Re-visiting the institutions of accountability

Bangladesh has achieved much since its independence in 1971, and suffice to say that Bangladesh is on a track to achieve, on average, a growth rate of 6 percent per annum, if not higher, over the coming years, barring any major disaster. With an additional 2-3 percent growth Bangladesh could, cumulatively, become a middle-income country in a decade. But this achievement will depend on the prevailing state of institutions. Whether Bangladesh can emerge from the present 'twilight' zone and either enter the 'daylight of prosperity' or the 'darkness of poverty' will largely depend on the establishment of effective institutions in Bangladesh. This brings me back to the proposition stated above -- the quality of good governance in any society ultimately depend on the interface between the 'demand' of citizens' entitlements and the 'supply' of institutions' responsiveness. What can be the role of the Constitution in establishing better governance in Bangladesh? Let me first assess the 'supply' side.

The Constitution of Bangladesh provides a broad framework of certain key institutions and proper functioning of them is meant to increase the level of accountability within the Bangladeshi body politic. Generally, the Constitution has fared well but there are some lacunas, and some of the constitutional provisions need strengthening. The Institute of Governance Studies (IGS) of Brac University has examined the constitutional provisions of four such institutions, often referred to as the 'institutions of accountability': the Public Service Commission, the Bangladesh Election Commission, the Office of the Comptroller and Auditor General (OCAG) and the Judiciary. After a thorough analysis of the functioning of the aforementioned institutions, IGS has suggested certain recommendations, and if they are implemented, will increase their level of independence, accountability, efficiency and effectiveness. Initially, the Constitution will have to be amended bearing in mind two broad issues: "first, the appointment of the [senior members of the institutions]; and second, in-built mechanisms to ensure that the [institution] will be able to perform its duties within acceptable standards independent of the level of commitment of the political leadership." A clear constitutional guidance regarding the process of appointment of senior personnel to constitutional positions can be followed up with necessary legislative changes, such as, the formation of "a Supreme Judicial Commission which will identify appropriate persons for appointment as judges and recommend their names to the President." In the case of the Office of the Comptroller & Auditor General, the recommendation is that of "a transparent and clearly laid down process of appointment of the CAG, as well as eligibility criteria for this appointment should be introduced through legislation." In the case of the Public Service Commission, the broad recommendation is the "establish[ment of] a transparent process for appointments to the PSC", and further specific suggestions have been put forward, for example, (i) clear ineligibility/disqualifying criteria should be specified in the proposed act (ii) formation of a search committee for the appointment of competent persons.

In the case of the Judiciary, Article 95(1) of the Constitution provides that the judges of the Supreme Court will be appointed by the President of the Republic. This was amended in 1975 and the requirement of consultation with the Chief Justice was removed. It remained as a convention but was finally discarded but a recent judicial decision has reasserted the role of the Chief Justice. "Such a decision has to be seen in the context of recent political history of Bangladesh, where political affiliation has played a significant role in appointments of high officials, including judges." This is another example of constitutional strengthening that could take place through appropriate constitutional amendments. Other related constitutional clauses which could be re-visited in relation to the judiciary are Articles 95(2)(c) and 88.

Safeguarding citizens' voice

Good governance is achieved and optimised if citizens' voice is heard and heeded. "We are concerned here with that form of governance which serves the citizens by safeguarding territorial integrity of the State and securing individual security, rule of law and the delivery of services ranging from education, health to livelihood and food security." In Part II of the Bangladeshi Constitution the 'Fundamental Principles of State Policy' clearly articulates some of the basic entitlements of citizens. These principles touch on diverse issues, such as, participation of women, removal of illiteracy and improvement of public health. Article 8(2) of the Constitution states "The principles set out in this Part shall be fundamental to the