

The Daily Star Roundtable on Good Governance: Need for Primacy of Law, Accountability and Transparency

Too much has been said about good governance, but too little has been done about it. The more we discussed the subject the worse our governance became. In fact, the situation today raises serious questions about our ability to manage institution, administer projects and implement much-needed policy decisions. All this has happened because of lack of accountability on the part of both government and private institutions. We believe that accountability can be achieved only by giving primacy to LAW and by making the government as transparent as possible.

It is with a view to finding ways to implement such ideas that The Daily Star organised a roundtable with a select group of experts. We publish the full transcript of that decision and hope that policymaker will take note of these suggestions. -Editor

The participants

Dr. Kamal Hossain, eminent jurist
Professor Rehman Sobhan
Executive Chairman, Centre for Policy Dialogue
Professor Muzaffer Ahmad, eminent economist
ATM Shamsul Haq
Chairman, Public Administration Reforms Commission
Syed Yussuf Hossain
Chief Comptroller and Auditor General
M Hafizuddin
former Chief Comptroller and Auditor General

Md. Badiuzzaman
Director General, Anti-Corruption Bureau
Syed Humayun Kabir
Trustee, Transparency International Bangladesh
Kazi Fazlur Rahman
former advisor of the caretaker government
Abdul Mueed Chowdhury
Executive Director, BRAC
Ismet Zerir Khan
Chief of External Affairs, World Bank

Moderator: Mahfuz Anam



Mahfuz Anam: I think we are having less of good governance as we talk more on good governance and law and order. This is a matter of serious concern. The issue of good governance holds the key for national development. More and more, law is being observed in its violation than in its adherence. Everywhere law is taking a second place. An undeclared and invisible system is taking over. Corruption and bribery dominate, politics is going towards rhetoric and conflict. We have an administration, which is developing its own norm. As we know from the findings of the Comptroller General's office, nothing is followed up. In asking for good governance, we are not asking for the moon, but for simple norms that need to be followed along with simple expectations of citizens. It is more from the perspective of the citizens that we have convened this roundtable today. As we want to discuss the issue of governance from the perspective of the primacy of law, accountability and transparency. I thank you for joining us. The topic is general. I would like to call on the Chief Comptroller and Auditor General Syed Yussuf Hossain to take the floor.

Syed Yussuf Hossain, Chief Comptroller and Auditor General: I feel privileged to have been invited to this forum. I feel that I have a duty to mention something out of my own experience, that is, good governance can be viewed from two perspectives, one is good governance from a macro level and the other from a micro point of view. I would like to mention that good governance is linked to the hopes, aspirations, demands and values of the people of an evolving society. This is not a static concept. It changes with time. It changes with the expectations of the people, more so with the rising expectations of the 21st century people, in view of the institutionalisation of democracy. It changes with the concepts of the fundamental rights and demands of the people. It is related to the constitution of the country. Our constitution incorporates the basic guidelines for good governance and the fundamental principles of the state. At the macro level, I believe good



Syed Yussuf Hossain

governance is equated to institutionalisation of democracy, a strong legal framework, political will and commitment. Urge for growth and development, parliamentary effectiveness, the functioning of parliamentary democracy, poverty alleviation, responsible media, women empowerment, concept of an ethical society, an efficient functioning bureaucracy, accountable public administration, strong oversight agencies, independence of judiciary, a watchful society and some other elements added to it contribute to good governance. This is a term that has been widely used and widely discussed. But, it needs a concrete shape to come to its understanding and definition. I believe that, these are the macro elements that ensure the process of good governance. At the micro level there are individual institutions that are responsible for ensuring

good governance. We blame others, we should think more of us, every institution must ensure that its assigned role for good governance is played. Individual organisations should look towards their own responsibilities. All the organisations should work according to their assigned role for good governance. All the sectors and sub sectors have joint responsibility. If all of them act together, then good governance can be achieved. An integrated approach would bring the desired result. As to the office of the CAG, I have to give time to others. At the micro perspective, the office is responsible as an oversight agency and it contributes to financial propriety in safeguarding public resources from misuse and waste and corruption. It has a deterrent role on the administration. I will come back on the role of CAG in good governance later on.

Mahfuz Anam: Governance was better before. There was an adherence to norms. But, if the people feel that it is eroding then that is enough. Would Dr. Kamal Hossain share his views with us on the matter?

Dr. Kamal Hossain: I value opportunities of this kind. The Daily Star is taking risk to inform the people. We have the constitutional framework of parliamentary democracy. There will be rule of law, there will be a parliament to which the executives will be accountable. But, the reason we are meeting here is to discuss, why it is not working? There has been a continuous effort from the people to ensure good governance, a form of government that is democratic in the true sense. The foreign minister of France is on trial today for his dealing with an oil company, Mr. (Helmut) Kohl had to plead guilty at this stage of his life. Mr. Narsimha Rao at the age of 80 is facing a pending appeal. Where the constitution and law works, there is accountability. Article 7 of our constitution stipulates that power belongs to the people. That means people must know what is happening how decisions are being taken for instance, contracts related to gas and oil. Many companies across the world, which came here to bid for gas blocks, went away, saying that the process of bidding was non-transparent. They wanted to know why preference was given to a small European company. People should know why this was given to a small company. The Parliamentary committee has never been informed on matters related to the conditions based on which these contracts should be given, and on what criteria. It has not been informed what national interests these contracts would serve. We know from your paper that contract is being given without competitive bidding. This is where the substance of democracy is being lost.

Institutions are not working as per the underlined rationale. The people must know. In important matters parliament is kept in the dark, and ultimately people have no real knowledge of what is going on. The remedy that has been proposed is freedom of information. Parliament has not used the instrument of parliamentary questions. The questions in the parliament are so low down in the list, that the questioner is exhausted. There is no transparency as for matters related to the purchase of MIGs or frigates. Parliamentary Committee is being rendered non-functional due to the denial of information.

I congratulate those of you who have gone into investigative journalism and have extracted facts. The journalist in Jessore Shamsul Rahman was a courageous journalist, he did investigative reporting. Tipu Sultan from Feni published a report on mis-governance. He was beaten and left for dead. This is the reality that confronts the formal trappings of democracy which are there in the constitution. We have democracy and rule of law on paper, we do not have it in fact. The girl students of Jahangirnagar who were raped, the rape that took place in Dhaka University, the killings that have been taking place in different universities. FIR have been filed, but no actions have been taken. There is the difficulty of getting the FIR accepted, and there are complications of getting transparent investigation. There is lack of accountability. We have investigated many reported killings and went to Rajshahi for fact-finding. The teachers said that, why a student supporting the government was killed and nothing happened. This was during the last government. Things have changed since 1996.

Mahfuz Anam: What is this practice of FIR not been accepted?



Dr. Kamal Hossain: Now there are two cases in court. One in Natore involves a certain 'Gargis Bahini'. This group has been carrying on a reign of terror for a long time. The previous home minister gave a letter to the police asking them to act on the FIR. FIR's were there, but no action was taken. The Constitution says that there is rule of law, but nothing has happened to the Gargis Bahini.

Mahfuz Anam: If I as a citizen go to a police station and lodge an FIR can the OC refuse to accept it?

Dr. Kamal Hossain: The law is being grossly and flagrantly violated. The FIR of the journalist from Feni was not accepted. I went to court and the directive was that the OC should accept his FIR.

Mahfuz Anam: When the high court says that, you have to accept the FIR, the OC has an option of accepting and not accepting? Why didn't the high court accuse him of violating law?

Dr. Kamal Hossain: The first step in these cases is that the person has to come to court, and he will be asked why he had not accepted the FIR and on what justification.

Abdul Mueed Chowdhury, Executive Director, BRAC: The police change the FIR. If there is a dacoity, they want to show it as a theft, if there is a murder, they want to show it as an assault. According to Dr. Kamal Hossain, the court issues a directive to the OC to accept the FIR, he accepts it, then what?

Kazi Fazlur Rahman, former advisor to the caretaker government: I can't recall an occasion during my service life, when an OC refused to accept an FIR. It is his duty to record the FIR. I saw in a newspaper that someone was killed on the streets, but no case was registered, the explanation of the OC was that no one complained.

Dr. Kamal Hossain: Let me tell you the reality. I hope the IG is listed in the participants list is present.

Mahfuz Anam: I think this is another violation of law. People promising to come, then not showing up.

Dr. Kamal Hossain: About 18 months ago, at a function in the Engineers' Institution involving the launching of a party, there was a sudden hail of bullets. Then, I sent someone to get the police stationed at the gate. The OC of Ramna Thana was there, but the OC did not do anything. An FIR was lodged, but the student involved with the shooting said the next day at a press conference, that he had not led the shooting. The FIR against them was not accepted. On the contrary, an FIR from the assailants was accepted against the injured persons.

The police are being made dysfunctional. I was a witness to this incident where the OC was asked to do his duty but refused to do so. But what happens if we go to court? Police will be asked to take the FIR. In the Jahangirnagar University, the FIR against the person celebrating the century of

rapes was lodged. It was accepted after 700 students demonstrated. Why is this? The minimum concept of rule of law does not exist. This needs to be recorded.

Mahfuz Anam: The OCs are functionally independent. They do not belong to the hierarchy. They are not appointed by the Home Minister. The OCs have very deep-rooted high connections. Home Ministry would not dare to do anything against an OC. If something happens to me in my area, and if it depends on the OC to decide if a crime had been committed or not, then it all falls within a pattern that changes with the government. This means that at the grass roots level there are problems.

Professor Rehman Sobhan, Executive Chairman, CPD: I know a case where a man went to lodge an FIR, but was refused. That person went to Azimuddin the then Home Secretary, but still even at his intervention the FIR was not accepted. In the end, he had to pay money to have the case registered. The relevance of this is, that the machinery of law and order has become an independent body from the level of OC, up the chain that operates as a commercial enterprise operated by market principles. Well, any government has a dual objective, one they will want to give a free hand to their goons who are their political resources. They also want to appear that they are maintaining law and order. No government wants to show that they are letting the law and order situation lapse into total anarchy. The law enforcers are there, they make accommodation with criminals, they pursue cases, but all depends on how much you are willing to pay. We are in a situation where the law is a commodified process. You have to pay for what you want. If not, you have to use political connections. That, is however not sufficient.

Syed Yussuf Hossain: There are macro level factors that influence the matter of good governance. We have to find them. We must do our duty.

Mahfuz Anam: We are in a situation, where police is being prevented from doing its duty. Bureaucrats are being prevented.

A journalist did his duty, and he was almost beaten to death. The society, and the government did not respond to this incident. Do you think that any other journalist will want to do his duty after this?

ATM Shamsul Haq, Chairman, IARC: One thing has to be said, that, there is degeneration at all levels. The question is when do we start to find out the roots. The politicians blame the military rulers



ATM Shamsul Haq

of the 60's 70's and the 80's. We were not given the chance to honour the values of life. Things cannot change overnight. The martial law in 1958 was the starting point for the decline of law and order. We have had democracy for 10 years, but we need time for hard decisions.

Mahfuz Anam: We have had 10 years of democracy, and it is about time that there were indica-

tions of change. We do not want an overnight remedy. But we want a process at least we can expect that as a citizen.

ATM Shamsul Haq: We have had two governments, and in the third democratically elected body, we can expect hard decisions. It is the joint belief of many editors and responsible people, that if the 70 to 80 per cent of the existing rules were implemented then the problems could be solved. This is an unanimous verdict. Why are we going for new laws? Are we enforcing the existing laws? We are not. But why?

The statement of the police is that we apprehend the criminals but the court grants them bail. What can be done on this matter? The OC has to be a first class officer. Raising the status of the OC's can be a solution. This is a suggestion that we gave.

Dr. Kamal Hossain: There are institutionalised self-imposed constraints on the matter of working independently. When we say let us do our duty, can the Auditor General perform his duty as he would have liked to do?

Syed Yussuf Hossain: I want to answer this question from the perspective on management. There are controllable factors and uncontrollable factors. I am trying to maximise on controllable factors. I am also trying to get the best from uncontrollable factors.

Dr. Kamal Hossain: The main point is the accountability of the Home Ministry to the parliament. If there is failure in law and order, the Home Minister has to answer. Every ministry should take the responsibility of the works that fall within their purview.

Dr. Kamal Hossain: The question is, that why the parliamentary accountability is not functioning. If a previous minister failed to do his work then in most cases, he had to pay a political cost. As a result he would fail to come in the next cabinet. In foreign countries people's opinion about a candidate is reflected on the outcome of the elections. A ten per cent swing of opinion against the government would mean that it would lose. Why is public opinion not reflected in our polls? My assessment is, what the public thinks and expects is not reflected in the election. Money and arms have become the determining factors. Even the caretaker government could not control the flow of black money. In 1996 elections, arms could be controlled but black money could not be controlled. The failure of the law and order situation is not just the OC or IG's failure, but it's the Home Minister and the Cabinet's failure. A political cost has to be paid for this failure.

Money and muscle control the elections, not people's votes. The remedy is that, the moment caretaker government takes over, muscle and money have to be immobilised. The bank defaulters must be prevented from giving money to the evil process. Political failure is the failure of the political system induced by injection of money and muscle power on a scale which has made democracy non-functional. In addition the military introduced such malicious forces, but how come our political parties are not trying to reverse it? Why is it the person who was removed through a mass movement by the people, and later successfully prosecuted by Barrister Amirul Haq is being wooed by both the major political parties? Why is it that, it is being said that his disqualification can be removed? This is a disgrace and an affront to the people. What is our answer to that? Why are we wooing a military dictator?

Md. Badiuzzaman, Director General, Anti-Corruption Bureau: If the police does not accept FIR there are other ways, but that is not an excuse. If the police do not take an FIR, a person can go to court and file a complaint. The magistrate taking the petition into account can send it to the police station asking the OC to take the complaint as FIR.

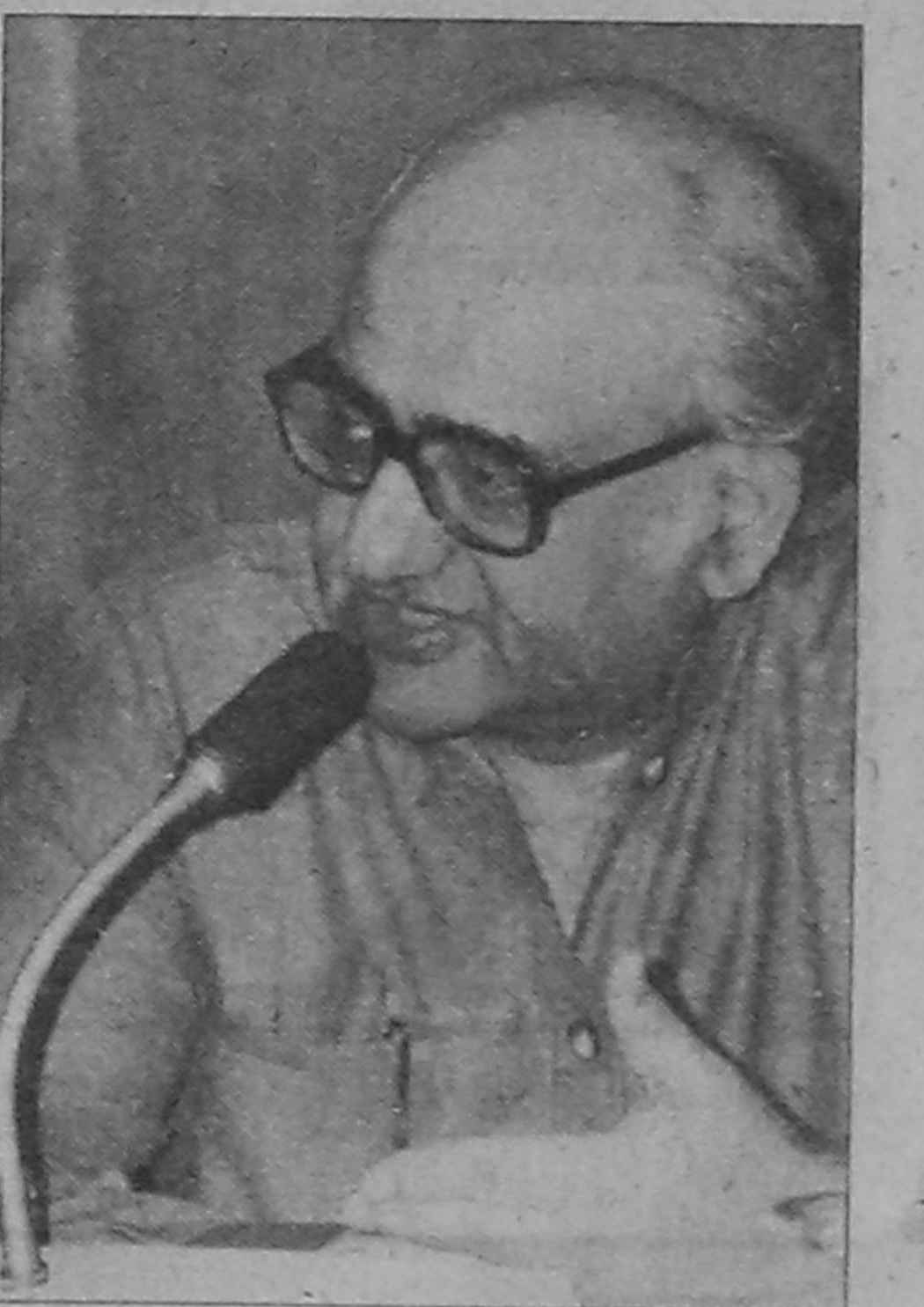
Police previously had to answer to SDO and DG. SDOs used to write confidential reports on police officers. So, they had to adhere to the orders of SDO and DG. Without the order of the magistrate the police could not open fire, in cases and incidents of anarchy and mob violence. But now days the police do not care to take orders. Now police are no longer under the control of the DG and the magistrate. The law is there, but it is not followed.

Mahfuz Anam: The point is that the institutions are collapsing. How do you begin an investiga-

tion? Is there a process? Do you do it yourself, or does someone need to complain to you?

Can you give an example in which you picked up information from the media and acted upon it? **Md. Badiuzzaman:** If someone comes, and files a petition we carry out investigation. Normally, we investigate corruption within the government. It can be extended to private organisations. The petitions are signed by someone else. If you come with the petition of someone else, we will take action. In government, relevant departments can ask us to take action. Another source is media. If there is a corruption related news item, we take that into consideration. No, I cannot give any example now, but there are cases. But, most of the cases are sustained in the higher court, and we are stuck. If someone has disproportionate property then, the court issues a charge sheet.

Dr. Kamal Hossain: I would like to talk both on the matters of bail, and intervention from the high



Professor Rehman Sobhan

courts. If anything done by the court or government is serious, then they can go to the next stage by cancelling bail. If proper evidence material is placed saying why bail should not be cancelled then court will take the matter seriously. But, in practice when the court asks the government lawyers if he has anything to say the latter refuses, and thus the bail is given.

If the anti corruption bureau frames a charge, then the accused person goes to court and says, that this law cannot be used as a means of harassment.

Then, a stay order is issued on the charges. On the next day, the government lawyer goes to court with the material based on the basis on which the accusation had been made.

The lawyer says that the stay order is delaying the investigation.

The fact is, stay order can be vacated the next day. But, this does not happen, because perhaps the government does not have enough lawyers, or those who are charged to follow these cases do not show enough commitment.

In this regard I would like to mention the case taken by my late friend Barrister Aminul Haq involving General Iqbal. In that case he had to face 14 adjournments. However, in his crusade, he managed to get a conviction. But he protested the adjournments, and the matter of VIP criminals' Aminul Haq died in 13th July 1995, but since then in the last five years the case did not come up. The day the case came up Aminul's prediction that the appeal would be disqualified came true.

In this matter of cases of bail and stay orders, if there is political will, if there is a government commitment to see that the corrupt people are proceeded against, you will see the Attorney General giving a mandate.

Kazi Fazlur Rahman: The very life of an MP starts with falsehood, Election Commission permits Tk. 3 lakh for election expenses. We know with that amount you cannot even become a Union Com-

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