

A Review of Progress of Implementation of the Recommendations of the CPD TASK FORCE on ‘ADMINISTRATIVE REFORM AND STRENGTHENING OF LOCAL GOVERNMENT SYSTEM’

Introduction

After the review and analysis, it was observed that there were many efforts for reforming the public administration and local government systems in Bangladesh since its emergence as an independent country. Unfortunately these reform efforts fell short of expectation in bringing about desired changes for a number of reasons. Now, there is a consensus that broad and holistic reform efforts has to be initiated in the light of the changes that have taken place in the national and global arenas. In view of the above, in the Policy Brief, a number of recommendations were made for reforming public administration and local government systems in Bangladesh.

The Task Force viewed Administrative Reform and Strengthening of Local Government System from a holistic perspective that included dimensions, such as, the Role of Government; Public Policy Commitment; Neutral Governance: Law and Order and Enforcement; Neutral Governance: Administration and Access to Justice- Rule of Law; Civil Services; Corruption; Media and Civil Society; Local Government (tiers, powers and functions, finance, human resources (personnel and staff), etc.

Recommendations were grouped into three categories: Pre-election, Short- term and Long- term. The Pre-election category included recommendations that were to be implemented or actions to be initiated during the tenure of the Caretaker Government and specific election pledges that are to be made by the political parties intending to contest in the ensuing general election. On the other hand, recommendations that were grouped under Short and Long-term are to be implemented by the party (s) that would form the Government after the general election.

The recommendations were basically directed toward the political parties intending to contest in the general election, 2001 and the government that would come to power after winning the election. With respect to political parties, it was believed that some of the recommendations, if not all, would be acceptable to them and find reflections in the election manifestos as pledges to the nation that if elected to form the government, these will be implemented in the due course of time. In the case of Caretaker Government, the notion was that it might not play any significant role in implementing these recommendations as the Constitution limits its scope and jurisdiction (for details, please see, Article 58D of the Constitution of the People’s Republic of Bangladesh). The present exercise intends to find out how far the recommendations of the Task Force have been reflected in the election manifesto of the leading political parties and what is the status with respect to implementation of these by the coalition of political parties that formed the government after winning the general election, 2001.

Election Pledges

A review of the election manifestos of the major political parties including the Bangladesh Nationalist Party (BNP), the Awami League and the Jamat-i- Islam, Bangladesh reveals that many of the recommendations of the Task Force found reflections as election pledges. Implementation of these pledges have both short, medium and long term time frames.

The BNP recognized the importance and necessity of:

- restoration of law and order for ensuring individual security;
- rule of law and quick dispensation of justice; and
- safeguard of fundamental and human rights.

The other important pledge that needs to be mentioned were the commitments of:

- responsible governance which enjoins accountability and transparency of all having responsibility for governance at various levels of society;
- speedup comprehensive administrative, structural and institutional reforms; and
- directly confronting corruption through moves against extortion, toll-collection, rent-seeking and non-transparent contracts.

In the medium and long term, the BNP intends to strengthen democracy and good governance in Bangladesh. Rule of law, freedom of press and independence of the judiciary have been recognized as important priorities in achieving the above.

The future policies and programs as stated in the BNP election manifesto was the establishment of a cohesive and tolerant society. The basic parameters would include:

- safeguarding sovereignty, national independence and territorial integrity;
- establishing a liberal democratic polity on a firm footing;
- ensuring good governance through rule of law, democratic ideals, social justice and a non-communal ethos; and
- promoting sustainable development.

The election pledges of the Bangladesh Awami League included, among others:

- institutionalizing democracy by further expanding it and consolidating the rule of law in all spheres;
- good governance and administrative reforms for ensuring efficiency, accountability and transparency;
- improvements in law and order;
- uprooting corruption;
- independence of judiciary and assurance of justice;
- independence and autonomy of mass media and free flow of information; and
- decentralization and empowerment of people by giving full shape to the four-tier system of local government.

Some of the election pledges of the Jamat-i- Islam, Bangladesh that have relevance to our effort are cited below:

- Constitutional and legal reforms to ensure safeguarding of fundamental human rights by repealing the Special Power Act and the Public Safety Act;
- Quick dispensation of justice;
- Administrative reforms and decentralization by establishing democratic local government system;
- Eradicating corruption; and
- Improvement in law and order through establishing rule of law.

The above suggests that all the major political parties in Bangladesh have pledged their support and commitments for administrative reform from a wider perspective and strengthening of the local government system

Implementation Status: The Short term Initiatives

100 Days Agenda

The BNP led coalition government just after assuming the rein of the government declared a hundred day agenda for implementation (The Daily Star, Prothom Alo, Jugantar and Sangbad). Some of these were:

- Initiating the process of repealing the Public Safety Act and the Special Powers Act
- Starting the legal procedure for the release of political detainees and persons detained without trial;
- Cancellation of all previous unjust administrative orders
- Initiating judicial probe into the sensational bomb explosions
- Enquiring into all allegations of corruption, identifying the corrupt persons and starting their trial
- Holding of national convention against terrorism in Dhaka
- Formation of citizen's committee for improving law and order situation at *paras*, *mahallas*, villages and towns by involving local noted persons

Within the next 100 days after the declaration of the 100 Days Agenda, in some cases some measures were initiated but did not register desired level of success in most of the cases as reported in the press (The Daily Star, Prothom Alo, Jugantar and Sangbad).

Implementation Status: The Medium and Long term Initiatives

Independence of the Judiciary from the Executive

The separation of the judiciary from the executive organ of the government has been an election pledge of the present coalition government. The Supreme Court of Bangladesh has also directed the government to take measures to separate the lower judiciary form

the executive branch of the government. But the government has sought time, more than once, to implement it citing the complex nature of the process and structure. Now, the government has again being given a four months time to implement the decision of the Court.

Meanwhile, a writ was instituted at the High Court Division of the Supreme Court of Bangladesh challenging the validity of the appointment and regulation of judicial officials in accordance with the Bangladesh Civil Service (Reorganization) Order 1980 (with amendment of 1986) and terming it as ultra vires the Constitution. Recognizing that the appointments and regulation of judicial officers under the Civil Service (Reorganization) Order 1980 (with amendment of 1986) has been rightly declared ultra vires the Constitution, the High Court Division of the Supreme Court of Bangladesh directed the Government to make Rules as per Article 115 of the Constitution for establishing a separate Judicial Service Commission as allowed by Article 137 of the Constitution.

On appeal by the Government the Appellate Division of the Supreme Court observed that the Constitution has clearly upheld the independence of the Judiciary from the Executive as evident from salient provisions of the Constitution and dismissed the appeal.

Penal Reforms

The Government has passed a number of new laws since their assumption of office. These laws have essentially been framed to ensure speedy trials and quick disposal of suits. They are:

- Law and Order Disruption Crimes (Speedy Trial) Act 2002
- Acid Crimes Repression Act, 2002
- Acid Control Act, 2002
- Money Laundering Prevention Act, 2002
- Repeal of the Public Security Act (PSA)

The Special Powers Act 1974 and Section 54 of the Criminal Procedure Code

The government has formed a Home Ministry Committee to look into various aspects of the Special Powers Act (SPA) before scraping it. It is yet to be seen when the law is going to be repealed.

In a recent development, the indiscriminate application of the Section 54 and remand provisions in Section 167 of the Code of Criminal Procedure and the Special Powers Act 1974 has been barred by the High Court Division of the Supreme Court in a decision in a writ filed by human rights groups and individuals following the death of Shamim Reza Rubel, a university student, in police custody in 1998.

The Court barred the Government from detaining a person under the Special Powers Act after arrest on suspicion. The Court held that no person could be placed in remand for

interrogation after arrest without approval of the Metropolitan Sessions Judge or the District and Sessions Judge. The learned Judges ruled that an accused has to be interrogated by an investigation officer in prison instead of in the police interrogation cell in the presence of his lawyer and relatives. The procedure must be carried out behind a glass divide in order to enable the family and lawyer of the accused to observe the proceedings and to see whether he is being physically tortured. The police are required to immediately inform the relatives of the person arrested in his house or work by showing their identification. If a person is arrested on the street or elsewhere, his relatives are to be informed within three hours and if necessary, through a special messenger.

The Court, in a series of guidelines that have been mandatory for the authorities, stated that an accused has to be medically examined before and after police interrogation under Section 167 of the Code of Criminal Procedure. If any accused complains of being tortured during police interrogation and it is confirmed by medical examination, the Court will take action against the investigation officer.

The learned Court also directed the Government to amend the provisions on Sections 54 and 167 of the CrPC within six months. In the meantime the guidelines provided by the Court are to be followed until the relevant amendments have been made.

The Court also recommended raising the penalty for wrongful confinement from two years to seven years and from three years to seven years for malicious prosecution.

National Human Rights Commission Bill

The Minister for Law and Parliamentary Affairs of the previous Government had formally submitted a draft legal framework in 1998 for the establishment of a Human Rights Commission. This proposed framework was subsequently amended on several occasions. Although the draft was supposed to have been presented before the Cabinet of Ministers for approval following finalization in 1999 the process was beleaguered by uncertainties and bureaucratic hassles. After the present Government assumed office the finalized draft National Human Rights Commission Bill was once again submitted to the Cabinet of Ministers for examination. Reportedly, the draft Bill was finalized at the eighth session of the Cabinet held on November 10, 2002. The second phase of scrutiny of the final version of the bill started after that. The Cabinet has conclusively finalized 10 out of 32 sections of the bill at a meeting on January 8, 2003. The rest of the sections were to be endorsed by the Cabinet at its successive meeting. Therefore, the process is apparently ongoing. Moreover, the Law Minister has indicated that the bill would be produced before the Parliament in the coming session.

Corruption Commission

It was reported in the Daily Star that the government has decided to set up an independent Anti-Corruption Commission. The issue is supposed to be raised in the coming session of the Parliament. This decision came in the wake of a promise by the government to the donors in the Paris consortium meeting last year that such a commission would be

established to ensure good governance. A high powered meeting chaired by the Finance Minister reviewed the progress in establishing the commission and examined structures of similar commissions in other developing nations. Although no definite conclusion regarding the structure was reached at the meeting, the Finance Minister stressed that the commission would have an independent budget and would operate within a legal framework. Its chairman and members would be independent of government influence.

Local Government

Upazila Parishad

Though the present government is committed to reintroduce the *Upazila* system in the country but is still undecided on the face of the stiff resistance especially from the Members of Parliament (MP). It has also been reported that the cabinet is also divided on the question of reintroducing *Upazila* system in the country.

Gram Sarkar

Recently, an Act has been passed for the creation of Gram Sarkars. These bodies will be created at the Ward levels. Each Gram Sarker will represent 1-2 villages comprising of about 3,000 people on an average. The UP member elected from the Ward will be the Chairman of the GS, which will have other members, both males and females, elected in a general meeting of the voters of the Ward under the supervision of a 'prescribed/directing authority'. There are defined functions of the GS and other functions may be assigned to it as may be specified by the government from time to time. GSs will have the right to constitute issue-based standing committees as and when required, and to determine the membership of such committees.

Peoples' Opinion

In the first half of May, 2003, the Task Force presented the implementation status of the recommendations it had made in the Report in a consultation meeting held in Sylhet. The meeting was attended by the cross section of the people representing different sections of the population. From the deliberations, it emerged that the government have not yet taken any measure to implement most of the recommendations of the Task Force. It was emphasized that Task Force recommendations especially with respect to maintenance of law and order and administration of and access to justice-rule of law should be implemented by the government at the earliest.

- It was particularly pointed out that the reform initiatives with respect of police administration police administration has become an immediate necessity in the light of ever deterioration in the law and order situation. It was suggested that 'Nagorik (citizen) Committees' should be formed in localities to oversee and assist the maintenance of law and order by the enforcement agencies particularly the police.

- The issue of corruption was also highlighted and the government was urged to establish the independent corruption Commission with any further delay.
- With respect to reform initiative in the area of local government, it was suggested that the *Upazila* system should be reintroduced by the government.

Conclusion

All the major political parties of the country during the last general election made a number of promises with respect to administrative reform and strengthening of local government system. Many of these were earlier identified in the Policy Brief with area wise specific recommendations. With respect to progress in the implementation of these recommendations by the present coalition government, we are yet to see any significant achievement. In some limited areas, some efforts have been noticed. But most of the areas identified in the Policy Brief, till today, have remained outside the attention of the government.

Parties in opposition are an important element of the political system of a country. Through concerted and constructive efforts they can put pressure on the government to bring about desired reforms. But no substantive move by the opposition political parties in that direction has been observed yet. The civil society also so far has failed to exert pressure on the government for bringing about desired reforms in administration and the local government system.