

Local Government in Bangladesh: Major Challenges and Leading Case Decisions

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***Abstract:** This paper is an attempt to focus on the local government structure in Bangladesh and tries to examine the situation prevailing at the local government structure in Bangladesh. An analytical endeavour has been taken to evaluate the extent of local autonomy by investigating the prevailing situation of local government in Bangladesh. In this part, the major barriers have been analysed separately with its theoretical pillars first then relating it with the situation of Bangladesh. Moreover, the case decisions concerning local government in Bangladesh have also been examined. At the end of the study some recommendations have been suggested to overcome the barriers. This study is an attempt to analyse and evaluate the local government structure and the lacunas which hinders to establish an autonomous, efficient, representative and transparent local government in Bangladesh.*

1.0 Introduction

Local Government is almost a universal institution in the present day world and a vital component as well of a politico-administrative system composed of the members elected by the people of an area or locality to ensure local-level participation in the formulation, planning and implementation of programs and delivering prompt basic civil services (sanitation, public health, primary education social welfare services etc.) to the local people within its jurisdiction through the efficient use of local knowledge, direct contact with citizens and greater ability to overcome communications problems. As a tier, local government is at the bottom of a pyramid of governmental institutions with the national government at the top. The local government which is ultimately accountable for exercising the powers of administration and taxation delegated upon it by the relevant laws. It would be difficult nowadays to name any aspect of day-to-day life without a link with local government.¹ A vibrant and viable local government system can ensure the sustainable development of a country. With the increase of population and greater expansion of governmental functions, certain matters of policy and administration concerning national and international interests are reserved for the central government but the rest bulk of the

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¹ Bari, Dr. M. Ershadul, The 1972 Constitution of Bangladesh and The Local Government, The Dhaka University Studies, Part-F Vol. VI(1), 1995, P.1

administrative functions are invested with local authorities.²

Bangladesh has a long and eventful tradition of local government. The structure and functions of local government have evolved in consonance with the socio-economic and political transformation of the country. Nevertheless, the Bangladesh Constitution contains provisions for establishing local government as an inseparable organ of administering state affairs to safeguard democratic values and to secure economic and social justice.³ The original Constitution of Bangladesh, which was adopted on 4 November 1972 and that came into effect on 16 December 1972, contained two Articles, 59 and 60, in Chapter III (entirely devoted to local government) of Part IV providing for the composition (to be consisted of elected persons) and powers of local government institutions to be established in Bangladesh by the Act of Parliament. Apart from these two Articles, original Article 11 of the Constitution provided, as one of the Fundamental Principles of State Policies, that "the Republic shall be a Democracy ... in which effective participation by the people through their elected representatives in administration at all levels shall be ensured." However the provisions concerning local government was abolished by the Constitution (Fourth Amendment) Act, 1975, passed on 25th January 1975 through the omission of Articles 59 and 60 from it and dropping the sentence concerning local government as contained in Article 11. The First Martial Law Government (1975-1979), though did not restore these provisions to the Constitution, but it substituted the provisions of original Article 9 concerning nationalism. Later the Constitution (Twelfth Amendment) Act, 1991, passed on 18 September 1991, restored the original provisions of Articles 59 and 60 relating to local government and the sentence of Article 11 to the effect.⁴ Thus, local government in Bangladesh has appeared with its changing face since its beginning. The main objective of the study is to examine the gradual development of the local government in Bangladesh. Most importantly, this study analyzes and evaluates the present face of local government in the context of Bangladesh.

² Talukder, Dr. S. M. Hassan, *Development of Administrative law in Bangladesh : Outcomes and Prospects*, 2nd Edn, 2011, p.189

³ Khan, Dr. Mohammad Mohabbat , *Functioning of Local Government (Union Parishad) :Legal & Practical Constraints*, p.4 (link- <http://www.dwatch-bd.org/L&P%20constraints.pdf> (last visited: 07.06.11)

⁴ Bari, Dr. M. Ershadul, *Local Government Institution at the Thana/Upazila Level in Bangladesh*, The Dhaka University Studies, Part-F Vol. VII(1), June 1996, P.1-2

1.1 Meaning of Local Government

Local government is loosely defined, without making any reference to its financial and legal status and representative character, as "a public organization authorized to decide and administer a limited range of public policies within a relatively small territory which is a subdivision of a regional or national government."⁵ According to William Valent, "Local government is subject to the authority of the State and composed of by the elected person for the purpose of imposing taxes and raising funds."⁶

In a similar way, Justice Shahabuddin Ahmed, the then Chief Justice of Bangladesh commented in 1992 on the nature of local government in the case of Kudrat-e-Elahi Panir V. Bangladesh⁷, "Local government is meant for management of local affairs by locally elected persons. If government's officers or their henchmen are brought to run the local bodies, there is no sense in retaining them as local government bodies ... Local government is an integral part of the democratic polity of the country." ⁸ The essential features of a local government are:

- i. It is established by law;
- ii. It is generally an elected body composed of members elected by the people of an area or locality;
- iii. It has the power of administration over a designated locality and the authority to manage the specified subjects;
- iv. It has the power to raise fund through taxation within its area; and
- v. It is ultimately accountable and subordinate to the national government.

Thus local governments are not true sovereign governments. As such they possess no independent sovereign powers or authority, except those delegated to them by State institutions and laws.⁹

2.0 Major Challenges of Local Government in Bangladesh

2.1 Local Government is acknowledged as a highly viable mechanism through which democratic processes and practices can be established and

⁵ IX Encyclopedia of Social Sciences, New York, 1968, p.451

⁶ Valent, William, Administrative Law, 2nd edn.

⁷ 44 DLR (AD) 319

⁸ Ibid. at 330, 336

⁹ Valent, William, Local Government Law 2 (American Case Book Series)

participatory development ensured.¹⁰ The constitution of the country provides for the creation of the local government bodies at every administrative level. In effect, LG in Bangladesh remained weak and perpetually dependent upon central government through various means of political and administrative control. Since the emergence of the country there have been frequent policy changes and rearrangements of the tiers of local government. At the same time, these bodies are alleged to have been exploited both by democratic and military national governments as means for political mobilization and consolidation of power, and not allowing them to operate as autonomous, decentralized local government institutions. The above has also been reflected in one of the important observations of the Supreme Court of Bangladesh-

...since independence from the British rule, these institutions fell victim to party politics or evil designs of autocratic regimes, passed through the ordeal of suppression, dissolution or management of their affairs by official bureaucrats or henchmen Government of the day.¹¹

An overview of the growth and evolution of local government units in Bangladesh establishes the fact that these have all along been under the strict administrative control of the public bureaucracy and the close political control of the national government or party in power. As a result the local bodies could neither become politically or financially viable nor could they gain any credibility in the eyes of electorate.¹²

2.2 Lack of Freedom or Autonomy

Local self-government is perceived to be an expression of freedom in society. Liberty for the local communities to develop according to their own preferences was powerful ideological element in the introduction of local government systems in most countries of the world.¹³ But the history of LG bodies of Bangladesh indicates that those institutions were not

¹⁰ Khan, Z.R., 'Strengthening Local Government: Recent Experience and Future Agenda', keynote paper presented at the CPD-CARE Dialogue held in Dhaka, Dhaka, Centre for Policy Dialogue (CPD), 2000, p.12.

¹¹ 1992, DLR (AD) 319

¹² CPD, Policy Brief on "Administrative Reform and Local Government": CPD Task Force Report, Dhaka: Center for Policy Dialogue, 2001, pp.11-13.

¹³ Kjellberg, Francesco, "The Changing Values of Local Government", *Annals of the American Academy of Social Sciences*, 1995, No. 1, p.42.

allowed to develop independently, rather they were imposed from above at the behest of the central government.¹⁴

The LG bodies of Bangladesh are in such a condition that the question of 'freedom' is not perceived and valued properly. For example, the LG institutions are entitled to have Annual Development Plan (ADP) Block Grants from the national government. But there are unduly restrictive and strictly complied central guidelines for the use of the ADP Block Grant for Unions that inhibit the UP's development activities. In particular, the grants have been designed to be applied for specific investment sectors.¹⁵ This pre-determined sectoral allocation thus seriously limits the scope of local level planning as well as the flexibility of local bodies to utilize the financial resources for satisfying the diversified and immediate development needs.¹⁶

The UP annual income and expenditure budgets are provisionally scrutinized and approved by three levels of central government officials - the UNO, the Assistant Director, Local Government (AD, LG) and Deputy Commissioner (DC). The annual budget is submitted to the UNO, scrutinized by the AD, LG and placed before the DC for final approval. This scrutiny extends beyond checking that a proper budget has been prepared which is consistent with the legislation¹⁷. In this regard Dr. Mohammad Mohabbat Khan finds out that,

- i. Persistent tendency of the bureaucracy to control the LG institutions is a major constraint. Such control is manifested through frequent promulgation of the executive orders curtailing the authority of the LG.
- ii. There is no clear demarcation between jurisdiction of the members of the parliament and the local government representatives.

¹⁴ Zafarullah, Habib and M. M. Khan, "Bureaucracy and Rural Development in Bangladesh" in Ali Farazmand (Ed.) Handbook of Bureaucracy, New York: Marcel Dekker, 1994, p.644.

¹⁵ 15-50% for agriculture and irrigation, 25-60% in transport and communication, 10-15% in physical infrastructure and 10-25% in education and development.

¹⁶ Ehsan, Mohammad, Rhetoric of Local Democracy in Bangladesh: An Analysis of Rural Local Government, Asian Affairs, Vol.24, 2002, p.57-58.

¹⁷ Khan, Zarina R., Strengthening Local Government: Recent Experience and Future Agenda, keynote paper presented at the CPD-CARE Dialogue held in Dhaka, Dhaka: Centre for Policy Dialogue (CPD), 2000, p.6.

- iii. There is no alternative to financial autonomy for comprehensive development of the LG. In fact, absence of effective financial management made the LG a weaker and less acceptable institution. Most of the time, the LG bodies implement programs and decisions imposed by the central government that mostly are at variance with the local needs.¹⁸

2.3 Interference of the Members of Parliament (MPs)

One of the most self-serving actions of the ninth Parliament was to reintroduce the 1998 Upazila Act with some amendments. A unique feature of the 1998 Upazila Act is that it brought the Upazila Parishad under the controlling authority of the MPs by making them Advisers and requiring the Parishad to adhere to their advice. In addition, the legislature let the Zila Parishad and the Local Government Commission Ordinances lapse.¹⁹ The new Parliament, however, passed new laws for City Corporation, Paurashava and Union Parishad, removing most significant reforms incorporated in the Ordinances, including women's representation on a rotational basis and disclosure requirements of candidates.²⁰ The new Upazila Parishad Ordinance²¹ provides that the Members of Parliament would be advisers to the Upazila Parishads. According to the law, no development plans can be taken or no program can be implemented by the Upazila Parishads without the advice of the concerned MPs, and even any communication between Upazilas and the government must be informed to the MPs which explicitly contradicts the notion of modern government with its three branches - legislative, executive and judiciary - being mutually interdependent.²² This act is in contradiction with Article 59 of the Constitution, which empowers the locally elected persons to run local affairs.²³

Moreover, the interference by MPs in the UP affairs, particularly in development activities, has weakened the UPs' independence. The MPs often dictate the development activities to be undertaken, most of the

¹⁸ Interview of Dr. Mohammad Mohabbat Khan, (dated.23.07.11)

¹⁹ Disclosure requirements were kept in the City Corporations Act, 2009

²⁰ The Local Government (Upazila Parishad) Ordinance, 2008.

²¹ Aminuzzaman, Salahuddin, "State of Art of Local Government in Bangladesh", AS Profile, Vol.12, No.2 1998, p.7

²² Siddiqui, Kamal, 1995, pp.440-444.

²³ Rahman, Md. Saidur, Challenges of Local Government Institutions Bangladesh, <http://EzineArticles.com/> (last visited:09.07.11)

times without consulting with the local elected representatives or assessing actual needs. Ruling party MPs tend to intrude more in the UPs' development planning. Even if there is no ruling party MP in the areas the local leaders of the ruling party meddle in the process.

So as per the law, the Upazila Parishads have lost their characteristics of local government bodies, since in the name of advice, the MPs are authorized to control the activities of the bodies. Dr. Mohammad Mohabbat Khan said in this regard:

"The relationship between Members of Parliament (MPs) and the local government should be cooperative and complementary instead of domination and subjugation. MPs should not in any way interfere in the affairs of UPs. Respective jurisdictions of MPs, central government and local government have to be urgently redefined in a clear and specific manner to free the LG bodies from political interference."²⁴

2.4 Corruption

Widespread corruption is another reason which hampers much functioning the LG institutions better. Funds for projects like Food for Work or disaster relief are all too often misused by local leaders; even VGF (Vulnerable Group Feeding) cards go to the people rather than those who really need it.

The Asian Human Rights Commission (AHRC) had released a report which shows that almost 80 percent of VGF cardholders in Gaibandha District, northern Bangladesh, had not received the food subsidy: Out of 13 villages in Monohorpur Union, Palasbari sub-district, seven villages were on the list of beneficiaries; six villages were excluded altogether. Local political leaders had taken the VGF cards of 600 families who are in the beneficiary list but never received the food subsidy. Some of the cardholders receive 3 kilograms of rice instead of 15 kilograms earmarked.²⁵

It has also been reported that the VGF cards distributed by Council and Committee which are composed of government officials or political activists failed to reach the poorest. It often goes to the families or

²⁴ Interview of Dr. Mohammad Mohabbat Khan, (dated.23.07.11)

²⁵ [http://www.thehungersite.com/click to Give/th/article/National-food-program-in-Bangladesh-facing-serious-allegations302](http://www.thehungersite.com/click%20to%20Give/th/article/National-food-program-in-Bangladesh-facing-serious-allegations302) (last visited on 19.09.11)

relatives, or is used for the purpose of political activities. One of the main causes is that those who distribute the cards are either public servants or politicians who practice corruption widely.

The Transparency International in Bangladesh (TIB) has published their report on corruption by upazilas/thanas in Bangladesh.²⁶ It was reported that all of the upazilas/thanas except 16 had incidence of corruption. It shows that out of 496 Thanas, the highest number of report was found in Uttara thana (25) in Dhaka district which is 1.86% of total reported cases. Second highest corruption cases were reported for Ramna Thana of Dhaka district.

Table 1: Corruption at Upazila/Thana Administration

Name of the Thana/Upazila	Reported cases (%- N)
Uttara	1.86 25
Ramna	1.19 16
Sharsha	0.97 13
Sherpur (Bogra)	0.89 12
Barisal Sadar	0.82 11
Comilla Sadar	0.82 11
Mymensingh Sadar	0.74 10

2.5 Undue Bureaucratic Control in Centre-Local Relations

In the context of the LG, central-local relations have always been an issue. In Bangladesh, statutorily, central-local relationship as provided in the statute has historically been authoritative in nature²⁷. The central or the national government primarily exercises its control over the LG bodies through its field level government functionaries such as the Deputy Commissioner (DC) and the UNO, heads of district and Upazila administration respectively. In addition, LG units are further controlled through a plethora of intricate and complicated orders and circulars from different agencies/ ministries which very often contradict the original legal framework²⁸.

²⁶ http://www.ti-bangladesh.org/index.php?page_id=337 (last visited: 01.10.11)

²⁷ CPD, Policy Brief on "Administrative Reform and Local Government": CPD Task Force Report, Dhaka: Center for Policy Dialogue, 2001, P.14

²⁸ Siddiqui, 2005

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 has 'failed' to meet its financial obligations; or otherwise exceeds or abuses its power, then the government may declare such LG bodies to be suspended for a period as may be specified by the law. This provision allows the district administration to axe an LG unit such as the UP at any time and consequently, make them extremely vulnerable to the political and administrative whims of the government. In this regard Dr. Mohammad Mohabbat Khan observed that the constitution did not mention different aspects of local government management in detail as it did for the parliament, the executive and the judiciary. The composition, structure, election, functions, financial power, sources of income, rules of procedure, control of local bodies, monitoring have not been mentioned in any detail in the Constitution. 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.²⁹

In addition, 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 agencies³⁰. Again in the case of UP authority over the appointment and payment of salaries of the staff is held by central government bureaucracy³¹. The above facts in the context of UP, reveal that the LG units in Bangladesh are being constantly controlled by the national government through various mechanisms for almost every aspect of their operation and functioning. Such practices, in reality, have turned the local government institutions in Bangladesh into mere extension of the national government and of their various functionaries.

2.6 Lack of Institutional Capacity

Institutional capacity includes both human competence and logistics. Relevant studies reveal that the overwhelming majority of the chairmen

²⁹ Interview of Dr. Mohammad Mohabbat Khan, (dated.23.07.11)

³⁰ <http://www.unescap.org/lgstudy/country/Bangladesh> (last visited: 05.06.11)

³¹ For example, the Local Government Ordinance 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 DC.

and members of LG units lack knowledge and understanding of the operational procedures and functions of these bodies³². Moreover, for example, Union Parishads are required to maintain and preserve more than 100 registers (for general office management, village courts, test relief programs, food-for-work programs, VGDP and RMP). It is a huge task considering the managerial capacity of the said LG unit. In effect, very few registers are actually maintained. This is due to the fact that very little effort has been taken over the years to impart training in the relevant fields of local institutional operations to the elected officials and salaried staff particularly the Union Parishad Secretaries. Moreover, relevant institutions have inadequate facilities and the training modules are also out dated³³.

Recently National Institute of Local Government (NILG) and Volunteer Service Overseas (VSO) Bangladesh jointly conducted a study titled "Exploring the challenges and potentials of UP standing committees"³⁴, which was intended to explore the role of standing committees in the decision making process at the UPs. The study report says that 60% of the committees are not functioning, and it identifies some major reasons for non-functioning of the standing committees, such as, apathy of UP chairmen, ignorance of members and lack of resources and proper monitoring system. The report says the UP chairmen dominate while taking decisions and do not think that the committees are very important in this regard³⁵.

2.7 Lack of Efficiency

The efficiency of local self-government can be assessed by two ways. First by observing the kinds of tasks performed by LG bodies or in other words, how many and important functions are channelled through the LG bodies and secondly, by the fact of how much money a particular unit of LG generate as local resource from their area of jurisdiction and their effectiveness in spending money in the proper projects for the development of the particular area³⁶.

³² Aminuzzaman, Salahuddin, "State of Art of Local Government in Bangladesh", Asia Profile, Vol.12, No.2 1998

³³ CPD, Policy brief on "Administrative Reform and Local Government" CPD Task Force Report, Election 2001 : National Policy-Forum,Dhaka, 2001, p.13.

³⁴ Study report published on 6 May 2009,source: Rahman, Saidur.

³⁵ Ibid.

³⁶ Kjellberg (1995)

In Bangladesh, the LG traditionally have limited jurisdiction especially over some specific but again very limited development functions. The area of regulatory administration has always been kept aside from the purview of the role and functions of these bodies³⁷. Powers and responsibilities of the local government are invariably defined in general and vague terms while the powers of the administration are enshrined in specific and precise terms. For example, the general power of the UP is to maintain law and order but the specific powers in this context lie with the magistracy and the police in terms of powers of arrest, bail and so forth³⁸. The UPs are responsible for 43 functions,³⁹ however, in reality, most of the developmental functions for which LG units are made responsible under the legal framework, such as, family welfare, education, public health, social welfare, etc., are administered by different agencies of the national government⁴⁰. For example, the UPs have no authority other than reviewing and reporting to the Upazila Nirbahi (Executive) Officer (UNO), a national government functionary. UPs virtually have no scope to get involved in the implementation of development projects initiated by these agencies at the local level⁴¹.

2.8 Inefficiency in Mobilizing Local Resources

LG bodies' performance in mobilising local resources in Bangladesh is also very poor. Though the LG regulations empowered them to mobilise resources from local sources through assessment and levy of taxes, leasing of local Hats and Bazars, water bodies etc, but they do not receive the total resources generated from their entitled sources⁴². Another feature of financial control is that the UNO receives funds transferred from UP mobilized resources like share of land transfer tax, market lease money

³⁷ Hussain, A., Sarker, A. E. and Rahman M., "Governance in Bangladesh: An Analytical Review", Theoretical Perspective, Volume 1, Number 1, 1994, p. 78.

³⁸ Rahman, Hossain Zillur (2001), Re-thinking Local Governance Towards A Livelihoods Focus, Dhaka: Power and Participation Research Centre, p.6.

³⁹ In the following categories: a) civic functions, b) police and defense functions, c) revenue and general administrative functions, d) development functions and e) functions which may be transferred by the government.

⁴⁰ CPD, 2001, p.11.

⁴¹ Ehsan, p.62.

⁴² 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 percent is the entitlement of the UP

for retention in the accounts maintained by him for later distribution to UPs on basis of prescribed government guidelines⁴³. This indicates that the UPs virtually have no direct control even over resources generated from its own jurisdictions. Such practice of regulating and controlling of the financial resources by the national government functionaries keeps the LG units ever resource poor and resource dependent on the national government⁴⁴.

2.9 Lack of Accountability and Transparency

Accountability and transparency of operations and functions of the LG units are essential for ensuring their credibility to the electorate. This can only be achieved through adequate supervision and monitoring. Legally, the Monitoring & Evaluation Wing of the Local Government Department of the Ministry of Local Government, Rural Development and Cooperatives (LGRD&C) is responsible for monitoring the functions of the local bodies. But it has been observed that the monitoring mechanism of the said wing is weak, inadequate and ineffective⁴⁵. The other mechanism is through the inspection and visits by the field level government functionaries, such as, the UNO and the ADLG. But their functions are more of controlling nature than of monitoring⁴⁶.

Table 2: Survey Report on Accountability, Transparency and Effectiveness of LG⁴⁷

Question	Yes	No	Others
1. Enhance the power of UP	47%	30%	23%
2. Enhance authority in budget making	17%	70%	13%
3. Local people's participation in budget making	93%	0%	7%
4. Tax collection from locality	13%	80%	7%

⁴³ Ehsan, p.63

⁴⁴ Khan, Zarina R., Strengthening Local Government: Recent Experience and Future Agenda, keynote paper presented at the CPD-CARE Dialogue help in Dhaka, Dhaka: Centre for Policy Dialogue (CPD), 2000, p.7.

⁴⁵ CPD, 2001,p.16

⁴⁶ Ehsan,pp.66-68.

⁴⁷ A study on Ambaria and Shomoshpur union parishads in Kushtia Zila dated 09.07.11 and 10.07.11. Information were collected from the local people of two Union Parishads of Kushtia Zila. Fifteen person from each Union, totaling 30 person participated in the survey. They were asked questions on 14 different aspects of the functioning of UP.

5. Support from UP members	33%	47%	20%
6. Satisfied with the role of UP members	27%	67%	7%
7. Delivery of information on LGED programs	90%	0%	10%
8. Enhance the educational qualification	63%	7%	30%
9. Limit the UP election expenditure	53%	10%	37%
10. Observance of UP election conditions	17%	37%	47%
11. Enhance the power of women members	87%	0%	13%
12. UP Standing Committee properly functions	10%	27%	63%
13. Political interference in welfare programs	77%	3%	20%
14. Village police performs properly	7%	63%	30%

2.10 Defects in Representativeness

In the Constitution of Bangladesh, it has been articulated in clear terms that the state will encourage LG institutions composed of elected representatives. But, so far, the sociological representation is not proper and effective in Bangladesh. Councilors of LG bodies are still disproportionately male and middle-aged and that women, younger people and ethnic minorities are all under-represented, though there has been some progress in recent years in regards to women⁴⁸. However, although the entry of rural women into the formal structure of the UP is a landmark in the history of political participation of Bengali women⁴⁹, but the post election experience of elected women members in the Ups has not been encouraging. Reports indicate that they are being systematically discriminated and abused, denied power to take decisions, implement schemes and deliver services to people, are intimidated and even raped by male councilors of the same Parishad. They also face gender discrimination and sexual harassment in the UP office.⁵⁰

⁴⁸ Shamim, Ishrat and Mahbuba Nasreen, "Gender and Local Governance: A New Discourse in Development", The Journal of Social Studies, Volume 94-95, 2002, p.11.

⁴⁹ In 1997, for the first time in the history of Bangladesh, direct election for women representative was held at the Union Parishad. An amendment to the Union Parishad (Ordinance No. LI of 1983) was made in 1997 (Act 20 of 1997) which provided for exclusive reservation of three seats for women to be elected directly on the basis of adult franchise. It further provided that a woman would be free to contest general seats not reserved for women.

⁵⁰ CPD, Strengthening Local Government: Recent Experience and Future Agenda, Report No. 29, Dhaka: Center for Policy Dialogue, 2000, p. 22.

2.11 Bureaucratic Supervision over Local Level Infrastructural Development

Local level infrastructure development is one of the important functions of the LG. These projects are generally implemented through food aid and grants received from the national government. Food aids are channeled through food aid and grants received from the national government. In this area, for example, the role of UP as a LG unit is again limited to the selection of the possible projects only. Such selected projects are finally approved by the UNO in consultation with the Upazila Engineer (UE) and the Project Implementation Officer (PIO)⁵¹. The above type of scenario clearly suggests that the role and functions of LG units are restricted in the area of development administration. In addition, the other functions of the LG units are again subjected to bureaucratic supervision and guidance.⁵² Dr. Mohammad Mohabbat Khan finds out the following constraints which hinder the proper functioning of local government,

- i. Lack of proper legal authority in carrying out public programs and deliver public services is a major practical constraint.
- ii. There exists serious capacity gap within the LG bodies in rendering its responsibilities in terms of manpower, training, and supply of logistics.
- iii. Administrative complexities and red tapes hamper LG activities.⁵³

2.12 Frequent Changes of Local Government Institutions

The structure of LG in Bangladesh has always been dependent upon the nature of the regime and the outcome of the power struggle at the centre. Rather than the permanency of the existing local government structure since its independence, regular changes in it with the changes of successive governments are permanent in Bangladesh. In spite of the clear-cut vision of local government in the Constitution of Bangladesh, 'local government for the central government' is a legacy which Bangladesh inherited from British India, but which has been strengthened by the passage of time⁵⁴.

⁵¹ Ehsan, p. 62.

⁵² Khan, Zarina R., "Decentralised Governance: Trials and Triumphs" in Raunaq Jahan (Ed.) Bangladesh: Promises and Performance, Dhaka: University Press Limited, 2000, p. 121.

⁵³ Interview with Dr. Mohammad Mohabbat Khan

⁵⁴ Ehsan, pp. 68-69.

Local government has long been considered a favoured political mechanism by our army rulers (General Ziaur Rahman and General H. M. Ershad) because it served their purposes to rule. The bureaucracy took quite the opposite view for local government as they consider local government a rival political and administrative force to which they are supposed to surrender or share most of their power⁵⁵. Elected political governments have usually taken a view in between these two extremes. There has been a reluctance to revive, or continue, local government systems that were established by previous rulers⁵⁶. As a result, local government in Bangladesh has always been a rolling stone in the power struggle between the generals, short-sighted politicians, and over-ambitious bureaucrats. In the shadow of national politics, and in competition with a powerful and integrated all-purpose bureaucracy, local government could never become a self-sustaining, stable and self-governing set of institutions. Rather it has been successively attacked by different political parasites trying to flourish and survive on its life force⁵⁷.

It has been observed that, the LG bodies had never been, in the past, and even so in liberated Bangladesh, 'self-governing' bodies in the true sense of the term. These could simply be labeled as extensions of the national government with guides and limits local participation. Consequently, LG units have always been institutionally and financially weak, poorly managed and lacks social and political credibility.⁵⁸ Unfortunately all reform efforts fell short of expectation in bringing about desired changes in the public administration and local government systems of the country for a number of reasons. But for the sustenance and institutionalization of democratic tradition, values and culture in the polity, an efficient, result oriented, representative, participatory, gender sensitive, transparent, corruption free and neutral public administration and local government system are required.

3.0 Case Law Analysis Relating to Local Government

To examine the provisions of our Constitution concerning local government, some landmark judgments of the Supreme Court of Bangladesh have been discussed in this chapter.

⁵⁵ CPD, 2001

⁵⁶ Aminuzzaman, Salahuddin, "State of Art of Local Government in Bangladesh", Asia Profile, Vol. 12, No. 2 1998.

⁵⁷ Ehsan, p. 68.

⁵⁸ CPD, 2001, P. 1

3.1 Kudrat-E-Elahi Panir Vs. Bangladesh, 1992, 44 DLR (AD) 319

3.1.1 Fact: The Constitution (Twelfth Amendment) Act, 1991, passed on 18 September and restored Arts. 59, 60 and the sentence of Art. 11. On 23 November 1991, the Upazila Parishad⁵⁹ was abolished through the promulgation of the Local Government (Upazila Parishad and Upazila Administration Reorganization) (Repeal) Ordinance, 1991. The Constitutional validity of the Ordinance was ultimately challenged before the court in the case of Kudrat-E-Elahi Panir Vs. Bangladesh.

3.1.2 Issue: It was contended in Kudrat-E-Elahi Panir Vs. Bangladesh that having regard to the provisions of Art. 59 read with Arts. 9 and 11 of the Constitution, Parliament can not abolish an existing tier of local government.

3.1.3 Judgment: The Appellate Division rejected the contention holding that the Upazila Parishads were not local government bodies in conformity with the provisions of Art. 59 and no provision of the Constitution has been violated by the abolition.

With regard to the continuity of the system of local government institutions, the then Chief Justice of Bangladesh, Justice Shahabuddin Ahmed observed in the case⁶⁰:

"The local government is an integral part of the democratic polity of the country and the local government institution may be altered, reorganized or restructured, and their powers and functions may be enlarged or curtailed by Act of Parliament⁶¹, but as the system as a whole cannot be abolished."⁶²

⁵⁹ which had been established by 1982 Martial Law Administrator.

⁶⁰ 1992, 44 DLR (AD) 319, at 336

⁶¹ See *City of Worcester v. Worcester Consolidated Street Ry CO*, 196 US 539, 550 (in the absence of any Constitutional restriction the legislature may at any time repeal the Charter of a municipal corporation or otherwise terminate its existence and provide other and different means for the government of the territory lying within the limits of the former municipality); *W.W. Atkins v. Kansas*, 191 US 207, 221 (As legislature may create a municipality, so it may abridge and control); *U.S. v. Baltimore & Ohio R.R. Co.*, 21 L. Ed. 597.

⁶² 1992, 44 DLR (AD) 319 (These bodies made great contribution to the country's democracy, which is now a basic structure of the Constitution. With the revival of the Constitutional backing for 'local Government' these old institutions can not be abolished without damaging the democratic fabric of the country-per S. Ahmed CJ).

The Supreme Court observed, further⁶³ :

"Local government is meant for management of local affairs by locally elected persons. If government's officers or their henchmen are brought to run the local bodies, there is no sense in retaining them as local government bodies ... Local government is an integral part of the democratic polity of the country."⁶⁴

"Local government, as a concept and as an institution, was already known to have possessed certain common characteristics, namely, local elections, procedure for public accountability, independent and substantial sources of income, clear areas for independent action and certainty of powers and duties and the conditions under which they would be exercised".⁶⁵

Furthermore, the Supreme Court criticized the steps taken by various autocratic regimes both before and after the independence of Bangladesh regarding local government institutions thus:

"...since independence from the British rule, these institutions fell victim to party politics or evil designs of autocratic regimes, passed through the ordeal of suppression, dissolution or management of their affairs by official bureaucrats or henchmen nominated by Government of the day."⁶⁶

The structure of local government was left fully and completely in the hands of Parliament. No one can claim a vested right in any particular form or in any particular number of tiers of local government. Within the framework of Articles 59 and 60, Parliament retains the power of continually re organizing, re structuring and re modeling the local government institutions in the light of experiences gained to meet the changing needs of changing times. It is to be remembered however that local government is a part of the constitutional system and therefore Chapter III of Part IV of the Constitution containing Articles 59 and 60

⁶³ 1992, 44 DLR (AD) 319

⁶⁴ Id. at 330,336

⁶⁵ 1992, 44 DLR (AD) 319.

⁶⁶ Id. at 341-342

⁶⁷ Id. at 329-330

cannot ever be kept as a dead letter. Local Government cannot be abolished altogether. It must exist in some form, in some tier or tiers at any given point of time to give a meaning to Chapter III of Part IV and to justify its rationale, validity and existence, It is not a mere adornment in the Constitution.⁶⁸

3.2 Anwar Hossain Manju v. Bangladesh,⁶⁹ 16BLT(HCD) 2008

In this case the High Court division, declared the appointment of District Ministers by a government notification unconstitutional, clearly forbids MPs from getting involved in local development activities the High Court states in this regard:

"... Neither the Ministers nor the members of Parliament can abdicate the functions of the elected members of the Local Government Bodies in respect of their functions in the concerned administrative units... While the Executive Government under Chapter-II would run the administration, development and other ancillary matters for the entire country as a whole, but at the same time the people at the grass-root level should also be made responsible for the development of their own respective areas, on the formation of local government bodies, in order to bring the development and also administration to their door steps so that they can be responsible as well as self-reliant and also become part of the over-all nation building process."

3.3. Ziaur Rahman Khan v. Bangladesh, 49 DLR 491

3.3.1 Fact: In this Writ Petition, Rule was issued calling upon the respondents to show cause as to why section 16A (16Ka) contained in Rangamati Hill Tract District Local Government Council (Amendment) Act, 1997, Khagrachari Hill Tract District Local Government Council (Amendment) Act, 1997 and Bandarban Hill Tract District Local Government Council (Amendment) Act, 1997, should not be declared to have been made in contravention of the Constitution.

⁶⁸ Kamal, Mustafa J in id, at 343

⁶⁹ Anwar Hossain Manju v. Bangladesh, 16BLT (HCD) 2008

3.3.2 Judgment: It has been held that, the provision for interim council to be appointed by the government for the Chittagong Hill Districts is not unconstitutional as such a council will, in fact, come in aid of and facilitate the implementation of Arts. 59 and 60 of the Constitution.⁷⁰

The observations made by Justice Md. Mozammel Hoque⁷¹ are worth-quoting:

"Section 16Ka has been added in order to meet a situation if for the reasons and circumstances beyond control, the election of the councils cannot be held within the stipulated time."

It is also held that, interim council will be created only to meet an unforeseen situation and insertion of the provision by section 16Ka in the Act itself will not in any way affect the very fundamental structure of the Constitution.⁷²

4.0 Recommendations

The following specific suggestions are made for the LG system to make the local bodies truly decentralized, institutionally effective, financially viable, participatory, gender sensitive, transparent and accountable:

- Political parties should declare their political commitment to initiate concrete legal measures for ensuring the establishment of decentralized local government system in the country and express this in explicit terms in their respective election manifestos. The committed LG system should be based on the principle of devolution of power, authority and functions; resource sharing; and with appropriate mechanism for effective representation and participation of women and other disadvantaged groups. Political parties should - i) reach consensus on the number of tiers of local government and make legal provisions of elections to all LG units (tiers) simultaneously; and ii) ensure establishment and continuity of local government units once decided upon.
- The whole range of functions of government should be divided into three categories namely, Reserved, Transferred and Residual. The national government would retain the functions under the

⁷⁰ 49 DLR 491.

⁷¹ Ibid, at para 20.

⁷² Ibid, at para 20 & 21.

Reserved list. While functions under the Transferred list would fall under the jurisdiction of LG. On the other hand, functions under the Residual List may be placed under the local government. This division of functions has to be materialized by transferring powers from the national to the local government through specific and clear-cut provisions.

- The tiers of LG decided upon must have access to their own finances. An effective mechanism of accountability of the expenditures from such funds has to be ensured by regular auditing and reporting. Apart from this right of Local Resource Mobilization, each of the LG units should have stipulated share of the central government revenue earmarked in the national budget to be distributed on the basis of a pro rata population strength and other relevant criteria. This share of revenue should be determined by a high level committee including representatives from relevant quarters and experts on local government revenue matters.
- The deputed officials must be made responsible and accountable to LG units. One effective means of achieving it is by making the mandatory provision of the Annual Confidential Reports (ACRs) of such officials to be initiated and signed by the Chairpersons of concerned LG units so long they are on deputation. And this ACR will be the basis for onward career development of the deputed staff. In addition, LG units should have the authority to hire and fire necessary staff / officials of its own.
- The Members of Parliament (MPs) shall not be involved in any manner with the affairs of the LG units because this violates the Principle of Separation of Power.
- Specified number of seats for women have to be reserved at every tier of the LG system. The chairman and members including women members should be directly elected to all LG units.
- The elected members of each of the local government units shall be given distinct portfolios on the basis of functions given to them.
- The public accountability through the mechanisms of transparency of LG functions and financial management i.e., budgeting and development planning and implementation thereof shall be activated and regularly monitored.

- Reorganization and building capacities of the national training institutes like NILG, BARD and RDA should be initiated.
- An independent local government commission has to be established for funding and monitoring of local government activities. Local government representatives shall be accountable to that commission for their actions.

5.0 Conclusion

The foregoing discussion reveals that though the history of LG in Bangladesh is centuries old but still today, the citizens of Bangladesh have not experienced a stable LG structure. Though the vision of LG is clearly articulated in the Constitution of Bangladesh, but due to political interference and lack of political will, central control is still prevailing despite LG body's untapped potential. It is to be noticed that successive governments felt the necessity to abolish the existing local government institutions and start afresh, perhaps to create political base in accordance with its own choice and preference⁷³. As a result, local government in Bangladesh has always been a rolling stone in the power struggle between the generals, short-sighted politicians, and over-ambitious bureaucrats. In the shadow of national politics, and in competition with a powerful and integrated all-purpose bureaucracy, local government could never become a self-sustaining, stable and self-governing set of institutions. Rather it has been successively attacked by different political parasites trying to flourish and survive on its life force⁷⁴. The noble words of Winston Churchill "to change is to improve, to change often is to improve often, to change continuously is human endeavour for perfection"⁷⁵ have never been reflected in the laws enacted by the various governments of Bangladesh concerning local government. Finally, we can say that the state of local government system in Bangladesh is not very impressive in any respect. If there is less control from the part of central government and if they value LG as an autonomous body then there is ample opportunity for Bangladesh as a real democratic country both at local and national level.

⁷³ Bari, Dr. M. Ershadul, Local Government Institution at the Thana/Upazila Level in Bangladesh, Part-F Vol. VII (1), June 1996, p. 19.

⁷⁴ Ehsan, Mohammad, Rhetoric of Local Democracy in Bangladesh: An Analysis of Rural Local Government, Asian Affairs, Vol.24, 2002, p. 68.

⁷⁵ Cited in Bari, p. 19.

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