

## Rule of Law, Constitutional Obligation and State of Good Governance: Bangladesh Perspective

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### Abstract

The Rule of Law exists in the supremacy of law, equality before law and protection to individual liberties which deeming whole citizens are under law and are yclept to get same patronage of law without discriminating on the basis of rich or poor, strong or weak, male or female, black or white, religion, race, cast, sex, place of birth etc. It is one of the primary responsibilities to the state to make a fair and well society having good governance. Therefore, rule of law is the most important elements of good governance. Good Governance in fact refers to the balance of power among the three organs of the government i.e. Legislature, Executive and Judiciary as well as to fulfillment of fundamental human rights; independence of judiciary, policy based administration, fairness, accountability, predictions, utility and capability of the government. The purpose of rule of law and of good governance is almost *vice-versa*. The rule of law prevailing society maintains equality, social security, social justice and after all dignity of human beings and good governance indicates the accountable and transparent management system where human rights are ensured. This study attempts how to assure good governance in Bangladesh. The main objective of this study is to personify the rule of law as incorporated in the Constitution and its role in establishing Good Governance in Bangladesh.

**Keywords:** Rule of Law, Governance and Good Governance.

### 1. Introduction

After 50 years of its independence the achievements of Bangladesh in the spheres of rule of law and good governance are not remarkable. All people are equal before law and are yclept to equal treatment of law' is one of the basic principles of rule of law: in general, rule of law implies the preservation of fundamental human rights and proper enforcement of legislations which come from the legislature of a country.

Rule of law is a consecrated legal frame that should be fair and instituted impartiality, especially the laws in human rights (UNDP policy Document, 1997:2). Rule of law entails same treatment of human rights of person and other groups and same punishment according to law. It protects citizens from arbitrary state action. Rule of law ensure that all people are treated in the same way and are subjected to the law rather than to the whims of the powerful. The law should also deliver vincible group defense against absorption and maltreatment. Rule of law refers the system of law that ensures justice with fairness and liberty of the people. Existence of rule of law in the society is *Sine qua non* of good governance. Rule of law is connected with development and it is also an important factor for favourable economic environment. Rule of law means law of equity which is more important for good governance.

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Good governance is a much talked about issue in the present developing world. The issue of good governance holds the key for national development of a country. Governance refers to development in the economic, political and cultural spheres, which are connected for total development of a nation. Governance indicates the power-exercising manner of the government, which is practiced in the management of a country's socio-economic and cultural resources for development. Using the term 'good' with governance introduces a normative element, which emphasizes the exercising manner in a proper way. Good governance fights for the rule of law, fairness, accountability, responsibility, participation, equality, functionality and skillful vision and mission for the political, social, economical and administrative authority. It also demands rules, which are simple, understandable, transparent, predictable, enforceable, non-discriminatory and effective. Good governance is linked with the hopes and aspiration, demands and values of the people of an evolving society. It is a common expectation of the government of every country to uphold economic and social conditions with a view to assuring the quality life of the people. Good governance is one of the most important pre-condition for achieving the overall development. Good governance is an important element for attracting capital and maintaining stable growth and it is also the path for eradicating poverty and upholding human dignity as well. Good governance is an abstract idea as its existence depends upon existence of some elements. Hence it is not possible to ensure good governance by an individual organ of the government. Effective parliament, fair and accountable judiciary, Independent Anti Corruption body, establishment of an office of the ombudsman, transparent and accountable administration, strong local government bodies etc, can play a vital role to establish good governance in Bangladesh (Daily Star, 27 April 2001, p. 4).

After independence Bangladesh has passed 50 years but due to lack of good governance, Bangladesh has not reached the door of development. In this regard, the main focus of the present study is to analyze the nature of the rule of law as incorporated in the Constitution of Bangladesh and its role in establishing good governance and also to give some recommendations how to assure good governance in Bangladesh.

## **2. Study Method**

On the basis of the content analysis of the study, different methods of study have been used in this research. Data have been collected from both primary and secondary sources. Moreover, the researcher has followed the historical and observational methods to continue the study. The mentionable documents which have been used in this research are various research articles, relevant books, unpublished study documents, daily newspapers which are available in our Central Library of Rajshahi University, Seminar Library of the Department of Political Science and websites such as Goggle Scholar etc. No empirical evidence has been used in this study.

## **3. Objectives of the Study**

The main aim of this paper is how to ensure good governance in Bangladesh. The specific objectives are:

- i. To examine the role of rule of law in establishing good governance in Bangladesh.
- ii. To evaluate the rule of law and good governance under Bangladesh constitution.
- iii. To analyse the rule of law and good governance in practice.

#### **4. Definition of Key Terms**

##### **4.1. Rule of law**

The term rule of law means the power exercised by the state functionaries with a legal basis that means, they must be based on authority given by law and the law should ensure to particular minimum level of justice, both tangible and systemic. The term means that the administrator must be subject to law. It is the subjection of all authorities, executive, legislative and other to particular precept which would generally be assumed as landmark of law, such of the ideas of the basic precept of justice, moral precept, integrity and due process. It means respect for the highest standard and dignity of the person (Walker, 1980:1093).

##### **4.2. Governance and Good Governance**

Governance is a decision-making process and also the process by which decisions are implemented, an analysis of governance focuses on the formal and informal actors those who are involved in decision-making process and implementing. The decisions and the formal and informal structures which have been set in place to arrive at the end implement the decision. Governance may be used in various content like corporate, local, national and international governance (Encyclopedia of Social Science: 216).

Good governance means such administration that is very much sensorial and reactive to the demands of the citizens. It also implies that workable in coping with rising problems in society by constructing and implementing proper laws and policies (Finer, 1934:8).

#### **5. Provisions of Rule of Law and Good Governance under Bangladesh Constitution**

The constitution of the People's Republic of Bangladesh has adopted and incorporated the principles of rule of law, as it is a basic requirement for a democratic government (Article, 27). The rule of law is a fundamental characteristic of the Constitution of Bangladesh (Chowdhury V. Bangladesh, 1989:443). The preamble of the Constitution enunciates the ideals of rule of law, fundamental human rights, justice and equality, socio-economic and political rights.

The Constitution has incorporated some rights known as fundamental rights in Article 26 to 43 and when these rights are infringed are made enforceable. These are the vital components of rule of law. For example, the Constitution provides equality and equal treatment of law (The Constitution of the People's Republic of Bangladesh, Article, 27), equal gender discrimination in political right to men and women at all levels of state and public life (Article, 28(2), right to life, right to liberty etc (Article 32). The Constitution also prohibits rights and activities (Article 36-39). In spite of all these provisions, the state can make some special rules in assistance of women or children or for the progress of people of any backward area (Article 28(4)).

The separation of judiciary is one of the main safeguards of rule of law and independence of judiciary is the vital component of good governance. In this regard, the Constitution describes that the state must assure the separation of judiciary from the executive and legislative organ of the government (Article 102(2)). The basic theme of rule of law and good governance has been reflected in the preamble of the Bangladesh

Constitution. The preamble keeps the will of the state as it will be a basic aim and objective of the state to wake up to something by the democratic process of a socialist society, free from absorption of a society in which the rule of law, fundamental human rights, liberty, equality, justice, socio-economic and political rights, will be secured for all people. The Constitutional supremacy and democracy have also been recognised by the Constitution itself, as all powers belong to the people, and they exercise on behalf of the people shall be affected only under, and by the authority of this Constitution. This Constitution is the mouthy manifestation of the will of the people, the supreme law of the state, and if any other law is incoherent with this Constitution then other law shall, to the spread of the incoherence, be invalid (Article, 7). Here, the matter of accountability of the government is accountable to the people.

The governing chapter of the Constitution (Chapter 2), this is also called the chapter of fundamental principles of the state. Its also recognises some economic, social, cultural rights of the citizens which are important criteria of rule of law. This chapter basically contains the governance criterion of the state. These are also guiding principles of explanation of Bangladesh Constitution but what happens if the language of a statute is absolutely clear and that statute is completely repugnant to some of the principles of state policy? In the name of the interpretation, the court can-not create a new law and there by enforce the principles of state policy contrary to the mandate of the Constitution (Islam, 2002:56). These principles will also be the basis of the action of the state and of the people of Bangladesh. Article 8(2) states that this policy shall be basic to the governance of Bangladesh and shall be utilised by the state in making the laws. Thus, these principles space the government under obligation to achieve and maximize social welfare and the basic values of life (Islam, 2002:54).

As democracy is one of the vital component of good governance and rule of law, the Constitution of Bangladesh preserves this with giving importance. To establish democratic society was the prime concern of the next government of liberation war. The ultimate spirit of the Bangladesh Constitution is to ensure democracy in all aspects of life and the framers of the Constitution have made the right thing.

The Constitution is the symbol of democracy, equality and justice. Its preamble affirms the democratic process through which equality, justice, freedom, socio-economic and political rights of the people etc, will be ensured. The Constitution provides that the People's Republic of Bangladesh shall be a democratic state in which fundamental human rights, freedoms and respects for the dignity and value of the person shall be guaranteed, in which efficient sharing by the people through their elected representatives at all levels of administration shall be assured (Article, 11).

Empowerment and participation of all classes of people is one the prime agenda of good governance. Empowerment of women, as part of all nation-building activities, is now high on the agenda of the world especially in all developing countries; the overall development depends upon the development of both men and women. Women are lagging behind men in various fields, such as participation in policy- making, education, health, politics, service etc. Keeping this matter is very much important for national development. The Constitution declares that 'steps will be taken to assure women participation in all aspects of national life' (Article, 10).

Recognition of various important rights of human, such as economics, social, cultural, educational, right to health, proper shelter, access to law courts etc. Side by side the civil and political rights are the preconditions of rule of law. The actual trial of good governance is also the step in which it grants on the pledge of human rights. Here the key questions of good governance in this research are: are the responsible institutions of governance practically ensuring the right to health, adequate food, sufficient housing, blooming education, fairness, justice and personal security? Constitutionally did Bangladesh take the responsibility to attain all the above basic necessities of its citizens in its constitution (Article, 15).

Rural development and maintaining equal living standard for both urban and rural people are also important concerns of government. In this regard, the state responsibility is to take workable action to fetch about a basal change in the rural areas by the improvement of agriculture, electrification, cottage and other industry and development of education, communication and public health with a view to removing the inequality in the living standard between the people of rural and urban areas (Article, 16).

Reasonable allocation of wealth among the citizens is one of the main objectives of the governance of a state. Bangladesh promised to assure parity of opportunity to all people and to dispel all socio-economic disparities between men and women and to assure the equal allocation of wealth among the people, and of advantages in order to gain a same inches of economic development oblique the state (Article, 19).

To make a corruption free society providing works for its citizens was the dream of independence of Bangladesh. In its Constitution, prospect and speculator of the people have been exhibited. The Constitution describes the same scope of the people and call on the state to originate the scope of work for the people to remove economic and social inequality (Article, 19). At one time, the Constitution has given the liability to the state to assure such type conditions that prevent the people to earn unearned income (Article, 20(2)).

Independence of judiciary is the prerequisites of rule of law and good governance. Constitutional law will be sheer moral rules of action imparting no result; if there is no law enforcement body and faithful enforcement of those laws are not possible in the absence of an independent, fair and impartial judiciary (Islam, 2002: pp. 61-62). In order to assure impartiality and independence of judiciary, the first endeavour of the state is to assure the separation of judiciary from the executive and legislative organ of the government. In this regard, The Constitution keeps the necessary provisions such as; the article 22 proclaims that the state must assure the separation of judiciary from the executive and legislative organ of the government.

#### **6. Rule of Law and Good Governance in Practice**

In spite of all the above constitutional safeguards, there are some legal and practical problems which are hampering the establishment of rule of law and good governance process, such as, Generally civil and political situation is the standard to determine the human rights and rule of law. Most of the fundamental rights which are incorporated in the Constitution of Bangladesh are civil and political rights and some socio-economic and cultural rights are formulated in the fundamental principles of state policy chapter

which should not be judicially enforceable (Article, 8(2)). Even some rights are yet to be formulated such as, right to security, right to living wage, right to development, right to standard living etc (Suggestions of International Jurist Commission).

One of the basic principles of rule of law is equality before law. The Constitution of Bangladesh describes that all citizens are equal before law and are entitled to equal protection of law but this doctrine is not applicable for the members of the disciplined force (Article, 45). It is reasonable, but when any member of a disciplined force fails to get relief from his own department, he can not go to the High Court Division. Judicial review is not applicable here. So, tremendous violation of rule of law is found in the field of defence department.

Though the constitution provides equal treatment of law, men and women are not equal in status in the family. Muslim women get half share in the common decent of men and Hindu women get no share from their predecessor.

Though there is a provision in the Constitution of Bangladesh for the separation of powers, some provisions in the Constitution and some other factors directly or indirectly intervene in the independence of judiciary. Some of the conditions are such as,

The president shall have power to grant excuses, respites and to decrease, suspend or mitigate any sentence posed by the court, tribunal or any other authority (Article, 49). This is the indirect intervention upon the judiciary and inverse to the rule of law. On the basis of this constitutional provision, President H. M. Ershad excused the capital punishment awarded to Azam Khan who killed Moyeez Uddin in 1983. (Islam, 2013:197).

Virtual independence of judiciary has yet been assured. Though under the present law, the judges including magistrate exercising judicial functions of the lower judiciary are being appointed by the independent Judicial Service Commission, due to existence of some Constitutional provisions, the executive has tremendous control over the judiciary in various ways. For example, judges of the judiciary and magistrates exercising judicial functions are appointed by the president (Article, 115), and control, i.e., promotion, posting, grant of leave and discipline of persons those who are employed in the judicial service and magistrates exercising judicial conjunctions are exercised by the President in exhortation with the Supreme Court (Article, 116). Seldom, the consultation provision with the Supreme Court is maintained by the President.

Detention under the special powers Act 1974 is gross violation of human rights. Without adjudicating the detenu is detained for a long period. The prohibitions of appointing lawyer on behalf of detenu i.e., free legal profession or access to justice has been ignored here. Justice Abdur Rahman Chowdhury told, "it is the blackest law of the black laws." From its inception 69010 persons were detained and 68195 persons have been acquitted by the High Court Division up to 31 December, 1998 (Parliamentary Standing Committee's report).

Suspicious arrest under section 54 of the criminal procedure code of 1898 is against the fundamental human rights. Mostly police abuse their powers with the help of this section. Actually the police apply this section with a view to earning money in illegal way (A report "Odhikar", the Prothom Alo, 8 Sept. 2000). Besides, police torture in the name

of remand is the vital question in our country as regard the violation of human rights though the Constitution of Bangladesh proclaims that, no body shall be subjected to torture or brutal, inhuman punishment or treatment (Article, 35(5)). The High Court Division directed the authority to restrain from an abusive exercise of powers under section 54 of the Criminal Procedure Code and Simultaneously the Court has given a vivid recommendation for amending the existing provisions of section 54 on the writ petition filed by the Bangladesh Legal Aid and Services Trust and Others (Bangladesh Legal Aid and Services Trust and Others V. Bangladesh and Others).

The enemy property Act later on Vested Property Act is one of the deceptive documents. From its inception about ten lakh Hindu families have suffered loss and at that time they have lost 21 lakh acres land (53% of total Hindu land), (Report of the Prothom Alo, 22 Sept. 2000). The existence of this kind of law in a democratic country like ours is anti-human and violation of rule of law. It is woeful to us that about 1.5 lakh acres of land are in the possession of the government and rest 20 lakh acres are in illegal possession by four lakh individuals (Report of the Prothom Alo, 22 Sept. 2000). In 2001, the vested property (Return) Bill has been passed. But the complexity of the law and lack of will of the ruling classes, the result of the law is yet to reach to the people.

#### **7. Rule of law and its role in establishing Good Governance in Bangladesh**

Rule of law and good governance have a nexus. Rule of law always play a vital role in establishing good governance, because the purpose of rule of law and good governance is almost same. Rule of law is one of the most vital components of good governance. Rule of law influences on good governance in such a way, the rule of law prevailing society, maintains equality, social security, social justice and after all dignity of human beings. The rule of law tells about sufficient preservation of socio-economic and cultural rights too. Rule of law implies the preservation of fundamental human rights and proper enforcement of law and it prefers administrative control of courts. Rule of law indicates the existence of some elements which can ensure good governance because the rule of law is basically rights and justice oriented.

The rule of law can play a vital role in establishing good governance in Bangladesh as per the provisions of the Constitution. Though the Constitution of Bangladesh provides a lot of articles regarding rule of law but in practice most of the articles are not enforces. Some of the articles are such as:

Most of the fundamental principles which are incorporated in the Constitution of Bangladesh which should not be judicially enforceable (Article, 8(2)). Article 11 declares that, the People's Republic of Bangladesh shall be a democratic state in which fundamental human rights and liberty, respect for the dignity and value of the human person shall be guaranteed. In 2013 the government acted the anti-torture law that is called Torture and Custodial Death (Prevention) Act. Howsoever, Bangladesh security forces, including the police, military and paramilitary are using the torture extensively (The New York Times Opinion, 11 July 2017). The police requested the Prime Minister to omit the anti-torture law in 2017 (New Age, 11 July 2017). Article 32 declares that, no body shall be deprived of life and liberty save in according to law. In fact, Bangladesh has a huge number of

extrajudicial killings and enforced death every year. RAB (Rapid Action Battalion) is charged of being the leading offender of such kind of human rights abuses, followed by the Bangladesh police, DGFI (Directorate General of Forces Intelligence) and the Bangladesh Army (Forced disappearance in Bangladesh, New Age, 8 Sept. 2018). In the article 34, forced labor is forbidden but Bangladesh has momentous challenges of human laundering and modern slavery (The New York Times Opinion, 11 July 2017). The general freedom of gathering stated in article 37 but sometimes the political opposition is confined from occupying public meetings and rallies by the government in Bangladesh. All investigation on attack on members of the opposition party on and before Bangladesh elections called for by the Human Rights Watch on 03 January in 2019 (Ganosonghati Andolon Boycotts Polls, LIVE Polls, 9 Jan. 2019, 8.00 am). Though article 38 provides freedom of association but sometimes the leaders of the trade union from the textile industry face cranky arrests and politically motivated litigations (Hrw.org. Retrieved on 11 July 2017). Forming trade unions are prohibited in EPZ (Export Processing Zone), but the government has promised to remove the ban (Dhaka Tribune, 24 April 2017).

The Constitution of Bangladesh proclaims that, whole citizens are equal before law and are entitled to equal treatment of law (Article, 27), but in the writ petition no. 2932 of 2010, BLAST and others V. Bangladesh, in this case continuously depriving Bangladeshi citizens because of their disabilities from the opportunity of appearing in the BCS (Bangladesh Civil Service) examinations and they are not approving to join any cadre as may be determined by the PSC (Bangladesh Public Service Commission), (writ petition no. 2932 of 2010).

According to the article 28(2), men and women shall have same rights in every spheres of life and of the state but in Bangladesh, gender pay gap was 57% in 2017 and 54% in 2016 for the same work in same place (The Daily Star, 23 Sept. 2018).

According to the article 102(2), the state shall assure the independence of judiciary from the executive organ of the government. It is a vital component of rule of law and good governance but in Bangladesh, the executive has unjustly been using the punitive power against the judges to keep them under constant danger of initiation of departmental proceedings (The Daily Star, 4 April 2017).

Article 35(5) proclaims that, no body shall be subjected to torture or brutal, inhuman or decadent punishment or treatment but in Bangladesh occurring extrajudicial killings. As for example, former Major Sinha Md Rashed Khan killed at a police checkpoint in Cox's Bazar on July 31<sup>st</sup> night. 47 people killed by the law enforcement in July 2020. The highest in a month this year (bdnews24.com, 3 Oct. 2020).

Last few years the law and order situation in Bangladesh is very bad condition. We have been seen it repeatedly is that some terrible criminal acts have gone on without any significant interference from the government. Sometimes people killed in their wagon and nobody get arrested, sometimes people get knifed on the busy street but nobody get arrested, sometimes children are kidnaped from their school or house and they do not come back if the compensation have not been paid (Dhaka Tribune, 27 July 2019).



A report has been submitted by the office of the Inspector General of Police (IGP) to the High Court division is that the rape cases have been lodged in the last five years in total of 26,695 (The Daily Star, 22 July 2021).

Corruption has been occurring in different sector is very widely, such as Passport office, e-commerce firm, Roads and Highways Department (RHD), Biman Bangladesh Airlines, health sector, money laundering, bribery of private and public officials etc (Dhaka Tribune, 18 July 2021).

The political criminalisation in Bangladesh is acute. The trend of corruption, torture, violation of freedom, extra judicial killings, deter to hold political rallies and meetings, violation against women etc are alarming in Bangladesh at present (Human Rights Report 2019, Odhikar, 8 Feb. 2020).

Though the judiciary is separated from the executive and legislature although the interference of the executive over the judiciary is running in different ways like sometimes Parliament Member and Ministers are requests to the judges for the release of the convict.

## **8. Results and discussion**

In the above discussion it is distinct that as the rule of law did not ensured as per the Constitution of Bangladesh so good governance is far cry. To ensure good governance the rule of law have to be ensured first but here one thing is very much clear that there are some challenges to ensure rule of law as well as governments have some endeavour to ensure good governance, such as:

### **(i) Challenges of ensuring Rule of Law**

As affixed in the outskirts section Bangladesh is far cry from the present state of good governance as most of the perspectives of good governance are not present. Bangladesh is moving a great number of challenges to achieve good governance, such as downfall of law and order situation. The law and order situation is falling, such as peoples are suffering insecurity. The problem of law and order has intensified over the past few years. However, rape, killing, acid throwing, kidnapping, snatching, extortion etc have now reached a new height gauge. People really scared in the present context. Nobody is free from danger like journalists, businessmen, teachers, service holders, and other sectors of citizens are passing their days under the continuous threat of terrors.

### **(ii) Governments endeavour to ensure Good Governance**

Good governance can be ensured by improving law and order situation and ensuring security for all. For ensuring better law and order, the successive governments took various initiatives such as, Operation Clean Heart, Operation Spider-Web, Combating Operation in Chittagong Hill Tracts, RAB, BGB and establishing Speedy Trial Tribunals etc.

## **9. Conclusion and Recommendation**

In the alluded presentation it is appreciable that in the one hand the state have some challenges of ensuring rule of law and on the other hand governments have some endeavour to ensure good governance but the endeavour of government in improving law and order situation is not free from suspicion. For overcoming the situation, the

police must take legal action against the criminals who have been involved with unlawful attack, torture and assault in order to ensure justice. The persons involved with offence should be arrested and charge should be formed against them. The administration has to ensure protection for the general people everywhere. Proper investigation must be initiated to investigate the incidents and violation of law. The incidents of disappearance of innocent people have to be stopped. The civil society and media must address the issue of deterioration of law and order situation seriously. International community should play neutral role and address the human rights violation issues very seriously. These recommendations may be the recipe to overcome the challenges of ensuring rule of law and to ensure good governance in Bangladesh.

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