports prepared by the PAC after examination of the reports of CAG are not discussed in the House due to the absence of any rule in the RoP in this behalf.

CAG audits its own offices by engaging one audit directorate to audit the other one. The result of such audit is incorporated in the CAG's audit report for submission to the Parliament.

There is no system of allowing administrative bodies audited by CAG to challenge or appeal against audit results. Ample opportunity is given to the administrative bodies to challenge the audit findings before any objectionable items are ultimately incorporated in the final audit report<sup>583</sup>.

As already mentioned in answer to the preceding scoring question the CAG does not report and be answerable to any authority for his actions either in theory or in practice. He is answerable to himself, to the dignity of his high office.

CAG's audit results can be challenged by relevant agencies during discussion of the reports in the PAC meetings as well as before the final Audit Report is prepared for submission to the President. Since a lengthy process is followed in which discussion between the audit and the relevant agency takes place a number of times before producing the final audit report, the audited entities get enough opportunity to challenge the findings/disclosures of the audit<sup>584</sup>.

There does not exist any specific mechanism to ensure the integrity of the CAG excepting that he is supposed to observe the code of conduct to be prescribed for the judges of the Supreme Court. Secondly he can be removed from office on grounds of gross misconduct and infirmity of body or mind by the Supreme Judicial Council. Moreover, he is ineligible to hold any post in the services of the Republic once he retires. These are mechanisms to ensure the integrity of the CAG.

The CAG is supposed to observe the code of conduct to be prescribed by the Supreme Judicial Council for the judges and other functionaries who are not removable except in the manner of a judge<sup>585</sup>. But till now no such code of conduct has been prescribed by the Council. There is no specific rule regarding conflict of interest but in broader terms it amounts to misconduct. Acceptance of gifts or hospitality also constitutes misconduct. Post-employment for CAG is prohibited by the Constitution. For the members of staff the Government Servants Code of Conduct specifically prohibits acceptance of gifts or hospitality and espouse values of independence, impartiality and objectivity. In addition to that, there is also a Code of Ethics for the officers and staff of the CAG<sup>586</sup>.

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<sup>582</sup> M. Hafizuddin, *op.cit.*

<sup>583</sup> Civil Audit Manual, Office of the Comptroller and Auditor General, See [http://www.cagbd.org/methodology/civil\\_audit\\_manual](http://www.cagbd.org/methodology/civil_audit_manual).

<sup>584</sup> Civil Audit Manual, Office of the Comptroller and Auditor General, See [http://www.cagbd.org/methodology/civil\\_audit\\_manual](http://www.cagbd.org/methodology/civil_audit_manual)

<sup>585</sup> M. Hafizuddin Khan, *op.cit.*

<sup>586</sup> *The Code of Ethics of Public Sector Auditor, 2001*. Section 3.1.1. of Code of Ethics notes that "Auditors have a duty to adhere to high standards of behaviour (e.g. honesty, fairness, candidness, and truthfulness) in the course of their work and in their relationship with the officials of audited bodies. In order to sustain public confidence, the conduct of auditors should be above suspicion and reproach".

A recent study<sup>587</sup> has questioned the integrity of the audit institution. Transparency International, Bangladesh (TIB) has detected some 23 instances of corruption in one of the offices of the Comptroller & Auditor General i.e. Controller of General Accounts (CGA).

Theoretically the existing code of conduct governing acceptance of gift, hospitality, and having conflict of interest is quite adequate to ensure ethical behaviour by the CAG and its staff members. Detection of cases of violation of code of conduct is not infrequent and imposition of punishment invariably follows<sup>588</sup>. None of the CAG has ever been found to have violated any code of conduct or has lacked in integrity<sup>589</sup>. However, the Chairman of a watchdog body the Anti Corruption Commission (ACC) has observed that “if Comptroller and Auditor General, performs its duty sincerely, there is supposed to be no corruption”<sup>590</sup>.

Political culture and resource constraints are important facts that affect the broader issues of integrity and efficiency of office of CAG<sup>591</sup>. The Comptroller and Auditor General (CAG) observed that “inadequate internal control” sometimes deters the quality of audit. He further noted that the level of corruption in the country would have been much lower had the successive governments cleared audit objections timely”<sup>592</sup>.

## **Role Assessment**

### ***Effective Financial Audits***

The CAG with its existing manpower<sup>593</sup> and organizational set up is constrained to effectively audit the whole gamut of public expenditure incurred by more than 22000 auditable units. There is still a large volume of audit work in arrears. Further the mechanism to implement decisions of the PAC on audit reports suffers from various deficiencies. Consequently, the

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Section 3.1.3 emphasizes that “ Integrity also requires auditors to maintain irreproachable standards of professional conduct, make decisions with the public interest in mind, and apply absolute honesty in carrying out their work and in handling the resources of SAI”.

For detail see <http://www.cagbd.org/publication/1299658264CAG%20NEWS.pdf>.

<sup>587</sup> TI Bangladesh, *Challenges of Governance in the Office of CGA: Way Forward, 2012*

<sup>588</sup> Md. Motaher Hussain, Controller General Defence Finance, 11 Sept 2013.

<sup>589</sup> M. Hafizuddin Khan, *Op.cit.*

<sup>590</sup> As reported in *The Daily Star*, July 19, 2012.

<sup>591</sup> Asif Ali, “The Role of Supreme Audit Institutions (SAIs) in Improving Governance – The Bangladesh Perspective,” (Former CAG), <http://siteresources.worldbank.org/INTBANGLADESH/Resources/BD-C-AG-Audit-Institutions-Governance.pdf>

<sup>592</sup> *The Daily Star* August 26, 2012.

<sup>593</sup> Currently the OCGA has 2501 staff, of which Class I - 504, Class- II 188, Class III- 1493, and Class IV 2510. Source: OCGA Annual Report 2011.

perpetrators of squandering public money or corruption cannot be taken to task to the fullest extent<sup>594</sup>.

The office of CAG has some limitations -- shortage of staff and skilled manpower and absence of a comprehensive audit law<sup>595</sup>. The Office of CAG is running its offices with only by 40 percent of the staff required.<sup>596</sup>

The Comptroller and Auditor General also observed that "Secretaries [of different ministries] have kept vital or burning issues [of audit objections] unresolved for a long period of time," which encouraged wrongdoers to continue indulging in corruption. The Office of the Comptroller and Auditor General (OCAG) audited a number of government entities in the last couple of years and found irregularities in different accounts, but "timely action against them would have resulted in a significant decrease in corruption." CAG noted that the government has failed to take punitive action against the people responsible, even in some serious cases, despite repeated recommendations made by OCAG<sup>597</sup>.

The Chairman of Public Accounts Committee however criticised the Comptroller and Auditor General (CAG) office, as it lags behind in placing updated audit reports. CAG has so far placed only the audit reports dated 2005-06 before the PAC for settlement<sup>598</sup>. The PAC observed that the auditor's capacity and its focus on auditing should concentrate on significant financial irregularities instead of finding violations of simple rules and regulations<sup>599</sup>.

However, the office of the CAG observed that the "Non-existence of regular parliament sessions, late formation of committee, lack of secretarial assistance and the absence of any binding for the principal accounts officer or secretaries to timely reply are some other reasons" that delays the submission of Audit Report<sup>600</sup>.

A Former CAG noted that the traditional audit practices and a lack of updated and modern auditing skills adversely affect the quality of audit. Speakers suggested empowering CAG with executive capacity to compel secretaries to be accountable for financial irregularities and other audit objections of the ministries concerned<sup>601</sup>.

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<sup>594</sup> Md. Shahidul Islam, Public Accounts Committee: Its Role in Bangladesh, a Master of Arts in Governance and Development, BRAC University, 2010.

<sup>595</sup> *The Daily Star*, "Audit Objections: Inaction spikes corruption, CAG says timely action could have curbed graft significantly", May 6, 2012.

<sup>596</sup> *Ibid.*

<sup>597</sup> *Ibid.*

<sup>598</sup> The Public Accounts Committee (PAC) of the Jatiya Sangsad has stepped up efforts to clear a huge backlog of unresolved audit reports piled up since fiscal year 1972-73. Four sub-committees have been formed by the PAC in May 2009 for disposal of the audit objections made from FY 1972-73 to 2005-06. See Shakhawat Liton, *PAC hopes to clear backlog by this year*, *The Daily Star* April 8, 2010.

<sup>599</sup> *The Daily Star*, April 20, 2010.

<sup>600</sup> *Ibid.*

<sup>601</sup> *Ibid.*

The Performance Audit is a new addition to the list and the OCAg is increasingly conducting this kind of audit<sup>602</sup>. The PAC also has repeatedly laid strong emphasis on conducting performance audit in increasing numbers. For this purpose a new Directorate i.e. Directorate of Performance Audit has recently been created. But there is problem of expert manpower to conduct performance audit because this audit requires specialised knowledge and deep insight into the functioning of various agencies of the government, their mandate, their output and outturn and the impact of spending by these organizations by assessing if the society is really getting value for money taking into consideration the opportunity cost of such spending<sup>603</sup>.

Audit reports are generally quite comprehensive. But there was huge backlog in audit at the end of the CAG and disposal of audit reports at the end of the PAC. A number of factors are responsible for accumulation of arrear at both the ends<sup>604</sup>. The reconstitution of the PAC, whenever becomes necessary, has never been done promptly. The Parliamentary Rules of Procedure is silent about time frame of formation of the PAC or reconstitution of the PAC in case any vacancy occurs in the PAC. The OCAg has continuously been producing reports but the disposal gets stuck if the PAC does not function simultaneously.

### ***Detecting and sanctioning***

In course of conducting audit, misbehaviour of public office holders in financial matters is regularly detected and reported upon. Responsibility of investigation of misbehaviour, however, lies with the controlling authority of the offending office holder. PAC also issues directives to take disciplinary or criminal action against the offenders<sup>605</sup>.

The Audit Institution does have mechanisms to identify misbehaviour in as much as Article 128(1) confers constitutional power on him and on his authorised officers to have access to all records, books, vouchers, documents, cash, stamps, securities, stores, or other government property in the possession of any person in the services of the Republic. Misbehaviour in the form of misuse, wastage or corruption in spending public money can be investigated by Audit and it has independence to do so and to identify persons responsible for this misbehaviour. But no sanction can be applied by Audit. It only reports the misbehaviour to the Parliament in the form of Audit Report. The procedure of applying sanction is very weak and the PAC's recommendations also are not acted upon with the urgency these incidents warrant. There is even no effective institutional mechanism to monitor whether the recommendations for punishing guilty officers have been implemented<sup>606</sup>.

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<sup>602</sup> Office of the Comptroller and Auditor General of Bangladesh: Performance Auditing Manual

<sup>603</sup> Nusrat Ferdousi, *Challenges of Performance Audit in the Implementation Phase: Bangladesh Perspective*, MPPG Thesis, North South University, 2012.

<sup>604</sup> Strengthening Public Expenditure Management Program (SPEMP), Reduction of Audit review Backlog by Public Accounts Committee - 9th Parliament of Bangladesh, June 27, 2012.

<sup>605</sup> PAC discussed over 5,550 audit objections, and settled 3,200 with response from Executive with recovery of BDT 9.25 billion. For detail see. Strengthening Public Expenditure Management Program (SPEMP), Reduction of Audit review Backlog by Public Accounts Committee - 9th Parliament of Bangladesh, June 27, 2012.

<sup>606</sup> Interview with former CAG Mr. M. Hafizuddin Khan.

### ***Improving financial management***

The CAG cannot directly take any action against any offenders, but it can report such incidents to the higher authority of the offender for taking action in the matter. There always occurs a time lag between the finding and disclosure of the offences allegedly committed by public officials and action taken against them as recommended by the parliamentary committee. So the CAG suffers from some limitation in promoting efficiency in financial management of government. However CAG acts as a major deterrent against inefficient and corrupt use of public money because its report is taken with high priority and importance by the PAC. The PAC does heavily “rely on C&AG’s recommendations, working papers and analyses rather than doing much analysis independently.”<sup>607</sup>

CAG of Bangladesh does follow up quite aggressively the PAC recommendations unless advised by the PAC. The CAG also reports back to the PAC on the implementation status of its recommendations. There does not exist a well developed institutionalised mechanism to follow up and monitor the implementation of the decisions taken by the PAC either at the end of the PAC or at the end of the CAG which is a major deficiency in the system of oversight functions of the CAG and the Parliament<sup>608</sup>.

Even the PAC’s report containing its detailed recommendations tabled in the House is not discussed. The Government does, however, act upon the CAG reports at least partially and full implementation depends on how persistent is the PAC along with the CAG.

### **3.2.4 Election Commission**

The Constitution of Bangladesh (Article 118) gives the provision for setting up an Election Commission (EC) for the superintendence, direction and control of the preparation of electoral rolls for election to the office of the President and to the Parliament, and the conduct of such elections in accordance with the Constitution. According to the Constitution, the EC is independent in the exercise of its functions and subject only to the Constitution and applicable laws.

Since independence the EC has so far conducted a number of elections that include eight parliamentary elections, three presidential elections with direct voting by the people, three referendums, and several other local body elections. Among these, 13 were held under military government (five local, three referendums, two presidential and three parliamentary), and the remaining under civilian government. Three parliament elections were held under non-party caretaker governments in 1991, 1996 and 2001. Since 1972, nine Chief Election Commissioners (CEC) have been appointed; among them seven were from the

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<sup>607</sup> Strengthening Public Expenditure Management Program (SPEMP), Reduction of Audit review Backlog by Public Accounts Committee - 9th Parliament of Bangladesh, June 27, 2012, p.5.

<sup>608</sup> M. Hafizuddin Khan, *op.cit.*

Judiciary. Only three of the CECs completed their tenure of five years as CEC. Elections held under different CECs were criticised for gross violation of electoral rules and termed ‘un-free’ and ‘unfair’<sup>609</sup>. Resolution of election petitions is another issue of concern. Very few of the election petitions were resolved within the duration of the concerned parliament.

The EC’s neutrality has been questioned due to capricious appointment of CECs and Election Commissioners with out wider political consensus. The predominant confrontational politics has made election management quite difficult in Bangladesh. The BEC so far played a passive role in the election process to avoid such difficulties. Such laissez-faire policy followed by the Commission partly enabled commercialisation and criminalisation of politics.

The Election Commission has never undergone significant reforms, except the provision of relative autonomy of the Commission through the promulgation of the Election Commission Secretariat Act, 2009. The immediate past Chief Election Commissioner noted that reforms of a fundamental nature were never attempted except in the case of the introduction of a voter identity card and almost all major reform efforts were incremental in nature and were made to meet the needs of the party in power.<sup>610</sup>

### **Structure and Organization**

The Bangladesh Election Commission (BEC) is a permanent and independent constitutional body that was established in 1972<sup>611</sup>. The Constitution provides that there shall be an Election Commission consisting of the Chief Election Commissioner and not more than four Election Commissioners<sup>612</sup>. In the 15th amendment of the Constitution the number of commissioners has been set at five, including the Chief Election Commissioner<sup>613</sup>.

The President appoints a Chief Election Commissioner and such number of other Commissioners as may be decided by him for a term of five years. Most of the Commissions, including the current one, have consisted of three Commissioners.

The Election Commission is constitutionally mandated to supervise, direct and control the preparation of electoral rolls for elections to the office of President and to Parliament and to hold elections to those offices and delimit the constituencies for the purpose of elections to Parliament.<sup>614</sup> Other laws assign the Commission responsibility for the conduct of elections to

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<sup>609</sup> Peter Eicher, Zahurul Alam & Jeremy Eckstein, *Elections in Bangladesh 2006-2009 - Transforming Failure into success*, United Nations Development Programme, Dhaka 2010.

<sup>610</sup> Interview with CEC Dr. ATM Shamsul Huda, Dhaka, August 2010 cited from M. Sakhawat Hussain, *Review of Electoral Reform in Bangladesh: 1972-2008*, M.Phil Thesis submitted to National Defence College, Bangladesh University of Professionals, 2010. p12.

<sup>611</sup> Article 118(4) of the Constitution ensures the independence of the EC and narrates “The Election Commission shall be independent in the exercise of its functions and subject only to this Constitution and any other law”.

<sup>612</sup> Article 118, The Constitution of Bangladesh.

<sup>613</sup> bdnews24.com, June 30 2011.

<sup>614</sup> Article 119, The Constitution of Bangladesh.

various local bodies and the management and control of all matters relating to National Identity Card registration<sup>615</sup>.

The Commission is supported by a Secretariat that has been made independent of all Ministries and government agencies through the passage of the landmark legislation, the *Election Commission Secretariat Act, 2009*.

## **Capacity**

### ***Financial, Human and Infrastructural Resources***

The expenditure of the EC is charged upon the consolidated fund. For each financial year the Election Commission submits a budget proposal to Ministry of Finance. Upon review of the estimates, the Ministry of Finance allocates funds. The Election Commission however does not need to take any prior permission from the Ministry to spend the approved head wise expenses<sup>616</sup>. The Election Commission has a full-fledged Secretariat as provided for by the Election Commission Secretariat Act 2009. Apart from the deputed officers, the EC's own officers and staff are recruited in accordance with *The Election Commission (Officers and Staff) Rules 1979*. According to the Constitution (Article 120 of the Constitution) both the commissioners and staff are permanent. The recruitment law of the election commission staff is same as that of government recruitment rules. The EC is empowered to recruit junior and support level staff but executive positions are recruited by the Public Service Commission.

The Secretariat comprises headquarter offices in Dhaka and field offices across the country. BEC is a constitutional permanent body and it has its own permanent staff of over 2,700 people. During election services of staff (nos. may go upto 6-7 hundred thousand) of other government, semi-government and autonomous bodies are placed at its disposal. The business of the Commission and Secretariat is transacted according to the procedures laid down in the Election Commission (Conduct of Business), Rules, 2010<sup>617</sup>.

According to the Constitution, BEC is permanent (Article 120 of the Constitution) and both the commissioners and staff are permanent. At present there is no prescribed law or regulation describing academic or professional qualifications for the appointment of CEC or Commissioners of BEC<sup>618</sup>. The recruitment law of the Election Commission staff is same as that of government recruitment rules. EC is empowered to recruit junior and support level staff but executive positions are recruited by Public Service Commission. Diagnostic studies

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<sup>615</sup> M. Sakhawat Hussain, *Review of Electoral Reform in Bangladesh: 1972-2008*, M.Phil Thesis submitted to National Defence College, Bangladesh University of Professionals, 2010

<sup>616</sup> Section 7, Bangladesh Election Commission Secretariat Act 2009.

<sup>617</sup> Bangladesh Election Commission, Five Year Strategic Plan, 2011-2016, Public Relations Branch, Election Commission Secretariat, Bangladesh Election Commission, 2011.

<sup>618</sup> In 2011, the BEC prepared a draft law entitled "*Chief Election Commissioner and Election Commissioner (Appointment) Act, 2011*" and sent to Ministry of Law, but the law has yet not been processed by the Ministry ( Source: Interview with an Ex Election Commissioner). (*anonymity requested*).

however have noted that “BEC staff suffer from severe lack of expertise and career planning”<sup>619</sup>.

The ruling regime appoints the Commissioners according to their own choice and consideration. For the first time in our country’s history, the Election Commissioners including the CEC have been selected through a search committee appointed by the President<sup>620</sup>. Generally most of them including the CECs and members are ex-government servants.

During the election period other local government structures become responsible for administering the election and aggregating the results. In particular, Deputy Commissioners (DCs) become Returning Officers (ROs) and therefore responsible for candidate nomination, election administration and responsible to control of magistrates and law enforcing agencies<sup>621</sup>. Besides the Secretariat and Electoral Training Institute at Dhaka, there are 9 Divisional Election Offices, 83 District Election Offices and 505 Thana/Upazila Election Offices across the country. The Commission engages a pool of manpower consisting of permanent staff of 2391. Furthermore, during election services of staff (nos. may go upto 6-7 hundred thousand) of other government, semi-government and autonomous bodies are placed at its disposal.

The Election Commission Secretariat has an Electoral Training Institute (ETI) which was established in 1995 pursuant to a project funded jointly by the Government of Bangladesh, The Asia Foundation, and NORAD. The Institute was set up to provide specialised training to develop an efficient electoral management system and train all relevant polling personnel<sup>622</sup>.

The expenditure of the EC is charged to the consolidated fund. The Election Commission however does not need to take any prior permission from the Ministry to spend the approved head wise expenses<sup>623</sup>. Budget estimates are made on the basis of the incoming elections and election-related expenses. The ministry of Finance does not necessarily provide the amount as required. There is always a gap between the demand placed by the EC and funds provided by

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<sup>619</sup> Institute of Governance Studies, BRAC University, Bangladesh Election Commission Policy Note, May 2008. The study noted that that “The Election Commission (Officers and Staff) Rules 1979 provide highly discriminatory promotion rules in favour of Secretariat officials. For instance, persons who joined as Assistant Secretaries (AS) in 1984 were promoted to the posts of Joint Secretaries in 2003. But those who joined as the District Election Officers in a field office (equivalent to the AS in the Secretariat) during the same year had not received a single promotion until 2004. This discrimination frustrates the officials working at field level.

<sup>620</sup> Though the opposition and a section of media noted that such search committee was biased and picked the EC members and chair from among the “trusted and like minded” candidates. M Abdul Latif Mondal, “Bare Facts - Appointment of election commissioners”, *The Daily Star*, June 29, 2011, also see ATM Shamsul Huda, “Independence of Bangladesh Election Commission - Its meaning, attributes and limit”, *The Daily Star* March 17, 2013 .

<sup>621</sup> There are 66 DCs/ROs (at least one for each district). Under the ROs, there are Upazila Nirbahi Officers (UNOs) serve as Assistant Returning Officers (AROs).

<sup>622</sup> Training courses include modalities on the Preparation of Voter List, Election materials, Election Management, Voting System, Election Rules, Laws, Acts, Code of Conduct, Electoral Law and Order, Office Management, Financial Management, Computer Fundamentals, Operating System, and Database Management System.

<sup>623</sup> Section 7, *Bangladesh Election Commission Secretariat Act 2009*.

the ministry. There are also allegations of delayed release of funds from the Ministry of Finance<sup>624</sup>.

The following table shows the development and non development budget<sup>625</sup> of the BEC. It clearly reveals that the actual receipt of both non-developmental and development allocations have been noticeably less than that of the budgeted amount.

*Table 1: Development and non development budget of the BEC*

*Amount Tk in crore*

	Budget 2012-13	Revised Allocation 2011-12	Budget 2011-12
Non-Development	207	190	199
Development	195	144	220
Total	402	334	419

*Source: Statement II Non-Development and Development Expenditure, Ministry of Finance 2013, GoB*

BEC also receives development related project grants from different development partners to develop its institutional capacity and infrastructure. From 1997 to 2004 the BEC implemented a project titled Strengthening the Election Commission for Improvement in the Electoral Process with an amount of Tk 670 million funded by UNDP<sup>626</sup>.

The BEC Secretariat is currently located in a building which is owned by the Planning Commission of Bangladesh. Some of its units/ offices are based in the rented premises.<sup>627</sup> In the field level, till mid 2012, BEC didn't have its own premises and conducted its operations either from rented offices or from an office owned by the district/upazila parishad.

Presidents Order 155 of 1972 Section 6.1 authorizes the commission to requisition “any such vehicle or vessel as is needed or is likely to be needed for the purpose of transporting to and

<sup>624</sup> Transparency International Bangladesh, *Bangladesh Election Commission: A Diagnostic Study, 2006*

<sup>625</sup> Non development budget refers to wage and salaries and other allowances of the staff and employees.

<sup>626</sup> The UNDP project key components included setting up of computerised database with linkage among all the district level databases, a computerised electoral roll with image of voters, capacity building of election officials through training, and arrangement of elections using electronic voting machines.

<sup>627</sup> In 2009, BEC initiated to have its own premises and a piece of land has been allotted in Agargaon, Dhaka. The design for the BEC premises is also approved but construction has not yet started.

from any polling station ballot boxes or other election materials or any Officer or other person engaged for the performance of any duties in connection with the election”

The expenditure of the EC is charged upon the consolidated fund. For each financial year the Election Commission submits a budget proposal to the Ministry of Finance. Upon review of the estimates, the Ministry of Finance allocates funds. The Election Commission however does not need to take any prior permission from the Ministry to spend the approved head wise expenses<sup>628</sup>. Budget estimates are made on the basis of the incoming elections and election-related expenses such as voter list updating, training of the personnel, costs of the administrative machinery. The Ministry of Finance does not necessarily provide the amount as required. There is always a gap between the demand placed by the EC and funds provided by the ministry. There are also allegations of delayed release of funds from the Ministry of Finance<sup>629</sup>.

However, the budget estimation and allocation is based on the election calendar of the BEC.<sup>630</sup> In 2010-11, the total budget was BDT 4616 million as there was the Union Parishad election in 2010 while the total budget in 2011-12 was a bit lower, BDT 3956 million, as there were no major elections. The total budget of BEC for 2012-13 is BDT 403 million, while the projected budget for 2013-14 is BDT 5336 million as there is the scheduled parliament election and local government elections in 2013-14.<sup>631</sup>

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<sup>628</sup> Section 7, *Bangladesh Election Commission Secretariat Act 2009*.

<sup>629</sup> Transparency International Bangladesh, *Bangladesh Election Commission: A Diagnostic Study, 2006*

<sup>630</sup> Interview with Election Management Consultant, August 18<sup>th</sup> 2013 (*anonymity requested*).

<sup>631</sup> Election Commission Secretariat, *Yearly Budget 2012-13*.

<sup>632</sup> Non development budget refers to wage and salaries and other allowances to the staff and employees.

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The BEC Secretariat is currently located in a building which is owned by the Planning Commission of Bangladesh. Some of its units/ offices are based in the rented premises.<sup>634</sup> In the field level, till mid 2011, BEC didn't have its own premises and conducted its operations either from rented offices or from an office owned by the district/upazila council. Under the Construction of Server Station and Electoral Database Project (CSSED), BEC has however been able to construct 481 server stations.

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According to The Constitution BEC is permanent (Article 120 of the constitution) and both the commissioners and staff are permanent. At present there is no prescribed law or regulation describing academic or professional qualifications for the appointment of CEC or Commissioners of BEC<sup>635</sup>. The recruitment law of the Election Commission staff is same as that of government recruitment rules. EC is empowered to recruit junior and support level staff but executive positions are recruited by the Public Service Commission. However, diagnostic studies have noted that "BEC staff suffers from severe lack of expertise and career planning"<sup>636</sup>.

The ruling regime appoints the Commissioners according to their own choice and consideration. For the first time in our country's history, the Election Commissioners including

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<sup>634</sup> In 2009, BEC initiated to have its own premises and a piece of land has been allotted in Agargaon, Dhaka. The design for the BEC premises is also approved but construction has not yet started.

<sup>635</sup> In 2011, the BEC prepared a draft law entitled "Chief Election Commissioner and Election Commissioner (Appointment) Act, 2011" and sent to Ministry of Law, but the law has yet not been processed by the Ministry( Source: Interview with an Ex Election Commissioner). (*anonymity requested*).

<sup>636</sup> Institute of Governance Studies, *Bangladesh Election Commission Policy Note*, BRAC University, 2008. The study observed that "The Election Commission (Officers and Staff) Rules 1979 provide highly discriminatory promotion rules in favour of Secretariat officials. For instance, persons who joined as Assistant Secretaries (AS) in 1984 were promoted to the posts of Joint Secretaries in 2003. But those who joined as the District Election Officers in a field office (equivalent to the AS in the Secretariat) during the same year had not received a single promotion until 2004. This discrimination frustrates the officials working at field level".

the CEC have been selected through a search committee appointed by the President<sup>637</sup>. Generally most of them including the CECs and members are ex-government servants.

### ***Independence and Functional Autonomy***

BEC is a constitutional body which is 'independent in the exercise of its functions'<sup>638</sup>. The Commissioners including Chief Election Commissioner are appointed by the President and are not accountable to any ministry. During the time of election all executive authorities are responsible to assist EC in the discharge of its functions<sup>639</sup>. Part VII (Article 118-126) of the Constitution of Bangladesh deliberates about the establishment, functions, staff, and responsibilities of the BEC. The Election Commission Secretariat Act 2009, Rule 3(2) further noted that the Election Commission Secretariat will not be under administrative control of any government ministry, directorate or department.

Article 126 of the Bangladesh Constitution and Article 5 of the Representation of the People Order 1972 (RPO 1972) provide that it is the duty of the executive branch of government to assist the Commission in the discharge of its functions. The BEC depends on the Government for preparing the electoral roll, preserving law and order during elections and conducting the elections. But no redress is available if the government does not comply with the BEC's directions or distorts them during implementation.<sup>640</sup>

The Constitution provides that the appointment of the Chief Election Commissioner and other Election Commissioners (if any) must be made by the President. When the Election Commission consists of more than one person, the Chief Election Commissioner shall act as its Chairman. Under the Constitution, the term of office of an Election Commissioner is 5 years from the date on which he enters into office. A person who has held office as Chief Election Commissioner is not eligible for appointment in the service of the Republic. Any other Election Commissioner is, on ceasing to hold such office, eligible for appointment as Chief Election Commissioner, but is not eligible for appointment in the service of the Republic.

Article 126 of the Constitution and Articles 4 and 5 of *The Representation of the People Order, 1972* provide that it shall be the duty of all executive authorities to assist the Election Commission in the discharge of its functions. The Commission has the power to require any person or authority to perform such functions or render such assistance for the purpose of election.<sup>641</sup>

The Commission may authorise its Chairman or any of its members or officers to exercise and perform all or any of its powers and functions under the law. The conditions of service of Election Commissioners are determined by the President subject to the provisions of any law made by the Parliament. An Election Commissioner cannot be removed from office except in

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<sup>637</sup> Though the opposition and a section of media noted that such search committee was biased and picked the EC members and chair from among the "trusted and like minded" candidates.

<sup>638</sup> *Article 118 (4) of the Constitution.*

<sup>639</sup> *Article 126 of the Constitution.*

<sup>640</sup> Institute of Governance Studies, Bangladesh Election Commission Policy Note, BRAC University, 2008, p.2, and Manzoor Hasan, "How assertive has the Election Commission been? 19th Anniversary of the Daily Star, A Testing Year- *The Daily Star*, February 25, 2010.

<sup>641</sup> *Article 120, The Constitution of Bangladesh.*

the manner and on the grounds applicable to a Judge of the Supreme Court. An Election Commissioner may resign from his office by submitting his resignation in his own handwriting, addressed to the President.

These electoral laws of Bangladesh were updated and amended during the tenure of the last Care taker Government (CTG). Many laws especially the ones relating to Parliamentary elections, were later ratified by the Ninth Parliament. There were some very useful provisions, namely the requirement of disclosures of the antecedents of candidates, the registration of political parties, an independent secretariat for the Election Commission and so on. However, they lack some provisions that are conducive for free, fair and meaningful elections.<sup>642</sup>

A number of laws, rules and regulations have also been enacted and/or provided. These laws discuss in detail, procedures of different functions such as preparing of electoral rolls, delimitation of constituencies, election of the President and women members of Parliament, and conduct of election. Another set of laws and rules provide for administrative functions with regard to salary and privileges of Election Commissioners, and appointment, promotion and transfer of the officials and staff of the EC Secretariat.

The Chief Election Commissioner is responsible for the overall regulation and discipline of the Secretariat, although the Secretary to the Election Commission is the executive head of the Election Commission Secretariat.<sup>643</sup> The Secretariat is mandated to assist the Election Commission in respect of the preparation of electoral rolls, conducting of referendum and elections, the reservation and allocation of symbols to political parties/candidates, the procurement, supply, storage of election materials; the consolidation of all election results and their formal publication in the official gazette, etc.<sup>644</sup>

The Election Commission Secretariat is empowered to liaise directly with any government ministry, department or office; however, Section 3 of *The Election Commission Secretariat Act 2009* explicitly provides that the Election Commission shall not be subject to the control of any government body or agency. The Election Commission is independent in the exercise of its functions and subject only to the Constitution and applicable laws.

The government allocates funds for the Election Commission annually on the basis of the proposal furnished by the Election Commission in this respect. The Commission is entitled to control and use the funds so allocated independently of government involvement.<sup>645</sup>

The head of the Commission is the Chief Election Commissioner (CEC). According to Constitution, "there shall be an Election Commission for Bangladesh consisting of the Chief Election Commissioner and not more than four Election Commissioners" and the appointment of the Chief Election Commissioner and other Election Commissioners (if any) shall, subject to

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<sup>642</sup> Badiul Alam Majumdar, "Which way towards free, fair and meaningful elections?" *The Daily Star*, 17 March 2013

<sup>643</sup> Section 5, *The Election Commission Secretariat Act 2009*.

<sup>644</sup> Section 4, *The Election Commission Secretariat Act 2009*.

<sup>645</sup> Section 7, *The Election Commission Secretariat Act 2009*.

the provisions of any law made in that regard, be made by the President."<sup>646</sup> As of date, there is no legal framework for recruitment of CEC.

Commissioners are independent in their activities and not accountable to CEC. Bangladesh Election Commission has its own Secretariat as per Election Commission Secretariat Act 2009, which is headed by a Secretary. The Secretary is accountable to CEC and is the head of the EC Secretariat. Secretariat renders all assistance to execute the decisions and orders of the Commission. Powers and functions of the Commission and the Secretariat are different and clearly mentioned in different legal frameworks or laws. According to the Election Commission Secretariat Act 2009, the Secretariat is under the full control of the Commission. The EC Secretariat has six Wings headed by either Additional Secretary/Joint Secretary or equivalent officials. The head of each wing is accountable to the Secretary. Except these six Wings, EC has a training institute headed by a Director General and field offices at regional, district and upazila/thana level. The DG, ETI and Regional Election Officers are accountable to the Secretary.

Neither the Constitution nor the rules prescribe qualifications for appointment to the post of CEC or Election Commissioner<sup>647</sup>. "Despite having the constitutional provision (Article 118(1) of the Bangladesh Constitution) for enacting a law governing appointments of the CEC and the ECs, no such law does yet exist. As in the case of other decisions and appointments to senior constitutional positions, the President acts on the advice of the Prime Minister under Article 48(3) of the Constitution. This arrangement provides the opportunity for politicising appointments of the CEC and the ECs. There is clear recruitment rule for the recruitment of professional and support staff which is done by the Commission and class I officials are recruited by PSC according to government recruitment rule.

As regards the removal of Election Commissioners, the Constitution of Bangladesh states in Article 118 (5) that an Election Commissioner shall not be removed from his office except in like manner and on the like grounds as a judge of the Supreme Court.

The notion of the Commission's independence reached a new height with the promulgation of the Bangladesh Election Commission Secretariat Ordinance, 2008 subsequently ratified by the 9<sup>th</sup> Parliament (Jatiya Sangsad) into an Act in 2009. The Act has de-linked the Commission Secretariat from the Prime Minister's Office. It is no longer under the control of any Ministry, Division or Office.

It has also been given the authority to periodically review its manpower needs in association with officials of relevant government agencies and whatever is decided by this committee would be deemed as final. Similarly, the commission does not have to seek the clearance of the Ministry of Finance every time it needs to release funds once the budget is approved by the Sangsad<sup>648</sup>.

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<sup>646</sup> Article 118(1) of the Constitution

<sup>647</sup> TIB, Bangladesh Election Commission: A Diagnostic Study, 2006.

<sup>648</sup> A.T.M. Shamsul Huda, Independence of Bangladesh Election Commission: Its meaning, attributes and limit, *The Daily Star*, March 17, 2013

Article 118 of the Constitution has guaranteed the Election Commission (EC) all power, independence and strength, but it could not grow as a credible institution because of political manipulation<sup>649</sup>. Various studies have suggested that the EC has not always been effective in addressing the violation of electoral malpractices due to the lack of institutional capacity and also due to non-cooperation of the government<sup>650</sup>.

The Election Commission in Bangladesh over the years has suffered from image crisis<sup>651</sup>. However available survey reveals that immediate past EC had managed to gain some confidence of the citizens. IRI, in its survey found that 93% voters of Bangladesh opined that the election environment was "very good" indicating their confidence in BEC<sup>652</sup>. On the other hand the present EC does not seem to have such kind of confidence, both of the citizens and of the civil society<sup>653</sup>. Among many other reasons for people's negative perception about BEC that grew over the years, up until 2007, important ones were lack of transparent process of the selection of Commissioners and the independence of the Commission Secretariat. The party<sup>654</sup> in power has never complained against its performance or effectiveness in running the election, while in almost all cases after the election result opposition party /parties label the EC as "partisan" and "biased".

One ex Chief Election Commissioner observed that "people expect that the EC should act neutrally and independently. Its neutrality and independence ought to be visible and perceptible through its actions<sup>655</sup>. Even though the EC has the constitutional and statutory mandate to function independently, whether or not it can do so depends on the quality of people making up the Commission. Many citizens have serious concerns about the manner in which the EC was reconstituted and the neutrality of some of the Commissioners. The opposition 18-party alliance has already expressed its non-confidence in the present Commission<sup>656</sup>.

The inability of the BEC to win public confidence during the 2006-2007 election period was a major factor in the failure of the election process. The lack of public confidence in the Commission was closely tied to its inability to correct the electoral rolls. Moreover, Presidential sole authority to appoint Election Commissioners is also a part of the problem in Bangladesh which is characterised by sharp political divisions. This is particularly true as the President is regarded as a nominee of a particular party and there is no requirement for him

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<sup>649</sup> Shahid Alam, "The afterthought in the democratic process" Star Books Review , *The Daily Star*, Saturday, June 16, 2012

<sup>650</sup> Ex Election Commissioner Shakhawat in his interview particularly referred to Narayabganj Poushava Election.

<sup>651</sup> *Ibid.*

<sup>652</sup> IRI, Exit Poll, Bangladesh Parliamentary Election, 29 December 2009 .

<sup>653</sup> Badiul Alam Majumdar, *op.cit.*

<sup>654</sup> IGS, *op.cit.*

<sup>655</sup> Mohammed Abu Hena, The challenge before the Election Commission, *Daily Star* March 17, 2013.

<sup>656</sup> Badiul Alam Majumdar, *Ibid.*

to consult with Parliament or with the political parties when appointing Election Commissioners. Thus the nature of the appointment process of the ECs raise suspicions about the impartiality of the Election Commissioners<sup>657</sup>.

The Government tends to play an indirect and covert interference in manipulating the role and function of the EC. During the Narayanganj City Corporation election in 2011, EC's decision to deploy army to maintain the law and order was tactfully ignored by the government. Judiciary has also a formal and legitimate role in interfering in the election process. A former Election Commissioner observed that "In Bangladesh, the judiciary is given the final authority to adjudicate election disputes. But past experiences show that such disputes are seldom resolved expeditiously, and many times the five-year life of the Parliament expires before decisions are made by the Court"<sup>658</sup>.

It is alleged that some MP candidates take the advantage of the court's jurisdiction to run for the election even when the EC has disqualified them. A former EC noted that "some people used the court in the past in their personal interest, hampering the electoral process"<sup>659</sup>. The European Union Election Observation Mission noted that "there were examples that in the month prior to Election Day the Supreme Court played a more significant role than expected. Many candidates rejected by the BEC availed themselves of their constitutional right to file a writ petition to the High Court to challenge the decisions of the BEC"<sup>660, 661</sup>.

Given the political reality and the selection process of the EC members and the Chairman, it is difficult to say that the Commission can effectively play a professional and non-partisan role. The Fifteenth Amendment of the Constitution, enacted in June 2011 provides that the Parliamentary elections are to be held under the government of the day i.e., a party-based government<sup>662</sup>.

One of the most important factors that remained critical was the lack of public confidence that the BEC had suffered on the question of legitimacy as there was no principle rule for appointment of the Commissioners. Most of the time legitimacy of the appointment of the Commission has been questioned by public. In most cases appointment has been through political government out of persons of their liking.

By law BEC is independent but the existing organisational structure of the BEC is inadequate to carry out its responsibilities. The BEC needs support from various ministries and agencies to conduct a free and fair election and discharge its functions. Constitution has made it

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<sup>657</sup> Peter Eicher, Dr. Zahurul Alam, Jeremy Eckstein, *Elections in Bangladesh 2006-2009: Transforming Failure into Success*, March 2010.

<sup>658</sup> Interview with Ex EC Shakhawat Hossain.

<sup>659</sup> Shakhawat Liton, "EC wants full grip on poll matters Seeks constitutional amendment to end court's review of EC actions in holding JS polls" *The Daily Star*, April 9, 2011.

<sup>660</sup> The European Union Election Observation Mission (EU EOM), Bangladesh Parliamentary Election 2008. 31 December 2008, Dhaka.

<sup>661</sup> IGS, 'Bangladesh Election Commission: External Dependence and Influence' (The State of governance 2008). BRAC University. p 84.

<sup>662</sup> Badiul Alam Majumdar, "Which way towards free, fair and meaningful elections?" *The Daily Star*, 17 March 2013

obligatory for all Executive authorities to assist the BEC in discharging its functions. But at the field level during the elections the Returning Officer (RO) plays a key role in conducting election. Deputy Commissioners (DCs) and Upazilla Nirbahi Officers (UNOs) are usually chosen as ROs to the parliamentary and all local government elections respectively. As both the DCs and the UNOs are government officials, the Government can influence election results by placing partisan civil servants in these posts<sup>663</sup>.

The Constitution has granted the Election Commission a high degree of independence in the exercise of its functions. However, the BEC still lacks an overarching law, which clearly states the powers of the BEC in relation to the government and an unambiguous redressal mechanism if the Government fails to comply with or distorts the implementation of the BEC's directives.

At present, the BEC has no accountability for service delivery to citizens other than through a prerogative writ viz. public litigation, which is expensive and lengthy. The BEC has started consulting political parties recently. But it has no formal channel of communication to inform the parties about its actions and to receive feedback from them on a regular basis.

As per *Article 88 of the Constitution*, salaries of the Commissioners and BEC officials and its administrative expenses are charged on the consolidated fund. However, the Ministry of Finance (MoF) has the authority to circumscribe the charged administrative expenses of the BEC in the name of financial discipline. The capital and the development expenditures of the BEC are not charged on the consolidated fund and are thereby subject to the control of the MoF. There is currently no recourse for the BEC to justify its budget proposal to Parliament if the MoF denies its reasonable demands.

Deputed officials are not considered as officials of the BEC Secretariat and thus the BEC's service rules are not applicable to them. This provision may leave room for exercising significant government influence.

The office of the Comptroller and Auditor General (C&AG) was responsible for ensuring post-expenditure accountability. But the latter was largely ineffective and the Public Accounts Committee's jurisdiction in overseeing the BEC's financial matters was unclear.

Unfortunately even after the enactment of the Secretariat Act, the commission had faced with a lot of difficulties in conducting the local government elections due to bottlenecks in release of funds and unusual delay in getting sanction for additional manpower. The Recruitment Rules for the appointment of officers and staff of the commission still require it to obtain the clearance of the government for appointment to Class 1 positions.

At present there is no mechanism for holding the BEC accountable for its performance. However, an MP can raise a petition as per the Rule 100 of the Rules of Procedure of the Parliament against any irregularities of the BEC.

Election Commission in Bangladesh is very often alleged to be partisan and biased to the political parties serving particular party interest. One veteran election observer noted that

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<sup>663</sup> IGS *op.cit.*

“the use of the EC for partisan ends has always been a problem in Bangladesh.... During the early part of the 4-party alliance government, the Secretary of the EC was branded as totally partisan person....and was later rewarded by the last government by elevation to the position of Election Commissioner”... all the appointments of the 4-party alliance government were more or less partisan, and some were nakedly so”. During the Awami League regime, one former government official, who took a public position against the first BNP government, was appointed election commissioner<sup>664</sup>. Elections held under different CECs were criticised for gross violation of electoral rules and termed ‘un-free’ and ‘unfair’.<sup>665</sup> There are allegations of official influence in resolving election disputes. For example, none of the election petitions filed after the 2001 elections were resolved within the terms of the Parliament. It has been alleged that both the EC and the judiciary were influenced by the government for this purpose. Yet another source of influencing electoral outcomes is the delimitation of constituencies<sup>666</sup>.

## **Governance**

### ***Transparency, Accountability and Integrity: Legal Framework and Practice on the Ground***

The Election Commission is legally obliged to keep citizens informed of its functions and procedures of work; to this end the Election Commission may direct its Secretariat to organise information dissemination programmes for the people.<sup>667</sup> According to the *Election Commission Secretariat Act 2009* {(Rule 4 (2))}, the Secretariat has to publish all relevant information of any election in government gazette. In *Representation of the People Order (RPO), 1972* - Article 8. (2) it is stated that the Commission has to inform the public through official Gazette about any alterations in the list of polling stations at least twenty five days before the polling day. Besides, Article 11, Article 15, Article 16 (4), Article 19 (3), Article 20 (b), Article 24, Article 39, Article 43, etc. also ensure that relevant information related to election process has to made public well ahead. The Conduct of Election Rules 2008 ensures the publication of the list of legally nominated candidates, the list of contesting candidates, monitoring by general public the documents of EC, etc. *The Electoral Roles Act 2009* Article 7 (6 & 7) also made it obligatory to prepare and public Voter list in a transparent manner.

Election dates and results are always published and informed to the stakeholders through the media. The practice is after preparing an election schedule, BEC conduct a press conference. In relation to election result, the election officials declare the results at the polling station. For the parliamentary election the unofficial consolidated result is published by the election commission live on television.

From the 9<sup>th</sup> Parliamentary election with the revised RPO, political parties have to submit election expenditure to the BEC. All the parties that are participating in the election have to submit their election expenditure and which are the published by BEC in its website.

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<sup>664</sup> Badiul Alam Majumdar, *op.cit.*

<sup>665</sup> Peter Eicher, Zahurul Alam & Jeremy Eckstein, *Elections in Bangladesh 2006-2009 - Transforming Failure into success*, United Nations Development Programme, Dhaka 2010p

<sup>666</sup> Peter Eicher, *Ibidp*

<sup>667</sup> Section 18, *The Election Commission Secretariat Act 2009*.

All information such as election operations by BEC, election schedule, election expenditure by parties<sup>668</sup>, statement and assets declared by candidates, election expenditure by parties are made public by the EC. But there are some issues such as yearly income and expenditure of the parties, minutes of the EC meetings etc are not made public.

EC almost regularly organizes press conferences / briefing on various election related matters. Sometimes EC arranges issue-based formal press briefings while informal briefings to the journalists are made by the CEC/EC/Secretary in a regular interval. All major announcements like registration of voters, registration of political parties, election days, updating of electoral roll etc are announced well ahead through print and electronic media.

EC has an official website ([www.ecs.gov.bd](http://www.ecs.gov.bd)) that contains various information related the Commission, its activities and with events, election results, voter registration, asset declaration by candidates, election expenditure return submitted by candidates and parties. It also contains the relevant laws and regulations related to election. Unlike other developed countries EC does not have any dedicated call centre but, political party can call to the Election Management Wing-1 to make enquiry about registration issues, while the voters can call to the National Identity Registration Wing to learn anything about national Voter ID card. However performances of such enquiry services are reported to be very poor and not user friendly<sup>669</sup>. EC Website indicates a designated person<sup>670</sup> called 'Focal Point to receive Complaint & Clearance'. However field test result reveal that after 6 different attempts the designated personal could not be reached<sup>671</sup>.

All officers and staff of the Election Commission Secretariat are accountable to the Secretary within the overall control of the Election Commission. The Secretary to the Election Commission is in turn accountable to the Election Commissioners.<sup>672</sup> Disciplinary measures against officers and staff of the Election Commission Secretariat are taken in accordance with the provisions of the relevant rules framed for this purpose.<sup>673</sup>

*The Election Commission Secretariat Act 2009, Rule 6 & 15* stated about the communication with external stakeholders. But there is no specification or details on the relationships with external stakeholders. However EC holds regular dialogues with the stakeholders (political parties, CSOs and media) on election procedures, delimitation of constituencies, introduction of electronic voting system, voting norms and procedures etc.

There is no systematic way of regular monitoring of BEC decisions but court may take action against any decisions of BEC if it is challenged by any person. The Election Commission is seeking amendments to the constitution to remove the court's jurisdiction of reviewing EC's

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<sup>668</sup> After the 9th Parliamentary Election, most of the candidates and parties submitted their electoral expenditure reports to the Election Commission. Source: Transparency International Bangladesh 'Transparency in Political Financing', October 2009p

<sup>669</sup> A senior Reporter of *Jugantar*

<sup>670</sup> Director (Public Relations), Election Commission Secretariat, Block #5, Sher-E-Bangla Nagar Dhaka-1207, Ph: 02-9180812, Fax: 02-9129773, Email: [dpr@ecs.gov.bd](mailto:dpr@ecs.gov.bd), [asad.bec@gmail.com](mailto:asad.bec@gmail.com)

<sup>671</sup> Field study was carried out in between May 3 to 14<sup>th</sup> July 2013.

<sup>672</sup> Section 14, *The Election Commission Secretariat Act 2009*.

<sup>673</sup> Section 13, *The Election Commission Secretariat Act 2009*.

actions taken during the process of holding parliamentary polls. The EC has submitted a number of amendment proposals to this effect to the parliamentary special committee on Constitutional amendment<sup>674</sup>.

*Article 125 of Bangladesh Constitution* empowers the BEC to the delimitation of constituencies, or the allotment of seats to such constituencies and which “shall not be called in question in any court”. Furthermore the *Representation of the People Order, 1972* (Section 92) notes that “No Court shall question the legality of any action taken in good faith by or under the authority of, the Commission, a Returning Officer, Presiding Officer or an Assistant Presiding Officer or any decision given by any of them or by any other officer or authority appointed under this Order or the rules”.

*The Election Commission Secretariat Act 2009*, Rule 4 (2)(ka)(13) notes that it is the responsibility of Election Secretariat to prepare an overall report of every election and publish it. After each of the general elections, local government election, the EC produces a report containing election results, constituency information, number of polling centres' and other basic statistical information. The reports are posted to the BEC website.

There is a comprehensive and dedicated Section (Chapter V: Election Disputes) in *The Representation of the People Order 1972 (RPO 1972)* where Articles 49-72 have clearly described the rules and procedures of petition if any electoral irregularities found in the election process. The law has authorised candidates and political parties to redress for electoral irregularities. In such kind of case, candidates can submit notice to the returning officer accompanied by a statement of the case, and all the provisions relating to the contents, verification, trial and procedure of an election petition, or to the security deposit in respect of an election petition shall apply to such a statement as if it was an election petition<sup>675</sup>. If the candidate is not happy with the hearing of the Returning Officer, he can go to the High Court Division and then Appellate Division of the Supreme Court.<sup>676</sup>

*The Election Commission Secretariat Act 2009*, Rule 7: Economic freedom of Election Commission pre-expenditure accountability of the BEC has been relaxed. Besides, other legal frameworks do not specify the issue of auditing of expenditure by BEC. But as general provision of Bangladesh Constitution (Article 1128: Functions of Auditor General) CAG regularly undertakes the audit of BEC.

There is nothing in any legal framework about the financial discrepancies but Article 83-85 of *The Representation of the People Order 1972 (RPO 1972)* said that the officials of BEC are punishable with imprisonment if they are found guilty of an offence in election process or activities.

The secretary of the Commission is accountable to CEC, while all other staff through a chain are accountable to the Secretary for their activities. In practice, BEC does not prepare reports

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<sup>674</sup> Shakhawat Liton, “EC wants full grip on poll matters Seeks constitutional amendment to end court's review of EC actions in holding JS polls”, *The Daily Star*. Saturday, April 9, 2011.

<sup>675</sup> *Article 61(2) of the RPO.*

<sup>676</sup> *Article 62 of the RPO.*

on all its activities. BEC have not prepared reports on the last Union Parishad, Pourashava and Parliamentary bi-elections. During the period 2010-2012, BEC on pilot basis introduced Electronic Voting Machine (EVM) in selected wards for city corporation elections, but as of today the BEC has not published any report on the viability and impact of EVM on the overall voting process. However almost all election reports are made public, but some of the internal reports like survey on the accuracy of electoral roll conducted in 2009 has not been published.

Although there are elaborate procedures and systems for political parties and candidates to seek redress for electoral irregularities<sup>677</sup> but the practice is slow and indefinite. BEC has a Legal Wing led by a Joint Secretary. Any complaints lodged with BEC are dealt by this Wing. However such dispute resolution process is generally slow. In case of violation of election code of conduct, BEC imposes fine and other penalties. In most cases such fines, penalties and sanctions are implemented. However for the election day, the Election Enquiry Committee (EEC) is active and the mobile teams of judicial magistrates hear and/or investigate complaints and conduct summary trials. However for gross irregularities the cases generally end up to the EC and subsequently to the higher court. In both cases it takes a long time. There are incidences where an MP candidate have been declared winner after almost 3 years after the election.

The Election Commission (EC) has been active in the last parliamentary election and in few cases imposed penalties. It cancelled the membership of a lawmaker of the ruling party of ninth parliament and announced the seat vacant following the Supreme Court's verdict<sup>678</sup>. The EC also cancelled the membership of another ruling member of the ninth parliament following the Supreme Court verdict<sup>679</sup>. Surprisingly he managed to get a stay order from the supreme court for six months and currently holding an important portfolio of the Cabinet<sup>680</sup>.

In most cases, the Election Commission announces the election results immediately after preparing them and makes them public through press releases and its web site. Most of the time, people get the official results within one day<sup>681</sup>. The BEC publishes its report on election in its website.

As the report covers only the information about the election, constituencies, political parties, nomination, and election results, etc. and there is not much about the election disputes, financial matters. It does not make any reference to punitive actions initiated or implemented by the BEC.

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<sup>677</sup> Article 81, 83, 84 and 89 of the RPO. The RPO has clear mention that any irregularities conducted by the election officials or temporary poll worker/officers such Returning Officer, Assistant Returning Officer, Presiding Officer, Assistant Presiding Officer, Polling Officer or any other officer or clerk in the conduct of election management can be challenged by making complaint.

<sup>678</sup> Major (ret'd.) Jasim Uddin's membership (Bhola-3 constituency).

<sup>679</sup> Global Integrity Index 2010, p.35-36.

<sup>680</sup> Parliamentary Membership of Mr. MK Alamgir was cancelled by the Election Commission but later through writ petition he got a stay order for six months from the Supreme Court. No follow up hearing has been made yet. Meanwhile Mr. Alamgir is inducted into the cabinet as Home minister.

<sup>681</sup> Global Integrity Index 2010. p.35.

There is 'The Conduct of Election Rules 2008' for Election Commission and The Code of Conduct for Parliamentary Election 2008 for candidates and political parties. But there is nothing as such for the staff and employees of EC. They are covered by the conventional code of conduct for the public employees of the Republic. There no rule as such that covers conflict. The staff of the EC are regulated by the Conduct Rule of the Public employees of the Republic.

However the terms and conditions and tenure of the Election Commissioners, as per the constitution (Article 118 (3)), is five years, and the Chief Election Commissioner, after the lapse of five years, cannot be appointed by government to any other government posts. The Commissioners have the same, but the only avenue left is to become Chief Election Commissioner.

As per the Article 148 of Bangladesh constitution Election Commissioners has to take oath to faithfully discharge the duties of office in accordance to law. They also make formal commitment "to preserve, protect and defend the Constitution" and not to "work for personal interest to influence the official conduct or official decisions."

EC is supposed to be non-partisan and composed of persons of high integrity. However with exception of very few cases the integrity of Election Commissioners have been questioned. During the Caretaker Government 2008, the EC proved its commitment to maintain the integrity and prepared almost full-proof electoral roll with photograph. On the other hand in 2007, the EC prepared the voter list with more than 10 million access or duplicate voters. Integrity of the ECs have been questioned at different time and are perceived to be favourable to the candidates of the party in power.

Constitutionally, EC is responsible for preparing accurate voter list. Moreover, after enactment of the National Identity Registration law in 2009, EC is responsible to provide NIDs to the voters. Although EC has commitment to provide quality services to the voters and stakeholders, the institution is not 100% successful in providing quality services.

Although there is no such specific allegation on conduct, integrity and ethical standard and about the Commissioners but their selection as Commissioner has been tainted as "biased" and "politically motivated" by the major opposition. The outgoing Chief Election Commissioner observed that "in the context of divisive nature of politics in Bangladesh, the method of recruitment and qualification requirements of candidates to be selected for appointment as commissioners assumes special significance in terms of its institutional integrity". In fact out of ten Chief Election Commissioners, six had to resign on the accusations of partisanship by political parties. Observers have raised their concern about the credentials of the Commissioners and suspect ill-intention behind such appointments. It is also accused "that persons who could not reach the highest grade in their service career and never even dreamt of occupying such a high position as that of an Election Commissioner, if appointed to such position, will do anything to satisfy their benefactors".<sup>682</sup> Lower status of the Commissioners of the present Election Commission has further reinforced the general

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<sup>682</sup> A.T.M. Shamsul Huda, "Independence of Bangladesh Election Commission: Its meaning, attributes and limit", *The Daily Star*, March 17, 2013.

mistrust about the neutrality and integrity of commission. However there has been no formal complaint on the deviant behaviour of the EC staff in terms of abuse of the office of the EC both at the field and at the Headquarters.

### **Role Assessment**

#### ***Campaign Regulation***

The EC has two legal frameworks regarding the rules and regulation of Election Campaign by registered political parties. These are: The Code of Conduct for Parliamentary Election 2008 and The Representation of People Ordinance 1972. The RPO has some provisions in connection with election campaign. The expenditure limit for a candidate is BDT 15,00,000, while the maximum expenditure by a party is BDT 4,50,00,000 when the number of candidates are 200 or more.<sup>683</sup> There are some guiding principles to the campaign, e.g. (a) candidates have to submit a probable source of expenditure during the time of submitting nomination, (b) open a separate bank account for keeping record of expenditure, (c) cannot print poster of more than one colour (d) cannot print poster of a size bigger than the size prescribed or specified by the Commission, (e) cannot set up a pandal covering an area of more than four hundred square feet, (f) cannot make any banner by using any cloth, (g) cannot employ or use more than three microphones or loudspeakers at a time in a constituency<sup>684</sup> After election each of the political party has to submit a detail financial statement on the overall election expense to the EC.

#### ***Election Administration***

With its limited staff capacity EC tries to ensure that all eligible voters are registered. The law ensures equal suffrage for all. There is no special package/programme for first time voters, women, minorities or voters of the remote areas. EC hires additional contractual staff to prepare the voter list. By law the draft voter list has to be published and be hanged on the board of the concerned district and Upazila election office as well as in the concerned Union Parishad. Any person can approach the concerned officials of BEC if he/she finds any error or omission in the list. BEC, in accordance with law, has to make correction (if any) before finalisation of electoral roll<sup>685</sup>. The compilation of the voter list with photographs was a major achievement. It has greatly contributed to the credibility of the process, enhancing public and political confidence.

EC has undertaken a 5-year electoral support project called Strengthening Election Management in Bangladesh<sup>686</sup>. The prime purpose of the project is to enhance and further consolidate the institutional and professional capacities of BEC, its Secretariat and local office to deliver its mandated functions of conducting fair, credible and transparent elections and further consolidating itself as a permanent, professional, credible and independent of government influence. The Bangladesh Election Commission has also formulated a Five-year

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<sup>683</sup> Article 44CC of the RPO.

<sup>684</sup> Article 44B of the RPO.

<sup>685</sup> Electoral Roll Act 2009

<sup>686</sup> The project worth US \$ 19,613,053 has been UNDP, DFID, EU, USAID for the period of 2011-2016. The Bangladesh Election Commission has also formulated a Five-year Strategic Plan (2011-2016) and a Two-year Action Plan (2011-2013) in 2011 for its institutional capacity building.

Strategic Plan (2011-2016) and a Two-year Action Plan (2011-2013) in 2011 for its institutional capacity building.

Almost all elections in Bangladesh have witnessed some form of violence, corrupt and irregular practices. There are incidences where dominant political party workers capture the voting booths. There are also sporadic incidences of stealing ballots or preventing people from voting by force. EC does not maintain any such record of violence and voting irregularities.

EC both runs and oversees voter education programmes through electronic and print media and other conventional approaches like use of loud speaker to disseminate election process and practices in the local market and public gathering. The EC publishes Manual for Voters, with detailed information on voting rights and civic responsibilities<sup>687</sup>. NDI Election Observation Report 2008 noted that “post-election survey conducted by EWG reportedly found that 80 percent of respondents had seen at least one of the public service announcements<sup>688</sup>”.

There are allegations of tampering of Ballot papers. There are reports that a voter can drop a piece of paper into the box instead of ballot paper and brings the ballot paper outside the polling and hand it over to the polling agent of a given party<sup>689</sup>. The seals being used are very simple and there is no security measures. However it is difficult to temper the tally sheets as these are kept by the Presiding Officer till the voting is finished. The sheets are used during the time of counting in presence of all the officials and candidates' agents and sometimes independent observers. In order to ensure transparency, EC has purchased 240,000 translucent ballot boxes with a UNDP project grant<sup>690</sup>.

Unofficial election results for each of the Polling Centres are announced by the Presiding Office in presence of Polling agents of the candidates. At the Upazila level the UNO as Returning Officer consolidates the results from the Polling Centres and announced yet another unofficial result and forward to the Deputy Commission and which again forwarded to Election Commission for consolidation and publication.

On paper and by law, it can be said that results are accurately aggregated to ensure and validate the election results. An aggrieved candidate can however lodge a petition to Election Commission and the Court of Law challenging the result for its accuracy and validity. But in reality, very few of the election petitions were resolved within the duration of the concerned parliament<sup>691</sup>.

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<sup>687</sup> EU Election Observation Mission to Bangladesh Final Report, 24 March 2009 Parliamentary Elections – 29 December 2008, p.24.

<sup>688</sup> NDI Election Observation Report 2008 noted that “post-election survey conducted by EWG reportedly found that 80 percent of respondents had seen at least one of the public service announcements”.

<sup>689</sup> Interview with Prof. Kalimullah, Chairman, *Janipop* (National Election Observation Council).

<sup>690</sup> The total budget of the project was approximately USD 6.2 million.

<sup>691</sup> Peter Eicher, Zahurul Alam & Jeremy Eckstein, *op.cit.*

The consolidation process, although transparent overall, was marred by a significant number of procedural and technical irregularities in its implementation. These put into question the adherence to law and procedure of both the BEC at Dhaka HQ and the intermediate election administration bodies (Assistant Returning Officers and Returning Officers) but did not appear to impact on the results. The official consolidation process was supposed to be performed exclusively by the RPOs<sup>692</sup>. EU Election Observation Mission to Bangladesh Final Report noted that “Only in nine of the 38 consolidations observed law and procedures were correctly followed. Of the 38 consolidations observed, there were no postal ballots whatsoever. In 22 per cent of cases the consolidated results were not publicly announced and in 58 per cent of consolidations observed, the consolidated results were not publicly displayed on the Notice Board as required by law and procedures”<sup>693</sup>.

Observers, both national and international, can observe election from opening to closing of a polling station, but EC does not allow any observer to stay in a polling station from opening to closing<sup>694</sup>. A leading election observer noted that “during recent year’s election monitoring of the local observers has shifted from conventional Election Day stationary monitoring to a comprehensive monitoring which starts from the date of announcement of election schedule to post election period”<sup>695</sup>.

### **3.2.5 ANTI-CORRUPTION COMMISSION (ACC)**

It has been observed that some structural, institutional and political factors affect the performance and effectiveness of the ACC. These include: lack of strong political will, inaction of the Commission in allegations against ruling party men, the commission's unwillingness to institute suo moto inquiry, absence of a capable prosecution team, inadequate capacity to undertake research activities, as well as a lack of transparency and accountability.

The ACC's effectiveness and independence have been intensely debated in the media and beyond. It has been under direct and indirect pressure politically and administratively. It has been ridiculed in the Parliament and outside. Its leadership has been intensely debated. The degree of professional excellence, integrity and credibility of its staff has been criticized.

Apparently influenced by political signals and caught up in a denial syndrome, and for lack of proper strategy and determination of the Commission itself, it appears to have missed the opportunity to gain public trust and credibility. Time has elapsed but no action to strengthen the ACC is visible. On the contrary, a bill has been lying with the Parliament which, if enacted

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<sup>692</sup> RPO Article. 37 “[1] the Returning Officer shall give the contesting candidates and their election agents a notice in writing of the day, time and place for the consolidation of results and, in the presence of such as the contesting candidates and election agents as may be present, consolidate in the prescribed manner the results of the count furnished by the Presiding Officers...]

<sup>693</sup> EU Election Observation Mission to Bangladesh Final Report, 24 March 2009 Parliamentary Elections – 29 December 2008, Page 34-35.

<sup>694</sup> Global Integrity Index 2010. pp 38-39.

<sup>695</sup> Interview with Dr. Nazmul Ahsan Kalimullah, Chairman, Janipop (National Election Observation Council)

without amendments demanded by civil society, will make the Commission a ‘toothless tiger’ – as observed by the incumbent Chairman of the ACC himself.

Externally ACC has always been subjected to political and administrative influence and control, whereas ACC’s own persona is far from conducive to professional delivery meeting its mandate of taking action against corruption without being influenced by the identity of the individual concerned. The investigative capacity of the ACC is also not commensurate with the load of its work

There have been a number of moves to curtail the independence and effectiveness of the Anti-Corruption Commission. The ACC is still perceived by the people as not free from government influence and intervention.

### **Structure and Organisation to be inserted**

The commission consists of three Commissioners; of them one is the chairman and all appointed by the President on the recommendation of the Selection Committee for a period of four years from the date of their appointment. While the commissioners function on full-time basis loses eligibility for reappointment on expiry of the term in their office.

Operational activities of the ACC is carried out by six Director General with the rank and status of Joint Secretary. These DGs look after Legal and Prosecution, Administration and Finance, Investigation and enquiry; Special Investigation; Research, Prevention and Public Awareness; and Incomplete cases and Inspection. All these units are run by both deputed staff of the Government as well as internal staff members of the ACC. All DGs report to the the Secretary of the ACC, who is a deputed staff from the government with the rank and status of a Secretary. There is also a Director for Monitoring and Evaluation, who directly reports to the Chairman of the ACC.

## **Capacity**

### ***Financial, Human and Infrastructural Resources***

The Anti-Corruption Commission has its annual budget. The ACC proposes its own budget to the government. The budget proposal of ACC is subject to normal scrutiny of the Finance Ministry and in general approved by the Ministry of Finance unless any demand under a head is considered on the high side or too exaggerated<sup>696</sup>. In such a situation the Finance Ministry holds meetings with the ACC. The agreed budget estimate is placed in the Parliament as a part of the national budget. The budget is subject to approval of the Parliament unlike those expenditures which are termed as ‘charged expenditure’. The ‘charged expenditure’ proposals can be only discussed in Parliament but are not subject to vote of the Parliament.

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<sup>696</sup> Interview with Additional Secretary (*anonymity requested*), Ministry of Finance.

There is no formal guarantee of fiscal stability over time but by and large it enjoys the stability in practice as much as the budget estimate of the ACC is fixed by the Ministry of Finance in consultation with the ACC and then it forms part of the national budget. Once the budget is tabled in the Parliament very rarely the budget estimate is reduced or refused by the Parliament. As per Clause 25 of the Act, the Commission does not need any permission in advance from any authority to spend the allocated money.

There is no laid down indicator for determining budgetary change, but the budget estimate is prepared on the basis of need which is generally respected by the Finance Ministry as well as by the Parliament.

Recently a significant amount of money acquired through corruption by some individuals and deposited in a Singapore Bank has been repatriated and placed at the disposal of the ACC to be spent for carrying out anti-corruption drives<sup>697</sup>.

The budget of the ACC has so far been found to be sufficient and the Commission has not faced any impediment for want of budgetary resources<sup>698</sup>. The financial resources are enhanced regularly with the increase in the cost of running the Commission. The budget allocation of the last three consecutive years is given below, showing that the allocation increases every year in consideration of increase in expenditure due to various reasons.

Table 1: The Budgets of the ACC (in BDT million)

Financial Year	Budget Allocation (Tk. Million)
2010	298.194
2011	320.930
2012	345.900

Source: Ministry of Finance

There is stability of human resources. ACC has a government-approved organogram stipulating the number of staff of various categories. In case any vacancy occurs, the ACC is empowered to fill the staff positions without any formal permission from any authority.

ACC's Service Rules stipulates the academic qualifications and experience needed for appointing its various positions. But the situation is quite complicated. The ACC has, at least in the Head Office, a large number of staff of various categories who were in the defunct Bureau of Anti-Corruption and were absorbed in the ACC although the reputation and efficiency of

<sup>697</sup> Interview with ACC Chairman Mr. Golam Rahman.

<sup>698</sup> *Ibid.*

most of them were highly questionable<sup>699</sup>. On the other hand, at field level, in addition to issues of credibility and expertise, under-staffing remains a problem. Some mid-level staff members have recently been recruited lacking adequate training. The ACC's legal and prosecution capacity remains weak and much needs to be done in this regard<sup>700</sup>.

The ACC follows merit-based recruitment procedures. Before appointment police verification is conducted on the selected candidates to ascertain their antecedents, particularly whether they were involved in any political or criminal activities but that can hardly be regarded as ethical screening<sup>701</sup>.

The recruitment is based on competitive examinations, subject to various regional, gender and ethnic quotas prescribed by the government which is applicable to all recruitments in the country. After joining the service the new staff members are provided with theoretical and practical training. However, the Commission does not have its own training institute and the training arrangement is not adequate, particularly as there is a great need for intensive training in conducting investigation and prosecution<sup>702</sup>.

The Chairman and Commissioners are selected through a process contained in the Anti-Corruption Commission Act itself which stipulates that they would be appointed by the President on the recommendation of a Selection Committee consisting of five members: i. Judge of the Appellate Division, nominated by the Chief Justice; ii. Judge of the High Court Division, nominated by the Chief Justice, iii. The Comptroller and Auditor General of Bangladesh; iv. The Chairman of the Public Service Commission; and v. The last retired Cabinet Secretary.

As for the selections made so far, ever since the Anti-Corruption Act was passed and the Commission was created, the general perception is that the selections were made by the Prime Minister and all recommendations of the Selection Committee and the consent of the Selection Committee members are manipulated. They simply give their consent to what has been desired by the Prime Minister. All other members of staff, including the Director General, are appointed directly through deputation or by promotion where scope for political consideration cannot be ruled out altogether. As per the ACC service rules, for the permanent staff of the ACC, there is provision for promotion at all levels.

### ***Independence and Functional Autonomy***

Fundamental Principles of State Policy, at Article 20(2) states, "The State shall endeavour to create conditions in which, as a general principle, persons shall not be able to enjoy unearned incomes."

The ACC is an independent and statutory body and, in theory, it is totally independent of any other authority or Ministry. It is a statutory body created by the Anti-Corruption Commission

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<sup>699</sup> Interview with Mr. M Hafuzuddin Khan, former Advisor, Care Taker Government and a member of screening committee to review the staff profile of the former Bureau of Anti Corruption.

<sup>700</sup> Interview with ACC Chairman Mr. Golam Rahman, 2013.

<sup>701</sup> *Ibid.*

<sup>702</sup> *Ibid.*

Act, 2004, as an independent and impartial body (Clause 3). The Commission consists of three Commissioners and a Chairman is appointed from amongst them (Clause 5).

The ACC Chairman claims that “The Anti-Corruption Commission Act, 2004 made it an independent and neutral body. It is functioning in accordance with the law. Its accountability lies with the country’s judicial system. It serves no master. ACC is performing its responsibilities independently, neutrally and fearlessly, upholding the best interest of the nation”<sup>703</sup>.

According to Section (3) of the Anti-Corruption Commission Act-2004, the ACC is an independent and impartial organization. It is not accountable to any other authority excepting the Office of the Comptroller and Auditor General for integrity of its financial operations. There is no formal scope for political interference in carrying out its mandate.

The Directors and others below them are appointed through a recruitment process on the basis of qualifications prescribed for each post which is in consonance with professional criteria.

All the activities of the Commission are independent and impartial. According to Rule No. 38 of the Anti Corruption Commission Service Rules-2008, staff members of the Commission cannot involve themselves in any political activity.

The Chairman and Commissioners are appointed on fixed tenure of four years. The tenure of service of other staff members are regulated by the Public Servants Retirement Act, 1974, as amended subsequently.

The staff members of ACC (including directors but excluding Commissioners) have the retirement age limit according to Public Servants Retirement Rules-1974. The staff members can be reappointed. But the Commissioners cannot be reappointed nor are they eligible to hold any profitable office in the service of the Republic.

The Commissioners (not Directors) are well protected from any forceful and undue removal. Section 10 of ACC Act, 2004, provides that no Commissioner shall be removed from office except on similar grounds and in accordance with the similar procedures as applied to the removal of a Judge of the Supreme Court. The procedure of removal of the Judges of the Supreme Court is that there shall be a Supreme Judicial Council consisting of the Chief Justice and the two next senior Judges who, on reference from the President of the Republic, will enquire into complaints of physical or mental incapacity or gross misconduct and if proved the President shall, by order, remove the Judge. The same procedure is applicable to the Commissioners of ACC.

Section-31 of the ACC Act, 2004 ensures that “If any person is affected or is likely to be affected by any action taken in good faith in the discharge of duties under this Act then

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<sup>703</sup> Exclusive Interview of Mr. Ghulam Rahman, Chairman of ACC, *The Daily Star*, March 30, 2012.

neither the Commission nor any commissioner, officer or employee thereof shall be liable to action under civil or penal codes or otherwise.’

The Commission is totally independent in terms of investigation power. The other law-enforcement agencies assist the ACC in order to arrest, search and seize any accused. While performing duties the Investigation Officers of ACC have the power of an Officer-in-charge of the police station according to Section-20(2) of the ACC Act-2004.

Since the appointment of the Commission is not immune to political consideration there are allegations of partisanship by the opposition and section of media as regards the recruitment of the Commissioners<sup>704</sup>. At the beginning of his tenure the Anti-Corruption Commission (ACC) Chairman claimed that the Anti-Corruption Commission Act 2004 is quite sound and he did not want any tampering with it<sup>705</sup>. Later however the ACC Chairman in a press interview noted that “The Anti Corruption Act, 2004 gave the ACC independence in functional matters. In administrative and financial arena its autonomy is very limited”<sup>706</sup>. Section 25 clearly makes room for dependence of the Commission on the Government for its budget and financial power to use the same, when it says that the Government shall make an annual financial allocation to cover expenses of the Commission; and the Commission would not require prior permission of the Government for expenses in approved and identified items. The point is that even within the given budget the Commission's financial authority is restricted to the items “approved and specified” by the Government.

It is supposed to be, but on various occasions it appeared to be not totally politically impartial. Observers noted that hundreds of corruption cases have been withdrawn under political consideration<sup>707</sup>. Institutional capacity to control corruption and promote accountable governance has been undermined by deepening of politicization of administration and law enforcement<sup>708</sup>. There has been a number of high profile corruption allegations like Padma Bridge, Railway scam, Stock Market, Hall-Mark and Destiny. Such cases have amply demonstrated that a section of the government, appearing to be hostage to a denial syndrome, has often failed to demonstrate the commitment and capacity to allow investigations in the due process without favour or fear and thus the ACC is perceived by the people as not free from government influence and intervention<sup>709</sup>.

The role of ACC has been questioned as the Commission revived the cases of the political leaders initiated by the military-backed caretaker Government. With exception of a few cases

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<sup>704</sup> Editorial: *New Age*, Dec 29, 2010 *New Age* Dec 29, 2010.

<sup>705</sup> Quoted from M. Abdul Latif Mondal, What impedes effectiveness of Anti-Corruption Commission?, *The Daily Star*, December 17, 2009.

<sup>706</sup> Exclusive Interview of Mr. Ghulam Rahman, Chairman of ACC, *The Daily Star*, March 30, 2012.

<sup>707</sup> As many as 314 graft cases filed against leaders and activists of the ruling party have been withdrawn by the commission, *New Age* 29 December 2010.

<sup>708</sup> Iftekhazzaman, Anti-corruption and people's engagement: The Bangabandhu way? *The Daily Star*, December 9, 2012.

<sup>709</sup> M. Hafizuddin Khan, “Corruption: Situation and remedies”, *The Daily Star*, March 18, 2013

of the members of opposition, all the cases of the stalwarts of the ruling Awami League (AL) regime have been withdrawn by the Government<sup>710</sup>.

Because of political interference the Commission in many cases found it difficult to take action against people in positions of power<sup>711</sup>. There have been number of influential political suspects like the ex Communication Minister, the ex Railway Minister, the Economic Adviser and the Health Adviser of the Government where the ACC appeared to have followed a go-slow approach. Its effectiveness and independence have been intensely debated in the media. It has been under direct and indirect pressure politically and administratively. Its leadership has been intensely debated. The degree of professional excellence, integrity and credibility of its staff has been criticized<sup>712</sup>.

A former Chief Justice and Chief Adviser of the Caretaker Government noted that “we raise our voice against corruption but hesitate to take stern measures to prevent it. Whenever someone is suspected to be involved in corruption, he or she is eventually found to be a relative of influential persons” Although a number of cases were filed against Heads of the Government and the State, Ministers and politicians, disposal of cases filed against influential corrupt suspects, particularly those who belong to ruling political camps, are often delayed as the Government Attorneys do not take measures to expedite the process<sup>713</sup>.

The Government’s lack of commitment to let the Commission function independently was evident when they appointed Commissioners on partisan political consideration. Even a powerful minister declared that the ACC was a part of the Executive Wing and therefore it should work within the framework of the Government<sup>714</sup>.

## **Governance**

### ***Transparency, Accountability and Integrity: Legal Framework and Practice on the Ground***

As per the ACC Act 2004 (section 29) the ACC is supposed to prepare an annual report by March of every calendar year and submit it to the President. After having received the report, the President shall take steps to present it to the Parliament and thereafter the report becomes publicly available. However the last Annual Report of ACC was published six years back in 2007. The Right to Information Act, 2009 is applicable to ACC subject to reasonable confidentiality considerations as provided by the Act itself.

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<sup>710</sup> A military backed Caretaker Government ruled the country illegally and unconstitutionally from January 2007 to December 2008, which was welcomed by the present ruling party. This Government has been blamed for many anti-people activities.

<sup>711</sup> Iftekhazzaman, The most unenviable institution, *The Daily Star*, March 18, 2013.

<sup>712</sup> *Ibid.*

<sup>713</sup> Justice Muhammad Habibur Rahman, Key Note Speech ‘The role of the media and the civil society in implementing political pledges to curb corruption’, Seminar organized by the Anti-Corruption Commission, *New Age*, April 2, 2012.

<sup>714</sup> Farid Hossain, “Parliamentary committees - Moving from form to substance”, *The Daily Star*, 23 February 2010.

ACC discloses information as per its Information Disclosure Policy 2011. To comply with the provisions of Right to Information Act the ACC, by issuing office order, the Public Relations Officer of the Head Office, the Directors of the Divisional Offices and the Deputy Directors of the District level offices have been directed to inscribe 'officer responsible for providing information' on their name plates. The ACC has a website<sup>715</sup> which was under maintenance during the study period.

There is a lack of transparency in the accountability of the Commission. The ACC Act provides no accountability or self-regulatory mechanism except under Section 29, which only stipulates that within March every year the Commission shall submit to the president a report on activities completed in the previous calendar year, following which the President will take measures to place it in the Parliament. The law does not have any provision for any follow-up, nor does it indicate any other accountability mechanism.

Since the Commission is independent and impartial according to the Act, it is not directly accountable to the Parliament as such or to any Executive authority. But it submits the annual report to the President which then is forwarded to the Parliament. However all its activities are subject to judicial scrutiny. Any aggrieved person may apply to the Court for relief. All the enquiry and investigation related works of the ACC can be judicially reviewed on application. Moreover the financial operations of the Commission are subject to audit by the Comptroller and Auditor General.

Investigation reports are confidential documents and are submitted only to the courts in accordance with its law for consideration of the Court. There is the Whistle Blowers Protection Act which applies to ACC also.

There is no oversight committee formed by ACC. But TIB and some other organizations do perform oversight function in a limited scale. They perform their duty diligently and honestly. Any serious lapse in this regard will tell upon the efficiency of the Head of the organization unless he remains vigilant on the performance of the staff or makes necessary arrangement for exercising vigilance on the staff of his office. So the Commission as a whole and all senior members of staff have to keep an eye on the activities of all staff. ACC has to produce and file only one report i.e. the Annual Report which is submitted to the President and is ultimately placed in the Parliament. The Annual report is printed for public dissemination.

The Whistle Blowers Protection Act was passed in June 2011, but people at large are not fully aware of the Act. Even in Government offices very few are conversant with the Act. Hence the whistle blowing policy is yet to be effective<sup>716</sup>.

The concept of citizens' oversight committees has not yet taken root in the country. The TIB's associate bodies known as 'Committee of Concerned Citizens' act as citizens oversight Committees to enhance awareness and initiate social movement against corruption, but their number is limited to 45 which can cover only a fraction of the total territory.

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<sup>715</sup> [www.acc.org.bd](http://www.acc.org.bd)

<sup>716</sup> *Survey on Peoples' Awareness about Whistle Blowers Act 2011*, PA 423 Project, Department of Public Administration, University of Dhaka, February 2013.

Section 17(g) and (k) of the ACC Act direct the Commission to "promote the values of honesty and integrity in order to prevent corruption, and take measures to build up mass awareness against corruption" and "perform any other work considered necessary for the prevention of corruption." ACC follows the Anti-Corruption Commission (Servant) Service Rule, 2008 and The Government Servants Conduct Rules, 1979. These Rules are quite comprehensive.

As of now there is no legal binding on the Commissioners and staff to declare their assets. The draft amendment of the Anti-Corruption Act proposed by the ACC that has been lying with the Parliament contains a provision for declaration of assets. The Commission is not under any obligation to declare assets. However the Commission can initiate investigation against any of its staff who are alleged to have obtained property not consistent with his legal sources of income.

There is specific provision in the Government Servants Conduct Rules, 1979, regarding acceptance of gifts and hospitality. For the staff members there are no post-employment restrictions. But for the Commissioners employment restrictions have been embodied in the ACC Act itself.

There is no standard practice of integrity screening of new recruits. Police verification, however, is done before issuing appointment letter. The police verification mainly concentrates on criminal and political antecedents.

The Commission has not yet addressed the question of integrity, transparency and capacity of its staff, nor has it adopted such preventive tools as code of conduct and manual for internal governance complemented by a set of positive and negative incentives for its staff. ACC has some occasional in-house short training but its coverage is not wide enough as the modules are basic and contains some elements of integrity issues only<sup>717</sup>.

In theory regulations related to codes of conduct, gift and hospitality are in practice. There are various major and minor punishments. Major punishment includes (a) reduction in rank or downgrading to a lower pay scale; (b) realization of money lost due to negligence, dereliction of duty; (c) compulsory retirement; (d) removal from service; (e) dismissal from service. In case of dismissal from service the person becomes ineligible for employment in any other government department or body corporate established by or under an Act of Parliament. Minor penalty includes (a) censure; (b) deferment of normal increase of pay or promotion in case the employee does not fulfill normal conditions as applicable; (c) stoppage of grant of time scale for certain period.

During the period of 2008-2012, major penalties were imposed on 23 staff members and minor penalty on 25 staff members<sup>718</sup>.

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<sup>717</sup> Interview with ACC Chairman Mr. Golam Rahman.

<sup>718</sup> *Ibid.*

## **Role Assessment**

### ***Corruption Prevention***

In addition to inquiry and investigation of corruption cases the Commission includes a considerable number of functions to prevent corruption. The Commission upon reviewing the legal measures for preventing corruption, submits recommendations to the President for their effective implementation. It is also mandated to undertake research on the prevention of corruption and make necessary recommendations to the President. The ACC undertakes various measures like rallies, seminars, workshops, etc to build up mass awareness against corruption. In practice, however, these preventing functions are not being given due attention owing to institutional deficiency and huge burden of work<sup>719</sup>. . The organizational strength of ACC is not commensurate with its workload<sup>720</sup>.

Concerns have been raised as regards the deficit of the Commission's own skills, capacity, integrity and effectiveness. There are allegations of corruption of a section of the ACC staff in the Dhaka office as well as in its field offices. The Commission has not addressed the question of integrity, transparency and capacity of its staff, nor has it adopted such preventive tools as code of conduct and manual for internal governance complemented by a set of positive and negative incentives for its staff<sup>721</sup>.

Section 17(g) and (k) of the ACC Act direct the Commission to "promote the values of honesty and integrity in order to prevent corruption, and take measures to build up mass awareness against corruption" and "perform any other work considered necessary for the prevention of corruption." In order to put Section 17(g) and (k) of the ACC Act into action, the ACC has formed prevention committees at the grassroots level in every district and Upazila of the country. From its Headquarters in Dhaka, six divisional and 22 integrated district offices, the ACC has formed a committee known as "Corruption Prevention Committee." In 2011, the ACC spent considerable time in the reconstitution of the District Corruption Prevention Committee consisting of 13 members and Upazila committee of nine members respectively, to institutionalize the movement against corruption throughout the country. All such committees were directed to include one-third female members, preferably.

There are 420 such committees at Upazila /Thana level (out of a total of 484 Thanas) all over the country. In selecting the members of the committee the major criteria were that they must be honest, locally reputed and respected, ideologically non-political and without any criminal record. The members were properly trained and equipped in understanding the forms of corruption and skills to mobilize opinion against corruption in their respective areas.

Integrity units (*satata sangha*) have been formed at the secondary schools (from class VI to X) to ensure active involvement of the youth. These units work as associated bodies of the Corruption Prevention Committee to create awareness among the young generation and thus

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<sup>719</sup> Interview with ACC Chairman Mr. Golam Rahman.

<sup>720</sup> Syeda Naushin Parnini, Governance Reforms and Anti-Corruption Commission in Bangladesh, *Governance and Corruption*, Vol 11 - No 1 – 2011.

<sup>721</sup> *The Daily Star*, March 18<sup>th</sup> 2013.

promote public awareness to resist corruption in educational, religious and training institutions. In total 11,740 integrity units were formed in 2011<sup>722</sup>.

The ACC can recommend legislative reforms. But the acceptance of the reform proposal has to pass through the same procedure as is applicable to all legislative measures (new or amended) of the Government. According to the *ACC Act, 2004 Clause 17 E*, the Commission can review legally accepted measures for preventing corruption and submit recommendations to the President for their effective implementation but that too has to follow the same legislative procedure. The Commission is also empowered to frame rules and regulations subject to prior approval of the President.

The ACC has proposed a number of amendments of the *ACC Act 2004*. A Cabinet Committee have been formed to review the ACC Amendment Act and proposed immunity for Government officials, making it obligatory for the Anti-Corruption Commission to take permission before filing cases against them.

Anti-Corruption Commission (amendment) Bill-2011 was placed in Parliament on February 28 proposing a new Section 32A that stipulates that the provisions in Section 197 of the Code of Criminal Procedure must be followed in filing a graft case against a Judge, Magistrate or public servant. However the Parliamentary Standing Committee on Law and Parliamentary Affairs did not agree with the proposed amendment. There has been strong resistance from the civil society as well.<sup>723</sup>

ACC viewed that some provisions of the proposed bill, particularly the requirement to obtain permission before lodging cases against Government officials were incompatible with the spirit of the *ACC Act, 2004* and would compromise its independence<sup>724</sup>.

The ACC Act has not specifically imposed any responsibility on the ACC to work as the coordinator of anti-corruption activity. However, according to the *ACC Act, 2004 Clause 17*, the Commission can perform any other work considered necessary for the prevention of corruption. But the Commission has not assumed any coordinating role so far<sup>725</sup>.

The Commission has not been performing any coordinating function. The constitutional provision for the office of the Ombudsman has not yet been created. The only other institution with corruption control responsibility is the office of the Comptroller and Auditor General. But these two organizations perform their duties in isolation from each other.

ACC is working with the civil society organizations, such as TIB, and PROGATI, to create awareness among the people, regarding corruption, through organizing seminars, holding human chains, discussion programs, posters and leaflets all over the country. ACC has formed

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<sup>722</sup> M.H. Salahuddin, "Fighting corruption: Effective measures", *The Daily Star*, April 5, 2012.

<sup>723</sup> Editorial, "Changes in ACC Act", *The Daily Star*, October 24, 2011.

<sup>724</sup> Interview of Mr. Golam Rahman, Chairman of ACC, *The Daily Star*, March 30, 2012.

<sup>725</sup> Interview with ACC Chairman Mr. Golam Rahman.

“Durniti Protirodh Committee (Anti Corruption Committee)” with the help from ADB and DANIDA<sup>726</sup>.

It has a Research Unit under Prevention Wing of ACC. But the Unit needs to be strengthened in terms of recruiting qualified staff, building capacity to carry out research work, and having adequate logistic support. The Research Section is currently working on determining modalities of corruption prevention. It is also reviewing the limitations of the existing Acts and rules/regulations that govern the function of ACC<sup>727</sup>.

The Commission, by March every year submits to the President a report on its activities carried out during the previous year. From the President this report goes to the Parliament. Besides this no other activity is generally undertaken by the Commission in this regard. The last report of the ACC was submitted in September 2008 during the Caretaker Government. The Parliament has not initiated any discussion on the ACC report thereafter.

### **Anti-Corruption Education**

ACC is currently conducting mass awareness programs especially involving the young generation through various campaigns to combat corruption. ACC has already formed Corruption Prevention Committees at City, District and Upazila levels. These committees have formed 16 thousand integrity Units composed of the students of School, Colleges and Madrasas etc. In addition, the ACC observes Corruption Prevention Week, International Anti-Corruption Day etc. to educate the public on fighting and preventing corruption.

### **Corruption Investigation**

According to *Section-20 (1) of the ACC Act, 2004*, “Notwithstanding anything in the Code of Criminal Procedure, corruption shall be the subject matter of investigation by the Commission alone”. The investigation procedure of the ACC consists of three steps. First the ACC receives and scrutinizes the complaints and then ACC enquires into the complaint in order to find out if there is prima-facie of case. After enquiry if it finds that a prima-facie does exist, the ACC lodges FIR with the police station and then starts the fuller investigation. But the investigative competence needs much more strengthening.

In practice, ACC has hardly conducted any investigations into corruption of high ranking officials with exception one case, namely the Padma Bridge corruption allegation. A number of senior civil servants have been arrested in this connection<sup>728</sup>.

During 2012 ACC took up 839 cases. During that period it completed 962 investigations. (Some of the completed investigations were initiated in previous years). Out of 839 new cases, 521

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<sup>726</sup> Cabinet Division, Government of Bangladesh, *Independent Expert Survey and National Perception Survey on NIS, UNCAC and Partnership Implementation– Supporting the Good Governance Program*, The Nielsen Company (Bangladesh) Ltd. January, 2012.

<sup>727</sup> Interview with ACC Chairman Mr. Golam Rahman.

<sup>728</sup> M Rahman, “Padma Graft Conspiracy - Mosharraf points finger at his boss”, *The Daily Star*, December 31, 2012

cases were identified on ACC's own initiative<sup>729</sup>. During the same period the ACC submitted charge sheets in 588 cases as substantial evidence was available. In that year, trial all of the cases could not be completed by the court. Only about 57 cases resulted in successful prosecutions that year. The number of successfully prosecuted cases increased by about 72% over time<sup>730</sup>.

### 3.2.6 NATIONAL HUMAN RIGHTS COMMISSION (NHRC)

The National Human Rights Commission (NHRC) is a statutory body established for the promotion and protection of human rights of the citizens of Bangladesh. Devoid of resources in terms of staffing, infrastructure and logistical support at the time of its inception, it tentatively began its journey with financial and technical support from the United Nations Development Programme (UNDP). The Commission continues to be resource deficient and is largely donor dependent for its work despite legally mandated budget allocation by the government. The appointment of the Commissioner and its members has been debated on account of their apparent bias towards the ruling party. Such bias is evident from the manner in which the NHRC targets interventions and crafts public statements. The pre-eminence of the Chairman of the Commission has virtually reduced the NHRC to a one-man show to the exclusion of its other members. The legal framework is inadequate in respect of ensuring the transparency, accountability and integrity of the NHRC. Investigation is weak and largely unable to respond to the growing number of complaints. Despite its efforts to raise human rights awareness and advocate for change, their impact on the ground is not noticeable as yet.

#### Structure and Organisation

The National Human Rights Commission (henceforth NHRC), the first of its kind in Bangladesh, has been established for monitoring the implementation of state obligations in respect of the protection, promotion and guaranteeing of human rights as enshrined in the Constitution of Bangladesh. Set up in 2007 during the Caretaker Government pursuant to the National Human Rights Commission Ordinance,<sup>731</sup> the Commission was reconstituted by the present government in 2010 in the light of the *National Human Rights Commission Act 2009*. While previously, the NHRC was manned by a Commissioner and two members, the reconstituted Commission is now steered by a Chairman, a Full-time Member and five honorary members.

The NHRC occupies a critical position in the national infrastructure as it not only serves as a major watchdog over human rights practices but also brings together human rights education, investigation and law and policy advocacy under one umbrella. The effectiveness of a state is implicit from its ability to protect its citizens through an effective and balanced power structure comprising of the legislative, executive, and judicial organs; when corruption occurs in the state, it tends to damage this power structure to the detriment of citizens' human

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<sup>729</sup> Record Collected from Desk Officer, ACC.

<sup>730</sup> Record Collected from Desk Officer, ACC

<sup>731</sup> Given that the Parliament stood dissolved during the tenure of the Caretaker Government, all legislations under that regime had to be made by way of Presidential Ordinance.

rights.<sup>732</sup> Indeed, its stated mission to ensure, amongst others, the rule of law, social justice and freedom through human rights entitles the NHRC to be regarded as a key pillar within the national integrity system.

## **Capacity**

### ***Financial, Human and Infrastructural Resources***

The National Human Rights Commission (NHRC) Act 2009 provides for a Chair and members. Salary, remuneration and other terms and conditions for the Secretary and other officers and employees shall be determined by Government rules. The law provides for a fund to be allocated specifically for carrying out the activities of the NHRC. The fund, which is composed of annual grants from the government and grants from local authorities, is also used for paying the salaries, remuneration and other incidental expenses of the Commission.<sup>733</sup>

The founding Act of the NHRC ensures a fund that is to be used for supporting the activities of the NHRC as well as providing for the salaries of its officials. The law does not provide for skills enhancement of NHRC officials.

Currently, the NHRC relies largely on donor funds from Sweden, Denmark and Switzerland and to a lesser extent on government funds, allocated by the Ministry of Finance and disbursed annually by the Ministry of Law, Justice and Parliamentary Affairs.<sup>734</sup> South Korea was also a funder initially but withdrew its support when it found that the Commission was not making much headway in the early days. The UNDP manages the external funds for the NHRC and provides it with technical support under the *NHRC Bangladesh Capacity Development Project* initiated to help the Commission evolve into a sustainable and effective institution. Attempts at maintaining funding levels are manifest from the arrangements entered into by the NHRC with United Nations High Commissioner for Refugees (UNHCR) and the International Labour Organisations (ILO) for addressing rights of refugees, and migrant workers. The NHRC is also in the process of negotiating with OXFAM for developing a project on people's right to food and shelter.<sup>735</sup> These initiatives are primarily aimed at ensuring that the Commission's work is sustained without having to expend its core funds.

The NHRC lacks adequate outreach and equipment (e.g. vehicles used during investigation are generally on hire) for conducting its investigations properly.<sup>736</sup> A considerable number of complaints are pending for dearth of human resources. Likewise, suo motu interventions are on hold on account of unavailability of human and financial resources.<sup>737</sup> The NHRC relies on local level partnerships with NGOs that are widely recognised for their work, integrity and

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<sup>732</sup> Anti-Corruption Research Network, A Close Linkage between Corruption and Human Rights – Definition, Causes and Effects, available at <http://corruptionresearchnetwork.org/resources/articles/a-close-linkage-between-corruption-and-human-rights-2013-definition-causes-and-effects>

<sup>733</sup> Section 24, The NHRC Act 2009.

<sup>735</sup> Interview with Professor Mizanur Rahman, Chairman, National Human Rights Commission (NHRC).

<sup>736</sup> *Ibid.*

<sup>737</sup> National Human Rights Commission, *Annual Report 2010*, p. 31.

expertise in reaching out to constituencies that seek or are in need of intervention by the NHRC.<sup>738</sup>

The NHRC is steered by one full-time Chairman and six members, of which five are honorary and one serves full-time. A total of 28 permanent positions have been approved by the government to manage different aspects of the Commission's work of which 16 are support staff and 12 are administrative staff. Of the 12 administrative positions, 8 are occupied by individuals who have been recruited through advertisements in two leading dailies, and on the basis of the cumulative marks obtained by candidates in written and oral examinations conducted by the Faculty of Social Sciences of the University of Dhaka; the other 4 are occupied by government officials who are serving the NHRC on deputation. The Commission's work is spread across seven departments, each of which is led by a Director. The NHRC is located in Dhaka but has the mandate to open regional offices. Its current premises in Dhaka are temporary.

Although, the core functionaries of the Commission possess the requisite educational qualifications, they lack the skills and experience that are crucial in this line of work. For example, the complaint section of the Commission is steered by a Director who is a former Additional District Judge and supported by 3 Assistant Directors, all of whom have law degrees from recognised law schools but none of them have the specialised knowledge and expertise on investigating human rights violations that is required to effectively spearhead the work of NHRC.<sup>739</sup>

Notwithstanding, the Commission is trying to fill this gap by providing in-house training to its staff on human rights jurisprudence, on complaint and investigation processes and so on. Besides, they are sent abroad at intervals to attend workshops and trainings relevant to their work. So far, they have participated in orientation programmes in the Philippines, Thailand, South Korea, Malaysia, New Zealand, and India. The participants of the training workshops, on return home, are asked to make presentations of the lessons learnt from these various exposures and to set priorities and develop plans of action for application in the field.<sup>740</sup>

The NHRC is resource-deficient in terms of manpower, infrastructure and logistical support. Much of NHRC's work continues to be donor dependent. This is paradoxical given that as per law the Commission is entitled to an annual grant from the government and other grants provided by local authorities.<sup>741</sup> The law does not however define what is meant by "local authorities". NHRC functionaries and staff are not adequately skilled to effectively shoulder the work of the Commission. However, efforts are underway to build the capacity of NHRC officials through in-house training and exposure visits. Nearly all staff members play administrative or financial roles. There is a dearth of technical staff.<sup>742</sup>

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<sup>738</sup> Interviews with Professor Mizanur Rahman, Chairman, NHRC and Sultana Kamal, Executive Director, Ain O Shalish Kendra (ASK).

<sup>739</sup> Interview with Professor Mizanur Rahman, Chairman, NHRC.

<sup>740</sup> *Ibid.*

<sup>741</sup> Section 24(4), The NHRC Act 2009.

<sup>742</sup> NHRC, Strategic Plan 2010-2015, p. 13.

### ***Independence and Functional Autonomy***

The Commission is by law an independent statutory body with power to, amongst others, acquire, hold, manage and dispose of property, both moveable and immoveable and may sue or be sued in its name.<sup>743</sup> The Commission enjoys immunity from any suit, prosecution or other legal proceedings for any damage cause or likely to be caused by any publication, report or any other activity carried out in good faith under the NHRC Act and not beyond.<sup>744</sup>

The President appoints the Chairman and Commissioners on the recommendation of a Selection Committee headed by the Speaker of the Parliament and comprising the Ministers of Law, Justice and Parliamentary Affairs; Home Affairs; Chairman, Law Commission; Cabinet Secretary; and two members of the Parliament (nominated by the Speaker, of whom one is to be from the Treasure Bench and the other from the Opposition).<sup>745</sup> When recommending appointment of the Chairman and Commissioners, it is incumbent on the Selection Committee to propose two names against each vacant post; the decision of the majority of votes of the members present shall prevail and in case of a tie in votes, the person presiding over the meeting shall exercise the casting vote.<sup>746</sup>

The law prescribes that the Chairman and Commissioners shall be appointed from amongst people having remarkable contribution in the field of legal or judicial activities, human rights, education, social service or social development.<sup>747</sup> The tenure of the office of the Chairman and Commissioners shall be of three years and they shall not be appointed for more than two terms.<sup>748</sup> Moreover, no person shall qualify for appointment to the post of Chairman or Commissioner if s/he is less than 35 years of age or over 70 years of age.<sup>749</sup>

The Chairman of the Commission is entitled to salaries, allowances and privileges equivalent to that of a judge of the Appellate Division of the Supreme Court, whereas the salary of the permanent member is equivalent to that of a judge of the High Court Division of the Supreme Court.<sup>750</sup> The honorarium and other allowances of the honorary members of the Commission are determined by the Commission.<sup>751</sup> The salaries, remuneration and other terms and conditions of service of other officers and employees of the Commission are to be determined by rules and until the rules are in place their pay package is to be determined by the Government.<sup>752</sup>

The law entitles the President to remove the Chairman or any other member of the Commission if he (i) is declared insolvent by any competent court; (ii) if the Chairman and permanent member engages in paid engagement extraneous to NHRC duties during their respective tenures; (iii) is declared to be of unsound mind by a competent court; or (iv) is convicted of any offence involving moral turpitude.<sup>753</sup>

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<sup>743</sup> Section 6(2), the NHRC Act, 2009.

<sup>744</sup> Section 29, *ibid.*

<sup>745</sup> Section 7 (1), *ibid.*

<sup>746</sup> Section 7(4), *ibid.*

<sup>747</sup> Section 6(2), *ibid.*

<sup>748</sup> Section 6(3), *ibid.*

<sup>749</sup> Section 6 (1), *ibid.*

<sup>750</sup> Section 10 (1)(2), *ibid.*

<sup>751</sup> Section 10(3), *ibid.*

<sup>752</sup> Section 23 (3), *ibid.*

<sup>753</sup> Section 8(2), *ibid.*

Indeed, the NHRC Act contains provisions that essentially limit the independence of the Commission in practice. Section 18 of the Act requires the Commission to request the government for a report in the event of an allegation of human rights violation by the disciplined force or any of its members. While the term ‘disciplined force’ is customarily used to denote the military, technically the police are also deemed to fall into this category. Consequently, any human rights violation by the police and the Rapid Action Battalion (RAB) cannot, by law, be investigated independently by the Commission but would have to submit it for government inquiry, the process of which is most often than not, non-transparent and the results, biased.

The NHRC is by law an independent entity. However, the fact that the President appoints the Chairman and Commissioners on the recommendation of a Selection Committee headed by the Speaker and comprising largely of members from government ministries has the potential to dilute its independence. Besides, the appointment of the Chairman and Commissioners on the basis of “remarkable contribution in the field of legal or judicial activities, human rights, education, social service or social development” can be problematic, as the criteria is too broad. More importantly, its independence is further restricted by law from investigating human rights violations by ‘disciplined forces’ that technically include the law enforcement agencies.

The NHRC enjoys complete independence with respect to the management and administration of the annual grant received from the government. However, it is believed that the NHRC’s independence has been curbed at the outset since it has essentially been founded by the Government and is steered by key individuals directly selected by the Government.<sup>754</sup> It has been contended that the NHRC’s selection process is not credible, with six of the seven members of the Selection Committee being government officials; this has resulted in the selection of NHRC members based on their loyalty to the Government.<sup>755</sup>

At the functional level, although the NHRC appears to operate with relative independence, it is often subjected to covert political and executive interference when its activities or investigations have the potential of harming the interests of vested groups. This is particularly true of local level politicians and actors in the executive branch of the government, mainly the Ministry of Home Affairs, which is responsible for maintaining the internal security of the country and with which the Commission has to interface constantly given the very nature of its work.<sup>756</sup>

The Commission is seemingly poised on a double edged sword when it comes to practicing independence. The Chairman of the NHRC for example, expressed his frustration at how he is often mocked by politicians, particularly those belonging to the ruling party, for his efforts as they believe that by challenging human rights violations, he is essentially challenging the government that has appointed him.<sup>757</sup> As far as they are concerned, the NHRC is a government body and as such, should refrain from doing anything that would embarrass the government.<sup>758</sup> On the other hand, the NHRC Chairman has also been criticised on occasion by

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<sup>754</sup> Interview with Adilur Rahman Khan, Chief Executive, ODHIKAR, a national human rights organisation.

<sup>755</sup> ODHIKAR and ALRC, 2013, *op.cit.*, p.3.

<sup>756</sup> Interviews with Adilur Rahman Khan, Chief Executive, ODHIKAR and Sultana Kamal, Executive Director, Ain O Shalish Kendra (ASK).

<sup>757</sup> Interview with Professor Mizanur Rahman, Chairman, NHRC.

<sup>758</sup> *Ibid.*

civil society members and human rights activists for public statements that have ostensibly demonstrated a bias towards the government.<sup>759</sup> Indeed, even in the choice of issues for interventions, NHRC is deemed to be selective and tentative; in other words, the NHRC allegedly chooses to intervene in areas that are less politically sensitive and steer clear of issues that are most likely to embarrass the government.<sup>760</sup>

The NHRC engages independent consultants and experts, from home and abroad, to prepare some of its reports and conduct researches, for example, baseline surveys. Recently, the NHRC has utilised the assistance of an overseas consultant in the preparation of the Universal Periodic Review (UPR) that is to be presented before the Human Rights Council at the United Nations. This has been criticised primarily because it is believed that that the UPR, being a critical reflection of the status of human rights on the ground, ought to be prepared by a national consultant with the requisite local knowledge and understanding of the various factors impinging on human rights instead of a foreigner, who is unfamiliar with local conditions.<sup>761</sup> The NHRC however maintains that the foreign consultant was engaged simply to synthesise the feedback from consultations with relevant stakeholders and produce a coherent document encapsulating all the essential issues needed for an effective presentation; as such, there was no independent input from the consultant.<sup>762</sup>

It is believed that the NHRC is subjected to censure and pressure not only from the government but also varyingly from donors, multinationals and bilateral bodies given the high expectations associated with its mandate on the one hand and its dependence of donor funding, on the other.<sup>763</sup> Consequently, it is difficult to tangibly assess the degree of independence NHRC enjoys in practice. It has been contended that the NHRC is yet to emerge as an effective body for protecting human rights. The current government has done very little to genuinely empower the Commission to tangibly execute its mandate which is why it remains only semi-functional.<sup>764</sup>

The NHRC is visibly restricted in its role and function primarily because it has been founded by the government. That the NHRC enjoys limited freedom is manifest from its selective interventions into human rights violations (it chooses to ignore issues that are likely to embarrass the government and target less contentious ones) and biased public statements by the Commissioner. On a different level, the NHRC's continued dependence on donor resources also circumscribes its freedom.

## **Governance**

### ***Transparency, Accountability and Integrity: Legal Framework and Practice on the Ground***

There is nothing in the law to ensure that the public can obtain information on the activities and decision-making processes of the NHRC. However, there are provisions that require the Commission, upon the conclusion of an inquiry following a complaint, to keep the aggrieved person informed by furnishing him/her or his/her representative with a copy of the inquiry

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<sup>759</sup> Interview with Sultana Kamal, Executive Director, Ain O Shalish Kendra (ASK).

<sup>760</sup> Interview with Adilur Rahman Khan, Chief Executive, ODHAKAR. See also, Ain O Shalish Kendra (ASK), *NHRC is in a Critical Juncture of Hype vs Real Action*, Dhaka, 2012, p. 19-21.

<sup>761</sup> Interview with Adilur Rahman Khan, Chief Executive, ODHAKAR.

<sup>762</sup> Interview with Professor Mizanur Rahman, Chairman, NHRC.

<sup>763</sup> Interview with Adilur Rahman Khan, Chief Executive, ODHAKAR.

<sup>764</sup> Fahimul Quadir, 2011, *op.cit.*

report.<sup>765</sup> The Commission is also required to publish the summary of its inquiry report and its decision or recommendation for general information.<sup>766</sup>

The law does not require officials of the NHRC to declare their assets or to make public the audit report. The legal framework is inadequate in terms of ensuring transparency of the NHRC's work, including the declaration of assets by officials. Whatever little is available is confined to making the outcome of an inquiry known to the complainant.

The NHRC hosts a website which is still at a rudimentary stage. Developed with support from the UNDP, the website has huge scope for improvement as it does not encapsulate the entire ambit of NHRC's work and decision-making processes. However, the NHRC publishes an annual report that basically contains, amongst other things, the role and mandate of the NHRC, the profiles of the commissioners, its activities, challenges and strategic plans. The annual report does not provide any information on budget or expenditures. The NHRC annual report is available on the website for the general public while hardcopies are sent to all District Commissioners' offices, foreign missions, donor agencies, and heads of relevant departments of universities and other institutions. It has been suggested that that in order to ensure transparency, the NHRC should make a practice of placing its Annual Report before the Parliament.<sup>767</sup> Despite encouraging the NHRC to this end, no initiative has been taken so far.<sup>768</sup> NHRC's website also hosts an online complaint management system with tracking options.

Communications made to the NHRC are generally kept confidential and are shared with those involved in the process only in the interest of the investigation.<sup>769</sup> Officials of the NHRC do not declare assets in practice.

Transparency measures of the NHRC are limited to information posted on its website and published in its annual report, both of which contain basic information. There is no information on its budget and its disbursement since no audit has taken place at the time of the research. Despite recommendations that the NHRC Annual report be placed before the Parliament, this has not been done.

The NHRC is answerable to the President by law which requires the Commission to submit an annual report of its activities to the President by the 30 March each year.<sup>770</sup> It further requires the Commission to furnish a memorandum along with the annual report that highlights, amongst other things, the reasons for not taking necessary action or measures recommended in any particular instance by the Commission. There is a prescribed timeline for reporting to the President but there is no option for debate.

The Commission must maintain its accounts properly and prepare annual statements of its accounts.<sup>771</sup> The accounts of the Commission shall be audited by the Comptroller and Auditor General every year and a copy of the audit shall be submitted to the Government and to the

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<sup>765</sup> Section 19(3), The NHRC Act, 2009.

<sup>766</sup> Section 19(5), *ibid.*

<sup>767</sup> Interview with Adilur Rahman Khan, Chief Executive, ODHAKAR.

<sup>768</sup> *Ibid.*

<sup>769</sup> Interview with Professor Mizanur Rahman, Chairman, NHRC.

<sup>770</sup> Section 22, The NHRC Act, 2009.

<sup>771</sup> Section 26(1), *ibid.*

Commission.<sup>772</sup> The Auditor General or any person authorised by him shall be entitled to access all records, documents, cash, securities, and property amongst other things and may examine any member, officer or employee of the Commission.<sup>773</sup>

The NHRC is required by law to submit an annual report to the President along with highlights of its investigation and outcome. It is also required to prepare annual financial statements and submit them to the Auditor General.

The principal mechanism whereby the NHRC reports to the President is by presenting him with the Annual Report that contains detailed aspects of NHRC's work. Despite a prescribed timeline for reporting to the President, the NHRC is sometimes unable to maintain it, predominantly on account of the President's unavailability for a formal audience. There has not been any debate regarding the information furnished in the annual report of the NHRC, primarily because the report is not placed before the Parliament despite advocacy by human rights defenders to that effect.<sup>774</sup>

To date, there has been no audit of the NHRC. It is reported that no initiative to conduct an audit of the NHRC's accounts have so far been undertaken by the office of the Auditor General.<sup>775</sup>

Accountability measures practiced by the NHRC have been confined to the submitting of the annual report to the President. No audit of the NHRC has taken place as yet and as such, there is not sufficient information to assess financial accountability of the NHRC. No debates have taken place in terms of the information provided in the annual report.

The NHRC Act is silent on issues of integrity. There is nothing in the law that deters NHRC officials from taking gifts, gratification, or engaging in political activities. Asset declaration by officials is not required and there is no provision on conflict of interest or code of conduct for NHRC officials.

The NHRC law is devoid of codes of conduct, gift and hospitality regulations, post employment restrictions, and conflict of interest policies.

The NHRC presently does not have any formal code of conduct or conflict of interest policy in place but a draft Standard Operating Manual (SOP) that contains issues of ethical and accountability standards is awaiting official approval.<sup>776</sup> In the meantime, the NHRC maintains a strict practice of not accepting gifts and hospitality that are likely to hinder its functions.<sup>777</sup> Foreign trips by NHRC officials are confined to official visits only.<sup>778</sup> The fact that services rendered by the NHRC are free of cost is widely publicised to prevent potential deception and dubious practices by others.<sup>779</sup> It has been claimed that the NHRC is by mandate an apolitical and independent institution with a focus on protecting the human rights of citizens and as

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<sup>772</sup> Section 26(2), *ibid.*

<sup>773</sup> Section 26(3), *ibid.*

<sup>774</sup> Interview with Adilur Rahman Khan, Chief Executive of ODHIKAR.

<sup>775</sup> Interview with Professor Mizanur Rahman, Chairman, NHRC.

<sup>776</sup> *Ibid.*

<sup>777</sup> *Ibid.*

<sup>778</sup> *Ibid.*

<sup>779</sup> *Ibid.*

such, has little scope for political gains by its staff.<sup>780</sup> Despite the lack of staff training on integrity and ethical standards, to date there has been no known instance of violation of standards of ethics by the NHRC members and staff.<sup>781</sup>

In the absence of any legal provision on integrity, the NHRC follows a draft Standard Operating Manual that underscores issues of ethics and accountability which the Commission officials are expected to follow. This is a positive step taken by the NHRC which effectively demonstrates its commitment to promote ethical practices within the Commission.

## **Role Assessment**

### ***Investigation***

The NHRC is primarily a recommendatory body with no power of execution. As such, much of their work revolves around receiving complaints and lobbying with relevant actors within the government for action and compliance with minimum human rights standards and practices. In the experience of the NHRC, people generally file their complaints without fear; however, there have been a few instances where complainants feared a backlash, primarily because of the involvement of people with political and economic clout.<sup>782</sup> A total of 300 complaints have been lodged with the NHRC since the date of its inception up to 31 December 2010, of which 224 complaints have so far been resolved.<sup>783</sup> There is a prevalence of *suo moto* petitions, a trend that has increased three times since the Commission started its work.<sup>784</sup> Complainants are kept updated on the progress of their matters and relevant authorities are given a time line within which to report back to the NHRC on the action or steps taken to address a given problem.<sup>785</sup>

Although the number of complaints to the NHRC has been rising steadily, its investigation of complaints has not been encouraging. It is reported that the NHRC has conducted only eight investigations during the period of January 2011 to October 2012.<sup>786</sup> While these investigations largely focused on murder, rape, and communal violence, not a single investigation was conducted in respect of extra-judicial killings, enforced disappearances or any politically sensitive incidents involving human rights violation.<sup>787</sup>

The NHRC has also been criticised for failing to carry out other responsibilities under the law. It has been pointed out that though the NHRC is legally empowered to recommend the ratification of international human rights instruments,<sup>788</sup> it has not taken any initiative in this regard. Similarly, it is authorised to investigate complaints of human rights violations, but has been unable to undertake effective investigations on the plea of lacking resources.<sup>789</sup>

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<sup>780</sup> *Ibid.*

<sup>781</sup> *Ibid.*

<sup>782</sup> *Ibid.*

<sup>783</sup> NHRC Annual Report 2010, *op.cit.*, p. 31.

<sup>784</sup> *Ibid.*

<sup>785</sup> Interview with Professor Mizanur Rahman, Chairman, NHRC, on 24/09/2012.

<sup>786</sup> ASK, 2012, *op.cit.*, p.23.

<sup>787</sup> *Ibid.*

<sup>788</sup> Section 7 of The NHRC Act, 2009.

<sup>789</sup> Odhikar and ALRC, 2012, *op.cit.*, p.4.

While most government agencies have been generally cooperative, the Ministry of Home Affairs has not been accommodative or proactive in supporting the work of the UNHRC.<sup>790</sup> Since many human rights violations are perpetrated by state actors, e.g., the law enforcement agencies (police, RAB), it is generally expected that the NHRC will engage with them firmly and without compromise. Unfortunately, in practice, the NHRC has been found to lack the desired drive and tenacity in challenging human rights violations by the law enforcement agencies, in particular, the RAB.<sup>791</sup> In its defence, the NHRC maintains that it is often rendered helpless when it comes to dealing with the police and RAB on account of inherent flaws in the law that limit the ambit of the NHRC.<sup>792</sup> However, the NHRC has failed to engage in a progressive interpretation of the law in holding law enforcement agencies accountable.

The NHRC has been dealing with a rising number of complaints since its inception but has not been able to investigate all complaints thoroughly due to resource constraints or pressure from the executive branch of the government. It faces major challenges in its interaction with the Ministry of Home Affairs which controls the law enforcement agencies that frequently perpetrate human rights violations.

### ***Promoting Good Practice***

The Commission has organised workshops and seminars at the national and regional levels for exchanging views on key issues of human rights and state obligations.<sup>793</sup> It has also established media contacts for disseminating its work.<sup>794</sup> However, there is no concrete indicator to demonstrate the impact of these initiatives.

Public perception of the NHRC is varied and works at three levels: firstly, a section of the public feel that at least there is a forum for venting their grievances, secondly, some harbour doubts about the independence of the NHRC from the government and believe that its activities and modus operandi are free to the extent they do not conflict with the interests of the government, and thirdly, many associate the NHRC with the NHRC Chairman, which though personally rewarding for the NHRC Chief, is indicative of institutional failure in trust-building and leadership development.<sup>795</sup>

NHRC initiative to raise awareness of human rights amongst the public and the government is on-going but yet to demonstrate tangible impact.

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<sup>790</sup> Interview with Professor Mizanur Rahman, Chairman, NHRC.

<sup>791</sup> Interviews with Adilur Rahman Khan, Chief Executive, ODHIKAR and Sultana Kamal, Executive Director, Ain O Shalish Kendra (ASK).

<sup>792</sup> Interview with Professor Mizanur Rahman, Chairman, NHRC. Please refer to 'independence in practice' above.

<sup>793</sup> NHRC *Annual Report, 2010, op.cit.*, pp. 37-40.

<sup>794</sup> Sonia Hussain, *National Human Rights Commission (NHRC) Bangladesh. Reflections of an Intern*, Dhaka, 2012, p. 23.

<sup>795</sup> *Ibid.*

### 3.2.7 INFORMATION COMMISSION

Debates regarding the right to information have been gathering momentum in civil society advocacy, public discourse and media coverage for quite a while in Bangladesh. The concern was subsequently taken up by major political parties in their election campaigns. These various efforts culminated in the enactment of *The Right to Information Act* in 2009 (henceforth the RTI Act), one of the most significant pieces of legislations passed by the Bangladesh Parliament. Pursuant to this law, the Information Commission was set up in 2009 for receiving, inquiring into and disposing of complaints relating to the right to information. The Information Commission plays a critical role in promoting the right to information; however, its ability to effectively play its oversight role depends on a host of factors, such as, its mandate, independence, availability of resources and its relationship with the public authorities they oversee. While the Commission started off well, it has not been quite as successful in coordinating all RTI-related activities in the country and identifying the challenges facing both the demand and supply sides of the RTI law, and find ways of meeting them.<sup>796</sup>

#### **Structure and Organisation**

The structure, composition and functions of the Information Commission are clearly spelt out in the RTI ACT 2009. The Commission is composed of a Chief Information Commissioner, who is essentially the Chief Executive of the Commission, and two other Commissioners. The Commission has the administrative support of a Secretary and a select number of officers and employees.

#### **Capacity**

##### ***Financial, Human and Infrastructural Resources***

The Information Commission is headed by a Chief Information Commissioner and two Commissioners, one of whom is a woman in conformity with the law.<sup>797</sup> Their rank, remuneration, allowances and other facilities are to be determined by the Government.<sup>798</sup> The law provides for a Secretary of the Information Commission; besides, the Commission is empowered, subject to the prior approval of the Government, to appoint such number of officers and employees (including on deputation) as may be necessary for the efficient performance of its functions.<sup>799</sup> The salaries, allowances and other terms and conditions of service of the Secretary and other officers and employees shall be determined by the Government.<sup>800</sup>

The budget of the Information Commission is determined by the Government for each financial year on the basis of estimates furnished by it.<sup>801</sup> The Information Commission has its own fund for carrying out its work, which is largely made up of annual grants from the Government and Government approved grants from any institution. The salaries and

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<sup>796</sup> Protifolon, Policy Brief, Issue 5, February 2012, Institute of Informatics and Development, p.2 available at [http://r4d.dfid.gov.uk/pdf/outputs/ids/Protifolon\\_5.pdf](http://r4d.dfid.gov.uk/pdf/outputs/ids/Protifolon_5.pdf)

<sup>797</sup> Section 12, The Right to Information Act, 2009.

<sup>798</sup> Section 17, *ibid.*

<sup>799</sup> Section 23, *ibid.*

<sup>800</sup> *ibid.*

<sup>801</sup> Section 20, *ibid.*

allowances of the Chief Information Commission, the Information Commissioners, the Secretary and other employees of the Commission are to be disbursed from this fund, in accordance with the terms and conditions of their service. Other expenses of the Information Commission shall also be disbursed from this fund. The management and administration of this fund are vested in the Information Commission.<sup>802</sup> The law entitles the employees of the Commission to different kinds of allowances subject to Government rules. This includes travel and daily allowances (for travel within the country), festival allowance, duty allowance and honorariums for research and development work.<sup>803</sup>

The law provides for adequate financial resources for the efficient performance of the Commission's activities. The Information Commission by law has its own funds for its work, largely made up of annual grants from the Government and Government approved grants. However, the number of Commissioners mandated by the law is deemed low in comparison to the total population of the country.

The information Commission currently possesses resources that are just about sufficient to conduct its business as an autonomous entity. Notwithstanding, it lacks the strength both in terms of manpower and money to reach the entire population of Bangladesh. Since its inception in 2009, the Information Commission has been slowly acquiring the various resources that are necessary to execute its mandate. The Commission's office has been set up on the 2<sup>nd</sup> floor of the Archaeology Building in Sher-e-Bangla Nagar in Agargaon. However, it is expected that upon completion of all formalities, the Commission will set up its own office on the 0.35 plot that was formally allotted by the Government in 2010 for the purpose.<sup>804</sup> While a total of 76 positions for officers and staff have been approved by the Government, only 30 have been recruited so far.<sup>805</sup> The administrative staffs of the Commission have been largely requisitioned from the Ministry of Information. In addition to recruiting officers and staff, the Commission has also procured office materials, computers and transport for the smooth functioning of its work. The budget of the Commission for the 2011-2012 fiscal has been under-utilised primarily because officers and staff have not yet been recruited to all the available positions.<sup>806</sup> Under-utilisation of allocated funds is perceived negatively by many as it reflects a lack of capacity. It is believed that the funds could not be properly utilised for want of effective leadership and direction.<sup>807</sup>

Initially, the Commission's website was managed by the Bangladesh Computer Council; in December 2011, the Commission established its own server station with a capacity of over 2000 gigabytes.<sup>808</sup> This is expected to enhance the information, communication and technological capacity of the Commission by enabling it to connect with other important websites at home and abroad and effectively provide information to people who seek it. The Commission has developed a Right to Information Manual which contains the RTI Act and other rules and important questions and answers relating to the use and utility of the RTI law.

There has been no in-house training for the officers and staff of the Commission to date. The training funds are tied to the approval of the Ministry of Finance. Exposure visits at home and

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<sup>802</sup> Section 19, *ibid.*

<sup>803</sup> Rules 30-33, The Information Commission (Officers and Staff) Employment Rules, 2011.

<sup>804</sup> Information Commission, *Annual Report 2011*, p.4.

<sup>805</sup> *Ibid.*

<sup>806</sup> Information Commission, *Annual Report 2012*, p.111.

<sup>807</sup> Interview with Professor Sadeka Halim, Information Commissioner.

<sup>808</sup> Information Commission, 2011, *op.cit.*, p.22.

abroad have been restricted to the Chief Information Commissioner and the Commissioners. While the Commissioners are by and large competent, not all have the specialised skills to do justice to their respective portfolios. Clearly, the Commission and its human resources are in relatively unknown professional terrain, not least because of the need to cope with challenges of mindset transformation of stakeholders; as such, their own training and exposure to international expertise and experiences is of crucial importance.<sup>809</sup>

The Commission continues to operate from improvised office premises and is yet to move to its designated location allocated by the government. Less than 50 percent of the total number of approved positions of officers and employees has so far been filled. The Commission has failed to properly utilise financial resources. Consequently, large chunks of the allocated budget have been returned. These essentially have a bearing on quality of leadership and capacity of the Commission to do its work properly. Not all personnel have the specialised knowledge and skills necessary for effective discharge of their functions. There has not been any initiative to develop the capacity and skills of the Commission's officers and staff through in-house training. The Commission has a fairly robust website which can be developed further.

### ***Independence and Functional Autonomy***

The Information Commission is by law an independent body having perpetual succession and power to acquire, hold and dispose of property, both movable and immovable, and to sue by its own name and be sued.<sup>810</sup> *The Right to Information Act 2009* prescribes the modality for the constitution, power and function of the Information Commission. A selection committee comprising 5 (five) members is empowered to recommend the appointment of the Chief Information Commissioner and Information Commissioners. The Committee is composed of a cross-section of individuals representing the higher judiciary, the government, the legislature, and the media. In appointing the Chief Information Commissioner and the Information Commissioners, the selection committee shall, on the basis of the decision of the majority members present at the meeting, recommend 2 (two) names against each vacant post. In the event of equality of votes in the selection committee, the Chairman shall have the right to a second or a casting vote.<sup>811</sup>

The President is legally mandated to appoint all Commissioners on the recommendation of the aforesaid selection committee. The law requires the Commissioners to be appointed from amongst persons having broad knowledge and experience in law, justice, journalism, education, science, technology, information, social service, management, or public administration. No Commissioner shall be eligible to be appointed or hold office after he has attained the age of 67 (sixty-seven) years. The tenure for the Commissioners is 5 (five) years from the date of appointment or until s/he attains the age of 67 (sixty-seven) years, whichever is earlier. Notwithstanding their ineligibility for reappointment to the same posts, an Information Commissioner shall not be debarred from appointment to the position of the

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<sup>809</sup> Iftekharuzzaman, "Towards People's Right to Information in Bangladesh: High Expectations, Tentative Progress, the Way Forward", paper presented at the Roundtable Discussion organised by the RTI Forum Bangladesh to mark the International Right to Know Day, Dhaka, September 28, 2010, p.11.

<sup>810</sup> Section 11, *The Right to Information Act, 2009*.

<sup>811</sup> Section 14, *ibid*.

Chief Information Commissioner. The Commissioners may, at any time, resign from office in writing addressed to the President.<sup>812</sup>

Certain aspects of *The Right to Information Act 2009* reinforce the Commission's dependence on the Government. For example, Section 17 of the Act states that the status, compensation and other benefits of the Chief Information Commissioner and other Commissioners shall be determined by the Government. This creates ample scope for undue influence over and manipulation of the Commissioners by the Government. Again, the criteria stated in Section 15 of the Act for selecting the Chief Information Commissioner on the basis of "broad knowledge" and "experience in law, justice, journalism, education, science, technology, information, social service, management or public administration" is generic and far too vague. In the absence of clear guidelines as to what constitutes "broad knowledge" and "experience", the Government enjoys a wide discretion to select individuals of their choice.

The law also provides for the recruitment of officers and employees to permanent posts by (i) direct appointment; (ii) promotion; (ii) deputation,<sup>813</sup> provided candidates meet the criteria in respect of age, nationality and marital status.<sup>814</sup> Promotions shall not necessarily be on the basis of seniority but shall also be guided by the degree of dedication, commitment, efficiency and successful performance in departmental examinations. Underperforming officers shall not be considered eligible for promotion.<sup>815</sup> The law also provides for reappointment of personnel who were temporarily dismissed or sent on forced leave.<sup>816</sup>

Although the Commissioners can only be removed from office in a like manner and on like grounds as that of a Judge of the Supreme Court, the President has the prerogative to any one of them, if s/he (a) is declared insolvent by a competent court; (b) engages in any post extraneous to his/her own duties during his/her term of office for remuneration; (c) is declared to be of unsound mind by a competent court; or (d) is convicted of an offence involving moral turpitude.<sup>817</sup>

Financial independence of the Commission in terms of spending money allocated by the Government against prescribed heads is guaranteed by law.<sup>818</sup> The Commission enjoys legal protection for acts done in good faith. As such, no suit, prosecution or other legal proceedings shall lie against the Information Commission, the Commissioners or any officers or employee of the Commission. Likewise, the officer-in-charge of any authority or any other officer or employee thereof enjoys legal protection in the event someone is affected by disclosure of any information in good faith, or rules or regulations made pursuant to *The Right to Information Act 2009*.<sup>819</sup>

The requisite qualifications for the position of the Chief Information Commissioner are too wide and provide opportunities for manipulation of the recruitment process by the government. Certain aspects of the law reinforce the Commission's dependence on the government. The fact that the Commission is required by law to seek the government's

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<sup>812</sup> Section 15, *ibid.*

<sup>813</sup> Information Commission (Officers and Staff) Employment Rules, 2011.

<sup>814</sup> Rule 5, *The Information Commission (Officers and Staff) Employment Rules, 2011.*

<sup>815</sup> Rule 6, *ibid.*

<sup>816</sup> Rule 44, *ibid.*

<sup>817</sup> Section 17, *The Right to Information Act, 2009.*

<sup>818</sup> Section 21, *ibid.*

<sup>819</sup> Section 31, *ibid.*

permission before appointing officers and employees also restricts the independence of the Commission in appointing officers and staff of its choice. The Commission is financially dependent on the government as it is required to submit an annual budget for each fiscal year for approval by the government.

Although the law ensures independence of the Commission from executive or political influence, in practice, such influence cannot be precluded altogether. The inherent culture of *tadbir* (requests) and partisanship in decision-making processes have the potential to impede independence of the Commission in respect of recruitment and appointment of impartial officials, as more emphasis is placed on their loyalty to the government instead of relevant experience, skills and competence.<sup>820</sup> The induction of government personnel on deputation has also proved counterproductive.

The conspicuous absence of proactive (*suo moto*) demands for information by the Commission is yet another indication of the Commission's reluctance to engage on matters that would embarrass the government. For example, there was no visible initiative on the part of the Commission to seek, of its own volition, information on various scams relating to banks, the share market, and construction of the Padma Bridge. Despite being legally empowered to seek information *suo moto*, the fact that the Commission has refrained from so doing at opportune times demonstrates its subservience, even if unwilling, to the government.<sup>821</sup> Indeed, it is believed that the functions of the Commission would suffer if they were to do otherwise.<sup>822</sup>

Government control over the recruitment of the Commissioners, officers and staff has effectively impeded the independence and effectiveness of the Commission. This is evident from the Commission's reluctance to proactively engage on issues that are potentially annoying for the government and its officials.

## **Governance**

### ***Transparency, Accountability and Integrity: Legal Framework and Practice on the Ground***

The Information Commission has a statutory obligation to, amongst others, publicise issues relating to the preservation and implementation of the right to information among different classes of citizens of the society and to increase their awareness about the right to information by publishing, disseminating or by any other means<sup>823</sup>, to increase public awareness on right to information by conducting research, seminars, symposiums, workshops and other similar measures and disseminate the result obtained from the research<sup>824</sup> and to establish a web portal for Bangladesh in order to ensure right to information.<sup>825</sup> For purposes of the RTI Act, "information" includes any memo, book, design, map, contract, data, log book, order, notification, document, sample, letter, report, accounts, project proposal, photograph, audio, video, drawing, painting, film, any instrument done through electronic process,

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<sup>820</sup> *Ibid.*

<sup>821</sup> Interview with Dr. Nazrul Islam, Professor of Law, University of Dhaka and media personality.

<sup>822</sup> *Ibid.*

<sup>823</sup> Section 13(5)(j), The Right to Information Act, 2009.

<sup>824</sup> Section 13(5)(m), *ibid.*

<sup>825</sup> Section 13(5)(o), *ibid.*

machine readable record, and any other documentary material regardless of its physical form or characteristics, and any copy thereof in relation to the constitution, structure and official activities of any authority.<sup>826</sup>

The law requires the Information Commission to prepare and publicise an annual report that encapsulates all activities of the Commission.<sup>827</sup> The Commission is also required to maintain its accounts and prepare an annual statement on the basis of its accounts. The Comptroller and Auditor General (hereinafter Auditor General) shall audit the accounts of the Commission every year and shall submit copies of the audit report to the Government and Information Commission respectively. In order to discharge his duties the Auditor General or any person empowered by him in this behalf shall have access to all records, documents and papers, cash or money kept in the bank, undertakings, treasury and other property. He may also examine the Chief Information Commissioner, the Information Commissioners or any officer or employee of the Commission as deemed necessary.<sup>828</sup> However, the investigation processes into allegations of breach of conduct by officers and staff of the Commission are by law confidential and not to be divulged to the public.<sup>829</sup>

The law requires the Information Commission to publicly disclose key aspects of its mandate and functions and undertake various activities in the public domain in furtherance of its role. However, the fact that the public are precluded from seeking information relating to investigations into allegations of breach of conduct of the Commission's staff and employees and decisions thereon erode transparency measures.

The Commission hosts a website which contains all relevant information regarding the Commission's work and mandate. The RTI law and rules can be downloaded for free from this website. The Commission has published materials containing laws and rules that are relevant to the right to information and important questions and answers on the RTI law and its use. These publications essentially function as handbooks for quick reference to RTI related issues. Since the Commissioners frequently engage in field level awareness raising activities through consultations, workshops and seminars, it provides them with an opportunity to assess the situation on the ground on the one hand and on the other, enable local people to ask them questions directly regarding the Commission's' role, functions, RTI law etc. Besides, the publication (and free distribution to the government departments throughout the country) of questions and answers on significant issues, examples of complaints filed and the Commission's response, including fines awarded by the Commission is another means of ensuring transparency of their work. Since the inception of the Commission in 2009 until July 2012, it has received a total of 191 complaints, of which 89 have been accepted and 102 were declined on account of procedural deficiencies (and were asked to reapply).<sup>830</sup>

The Commission's engagement with the public and government functionaries at various forums provides the latter with the opportunity to seek information on diverse issues. Besides, the Commission's website also furnishes salient information on its activities and other RTI related matters. It has also published different promotional material in addition to producing annual reports and audit reports at regular intervals.

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<sup>826</sup> Section 2(f), *ibid.*

<sup>827</sup> Section 30, *ibid.*

<sup>828</sup> Section 22, *ibid.*

<sup>829</sup> Rule 41(9), The Information Commission (Officers and Staff) Employment Rules, 2011.

<sup>830</sup> The Information Commission, *Complaints Filed at the Information Commission and Decisions*, Dhaka, 2012, p.5.

The Information Commission is accountable to the President to whom it is required to furnish, by 31 March every year, an Annual Report of its functions performed during the previous year. This report must capture, amongst other things, the number of requests for information made to each authority, the number of refusals to furnish information and appeals thereto, particulars of disciplinary actions taken against any authority, number of complaints received, description of action taken and punishment awarded on the basis of the complaints, the amount of fine imposed and recovered. On receiving the report, the President shall place the report before the Parliament. The Information Commission shall then publish and publicise its annual report through the mass media and its official website.<sup>831</sup>

The performance of the officers and employees of the Commission is to be evaluated annually in terms of efficiency, achievements, malfeasance, etc. and filed in individual Annual Confidential Reports (ACR). These reports are normally not disclosed publicly but if any relevant authority so desires, it may request the reporting authority to furnish it with a copy of an ACR of any officer. Officers of the Commission have no access to their ACRs but if there is any negative observation in the ACR, the concerned officer is entitled to furnish an explanation or alternatively be allowed to rectify himself/herself.<sup>832</sup> The ACRs are pivotal to officers' promotion, salary raise, etc. and consequently, negative comments in an ACR severely compromise an officer's chances of professional advancement.

Accountability measures prescribed by law are limited to submitting the Annual General Report to the President within a prescribed time frame to be placed before the Parliament subsequently. Annual confidential reports highlight the performance evaluations of the officers and employees of the Commission.

Given that the Information Commission is very young, it is difficult to make a fair assessment of its accountability trail. However, the Commission has successfully prepared, published and submitted to the President three Annual Reports to date spanning 2009, 2010 and 2011. Likewise, ACRs of officers of the Commission are being duly prepared.<sup>833</sup> Accountability measures prescribed by law are carried out in practice and three annual reports have been published. Given that the Commission is fairly new, a more in-depth assessment of its accountability is difficult to make.

There is no specific provision in *The Right to Information Act, 2009* that seeks to regulate the code of conduct of the higher officials of the Information Commission, i.e., the Chief Information Commissioner of the Information Commissioners.<sup>834</sup> Rules in respect of conflict of interest, gifts and hospitality, political engagement, asset declaration, and confidentiality of information are non-existent. The provisions that come closest to these concerns are the removal of the Chief Information Commissioner or any Information Commissioner if s/he engages in any remunerated post extraneous to his/her duties during his/her tenure or if s/he is convicted of offence involving moral turpitude.<sup>835</sup>

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<sup>831</sup> Section 32, The Right Information Act, 2009.

<sup>832</sup> Rule 35, The Information Commission (Officers and Staff) Employment Rules, 2011.

<sup>833</sup> Interview with Professor Sadeka Halim, Information Commissioner.

<sup>834</sup> However, a strategy paper (*Implementing the Right to Information Act 2009: A Strategy Paper for the Information Commission, Bangladesh, 2012*) that has been developed with USAID support proposes the introduction of a Code of Conduct for Information Commission Officials.

<sup>835</sup> Section 16(2)(b)(d), The Right Information Act, 2009.

Legal bars have, however, been placed on officers and employees of the Commission by *The Information Commission (Officers and Staff) Employment Rules 2011*. The Rules prescribe a number of activities that officers and employees are prohibited to engage in which include, amongst others, political activities, accepting grants from any person or organisation that has any dealing or is likely to have dealings with the Commission, engaging in business or agency of any kind, work outside of the Commission without prior permission, using political and financial borrowing and loans.<sup>836</sup>

The law prescribes penal sanctions for an officer or employee of the Commission if found guilty of (i) negligence of duty; (ii) misconduct<sup>837</sup>; (iii) desertion; (iv) incompetence; (v) theft, misappropriation of funds, or fraud; (vi) anti-state or terrorist activities; or (vii) corruption<sup>838</sup>. Punishment for misconduct and corruption consists of both major<sup>839</sup> and minor<sup>840</sup> sanctions.<sup>841</sup> Separate procedures apply for investigating into misconduct, corruption, and acts of terrorism. Provisions for appeal against decisions of the relevant authority are in place.

While the law provides measures for ensuring the integrity of the officers and staff of the Commission, their application does not extend to the Information Commissioners except in respect of paid engagement outside of the Commission and conviction on grounds of moral turpitude. The law is silent on issues of asset declaration, financial gratification, political activities, gifts and hospitality in relation to Commissioners. This is essentially discriminatory and provides higher officials with an opportunity to function with impunity.

The public perception of the Information Commission is quite good. To date, no serious concern has been raised in terms of the integrity of the Commission members. The media, normally vigilant on issues of institutional integrity, has also not come up with any groundbreaking news coverage in this respect. It is believed that the structure, functions and focus of the Commission are such that they do not provide avenues for corrupt practices.<sup>842</sup> However, it is important to note that the practice of declaring assets by the Commissioners is absent. While all trainings conducted by the Information Commission primarily focus on educating the participants about *The Right to Information Act 2009*, procedures on seeking information and lodging complaints if the concerned authority does not cooperate or comply

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<sup>836</sup> Rule 36, *The Information Commission (Officers and Staff) Employment Rules, 2011*.

<sup>837</sup> 'Misconduct' has been defined by *The Information Commission (Officers and Staff) Employment 2011 Rules* as conduct that contravenes the disciplinary rules or codes of minimum decency and includes (i) disobedience to superiors; (ii) grave negligence of duty; (iii) indifference to the orders, rules or regulations of the Information Commission without lawful cause; and (iv) the filing of false, annoying, baseless or unjust allegations/complaints against any employee.

<sup>838</sup> An officer or employee shall be considered 'corrupt' within the meaning of *The Information Commission (Officers and Staff) Employment 2011 Rules* if s/he or any of his/her dependents, is in possession of pecuniary resources (for which s/he cannot reasonably account) or of property disproportionate to his/her known sources of income or leads a lifestyle that is not commensurate with his/her declared income.

<sup>839</sup> Major punishments include demotion in terms of position or pay, compensation for damages incurred due to his/her conduct, removal from service and dismissal from service. Persons who are dismissed from service shall be disqualified from re-employment in the Commission.

<sup>840</sup> Minor punishments range from reprimands, postponement of promotion or salary increment for a specific period, and a cut in pay of up to 7 days basic salary.

<sup>841</sup> Rule 38, *The Information Commission (Officers and Staff) Employment 2011 Rules*.

<sup>842</sup> Interview with Professor Sadeka Halim, Information Commissioner.

with the request, they have not undertaken any initiative to provide any training on issues of ethics and integrity.<sup>843</sup>

To date, the integrity of the Information Commission in the strict sense of the term has not been questioned by any quarter. However, the fact that it is reluctant to engage proactively to seek information from the government on salient issues impedes its professional integrity. Asset declaration by Commissioners is absent.

## **Role Assessment**

### ***Investigation***

The grounds under which a person may file a complaint to the Information Commission are clearly spelt out in the RTI Act 2009.<sup>844</sup> The vetting of the rules on application, appeal and costs for requests was greatly delayed and finally notified in the official gazette on March 8, 2010, following which the Commission began to accept complaints about non-compliance to requests for information.<sup>845</sup> The law empowers the Information Commission to launch an inquiry into a complaint lodged under this Act either on its own accord or upon receiving a complaint. The Information Commission has the same powers as that of a civil court under the Code of Civil Procedure, 1908 (Act V of 1908) and can:

- (a) issue summons to enforce the attendance of persons and compel them to give oral or written evidence on oath and to produce documents or other things;
  - (b) examine and inspect information;
  - (c) receive evidence on affidavit;
  - (d) secure any information from any office;
  - (e) issue summons for witnesses or documents;
  - (f) deal with matters prescribed by the rules for giving effect to the purposes of the RTI Act;
- and
- (f) examine on spot any information relating to the complaint kept in the custody of any authority.

Although the RTI Act has precedence over any other existing law that may contradict its provisions, designated officers are often confused about what and how much to disclose and where to draw the line.<sup>846</sup> Laws like *The Official Secrets Act 1923*, *The Evidence Act 1872* (Sec. 123-124), *The Rules of Business 1996* (Rule 28-1), *The Government Services Conduct Rules 1979* (Rule 19) or the secrecy provision under the Oath (affirmation) of Appointment to public office essentially prevent free flow of information. Likewise, exemptions contained in the RTI law (Sec. 7) that preclude certain information (e.g. information that may threaten state security, or affect intellectual property, or obstruct law enforcement) from being publicly disclosed, impede the Commission's role in dealing with public complaints.

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<sup>843</sup> *Ibid.*

<sup>844</sup> Section 13 (3)(4), The Right Information Act, 2009.

<sup>845</sup> Tahmina Rahman, "RTI Law Implementation in Bangladesh: Taking It to the Next Phase", *Country Paper* at the Regional Workshop towards More Open and Transparent Governance in South Asia, New Delhi, 27-29 April 2010, p. 8.

<sup>846</sup> Ifthekharuzzaman, 2010, *op.cit.*, p.15.

There are clear provisions in the law for ensuring that the Information Commission may effectively deal with complaints lodged by the public. However, the co-existence of laws, including the exemption provisions in the RTI law, that actively endorse non-disclosure of information circumscribe the Commission's investigative role. The range of exceptions is too broad and the fact that there is no possibility of overruling these exceptions in special circumstances or in the public interest erodes the spirit of the law.

Despite their commitment to make RTI a reality, the Commission has faced a number of challenges in executing its mandate. One of the fundamental problems besieging government offices is the lack of a systematic and contemporary information management system. While the existing system, being archaic, makes it difficult for designated officials to quickly retrieve information on request, it also provides them with pretext to reject applications or mislead information seekers citing systemic deficiencies. Indeed, there is no alternative to a modern digitised information management system that would ensure easy, dependable and secure archiving and retrieval with clear tracking indicators.<sup>847</sup> This is compounded by the dearth of trained personnel skilled in information archiving and processing.

Applications for information are often held up when the designated officer is transferred or is otherwise preoccupied with office protocol.<sup>848</sup> Since applications are required by law to be addressed to the designating officer by name, his absence delays the process as the information seeker is directed to reapply using the correct name. It is common for government offices to take refuge in the exemption clause (e.g., state security, commercial transactions) in the RTI Act when denying or withholding information.

The Information Commission's investigative role is often impeded by the non-responsiveness of government authorities on account of the lack of or outdated information management systems and a general absence of skills amongst officials of the concerned authorities. Besides, the tendency of government officials to seek recourse to laws that exempt them from disclosing information also delays the process. Proactive publication is limited both in terms of the scope of information covered, as well as the means of dissemination of this information.

### ***Promoting Good Practice***

Raising awareness about the value of right to information through research, seminars, symposiums, workshops and other related activities, either of its own accord or in collaboration with other institutions, is a legally mandated function of the Information Commission. In addition, the Commission is empowered to formulate guidelines and directives as to the preservation and implementation of the right to information of citizens, provide respective authorities with technical assistance to ensure preservation and implementation of the right to information, advocate with the government to undertake law and policy reforms to promote and protect right to information and advise the Government to ratify or sign related international instruments on right to information.<sup>849</sup>

Following initial uncertainties and resource constraints, the Information Commission started off in earnest with a series of public awareness and outreach events in divisional, district and

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<sup>847</sup> *Ibid.*, p.14.

<sup>848</sup> Interview with Professor Sadeka Halim, Information Commissioner.

<sup>849</sup> Section 13, The Right to Information Act, 2009.

even lower levels, with active participation by the Information Commissioners.<sup>850</sup> Among participants were local level government officials, civil society, NGOs, media, and general members of the public. In addition to various promotional activities, the Information Commission has also entered into an MOU with mobile phone operators (Grameen and Robi) for sending off text messages on RTI. Pursuant to this initiative, an estimated 26,88,08,007 text messages have been sent.<sup>851</sup> Critics believe that the number of text messages sent is disproportionately low compared to the size of the population of the country. Apart from the fact that not everyone owns a mobile phone, this strategy is ill-suited in a context where a great majority of the people is illiterate.<sup>852</sup>

An increasing number of applications are being made to government offices mainly by poverty groups, with encouraging results. The applications relate primarily to government programmes on safety-net, livelihood, health, housing and the like. An example of good practice is that people who are entitled to vulnerable group feeding (VGF) cards are now securing them by simply filing carefully crafted RTI applications. This was not possible previously without bribing the authorities.<sup>853</sup> While, at the outset this may not seem extraordinary, for people who have been traditionally sidelined by the state, the outcome has been overwhelming. Case studies on the use of RTI law also reveal that while some officials disclosed the information without intervention of the Information Commission, others had to take their requests to this appeal mechanism. In such cases, the Commission ruled in favor of the requester. These decisions contribute to the engendering of a culture of openness among government officials and at the same time make citizens' aware of the fact that there is an agency that can ultimately rule in their favor.<sup>854</sup>

The Information Commission believes that they are making good progress evident from the rising number of requests for information being processed, designated officials being appointed to handle these requests, particularly at the local level, and a website and mobile phone campaigns for sensitising citizens about the RTI law.<sup>855</sup> Civil society thinks otherwise, as very little seems to have changed in the official culture of shabbily treating citizens who seek information from government offices. While the Information Commission claims to have trained a total of 2299 designated officers<sup>856</sup>, in addition to the trainings imparted by the NGOs, there is very little evidence of actual internalisation and application of the knowledge imparted. Criticism has been levied at the Commission that "too much emphasis on its own housekeeping and too little service to the people have characterised its work so far".<sup>857</sup>

Undeniably, progress in the Commission's work has been slow. This is evident from the fact that in over nearly four years the Commission has only heard 44 complaints out of 104 received. This is by no means adequate in a country of nearly 150 million people. It has been reported in an IID policy brief, that awareness about the RTI law continues to elude the

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<sup>850</sup> Iftekhazzaman, 2010, *op.cit.*, p.6.

<sup>851</sup> Sadeka Halim, "Right to Information Law and the Role of the Information Commission" in *Bangladesh Protidin*, March 15, 2012.

<sup>852</sup> Interview with Dr. Nazrul Islam, Professor of Law, University of Dhaka and media personality..

<sup>853</sup> *Protifolon*, 2012, *op.cit.*, p.2.

<sup>854</sup> World Bank Institute et. al., *The Power of Using the Right to Information Act in Bangladesh: Experiences from the Ground*, Dhaka, 2011, p.28.

<sup>855</sup> Interview with Professor Sadeka Halim. Information Commissioner..

<sup>856</sup> Information Commission, 2011, *op.cit.*, p. 21.

<sup>857</sup> *The Daily Star*, "RTI under the microscope. Tangible progress yet to be seen", Editorial, September 30, 2011.

majority of government officials, resulting in withholding of information by them. According to the Information Commission, only one-third of government offices and concerned NGOs have so far submitted the names of their designated officials to the Commission or made them public.<sup>858</sup> Besides, there is very little initiative on the part of the Government, the media and the NGOs, to communicate the use, utility and impact of RTI to the public at large.

Since inception, the Information Commission has had reasonable success in reaching out to the public through various promotional activities. The orientation sessions with public officials have hugely influenced the appointment of designated officials in respective departments in and outside of the government. While the participation of Commissioners in seminars, discussions and other activities pertaining to access to information and good governance has contributed to enhancing the profile of the Commission, it has on the whole been able to live up to public expectation.

### **3.3 NON-GOVERNMENTAL ACTORS**

#### **3.3.1 POLITICAL PARTIES**

There are more than 40 registered Political Parties in Bangladesh till June 2013. During the 2008 General Election, 38 political parties participated, of which four major parties namely Awami League, Bangladesh Nationalist Party, Jatiya Party and Jamaat- e-Islami generally dominated the political arena and together they captured 91.45% of the total votes cast during the last election<sup>859</sup>. Twenty-five small political parties that fielded 716 candidates in the 2008 parliamentary election bagged only 2.38 percent of the total votes. 148 independent candidates in the polls got 2.95 percent of the total votes while four of them won parliamentary seats<sup>860</sup>.

The major opposition parties have been periodically boycotting the Parliament for a long time since its inception in mid 1990s<sup>861</sup>. Political Parties' role in Bangladesh in strengthening democratic practices and good governance has been diminishing due to its poor image, lack of credibility and low public trust.

There is an elaborate legal framework that provides the basis of democratic functioning of the Political Parties in Bangladesh. However practice and compliance with the legal framework is weak and in many cases non-functional.

Political culture in Bangladesh is characterized by confrontation and intolerance. The Elections of 1996, 2001 and 2008 were preceded by a long opposition boycott of Parliament. The political parties are nowadays considered a safe abode for criminals and terrorists. The political system has been ruined by a new process of "criminalization and commercialization"

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<sup>858</sup> Interview with Professor Sadeka Halim, Information Commissioner.

<sup>859</sup> Election Commission Website, dated July 2013.

<sup>860</sup> *The Daily Star*, January 2, 2009.

<sup>861</sup> During the lives of Fifth, Seventh, Eighth and Nine Parliaments, the Opposition, which is an indispensable component of the system, led by Awami League (AL), Bangladesh Nationalist Party (BNP), respectively have missed 34%, 43%, 60% and 83.38% of the working days of parliamentary sessions by boycotting it.

of politics. Political Party funds are also allegedly collected directly from leading businessmen and industrialists. Such funds are often donated out of vested interest in anticipation of favors in return, or through extortion. Furthermore, business elites are gradually taking the control of the Party system and also the Parliament.

Political Parties suffer from centralized decision-making and personalization of internal party structures and absence of intra-party democracy. The ruling parties in Bangladesh have been almost always engaged in establishing their hegemonic control over the use of public resources to further their partisan interests under the facade of public interest.

Political Party finance in Bangladesh is not transparent, as is the case with electoral finance. The reporting on finance within the Party or to Election Commission is weak. Such reports when submitted are far from comprehensive and are lacking in depth. Disclosure by Parties or the candidates in elections is flawed and thus not reliable. Sanctions as contained in RPO are hardly applied. State oversight and civil society oversight are yet to become functional<sup>862</sup>. In summary, it can safely be said that the Political Parties hardly maintain the legal provisions as regards transparency with particular reference to electoral expenses.

### **Structure and Organization**

There are 40 registered political parties in Bangladesh. In addition there are more than 70 unregistered political parties. The unregistered small parties are not active but generally support major political parties during the election by joining or forming larger political alliances. Present parliament is represented by eight political parties. The ruling 14 party alliance government is represented by 4 parties and the opposition bench is composed of four parties<sup>863</sup>. However two members of the cabinet though represent different party but contested the election with the electoral symbol of the ruling alliance lead party Awami League. Non registered political parties would not be able to contest parliamentary polls.

### **Capacity**

#### ***Financial, Human and Infrastructural Resources***

The right to form Political Parties and its activities is guaranteed under the Constitution of Bangladesh. Article 152 of the Constitution provides the definition of political party. In view of the Constitutional outline, Section 2(b) of the Political Parties Ordinance 1978 defines a political party as “a group or combination of persons who operate under a distinctive name and who hold themselves out for the purpose of propagating any political opinion or engaging in any other political activity<sup>864</sup>”. However the Political Parties Ordinance, 1978 restricts that no Political Party can be formed with the objective of propagating any opinion, or acting in a manner, prejudicial to the sovereignty, integrity or security of Bangladesh and no one will be

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<sup>862</sup> Muzaffer Ahmad, “Political Party Finance”. *The Daily Star*, 19<sup>th</sup> Anniversary Issue, February 23, 2010.

<sup>863</sup> 14 party ruling alliance members-Bangladesh Awami League, Jatiya Party (Ershad), Jatiya Samajtrantik Dal (JSD), Workers Party, Shammobadi Dal (withut an elected member in the Parliamant)., while , Bangladesh Nationlist Party. The opposition parties of the present parliamnat include four parties – Bangladeh Nationalist Party (BNP), Jatiya Party (Andalib),

<sup>864</sup> . *The Political Parties Ordinance 1978*.

allowed to form, organize, set up or convene a foreign aided party. Furthermore underground political activity and armed cadre are prohibited by the law<sup>865</sup>.

The provisions relating to the registration of Political Parties are embodied in Representation of the People Order (RPO), 1972. Subsequently two amendments to this RPO were made, namely, Representation of the People (amendment) Ordinance, 2008 and Representation of the People (Second Amendment), Ordinance 2008. In these ordinances as well as in the rules made there under, namely Registration of Political Parties, 2008 conditions relating to registration have been laid down. It may be mentioned that political parties willing to take part in the Parliamentary Elections must be registered with the Bangladesh Election Commission (BEC).

In accordance to in RPO (Section 90B)<sup>866</sup> a Political Party has to fulfill either of the following conditions like securing at least one seat with its electoral symbol in any Parliamentary Election, or secured five percent of total votes cast in the constituencies, or having a functional central office with a central committee and organization at various administrative levels in the country etc. Furthermore a Political Party, desiring to be registered with the Commission, should have specific provisions in its constitution to elect members of the committees at all levels including members of the central committee and ensure that by year 2020 at least 33% women members in all committee positions of the party to be fulfilled by women, prohibit formation of affiliated or associated body for the teachers or students of any educational institution, employees or labourers of any financial, commercial or industrial institution or establishment or the members of any other profession, ensure that the nomination of candidate for the parliamentary election be based in consideration of panels prepared by members of the grassroots based and district committees<sup>867</sup>.

A Political Party can be disqualified for registration if the objectives laid down in its constitution are contrary to the Constitution of the People's Republic of Bangladesh. As per the RPO 1972 Section 90H(1), the registration of a Political Party may be cancelled by the Election Commission on specific grounds<sup>868</sup>.

In October 2012, the EC issued a circular, seeking applications for new registration of Political Parties. The Election Commission received as many 43 applications for registration. In that

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<sup>865</sup> Registration of Political Parties has got a new emphasis after the amendments during the Care Taker Government. The PRO in effect has introduced new conditions which have added some new dimensions in the registration process of political parties. The amended legal framework has to a great extent provided an environment conducive to the formation and operations of political parties.

<sup>866</sup> *Representation of the People Order, 1972* (President's Order No. 155 of 1972).

<sup>867</sup> Section (90) E of the *Political Party Ordinance 1978*.

<sup>868</sup> if the party is declared dissolved according to the constitution of the party, if the Political Party is declared banned by the Government; the Political Party fails to provide any information under this Order and rules to the Election Commission; if the Political Party does not participate in the Parliamentary Elections for two consecutive terms etc.

round the EC refused to register 40 Political Parties as they do not fulfill the necessary requirements<sup>869</sup>.

Soon after independence Bangladesh banned religion-based politics. However an amendment to the Constitution in 1979 allowed Islamic Parties to operate again. At present there are more than two dozen Islamist Parties<sup>870</sup>.

The Election Commission has two legal frameworks regarding the rules and regulation of election campaigning by registered Political Parties. These are: The Code of Conduct for Parliamentary Election 2008 and The Representation of People Ordinance 1972.

The Code of Conduct for Parliamentary Election 2008 has specified the rules for election campaign in Articles 5-14. The Representation of People Ordinance 1972 has extensive provision in campaign regulation. Articles 73-80 clearly describe the pattern of offences or corrupt practices by any candidates or concerned persons and also specify the punishment procedures. But there is nothing in the law regarding the internal democratic decision making of Political Parties in Bangladesh.

There is no system of public funding for the Political Parties. According to the RPO 2008, the Political Parties are supposed to receive donations from both individuals and companies through cheques. The amount of such donations in a year has been limited by the EC. A Political Party may receive donations not more than Tk 0.5 million (equivalent to US\$ 7,143) or services worth the same amount from individuals or Tk 2.5 million (US\$ 35,714) or services worth the same amount from a company in a year. A registered Political Party is also prohibited from receiving grant, fund, donation or gift from any foreign individual or organization. However, there is no mention of any specific punitive measure in the law for violating the above provisions.

The POR Article 90F allows a registered Political Party to receive donation or grants from any person, company, group of companies or non-government organization provided such amount of donation or grants shall not exceed the certain limit in a given calendar year<sup>871</sup>.

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<sup>869</sup> The disqualified parties are: Bangladesh Jalali Party, Bangladesh People's Democratic Party, Bangladesh New Sangsad League, Bangladesh Awami Party (NAP Bhashani), Bangladesh Jatiya League, Muktijoddha Communism Democratic Party, Bangladesh Jatiya Dal, Gono-Odhikar Party, Bangladesh Gonoseba Andolon, Bangladesh Janata Dal, Bangladesh Probashi Dal, Bangladesh Trinomul League, Bangladesh Anjuman Al Islah, Gonotantrik Islamic Movement, Mukto Rajnoitik Andolon, Jatiya Muktijoddha Gonotantrik Oikya Front, Bangladesh Islamic Party, Jomiyot-e Ulamaye Islam and Nezami Islamic Party, Bangladesh People's League, Public Party, Bangladesh Jonogonotantrik Dal, Matribhumi Dal, Bangladesh Gono-Odhikar Dal, Bangladesh Liberal Democratic Party, Bangladesh Gonoshakti Dal, Bangladesh Baam Front, Janata Mahajote Bangladesh, Sammilito Gonotantrik Party, Bangladesh Samajtantrik Dal, Bangladesh Hindu League, Bangladesh Nezam-e-Islam Party, Bangladesh Samyabadi Dal, Bangladesh Minority Party, Bangladesh Communist Party, Bangladesh Red Star Party, Bangladesh Labour Party, Krishak Sramik Party, Democratic People's Party, Bangladesh Gesnariyas Party, and National Awami Party (NAP) Bhashani. However, it has registered Bangladesh Muslim League following a High Court order. For detail see Mohammad Zakaria, "EC disqualifies 40 political parties for registration", Dhaka Tribune, May 26, 2013.

<sup>870</sup> Farid Hossain, *Ahmadiyya Times News* July 30, 2010.

Political Parties receive donations in cash, and some of them receive donations from foreign sources. Such donations are not received through bank accounts, and not reported in the party accounts, as required by law. Sometimes donations are received in cheques but these do not go to the Party bank account, but to the account of Party Leader(s). Moreover, there is no mechanism in the BEC to monitor the financial flow of Parties<sup>872</sup>.

Elections are very costly in Bangladesh, even more so than in Western countries. Once a leading MP of Jatiya Party noted that the political parties in Bangladesh spend around \$ 70 to \$ 80 million during the election campaigns whereas in Germany the expenditure does not exceed \$60 million<sup>873</sup>. A large portion of funds are collected through various informal processes<sup>874</sup>.

The sources of Political Party finance are many. Political Parties often receive a large number of small amounts from individuals of small means, which is surprising in a poverty stricken country such as Bangladesh. Yet this has received very little attention in recent years from Political Parties. This is because of the value of regular support of small amounts in creating a strong support base and a reservoir of volunteers at times of peak activity<sup>875</sup>.

In Bangladesh, historically, funding for Parties came from wealthy individuals and voluntary donations from businesses, without any reporting or submission of financial or accounting reports. As campaign expenses soared, not only did businessmen become directly involved as candidates for political offices, replacing genuine Party Leaders in many cases, they and other wealthy individuals were also forced through *chadabazi* (extortion) and various extortion tactics to make contributions to parties.

The major opposition Parties are not generally resource poor. Private sector and business houses regularly but informally provide the Party healthy amounts of financial support as a political investment<sup>876</sup>. A recent trend of the “commercialization of politics” has also opened the window for private sector aspirants to ensure nominations for the next election from the major Opposition and also simultaneously from the Ruling Party. Opposition Parties sometimes expose how vested interest groups - through the political economy of the distribution of public goods and services and patronage politics - eventually get rewarded by

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<sup>871</sup> In the case of a person, taka five lakh or property or service equivalent to it for company or organization, taka twenty five lakh or property or service equivalent to it.

<sup>872</sup> TIB, *Transparency in Political Finance in Bangladesh*, October 2009, pp.16-17.

<sup>873</sup> Barrister Anisul Islam Mahmud, Presidium Member of Jatiya Party, for detail see *The Daily Star* May 18, 2010.

<sup>874</sup> Interview with a senior leader of the main opposition party BNP. (*anonymity requested*) During an interview with the researcher similar observations have been made also by a noted private sector entrepreneur.

<sup>875</sup> *Ibid.*

<sup>876</sup> A leading members of the FBCCI (*anonymity requested*).

financial grants and tolls by some of the corporate houses<sup>877</sup>. New and small Parties generally do not have many resources and are run by the one or two core and influential persons and their private funding. It is also widely believed that major and larger Parties also fund them informally with the hope of developing a greater Political Party alliance in numbers.<sup>878</sup> In other words the small and new Parties to a great extent directly and indirectly depend on the support of the two larger Parties.

There is no formal rule as such to provide airtime to make Party campaign during election time. However there is a convention that each of the leading Political Parties are given airtime both at national Radio and Television to present their manifestos immediate before the election. This has been a practice since 1970s and is found to have played a positive role in making the electoral process effective and accountable. This practice has made the people at large acquainted with the Political Parties and their programs<sup>879</sup>.

### ***Independence and Functional Autonomy***

The Political Parties' Law emphasizes that the State must ensure the protection of a Party's rights and legitimate interests, while State apparatus and officials are prohibited from interfering with a Party's activities except where the law demands so<sup>880</sup>. The Political Parties' Law contains safeguards against arbitrary dissolution of Parties by the Government. According to Political Party Ordinance 1978, it is only the High Court Division after hearing the Party concerned can ban a Political Party. However if the Government deems it necessary in public interest, it can suspend the operation of the Political Party until the High Court Division has given its decision.

As such there are no legal powers of state authorities for surveillance of political parties. However the intelligence agencies of the government do prepare occasional reports on the activities and programmes of the major opposition parties<sup>881</sup>. If in the opinion of the government, a political party is considered to be working against the public interest, the case is referred to the High Court Division for a decision.<sup>882</sup> However, the Government may, in the interest of the public, by order published in the official Gazette, direct such Political Party to suspend its operation or activity until the High Court Division has given its decision.<sup>883</sup>

If any person, after the official publication of the suspension or dissolution of a Political Party, holds himself out as a member or office bearer of that Party, or acts for, or otherwise associates himself with, that Party, he shall be punishable with imprisonment for a term which

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<sup>877</sup> Muzaffer Ahmad, "Political Party Finance" *The Daily Star*, 19th Anniversary Issue, February 23, 2010

<sup>878</sup> There are two major alliances at this point of time in Bangladesh. The ruling party alliance has 14 members of which only 3 parties has representation in the parliament. Similarly major opposition has a 18 party alliances of which also only 3 party has parliamentary representation.

<sup>879</sup> Interview with Mr. Kha M Harun, Deputy Director General (retired), Bangladesh Television

<sup>880</sup> *The Political Party Ordinance 1978*.

<sup>881</sup> Interview with a senior officials of the Special Branch of Police, (*anonymity requested*) November 2012 .

<sup>882</sup> Section 6(1), *The Political Parties Ordinance, 1978*.

<sup>883</sup> Section 6(2), *The Political Parties Ordinance, 1978*.

may extend to two years, or with fine, or with both.<sup>884</sup> However, no prosecution shall be instituted against any person without the previous sanction in writing of the Government.<sup>885</sup>

Political Parties generally appear to be not protected from state interference. There have been some cases where the State have been fairly aggressive in handling the Opposition Parties allegedly by using of State machineries like police and law enforcing bodies<sup>886</sup>. There are also allegations raised by the major Opposition Parties that their activities are restricted by undue interference from Party activists. There are incidences in which Party Leaders and workers have been subjected to intimidation and harassment by the State authorities and Ruling Party vanguards<sup>887</sup>.

There are several incidences of police attacks on the central office of the main opposition party. A national newspaper editorial noted that “ the police attack on the central office of the main opposition Bangladesh Nationalist Party in the capital Dhaka, and subsequent arrest of top BNP leaders, including its acting Secretary General, seems to have given state-sponsored encroachment on the democratic space for opposition politics a whole new meaning<sup>888</sup>. ”

Human Rights organization *Odhikar* notes that “between 2009 and 2012, 775 persons were killed in political violence and due to criminalization of politics”. This trend continues at the beginning of the year 2013, in particular, clashes due to internal conflicts of *Chhatra* League activists<sup>889</sup> and incidents of attacks on teachers, students and opponents. During 2012, the administration stopped 105 meetings and political programmes by imposing Section 144 of the Code of Criminal Procedure (Cr.PC) and the trend continued in 2013. According to *Odhikar’s* statistics, in January 2013, a total of nine instances of the imposition of Section 144 of the Cr.PC by the local administration, were recorded across the country; mainly to stop political gatherings and rallies from occurring<sup>890</sup>. Even the activists of the Ruling Party and its Front Organisations took control of the city streets and the entry points to Dhaka to obstruct Opposition supporters from joining their scheduled political programmes<sup>891</sup>. The most significant and striking example of intolerance has been manifested by the arrest of 45 senior leaders of BNP with a politically motivated case of “burning a bus” in the strictly monitored

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<sup>884</sup> Section 7, *The Political Parties Ordinance*, 1978.

<sup>885</sup> Section 8, *The Political Parties Ordinance*, 1978.

<sup>886</sup> Mirza Fakhru Islam Alamgir, Bangladesh: *Search for a responsive & sustainable governance system*, (Paper presented at the seminar entitled *Achieving Edge for Bangladesh*, organised by Bangladesh Center for Development Studies in North America, Harvard University, USA, 13 October 2012) and follow up interview with him at his office. Mr. Alam is the Acting Secretary General of Bangladesh Nationalist Party – the largest opposition party of Bangladesh.

<sup>887</sup> *op.cit.*

<sup>888</sup> Editorial, *New Age*, 13th March 2013.

<sup>889</sup> Student front of Ruling Party – Bangladesh Awami League.

<sup>890</sup> Bangladesh Human Rights Report of January 2013, *Odhikar*, (A Bangladeshi Human Rights Organization February 04, 2013 .

<sup>891</sup> *New Age*, 9 April 2009.

restricted area near the PM's Office<sup>892</sup> The human rights monitoring group *Odhikar* reported that 3,215 people were arrested ahead of the 12 March 2012 BNP “grand rally” in Dhaka<sup>893</sup>. Furthermore the government has also cracked down on media coverage of the BNP. It ordered cable operators to close three TV stations during live coverage of the 12 March rally<sup>894</sup>.

## **Governance**

### ***Transparency, Accountability and Integrity: Legal Framework and Practice on the Ground***

The Representation of the People Order, 1972, Law requires disclosure of probable funding sources for meeting elections expenses. Every contesting candidate must submit to the Returning Officer, at the time of submitting the nomination paper, a statement, in the prescribed form, showing his income and the sources of such income, voluntary contribution and its sources, sum to be borrowed, or received as voluntary contribution from any Political Party, organisation or association; and sum to be received from any other source. The disclosure also demands a statement of the contesting candidate's assets and liabilities, annual income and expenditure and, a copy of the income-tax return last submitted by him<sup>895</sup>.

Article 44(CCC) of the Representation of the People Order (amendment) 2009 states that every political party nominating any candidate for election has to submit to the Election Commission expenditure of election and its sources within ninety days of the election. Every statement submitted by the Party has to be certified to be correct and complete by the Secretary to the Party. Statements of election expenses submitted to the Election Commission are published in the website of the Commission.<sup>896</sup>

If any registered Political Party fails to submit its expenditure statement within the time specified, the Commission can issue a notice of warning directing and eventually can impose a fine of Taka 10,000 (US\$139). If such registered Political Party fails to submit its statement within that extended time, the Commission may cancel its registration.

Every candidate is required to submit to the Returning Officer along with the nomination paper, in the prescribed form of the probable source of his/her election fund. The disclosure statement must be accompanied by a statement in the prescribed form of candidate's assets, liabilities, annual income and expenditure and Income-tax Return<sup>897</sup>.

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<sup>892</sup> Mirza Fakrul Islam Alamgir, *op.cit.*,

<sup>893</sup> “Quarterly Report”, *Odhikar*, April 2012, [www.odhikar.org/ documents/2012/](http://www.odhikar.org/documents/2012/). accessed September 9, 2012

<sup>894</sup> <http://bangladeshwatchdog.blogspot.com/2012/03/bangladesh-authority-blocks-private-tv.html> accessed September, 9 2012.

<sup>895</sup> Article 44AA, *The Representation of the People Order, 1972*.

<sup>896</sup> Article 44D, *The Representation of the People Order, 1972*.

<sup>897</sup> Transparency International Bangladesh, *Transparency in Political Finance in Bangladesh*, October 2009, pp 6-10.

Political Parties are responsible to submit their financial audited report (audited by a registered CA firm) to the EC by July 31 of every fiscal year. It is mandatory to have the accounts of the Parties signed by a certified accountant. Any registered Political Party cannot receive any gift, donation, grant or money from any other country, non-government organization or from any person who is not Bangladeshi or any organization established and maintained by such person.

The statements, returns and documents submitted under article 44AA and 44C (relating to personal expenditure report) during one year from the date of their receipt, be open to inspection by any person on payment of the prescribed fee. The EC publishes financial reports of the legislative elections campaigns on their website.

Different donors of Political Parties are not legally bound to disclose information on political financing. According to the law the EC is responsible for publishing the information on electoral expenditure through their website.

A Transparency International Bangladesh study revealed that the income and expenditure records are hardly maintained properly by the Political Parties. None of the Parties has yet had their accounts externally audited. The study also found that most of the Parties submitted electoral accounting reports to the EC after the 2008 election, but they were not externally audited. Only in a few cases, the Election Commission launch investigations, based on complaints lodged mainly by contesting candidates and the media, and took action<sup>898</sup>.

After the 9<sup>th</sup> Parliamentary Election of 2008, even though most of the candidates and Parties submitted their electoral expenditure reports, till date the EC has neither disclosed the information on its website nor made it open in any other form for the public consumption.

In practice, political parties and donors do not disclose such information proactively or on demand from citizens or civil society organizations for many reasons. One reason is the culture of “winner takes all” politics. If a company discloses information on its contribution to a Political Leader or Party, and if the candidate or Party fails to come to power, the company may face a backlash including loss of business. Secondly, the amount of the contribution usually comes from undeclared sources. Some of the companies widely perceived to be regular in making political donations contacted for this study denied that they did so for Political Parties or candidates. The common people including experts or journalists do not have any access to such information<sup>899</sup>.

According to The Political Parties Ordinance 1978, all funds of a Political Party must be maintained and operated through a scheduled bank.<sup>900</sup> The Representation of the People Order 1972 requires every Political Party setting up any candidate for election to maintain proper accounts till the completion of elections in all the constituencies. Political Parties are

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<sup>898</sup> Transparency International Bangladesh, *Transparency in Political Finance in Bangladesh*, October 2009 and Global Integrity Index 2010. p.48.

<sup>899</sup> Ibid pp.15-16.

<sup>900</sup> Section 5 of PRO 1978.

disbarred from receiving any donation exceeding BDT 20,000 unless it is made by cheque. Contravention of these provisions is punishable with fine up to BDT 10,00,000.<sup>901</sup>

According to the RPO 2008 the registered Political Parties must keep their accounts book as per prescribed legal format which must be audited by a certified auditor. The Parties have to submit their annual income and expenditure statements to the EC within 31 July after the end of the last fiscal year. The law also imposes sanction for any violation of the regulations. The upper limit of electoral expenditure by candidates depends on the number of voters (Tk 5 per voter), or a maximum Tk 1.5 million in a constituency. In case of Parties the highest permissible amount spent by a Party depends on the number of candidates from the respective party, or a maximum Tk 150,000 per candidate. Both the candidates and Parties are bound to submit electoral expenditure reports to the EC within a stipulated time, violation of which will result in jail with fine or cancellation of registration. The candidates are under obligation to submit electoral expense statements to the BEC. However, the individual candidates are not bound to disclose information to the common citizen<sup>902</sup>.

In case of corporate donation a Party can receive Tk 2.5 million or property or service equivalent to it in a year. Any registered Political Party cannot receive any gift, donation, grant or money from any other country, non-government organization or from any person who is not Bangladeshi or any organization established and maintained by such person.

The election funds and expenses of a Political Party must be operated through a separate account with a scheduled bank. A Party cannot receive any donation amounting to more than Tk 20,000 unless it is made by cheque. The party, failing to comply with the obligation to submit the statement of election expenses may be punished with fine up to Tk 10,000 and even lose its registration.

Every Political Party nominating any candidate for election has to submit to the Election Commission an expenditure statement giving details of the expenses incurred within 90 days of the election. The statement has to be certified by the Secretary to the Party. If any registered Political Party fails to submit its expenditure statement within the prescribed time, the Election Commission may impose a fine and even may cancel its registration.<sup>903</sup>

The Election Commission has not been effective in ensuring the accountability and financial oversight of individual candidates and the political parties. Political Parties appear to be unwilling to follow and practice democratic norms and particularly financial discipline. The Election Commission is also found to be ineffective in penalizing offenders. It doesn't have an adequate database on individuals, large donors and corporate bodies who have made financially contribute to the Political Parties<sup>904</sup>.

With a few exceptions, most Political Parties submitted their expenditures related to their campaigns after the last Parliamentary Elections. However the Political Parties are reluctant to follow the guidelines of the Election Commission. Those who fail in winning a seat generally

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<sup>901</sup> Article 44CC, *The Representation of the People Order*, 1972.

<sup>902</sup> Global Integrity Index 2010, p. 53

<sup>903</sup> Article 44CCC, *The Representation of the People Order*, 1972.

<sup>904</sup> Global Integrity Report 2010, pp 47-49.

lose interest in the process<sup>905</sup>. Moreover, due to lack of capacity the BEC take some time to publish the candidates' and parties' electoral expenditure through its website<sup>906</sup>.

The financial information is generic in nature and not detailed. It is mandatory for the Political Parties to submit audit reports but as of August 2012, the Election Commission has received 21 out of 38 audit reports from the registered Political Parties in due time. The Election Commission has so far not penalized any Political Parties or candidates for breaching the regulations<sup>907</sup>.

While it is difficult to regulate individual/corporate contributions to Political Parties and candidates, the BEC has gradually been able to put in place a realistic limit on total Party expenditures. Since many of the Parties' expenditures are visible, it is less difficult to regulate those. However, the EC doesn't have the capacity to monitor all the activities of Political Parties and candidates all the time<sup>908</sup>.

With the capacity that the Election Commission currently has, it would be difficult for it to initiate independent investigations to explore any issues of Political Parties. The BEC is responsible for the management of elections and it has been working on upgrading various aspects of elections. It does respond to candidates' complaints, though sometimes it can take a long time to settle<sup>909</sup>.

Each political party is guided by its own Constitution, which spells out its aims, objective, fundamental principle and Commitment. The provisions relating to the registration are embodied in Representation of the People Order (RPO), 1972<sup>910</sup>. It may be mentioned that political parties willing to take part in the Parliamentary elections must be registered with the Bangladesh Election Commission (BEC). The registered political parties must comply with the set criteria of the Election Commission, which includes along with others – party constitution, rules/regulations, list of the members of central committees/and chapter committees, sources of funds and bank account.

The Political Party charter mandates the councillors to elect all leaders, including the Standing Committee/Presidium members - , the highest policy making body. As a registered Political Party under the RPO, the Party councillors are supposed to elect the entire Central Committee. Ironically the voting rights of the councillors can be delegated to the Party Chief.

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<sup>905</sup> Interview with Ex Election Commissioner Brig General (Retd) Muhammad Sakhawat Hussain

<sup>906</sup> *Ibid.*

<sup>907</sup> Global Integrity Report 2010, pp 52-53

<sup>908</sup> Bangladesh -European Community - Country Strategy Paper for the period 2007-2013

[http://eeas.europa.eu/bangladesh/csp/csp\\_07\\_13\\_en.pdf](http://eeas.europa.eu/bangladesh/csp/csp_07_13_en.pdf) accessed 20th August 2012 also see Shahzada M Akram & Shadhan Kumar Das, *Bangladesh Election Commission: A Diagnostic Study*, [http://www.ti-bangladesh.org/research/ES\\_ElectionCommission.pdf](http://www.ti-bangladesh.org/research/ES_ElectionCommission.pdf) accessed September 5, 2012 .

<sup>909</sup> Transparency International Bangladesh, *Transparency in Political Finance in Bangladesh*, October 2009.

<sup>910</sup> Two amendments to this Order were made recently, namely, Representation of the People (amendment) Ordinance, 2008 and Representation of the People (Second Amendment), Ordinance 2008.

Lack of internal democracy has retarded the growth of Political Parties in Bangladesh. The weakness of internal party democracy is a serious constraint to the consolidation of a democratic culture and building of national consensus. One observer notes that the survival of absolutism in Bangladesh "illiberal democracy" has led to the reappearance of the dictatorial culture of a coterie<sup>911</sup>.

The two major Parties; supreme leadership comes from two iconic families of Bangladesh and therefore the Party Council sessions meant to elect office bearers of these two Parties are arranged by their supporters and sycophants in a way that would guarantee these supreme leaders the Party Chair positions in their respective Parties<sup>912</sup>. Furthermore, the Party Chairs are authorized by their Party councillors to select and or fire at will other office bearers of their Parties. So, these supreme leaders enjoy absolute power and authority in their respective Political Parties and have been exercising dictatorial authority for roughly thirty years now, contrary to the practices elsewhere in the democratic world<sup>913</sup>.

Some politicians of the large Parties (AL and BNP) attempted to reduce the dictatorial power of their supreme Leaders. But such "reformists leaders of both Parties earned so much wrath from their Political masters that they have been either marginalized from the power circuit or expelled from the Party altogether by their Party Chiefs with unqualified support from opportunists and sycophants in their Parties"<sup>914</sup>. In the process, the Party bosses seem to have consolidated their power and strengthened their authoritarian grip more than ever before.

Political Party charter mandates the councillors to elect all leaders, including the Standing Committee/Presidium members, the highest policy making body. Political Parties of Bangladesh however have set examples of the negation of almost all practices of intra-party democracy at the cost of gross disregard to Representation of the People's Order (RPO). The mode of formation of the Central Committee of the Political Parties violates certain provisions of the Representation of the People's Order (RPO). As a registered Political Party under the RPO, the Party councillors are supposed to elect the entire Central Committee. Ironically the voting rights of the councillors can be delegated to the Party Chief.

Following the EC's instructions after the last general election, major Political Parties arranged their Councils, but apparently those were mere eyewash since their councillors did not get the opportunity to elect their Parties' executive members in the real sense<sup>915</sup>.

Freedom of expression of political parties in respective party forums has declined considerably. Party positions on national issues and major policies issues are not decided by

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<sup>911</sup> Muhammad Nurul Huda, "Besides the tenure of office", *The Daily Star*, August 16, 2009.

<sup>912</sup> Shakhawat Liton, "The Scapegoat", *The Daily Star*, July 26, 2013.

<sup>913</sup> Md. Saidur Rahman, *Institutionalization of Democracy in the Political Parties in Bangladesh Does culture matter?* Unpublished Master Thesis, MPPG Program, North South University, 2010.

<sup>914</sup> Matiur Rahman, *Dictatorship in democracy*, Daily Star February 21, 2011.

<sup>915</sup> Md. Saidur Rahman, *op.cit*

relevant party working groups but by the supreme leader and closer advisers. International Crisis Group 2012 report<sup>916</sup> thus observed that:

*With both senior Cabinet and Party figures bent on self-censorship, no one dares to speak up, because they know it will be fatal for their political career.... The Party's wings, including its Student Wing, the Bangladesh Chatra League, has returned to the violence and criminality that have been the traditional hallmarks of political incumbents. A majority of the 135 political killings in 2011 involved AL members killing internal rivals for party nominations, lucrative State contracts or territory.*

Similarly an editorial of a leading national daily referring to the Council and Party elections of a major Political Party observed that:

*We note the stark deficit in intra-party democracy. Not only the mantle of leadership in the top position is assumed uncontested, there is also a broader negation of democratic principle in the way party's crucial bodies are going to be formed. The council has given the sole mandate of choosing other members of the AL central committee to the party president and general secretary.... If a party is not seminally respectful of the rights of councillors to elect their leaders how could then it operate strongly and democratically in relation to the people as well as the opposition<sup>917</sup>.*

During the formation of national committees, Political Parties give priority to the regional identity of the leaders and favour those near to the chiefs or central leaders. According to the table, 55% of the respondents say regionalism has a wide effect in getting posts in the national level committees of the Political Parties, while 25% say it's very wide. Again, 51% of the respondents say that nepotism is widely prevalent in getting posts in the committees<sup>918</sup>.

In one incident the full-bench Appellate Division headed by Chief Justice cancelled the candidature of an MP of the 2008 Parliamentary Election who was earlier declared ineligible by the Election Commission on grounds that he was convicted and sentenced to 13 years in prison in a graft case<sup>919</sup>. The said political leader is still an MP and currently holding an important Cabinet position<sup>920</sup>.

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<sup>916</sup> International Crisis Group Report – *Bangladesh: Back to the Future*, Asia Report N°226 – 13 June 2012.

<sup>917</sup> Editorial, “Awami League's national council outcome - The party should feel strengthened to think along new lines”, *The Daily Star* 31 December 2012.

<sup>918</sup> Md. Saidur Rahman, *op.cit.*

<sup>919</sup> The constitution says a person convicted and sentenced to jail for more than two years cannot stand for a parliamentary election unless five years have passed since he served out the sentence.

<sup>920</sup> The lawmaker's counsel told reported to the media that “the SC order would not affect his client's parliament membership since he took part in the 2008 election on order of the chamber judge of the Appellate Division”. He also said there is no need to file a petition with the Appellate Division to review its decision. For detail see “MK Alamgir to lose JS seat -SC upholds EC's decision to cancel his candidacy for 'graft conviction' in 2008”, *The Daily Star* July 16, 2010.

## **Role Assessment**

### ***Interest Aggregation and Representation***

Unfortunately Political Parties of Bangladesh have failed to serve as a credible mediator between state and society as they collectively lack a popular image, credibility and trust.

The inability of Political Parties of Bangladesh to aggregate and represent public interest can be, to a large extent, attributed to some crucial facts: leadership has a strong tendency to follow family lineage; power and authority are highly centralized; there is a strong culture of intolerance; and there is a lack of committed leadership with a long term vision. As a result, Bangladesh's Political Parties tend to promote the interests of their supreme leaders and the central oligarchy<sup>921</sup>.

It is interesting to note that in almost all cases, Opposition Political Parties generally seem to accept and applaud the reports, criticism and advocacy issues of the civil society bodies. But the framework of the relationship between civil society and Political Parties could be labelled as "love and hate" depending on whether the Party is in power or on the Opposition Bench<sup>922</sup>. Neither the BNP nor AL trusts civil society as such<sup>923</sup>. Opposition Parties sometimes collaborate to provide support to civil society bodies when they find a common ground to attack and embarrass the Government. In the long term such temporary and informal deals of Political Parties with civil society do not add up to any significant contribution to promote the interests of the community.

Some of the reports and publications of civil society bodies like Transparency International Bangladesh, Centre for Policy Dialogue, Sujon (Citizen Coalition for Good Governance) are not always warmly accepted by the Government and even the Political Parties. Political Leaders often find "ill motives" of such publications<sup>924</sup>.

Empirical surveys have validated that the credibility and image of the Political Parties among the general public is low as compared to other stakeholders and actors of politics.<sup>925</sup> Political Parties have been ranked at the bottom of the list of options in an institutional survey on trust<sup>926</sup>. Willingness of Political Parties to adopt and adapt appears to be grossly lacking in Bangladesh politics. Such rigidity has made the Parties less adaptable, which in turn has

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<sup>921</sup> Syed Saad Andaleeb, "Political culture in Bangladesh: perspectives and analysis : selections from the journal of Bangladesh studies", Dhaka Bangladesh Development Initiative – University Press Ltd, 2007.

<sup>922</sup> Salahuddin Aminuzzaman, *The Third Sector in Development: The Role of Civil Society and NGO in Bangladesh*, Seminar paper, Department of Development Studies, University of Dhaka, 2011.

<sup>923</sup> International Crisis Group Report, *Bangladesh: Back to the Future*, Asia Report N°226 – 13 June 2012.

<sup>924</sup> Prime Minister Sheikh Hasina castigated the Transparency International Bangladesh for publishing a survey report on lawmakers and termed it as "ill-motivated".

<sup>925</sup> Department of Public Administration, *Preliminary Finding of Trust Survey on NIS Institutions*, University of Dhaka, 2013.

<sup>926</sup> Salahuddin Aminuzzaman, *Governance and Development Discourse in Bangladesh*, in Juha Vartola(ed) *Towards Good Governance in South Asia*, University of Tampere, Finland, 2010.

contributed towards the lower level of political institutionalization in Bangladesh.<sup>927</sup>

There is an emerging trend of commercialization of politics in Bangladesh. In the current ninth Parliament, 63 percent or 188 MPs out of total 345 including 45 lawmakers elected to reserved seats for women are professional businesspersons<sup>928</sup>. More than half of the elected candidates had indeed declared business as their profession, suggesting that access to financial resources were an important factor in the election. As membership contribution is not given much importance, the Parties have become dependent on donor contributions primarily from the businessmen<sup>929</sup>. This has seen the rise of politician businessman in the political hierarchy of the Parties. These businessmen in turn had enjoyed and continue enjoying state patronage in various forms and receiving protection when they confront legal process. These businessmen often build in such contributions as a business cost in getting the allocation of contracts<sup>930</sup>. Thus major policies of the Government are, in most cases, tilted towards promoting the interest of these business communities.

### ***Anti-Corruption Commitment***

The fight against corruption was given significant prominence in the campaigns of leading Political Parties of Bangladesh during the last Parliamentary Elections. In their Election Manifestos, both Awami League (AL) and Bangladesh Nationalist Party (BNP) promised the eradication the corruption from the country.

One of the five priority issues of the Election manifesto of the ruling party Bangladesh Awami League is effective action against corruption. The Election Manifesto stressed the need for “multi-pronged measures to fight corruption”. It further reiterated that “powerful people will have to submit wealth statement annually. Strict measures will be taken to eliminate bribe, extortion, rent seeking and corruption. Strong measures will be taken against those having unearned and black money, against loan defaulters, tender manipulators, and users of muscle power in every stage of state and society. State or private monopoly will be broken up. Discretionary power of officials will be curtailed. Opportunities for corruption will be eliminated or minimized through widespread computerization and would continue to combat corruption and build a public service founded upon professionalism and merit”<sup>931</sup>.

Similarly, the Bangladesh Nationalist Party noted in their last Election Manifesto their strong commitment to address corruption. The Party reiterated its commitment to eradicate corruption for the country and categorically noted that: the Party will take strong measures to root out the sources of all corruption; State and state control transparency and accountability

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<sup>927</sup> Report on Political Parties of Bangladesh: How Would You Explain the Lack of Institutionalization in Political Parties of Bangladesh? The Lawyers and Jurists, 11 February, 2013, <http://www.lawyersjurists.com/articles-reports-journals/others-articles-reports-journals/report-political-parties-bangladesh-explain-lack-institutionalization-political-parties-bangladesh/>

<sup>928</sup> Shakhawat Liton, “Limping parliament and unmet expectations”, *The Daily Star*, March 17, 2011.

<sup>929</sup> Faiz A. Chowdhury, “Funding of political parties”, *The Daily Star*, October 13, 2013.

<sup>930</sup> Muzaffer Ahmad. “Political Party Finance”. *The Daily Star*, 19th Anniversary Issue, February 23, 2010.

<sup>931</sup> Election Manifesto of Bangladesh Awami League – A Charter of Change, 2008.

will continue and strong measures will be taken against those who will try to destabilise the system; ACC will be given all support and cooperation to perform its role more efficiently; Corruption awareness among the common people and mass campaigning programmes will be initiated; Local government institutions, media and people will be encouraged to join the movement against corruption, and after election and within 30 of oath of office, all elected representatives will have to provide their wealth statements<sup>932</sup>.

A careful review of the two documents shows some broad similarities and party positions on corruption. Following common themes are notable: emphasis on freeing the country from the curse of corruption and its implications. While importance of the goals in the national agenda is indisputable, the hard part clearly lies in actual realisation of these goals<sup>933</sup>. Available evidence on corruption does not show much promise as of today. Bangladesh has unfortunately witnessed the allegation of corruption in a large project, proven corruption of two State owned Banks<sup>934</sup> and massive corruption of the direct and indirect supporters and sympathizers of the ruling regime<sup>935</sup>.

Another right-wing party Jamaat -e -Islami (JI) has also made their election pledge on corruption. The JI emphasised the institutional strengthening of the Anti-Corruption Commission and assured all necessary cooperation to make it work independently to eradicate corruption, initiating a social movement against corruption; tough actions to be taken against corrupt officials and employees; new laws to be promulgated against the corrupt people who hold responsible positions; and measures to ensure the application of those laws<sup>936</sup>.

### 3.3.2 CIVIL SOCIETY

Civil society signifies organisations and institutions outside of the family, the state and the business sector, formed by individual or collective action to advance shared goals and objectives. Bangladesh has a reasonably vibrant civil society that comprises both organised and autonomous groups. The civil society is known for its significant contributions to the establishment of a sound democratic system by exerting pressure on actors in governance and political parties to conform to democratic norms and practice and more importantly, ethics of fair play. Financial sustainability has been a persistent problem for CSOs as most organisations lack explicit strategies and directions for achieving financial independence and as such, are dependent on external grants for survival and continuity. The combination of 'flexibility' and 'control' in the laws guiding the formation and registration of CSOs creates opportunities for the government to control the activities of the CSOs. Transparency and accountability measures in law and practice are inadequate and inconsistent.

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<sup>932</sup> Election Manifesto of Bangladesh Nationalist Party 2008.

<sup>933</sup> Zaidi Sattar, Election manifestos of AL and BNP, The Financial Express, December 16, 2008.

<sup>934</sup> State-owned banks risk losing global business, Dhaka Tribune, September 2013.

<sup>935</sup> "Adviser's shadow in Hallmark scam", Daily Star, August 20, 2012.

<sup>936</sup> Election manifesto of Jamaat-e-Islami Bangladesh, [http://www.jamaat-e-islami.org/en/articlepdf/110\\_manifesto%20in%20english.pdf](http://www.jamaat-e-islami.org/en/articlepdf/110_manifesto%20in%20english.pdf)

## **Structure and Organisation**

The various components of civil society include NGOs (non-governmental organisations), CSOs (civil society organisations)<sup>937</sup> and CBOs (community-based organisations), research institutions and think-tanks. Varyingly referred to as the voluntary sector, the non-profit sector or the third sector, the civil society has over the years experienced vigorous growth and has become an important powerhouse engaging in activities that range from basic service delivery (health care, informal education, etc.), to democratic governance.

## **Capacity**

### ***Financial, Human and Infrastructural Resources***

Every citizen has the right to form associations or unions under Article 38 of the Constitution of Bangladesh, subject to restrictions imposed by law in the interests of morality or public order. However, associations, the objects of which are inconsistent with the Constitution or formed for purposes of (i) destroying the religious, social and communal harmony amongst citizens, or (ii) discriminating against citizens on grounds of religion, race, caste, sex, place of birth or language or (iii) organising terrorist acts or militant activities against the State, citizens or any other country, are prohibited.

In addition to the constitutional provisions, there are two distinct sets of laws in Bangladesh that pertain to CSOs – one sets out the parameters whereby CSOs may acquire legal status and incur legal obligations<sup>938</sup> and the other spells out the regulatory measures under which CSOs must operate. As such, the legal regime relevant to CSOs involves on the one hand, laws for incorporation, which set forth standards under which a CSO may be legally incorporated and on the other, laws for regulation, which essentially control its activities<sup>939</sup>.

The most frequently used law is *The Societies Registration Act 1860* as it permits organisations to engage in a broad spectrum of activities that range from the promotion of science, art and culture to social development. There are also ‘legislated’ religious laws pertaining to the registration and activities of philanthropic and charitable institutions that operate under religious frameworks, e.g., *The Waqfs Ordinance (1962)*. CSOs engaged in social welfare and charitable activities may be formed under *The Charitable Endowments Act (1890)* which enables endowments to be made for the purpose of advancing objects of charity and public good with the income that is generated from the donation. Again, cooperatives may be formed under *The Cooperative Societies Ordinance (1984)* with the objective of producing and/or disposing goods as collective property and performing services for the cooperative society members.

While it is not mandatory for all organisations to be registered, it is nevertheless a common practice to seek registration to become a legal entity.<sup>940</sup> Organisations that are not formally

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<sup>937</sup> Harry Blair, *op.cit.*, 2002, pp.192-193.

<sup>938</sup> For example, The Societies Registration Act (1860), The Trusts Act (1882), The Voluntary Social Welfare Agencies (Registration and Control) Ordinance (1961) and The Companies Act (1994).

<sup>939</sup> For example, The Foreign Donations (Voluntary Activities) Regulation Ordinance 1978 (as amended by Ordinance XXXII of 1982) and The Foreign Contributions (Regulation) Ordinance 1982.

<sup>940</sup> Muzaffer Ahmad and Roushan Jahan, *Investing in Ourselves: Giving and Fund Raising in Asia*, Asian Development Bank et al., 2002, p.11. See also Sumaiya Khair and Saira Rahman Khan, “Philanthropy

registered operate within the framework of their own constitutions. This happens more in the case of smaller organisations. However, registration is mandatory when organisations receive foreign donations for their work or if they seek tax-exempt status.

There are specific laws that regulate and control the flow of foreign funds. According to *The Foreign Donations (Voluntary Activities) Regulation Ordinance 1978* (as amended by Ordinance XXXII of 1982), no organisation, irrespective of its legal status, can receive funds from abroad unless it is registered with the NGO Affairs Bureau and has prior permission from the Bureau. Except where they are formally exempt, every organisation receiving foreign funds is required submit a declaration showing the amount of funds received and the source thereof.<sup>941</sup> If the Government is not satisfied with the declaration or believes that a false declaration has been submitted, it may cancel the registration of such organisation and stop its activities, after giving it an opportunity of being heard. If any organisation receives or operates foreign funds in contravention of this law, it shall be punishable with fine, or imprisonment or both.<sup>942</sup>

*The Foreign Contributions (Regulation) Ordinance 1982* redefined the meaning of foreign donation and expanded the scope of the 1978 Ordinance discussed above to cover all kinds of contributions from abroad. Greater restrictions were imposed on the voluntary sector by virtue of which organisations required prior approval from the government in order to receive foreign grants of any kind. Similarly, no government, organisation or citizen of a foreign state can make any donation, grant or assistance, whether in cash or in kind, including a ticket for journey abroad to any citizen or organisation in Bangladesh without prior permission of the Government.<sup>943</sup> Whoever contravenes these provisions shall be punishable with imprisonment or with fine or with both.<sup>944</sup>

The rules, procedures and Executive Orders regarding capital formation and resource mobilisation are transparent and pragmatic. Many organisations form capital and mobilise resources in the light of these laws and regulations. However, they are also very simple and easily abused. There have been complaints that the process is often so time consuming that it eats into the time reserved for implementation of the activities. Besides, there are complaints about bribe seeking and corruption in the NGO Affairs Bureau for sending the application to the Ministry of Home Affairs or to give a seal of approval to the project and allow acceptance of foreign funds.<sup>945</sup>

Taxes, custom duties, value-added tax and other similar charges are regulated by different laws.<sup>946</sup> The National Board of Revenue determines the status for tax exemption, as per the provisions of *The Income Tax Ordinance of 1984*. Any income derived from property held under trust or other legal obligation wholly for religious or charitable purposes, is exempt

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and Law in Bangladesh”, in Mark Sidel and Iftekhar Zaman (eds.), *Philanthropy and Law in South Asia*, APPC, The Philippines, 2004, pp. 49-113, at p.65.

<sup>941</sup> Section 3 of The Foreign Donations (Voluntary Activities) Regulation Ordinance, 1978.

<sup>942</sup> Section 6, *ibid.*

<sup>943</sup> Section 4 of The Foreign Contributions (Regulation) Ordinance, 1982.

<sup>944</sup> Section 5, *ibid.*

<sup>945</sup> Interview with Syeda Rizwana Hasan, Chief Executive, Bangladesh Environmental Lawyers Association (BELA). Also see, Sumaiya Khair and Saira Rahman Khan, 2004, *op.cit.*, p. 88.

<sup>946</sup> The Income Tax Ordinance, 1984, The Customs Act, 1969 and The Value Added Tax Act, 1996.

from tax payment.<sup>947</sup> This advantage is also available to philanthropic organisations that include co-operatives, banks or small industries and micro-credit schemes.<sup>948</sup> However, existing ambiguities in the tax law lead to confusion amongst NGOs regarding their tax status. While on the one hand, the income tax law stipulates that income used for “charitable” purposes is exempt from taxes (which if read in the context of many NGOs would mean that they are not required to pay tax on income from any source, including income from commercial activities), on the other hand, it makes NGOs subject to tax on their income.<sup>949</sup> Again, micro-credit surpluses are exempt as long as the NGO is registered with the NGO Affairs Bureau.<sup>950</sup>

A non-profit organisation need not re-qualify for its tax exemption due to passage of time or other events.<sup>951</sup> However, if the Government decides to withdraw the benefit, the tax exemption may be revoked. In such a case the organisation may institute a writ petition against the Government in the High Court Division of the Supreme Court seeking the reasons for the revocation of its status and praying for restitution or remedy.<sup>952</sup> It may also appeal to the Tax Tribunal. Similarly, if the National Board of Revenue or any other government organisation abuses its discretionary powers and denies a tax exemption, a writ petition may be filed against the said authority in the High Court Division of the Supreme Court.<sup>953</sup>

Personal income tax of the NGO employees is usually handled institutionally. As a matter of practice, many NGOs deduct taxes from employees’ salaries at the source and submit the payment to the Tax Department on their behalf.

The diverse forms of civil society are shaped by local needs and government space for action. The legal regime in Bangladesh offers a wide array of laws for the formation of CSOs. Registration of CSOs is mandatory in order for them to acquire a legal status. Registration is also required if CSOs receive foreign donations or if they seek tax-exempt status. Although the procedures for registration and incorporation are fairly straightforward and easily available, the process is beleaguered by ambiguities in the law, procedural complexities and tedious formalities. This creates opportunities for unscrupulous registration officials to manipulate registration seekers for monetary gain.

The social scenario in Bangladesh has traditionally been characterised by voluntarism and acts for collective good. However, changing social structures gradually induced shifts in voluntarism whereby people or groups undertaking philanthropic initiatives began to incorporate professionalism and expertise by invoking formal organisational and management structures in an attempt to make their work more effective. Therefore, what started out as a purely humanitarian concept, gradually evolved into concrete mechanisms for providing public service.<sup>954</sup> To this end, societies, trusts, clubs, associations and foundations were established with the primary objective of rendering social services. Following unprecedented expansion in the 1990s, some of these entities now employ thousands of staff and handle

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<sup>947</sup> Sections 45, 46 and 47, The Income Tax Manual.

<sup>948</sup> Sumaiya Khair and Saira Rahman Khan, 2004, *op.cit.*, p.82.

<sup>949</sup> The Income Tax Ordinance, 1984, 6<sup>th</sup> Schedule, Part A, Clause 1A.

<sup>950</sup> 6<sup>th</sup> Schedule, The Finance Act 2002.

<sup>951</sup> *Ibid.*

<sup>952</sup> *Ibid.*

<sup>953</sup> *Ibid.*

<sup>954</sup> Sumaiya Khair and Saira Rahman Khan, 2004, *op.cit.*, p. 51.

multimillion-dollar budgets and are nearly comparable to government departments in terms of their budgets, reach and complexity.<sup>955</sup>

Indeed, many organisations do not operate to generate a surplus and only provide service to members at a nominal price; consequently, they rely varyingly on the government or foreign donors or generation of surplus by their activities for financial sustainability.<sup>956</sup> Competition for government funds is stiff, but public relations, visibility, knocking on the right door at the right moment are important factors for ensuring access to those funds. Indeed, the success in fund-raising largely depends on the resourcefulness, competence and connections of the organisational head. It is believed that dependence on donor funding compels CSOs to design projects more in line with donor demands, rather than local priorities. Many NGOs embark on projects in which they do not have the relevant expertise, but since donor money is available, programmes are undertaken anyway, notwithstanding that many end in failure.<sup>957</sup>

Organisations under prudent management accumulate capital through receipt of funds or income generating incidental activities.<sup>958</sup> People, who can afford it, often donate money to orphanages, mosques, charities and schools in rural areas and in their villages. Most mosques and some orphanages in Bangladesh have donation boxes. Concerts and other fund-raising events are also held around the country, the proceeds of which go to charities and to help socially disadvantaged groups.<sup>959</sup> While some contributions are made by Bangladeshi expatriates and the private sector as part of social responsibility activities, corporate giving to CSOs is still very limited. A CSO may raise funds from its own sources for example, micro-credit, income generation activities (as in growing vegetables, poultry and fish cultivation, handicrafts, etc.), and membership contributions. While it is relatively easier to mobilise funds for service delivery activities, the process is quite problematic for rights-based organisations.<sup>960</sup> Given their engagement in contentious issues to which governments are traditionally averse, rights-based organisations have fewer options to shop for funding.<sup>961</sup>

Some of the larger organisations like BRAC and Grameen Bank, have gained such recognition and stature over the years that they can operate autonomously but at the same time, have donors coming to them. BRAC has a for-profit division that finances a considerable part of its local operations and has important global connections; Grameen Bank, though narrower in scope of its programme than BRAC, has experienced even more dramatic growth in terms of membership.<sup>962</sup> The dramatic growth of a relatively small group of organisations vis-à-vis a large number of smaller actors essentially demonstrates a bias of northern donors towards large organisations.<sup>963</sup>

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<sup>955</sup> The World Bank, "Economics and Governance of Nongovernmental Organizations in Bangladesh", *Bangladesh Development Series Paper No. 11*, Dhaka, 2006, p.2.

<sup>956</sup> Muzaffer Ahmad and Roushan Jahan, 2002, *op.cit.*, p.3.

<sup>957</sup> Iftekharuzzaman, "NGO Governance in Bangladesh: Challenges and Outlook", paper presented at the conference on *Human Rights and Governance: Local and Global Perspectives*, Dhaka, 16-18 January, 2005, p.15.

<sup>958</sup> *Ibid.*, p. 12.

<sup>959</sup> Sumaiya Khair and Saira Rahman Khan, 2004, *op.cit.*, p. 87.

<sup>960</sup> Interview with Syeda Rizwana Hasan, Chief Executive, BELA.

<sup>961</sup> *Ibid.*

<sup>962</sup> Jerry Buckland, "Non-Governmental Organisations and Civil Society in Bangladesh: Risks and Opportunities of Globalisation", in Matiur Rahman (ed.), *Globalisation, Environmental Crisis and Social Change in Bangladesh*, UPL, Dhaka, 2003, pp.141-162, at p.154.

<sup>963</sup> *Ibid.*

The diversification of NGO work into profit-making activities, though aimed at reducing donor dependency, was deemed by many, in particular the private sector, as contradicting NGO mandate of serving the poor. For example, the generation of large surpluses by some organisations, like BRAC, Grameen Bank, ASA, and Proshika, rapidly came under scrutiny. Questions have been raised about subsidies to the equity base of NGO commercial activity, and about whether the tax-exempt status of NGOs provides an implicit subsidy to their commercial operations.<sup>964</sup>

Demands of a fast-track lifestyle, consumerism, economic downturns and an overall change in people's psyche, have eroded the spirit of voluntarism. Nonetheless, voluntarism has not disappeared altogether from within the CSOs. A 2002 study of 870 voluntary organisations (56.3 percent were from the rural and peri-urban areas, 20.7 percent from district towns, and 23 percent from metropolitan areas) reveal that 39 percent of them are run by volunteers and 61 percent have permanent employees.<sup>965</sup> About 17.5 percent of the organisations benefit from the voluntary work of 1-5 people while 29.7 percent of them benefit from the voluntary service of 6-15 persons. About 67.7 percent of the volunteers contribute 1-3 hours of work per day on an average, with variations over the week or months. It is found that 59.8 percent of voluntary work is spent on administration, while 72.3 percent of such work is devoted to teaching, training, child care, treatment of patients, cultural activities and sports.<sup>966</sup> Nonetheless, the altruism that is generally associated with people working in the non-profit sector does seem to be on the wane. Research on women working in NGO rural branches and government credit programs explicitly rejects the notion.<sup>967</sup> Fieldworkers perceived their work a "just a job," and reported that altruism and progressive motivations played a very small role in decisions to work in rural development. First-generation NGO workers are more likely than their successors to have been inspired by commitment to altruistic or progressive goals. Unemployment rates among secondary school and university graduates—the groups from whom the majority of NGO staff are drawn—are such that the motivations for entering NGO employment may very well reflect the lack of alternatives, instead of or in addition to altruism.

According to a TIB study on NGO governance,<sup>968</sup> the recruitment of staff/consultants depends on the unilateral choice of the chief executive. This often results in the recruitment of employees on the basis of nepotism and personal relationship with the chief executive. Altogether new positions are created with specific individuals in mind, because they are in the good books of the chief executive. There are also examples of financial transactions during the recruitment process. The selection process often lacks transparency to the extent that the Selection Board convenes simply to vet a pre-selected candidate. The recruitment process is often influenced by recommendations from the donors, politicians, government officials, and other influential persons. This leads to the recruitment of, amongst others, retired government functionaries who have no experience or knowledge of NGO work. Most NGOs have a leader-centric culture that is not conducive to fluid leadership transitions; this

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<sup>964</sup> The World Bank, 2006, *op.cit.*, p.6.

<sup>965</sup> Muzaffer Ahmad and Roushan Jahan, 2002, *op.cit.*, p.23.

<sup>966</sup> *Ibid.*, 24.

<sup>967</sup> The World Bank, 2006, *op.cit.*, pp.79-80.

<sup>968</sup> Transparency International Bangladesh (TIB), *Problems of Governance in the NGO Sector: The Way Out*, Executive Summary, 2007, p.6.

discourages innovation, and limits incentives for career advancement beyond operations management.<sup>969</sup>

CSOs are often criticised for lacking in efficiency. While many NGOs run very expensive operations their planning, resource mobilisation and record keeping are inadequate. There is a general dearth in skilled staff in NGOs that is largely the result of non-transparent recruitment policies that are based more on personal preferences rather than qualifications. Training programs vary significantly across organisations in terms of delivery, scope, and emphasis. Certain associations have their own training centers, while others emphasise less on formal training and more on hands-on learning. Apex bodies such as Palli Karma Shahayak Foundation (PKSF) also offer a range of training courses to various levels of NGO staff. A significant large part of the training provided by NGOs and apex bodies focuses on training of trainers, who are expected to disseminate the knowledge to staff and clients. Training courses are also available for the senior and mid-level management.<sup>970</sup>

Indeed, pay structures and career development opportunities are critical factors in attracting and retaining skilled professionals to this sector. This is primarily why this sector often witnesses a high turnover of staff. This is particularly relevant to project-based operations when employees, recruited for a particular project, are compelled to leave on the expiry of the project. Employees recruited simply to meet service delivery goals of the organisation do not perceive themselves members of a constituency or representatives of the interests of the beneficiaries of the organisation.<sup>971</sup> Moreover, the absence of adequate physical infrastructure to accommodate eligible staff from outside and impart skills training to in-house employees compel organisations to rely on local staff cum volunteers who may be dedicated but are not sufficiently skilled. This seriously compromises the management of the organisations and the implementation of their activities. However, there is no doubt that CSOs have their own pool of dedicated and committed personnel who are sincere in their efforts to help socially disadvantaged people.

Financial sustainability has been a persistent problem for CSOs as most of the organisations lack explicit strategies and directions for achieving financial independence. With the exception of a few large organisations, CSOs are predominantly dependent on external grants for their survival and continuity. It has been contended that CSOs in Bangladesh are weak in the articulation of a coherent vision with social appeal; the demonstration of capacity and quality management for efficient implementation of its work; and ability to enlist support—elements that are crucial for attaining sustainability.<sup>972</sup> With the exception of a few reputed organisations, CSOs are managed by inadequately skilled personnel most of whom learn the ropes on the job. Diversification by big organisations into profit making activities and the generation of huge surpluses have often raised doubts about the non-profit nature of these organisations.

### ***Independence and Functional Autonomy***

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<sup>969</sup> Institute of Governance Studies, (IGS), “NGO Governance in Bangladesh: A View from Within”, *The State of Governance in Bangladesh (2007)*, BRAC University, Dhaka, 2008, pp. 109-127, at p.116.

<sup>970</sup> The World Bank, 2006, *op.cit.*, p.80.

<sup>971</sup> Shelley Feldman, “NGOs and Civil Society: (Un)stated Contradictions”, in Rounak Jahan (ed.), *Bangladesh: Promise and Performance*, UPL, Dhaka, 2002, pp.219-243, at p. 239.

<sup>972</sup> Muzaffer Ahmad and Roushan Jahan, 2002, *op.cit.*, p. 44.

The legal framework in Bangladesh provides CSOs with a choice and flexibility in terms of choosing their preferred forms of incorporation and types of activities. However, this flexibility has its counterpart in control over the purposes for which a CSO is formed and registered. The state exercises control over CSO activities in two ways: a broad statement of the purposes and objectives for which a non-profit organisation may not be formed and a strong assertion of discretionary power in interpreting that standard.<sup>973</sup> For example, while the laws generally promote ‘charitable purposes’ or ‘social welfare’, CSOs often encounter problems in convincing the designated government officials how objectives like ‘human rights education and advocacy’, ‘empowerment of women and disadvantaged groups’ and ‘mobilising against corruption’ can actually be charitable and achieve social welfare. Although laws do not contain permissible grounds for state interference, security organisations of the government, namely the Special Branch and the National Security Intelligence, undertake investigations into CSO purposes and activities in order to ascertain whether they are “anti-state” or “anti-social”.<sup>974</sup> There is nothing in the laws to indicate what constitutes such activities.

State control of CSO operations is also manifest in the provisions on termination, dissolution or management take-over prescribed by the laws. General grounds for dissolution of a CSO may range from improper use of funds, activities outside of the objectives, inability to settle debts to the violation of terms and conditions.<sup>975</sup> A court intervention is required if such dissolution is challenged.<sup>976</sup> While the practice of reviewing government decision to terminate or dissolve an organisation is virtually non-existent, interested parties are entitled to ask the government to justify its action.<sup>977</sup> Remaining assets of an organisation that has been terminated are taken over by the government but there is no evidence of how they are used or disbursed.<sup>978</sup>

With the expansion of CSOs and flow of foreign funds, successive governments became increasingly inclined towards ‘regulation’ of the non-profit sector rather than ‘facilitation’.<sup>979</sup> This is evident from government trends of introducing, at various times, laws that enable it to tighten its grip on CSOs. As a result, the environment in which these organisations operate is not fully conducive to realising the full potential of the sector.<sup>980</sup>

The law does not require government representation in CSO management. With the exception of *The Waqf Ordinance 1962* under which the Administrator of Waqfs is appointed by the government, no other law stipulates state membership on CSO Boards. Although the Constitution guarantees citizens the right to privacy in terms of correspondence and other means of communication,<sup>981</sup> whether this extends to CSOs is not clear. Even if this provision were to apply to CSOs by broad interpretation, the right to privacy as envisaged in the

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<sup>973</sup> Mark Sidel and Iftekhar Zaman, “Philanthropy and Law in South Asia: Key Themes and Key Choices” in Mark Sidel and Iftekhar Zaman (eds.), *Philanthropy and Law in South Asia*, AAPC, 2004, pp. 15-47, at p. 28.

<sup>974</sup> Sumaiya Khair and Saira Rahman Khan, 2004, *op.cit.*, p.66.

<sup>975</sup> *Ibid.* p.79.

<sup>976</sup> *Ibid.*

<sup>977</sup> *Ibid.*

<sup>978</sup> *Ibid.*

<sup>979</sup> Iftekharuzzaman, 2005, *op.cit.*, p.11.

<sup>980</sup> Interview with Syeda Rizwana Hasan, Chief Executive, BELA.

<sup>981</sup> Article 43(b), The Constitution of Bangladesh.

Constitution is subject to “any reasonable restrictions imposed by law in the interests of the security of the State, public order, public morality or public health”.

The combination of ‘flexibility’ and ‘control’ in the laws guiding the formation and registration of CSOs creates opportunities for the government to control the activities of the CSOs. Lack of clarity in the legal language creates confusion and arms regulatory authorities with wide discretionary powers to interpret and execute laws at will, thereby hindering the independence of CSOs in their operations.

Government manipulation of CSO activities begins from the moment the latter embark on the registration process. For example, NGOs seeking registration need clearance from the Ministry of Home Affairs, which directs the national security authority to examine the applications for registration and conduct necessary investigation of the organisations before declaring them fit for registration. Applications are assessed on the basis of whether the organisations or particular individuals seeking registration are in any way involved in anti-state, anti-social or terrorist activities. The absence of concrete indicators as to what constitutes these various offences lends excessive discretionary power to the concerned authorities who harass and manipulate registration seekers in different ways. It is common for investigative bodies to willfully withhold reports and sit on the files until some payment, in cash or kind, is proffered. While resourceful organisations, with the right connections in the government or with politicians, are able to extricate themselves from these situations, the less powerful ones are compelled to pay bribes or risk facing inordinate delays in the registration process.<sup>982</sup>

Although the regulatory frameworks are meant to facilitate CSO operations, in effect, they impede financial disbursements in ways that not only hinder activities of CSOs but also restrict their scope of work.<sup>983</sup> For example, an organisation receiving foreign funds is compelled to go through successive stages of approval. The first stage involves the seeking of approval for registration so as to be entitled to receive foreign funds, the second demands prior permission for every project undertaken with foreign funds and the third requires permission in order to disburse the funds.<sup>984</sup> Therefore, the existing legal context is not conducive to quick, hassle-free incorporation, registration and operation of CSOs.

The establishment of the National Social Commission in April 2009 was seen by many as a political move by the government to control both NGOs and the flow of foreign funds for NGO programs. The Commission, composed of different government agencies, has been empowered to cancel NGO registration.<sup>985</sup> As of March 15, 2011, the Commission has cancelled the registration of 550 NGOs for alleged corruption, anti-government activities, patronising militant organisations, and misuse of foreign funds.<sup>986</sup>

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<sup>982</sup> Sumaiya Khair and Saira Rahman Khan, 2004, *op.cit.*, p.58.

<sup>983</sup> *Ibid.*, p.59.

<sup>984</sup> *Ibid.*

<sup>985</sup> William Gomes, “Bangladesh NGOs under bureaucratic dictatorship”, UPI Asia.com, April 10, 2009, [http://www.upiasia.com/Blogosphere/williamgomes/20090408/bangladesh\\_ngos\\_under\\_bureaucratic\\_dictatorship/](http://www.upiasia.com/Blogosphere/williamgomes/20090408/bangladesh_ngos_under_bureaucratic_dictatorship/)

<sup>986</sup> Syed Shukur Ali, “Reg of 550 NGOs Cancelled: Most involved in irregularities, funding militancy”, *News Today*, March 21, 2011, [http://www.newstoday.com.bd/index.php?option=details&news\\_id=23086&date=2011-03-21](http://www.newstoday.com.bd/index.php?option=details&news_id=23086&date=2011-03-21).

While income generating and development organisations are relatively independent in their work, it is common for organisations that work with human rights, legal aid and governance issues to face government censure, reprisals and veiled threats.<sup>987</sup> Human rights defenders work in very difficult circumstances. Examples of torture and harassment of rights advocates/activists effectively demonstrate government apathy to organisations working to catalogue human rights violation and promote and protect human rights.<sup>988</sup> The government is also intolerant of dissenting voices and activities that question the accountability and integrity of government functionaries and the soundness of government decisions.<sup>989</sup> For example, TIB's reports on various government departments have been subjected to aggressive censure by the government on various occasions to the extent when parliamentarians from the ruling party demanded the closure of TIB.<sup>990</sup>

Notwithstanding, support by successive governments to NGO activities in Bangladesh is often underplayed. For example, a 2006 World Bank study draws on scholars who find that 'in comparative and certainly regional perspective, public policy toward NGOs in Bangladesh has been unusually successful in balancing the need for official oversight with the operational autonomy necessary for NGOs to operate and innovate'.<sup>991</sup> This has been attributed to the relative simplicity of the regulatory framework which consists of a single layer of the government that in effect regulates NGOs, in contrast to India or Pakistan, where NGOs have to negotiate multiple layers of government control under the federal arrangement.<sup>992</sup>

In Bangladesh, CSOs also face difficulties from other vested quarters. Reform oriented activities, e.g. non-formal education, women's emancipation, legal empowerment, etc., have often come under attack by extremist religious groups. This has largely been motivated by conservative forces in their desire preserve the patriarchal and feudal stranglehold on social progress. Fortunately, the progressive thinkers in society have persistently outweighed the conservative groups, evident from the fact that the latter were able to secure only nominal popular vote since independence of the country in 1971.<sup>993</sup>

The independence of CSOs in terms of its activities is curbed by different quarters including the government, political parties, and religious extremist groups. Such attempts are manifest in actions that range from the introduction of restrictive legal or administrative measures, control of CSO resources, veiled threats to harassment and physical torture of CSO personnel.

## **Governance**

### ***Transparency, Accountability and Integrity: Legal Framework and Practice on the Ground***

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<sup>987</sup> Interviews with Syeda Rizwana Hasan, Chief Executive, BELA and Dr. Debapriya Bhattacharya, Distinguished Fellow, Centre for Policy Dialogue. Also see, Odhikar and ALRC, 2012, *op.cit.*, pp.7-8.

<sup>988</sup> Odhikar and ALRC, 2012, *op.cit.*, p.8.

<sup>989</sup> Interviews with Syeda Rizwana Hasan, Chief Executive, BELA and Professor Badiul Alam Majumdar, Secretary, SHUJAN (Citizens for Good Governance).

<sup>990</sup> M. Hafizuddin Khan, "Corruption: Situation and remedies", *The Daily Star*, 18 March, 2013.

<sup>991</sup> The World Bank 2006, *op.cit.*, p.4.

<sup>992</sup> *Ibid.*

<sup>993</sup> Tasneem Siddiqui, "NGOs in Bangladesh: Challenges on the Threshold of the New Millennium", in A.M. Chowdhury and Fakhrul Alam (eds.), *Bangladesh on the Threshold of the Twenty-First Century*, Asiatic Society of Bangladesh, Dhaka, 2002, pp.411-432, at p. 426.

It is not mandatory for CSOs to proactively make public their activities, decisions and accounts. Information can be sought from CSOs under *The Right to Information Act 2009*. This law entitles a citizen to seek information in relation to CSOs' constitution, structure and official activities. Unless there is a complaint or a dispute or a clause in any specific law to that effect, there is no general provision for government inspection. However, under *The Foreign Donations (Voluntary Activities) Regulation Ordinance 1978*, the Government may at any time, for reasons to be recorded in writing, inspect the books of accounts and other documents of non-profit organisations receiving foreign funds. There is no general requirement for organisations with tax-exempt status to file annual tax returns. However, at the end of each project year, auditing is necessary for organisations that receive foreign funds as per *The Foreign Donations (Voluntary Activities) Regulation Ordinance 1978*.

Transparency measures are generally available in the laws regulating the non-profit sector. However, in practice non-disclosure of finance and human resource management creates opportunities for monopoly by vested interest groups and irregularities in the non-profit sector.

Many non-profit organisations publish annual reports disclosing their activities during a particular year, the sources of their funds, brief financial statements and so on. These reports are, where funds are available, published in the style of glossy magazines and are usually distributed free of cost. However, salaries, benefits and other internal matters are not revealed nor are organisations legally bound to do so. However, many of the leading NGOs have well-developed reporting procedures that have received global recognition. Besides, requirements of external actors, like the NGOAB, donors, Bangladesh Bank and the Palli Karma Shahayak Foundation (PKSF) compel organisations to practice transparency in their operations, including monitoring procedures for internal accountability.<sup>994</sup>

Many NGOs are reluctant to disclose information particularly those relating to finance and human resource management. A culture of secrecy prevents public access to consolidated information on NGO governance. Except for the big, reputed organisations, information is not updated on the websites of the CSOs. There is also lack of transparency in decision-making processes of CSOs. Decisions are not arrived at meetings but are commonly taken unilaterally by the chief executive and as such, the general staff are not aware of the project proposals, budget, audit report, evaluation report, general fund, and accounts of the organisation. Consequently, they do not have the scope of voicing their opinions. Service recipients are not informed about the policies. Sadly, there is no tangible initiative on the part of the donors to persuade NGOs to disclose information.<sup>995</sup>

The practice of disclosure of sources of funds, staff recruitment, benefits and internal governance is largely absent except in the case of reputed organisations which have robust reporting mechanisms. Transparency in decision-making processes is also lacking.

The legislative framework relating to internal governance of NGOs, including accounting, disclosure, and transparency, is unclear. There is no uniformity in the laws regarding accounting requirements. For example, *The Societies Registration Act 1860* does not require the submission of annual accounts or audits; *The Trust Act 1882* requires clear accounts to be maintained, but there are no requirements for external audit; *The Companies Act 1994*

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<sup>994</sup> IGS, 2008, *op.cit.*, p.118.

<sup>995</sup> TIB, 2007, *op.cit.*, p.7.

requires meticulous book-keeping, audit and audit reports. Similarly, the administration of *waqfs* and other religious trusts requires the submission of audited accounts. Many of the laws that do require the submission of audit reports do not spell out clear guidelines on the method of accounting; others are not compatible with international standards.<sup>996</sup>

The responsibility for management and governance is generally laid out in the relevant laws under which an organisation is set up. The structure for internal governance is usually given in the constitution or memoranda or trust deed.<sup>997</sup> The basic responsibility of the management is to administer the funds and properties of the organisation and manage its affairs in the manner consistent with the aims and objectives of the organisation.<sup>998</sup> In discharging their responsibilities the management is obliged to act in good faith and with honesty and integrity.<sup>999</sup> The interests of the organisation must be of paramount consideration. The functionaries must not engage in activities that would conflict with the interests of the organisation. In the event of transgression of these obligations CSO officials are liable to punitive measures mandated by law.<sup>1000</sup>

The law requires organisations registered with the NGO Affairs Bureau (NGOAB) to provide it with annual reports and audits of the projects they are implementing. Unless these reporting requirements are met and the reports are accepted and approved by the NGOAB, subsequent applications for additional fund clearance for the same project will not be released. Accounts are to be maintained following NGOAB guidelines and books of accounts must be audited by a chartered accountant selected from a list of audit firms. This list is not particularly problematic as a good number of registered auditing firms are authorised by the NGOAB to conduct audits of NGOs.<sup>1001</sup>

The legal provisions on accountability of CSOs are slack, devoid of uniformity and inadequately detailed. Likewise, the mechanisms spelt out by the laws for governance of CSOs are inconsistent as statutory governance requirements are different for each form of non-profit organisation, whether a society, or a trust or a company. The law does not require self-regulation as such although it is an important aspect of CSO management and governance and is crucial for ensuring accountability.

Given that CSOs have multiple stakeholders, measuring accountability of CSOs is a complex matter as it involves a myriad of actors at different levels: the government, donors, partners, beneficiaries, boards, and staff. Broadly however, CSO governance is characterised by i) accountability to the people, i.e., the beneficiaries that NGOs serve, ii) accountability to the government in terms of compliance with laws, rules and regulations and iii) accountability to funding agencies whose money NGOs utilise to achieve their targets.<sup>1002</sup> The locuses of external accountability require that non-profit organisations have a responsibility to demonstrate to the State that they have not transgressed any laws. To the extent that NGOs seek special fiscal or financial benefits/privileges they are accountable to the government,

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<sup>996</sup> The World Bank, 2006, *op.cit.*, p. 63. See also, Sumaiya Khair and Saira Rahman Khan, 2004, *op.cit.*, pp.97-100.

<sup>997</sup> Sumaiya Khair and Saira Rahman Khan, 2004, *ibid.*, p. 95.

<sup>998</sup> *Ibid.*

<sup>999</sup> *Ibid.*

<sup>1000</sup> *Ibid.*

<sup>1001</sup> The World Bank, 2006, *op.cit.*, p.62.

<sup>1002</sup> Sk. Tawfique M. Haque, "NGO Governance in Bangladesh: Quest for Accountability and Transparency", available at [www.istr.org/resource/resmgr/Istanbul.../ISTR2010\\_0266.pdf](http://www.istr.org/resource/resmgr/Istanbul.../ISTR2010_0266.pdf)

which assumes an obligation to monitor their activities. Since every NGO requires funds to conduct its operations, it becomes incumbent on its part to explain how the funds were used/disbursed.<sup>1003</sup> The accountability of CSOs is generally expressed through an annual report and an audited account presented to the general body of members and submitted to the registering authority, designated Government agencies and donors respectively.<sup>1004</sup> It has been contended that because of donor-dependence, NGOs feel accountable only to donors, rather than to the government or members of the public.<sup>1005</sup>

While NGOs normally maintain their accountability to the government and the donors for fear of sanction and discontinuity of funds in the event of non-compliance, it is their accountability to the people, or rather, the lack of it, that raises serious concern. Although participation by beneficiaries in decision-making processes of NGOs is deemed crucial for transparency of their operations and local ownership by the people, in reality local communities have neither the skill nor the space to question NGO activities/priorities. Indeed, in many instances, such participation essentially means the tacit agreement by local communities to play along with whatever the NGOs have already decided to do, ostensibly in their interests.<sup>1006</sup>

Financial management of NGOs is largely guided by donor requirements and consequently, there is no uniform basis of accounting. Differences therefore exist in the presentation, disclosures, terminology, and accounting policies.<sup>1007</sup> While annual external audits are common, the outcome varies significantly in terms of quality and depth. The practice of internal audit is absent in smaller NGOs, but the larger organisations commonly undertake internal audits.<sup>1008</sup> While the larger organisations hire highly qualified accountants and use automated accounting systems, the lack of resources compel the smaller ones to recruit mediocre accountants and rely on outdated and often manual accounting systems.

There have been allegations, not always unfounded, that non-profit organisations lack accountability and transparency in their activities and fund utilisation.<sup>1009</sup> Members of many organisations are known to have misappropriated funds from the organisations for personal gain and even to have colluded with local bank officials to derive monetary benefit during transaction of foreign funds.<sup>1010</sup> It has similarly been alleged that officials of many donors are also involved in corrupt practices.<sup>1011</sup> Issuing of false cash receipts is a normative practice amongst many of these organisations. A 1992 Government report highlighted some irregularities committed by leading NGOs in Bangladesh. It alleged that many NGOs secured foreign funds without prior permission of the Government and claimed that they maintained illegal bank accounts and spent exorbitant sums on salaries, air-conditioned cars, foreign trips

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<sup>1003</sup>The World Bank, *Pursuing Common Goals. Strengthening Relations between Government and Development NGOs in Bangladesh*, UPL, Dhaka, 1996, p.58.

<sup>1004</sup> Muzaffer Ahmad and Roushan Jahan, 2002, *op.cit.*, p.13.

<sup>1005</sup> Itekharuzzaman, 2005, *op.cit.*, p.15.

<sup>1006</sup> Sk. Tawfique M. Haque, *op.cit.*

<sup>1007</sup> The World Bank, 2006, *op.cit.*, p.64.

<sup>1008</sup> In conversation with different CSO representatives (anonymity requested).

<sup>1009</sup> Sumaiya Khair and Saira Rahman Khan, 2004, *op.cit.*, p.101.

<sup>1010</sup> *Ibid.*

<sup>1011</sup> *Ibid.*

and other luxuries. It also contended that many NGOs, instigated by donors, engaged in political activities and fabricating anti-national propaganda abroad.<sup>1012</sup>

The fact that NGOs are vested with the power of appointing any state registered audit firm has often resulted in manipulation of auditors to produce favourable reports. Since the NGO Affairs Bureau is poorly equipped in terms of resources and manpower, there is only a random examination of audit reports that essentially fail to capture the actual position of the accounts of NGOs. In the event a complaint is at all lodged against an NGO for financial irregularities discovered by the auditor, no significant action is taken against it—instead, a mere cautionary note is served on it to fix its accounts.<sup>1013</sup>

CSOs are generally averse to overzealous boards that are prone to micro-managing their affairs. On the other hand, they also want a board that will lend them credibility and enhance their profile. These considerations essentially influence the structure and composition of CSO boards.<sup>1014</sup> In practice, board members are hand-picked, on the basis of their experience, qualifications and commitment, and in many cases, personal relationship with the chief executive.<sup>1015</sup> As a result, some key questions pertaining to good governance and accountability—e.g., who determines the number, demographic composition, tenure, rotation, nomination and/or appointment of board members and the chief executive, and on what basis—are hardly raised.<sup>1016</sup> Board members generally refrain from raising questions about financial matters; this is primarily because they do not want to involve themselves in complicated monitoring procedures because they either lack the time or the necessary expertise. Besides, the relationship between the chief executive and board members is such that the latter are hesitant to ask questions about management efficiency and financial transparency of the organisation.<sup>1017</sup>

The more proactive CSOs prefer to have personalities (e.g. NGO professionals, social workers, academics, lawyers and activists, beneficiaries, etc.) on their boards for greater credibility. While these individuals are perceived to bring a level of respect and accountability to an organisation, the fact that they often have multiple roles to play, greatly compromises their ability to give quality time, attention and inputs to governance of the organisation.<sup>1018</sup> Some CSOs are typically dominated by friends or family of the founder or the chief executive, where it is common for founders to head management as well as hold important board positions, such as chair or secretary. That these dual roles essentially create conflicts of interest and have the potential to compromise organisational accountability is largely ignored. Board elections, when they are held, appear to take place on a consensus basis, with members tending to rotate posts; this limits the scope for new members.<sup>1019</sup> Unlike the boards of bigger organisations that delegate authority to the chief executive or employees at different levels, smaller NGOs tend to have board members as signatories to the organisation accounts.

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<sup>1012</sup> Syed M. Hashemi, “NGO Accountability in Bangladesh. Beneficiaries, Donors, and the State” in Michael Edwards and David Hulme, *Beyond the Magic Bullet: NGO Performance and Accountability in the Post-Cold War World*, Kumarian Press Inc., 1996, pp. 123-131, p.124.

<sup>1013</sup> *Bhorer Kagoj*, “There are several complaints of irregularity and corruption against NGOs”, 29 July, 1992.

<sup>1014</sup> Interview with Dr. Debapriya Bhattacharya, Distinguished Fellow, CPD.

<sup>1015</sup> *Ibid.*

<sup>1016</sup> Iftekhharuzzaman, 2005, *op.cit.*, p.13.

<sup>1017</sup> *Ibid.*, 14.

<sup>1018</sup> The World Bank, 2006, *op.cit.*, p.63. Also see, IGS, 2008, *op.cit.*, p.114, and TIB, 2007, *op.cit.*, p.4.

<sup>1019</sup> The World Bank 2006, *ibid.*, p.63.

Proactive boards are involved in policy formulation, approving decisions, planning, analysing audits and even fund-raising.<sup>1020</sup>

Closely related to the internal management and governance of an organisation is the option for self-regulation which may be exercised in such forms as may be deemed appropriate by particular organisations. While the NGOAB represents the government in coordinating NGO activities, the Association of Development Agencies in Bangladesh (ADB) and the Federation of NGOs in Bangladesh (FNB) are civil society bodies which, in addition to providing NGOs with technical support, also encourage self-regulation by them. These bodies facilitate the development of networks between NGOs and the government, the business community, donors, UN bodies and the civil society. In terms of policy, advocacy and lobbying, they focus on issues of public interest and those pertaining to strengthening national and international linkages and development communication. Although the primary purpose of these organisations is to promote and oversee self-regulation by organisations, in reality they turn into NGOs themselves, membership to which is based on political affiliation along partisan lines.<sup>1021</sup>

There are inherent weaknesses in the accountability of CSOs. CSO accountability is compromised primarily by the existence of weak boards and strong founder/successor executives. Other governance deficits stem from the absence of accountability to the government in terms of tax returns and audits, the public and the constituencies CSOs serve. Annual external audit outcomes vary significantly in terms of quality and depth. The practice of internal audit is largely absent in smaller organisations. Self regulation of CSOs is inadequate.

The law on integrity of CSOs is scanty. Section 11 of *The Societies Registration Act 1860* permits prosecution and punishment of a CSO if it has been found guilty of stealing or embezzling organisational money or property or of forging any deed, bond, etc, which might incur losses for the organisation. There is no provision requiring CSOs to adopt a code of ethics/conduct. CSOs are legally obliged to follow Government approved taxation and procurement rules and procedures.

The CSO legal framework is devoid of integrity mechanisms in the strict sense of the term thus creating scope for corruption and irregularities.

The integrity of CSOs is often compromised by various factors. A study on NGO governance conducted by Transparency International Bangladesh (TIB) reveals interesting findings that provides insights into how organisational integrity is eroded. The study selected 20 NGOs on the basis of type, geographical distribution, nature of activities and funding sources. Financial irregularities feature prominently amongst the NGOs studied. High ranking personnel avoid income tax by showing a scaled-down basic salary and scaled-up fringe benefits. Such irregularities usually take place with the connivance of the tax consultants. Properties such as vehicles, computers, and furniture are often used for personal purposes.<sup>1022</sup>

The TIB study reveals that discrimination abounds in the salary structures of the high, medium, and low level staff. Employees are often not paid salaries, etc., in accordance with the figures budgeted for in the project proposal or in the approved budget. Two salary

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<sup>1020</sup> IGS 2008, *op.cit.*, p.114.

<sup>1021</sup> Interview with Professor Badiul Alam Majumdar, Secretary, SHUJAN.

<sup>1022</sup> TIB, 2007, *op.cit.*, p.5.

statements are often maintained to cover such irregularities. Employees who work at several projects receive their salaries from one project, although on record, they are shown as drawing salaries from all the projects. Employees are compelled to work extra time, but no financial benefit accrues for the extra work. Staff salary is often deducted on various grounds, e.g., for sustainability of the organisation, for enhancing the common fund, etc.<sup>1023</sup>

The TIB study also unearthed several procurement-related anomalies. For example, it is common for organisations to undertake unnecessary procurement of goods at the end of the project period in order to use up the allocated funds. During the procurement process, one original and two fake quotations are collected from the same vendor. The tender procedure is not very transparent and there is evidence of undue payment from the vendor as a pre-condition of procurement. Per diem and travel allowances are often drawn against fake vouchers. Fake vouchers are also produced against procurement of old properties and machineries.<sup>1024</sup>

The study found that many NGOs provide speed money in order to get their funds released. The practice of offering bribes or gifts in order to land government projects is also common. Consultants or evaluators hired to appraise NGO performance are often influenced to produce favourable reports. Indeed, NGOs have their own pick of consultants who would produce tailor-made evaluation reports.<sup>1025</sup>

The *Code of Ethics* adopted by ADAB in consultation with its members in order to encourage and instill the practice of self-regulation amongst NGOs highlights *inter alia* principles of transparency in programme operations, accounting and disbursement of funds. It calls for constructive dialogues with the government, at the national and the local levels, to foster greater cooperation based on mutual openness and respect. The Code discourages duplication and assures staff welfare.<sup>1026</sup> The FNB also implements self-regulation amongst NGOs in terms of good governance, financial and operational accountability and transparency. It too has formulated a code of conduct for NGOs which prescribes corrective and disciplinary actions in case of transgression of the code.<sup>1027</sup> However, it has been contended that self regulation measures promoted by ADAB and FNB are not adequately complied with by organisations. Besides, politicisation and factionalism between the apex bodies and the non-profit sector aggravate matters further.<sup>1028</sup>

Weak accountability structures and ambivalence amongst CSOs regarding the strengthening of accountability and enforcement have significantly contributed to the erosion of integrity in the non-profit sector. Financial irregularities prevail including discriminatory salary structures and non-transparent procurement process. Although CSO self regulation is on the agenda in Bangladesh, organisational adherence to it is slack.

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<sup>1023</sup> *Ibid.*

<sup>1024</sup> *Ibid.*

<sup>1025</sup> *Ibid.*

<sup>1026</sup> Sumaiya Khair and Saira Rahman Khan, 2004, *op.cit.*, p.104.

<sup>1027</sup> Interview with Syeda Rizwana Hasan, Chief Executive, BELA.

<sup>1028</sup> Mark Sidel and Iftekhar Zaman, 2004, *op.cit.*, p.45.

## **Role Assessment**

### ***Holding Government Accountable***

The role and influence of civil society actors in conveying citizens' concerns to the State and holding the Government accountable have, until recently, been nominal. Although traditional social organisations have not been able to exert much influence on national polity largely due to co-optation by political parties, there is evidence of growing political involvement of civil society groups.<sup>1029</sup> The relevance of the civil society in democratic governance has been steadily growing given the rise in confrontational politics in the country. It is believed that if nurtured properly, civil society can make up for the deficits of political parties to a certain degree by holding the government accountable and flagging a steady stream of policy priorities.<sup>1030</sup> Indeed, it has been acknowledged that in the post-1989 global political economy, "it is civil society, rather than the state, that [carries] the positive 'ethical' connotation".<sup>1031</sup> This 'ethical' role of civil society has involved the reorganising of social life, with donor support, in ways that represent the priorities and interests of citizens, particularly the poor and the marginalised, and critique state practices.<sup>1032</sup> For example, the civil society played a key role in the government's Poverty Reduction Strategy Paper (PRSP) development process from 2002 and were strategic partners in the implementation of some of the development goals articulated therein; sadly, the advances made by the civil society during the PRSP phase suffered a serious setback when the present government reverted back to the traditional five-yearly development plans but did not solicit any civil society participation in the formulation process.<sup>1033</sup> Again, participatory budgeting programs at the *Union Parishad*, the lowest tier of local government, with the help of NGOs have assisted citizens to monitor quality spending of local governments through open budget sessions.<sup>1034</sup> Social audits are also proving useful in promoting public accountability and responsiveness. In one Bangladesh project, for instance, the participation of over 125,000 people from 250 communities, most of them women, led to their voice being counted in the provision of health and family planning services.<sup>1035</sup>

In Bangladesh, NGOs are playing an important role in promoting democratic local governance by actively engaging in monitoring elections at national and local levels, advocating human rights including women's rights, lobbying the Parliament for reserving women's seats in local councils and national parliament and promoting greater accountability of elected officials.<sup>1036</sup> For instance, the Fair Election Monitoring Alliance (FEMA) focuses on monitoring elections at the parliamentary, union parishad, and municipal levels. Several of its recommendations have

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<sup>1029</sup> Jerry Buckland, 2003, *op.cit.*, p.150.

<sup>1030</sup> Harry Blair, 2002, *op.cit.*, p.210.

<sup>1031</sup> Shelley Feldman, 2002:234, quoting Chris Hann, "The Nation-State, Religion, and Uncivil Society: Two Perspectives from the Periphery" in *Daedalus* 125(2), pp.27-45, Spring, 1997.

<sup>1032</sup> *Ibid.*, pp.235-36.

<sup>1033</sup> Institute of Governance Studies (IGS), "NGOs as Drivers of Policy Change: Between Policy Autonomy and External Influence", *The State of Governance in Bangladesh (2010-11)*, BRAC University, Dhaka, 2012, pp. 99-123, at p. 100.

<sup>1034</sup> Ahmad Raza, Governance, "Social Accountability and the Civil Society, Governance, Social Accountability and the Civil Society", *JOAAG*, Vol. 3. No.1, 2008, p.13.

<sup>1035</sup> *Ibid.*, p.16.

<sup>1036</sup> G. Shabbir Cheema, *Engaging Civil Society to Promote Democratic Local Governance: Emerging Trends and Policy Implications in Asia*, Working Paper No. 7, Swedish International Centre for Local Democracy (ICLD), Sweden, 2011, p.18.

been implemented in full, including allowing poll observers and monitors in polling booths and raising the security money for candidates.

Odhikar has established itself as one of the leading human rights watchdog bodies in the country, having strong networks with partners and human rights defenders locally as well as regionally. It engages in continuous monitoring of the overall human rights situation and produces monthly, quarterly, half-yearly and annual reports on the state of human rights in the country. Bangladesh Legal Aid and Services Trust (BLAST) and Ain o Shalish Kendra (ASK) primarily provide legal aid services to the poor, but have also made significant inroads into advocacy by way of public interest litigation challenging mal-governance of various kinds. Some of their initiatives have culminated in proactive legal and policy reforms. The Bangladesh Environmental Lawyers Association (BELA) has emerged as a powerful actor in the field of environmental justice. It has successfully challenged government action or inaction in preserving the environment pursuant to the constitutional guarantee of the right to life.

Sustained advocacy for law and policy reforms in the realm of women's rights have been carried out by many organisations including the Mahila Parishad, Naripokkho, Bangladesh National Women Lawyers Association (BNWLA) and Acid Survivors Foundation (ASF). Their efforts have culminated in law and policy reforms and gender-sensitive institutional changes at different stages of the country's development. The Centre for Policy Dialogue (CPD) is a civil society think-tank, the principal objective of which is to engage civil society in the design and oversight of public policy in order to promote a development process that is more demand driven, participatory and accountable.

Transparency International Bangladesh (TIB) routinely questions government accountability. Amongst various issues, TIB has questioned the independence of the Telecommunication Regulatory Authority, the integrity in the appointment process in public services, political interference in public procurement, government initiative to approve the whitening of black money in the national budget, and non-disclosure of assets and incomes of ministers, members of Parliament and public officials.<sup>1037</sup>

NGOs and advocacy groups that question the policies and practices of the government are penalised in different ways.<sup>1038</sup> Government intolerance of potential competition for public favour and dissenting voice is also patently clear from the dismissal in March 2011 of Nobel laureate Dr. Muhammad Yunus as Grameen Bank's Managing Director.<sup>1039</sup> Yunus's removal demonstrates government resolve to maintain its control over civil space at any cost. These developments bear uncanny resemblance to the drastic measures taken by the government against NGOs first in 1999 when Gono Shahajya Shangstha (GSS) was brought to heel apparently in response to financial misconduct and staff harassment and next in 2000 when it took Proshika and others to task and ordered mass arrests of their staff.<sup>1040</sup>

CSOs often play a critical role in holding the government accountable for its action or inaction. Many organisations have succeeded in involving marginalised communities, including women

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<sup>1037</sup> Transparency International Bangladesh (TIB), *Annual Report*, 2010, p.18.

<sup>1038</sup> Interview with Syeda Rizwana Hasan, Chief Executive, BELA.

<sup>1039</sup> Interviews with Dr. Debapriya Bhattacharya, Distinguished Fellow, CPD. and Professor Badiul Alam Majumder, Secretary, SHUJAN. See also Fahimul Quadir, 2011, *op.cit.*

<sup>1040</sup> Institute of Governance Studies (IGS), "Civil Society and the Media: who will watch the watchdogs?", *The State of Governance in Bangladesh (2006)*, BRAC University, Dhaka, 2006, pp. 93-108, at.98.

and landless peasants, in decision-making processes. CSO advocacy has varyingly addressed the accountability of politicians and public officials by filing public interest litigation challenging executive excesses, standing up for victims of human rights violation, and seeking government accountability by informing the media about violations by public officials. However, the retaining of CSO autonomy against government monopoly is a challenge for those who question the policies and practices of the ruling party.

### **Policy Reform**

Since the emergence of multiparty electoral democracy in the 1990s, CSOs have increasingly engaged in policy advocacy through research, policy documentation and analyses that address *inter alia*, human rights, rule of law, access to justice, democratic practices, and transparent governance, etc. Advocacy activities by NGOs have over the years become significantly prominent, institutionalised, and coordinated in the areas of good governance, state compliance with constitutionally guaranteed laws and universal human rights, and developmental rights.<sup>1041</sup> Accordingly, NGOs are increasingly participating in the broader national political arena through different activities including policy dialogues, election monitoring, voter education programmes, mass movements against authoritarian regimes, public interest litigation, anti-corruption movements, etc. Indeed, the scope and nature of advocacy by NGOs is controlled by (a) the formal regulatory framework (b) an understanding of the fine line between party political activism and advocacy, and (c) NGO's ability to protect its political space through support from the donors, media, and other influential connections within and outside the government.<sup>1042</sup>

CSO activities in the area of policy reform in Bangladesh have been spurred by a dysfunctional democracy and its impact on the deteriorating quality of governance.<sup>1043</sup> The Centre for Policy Dialogue (CPD) is one such organisation that has been particularly influential in working towards a reciprocal flow of ideas and influence between the State and civil society.<sup>1044</sup> It tangibly contributed to enhancing the quality of the policy discourse during the 2001 elections to the National Parliament. This was achieved by preparing a series of pre-election Policy Briefs in 2001 with a view to informing the political parties about problems of particular concern, encourage them to move away from confrontational rhetoric, focus on creating policy alternatives designed to respond to public concerns and influence subsequent executive action to be undertaken by the elected government.<sup>1045</sup> Their success can be seen in their annual review of Bangladeshi development which has been established as a set of key benchmarks of civil society's effort at making successive governments accountable for their stewardship of the development process.<sup>1046</sup>

Political and policy advocacy by CSOs have two associated risks: one, dependence of donors as civil society engagement in policy advocacy is largely donor driven, and two, increasing politisation of CSOs and resultant loss of their moral authority.<sup>1047</sup> Indeed, many of the

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<sup>1041</sup> *Ibid.*, p.35.

<sup>1042</sup> Interviews with Syeda Rizwana Hasan, Chief Executive, BELA, and Dr. Debapriya Bhattacharya, Distinguished Fellow. Also see, The World Bank 2006, *op.cit.*, p.35.

<sup>1043</sup> G. Shabbir Cheema, 2011, *op.cit.*, p.16.

<sup>1044</sup> *Ibid.*

<sup>1045</sup> *Ibid.*

<sup>1046</sup> *Ibid.*

<sup>1047</sup> Jerry Buckland, 2003, *op.cit.*, pp.158-159.

reforms, being donor driven, have failed to generate local ownership of the processes. The emphasis on advocacy and, in some cases, on social mobilisation has produced its own controversies, underscoring the thin line dividing civil society activism from partisan politics. Politicisation of NGOs came into sharp focus in the wake of the 2001 parliamentary elections when a number of relatively large and influential organisations were alleged to have used their programmes and organisational strength to influence the voting pattern to the detriment of the alliance that came to power.<sup>1048</sup> Their work drew fierce reactions from the government, but also within the NGO sector. Citing allegedly inappropriate NGO activities including electioneering, the government froze the foreign funding of a handful of NGOs, including that of a large national NGO, Proshika.<sup>1049</sup> In addition, much to the dismay of the NGO sector, it tried to push for amendments to the regulation of foreign-funded NGOs. Hence, NGOs prefer not to antagonise the government.

Since corruption is a contentious issue, no major national NGO works in this area, with the exception of Transparency International Bangladesh (TIB). TIB engages in exposing official corruption and advocating administrative reforms and conducting research on governance related issues. Since inception, it has been engaging in generating mass awareness on corruption, exposing official corruption, conducting surveys, diagnostic and investigative research and advocating administrative reforms. The first TIB survey on corruption in Bangladesh in 1997 was 'seminal in the discourse of corruption in Bangladesh, stimulating widespread public awareness and debate with civil society'.<sup>1050</sup> Since then TIB has progressively proved to be a thorn in the side of the government, drawing heated responses from it, particularly when Bangladesh was ranked as the most corrupt country in the world for five consecutive years in TI's Corruption Perception Index (CPI). In addition to national level advocacy, TIB is engaged at the grassroots through citizens committees that work towards ensuring transparency, accountability and participation in governance structures and processes. TIB is best known for its country corruption index and the heated debates in the government regarding on the ranking of Bangladesh. TIB's household surveys on trends and practices in corruption as perceived by the people, diagnostic studies on the causes and sources of corruption in specific arenas, thematic studies across government departments (police, parliament, ports, ACC, etc.) have generated a great deal of public interest on the one hand and scathing observations, criticism and denial by the government and vested interest groups, on the other. TIB's strategy of using citizens' report cards at the local-level schools, health clinics, and local government offices is a useful means for highlighting irregularities.<sup>1051</sup> Transparency International Bangladesh (TIB) has also successfully worked with the government in connection with the draft whistleblower protection law titled *The Disclosure of Public Interest Related Information (Protection) Act* which was adopted by the Parliament in 2011.<sup>1052</sup> This law makes special provisions for protecting the public and NGO officials from reprisals for exposing corruption in their respective offices. Likewise, TIB has played a key role in preventing the government from introducing amendments to *The Anti-Corruption Act* that would circumscribe the Anti-Corruption Commission's independence by increasing political and administrative control over it.<sup>1053</sup>

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<sup>1048</sup> Iftekharuzzaman, 2005, *op.cit.*, p.19.

<sup>1049</sup> The World Bank, 2006, *op.cit.*, p.6.

<sup>1050</sup> IGS, 2006, *op.cit.*, p.97.

<sup>1051</sup> TIB, *Annual Report. Summary*, 2011, p.6.

<sup>1052</sup> *Ibid.*, p. 3.

<sup>1053</sup> *Ibid.*

Adopting a two-pronged strategy of social development and policy advocacy, CSOs strive to create a democratic space for meaningful debates, and to challenge deficient, and often corrupt state practices. The enactment of *The Right to Information Act* in 2009 is a concrete example of successful legislative advocacy by civil society. The RTI movement in Bangladesh has emerged amidst growing concerns over the country's consistently low scores in consecutive Transparency International's Corruption Perceptions Indices from 2001 to 2005. A coalition of NGOs (*Manusher Jonno* Foundation and its partner NGOs, Transparency International Bangladesh, Article 19 Bangladesh) came together to form the RTI Forum and undertake the drafting and advocacy of an RTI law with technical assistance from donors. The RTI Ordinance passed in 2008 by the interim Caretaker Government was adopted as *The Right to Information Act* under the present government in 2009.<sup>1054</sup> No doubt, the series of consultations launched by civil society players involving different stakeholders and generating popular demand contributed significantly to the enactment of the RTI law.<sup>1055</sup>

CSOs have developed alliances at the local and national levels based on their area of work and expertise. They use different strategies to influence the public policy formulation. Some of these mechanisms include advocacy, lobbying, awareness raising, media campaign and forging partnerships with the politicians, bureaucrats, academics, and socio-cultural activists. GoB-NGO relationship is increasingly improving and becoming more constructive.

### 3.3.3 MEDIA

The media in Bangladesh has been growing steadily since the 1990s, despite that half of the country's population is unable to read and too poor to own televisions and other advanced communication tools. In addition to growing diversification, there has been a significant development in the media's outlook and its focus on governance issues. Admittedly, media reporting and debates now are freer and more open, the analyses more sharp and relevant, and the presentation more attractive to the audience at large.<sup>1056</sup> Nonetheless, the media in Bangladesh experiences difficulties at different stages of the country's political history. The regulatory framework, ambiguous and restrictive at the same time, effectively constrains media freedom on pretexts of national security, official secrecy, and contempt of court amongst other things. The media, being largely owned by big business houses, has become politicised over the years evident from the contents and analyses of the reports that are often overtly biased in favour of one party or the other.<sup>1057</sup> Media is also often found to represent in their reporting particular business interest and even unhealthy competition with each other exacerbated by multiplicity of the nature of business in which media owners are involved. This essentially clouds the objectivity of the media and raises questions regarding its independence. The absence of effective self regulatory mechanisms erodes the accountability and integrity of the media. While the media, particularly private owned ones, are vocal regarding corruption of public officials, government irregularities, and other contentious issues, it also exercises a degree of self-censorship for fear of backlash by the government and political parties.

<sup>1054</sup> IGS 2012, *op.cit.*, p.107.

<sup>1055</sup> Interview with Syeda Rizwana Hasan, Chief Executive, BELA..

<sup>1056</sup> IGS, 2006, *op.cit.*, p. 99.

<sup>1057</sup> Sumaiya Khair, 2008, *op.cit.*, pp.59-60.

## **Structure and Organisation**

Bangladesh hosts both print and electronic media outlets. There are numerous daily newspapers in both Bangla and English. Although state-owned newspapers became defunct in 1997 when the government adopted the Privatization Policy<sup>1058</sup>, state-owned television and radio continue to operate. In addition to on-line resources, recent years have seen a huge influx of private television operators and to a lesser degree, radio stations.

## **Capacity**

### ***Financial, Human and Infrastructural Resources***

There is a host of laws that govern the media and communication sector in Bangladesh. These laws varyingly deal with the establishment/installation, registration, operations, and management of the media outlets. Accordingly, as long as the eligibility requirements prescribed by the respective laws are fulfilled, entry into journalistic profession is unrestricted and straightforward.

The Constitution of Bangladesh guarantees citizens the freedom of speech and expression and freedom of the press.<sup>1059</sup> The advent of *The Right to Information Act 2009* (RTI Act) has supplemented the constitutional guarantee of the freedom of the press in concrete ways. Under this Act, any person, including media personnel, may apply to the officer-in-charge of a public office or non-governmental organisation operating with public or foreign funding requesting for information either in writing or through electronic means or through e-mail.<sup>1060</sup>

Apart from the Constitutional guarantee and RTI Act, there are different sets of laws that varyingly regulate the print, broadcast and electronic media in Bangladesh.

The operations of the print media is guided by *The Printing Presses and Publication Act, 1973* which outlines the manner in which printing presses, newspapers, documents, and books must be registered, authenticated and published.<sup>1061</sup>

*The Broadcasting Act 2003* prohibits any broadcasting service without a valid license from the relevant Authority.<sup>1062</sup> While the law guarantees broadcasting service licenses for the state-run Bangladesh Television and Bangladesh Radio, it empowers the Authority to issue additional licenses in the public interest. In case of additional licenses, the Authority is required to widely publish a notice to that effect.<sup>1063</sup> Applicants for a broadcasting service license are required to provide detailed financial, technical and, where relevant, proposed customer or subscriber information, as well as a Programme Schedule.<sup>1064</sup> Once the license has been granted, the Authority shall cause the decision to be published in the Gazette.<sup>1065</sup>

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<sup>1058</sup> See MediaBangladesh.net at <http://www.mediabangladesh.net/>

<sup>1059</sup> Article 3, The Constitution of Bangladesh .

<sup>1060</sup> Section 8, The Right to Information Act, 2009.

<sup>1061</sup> Section 7, The Printing Presses and Publication Act, 1973.

<sup>1062</sup> Section 20, The Broadcasting Act 2003.

<sup>1063</sup> Section 22, *Ibid.*

<sup>1064</sup> *Ibid.*

<sup>1065</sup> *Ibid.*

Licenses granted under *The Broadcasting Act 2003* are not transferable to any other person without the prior approval of the Authority.<sup>1066</sup> An application for the renewal of a license must be made within the last three months before the date of expiry of the existing license. The Authority may refuse to renew a license in the greater interest of the public or where the licensee has operated in significant breach of its license conditions. In the event the Authority chooses not to renew a license, it must convey to the licensee the reasons in writing, whereupon the licensee shall have an opportunity to make oral and/or written representations.<sup>1067</sup>

In case of the electronic media, a license is required from the Bangladesh Telecommunication Regulatory Commission (established under *The Bangladesh Telecommunication Act 2001*) for the establishment or operation of a telecommunication system, or the undertaking of construction work of such system or for internet service or operating any apparatus for such service.<sup>1068</sup> Before granting a license, the Commission shall take into consideration, amongst others, the background and financial capacity of the applicant, whether the applicant has a criminal record or outstanding bank loans, and to what extent the project will serve public interest.<sup>1069</sup> A license may be renewed subject to payment of fees or other payment as may be prescribed by the regulations or the administrative orders issued by the Commission.<sup>1070</sup> Unlicensed telecommunication activities are punishable with imprisonment or a fine.<sup>1071</sup> The Commission has the authority to cancel the license if the licensee is found to have obtained the license by suppressing his disqualification, or has failed to start services within the time-limit specified in the license or has contravened any provision of this Act.<sup>1072</sup> The licensee shall not be entitled to any compensation for damage caused by cancellation or suspension nor shall he be entitled to raise such claim before any court or other authority, and even if such claim is raised, the matter shall be summarily rejected by the court or authority.<sup>1073</sup>

The Telecommunication Regulatory Commission is also legally empowered to grant a license, for the establishment, operation or use of a radio apparatus for communication. The allocation of frequency, their renewal, suspension and cancellation, the qualifications and disqualifications of a licensee, penalties, the license-fees and other related matters shall be determined by regulations.<sup>1074</sup>

The law has provisions for a national news agency. The Bangladesh *Sangbad Sangstha* Ordinance 1979 provides for the establishment of the Bangladesh *Sangbad Sangstha* (BSS) as a national news agency.<sup>1075</sup> The management and administration of the affairs of the *Sangstha* vests in a Board comprising members representing the Government and the media but all of whom are appointed by the government.<sup>1076</sup> The law requires that in addition to being bound by government directions that may be given from time to time, the Board must have due regard for public interest as far as practicable while discharging its functions. This essentially

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<sup>1066</sup> *Ibid.*

<sup>1067</sup> Section 26, *ibid.*

<sup>1068</sup> Section 35, The Bangladesh Telecommunication Act, 2001.

<sup>1069</sup> Section 36, *ibid.*

<sup>1070</sup> Section 38, *ibid.*

<sup>1071</sup> *Ibid.*

<sup>1072</sup> *Ibid.*

<sup>1073</sup> Section 46(4), *ibid.*

<sup>1074</sup> Section 55, *ibid.*

<sup>1075</sup> Section 3, The Bangladesh Sangbad Sangstha Ordinance, 1979.

<sup>1076</sup> Section 7, *ibid.*

indicates that the Board has a role in promoting an enabling environment within which a diverse, independent media may be fostered.

There are two laws that provide for the establishment of designated authorities for the regulation of the broadcast media. Under *The Bangladesh Radio Authority Act 2001* and *The Bangladesh Television Authority Act 2001*, two separate legal entities have been established to ensure the smooth operation and management of radio and television outlets respectively. The principal responsibilities of the respective authorities are to ensure that the broadcast outlets comply with government endorsed rules of business, improve the standards of news coverage by the broadcast media, determine and collect licensing fees, and assist the government in developing broadcast policies. The laws provide that these authorities shall have their own funds that shall be generated from different sources within the government and outside. The Executive Directors of each are empowered to propose budgets for each fiscal year and submit the same for government approval and allocation.

There are different laws that regulate the setting up and operation of the print, broadcast and electronic media in Bangladesh. Although the laws require government involvement at various stages of their registration process, the legal framework does not contain any significant barriers to media establishment and operations. As such, there has been a considerable proliferation of diverse media outlets. The existence of a national news agency and other designated authorities for ensuring that the media outlets comply with the law and have due regard to public interest while reporting ensures a check and balance between the regulatory framework and media freedom.

The post 1990s saw a boom in both print and electronic media, although not all are of the same standard. In addition to *Ittefaq*, a prominent *Bangla* newspaper which was in circulation since independence, other popular *Bangla* dailies emerged—*Ajker Kagoj*, *Janakantha*, *Prothom Alo*, *Jugantor*, *Amar Desh*, *Samakal*, and *Naya Diganta*.<sup>1077</sup> Amongst the English dailies, *The Daily Star* has quickly taken the lead over others, followed by *New Age* and *Dhaka Tribune*. Since their inception, *The Daily Star* and *Prothom Alo* have been playing pioneering roles in successfully combining news, entertainment and social action for readers.<sup>1078</sup> *Amar Desh* has been steadily gaining popularity amongst readers for its bold exposés on government irregularities. The major newspapers also have online versions for users but their use is restricted to the urban elite. Social networking sites, like the Facebook, Twitter, You Tube, blogs are other internet-based sources of news that have gained considerable popularity amongst the urban population.<sup>1079</sup>

The mid-1990s witnessed a rise in electronic media. The state-run terrestrial Bangladesh Television (BTV) and Bangladesh Betar (Radio) which have been operating since independence have expanded.<sup>1080</sup> In addition to FM radio stations in selected urban areas, community radio stations have also emerged in different parts of the country catering to information and communication needs of local communities.<sup>1081</sup> There has been a substantial growth in satellite broadcasting which has led to the introduction of private television channels, the

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<sup>1077</sup> IGS, 2006, *op.cit.*, p.100.

<sup>1078</sup> *Ibid.*

<sup>1079</sup> In conversation with Dr. Nazrul Islam, Professor of Law, University of Dhaka and media personality.

<sup>1080</sup> Shameem S.M. Reza,, “Media Governance in Bangladesh: Rhetoric and Reality of Broadcast Policy”, *Forum*, a magazine of The Daily Star, Vol. 6, Issue 5, May, 2012, pp. 4-9, at p.5.

<sup>1081</sup> *Ibid.*

number of which is progressively mounting.<sup>1082</sup> Recent proliferation of information and communication technologies, including the internet, has enabled democratic engagement for people in Bangladesh.<sup>1083</sup> Television programmes range from news, current affairs, social and cultural magazines, entertainment programmes, and sports to social service, development priorities (health, education, etc.), gender, religion, and social documentaries.<sup>1084</sup>

While the media sector has been experiencing progressive growth, its expansion has largely been in terms of numbers and not so much in terms of political, social and cultural diversity. Except for a very small number of outlets that are clearly premised on religious ideology, the great majority are inclined towards political parties. Many papers support the overall policies of the government, at least outwardly, but also publish critical reports on government policies and activities. Newspapers that are published by big business houses follow some sort of independent line of thinking but their freedom is affected by their financial dependence on government advertisements.<sup>1085</sup> Many of them are found to represent ownership-related corporate interest. Some are also often involved in unhealthy mutual competition.

There are numerous news agencies, many of which lack professionalism while many others are far too insignificant to merit recognition.<sup>1086</sup> The emergence of the first online news portal, *bdnews24.com*, has provided a fast and reliable source of news which is used extensively by all other Bangladeshi media as a primary news source. Following *bdnews24* a large proliferation of on-line news portals has taken place including a good number at local level outside the capital. Local newspapers buy news from bigger ones at affordable prices. It is also not uncommon for smalltime newspapers to simply reproduce news items taken from established news outlets without so much as acknowledging the source. There exist forums for safeguarding the interests of journalists and their relationship with their employers. The primary objective of these bodies is to improve the working conditions of journalists and battle against prevalent barriers, including restrictive laws, which impede effective execution of their duties.<sup>1087</sup> Apart from national, district and other sub-national level union of journalists and other media persons, led by committees elected most often under direct or indirect political leaning, there is a good number of sub-sectoral reporters' platforms related to thematic areas of reporting. The newspaper and television channel owners have also formed unions to protect and promote their corporate interests.

Academic facilities for journalism training in Bangladesh are reasonably sound. The major public universities and a few private universities offer graduate and post-graduate courses on mass communication and journalism. Practitioner-oriented training for journalists is also available at both government and NGO-run outlets.<sup>1088</sup>

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<sup>1082</sup> *Ibid.*

<sup>1083</sup> Fahimul Quadir, 2011, *op.cit.*,

<sup>1084</sup> Bangladesh Enterprise Institute, *Media in Development. Linkages between Socio-Economic Development and Diversified Media In Bangladesh*, Dhaka, p.19. LINKAETWOCIOECONOMIDEVELOPMENANDIVERSIFIBANGLADESH

<sup>1085</sup> Dalem Barman et. al., *Democracy Report for Bangladesh, Country Report under the IDEA State of Democracy Project*, (undated), p.61.

<sup>1086</sup> In conversation with Dr. Nazrul Islam, Professor of Law, University of Dhaka and media personality.

<sup>1087</sup> Abul Mansur Ahmed, "Freedom of the Press and its Constraints: A Study of Press Regulations in Bangladesh", York University, p.11 available at <http://cjms.fims.uwo.ca/issues/01-01/ahmed.pdf>

<sup>1088</sup> *Ibid.*, p.12. Also see Abul Mansur Ahmed, "Media, Politics and the Emergence of Democracy in Bangladesh", *Canadian Journal of Media Studies*, Vol. 5(1), pp.50-69, at p.59.

A media landscaping initiative in 2012 reveals that there exist robust associations and networks for constructive media engagement and learning.<sup>1089</sup> According to this exercise, established in 1949, the National Press Club is the biggest professional forum for journalists in Bangladesh. Independent press clubs are also located in many provincial towns and cities but these do not have any formal links with the National Press Club. There are several other associations that represent the interests of media personnel, for example, the Dhaka Reporters Unity (DRU), the Bangladesh Federal Union of Journalists, the Dhaka Union of Journalists, the Dhaka Sub-Editors' Council and the Centre for Women Journalists, Bangladesh. Media networks that have evolved for covering selected issues, for example, diplomatic affairs, health, economics, NGOs, ICT and parliamentary matters.<sup>1090</sup>

It is expected that the abundance of media suppliers would contribute to the significant improvements in the quality of the products. There is very little information on whether increased competition in the media sector has had any tangible impact on its human and financial resources for reporting on issues of good governance. Existing literature however, suggests that the media sector suffers from considerable resource constraints in terms of, technical capacity for political and administrative policy analyses, corruption investigation, qualified staff and training opportunities, advertising revenue generation, production costs, and adequate wages for journalists and margin of profits.<sup>1091</sup> Besides, the inability of the sector to provide sufficient income to its staff has reduced its effectiveness to pursue governance issues; indeed, it has been suggested that the 'present crop of journalists are unable to follow [sic] governance objectives because they are more often than not hobbled by middle class income shortages, aspirations and the market's inability to provide them sufficiently through conventional salary mechanisms'.<sup>1092</sup> The lack of attractive remuneration in the media sector for those in low to mid level positions acts as a major incentive for internal corruption and influence peddling.<sup>1093</sup>

The proliferation of media outlets in Bangladesh in the 1990s signifies the existence of an environment that is generally conducive to media establishment and operations. The sector has witnessed massive transition in terms of modernisation, technological advancement and institutional capacity development. Notwithstanding, there is room for further development. For example, the media is largely reliant on imported newsprint due to scarcity in the local market; this is huge strain on print media. There is a lack of human resource development for enhancing the academic, analytical and technological skills of media personnel, particularly at the local levels. While training opportunities are generally available, they rarely address issues of ethics and integrity, except for underscoring the importance of ensuring public interest while reporting. Low wages force journalists into situations where a potential conflict of interest could well affect the accuracy of their reports. Low wages force journalists into situations where a potential conflict of interest could well affect the accuracy of their reports.

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<sup>1089</sup> For details, please see Infoasaid, Bangladesh: Media and Telecoms Landscape Guide, May 2012 available at [http://infoasaid.org/sites/infoasaid.org/files/pdf/bangladesh\\_media\\_landscape\\_guide\\_final\\_090512.pdf](http://infoasaid.org/sites/infoasaid.org/files/pdf/bangladesh_media_landscape_guide_final_090512.pdf)

<sup>1090</sup> *Ibid.*

<sup>1091</sup> IGS, 2006, *op.cit.*, p.105.

<sup>1092</sup> Afsan Chowdhury, "Critical Overview of the Growth of the Media Sector", in *Bangladesh Governance Report 2007. Unbundling Governance*, Power and Participation Research Centre (PPRC), Dhaka, 2007, pp.116-136, at p.136.

<sup>1093</sup> Interview with Nurul Kabir, Editor, *New Age*.

### ***Independence and Functional Autonomy***

The Constitution guarantees the freedom of the press and the right of every citizen to freedom of speech and expression.<sup>1094</sup> Access to information is ensured under *The Right to Information Act 2009* which entitles every citizen to demand information from the concerned authority, which shall be bound to provide the information sought.<sup>1095</sup> *The Press Council Act 1974* provides for the establishment of a Press Council for the purpose of preserving the freedom of the press and maintaining and improving the standard of newspapers and news agencies in Bangladesh. Libel laws are also available. The government has amended *The Printing Presses and Publications (Declaration and Registration) Act, 1973*, to set up the Press Appellate Board, which has the final say in matters of authentication and cancellation of authentication of publication. This initiative was conceived to allow limited freedoms to the press.

Licensing of broadcast media primarily deals with financial, technical and, where relevant, proposed customer or subscriber information, as well as a Programme Schedule.<sup>1096</sup> There is nothing in the laws that make censorship illegal or require journalists to disclose the source of their information.

Media governance in Bangladesh is perceived as geared more towards “control” and “pressure” from government authorities, designated regulators and at times, the business sector which owns many of the media outlets<sup>1097</sup>, rather than to proactive promotion of its work. Indeed, many of the laws are such that they directly contradict media freedom. The grounds and circumstances underscored in many of the laws for limiting the freedom of expression are largely vague and discretionary, having the potential for misapplication and miscarriage. For example, the Constitutional guarantee of the freedom of speech and expression and freedom of the press is restricted by a conditional statement that subjects such freedom to “reasonable restrictions imposed by law in the interests of the security of the State, friendly relations with foreign states, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence”<sup>1098</sup>. The grounds depicted here are broad and provide ample room for (mis)interpretation and selective application by the authorities in order to suppress media freedom.

Government functionaries are commonly averse to providing information to the public, ostensibly in the interests of the state. Consequently, the public is largely unaware of decision-making processes that affect their lives. The enactment of *The Right to Information Act, 2009* has to an extent mitigated the problems of accessing information from the government departments. However, the leverage gained under the RTI law has been diffused by the long list of exceptional circumstances that will preclude the application of the law which includes, *inter alia*, any information that may cause, if disclosed, a ‘threat to the security, integrity and sovereignty of Bangladesh’.<sup>1099</sup>

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<sup>1094</sup> Article 39, The Constitution of Bangladesh.

<sup>1095</sup> Section 4, The Right to Information Act 2009.

<sup>1096</sup> Section 22, The Broadcasting Act 2003.

<sup>1097</sup> Shameem Reza, 2012, *op.cit.*, p.6.

<sup>1098</sup> Article 39 (2), The Constitution of Bangladesh.

<sup>1099</sup> Section 7, RTI Act, 2009.

Restrictive laws are often used to the detriment of the journalists and other media personnel. For example, the Preamble to *The Special Powers Act 1974* states that this law has been enacted to provide special measures for the prevention of “prejudicial activities”; the very vagueness of the expression increases the scope of abuse of the provision through selective and/or arbitrary application of the provisions of the Act. Again, Section 19 of the Act provides that the government may suspend the activities of an association if it is satisfied that there is a likelihood that the association may act in a manner or be used for purposes “prejudicial to the maintenance of public order”. Section 23 empowers the police or any other person authorised in this behalf by the Government, ‘to search any person entering or seeking to enter, or being on or in, or leaving, a protected place or protected area, and any vehicle, vessel, animal or article brought in by such person, and may, for the purpose of the search, detain such person, vehicle, vessel, animal or article’. It further states that if any person is in a protected place or protected area in contravention of the provisions of this law, he may be removed from there by or under the direction of any police officer or by any other person authorised in this behalf by the Government or imprisoned for a term which may extend to three years, or fined, or with both. Indeed, the provisions of preventive detention in this Act are often utilised by the government to quell activism by media personnel.

*The Official Secrets Act 1923* makes it an offence if any person commits an act that is deemed ‘prejudicial to the safety or interests of the State’.<sup>1100</sup> The Act restricts physical presence in prohibited places and prohibits publication and communication of matters that might jeopardise the interests of the state.<sup>1101</sup> While the principal purpose of this law is to protect state secrets primarily in the area of defence and economic resources, government functionaries frequently use the law to justify their denial to furnish information to information seekers including the media. Although the Right to Information Act 2009 prima facie takes precedence over the Official Secrets Act, it is still perceived to bar government officials from divulging information to the public without proper authorisation.<sup>1102</sup> In case of journalists, if they need any information from any government department, they have to pose their queries to the Ministry of Information in writing, which in turn, would forward them to the concerned department.<sup>1103</sup> This essentially makes the process cumbersome.

*The Penal Code 1860* has extensive provisions that might be used to restrict media freedom in different ways. The law penalises persons who speak, write, or use signs or visible representation in a manner likely to prejudice the safety and sovereignty of the state,<sup>1104</sup> or generate disaffection towards the Government,<sup>1105</sup> or promote sectarian hatred amongst people.<sup>1106</sup> This law permits libel charges against persons for printing any matter, knowing that it is defamatory of any person.<sup>1107</sup> The sale or offer to sell such defamatory matter is also punishable.<sup>1108</sup> The publication or circulation of any statement, rumour or report which is likely to instigate mutiny within the military or cause any officer to disregard or fail in his duty,

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<sup>1100</sup> Section 3, The Official Secrets Act, 1923.

<sup>1101</sup> Section 3A, *ibid.*

<sup>1102</sup> *Ibid.*

<sup>1103</sup> In conversation with Professor Nazrul Islam, Professor of Law, University of Dhaka and media personality.

<sup>1104</sup> Section 123A, The Penal Code, 1860.

<sup>1105</sup> Section 124A, *ibid.*

<sup>1106</sup> Section 153A, *ibid.*

<sup>1107</sup> Section 501, *ibid.*

<sup>1108</sup> Section 502, *ibid.*

or disturb public tranquility,<sup>1109</sup> or incite communal disharmony<sup>1110</sup> and disrupt state security or public order or supply and services to the community or friendly relations with foreign countries, is also punishable.<sup>1111</sup>

*The Code of Criminal Procedure 1898* empowers the government to forfeit any newspaper, or book or any document if it appears to contain matters that are highlighted in any of the relevant provisions of *The Penal Code 1860* discussed above.<sup>1112</sup> In addition, the government may, by gazette notification, forfeit and seize, any newspaper, book or document, if it appears to contain any matter which is defamatory of the President, the Prime Minister, the Speaker or the Chief Justice, or any matter which is grossly indecent or scurrilous or obscene, or any words or visible representations which incite, or are likely to instigate the commission of a non-cognizable offence. A person having interest in the publication that has been forfeited may apply to the High Court Division for setting aside the forfeiture order.<sup>1113</sup>

*The Printing Presses and Publication (Declaration and Registration) Act 1973* likewise empowers the government to forfeit, by official Gazette notification, and cause to be seized, all copies of any book or paper if they contain any words, signs or visible representations which according to the government are indecent, obscene or scurrilous.<sup>1114</sup> *The Contempt of Court Act 1926* also provides scope for suppression of media freedom.

The media is prima facie free but governed by laws that potentially restrain freedom of expression. Ambiguities in the laws governing the media sector offer a wide scope for subjective interpretation of the provisions to the detriment of the media and its operations. Amendments to the laws are necessary for complying with international standards on the protection of freedom of expression. The involvement of the government, e.g., the Ministry of Home Affairs in determining the validity of a declaration before it is authenticated increases the potential for government manipulation of the media. Indeed an independent and informed judiciary is crucial for ensuring the freedom of the speech and expression.

State run media is totally monopolised by the government. Private owned media outlets on the other hand, operate with relative freedom evident from the manner in which they have created opportunities for public dialogues on issues ranging from governance and policy processes to corruption. It is common for every government in power to claim that the media enjoys unbridled freedom in Bangladesh. However, since independence of Bangladesh, the media has been experiencing varying degrees of harassment, restriction, intimidation, legal action, self-censorship, murder and torture from both civilian and military regimes. Recent developments find the media to be heavily influenced by legal ambiguities, political biases and corporate ownerships in addition to government scrutiny.<sup>1115</sup> These various factors, singularly and together, curb media freedom significantly. Bangladesh was ranked 129th out of 179 countries listed in the Reporters San Frontières 2011-12 Press Freedom Index.<sup>1116</sup> Bangladesh

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<sup>1109</sup> Section 505, *ibid.*

<sup>1110</sup> *Ibid.*

<sup>1111</sup> Section 505A, *ibid.*

<sup>1112</sup> Section 99A(1), *The Code of Criminal Procedure, 1898.*

<sup>1113</sup> Section 99B, *ibid.*

<sup>1114</sup> Section 20A, *The Printing Presses and Publication (Declaration and Registration) Act 1973.*

<sup>1115</sup> Hana Shams Ahmed, "Censorship and Human Rights", *Forum, The Daily Star Magazine*, Vol.6, Issue 12, December 2012, pp. 42-51, at p.43.

<sup>1116</sup> Please visit <http://en.rsf.org/press-freedom-index-2011-2012,1043.html>

has scored 52 (partly free) in regards to freedom of the press in the rating by the Freedom House in 2012.<sup>1117</sup>

The state run media is controlled by the government in power. For example, BTV largely concentrates on parliamentary sessions, government programmes, and other government highlights to the exclusion of opposition views. Cable operated private channels generally function without government interference; however, the government has directed all private stations to broadcast, without charge, selected government news programs and speeches by the Prime Minister.<sup>1118</sup>

The fact that the government reserves the authority to issue and revoke licenses significantly contributes to the award or rejection of private media licenses on the basis of the license seeker's political allegiance and/or financial clout. This trend is particularly patent in the broadcasting media which is rife with allegations that the government has issued new licenses to its cronies in the absence of a clearly articulated policy in regard to the issuing of licenses for television channels.<sup>1119</sup> Recent developments witness a proliferation of media outlets, in particular, private satellite TV channels each time a new government assumes power. Conversely, licenses of media outlets have also been revoked on political considerations. For example, the first private television channel, *Ekushey TV* (ETV), which went on air in 1998 (under the Awami League government) gained huge popularity as an innovative and professional alternative to the dull and outmoded state-run Bangladesh Television (BTV), was shut down in 2002 (during the BNP government) after losing an appeal against a High Court decision that its broadcast license was illegal.<sup>1120</sup> It is widely believed that the case against ETV was politically motivated as they were into promoting progressive secular and non-partisan values in their news coverage and other programmes.<sup>1121</sup> It is believed that irrespective of whether or not there were indeed serious licensing irregularities, 'the closure of ETV was not so much in the public interest as was in the interests of the political actors, willing to use the courts to achieve political ends at the expense of media freedom'.<sup>1122</sup> It has been alleged that the broadcasting media received "telephone advice", "instructions" and "directives" from the last caretaker government (2007-2008) regarding programming agenda and restrictions were imposed on television talk shows.<sup>1123</sup>

The change in government in 2009 brought in its wake a series of similar incidents. In April 2010, Channel 1, a private TV station with close affiliations with opposition leaders from BNP, was shut down for alleged 'irregularities' in respect of ownership of its broadcast equipment. In May 2010, the High Court Division upheld a government order and directed the closure of the test transmission of *Jamuna Television* on the ground that the channel's *No Objection Certificate* (NOC) expired in 2007 before they station went on air.<sup>1124</sup> Another channel, *Diganta*, was shut down also allegedly on political grounds. The government also tried to close down *Amar Desh*, a *Bangla* daily, which is known for its connections with the opposition

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<sup>1117</sup> Freedom House, *Freedom of the Press* available at <http://www.freedomhouse.org/report-types/freedom-press>

<sup>1118</sup> United States Department of State, Bureau of Democracy, *Country Reports on Human Rights Practices: BANGLADESH*, 2011, p.15.

<sup>1119</sup> Bertelsmann Stiftung, 2012, *op.cit.*, p.7.

<sup>1120</sup> IGS, 2006, *op.cit.*, p.103.

<sup>1121</sup> *Ibid.*

<sup>1122</sup> *Ibid.*

<sup>1123</sup> Shameem Reza, 2012, *op.cit.*, p.6.

<sup>1124</sup> *Ibid.*

party.<sup>1125</sup> The government's persecution of its editor led first to his arrest on various occasions on charges of fraud, defamation and sedition where he was allegedly tortured, and then to a sentence of six months' imprisonment on charges of contempt in another case.<sup>1126</sup>

Ahmed<sup>1127</sup> chronicles a string of developments that have adversely affected the freedom of the media in the last few years. Following the arrest of the editor of *Amar Desh*, a case was filed accusing over 100 journalists and other office staff for allegedly 'obstructing justice' when they resisted police action in the newspaper office. When YouTube aired the Prime Minister's meeting with the army personnel following the BDR mutiny in February 2009, it was promptly blocked. Pages of Facebook depicting caricatures of the Prime Minister and the Opposition leader were similarly blocked. The anchor of a talk show, 'Point of Order' received death threats and was directed to stop airing shows on human rights and constitutional freedom. Death threats were also issued against journalists who wrote against local political party leaders. The government drafted guidelines to regulate talk shows in respect of not only the content of the show but also the invited guests. The use of mobile phones other methods, e.g., exhibitions, to convey sensitive issues to the public is also resisted by the government. A photo exhibition titled "Crossfire" highlighting extra judicial killings was stopped on the opening day on 22 March, 2010 on the ground that prior permission of the government was not obtained by the gallery for the exhibition.

Governments generally resort to media suppression to offset criticism of their actions.<sup>1128</sup> The media sector engages in a stiff competition over advertising revenue given the high number of media outlets and the prospect of market saturation. In the circumstances, they are often compelled to rely on government advertising which effectively limits their potential to critique the government for irregularities in governance.<sup>1129</sup> Like earlier governments, the present government has engaged in the intimidation of pro-opposition journalists through arbitrary detention and prosecution.<sup>1130</sup> Likewise, criminal libel laws have been used to silence voices critical of the government and key members of the ruling party.<sup>1131</sup> Since the court is empowered to issue warrants of arrest against the accused on defamation charges, editors, journalists and publishers have been known to appear before the court and plead for bail. There is no real trial but such cases are filed simply to harass and gag belligerent journalists. The physical integrity of media personnel is routinely violated in Bangladesh.<sup>1132</sup> One local media freedom organisation documented dozens of attacks and instances of intimidation in 2009 alone, most of which went unpunished.<sup>1133</sup> Odhikar reports that the last few years have witnessed an escalation of violence against media personnel. Odhikar's data reveal that 11 journalists have been killed, 240 threatened, 188 assaulted, 497 injured, 5 arrested, 3 kidnapped, 75 attacked and 80 sued in the period.<sup>1134</sup>

It is widely believed that the media exercises self-censorship due to fear of retribution from the government. The media's (particularly print media) dependence on government

<sup>1125</sup> *Ibid.*

<sup>1126</sup> Fahimul Quadir, 2011, *op.cit.*

<sup>1127</sup> Hana Shams Ahmed, 2012, *op.cit.*, pp.46-49.

<sup>1128</sup> Interview with Nurul Kabir, Editor, *New Age*.

<sup>1129</sup> IGS, 2006, *op.cit.*, p.105.

<sup>1130</sup> Fahimul Quadir, 2011, *op.cit.*

<sup>1131</sup> *Ibid.*

<sup>1132</sup> United States Department of State, 2011, *op.cit.*

<sup>1133</sup> Fahimul Quadir, 2011, *op.cit.*,

<sup>1134</sup> Odhikar and ALRC, 2012, *op.cit.*, p.7.

advertisements for a significant percentage of its revenue, operates as a strong incentive for self-censorship.<sup>1135</sup> It is contended that since the state no longer has monopoly on print and electronic media, it utilises advertising campaigns either to reward media outlets that favor its programmes and policies or to punish pro-opposition media outlets by depriving them of government-sponsored advertisements.<sup>1136</sup> The US State Department reports<sup>1137</sup> that journalists perceived to be critical of the government or engaged in uncovering corruption in the government departments have been subjected to harassment, assault leading to bodily injury, etc., by unspecified wings of the security forces and members of the ruling party. For example, on July 31, 2011 the authorities arrested the editor of an online news portal *SheershaNews*, on an apparently fabricated extortion charge, perceivably in retaliation for his reports on corruption within various government ministries. The government revoked the press credentials of *SheershaNews* journalists and forced the news agency to shut down indefinitely. On September 12, 2011 members of the RAB in Dhaka assaulted a broadcast engineer of the *Bangla Vision* channel. The officers also damaged broadcasting equipment. The reason for the assault was unclear.

Media outlets are occasionally constrained by skewed application of or the absence of laws in a particular area. For example, although *The Printing Presses and Publications (Declaration and Registration) Act, 1973* empowers the District Magistrate as the sole authority to authenticate any declaration, in practice, applications for authentication are sent to the Ministry of Home Affairs which decides, after police enquiry, whether or not a declaration shall be authenticated and the newspaper be permitted to be published. The involvement of the Home Ministry in this process enlarges the potential for political interference and nepotism as is evident from the widespread allegations recently that the government has issued new licenses only to its cronies.<sup>1138</sup>

That media resources are frequently monopolised by political forces and parties in power is evident from the partisan ideology subscribed to by many media outlets. It has been observed that “the vast majority of Bangladeshi newspapers have clearly taken a stand in favor of one of the two major political parties. Media independence is difficult to find in Bangladesh, where the external pressures on media outlets are numerous and strongly influence content”.<sup>1139</sup> Professional media associations are likewise afflicted by political bias and stand divided along partisan lines. Instead of actively pursuing legal reform of restrictive press laws or working to enhance the democratic space for press media, the associations are involved in underhand activities that link the media to political and business interests.<sup>1140</sup>

The fact that many of the media outlets are owned by corporate houses considerably erodes their objectivity in reporting. It has been pointed out that irregularities in the cell phone companies, bottled mineral water companies, etc, have not been reported despite complaints from consumers; this is an example of how the media is forced to protect commercial gains

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<sup>1135</sup> United States Department of State, 2011, *op.cit.*, p.15.

<sup>1136</sup> Fahimul Quadir, 2011, *op.cit.*

<sup>1137</sup> *Ibid.*

<sup>1138</sup> Bertelsmann Stiftung, 2012, *op.cit.*, p.7.

<sup>1139</sup> Barbara Trionfi, “Politicisation of Bangladesh Media Diminishes Space for Critical Reporting”, June 28, 2010,

[http://www.freemedia.at/index.php?id=78&tx\\_ttnews%5Btt\\_news%5D=5017&cHash=8b497cb805](http://www.freemedia.at/index.php?id=78&tx_ttnews%5Btt_news%5D=5017&cHash=8b497cb805).

<sup>1140</sup> Irum Shehreen Ali, “Governance and the Media”, Working Paper 3, Centre for Governance Studies (now Institute of Governance Studies), 2006, p.25.

earned from advertisements of consumer products at the cost of public interest.<sup>1141</sup> Hence, press freedom is compromised by the corporate sector which is more interested in maximising profit than appreciating the intrinsic value of the media profession.<sup>1142</sup> By way of promoting respective business interest they sometimes indulge in unhealthy competition including motivated and unsubstantiated reporting against each other.

While state run media is totally monopolised by the government, the private owned media outlets operate with relative freedom manifest in the ways it has created platforms for political debate, acquainting the public with governance and policy process and exposing corruption. However, poor internal governance, monetary considerations, dependence on government-sponsored advertisements, political pressure, and fear of retribution by the government, for example, by cancellation of license or closure are but some of the elements that divest the media sector of its independence, objectivity and impartiality. Besides, harassment and violence against journalists, often leading to death or disappearance, act as an effective deterrent to media freedom. The freedom of media personnel is further curtailed by the indiscriminate use of libel laws and charges of anti-state activity including sedition. Media ownership by corporate bodies and vested interest groups effectively restricts the independence of the management and reporters in covering stories on corruption and mal-governance that have the potential to conflict with the political and/or business interests of their patrons.

## **Governance**

### ***Transparency, Accountability and Integrity: Legal Framework and Practice on the Ground***

Laws impinging on the media generally do not contain transparency provisions or have limited provisions on disclosure of ownership and internal policies. For example, the media is exempt from disclosure of information under *The RTI Act 2009*. Again, the Telecommunication Regulatory Commission established under *The Bangladesh Telecommunication Act 2001* provides the people with the opportunity to inspect and collect copies of all information that the Commission receives in the course of its functions. The Commission reserves the right to publish or not to publish any confidential information received by it; the Commission's decision in this regard is guided by public interest.<sup>1143</sup> However, the law prohibits the disclosure of any confidential information to any person if the information is likely to be used for the benefit of that person or against the interest of another person. Disclosure of confidential information shall amount to misconduct.<sup>1144</sup>

Under *The Broadcasting Act 2003*, the licensing Authority is required to maintain a register of licenses, which must be available for public inspection.<sup>1145</sup> Each of the regulatory bodies established under *The Bangladesh Radio Authority Act 2001* and *The Bangladesh Television Authority Act 2001* respectively is required to submit to the government an annual report at the end of each fiscal year containing details of its activities during the year. The government

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<sup>1141</sup> Geetiara Nasreen, in conversation with Tamanna Khan, writing for Forum, a magazine of *The Daily Star*, Vol.6, Issue 5, May 2012, p. 21.

<sup>1142</sup> *Ibid.*

<sup>1143</sup> Section 85, The Bangladesh Telecommunication Act, 2001.

<sup>1144</sup> *Ibid.*

<sup>1145</sup> Section 20, The Broadcasting Act, 2003.

reserves the right to call for any information from the relevant authorities at any point of time and the latter are duty bound to submit the same.<sup>1146</sup>

The legal framework on media transparency is inadequate. Whatever little is available is confined to the electronic and broadcast media. The print media is not required to meet any specific transparency measures in terms of internal staff, reporting and editorial policies.

The media sector as a whole lacks transparency in its operations. Information on its revenues, expenses and sources of funding is not easily available to the public.<sup>1147</sup> Information on internal staff, reporting and editing policies are not available publicly but there is scope to access such information under the RTI law. Some of the bigger media actors, for example, Prothom Alo, are trying to incorporate editorial and reporting policies into their broader management policy in the interest of transparency.<sup>1148</sup> Since the media is predominantly owned by corporate houses, transparency measures, including ownership, tax, vat and asset declarations, practiced by the latter in respect of their business ventures preclude the media sector from employing a separate mechanism for ensuring transparency of its work.<sup>1149</sup> It is contended that smaller media entities never disclose their funding sources, assets and incomes.<sup>1150</sup>

While information on media ownership is not problematic in Bangladesh, the sector lacks transparency in terms of its funding mechanisms, operations and ethical codes. This is particularly true of smaller media outlets.

The Press Council, established pursuant to *The Press Council Act 1974*, has the power to warn, admonish, or censure any newspaper or news agency either upon a complaint made to it or suo moto, for breaching or offending the standard of journalistic ethics or public taste or for professional misconduct or a breach of the code of journalistic ethics by an editor or a working journalist. The Council may, after giving the newspaper or news agency, the editor or journalist concerned an opportunity of being heard, hold an inquiry to verify the validity of the complaint.<sup>1151</sup> The Council has similar powers to a court in performing this duty, for example, it may enforce attendance and require production of documents.<sup>1152</sup> However, the fact that the Commission is composed of a Chairperson who is a former High Court Judge and member who is the Attorney General provides the government with the opportunity of interfering in its work. This includes media responsibility to correct erroneous news reports.

The Press Council is an oversight body for the media. However, the composition of the Press Council is problematic and unfavourable for ensuring media accountability. The fact that the Council is a statutory body and comprises of a Chairperson who is a former High Court judge and a member who is the Attorney General, engenders a bureaucratic culture and provides ample opportunities for government interference. The power of the Council is limited in that it can take action against only the print media to the exclusion of the electronic and broadcast media.

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<sup>1146</sup> Section 18, The Bangladesh Radio Authority Act, 2001 and The Bangladesh Television Authority Act, 2001.

<sup>1147</sup> Geetiara Nasreen 2012, *op.cit.*, p.23.

<sup>1148</sup> Interview with Matiur Rahman, Editor, *Prothom Alo*.

<sup>1149</sup> Interviews with Matiur Rahman, Editor, *Prothom Alo* and Nurul Kabir, Editor, *New Age*.

<sup>1150</sup> Interview with Nurul Kabir, *ibid*.

<sup>1151</sup> Section 12, The Press Council Act, 1974.

<sup>1152</sup> Section 13, *ibid*.

The Press Council of Bangladesh, statutorily constituted in 1974, is legally charged with ensuring media accountability and empowered to deal with complaints by the public about media content. Its effectiveness however, has increasingly been curbed for a number of reasons. To begin with, its composition hinders independence as it is headed by a former High Court judge, and consists of members including the Attorney General and representatives of the editors' association, the publishers' associations, the journalists' union, and civil society groups, all of whom are elected by the government. Besides, the Press Council has jurisdiction only in respect of the print media to the exclusion of the electronic media. The power given to the media to censor the media is often misused. The Council suffers from perennial shortage of funds which essentially prevents it from running smoothly.<sup>1153</sup> Indeed, a statutory Press Council that allows far too much governmental interference essentially obstructs the development of self-regulatory media accountability systems, including professional codes of practice, which would enable the profession to handle complaints, including determining fines and remedies, such as publishing corrections and apologies.<sup>1154</sup>

The media has professional forums such as blogs, chats to interact with their colleagues and the general public on various issues. Information disseminated by the media, if considered flawed or erroneous, can be challenged and the concerned outlet is duty bound to provide some kind of response. The practice of publishing apologies or rejoinders is more common amongst the more reputed and bigger media players than the smaller ones.<sup>1155</sup> Individual media outlets do not have ombudsmen,<sup>1156</sup> and attempts at introducing the system is resisted by the reporters associations as it would expose corrupt activities of journalists.<sup>1157</sup>

While the independence of the Press Council is imperative for good governance of the media sector, it is increasingly becoming hostage to political manipulation; indeed, successive governments have been found to utilise the Press Council to gag the press by compelling it to apply its powers to admonish and censure the press. This has rendered the Press Council inactive and incapable of discharging its mandate. The Press Council is largely dysfunctional, partisan, lacks credibility and has limited jurisdiction as it caters only to the print media. It suffers from a constant dearth of financial resources which prevents it from running smoothly. It is poorly equipped to handle grievances and complaints. Efforts to introduce ombudsmen by individual media outlets are thwarted by corrupt journalists.

The law does not provide any concrete code of ethics for journalists or media outlets as a whole. However, the Press Council, established under *The Press Council Act 1974*, has the power to act on any complaint lodged in case of misconduct by a journalist or a breach of professional ethics. The Council is empowered to warn, admonish, or censure any newspaper or news agency upon a complaint made to it or otherwise if it has reason to believe that the accused has breached or offended the standard of journalistic ethics or public taste or that an editor or a working journalist has committed any professional misconduct or a breach of the code of journalistic ethics. The Council may, after giving the newspaper or news agency, the editor or journalist concerned an opportunity of being heard, hold an inquiry to verify the

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<sup>1153</sup> International Press Institute, "The Media Environment in Bangladesh", The Global Network for a Free Media, Vienna, 2009, p. 8 available at [http://www.freemedia.at/fileadmin/media/Documents/IPI\\_mission\\_reports/Bangladesh\\_Media\\_Environment\\_final.pdf](http://www.freemedia.at/fileadmin/media/Documents/IPI_mission_reports/Bangladesh_Media_Environment_final.pdf)

<sup>1154</sup> *Ibid.*, p.10.

<sup>1155</sup> Interview with Matiur Rahman, Editor, *Prothom Alo*.

<sup>1156</sup> *Ibid.*

<sup>1157</sup> Interview with Nurul Kabir, Editor, *New Age*.

validity of the complaint.<sup>1158</sup> Integrity provisions in the laws are inadequate as they are available only in respect of the print media. There is no legal requirement for a code of ethics or ethics committees for the media.

There is no institutional framework for setting standards on ethics and conduct for the media or for protecting it from attacks.<sup>1159</sup> The media is beleaguered by major internal governance problems that overwhelmingly stem from partisan control of the media and its professional bodies.<sup>1160</sup> It is reported that there exists a large “underground media” (synonymous to “underworld”, “mafia”) which are funded by dubious sources and serve as conduits for money laundering and other illegal activities.<sup>1161</sup> Since a great majority of the media outlets are owned by business houses, the tax, vat and assets of the media are incorporated in the tax returns and asset declarations of the respective companies.<sup>1162</sup>

The internal governance of the media has been further weakened by its increased dependence on advertisement revenue in order to meet the higher costs of production and payment; this often compels the media to make adjustments by making critical choices about which story to follow and which to give up.<sup>1163</sup> While only a handful of newspapers pay journalists the official minimum wage, there are numerous others that pay deplorably low wages that essentially encourage media personnel to engage in corrupt practices, including blackmail and rent-seeking.<sup>1164</sup> Regional correspondents, who are kept on retainer by major newspapers and paid by the number of lines in a column published in a month, are often not paid unless a certain number of column lines have been printed.<sup>1165</sup> Consequently, local correspondents are constantly vying for sensational scoops that have the potential to draw substantial pay-offs for squashing the stories.<sup>1166</sup> Similarly, newspaper crime reporters are reportedly bought-off by the crime syndicates; political reporters are believed to be too close to their sources for comfort and so on.<sup>1167</sup> The print media being profit oriented has little scope to engage much in selfless public service.

It has been contended that independence of the print media can be easily ensured if newspaper editors have integrity.<sup>1168</sup> Although there has been considerable apprehension regarding the impartiality of the growing number of politically sponsored private satellite TV channels, many of them have effectively demonstrated their ability and willingness to engage in a form of journalism that strikes a balance between informed and unbiased news coverage and protection of the sponsor’s interests.<sup>1169</sup>

There is no comprehensive code of ethics and standards for the media sector. Inadequacies of the Press Council and its inability to impose standards of conduct for media outlets greatly weaken the integrity of the sector.

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<sup>1158</sup> Section 12, The Press Council Act, 1974.

<sup>1159</sup> IGS, 2006, *op.cit.*, p.5.

<sup>1160</sup> *Ibid.*

<sup>1161</sup> *Ibid.*, p. 104.

<sup>1162</sup> Interviews with Matiur Rahman, Editor, *Prothom Alo* and Nurul Kabir, Editor, *New Age*.

<sup>1163</sup> Afsan Chowdhury, 2007, *op.cit.*, p.135.

<sup>1164</sup> Interview with Matiur Rahman, Editor, *Prothom Alo*.

<sup>1165</sup> IGS, 2006, *op.cit.*, p.105.

<sup>1166</sup> *Ibid.*

<sup>1167</sup> *Ibid.*

<sup>1168</sup> Interview with Nurul Kabir, Editor, *New Age*.

<sup>1169</sup> IGS, 2006, *op.cit.*, p.104.

## **Role Assessment**

### ***Investigating and Exposing Corruption***

Media coverage of corruption has been steadily improving in Bangladesh. While initially media reporting on corruption was marginal, the transition to parliamentary democracy in 1990 ushered in a host of new players who introduced new and improved standards of reporting, including exposing corruption, for example, irregularities in the health and education sectors, and local governance or through investigative journalism, for example, into government procurement process. Indeed, awards given annually by Transparency International Bangladesh (TIB) to the best investigative report provides journalists with an incentive to routinely cover and expose corruption practices. TIB has also been providing trainings on investigative journalism to national and local level journalists. However, these are far from adequate, and investigative journalism into corruption practices has not developed fully and is largely confined to a handful of media outlets and their employees.<sup>1170</sup> Indeed, quality training, attractive compensation package and personal commitment of the journalists and the integrity of the media owners are imperative for successful exposure of corruption by the media.

Successful interventions by the media in exposing corruption have been highlighted in the 2006 governance report of the IGS.<sup>1171</sup> Some of the early engagements by the media in the area include the investigation into bad debts in state-owned banks, the unmasking of bank defaulters and generally exposing systemic corruption in the banking sector. In 2002, persistent reporting in an English daily about an alleged shady award of a submarine cable project by the Bangladesh Telecom and Telegraph Board (BTTB) successfully culminated in the scrapping of the deal for a more transparent one. In 2005, two major *Bangla* dailies revealed how the then State Minister for Energy had received an expensive car as a gift from Niko Resources (a Canadian energy company held responsible for the Tengratila gas field explosion in January 2005). The minister stepped down as a result of these reports, the first ever instance of ministerial resignation in the wake of media reporting on corruption.

Today, stories on corruption appear almost on a daily basis in Bangladesh, particularly in the print media. The media has been vigilant in reporting on the scam involving the stock market which experienced an abrupt crash in 2011, affecting an estimated 3.5 million people. The investigating committee discovered massive manipulation in the share market and failure of the government to oversee the developments resulting in the sharp plunge in share prices. The media has extensively covered the incident of recovering an accounted BDT 7 million in cash from the car of a former railway minister in April 2012. The media has likewise covered the news of the embezzlement of BDT 16 billion alleged to have taken place through Sonali Bank, Bangladesh's largest state-run bank, between 2010 and May 2012. The media has been continuously covering developments in the negotiations between the Bangladesh government and The World Bank after the latter cancelled a project in June 2012 for building Bangladesh's largest bridge alleging conspiracy of high-level fraud. Some private TV channels have also been recently airing investigative reports on corruption on areas of public interest.

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<sup>1170</sup> Interviews with Matiur Rahman, Editor, *Prothom Alo* and Nurul Kabir, Editor, *New Age*.

<sup>1171</sup> IGS, 2006, op.cit., p.108.

Despite advances made by the media in reporting corruption, except for some of the instances discussed above, there has been very little reporting on grand corruption by major stakeholders at the higher echelons of the government. Similarly, the manipulation of constitutional or parliamentary apparatus by successive governments for furthering political goals has not featured greatly in media reporting on corruption.<sup>1172</sup> Likewise, reporting on business, NGO and media sector corruption has been sporadic. It has been suggested that media coverage of private sector corruption lacks credibility on account of the inclination of some newspapers to publish fabricated and unfounded allegations of corruption in rival media houses, competitors or opposition political parties. Mal-governance in the NGO sector likewise escapes media notice perceivably, because in many cases their Chief Executives are well-connected and have allies not only amongst political parties but also the media.<sup>1173</sup> Exceptions include such instances of corruption as a big NGO working on land rights that led to its closure, one on a large health sector project, and reports on alleged corruption and irregularities by some NGOs implementing projects for climate change adaptation.<sup>1174</sup> Corruption in the media sector is also not highlighted, perceivably because this is considered to be “part of the media business”.<sup>1175</sup>

The media in Bangladesh has in recent years been quite active and successful in exposing corruption practices. Investigative journalism, though limited, has captured the interest of many young reporters manifest from the growing number of media reports on high profile corruption cases, involving government functionaries and financial institutions. Paradoxically, corruption in the private and NGO sectors has not featured as prominently in media coverage.

### ***informing the Public about Corruption and its Impact***

While previously the role of the media in informing the public about corruption was limited, the scenario has been changing slowly but steadily in the last decade or so. Corruption being pervasive in the Bangladeshi society is covered almost routinely, particularly by the print media. As such, the media has been successful in making the public aware of the state and manifestations of corruption in Bangladesh.<sup>1176</sup> While remedial action by concerned authorities following corruption reporting by the media has been progressively rising, it is far from sufficient. It has been suggested that corruption reporting as a whole is rarely substantive and verifiable, but rather is source based, speculative, not thoroughly investigated and rarely followed up; besides, as corruption is difficult to conclusively prove, many corruption stories do not have adequate impact.<sup>1177</sup> Media reports on corruption lack depth largely due to resource constraints and the fact that many of these reports are produced pursuant to individual journalistic ambitions, or based on aggrieved party information.<sup>1178</sup> Consequently, media attention on corruption issues has rarely culminated in concrete policy action.<sup>1179</sup>

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<sup>1172</sup> *Ibid.*, p. 107.

<sup>1173</sup> *Ibid.*

<sup>1174</sup> Interview with Iftekharuzzaman, Executive Director, International Bangladesh (TIB).

<sup>1175</sup> Irum Shehreen Ali, 2006, *op.cit.*, p.18.

<sup>1176</sup> Interview with Matiur Rahman, Editor, *Prothom Alo*.

<sup>1177</sup> Irum Shehreen Ali, 2006, *op.cit.*, p.17.

<sup>1178</sup> *Ibid.*, p. 19.

<sup>1179</sup> *Ibid.*

Media coverage of corruption cases is growing, but by and large stop short at publicising the incident. Very rarely do the journalists engage in cost-benefit analyses of the corrupt incidents they cover. Besides, the reports are often piecemeal, with rare follow-ups.

### ***Informing the Public on Governance Issues***

The role of the media in informing the public about government activities has gradually gathered momentum. Although subsequent military regimes discouraged media activism, some media outlets were slowly carving out their own space within the chaotic political governance that prevailed in 1981-1991.<sup>1180</sup>

Since the 1990s onwards, erosion in transparency and accountability in political governance and confrontational politics have narrowed the scope for informed and meaningful engagement in dialogue and discussions by key actors in governance. The media has played a proactive role in filling this void by enlarging the political space and providing a common platform for concerned stakeholders to engage in law, policy and governance debates.<sup>1181</sup> Deliberations that essentially should have taken place in the parliament began to unfold at television talk/chat shows that have been bringing together politicians, scholars, professionals, etc, from within the government and outside for informed discussions on selected themes impinging on rule of law, and democratic governance.<sup>1182</sup> The print media also provides opportunities for constructive dialogue through the think pieces, opinions, and columns on different issues. Opinion polls are another mechanism for capturing public sentiments toward government and political party action. Leading English daily, *The Daily Star*, and many *Bangla* newspapers routinely conduct online opinion surveys on salient government actions and decisions as well as those of the opposition political parties.

Recent years have seen the growth of media-civil society partnership in pushing governance agendas through. Some leading dailies, e.g., *The Daily Star*, *Prothom Alo*, have been partnering with civil society organisations for mobilising against social inequities.<sup>1183</sup> *The Daily Star* and *Prothom Alo* have also collaborated with a civil society think tank, the Centre for Policy Dialogue (CPD), to publicise the contents of the pre-election policy briefs prepared by CPD led Task Forces in 2001 and 2003 respectively. These two print media again partnered with CPD during the caretaker government in 2006-2007 to provide a non-partisan platform for bringing representatives from major political parties, professional groups and civil society to discuss policy alternatives for addressing problems confronting democratic governance. Some other newspapers and TV channels are also following suit.

Despite the encouraging development in the realm of corruption reporting, the media has been largely unsuccessful in bringing to light the causes and consequences of governance deficits. This failure has been attributed to a number of factors: firstly, government reluctance to divulge vital information, secondly, the media's limited professional capacity and resources that severely constrains the industry's ability to professionalise, attract talented young people, maintain high ethical standards, undertake in-depth investigative reporting and innovate and thirdly, the absence of effective internal regulation of the media itself, the partisan politicisation of their professional associations and conflict of interests arising from

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<sup>1180</sup> Afsan Chowdhury, 2007, *op.cit.*, p.134.

<sup>1181</sup> Interview with Iftekharuzzaman, Executive Director, TIB.

<sup>1182</sup> Irum Shehreen Ali, 2006, *op.cit.*, p.12.

<sup>1183</sup> Interview with Matiur Rahman, Editor, *Prothom Alo*.

the fact that the majority of media outlet owners are aligned with the political and corporate elite who have vested interests in using the media for political and business gains instead of exposing governance failures.<sup>1184</sup>

The media in Bangladesh regularly reports on governance issues in terms of successes, failures, deficits and political milestones. Indeed, political and business interests of the owners of the media outlets, tend to dictate, overtly and covertly, the contents and focus of the news coverage. This makes it difficult for journalists to provide an objective and balanced coverage of governance issues. The media is likewise restricted in its criticism of the government and in respect of controversial executive decisions. Besides, resources constraints impede the development of capacity and skills that are required for effective journalism into corruption.

### 3.3.4 BUSINESS

In Bangladesh, the government policies recognize that the private sector must be the key driver of industrialization. In general, the country has a business-supportive legal framework which is sometimes found to be 'weak and slow'. Establishment, operation and independence of private businesses have a mixed experience with the fact that nearly 64 per cent of the Bangladeshi economy remains informal<sup>1185</sup>.

The business sector's formal engagements with the integrity movements are scanty and passive. Weaknesses in public governance and the judicial system severely affect the business climate. There is a lack of confidence in the domestic courts to impartially resolve commercial disputes<sup>1186</sup>.

Despite the significant role of the public sector at the emergence of Bangladesh during the 70s, after four decades, the economy is poised for accelerated growth with the private sector playing a lead role<sup>1187</sup>. Private sector has entered into almost all spheres of the economy from education to manufacturing to public infrastructure development. Almost 76 percent of total investment in Bangladesh is contributed by the private sector. Private investment stood at 19.4% of the GDP in FY 2011-12<sup>1188</sup>. Except for reserved sectors<sup>1189</sup>, private investment is leading all the other industrial sectors of the economy. The private sector has become the major employer, service provider and skills developer in the country. Recognizing this significant contribution, the Sixth Five-Year Plan confirms that "a key focus of the plans will therefore be on strategies, policies and institutions to help guide the private sector in helping Bangladesh achieve the goals set in

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<sup>1184</sup> Irum Shehreen Ali, 2006, *op.cit.*, pp.1-2.

<sup>1185</sup> UNCTAD, *Investment Policy Review: Bangladesh, Unedited Draft*, UNCTAD, New York and Geneva: 2012.

<sup>1186</sup> UNCTAD, *Ibid.*27

<sup>1187</sup> Government of Bangladesh (GOB), *National Industrial Policy 2010*, Dhaka: Ministry of Industries, 2011.

<sup>1188</sup> GOB, 2010.

<sup>1189</sup> Government of Bangladesh (GOB), *National Industrial Policy 2010*, Dhaka: Ministry of Industries, 2011..

Vision 2021”<sup>1190</sup>. In absolute terms, the total investment requirement under the Sixth Plan has been estimated at Bangladesh Taka (BDT) 13.5 trillion in FY2011, of which Private Sector contribution has been estimated at BDT 10.4 trillion (77.2% of total Plan investment) <sup>1191</sup>. Private sector investment has been increasing at a pace slightly above the rate of GDP growth <sup>1192</sup>.

The business sectors’ formal engagement with, and support to the task of combating corruption and improving the integrity system in critical. Corruption has been identified as the second most problematic factor for doing business in Bangladesh among a total of 16 factors. Besides corruption, inadequate supply of infrastructure, access to finance, inefficient government bureaucracy and inflation followed by policy instability are also found to be top problematic factors <sup>1193</sup>.

### **Structure and Organization**

Each of the business has its own style and structure of management system. However the entire business sector is coordinated by the Federation of Bangladesh Commerce and Industries (FBCCI). The Federation of Bangladesh Chambers of Commerce and Industry (FBCCI) is the apex representative organization safeguarding the interest of the private sector in trade and industry in Bangladesh.

The FBCCI was established under the Trade Organization Ordinance 1961 and Company Act 1913. The FBCCI is composed :1. Chambers of Commerce and Industry; 2. Trade and Industrial Associations. and 3. Joint Chamber with Foreign Countries. The FBCCI currently has 54 A Class and 20 B class Chamber members. There are also 19 Joint Chambers with different countries. In addition there are 347 different Business Associations covering all major areas of business, trader , manufacturing bodies. In order to deal with various sectoral issues and interest of the business community and engagement with government, the FBCCI has as many as 63 different sector based standing committees.

### **Capacity**

#### ***Financial, Human and Infrastructural Resources***

Bangladesh has a business-supportive legal framework for business along with the ‘most liberal investment regime in the region <sup>1194</sup>, although sometimes found to be ‘weak and slow <sup>1195</sup>. The country is ranked 129<sup>th</sup> among 185 economies on the ease of doing business as per World Bank's Doing Business survey 2013 <sup>1196</sup>. Globally, Bangladesh stands at 95 in the ranking of 185 economies on the ease of starting a business (falling behind the regional average of 86) and requires 7

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<sup>1190</sup> Government of Bangladesh (GOB), *Sixth Five Year Plan FY2011-FY2015: Accelerating Growth and Reducing Poverty*, Dhaka: Planning Commission, 2012.

<sup>1191</sup> GOB, *op.cit*, 2012.

<sup>1192</sup> GOB, *op.cit*, 2012.

<sup>1193</sup> World Economic Forum, *The Global Competitiveness Report 2012-13*, Geneva: World Economic Forum, 2012.

<sup>1194</sup> Dun & Bradstreet Limited , *D&B Country Report – Bangladesh 2011-12*

.(<http://www.agentschapnl.nl/sites/default/files/bijlagen/Bangladesh%20D&B%202012%20februari.pdf> accessed on 10 Jan 2013).

<sup>1195</sup> WTO, *Trade Policy Review - Report by the Secretariat – Bangladesh*, Geneva: WTO Secretariat, 2012.

<sup>1196</sup> World Bank, *Doing Business 2013: Smarter Regulations for Small and Medium Size Enterprises - Economy Profile: Bangladesh*, 10th Edition, Washington DC: World Bank Group, 2012.

procedures, takes 19 days, costs 25.1% of income per capita with no minimum paid-in capital requirement<sup>1197</sup>. On the ease of resolving insolvency Bangladesh stands at 119 in the ranking of 185 economies. Resolving insolvency takes 4.0 years on average and costs 8% of the debtor's estate, with the most likely outcome being that the company will be sold as piecemeal sale<sup>1198</sup>.

The current legal framework offers a mixed environment for formation and operations of individual businesses. However, the size of a firm (micro, small, medium and large) is a key determinant for effectively exploiting the legal framework and tax compliance. Small firms tend to operate on the fringe of the formal economy, with only loose connections to the formal tax and regulatory apparatus of the state<sup>1199</sup>. The ICA-2 revealed that tax compliance was higher among larger firms<sup>1200</sup>.

Bangladesh is a combination of competitive market, liberal policy regime and cost structure that can provide better returns. However the legal framework for business in Bangladesh is still characterized with a legacy of outdated, inconsistent and inaccessible regulations which are burdensome and sometimes require multiple approvals<sup>1201</sup>.

Reforms of the legal and regulatory framework have become essential in certain areas for facilitating economic growth and social development. In addition to the regular import and export policy guidelines, important new legislation has been passed in trade-related areas including: standards and accreditation, SPS, government procurement, intellectual property rights, economic zones, money laundering, insurance, tourism, telecommunications and competition<sup>1202</sup>. Globally, Bangladesh stands at 95 in the ranking of 185 economies on the ease of starting a business<sup>1203</sup>.

In the Heritage Foundation's Index of Economic Freedom, Bangladesh's score is 53.2, making its economy the 130th freest in the 2012 Index. Its overall score is 0.2 point better than last year, reflecting improvements in business freedom and labor freedom that counterbalance a significant drop in trade freedom. Bangladesh is ranked 28th out of 41 countries in the Asia-Pacific region.

<sup>1204</sup>

Bangladesh's Global Competitiveness ranking as assessed in 2012 is 118 among 144 countries – a 10 rank fall from the last year. The competitiveness rank significantly slipped in financial market sophistication (28 ranks – from 67 to 95), macroeconomic stability (25 ranks – from 75 to 100), labor market efficiency (17 ranks – from 100 to 117), institutions (15 ranks – from 112 to 127) and business sophistication (10 ranks – from 98 to 108). However Bangladesh's performance in

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<sup>1197</sup> World Bank, op.cit, 2012 .

<sup>1198</sup> World Bank, op.cit, 2012.

<sup>1199</sup> Fox, William F. and Murray, Matthew (2013), *Taxing the Small: Fostering Tax Compliance Among Small Enterprises in Developing Countries*, Working Paper 13-10, International Center for Public Policy, Georgia State University, USA. April 2013.

<sup>1200</sup> World Bank, op.cit, 2008.

<sup>1201</sup> FIAS, *Bangladesh: Regulatory Impact Analysis Diagnostic Study and Design* (Washington, D.C.: FIAS, 2006).

<sup>1202</sup> WTO, op.cit, 2012.

<sup>1203</sup> World Bank, op.cit, 2012.

<sup>1204</sup> The Heritage Foundation, Index of Economic Freedom, [<http://www.heritage.org/index/>] accessed on 15 Nov 2012.

market size has improved a little (from 49 to 47) and the country did relatively better among the mid-level economies<sup>1205</sup>. These indicate that Bangladesh is losing its competitiveness and it has started to move in reverse direction from a slow and steady improvement over the last several years<sup>1206</sup>.

Table 1: Bangladesh's GCI Rank and Score 2012-13

Indices	Rank		Score (out of 7)	
	2011-12	2012-13	2011-12	2012-13
GCI	108	118	3.73	3.65
Basic Requirements (BR)	112	119	3.81	3.72
<i>Institutions</i>	112	127	3.31	3.2
<i>Infrastructure</i>	134	134	2.24	2.22
<i>Macroeconomic Stability</i>	75	100	4.70	4.24
<i>Health and Primary Education</i>	108	103	5.01	5.2
Efficiency Enhancers (EE)	99	107	3.69	3.62
<i>Higher Education and Training</i>	126	126	2.81	2.88
<i>Goods Market Efficiency</i>	81	95	4.09	4.10
<i>Labour Market Efficiency</i>	100	117	4.02	3.91
<i>Financial Market Sophistication</i>	67	95	4.07	3.74
<i>Technological Readiness</i>	122	125	2.82	2.74
<i>Market Size</i>	49	47	4.32	4.36
Innovation and Sophistication (IS)	113	122	3.04	2.98
<i>Business Sophistication</i>	98	108	3.51	3.5
<i>Innovation</i>	124	130	2.57	2.47

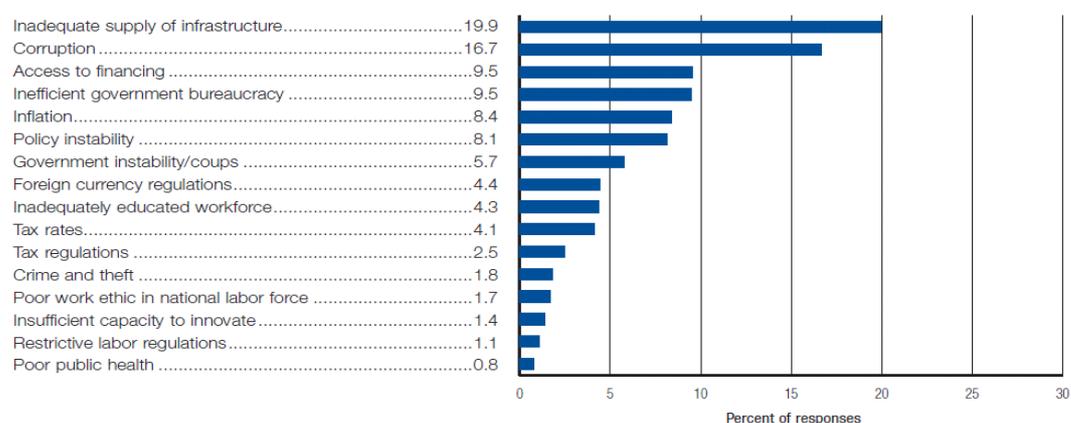
Source: The Global Competitiveness Report 2012–2013, World Economic Forum

<sup>1205</sup> World Economic Forum, *The Global Competitiveness Report 2012-13*, Geneva: World Economic Forum, 2012.

<sup>1206</sup> Centre for Policy Dialogue (CPD), *Release of The Global Competitiveness Report 2012-13 and The Bangladesh Business Environment Study 2012*, Press advisory, September 05, 2012, Dhaka: CPD, 2012.

The Global Competitiveness Report (GCR) 2012-13 also identified the most problematic factors for doing business in the country. The top ten factors include inadequate supply of infrastructure, corruption, access to finance, inefficient government bureaucracy and inflation followed by policy instability.<sup>1207</sup>

Figure 1: The most problematic factors for doing business



Note: From the list of factors above, respondents were asked to select the five most problematic factors for doing business in their country and to rank them between 1 (most problematic) and 5. The bars in the figure show the responses weighted according to their rankings.

Source: Country/Economy Profile Bangladesh, The Global Competitiveness Report 2012-2013.

According to the 2011 International Property Rights Index (IPRI), Bangladesh ranked 125th out of 129 countries with regard to protection of overall property rights. In specific, the legal and political (LP) environment decreased by 0.1 points. While Bangladesh still has a long way to go, ongoing reforms have helped it to slowly improve its position compared to the worst performing countries in the Index.<sup>1208</sup>

The latest WTO Trade Policy Review report found that Bangladesh continues to bring its intellectual property (IP) laws in line with the TRIPs Agreement and other international commitments within national economic and social development strategies. As a least developed country (LDC), Bangladesh has been given an extended time limit until July 2013 for the full implementation of the provisions of the TRIPs Agreement, other than those relating to national treatment and most-favored nation treatment. Bangladesh is also a beneficiary of the TRIPs Council decision extending until 2016, the transition period during which LDCs do not have to protect or enforce patents and undisclosed information relating to pharmaceuticals. Bangladesh recognizes that enforcement of IPRs is important for encouraging innovation and creation although it admits that enforcement falls short of the desired level.<sup>1209</sup>

<sup>1207</sup> World Economic Forum, *op.cit.* 2012.

<sup>1208</sup> Property Rights Alliance, *International Property Rights Index*, (Washington DC: Property Rights Alliance, 2012).

<sup>1209</sup> WTO, *Opcit.* 2012.

Formation of business in Bangladesh is rather standard, even though it is relatively lengthy and requires payments at several stages along the way<sup>1210</sup>. According to data collected by *Doing Business*, starting a business in Bangladesh requires 7 procedures, takes 19 days, costs 25.1% of income per capita and requires paid-in minimum capital of 0.0% of income per capita<sup>1211</sup>. It involves name clearance (which was computerized in the mid-2000s), the filing of company documents (name clearance certificate, memorandum of association, articles of association and others depending on the legal form of the company) for registration with Registrar of Joint Stock Companies and Firms and the registration with the NBR for corporate taxation (tax identification number) and VAT (VAT identification number). In addition, companies need to secure a trade license from the local authorities, typically at the city level. The relative length and costs involved in the start-up procedure, in spite of the recent introduction of IT-tools, means that Bangladesh ranked 95th in the World Bank's "Starting a Business" category of the *Doing Business 2013*.<sup>1212</sup>

Registering property faces major challenge in Bangladesh. There requires 8 procedures, takes 245 days and costs 6.8% of the property value. Despite reducing the property transfer tax to 6.7% of the property value, it stands at 175 in the ranking of 185 economies on the ease of registering property.

The cost and administrative burden of complying with taxes in Bangladesh is quite high. As per the *Doing Business* report, on average, firms make 20 tax payments a year, spend 302 hours a year filing, preparing and paying taxes and pay total taxes amounting to 35.0% of profit. Globally, Bangladesh stands at 97 in the ranking of 185 economies on the ease of paying taxes. However, initiatives have been undertaken to simplify the tax filing and payment system through introducing online mechanisms.

Enforcing a contract has the most severe condition. It takes 1442 days, costs 63.3% of the value of the claim and requires 41 procedures. Globally, Bangladesh stands at 182 in the ranking of 185 economies on the ease of enforcing contracts. There has been no improvement during the last decade in enforcement of a contract.

Resolving insolvency takes 4.0 years on average and costs 8% of the debtor's estate, with the most likely outcome being that the company will be sold as piecemeal sale. The average recovery rate is 25.5 cents on the dollar.<sup>1213</sup> All this suggests a lack of confidence in the domestic courts to impartially resolve commercial disputes.

### ***Independence and Functional Autonomy***

The Companies Act of 1994 is concerned with issues of company administration and management, including annual general meetings and proceedings, and with issues related to the duties and obligations of directors or the protection of minority interests. Current legal framework does not provide specific safeguard from interferences of public officials on private

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<sup>1210</sup> UNCTAD, *Opcit*, 2012.

<sup>1211</sup> World Bank, *Opcit*, 2012.

<sup>1212</sup> UNCTAD, 2012, *Investment Policy Review: Bangladesh*, Unedited Draft, New York and Geneva: UNCTAD.

<sup>1213</sup> World Bank, *Opcit*, 2012.

business. One of the main regulatory problems facing Bangladesh includes unduly permissive primary legislation that provides for much of the implementation arrangements to be done through secondary legislation without Cabinet scrutiny, business scrutiny or further recourse to Parliament. These contribute to an unpredictable business environment where poor regulatory quality is compounded by weak implementation, official corruption, and little prospect of recourse to the rule of law. It is alleged these changes can be made at the behest of particular well-connected interest groups.<sup>1214</sup>

The Government Servants (Conduct) Rules, 1979<sup>1215</sup> and the Government Servants (Discipline and Appeal) Rules, 1985<sup>1216</sup> provide remedies of misconducts by public officials including negligence of duty, flouting of Government orders, circulars and directives without any lawful cause.

A corporate interviewee acknowledges that, in practice, it is exceedingly difficult for a business to complain or file a law suit against the behaviour of the public administration or a civil servant event if it incurs a loss. No company enters into such litigation unless the existence of the business is threatened or it poses a considerable operational risk. In general, businesses are scared of potential victimization in future<sup>1217</sup>.

The World Bank's Second Investment Climate Assessment Report, known as ICA-2, states that the average firm annually receives 14.5 inspector visits (median 4), most frequently from the electricity and customs (over three visits annually on average). Sectors such as garments, leather, and transport/construction receive over 20 visits on average, while trade services firms receive 7. Large firms get 19 visits as opposed to the ten visits to small firms. The number of inspections and visits by officials imposes a financial and non financial (i.e. time) cost on managers, and dampens firms' performance. Regression analysis for Bangladesh shows that the number of inspections per employee has a significant negative correlation with investment and productivity Firms<sup>1218</sup> reported that 1% of their sales go towards unofficial payments to get things done<sup>1219</sup>. Besides, the Business Environment Survey 2012 also identified that undocumented extra payments or bribes made by firms connected with annual tax payments, imports and exports, awarding of public contracts and licenses are common<sup>1220</sup>.

The Business Environment Survey 2012 states that the legal framework for private business in challenging the legality of government actions and regulations is moderately inefficient<sup>1221</sup>. These are mainly evident in tax and tariff disputes. The Commercial Laws Review pointed out that: *"in relation to fiscal laws, particularly customs-related laws, Statutory Regulatory Orders (SROs) are used abundantly to deviate from many of the parameters set in parent laws, especially in the setting of rates for duties and taxes"*. The current position is that rates of duty are fixed by

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<sup>1214</sup> FIAS, Opcit, 2006.

<sup>1215</sup> Government of Bangladesh (GOB), *Government Servants (Conduct) Rules, 1979* (Dhaka: Ministry of Establishment, 1979).

<sup>1216</sup> Government of Bangladesh (GOB), *Government servants (Discipline and Appeal) Rules, 1985* Dhaka: Ministry of Establishment, 1985.

<sup>1217</sup> Interview of a CEO of company (*anonymity requested*).

<sup>1218</sup> World Bank, *Harnessing competitiveness for stronger inclusive growth : Bangladesh Second Investment Climate Assessment*, Washington, D.C.: World Bank Group, 2008,

<sup>1219</sup> World Bank, Opcit, 2008.

<sup>1220</sup> CPD, Opcit, 2012.

<sup>1221</sup> CPD, Opcit, 2012.

Parliament, but the law gives the Government power to notify, through SROs, that certain amounts of duty be excepted etc. While it is common for secondary or enabling legislation to be used in the context of implementing existing laws, in modern democracies, fiscal changes are usually rarely introduced outside the context of a Finance Bill, whose provisions are subject to external consultation (e.g. NBR meetings with business chambers) and debated fully in Parliament.<sup>1222</sup>

As in early 2010, five fixed-line telephone operator's licenses were suspended and subsequently cancelled. In this cancellation process, the Bangladesh Telecommunication Regulatory Commission (BTRC) never took into cognizance the subscribers' interests and as a result a large number of subscribers faced huge difficulty. The companies sought legal recourse, but this remained pending. As for the outcome, whatever way, just for the delay would render the matter ineffective.<sup>1223</sup> BTRC has absolute power to cancel licences on justified grounds, in the due

process of law. In the cases of the ill-fated operators, this fundamental principle was not followed.<sup>1224</sup>

The recent Hall-Mark scam (of siphoning huge amounts of bank borrowing) through state-owned Sonali Bank is exemplified as a product of abuse of power through verbal instructions or unwritten intimidations from powerful quarters that can never be evidenced in black and white.<sup>1225</sup>

## **Governance**

### ***Transparency, Accountability and Integrity: Legal Framework and Practice on the Ground***

All companies in Bangladesh are required to prepare and present audited financial statements at the general meeting of shareholders on an annual basis. Those statements should then be filed with the Registrar. They should include a balance sheet, the profit and loss account, cash flow statement, and changes in equity. In addition, the board should also disclose other financial information such as changes or commitments affecting the financial position of the company<sup>1226</sup>.

In practice, most listed companies mail the annual report to shareholders before the general meeting of shareholders. However, compliance with basic disclosure rules must be considered

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<sup>1222</sup> FIAS, Opcit, 2006 .

<sup>1223</sup> Hussain, Faheem, (nd), *ICT Sector Performance Review for Bangladesh: Including the results and Analysis of the 2011 TRE Survey*, [[http://irneasia.net/wp-content/uploads/2010/07/TRE\\_Bangladesh\\_FH\\_D20.pdf](http://irneasia.net/wp-content/uploads/2010/07/TRE_Bangladesh_FH_D20.pdf)].

<sup>1224</sup> Khondaker Md Abu Bakar, *Remedy for PSTN operators*, *The Daily Star*, 10 June 2010. [<http://www.thedailystar.net/newDesign/news-details.php?nid=142059> accessed on 11 Nov 2012]

<sup>1225</sup> Khan, Masud Alam, *Business: Not government's cup of tea*, Editorial, *The Financial Express*, 3 Nov 2012, [<http://www.thefinancialexpress-bd.com/index.php?ref=MjBfMTFfMDNfMTJfMV82XzE0ODY4OA>]

<sup>1226</sup> World Bank, *Corporate Governance Country Assessment – Bangladesh*, Washington D.C.: The World Bank, 2009.

moderate. Z-listed companies do not in general prepare annual reports, and reports of other companies are often difficult to obtain<sup>1227</sup>.

Listed companies are to prepare their reports using International Financial Reporting Standards (IFRS) as adopted by the Institute of Chartered Accountants of Bangladesh (ICAB). ICAB has incorporated a number of international standards, but not all have been adopted, and some that have not been updated. The Companies Act and other legislation also contain provisions that are not consistent with IFRS. Legally, these provisions are superseded by securities regulation, but in practice they still hinder IFRS implementation by companies. For example, many companies do not prepare consolidated accounts because of the general belief that it is not required under the Companies Act<sup>1228</sup>.

The Institute of Chartered Accountants of Bangladesh (ICAB) has adopted 30 of the 41 International Accounting Standards (as BAS). However, in many cases, the IAS has been adopted in its original form, and subsequent amendments have not been adopted. As a result, IAS and BAS differ in a number of material aspects. Accounting standards in Bangladesh allow for considerable discretion by the company and do not require disclosure of the financial and non-financial details necessary for a full assessment of a company's operations, financial situation and prospects.<sup>1229</sup>

Enactment of the Right to Information Act, 2009 and its enforcement played an important role in ensuring transparency and accountability of public offices. The Act ensures publishing information on registration, permission, licences etc to the media and public.

The Bangladesh Business Environment Study 2012 found that regulations of securities exchanges are not transparent, effective and independent of undue influence from industry and government. The study also found that the financial auditing and reporting standards regarding company financial performance are relatively weak.<sup>1230</sup>

Basic information on most registered companies is available online. Public Limited companies listed with the stock exchanges are required to disclose management and key business information that can be accessed through the stock exchanges depository<sup>1231</sup>. The Registrar of Joint Stock Companies and Firms, Board of Investment, BEPZA and other sponsoring agencies publish company/project information regularly<sup>1232</sup>.

The Rapid Assessment Survey 2012 by CPD also revealed that the monitoring and supervision system of the Securities and Exchange Commission (SEC) to regulate the market is inefficient. So insider trading in Bangladesh's stock market is pervasive. Besides, money laundering through the

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<sup>1227</sup> World Bank, Opcit, 2009.

<sup>1228</sup> World Bank, Opcit, 2009.

<sup>1229</sup> Hossain, Md. Amir, *Corporate Governance Practices in Bangladesh* (December 13, 2011). Available at SSRN: [<http://ssrn.com/abstract=1971852> or <http://dx.doi.org/10.2139/ssrn.1971852> accessed on 12 Nov 2012]

<sup>1230</sup> CPD, Opcit, 2012

<sup>1231</sup> The Companies Act 1994, section 183, 184, 190, and DSE Listing Rules 19(1).

<sup>1232</sup> Could be accessed at [www.roc.gov.bd](http://www.roc.gov.bd), [www.boi.gov.bd](http://www.boi.gov.bd), [www.epzbangladesh.gov.bd](http://www.epzbangladesh.gov.bd).

formal banking system in Bangladesh is somewhat rare. 43% respondents perceived that money laundering through banking system has declined.<sup>1233</sup>

Regulatory basis for corporate governance (CG) emanates from a host of legal measures in practice that include Securities and Exchange Ordinance 1969, Bangladesh Bank Order 1972, Bank Companies Act 1991, Financial Institutions Act 1993, Securities and Exchange Commission Act 1993, Companies Act 1994, Bankruptcy Act 1997.

Institutionalizing the practice of CG in Bangladesh, first initiative was undertaken by the Securities and Exchange Commission (SEC). SEC issued a notification on Corporate Governance Guidelines (CG Guidelines) for the publicly listed companies of Bangladesh under the power vested in the Commission by Section 2CC of the Securities and Exchange Ordinance, 1969.<sup>1234</sup>

The Companies Act 1994 requires that the board have at least three members. The CG Guidelines require that the board be composed of at least five directors and not more than 20. Most have about six to eight. The number of positions one person can hold is apparently not limited and does not have to be disclosed. The Act and CG Guidelines provide limited guidance on board member responsibilities. The voluntary Code of Corporate Governance suggests that the board determine, monitor and evaluate strategies, policies, management performance criteria, and the company's business plan. It is unclear how many company boards actually fulfill these responsibilities or require them in their articles. The law and Guidelines are unclear on whether the board can oversee the selection and replacement of key executives.<sup>1235</sup>

The fiduciary duties of directors are rooted in English common law, and are not explicit in the Companies Act. These include duties to act in the interest of the company and show the same care regarding the company as they would in their own personal affairs. Shareholders can be sued and can be liable for negligence, default, breach of duty or breach of trust, except if they had acted honestly and reasonably.<sup>1236</sup>

The CG Guidelines recommend that one-tenth of the board – and at least one member – be independent. An independent director is defined by the Guidelines as a person who does not hold any share or less than 1 percent. Yet, it is required by the CA to own at least a share to be a director. The CG Guidelines note that the separation of chairman and CEO is preferable, but this is not required. In practice, those positions are usually filled by different individuals.<sup>1237</sup>

Corporate sector in Bangladesh is yet to be capable enough to provide a setup for good corporate governance institutionally. Most importantly, the listed companies do not supply actual and

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<sup>1233</sup> CPD, Opcit, 2012.

<sup>1234</sup> Dhaka Chamber, *Study Report On Corporate Governance in Bangladesh: How Best to Institutionalize it, Critical Practices and Procedures* (Dhaka: DCCI, no date).

<sup>1235</sup> World Bank, *Corporate Governance Country Assessment – Bangladesh*, Washington D.C.: The World Bank, 2009.

<sup>1236</sup> World Bank, Opcit, 2009, p.5.

<sup>1237</sup> World Bank, Opcit, 2009, p.5.

adequate information to the investors, employees and other stakeholders. In many cases, stakeholders' interest are overlooked and not given preference.<sup>1238</sup>

The Securities and Exchange Commission (SEC) issued Guidelines on Corporate Governance in 2006. Listed companies are required to “comply or explain”. The Guidelines cover some key topics, including the functioning of the board, and internal and external controls. The Guidelines do not deal with other aspects of corporate governance, including shareholder rights. Compliance is at its early stage - in 2007, about 33 percent of the companies declared full compliance with the Guidelines and 60 percent declared partial compliance. Other institutions have issued guidance on corporate governance. The Bangladesh Enterprise Institute (BEI) issued a more detailed and voluntary Code of Corporate Governance in 2004. Compliance is limited. Bangladesh Bank (BB), which regulates the financial sector under the 1991 Bank Companies Act and the 1993 Financial Institution Act, issued Prudential Regulations on Corporate Governance for Banks in 2003.<sup>1239</sup>

Corruption represents a serious impediment to efficient business operations in Bangladesh, as emphasized by the US Department of State report in 2012. Corruption and bribery in Bangladesh raise the costs and risks of doing business and are identified as common within public procurement, tax and customs administration, and regulatory authorities. The same report also notes that corruption in Bangladesh has resulted in annual losses amounting to 2 to 3% of the country's GDP. This perception is supported by the World Economic Forum Global Competitiveness Report 2012-2013, according to which, inadequate supply of infrastructure and corruption are the greatest constraints to foreign companies operating in Bangladesh. Corruption is reportedly present in most interactions with public authorities.<sup>1240</sup>

- Foreign companies report that they are at times subjected to costly and unnecessary licence and permit requirements, while e-governance is not yet developed in Bangladesh. Face-to-face encounters with public officials are therefore inevitable and facilitate the solicitation of bribes.
- Encounters with police forces are frequently marked by corruption.
- There is no legal mechanism to deal with business-to-business corruption.
- Reports of corruption in the awarding of public and private tenders are frequent. Collusion between political leaders and bureaucrats in public contracting occurs in order to favor particular bidders.

According to Global Integrity Report 2010, conflict of interest regulations for procurement officials are not well enforced in practice, and there is no mechanism to monitor the assets, incomes and spending habits of public procurement officials. Companies guilty of major violations of procurement regulations, such as bribery, are not always prohibited from participating in future procurement bids. It is further alleged that some powerful companies will not be affected

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<sup>1238</sup> World Bank, *How Bangladesh is making progress : corporate governance effort is central to sustainable development*, Washington D.C.: The World Bank, 2009.

<sup>1239</sup> World Bank, *Op cit*, 2009.

<sup>1240</sup> <http://www.business-anti-corruption.com/country-profiles/south-asia/bangladesh/show-all/>

by debarment.<sup>1241</sup> Nevertheless, more than 50 companies have been banned from the bidding process for violating procurement regulations between 2009 and 2010.<sup>1242</sup>

Business executives surveyed in the World Economic Forum Global Competitiveness Report 2012-2013 perceive that government officials often favour well-connected companies and individuals when awarding contracts. Rules and criteria are frequently manipulated to fit specific providers, as reported in Global Integrity 2010<sup>1243</sup>.

Lawsuits and commercial disputes are often delayed and the parties are subsequently encouraged to pay 'speed money' in order to obtain a ruling.<sup>1244</sup>

CPD's Bangladesh Business Environment Study 2012 found that undocumented extra payments or bribes made by firms connected with imports and exports, awarding of public contracts and licenses, public utilities, from one private firm to another to secure business are quite common.

<sup>1245</sup>

## **Role Assessment**

### ***Anti-Corruption Policy Engagement***

In Bangladesh, business sectors' initiatives and engagements in combating corruption is not noticeably visible. However, the media, civil society, non-government organizations and Transparency International (TI) has a strong voice for anti-corruption measures. . The TI board of trustees includes at least one business leader (president of a renowned business chamber) and one entrepreneur.<sup>1246</sup>

There is a strong nexus between politics and businesses in Bangladesh. *"You can now buy yourself a MP [Member of Parliament] nomination the same way as you buy an air ticket to Singapore: pay up and off you go!"* This statement by a Bangladeshi Member of Parliament illustrates a problem in current Bangladeshi politics; public positions are for sale. People with money are progressively getting party nomination and politics is becoming a 'rich man's game'. This influx of businessmen is of increasing concern to observers and intellectuals, and the businessmen are accused of seeking position *not* in order to promote the collective interests of the business sector but rather to protect and expand their private businesses.<sup>1247</sup>

Recent examples are non-enforcement of safe working conditions in factories. Many garment factory owners have substantial political clout, including some who are members of the

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<sup>1241</sup> <http://www.globalintegrity.org/report/Bangladesh/2010/>

<sup>1242</sup> <http://www.globalintegrity.org/report/Bangladesh/2010/>

<sup>1243</sup> <http://www.business-anti-corruption.com/country-profiles/south-asia/bangladesh/show-all/>

<sup>1244</sup> <http://www.business-anti-corruption.com/country-profiles/south-asia/bangladesh/show-all/>

<sup>1245</sup> CPD, 2012

<sup>1246</sup> <http://www.ti-bangladesh.org/index.php/site-map/board-of-trustees>

<sup>1247</sup> Inge Amundsen, *'Pay Up and Off You Go!' Buying Political Positions in Bangladesh*, in Søreide, T. and A. Williams: *Corruption, grabbing and development: Real world challenges*. Edward Elgar Publishing, 2013. Also accessed through [www.cmi.no/publications/publication/?4956=pay-up-and-off-you-go-buying-political-positions](http://www.cmi.no/publications/publication/?4956=pay-up-and-off-you-go-buying-political-positions).

Bangladesh parliament. Factory owners also finance political campaigns during national elections, according to *The Times*. The result is that the laws that would have to be changed to hold factory owners accountable are largely in the hands of the factory owners themselves.<sup>1248</sup>

The National Integrity Strategy of Bangladesh recognizes that both public and private sectors have key roles to play here and the task of eliminating the causes of corruption will only be successful if a multi-disciplinary approach is undertaken.<sup>1249</sup> The top business chamber and association represented in the first meeting of the recently formed National Integrity Advisory Council (NIAC)<sup>1250</sup> which is strong indication of private sector engagements in implementation of integrity strategy.

A Global Compact Local Network was launched in Bangladesh in 2009. Only 45 organizations subscribed to the Network including 21 companies and four business associations<sup>1251</sup>. Among them, 14 companies are active participants and the remaining seven are Non-communicating members for failing to submit a Communication on Progress by the relevant deadline<sup>1252</sup>. Since 2002, the Bangladesh Enterprise Institute (BEI) has been active in promoting the principles in Bangladesh. In September 2007, CSR Centre came on board to take forward the UNGC agenda in Bangladesh. At present, BEI and CSR Centre together comprise the principal promoters of the UNGC and its principles among the Bangladeshi signatories<sup>1253</sup>.

Trade and business associations are often led by former government employees or politically active persons, leading to patron-client relations between government and business<sup>1254</sup>. Private sector corruption is also widespread, and Bangladesh performs poorly in relation to the ethical behaviour of companies in interactions with public officials, politicians and other companies, according to the World Economic Forum Global Competitiveness Report 2009-2010.<sup>1255</sup>

Bangladesh Enterprise Institute (BEI), a civil society organization promotes issues of importance to the private sector and seeks to influence policy for the development of a market-oriented

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<sup>1248</sup> Frank Hayes, Bangladesh Factory Owners Aren't Held Accountable Because They Control The Law, Activists Say. June 30, 2013, in [www.fierceretail.com/story/bangladesh-factory-owners-arent-held-accountable-because-they-control-law-a/2013-06-30](http://www.fierceretail.com/story/bangladesh-factory-owners-arent-held-accountable-because-they-control-law-a/2013-06-30)

<sup>1249</sup> GOB, *Framework of National Integrity Strategy: An Inclusive Approach to Fight Corruption* Government of the People's Republic of Bangladesh, 2008

<sup>1250</sup> <http://www.thefinancialexpress-bd.com/print.php?ref=MjBfMDNfMjlfMTNfMV84OF8xNjQ3MDg=>

<sup>1251</sup>

[http://www.unglobalcompact.org/participants/search?business\\_type=all&commit=Search&cop\\_status=all&country\[\]=14&joined\\_after=&joined\\_before=&keyword=&listing\\_status\\_id=all&organization\\_type\\_id=&page=1&per\\_page=250&sector\\_id=all](http://www.unglobalcompact.org/participants/search?business_type=all&commit=Search&cop_status=all&country[]=14&joined_after=&joined_before=&keyword=&listing_status_id=all&organization_type_id=&page=1&per_page=250&sector_id=all)

[p://www.unglobalcompact.org/participants/search?business\\_type=all&commit=Search&cop\\_status=all&country\[\]=14&joined\\_after=&joined\\_before=&keyword=&listing\\_status\\_id=all&organization\\_type\\_id=&page=1&per\\_page=250&sector\\_id=all](http://www.unglobalcompact.org/participants/search?business_type=all&commit=Search&cop_status=all&country[]=14&joined_after=&joined_before=&keyword=&listing_status_id=all&organization_type_id=&page=1&per_page=250&sector_id=all)

<sup>1253</sup> <http://ungcbangladesh.org/index.php?NoParameter&Theme=default&Script=homeabout>.

<sup>1254</sup> <http://www.business-anti-corruption.com/country-profiles/south-asia/bangladesh/general-information/>

<sup>1255</sup> <http://www.business-anti-corruption.com/country-profiles/south-asia/bangladesh/general-information/>

economy. It is a project-oriented institute that works with projects to promote transparency and to fight corruption.<sup>1256</sup>

### ***Supporting Civil Society in Anti-Corruption Work***

The business sectors' formal support to civil society on its task of combating corruption is minimal. However, business chambers declare support for anti-corruption initiatives, e.g. IBFB organized two national advocacy workshops titled "Reducing Corruption in Accessing Industrial Credit" in 2010<sup>1257</sup>. MCCI<sup>1258</sup> and other chambers also speak against corruption.

An interviewee from a national business chamber opined that business sector has significant interest in engaging in the anti-corruption initiatives. However, due to lack of confidence in the Anti-Corruption Commission (ACC), inefficiency of judicial enforcement and most importantly, politicization and potential individual victimization discourage them from any active engagement<sup>1259</sup>.

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<sup>1256</sup> <http://www.business-anti-corruption.com/country-profiles/south-asia/bangladesh/initiatives/private-anti-corruption-initiatives/>

<sup>1257</sup> IBFB Advocacy workshops on Reducing Corruption in Accessing Industrial Credit, 2010, [http://www.ibfb.org/index.php?option=com\\_content&view=article&id=115:advocacy-workshops-on-reducing-corruption-in-accessing-industrial-credit&catid=31:past-events-information&Itemid=1](http://www.ibfb.org/index.php?option=com_content&view=article&id=115:advocacy-workshops-on-reducing-corruption-in-accessing-industrial-credit&catid=31:past-events-information&Itemid=1)

<sup>1258</sup> [http://www.thefinancialexpress-bd.com/more.php?news\\_id=142399&date=2012-09-06](http://www.thefinancialexpress-bd.com/more.php?news_id=142399&date=2012-09-06) MCCI concerned

<sup>1259</sup> Interview of a business chamber leader (*anonymity requested*).

## CHAPTER 4

### 4.1 CONCLUDING OBSERVATIONS

The preceding chapters have encapsulated the overall status of relevant pillars within the NIS of Bangladesh on terms of capacity, governance and role. It is evident that while nearly all pillars within the NIS is blessed with a robust legal framework, the implementation is ineffective. This tends to weaken the efficiency of the NIS leading to deficits in good governance.

It is recognised that a strong synergy between and amongst the NIS pillars is crucial for the system's overall effectiveness. Weaknesses in one or more pillars, particularly in the public sector, directly or indirectly affect the other pillars. Within the Bangladesh NIS, a dysfunctional parliament, an all-powerful executive, an exploited judiciary, and an increasingly politicised bureaucracy and police force have essentially eroded the checks and balances that are pivotal to good governance. Questions have been raised regarding the independence and credibility of the respective Commissions (EC, ACC, NHRC & IC) which have diluted public trust on these institutions. The absence of strong internal governance in political parties, civil society and the media likewise has exacerbated the governance challenges that confront the country's integrity system today.

The following section underscores the strengths and weaknesses of respective pillars in the NIS of Bangladesh:

#### **Parliament**

##### ***Strengths***

- Parliamentary Standing Committees active. Members from the Opposition included and participating in PSCs.
- Electronic system in place for automatic time management and receiving notice. Live telecast/broadcast of parliamentary proceedings.
- Enactment of critical laws (e.g. Right to Information Act 2009, Whistleblowers' Protection Act 2011, Money Laundering Prevention Act 2009, National Human Rights Commission Act 2009, Public Finance and Budget Management Act 2009, Competition Act 2012).

##### ***Weaknesses***

- Inadequate financial resources, lack of quality staff.
- Nominal contribution to promotion of good governance—weak oversight of the Executive.
- Extensive executive control, predominance of the ruling party. Sustained parliamentary boycott by the Opposition.
- Debates/discussions motivated by party considerations. Critical national issues are of secondary importance.
- Apathy of MPs towards constructive criticism and oversight of government policies.
- Policy capture—growing nexus between MPs, vested interest groups and business. Conflict of interest amongst committee members.

## **Executive**

### ***Strengths***

- Increase in budget allocation to the Executive branch.
- Extensive power and authority granted by law to act independently.
- Parliamentary Standing Committees to oversee the work of the executive.

### ***Weaknesses***

- Absolute power and authority of the executive creates scope for abuse.
- Separation of power between legislative, executive and judicial organs are uneven and dominated by the executive.
- Partisan bias of the executive in decision making.
- Absence of legal provision to disclose executive decisions.
- Absence of accountability of the executive and transparency in decision making.
- No legal provision requiring annual disclosure of income and wealth.

## **Judiciary**

### ***Strengths***

- Infrastructure and capacity development (new court buildings in various districts, separate Judicial Service Commission for recruitment of lower court judges, recruitment of judges to address case backlog, Information Unit at the Appellate Division for providing information to the public, initiatives for better case management and preservation of case files in higher courts).
- Gradually advancing towards separation from executive influence.
- Judicial interventions in the public interest—PIL, writs.

### ***Weaknesses***

- Lack of financial autonomy (dependence on the Executive).
- Low pay structures, inadequate infrastructure and logistical support.
- Interference by MLJPA despite separation from executive branch.
- Politicisation of judges (appointment, promotion) leading to erosion in judicial independence.
- Accountability of judges impeded by immunity from prosecution & censure.
- Asset disclosure by SC judges is non-existent.

## **Public Administration**

### ***Strengths***

- High priority attached to public service in budgetary allocation.
- Increasing cooperation between the public sector and civil society.
- Performance based auditing piloted.
- Introduction of Mid Term Budgetary Framework.

### ***Weaknesses***

- Lack orientation in terms of values of new public administration and dynamics of development management.
- Great number of employees but ineffective public service delivery.
- Partisan political appointments, transfers and promotions. Number of OSD high.
- Elitist, powerful and resistant to change.
- Characterized by structural deficiencies, erosion of hierarchical control and lack of motivation.
- Vulnerable to politicisation for personal/material gain leading to corruption.
- Inclined towards close door policy development leading to erosion in transparency and accountability.

## **Police (Law Enforcement)**

### ***Strengths***

- Increased investment in modern arms, equipment and vehicles.
- Initiatives to beef up number of police personnel and introduce allowances (investigation allowance, risk allowance).
- Police reform initiatives on-going (model thanas, victim support centres, community policing, increase in the number of women police).

### ***Weaknesses***

- Low pay, overwork and inadequate logistical support.
- Recruitment /transfer/promotion dependent on political patronage, nepotism and bribery.
- Hostage to ruling party. Backlash for disobedience/deviation including dismissal from service.
- Questionable links with bureaucracy, business and criminal syndicates .
- Police administration characterised by corruption, inefficiency and partiality.
- Police work outside public scrutiny. Citizens afraid to complain against police wrongdoing/misconduct.
- Absence of sanctions based on political considerations/personal gain breed a culture of impunity.

## **Election Commission**

### ***Strengths***

- Independent Secretariat controlled by the EC.
- Strong administrative set-up (central database, infrastructure up to Upazila level).
- Institutional capacity to hold elections (human resource, skill and expertise).
- Considerable financial independence.
- Role and responsibility (e.g. preparing voter list, delimiting constituencies, holding elections, monitoring candidates and political parties)

### **Weaknesses**

- Independence of CECs/ECs debatable.
- Constrained by legal limitations:
  - dependence on government for holding local government elections .
  - devoid of authority to-- cancel MP membership even if found ineligible, scrutinise electoral expense returns, disclose financial statements of political parties, penalise breaches of electoral Code of Conduct, etc.)
- The law is silent on issues of asset declaration, financial gratification, political activities, gifts and hospitality in relation to Commissioners.
- Redress for electoral irregularities slow and indefinite.
- EC seemingly weak in living up to its mandate evident from its failure to withstand pressure of the ruling party and local administration in the electoral management process.

### **Office of Comptroller and Auditor General (CAG)**

#### **Strengths**

- Innovation in planning, development of competence, quality reporting.
- Detached from external influence—political or otherwise.
- CAG activities and decision-making processes generally transparent.

#### **Weaknesses**

- CAG's independence in respect of personnel and finance compromised as in practice it is subordinate to the Finance Ministry.
- The offices are constrained by inadequate technical and human resource capacity. Not well-suited for conducting performance audits.
- Lack of timely response to audit reports/objections by the Parliament and government creates opportunities for corruption.
- Backlog of audit reports.

### **Local Government**

#### **Strengths**

- LGs have strong Constitutional framework.
- Local visibility and presence particularly in times of crisis.
- Increased availability of resources.

#### **Weaknesses**

- LGs are chronically poor.
- Control oriented regulatory framework.
- Limited autonomy of the LGs which are subject to authoritarian supervisory role of the "central government".
- LGs lack transparency and accountability as general people have little idea about budget allocation, implementation of development projects; and income and expenditure.
- Monitoring mechanisms are weak, inadequate and ineffective.

- LGI leadership suffers from image crisis on account of corruption and lack of transparency, and politicisation to a certain degree .

### **Anti-Corruption Commission (ACC)**

#### ***Strengths***

- ACC panel lawyers in and outside Dhaka.
- Human resource beefed up (number of Asst./Deputy Directors recruited against available positions).

#### ***Weaknesses***

- Filing and withdrawal of cases on political considerations .
- Inadequate institutional capacity to pursue anti-corruption cases.
- “A toothless tiger”. ACC’s ability to act independently questioned. Attempts at curbing ACC’s independence manifest in amendment to the Act, later aborted.
- The law is silent on issues of asset declaration, financial gratification, political activities, gifts and hospitality in relation to Commissioners.
- Inability to secure cooperation from other institutions (Bangladesh Bank, NBR) in information collection.
- Disposal of corruption cases slow.

### **National Human Rights Commission (NHRC)**

#### ***Strengths***

- Multiple roles of watchdog over HRTs violation, HRTs education and law & policy advocacy.
- Introduction of a Standard Operating Manual on Ethical and Accountability standards.
- Engagement through promotional activities at the national and local level.

#### ***Weaknesses***

- Government/donor dependence in terms of funding.
- Weak investigation due to resource deficiency in manpower, technical know-how, infrastructure and logistical support.
- Recruitment criteria for commissioners too broad offering scope for nepotism.
- Inadequate legal framework ensuring transparency, integrity of Commissioners.
- The law is silent on issues of asset declaration, financial gratification, political activities, gifts and hospitality in relation to Commissioners.
- Non cooperation by GoB ministry (MOHA). Legal restriction on investigation of breaches by “disciplined forces” that technically include law enforcement agencies.
- NHRC is primarily a recommendatory body with no power of execution.

### **Information Commission (IC)**

#### ***Strengths***

- Engagement in promotional/communication activities.
- Increasing number of requests/appeals for information received and processed.

- Adequate financial resources available.

#### **Weaknesses**

- Government control over staff recruitment impedes independence.
- Top leadership devoid of requisite experience.
- Lack of personnel with specialised knowledge and skills.
- Under utilisation of resources and staff positions.
- The law is silent on issues of asset declaration, financial gratification, partisan political activities, gifts and hospitality in relation to Commissioners.
- Lack of proactive initiative to seek information on matters that are potentially embarrassing for the government.

### **Political Parties**

#### **Strengths**

- Political party formation relatively easy.
- Regular audit returns by registered political parties.

#### **Weaknesses**

- Confrontational political culture.
- Tendency amongst elected political parties to treat Government as an apparatus of their own political party.
- Lack of transparency in political fundraising and use.
- Lack of internal democracy (centralised decision-making, personalisation of party structures).
- Criminalisation and/or commercialisation of politics.

### **Civil Society**

#### **Strengths**

- Vibrant agent for advocacy for law/ policy/ governance reforms.
- Demanding transparency and challenging state priorities, processes, practices.
- Pro-poor/marginalised communities issues rank high on CSO agenda.
- Strategic issue- based alliances with other CSOs and the media.

#### **Weaknesses**

- Absence of financial sustainability and dependence on external grants.
- High turnover of staff (project based, inadequate pay structures, limited career development opportunities)
- Independence subverted by
  - restrictive/ambiguous legal/procedural measures
  - govt. control of resources, intolerance and harassment of CSO personnel/activists.
- Practice of proactive disclosure of sources of funds, internal governance absent.
- Anomalies in tax returns, audit reports and procurement.
- Accountability compromised by weak boards and strong founder/ successor executives.
- Inadequate self regulation.

## Media

### Strengths

- Proliferation of media outlets -- modernisation, technological advancement and institutional capacity development.
- Whistle blowing through proactive coverage of corruption.

### Weaknesses

- Low wages, lack of incentive and training on ethics and integrity.
- Inadequate academic, analytical and technological skills of media personnel.
- State run media monopolised by govt.
- Media independence curtailed by
  - indiscriminate use of libel laws, cancellation of license /closure
  - dependence on govt. sponsored advertisements
  - media ownership by corporate/vested interest groups with partisan political bias
  - poor internal governance
- Lacks transparency in terms reporting, funding, and operations.
- Press Council largely dysfunctional: lacks credibility and financial resources, has limited jurisdiction and is hostage to political manipulation.

## Business Sector

### Strengths

- Lead contributor to the national economic growth.
- Engaged in almost all spheres of the economy from education to manufacturing to public infrastructure development.
- Basic information of most registered companies are available on-line.

### Weaknesses

- No legal safeguards against undue interference of public officials.
- Private sector corruption is widespread. Ineffective mechanisms to deal with business sector corruption.
- Ethical behaviour of companies in relation to public officials, politicians etc is question.
- “Informalism” is a regular process in managing relationship with Government and other stakeholders

## 4.2 CONTINUING CHALLENGES

Democratic governance, which is fundamental to ensuring the rule of law, due process of law, protecting citizens’ rights and ensuring effective functioning of state institutions, continues to be elusive in Bangladesh. Paradoxically, Bangladesh has made commendable strides in social and economic development. While a number of theories explain this paradox,<sup>1260</sup> it is believed

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<sup>1260</sup> There are four types of hypotheses to explain the inverse relationship between growth and governance. First, It is argued that growth in Bangladesh in recent decades is an aberration and is likely to be reversed soon (Fernandez, Anna Margarida and Aart C. Kraay. 2007. “Property Rights Institutions, Contracting Institutions and Growth in South Asia in Macro and Micro evidence”. In *South Asia: Growth*

that absence of good governance would be a serious constraint on further growth.<sup>1261</sup> Indeed, the NIS assessment reveals that partisan political regime management poses a significant threat to the consolidation of democracy and improvement in the quality of governance in Bangladesh. The situation is compounded by the continuing hostility between the two major political parties in Bangladesh which has effectively blocked opportunities for dialogue and consensus.

Clearly, there is a dearth of political commitment to bring about substantive reforms within the National Integrity System (NIS) and practices in Bangladesh. The ruling parties have historically concentrated more on establishing their hegemonic control over public resources to further partisan interests rather than on public interest. Consequently, public policy-making process is influenced predominantly by patronage politics as opposed to the compulsion for the government to play an effective developmental role.<sup>1262</sup> Successive governments have been aggressively intolerant of criticism of their role and functions, no matter how objective/constructive. Governments tend to treat their critics as being either in league with their political opponents or motivated by some hidden agenda for undermining the regime. This culture of intolerance has to all intents and purposes been detrimental to good governance.

Lack of accountability and transparency prevails across nearly all key institutions of integrity resulting in widespread corruption, deterioration of law and order, and violation of people's rights –all with impunity. Indeed, the situation is so complex that corruption and accountability deficits form such an intricate web, that even if reforms are implemented in

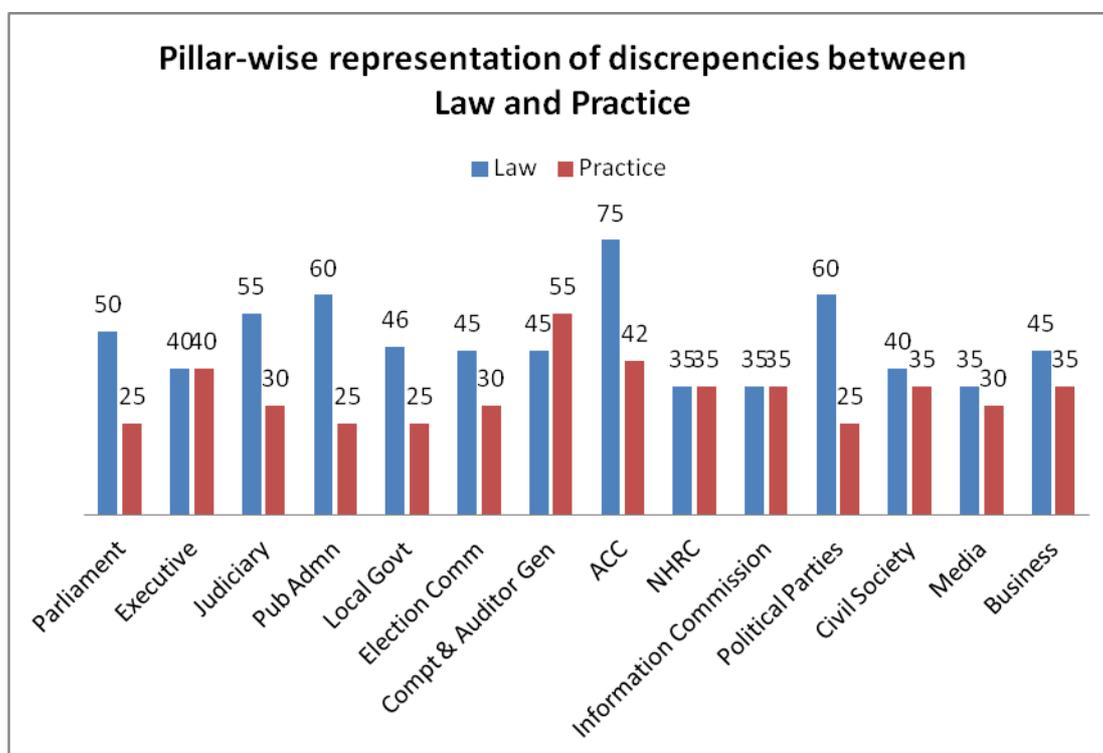
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*and Regional Integration*, eds. Sadeq Ahmed and Ejaz Ghani. Delhi: Macmillan India); Second, good growth amidst pervasive bad governance in Bangladesh to the creative role of NGOs and civil societies (Devarajan, Shantayanam. 2008. "Two Components of Governance Indicators: Where are We, Where Should we be Going?" *World Bank Research Observer*. 23(1), 31-34.). Thirdly, Bangladesh's remarkable achievement in economic sphere was triggered by a few key governance reforms (World Bank. *Bangladesh Strategy for Sustainable Growth*. Dhaka 2007. (i) The State created space for the emergence of a domestic private sector, (ii) Successive governments encouraged the migration of Bangladeshi workers, (iii) The State recognised the limitations of its services delivery and created space and forged partnership with NGOs for providing public services, (iv) Public expenditure was relatively pro-poor compared to similar low income countries, and (v) The State improved its capacity in disaster-management. The fourth hypothesis postulates a kinked relationship between growth and governance over time. This suggests that at low levels of economic development, governance is not a constraint on growth. It may be possible to attain growth at low level of development despite pervasive governance failures (Avinash Dixit, 2004. *Lawlessness and Economics*. Princeton: Princeton University Press).

<sup>1261</sup>Address at a seminar on "Governance and Growth: Is Bangladesh an Outlier", jointly organised by Economic Research Group (ERG) and International Growth Centre (IGC), Hotel Sonargaon, Dhaka. Also see "Improve governance to maintain growth. Economists warn against failure", The Daily Star, December 21, 2011.

<sup>1262</sup> Mahmud, Wahiduddin, Sadiq Ahmed and Sandeep Mahajan, *Economic Reforms, Growth, and Governance: The Political Economy Aspects of Bangladesh's Development Surprise*, The International Bank for Reconstruction and Development, The World Bank, 2008.

one sector, they are likely to be obstructed by practices in another.<sup>1263</sup> Indeed, the data in bar representation below drawn from the present assessment clearly demonstrates the prevalence of significant gaps between relevant laws and actual practice.



With the exception of the Executive, NHRC and the Information Commission the practices of which are commensurate to applicable laws, all other pillars reveal considerable discrepancies between laws and practice. This limitation once again resonates the lack of political will of concerned actors in governance to uphold the rule of law and no impunity principles for efficient implementation of the NIS through strategic interventions and reforms. The important point here is that not only must reform occur in most every public sector; they must be appropriately sequenced in order for the reforms to be effective and durable.<sup>1264</sup>

### 4.3 RECOMMENDATIONS

#### **Parliament**

- Effective measures must be taken to make the parliament effective, especially to ensure healthy debate for accountable governance. The practice of parliamentary boycott must be stopped by law.
- A timeframe should be prescribed under the Rules of Procedure (RoP) for implementation of the recommendations of the Parliamentary Committees. Key

<sup>1263</sup>Downey, Kevin, “Sequenced Reforms as a Response to Governance Challenges in Bangladesh” in *Asian Affairs*, Vol. 29, No. 2, April - June 2007, pp. 40-59, at p.49.

<sup>1264</sup> Ibid.

committees such as, the Public Accounts Committee (PAC), should be chaired by opposition members. In forming Committees, special care should be taken to avoid conflict of interest.

- The professional capacity of the Parliament secretariat must be improved.
- The selection of the Speaker should be made through all-party consultation and consensus in order to protect his/her neutral image. Speaker should resign from party position if any. Deputy Speaker should be appointed from the opposition party
- The draft Code of Conduct Bill for MPs must be enacted as a law.
- Information regarding MP's income-expenditure, properties, loan, income tax, and information on legal cases and the usage of development funds must to be disclosed and updated on a regular basis.

### ***Executive***

- In order to ensure checks and balance in the role of the Executive, the Rules of Business governing it must be reformed.
- A law/rules must be adopted for further empowering the committee system to ensure and strengthen oversights on the executive and public bureaucracy.

### ***Judiciary***

- The judiciary must have complete financial and administrative independence from the executive branch of the government. Salary structures, benefits, etc., must be reviewed and determined in consonance with their status, experience, competence and performance.
- Appointments of Supreme Court Judges must be made by an independent body (e.g., a Supreme Judicial Commission or a collegium of judges) in concurrence with the Chief Justice and in conformity with prescribed rules developed in this respect.
- Strict compliance with codes of conduct by all judicial officers must be ensured including mandatory disclosure of income and assets updatable on annual basis. Breach of the code of conduct must be dealt with sharply and swiftly and decisions made public.

### ***Public Administration***

- A Civil Service Act must be enacted with provisions on transparency and independence in terms of civil service recruitment, promotion, career progression, integrity and accountability combined with a good balance of positive and negative incentives.

- A performance-based career planning system for the public sector employees must be developed.
- Public Officials must disclose information of wealth and assets and update annually.
- Government should consider the formation of a Governance Review and Reform Commission (GRCC) to examine and address the structural, managerial and behavioural issues affecting the performance of the public sector.

#### ***Law Enforcement (Police)***

- The legal framework for the police force must be reformed to include extensive transparency, accountability, independence, professional integrity and no impunity provisions in police operations.
- The police must be kept free from political /administrative influence.
- Strict punishment must be ensured for police officials and staff who are guilty of corruption, human rights violation and other offences.
- The police must be incentivised and capacitated through increased resource allocation in terms of salaries and benefits, training, modern equipments, IT support, forensic facilities, etc.

#### ***Election Commission***

- A Law specifying the eligibility criteria for appointments of EC members must be enacted.
- A framework for monitoring compliance with electoral laws, rules and regulations must be developed.
- Legal provisions must be introduced to ensure mandatory asset declaration by Commissioners and prohibition on financial gratification, partisan political activities, gifts and hospitality.
- Election disputes must be resolved fairly and expeditiously. The law must mandate the establishment of an adequate number of High Court benches to ensure quick disposal of election related cases.
- Election Commission must engage with stakeholders including political parties, civil society and media in all matters related to reform of the electoral law as well as policies relevant to conduct of elections.

#### ***Office of Comptroller and Auditor General***

- The draft Audit Act must be adopted subject to consultation with stakeholders without delay.

- Resources in the form of adequate number of trained manpower, financial allocation, and logistical support must be enhanced in order for OCAg to achieve its goals.
- The OCAg must be given the legal mandate to follow up and ensure execution of the audit observations that it provides.
- Strict compliance with the Code of Ethics by OCAg officials must be ensured.

### ***Local Government***

- The government must formulate an inter-governmental fiscal transfer policy for effective distribution of resources among different tiers of LG to minimise/remove uncertainties and scope for political manipulation.
- A permanent Local Government Finance Commission may be considered to ensure objective distribution and allocation of public fund and to implement and monitor the proposed inter-governmental fiscal transfer policy.
- Rules and procedures must be developed to make LGIs more responsive to their constituents.
- Capacity of the LGIs must be strengthened by providing incentives for resource mobilisation at the local level.
- Steps must be taken to prevent manipulation of LGIs by Members of the Parliament.

### ***Anti-Corruption Commission (ACC)***

- The ACC must develop its own strategic plan to effectively deliver its mandate.
- The ACC must publish and regularly update for public information detailed statements on income, assets and liabilities of Commissioners and its employees.
- The ACC organogram must be re-examined to rationalize its staff strength. Initiatives must be taken to strengthen the investigative and prosecutorial capacity of the ACC.
- ACC Act must be reviewed to incorporate provisions aimed at making it truly independent and ensuring its effectiveness and internal accountability.
- Legal provisions must be introduced to ensure mandatory asset declaration by Commissioners and prohibition on financial gratification, partisan political activities, gifts and hospitality.
- ACC may consider forming a Citizens Advisory Committee consisting of prominent citizens of high integrity, credibility and acceptability from civil society to advise, monitor and evaluate key aspects of ACC's work.

### ***National Human Rights Commission (NHRC)***

- The NHRC must be an independent, vigilant and proactive force against human rights violations, unfettered by political and other considerations.
- The NHRC Act must be reviewed and necessary amendments incorporated in terms of the definition of human rights, the eligibility criteria of Commissioners, the Commission's powers to investigate human rights violation by disciplined forces.
- The capacity of the NHRC must be enhanced through training and skills for effective investigation, reporting and action.
- Legal provisions must be introduced to ensure mandatory asset declaration by Commissioners and prohibition on financial gratification, partisan political activities, gifts and hospitality.

### ***Information Commission (IC)***

- The top leadership of the IC must be strengthened in terms of requisite knowledge, experience and skills and ability to effectively play its oversight role.
- Initiatives must be taken to increase the visibility of the IC and enhance the capacity of its personnel to harness their skills for effective discharge of their role and functions.
- Legal provisions must be introduced to ensure mandatory asset declaration by Commissioners and prohibition on financial gratification, partisan political activities, gifts and hospitality.
- The IC must undertake research on RTI, impediments, openness, technologies, social needs, and public perceptions, so that it can keep pace with the changes taking place at home and beyond.

### ***Political Parties***

- Political Parties must inculcate the practice of internal democracy. The Party constitution must include a provision for transparency, disclosure and accountability of the Party Leaders to its members.
- Political Parties must not give Party membership to identified criminals or convicted persons (at least for a certain period after their punishment) with a view to decriminalising the country's political arena.
- Financial transactions and audit reports of political parties must be submitted to the Election Commission and disclosed in time as per law. Legal sanctions for non-compliance must be strictly executed.
- Political parties should be subjected to Right to Information Act.

### ***Civil Society***

- The regulatory framework for CSOs should be reviewed and harmonised to enhance the space needed for the sector's independent functioning, to avoid unnecessary duplication, overlapping, and ambiguities and incorporate standardised, simplified and flexible measures for their formation, registration and management.
- CSOs must ensure greater accountability and transparency in respect of their activities and finances. Self regulation should be introduced through the development of a sound governance body, efficient management system, effective supervision and monitoring and internal control.
- CSOs must adopt a policy of proactive disclosure about their operations and fund utilisation. Accordingly, audited financial reports and activity reports should be made available to the public at large.

### ***Media***

- The media must be free from the influence of the government, partisan politics, and other vested interested groups. The space for free media must be enhanced and protected.
- Clear and coherent policy and legislation must be adopted to help democratise and bring discipline to the media sector.
- There must be a transparent and logically coherent licensing regime for the media.
- The media must develop independent and voluntary codes of conduct affirming fair, balanced and accurate journalism.
- Legislation should provide for an independent body to guide and manage the public service broadcasting in radio and TV networks.

### ***Business Sector***

- The Companies Act 1994 must be amended to streamline business start-up procedures, reduce constraints on company structure, facilitate the transition of large informal businesses to the formal sector and necessitate appropriate reporting mechanism.
- Pragmatic strategies must be adopted to enforce reporting and disclosure requirements prescribed in existing laws.
- A national business portal should be established at the office of the Registrar of Joint Stock Companies and Firms or Board of Investment to self-record basic business information on mandatory basis.
- Large public/private contracts and business deals of certain thresholds must be subjected to a systemic mandatory disclosure and monitoring. Business houses and

their association should adopt voluntary practice of “publish what you pay” in their dealing with public institutions.

- Business persons in position of politics and public representation must not use such positions for profit-making.

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