BARRIERS TO A RESILIENT CONSTITUTION IN BANGLADESH AND RESOLUTIONS: AN EXPLORATORY ANALYSIS

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ABSTRACT

Bangladesh has experienced a period of "Illiberal democracy" in recent times where politicians have acted autocratically, rewarding political supporters, punishing the opposition. The judiciary, bureaucracy, police and even the legislature have all been hollowed out by financial, partisan and personal attention. Disorder became the order, irregular the regular and Machiavellianism the political practice. Following a series of ups and downs, question arises, as to whether the constitution has been able to maintain its resilience! The purpose of this paper is to find out the answer. It describes the major constitutional drawbacks with a historical perspective. This paper also exposes, whether the constitution can be called as a resilient one or not. If not, then what are the barriers and resolutions? It aims to bring to light and consolidate the key issues in this area. It proposes an institutional approach as well which is contrary to the by and large person-centered approach.

Key words: Constitution, resilience, democracy, law, provisions, political parties, judiciary, amendment, drawbacks, resolutions, reform, parliament, fundamental rights, High court, ordinance, legislature, minister, president, election commission, Government.

INTRODUCTION

Generally, the term, 'Resilience of body' denotes the proficiency to cope with an attack on its immune system. What applies in case of Biology or Psychology, is also uniformly valid for legal bodies. When it comes to constitutional resilience, it denotes the enablement or competency to cope with the existing & posterior complexities.[i]

The efficiency with which the constitution survives or endures when faced with major challenges is the parameter of constitutional resilience. But, if we propagate the term-constitutional resilience, it also incorporates more genuine notions of what a constitution can and should do, particularly when confronted with major, unexpected or even unprecedented issues. From many of the features, one very important characteristic is its ability to withstand challenges even when the country is traveling through turbulent water. It means, the constitution will always remain thoroughly unchanged & maintain its essence despite how hard time it encounters. Scholars suggest, the constitution may be transformed in a way to tackle a particular political or social context but such change would not suffice in shifting from its underlying values & mandates. The notion of constitutional resilience is not stuck in the constitution only, rather it also focuses on the inter-connected institutions set up by a constitution such as, the parliament, executive and so on. Rome was not built in a day. Alike constitution needs to be developed, refined & put into context over time.[ii]

Whether or not the constitution of Bangladesh is resilient is a debatable subject. In the landmark case of *Shamima Sultana Sheema Vs. Bangladesh, 57 DLR (2005) 201, Para 108*, the learned justice ABM Khairul Haque observed, the intrinsic power of the constitution is its ingrained spirit & the constitution is completely inane without that spirit. He compared the constitution with hollow instrument & dead letter without that spirit and force. He also added, though the United Kingdom does not have any written constitution, the people of that country feel proud of their constitution because, they succeeded in incorporating the spirit. The constitution will still remain as a mirage without the spirit even if it is written or amended many a times.[iii]

PAST AMENDMENTS AND THEIR IMPACT ON CONSTITUTIONAL RESILIENCE:

The constitution of Bangladesh began its journey as a seemingly rigid constitution[iv]. Although the original constitution was excellent, it had a few minor but substantial flaws. One of them was article 70. Despite the fact that it was created with the intention of preventing a bad parliamentary culture of floor-crossing as part of immoral backdoor deals, it resulted in a far greater evil in the long run. Because of Awami-league's undeniable but one sided majority in the first parliament, they had easy access to the power to change the constitution on the spur of the moment. But to a large extent, this constitution was written by our founding fathers and those who fought for our independence. Their motivation for using this unquestionable majority to amend the constitution to the point of severe deformity through the fourth amendment may have some historical and political implications that historians and political scientists should debate and assess. My concerns here are with the outcome, which has paved the way for more severe deformities in the constitution.

A good constitution, according to popular belief, is responsible for defining the state, its organs of Government and its systems among other things. All of these were fulfilled by the constitution of Bangladesh which demonstrated the Bangladeshi Government as a liberal-democratic parliamentary system. However, by burying the concept of liberal-democratic parliamentary system, multi-party system took the possession and with the help of fourth amendment, it turned into a presidential form[v]. Later dictators particularly military regimes cause more serious damage in the constitution. Personally I believe that the fourth amendment set the stage for these ruler's audacity. We have seen them using undemocratic constitutional amendments like the fifth and seventh amendments to legitimize their unconstitutional activities. The previous grant of undemocratic and unconstitutional indemnity to the murderers of Bangabandhu Sheikh Mujibur Rahman and his family members was given constitutional validity after the fifth amendment, resulting in a very shameful legal fallacy. The dictators changed the constitution to the point where there were almost no practical limits to governance, turning into a toy for playing politics and destroying its rigidity to the point where Bangladeshi constitutionalism became a fairytale. The sixth, ninth and eleventh amendments served as a supplement or upgrade to the fifth and seventh amendments which effectively destroyed the concept of constitutionalism in Bangladesh. The Eighth amendment, on the other hand caused a minor but significant change in the constitution.

Despite the fact that, the twelfth amendment restored the original constitutional form of Government, the liberal democratic one, it fell short of completing the process. But I can't deny it was a significant way forward in the history of restoration and resiliency. The history of resiliency was then given a new dimension by two landmark judgments from Bangladesh's Supreme Court. The debatable actions of the fifth and seventh amendments were declared null and void. The Italian marble case[vi] and the seventh amendment case[vii] were the two cases in discussion. These two incidents were Bangladesh's two of most illustrious examples of judicial activism.

The thirteenth amendment, on the other side engendered a constitutional defect by introducing a new concept of a peculiar form of Govt. which is the Non-party caretaker movement. The flaw in this Govt. system lies in the void it creates and the way it attempts to fill that void. The fact that, no Prime minister was succeeded by another at the end of his tenure under this system. Instead a temporary intermediate figure who was unaccountable to the people and did not have the title of PM was in charge of running the election and handing over power to the next elected PM. An endeavor was made to fill the lacuna in an ineffective manner, with the stated goal of ensuring election transparency and fairness. This is unconstitutional because the goal could be achieved in a more effective manner by using proper constitutional methods such as empowering and strengthening the election commission. This entire process ran the risk of being abused by the military and bureaucracy, and it attempted to derail Bangladesh's long standing popular desire for parliamentary democracy. However, the fifteenth amendment provided a significant reversal. Though it is true that few of the deformities caused by the fourth amendment were reversed by subsequent dictatorial amendments, I prefer to see the fifteenth amendment as their end result because of the invalidity of those dictator regimes stamped on them by the apex court as a result of judicial activism under democratic Governments.

The fifteenth amendment, on the contrary had three key features that are relevant to our discussion of resilience. First it attempted to restore the original constitution's main features, such as the four pillars. Second in order to appease the public, legislators attempted to filter the deformities and rather than restoring the original constitution entirely, they worked to maintain the existing positive changes in the constitution, viewing them as healthy rather than severe deformities and third, it included protective measures in the constitution. Later, the sixteenth amendment was notable because it attempted top replace the supreme judicial council with a

judicial accountability system to the legislature. However, the sixteenth amendment case[viii] declared to be ultra vires the constitution, resulting in broader debates and dilemmas[ix]. Leaving aside the ensuing conundrum and debate it is a return to the original intent of Article 96, which was distorted by the fifth amendment. So, I prefer to appreciate this approach with my eyes closed in this context.

So we can say that there are four major stages in the history of constitutional deformity and recovery initiatives. Firstly, the introduction of presidential system and the subsequent harms caused by the dictators as a result of it. Secondly, the event of reversion to the parliamentary democracy system including the remarkable events of judicial activism. Thirdly, the further deformity caused by the introduction of the non-party caretaker Government. The sixteenth amendment should be included in this forth stage of reversal as well. The first and third stages were instances of causing constitutional deformity while the second and fourth stages were instances of reversal.

We can find the historical perspective of constitutional resilience in Bangladesh in all of these deformity and reversal events. We should also note a significant pattern of constitutional resilience in Bangladesh. There was little resistance to the deformity here and we may find the events of subsequent reversals as pivotal points to locate the resilience at a later time.

Whenever a flaw in the constitution has been discovered, it has been corrected either by democratic governments or by dictators as a result of popular uprisings. However, one thing must be proven in order to locate the resilience within these amendments whether the reversals were either natural or artificial. Whether they were brought as a good will gesture by some Govt. or as a true reflection of the people is the question that needs to be answered. If the constitutional amendments that correct the deformities are solely the result of Govt. initiatives. They are not the natural examples of constitutional resilience. However, in order to reach this decision, we must consider the historical perspective particularly the past amendments on the possibility of being artificial.[x]

THE CONSTITUTIONAL RESILIENCE OF SECULARISM

The meaning of secularism can be well understood from the speech of Dr. Radakrishnan. He cited, if a state alleged to be a secular, it does not mean the unseen spirit of the relevance of religion to life is rejected by that state or it exalt irreligion. It does not also mean that, neither secularism itself would be treated as a positive religion nor the state assumes divine prerogatives. Dr. Radakrishnan added, secularism in its innermost sense means that, no religion will be given preferential status or unique distinction. No religion must be provided special privilege in both national & international systems in such a way that violates the basic principles of democracy. It will also not be at odds with the best interest of religion and government.[xi]

In the year of 1999-2005 Bangladesh witnessed the most toxic militancy and extremism in the name of Islamic movements. The then contemporary politics, society, ethnicity, nationalism, culture etc. were tried to radicalize. That was a serious miscalculation and abuse of religious beliefs. However, Bangladesh wheeled back positively and strongly by countering the militancy and pushing the war crimes tribunal. The illustration of Bangladesh in 1971 was portrayed for a country where Hindu people would take the charge of security of Eidgah's during Eid congregations and Muslim youths would guard the puja mandaps during prayers.[xii] As rightly pointed out by Dr. Zakir Hossain, the first Muslim president of India, Secularism is only achieved when you do not know my religion. And exactly this was the motivation behind the inclusion of Article 12 in the constitution. Though Bangladesh faced some tough times due to the abuse of religious sentiment and wrong move of the then Governments, I think at least at this stage, the constitution of Bangladesh guarantees the resilience of secularism and the law enforcement agencies are doing well in this regard.

THE CONSTITUTIONAL RESILIENCE OF WOMEN'S PRIVATE LIFE

Women's equality in public life is guaranteed by Article 28(2) of the constitution of Bangladesh. The inherent flaw here is that it does not emphasize on equal treatment in matters other than public affairs. This article should be amended which will include women's equality of rights in their private life as well. Because the constitution's fundamental rights are judicially

enforceable this is an important consideration in preventing discriminations against women in their private lives.[xiii]

THE CONSTITUTIONAL RESILIENCE OF SAFEGUARDS AS TO ARREST AND DETENTION

The authority to make laws for preventive detention is provided by Article 33 of the constitution of Bangladesh which is one of the most contentious provisions in the constitutional law is concerned. In this context, the Special Powers Act of 1974 was enacted. Which has been used by every ruling party to further strengthen their own political interest. This is one of the most draconian act. It is also worth noting that the right to appeal a detention order is inextricably linked to the right to communicate grounds. Because it is nearly impossible to make a strong case for the person detained in violation of the order without knowing the facts. Surprisingly it also states that the detaining authority has the right to refuse to reveal any information that they believe is contrary to the public interest. The first two constitutional rights are thus now rendered null and void..[xiv]

15 directives were issued by a bench of High Court division judges regarding arrest and detention in the case of Blast Vs Bangladesh (55 DLR 363). However, in practice, the majority of them are not elegantly followed.

THE CONSTITUTIONAL RESILIENCE OF FREE VOTING BY THE MP'S IN PARLIAMENT

Article 70 of the constitution talks about the vacation of seat on resignation or voting against political party. Here it says the seat of a member of parliament shall vacate if he casts his vote against the political party under which he was nominated as the candidate and subsequently the member of parliament. This provision is a clear barrier of a democratic framework. Considering this article 70, the cabinet remains always tensed free because it will never be defeated on the floor by a motion of no confidence. Article 70 is also drastically inconsistent with Article 55(3) which provides the collective responsibility of the cabinet to the parliament. Obviously this

provision can be treated as a cornerstone to ensure a responsible Government but the provision laid in article 70 made the article 55(3) fully a fruitless one. A healthy constitution does not authorize or support any blockade in the functioning of one provision by the placement of another contradictory one.[xv] In the case of Abdus Samad Azad Vs Bangladesh 44 DLR 354, para 26 Barrister Amirul Islam argued that, Article 70 puts barrier on legislative and policy status of the members of parliament by putting the embargo on them from voting against their party decision. He further added, an extra ordinary function like election of the president must not be brought within the operation of Article 70.

THE CONSTITUTIONAL RESILIENCE OF ORDINANCE MAKING POWER OF THE PRESIDENT

When the parliament is in session or when the parliament is dissolved the president can issue an ordinance. According to article 93 of the constitution if he believes that circumstances require immediate intervention. The president's ability to issue ordinances is entirely dependent on his subjective satisfaction. Because of the president's subjective satisfaction there exists a scope of playing an unbroken role in the executive branch's abuse of power. In reality during each recess of parliament the executives issue a large number of ordinances in order to get around parliament while avoiding any unforeseen or emergency situations. The Govt. creates all black laws through ordinances in order to create a strong political stance. These ordinances become laws immediately after being signed and gazetted by the president. They are framed in the privacy of the ministries and passed by the cabinet without any public exposure. With no scope for public scrutiny or legal legitimacy. This power to issue ordinances is clearly a violation of the rule of law.[xvi]

Rule of law emphasizes on the laws which are passed in a democratically elected parliament after sufficient discussion and deliberation. Surprisingly, except in Bangladesh, India, Pakistan and some other developing country's constitution there is no provision found as such in the true democratic states. If any urgent situation demanding a legislative action needed, emergency summoning of parliament in both USA and UK is there. Because of the direct intervention and influence of the bureaucrats, the bureaucracy gets the opportunity to defy and flout the supremacy of the constitution which is against principle of institutionalizing

democracy and norms of constitutionalism.[xvii] As rightly pointed out by A.K. Brohi in the contribution of his "Fundamental Law of Pakistan", the ordinances (Temporary laws) contains with their own womb seeding of their own destruction.[xviii] In addition, it will not be wrong if we add, these ordinances leave powerful seeds of rule by tyranny.

THE CONSTITUTIONAL RESILIENCE IN THE APPOINTMENT OF OMBUDSMAN

An ombudsman is a non-partisan outside-the-bureaucracy official with the authority to detect administrative lapse & faults, investigate, recommend corrective measures, issue reports, criticize & publicize but not to capsize rectifications. The office of Ombudsman oversees & inspects whether the administrative officials are exercising their power legally or not. But, in comparison with the umpteen institutionalization of this office in the western developed countries, the office of Ombudsman is stillborn in Bangladesh. The ombudsman act, 1980 and article 77 of the constitution respectively establish the legitimacy of this office and provide detailed instructions on how to set it up. Since the establishment of the office of ombudsman was not made mandatory. It was left to the whims and discretion of the parliament; the experts are realizing the importance of filling the vacuum of an ombudsman by the passage of time. Since its independence, Bangladesh has been aware of the lack of an Ombudsman's office. It goes without saying that if administrative activities remain unfettered and derelict, a tyrannical situation will emerge. From Bangladesh's perspective the method of combating administrative irregularities is haphazard and ineffective. The Annul confidential report (ACR) is a highly subjective document & is not of much use. To minimize the maladministration, inefficiency, arrogance & abuse of power the appointment of ombudsman has become a crying need. Ordinary courts are uncongenial to conduct informal investigations. Formal legislation is cumbersome, time-killing & protracted, contrariwise the investigation of an ombudsman is informal & where no counsel is required. To administer the operations of Govt. officials, executives & agencies the installation of ombudsman is highly preferred. Since the population of Bangladesh is huge & rapidly expanding, one parliamentary ombudsman is rationally incommensurate. Non parliamentary ombudsmen such as an equal opportunities ombudsman, children's ombudsman, press ombudsman, ombudsman against ethnic division, a consumer

ombudsman and so on should be appointed in Bangladesh. The ombudsman has the potential to play a pivotal role in the establishment of natural justice. Bangladesh requires the appointment of such ombudsman who can investigate complaints made against any public officials, including cabinet ministers, members of parliament, the central bureaucracy, local representatives, military personnel, judicial bodies and others and who can guarantee that lawful, non-discriminatory and fair actions will be taken without regard for extraneous factors. They will root out corruption, nepotism and bias in the public administration. The installation of ombudsman will affirm stronger & more disciplined democracy and mostly rule of law will prevail in Bangladesh.[xix]

THE CONSTITUTIONAL RESILIENCE IN MITIGATING CASE BACKLOGS

In Bangladesh, access to justice is confined by a huge case backlogs & delays in the disposal of cases. According to a statistical information on the institution & the disposal of cases in the Appellate Division of the Supreme Court, 38 appeals were filed in the year 1987 from which 29 of them were put in an end or disposed of. In comparison, in the year 2019 total number of appeal filed was 548 and from them 144 were disposed. There were 5 Justices in 1987 whereas the number of Justices of Appellate division is 5 still now. In both the divisions of Supreme Court, there were total 13 justices and the number of pending cases was 24,623. Whereas after 50 years in 2021 we have total 95 justices and the number of pending cases is 4,68,198. The number of pending cases are immensely increasing in the subordinate courts as well. In 2016 pending cases were 31,55,878, In 2017 it became 33,54,500, In 2018 in turned into 35,69,750, In 2019 pending cases were 36,84,728 and lastly in 2020 it has stood in 39,33,186. Things are getting out of hand, but besides the increased number of cases, unfortunately we do not see the appointment of judges to handle the pressure. To mitigate the pressures only in the Appellate Division, at least 15 justices need to be there with 3-4 specialized bench such as one for dealing with civil cases, one for criminal cases, one for company cases etc.[xx]

According to Article 94(2) of the constitution, the number of judges is not fixed and is left to the President's discretion. He will appoint judges as he deems appropriate. With a population over 17 crores and over 39 lacs pending cases, why is not the President appointing more judges

every year? Isn't it a time to take a serious look at the judge shortage? Even after so many cases have been tangled year after year, it is unfortunate that the president does not increase the number of judges. The same can be said for the lower courts. Despite the fact that constitution contains a provision for increasing the number of judges on the supreme court, there is nothing similar in the constitution for lower court judges. The need for structural reform of the justice system and the adjudicative process has never been greater. Already we have wasted lots of time. No more delay, no more excuses. Proper initiatives must be taken immediately; otherwise people's trust upon judiciary will be at stake.

THE CONSTITUTIONAL RESILIENCE OF AN ACCOUNTABLE ADMINISTRATIVE TRIBUNAL

Article 117 of the constitution depicts the establishment of administrative tribunal. But this article is vague and incomplete because it is mute about the chairmanship, qualifications, conditions, tenure etc. Unexpectedly this tribunal has been kept away from the writ jurisdiction of High Court Division under article 102(5). In addition, it was also kept outside of the supervisions from High Court Division. Due to this, this article can be said as the obstacle to integrated judicial system and of independence of judiciary.[xxi]

THE CONSTITUTIONAL RESILIENCE OF THE PROCLAMATION OF EMERGENCY

The president can declare a state of emergency based on war, external aggression, or internal disturbances according to Article 141A of the constitution. There can be no objection to war and external aggression because they are clearly defined in international law. However, the term, "|internal disturbance" is ambiguous and undefined. Fakhruddin's caretaker Govt. lasted almost two years due to its ambiguity. It is a readymade weapon that the ruling party employs to crush the opposition and anti-government movement. This draconian provision has been a permanent stain on our constitution, serving to maintain rule and suppress opposition. In the constitutional history of Bangladesh, total four times emergency were declared. And three of them for political reason. Alike Bangladesh, India widely abused this provision when Indira

Gandhi was in power. But in the 44th amendment of Indian constitution, they replaced the word 'internal disturbance' with 'armed rebellion' in order to prevent the extensive abuse of this provision. At this they have abled to lessen the abuse of this provision. It is high time Bangladesh inserted such word in the place of 'internal disturbances'.[xxii]

THE CONSTITUTIONAL RESILIENCE OF THE CARETAKER GOVT. AND THE INDEPENDENCE OF THE ELECTION COMMISSION:

The caretaker Govt. as provided for by the 13th amendment has lustered the path of making only the general elections free and just. But the question of assuring such atmosphere for other elections like parliamentary by-election, city corporation, local bodies election etc. are still not settled yet. There are still some drawbacks which can hamper free and fair elections. Allegiance to any political party and the unchecked authority given to the returning officers under Representation of the People Order, 1972 can be the factors. As the question was asked in the first caretaker Govt., same thing can happen because the returning officers are vested with huge powers i.e. counting votes, controlling polling station, accepting nomination papers etc. They announce results but if any partiality or illegality is perceived, the Election commission has not vested with the power to take appropriate measures against them. Such powers to election commission is must to witness an accountable, free, fair election.[xxiii]

THE CONSTITUTIONAL RESILIENCE FOR MOTION OF CENSURE

In the constitution of Bangladesh there is no provision for motion of censure. No motion of censure, therefore can be made against a minister in his ministry for any corruption. If we see the Greece constitution, they specifically inserted vote for censure. So Bangladesh's constitution should incorporate a provision of vote of censure in order to ensure the ministerial responsibility.[xxiv]

INSTITUTIONAL REFORM (THE PRESIDENT)

Despite the fact that, the President is referred to as Bangladesh's constitutional head, he is nothing more than a ceremonial executive. Except for appointing the Prime minister and chief executive, the president follows the prime minister's instructions. The presidency should be determined by election, and it should be elected by an extended electoral college that includes MPs', local elective bodies and Article 48(1) should be revised accordingly. At this, the local Govt. will be valued being a precondition to the presidential election. A presidential candidate must be non-partisan. Though there will be complexities and necessary changes in the existing constitution required, it is undeniable truth that, there is difference between pre requirement and post requirement of neutrality. Article 50(4) can be theoretically true, but it is impossible to abandon psychological adherence. The prestigious institution of presidency to abide by the Prime minister's advice must be reduced and for that purpose Article 48(3) should be restructured.[xxv]

INSTITUTIONAL REFORM (THE CARETAKER GOVERNMENT)

If the caretaker Govt. sustains there must be some balance between the power of president and the chief adviser. The provision to act on the advice of PM or upon his prior signature by the president should be ineffective. Article 58B (2) turns the caretaker Govt. into collectively responsible to the govt. "Routine functions" as mentioned in article 58D (1) needs to be redefined. When the president summons the parliament as per Article 72(4), the caretaker govt. shall be collectively responsible, the article should be amended in that way. President should not be the chief advisor under Article 58C(6).[xxvi] An interim Govt. may be formed if we decide to abolish the system entirely. An interim prime-minister will be appointed who will not seek re-election to the next parliament from amongst the members of the dissolved parliament. Ministers are appointed in proportion to the number of members who represent political parties and they are not eligible for re-election. Even if we do not like any more interim arrangements and our politicians begin to believe in themselves, we can return to the foundations of parliamentary democracy- an independent election commission. Our democracy does not require the presence of a caretaker. This can be an alternative in this regard.

INSTITUTIONAL REFORM (THE LEGISLATURE)

The whole country should be divided into 100 zones and the woman members of parliament should be directly elected by the electors. Article 67(1)(B) of the constitution is unable to check the continuous boycott of MP's, ninety days should be changed to forty-five days. If there can be a provision that, absence of 60% sitting of each session will suffice to lose the parliamentarian seat, that would be better. In lieu of one deputy speaker, there should be two, one of whom shall be from the opposition party. During the tenure, speaker and deputy speaker should not engage themselves with political affiliation. Article 145A is vague and unclear. It seems parliament cannot do more than presenting the international treaties. Parliament must be given power to reject or ratify international treaty by amending Article 145A.[xxvii]

There is a "No Vote" provision that nullifies an election result in a constituency if more than 50% of the total votes are NO. This is to prevent the business tycoons and Godfathers from being elected. But there are some drawbacks with this provision. First, while parties and candidates campaign for election, no one is campaigning against all of the candidates or parties in the race. Second, if the burden is placed on the election commission, there will be confusion. The election commission organizes election while also informing the public that they are not required to vote for their representative. Third, if the commission is taken seriously by a sufficient number of voters and they use the option, the general election fails to elect parliament, which would be a complete shock to the democratic process. As a result, it is preferable that we focus our efforts at this time on ensuring clean candidates in the parliamentary election by requiring candidates to disclose information. [xxviii]

Article 70 of the constitution came about as a result of the painful necessity of preventing political instability. This article has been criticized for violating Article 39 (2)(a) of the constitution. That guarantees freedom of expression and opinion and for allowing leaders to ignore the pulse of their backbenchers. That is why Article 70 should only be used when a member of parliament is called upon on vote on a motion of no confidence or when a member must demonstrate that he or she has the support of a majority of MPs.[xxix]

INSTITUTIONAL REFORM (THE JUDICIARY)

The long-running battle for lower court independence has won a partial victory but the fight is not over yet. As before, the judges are haunted by the ghosts of the law ministry. The law ministry is in charge of a judge's promotion, posting, discipline and leave among other things. As a result, the judicial service association has demanded unequivocally that the position of secretary to the law ministry be reserved exclusively for judges. Some provide ad hoc support to the judicial service association until a separate judicial secretariat is established. While others vehemently oppose the demand claiming that it violates separation of power. Whatever anyone opines, we must complete the unfinished revolution by establishing an independent judicial secretariat under the direct control of the Supreme Court in order to give the separation of powers a meaning.

INSTITUTIONAL REFORM (THE POLITICAL PARTIES)

Political parties are thought to be heavily reliant on the business community for funding. This is why maintain transparency and standing up for pro-people issues or politics is impossible for them. They are hesitant to jeopardize the donor's interest. As a result, under certain conditions a scheme for state funding of political parties and candidates could be implemented. The number of seats in the parliament or the number of votes cast in the most recent national election could be used a criterion for state funding of a political party. It will allow citizens to say, as you receive from the public exchequer, so you account for it". [xxx]

INSTITUTIONAL REFORM (LOCAL GOVERNMENT)

A politically empowered and financially viable local Govt. system is yet to be emerged in Bangladesh. A destructive culture has hampered the long-term viability of a stable local Government structure. What we have now can best be described as national governments extensions with guided and limited local participation. As a result, it is critical that Upazila and zilla parishad elections be held on a regular basis and these become the true epicenter of local-self Government. To make local Govt. make sense, the so called advisory role of the member of parliaments inserted in the Upazila Parishad Ain, 2009 must be removed.

INSTITUTIONAL REFORM (THE ELECTION COMMISSION)

The election commission's viability as an institution has been seriously questioned in recent years. Though the current election commission has made significant progress in regaining lost ground, the following points may play a vital role in steering the pace-

Instead of being at the president's discretion the number of members of the election commission should be fixed. The manner in which the commission makes decision is unclear, as it is unclear whether a formal decision requires a formal vote of the commission's members or whether the chairman decides alone. To ensure free flow of information and transparency, the commission must adopt its own rules of procedures and a formal approach to conduct its day to day activities.[xxxi]

CONCLUDING REMARKS

The constitution is regarded as the guardian of all laws. As a result, there are unlikely to be to be any flaws. Unfortunately, Bangladesh's constitution has some flaws and underdeveloped provisions. Based on the foregoing discussion, we cannot confidently declare Bangladesh's constitution to be fully resilient. We require a constitution that will ensure that democratic functions are carried out smoothly throughout the country. Bangladesh's democratic institutions have yet to be fully consolidated. Bangladesh has experienced a period of "Illiberal democracy" in which politicians have acted autocratically, rewarding political supporters while punishing the opposition. The judiciary, bureaucracy, police and even the legislature have all been hollowed out by financial, partisan and personal attention. Disorder became the order, irregular the regular and machiavaellism the political practice. Though all these complications of democracy haunt Bangladesh, the prospects of her democracy make her optimist of a sustainable destiny. The discussion above has pointed out some major lacunas for which our constitution failing to be called as a resilient one. Hope the constitution of Bangladesh will be a beacon light in the journey of politico-cultural reform through a glorious revolution.[xxxii]

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