

# Good constitution: An invaluable gift

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**T**HE extent of goodness of a country's constitution reflects the influence of the level of education, intellectual maturity, social homogeneity, cultural richness, high importance to life, environmental circumstances and rational vision and educated conscience, people's fight for rights and against injustice in that particular geographical entity.

The democracy of the USA which claims itself to be its champion, is a compromise born out of fighting and infighting for centuries for liberty and right that led to declaration of independence from British crown on July 4, 1776, which was not willing to delegate power. The 1789 USA Federal Constitution specifies citizen's right and liberty and has provisions even for apportionment of tax money between Federal and State Governments, and promotion of progress of Science and useful arts.

The British democracy is born out of necessity of sharing power. Japan's Meiji emperor introduced some sort of democracy through the imperial constitution of February 11, 1889, which was drafted after Prussian system, not British system, to modernise the administrative system, and codified local government. Her present

constitution of November 3, 1946, that took effect on May 3, 1947 replacing the Meiji Constitution, was virtually a US imposition. It has been functioning since then without any amendment or crisis. The systems, laws and institutions established under this constitution have successfully steered her to present level of development in social peace. The European countries evolved their functional constitutions through various exercises, though there still exist monarchy and kingship.

The Philippines which was under Spanish, US and Japanese rules intermittently fought for independence and realized some important rights even before its formal independence on July 4, 1946. Before the American-authored 1935 constitution limiting the president to two terms was changed, President Ferdinand E. Marcos declared martial law on September 21, 1972. Though he brought some economic prosperity during his early presidency since 1965, continued borrowing, and crony capitalism, and eventual inability to repay its foreign debts led to severe economic recession in the mid-1980s. Under 1973 constitution he retained absolute power, which he was said to have abused.

In a snap election on February 1986, Corazon Aquino the widow of assassinated Benigno Aquino became president amid high expectation that she would undo all of the wrongs of Marcos' time.

A new constitution endorsed by Aquino was approved in a national referendum in February, 1987. It provided for a bicameral legislature and a president as chief executive. It limited the president to one six-year term. Its provisions also included promotion of science and technology. She sought relief from International Monetary Fund (IMF), which required

severe austerity measures and structural reform. She did not seek second term. The next president Fidel Ramos wanted to amend the constitution to allow him a second term, but Aquino successfully protested against the move to uphold the original provision of one term.

This constitution provides for unprecedented power to the people, the right of enactment by direct initiative. This is an innovative provision that Bangladesh can emulate and provide for a substitute for present practice of destructive *Hartal* that disrupts normal human life and economy. This is like a safety valve to avoid violent change of power. The last few occasions of peaceful transfer of power prove its merit and effectiveness.

Like Japan, Federal Republic of Germany was also under occupation by Allied power after world war II. Her constitution, the Basic Law has determined the development of her policy. It bestowed on the citizens a life in liberty, democratic self-determination and personal responsibility protected by law and justice. It has specific article on education (such as Article 7: "The entire schooling system shall be under the supervision of the state... (4) ... approval (to private schools) shall be given where private schools are not inferior to the state schools in their educational aims, their facilities and the professional training of their teaching staff, ... approval shall be withheld where the economic and legal position of the teaching staff is not sufficiently assured"). In Bangladesh, we are for or against private university, English medium schools just on arbitrary notions, not on uniform enforceable standard. The German constitution provides for basic rights which bind the legislature, the

executive and the judiciary as "directly enforceable law" whereas the rights given under part II "Fundamental Principles of State Policy" of Bangladesh constitution are incapacitated by the words "shall not be judicially enforceable" at the end of paragraph (2) of Article 8.

It is the article 22, "The state shall ensure the separation of the judiciary from the executive organs of the state", which is a loud question now, but there is no public cry or any cry from legal experts or judiciary about other provisions of Part II (remaining of articles 8 through article 25) which ordains the state in article 9, to encourage local government institutions composed of representatives of the areas concerned; in article 11 to ensure ... "effective participation by the people through their elected representatives in administration at all level shall be ensured"; in article 14, to emancipate the toiling masses from all forms of exploitation; in article 15 "to attain through planned economic growth, a constant increase of productive force ..."; in article 17(a) to establish uniform, mass-oriented and universal system of education and extend free and compulsory education to all children ...; in article 20(2) to create conditions in which, as a general principle, persons shall not be able to enjoy unearned incomes; in Article 21(2) to ensure that "Every person in the service of the Republic has a duty to strive at all times to serve the people; in article 25(1) ... to base its international relations on the principles of respect for national sovereignty and equality and non-interference in internal affairs ..."; and other good provisions.

The foregoing article can easily answer to the question of

whether or not to consider immunity to World Bank or IMF, whether or not state owned enterprises should be closed or rehabilitated, whether or not to indulge in external borrowing for unproductive purpose to endanger the national economy and economic security.

There is no institution like National Constitution Court to determine constitutionality and unconstitutionality of laws, government actions, election related matters, as in Germany and many other countries.

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In politics, political parties or parliamentary groups play pivotal roles. So it is understandable how important it is for a constitution to define the structure, duty and responsibility of political parties. The German constitution provides a guidance to the parties; "the political parties shall participate in the forming of the political will of the people. They are freely established. Their internal organisation shall conform to democratic principles. They shall publicly account for the sources and use of their funds and for their assets. The federal constitution court shall decide on the question of unconstitutionality". We need more precise guidance to our political parties in view of their past records.

The article 70 of our constitution, which takes away the elected parliament members' basic right of exercising their conscience in voting in parliament, the basic essence of

democracy must be repealed. The article 77 provides for establishment of the office of Ombudsman, but it does not specify its functioning and any government can manipulate it in its own way by changing the law by simple majority. Now there is confusion or doubt about the efficacy of the recently formed anti-graft commission for the same reason.

The provision of caretaker government is an innovation born out of mistrust among parties, but its capability to run the state function and election with no previous experience and preparation is liable to question despite all good intention. There is a scope for its improvement in structure with some permanency and backed by a non-party National Security Council. Expansion of education base shall strengthen democratic practice.

Sweden has Election Review Board to ensure election law compliance. In Japan also there are instances of reversing election result for violation of election law.

There is a tendency of believing that government cannot be run without inward foreign investment and external borrowing, which Japan and South Korea consciously resisted and restricted at their early stage of development. For safeguarding national interest, the constitution must have clear provisions on external borrowing, selective inward investment, sale of land to foreigners, preservation of depletable natural resource, external investment in service sector, equitable taxation, promotion of science & technology, industrialisation, foreign contract, treaties, joint venture and other matters of national interest until we happen to gain equality

in economy.

Our constitution was framed in a hurry by the party in power and thus it lacks the depth of abstruse principles required for running a free state. Now it may be suggested that one or a few Constitution Study committees of experts, researchers, independent-minded people be formed to study about a desired national constitution so that we do not have to move round the square every time, and can concentrate our efforts to solve our developmental problems. All political parties, stakeholders and interested individuals must be involved in the exercise, which may hardly take more than six months. It is not for any party, it is for the nation. I believe, given opportunity, Bangladeshis can prove their wisdom. The coalition government can take this initiative with its two-thirds majority and put the outcome to national referendum so that the constitution becomes the people's cherished constitution. If the leadership can be that great and visionary the nation will salute them for a new independence -- independence from corruption, abuse of power, injustice, economic mismanagement, irresponsible administration, dependence on external loans with strings, official extortion, mistrust, vengeance, social degradation, and finally muscle and ill-gotten money propelled politics.

Incidentally, the author has already presented a proposal for such comprehensive constitutional amendments to the ruling party as well as some members of other parties for their study and improvement.

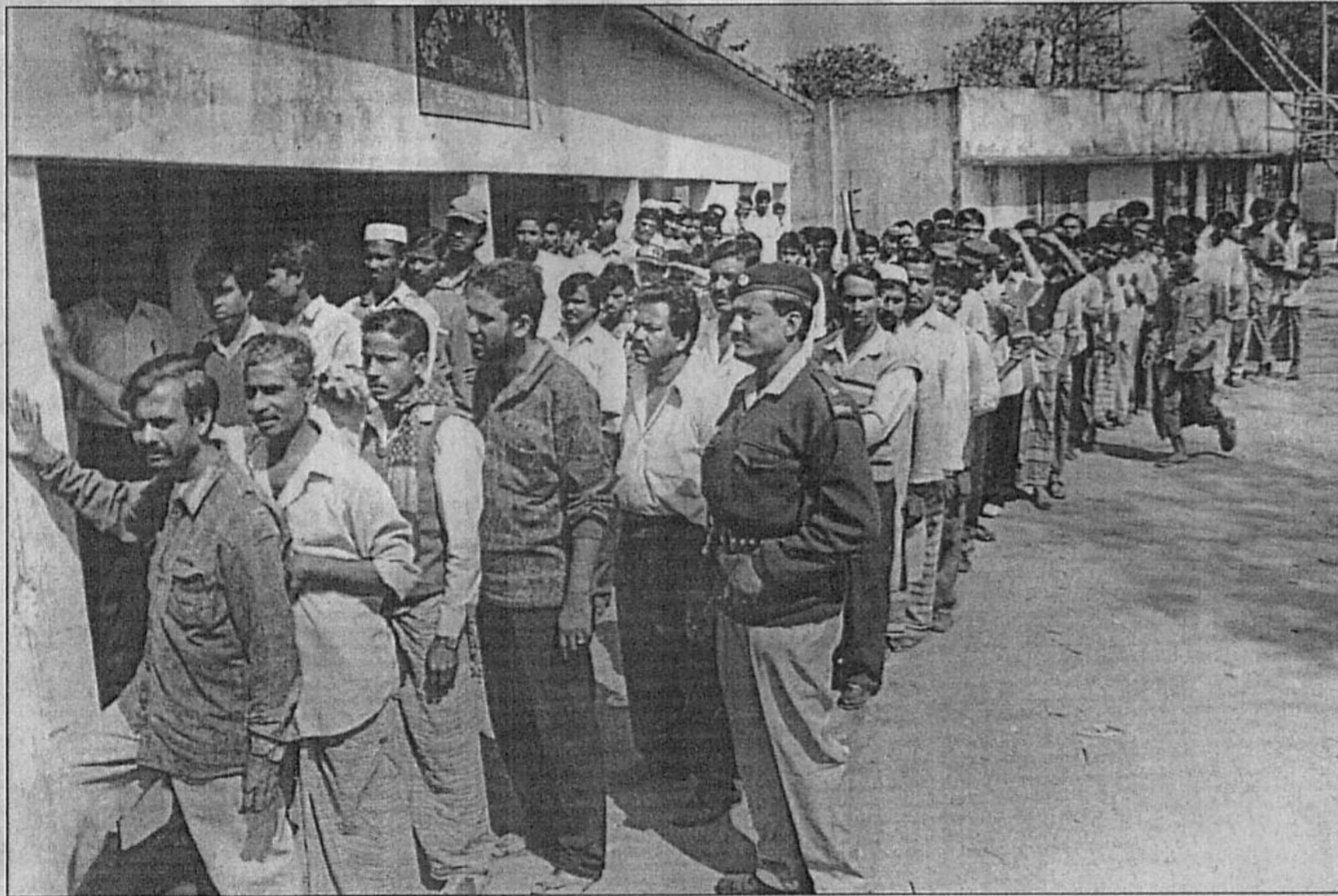
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## Decentralisation for efficient service delivery

ZARINA RAHMAN KHAN

**T**HE delivery of services to citizens has become the centre of much discussion, debate and demands for policy change in recent times in Bangladesh. The deteriorating public service delivery systems, most significantly in the primary health and education sectors, resulting in increasing dissatisfaction of customers have brought to the fore most the extreme inefficiency of the public sector service providers. Critical appraisals of the performance of the providers particularly by the donors often push the government to attempt policy shifts. Yet most performance indicators show hardly any improvement in the delivery system. On the contrary, the trend is of a worsening situation with announcements of serious concerns by the donors over failed/failing programs recently. On the face of this, the remedial measures have failed to bring about the desired results because, unlike in the case of many other developing countries, the potential of efficient service provision through effective political decentralization have not been considered till date as a way to the solution. As a result 'failed' programs due to inefficient service delivery continue to plague the overall governance of the country.

An acknowledged characteristic feature of good governance worldwide is an important role for elected sub-national governments in carrying out certain specific functions. It is generally accepted as the results of such practice also show that democratic decentralization contributes to good governance since decision-making regarding service provision enables a better match between the services provided and the needs of the citizens. However, whether and to what extent decentralization leads to pro-people policy in determining the mix of goods and services depends to a large extent on the design of decentralization and its implementation. Mere decentralization or delegation of functions without devolution of



powers and finances does not provide the adequate clout to local governments to play such a role. The desire for such political decentralization depends, therefore on the political will and commitment of central governments. Unfortunately, although there is a worldwide trend towards decentralization, in many countries problems of political will of central governments continue to impede effective implementation. Bangladesh is one of these countries.

Ironically however, decentralization has remained the most popularly used concept for strengthening the process of local governance in Bangladesh during the last few decades. Yet, the country has not seen any substantive development beyond administrative de-concentration and some degree of political devolution in

the structure of local government. Ironic as well is the fact that since the creation of the first legally constituted local governments in 1870 a large number of reform measures across the board in terms of regimes in power failed to establish the desired local governance.

The scenario of local government at the lowest levels in Bangladesh include over 280 municipalities in the urban and nearly 4500 union parishads in the rural sectors. These elected councils are governed by Ordinances and a large number of government orders and circulars, the summary of which show the picture of central government, financial and administratively weak local governments. Over 70 per cent of the country's population is made up of rural residents who are technically governed by union

parishads. Yet UPs, though having a number of functions listed to them are practically devoid of any authority to either deliver or to ensure any of the services. Over the recent years the central governments have gradually reallocated most local sources of finance of UPs to the Upazila administration on the ground that UPs lack financial management capacity and transparency.

In this light it is often pointed out that apart from the political and bureaucratic resistance to autonomous functioning, there are also institutional problems of local government that prevent its acting as viable vehicles to provide or ensure satisfactory services. These are the external factors of central control over local government finances and administration and the internal issues of inadequate knowledge, skill and

commitment to transparent and participatory planning and implementation of programs. It is argued that in most cases the inability of local government to effectively deliver and monitor services is due to its poor standard of organisational management and accountability. For many years in Bangladesh a number of donor-funded projects on financial and administrative management capacity building of UPs have been implemented by NGOs. In this background, the UP functionaries should be efficiently performing if they have a role in development plans and implementation. The question is whether there is any independent role for the UPs under the existing system of central control of all UP functions? Secondly, there are specific mechanisms of monitoring UP performance and auditing

financial management. If these are functional then it may be assumed that the financial accountability of UPs can be easily maintained. The question is not whether the UPs are willing to be transparent, it is whether the central government is sincere in maintaining accountability of all UPs irrespective of their leaders' party affiliations?

Because of this situation prevailing in many 'decentralising' countries, it has been pointed out in many studies including some World Bank documents that failures in local service delivery are not merely the result of lack of technical knowledge on the part of local government, but also because of constraints and 'perverse incentives confronting local personnel and their political leadership' which are results of problems in central-local government relations. The control of local finances, administrative interference in project planning and implementation, politicisation are constants that inhibit local government ability to perform. The 'decentralisation' now occurring in many countries including Bangladesh is not a 'carefully designed sequence of reforms aimed at improving the efficiency of public service delivery; it appears to be a reluctant disorderly series of concessions by central government to maintain political stability'. This perhaps can be taken as an explanation as to why after thirty years of promise and dozens of recommendations of many reform commissions no substantive change in the form and content of local government in terms of a viable decentralised system has evolved in Bangladesh.

Globally it is observed that from the decades of eighties many developing countries have started to devolve central government functions to local jurisdictions, in response to political pressures for local autonomy, and also in consideration of delivering public services more efficiently. In Bangladesh the specific characteristic of the decentralisation reform has been one of consideration of the interest of the central govern-

ment. Demands failed to create effective pressure for reform due to the absence of a strong constituency for decentralisation with the local governments at its epicenter. The civil society demands failed to produce concrete responses. Yet the need for a viable local government capable of providing/ensuring efficient services to the citizens remains strong. A recent citizens' survey by the Local Government Initiative indicates that an overwhelming majority of the respondents expect elected local governments to carry out the functions of governance at the local level. Mostly dissatisfied with the nonavailability of desired services the rural respondents look up to the UPs to ensure them. Such data provide a strong indication of the expectation of voters of their elected units of local governance. The expectations can only be met through a transformation of the local government in Bangladesh into a truly decentralized governance institution.

Generally speaking, decentralisation increases efficiency provided that the devolution occurs within an institutional environment that ensures political, administrative and financial authority to local governments. It has to be accompanied with effective mechanisms of local accountability and central oversight. Decentralisation cannot bring about efficiency in services if local governments have limited authority, unless increased accountability at local level is in place and until citizens' participation is ensured in order to communicate their needs to local government. The promises of decentralisation for improved service can only be delivered upon if the institutional arrangements governing its implementation are in place. In Bangladesh the champions of decentralised local government for efficient services will have to direct their attention to these preconditions in their advocacy for reform.

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