

The State of Governance in BANGLADESH 2008



CONFRONTATION
COMPETITION
ACCOUNTABILITY



Institute of Governance Studies
BRAC University

The State of Governance in BANGLADESH 2008

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Confrontation, Competition, Accountability

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Table of Contents

List of tables, figures and boxes	viii
List of acronyms	x
Glossary	xii
Preface	xiii
Acknowledgements	xiv
Executive Summary	xv
1. Overview: The State of Governance in Bangladesh 2008	01
1.1 The Purpose	01
1.2 The Context	02
1.3 The Theoretical Framework	02
1.4 Report Structure and Methodology	04
1.5 Themes	05
1.6 Findings	06
1.7 Conclusion	09
2. Political Governance	11
2.1 Introduction	11
2.2 Confrontational Politics and Political Parties	12
2.3 Political Parties and Bureaucracy	15
2.3.1 The Politicisation Strategy	
2.3.2 Weaknesses in the Bureaucracy	
2.3.3 Bureaucratic Response to Politicisation	
2.3.4 Effect of Politicisation on Bureaucratic Accountability	
2.3.5 Consequences of Politicisation	
2.4 Politicisation of Local Government	21
2.5 Monopoly over State Resources	23
2.5.1 Historical Factors	
2.5.2 Lack of Internal Party Democracy	
2.5.3 Legal Factors	
2.5.4 Social Factors	
2.6 Attempts to Bring Accountability: Developments of 2008	26
2.6.1 Bureaucratic Reforms	
2.6.2 Local Government Reforms	
2.6.3 Political Party Reforms: Unwillingness All Around	
2.7 Conclusion: Towards Responsible Party Politics in Bangladesh	30
3. Parliamentary Accountability	33
3.1 Introduction	33
3.2 Public Accountability and Parliament	34

3.3	Formal Rules of Parliamentary Accountability	35
3.3.1	Constitutional Provisions	
3.3.2	Plenary and Parliamentary Committees in Bangladesh	
3.4	The Outcome	39
3.4.1	Executive Dominance over the Legislature in Plenary	
3.4.2	Collective and Individual responsibility: Constitutional and Other Provision and the Real Picture	
3.4.3	Functioning of Committee System and Its implications in Holding the Government to Account	
3.5	Failure of Formal Rules in Ensuring Effective Parliamentary Accountability	45
3.6	Developing Rules of the Game	47
3.7	Conclusion	51
4.	Judicial Oversight	53
4.1	Introduction	53
4.2	The Context	54
4.3	Role of an Independent Judiciary in a Constitutional Democracy	56
4.4	The Judiciary in Bangladesh: The Legal Framework	57
4.4.1	Appointment, Tenure and Removal of Judges	
4.4.2	Subordinate Courts	
4.4.3	The Masdar Hossain Judgment and Its Aftermath	
4.4.4	Effect of Legal Changes Brought by the Caretaker Government	
4.5	How the Normal Framework Operates in Practice: <i>De Facto</i> Rules	61
4.5.1	Appointment of Supreme Court Judges: Politicisation and the Changing Profile of Judges	
4.5.2	Remuneration and Privileges	
4.5.3	Accountability	
4.5.4	Financial and Administrative Independence	
4.5.5	Transfer, Promotion and Posting	
4.5.6	Authority: Enforcement and Legitimacy	
4.6	The Judiciary and the Stakes of Politics	67
4.7	Conclusion	69
5.	Institutions of Accountability	71
5.1	Introduction	71
5.2	Independence: Preserved in Theory, Breached in Practice	72
5.2.1	Futility of Constitutional and Statutory Authorities Due to Poor Leadership	
5.2.2	Lack of Fiscal Autonomy	
5.2.3	Relationship with the Executive: Practical Requirement for Independence	
5.2.4	Politicisation of the Appointment Process	
5.3	Accountability: Whose Accountability to Whom?	76
5.3.1	President-Institution relationship: the Holder and the Giver	
5.3.2	Internal accountability: Oversight Institution as 'Holder' and its Own Administration as 'Giver'	

	5.3.3	Relationship between the Citizens' as 'Holder' and the Institution as 'Giver'	
5.4	Efficiency		81
	5.4.1	Organisational Structure	
	5.4.2	Capacity in Human Resource Management	
5.5	Effectiveness		84
	5.5.1	Bangladesh Election Commission: External Dependence and Influence	
	5.5.2	Public Service Commission: Corruption and Partisanship	
	5.5.3	The OAG: Moving Ahead with Major Internal and External Challenges	
	5.5.4	Effectiveness of the Anti-Corruption Commission: Too Early for an Analysis	
5.6	Conclusion		89
6.	Public Perceptions of Governance		91
	6.1	Introduction	91
	6.2	Objectives of the Survey	91
	6.3	Methodology	92
	6.4	Social and Demographic Characteristics	93
	6.5	Living Standards and Optimism about the Future	94
	6.6	Service Delivery	96
	6.7	Access to Information	97
	6.8	Judicial Independence and Law and Order	100
	6.9	Parliamentary Election 2008	105
	6.10	Political Governance	110
	6.11	Conclusion	115
7.	Conclusions		117
	7.1	Findings	118
	7.2	Recommendations	121
	7.3	Looking Ahead	122
	Appendices		125
		Appendix 1	
		Appendix 2	
	Bibliography		163

List of Tables, Figures and Boxes

List of Tables:

Chapter 3: Parliamentary Accountability

- Table 3.1: Activities of Public Accounts Committees in Seventh and Eighth Parliaments
Table 3.2: Performance of the Standing Committees in the Fifth, Seventh, and Eighth JS

Chapter 6: Public Perceptions of Governance

- Table 6.1: Education profile
Table 6.2: Poverty distribution of survey household
Table 6.3: Source of information
Table 6.4: Variation of public perception at different levels of education
Table 6.5: People's trust in the Bangladesh Election Commission (BEC)

List of Boxes

Chapter 3: Parliamentary Accountability

- Box 3.1: Misuse of Article 93 (1) to bypass the Parliament
Box 3.2: Coalition between ruling party back-benchers and opposition
Box 3.3: Relatively effective committees in the Seventh Parliament

List of Figures:

Chapter 1: Overview

- Figure 1.1: Model of confrontational politics

Chapter 3: Parliamentary Accountability

- Figure 3.1: Rule of the game

Chapter 6: Public Perceptions of Governance

- Figure 6.1: Living standards in 2008 and 2007
Figure 6.2: Respondents dissatisfied with the price of essentials
Figure 6.3: Level of satisfaction with service delivery

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- Figure 6.4: Level of satisfaction with service delivery
- Figure 6.5: Public's legal right to receive information on government activities
- Figure 6.6: Public's ignorance about obtaining information on government activities
- Figure 6.7: Obtaining information through bribery
- Figure 6.8: Independence of judges and courts
- Figure 6.9: Influencing court proceedings
- Figure 6.10: General people's perception as victim of crime/ resolving dispute
- Figure 6.11: Professional people's perception as victim of crime/ resolving dispute
- Figure 6.12: Dispute resolution: social arbitration vs. court
- Figure 6.13: Complexity of court proceedings
- Figure 6.14: Reduced access to justice for poor, minority and aboriginal people
- Figure 6.15: Good laws with poor enforcement
- Figure 6.16: Justice during CTG regime
- Figure 6.17: Increase in crime during CTG regime
- Figure 6.18: 2008 parliamentary election
- Figure 6.19: CTG reforms prevented corrupt politicians' participation in election
- Figure 6.20: Most reliable source of election information
- Figure 6.21: Factors influencing voting decision
- Figure 6.22: Election alliances restrained voters to vote for their preferred candidate
- Figure 6.23: Political nepotism helps with business
- Figure 6.24: Political nepotism sways VGD & VGF distribution
- Figure 6.25: Political nepotism protects criminals
- Figure 6.26: Opposition voices ignored (by ruling party) in Parliament
- Figure 6.27: Opposition tendency to boycott Parliament
- Figure 6.28: Little scope for opposition MPs to work in locality
- Figure 6.29: Local MP & UP Chairman will not work together
- Figure 6.30: CTG had to compromise with the politicians
- Figure 6.31: Honest and qualified candidates participated in 2008 general election
- Figure 6.32: Positive steps by CTG
- Figure 6.33: Less popular activities of CTG

List of Acronyms

ACC	Anti-Corruption Commission
ACR	Annual Confidential Report
ADB	Asian Development Bank
AL	Awami League
BAC	Bureau of Anti Corruption
BAC	Business Advisory Committee
BBS	Bangladesh Bureau of Statistics
BCS	Bangladesh Civil Service
BEC	Bangladesh Election Commission
BJS	Bangladesh Jatiya Sangsad
BJSPC	Bangladesh Judicial Service Pay Commission
BNP	Bangladesh Nationalist Party
CBN	Cost of Basic Need
CEC	Chief Election Commissioner
CGA	Comptroller General of Accounts
CJ	Chief Justice
CNG	Compressed Natural Gas
CPU	Committee on Public Undertakings
CSP	Civil Service of Pakistan
CTG	Caretaker Government
C&AG	Comptroller and Auditor General
DC	Deputy Commissioner
DG	Director General
DGFI	Directorate General of Forces Intelligence
DLR	Dhaka Law Report
EC	Election Commissioner
FEMA	Fair Election Monitoring Alliance
FIU	Financial Intelligence Unit
GoB	Government of Bangladesh
HC	High Court
HIES	Household Income and Expenditure Survey
ICS	Internal Control System
IGS	Institute of Governance Studies
IoA	Institutions of Accountability
IO	Investigation Officer
IPS	Institute of Parliamentary Studies
IRI	International Republican Institute
JIB	Jamaat-e-Islami Bangladesh

JP	Jatiya Party
JS	Jatiya Sangsad
LGI	Local Government Institutions
MoE	Ministry of Establishment
MoF	Ministry of Finance
MoLJPA	Ministry of Law, Justice and Parliamentary Affairs
MP	Member of Parliament
NBR	National Bureau of Revenue
NCC	National Coordination Council
NGO	Non Government Organisation
NPM	New Public Management
NSI	National Security Intelligence
OCAG	Office of the Comptroller and Auditor General
OSD	Officers on Special Duty
PAC	Public Accounts Committee
PMO	Prime Minister's Office
PMQT	Prime Minister's Question Time
PPRC	Power and Participation Research Center
PPS	Probability Proportional to Size
PSC	Public Service Commission
PSU	Primary Sampling Units
RAB	Rapid Action Battalion
RPO	Representation of People Order
SB	Special Branch
SCBA	Supreme Court Bar Association
SJC	Supreme Judicial Commission
SoG	State of Governance
SSC	Secondary School Certificate
TAC	Truth & Accountability Commission
TDCC	Thana Development Coordination Council
TIB	Transparency International Bangladesh
UNDP	United Nations Development Programme
UNO	Upazila Nirbahi Officer
UP	Union Parishad
UZP	Upazila Parishad
VGD	Vulnerable Group Development
VGf	Vulnerable Group Feeding
WB	World Bank
ZP	Zila Parishad

Glossary

Crore	10 million
Gram	Village
Hartal	An all-out strike, usually called by opposition political parties
Jatiya Sangsad	Parliament
Kajer Binimoy Khaddo	Food for work
Madrassah	Traditional Muslim religious school/college
Neta-karmi	Leader-party worker
Para	A certain area of village
Parishad	Council
Pourashavas	Municipalities
Tadbir	Reflecting lobbying efforts and patronage without any consideration of performance
Thana	Administrative unit between district and village; also police station
Upazila Nirbahi	Sub-District Executive
Upazila	Sub-District
Zila Parishad	District Council
Zila	District

Preface

This is the third year that the Institute of Governance Studies (IGS) has thoroughly examined the nature and form of governance in Bangladesh, and presents its major findings in the *The State of Governance in Bangladesh 2008*. The State of Governance research project, which started in 2006, has the declared objective of examining the various facets of governance and explains the reasons for its failures and successes. The first Report published in 2006 looked at the fifteen-year period of democratic rule and found 'the system....unconsolidated, politicised, confrontational and marred by bad governance'. Before the ink of the 2006 Report could dry Bangladesh experienced the '1/11' event of 2007. In the 2007 Report the Institute focused on the various reform measures undertaken by the 'extended' Caretaker Government of Bangladesh. The 2007 Report attempted to 'provide an account and analysis of the context, process and trajectory of the reform efforts' of that year.

The present Report, together with the previous two, chronicles a trilogy of governance tragedy despite relatively free and fair elections the 'first-past-the-post' electoral system together with patron-client culture and strong anti-incumbency tendency Bangladesh has consistently elected 'winner takes all' governments. This has given rise to confrontational politics as the Opposition had little incentive to follow the rules of parliamentary democracy. The present Report attempts to provide a theoretical framework to explain the dynamics behind Bangladesh's confrontational politics. The Report also bravely recommends some ways and means of increasing institutional accountability, by factoring into the analysis the incentive structure of policy makers, which would reduce the high political stakes and thus create a more level playing field for the political players of Bangladesh. In other words, greater accountability could result in healthy political competition and reduced confrontational politics. Could this be the beginning of the end of the perennial Bangladeshi governance 'trap'? Thus the title of this Report: Confrontation, Competition, Accountability.

The Report reflects, like the first two, the excellence of the research team who deserve recognition and appreciation. This Report has been delayed for a number of reasons. We regret this fact but hope to address this shortcoming with the next Report. Our hope is to revert back to our declared intention of developing replicable measures of governance that are relevant to the Bangladesh context. Due to the exceptional situation prevailing in Bangladesh in 2007 and 2008 we felt obliged to deviate from our plan but hope to get back to our original course in the future.

As with any collaborative project, there are too many people and organisations whose contributions were indispensable in assuring the standard and quality of this Report to be acknowledged individually. But I would like to express my gratitude to the World Bank whose support has financed this project.



Manzoor Hasan
Director

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Chapter authors for the Report are Dr. Shahnaz Karim (Overview, Political Governance), Ms. Saku Akmeemana (Judicial Oversight), Dr. Ferdous Jahan (Judicial Oversight, Public Perceptions of Governance), Mr. Asif Md. Shahan (Judicial Oversight, Parliamentary Accountability) and Mr. Haydory Akbar Ahmed (Institutions of Accountability). The team would especially like to acknowledge the contributions of background papers authors Dr. Ferdous Arfina Osman and Dr. Taiabur Rahman.

It is not possible to mention by name all those who shared their valuable opinions and time towards the development of this Report, but the team acknowledges all who most sincerely provided information that has been used extensively in this Report.

The research team takes full responsibility for the contents of this Report.

The State of Governance in Bangladesh 2008

Executive Summary

The State of Governance in Bangladesh 2008 is the third annual report published by the Institute of Governance Studies (IGS) at BRAC University. This report is the product of an ongoing long-term research programme on governance in Bangladesh initiated by the Institute in 2006. The concept of governance is viewed by IGS as the sum total of the institutions and processes by which society orders and conducts its collective or common affairs. The mission of the Institute is to identify, promote and support effective, transparent, accountable, equitable and citizen-friendly government in Bangladesh and South Asia. In pursuit of this mission, the Institute is dedicated to understanding the strengths and weaknesses of governance in Bangladesh and South Asia through research and academic pursuits.

Over almost two decades, Bangladesh moved from what may be considered a 'minimalist democracy' - regular free and contested elections, peaceful transfer of power, fundamental freedoms, civilian control over policy and institutions - to what has been called illiberal democracy - misuse of state power for partisan and personal gain; and institutions brought under partisan political pressure. The practice of partisan politics has severely undermined the accountability mechanisms of the political system and rendered it largely dysfunctional. The institutions of the democratic multi-party state have been dominated and undermined by partisan politics and party patronage networks run by the major parties. Bangladesh is further characterised by high levels of competition between major parties, absence of intra-party democracy, highly centralised decision-making and personalisation of internal party structures. These have had a negative impact on the overall governance of the country.

The current Report focuses on the functioning of formal accountability mechanisms particularly prior to 1/11 and identifies how comprehensive accountability mechanisms can help ensure functional democracy in Bangladesh in the years to come. The Report has analysed the informal norms that affect the functioning of political parties, the bureaucracy, oversight institutions, the Parliament and the Judiciary - through both primary and secondary research, and solicited public opinion on governance issues through a nationwide survey. In addition to the overview chapter, the report has five chapters that present analyses and findings on: political governance, oversight institutions, Parliamentary accountability, judicial oversight and public perceptions on the state of governance. The conclusions are presented in the final chapter.

Appropriate analytical frameworks and research methods were selected to fit the objective of each chapter and include an institutional analysis (political governance), a national quantitative perception survey, and qualitative studies and Institutions of Accountability (Parliamentary accountability).

The target audience is academics, researchers and expert practitioners in the field of governance and development, among whom it is hoped it will provide a basis for discussion and debate. It is also expected to provide information for students on the increasing number of courses devoted to the study of governance and development in Bangladesh. Criticisms and comments are actively welcomed, as the State of Governance in Bangladesh research project continues beyond the publication of this Report.

It remains the Institute's intention to build local research capacity, and the Report highlights the work of the team of a new generation of Bangladeshi researchers who contributed to the dynamic debate over the Report's shape and findings. As was the case last year, the Report was an opportunity for younger scholars on the team to develop their research, writing, and editing skills. And it is the Institute's research team that takes full responsibility for the contents of this Report.

Chapter 1 An Overview

The governance process has been analysed in this Report from the view-point of game theory explaining how payoffs are generated and distributed in the political game, which ultimately decide how political actors will behave in a social setting. The focus is on searching for historical bias toward a particular set of rules of the game over others, interface between the rules and the culture (beliefs, values, norms and attitudes of the political actors) and its implication on the structure of the political organisations.

The political history of Bangladesh reveals the degree of control over public resources as the most critical factor determining political behavior of interacting political actors. The ruling party always try to establish their hegemonic control over the use public resources to further their partisan interests (under the façade of public interest) at the expense of the opposition party. This zero-sum game is caused partly by the apparent absence of institutions that clearly demarcate between the partisan and public interests and enforce conformity, partly by the apparent absence of institutions that facilitate communication between rival political actors, and partly by the strong presence of a political culture characterised by patron-clientelism and social distrust.

The patron-client culture has driven political parties in search of party people who would distribute patronage instead of serving party ideology. Pervasive patronage penetrates other political actors (bureaucracy, military, business interests, professional interest groups and oversight institutions) in a bid to build a rent-seeking coalition between the political parties and those actors. Social distrust, the other cultural variable, has also transformed political competition into conflict by making communication and cooperation among rival political actors difficult.

Both patron-clientelism and social distrust have had a considerable impact upon the structure of political organisations that define intra-party dynamics (internal distribution of power) and inter-party relations. Clientelist politics also deters institutionalisation of political parties as parties become more dependent on the personal capacity of the patrons rather than organisational structure and discipline. Such personality based politics encourages the rise of charismatic leaders who centralise power.

Parties characterised by centralised power at the top, often irresponsible yet charismatic leadership, factions, and lack of institutional means to voice dissent and acting within a culture of distrust compete with each other within the rubric of an 'enemy discourse'. The design of our political institutions also facilitate the process through conferring unfettered power to the Executive head, establishing Executive dominance over the legislature through constitutional means and providing the marginal majority with the right to dominate all state apparatus through the single plurality electoral system. Thus Bangladesh has developed a 'winner takes all' system in which the losing parties have little stake to play the game in a cooperative manner.

Chapter 2 Political Governance

The concentration of political power in the two major parties has helped to form governments with large stable majorities, but this has also resulted in a system in which winners in elections take all and the losers have difficulty in reconciling themselves to their loss. The result is a dysfunctional Parliament and highly confrontational politics. There is little democratic practice within the major parties, which are run by authoritarian control from the top; this is a reflection of the personalised and patron-client relationships pervading the Bangladeshi society at large.

Confrontational politics leading to unhealthy political competition drives the ruling party towards monopolisation of state resources on the one hand, and on the other, it leads the opposition towards mobilisation politics. All key state institutions are brought under their sway of the ruling party for regime maintenance and to create a beneficiary group through the distribution of favor (from state resources). Bureaucracy becomes the first victim of such political control. Politicisation breaks its chain of command, hierarchy and weakens the formal accountability mechanisms. Local government institutions are similarly monopolised through intimidation, influence over the local election, partisan control of funds etc.

Structural, behavioral and political factors account for the deviant behavior of political parties and politicians. What is needed most are measures to hold those exercising political power accountable. The traditional mechanisms used to ensure accountability do not seem to work properly, not because of numerous inherent defects, but mostly because of the absence of an 'enabling environment' caused by different structural factors. There is an urgent need for major changes in the way(s) power is acquired and exercised.

The Chapter views the following as essential elements required to break the vicious cycle and bring about qualitative changes in the electoral system: balance in Parliament-Executive relations, strengthening/promoting intra-party accountability, democratisation of local government and making local elections non-partisan, professionalisation of the bureaucracy, and depoliticisation.

Chapter 3 Parliamentary Accountability

In contemporary Bangladesh, despite its constitutional position, the Parliament has become merely the 'law approving body'. It has turned into an institution which has failed to hold the Executive accountable and play the 'consensus-building' role due to a dotted history of political turmoil, amendments to the Constitution and changes in political dimension and actors.

Since the 1990s, some reforms have been brought into the formal arrangements of the Parliament in general and the committee system in particular. These include broadening the jurisdictions of standing committees to deal with legislation and oversight simultaneously, replacing ministers by backbenchers as committee chairs and introducing Prime Minister's Question Hour among others. However, long boycotts of the Parliament by the opposition, the refusal of the ruling party to give enough opportunity to the opposition to criticise the government and the dysfunction of the Parliamentary committees transformed the Parliament into a rubber stamp institution (TIB 2007b).

During the tenure of the last Caretaker Government, a number of efforts were taken to bring about qualitative change in the functioning of the political parties, consistent with the spirit of positive change, for the first time in the history of parliamentary democracy of Bangladesh, all the standing committees have been formed within the first session of the Parliament and opposition party members will chair two of the standing committees on ministries. However, the present Parliament has some in-built problems as the ruling party/coalition enjoys an overwhelming majority. If the government/ ruling party even agrees to follow a proportional principle in the distribution of committee positions, the opposition will have at most one member in a ten-member committee. The scope of opposition scrutiny of government measures will thus be remote (Ahmed 2009b).

Thus, a few good practices may not result into an effective Parliament, unless and until, the political parties come to a consensus in bringing about significant change in the Rules of Procedure such as '...the introduction of opposition days or the provision for regular unscheduled debates to subject the government policies and measures to more effective parliamentary scrutiny', which will allow the opposition a better opportunity to be pro-active. Simultaneously, an effective Parliament requires the presence of pro-active government backbenchers to form a coalition with the opposition. This new rule of the game, in fact, will determine the effectiveness of the institution in holding the Executive accountable.

Chapter 4 Judicial Oversight

The narrative of the Judiciary in the independent Bangladesh is very much the other side of the story of constitutionalism, which teaches state actors that the legal bounds of the system cannot be transgressed for the achievement of partisan political gains. As the stakes of political power increased with the quantum of resources that were potentially the spoils of office, and the risk of access to rents being closed when losing office, there were strong incentives for incumbent governments to hamper judicial independence and few restraints preventing them from doing so.

The Chapter recognises corruption and external interference in the lower courts as a serious problem, and highlights the growing recognition that the superior courts have suffered a long term decline in both quality and integrity. While there have been many changes to the formal institutional framework, judicial independence has principally been undermined in recent years through the appointment of poor quality party loyalists to the bench. They are beholden to those who appoint them, and are more open to improper influence and corruption, leading to a long term decline in both quality and integrity. This has had an obvious effect on the quality of justice and on the fairness and impartiality of decisions. This has been aided by a drastic fall in the real and relative value of judicial salaries and benefits and the failure to preserve non-material incentives (such as status and prestige) for judicial service over decades. The legitimacy of the courts and citizens' trust in their decisions have thus been undermined.

Despite the separation of Judiciary from the Executive branch of government during the CTG tenure, judicial rulings generally followed the political script of the period. Generally speaking, judges did not rule against the vital interests of the CTG or military. With the expansion of patrimonialism, informal rules and incentives developed over time which has governed the Judiciary. These appear to have such strong roots that substantial changes to the formal legal framework have had relatively little impact.

Chapter 5 Institutions of Accountability

The Chapter analyses institutions of accountability - the Bangladesh Election Commission, the Public Service Commission, the Office of Comptroller & Auditor General and the Anti-Corruption Commission - under four key themes: independence (how independent the institutions are from any influence), accountability (state of accountability mechanisms of these institutions), efficiency (organisational structure and capacity in discharging their mandate) and effectiveness (how far the institutions are achieving their mandate).

These oversight institutions in Bangladesh enjoy the necessary Constitutional and statutory protection but the leadership has not been pro-active enough to exercise this in their favour. Rather, in many cases they are perceived to be partisan and compliant to external pressure. There are evidences of Executive influence through issues pertaining to human resources and budget. Appointment of the leadership is the main

channel of politicisation, which needs to be addressed immediately. Accountability mechanisms need to be rationalised, especially to the citizens. Institutionalisation of the accountability mechanisms, both internal and external, is likely to reinforce efficiency and effectiveness.

Structural and systematic loopholes often become constraints to effective functioning. The successes are overlooked mainly due to corruption and partisan behaviour. The human resources lack capacity and motivation and the issue of deputation make the scenario worse. Dependence on the Executive, for both fiscal and human resources, to certain extent curb independent functioning and also prevent long-term capacity building.

Finally, political will is the main catalyst that can bring about real changes that make the institutions effective in a democratic framework. This, in turn, is likely to ensure good governance for the society as a whole.

Chapter 6 Public Perceptions of Governance

After the abrupt political transition of 11 January 2007, the political environment has gone through a series of changes for two years. The objectives of the nationwide public perceptions survey were, broadly, to gauge public perceptions about the state of the governance, the political system and political culture in Bangladesh. It also attempted to ascertain citizen's perceptions and opinions about the institutional reform initiatives of the CTG, especially their effectiveness, sustainability and impacts on the political system in Bangladesh. The survey also evaluated the performance of CTG in holding fair and credible election and initiatives against corruption. Last but not the least, it tried to determine public opinion about service delivery in education, health, water, and electricity. The survey's sample size was 4,000 respondents, 3,500 of whom were chosen randomly as 'General Citizens' and the remaining 500 were selected from different professional groups. They are referred to as 'Professionals'.

Citizens expressed satisfaction with the CTG reform efforts and free and fair parliamentary elections. They are hopeful that the MPs and local government representatives will be able to work for citizens. Contrary to general belief, the survey revealed that citizens seek help from their elected representatives when faced with disputes/crimes. On the other hand, citizens perceive that political influence will continue to cripple the institutions of accountability (e.g. Judiciary) and hamper service delivery (e.g. law and order and social safety nets).

Bangladeshi's also felt that the opposition parties will exercise negative political culture of boycotting the Parliament and there will be a lack of political consensus among the ruling and opposition political parties on important national issues.

While citizens largely supported the activities of the CTG, they remained dissatisfied with power sector, price hikes of essential and existing state of unemployment. They also expressed dissatisfaction on the CTG

initiated anti-poor initiatives like closing down jute mills and evicting slums. Overall, citizens were optimistic that CTG initiated reforms and fairly elected political government would bring some positive outcomes to help the better functioning of democracy in Bangladesh.

Chapter 7 Conclusions

The State of Governance in Bangladesh 2008 report has focused on the functioning of formal accountability mechanisms particularly prior to 1/11 and has attempted to identify how comprehensive accountability mechanisms can help ensure functional democracy in Bangladesh in the years to come. Specifically, it has outlined the main gaps and weaknesses that have impaired the effectiveness of these accountability mechanisms, assessed the extent to which the Caretaker Government-proposed reforms have addressed those deficiencies, and discussed the importance and challenges of deepening these reforms under a political government.

It is essential for the country to move from the existing 'winner takes all' culture to a new equilibrium that will encourage both winner and losers to engage in rational negotiation instead of disruptive, if not violent, conflict. The opportunity of the incumbent to monopolise the state apparatus for serving its partisan interests must be limited, thereby reducing the stakes to a tolerable level. Critical to this process is the establishment of credible mechanisms of accountability, for the parameters of the stakes are defined in large part by such mechanisms. Such mechanisms, if placed properly, will provide checks on the natural imperative of the Executive to monopolise control over state institutions. The agenda of political reforms should be taken up by political parties and a stronger media and civil society must be built to create opinion among the public against confrontational politics and the high costs of unhealthy political competition.

Research for the State of Governance in Bangladesh 2008 was conducted over the period March 2008 to March 2009. The full report on the quantitative research on perceptions of governance is available on the IGS website at www.igs-bracu.ac.bd.

The State of Governance in Bangladesh 2008: An Overview

1.1 The Purpose

The State of Governance in Bangladesh 2008 is the third annual report published by the Institute of Governance Studies (IGS) at BRAC University. This report is the product of an ongoing long-term research programme on governance in Bangladesh initiated by the Institute in 2006. The concept of governance is viewed by IGS as the sum total of the institutions and processes by which society orders and conducts its collective or common affairs. The mission of the Institute is to identify, promote and support effective, transparent, accountable, equitable and citizen-friendly government in Bangladesh and South Asia. In pursuit of this mission, the Institute is dedicated to understanding the strengths and weaknesses of governance in Bangladesh and South Asia through research and academic pursuits.

The State of Governance in Bangladesh 2006 portrayed the penetration of partisan politics in all aspects of public life and how partisan interests eventually undermined the formal accountability mechanisms. *The State of Governance in Bangladesh 2007* documented the reforms initiated by the Caretaker Government (CTG) apparently claiming to bring an end to this partisan penetration in different institutions of the state. The changes brought to legal frameworks, formal rules and procedures dictating practices of state affairs, and restructured institutions were analysed in detail. The year 2007 also brought politics and political parties under public scrutiny as never before. *The State of Governance in Bangladesh 2008*, designed as a continuation of the two previous reports in the series, builds on their findings but narrows the perspective to focus on reducing the high stakes of politics through an accountability framework.

This Report argues that effective checks and balances that strengthen accountability are the prerequisites for a functional democracy, which is representative, responsive, transparent and accountable. In this light, *the State of Governance in Bangladesh 2008* report focuses on the functioning of formal accountability mechanisms particularly prior to 1/11 and identifies how comprehensive accountability mechanisms can help ensure functional democracy in Bangladesh in the years to come. Specifically, it outlines the main gaps and weaknesses that have impaired the effectiveness of these mechanisms, and discusses the importance and challenges of overcoming these deficiencies.

1.2 The Context

The political economy literature argues that democracies are most stable when the stakes in political competition are sufficiently circumscribed: the losers can retain enough resources and influence to allow them to compete another day. Formal accountability mechanisms are key to establishing and sustaining stability; if functioning properly, they inhibit the incumbent government from manipulating the state apparatus to silence if not obliterate the opposition and have its way however undesirable the consequences may be for the public interest. In Bangladesh, democracy has been quite unstable. Though the country has avoided the vicious cycle of coups and countercoups, politics has been highly confrontational. Since democratic politics was re-established in 1991, there has been an increasing tendency for the winning party 'to take it all', lock, stock, and barrel, with increasingly bolder attempts to monopolise control over all key institutions of the State and funnel resources and rents to supporters to solidify that control. Institutions meant to instil accountability in and of government, have been systematically and increasingly impaired. Not surprisingly, the difference between winning and losing an election has become enormous. As the payoff of winning and the costs of losing have become very high, there is fierce competition among political actors. The incumbent, to try to ensure its continued dominance, takes all possible actions to capture state institutions. The opposition, getting little or no payoff in the process, tries to shorten the life span of the government by destabilising state affairs through mobilisation politics. The situation that evolved on 1/11 is a glaring example of this. Although the incumbent Bangladesh Nationalist Party (BNP) government had a two-thirds majority in the Eighth Parliament, its alleged electoral engineering provoked the oppositions to mobilise violent street protests, culminating in the birth of an unusually long-term military backed Caretaker Government.

One possible solution to this unstable political game is to reduce the stakes of political competition. If the incumbent is unable to manipulate the state apparatus for serving its partisan interest and the opposition has sufficient scope to effectively participate in the governance process, the stakes are likely to be reduced to a tolerable limit. Critical to this process is the establishment of credible mechanisms of accountability, for the parameters of the stakes are defined in large part by such mechanisms. Such mechanisms, if placed properly, will provide checks on the natural imperative of the Executive to monopolise control over state institutions.

It can, therefore, be argued that the establishment of accountability mechanisms, and particularly making them work, is critical to enabling the country to move from the existing 'winner takes all' equilibrium to a new equilibrium based on checks and balances that will encourage both winner and the losers to engage in rational negotiation instead of disruptive, and often violent, conflict.

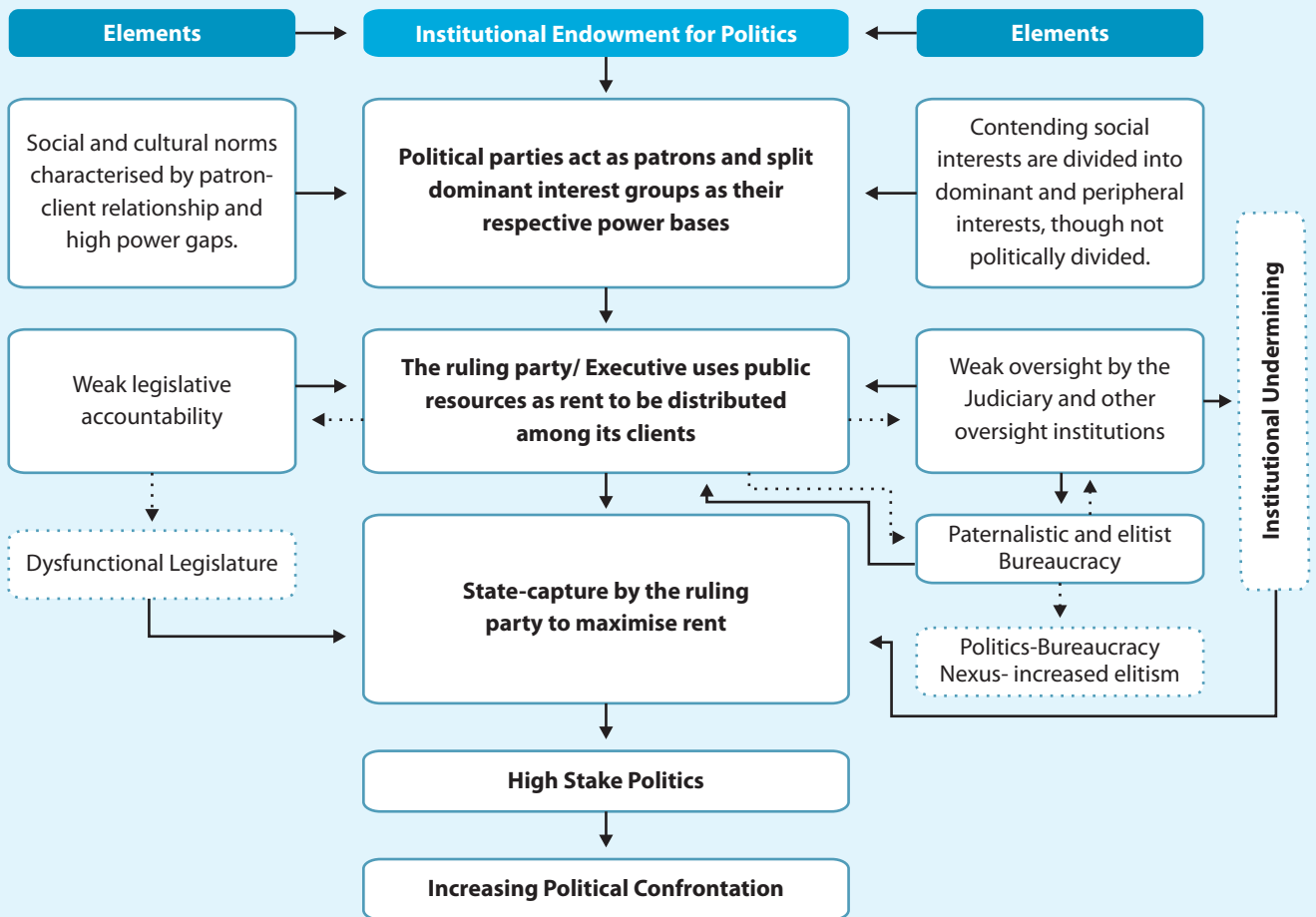
1.3 The Theoretical Framework

Following Levy and Spiller (1994), it can be argued that how government will behave *vis-à-vis* other state and non-state actors will depend upon the institutional endowment of a particular country. Institutional endowment comprises five elements. *First*, the Constitution and jurisdiction of the legislature and the Executive and their relationship: the relationship and jurisdiction between them vary in presidential and parliamentary systems. Again, bicameral legislature works in a different way than unicameral. In some parliamentary systems, the Executive has substantial control over both legislative agenda and legislative outcome. If the legislative and the executive power alternate between political parties that confront each other violently, the ruling party might cause the opposition to be suppressed in the legislature. *Second*, the Judiciary and other oversight institutions: they may be independent and effective to check undue Executive

dominance, or they may act as the supportive arm of the Executive. *Third*, prevailing culture and social norms: culture and social norms may be collective and irrational or individualistic and rational. Whatever they may be, these limit choices for Executive action. *Fourth*, the character of the contending social interests and the balance between them: contending social interests may stand in balance in terms of resource sharing, but may violently confront each other to win over more resources, or they may coexist through rational compromise. In other case, some social interests may dominate others and thus may cause social inequality and turmoil. *Fifth*, administrative capability of the country: some countries may have adequate administrative capabilities and others may lack them.

These five elements are not independent of each other - rather together determine the nature of the institutional endowment. As each element has many variations, interaction between them may produce many a number of institutional endowments different in nature. For this research, the general condition of a particular element (e.g. weak legislature or weak oversight institutions) as exists in Bangladesh and its subsequent political consequence have been taken into consideration. The possible impact of political behaviour over each element other than the first two, which are taken as given and difficult to intervene, has also been considered. A model of confrontational politics has been designed as the theoretical framework for the Report.

Figure 1.1. Model of confrontational politics



The model depicts that an institutional endowment characterised by hierarchical social norms and weak oversight institutions, provides incentive for the Executive to capture all state institutions to serve its partisan interests, leading to high stake politics that makes political parties to take a particular role and course of behaviour. Such behaviour creates problems of collective action that is apparent in the form of confrontational behaviour of political parties. Collective action being problematic makes reversal process of high stake politics difficult. The model shows that political parties encapsulate almost all the elements and therefore provide us with the notion that they are probably the most effective intervention point. The model also depicts that bureaucracy is, among other elements, a direct beneficiary of high stake politics in the sense that it has not been able to keep its institutional interest intact as with other institutions. This highlights the necessity of keeping institutions outside the reach of partisanship/politicisation, which will in turn check the dominance of the Executive and the latter's due influence over state institutions.

1.4 Report Structure and Methodology

The Report seeks to analyse the existing institutional endowment leading to high stake politics and explore ways of accountability mechanisms that will lead to a new institutional endowment characterised by checks and balances. It attempts to explore ways of establishing accountability mechanisms that will lead to a new equilibrium based on checks and balances. Organised around the basic institutions that can provide effective checks and balances on the use or abuse of the Executive, the Report adopts a multidisciplinary research strategy. Each chapter has been contextualised within the appropriate analytical framework, yet applies a common methodological approach, identifying pathologies and the desirable institutional arrangements/characteristics that make for a well functioning institution, the gaps between the two, and recommendations for beginning to address the problems in the medium term - given realistic constraints.

In addition to this overview chapter, the Report has five chapters that present analyses and findings on:

- Political Governance
- Parliamentary Accountability
- Judicial Oversight
- Institutions of Accountability
- Public Perceptions of Governance

As an integral part of the research methodology regarding the formulation of the *State of Governance in Bangladesh 2008* report, a national perception survey was conducted at the beginning of 2009 to gauge people's perception on various spectra of governance issues in Bangladesh. The survey was designed to maximise geographical coverage and includes both citizens at large as well as respondents belonging to selective occupational groups. An extensive literature review was done to develop the questionnaire for the survey in late 2008. The survey's sample size was 4,000 respondents, 3,500 of whom were chosen randomly as general citizens and the remaining 500 samples were selected from different professional groups. A multistage cluster sampling method was used for the study. Fifty-one urban primary sampling units (PSU) and 124 rural PSU were selected using 'probability proportional to size' (PPS) method. The survey effectively complements the theoretical grounding of the SOG-2008 that the existing zero-sum game in Bangladesh politics led to unilateral/overwhelming control over the state apparatus to control its resources and to capture independent and effective institutions capable of imposing checks and balances.

The Report was prepared under guidelines and supervision of the Institute of Governance Studies. The Institute's report team took overall responsibility for conducting a literature review on each chapter. The report team on each chapter also conducted semi-structured key informant interviews as a means to

validate secondary data and explore new dimensions of the existing problems. Where the team's expertise was not available, the Institute engaged external capacity. The nationwide perception survey was prepared and implemented by the Institute's research team in consultation with SIRIUS Marketing and Social Research Limited, a local marketing and social research firm. The preparation of survey questions and data analysis has been an interactive and collaborative effort between the Institute and SIRIUS.

As mentioned before, analytical frameworks and research methods were selected to fit the objective of each chapter. Among the methods applied are institutional analysis, a national quantitative perception survey, and qualitative studies. Particular methodological approaches are discussed in each chapter.

It remains the Institute's intention to build its own research capacity, and the Report highlights the work of the team of a new generation of Bangladeshi researchers who contributed to the dynamic debate over the Report's shape and findings, as was the case last year. And it is the Institute's research team that takes full responsibility for the contents of this Report.

1.5 Themes

The governance process has been analysed in this Report from the view-point of the game theory - how payoffs are generated and distributed in the political game, which ultimately decide how political actors will behave in a social setting. The focus is on searching for historical bias toward a particular set of rules of the game over others, interface between the rules and the culture (beliefs, values, norms and attitudes of the political actors) and its implication on the structure of the political organisations.

The political history of Bangladesh reveals the degree of control over public resources as the most critical factor determining political behaviour of interacting political actors. While politics denotes the process of making public decisions regarding control, allocation and distribution of public resources in all political systems, a democratic political system requires that such public decisions be made in conformance with public interest. Both the ruling and the opposition parties may have their own opinion about public interest, but a "... successful democracy is conditioned by a value system allowing peaceful play of the political game and the respect of the 'outs' to the decisions taken by the 'ins' and the acknowledgement of the 'ins' regarding the rights of the outs"(Lipset 1959). Unfortunately the scenario in Bangladesh is the exact opposite of this ideal - the 'ins' always try to establish their hegemonic control over the use public resources to further their partisan interests (under the façade of public interest) at the expense of the 'outs'. This zero-sum game is caused partly by the apparent absence of institutions that clearly demarcate between the partisan and public interests and enforce conformity, partly by the absence of credible institutions that facilitate communication between rival political actors, and partly by the strong presence of a political culture characterised by patron-clientelism and social distrust. Thus, the political history of Bangladesh has demonstrated a bias towards *de facto* rules of the game that help establish greater control over public resources.

While history endorses the importance of the degree of control over public resources as the dominant rule of game, the political culture of the country characterised by patron-clientelism and social distrust reinforces the dominance of this rule. The patron-clientelism culture has driven political parties in search of party people who would distribute patronage instead of serving party ideology. Pervasive patronage penetrates other political actors (bureaucracy, military, business interests, professional interest groups and oversight institutions) in a bid to build a rent-seeking coalition between the political parties and those actors. Patron-

clientelism thus generates excessive competition among the rival patrons and clients for more political power and thereby more control over public resources. Social distrust, the other cultural variable, has also transformed political competition into conflict by making communication and cooperation among rival political actors difficult. Furthermore, lack of trust in political institutions weakens institutional cohesion as a whole.

Both patron-clientelism and social distrust have also had a considerable impact on the structure of political organisations that define intra-party dynamics (internal distribution of power) and inter-party relations. Clientelist politics often deters institutionalisation of political parties as parties become more dependent on the personal capacity of the patrons rather than organisational structure and discipline. Such personality based politics encourages the rise of charismatic leaders who centralise power. The presence of strong charismatic leaders discourages genuine intra-party democracy.

Parties, which are characterised by centralised power at the top, often lacks of institutional means to voice dissent and within acts with the mindset of enemy discourse' externally with competing parties. The design of the political institutions also facilitate the process through conferring unfettered power to the Executive head, establishing Executive dominance over the legislature through constitutional means and providing the marginal majority with the right to dominate all state apparatus through the single plurality electoral system. Thus Bangladesh has developed a 'winner takes all' system in which the losing parties have little stake to play the game in a cooperative manner.

1.6 Findings

In democracies, political parties remain the primary vehicles for the aggregation of societal interests and exert major influences on the development of public policy. In Bangladesh, parties are not such vehicles, but rather provide safety nets (based on patron-client relationships) for large parts of the population in the absence of an effective state.

In Chapter Two, the Report identifies three main findings about the causes of poor political governance in Bangladesh: (a) the design of the state and its institutions, (b) the clientelist nature of politics fuelled by greed and (c) the nature of confrontational politics. IGS has consistently argued that these are the challenges Bangladesh facing in governance and thereby the core concerns to deliver better governance. The following measures have been proposed as ways of breaking out of this vicious cycle: deregulation of state functions which will make the state 'pie' smaller which would reduce competition and at the same time, improve efficiency of services; downsizing the government - both cabinet and civil service, as well as the PMO; depoliticising the bureaucracy by making appointments, promotions and transfers in a uniform and transparent manner under definite rules and regulations; building a stronger media and civil society to raise awareness amongst masses and create public opinion against confrontational politics and the high costs of unhealthy political competition.

Several factors - structural, behavioural and political - account for the deviant behaviour of political parties and politicians. There is, however, no best way to overcome the dysfunctional consequences of the 'winner takes all' system that has evolved in Bangladesh. What is needed most are measures to hold those exercising political power accountable. The traditional mechanisms used to ensure accountability do not seem to work properly, not because of numerous inherent defects, but mostly because of the absence of an 'enabling environment' caused by different structural factors. There is an urgent need for major changes in the way(s) power is acquired and exercised. The Report views the following as essential elements required to break the

vicious cycle: qualitative changes in the electoral system, balance in Parliament-Executive relations, strengthening/promoting intra-party accountability, democratisation of local government and making local elections non-partisan, professionalisation of the bureaucracy, and depoliticisation.

Chapter Three explores how the Parliament in Bangladesh has consistently failed to hold the Executive accountable and play the 'consensus-building' role. Thus, for a period of 15 years and three elected governments, the nation witnessed an all-powerful prime minister, an unaccountable Executive, and a dysfunctional Parliament. The role played by the political parties has a clear implication for Parliamentary democracy. The mode of functioning of the political parties in Bangladesh has played a major role in creating and sustaining the culture of confrontational politics. The lack of internal democracy within the parties, the politics-business nexus, and the emphasis on considering politics as investment have facilitated the development of a procedure where the winner of the election takes complete control of the public resources, leaving the loser of the election with nothing. As a result of this confrontational culture of politics, the political parties develop within themselves some informal practices which, to a large extent, dictate their mode of functioning in the Parliament. For instance, due to lack of internal democracy, the Parliament members always try to please their party heads as they know that the displeasure of the chief may cause them the chance of being a partner in the 'winner takes all' system. Article 70 also prevents MPs from voting according to their conscience. Besides, as politics is being considered as an investment, the MPs are often reluctant to play an important role in the Parliament, as good performance in policy making or in holding the Executive accountable might do more harm than good to their political careers.

These informal practices undermine Parliamentary procedures by allowing loopholes to be openly exploited. For instance, the possibility of experienced or expert MPs' being appointed as committee members or chairs is hampered as the Executive may not be too keen to ensure its own accountability, and may award these posts to its party loyalists and clients. Most MPs, being active actors of the politics-business nexus, are not interested in playing their designated function of legislators in the Parliament. Moreover, the futility of the committee recommendations discourages many parliamentarians from seeking an active committee role. The dynamics of the formal and informal rules and practices guarantee perpetuation of a dysfunctional Parliament.

Chapter Four describes the demonstrable diminution amongst the political class of a commitment to the idea of a self-restraining state. Analysing the Judiciary at length, the Chapter stresses that the Judiciary has significant potential to check the other arms of Government, and has on occasion shown its preparedness to act accordingly, most notably in cases where the central issue was whether Parliament's power of constitutional amendment was complete and unrestrained. The Judiciary acts as the mediator of disputes between the other major institutions of the state when it engages in its judicial review functions. It can potentially restrain and hold to account the Executive, other state institutions including the Parliament, as well as politically and economically powerful actors, and thus is fundamental to rule-based governance. The Report suggests that the formal constitutional framework has little impact on judicial independence. It is ultimately about the internalisation by state actors of the concept of the rule of law, of the notion of restraints on power and the legitimacy of the courts amongst citizens as an arbiter of disputes over power.

In discussing judicial oversight, the Report has focused on the upper courts in its analysis because of the focus in this year's report on moderating the high stakes of politics, and the role that the superior courts potentially play in this process through judicial review. It suggests some possible factors that have encouraged successive governments (both military and democratically elected) to curb the power and undermine the authority of the Judiciary through an examination of how the incentives for ruling regimes of interfering with judicial independence have changed. It has also explored the recent changes to the formal

legal framework which has separated the Judiciary from the Executive, and has examined why these changes have had little effect on increasing judicial independence or increasing the accountability of political actors. The role of ancillary legal institutions and actors such as the Attorney General and Bar Associations has also been analysed.

The Report highlights the fact that trust in the superior courts and in the quality of the justice they dispense has fallen considerably, a trend which showed few signs of reversal during the CTG's tenure. There has been a decline in both judicial integrity and quality, the latter the result of a drastic fall in the real and relative value of judicial salaries and benefits and the failure to preserve non-material incentives (such as status and prestige) for judicial service over decades. The superior courts have lost the legitimacy that they had until relatively recently, when the Supreme Court was held in high esteem. In the most vivid recent example where the courts were put to the test as the arbiter of a dispute that was simply about the grab for political power, the constitutional challenge to President Iajuddin's Caretaker Government in October 2006, had failed miserably.

Constitutionally established oversight institutions play a significant role in providing checks and balances within a democracy and therefore in enhancing the accountability of Government. In Chapter Five, the Report analyses its findings on the efficacy of different institutions of accountability (e.g. the Bangladesh Election Commission, the Anti-Corruption Commission, the Public Service Commission, and the Office of the Comptroller and Auditor General) under four themes: independence, accountability, efficiency and effectiveness. The Report has found that despite constitutional and statutory independence, poor leadership quality, lack of fiscal autonomy and influence from the Executive are curbing the independent status of these institutions. It can be argued that the appointment process is the source of politicisation of these institutions. The accountability issue has been looked at under three dimensions - to the president, internal accountability and to the citizens. The efficiency issue of these oversight institutions has been viewed from two perspectives - organisational structure and human resources. The organisational structure of these bodies is challenged by lack of coordination and internal politics while at the same time being dominated by hierarchy. A lack of clarity in human resource management policy, inadequacy of management staff and competition between the personnel on deputation and the institutions' own staff make the situation worse. With regard to effective functioning of these institutions, the Report has found that political will of the ruling party is a pre-requisite. Due support from the media and civil society are also required to ensure effective functioning as well as increase their credibility.

As a follow-up to the nationwide perception survey conducted for the *State of Governance in Bangladesh 2007* report, a similar survey was conducted to explore public opinion on issues pertaining to service delivery, corruption, politics, reforms, institutions, professions and professionals involved in the governance process. This Report attempts to compare findings of the two surveys to draw some insightful comparisons. Since the two years do not have a similar scenario, some of the issues surveyed in 2007 have not been repeated. Certain new issues and topics relevant to 2008 have been included in the 2008 survey. This deviation is unavoidable given the changed scenario in the political arena. The survey findings, as described in Chapter 6, provide the public's view of the fundamental state institutions which are over-run by partisan interests. There is little doubt in the public's mind that political stake management has been blatantly manipulated by the winning party in Bangladesh in the post-1991 era. The Parliament and the Judiciary were also subjected to public scrutiny under the survey. Public perception was also sought on the present living standard, service delivery, and the law and order situation of the country. The qualitative research findings of this Report are substantiated by the quantitative findings that have emerged from the perception survey.

1.7 Conclusion

The stakes of politics in Bangladesh remain high as the Executive, as the winner for five years, takes control over all the public resources and strips the opposition of all its functions and rights. This allows the confrontational culture of politics to continue in a vicious circle. On the other hand, if the nature of political culture were different, either that would ensure the following of the formal rules or the informal practices would have little importance. As a result, the political parties would need to take corrective measures so that the system contains no loopholes or they would proscribe themselves from exploiting these loopholes. In either of the cases, the Parliament will work as an effective institution of accountability, which will play its role in lowering the stake of politics. 'Winner takes all' system/practice is not conducive to Parliamentary democracy. Intra-party demo is a better option to adopt.

Political Governance

2.1 Introduction

Governance encompasses performance of the government including public and private sectors, global and local arrangements, formal structures and informal norms and practices, spontaneous and intentional systems of control. In the simplest sense, governance means the process of decision-making and the process by which decisions are implemented (or not implemented). In the empirical analysis of public policies, governance is considered to include all aspects of the exercise of authority in the management of the resource endowment of a state and the manner in which the power is exercised. The quality of governance is determined by the impact of this exercise of power on the quality of life enjoyed by the citizens.

Political governance refers to a country's voice and accountability, political stability and government effectiveness. Political governance is essentially about managing the state and establishing a practice of accountability to the people, which includes the process of electing leaders to office, the interface between the political and bureaucratic arms of government, the strength of oversight bodies and the role of civil society in influencing the quality of governance (Political Governance, Commonwealth of Australia 2005). Politics is the prime mover of political governance.

However, politics alone cannot manage the state affairs. Politicians and bureaucrats jointly compose 'state power,' which competes and cooperates with or controls other social organisations (Migdal 1988, Evans, Rueschemeyer and Skocpol 1985). Bureaucracy also has certain resources (information, expertise, permanence), which makes the nexus between politics and bureaucracy imperative for political governance. But when this interdependence is abused by establishing political monopoly over bureaucracy and through it other state institutions, the motive behind this is negated. The nature of politics in Bangladesh, which is confrontational in nature, breeds monopoly of the ruling party over bureaucracy along with other state institutions, which causes erosion of formal accountability mechanisms and affects political governance.

This Chapter examines the impact of confrontational party politics on governance in Bangladesh. It describes the structure, ideologies and leadership of political parties, the roles and stakes of both the party in power and opposition parties, and the nature of monopolisation of state resources by the ruling party. To

get a clearer picture about the “winner takes all” approach of the ruling party, monopolisation of bureaucracy and the local government by the ruling party has been examined, and the impact on the accountability has been assessed. Besides the introduction, this Chapter has six more sections. Section 2.2 analyses the nature of confrontational politics in Bangladesh. Section 2.3 examines the politics-bureaucracy nexus. Section 2.4 describes the gradual politicisation of local government. Section 2.5 identifies the factors which allow the ruling party to establish monopoly over state resources. Section 2.6 examines the reform initiatives undertaken by the Caretaker Government in an attempt to bring accountability in the political game. Finally, Section 2.7 concludes with some practical recommendations.

This Chapter builds on the research conducted for two previous State of Governance in Bangladesh reports (2006 and 2007) and conveys a clear yet devastating message about the state of political governance in Bangladesh in 2008. An extensive literature review was carried out to situate its findings in the broader context of analyses on state and institutions, as well as development - albeit in a more limited manner. The Chapter draws extensively on a background paper for which data was collected from both primary and secondary sources. Mid to senior level bureaucrats and senior politicians - from three major political parties, were interviewed as part of the primary research.

2.2 Confrontational Politics and Political Parties

Bangladesh politics has in recent years evolved into a highly confrontational game which generates unhealthy competition between the winning and losing party instead of constructive engagements. This causes severe damage to the state institutions. Broadly, the confrontational politics in Bangladesh can be explained in terms of (a) ideological conflict, (b) conflict over a desperate bid to capture power or show off strength and (c) conflicts arising from personal interests of the political elements. Of these three aspects, confrontational politics centres around the latter two while the first plays a less significant role.

Confrontational politics in Bangladesh could be generally described through the frameworks of patron-client relationship and mobilisation politics. The winning party uses patronage to establish a relationship of loyalty and allegiance with the state institutions and within the party itself. On the other hand, mobilisation politics - usually a tool for protests - has been the strategy of the losing party. As a result, the party in power searches for loyalists within the bureaucracy and other state institutions to counterbalance the impact of the mobilisation organised by the opposition party. This, again, leads to massive politicisation of state institutions, especially the bureaucracy. When a change occurs in the composition of the political leadership, it invariably leads to the reshuffling of civil service. It is the nexus between politics and bureaucracy that ultimately shapes up the process of governance.

As in other South Asian countries, political parties in Bangladesh have not been created within legislatures; they have extra-Parliamentary origins. Among more than 150 political parties in Bangladesh,¹ the major ones can be grouped into two categories: parties of the state and parties of the civil society. One of the best examples of the latter is the Awami League (AL) as evinced by its origin and growth in pre-independent Bangladesh; while both Bangladesh Nationalist Party (BNP) and Jatiya Party (JP) originated as parties of the state. Another party the Jamaat-e-Islami Bangladesh (JIB) can also claim to have its origin in civil society. The leftist parties have apparently become 'parties of the past' as none of them can claim any support worth mentioning mainly because of the decline of leftist politics world-wide and the chronic factionalism that characterises these parties in Bangladesh.

Hague and Harrop (1982) have identified two pure forms of party factions. One form is the patron-client type in which relationships of obligation and service develop between a high-status leader (the patron) and dependent followers (or clients) of lower strata. The other form consists of groups of party members whose common bond lies in shared ideology. This type of faction is less dependent on particular leaders, rather is more often organised in a formal manner with its own membership rules and is not restricted to the limits on size to which patron-client factions, with their essentially personal character, are subject (Ibid). Such factions often provide an important means by which oligarchic tendencies of leadership in mass parties are, to some extent, restrained. In stable democracies, the second type of faction is more evident than the patron-client type of politics. Bangladesh, however, has parties displaying the patron-client variation.

The parties in Bangladesh draw support from a variety of sources, and the sharp polarisation amongst them is clear. There are also distinct differences among the sources of support of the main parties. For example, the BNP initially drew its support from the army, the bureaucracy, the urban and rural rich, large industrialists and traders. Over the years, it has succeeded in broadening its support base by initiating some populist policies. The AL was pretty bourgeoisie in origin. Those who provided the main support base of the party included the rural middle class, small town lawyers, college/school teachers, and small traders and businessmen. However, since the beginning of the democratic era, the social base of the AL has changed considerably. Big businesses, the bureaucracy, and the military now have better representation in the AL than in the past. The influence of lower/middle class in AL politics has considerably declined. The social composition of the Parliaments elected since the early 1990s show that the majority of lawmakers belonging to the BNP and AL share similar backgrounds and personality traits. In recent years, business and politics in Bangladesh have become closely intertwined.

These major parties, however, share a number of common characteristics. First, as suffrage was expanded, each party created external parties in order to mobilise voters, and links were created between legislative and external parties (Jewell 1973). Second, most parties in the country are personality-centred. Third, there is a tendency in each party toward concentration of power at the top. Local branches of parties do not enjoy much autonomy (Ahmed 2009a).

These major parties share yet another common characteristic: their organisational hierarchy parallels the administrative hierarchy of the government. Most parties have organisational units at division, district and *thana* levels; but only a few, however, have organisational units at the grassroots level. The central party exercises direct control over the way party units at sub-national levels (as well as different fronts/associate organisations) carry out their activities, although the extent to which such control remains effective can not always be known. All major parties except JP have different front organisations, of which the student front deserves special mention. The linkage between national student organisations and political parties has become so strong that the top leaders of political parties now hand-pick the student leadership, instead of the student leaders being democratically chosen in national conventions as used to be the norm. The rent-seeking behaviour of student organisations is also partly due to their close links with political leaders.

These four parties (AL, BNP, JP and JIB) together have won the majority of seats in all parliamentary elections held since 1991. Together they claim the support of more than 90 percent of the electorate. It can thus be argued with relative certainty that the future of Bangladesh democracy will largely depend on the ways these parties, particularly the AL and the BNP, behave (Ahmed 2009a). Inter-party relationship, however, is often governed more by the 'politics of convenience' than by ideological affinities. Thus, despite differences in ideological orientation and background, the various parties have often agreed to cooperate with each other to confront the ruling party. Conflict thus becomes inevitable.

Politics is by nature confrontational as it involves conflicts of interests, views and ideologies. Hence, arguments, debates and disagreements are an integral part of politics. However, confrontation by itself is not a problem rather the problem is its manifestation. Several factors account for widespread political party confrontation in Bangladesh, of which the enemy discourse appears to be the most important. Enemy discourse has polarised Bangladesh society since independence. The entire society has become divided into two large factions along the lines of the two major political parties: the AL and the BNP, which have trapped themselves in the clutches of enmity. Misinterpretation of the history of the war of independence, lack of mutual respect, high degrees of intolerance, and the role the parties themselves have played in the post-independence period all fuel the flames of confrontation.² Further issues that have generated enmity between these two parties include: AL's embeddedness in 'Bengali nationalism' versus BNP's 'Bangladeshi Nationalism'; AL's stance in favour of secularism and BNP's alliance with an Islamic party; AL (once) favouring the one-party system as opposed to that of BNP's multiparty system etc. It is interesting to note that for all their enmity, there is little ideological difference between the two parties. Both parties support capitalism, uphold the free market economy and pursue a near-identical foreign policy. It appears that personal differences over issues between the two leaders of AL and BNP are the main reasons for all kinds of confrontation.

The enemy discourse has intensified both patron-clientelism and mobilisation politics in Bangladesh, as it requires clients everywhere and mobilisation across the social space (Islam 2002). These clients get engaged in deposing the opponent. Success in their endeavours results in rewards by the patrons. This tends to move in a cyclic manner.

The party in power has four major stakes for opting for clientelist politics. First of all, it obtains political benefit through creating beneficiary groups or clients by giving jobs to the student leaders, giving businesses to party supporters, promotion to the bureaucrats - which will ensure their support (political, administrative and also financial) in the next election. Using state machinery they create support groups in every sphere/strata/institution. Benefits are distributed at all levels. The second stake is to obtain financial benefits through illegal and unethical way. The party in power expects to obtain an 'undue' share of public money. An increase in the size of the ADP for example has thrown parties into a frenzy, competing for a slice of the pie. Monopolisation of governmental projects and all financial transactions of the state bring immediate benefit for the party as it is distributed in favour of the party leaders and workers. The third major stake is greed for power. The winning party thinks that they have won the election battle through a huge investment which have to be recouped as fast as possible, and significant returns made on the 'investment'. The fourth stake is counterbalancing the opposition. The party in power wants to subdue the opposition instead of moving forward to work together.

On the other hand, the opposition pursues the politics of mobilisation for three reasons. First, mobilisation politics has been a crucial factor in the political history of Bangladesh from the days of colonialism (Islam 2002) to the independence of Bangladesh from Pakistan. Thus, mobilisation politics has acquired *validity* in the eyes of the opposition. Second, the opposition opts for mobilisation politics because they are never given their dues either inside or outside the Parliament. In Parliament the opposition is not allowed sufficient time to raise issues. Moreover, political jealousy, personal rancour and parochial attitudes are expressed in the behaviour of the treasury bench. As there is no institutional mechanism for redress and no formal mechanism is operational, no alternative is left to the opposition other than going for street mobilisation. Outside of Parliament the opposition is deprived from getting development funds for its constituencies. The third reason is greed for a share of state resources. Being barred from getting a return on

2 One claims itself to be the pro-liberation force led by Bangabandhu while the other is blamed to be 'anti-liberation' or 'pro-Pakistani' force.

their elections 'investments' the opposition opts for agitation, and often becomes destructive to topple the government at any cost. In a bid to capture power the opposition opts for protests and mobilisation politics - the only way they consider to be open to them in trying to attain equilibrium in the political game.

Notwithstanding differences in age, orientation and ideology, the two main parties - AL and BNP - have mostly followed a similar policy, especially to secure state power and to survive in it. Both have deliberately followed a policy of politicising almost all state institutions that matter in the governing process. The next two sections explore the way(s) the AL and the BNP have politicised the bureaucracy and local government for party political purposes.

2.3 Political Parties and Bureaucracy

The Public Sector in Bangladesh currently employs around one million people. Around 300,000 are employed in public enterprises while approximately 700,000 are employed in various ministries, departments and other government offices (Kim and Monem 2008). This latter group is termed the 'Civil Service'. These officers staff 35 ministries, 15 administrative divisions and the offices of the President and the Prime Minister. The Bangladesh Civil Service is structured horizontally into four classes: Class I being the professional or officer class (numbering about 40,000) and three other classes performing a variety of supporting functions. Seventy percent of Class I officers are recruited into cadres, whilst the rest work in functional non-cadre areas. Some non-cadre posts and hierarchies have existed for decades and, for those in these positions, their status is a cause for much dissatisfaction and frustration. On average, between 1,200 and 1,800 Class I officers are recruited each year. There are 28 cadres each comprising officers with particular skills or qualifications.

IGS research has extensively documented the state of public administration in Bangladesh (IGS 2006, 2007, 2008). In the years since independence, the Bangladesh polity has seen many changes, resulting in its current form: a multiparty, aggressively competitive democracy. Yet the essential character of the bureaucracy has altered little over that time, except to increase in size (Ahmed 2002c). However, the context in which the civil administration operates has unquestionably been transformed. Efforts to politicise the bureaucracy by successive regimes have had the most direct impact on the service, particularly after the crucial movement initiated by civil servants against the ruling Government in 1996. Subsequent political parties in power have worked hard to prevent a recurrence of this by installing party supporters in key positions. The greater legitimacy of the democratically elected Executive compared to authoritarian predecessors has also had the effect of making the bureaucracy relatively less powerful in comparison to the more powerful political class.

The lack of progress in administrative governance has been made more acute by the failure of successive governments to pursue the reform agenda. The Public Administration Reform Commission (2000) and several other studies have identified areas that undermine the efficiency of the bureaucracy, amongst which politicisation and external influence feature prominently.

The literature on politicisation of bureaucracy (Aberbach, Putnam and Rockman 1981; Aberbach and Rockman 1987; Hojnacki 1996; Ingraham 1996; Ingraham and Peters 1988) refers to the levels and types of political activities undertaken by the bureaucrats, as well as to the political influence on bureaucrats by politicians and citizens. The second feature is politician-driven politicisation, which is the central concern of this section. As a *principle*, both elected politicians in democratic countries and party leaders in communist countries are engaged in controlling their *agents*, such as bureaucrats and administrative systems.

Politicisation of the bureaucracy has been an ever present threat in Bangladesh, proceeding in waves over the history of the country, rising on the back of successive periods of military rule and reform efforts (IGS 2006). At times, proximity to political forces has increased the autonomy and power of the bureaucracy, while at others, including the present day, it has left the bureaucracy weakened and dependent on its political masters. The return to democracy in 1991 was a period of vulnerability for the bureaucracy, during which political patronage and favouritism began to chip away at its cohesiveness and unity. The bureaucratic response was to abandon its traditional values of public service neutrality and embrace partisan alignment (Haque and Rahman 2003).

On the other hand, it can be argued that the assumption that politicisation of the administration is always motivated by partisan concerns has given it strongly negative overtones. It is also plausible that motivations may have included appointing more committed and able individuals to expedite priority policies. Similarly, reshuffles, transfers and promotions should not be seen exclusively as a system of partisan punishment and reward. The level of contractual appointments may be a better and more neutral way of measuring the extent of politicisation. With all officers required to begin their civil service career at the entry level, there is limited scope for contractual appointments within the civil service. Thus, a contractual appointment after a civil servant's career ends is invariably used as a political tool.

Two distinctive features of the Bangladeshi bureaucracy map its negotiated and compromising nexus with politicians: (a) *Decay of Elitism*: Elitism is now non-existent in Bangladesh civil service since all the services are unified at present. In an effort to eliminate elitism from the bureaucracy and by liberalising the system of recruitment as component of administrative reform, the charm of the service has faded away. The low salary, uncertain promotional scope, politicisation of promotion and transfer decisions, and rampant corrupt practices have made the civil service a lacklustre option to the educated upper middle-class; (b) *Factionalism in Bureaucracy*: The entire bureaucracy in Bangladesh is plagued with deep-seated factionalism and waning *esprit de corps*. The sharpest and pernicious form of factionalism in civil service manifests itself as the conflict between the specialists and the generalists. To this principal configuration, one can add at least seven lesser strains of factionalism (Rahman 2002). This conflict has led to total demoralisation, utter negligence of work, ugly acrimony and serious tension in bureaucracy (Siddiqui 1996). This factionalism has weakened the bureaucracy as an institution.

2.3.1 The Politicisation Strategy

Politicians want to build their own 'force' in bureaucracy mainly to maintain their regime and to get support for activities which may not be entirely legal. As a first step towards consolidating its rule it shuffles and reshuffles the entire administrative apparatus repeatedly in search of party sympathisers to install them in key positions of administration. In fact, both politicians and bureaucrats have stakes in politicisation. Their mutual interests create a 'win-win' situation. Politicians have both political and financial stakes behind politicisation. Firstly, they want to build their 'own' force in administration to materialise their own agenda (to counter political rivals, to implement their own decisions) and second, their financial motives are served with the help of this 'force'. On the other hand, politicisation of bureaucracy rewards the subservient bureaucrats through foreign travel, speedy promotion and better postings. They also enjoy power and prestige for being allied to the party in power.

2.3.2 Weaknesses in the Bureaucracy

The bureaucracy in Bangladesh has a number of inherent weaknesses that allow and indeed encourage politicisation:

Structural factors

A number of structural weaknesses encourage its politicisation. First, increasing the number of cadres to 29 during the Zia regime intensified conflict and competition in bureaucracy for limited scope of promotion. To survive in the competition, the officials engaged themselves in seeking assistance of politicians for career advancement.

Second, certain discriminations in the service rules encourage politicisation. In case of promotion to the Deputy Secretary level there is a policy of filling up 75 percent of the posts by the Administration Cadre officials and the rest from the other cadres. By virtue of this rule junior officials of Administration Cadre occupying lower positions in the gradation list may also get promotion through political influence. Dissatisfaction arises as a consequence and remedies are sought from the political masters.

Third, lack of confidence among the officials is another contributing factor behind politicisation. Due to a lack of definite career planning, officials are found lacking in confidence. This lack of confidence does not permit any bold moves to counter politicisation.

Fourth, lack of a transparent transfer and posting policy is yet another weakness that plagues the Bangladesh bureaucracy. According to the service rules, an officer has to work in one place for three years but it is not followed all the time. Nobody has any idea about his/her future posting. This uncertainly causes officers to become opportunists and look for political blessings. Political leaders gladly take this advantage.

Fifth, lack of transparent promotion policy creates another scope for politicisation. As performance is not the criteria for promotion, officials are more concerned about establishing extra-legal relationship with the politically influential persons than being a good performer. One bureaucrat, during interview, argued: "We are not informed why we were not promoted. In promotion race, always corrupt, clever people win, as they are more adept in socialising and networking. Usually efficient, honest people are a bit lonely and marginalised".

Sixth, bureaucrats often work under insecure and unprotected conditions. The system makes it difficult for them to turn down any political moves. Furthermore, the senior bureaucrats do not protect the junior officials from undue political influences. There is no Civil Service Act to protect the interests of the bureaucrats. Although an Act was drafted for this purpose during the Fakhruddin-led caretaker regime, but it was not finalised/approved by the Cabinet.

Legal factors

The Civil Servants' Retirement Act of 1974 creates scope for politicisation. It requires that public servants retire from service at the age of 57. Rules made under the Act state that after the completion of 25 years service at any time, government, for the sake of public interest, can give retirement to a public servant without showing any reason. Another provision of this rule reads, "The President, for the sake of public interest, can appoint a retired civil servant on contractual basis if he deems fit". By virtue of this law civil

servants, whom the party in power do not consider as their own men, have to retire voluntarily after 25 years of service or they are often sent on forced retirement. Bureaucrats are not usually ready to retire at the age of 57. Politicians take advantage of this opportunity by promising extensions or contractual appointments. Thus bureaucrats being in policy making positions at the fag end of their career, become vulnerable in fear of termination of job. To retain their job or to prolong their career, they cannot oppose the decisions of the politicians. Sometimes they even get engaged in frantic race of getting contractual appointments.

2.3.3 Bureaucratic Response to Politicisation

Bureaucracy has a mixed reaction to politicisation. A very small number of officials accept politicisation wholeheartedly because of the perks mentioned before, while the large majority does not like this irregular practice but accepts it as a 'risk aversion' measure. Favour for politicisation is found more at the higher levels in bureaucracy. Describing the aspirations of bureaucrats, a senior official said, "Out of ten aspirations of civil servants, around seven are related to promotion and transfer i.e. to get posting at Dhaka". To meet these aspirations the civil servants try to show loyalty to the ruling party. The post of Secretary (the highest rank in bureaucracy) is a very competitive and extremely lucrative position. The aspired candidates sometimes become desperate to show loyalty to the ruling party to serve their own interests. Bureaucrats have also been known to get engaged in a frantic race for attaining the approval of the ruling party for mid-ranking positions.

One thing, however, to be stressed here is that the majority of the bureaucrats are still apolitical. "Only 10-15 percent of the civil servants are political or the die-hard supporters of political parties", said a bureaucrat. These neutral persons accept politicisation as they don't want to be victimised by politics, through bad postings, humiliation or deprivation. As a result, bureaucrats remain tactful and if necessary work against the interests of the public - the *real* masters of the Republic. Bureaucracy also accepts politicisation due to a lack of unity: individual resistances cause individual loss. However, certain aspects of politicisation are intensely disliked by the bureaucracy: e.g. making officials Officer on Special Duty (OSD), giving promotions superseding the seniors and award of contractual appointments bypassing serving officers.

2.3.4 Effect of Politicisation on Bureaucratic Accountability

There are two forms of bureaucratic accountability: internal and external. Internal accountability refers to the hierarchical accountability while external accountability is the accountability to the political Executive and through it to Parliament. Bureaucrats also have indirect accountability to the people as their clients.

Internal accountability is ensured through a hierarchical chain of command. There are more than 4000 rules and regulations relating to accountability in the bureaucracy. Rules of Business 1996, Allocation of Business, Secretariat Instructions, and Government Servants (Conduct) Rules 1979 are some of the major guiding rules for ensuring accountability. For instance, the Government Servants (Discipline and Appeal) Rules, 1985 reads, "disobeying the legal orders of the superior officer, sheer negligence of duty, reluctance in carrying out a government order or instruction without any reasonable excuse are considered as the misbehaviour of civil servants". The Public Employees Discipline (Punctual Attendance) Ordinance, 1982 reads, "If a public servant goes on leave or remains absent from office or leaves office without prior permission of the superior authority, for the delay in office one day's basic salary will be deducted for each case of violation". In enforcing this rule, the supervisor is the final authority, as it does not require any consultation with the Public Service Commission (PSC) for this purpose. Thus officials are directly accountable to their superior officers as per the hierarchy.

The formal accountability mechanism is unfortunately not followed in practice. For example, the Secretariat instruction 2004 clearly specifies how long a file can remain with an official but the officials openly disregard this. Ministerial coordination meetings are held regularly every month, officials are not held accountable for their negligence of duties in these meetings. In practice, officials are mostly assessed on the basis of the personal interactions or relationship with the superior officials. Officials will not be in the good book of their superior officers if they don't maintain a 'good' personal relationship with them (the superior officers). Insubordination or disloyalty (not carrying out the orders of superiors) is strictly dealt with while negligence of duty is rarely punished. Disloyalty is usually punished through a negative report in the Annual Confidential Report (ACR) of the offending officer.

Politicisation of recruitment also shatters the internal accountability mechanism. Officials appointed on political grounds are likely to serve their political masters even at the cost of public interest, because they believe that they owe their allegiance and indeed their job to the person or the party which got them appointed and not to the Republic whose employees they actually are and to which they really owe allegiance. Due to political influence the chain of command is often broken and violated. Politicisation often leads to the placement of incompetent persons to a position. Irregular promotion through politicisation affects internal accountability mechanisms. Moreover, as party loyalty becomes the criteria for selecting the officials for promotion, officials become more concerned about establishing extra-legal relationship with the political masters rather than being accountable to the superior authority for better performance.

Accountability of bureaucrats to the Parliament through the Ministers is also largely ineffective due to the absence of functional Parliamentary Standing Committees. Parliamentary Committees cannot be effective in making the bureaucracy accountable as the politically chosen Secretaries, considering the Committee members fellow 'party men', respond poorly to the queries and in implementing recommendations of the Committee. On the other hand, the Committee members also hesitate to take any stern action against them for similar 'fellow-feelings'. Accountability of bureaucrats to the people is even more ineffective. When the officials follow the instructions of political masters they fail to be responsive to the people. The effectiveness of accountability mechanisms is thus affected by politicisation in a pervasive way.

The preceding discussion explains the dynamics and the intricate relationship between the politicians and bureaucracy in Bangladesh. The ruling politicians can wield complete control over the bureaucrats by regulating recruitment, transfer and promotion. Even more alarming is the fact that several reform measures have been undertaken and are underway during this decade to make the bureaucrats formally accountable to their political masters. Furthermore, bureaucracy itself is plagued with its own poly-faceted factionalism. Its prior position and authority are waning and being challenged. All these initiatives have prompted the bureaucracy to build a symbiotic and compromising trade off with the politicians. Politicians are now firmly in the driver's seat and bureaucrats are no longer treated as the final arbitrator of governing the country.

2.3.5 Consequences of Politicisation

There is almost total absence between bureaucratic performance and reward - throughout the duration of civil servants' career. Civil servants are recruited in a way so that the civil service can become a 'loyal' force of the incumbent government. The party in power often opts for drastic measures to recruit members of its student wing into the civil service. It has been - the norm since the birth of the nation to recruit political cadres into civil service but since the restoration of democracy in 1991 it has intensified. Since the restoration of democracy, political interference has also been playing havoc with bureaucracy and the careers of government officials at the senior levels. The dominant criteria for promotion of civil servants are political connections and affinity with the ruling class, and closeness to the Chief Executive rather than merit

and competency. Strategic positions are always filled up by officials handpicked by the party in power. In Bangladesh Civil Service, only one promotion at the earliest stage of the career i.e. promotion from Assistant Secretary to Senior Assistant Secretary generally takes place without any kind of external interference. The promotion policy, which is confidential, keeps changing for the convenience of individuals.

Promotions of some services like postal service, information, audit, and taxation - are not overly politicised. But promotions of some cadres, e.g. administration is very much politicised, especially at the senior levels, as the party in power has to depend on these cadres to effectively rule the country. According to the Civil Service Recruitment Rule, promotion is based on seniority and merit as per the gradation list prepared by the PSC during recruitment but it is very often violated. As per the rules, educational qualification, the ACR containing the information regarding experience and performance of the candidate are the only criteria for promotion. The rules also stipulate that an officer must score more than 80 percent in the ACR to be considered for promotion. But this ACR grade is very often manipulated. To cite an example, the ACR is written by the immediate senior officers for Joint Secretary to Additional Secretary levels but it must be countersigned by the concerned Minister. This creates scope for manipulation and political influence over promotion in civil service. As there is no transparent, definite career planning, political influence in promotion is massive.

The absence of transfer/posting policies creates further scope for politicisation. Officials not loyal to the party in power are usually given bad postings while those who curry favour with the incumbent government get better postings. Consent of the political masters is considered an important factor for transfer.

Perhaps it is not surprising that under the prevailing situation, incentives to perform within the service are distorted in favour of demonstrating political support over professional performance. There is no doubt that politicisation has been instrumental in distorting the professional incentives of bureaucrats. The major problem surrounds the imposition of political affiliation upon permanent members of the bureaucracy who have been recruited and formally operate under an entirely different set of rules. Good performance of the public institutions depends on the bureaucratic personnel facing a set of stable incentives which are shaped by the assumption of political neutrality in personnel management decisions, such as transfer and promotion. Instead there is uncertainty, and incentives are oriented towards pleasing political masters rather than professional performance (see also Mukherjee *et al* 2001).

The post-1991 democratic era in Bangladesh has witnessed a massive push towards greater politicisation. This has primarily involved greater interference by politicians in the everyday work of the bureaucrats, frequently having to divert resources or to use influence for corrupt purposes. The major thrust in the politicisation of the bureaucracy since 1991 has involved recruiting 'party men bureaucrats'. The first five years of democracy (1991-1996) under the BNP Government witnessed politicisation in various forms: party loyalists were placed in important civil service positions and attempts were made to manipulate the recruitment process, including through appointment of student party leaders (Zafarullah 1998). For example, in 1992, 654 allegedly partisan officials were promoted, and in 1996, civil servants were compelled to retire prematurely without a specific reason (Karim 1996).

After coming to power in 1996, the AL continued the process of politicisation. A number of senior civil servants had been directly involved in the movement which forced the BNP to resign for a re-election under a constitutionally guaranteed Caretaker Government (CTG) in 1996. On winning the election that followed, the AL rewarded those civil servants with promotions (Haque and Rahman 2003).

The return to power of the BNP-led coalition in 2001 continued to strengthen political interference in the bureaucracy. A record 978 officials were appointed as 'Officer on Special Duty'. This is a position that is used as a punishment; in essence it means being a civil servant without a post. Within the civil service, decisions regarding promotions were no longer believed to be made according to seniority or merit. Rather, importance was given to party loyalty. Such practice was damaging to civil service morale. The rising number of contractual appointments and contractual extensions at the upper levels of the service were also seen to be made on the basis of political allegiance. Towards the end of the second BNP regime, the Superior Selection Board had been rendered dysfunctional and acted as a mere rubber stamp, with decisions made by the Prime Minister's Office.

Apart from the impact on morale, performance and human resource management, particularly at the senior levels, the introduction of political considerations into bureaucratic procedure has severely undermined the credibility of the rules and regulations that govern the civil service, especially the Government Servants (Conduct) Rules, 1979 which regulates the terms and conditions of service and clearly rules against partisan affiliation or support. The situation was further complicated by the involvement of contractual appointees in active politics, including as candidates for public office. Rules forbid civil servants from involvement in politics, but in recent years, the increasing number of contractual appointments has superseded these rules.

2.4 Politicisation of Local Government

Local government has always played a significant role in the social system of Bangladesh. Reaching into the remotest rural areas, local government acts as a bridge between the people and the government through implementation of different government development projects and public welfare programmes. The Constitution of Bangladesh categorically emphasises the need for establishing local government with a representative character (Article 59). It also implies direct participation of the people in constituting the local body and in managing the affairs of such bodies. Article 59 in particular highlights the role of local government bodies in the preparation and implementation of plans relating to public services and economic development. Article 60 stresses the need for local government bodies to have the power to impose taxes for local purposes, to prepare their budgets and to maintain funds. The inclusion of such stipulations within the Constitution underlines the significant role that is anticipated from local government as an institution.

Local government councils now exist in both urban and rural areas. At the top of the three-tier rural local government structure lies the Zila Parishad (ZP), and at the base, the Union Parishad (UP). The middle tier is called the Upazila Parishad (UZP) and was first introduced in the 1980s. Most of the urban local bodies are called municipalities, although those in the six divisional headquarters - Dhaka, Chittagong, Khulna, Rajshahi, Sylhet and Barisal - have been granted the status of city corporations. All these urban and rural local councils except the ZP are now composed of directly elected representatives.

Rural and urban local government bodies are entrusted with a large number of functions and responsibilities relating to civic and community welfare as well as local development. It is perhaps therefore not surprising that local government is yet another focal point where the successive ruling parties- have tried- to establish their monopoly as a mechanism for strengthening their support base at the local level. In a bid to establish control over the local government, party Secretary Generals have invariably been made the local government minister. Control over local government is established in four ways: first, through establishing bureaucratic control over local government, second, through influencing local elections, third, by disbursing insufficient funds to the areas led by the opposition and fourth, by preventing opposition MPs from attending local level meetings.

Establishing bureaucratic control over local government

The Union Parishad is the only tier of local rural government which has long retained its representative character. The other units of local government, especially the ZP, have remained under total control of the central government since independence. In 1983 the government of Ershad (1982-90) introduced the *upazila* system which at least in theory established the supremacy of local representatives at the *thana* level - over local administration. After the overthrow of Ershad, the BNP regime (1991-96) abolished the *upazila* system and reinstated the previous *thana* council administered by the central government. The second AL regime (1996-2001) attempted to reintroduce the *upazila* system headed by a directly elected chairperson, but failed due to the opposition of their own MPs as they viewed these local leaders as threats to their power at the local level. Central control over the *thana* and also district level continued as before and the third BNP regime (2001-2006) did not do anything to strengthen democratic control over the bureaucracy at the local level. Thus every successive government since the restoration of democracy kept the local government institutions under its direct control with the help of bureaucracy. Explaining this attitude of the ruling party a political leader, during interview with the researchers, said, "Ruling party feels safe if it has full control over the local level institutions which is not always possible to attain through the elected representatives. It is much easier to establish central control over local bodies through the bureaucratic machinery". The UZP has been reintroduced recently.

Influencing the local government election

The winning party very often tries to win the local level elections by excluding the opposition from the game at all cost mainly through intimidation, and election rigging if an opposition leader wins the election, s/he subsequently finds it very difficult to work, or some misfortune strikes like false cases. Moreover, these UP chairmen fail to obtain development funds, which obstruct development activities in their areas.

Development projects at the local level: monopoly over fund disbursement

An effective way of controlling the local government is by controlling fund disbursement. Insufficient funds are allocated to local government institutions led by the opposition party. In the 2001-2006 BNP-regime it was found that Khulna, Barisal and Rajshahi city corporations led by the ruling BNP backed leaders were allocated more funds than those of Chittagong and Sylhet led by the opposition backed leaders. This monopoly begins from the allocation of development funds at the local level through MPs - most development projects are awarded to ruling party MPs. Food for Work (*Kajer Binimoy Khaddo*), VGF, VGD cards, old age pension etc are also common instruments of exercising power at the local level. Money and material are thus pumped through development projects at the local level to reward the grassroots level workers who took part in the election activities for the winning party.

Preventing opposition MPs from attending local level meetings

Preventing opposition MPs from attending local level meetings is yet another instrument of controlling the local government. For example, an opposition MP is seldom invited to take part in the Thana Development Coordination Council (TDCC) meeting, of which MPs are advisors. Invitations to attend the disciplinary meetings at the DC office are often sent barely hours before the meeting is scheduled to begin. These examples demonstrate the 'irrational' motive of the politicised administration to obstruct the participation of the opposition MPs in local administration.

Consequences of monopolization of local government

Monopoly of the ruling party over local government tremendously reduces the significance of representative character of local government. According to Article 9 and 59 of the Constitution (Bangladesh 2004) local government institutions should be composed of representatives of the areas concerned. But representativeness loses its meaning and sense by vote rigging, intimidation of voters and election manipulation by the ruling party. On the other hand, the tendency of exerting central control either through bureaucratic machinery or by the MPs local government loses its autonomy and fails to act or think independently. As a result, the core purpose of the local government i.e. making the local people empowered to decide their own priorities remain a far cry. More dangerously, the tendency of grabbing all development funds for the local level by the ruling party leads to an imbalanced development at the local level. It also affects the sustainability or continuity of projects as with the regime change projects/programs also die.

2.5 Monopoly over State Resources

During the course of our research we have attempted to unearth the reasons why the ruling party wishes to establish its monopoly over state resources and institutions and how it achieves this. The findings demonstrate that a number of factors contribute to the 'winner takes all' approach of the ruling party, prominent amongst them the history of the emergence of Bangladesh, lack of internal party democracy, certain legal provisions and some social factors.

2.5.1 Historical Factors

Since the colonial period, the middle class considered involvement with the state machinery as the most effective means of surplus extraction. During the Pakistani regime, the AL became the focal point for attempts by the Bengali Muslim bourgeoisie to share power in the national polity and to use it as a means to divert resources and jobs to those who backed their class (Sobhan and Ahmed 1980). The support base of AL was also largely drawn from the middle classes or bourgeoisie and as a result the regime led by AL after independence in 1971 supported the growth of public enterprise as a source of patronage in jobs - trading privileges and consolidating state power. Later, from the political changeover in 1975 until 1990, the country was ruled by two military regimes that shared power mainly with the civil bureaucracy and powerful vested economic interest groups such as industrialists, traders, businessmen and the rural rich (Monem 2006). This composition of the regimes promoted the interests of gaining directly or indirectly from the state resources.

2.5.2 Lack of Internal Party Democracy

Undemocratic practices within political parties contribute significantly to the arbitrary attitudes of the ruling party. Political parties as public institutions should be subject to accountability and should be governed by the laws of the land. The prevailing internal organisational structure and management system of political parties are not congenial to hold the party leaders accountable. The party chief enjoys absolute power in taking all important decisions. There is no scope for dissidence and perhaps most important, there is no transparency in financial transactions. These factors have allowed the party leaders to become authoritarian. The decision making structures and financial transactions of three major political parties of the country - BNP, AL and JP - bear striking similarities.

There is also a tendency toward dynastic rule in the two main parties. Jahan (2007) observes, "... the trend toward dynastic succession is rapidly spreading from top to mid to lower level of political leadership. Nominations to parliamentary seats are being increasingly given to people with dynastic connections: wives succeeding husbands, sons succeeding fathers in different constituencies. Women's reserved seats at various levels from Parliament to local bodies are being used for favouring candidates with familial connections."

Decision-making structure and internal accountability mechanisms

Despite having local level committees, political party decisions are invariably taken at the top, and imposed upon the rank and file. Advisory Body, Working Committee, Standing Committee and Council members are selected rather than elected. Grassroots level committees are absent or dysfunctional. The party constitution is largely ignored in the day-to-day activities of the party (Osman 2009). Meetings are irregular and when held, only endorse the decisions of the party leader. Internal party dynamics also prevent party workers from enjoying freedom of speech. Dissent with the party leader leads to loss of position or membership.

Theoretically, internal hierarchy creates a system of accountability within the party. However, there is no oversight and hence very limited hierarchical accountability, except to the party leader. The party leader is not accountable to anyone and is able to take unilateral decisions. Although in terms of structure it is seen that AL is more democratic than other parties but in practice it is less than democratic. BNP, despite proclaiming that financial irregularities of any kind will be dealt with by expelling the person from the party, in practice turn a blind eye to such matters.

Financial management and mobilisation of financial resources through patronage

Financial transactions of the parties are totally non-transparent and are often shady and ambiguous. Again, party leadership is not accountable to anyone for their financial transactions. There is no clarity regarding the source of party financing. Fund allocation also remains a mystery. This non-transparency encourages the arbitrary attitudes of the party leaders. Parties create beneficiary groups among the businessmen for mobilisation of funds who are again rewarded through grabbing state resources. This creates a vicious cycle.

It is customary for political parties everywhere in the world to receive donations. It should be on record and done within set rules, which are generally acceptable to the people. Political parties in Bangladesh receive donations of their party men and their supporters from both within the country and abroad. Contributions, kept secret, are usually made expecting a return in kind when the party goes into power. To manage business for these supporters or party loyalists or donors, the winning party needs to have complete control over the state machinery.

2.5.3 Legal Factors

The Constitution has awarded considerable power to the Prime Minister as the Chief Executive of the country. For instance, Article 55 stipulates, "There shall be a Cabinet in Bangladesh led by the Prime Minister and this Cabinet will be comprised of other ministers as designated by the Prime Minister from time to time". The parliamentary system of democracy wanes in the face of such huge discretionary power to the Chief Executive. The state in Bangladesh is also involved in a lot of sectors - from garbage disposal to selling energy. Such increased role of the state affects efficiency of services and also leads to the increase of state resources the party in power may avail of.

Article 70 of the Constitution that prevents the elected Members of Parliament from playing their due role freely in the Parliament encourages or facilitates the dictatorship of the party leader. Moreover, the provision of appointment of a 'partisan' Speaker and also the removal of Speaker by the majority members of the Parliament (Article 74) severely affects the independent and neutral functioning of Parliament. By virtue of these provisions Parliament appears to function in favour of the ruling party (for having three-fourth majority), which in effect, institutionalises the monopolistic attitude of the ruling party.

2.5.4 Social Factors

The societal characteristics that influence the attractiveness of clientelist and monopolistic political strategies include per capita income, the number of youth as a percentage of the population, and the number of rural population. Poor voters are more subject to clientelist promises (Dixit and Londregan 1996) and that young, rural voters pose different challenges to political competitors seeking to mobilise support. Bangladesh society is very much seeped in this phenomenon. The country's per capita income is low (US\$460), nearly about 45 percent of the population are young and more than 75 percent of the population live in rural areas.

Poverty

Almost half of the population of Bangladesh lives below the poverty line. Scarcity of resources contributes to the wish to monopolise all available resources. People live amidst resource scarcities. Lands are scarce, resources are scarce, and the population is huge. A large part of the population has been in a lifelong struggle merely for day-to-day survival. The uncertain conditions these people live under are manifested in competition and confrontation. Parties lure the poor into getting involved in the monopolisation process through lucrative promises and material and financial benefits. To survive in the competition the poor assist the parties in exchange of benefits - thus becoming an instrument of politics. As Bangladesh society is underdeveloped, those not caught in the poverty trap also collude with parties with the hope of gaining more resources and power - thus assisting the ruling party to establish its monopoly over state resources.

Feudalistic society

Feudalistic culture is one of the dominant factors leading to monopolisation of state resources by the winning party. Political culture is very much guided by feudalistic norms. "One group will always rule while others will always be ruled. Those who are ruled will never be the ruler" has become the norm ingrained in the society (Osman 2009). Balance of power between the ruler and the ruled is almost absent. It is also accepted by the society that the ruler while ruling will engage in corruption, and will commit wrongdoings, but will protect his/her supporters in one form or another. This feudalistic outlook encourages the rulers to engage in what is *de facto* expected of them.

Bipolarisation

Bangladesh society is moderately fractionalised as a result of which it encounters polarisation - two large politically opponent groups. A society characterised by two equally large and discordant groups is more polarized than a society characterised by many small and discordant groups (Keefer 2005). Bipolarisation in the society is another factor intensifying political competition and confrontation as the entire society is divided into two groups along these two major political parties. There is hardly any class which is not partisan. These groups being the clients assist the ruling party to become the patrons and also assist the opposition for mobilisation politics.

Social expectations

Massive social expectations of ministers are yet another factor responsible for monopolisation of state resources. The minister is considered to be highly powerful, someone who can do whatever s/he wishes. Consequently they are faced with all kinds of personal, official and social requests. Out of social accountability, the minister feels a sense of compulsion to attend to the requests.

2.6 Attempts to Bring Accountability: Developments of 2008

Politics denotes the process of making public decisions regarding control, allocation and distribution of public resources in all political systems, and a democratic political system requires that such public decisions be made in conformance with public interest. In Bangladesh, this had not been the case since the 'return to democracy' in 1991. Structural, behavioral and political factors together account for the deviant behavior of political parties and politicians. Traditional mechanisms used to ensure formal accountability have not seemed to work properly, not because of numerous inherent defects, but mostly because of the absence of an 'enabling environment' caused by different structural factors.

Following the political impasse over the Chief Adviser of the Caretaker Government at the end of 2006, a *State of Emergency* was declared in January 2007 amidst political deadlock and prolonged violence over electoral reforms. An army-supported Caretaker Government (CTG) headed by former Bangladesh Bank Governor Dr. Fakhruddin Ahmed was appointed on 12 January 2007, and ran the country for almost two years. The CTG during its extended tenure launched a broad-based governance reform programme aimed at strengthening/promoting intra-party accountability, democratisation of local government, professionalisation of the bureaucracy, and depoliticisation of the entire system as a whole.

The CTG demonstrated its earnest desire to rid the Bangladeshi political system of undemocratic elements by launching an ambitious anti-corruption drive and targeting several high-profile personalities who were blamed for the dysfunctional governance in certain aspects of the country's economy, service delivery, and law and order sectors. Reforms of public institutions and initiatives to bring accountability and transparency to the government were met with broad support, if not cautious optimism, from all quarters of society.

2.6.1. Bureaucratic Reforms

In Bangladesh where democracy is still nascent and politicians have not yet fully learnt to respect democratic norms, those holding the reins of power have spared no means to neutralise their rivals and in civil servants they have found an effective means towards that end. Use of administrative machinery to harass political rivals, deny them political rights and implicate them in fabricated cases has become endemic. This is the situation that was inherited by the CTG in 2007. The previous *State of Governance in Bangladesh* report has carefully recorded the chronology of events in the 'year of change'.

There is little doubt that administrative reform is a continuous process that should translate the changing needs of the citizens and the environment into policies and service delivery mechanisms. With the best of intentions, Bangladesh embarked on administrative reform initiatives shortly after its independence in 1971. Sadly, the recent history of public administration reforms has little more to show apart from a sequence of reform studies and proposals, with little evidence of real change. Furthermore, reform efforts undertaken to date have typically tried to provide technical solutions but neglected the socio-political dimensions of the problems. A recent Asian Development Bank (ADB) Report (2007) succinctly sums up the problems in the

following manner: (a) outside interference in administrative decision making; (b) politicisation of the civil service; (c) nepotism and favouritism; (d) a lack of delegated authority by mid-level and local level public officials; (e) a lack of public scrutiny of public administration; and (f) a paucity of citizen demand for improvements in public administration.

Given the pervasive politicisation of the bureaucracy, lack of political commitment from the party leadership and increasing dissatisfaction of citizens that civil servants do not play a pro-service-delivery role (IGS 2007a), the CTG in 2008 undertook certain measures to address the lack of significant progress in administrative governance which was exacerbated by the failure of successive political governments and the civil service itself, to pursue the reform agenda.

The CTG felt strongly that the rigid, hierarchical bureaucratic form of civil service which has predominated for the last few decades should be changed to a flexible, people and service oriented, market-responsive one. This should not be seen as simply a matter of reform or minor change in management style, but a change in the role of government in society as a whole, the relationship between government, civil service and citizenry. It expressed its wish to take immediate measures for improving efficiency, accountability, transparency and dynamism in all levels of civil service. It tried in earnest to restructure public institutions to restore and sustain their images and effectiveness by bringing about fundamental qualitative changes and also proposed necessary regulatory and legal reform measures. The proposed measures included, in addition to public sector policy and structural changes, a strengthening of civil society, private sector and other key governance participants.

Citizen's Charters were introduced into ministries and departments with a view to making civil servants truly responsive to the needs and demands of the citizens, and to change their mind-sets in a way that they serve citizens as citizens wish to be served rather than the way the civil servants want to serve them.

The Public Service Commission was restructured during May-July 2007 with a view to reducing political interference at the recruitment phase. The number of PSC members was reduced from 11 to eight, while six new members were appointed, including the Chairman. This initiative is expected to restore the credibility of the Commission. The restructured Commission is expected to give force to reforms aiming at increasing accountability, efficiency and transparency. The Public Service Commission Secretariat (Officers and Staff) Recruitment Rules 2008 was promulgated on 22 June 2008. This intends to address the problems of promotion and filling the vacant positions. The Rules however do not have any provision to enhance the quality of human resources.

The new team in PSC has so far taken a number of initiatives to bring reform both within the PSC and in the existing Bangladesh Civil Service (BCS) examination system. The BCS (Age, Qualification and Examination for Direct Recruitment) Rules 1982 has been amended. The examination policies and procedures have been amended and streamlined. And in a hitherto unprecedented step, the Commission has also decided to form expert viva boards comprising newspaper editors, bureaucrats, teachers of both public and private universities and heads of corporate organisations. The most notable feature of the reform efforts initiated by the PSC is that they have been initiated by the PSC, not the CTG. However, reform efforts undertaken so far by the PSC have been viewed as bureaucrat-friendly and cast doubt as to whether they will bring any real change to the existing bureaucratic structure.

CTG undertook an attempt to depoliticise bureaucracy although finally, it didn't see the light. It took an attempt to modify the Public Servants (Retirement) Act 1974 through abolishing its article 2 of section 9, which empowers the government to ask the officials to take retirement after the completion of 25 years of

service without showing any reason.³ Despite accomplishing various legal steps to abolish this provision, finally, CTG failed to formalise it. There is a real paradox with the situation regarding administrative reform in Bangladesh. Despite widespread recognition that administrative reform is a priority task for the nation, such reforms are not carried out in earnest. This Report recommends that the following measures may be adopted to address the cumulative problems of poor administration in Bangladesh arising from politicisation and inherent systemic weaknesses of the bureaucracy: (a) enactment of a comprehensive law to streamline service conditions, recruitment, promotion and transfer of civil servants, taking into consideration skill, capacity and merit, (b) enforcement of the Government Servants' Conduct Rules at all levels and ensuring accountability, and (c) rightsizing the civil service (through attrition) and providing adequate salary/benefits.

From the developments of 2008, it is obvious that administrative reform in Bangladesh must be carried out under the democratic conditions of competitive politics. Proposing reform measures is not enough. It is necessary to mobilise popular support for the proposed reform, so that the reform does not hurt electoral prospects of the party in power. Alternatively, consensus has to be built around the proposed reform amongst the polity. However, given the nature of Bangladesh politics, consensus building is not an easy task. Yet it can be argued that in order to carry out reform measures, a strong political will is a critical factor. In order to effectively carry out administrative reforms, the political government will need a well-articulated strategy. This change management strategy needs to build on a political process that will legitimise first a desired change among the stakeholders and then to build a supportive constituency - a political will to implement.

2.6.2 Local Government Reforms

The CTG was very much aware of the need to address the issue of strengthening local government. The CTG promulgated the Local Government Commission Ordinance, 2008 on 13 May 2008. According to the Ordinance, the Local Government Commission will be an advisory body comprising of a chairman and two members. The Commission was expected to, among others, make recommendations to the local government division on financial self-sufficiency, administrative efficiency, service and manpower structure of the Local Government Institutions (LGIs), on taxes, fees and tolls that LGIs can impose on the public, to monitor financial and administrative activities of the LGIs, and to ensure timely financial audit of LGIs. The Commission was also charged with recommending to the government on fiscal transfer and to periodically review laws and rules and circulars about local government and recommend necessary modifications to the government.

In an attempt to reduce the control of central government over LGIs, the independent LGC was given special authority. Provisions for consultation with the LGC by the Ministry of LGRD was made before issuing any instruction or before formulating rules regarding functions of LGIs, removal of a mayor or a councilor, for establishing new city corporations or municipalities, and for demarcating the jurisdictions of the existing ones. These would prevent central government from slapping numerous unwarranted restrictions on local government administrations by issuing frequent orders and directives and also limit the control of the former over the latter.

CTG also undertook an attempt to depoliticise local government by introducing an electoral reform to remove political identity of the local leaders. The reform required that the persons having political affiliation elected to a local body, will have to resign from the party posts after the election. Accordingly, after the city

3 Daily Jugantar, 'Sarkari Karmakartader aar baddhyo tamulok oboshor deya hobena (Government officials will no more be given force retirement)', 26 Nov, 2008.

corporation elections held in 2008 although the elected mayors resigned from their party posts but the political parties didn't accept their resignation that time and after the take over of power by the political government the provision has been repealed. The CTG also sought to withdraw the control of local MPs over UZPs by repealing the provision for seeking their advice (by UZP) before undertaking any activity.

Establishing an effective local government for better public service delivery, local development planning and accountability should be a top priority for any political government. In this regard, this Report makes the following recommendations with a view to preventing partisan capture of LGIs and for an optimally functioning local government: (a) there should be a need-based manpower structure under a formal service structure for local government, (b) there should be a properly functioning local government commission to monitor performance of LGIs and mediate between central and local government, (c) measures should be adopted to improve capacity of the local government to deliver services in an inclusive, participative, accountable and transparent manner, and (d) policy reforms should be introduced which address pro-poor issues and create favourable conditions for broad participation of different stakeholders. Finally, the political leadership must be able to realise the actual problems of the local government, and undertake reform measures to establish a strong, democratic and functional local government.

2.6.3 Political Party Reforms: Unwillingness All Around

Political parties in Bangladesh have not undergone any change for a long time, providing a serious constraint to the efficient working of government. Political parties have not addressed the deficiencies in their respective intra-party democracy and accountability. During the last fifteen years no reform took place in major political parties. Parties ran as per the directives of the top leaders. The only legal provision for political parties in their electoral role was the Representation of the People Order (RPO) 1972, although it did not contain any provision for registration of political parties. Representation of the People (Amendment) Ordinance, 2001 introduced a provision for the registration of political parties with the EC. However in the face of serious objection raised by the main parties against this provision, the government made the requirement optional. The RPO also initially empowered the EC to cancel the candidatures for gross violation of electoral laws and misconduct by candidates. But the move to this end fell flat in the face of strong opposition from political parties.

Internal reform of the parties had been given priority by the Fakhruddin-led CTG. It considered the 'irresponsible' behaviour of the dominant political forces as the root of political violence and adopted several measures to reform the 'political' sector, particularly the political parties to make them 'more' responsible and responsive to public needs and priorities. It is obvious that if democracy cannot be practiced within the parties themselves, then it remains doubtful that they will be able to dispense democratic principles if and when they are elected to government.

The CTG considered the lack of democratisation in different parties as the root of political violence and found the top leaders of the AL and BNP as the main obstacle to party reform. As a first step toward what can be called cleansing politics, the CTG sought to force the two leaders to go into political exile, failing which it interned them and tried to undertake reforms keeping them in jail. It used a carrot and stick policy to reform the parties. Those who agreed to work as protagonists of reform were spared of being sent to jail, while the party loyalists (anti-reformists) were charged with corruption and, in many cases, harassed. Some mid-ranking and senior leaders of the two main parties responded to this government policy, demanding that party leaders at different levels be chosen in a democratic manner and not by the whim of the party President. Some of them openly criticised their party chiefs for behaving in an autocratic manner. They alleged that the party leaders did not hold elections to different party forums mainly to retain their

leadership positions. An important proposal that the reformists in both BNP and AL advanced was to adopt measures to limit the discretionary power of the party chief.

The CTG amended the Representation of People Order (RPO), 1972 in accordance with suggestions made by the EC to provide measures to make the elections free, fair and credible. A series of regulations were proposed by the CTG to make registration of political parties with the EC mandatory - as reflected in the amended RPO - in a bid to ensure financial transparency and accountability of the major parties. In order to qualify for registration, a party was required, among others, to sever relations with their front organisations and dissolve overseas party units, to allow grassroots party units to have a say in the nomination of parliamentary candidates, to hold party elections on a regular basis and to allow women to fill one-third of party positions at different levels. The amended RPO also required candidates to provide information on a number of personal matters such as educational qualification, profession, criminal record (if any), sources of income, and loan received from any bank. A provision was also introduced in the RPO for holding re-election in a constituency if half of the voters cast 'no' votes, implying that no candidate is eligible to get elected. The amended RPO also empowered the BEC to cancel the candidature of any candidate at any time, even after s/he is elected, for certain irregularities. It disqualified those resigning and/or retiring from the service of the republic or of any statutory authority or of the defence service unless a period of three years has elapsed since the date of their resignation or retirement. In the event of removal or dismissal or compulsory retirement, a civil or military bureaucrat would have to wait for five years since the termination of job to contest the polls. The amended law also disqualified loan and utility bill defaulters from contesting the elections. The proposed reforms tried to ensure that the internal organisation of parties conform to democratic norms and practices.

Many of these reforms were long overdue but could not be introduced because of the resistance of the mainstream parties. The main parties remained seriously opposed to many reforms proposed in the amended RPO. But the Fakhruddin-led CTG proposed reforms brought the political parties on the verge of initiating major changes in their party constitutions in order to make themselves more 'democratic'. The parties contesting the ninth parliamentary elections held on 29 December 2008 generally followed the rules made by the BEC in accordance with the provisions of the amended RPO. The new provisions were made to make the parties rule-bound. Although it is unlikely that there will be any change in the top leadership of any of the major parties as the reform efforts paradoxically made the two leaders stronger than before, neither is it expected that parties will be able to remain unreformed for a long time. The exigencies of circumstance will encourage the parties to reform themselves in the future.

2.7 Conclusion: Towards Responsible Party Politics in Bangladesh

The concentration of political power in the two major parties has helped to form governments with large stable majorities, but this has also resulted in a system in which winners in elections take all and the losers have difficulty in reconciling themselves to their loss. The result is a dysfunctional Parliament and highly confrontational politics. There is little democratic practice within the major parties, which are run by authoritarian control from the top; this is a reflection of the personalised and patron-client relationships pervading the Bangladeshi society at large. The above structure of governance provides an ideal breeding ground for corruption through the exercise of large discretionary powers with little accountability. Spoils and privileges are parcelled out to different clientele groups as an essential tool of political management. On top of this, a large part of the bureaucracy is seen to be corrupt and incompetent, which further feeds this vicious cycle of poor governance. Economic liberalisation has no doubt contributed to reducing the scope of rent-seeking, such as from the import licensing system, but this has been increasingly replaced by other

means of patronage politics. The overall evidence suggests that if there is a demand in the political system for illegal incomes and rent-seeking, economic reforms alone will not be the remedy.

The Report identifies three main findings about the causes of poor political governance in Bangladesh: (a) the design of the state and its institutions, (b) the clientelist nature of politics fuelled by greed and (c) the nature of confrontational politics. IGS has consistently argued that these are the sources of Bangladesh's problems and the challenges to overcome.

Confrontational politics leading to unhealthy political competition drives the ruling party towards monopolisation of state resources on the one hand, and on the other, it leads the opposition towards mobilisation politics. The ruling party seeks to gain more power and more resources, cutting the opposition out completely. All key state institutions are brought under their sway for regime maintenance and to create a beneficiary group through the distribution of favour (from state resources). Bureaucracy becomes the first victim of such political control. Politicisation breaks its chain of command, hierarchy and weakens the formal accountability mechanisms. Local government institutions are similarly monopolised through intimidation, influence over the local election, partisan control of funds etc. The Report has identified a number of reasons for such monopoly of which lack of internal party democracy appears to be dominant. Political parties are highly autocratic in decision making, in managing financial resources and consequently, no accountability mechanism works. These arbitrary, autocratic attitudes of the party leaders are reflected while ruling the country.

The Report has noted earlier that several factors - structural, behavioural and political - account for the deviant behaviour of political parties and politicians. In exploring the best way to overcome the dysfunctional consequences of the 'winner takes all' system that has evolved in Bangladesh, the Report sees the urgent need for measures to hold those exercising political power accountable. As described in detail in this Chapter and in other Chapters, traditional mechanisms of ensuring accountability do not seem to work properly due to the absence of an 'enabling environment'. The Report views the following as essential elements required to break the vicious cycle and bring about qualitative changes in the electoral system: balance in Parliament-Executive relations, strengthening/promoting intra-party accountability, democratisation of local government and making local elections non-partisan, professionalisation of the bureaucracy, and depoliticisation. Deregulation of state functions would make the state 'pie' smaller which in turn would reduce competition and at the same time, improve efficiency of services. Efficiency can also be improved through downsizing the government and depoliticisation of the bureaucracy by making appointments, promotions and transfers in a uniform and transparent manner under definite rules and regulations. And finally, a stronger media and civil society are needed to play both a vigilant watchdog role and also to raise awareness amongst masses and create public opinion against confrontational politics and the high costs of unhealthy political competition.

Since the return to democracy in 1991, democratic practices in Bangladesh have been largely limited to the holding of regular elections. Despite regular elections, a largely independent media and civil society, democracy in Bangladesh is still shallow. A centralised, winner-takes-all political system has developed. Politics has become increasingly violent, polarised and punctuated by protests and boycotts of Parliament. Elections are increasingly influenced by political control, vote buying, violence and intimidation. The people's disillusionment with this system of 'Two Party' politics is growing daily. The Fakhruddin-led CTG focused on reforms of the key institutions of accountability, but also restricted political freedoms. Reforms have been successful in some areas, but there remain key areas where governance is weak, with serious implications for poverty reduction in this fragile state. Future reform will depend on the political will of the elected government to respect the independence of key democratic institutions. The main challenge, for

government and civil society, and the core issue for state capability-accountability-responsiveness, is the need to create a political system that delivers development for all people.

Developments of recent months clearly demonstrate that reforms need to be achieved through a political process, not a bureaucratic one. Furthermore, reforms need to focus on systems as well as individuals, and need to be sustained through continuous political mobilisation of support. Although civil society and media will advocate and mobilise support for the reforms, the political parties will have to take leadership of the reform agenda. Political parties need to be responsive to the demands for political reforms, develop the understanding about the necessity of reforms, and need to make a commitment to carry the reform agenda forward. Reforms under a political government should focus on bringing about sustainable systemic changes through a process in which players both within and outside the government play constructive and complementary roles. The agenda of political reforms should therefore be taken up by political parties, civil society, and media with the ultimate goal of ameliorating the dysfunctional political system.

Parliamentary Accountability

3.1 Introduction

The Parliament is the supreme law-making and oversight institution in Bangladesh. The country's experience and experiment with the institution of Parliament dates back to the 19th century when the Legislative Council of Bengal was established in 1861. Later, the Government of India Act, 1935 declared the beginning of a representative government in Bengal (Ahmed 2001). Despite an early introduction, the practice of this particular form of government has had to face a number of obstacles during both the British and the Pakistan periods (Ahmed 2001; Chowdhury 2000).

After achieving independence in 1971, Bangladesh opted for a parliamentary democracy. The framers of the 1972 Constitution followed the Indian parliamentary system (Jahan 1987) and attempted to create a balance between the two distinctive roles of the Parliament: **consensus-building** and **policy-making**. The expectations of the Constitution framers were threefold. First, Parliament would be the supreme body to discuss, analyse and if need be, modify issues of national concern; second, Parliament would make laws to meet the demand of the day; and third, Parliament would be the place where political commitment for the greater good would be established. However, in contemporary Bangladesh, despite its constitutional position, the Parliament has become merely the 'law approving body'. The initial attempt of the framers of the 1972 Constitution to provide adequate checks on the Executive through the legislative institution was marred due to the political turmoil, amendments to the Constitution, and changes in political dimension and actors. Consequently, the Parliament has turned into an institution which has failed to hold the Executive accountable and play the 'consensus-building' role.

Since early 1991, some reforms have been brought into the formal arrangements of the Parliament in general and into the committee system in particular. These include broadening the jurisdictions of standing committees to deal with legislation and oversight simultaneously, replacing ministers by backbenchers as committee chairs, establishing an independent parliamentary secretariat and an Institute of Parliamentary Studies (IPS) for research support, introducing the Prime Minister's Question Hour, and broadcasting the proceedings of the Parliament on the national TV and radio.

However, despite these efforts to make the Parliament an effective institution of accountability, due to long boycotts of the Parliament by the opposition, the refusal of the ruling party to give enough opportunity to the opposition to criticise the government and the inadequacies of the parliamentary committees transformed the Parliament into a rubber stamp institution (TIB 2007). Thus, for a period of 15 years and through the reign of three elected governments, the nation witnessed an all-powerful Prime Minister, an unaccountable Executive, and a mostly dysfunctional Parliament.

Against this backdrop, the prime objective of this Chapter is to make a critical review of the performance of contemporary Parliaments in Bangladesh in performing their key functions in general and the role of parliamentary sessions and committees in holding the government accountable in particular. Section 3.2 briefly discusses public accountability of Parliament. Section 3.3 examines the formal rules of parliamentary accountability. Section 3.4 critically analyses the outcomes of the different constitutional provisions and rules on the effectiveness of parliamentary accountability. Section 3.5 looks at the failure of formal rules in ensuring effective parliamentary accountability and section 3.6 explores new rules of the game. The Chapter concludes in section 3.7. Through an analysis of the formal rules and identification of the informal norms, the Chapter makes an effort to explore how the combination of these two has generated an entirely new rule of the game which governs the activities of the Members of Parliament (MPs) both in the plenary session and standing committees of the Parliament. This new rule of the game, in fact, determines the effectiveness of the institution in holding the Executive accountable. The Chapter draws largely on the available secondary literature on parliament and governance. However, qualitative data derived from open-ended interviews with MPs of the Seventh and Eighth Parliament has been used to supplement secondary reviews and materials.

3.2 Public Accountability and Parliament

Public accountability generally refers to the obligation to account for performance and to accept oversight and direction on the part of the Executive, which in turn, ensures the monitoring and controlling of government conduct and preventing Executive abuses (Aucoin and Heintzman 2000). In Westminster system, the chain of ministerial responsibility through the departmental hierarchy to ministers, Parliament and ultimately the voters remains the central avenue of accountability (Mulgan 2008). This is how government is accountable to the Parliament between elections and to the people at elections (Aldons 2001). In fact, accountability is seen as a two-way traffic suggesting that in addition to bureaucracies being held accountable by the elected officials, those same elected officials also should be held accountable for their direction of the bureaucracy (Wood and Waltermann 1994; Mulgan 2000; Pyper 1996).

The whole notion of parliamentary accountability revolves around the concept of checks on the Executive. Various means are used to this end, including the authorisation of the budget, the scrutiny of government expenditure and the questioning of the government in the Parliament to account for its actions. One channel of ensuring such parliamentary accountability is the mechanism of ministerial responsibility where ministers answer questions in the plenary sessions of the Parliament. Another channel is the functioning of the parliamentary committees which aim to undertake detailed scrutiny of government financial estimates and reports and direct questioning of government officials (Nethercote 1982; Reid and Forrest 1989; Uhr 1998).

3.3 Formal Rules of Parliamentary Accountability

3.3.1 Constitutional Provisions

The current parliamentary form of government of Bangladesh is entrenched in the 1972 Constitution. Provisions were incorporated in the Constitution with the aim of making the institution completely sovereign.¹ However, the 1972 Constitution provided an option, which reflected the mistrust existing in the political arena (Khan 1997). Article 70 stipulated that a Member of the Parliament would vacate his seat if he voted against the party that nominated him (GoB 1972; Chowdhury 2000; Khan 1997; Jahan 1987).

It is ironic that the very political party which attempted to establish the Parliament as the supreme law making body in the aftermath of the War of Independence, later took steps to curb its authority with the introduction and passage of the 4th amendment of the Constitution Bill on January 25, 1975 which overnight transformed the parliamentary system into a one party monolith (Khan 2006). The Parliament became quite ineffective and turned into an acquiescent tool in the hand of the President. All Executive, Legislative and Judicial powers were given to the President and he himself virtually *became* the state. However, while poised on the brink of this 'New Beginning', the government was overthrown by a military coup. From then on until 1990, Bangladesh went through an autocratic era in the form of a semi-parliamentary package. Certain amendments were made in the Constitution which had considerable impact on Parliament's effectiveness:

- Some of the discretionary powers granted to the President through the 4th amendment were withdrawn by the 5th amendment and the one-party system was scrapped.
- Supremacy of the Executive over the Legislative was ensured through a number of articles.²
- The Parliament was exploited as an institution to legitimise the activities of the military governments. The 5th and 7th amendments were made to ratify all actions taken during the period when the provisions under the Constitution were suspended.
- During this period, the Parliament had hand-picked 'lame and tame' legislators and the institution became a 'rubber stamp' one (Chowdhury 2000; Khan 2006).

1 Some important provisions made for the Parliament in 1972 Constitution are:

- According to Article 55 (3), the cabinet was held collectively responsible to the Parliament
 - Article 65 specified that all legislative power should be vested with the Parliament known as 'Jatiya Sangsad'
 - Article 72 specified that 'a period exceeding sixty days shall not intervene between the end of one session and the first sitting of Parliament in the next session'
 - Article 80 and 82 of the Constitution laid the basic provisions to be followed in case of passing and enacting bills
 - Article 76(1) created the provision for the Parliament to have parliamentary committees
 - Article 77 stipulated that Parliament might have an office of ombudsman to ensure accountability of the Executive
 - Article 79 provided for the establishment of a Parliamentary secretariat for the efficient working of the Parliament
 - Article 93 specified, "At any time when the Parliament is not in session, the President might make and promulgate ordinances which would have 'the like force of law as an Act of Parliament'
- 2 Article 92A curtailed legislature's authority over money matters and the President was allowed to spend public money from consolidated fund
- Article 145A curtailed Parliament's authority over foreign affairs as all international treaties were submitted to the President and he had the authority not to lay any treaty if he thought that against national interest
 - The provision of cabinet's responsibility to Parliament was withdrawn and in reality, the cabinet's accountability lies to the President.

The restoration of democracy in 1991 brought back the parliamentary form of government to Bangladesh. The 12th amendment reintroduced the concept of a sovereign Parliament. It also brought about the following changes in the Constitution:

- Reinstalling the rule making power of the Parliament
- Reducing time gap between two sessions of the Parliament
- Forming standing committees
- Establishing a Parliamentary Secretariat (Khan and Husain 1996; Khan 2006; Ahmed 2001)

However, several provisions in the Constitution continued to affect the optimum functioning of the Parliament. These are:

- The continuation of Article 70
- The continuation of Article 76(1) in its modified form (TIB 2006)³
- Continuation of President's ordinance to sidestep the Parliament (Khan 2006; Hasanuzzaman 1998)
- Inadequate role of Select Committee in case of scrutinizing bills (Ahmed 2001)

When the Constitution was framed in 1972, the politicians were willing to establish an effective parliamentary system, which would ensure both the collective responsibility of the cabinet and individual responsibility of the ministers. In line with this vision, the Rules of Procedures provided a detailed guideline to make the accountability mechanisms effective. However, the political changes during the period of 1975-1990 led to numerous amendments of the Constitution in such a way that the Parliament failed to fulfil this vision. After the 12th amendment, although the notion of parliamentary democracy was re-introduced, the presence of aforementioned controversial articles in the Constitution allowed doubt to remain whether the Parliament in practice will be effective.

3.3.2 Plenary and Parliamentary Committees in Bangladesh

Plenary

In the ideal Westminster parliamentary system, the Parliament oversees and acts as an effective check on the Executive by questioning ministers, exposing matters which affect public perception of the government, and questioning and amending bills sponsored by the government. MPs and their staff examine proposed bills, formulate opinions based on their policy preferences, and express these views through floor debates, committee discussions, motions and voting. They make use of oversight mechanisms such as *Prime Minister's Question Time* to hold ministers and ministries accountable. Under this system, the ruling party also communicates and explains its actions both directly and indirectly to the Parliament.

Formally, there are many opportunities for MPs in Bangladesh to question ministers or the government as a whole during the plenary sessions. MPs may direct questions to ministers under the procedure laid out in Rules 41-58 of the Parliament Rules of Procedure, or under Rule 59 for short notice questions (questions raised with notice shorter than 15 days). MPs may request discussions, either for half-hour discussion (Rule 60), adjournment on a matter of public importance (Rules 61-7), or discussion on matters of urgent public importance for short duration (Rules 68-70). An MP may make statements on matters of public importance, which then force the concerned ministers to respond and may result in the matter being referred to the concerned Standing Committee (Rule 71). As the ultimate sign of disapproval, MPs may also raise motions of no-confidence in ministers (Rule 159).

3 According to 1972's constitution, this article stated, "At its First meeting in each session, Parliament shall appoint from among its members the following standing committees..." the 4th amendment deleted the first part, i.e., "At its First meeting in each session". When the 12th amendment was passed it remained in the same format thus made the Parliament to wait for a long period before having any standing committee.

MPs also have many opportunities to scrutinise and amend bills at every stage in the process. When the bill is first moved, MPs can participate in discussion over the principles of the bill under Rule 78. If the bill is referred to a Standing Committee or Select Committee under Rule 77, then MPs may discuss the bills in those committees and document their opinions in the reports of those committees (Rule 209). After the report of the Committee is submitted, MPs once again have an opportunity to discuss the substance of the report (Rule 81). Once a bill is taken under consideration, MPs may move amendments (Rules 82-7). When a motion that a bill be passed is under consideration, MPs may make statements either supporting or rejecting the bill (rule 91). Finally, as a last resort, MPs may vote against the bill (Rule 90). Aside from bills, MPs may also discuss the budget (Rule 115). MPs also have many opportunities to state their own opinions or advance their own policy proposals. They may submit private members' bills under Rules 72-4. They may also move resolutions, declaring an opinion or recommendation, under Rules 130-145.

Parliamentary committees

Due to the ever widening scope of jurisdictions and complex nature of activities, it becomes difficult to ensure the accountability of the government only through plenary sessions. Parliamentary standing committees are thus considered one of the most significant internal organisational features of modern parliaments (Mattson and Strøm 1995). Like other legislative areas, a legislative committee is designed to promote majority rule and at the same time protect minority rights. In this way, committees are microcosms of the larger assembly (Ibid). Most committees are also vehicles for specialisation that essentially meet the professionalism and expertise critical for the legislative phase of policy making process involving complex policy issues. Detailed scrutiny of government activities only occurs at committee level. Public officials attend hearings and answer questions about their performances and policy intentions in front of committees. Committees also ensure government accountability through inquires, investigation and financial reviews. All committee devices are ultimately geared towards securing government accountability.

Article 76 of the Bangladesh Constitution has created a provision for the Parliament to have a number of standing committees. According to this Article, the Parliament has to set up a Public Accounts Committee (PAC), a Privilege Committee and also as many standing committees as the Parliament deems necessary. Clause 2 of the same article stipulates the functions and limits of authority of the other committees.⁴

The Rule of Procedure of the Parliament (rules 187- 266) further specifies the nature, functions and role of the committees. In general, the committees can be categorised in three groups: *Standing committees*, i.e. committees usually appointed by the House/the Speaker for the full term of the Parliament; *Select Committees on Bill*, i.e. committees established to examine bills referred to it and report to the Parliament, although it ceases to exist as soon as it submits a report to the House; *Special Committees*, i.e. committees to meet the demand of emergency situations. The standing committees can further be divided into various types. For instance, in the Eighth Parliament, there were 48 standing committees.⁵ The *ad hoc* committees

4 As per Clause 2, these committees are authorized to-

- to examine draft bills and other legislative proposals
- to propose measures of enforcing of laws and to review the enforcement
- to investigate any matter of public importance as referred to it by the Parliament
- to furnish through an authorized representative, relevant information and to answer questions, orally or in writing
- to enforce the attendance of witnesses and to compel the production of documents (GoB 2000)

5 Of them, 37 were of different ministries, the other 11 standing committees were- 1 Business Advisory Committee, 1 House Committee, 1 Committee on Rules of Procedure, 1 Library Committee, 1 Public Accounts Committee, 1 Public Undertakings Committee, 1 Committee on Estimates, 1 Petition Committee, 1 Committee on Government Assurances, 1 Committee on Private Members' Bills and Resolutions and 1 Committee on Privileges.

are basically formed according to the necessity of the Parliament (www.parliamentofbangladesh.org; Ahmed 2001; Ahmed 2006).

Most standing committees have 10 members, however, the Business Advisory Committee (BAC) and the Public Accounts Committee (PAC) have 15 each and the Rules Committee and the House Committee have 12 members each. The Library committee has eight members in total.

Appointment of committee members

The Rules of Procedure of the Parliament do not specify the appointment procedure of the committee members. Conventionally, the members of the committee are appointed by the Parliament on a motion moved either by the Leader of the House himself/herself or by any other parliamentary leader on his/her behalf. Generally, the members of the committees are selected by the Party Heads and a minister works as an ex-officio member of a ministerial committee. Even if the minister is not a member of the Parliament, s/he can still attend the meetings and participate in the proceedings but does not have the right to vote.

Chair and staff of committees

Members in each committee are selected based on proportional representation of the parties in the House. The same convention however does not apply to distribution of committee chair positions, who are *nominated* by the Parliament. Since the Seventh Parliament, a minister cannot be the chair of any parliamentary committee. In all previous parliaments, all the committee chair positions were held by the ruling party/alliance (Ahmed 2001; TIB 2006). In the Ninth Parliament, chairs of two standing committees on Ministries (Ministry of Environment and Fisheries) have been given to the opposition. Even though the theory of proportional representation has not been followed in this regard, this is an improvement over the system of the past. Unlike other democracies (including India and Sri Lanka), the powerful PAC in Bangladesh is still headed by a treasury bench MP. The Secretary of the Parliament is the ex-officio secretary of all committees and sub-committees authorise any officer of the secretariat to act in his/her (the Secretary's) stead.

Committee meetings

The meetings of the committee are held in private in Bangladesh. The deliberation of the meeting is, as per the rules, confined exclusively to committee members and officers of the Parliament Secretariat. However, in the meetings of ministerial and financial committees, officials including the secretary of concerned ministries and relevant public bodies remain present to clarify, explain and account for specific issues. Evidence, oral or written reports, and proceedings of the committees remain confidential until it is placed to the House. The committee enjoys the authority to summon government officials for hearings or other purposes. Ministers also can be requested to attend and usually they acquiesce with such requests. However, if someone fails to comply with the directives/requests without prior notice and reasonable explanation, s/he can be charged with contempt of Parliament and hence be liable for prosecution. But government may decline to produce a document on the ground that its disclosure would be prejudicial to the interest or security of the state. The quorum to hold the sitting of a committee is as near as one-third of the total members of the committee. The final decision regarding any issue in the committee is determined by simple majority of votes of the members present and voting.

The Parliamentary Select Committee has restricted power regarding the scrutiny of a bill. The committee members can make amendments to a bill but its acceptance or rejection is solely contingent upon the House where the ruling party is the majority (IPU 1986). In a committee, the bills are decided by majority votes. If any member does not agree with the decision of the majority members of the committee s/he may record a note of dissent that is included in a single minute. Before 1996, bills were seldom sent to the committee after its first reading in the House. "The opposition members routinely demanded the referral of bills to either select or standing committees, although without much success" (Ahmed 2003). Since the Seventh Parliament, most of the bills were sent to the committee for consideration but no major changes were made.

In the absence of any precise provisions in the rules, a committee is not obliged to report to the House on matters other than those referred to it by the House. According to the Rules of Procedure, if the House does not set any specific time limit for the presentation of the report by the committee, the committee is supposed to present the same within one month of which reference to the committee was made. However, the House can extend the time period for the submission of the report by bringing a motion. Hence, submission of reports to the House has, in practice, become irregular and largely optional. There remains virtually no provisions for deliberation over the reports after its submission to the House.

The features of Parliamentary committee system in Bangladesh are prominently modelled on the British Westminster system. They are permanent, decide on majority approach, meet in private, and ask for papers, persons and documents with the exception that the incumbent government may decline to provide documents where state security may be threatened. Furthermore they consider legislative bills referred by the House and do not have any role in budget allocation and demands for grants. The institutional arrangements of the committee system in Bangladesh places the government (the majority party) in a vantage position to be the ultimate arbiter on any issue. Thus, it can be surmised that institutionally Bangladesh has a weak committee system with marginal scope in ensuring bureaucratic accountability.

3.4 The Outcome

The consequences of all these rules discussed above are related to the issue of overall parliamentary accountability. This section critically analyses the outcomes of the different constitutional provisions and rules on the effectiveness of parliamentary accountability.

3.4.1 Executive Dominance over the Legislature in Plenary

The overall impact of all the aforesaid provisions is the continuity of Executive dominance which started in 1975 through the 4th amendment of the Constitution. The Rules of Business has allowed the Executive to have almost complete control over the law making procedure and policy decisions (GoB 1996).⁶ At the initial stage, laws are prepared, processed and drafted by the Executive branch, legislative initiatives are taken by the cabinet and arrangements for a bill-to-be-drafted are undertaken by the drafting section of the Ministry of Law, Justice and Parliamentary Affairs. The draft bill is then placed before the Parliament (Murphy 2006). The draft bill is supposed to be scrutinised by the Select Committee and face debate and possible amendments at the Plenary, except for the Fifth Parliament (with a relatively proactive opposition) and Seventh Parliament (with a relatively active Select Committee), bills are passed immediately. Eventually, due to Article 70, the members of the ruling party cannot vote against the bill.

6 Rule 16 (i) and 4(iv)

Because of the process mentioned above, the Executive often tends to control the legislative agenda. We have seen a reflection of this during the tenure of the last three elected governments, whence the Prime Minister, the cabinet and the bureaucracy initiated a large number of bills (Murphy 2006; Khan 2006; Hasanuzzaman 1998). Up to the Fifth Parliament, the bills placed before the Parliament were not referred to the standing committee (with the Second Parliament being an exception which sent half of the bills to committees). Even though the situation changed in the Seventh Parliament (Ahmed 2001), it failed to create substantial impact. Besides, according to Article 76 (2) (a), only draft bills should be referred to the standing committee. There were opinions among the opposition MPs during the tenure of the Fifth Parliament that "...the practice of introducing bills in the legislature before the examination of committees could not be accepted as a proper method" (Hasanuzzaman 1998). However, it is important to mention that examining bills by the committee before introducing it at the Plenary is contrary to the Commonwealth Parliamentary norms.

The insignificant number of passing of Private Members Bill is yet another indication of Executive dominance. In the last three Parliaments, only two Private Members Bills were accepted (Bangladesh Jatiya Sangsad 2006). More interestingly, during the tenure of the last Parliament, the Government decided to impose a restriction on the ruling BNP lawmakers, asking them to take permission from the Leader of the House or the party's parliamentary wing before placing a Private Member's Bill in the Parliament. These practices further strengthened Executive dominance.

Moreover, both the Fifth and Seventh Parliaments have seen a number of bills to be passed as President's Ordinance, which has allowed little scope for the parliamentarians to play a role. For instance, out of the first 94 bills accepted by the Fifth Parliament, only four were placed in the bill format and the rest were first promulgated as President's Ordinance and later simply raised in the Parliament for necessary approval (Hasanuzzaman 1998).

Box 3.1 Misuse of Article 93 (1) to bypass the Parliament

According to Article 93 (1), "At any time when Parliament stands dissolved or is not in session, if the President is satisfied that circumstances exist which render immediate action necessary, he may make and promulgate such Ordinances as the circumstances appear to him to require, and any Ordinance so made shall, as from its promulgation, have the like force of law as an Act of Parliament". This allows the President to have ordinance making power and although there is no doubt this is essential for the effective functioning of the government, this provision has often been abused by the party in power to bypass the Parliament. In the Fifth Parliament 40 percent of the laws were passed in this manner. The problem with these ordinances arise from the fact that once they are promulgated, the government does not deem it necessary to discuss the content of the laws and they are simply placed before the Parliament for necessary validation. In case of these bills, the tendency to rush them in a hurry, short-circuiting the rules, have also been noticed. In the Seventh Parliament 16 bills were placed in this manner and all these bills were hastily passed. Due to the anti-defection law (Article 70), the government parliamentarians have no option but to support the bills. Very often, when ordinance-turned-into-bills are placed before the Parliament; they are not put under scrutiny of the parliamentary standing committees. One example was the passing of the Anti-Terrorist Bill by the Fifth Parliament. This Bill was passed while under the scrutiny and consideration of a special parliamentary committee. Although Article 76 (2) (a) states that it is the duty of the standing committee to examine the draft bills and other legislative proposals, in case of these bills, the constitutional provisions are not properly followed.

Source: Khan 2006; Hasanuzzaman 1998

Executive dominance is closely related to the power and position of the Chief Executive, i.e., the Prime Minister. In reality, the transfer from presidential to parliamentary form of government has to a large extent merely meant the transfer of the absolute authority from the President to the Prime Minister. The 12th amendment of the Constitution, despite restoring parliamentary democracy, has been severely criticised as it allowed “incomplete adjustment from a presidential to a parliamentary system” (WB 1996). The position of the Prime Minister since restoration of democracy has become extremely powerful. One scholar has noted, “concentration of enormous power in the hands of the Prime Minister has made it difficult for the legislature to keep vigil on the government” (Khan 2006). Parliamentary accountability mechanisms have also failed to work properly. It has been further noted that major policy decisions are taken not only outside of the Parliament but also that these are rarely discussed in the Parliament.

An effective Parliament is a necessary precondition for checking Executive dominance, maintaining regime continuation, building up the consensus among political parties and so on. Executive dominance has persisted in Bangladesh through both formal and informal means - resulting in unproductive parliaments with detrimental consequences for the country. First, it resulted in a 'parliamentary autocracy' where ruling parties did not take into account the contribution of the opposition. Second, lack of control on Executive function turned the role of the legislators undemocratic. Third, as policy decisions were taken by the cabinet and only passed as law by the Parliament, the politicians failed to interpret the law properly. Fourth, this Executive dominance culminated in deep political tension where the opposition clearly displayed their inertia in joining parliamentary sessions, thus giving rise to confrontational politics. Finally, an ineffective Parliament has allowed the donors to exert undue influence on the policy decisions of the government.

3.4.2 Collective and Individual Responsibility: Constitutional and other Provision and the Real Picture

Article 55 (3) of the Constitution states that, “the Cabinet shall be collectively responsible to the Parliament” (GoB 2000). Besides, the Rules of Procedures have also prescribed the measure to ensure individual responsibility of ministers through questions, call-attention motions, half-hour discussions, adjourned motions, the formation of standing committees etc. (www.parliamentofbangladesh.org).

This collective responsibility can best be defined as, “...its (the cabinet's) duty to submit its policy to and defend its policy before the House...and to resign if defeated on issue of confidence” (Marshall and Modie 1971). In Bangladesh, because of Executive dominance over the parliamentary process, the government has hardly had to defend its policies in front of a functioning Parliament. However, there are glimmers of hope in case of ensuring accountability of the Cabinet. It has been observed that it is possible to build up an effective coalition between the government backbenchers and the opposition that can largely influence the government's policy decisions. The Fifth Parliament is an example of such a coalition.

Box 3.2 Coalition between ruling party back-benchers and opposition

The Fifth Parliament is a brilliant example of backbencher-opposition coalition. During this period, the Parliament saw a highly active opposition which even raised a motion of no confidence against the government, the only one in the history of Bangladesh. Quite curiously, this opposition succeeded in building a partnership with the government backbenchers and was able to exert considerable influence on policy decisions. During this period, the country saw a parliament where the government and the opposition jointly elected a person as Deputy Speaker. Besides, it was the opposition's enthusiasm that actually forced the government to embrace the parliamentary form of government.

The mechanisms to ensure individual accountability of the ministers are also not beyond controversy. In general the MPs, by asking questions, seek information from the minister on various issues. However, these questions often overlook critical dimensions of the existing administrative system and are merely 'informative and explanatory' (Aminuzzaman 1996). Moreover, the MPs seldom ask any questions related to "critical issues and problems that affect public life" (Rahman 2007).

Motions are a significant instrument of accountability which draw attention to administrative failures or policy lapses but in practice, discussion on motions (e.g. call attention motion, short discussion) has remained insignificant and marginal. In fact, no adjournment motions were accepted and no half-hour discussions took place in the Seventh and Eighth Parliaments, which "indicates a real failure in the methods" (Rahman 2007). However, the ineffectiveness of motions is mainly due to problems related to the Rules of Procedure. According to existing rules, motions require the Speaker's consent before being placed to the House for discussion (Bangladesh Jatiya Sangsad 2001). Besides, an MP cannot compel a minister to answer a question. As one scholar noted, "The ultimate fate of a question depends greatly on both the Speaker's satisfaction and the minister's consent to address it" (Rahman 2007).

3.4.3 Functioning of Committee System and its Implications in Holding the Government to Account

An individual minister's accountability can be analysed from various points of views. As Weller stated, "Ministers play many roles simultaneously as they deal with Parliament, cabinet and their department" (Weller 1996). Therefore, an individual minister is accountable lies to the Parliament, to the cabinet and to the department s/he heads.⁷ However, it has been noticed that in almost every instance, ministers are not being held responsible or accountable for their actions and activities. In last 16 years experience of parliamentary democracy, even though a number of ministers have resigned, they did so only when the Prime Minister asked them to do so. The standing committee is supposed to hold an individual minister accountable, although ultimately, a minister's accountability lies to the Prime Minister.

However, quite interestingly, the nature of regime has not had any impact on the role played by the parliamentary committees. Existing literature shows that the effectiveness of parliamentary committees depends on the following:

- frequency of committee meetings held
- regularity of members' attendance
- number and quality of reports prepared
- the scope for the members in case of agenda setting
- the fate of the recommendations made by the committee (Ahmed 2001)

Based on these indicators, the following table attempts to compare the effectiveness of the Public Accounts Committee (PAC) during the tenure of the Seventh and Eighth Parliaments.

7 A minister is held responsible to the Parliament through the standing committee. Article 76 (2) (c) allows a standing committee to investigate or inquire into the activities or administration of a ministry if referred to it by the Parliament (GoB 2000). Rule 248 of Rules of Procedure empower committees to undertake inquiries suo moto. The Seventh Parliament played a significant role in this regard. However, the Eight Parliament performance in case of holding an individual ministry accountable is quite awful. An individual minister can also be held responsible by questions or short notice questions.

Table 3.1 Activities of Public Accounts Committees in Seventh and Eighth Parliaments

Indicators	Seventh Parliament	Eighth Parliament
Beginning of Parliamentary Session	14th July 1996	28th October 2001
Date of Constitution of Standing Committees	12th May 1998	17th March 2004
Number of Meetings Held	103	46
Average Meetings Per Year	22	9
Attendance of Members (Average)	7.2	8.7
Number of Reports Submitted	5	1

Source: Ahmed 2006; TIB 2006

The above table highlights a number of issues. First, in both cases, it took two to three years to set up the parliamentary standing committees. Both Parliaments also took advantage of the 4th amendment of the Constitution. The 1972 Constitution clearly stated that the standing committees were to be formed within the Parliament's first meeting in each session. However, the 4th amendment omitted the part "at its first meeting in each session". Quite interestingly, the 12th amendment which restored parliamentary democracy did not reinstate this certain phrase. The consequence has been the late formation of committees. Second, in case of holding meetings, the Eighth Parliament was more irregular as compared to the Seventh. Although average attendance was higher for the Eighth Parliament than that of the Seventh Parliament, the fact remains that the former's PAC succeeded in producing only one report. This single report is based on the first 25 meetings of the committee. The last 21 meetings of the committee failed to produce any output. Third, the influence of the Seventh Parliament's PAC on Executive was much more visible than that of the Eighth Parliament.

Another useful mechanism adopted and utilised by the Parliament to hold the Executive accountable is the standing committee on ministries. In the Eighth Parliament, there were 37 such committees. During the Seventh Parliament, a provision was made to refer the ministry-related bills to the concerned standing committee for scrutiny. The Eighth Parliament's performance regarding the effectiveness of these committees has been less satisfactory in terms of contributing to scrutinising and revising these bills. It showed a number of symptoms which indicated that something went wrong with this accountability process. First, the rules of procedure were not followed in proceedings of the meetings. A recent study showed that only 13.20 percent of the meeting were held as per Rules of Procedure. Second, these ministerial standing committees failed to produce reports. Of the 37 standing committees, six did not submit any report, 30 committees submitted only one report and only one committee submitted three reports. Third, in cases where committees tried to perform their responsibilities they failed to do so. In a number of cases, the standing committees decided to investigate or raise questions about the ministers' activities. However at the end of the day, the committees could not carry out the investigation in an effective and efficient manner. For instance, "The Standing Ministerial Committee (SMC) on the Ministry of Communication discussed allegations of corruption in imports and distribution of Compressed Natural Gas (CNG) auto rickshaws. The committee took a tough stance on the issue and formed a four-member subcommittee. The subcommittee was given one month to submit its report. Unfortunately, it failed to submit a report by the end of the Eighth JS" (Rahman 2007; TIB 2007).

Box 3.3 Relatively effective committees in the Seventh Parliament

During the tenure of the Seventh Parliament, the standing committees on ministries played quite an important role. For instance, the Standing Committee on the Ministry of Health and Population Control identified 'huge irregularities and massive corruption' in procurement of medical equipments. The standing committee formed a subcommittee to investigate this incident and later brought charges against a number of ministry officials and civil surgeons. Following the recommendation of the committee, a number of civil surgeons and ministry employees were transferred. The Standing Committee on Defense Ministry also investigated the issue of *Frigate Purchase* at that time. The Committee summoned the navy chief, the secretary of the Defense Ministry and later asked them to submit all documents to the Committee.

Contrary to the performance of the Seventh Parliament, the Eighth Parliament was not that effective with regard to committees. For instance, the Standing Committee on Ministry of Communication decided to form two subcommittees to investigate the allegation of corruption against the concerned minister. In two years the subcommittee failed to submit its report. Similar subcommittees were formed to investigate corruption charges against Ministry of Shipping, Ministry of Power, Ministry of Energy and Mineral Resources and Ministry of Science and Information and Communication Technology. However, none of these subcommittees submitted any report.

Source: Ahmed 2001; TIB 2006

Another major problem which continues to dog the effectiveness of the parliamentary committees has been the fate of the recommendations made by the committees. Formally, there is no compulsion for the production and presentation of committee reports. However, on the matter of submission of reports to the Parliament, the available data elicits a dismal scenario of committee performance. In the Fifth Parliament, the highest number (49) of committee reports was submitted while the corresponding figure is the lowest in the Seventh Parliament (only 28). The frequency of report submission by each committee during the full term (usually five years) of the Parliament in Bangladesh ranges between 0.61 and 1.07. This data indicate a very poor performance of the committee system in Bangladesh at the implementation stage (TIB 2007; Rahman 2007).

Table 3.2 Performance of the Standing Committees in the Fifth, Seventh, and Eighth Parliaments (JS: Jatiya Sangsad)

Performance Indicators	Fifth JS	Seventh JS	Eighth JS	Ninth JS
Committee formed	46	46	48	46
Total committee meetings	1388	1485	1242	NA
Average meeting (per committee, per year)	6.03	6.46	8.63	NA
Reports submitted	49	28	47	NA
Average number of Reports submitted (per committee)	1.07	0.61	0.98	NA
Committees that did not produce any report	30	29	10	NA

Source: Rahaman 2008

Deliberation on committee reports at the Plenary level enables Members of Parliaments (who are not members of that committee) to know the activities of committees and provide constructive suggestions on the issues under deliberation. Deliberation on the major recommendations in the reports also helps in exposing the malfeasance and mal-administration of public organisations. As the plenary sessions are public, the deliberations would expedite the pace of implementation of the recommendations by creating collective pressure (by the Parliament, civil society and media) on the relevant bodies to comply with recommendations. No discussion or debate however, has taken place on those very few committee reports submitted to the House. For instance, no deliberation took place on three committee reports submitted by PAC to the Seventh Parliament along with a large number of important recommendations.

The composition of committees is crucial in ensuring government accountability. Opposition members in Bangladesh are invariably more inclined than the Treasury Bench MPs to dig out the irregularities by the bureaucrats. The position of the Chair of a committee is very significant. S/he calls meetings, influences the agenda and exercises the deciding vote in the case of a tie on any issue. If all committee chairs and most members (including the ministers) are from the ruling party, it becomes difficult to hold the government accountable against the will of the ruling party. The reluctance of the ruling party in Bangladesh to expose the Government's failure/malfeasance is easily understandable because it can adversely affect them in the next parliamentary elections.

3.5 Failure of Formal Rules in Ensuring Effective Parliamentary Accountability

As described in the previous section, the Parliament and the parliamentary committees in Bangladesh have so far failed to perform as an effective institution of accountability. Executive dominance in the Parliament has allowed the ruling party to have control over public resources and institutions. This Report believes that the following loopholes in the existing structure of the parliamentary standing committees are mainly responsible for this failure:

- There are no selection criteria in cases of appointment of the committee members. As a result, competent parliamentarians may not be selected as members of important committees.
- The insignificance of the committee reports and the apathy of the government to implement the recommendations suggested by the committees fail to generate enthusiasm in the minds of the committee members to work in an effective and efficient manner.
- The opposition members, in most cases, have a trivial role to play in the committee meetings. The number of the opposition members in the committees is determined in proportion to their seats in the Parliament which in effect allows the ruling party to take control of the committees. Moreover, no proper method has been developed so far to ensure the appointment of the opposition party members as Chair of the standing committees.

Political parties have cleverly exploited these loopholes in the formal rules and provisions. Through primary research, an effort has been taken to identify the informal practices that help the political parties to exploit the loopholes. The next section provides a summary of the findings.

Role of political party chiefs

In Bangladesh, the party chief selects the members and Chair of a standing committee. In absence of any selection criteria, this selection is entirely at the discretion of the party chief.⁸ This Report has identified the

8 One politician said, "Committee appointments depend upon the discretion of the leader of the House. Sometimes, s/he considers experience. Most of the time, lobbying dominates the process"

following informal criteria for nominating committee chairs/members (i) face value; (ii) lobbying; (iii) experience; and (iv) expertise.⁹

According to these informal criteria, the party leader chooses someone according to his/her liking. It is not at all surprising that party members invest their time and energy to please the party head. One veteran politician suggested, "lobbying is the informal means; our country runs on lobbying," and pointed out that effective lobbying can, in most cases, ensure the prize - the position of chair or member of a committee. The third and fourth criteria are rarely taken into consideration in the selection.

Whenever the party head appoints committee members who are neither experienced nor expert, it undermines the effectiveness of committees. In such cases, it is not surprising to find members who do not have adequate understanding of the subject matter. At the same time, as these members are being selected by leader's choice, they always try to satisfy the leader instead of performing their responsibilities.¹⁰ However, the interview findings also suggest that during the tenure of the present government, some efforts have been taken to include experienced and expert MPs in the committees.¹¹

Inexperience of MPs/lack of training

Law makers and the Executive (Minister and bureaucrats) can communicate directly in the committee meetings. This is a more direct method of holding the Executive accountable. At the same time, while considering a bill, the MPs should have knowledge about the technical considerations relevant to the bill. Moreover, there are a number of mechanisms to oppose or propose a bill which MPs need to know in order to effectively participate in the legislative process.

However, the setback is, in most cases, MPs lack the necessary knowledge to perform these accountability functions. As one politician said, "interestingly, most of the MPs are not aware about their party mottos and political manifestos let alone parliamentary procedures. What they do in the Parliament is try to please their leaders so that they can stay in their good book". It is obvious therefore that a considerable number of MPs fail to make the parliamentary committees or parliamentary sessions productive.

Lack of incentive

According to several interviewees, MPs in general, are not interested in playing their part in the Parliament. There are basically two reasons behind this apathy. First, there are no structured norms which might motivate the MPs to play certain roles. As a result, inexperienced MPs are confused in defining their role in the Parliament. Political parties are also not concerned with parliamentary procedures and therefore do not adequately guide their MPs to play constructive roles in Parliament. Second, research findings confirmed that the Government does not believe that it has to be accountable to the Parliament. At the same time, opposition parties do not believe that the Parliament can be the best possible place to oppose the government and build public opinion. Consequently, meetings of the parliamentary committees of the

9 For a veteran politician, the criteria of selection is very simple- "To put it concisely, on face value or assumed knowledge on the area of work."

10 According to one political leader, "The composition lies at the discretion of party hierarchy. It is often the case that the right person with expertise is not nominated in proper committees. Hence, it is not surprising to find members who do not have adequate understanding of the subject matter.

11 According to one MP of BNP- "This time committee formation seems more rational. Senior members like Suranjit Sen, Tofail or Abdur Razzak can ensure accountability of the concerned ministers. Actually, chairman of the committee should be appointed from the experienced and knowledgeable MPs and this time this has been done."

political parties themselves are not held regularly. Even the parties' standing committee and/or permanent committee meetings and council meetings are not held regularly. The norm within the major political parties to bypass their internal democratic practices in turn affect their performance in the Parliament.

Lack of preparation

The Parliament Secretariat provides the meeting agenda and the required reading materials to the committee members. However, sometimes, these documents are provided only a day or so before the meeting, with the inevitable result that most parliamentarians join the standing committee meeting without having done any ground work on the issue. The research identified three crucial issues which leave MPs unprepared regarding the issue of the standing committee meeting. These are as follows: (i) MPs do not feel interested as committee meeting do not provide them with concrete benefits, (ii) they are reluctant to make enemies with the ministers, and (iii) they have neither the time nor the capacity to adequately prepare for committee meetings. However, there are some MPs who diligently do their homework before attending any meeting.¹²

Lack of performance review

Another issue which leads to a dysfunctional Parliament arises from the fact that the performance of the MPs in parliamentary deliberations and activities is rarely reviewed. In fact, political parties do not consider framing indicators through which the performance of the MPs can be measured as they are not too serious about parliamentary activities.

The fact remains that Parliament in Bangladesh is far from being a forum for constructive debate, ensuring executive accountability, or sharing opinion on relevant national issues among the ruling and opposition parties. This opinion was voiced by the majority of the respondents in the nationwide perception survey carried out for this Report (see Chapter Six). Respondents also felt that the onus is on the ruling party to play a more constructive role in the Parliament by ensuring voice of the opposition MPs. It is unfortunate, agreed our respondents that most of the time the ruling party MPs dominate the proceedings and engage in debates on issues seemingly irrelevant in terms of the national interest.

3.6 Developing Rules of the Game

An effective Parliament plays a pivotal role in holding the government accountable. This, at the same time, focuses on the Parliament's command of political resources for the purpose of influencing public policy (Edelman and Zelniker 1973). The strength of the legislature's policy-making role is most frequently connected to its capacity to resist or modify policy initiatives emanating from the Executive branch (Polsby 1975). When the legislature lacks such capacity, its policy-making role becomes weak. In contrast, legislatures with strong policy-making roles can say '*no*' to the Executive and stand by what they have said.

An essential point to remember while studying the strengths/weaknesses of Parliament is that it cannot be insulated from the effects of wider social, economic and political contexts. In a democracy, the functioning

12 According to one politician, "Parties do not review performance of their MPs in the Parliament. Before reviewing, parties must have some performance indicators. They are not that serious with the Parliament. They are not willing to make MPs accountable to the party. Actually, they are very much tame to the party. So question of answerability does not arise at all. Government does not believe that it has to be accountable to the Parliament. Opposition parties do not believe that Parliament can be the best possible place to oppose the government and build public opinion."

of Parliament is inexorably linked with the functioning of other key institutions (Rahaman 2008), as described in Chapter Five. It is the interplay of political and social factors that determine the place of legislature in the political system - whether it is in Mezey's (1979) categorisation, an active, reactive, vulnerable, marginal or minimal legislature. The political context in which a legislature operates predominantly matters in order to measure the strength of Parliament to restrain the Executive.

Thus, in analysing the reasons behind the dysfunctional Parliament of Bangladesh, the changing nature and structure of the polity has to be kept in mind. Earlier sections of this Chapter have highlighted aspects of formal rules of the Parliament, explored the extent of influence of the informal practices and reflected how these informal practices are being exploited by the ruling party, which at the end of the day created the dysfunctional Parliament. The question remains as to why political parties use the informal practices to exploit the loopholes of the existing formal rules. The answer to this question demands a brief depiction of the role played by the political parties in developing the existing political culture of Bangladesh. This has been discussed in greater detail in Chapter Two.

The political parties are supposed to play the most important role in order to establish, institutionalise and sustain democracy. However, a simple overview of the activities of the parties in Bangladesh reveals the harsh reality that their role is not at all helpful for a well-functioning democracy.

First, there is an unlikely consensus between the major parties regarding the policy they follow in case of determining their economic and development objectives. This ideological consensus actually has a two-fold meaning: a) the basic ideologies of each party have hardly been practiced and *any* modification is permitted provided it helps the party to come in power; b) almost all parties lack internal democracy. One of the major parties, the BNP, did not form a council in 14 years. In both the major parties, the AL and the BNP, the Executive power is vested in the Chairperson; whatever decision she takes is immediately implemented. A number of leaders have been forced to leave the parties as they intended to protest against the decisions taken by the party chiefs (Ahmed 2003). Second, there has been a recent trend within major party leaders to give more importance to businessmen rather than the long-time veterans of politics. One example is the appointment of a particular businessman as the Private Sector Advisor of Sheikh Hasina. The person had allegedly maintained no connection with the party between 2001 and 2006, when it went through various troubles but was able to get a central position when the situation improved for the party (The Daily Jugantor, January 21, 2007), yet another example of the politics-business nexus as described in Chapter Two. Third, yet another significant point of concern is the way the parties nominate their candidates for the general election. It has been alleged that a large amount of money is paid by the nomination seekers in order to get nomination. The impact of these factors, i.e., lack of internal democracy and prevalence of a non-transparent procedure of selecting party candidates and unmitigated power of central leaders is significant in case of assessing the performance of the political parties in the political arena and thereby in the whole democratic process (Hasan *et al* unpub).

These characteristics of political parties of Bangladesh have created a situation where party activists do not feel it necessary to understand, realise and internalise the ideologies of the party. Rather, politics is viewed as a profession which they use to gain power. Politics has, as described earlier, become an area of investment where the activists expect to make profit if their party comes into power. Therefore, regardless of the party affiliation of the local MP, the activists of the party in power tend to take control of the public institutions

and organise control over the local distribution of public resources.¹³ Public perception regarding this matter has been described in Chapter Six.

This negative role played by the political parties has a clear implication for parliamentary democracy. As the parties are more concerned about taking control over all the institutions and utilising public resources for party loyalists, they tend to neglect the role of the Parliament. On the contrary, a dysfunctional Parliament is what suits their purpose, because when the Executive is working to ensure the smooth-functioning of a 'winner takes all' system, any check on the Executive's activities would ultimately hurt the ruling party in realising their objective. Thus, instead of bringing positive changes through the parliamentary framework, political parties were more eager to exploit the existing loopholes of the parliamentary procedure through informal norms - the outcome of the culture of confrontational politics. This in turn rendered parliamentary sessions and standing committees ineffective, and diminished the interest of MPs to regularly join parliamentary sessions or attend standing committee meetings.

Figure 3.1 attempted to explain this argument further. The figure shows that the mode of functioning of political parties in Bangladesh has played a major role in creating and sustaining the culture of confrontational politics. The lack of internal democracy within the parties, the politics-business nexus, the emphasis on considering politics as an investment have all facilitated the development of a system where the winner of the election takes complete control of public resources and while doing so makes sure that the loser (of the election) ends up getting nothing. As a result of this confrontational culture of politics, the political parties develop within themselves certain informal practices and behavioural norms which, to a large extent, dictate their mode of functioning in the Parliament. For instance, due to lack of internal democracy, the MPs always try to please their party heads as they know that the displeasure of the chief might lose them the chance of being a partner in the 'winner-takes-all' system. Besides, as politics is considered an investment, MPs are often reluctant to play any significant role in the Parliament. They realise that their good performance in policy-making or in holding the Executive accountable will not do them any good. Rather by emphasising too much on accountability they will jeopardise their careers.

13 A study conducted by CGS in 2006 in two *upazilas* found the following trends of local party control over public life:

- The ruling party takes control over resources regardless of the party affiliation of the local MP; at the same time, although the post of (District) Minister has been removed, there is informal influence exerted over the distribution of resources in the district

The Upazila Development Committee is a critical point of control. The Committee is attended by Union Parishad chairmen with the MP acting as advisor. The Committee coordinates all development work in the *upazila*, including the allocation of resources and projects to unions

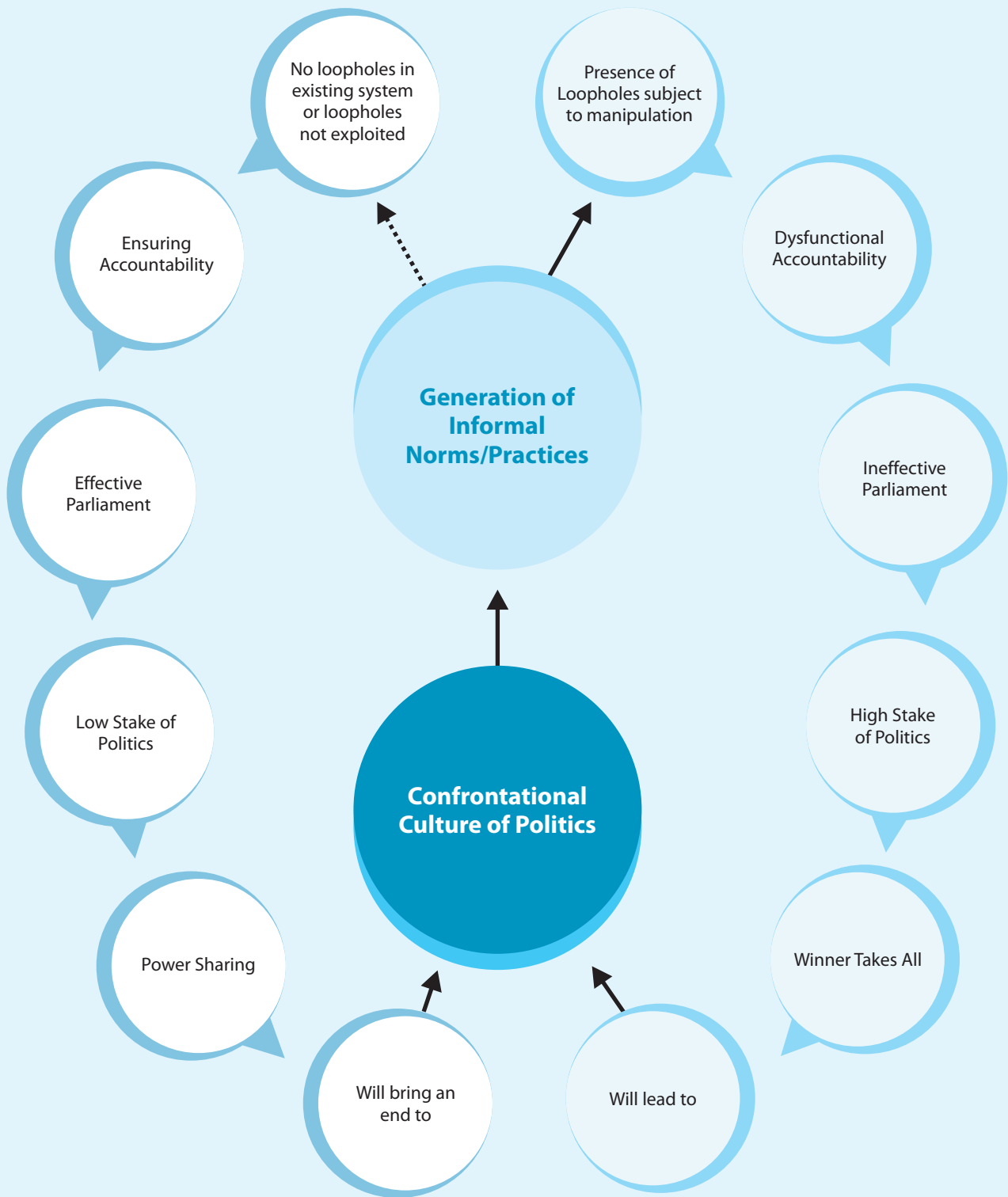
Ward and union level party activists support implementation of development activities, and control preparation of recipient lists for the distribution of relief (VGF, VGD)

Ruling party leaders, principally of the main BNP party and , currently hold government contracts for construction and repair of public infrastructure, including schools, culverts and roads

Parties retain formal and informal relationships with the administration and elected local government, in effect creating structures that parallel the official system

All 22 Union Parishad Chairmen were aligned to parties in the two *upazilas*

Figure 3.1 Rule of the game



The combined dynamics of weak formal rules and thriving informal practices guarantee that parliamentary procedures are thoroughly undermined. For instance, the absolute control of the party chiefs over party structure/activities, the significance of his/her pleasure or displeasure and the importance of lobbying significantly reduce the experienced MPs' possibility of being appointed as committee members or chairs. There remains the chance that if the Executive is not too keen to ensure its own accountability, it may award these crucial posts to its party loyalists so that the reward-receiver, in exchange, may allow continuation of Executive dominance. Similarly, the MPs, being active actors of the politics-business nexus, are not interested in playing their designated function of legislators in the Parliament. Moreover, the insignificance of the committee recommendations discourages many of the parliamentarians. Thus, in the absence of an effective Parliament, the Executive remains virtually unaccountable and the stakes of politics remain high as the Executive, the winner for five years, strips the opposition of all its rights and totally ignores all its demands. This allows the confrontational culture of politics to continue, to the detriment of democratic norms, values and practices. On the other hand, a different nature of political culture would either ensure that formal rules would be followed or would allow little impact of the informal practices. Political parties would need to take corrective measures so that the system has no loopholes or they would proscribe themselves from exploiting such loopholes if they existed. In either of the latter cases, the Parliament would function as an effective institution of accountability, which would in turn play a role in lowering the high stakes of politics. Consequently, a 'winner takes all' system would not be allowed to develop and the opposition would have the opportunity and the incentive to play an effective role in the legislative process.

3.7 Conclusion

The initial experiment with parliamentary democracy in Bangladesh did not work, coming to an abrupt end in 1975. After experiencing over one and a half decades of military and semi-authoritarian rule, Bangladesh again embarked on a painstaking journey towards democratisation in 1991. Since then, four parliamentary elections have been held which have been largely considered to be free and fair with high voter turnouts (55 percent in 1991, 75 percent in 1996, 76 percent in 2001 and 87 percent in 2008). However, free and fair elections cannot alone guarantee the continuity of stable democratic governance and sustainable development. This must be complemented by other functional institutions including parliament, judiciary, media, civil society and others.

During the tenure of the last Caretaker Government, a number of efforts were taken to bring about qualitative changes in the functioning of the political parties. Amendment of the Representation of People Order (RPO), 1972 allowed important measures to ensure free, fair and credible elections, including mandatory registration of the political parties intending to contest elections, and disclosure of certain information by candidates. The changes in electoral laws had a positive impact as candidates with comparatively cleaner images were selected by the political parties. This positive momentum has continued during the first session of the Ninth Parliament. For the first time in the history of parliamentary democracy in Bangladesh, all standing committees have been formed within the first session of the Parliament and with two chairman positions (of standing committees on ministries) being held by opposition party members. This 'empowerment' of the opposition in the parliamentary procedure is a very welcome change and hopefully marks the change in the hitherto displayed authoritarian attitude of the ruling party. This may in the long run pave the way for positive change in the existing culture of confrontational politics. However, the present Parliament has some in-built problems as the ruling party/coalition enjoys an overwhelming majority. "The tiny minority (opposition) will not have any real chance to confront the majority. If the government/ ruling party even agrees to follow a proportional principle in the distribution of committee positions, the opposition will have at most one member in a ten-member committee. The scope of

opposition scrutiny of government measures will thus be remote" (Ahmed 2009b). At the same time, an effective Parliament requires the presence of pro-active government backbenchers. The point is, when the government is assured of victory of its proposals in the Parliament, it does not deem it necessary to compromise with the opposition. However, if a coalition is formed between the government backbenchers and opposition members which makes certain demands, the government would have to respond positively. The experience of the Fifth Parliament (regarding the introduction of parliamentary democracy) can be cited as an example of this (Ahmed 1997, 2009b; Hasanuzzaman 1998). Thus, a few good practices may not result in an effective Parliament, unless and until, all political parties come to a consensus in bringing about significant change in the Rules of Procedure, e.g., the introduction of opposition days or the provision for regular unscheduled debates to subject the government policies and activities to more effective parliamentary scrutiny, which will in turn allow the opposition a better opportunity to be pro-active. Therefore, the focus should be on reforming the Parliamentary Rules of Procedure to facilitate the forming of the coalition, which in turn will ensure the accountability of the Executive.

Judicial Oversight

“Power vested in the state is potentially and often actually coercive...because the state and not the polity controls military and economic resources. Civil institutions exist at the behest of such power and exercise their own authority because the state allows it.” (Greenberg 1995)

“...a social context where relations are highly personalized and where personal loyalties are valued more highly than the 'rules' of the organization. This requires a conscious decision by the political and bureaucratic leadership to establish clear institutional rules (even though these will depart from current norms within a traditional patrimonial society) and then abide by them.” (WB 2002)

“Every country has a constitution, but this does not necessarily imply that every country in the world is endowed with a constitutional government or the practice of constitutionalism”. (Choudhury 1994)

4.1 Introduction

The courts are possibly the most fundamental site where power is contested in a constitutional democracy, at least in the common law tradition. The liberal notion of the rule of law involves limiting the state's authority by subjecting it to a set of transparent and universal rules: all power must find an ultimate source in law; the ruler and the ruled are governed by the same law. The “absence of arbitrariness, personal will or caprice” (Choudhury 1994) is its defining feature. The concept is inherently dependent upon a functioning and independent judiciary that applies the law impartially. The judiciary can potentially restrain and hold to account executive government, other state institutions including the legislature (by striking down laws which violate the Constitution), as well as politically and economically powerful actors, and thus is fundamental to rule-based governance. The judiciary acts as the mediator of disputes between the other institutions of the state, as well as disputes between state and citizen, when it engages in its judicial review functions.

While this chapter has many references to the Constitution, laws and appointment procedures, the formal constitutional framework has little impact on judicial independence. Any formal provision can be reversed - or indirectly subverted - by government. It is ultimately about the internalisation by state actors of concept of the rule of law, of the notion of restraints on power and the legitimacy of the courts amongst citizens as an arbiter of disputes over power.

4.2 The Context

The narrative of the judiciary in the independent Bangladesh is very much the other side of the story of constitutionalism. While democracy requires the development of a constitutional culture, "...which teaches state actors that the legal bounds of the system cannot be transgressed for the achievement of partisan political gains" (Larkins 1996), Bangladesh did not have a period of democratic or national consolidation upon its independence when such a principle became entrenched (see A: appendix 1). The gradual evolution of the courts and other political institutions of the country were interrupted by the imposition of authoritarian rule in 1975, the series of coups and counter coups between 15 August and 7 November 1975, and the imposition of martial law in 1975 and 1982. As in much of the developing world emerging from liberation struggles, neither the practice of democratic politics nor its institutional framework were entrenched, there were no political figures who 'set the tone' in terms of the relationship between the judiciary and executive, who saw an independent judiciary as an inherent part of consolidating the nation-building enterprise and who "rejected the idea of a packed court of individuals of the government's liking for getting decisions in its own favour" (see B: appendix 1). Over time there have been numerous attempts to amend the Constitution for political ends, (Choudhury 1994) including the dilution of the Constitution's capacity to limit executive discretion (see C: appendix 1) by regimes of all hues, from martial law governments to those that were democratically elected (Halim 2003). The Constitution became a document which was increasingly adhered to only in the letter, if that, but was flouted in spirit.

As has been highlighted elsewhere in this Report, there has been a demonstrable diminution amongst the political class of a commitment to the idea of a self-restraining state.¹ The judiciary has significant potential to check the other arms of government, and had on occasion shown its preparedness to do so,² most notably in cases where the central issue was whether Parliament's power of constitutional amendment was complete and unrestrained (see D: appendix 1). As the stakes of political power increased with the quantum of resources that were potentially the spoils of office, and the risk of access to rents being closed when losing office,³ there were strong incentives for incumbent governments to hamper judicial independence and few restraints preventing them from doing so.

The growth of the 'patriarchy' since 1991 in particular (described in *The State of Governance in Bangladesh 2006*)⁴ has had profound implications for the judiciary's capacity to perform its role as the guardian of the rule of law and in enforcing horizontal accountability. Partisan politics gradually permeated all aspects of collective social life, and neo-patrimonial structures developed alongside the rational bureaucratic structures of the state. The period witnessed the ascendancy of the political class, and its cultivation of the judiciary, the bureaucracy, and other public office holders as client groups. Control of the lower courts and law enforcement agencies became the mechanism for denying the opposition space in the political realm,

1 The Bangladesh Constitution originally had no provisions for preventive detention or a state of emergency. But as early as 1974, as the reality of governing hit the country's first government, emergency provisions were added and the Constitution came to resemble the Pakistani Constitution more closely.

2 During the first two decades of the country's existence, judicial activism was ad hoc and piecemeal

3 Refer to the discussion in Chapter Two

4 Center for Governance Studies, State of Governance in Bangladesh 2006, BRAC University

while the drive to control the superior courts came from a desire to curb their potential as a restraint on Executive power. The institutional autonomy of the judiciary and the personal independence of judges were subverted in a number of ways, often to further the interests of the ruling party, as political actors sought to consolidate political and economic power:

“Over the years, democratically elected political leaders started behaving in an autocratic manner, using state power to reward political supporters and punish and repress the political opposition. The rule of law started breaking down as successive elected governments began to misuse state power for partisan and personal gain. Increasingly the judiciary, particularly the lower judiciary, civil bureaucracy, police and other institutions of government began to lose their autonomy as they were also brought under partisan political pressure by successive governments.” (Jahan 2007)

Another incentive to interfere with judicial independence came in 1996, with a constitutional amendment introducing the Caretaker Government (CTG) mechanism, which mandates the last retired Chief Justice for the position of its 'Chief Adviser'. His or her partisan loyalty towards the incumbent government could potentially be very advantageous in engineering an election victory, something that became more crucial in a 'patriarchy' context, where the losing party and its associates essentially lost control of resources during the period out of office.

At the same time, this is not only a story about politicians and the contest for power but about the composition of the judiciary and its relationship with the broader society. While there remain a number of judges on the High Court and Appellate Divisions of the Supreme Court of competence and integrity, trust in the superior courts and in the quality of the justice they dispense has fallen considerably, a trend which showed few signs of reversal during the CTG's tenure. The decline in both judicial integrity and quality have been aided by a drastic fall in the real and relative value of judicial salaries and benefits and the failure to preserve non-material incentives (such as status and prestige) for judicial service over decades. The superior courts have lost the legitimacy that they had even ten years ago, when the Supreme Court was held in high esteem (WB 2002; 1996). In the most vivid recent example where the courts were put to the test as the arbiter of a dispute that was simply about the grab for political power, the constitutional challenge to the Iajuddin-led Caretaker Government in October 2006 (see E: appendix 1), they failed.

After the belated implementation of the judgment in *Ministry of Finance v Md. Masdar Hossain*⁵ in November 2007, the Judiciary in Bangladesh has been formally separated from Executive government. While there was an expectation amongst some quarters that separation would help to facilitate greater integrity and independence, especially in light of the absence of more traditional partisan political pressures during the Caretaker Government period, the Judiciary performed little better during the CTG's tenure and the formal legal changes appear to have had little impact to reverse the longer-term decline in judicial integrity. Judicial rulings generally followed the political script of the period. For instance, when the anti-corruption drive was at its height, few courts were willing to grant bail. Once deals were being cut by the CTG with political parties, bail was granted in abundance, and there was anecdotal evidence of large bribes being paid in order to secure hearings and bail.⁶ In August 2008, a bench of the High Court Division issued orders in some 298 cases in 315 minutes.⁷ Generally speaking, judges did not rule against the vital interests of the CTG or military. Once the new Government took office, almost all cases against politicians were dismissed, withdrawn or the accused have been given extended bail.

5 20 (2002) BLD, AD

6 Ain-o-Shalish Kendro, *Human Rights in Bangladesh 2008*, chapter 1

7 Ibid

This Chapter focuses on the superior courts in its analysis because the theme of this Report is that of moderating the high stakes of politics, and the superior courts potentially play a key role in this process through judicial review. The Chapter suggests some possible factors that have encouraged successive governments (both military and democratically elected) to curb the power and undermine the authority of the Judiciary through an examination of how the incentives for ruling regimes of interfering with judicial independence have changed. Second, it explores the recent changes to the formal legal framework which has separated the Judiciary from the Executive, and examines why these changes have had little effect on increasing judicial independence or increasing the accountability of political actors. Apart from a literature review, this Chapter has drawn extensively upon an empirical study which involved 25 key informant interviews of present and former judges of the Supreme Court, district judges, newly appointed assistant judges, high court advocates, journalists, academics and officials from the Ministry of Law, Justice and Parliamentary Affairs (IGS 2009a).

After setting out the context of judicial oversight in Section 4.2, the Chapter goes on to analyse the role of an independent judiciary in a constitutional democracy in Section 4.3. The next section (Section 4.4) discusses the formal legal framework of the judiciary in Bangladesh, whereas Section 4.5 analyses the *de facto* rules that have evolved. Section 4.6 discusses the stakes of politics. Section 4.7 concludes with some practical recommendations.

The constraints on the development of an independent judiciary discussed in this chapter have severely circumscribed citizens' access to the formal court system. At the same time, it needs to be understood that an independent judiciary is the ultimate indicium of the impersonalisation of power -- much of the literature on the relationship between governance and development notes that the Judiciary is often the last institution to develop in a country's development trajectory. (Tamanaha 2004; North, Wallis, and Weingast 2009; Khan 2003; Jensen 2003).

4.3 Role of an Independent Judiciary in a Constitutional Democracy

The separation of powers doctrine has been considered the "*conditio sine qua non*" of a modern state: the Legislature makes the law, the Executive implements the law and the Judiciary interprets and enforces it. Its rationale is to prevent the accumulation of excessive power in any one branch of government. Although the line of separation blurs while analysing the legislative-executive interaction in Westminster-style democracies, the Judiciary is vital in establishing and maintaining the self-restraining state. The Judiciary resolves conflict between political actors, organs of the state and also protects the rights of the individual through restraining the government from exercising its power in an arbitrary fashion. Thus, an independent Judiciary is inherent in the notion of the rule of law.

Judicial independence has a number of fundamental facets. First is the impartiality of judicial decisions, the "idea that judges will base their decisions on the law and facts, not on any predilections towards one of the litigants" or by the judge's personal interest in the outcome of the case.⁸ This 'party detachment' gains more significance when the government becomes a party to the dispute. Some analysts incorporate into 'impartiality' the idea that judges are not selected primarily because of their political views but on the basis of merit. Second, judicial independence entails that the Judiciary is free from interference. Parties to a case or others with an interest in its outcome (including the government) cannot influence the judge's decision. Judges should enjoy complete freedom in reaching decisions that are unpopular. In practice, it means protecting judges from corruption and coercion:

8 In resolving conflict, justice will be delivered by a neutral third party who has no relation to the litigants and has no direct interest in the outcome of the case. See further, (Fiss 1993), (Shapiro 1981)

“It is important that judges not be subject to control by the regime, and that they be shielded from any threats, interference, or manipulation which may either force them to unjustly favour the state or subject themselves to punishment for not doing so”. (Larkins 1996)

Insulating judges from officials of other branches of government is often taken to be the most important aspect of ensuring judicial independence. The executive poses the most serious threat to judicial independence for two reasons: it has a potential interest in the outcome of a myriad of cases (as one of the parties to the case), and it has potential power over judges in the terms and conditions of employment. The idea is elaborated upon by Larkins:

“Judges should not be used to further political aims nor punished for preventing their realization. ... [I]nsularity is believed to result from certain formal and structural safeguards which give judges life tenure, provide significant checks and balances in their appointment and protect their salary against diminution whilst in office.” (Larkins 1996)

Implicit in the concept is also the idea that the Judiciary has authority over other parts of the political system and that once rendered, judicial decisions will be respected. Either the parties to the case must comply voluntarily with the decision, or those with the authority to coerce compliance must be willing to use this power if compliance is not forthcoming:

“The scope of the Judiciary's authority as an institution or, in other words, the relationship of the courts to other parts of the political system and society, and the extent to which they are collectively seen as the legitimate body for the determination of right, wrong, legal and illegal.” (Larkins 1996)

Many of the principles outlined here are also enshrined in internationally accepted standards such as the United Nations *Basic Principles on the Independence of the Judiciary*. Tenure of office as well as the terms and conditions of office should be protected, as should the method of appointment. An independent judiciary should be free from administrative interference and enjoy financial autonomy. Financial autonomy enables the judiciary to provide its members with adequate pay and facilities and attract competent personnel in the service, who will, in absence of executive interference be able to base their decisions on impartial application of the law to the facts. In such conditions, judges are in a position to conduct judicial proceedings fairly, which will in turn maintain public confidence in the institution and adds to its authority and legitimacy. However, the sustainability of public confidence to a large extent depends on the accountability of the Judiciary, which requires that any charge against a judge regarding his integrity or capacity will be dealt with through an appropriate procedure; if his/her lack of capacity or misbehaviour is proved, a judge will become subject to suspension or removal. The subsequent sections will discuss the issue of judicial independence in Bangladesh following this conceptual framework.

4.4 The Judiciary in Bangladesh: The Legal Framework

Bangladesh's Constitution came into effect in December 1972, and attempted to establish an independent judiciary through enshrining the separation of the judiciary from the “executive organs of the state” in Article 22. The Judiciary is vested with the judicial power of the Republic, with the Supreme Court at the apex (Case: Mujibur Rahman v. Bangladesh: Islam 1995). Part VI of the Constitution provides that the Supreme Court consists of the Chief Justice and other judges appointed by the President (see F: appendix 1). The Court is divided into two Divisions: the Chief Justice and other judges appointed to the Appellate Division sit in that Division whereas the remaining judges sit in the High Court Division. While the Supreme

Court in its current form came into existence upon Bangladesh's independence with the High Court of Bangladesh Order, 1972 (President's Order No. 5 of 1972), it has a long history --- the court's predecessors were the High Court of East Bengal (1774-1947) (see G: appendix 1) and the High Court of East Pakistan (1947-1971).

The Constitution defines the jurisdiction of the High Court and the Appellate Divisions. The High Court hears appeals from orders, decrees and judgments of subordinate courts and tribunals. It has original jurisdiction to hear writ applications under article 102 of the Constitution a mechanism for ensuring the enjoyment and enforcement of fundamental rights of citizens. The Court also has powers and jurisdiction to hear and dispose of cases as the court of first instance under article 101 of the Constitution. Although there is no explicit grant of judicial review over laws that contravene constitutional provisions other than fundamental rights, articles 102 and 7 read together suggest that the Supreme Court has the power to declare void laws that are inconsistent with any provision of the Constitution (Islam 1995).

As mentioned, the High Court has the power to issue orders to prevent public functionaries from exceeding their power through the prerogative writs. The writ of prohibition stops public officials from doing things s/he is not permitted to do (Art. 102(2)(a)(i)) and the writ of mandamus directs a public official to do things which s/he is required by law to do⁹ so long as the public official has a definite legal duty to the applicant (Islam 1995). The High Court may also declare that an action taken by a public official (whether s/he is performing judicial or administrative functions) (Islam 1995) has no effect because it was taken without lawful authority (writ of certiorari) (Art. 102(2) (a) (ii)). Finally, the High Court may require that a person holding public office show under what authority he claims to hold that office (writ of *quo warranto*) (Art. 102(2)(b)(ii)). This writ ensures that no one can hold any public office without having a valid claim on that office (Islam 1995). Through all of these various writs, the High Court has the power to check the excesses of public officials in exercising executive power.

The Appellate Division provides the ultimate check on executive power. First, it hears appeals from judgments, decrees, orders or sentences of the High Court Division, (Art. 103) including cases relating to the abovementioned writs. On paper, it has the power to issue advisory opinions, as requested by the President, on questions of law which are of such nature and of such public importance that it is expedient to obtain an opinion.¹⁰ This advisory jurisdiction has occasionally been used in Bangladesh except once in 1996, whereas in India it was used as early as 1950 (Austin 2003) the fact that this practice of obtaining opinion has been used sparsely, give some indication of the failure amongst the political class to internalise the idea of constitutionalism. The Court also enjoys rule making power for regulating the practice and procedure of each division and of any Court subordinate to it.

The 1972 Constitution barely had time to entrench itself before the Fourth Amendment to the Constitution established an authoritarian state in 1975, and included major changes to Part IV of the Constitution. While Ziaur Rahman's regime removed some of the undemocratic elements introduced by the Fourth Amendment, many of these elements remain in place today (Choudhury 1994).

4.4.1 Appointment, Tenure and Removal of Judges

While Article 95 of the original 1972 Constitution gave the power to appoint the Chief Justice to the President and provided that judges of the Supreme Court would be appointed by the President "... after consultation with the Chief Justice", this constitutional requirement of consultation was removed in 1975 and remains absent today. The power of appointment is today effectively exercised by the Prime

9 Id. Mandamus writs may issue upon any person holding public office and performing functions in connection with the affairs of the Republic or of a local authority

10 Art. 106. Though these advisory opinions are non-binding, the Executive likely finds it highly embarrassing politically to ignore advisory opinions issued by the Appellate Division

Minister (PM), since the President acts in accordance with the PM's advice under Article 48(3) of the Constitution (Bangladesh Constitution Art. 48(3), although a very recent decision of the Appellate Division has re-asserted (see H: appendix 1) the requirement that consultation with the Chief Justice (CJ) is necessary, and that non-compliance with the CJ's recommendations is a violation of the Constitution. The most recent Caretaker Government established a body for making appointments to the High Court and the Appellate Divisions of the Supreme Court. The Supreme Judicial Commission operated from January 2008 until February 2009, when the Ordinance which provided for its establishment lapsed.

Article 95 (2) also states that for being appointed as a Supreme Court judge, a person has to be a citizen of Bangladesh and has to be either a Supreme Court advocate having at least ten years standing or a judicial officer who held judicial office for a period not less than ten years. Initially, judges held office until they had attained the age of 62. The 7th amendment extended this age limit to 65 and the 14th amendment further extended this age limit to 67 (Current Art. 96).

Under the 1972 Constitution, the removal of a judge from his/her position required a resolution of the Parliament supported by two-thirds of MPs (Original Art. 96). The resolution could only be passed on the basis of two grounds – proven misbehaviour or incapacity. The 4th amendment removed those safeguards and permitted the President to remove any judge on the ground of misbehaviour or incapacity after providing a 'show-cause' notice against the action. The current provision, introduced in 1977, involves an ad-hoc Supreme Judicial Council (consisting of the Chief Justice of Bangladesh, and the two next senior Judges) as a disciplinary body which is supposed to:

- (a) prescribe a Code of Conduct to be observed by judges; and
- (b) inquire into the capacity or conduct of a judge or of any other functionary who is not removable from office except in like manner as a judge.

The body has the power to make recommendations about the misconduct of any judge and then the President alone could remove the judge.

4.4.2 Subordinate Courts

Article 114 of the Constitution provides for courts subordinate to the Supreme Court (see I: appendix 1). The 1972 constitution also placed the sub-ordinate Judiciary under the control of the Supreme Court and provided certain provisions to ensure the separation of the Judiciary from the Executive (see J: appendix 1). However, the 4th amendment of 1975 brought the subordinate Judiciary under the control of the executive. The amended Article 115 of the Constitution permitted appointments of officers exercising judicial functions without the recommendation of the Supreme Court. The amended Article 116 transferred control of sub-ordinate judicial officers and magistrates to the President "in consultation with the Supreme Court" (see K: appendix 1).

Until the recent changes to the legal framework by the Caretaker Government in 2007, appointments of officers in the judicial service and magistrates exercising judicial functions were decided by the President in accordance with the Bangladesh Civil Service Recruitment Rules, 1981 (see L: appendix 1). Assistant Judges to civil courts were appointed on the basis of a recommendation of the Public Service Commission (PSC), after a competitive examination amongst law graduates. Officers appointed in the Administration Cadre of the civil service were vested with the power of magistracy, usually appointed as a magistrate of the third class and gradually rising to that of the first class with experience (see M: appendix 1). Magistrates performed judicial as well as administrative functions; control over posting, promotion and leave was exercised by the Executive .

4.4.3 The Masdar Hossain Judgment and Its Aftermath

While the focus of this Chapter is on the superior courts, it would be incomplete if it did not discuss the resistance of successive governments to the separation principle and to judicial independence more generally. For decades, there have been promises from all sides of politics to separate the Judiciary from the Executive.¹¹ Prior to the 1991 election, both the major parties made an election pledge that the Judiciary would be separated from the Executive. However, during the BNP and Awami League tenures from 1991-2006, this pledge remained unfulfilled (Ashrafuzzaman 2006). A major shift came with the Appellate Division judgment in *Md. Masdar Hossain v the State* (1999) (see N: appendix 1), which condemned the 'mixing up or tying together of the judicial service with other civil administrative services' as a

“monumental constitutional blunder the harmful legacy of which is the dogged and headstrong denial of the proper and rightful institutional status of the members of the judicial service and of magistrates exercising judicial functions at the implementations stage.”

The decision affirmed that the judicial service is “functionally and structurally distinct and separate service from the civil, executive and administrative services of the Republic” (see O: appendix 1). The creation of Bangladesh Civil Service (Judicial) cadre by the Bangladesh Civil Service (Reorganization) Order, 1980 was held to be *ultra vires* the Constitution and the Bangladesh Civil Service Recruitment Rules 1981 inapplicable to the judicial service. The court provided a number of directives for the government, which sought to give control of the subordinate judiciary to the Supreme Court and provide for greater judicial independence.¹²

After the Awami League government failed to implement the *Masdar Hossain* judgment in its last year of office in 2000, the Caretaker Government of 2001 drafted a number of ordinances and rules to comply with the decision. However, both of the major political parties objected to this effort by pointing out that the CTG was not constitutionally authorised to take any policy decisions. Yet, after coming to power in 2001, the BNP Government was again reluctant to implement the decision, as it repeatedly sought stays of execution on the judgment. As one commentator writes:

“After its order to separate the Judiciary from the Executive branch, the government began applying for extensions. Like a schoolboy coming to class with one implausible excuse after the next about why he could not do his homework, it applied for more time on no less than 23 occasions. Finally, the Supreme Court lost its patience. On 5 January 2006 it rejected the government's latest request for an extension, and said that it would not entertain any more.” (Ashrafuzzaman 2006)

11 The Daily Star, August 22, 2004

12 The directives include the following:

- A Judicial Service Commission for recruitment to the judicial service is to be established with the majority of members from the senior judiciary.
- Law or rules shall be enacted separately for the judicial service relating to posting, promotion, grant of leave, discipline, pay, allowance and other terms and conditions of service consistent with Article 116 and 116A.
- Establish a separate Judicial Pay Commission.
- In the control and discipline of persons employed in the judicial service and magistrates exercising judicial functions under Article 116 the views and opinion of the Supreme Court shall have primacy over those of the Executive.
- The conditions of judicial independence in Article 116A namely, (i) security of tenure (ii) security of salary and other benefits and pension and (iii) Constitutional independence from the Parliament and the Executive shall be secured in the law or Rules made under Article 113 or in the Executive orders having the force of Rules.
- The Executive government shall not require the Supreme Court of Bangladesh to seek their approval to incur any expenditure on any items from the fund, allocated to the Supreme Court.

4.4.4 Effect of Legal Changes Brought by the Caretaker Government

The Caretaker Government which took office in January 2007 attempted an ambitious governance and institutional reform effort, which included the implementation of the *Masdar Hossain* judgment. On January 16, 2007, the process began with gazette notifications of four sets of rules (see P: appendix 1). With the passage of amendments to the Criminal Procedure Code on November 1, 2007, the Judiciary was said to be formally separated from the Executive. A number of commentators did, however, point out that this separation was incomplete, possibly reflecting the government's accommodation with those in the civil service resistant to full separation and the views of subordinate judges themselves. Since the Awami League Government took office after winning the December 2008 election, it appears prepared to return some of the powers to Executive magistrates (see Q: appendix 1).

4.5 How the Formal Framework Operates in Practice: *De Facto* Rules

4.5.1 Appointment of Supreme Court Judges: Politicisation and the Changing Profile of Judges

Historically, the consultative role of the Chief Justice (CJ) in all judicial appointments was a major safeguard against political and expedient appointments. The idea was that judges of the higher courts are best suited to competently adjudge the candidature, since the appointments are to be made from amongst those functioning in the Judiciary and the Bar. The CJ's opinion should thus have the primacy in the event of conflict and where the Executive fails to convince the CJ otherwise. This consultative process has been followed so consistently since British rule in India, that even in the absence of any legal requirement; it has become a constitutional convention in the sub-continent (Greenberg 1995). The convention of appointing judges on the basis of seniority from the High Court to the Appellate Division and to the Chief Justice's position again provided a bulwark against expedient appointments.

The original Constitution of 1972 gave power to appoint the Chief Justice to the President, and it provided that judges of the Supreme Court would be appointed by the President "...after consultation with the Chief Justice." Despite the sweeping legal changes brought by the Fourth Amendment, and the power of appointment being explicitly given to the President, the convention of consultation with the CJ continued for almost two decades through military regimes of various hues due to the strength of the convention. Though consultation with the Chief Justice was not mandatory on the face of this provision, governments continued to consult.

Since the Parliamentary form of government was reintroduced in Bangladesh in 1991, the President appoints judges in accordance with the advice of the Prime Minister. In 1994, the BNP Government ignored for the first time the constitutional convention by appointing nine judges to the High Court Division without consulting the Chief Justice, and faced a backlash. The-then Chief Justice objected with this break from a practice that was seen as pivotal to ensuring the independent functioning of the Judiciary and was supported by the Bar Association. While the government maintained that it was not mandatory for it to consult with the Chief Justice, it eventually relented after strong pressure; the appointments were cancelled, followed by consultation with the CJ leading to seven out of nine appointments. The convention of consultation continued until 2002. During the period of 1999-2001, 14 additional judges were appointed to the High Court Division by the-then Awami League Government. After two years of a 'probation' period, the Chief Justice found their performance satisfactory and recommended their permanent appointment. The BNP Government decided not to confirm their jobs (for detail see Q: appendix 1) mainly because they were appointed by the previous government (see R: appendix 1).

Since 2002, "...the practice started to be adhered more in breach than in observance leading to protests from the members of the bar" (Hoque 2003). By 2008, the convention was all but dead, although there are hopes for its revival due to a recent Appellate Division judgment which has re-asserted a role for consultation with the Chief Justice (see S: appendix 1). In any event, it must be noted that the consultation requirement only gains meaning in the context of a relatively strong judiciary - the appointment of a partisan to the position of Chief Justice renders the consultation safeguard ineffective; a weak or pliable Chief Justice may also simply endorse the government's decisions. During 90s, the government interference started for the first time with the convention of appointing by seniority to the Appellate Division from the High Court Division.

In January 2008, a nine member Supreme Judicial Commission (SJC) was formed by ordinance, headed by the Chief Justice and a number of ex officio appointees, with the Law Secretary as member secretary. The SJC was designed to provide a process for appointments to the High Court Division of the Supreme Court and promotions to the Appellate Division, in order to reduce the extent of politicisation. Examining its short life does provide some insights into the pathologies of the appointments process, as it appears that the Commission has been ineffective in reducing the extent of politicisation or improving the quality of judges. The pivotal role of the Law Ministry in preparing an initial list of nominees for the Commission's consideration and its control of the process raised some controversy - a lot of the power was in the hands of the Law Advisor (Minister) rather than the Chief Justice. Furthermore, the government could by-pass the recommendation of the Commission. There were also some controversies around the competence and integrity of a number of the appointments made by the SJC, such as that of one district court judge who had been charged with corruption and suspended from service. According to several judges and observers, the process remained open to both Executive manipulation and personal political and other influences (see T: appendix 1). By the end of 2008, seven new judges had been recommended for appointment to the High Court by the SJC, and six had taken office.¹³ The Ordinance establishing the Supreme Judicial Commission lapsed in February 2009. It remains to be seen whether the new government will comply with a High Court judgment last year which re-asserted a consultative role for the Chief Justice in the appointment process.

Article 95 (2) states that, in order to be eligible for appointment to the Supreme Court, a person has to be a citizen of Bangladesh and either a Supreme Court advocate having at least ten years standing or a judicial officer who held judicial office for a period of not less than ten years. Though the Article provides that Parliament could determine other qualifications through legislation, so far no such law has been enacted. This provision is very loose; experience refers to years of being admitted to practice at the bar, not necessarily of dealing with complex legal matters. It provides little protection against egregious appointments of partisans without the requisite competencies, especially in the absence of any collegiate assessment process by other judges.

There was broad agreement amongst interviewees from all stakeholder groups that political affiliation has played an increasingly large influence in appointments. As the appointment of partisans has gathered pace, there has been a distinct decline in overall quality of judges and judgments, and an undermining of judges' impartiality. One journalist who has followed the courts described a 'vicious cycle' regarding appointments to the High Court Division, something that was disputed by sitting judges but met the concurrence of an ex-judge: some senior advocates of the Supreme Court who are politically affiliated with the government of the day recommend their juniors as judges, which in turn helps those senior lawyers to influence judgments in cases where they appear before the judge's bench.

Another significant channel through which political influence can be exerted is Article 98 of the Constitution, which provides for the appointment of Additional Judges to the High Court for a period not exceeding two years. In its first four years of office during its most recent term (2001-2005), the BNP led four-party alliance government recruited 55 additional judges for the High Court, and the method followed for these appointments created severe controversy both inside and outside the Judiciary. It was said that 19 of these judges were affiliated with the parties in power including one BNP lawmaker of the sixth Parliament and a number of lawyers who contested the Supreme Court Bar Association (SCBA) election in the ruling party's ticket. The competence of these judges was questioned; as an eminent jurist of the country remarked, 'A man who can't write a single English sentence correctly has been made a judge'. At the same time specific allegations were raised regarding the authenticity of the (LLB) certificate of one of these judges, Justice Faisal Mahmud Faizee, which threatened the image and dignity of the higher courts. Later, despite the protest of the lawyers, the government appointed Faizee as a permanent judge to the HC although the Chief Justice had not recommended his confirmation at the end of his two year term as an additional High Court judge.

Traditionally, a third of Supreme Court judges are being recruited from the judicial service and two-thirds from the Bar Association. Most of the criticisms of those recruited for political reasons are directed towards the members of the bar; due to the political interference in the appointment procedure, many of these judges have poor academic records and had little 'stature' before joining the bench. In fact, presumably this is part of the reasons why the judges were chosen by the ruling party concerned and why they accepted the offer - they are far less likely to transcend the political patrons who appointed them. Judges of the subordinate courts are of the opinion that their contribution and competence is not valued, and that they make far better superior court judges because they have some considerable work experience before being considered for appointment to the High Court Division (see U: appendix 1). On the other hand, subordinate judges have a limitation in so far as they are not accustomed to dealing with constitutional and public law cases but with regular civil and criminal cases, and those coming from the Bar are better suited to preparing well-reasoned judgments drawing upon precedent because of their training as advocates. A High Court Division Judge coming from the bar opined:

"It is true that not all the judges are of the highest quality, but I do not think that it is right to give a wholesale comment. The number of political appointments has increased. Whereas in the past good lawyers were eager to join the Judiciary, the situation has changed. Not so competent lawyers with inadequate experience are being appointed to the bench."

As the status of the Judiciary has fallen, so has the lure of judicial office. As greater politicisation has resulted in a fall in quality and less consistency amongst judges, this acts as a further deterrent for those of integrity and ability joining the bench. There has been a shift in the background profiles of upper court judges, especially in the last decade in their levels of educational attainment, their class backgrounds, and their links with the politicians who appoint them. In a number of other countries, the homogeneity in the class backgrounds of the bench, while keeping the Judiciary a conservative profession, also instils a strong adherence to professional ethics and codes of behaviour, and a fear of departing from the collective social and professional norms, something that is now near absent in Bangladesh (Griffith 1997).

Even where the Judiciary is not monolithic in its political orientation or quality, and has a considerable number of judges of ability and integrity, case allocation is the mechanism through which partisan appointments can be used to favour the ruling regime. During 2006, we saw how this process worked in a way that undermined any greater accountability of the executive. The Chief Justice was close to the ruling regime and allocated cases to regime-friendly benches, who would dispose of them accordingly. Even in

instances where the High Court Division had delivered a favourable verdict for those who were seeking to extract accountability of the executive (for instance, rulings on voters' lists, High Court ruling on asset disclosure and other disclosures for politicians), weak enforcement undermined accountability. At the time, the Attorney-General was very closely aligned to the ruling party and would immediately appeal the judgment or seek a stay of execution as in the numerous stays sought with the *Masdar Hossain* separation judgment.

4.5.2 Remuneration and Privileges

Compensation is seen by many as going to the 'heart of the matter' in public administration (WB 1996). The remuneration and privileges of superior court judges are regulated by the provisions of the Supreme Court Judges (Remuneration and Privileges) Ordinance, 1978 (see V: appendix 1). Despite the fringe benefits, the salary received by superior court judges has fallen drastically over the last 100 years in relative terms, and especially in the last 50 years (WB 1996), and are also low in terms of both the market comparators. The pay is too low to attract the brightest lawyers from the Bar, except those who many have independent sources of wealth or family wealth behind them to make such a choice, (see W: appendix 1) and for whom the non-material incentives -- such as prestige, status, a family history in the bench or in the law and the positive potential to influence the shape of public policy and the exercise of power are attractive. One High Court judge remarked:

"The salary is very low. When I decided to join the High Court Division as a judge, I had a good practice, my own law firm and I was a principal of a renowned law college. I joined the High Court Division for the prestige and honour. However, I must agree, my family backup regarding financial matters was quite strong and to be honest, without that backup, it would not have been possible for me to take the decision. A couple of months ago, I asked a very good lawyer whether he was interested in joining the High Court Division as a judge. He is a very competent lawyer and he would be a very good judge. He told me, "I earn 20 times more each month than you, why should I join as a judge?" That's the real picture- low salary will only encourage those (to join), who now make less than that and you can guess what his/her quality will be."

Low emoluments are considered to be a main driver of corruption in the government, including the Judiciary. In the lower courts, the pay remains extremely poor (see X: appendix 1). The recent effort to recruit judicial magistrates in consequence of the CTG separation reforms actually led to a number of meritorious recruits joining the judicial service, many of them from more modest backgrounds for whom joining the judicial service had significant non-material incentives. However, due to the inadequate pay and facilities, as many as 49 entry level judges have already quit the service out of 380 recruits, many preferring civil service jobs (IGS 2009).

The Pay Commission, established in the wake of the *Masdar Hossain* judgment, submitted its recommendations to the government for a pay increase for the judicial service. However, the recommendations remain unimplemented. Furthermore, it is unclear whether the Commission has the requisite expertise to undertake systematic and comprehensive reviews of pay structures for instance, looking at systemic changes consistent with fiscal goals and which in the medium term could bring about a paradigm shift in compensation through attrition, early retirement, subdued pay increases at the bottom, and large pay increases at the top paid for by reduction of lower level staff.

While a pay increase for the lower judiciary may result in it attracting and maintaining more able recruits (since the principal alternative for many of these recruits, who are from more modest socio-economic

backgrounds, is the civil service), it is unlikely to make a significant difference for Supreme Court judges. Once the deterioration of quality has occurred and the non-material incentives further diminish because good candidates are discouraged from joining a judiciary of very inconsistent and often poor quality, increasing salaries at the margins is not going to make a difference to increasing quality. A massive increase in salaries for superior court judges (several hundred percent, at the very least, to make the salaries competitive with the private sector) is more likely make a difference, and many have recommended that judicial salaries need to be delinked from government salaries and be established in line with market and commercial considerations:

"Transparent performance and qualification-based methods of enhancing compensation selectively are widely practiced, would be politically justifiable and feasible, and would not lead to pressure for system-wide wage increases." (WB 1996)

An increase in salary without adequate accountability measures and a restoration of non-material incentives is unlikely to be an effective deterrent of corruption, especially for those who are already sitting in the courts. If the informal incentives differ markedly from the formal incentives, and income from illegal rents far exceeds the official salary, a salary increase is unlikely to change existing patterns of behaviour.

4.5.3 Accountability

Potentially, there are two types of accountability pressures in relation to the performance of judges: internal review by other judges (through judgments being appealed to the next tier of the courts or through reviews of operational efficiency in the way of performance evaluation) and external scrutiny from the media and civil society. External scrutiny of the Judiciary is severely curtailed, with not all decisions being published, something one hopes will be overcome in coming years through the dual pressures of the *Right to Information Act 2009* and the digital agenda (see Y: appendix 1).

Under the existing system, the performance of sub-ordinate court judges is evaluated through the Annual Confidential Report (ACR), a process that fails as an accountability mechanism but rather looms as a potential instrument of political control. For the Assistant Judges up to Additional District Judges, the ACR is written by the District Judge. The ACR of the District Judge and Additional District Judge is written by Supreme Court Judges. The culture of *tadbir* (reflecting lobbying efforts and patronage without any consideration of performance) prevails here, with judges being cautious in not alienating the senior judge who reviews their performance. Political interference can also have an impact on the ACR (see Z: appendix 1). In 2000, a Code of Conduct for the Judges of the Supreme Court was prescribed by the Supreme Judicial Council in the exercise of power under Article 96(4)(a) of the Constitution, but there is a dearth of mechanisms to enforce such a code (see AA: appendix 1).

Participation in training and updating of skills has little impact on the ACR. Training received by the judges in sub-ordinate courts consists of initial training at the Judicial Administration Training Institute and on-the-job orientation training. Once a judge is appointed to the Supreme Court, the only training s/he gets receives is on the job.

There remain few meaningful accountability mechanisms for the Judiciary, which are able to protect itself from criticism through contempt laws. Many have argued that the *Contempt of Court Act 1926* fails to strike a balance between protection of the court and freedom of expression (see BB: appendix 1). The law of contempt of court (see CC: appendix 1) that has developed in Bangladesh and other parts of the sub-continent is far more draconian than that found in the United Kingdom and other parts of the common law

world today. It has been used on a number of occasions to protect judges from accountability and justified criticism and to protect the Judiciary from public scrutiny. The Contempt of Court Ordinance 2008, which effectively curtailed the courts' powers of contempt (see DD: appendix 1), was struck down by the High Court in May 2008.

There are a number of examples where contempt laws have been used to protect judges against accountability pressures from citizens, on the basis that they would interfere with the judges' ability to function properly and would thereby have an impact on public confidence. An article published in late 2008 in the Bangla language daily, *Prothom Alo*, chronicled significant judicial corruption and politicisation of the Judiciary, has led to contempt of court charges against the journalist, rather than any move towards extracting greater accountability of the Judiciary. Some years before, two national newspapers reported in that an additional judge of the High Court, who was serving his probationary term, had doctored his law degree. Instead of an inquiry being instituted to first determine the veracity of these claims, and then to institute contempt of court proceedings if this was untrue and malicious, proceedings were instituted immediately and the High Court convicted editors, publishers and three reporters for contempt of court in 2005. Journalists were barred from contacting judges directly (see EE : appendix 1).

4.5.4 Financial and Administrative Independence

According to Article 88 of the Constitution, the salary of Supreme Court judges is charged on the consolidated fund and not subject to a vote of Parliament. But as administrative expenses are not defined, the Ministry of Finance can regulate such allocation in the name of financial discipline owing to its authority to make financial rules and regulations and ensure financial discipline of the government. This practice has the potential to seriously undermine the effective functioning of the judiciary (see FF: appendix 1). Many interviewees suggest that the administration has a somewhat hostile attitude towards the judiciary, and fails to respond promptly to requests for assistance in terms of staffing, manpower and basic resources (see GG: appendix 1). If the *Masdar Hossain* is to be fully implemented, the budget management of the Judiciary should be fully delegated to an independent secretariat in the Supreme Court or the Chief Justice's office.

The situation is more serious in the subordinate courts. When large numbers of new magistrates were recruited last year, there were no new court rooms for them to work in (they needed to share courts and could not sit in session regularly), they needed to share stenographers and were often not provided with the most rudimentary of equipment (such as pens). In some cases, Deputy Commissioners permit judicial magistrates or assistant judges to use their offices, but many do not (see HH: appendix 1). Recent newspaper reports suggest that the Ministry of Law is creating obstacles in providing services such as housing and vehicles for Assistant Judges, a contention that the research supports (see II: appendix 1). Finally, executive control over investigation officers can interfere with the autonomous functioning of the lower courts. Quite often investigation officers are transferred from one police station to another and the judge fails to find the officer as a witness when needed for a case (see JJ: appendix 1).

4.5.5 Transfer, Promotion and Posting

As there is no separate secretariat for the Judiciary, the Law Ministry can play a significant role in determining the transfer, promotion and posting of the subordinate court judges. The recent changes to the legal framework appear to have made little difference to end Executive dominance, because the whole process of consultation with the Supreme Court can be undermined or manipulated by the Law Ministry. Almost all the sub-ordinate court judges that were interviewed in the study are of opinion that no change has occurred (see KK: appendix 1).

4.5.6 Authority: Enforcement and Legitimacy

The Judiciary's authority is the extent to which it is seen by the society as a legitimate body for the determination of legal issues and the extent to which parts of the state apparatus and powerful individuals comply with, and enforce, its decisions. The ability of the Bangladesh judicial system to enforce its own judgments is weak. Apart from systematic political interference in law enforcement at the lower levels (Article 2 2006), partisan interference at the highest levels (through, for instance, a pliant Attorney-General who appeals cases or seeks stays on execution) has created a system where compliance is weak, where powerful political and economic interests and actors are involved (Islam 2003).

The undermining of the authority of the courts as a legitimate arbiter of disputes over power has been a longer term narrative. During the periods of martial law, constitutional rule was severely undermined and the Constitution was subservient to the martial law proclamation ((DLR 1978 (SC) 207). The subordinate courts were brought under executive control, which allowed the bureaucracy to take an upper hand over the lower courts. The result was an effective partnership between the military government and the bureaucracy, which preserved the interests of both the actors. An interesting thing to note here is that in neither of the two martial law periods, was any attempt made to manipulate the appointment procedure of Supreme Court judges. However, there was a gradual decline in the authority of the courts, which gathered significant pace during the last BNP regime.

During 2006, the Supreme Court perhaps lost the 'moral authority' that it previously had and it is unclear how this will be recovered. During that year, the Government and Election Commission were acting in open defiance of laws, court rulings and the Constitution. Even where the courts made courageous decisions on voter lists and asset disclosure for politicians, weak enforcement undermined accountability. High Court rulings were typically appealed by the Attorney-General as a matter of course to stay execution of judgments. Stays on Appellate Division hearings were sought. In the context of the voter list controversy, we witnessed the spectacle of one of the Election Commissioners (a former judge) saying that he will only implement those court judgments that he deems 'legal' and defy 'illegal judgments'. When the President appointed himself as the head of the Caretaker Government in late 2006, the constitutional challenge was subverted by the Chief Justice's actions. It is unclear whether the Supreme Court will fully recover from the impact of events in 2006 and since, where it lost its legitimacy as the arbiter of significant disputes over power.

Scholars have argued that judicial independence is, to a large extent, dependent on the 'authority' of the institution gained through its political status, which eventually allows the institution to determine some of the most sensitive political controversies of the day. The Indian Supreme Court has managed to maintain this authority and political status, even to a point where it is now being criticised for it. It is this decline in authority which makes it hardly surprising that the courts failed to challenge in a significant manner any controversial policies (Barzilai and Sened 1997) during the CTG period.

4.6 The Judiciary and the Stakes of Politics

When one examines the legal and constitutional framework over the past 35 years, there is an unmistakable trend towards the undermining of the Judiciary, evident in the attempt to reduce judicial independence and the authority of the institution for instance, through the 4th amendment to the Constitution, the curbing of the authority of the Judiciary by the military governments through the 5th amendment, the deliberate failure by successive elected governments to implement the Appellate Division judgment relating to the separation of the Judiciary from the executive, and efforts to manipulate the appointments process to the

superior courts in recent years. The 'politicisation of the Judiciary' which this chapter describes, has occurred during the last three decades, and refers to a multiplicity of mechanisms that emerged to subvert the institutional autonomy of the Judiciary and the personal independence of judges, so that the extra-legal actions of the executive or of individuals aligned with those influential in the ruling party remain beyond challenge. The reason is simple: with the decline amongst political actors of any commitment to the idea of a self-restraining state, came a desire to stifle the role of the Judiciary as an effective institution of accountability which will provide some restraint on power and to use the law enforcement apparatus as an instrument for party-political gain.

After the restoration of multi-party electoral politics in 1991, the ascendancy of the political class in Bangladesh has seen the development of clientelistic relationships with the Judiciary. The rise of 'patriarchy' gave birth to a 'winner-takes-all' syndrome, where an election assures the winner complete control of public institutions and access to the economic benefits of the state (whether contracts from government tenders or illegal rents). The courts became a useful mechanism for denying the opposition its own space in the political realm (control over the lower courts and law enforcement agencies through criminal cases is the key), a driver of control over the subordinate Judiciary. The impetus for control over the superior courts was to undermine its operation as an accountability mechanism, through judicial review and the prerogative writ jurisdiction. As the stakes of political power have increased over time with the quantum of resources that are potentially the spoils of office, and the risk of access to rents being closed when losing office,¹⁴ there were strong incentives for incumbent governments to hamper judicial independence and few restraints preventing them from doing so. The drivers -- to control the distribution of public resources keeping the ruling party and its allies above legal restraint whilst engaging in extra-legal and unconstitutional practices -- are very powerful. It should be noted that the Judiciary was in a very vulnerable position in any instance, due to a wholly inadequate (material and non-material) incentive structure that had deteriorated steadily over the course of the independent Bangladesh.

The introduction of the Caretaker Government provides an illustration of a factor that has increased the motivation for political actors to interfere in the judicial appointments process. Prior to 1996, the Chief Justice played a number of roles of consequence to the ruling party: hearing cases on appeal from the High Court, case allocation (especially of cases involving writ petitions to judges on the High Court Division), and a role in appointments to the bench. However, the potential political cost of being caught in the act of manipulating the appointment of the Chief Justice or the courts' decision-making was higher than the benefits. After the inception of the CTG, the last retired Chief Justice of the Supreme Court is constitutionally mandated to head a Caretaker Government which conducts an election upon which the ruling party's political future rests. There emerged a strong new incentive to ensure that a loyalist is occupying the position of Chief Justice, and thus to manipulate the entire system of appointments and promotions. The parties started to manipulate the formal rules -- for the most part not breaching the letter of the existing law, but acting in defiance of its spirit, discarding unwritten conventions (such as promotion and appointment to the Appellate Division on the basis of seniority, or consultation with the Chief Justice in appointments to the upper courts) and in some instances changing the formal rules (such as extending the retirement age to 67). Eventually, a stronger nexus has formed between the Judiciary and the ruling party during the denouement of the last BNP government, but continued to an extent during the CTG and the current government. The control over the appointment procedure of Supreme Court judges eventually allowed the political parties not only to choose the head of the CTG but also to use the institution in achieving its political objective of suppressing the opposition and of avoiding any accountability for violations of the Constitution.

What ultimately protects the independence of Judiciary in developed countries and amongst more politically mature countries in the developing world is a community consensus (amongst the general public, politicians of all hues, the legal profession) that judicial independence is a quality worth protecting and that there should be limits on the authority and power of political actors. Where the stakes of politics (the costs of winning and losing elections) are low and especially where the stakes of being caught in the act of interference are high, there is relatively little incentive for political actors to interfere with judicial independence. In the Bangladesh context, we have witnessed an increase in the stakes of politics coupled with few consequences for politicians being caught in manipulating the Judiciary. The latter is unlikely to change very quickly in light of the small size of a vocal middle class voice that holds any real political consequences for the ruling party. It will require either an enlightened political actor choosing to recommit to the notion of constitutionalism, to the benefits of a self-restraining state, or strong public demand that is likely to reverse this trend in the near future. The legal profession has a potentially large role in mobilizing this demand, because of its proximity to, and familiarity with, the courts and its relative visibility and access to media.

4.7 Conclusion

While there have been many changes to the formal institutional framework, judicial independence has principally been undermined in recent years through the appointments process, with significant numbers of partisan and less able appointees to the bench. This has had an obvious effect on the quality of justice, on the fairness and impartiality of decisions; poor quality judges are often beholden to those who appoint them, and are more open to improper influence and corruption. While corruption and external interference in the lower courts have long been recognised as a serious problem,¹⁵ there has been growing recognition that the superior courts have suffered a long term decline in both quality and integrity. In the past, the relative homogeneity of social background of the upper judiciary (Griffith 1997), while making it quite conservative, also imposed strong peer pressures for performance and acted as a deterrent against both corruption and political influence. With the appointment of poor quality party loyalists to the bench from a different social stratum, social and professional pressure from within the judiciary has not been a significant deterrent to corruption and improper influence in verdicts. The legitimacy of the courts and citizens' trust in its decisions have thus been undermined.

As indicated in the body of this Chapter, almost immediately after taking office, the CTG took concrete steps to comply with the *Masdar Hossain* judgment, which ordered the separation of Judiciary from the executive branch of government. Partisan political influences have also had far less influence over the courts' decisions during the CTG period than in previous years. Nevertheless, the changes to the formal rules appear to have had little impact to reverse the decline in judicial integrity. Judicial rulings through the CTG's tenure consistently followed the political script of the period. Generally speaking, judges did not rule against the vital interests of the CTG or military. In this light of these observations, the team has made an effort to analyse the effects of the formal separation.

What we found is that the informal rules that have developed over time which have governed the Judiciary appear to have such strong roots that substantial changes to the formal legal framework have had relatively little impact. Thus, while the formal incentives within the Judiciary may not have changed substantially over the last three decades, the informal incentives, as hypothesised, have changed or become accentuated in recent years as patrimonialism has expanded. This in turn has distorted the application of formal processes such as appointments and promotions, and led to the breakdown in routine monitoring and supervision.

15 Corruption database of Transparency International in Bangladesh (2005) reports that 66% of the surveyed people, who went to courts, had to pay bribes "to the lower judiciary at an average rate of Tk. 6,135.00".

While the appointment procedure of judges has been largely freed from executive control at the subordinate judiciary level (although we note the remaining administrative and financial reliance upon the government), apart from the brief interlude of the Supreme Judicial Commission during the CTG, the situation remains little changed for the upper courts. It is hoped that the government complies with the recent Appellate Division judgment which requires consultation with the Chief Justice. Greater transparency and credibility in appointments strengthens the confidence of the litigants and public in the Judiciary. Apart from a transparent process for appointments with a greater role for the Judiciary, it will be necessary to overhaul the compensation package for the judges by delinking it from the central government salary system and restoring it to the levels prevailing in the 1950s (WB 1996).

Institutions of Accountability

5.1 Introduction

In a constitutional democracy like Bangladesh, Parliament and Judiciary are fundamental to rule-based governance. In addition, there are four other key institutions which can potentially restrain and hold to account the Executive as well as other politically and economically powerful actors. The institutions are the Election Commission, the Public Service Commission, the Office of the Comptroller and Auditor General and the Anti-Corruption Commission. Because of their key role in holding the government, bureaucracy and politicians accountable, they are referred to as the 'Institutions of Accountability' (IoA). Schacter (2000) defines IoA as independent public bodies empowered to oversee the state's actions, demand explanations, and, when circumstances warrant, impose penalties on the government for improper or illegal activity. The first three are constitutional bodies designed to strengthen governance by establishing rule of law, ensuring equality, democracy, transparency and accountability within the statecraft. The Bangladesh Election Commission is designed to ensure free and fair elections that reflect people's choice and also hold the political parties accountable for their actions. The Public Service Commission is empowered to select the best candidates in a competitive and impartial manner for the bureaucracy and ensure discipline within the public administration. The Office of Comptroller and Auditor General is entrusted with the authority to audit the public bodies in a timely and transparent manner. The Anti-Corruption Commission (established in 2004) - not a constitutional body - is designed to address endemic corruption prevailing in Bangladesh.

These institutions are however yet to establish themselves with credibility and public trust. Massive politicisation has hindered their optimal performance over the years. There has been an ever increasing demand for reforming and strengthening these institutions from all quarters of our society. Against this backdrop, this Chapter analyses these institutions under four key themes, namely, **independence** (how independent the institutions are from any influence), **accountability** (state of accountability mechanisms), **efficiency** (organisational structure and capacity in discharging their mandate) and **effectiveness** (how far they are achieving their mandate). Independence, efficiency and effectiveness of these institutions are inherently linked to the ultimate objective of ensuring accountability.

The Chapter draws extensively on the background papers on these institutions prepared through both primary and secondary research by the Institute of Governance Studies (IGS) under its project on the

'Institutions of Accountability'.¹ Section 5.2 describes how the concept of independence has been breached in practice. Section 5.3 analyses the accountability structure. Sections 5.4 and 5.5 explore the issues of efficiency and effectiveness of these institutions. Section 5.6 concludes by summing up the findings and making specific recommendations for optimum functioning of these institutions. The objective of the research is to understand the inherent deficiencies and challenges that these institutions face for further research, debate and dialogue. The research outcome offers practical advice and guidance on a sequenced set of feasible reforms that can raise the performance of the institutions of accountability to a more effective and sustainable level.

5.2 Independence: Preserved in Theory, Breached in Practice

Independence implies that these institutions should act without *any* pressure- external or internal, and should have the discretion to draw resources and spend them to fulfil their mandate. The Chapter argues that leadership and fiscal autonomy of these institutions and their relationship with the executive organ are key elements for upholding independence. The Chapter further argues that, the appointment process at the leadership position is the main avenue for politicisation of these institutions by the executive organ.

5.2.1 Futility of Constitutional and Statutory Authorities Due to Poor Leadership

The Constitution of Bangladesh bestows Bangladesh Election Commission (BEC), the Office of the Comptroller and Auditor General (OCAG) and the Public Service Commission (PSC) with independence.² In addition, the Constitution provides the BEC with authority to take legal actions against anyone obstructing the Commission in its independent functioning. The PSC's independence and autonomy have been guaranteed under provisions made in the Constitution and President's Orders, as per Schedule I of the Rules of Business (issued in 1975) (Zafarullah and Khan 2005). The government cannot remove the leadership of the above institutions at its will as the Constitution provides due protection.³ The Anti-Corruption Commission (ACC) is not a constitutional body but the Anti-Corruption Commission Act (2004) ensures its independence.

Although constitutional and statutory protection is the necessary precondition for upholding independence, it is the institutional leaders' ability and willingness to act objectively in a non-partisan manner which increases the institutions' independence and credibility.

The BEC scenario gives us a mixed picture interwoven with success as well as failure regarding leadership. The 5th, 7th, 8th and 9th parliamentary elections were held under the non-party Caretaker Government system. It may therefore be said that the BEC and the Caretaker Government share the success to a large extent. The 4th and 6th parliamentary elections and a number of by-elections under the political regimes have been criticised for not being free and fair. Some of these tainted elections created political crises in the country. The by-elections of Magura (1994) and Dhaka (2001) are two such examples. During these elections the BEC failed to compel the political parties to comply with the rules and regulations promulgated by them. Similarly, the BEC has not been able to enforce the High Court decision on compulsory disclosure of nine categories of information about the candidates except for the 9th parliamentary election.

1 The Institute of Governance Studies (IGS) prepared four background papers on these institutions. In so doing, we reviewed existing literature, analysed legal and statutory frameworks of these institutions and conducted in-depth interviews with relevant experts and employees of these institutions

2 Article 118(4) and Article 128(3)

3 As per the Constitution the leadership are deemed equivalent to the Judge of Supreme Court

Although the current leadership has succeeded to register political parties with the Commission but there are a number of crucial issues which are yet to be resolved. The local government election held under the political regime in early 2009 has been criticised on the basis that it has not been as fair as the 2008 parliamentary election. The BEC has not been able to curb political influence during local government election. However, the Commission has been vocal against such issues and has filed a case against a minister for interference during the recent local government election.⁴ This indicates that if the leadership possesses the willingness and ability, it can protect its independence and act with credibility to certain extents. But this obviously cannot insulate the institution from the pressure exerted by the Executive. For leadership to work truly independently, the Executive also needs to play a supportive role.

The PSC leadership portrays a similar picture. It is a common scenario in Bangladesh for the new government to select a new PSC Chairman as a reward to the person who has proven his/her loyalty to the party. However, there have been Chairs and Members whose strong leadership gave PSC credibility as they upheld its independence. In contrast, some leadership turned the PSC into an institution crippled with corruption and acquiescent to the political party in power (IGS 2007b).⁵

The OCAg has the potential to hold the Executive accountable in their use of public resources. The institution deals with sensitive financial issues directly related to political and administrative corruption (when we define corruption as the use of public resources for private gain) and therefore the ruling party would consider an effective OCAg a threat to its partisan interest. There is however not enough evidence suggesting partisan behaviour by the OCAg in the public domain. At the same time, it can be argued that the OCAg has not been able to generate public awareness on scrutinising the state's behaviour in using public funds.

Unlike BEC, PSC and OCAg, the ACC is not a constitutional body but an independent, autonomous and non-partisan organisation.⁶ Since its inception, weak and divided leadership has affected the ACC's independence and its ability to function. Disagreements among the three Commissioners on different issues further intensified the situation.

5.2.2 Lack of Fiscal Autonomy

Fiscal autonomy is another important aspect of independence for the institutions. The roles of the Ministry of Finance (MoF) and the Parliament are crucial in this respect. As per Article 88 of the Constitution, the following expenditure shall be charged upon the Consolidated Fund:

- The remuneration payable to the Election Commissioners, Comptroller & Auditor-General, Chairman and Members of the PSC;
- The administrative expenses of, including remuneration payable to, officers and servants of the above three Institutions.

The constitutional provisions for fiscal autonomy have a grey area, as the term 'administrative expenses' has not been defined. This vagueness creates room for the Executive to curb fiscal autonomy of the aforementioned bodies. The definition does not include capital expenditure, especially development

4 The Daily Star, 'Minister Latif Sued for Poll Offence', 6 February 2009

5 The EC appointed Upazila Election Officers, who were selected through the PSC in 2003. This recruitment was criticised on the grounds that the appointed people were ruling party men. Later on this recruitment created a controversy within the country; New Age, 'Corruption, nepotism dog civil service recruitment', 27 November 2005

6 Section 3, ACC Act 2004

programme. Thus, the BEC, PSC and OCAG are financially dependent on the MoF. BEC requires submitting a bill of demand to the Parliament through the MoF. The institutions themselves usually prepare their budgets, but it is in the submission and approval procedure where involvement of the Executive is practiced. One BEC official asserted that MoF often fulfils their justified demands but a higher official from an election observer group opined that the MoF can have a stronghold due to this dependency (IGS 2008). The PSC budget in effect comes through the Ministry of Establishment (MoE). Whether or not the MoE plays a role in preparing the PSC budget estimates remains unclear. There are two opposing views in this regard: some opine that PSC prepares its own estimate and some suggested that the MoE plays a definite role (IGS 2007c). A similar scenario is observed with the OCAG. Even though the OCAG prepares its own budget, the MoF plays a definite role. The OCAG however, unlike BEC and PSC, can re-allocate funds across spending heads (IGS 2009b). It is worth mentioning that BEC and PSC have their own source of income. However, they do not have any control over these resources as they directly go into the government coffers.

As per Section 25 of the Anti-Corruption Act (2004), the government will allocate a certain sum in favour of the ACC for its expenditure. Constitutional provisions do not apply since ACC is not a constitutional body. However, there is no permanent source of funding for the ACC to take initiatives independently for the various purposes essential for its anti-corruption drive. In order to make the ACC more independent in this regard, a long-term block grant could be provided by the Parliament at the beginning of each new term (IGS 2007a).

This analysis shows that a lack of clarity in the definition of consolidated funds coupled with bureaucratic control limits the fiscal autonomy of the four institutions under consideration.

5.2.3 Relationship with the Executive: Practical Requirement for Independence

All four institutions need support from various government agencies to fulfil their mandate. It has been observed that the Executive often exploits opportunities to influence these institutions.

The BEC needs support from various ministries and agencies to conduct a free and fair election and discharge its functions. Constitution has made it obligatory for all Executive authorities to assist the BEC in discharging its functions.⁷ However, neither the Constitution nor the relevant statutes spell out the manner of such assistance. There are instances where the BEC had to comply with government's directives (TIB 2006). According to one BEC official, Executive influences are prevalent while selecting personnel for election management (IGS 2008). The Election Commission Secretariat is the operational hub for the Commission, which was under the Prime Minister's Office (PMO) until 2007. Hence, the Prime Minister was able to exercise arm-length control over the BEC. However, the last interim government has separated the BEC-Secretariat from the PMO.

The PSC has to depend on several offices of the government to perform its function, especially on the Ministry of Establishment. One former PSC Member noted, "MoE many a times creates unnecessary delay in providing the list of vacant posts to PSC" (IGS 2007b). Karim (2007) argues that the 'Warrant of Precedence' creates opportunities for the bureaucracy to intervene PSC decisions. It is often the case that the Establishment Secretary has a higher rank status than the PSC Members and thus the latter feel constrained in seeking cooperation from the former.

Doyal (2000) argues that OCAG is administratively subordinate to the government -particularly to the Ministry of Finance and the Ministry of Establishment. The MoF controls the budget and the Audit and Accounts Cadre officers work in the OCAG: both parts of the Executive branch of government. One high official of the OCAG said, "though the OCAG should have 4535 employees, currently it has only 2006 in its 10 Directorates. This is because the OCAG could not recruit in vacant positions, rather requires going through the tardy channels of MoE and MoF" (IGS 2009b). The OCAG also lacks the freedom to professionalise its office. This becomes acutely problematic in conducting technical audit, which needs multidisciplinary expertise, as they cannot recruit the number and kinds of people required.

Since the inception of the ACC in 2004, Executive interference in the functions of ACC was notable, especially on the two issues of appointment of the Secretary and absorbing the former Bureau of Anti-Corruption (BAC) staff into the newly constituted ACC. The Commissioners blamed the Cabinet Division for its interference in the function of ACC as the Cabinet Division sent a letter to the ACC stating that it (the Cabinet Division) has the sole jurisdiction to transfer the staff of the defunct Bureau of Anti-Corruption. The rift between the ACC and Cabinet Division on these issues escalated to such a level that the ACC sent a letter to the Cabinet Division, asking it not to interfere with the Commission's activities and thus make it inoperative.⁸ The ACC also needs to coordinate with a number of law enforcing and investigative agencies such as the National Board of Revenue and Bangladesh Bank. Effective coordination with other law enforcing, intelligence and investigation agencies is likely to increase the effectiveness of the ACC. However, successful coordination has not been evident so far. Instead, attempts of control on behalf of the Executive have been noted since the birth of the existing ACC.⁹

5.2.4 Politicisation of the Appointment Process

The Constitution and the legal framework for each of these oversight institutions provide indications for appointments to their leadership positions. The process lacks transparency, and at times it seems that the process becomes an *ad hoc* rather than a structured one. Lack of transparency and the *ad hoc* nature of the process creates room for politicisation. This section provides a brief account of the appointment process and identifies the loopholes.

The Constitution furnishes directives about the number, nature of composition and tenure for the leadership of the BEC, PSC and OCAG with articles specifying ineligibility as well as process for removal.¹⁰ The President is the appointing authority and the leadership has to write directly to the President to resign from the post. The Constitution provides for making of a law describing conditions and process for appointing the Election Commissioners. But no such law has been formed to date. The Constitution¹¹ also compels the President to act as per the advice of the Prime Minister and hence the danger of partisan influence is high.

According to available information, five out of 10 Chief Election Commissioners (CEC) and 10 out of 19 Election Commissioners (EC) could not complete their full terms. Most of the CECs and ECs were forced to retire prematurely for their allegedly partisan behaviour or lack of credibility. It is interesting to note that they were however not tried before the Supreme Judicial Council for their alleged misconduct. Opposition political parties agitated and campaigned against them demanding their resignation instead of the trial

8 The New Age, 'ACC to ask Cabinet Division to stop interference', 24 March 2005

9 For example, in the early 2007, the then caretaker government created the National Coordination Council (NCC). This was done to strengthen and speed up the anti-corruption drive. The later body in effect became the *de facto* arm of the government on the Commission. The NCC appointed a number of special Task Forces, with representation from a number of agencies, to strengthen the drive against corruption (IGS 2007a).

10 Article 118, 127, 129, 130, 138 and 139

11 Article 48(3)

under the said council as per the rule of law (IGS 2008). In April 1972, through 'Bangladesh Public service Commission Order' (President's Order No. 34 of 1972), two separate PSCs were established, namely BPSC (First) and BPSC (Second). The President had to appoint the Chair and Members as well as determine their numbers. In 1977, the government through the promulgation of Bangladesh Public Service Commission Order, 1977 decided to establish one PSC instead of two. The number of Members was also fixed by the ordinance (IGS 2007b). The President more or less follows the seniority principle as a norm in appointing the Comptroller and Auditor General (C&AG). Since independence, the senior most officers of the Audit and Accounts cadre usually received the appointment, except in two cases, in which the seniority principle was violated, allegedly on political and nepotistic considerations. Another important trend found in the appointment process is that officers who migrated permanently from the OCAg to the Secretariat were appointed in most cases. The appointment of the 9th C&AG was the first deviation from this trend. He was the first appointee from within the OCAg. The appointment of the 10th C&AG continued this deviation. Considering the above dynamics in the appointment process, it can be argued that the seniority norm alone cannot prevent the politicisation of the appointment process (IGS 2009b).

The Anti-Corruption Commission, established in 2004, is not a constitutional body but has an advantage over the other three in terms of appointment process. The Anti-Corruption Commission Act, 2004 and Anti-Corruption Commission Rule, 2007 clearly define the process and criteria for selecting the Chairman and Commissioners along with the non-eligibility criteria. The search committee makes the nominations and the President appoints the Chairman as well as the Commissioners from the list of nominees suggested by the search committee.¹² Despite these advantages, the appointment of the first Chairman and Commissioners created controversy due to politicisation (IGS 2007a). The process is well defined but lacks transparency.

The Constitution of Bangladesh along with the legal framework of the oversight institutions states that the President is the appointing authority. But as mentioned before, Article 48(3) states that the President shall act as per the advice from the Prime Minister - which opens up the avenue for politicisation. The Constitution also mentions how and when a person can be removed from the leadership position s/he is holding. However, neither the Constitution nor the statutes specify a well-defined and structured procedure outlining the criteria (i.e. eligibility and non-eligibility criteria for these constitutional positions), rules and process for their selection and appointment. The scope for civil society and media scrutiny does not exist and there is no room for the opposition to play a role in the selection process either. The process appears *ad hoc*, non-transparent and Executive dominated. Besides, the lack of transparency resulting from absence of well-defined rules creates room for practicing discretion. This discretionary power is often exploited by the political leadership from a narrow and selfish political/partisan point of view and hence, we have seen crippled leadership in the oversight institutions.

5.3 Accountability: Whose Accountability to Whom?

Accountability is generally defined as "A is accountable to B when A is obliged to inform B about A's actions and decisions, to justify them, and to suffer punishment in the case of eventual misconduct" (Schedler 1999). This process starts with providing an incumbent with clearly stated responsibilities and ascertaining his/her informed consent followed by periodic upward reporting by the incumbent regarding (his/her) performance of responsibilities. Accountability is defined, in a strict sense, as the relationship between two parties - one the 'holder of accountability' and the other the 'giver of accountability'. Therefore, whenever a relationship is established in which the 'holder' has the right to seek information about, to investigate and to scrutinise the actions of the 'giver', we can term that relationship as accountability (Mulgan 2002). In Bangladesh, the legal framework of the oversight institutions spells out the accountability mechanism.

This section analyses accountability as per the 'holder-giver' relationship elaborating the pertinent issues. We analyse accountability from three aspects-

- The relationship between the President as holder and the oversight institutions as giver
- The relationship between the institution as holder and the institutions own administration as giver. This is an analysis of the internal accountability mechanisms.
- The relationship between the citizens as holder and the institution as giver

5.3.1 President-Institution Relationship: The Holder and the Giver

The Constitution states that the BEC shall be independent in the exercise of its functions and would be subject only to the Constitution and any other law.¹³ The CEC and ECs can only be removed from their positions by a Supreme Judicial Council. The Constitution empowers the President to form a Supreme Judicial Council led by the Chief Justice to investigate misconducts of the CEC or ECs or their inability to serve those constitutional positions.¹⁴ This is the only mechanism that the Constitution provides for the accountability of the BEC to the President. However, political parties have many a time levelled the allegation that the CEC and the other ECs were partisan, but the Council has never yet been formed. It should be noted that the BEC has no accountability relationship with the Parliament. Unlike other constitutional bodies, the PSC and the OAG, the BEC does not prepare any annual report. However, in the case of the BEC, independence and accountability should be complementary. The BEC should be independent from undue influences and thus be given extensive authority. At the same time, the institution should also be accountable to assure all concerned that it is not abusing its authority and is performing without fear and favour. Accountability through Parliament may be advantageous for the BEC as it may be a way to avoid Executive control under the thinly veiled guise of accountability. If the BEC annual report is presented before the Parliament, the Parliament would be able to assess whether the BEC is performing as it should and also be able to take necessary actions to strengthen it further. If any MP identifies any irregularity in the performance of the BEC, s/he can move a petition following Section 100 of the Parliamentary Rules of Procedure. This will establish a balanced relationship between the Parliament, the Executive branch and the BEC (IGS 2008).

The PSC has the constitutional obligation to submit its annual report to the President by 1 March every year.¹⁵ However, it is not mandatory for the Parliament to discuss the report. Research indicates that MPs are often reluctant to discuss this report and at the same time the PSC is not adequately pro-active in ensuring that its recommendations are implemented (IGS 2007b).

The OAG, as per the Section 44 of the Rules of Business, has to submit its annual report to both the President and Prime Minister through the Finance Ministry. As the report goes through the PMO, the risk remains that the Executive might drive a hard bargain with the C&AG over politically inconvenient audit objections. Of course, as the President is invariably an appointee of the ruling party, it makes not much difference if the report is presented to him directly. All these suggest that the OAG is currently working as a part of the government. Under the prevailing circumstances, it is unlikely to play a bold and active auditing role (IGS 2009).

In spite of not being a constitutional body, the accountability mechanisms of the Anti-Corruption Commission are similar to that of PSC. According to Clause 29 of the ACC Act (2004), the Commission shall

13 Article 118 (4)

14 Article 96

15 Article 141

submit its annual report by 1 March every year to the President. The President has the onus to present the report to the Parliament. Since its inception in 2004, under the previous leadership, the Commission continuously failed to produce its annual report. At present, the annual report is being published and made available online. Since there was no Parliament in 2007-2008 we will need to wait for the new Parliament's evaluation of the report. However, it should be noted that the Parliament is not required to discuss the report in its session.

Accountability of the oversight institutions (as giver) to the President (as holder) depicts a mixed scenario. As observed earlier, BEC is not required to produce and submit annual report to the President but PSC, OCA and ACC are so required. The statutes do not specify any deadline for the President to present the annual reports to the Parliament. The President can first of all play a pro-active role by placing the annual reports in the Parliament within a specific timeframe. The research shows that Parliament may play a central role in ensuring accountability of these oversight institutions. Parliamentary discussion on these reports is likely to increase accountability and legitimacy of these institutions. The statutes however do not provide a clear indication as to how the Parliament can play a role in this regard. The MPs, as per the Constitution, use the committees and/or tools such as questions and answers, and various types of motions to exact accountability. Since 1990s the Parliaments have been more or less active *vis-à-vis* their predecessors. It should be noted however that there is not much evidence available as to how the MPs have fared in discussing issues related to the accountability of the oversight institutions, neither in the house nor in the committees. It can be argued that the oversight institutions are not serious enough about producing a credible annual report. The statutes also lack specific directions or guidelines regarding the preparation of the annual report.

5.3.2 Internal Accountability: Oversight Institution as 'Holder' and Its Own Administration as 'Giver'

The internal accountability mechanisms within BEC were traditionally challenged mainly by two factors: the control of the Prime Minister's Office over the BEC Secretariat and the staff on deputation. The Election Commission Secretariat Act (2009) promulgated on 9 March 2008, placed the EC Secretariat under the Commission. As per the Act, the Secretary is the head of the EC Secretariat and s/he will report to the Chief Election Commissioner. The Secretariat is the executive agency for the Commission and it will control all field offices, human resources, and budget, as well as address disciplinary matters. The Commission will formulate its own rules and organogram. The Commission will appoint its own staff who will be subject to the Election Commission (Officers and Staff) Rules (1979). However, these rules do not apply to the officers on deputation. A BEC official opined that the Commissioners have no scope for taking disciplinary actions against deputed officials which creates complacency in the deputed officials (IGS 2008). It can be argued that the hierarchical chain of accountability will be dominated by the Secretary against whom the Commission cannot take any action. The Secretary, who is often a deputed bureaucrat, is virtually beyond the CEC's control.

The Public Service Commission's accountability can be analysed from the hierarchical and the disciplinary perspectives. The accountability structure between the Commission and the Secretariat follows a hierarchical chain. The Secretary, who is deputed from other cadre services, heads the Secretariat. The officers below him are accountable to him and the Secretary is accountable to the Chair of PSC. Within the Commission, the Assistant Directors are accountable to the Directors and the Directors are accountable to the Members. However in most cases there has been a complete absence of any control mechanism over PSC staff who are very aware of this immunity. This negative attitude and the absence of clear rules regarding disciplinary actions of the secretariat staff, in fact, hampers the internal accountability mechanism. The situation becomes more complex when incompetent employees continue to go unpunished in spite of

recurring proof of their inefficiency. Another basic problem with the internal accountability mechanism lies in the accountability procedure followed for the officers on deputation. The Commission has no authority over the officers on deputation in disciplinary matters (IGS 2007b).

The OCAG follows the Government Servants (Conduct) Rules 1979 and the Government Servants (Discipline and Appeal) Rules 1985 to retain internal discipline. As audit is an oversight function and very different from the managerial functions that other government servants perform, the OCAG formulated a Code of Ethics, which it tries to implant in its auditors through training. Despite such measures, many officials of audited organisations revealed that auditors often made illegal demands and harassed them. Allegations include intimidation, fictitious and inflated objections, negotiation on the number and types of para, etc. One senior official of the OCAG admitted to the allegations but observed, "it is very difficult to prove corruption. Both auditors and auditee are engaged in underhand dealings and therefore we get information from none. We so far heard about few allegations and took departmental actions in proven cases" (IGS 2009). Although the Conduct Rules 1979 require government officers to submit yearly asset statements, this is not followed in the OCAG.¹⁶ After a thorough analysis of the situation, this Report recommends that the following measures be considered for strict implementation of the Conduct Rules and Code of Ethics.

- Mandatory submission of asset statements by the officers and their periodical verification
- Introducing stricter punishment for violating the Code of Ethics
- Conducting test audit of a certain percentage of the total yearly audits to identify cases of violation of the Conduct Rules and the Code and make public the result of such test audits.

Developing a two-way communication mechanism between the OCAG and the audited organisation would increase transparency with the former making the latter aware of the standard audit process and the latter might appraise the former about the actual audit practice (IGS 2009b).

Clause 16 of the Anti-Corruption Commission Act (2004) states that the ACC administration will be headed by a Secretary who is directly recruited by the Commission. The Commission also has the authority to employ its own staff. The Act further states that the personnel of the Commission shall be subject to the rules laid down by the Commission. Under Clause 22 (Section 8) of the ACC Rules (2007), the Commission can ask the government to send officers on deputation and at the same time ACC personnel can be sent to other government offices. Section 7 of the Anti-Corruption Commission Rules (2007) states that the Commission shall have the Internal Corruption Investigation Unit headed by the Chairman. If any person is found guilty, the Commission has the authority to bring criminal charges. The ACC (Officials) Service Rules (2008) defines the internal accountability mechanisms adopted by the Commission. The officers and staff have to follow the rules while working at the Commission. Staff and Officers also have to submit their own as well as their family members' wealth statement within seven days of joining the Commission and they have to submit similar wealth statements by 31st December each year (ACC Annual Report 2007-2008). However, there is no evidence or information on ACC taking disciplinary actions against any of its personnel.

5.3.3 Relationship between the Citizens' as 'Holder' and the Institution as 'Giver'

The Constitution guarantees freedom of thought, conscience and of speech.¹⁷ The citizens have the right to know about the functions and activities of the state institutions to develop an informed opinion. Hence, accountability to the citizens is another dimension of the oversight institution's accountability.

16 The OCAG is not an exception in not submitting yearly asset statements. Almost all government offices do not conform to this provision.

17 Article 39

The accountability of the BEC to citizens has not been very healthy, even though there is a provision in the RPO 1972 entitling citizens to have access to the documents relating to an election. However, in case of any real grievance, it is difficult for an ordinary citizen to access the Commission. Here, civic organisations may play a vibrant role by creating a bridge between the BEC and citizens. At present, civic organisations are mostly engaged in voter awareness and election observation functions. However, the BEC regularly arranges briefings for the media, which is playing a critical role in ensuring accountability of the BEC to citizens. The website of the BEC is updated regularly and contains pertinent information. Judiciary and the OCAg through the Public Accounts Committee can hold the BEC accountable on behalf of the people.

The Constitution empowers a person¹⁸ to submit writ petitions to the High Court against the BEC, if s/he thinks that the BEC has done something unlawful or violated her/his fundamental right which is guaranteed by the Constitution. On 22 May 2006, the High Court (Appellate Division) gave a verdict rejecting the then voter list in response to a writ petition of several Awami League (AL) leaders.¹⁹ The High Court (HC) also passed a 'show cause' notice to the BEC about the appointment of the then CEC on 18 June 2005 following another writ petition.²⁰ Besides, the HC issued directives on independence of the BEC secretariat, decision on consensus in the Commission, and some other issues of the past several years. According to Article 42 of the RPO 1972, the BEC preserves all documents relating to an election for one year and provides copies of such documents for examination necessary for an election petition as per the directives of the HC (Article 24). Therefore, it can be concluded that the HC at present is playing a vital role in ensuring accountability of the BEC.

The Bangladesh Constitution empowers the OCAg²¹ to examine financial documents of the BEC and prepare annual audit reports. Article 132 demands submission of such audit reports before the Parliament. Although the Parliamentary Rules of Procedure (Article 233) enables the Public Accounts Committee to examine audit report of the BEC, it has failed to do so in practice. Therefore, no such audit objections have been resolved over the years. Thus, the BEC at present enjoys immunity in financial matters.

An issue regarding the accountability of PSC is the access of citizens to PSC related information. In most cases, PSC is a 'restricted' place for citizens. Class III and IV employees of PSC have sometimes been known to create problems for citizens intentionally. As one former Member explained, "Out of nothing, the PSC staff portrayed me as someone who was quite a hard nut to crack, unresponsive and arrogant person to visitors." To solve this problem, another former Member proposed to set up an information desk in front of PSC (IGS 2007b).

The OCAg's accountability to citizens can be determined from the degree of its openness in conducting its operations and making important documents (its own budget, its annual financial statement, audit reports, decisions, follow-up, disciplinary actions, performance analysis, etc.) public. At present, the OCAg is not as transparent as it ought to be. Audit reports, which are presented to the Parliament, are generally not accessible by the public. It publishes only outdated audit reports on its website. OCAg is yet to take institutional measures to establish citizens' right to information. However, the Office publishes an annual report and quarterly newsletters on a regular basis. These reports mainly highlight its achievements and rarely include critical analysis of its own performance, financial statements and challenges it faced. The Office could arrange open dialogue with the civil society and media personnel periodically to make

18 Articles 44 and 102

19 The Daily Star, "Voter List: SC judgment on CEC's appeal today", 23 May 2006

20 Ibid., "Why holding 2 offices will not be illegal: HC orders CEC Justice Aziz, others to explain", 19 June 2005

21 Article 128(1)

important documents public and get suggestions for further improving performance. The Office can organise peer review sessions (peers might be private sector experts, representatives from auditees, Members of Parliament, civil society members) on its reports and performance as means to identify its own weaknesses and ways to improve its accountability for optimum performance (IGS 2009b).

The ACC has been under media scrutiny from its very inception. In recent times, the ACC has been pro-active with the media in disseminating information related to its functions. Thus, media has become a conduit between the citizens and the Commission. The Commission also acknowledges the role of media in fighting corruption. It agrees that objective journalism could contribute to the fight against corruption along with other social problems (ACC Annual Report 2007-08; 49). The ACC website is informative as it provides up-to-date information along with the annual report. The report provides updates about its achievements and challenges. The Commission has outreach programmes both at the district and the *upazila* levels. The Commission has also developed partnerships with civil society and NGOs to raise awareness against corruption (ACC Annual Report 2007-08; 52-53). These activities have enhanced the credibility of ACC as an institution.

It can be argued that accountability to the citizens is a high priority area that needs to be addressed. In the absence of a formal mechanism for the citizens to know about the activities of these institutions, media plays the crucial role of the conduit. Both electronic and print media update the people about these organisations. Nowadays, updated websites have become an important tool in bridging the information gap.

5.4 Efficiency

The classical definition of efficiency attempts to measure the relationship between committed resources and the produced goods and services. As per the Weberian model, to be efficient, an organisation must have four attributes: specialisations and/or division of labour, expertise (well-trained personnel with significant job experience), rules which define structures, procedures, and individual responsibilities and hierarchy (Gajduschek 2003). The New Public Management (NPM) concept demands that to be efficient, administrators should have risk-taking attitude rather than being risk-averse and also should ensure the optimal utilisation of resources rather than simply wasting it (Kernaghan 2000; Hughes 1994).

The following section analyses the issue of efficiency from two dimensions: organisational structures and capacity in human resource management.

5.4.1 Organisational Structure

The organisational structures of all four institutions under consideration are hierarchical in nature and they all suffer from the common ailment of lack of coordination and capacity amongst human resources.

The BEC has a three tier structure: (i) the Commission is the policy making body and initiates laws, rules and takes policy decisions, (ii) the Secretariat implements the policy and decisions taken by the Commission and manages supply and regulatory activities, and finally (iii) the field offices. Therefore, a clear subdivision of work and coordination among the three levels is mandatory. In practice, this coordination is not properly maintained. Although the CEC is supposed to have full control over the Secretariat regarding all sorts of policy making, but the situation is different in reality. The Secretariat controls the budget disbursement (except tender procurement) even though the CEC is the head of the Budget Committee. The Secretariat has

full control over policy implementation and related progress information. On the other hand, the relationship between Secretariat and the field offices is fraught with problems. The Secretariat hardly recognises the significance of field offices and thus the deployment of officials in the *upazila* and district offices is insufficient in comparison to the volume of activities and responsibilities. Better efficiency could be ensured by a proportionate deployment of officials based on area and population in each district (IGS 2008).

The BEC furthermore has neither a strategic plan nor an action plan with proper analysis of the risks and challenges to achieve its mandate. At present, it works out annual plans solely based on elections, i.e. the number of elections have to be held in that year, the process of preparing the electoral roll, the procurement process and the modalities of the supply of election materials. Coordination among other relevant government agencies is largely ignored and the BEC officials do not consider the strategic plan as a useful option for their effective functioning. Election-related activities are very much considered as routine and the outcome of the activity on the democratic process do not appear to be of major concern to the Commission staff. The Commission also does not have the capacity to design a strategic plan and the presence of a strong trade union poses a threat to any reform initiative (IGS 2007b). Due to the absence of such plans, it sometimes fails to manage critical periods and thereby earns public distrust (IGS 2008).

At present, there are two management lines in the PSC: the Commission and the Secretariat. While the Commission consists of the Chairman and Members, the Secretariat - headed by the Secretary who comes from the bureaucracy on deputation - consists of 12 functional units to assist the Commission in discharging their constitutional responsibilities. The Secretariat is the implementing agency and also maintains the day-to-day functioning of the Commission. Lack of capacity of the personnel is a major challenge, which becomes a threat due to the existing rivalry between officers on deputation and PSC's own staff.

Unlike BEC and PSC, the structure of the OCAG is slightly different. The OCAG plays the role of the Secretariat by helping the C&AG in policy making and monitoring implementation of those decisions. Ten Audit Directorates under 10 Director Generals run the office and they meet with the C&AG monthly to coordinate their respective activities. However, the official structure of the OCAG is not above question. Although as a part of the separation of audit activities from accounts, the Comptroller General of Accounts (CGA) has been placed under the Ministry of Finance, but the OCAG still carries out the accounts of the railway and defence service. Placing Divisional Accountants by the OCAG in different government works departments might prove to be a hindrance towards the efficiency of the OCAG auditor due to the possibility of collusion amongst them. Moreover, the departmentalisation of audit into 10 directorates often creates confusion due to allegations from audited organisations on overlapping of jurisdiction and duplication of audit works by the OCAG (IGS 2009b). The OCAG formulated its first ever strategic plan for the period 2003-2006, which included a four-phased work plan for enhancing capacity. The phases focused on reorganising the internal work plan, introducing supervision, improving methodology and information, and greater coordination between OCAG activities using IT etc. There have been significant improvements in terms of timeliness in reporting, audit and reporting process, settlement of audit observations, and quality (IGS 2009; OCAG Annual Report 2007). The second strategic plan for 2007-2012 has been formulated but it did not take account of the external environment and the activities are thus not linked with budget. It also appears that the mid-level officers of various directorates under the OCAG are unaware of the new strategic plan due to lack of adequate dissemination (IGS 2009b).

The ACC in Bangladesh has an organogram with six separate wings - each headed by a Director General (DG). The DGs are under the Secretary, who reports to the Commission. The Commission has a separate monitoring and evaluation unit, which operates under the Chairman of the ACC. It has a total of 1,264 staff besides the Chairman and the two Commissioners. The Commission has formulated its strategic plan and

also has its own operational framework. Currently there are two types of staff in the Commission: staff of the now defunct Bureau of Anti-Corruption (BAC) and the officials directly recruited by ACC. Since a significant proportion of ACC personnel are former BAC officers, who have long been criticised for being corrupt, this might pose a threat to the efficient functioning of the ACC. To date, there has been no analytical review on the organisational structure of the ACC to identify its challenges and shortcomings.

5.4.2 Capacity in Human Resource Management

Human resource management is one of the major challenges in the institutions of accountability. Inadequacy in expertise and inadequate distribution of staff and resources are prevalent with an excessive number of clerical staff. The promotion policy is not performance and merit based rather *ad hoc* in nature, and capacity building is often overlooked. Deputation of personnel from the bureaucracy often creates conflict within the organisations.

The proper management of human resource is also crucial for ensuring efficiency in the BEC. In case of human resource management, there exist two types of inconsistencies: deputation and unbalanced distribution of expertise. Officers on deputation fill in all technical and policy level posts like Secretary, Additional Secretary and Joint Secretary. As a result, BEC fails to build the capacity of its own officials and thus creates uncertainty in their career prospects. Besides, improper distribution of expertise, with excessive support staff and inadequate managerial staff is another threat for the efficient running of the BEC. Hence it can be argued that the human resource management is suffering both from excess capacity as well as under-utilisation. The promotion policy of the BEC is also not beyond criticism. According to Election Commission (Officers and Staff) Rules 1979, there are quota restrictions in promotion policy for its own staff. Moreover, class III and IV staff are not required to sit for a promotion examination, which is also likely to reduce human resource quality within the BEC. The capacity of such an important organisation also depends on proper financial management. But getting less priority on capital expenditure under consolidated fund and development expenditure under demand for grant in the budget planning of the BEC proves their weakness in financial management (IGS 2008; TIB 2006).

There are a multitude of problems regarding human resource management of the PSC. Conflicting deputation system, unclear promotion policy and non-transferability of staffs hamper the efficiency of the PSC. Research indicates that there is rivalry amongst the deputed officers and PSC's own staff. On the basis of the present promotion policy, a clerk may move to a position of strategic decision making and implementation that is equivalent to the position of a Deputy Secretary of the administration cadre with insufficient academic background as well as no in-service training. This is likely to compromise the standard of the PSC staff and overall efficiency of the organisation. Also, the non-transferability of the PSC staff might allow them to be involved with corruption and make them resistant to change (IGS 2007b).

There are mainly two types of problems that plague human resource management of the OAG. They are: lack of specialised auditors in different areas and unnecessary emphasis on the recruitment of class III officials rather than recruitment in the class II or non-cadre class I officials. As well qualified candidates would not be interested to join as class III officials, OAG consequently is saddled with a large number of officials who are possibly less qualified than the desired level. It is worth mentioning that 71 percent of the OAG staffs are Class III officials. A senior official observed, "Class III officials are poorly paid and treated as clerks. So they develop a mindset inappropriate for auditors" (IGS 2009b).

Last but not least, the ACC is suffering from a lack of expert officials for certain sections. Despite a research wing in the ACC, it is completely inactive due to the absence of qualified researchers. One high official

claimed that, no qualified researcher would like to join at the section due to the low salary scale. ACC also needs good lawyers for trying corruption cases. However, ACC budget poses a constraint in this regard.

5.5 Effectiveness

Effectiveness is defined as the measure of the relationship between the results obtained and the objective laid down from the beginning. The objectives for the oversight institutions are defined in the Constitution and in the corresponding statutes. The results obtained are subject to the activities. Convergence between the two indicates effectiveness and divergence indicates ineffectiveness. It should be noted that the issues related to independence and accountability has an impact on the results obtained - independent and accountable functioning is likely to ensure better results.

5.5.1 Bangladesh Election Commission: External Dependence and Influence

Holding free and fair elections, both at national and local levels, is the main responsibility of the BEC. For effective realisation of its constitutionally assigned mandate, the BEC needs continuous legal, administrative, and resource support from the ruling regime. However, as history has shown, successive regimes either could not rely on the BEC or perceived it as threatening to their interest. Other actors such as citizens and civil society organisations have failed to support the BEC to act as an effective countervailing democratic institution. As argued earlier, the BEC shares its success in arranging free and fair parliamentary elections with the Caretaker Government and it has not been pro-active enough in realising the authority bestowed upon it by the statute and Constitution. As a result, it has become an institution in which the power bestowed upon by the Constitution and laws are seldom realised. The BEC personnel are often fearful of repercussion from politicians, which deters them from acting objectively and with integrity. Thus, the organisational culture of the BEC mirrors the culture of our society, i.e. subservience to power. Consequently, the BEC failed to hold free and fair parliamentary elections except those held under Caretaker Governments. If political parties and citizens genuinely want the BEC to pursue its constitutionally assigned objectives, they must create an enabling environment for the BEC in the forms of compliant and responsible stakeholders (IGS 2008).

BEC also is responsible for the preparation of the electoral roll.²² Political parties, donors, media, and civil society alike criticised a faulty electoral roll prepared under CEC Justice MA Aziz.²³ The Commission has also been criticised for employing party men in the roll preparation process. The current roll with photo ID was prepared by the Bangladesh Army, which has been appreciated for accuracy and authenticity.²⁴ However, two caveats must be remembered in this regard. First, although the army prepared the current roll it will be the responsibility of the BEC to update the roll. It is a major concern whether the BEC has the capacity to handle this technology-intensive task along with maintaining the authenticity of the data. Second, the update mechanism has to be worked out. This commendable programme could fail if a proper update mechanism is not devised. It should be noted that the BEC has not taken any capacity building programme in this regard (IGS 2008).

Delimitation of constituency is another responsibility of the BEC.²⁵ The Commission follows specific delimitation rules and so far six delimitations have taken place. However, these delimitations have not been studied extensively for the impact of delimitation, and thus it is very difficult to measure the effectiveness of the BEC in this respect.

22 A Article 121 of the Constitution

23 New Age, "Holes in updated electoral roll", Editorial, 22 August 2006

24 The Daily Star, 'Successful Completion of Voter list Celebrated', 23 July 2008

25 Article 122(c) of the Constitution

Effective disposal of election petitions are imperative for ensuring justice, removing electoral irregularities, and, strengthening the electoral management process. The BEC has to depend on the judiciary for settlement of these types of dispute, and evidence paints a dismal picture. To speed up the process, the cases are now referred to the Supreme Court although no notable improvement is seen. The challenges for such poor status include absence of a time-limit for disposal of petitions, and the state of the judiciary and the law which exempts MPs from physical presence at the hearings. Besides, the Commission itself is not pro-active but rather reluctant to conduct these tribunals with a degree of objectivity. Evidence of malpractice is essential for an effective verdict, but the Commission's role in collecting and presenting this evidence can often be questioned (Ahmed 2001; FEMA 2000; IGS 2008). In recent times, the Commission has proposed to put a time limit of 1 year for these tribunals (IGS 2008).

Legislative support by enacting and/or amending the laws for effective functioning of the BEC is also likely to have a positive impact. But the Commission has no access to the parliamentarians for such support although the Constitution entrusts the Parliament for such laws.²⁶ In practice, politicians have been less supportive to strengthen the Commission (Azizul Islam Committee Report 1994). Reforms conducted thus far have been crisis driven and are criticised for being unsustainable (IGS 2008). The BEC, under the current leadership, introduced some key reforms which include:

- Mandatory registration of political parties
- Submission of audit and financial reports by registered parties
- Mandatory disclosure of candidate's information about their education, profession and past career etc.
- Election expenditures rationalized and rules made stringent about submission of election expenditures returns

All these changes are fundamental in nature and will help the BEC establish a degree of systemic control over political parties and candidates upon their appropriate implementation. And proper implementation of those far-reaching reforms depends upon bold leadership of the Commission and planned capacity building, especially targeting political resistance and in-house performance management. For effective demonstrative capacity, the BEC needs to build supportive relationships with political parties and citizens at large.

5.5.2 Public Service Commission: Corruption and Partisanship

The objectives of the Public Service Commission are as follows: recruiting personnel for the civil service (for class I gazetted posts), recommending personnel for promotion after examining their Annual Confidential Report (ACR) and considering their seniority, and taking decisions regarding disciplinary matters. It plays a central role in the civil service administration and therefore, in order to be effective, must ensure that:

- Only the best among the candidates are selected for recruitment to the civil service
- Only qualified persons are recommended for promotion
- Disciplinary matters are dealt with objectively as per the rules.

The effectiveness of the PSC should be measured from two perspectives: structural dimension and managerial competence. Discussion regarding structural dimension revolves around the examination procedure, the question pattern, the quota system, the length of the examination, and other examination

related issues. Managerial competence concentrates on the role of the Chair and Members of the Commission.

Structural dimension: the loop holes within

The Bangladesh Civil Service Examination is conducted by the PSC. The Commission plays the key role in holding these examinations whereas the PSC Secretariat is responsible for providing logistic support.²⁷ The examination involves the following phases: application followed by screening, preliminary examination, written examination and finally *viva-voce*. There is no minimum pass mark for the preliminary examination. The 1000 marks written examination follows a generalist approach for all cadres except for 200 marks earmarked for Professional and Technical Cadres. After the viva, the PSC makes the final recommendations to the Ministry of Establishment and the Ministry, after the required medical check up and police verification of each candidate, makes the final appointment. The basic eligibility criteria for appearing in the exam have been criticised for being very lenient. The quality of the questions in the BCS examinations has also faced severe criticism as inadequate for screening the most meritorious and able participants (Zafarullah *et al* 2005; Jahan 2006). In recent times, the PSC introduced two new changes in the examination process: (i) negative marking for every wrong answer during the preliminary selection examination and (ii) raising the passing mark to 50 percent during the written examination. This is likely to bring about some positive changes in the quality of candidates. This also means fewer candidates will be eligible for the *viva-voce* thus reducing the length of the selection process (which is 22 months on average at present).

A major problem within the selection process is the existence of quota reservation. There are district quota, female quota, tribal quota and the freedom fighters' quota. Ultimately, only 45 percent of the selected candidates are screened on the basis of merit. The remaining 55 percent are selected on the basis of quota reservations. This clearly denoted that more than half of the civil servants are in fact selected on the basis of some pre-defined quota policy and not on the basis of merit. The existence of quota for freedom fighters' children is a major source of controversy. For instance, in the last BCS examination, a candidate who stood 7000th in the merit list was selected, as s/he is a child of a freedom fighter.²⁸

Managerial competence: crippled by corruption

Managerial negligence, incompetence and corruption on the part of the Commission have been burning issues, the repercussion of which on the civil service may be disastrous. In this area, the role of PSC has raised many questions at recent times. The BCS examination system has proved to be a fertile ground of corruption and "a gateway of ruling party activists to enter into the civil service" (TIB 2007b). Political pressure during the selection process is a major problem for the PSC leadership. It is argued that the extent of politicisation has increased under successive political regimes since 1991. The PSC Secretariat's efficiency and integrity of its staff has proven to be yet another major concern. Research indicates that the staffs, especially the class III and IV employees, have been involved in corrupt practices due to their access to certain strategically useful information. *Viva-voce* is an integral part of the examination process and the Commission is responsible for convening these boards. There has been widespread allegation of corruption and malpractices against various board members (IGS 2007b; TIB 2007b). However, there has not been a single incident where the Commission has taken any steps to investigate these allegations.

Question paper leakage is another area of serious concern. In face of concrete evidence of question paper leakage, the PSC cancelled 24th BCS preliminary examination. The Commission, however, has been neither prudent nor pro-active in taking any legal or disciplinary actions against any body for such negligence (IGS

27 For a detailed account of the examination process please refer to the IGS Background paper on PSC available at IGS website.

28 New Nation, "Manipulation of BCS results not possible: Chairman", 11 March 2007

2007b; TIB 2007). It is not only the recruitment process, but matters relating to promotion and disciplinary actions also are not immune to corruption. "Promotions were sold at Tk. 5-10 lakhs, while corruption cases against government officials - which must be first vetted by PSC - were dropped for sums as high as Tk 2 crore in the past five years".²⁹

5.5.3 The OCAG: Moving Ahead with Major Internal and External Challenges

The mandate of the OCAG is to conduct objective and timely audit of the accounts of the Republic and of all courts of law and all authorities and offices of the Government. The Office's mission is to ensure honest, efficient and cost-effective governance through conducting effective audit and evaluating public sector operations (OCAG Annual Report 2007). The OCAG however has to depend significantly on external actors such as the Parliament and auditable bodies for realising its mission. This research identifies the following factors as challenges to effective functioning of the OCAG.

First, quality audit reports are a pre-requisite to effective functioning of the OCAG. Such reports need to be objective, reader friendly and evidence based. The OCAG audit reports are considered non-reader friendly and non-comprehensive. They are too lengthy in volume and technical in nature. They often contain detailed analysis of trivial issues, and also found lacking in evidence. The reports do not look at outcomes nor do they identify high-risk issues and areas of concern. They seldom address the challenges and constraints faced by the audited organisation. The capacity of the people preparing these reports is a key area of concern. OCAG officers opined that poor quality reports not only put an extra burden on them but also cause inefficiency. Doyal (2000) argues that OCAG reports do not emphasise on the performance aspects of audited entities. These days emphasis is put on performance audit and the OCAG has designed a structure for their reports in this light. Internally there is a two-phased monitoring system to ensure quality reports. The first quality check is undertaken at the Directorate level and then a central committee is there to address quality. However, there is not enough evidence suggesting OCAG is taking measures to improve the report writing capacity of their staff (IGS 2009).

Second, the Internal Control System (ICS) followed by the audited bodies is a practical challenge for the auditors. Public organisations in Bangladesh do not have well defined ICS consisting of proper job descriptions for their staff, proper inventory and cash management system, internal audit, accounting system etc. There are different systems of drawing money from the government exchequer. Common problems faced by the auditors include poor record of book keeping, delays in producing records, lack of understanding of financial and procurement rules, and political influence. Public organisations follow the General Financial Rules and Treasury Rules issued by the Finance Division. At the same time, departments and ministries have the authority to issue Office Orders that supplement these rules. The financial rules are also not well equipped to take account of the contingencies. Some of the rules are perceived as outdated as well as complicated and which provide opportunities for impropriety and irregularities thus complicating the audit process. Office Orders often lack clarity and contradict financial rules. These rules and orders make the audit process complicated and cumbersome. There are concerns regarding the level of understanding of the financial rules by the audit officials. The government bodies, at the same time, have to follow the rules despite lack of expertise. The OCAG established a Rules and Regulations Unit in 1997 to compile all financial rules and update their changes immediately and disseminate them amongst the relevant authorities. However, the unit is yet to show any progress (IGS 2009; Uddin 2006; Khan 2001). Thus, lack of a proper ICS coupled with lack of clarity of financial rules make it difficult for the auditors to produce quality reports.

29 New Age, "How Greed Destroyed the Public Service Commission", February 16-22, 2007

Third, the issue of settlement is an important aspect of effective functioning by the OCAG. The settlement process involves a number of stakeholders in a wide range of meetings, clarifications, and exchange of documents amongst agencies and goes through a slow-moving official channel. This not only causes delay but also increases the transaction cost. It is often the case that new people get involved in the process and the audit observations lose their utility due to promotion, transfer, retirement or even death of the person responsible. The OCAG has introduced bilateral and tripartite meetings to speed up the process, but the success of this process is contingent upon availability of reports, speedy and quick action by the participants, and most importantly, whether or not the participants have the authority to take and enforce decisions (IGS 2009b). Ali (2005) argues that delayed non-response from the audited institution in respect of audit queries is a common occurrence in Bangladesh which results in large number of unsettled observations.

Fourth, the Parliament through the Public Accounts Committee (PAC) and Committee on Public Undertakings (CPU) play a crucial role in ensuring accountability of the audited bodies. However, it should be noted that although PAC can make recommendations, but these recommendations are not binding on the Executive. PAC reports are furthermore not discussed in the Parliament. Although the PAC is supposed to sit once every month, practice indicates otherwise.³⁰ The Committee does not receive proper secretarial, budgetary and research support from the Parliament Secretariat, which are hindering its functioning. However, since the Seventh Parliament the OCAG has been providing necessary support to the PAC (IGS 2009b).

According to Section 15(vi) of the Audit Code, the auditors need to ensure that appropriate action is taken against irregularities and improprieties. Section 17(x) also requires existence of a follow-up mechanism. But the existing legal framework neither empowers auditors to enforce their observations, nor obliges to have a mandatory follow-up mechanism in the audited. However, as per the current rules, if an officer has audit objection against him, his pension is freezed. Notwithstanding this, the level of awareness about the audit is not satisfactory among the government officers, which makes follow-up of observations tardy. The OCAG never publishes follow-up reports. During the study, it has been found that departments having a separate audit cell are considerably faster in taking actions in accordance with audit observations and the audit directorate can easily follow-up such actions.

5.5.4 Effectiveness of the Anti-Corruption Commission: Too Early for an Analysis

The Anti-Corruption Commission since its inception in 2004 was more or less dysfunctional until 2007. The Commission could not finalise its organogram and there was a dispute between the Commission and the government regarding the appointment of personnel. The Commission itself was split due to disagreement amongst the Commissioners. In addition, a number of petitions in the High Court further complicated the matters slowing the Commission's progress. The Commission could not even coordinate with other law enforcing agencies for matters related to investigation. The Commission did not have formal rules, an organogram, efficient personnel and not even good leadership. This dysfunctional state in the early years, since its inception, destroyed its credibility and it failed to achieve anything at all in terms of its mandate (IGS 2007a).

The Fakhruddin-led Caretaker Government took quick and effective steps to strengthen the Commission and reconstituted it. The leadership took multi-pronged actions and received support from the interim government. The Commission's organogram was finalised along with the ACC Rules, and human resources were increased. Ordinances and the Emergency Power Rules further assisted the Commission's activities. The

30 In the 8th Parliament the PAC was formed almost after one and half year of the first sitting.

Commission demonstrated considerable success in its attempt to fight corruption through a top-down approach. It published three lists of corruption suspects and many of those were taken into custody and eventually sentenced with corruption charges (IGS 2007a).

But this success needs to be analysed with a sense of caution. The ACC operated with support of special powers due to the unique situation of the state of emergency the country was in at the time. As fundamental civil rights had been suspended, citizens did not have much recourse if there were excessive and arbitrary behaviour of the joint forces involved in arrest and interrogation. Furthermore, all offences tried under the ACC Act are non bail-able, meaning that any person under investigation can be detained for a maximum of five years, fined, or both as a preventive measure if s/he is perceived as a threat to the state. The ACC has also been empowered to arrest accused suspects without first obtaining a warrant from the courts. When the ACC makes arrests without judicial oversight, it opens the door to speculation as to whether or not there are legal grounds to make the arrests in the first place. While the measures taken to address corruption during the tenure of the Caretaker Government were perceived as temporary, they may have had a negative impact on the long-term operations and sustainability of the institution, as is evinced by the recent turn of events. If allowed to persist without restoring due process, the legitimacy of the ACC will be compromised and the public's confidence in the organisation, created to enhance transparency and accountability, will diminish. Finally, there is a question of capacity to deliver results. Corruption cases are tried in special courts. This raises an important question regarding the sustainability of the prosecution activities of the Commission. It also raises a question regarding the actual intention of the interim government (IGS 2007a).

Thus, it can be argued that the Commission operated in a unique situation, gaining public trust in the process, but there is a sense of concern about its sustainability under a political regime. In its first two-years under a political regime, the Commission was neither functional nor effective. But a non-political regime made it functional and it seemed that it was striving to fulfil its mandate. However, it is too early to discuss the effectiveness of the ACC at this point of time.

5.6 Conclusion

Oversight institutions in Bangladesh enjoy the necessary Constitutional and statutory protection but their leadership has unfortunately not been pro-active enough to exercise this in their favour. Rather, in many cases they are perceived to be partisan and compliant to external pressure. There is extensive evidence of Executive influence through avenues of human resources and budget. Appoint of the leadership is the main channel of politicisation, which also needs to be looked at immediately.

Accountability mechanisms need to be rationalized, especially to the citizens. Institutionalisation of the accountability mechanisms, both internal and external, is likely to reinforce efficiency and effectiveness.

Structural and systematic loopholes often become constraints to effective functioning. The successes are overlooked mainly due to corruption and partisan behaviour. The human resources for the most part lack capacity and motivation and the issue of deputation makes the scenario worse. Dependence on the Executive, for both fiscal and human resources, curb independent functioning to certain extents and also prevent long-term capacity building.

Finally, political will is the main catalyst that can bring about real change to make the institutions of accountability effective in a democratic framework. This, in turn, is likely to ensure good governance for the society as a whole.

Public Perceptions of Governance

6.1 Introduction

This year's State of Governance in Bangladesh report has focused on the evolution of a zero-sum game in Bangladesh politics, which has allowed the winning party absolute power over the state apparatus. The winning party exerts complete control over all state resources and we see capture of all independent and effective institutions capable of exerting checks and balances. As part of the Report, a nationally representative survey was conducted to gauge public perception about the overall state of governance and political system in Bangladesh.

After the abrupt political transition of 11 January 2007, the political environment of the country has gone through a series of changes over two years, and this year's survey has attempted to gauge people's perceptions and opinions about these changes. The survey was conducted immediately after the Ninth Parliamentary election and therefore also tried to determine public perception about the election process. The survey also attempted to assess people's perception about their present living standard, service delivery, political parties, Parliament, the Judiciary, and the law and order situation of the country. A similar survey was conducted for the *State of Governance in Bangladesh 2007* Report, and this survey draws parallels where possible and compares and contrasts results.

6.2 Objectives of the Survey

After the intense political turmoil that emerged with the formation of a controversial Caretaker Government in October 2006, a second Caretaker Government (CTG) came to power in January 2007 with the backing of the military and held office until it transferred power to the new Awami League led Government in January 2009. The CTG began its two-year tenure with an ambitious reform programme, parts of which were tempered as the imperative to hold a credible election with the participation of the political parties became apparent. The CTG also initiated a robust anti-corruption and law and order drive, reforms of the institutions of accountability, and made an effort to re-configure the political landscape of the country. It was

undoubtedly successful in preparing a credible voter list and in delivering a well-executed and fair election. In this context, the objectives of the people's perception survey are as follows:

- a) To gauge public perceptions about the state of the governance, the political system and political culture in Bangladesh;
- b) To ascertain citizens' perceptions and opinions about the institutional reform initiatives of the CTG, especially their effectiveness, sustainability and impacts on the political system in Bangladesh;
- c) To evaluate people's views about the performance of CTG in holding fair and credible election and initiatives against corruption; and
- d) To determine public opinion about service delivery in education, health, water, and electricity sectors, their living standard and price hike situation compared to the previous year.

6.3 Methodology

This survey is nationally representative and was carefully designed to maximise geographical coverage. It includes both the ordinary citizen as well as respondents belonging to selective occupational groups. The sample size was 4,000 respondents, 3,500 of whom were chosen randomly as 'General Citizens' and the remaining 500 were selected from different professional groups. The latter are referred to as 'Professionals'.

The survey used a structured questionnaire with a five point scale: e.g. Very Satisfied, Satisfied, Somewhat satisfied, Dissatisfied and Very dissatisfied about various service delivery institutions in Bangladesh. This method is generally used in perception barometer surveys to incorporate public's opinion (ranging from highest affirmative to negative) regarding any issue. The survey questionnaire is at Appendix 2.

An extensive secondary literature review was done for the development of the questionnaire for the survey in late 2008. A pre-testing of the questionnaire was performed in the field during the last week of December, 2008 to test its aptness. The feedback of the field-level pre-testing was incorporated into the questionnaire to refine it further.

The survey was conducted between 15th January 2009 and 6th March 2009. SIRIUS Marketing and Social Research Ltd. conducted the field work. The IGS survey monitoring team travelled to the six divisional survey areas. They monitored and accompanied all the survey teams of SIRIUS at field level to ensure data quality.

A multistage cluster sampling method was used for the study. Fifty-one urban primary sampling units (PSU) and 124 rural PSUs were selected using 'probability proportional to size' (PPS) method. A two-step PPS procedure was followed for selecting the rural centres i.e. 124 unions were selected in the first stage, and then one village in each of the selected unions in the second stage.

In each starting address, ten consecutive households were contacted by using the 'Right Hand Rule' for male respondent interviews and 10 consecutive households by 'Left Hand Rule' for female respondent interviews. One respondent was selected randomly from each household through KISH Grid. If the selected respondent was not available after two attempts, the survey team selected a substitute respondent from that starting point (from 11th household onward) by matching age group i.e. (18-25 yrs, 26-35 yrs, 36-45 yrs, 45 yrs +) and gender.

'Professional' respondents were chosen using purposive sampling technique throughout the country. Professionals were selected from amongst political parties, government service, NGOs, school, college/university and *madrassah* teachers, lawyers, medical doctors, middle/senior-level executive of private organisations, local government representatives and media personnel.

6.4 Social and Demographic Characteristics

Gender and age

The survey sought responses only from adult household members. Fifty-three percent respondents were male and 47 percent female. The average male female ratio is 1.12 whereas it is 1.05 as reported in the national survey.¹ The average age of the respondents was 35 years, which differs by 13 years from the national average of 22.

Education status of the respondents

Table 6.1 compares the education profile of respondents participating in the IGS perception survey with the education profile attained in the latest BBS Poverty Assessment survey (2004). The variation between the education profile of the survey respondents and the national profile can be explained thus: rather than incorporating the information of all household members, the survey purposively concentrated only on the education status of the adult respondent. That is why it includes less primary enrolment with a higher percentage of secondary and tertiary level. The average age of respondents is also significantly higher than national profile because of the same reason. Nevertheless, accepting these small and explainable deviation, the overall sample was nationally representative as it matches the national features in most aspects.

Table 6.1 Education profile

Level of Education	National Survey (Percent)	SoG Perception Survey (Percent)
Never attended school	35.3	28
Primary	36.3	23
Class VI-IX	18.1	24
SSC+	10.3	25

Source: Bangladesh Bureau of Statistics (BBS), Poverty Monitoring Survey 2004² and IGS Survey 2008

Poverty level

Among the households, more than 55 percent earn an income of less than 8,000 taka per month whereas 25 percent amongst this group earn less than 4,000 taka a month (falling below than the dollar-a-day poverty line). Only five percent of the surveyed households earn more than 25,000 taka (USD 365) per month.³

1 Statistical Pocket Book of Bangladesh, 2007

2 <http://www.bbs.gov.bd/>

3 Nationally, the bottom five percent households earn less than 1605 taka per month, where the earning of the top five percent is 33,471 taka per month, which corresponds to the findings

Table 6.2 Poverty distribution of surveyed households

Group	Score	Percent
Extreme Poor	1-19	2.5
Very Poor	20- 35	10.8
Moderate Poor	36-54	30.7
Middle Class	55-80	50.7
Rich	81+	5.4

The poverty score-card was also used to determine the poverty level of the households as per the poverty distribution used by the Household Income and Expenditure Survey (HIES) 2005.⁴ From the scores obtained from the survey data, five cut-offs have been decided to determine poverty level of the sample households. Among the households, 56 percent belong to non-poor group and 44 percent belong to poor group. It largely matches the national 60/40 proportion of non-poor and poor found by the 2005 HIES Survey conducted by BBS.

6.5 Living Standards and Optimism about the Future

The price of essential goods, especially food grains, has gone spiralling up significantly since mid-2008 which has adversely affected the lives of citizens in general and the poor in particular. Considering the fact that roughly half of the population lives below the poverty line in Bangladesh, this has serious implications, especially in the context of the current global economic crisis. Respondents were also asked for their opinion about their standard of living. The survey result depicts that citizens have been concerned about the price of essentials and lack of employment opportunities in 2008. The major findings are as follows:

Citizens opinion regarding their living standard



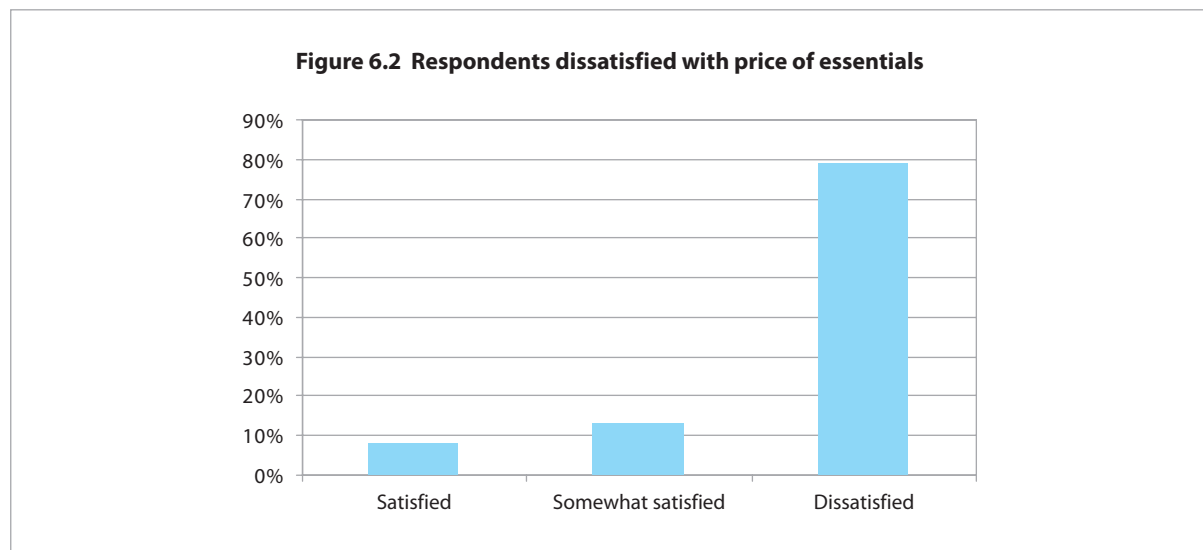
4 According to the Cost of Basic Need (CBN) approach, lower and upper poverty lines are set calculating the cost of food basket required to fulfill the basic nutritional requirements and the cost of basic non food expenditure. Using CBN approach, BBS defined five groups under two poverty lines which are-

- Non-poor: Per capita total expenditure is on or above the upper poverty line.
- Vulnerable non-poor: Per capita total expenditure is on or above the upper poverty line but within 10% of the line.
- Moderate poor: Per capita total expenditure is below the upper poverty line but above the lower poverty line.
- Very poor: Per capita total expenditure is below the lower poverty line.
- Ultra poor: Per capita total expenditure is below the food poverty line.

According to Figure 6.1, only three percent of the respondents were highly satisfied about their current living standard. Half of survey respondents marked their standard of living in 2008 as 'neither good nor bad'. Twenty-eight percent (with opinions of 'very bad' and 'bad' in Figure 6.1) of the respondents expressed their dissatisfaction about their present standard of living.

Concerns about the price hike of essentials

The sharp increase in the prices of essential commodities throughout 2008 seriously affected the livelihoods of citizens. Seventy-nine percent of surveyed households expressed their dissatisfaction with the inflation level (Figure 6.2). This overwhelming dissatisfaction suggests, quite unsurprisingly, that the high price of essential goods has been the main challenge for most citizens in 2008.



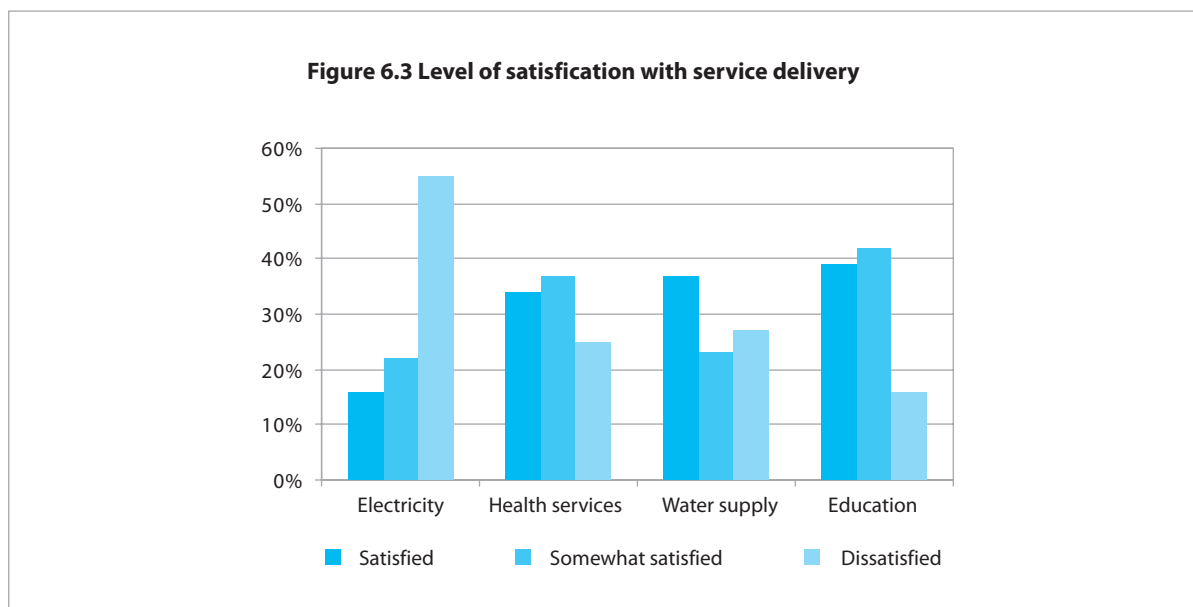
Optimism expressed about the future

Despite the fact that most people described their current living standard as 'neither good nor bad', they were found optimistic about a better state of living in the coming year, regardless of their socio-economic backgrounds. About 57 percent of the general respondents and 75 percent of the professionals expressed optimism about the future whereas only eight percent of the general respondents and five percent of the professionals were pessimistic about the prospects for better living standards in 2009. This positive attitude for future living standard may imply that citizens have great expectations from the newly elected government. This optimism also relates to broader literature on human agency and wellbeing as well as other research done in Bangladesh. Sen (1998) defines wellbeing as the achievement of a person in the context of his personal advantage. Accordingly, there are two aspects of human beings: 'agency' and its wellbeing. He argues that the wellbeing of an 'agency' depends on capabilities set. Capabilities denote rights and opportunities which one is allowed to have. In this light, Rahman and Uddin (PPRC 2007) argue that optimism is an important indicator of agency potential because citizens can read what possibilities they might be able to extract from a given political, social and economical environmental setup. The year 2007 began with political uncertainty followed by extended emergency rule. In 2008, the political situation improved and an elected government came into power. The new political regime may have created a sense of optimism among the people for 2009.

6.6 Service Delivery

The functioning of government service delivery mechanisms is linked to citizens' standard of living. The survey inquired about the respondents' level of satisfaction about different aspects of service delivery in various sectors. The majority of citizens still live outside of the coverage area of most utility services and thus their responses concerned only the supply of electricity. On the other hand, almost 80 percent of the respondents expressed satisfaction with government's education services. The important findings are highlighted below.

Highest dissatisfaction with electricity supply

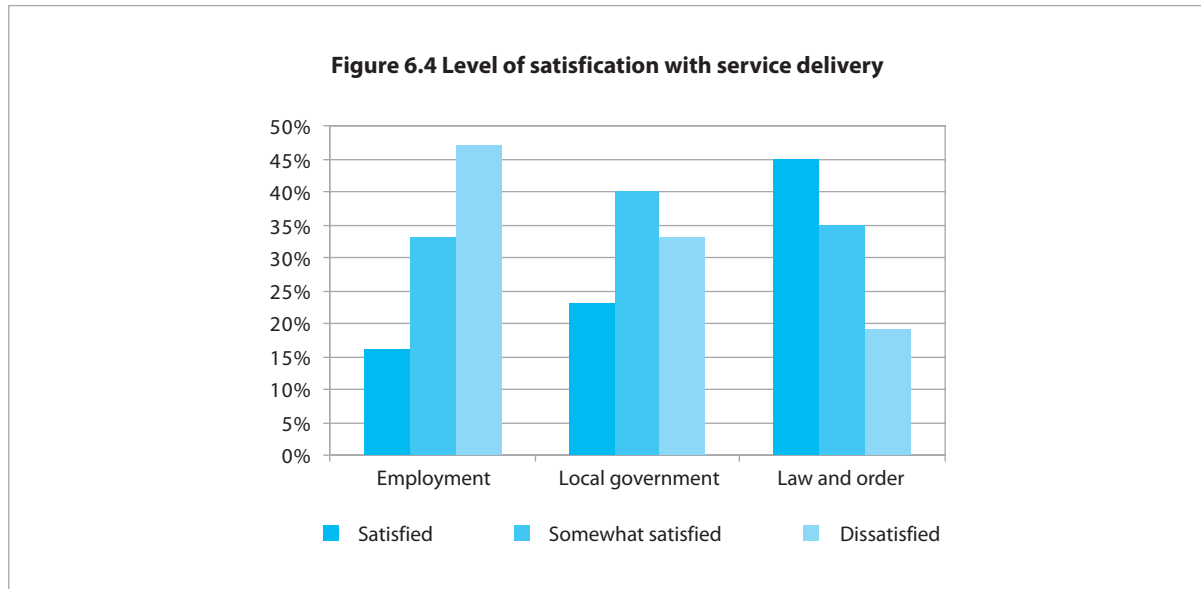


Respondents were asked to evaluate the performance of four basic service sectors: health, water supply, electricity, and education. Fifty-five percent of survey households expressed their dissatisfaction regarding the supply of electricity; another 22 percent were somewhat satisfied whereas only 16 percent of households were satisfied with the existing electricity supply (Figure 6.3).

According to the survey findings, widespread corruption has hampered the service delivery for citizens in the power sector. Citizens have identified the power sector as one of the most corrupt service delivery sectors in Bangladesh. Almost 75 percent of the people in 2007 identified power sector as one of the most corrupt sectors, with 63 percent in 2008. This seems to signify that corruption in this sector was brought under control to a limited extent during the tenure of the CTG.

On the other hand, citizens' perceptions of the education sector indicated high levels of satisfaction with service delivery. More than 80 percent of respondents expressed satisfaction ('highly satisfied' and 'satisfied' in Figure 6.3). Citizens were also more or less satisfied regarding health and water supply. However, it is important to mention that most respondents lived outside public utility services (providing water) coverage area.

Government failure in employment generation



Respondents were asked about other areas of public service including the law and order situation, the performance of local government and employment generation. Forty-seven percent of citizens expressed their dissatisfaction with the Government's performance in employment generation (Figure 6.4). This finding also correlates with the view expressed by a large percentage of respondents who identified that closing down a number of jute mills has been a negative activity of the CTG regime that exacerbated the unemployment problem in Bangladesh (see Figures 6.32 and 6.33 for detail).

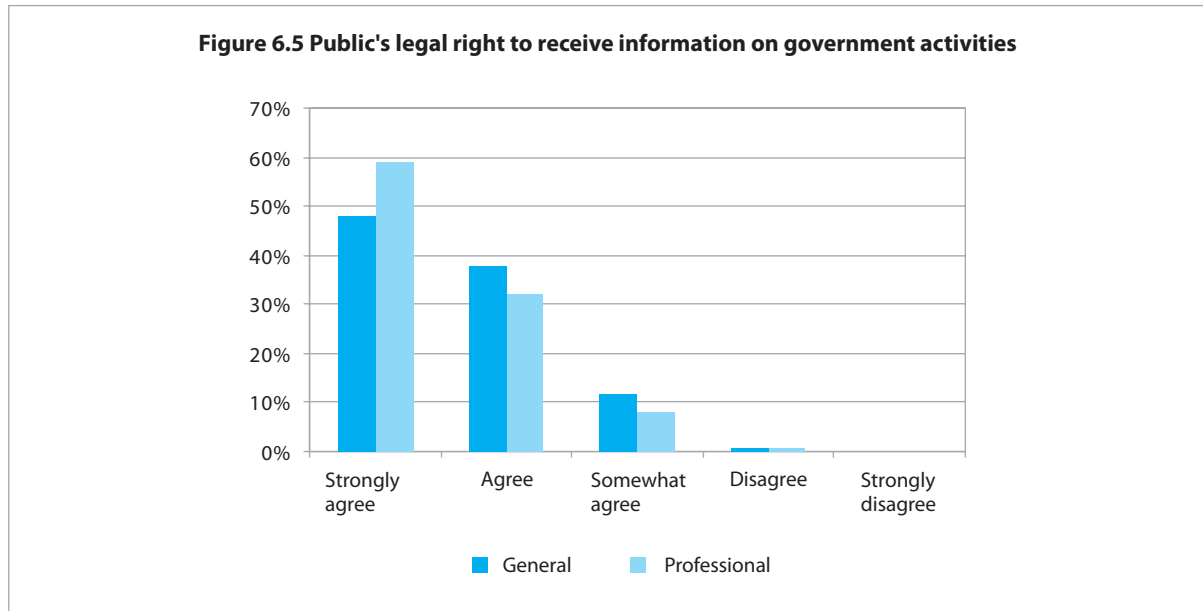
A significant percentage of respondents perceived that the law and order situation had improved in 2008. Forty-five percent of respondents were satisfied whereas another 35 percent were somewhat satisfied about the law and order situation. This is not a surprising result during a period in which the country was governed by a military-backed interim Government, and the military was largely responsible for maintaining law and order. It is interesting to see that despite the promulgation of the Local Government Commission Ordinance, 2008, it is one area where the CTG did not score well. The performance of local government was a source of dissatisfaction amongst our respondents. Forty percent of those interviewed were only somewhat satisfied about the performance of local government whereas 33 percent of the respondents expressed dissatisfaction.

6.7 Access to Information

The CTG passed the Right to Information (RTI) Ordinance in 2008,⁵ granting every citizen the right to information from the authority, and the placing the onus on the authority to provide information upon demand. While the passage of the law itself was viewed as a major step to ensure transparency, the survey attempted to evaluate people's awareness about their right to receive information from the Government and the potential utility of this right.

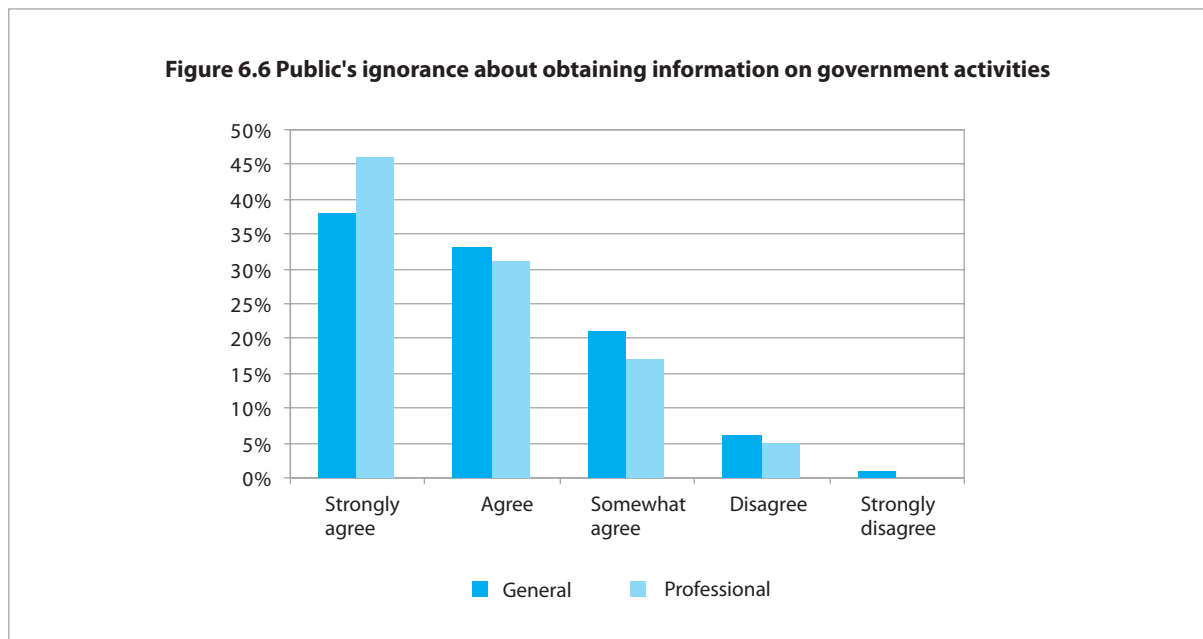
5 The current Parliament passed the Right to Information Act on March 29, 2009 with minor modifications to the ordinance.

Citizen awareness about right to information

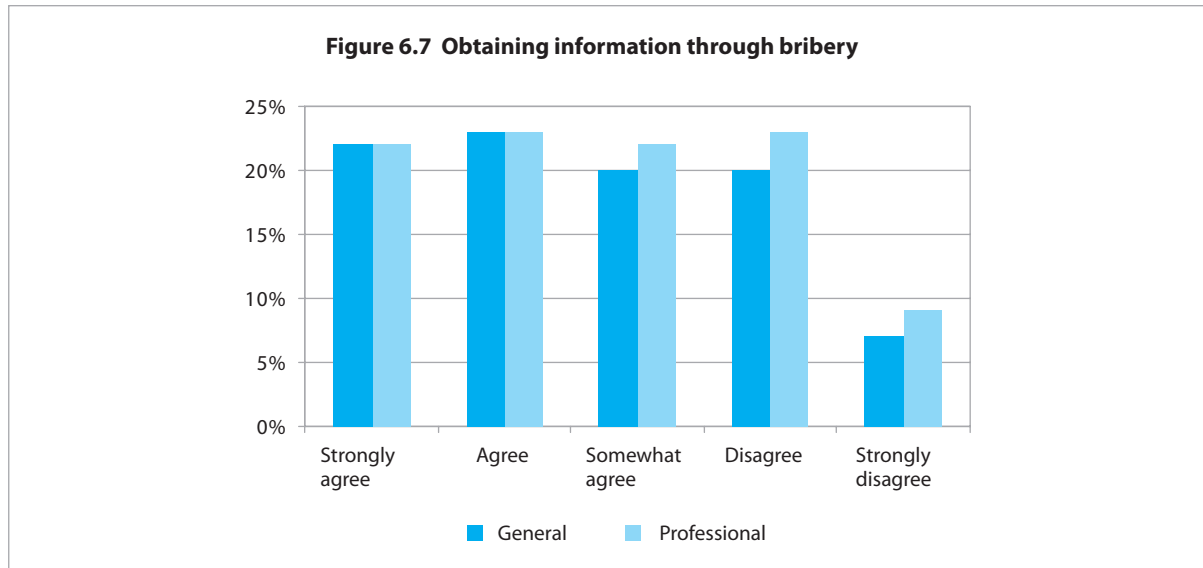


When people were asked to respond if they have the right to receive information about government's activities, it was found that majority of them was vocal about their right to know. Eighty-six percent of general respondents and 91 percent of professional respondents agreed that they legally have a right to know information held by public authorities.

Public denied information about government activities



However, even though the RTI ordinance was promulgated by the CTG, it did not affect the practices of the government. When asked about access to information in general, respondents expressed that they generally were not been properly informed about the sources of information during this regime. When asked about the present sources of information, 71 percent (total of those who responded with 'strongly agree' and 'agree' in Figure 6.6) opined that they usually do not know where to go to obtain information about government's activities. Respondents were divided in their opinion about the fact that one has to pay bribe to access information from a government office: 45 percent (combining 'strongly agree' and 'agree' in the Figure 6.7) agreed and 27 (combining 'strongly disagree' and 'disagree' in the same figure) percent opposed it.



Media (electronic & print) most authentic source of information

Respondents were asked to express their opinion about the authenticity of particular sources of information. TV channels and Radio stations, both private (82 percent) and government owned (78 percent) were considered to be authentic. It is interesting to note that a significantly smaller percentage of urban people (68 percent) considered government owned TV/Radio authentic and a greater number of urban people (87 percent) considered privately owned TV/Radio as authentic sources of information compared to their rural counterparts. Government owned TV/Radio are trusted as sources of information by significantly higher number of rural people (82 percent). However, this may be due to the fact that private TV channels are not available in most rural areas, and citizens only have access to the Government-owned channel.

Table 6.3 Source of information

Source of authentic information	Percentage of respondents who perceive the source as authentic
Private TV channels and radio stations	82
Government owned TV, Radio	78
Newspaper, magazines, posters	70
Friends/relatives who are working in government offices	67
Local Upazila Chairs /UP Chairs/Ward Commissioner and local counsellors/UP members	63
Government Officials such as UNOs and DCs	59

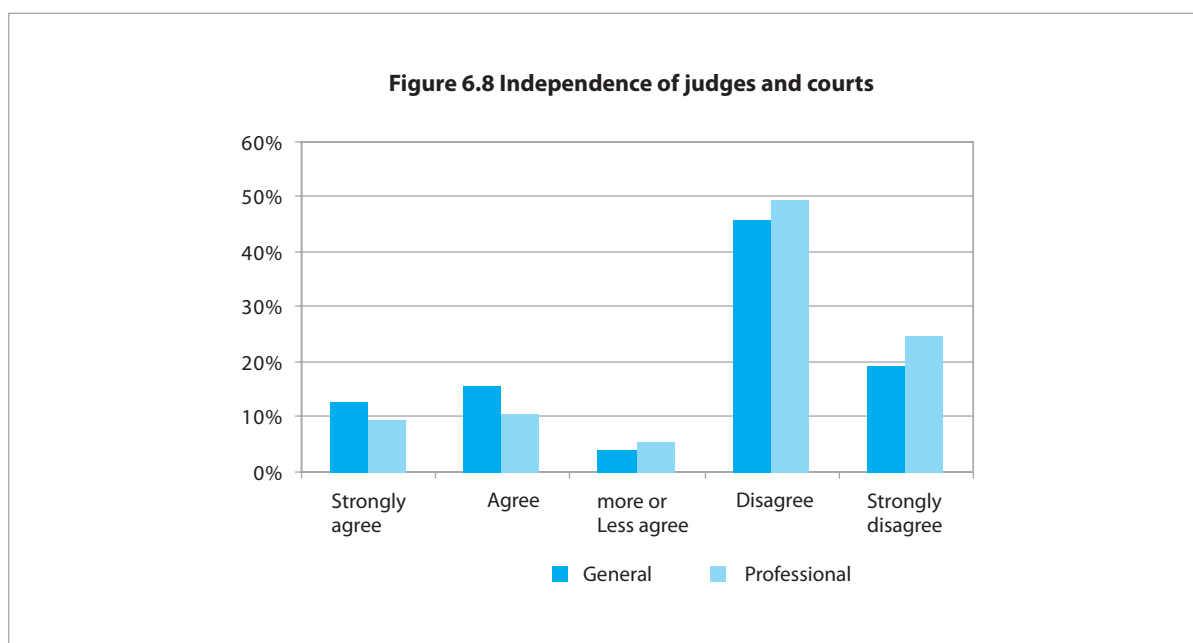
A significant percentage of respondents also considered newspapers as authentic sources of information. Citizens were also found to rely on informal sources of information such as friends and neighbours who work in government offices. It has also been perceived by respondents that their own elected local government representatives are more authentic sources of information than local government officials. Fifty-six percent are of the opinion that Ministries and secretariat officials also provide authentic information to general people.

6.8 Judicial Independence and Law and Order

In light of the team's understanding of the impediments to an independent judiciary, including partisan political influences, bribes, nepotism and corruption, respondents were asked to express their opinion about the existing judicial system in Bangladesh.

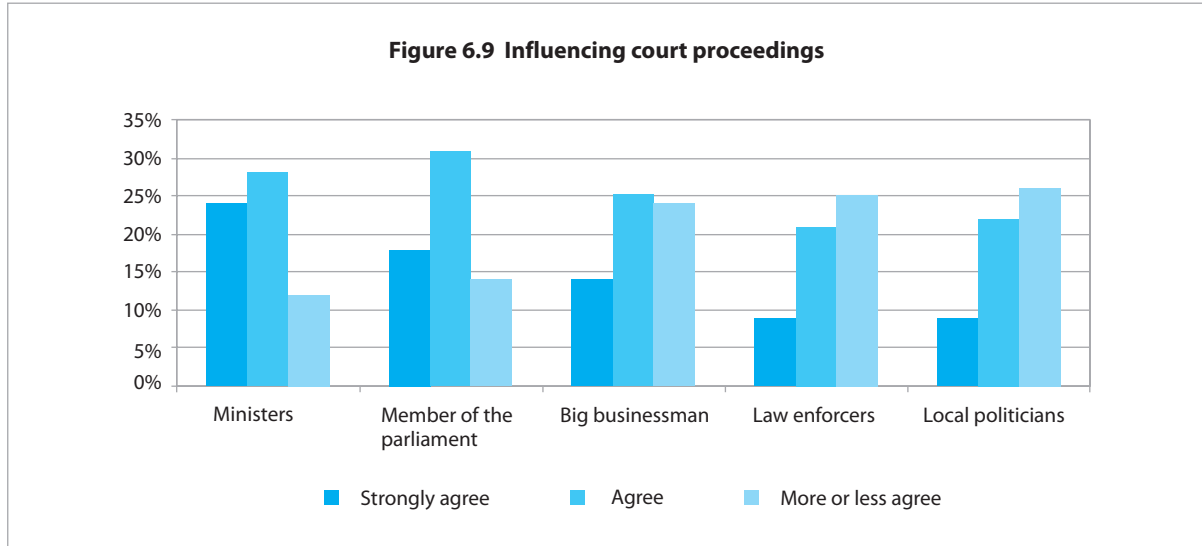
Courts are responsible for adjudicating legal disputes in accordance with the law. Respondents held the view that public access to judicial system in Bangladesh has been restricted by different factors. Citizens have been more willing to go for negotiation than to take the matter to court. It seems a widely held belief that poor, minority and aboriginal people usually do not get justice from the court and their access to court is also restricted. An important revelation was the widespread perception that those with political and economic influence are prepared to interfere with the independence of the courts in Bangladesh.

Courts unable to work independently

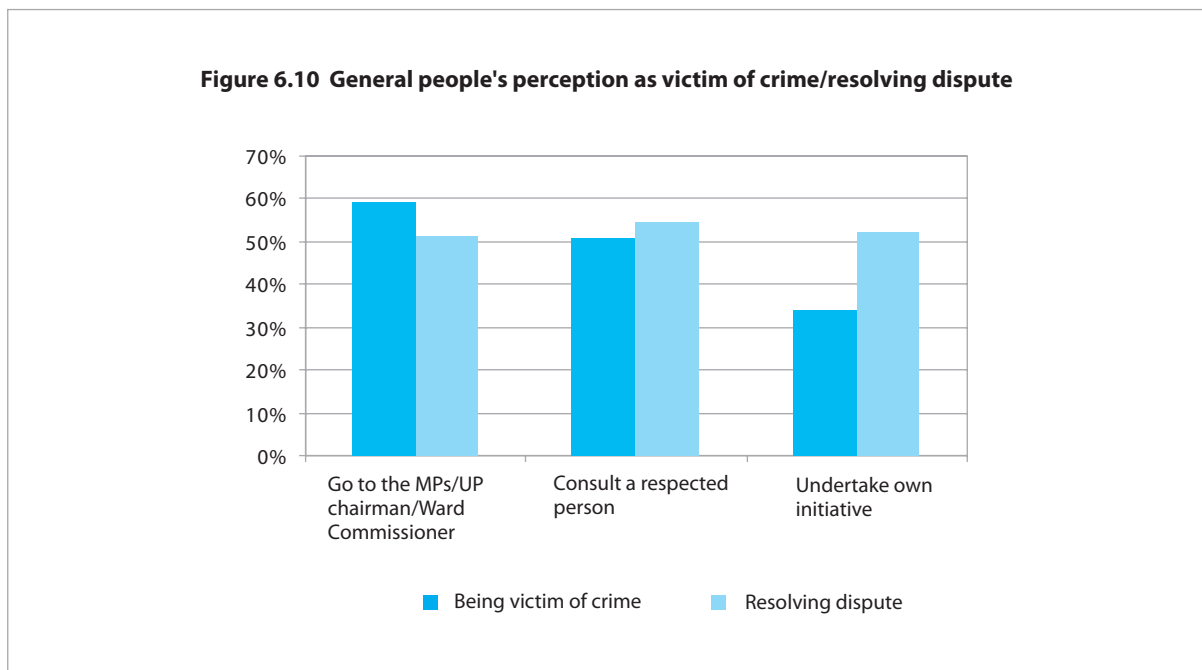


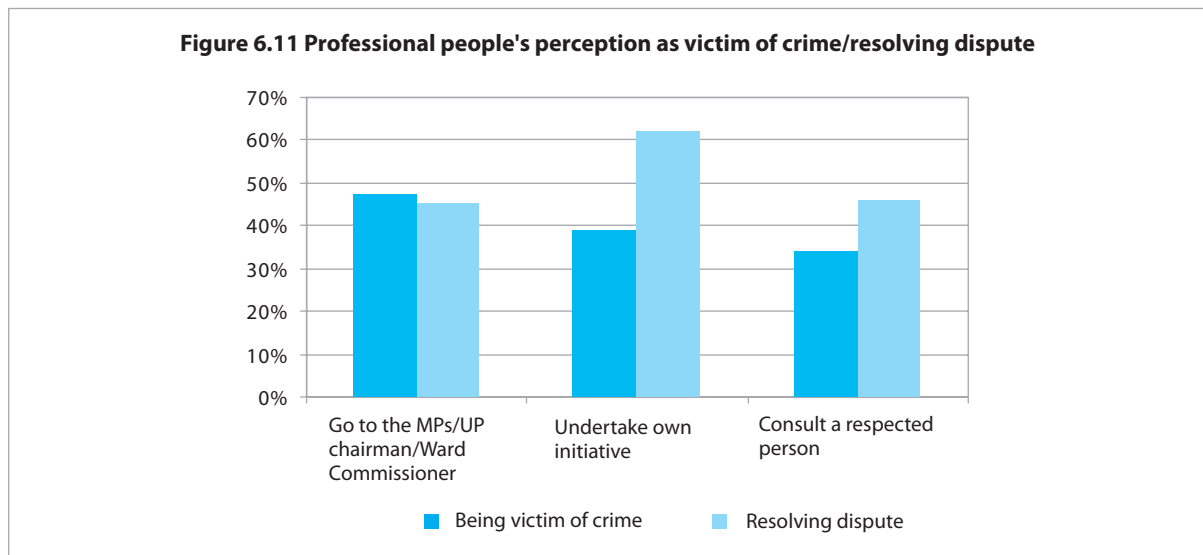
Forty-nine percent of professional respondents disagree with the statement '*judges and courts in Bangladesh can work independently*'; whereas 46 percent of the general respondents did not agree with the statement. Moreover, 25 and 19 percent of professional and general respondents respectively strongly disagreed with the statement.

Several entities influence court activities



According to the citizens surveyed, different actors can influence court activities, and do. At least 30 percent of general respondents agreed (combining 'strongly agree' and 'agree' in Figure 6.9) that ministers, Members of the Parliament (MP), law enforcers (e.g police, RAB), influential businessmen and local politicians influence courts and can manipulate court's activities. Twenty-four percent of the general respondents strongly agreed that ministers are the most influential actors who undermine the independence of the courts. Thirty-one percent of the general sample agreed that MPs can influence the court and 26 percent of people somewhat agreed that local politicians can do so. Twenty-four percent of professional respondents strongly agreed that ministers can influence the court while 33 percent of them agreed that MPs can manipulate court activities.



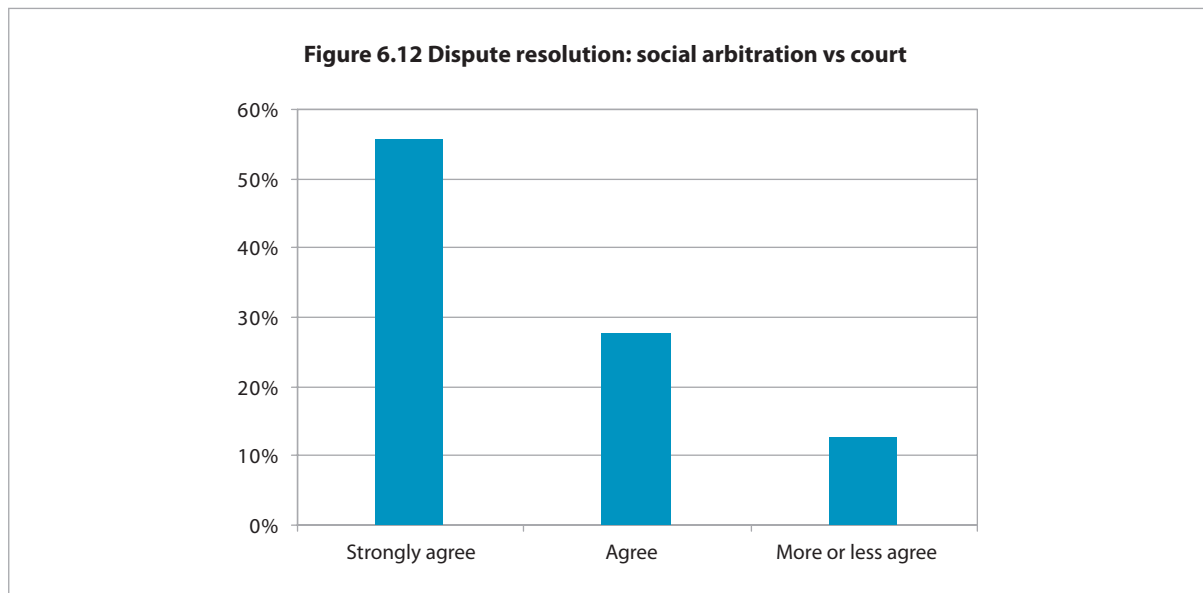


Citizens' preference for elected representatives with social arbitration

Respondents were asked to whom or which institutions they would prefer to go first if they became victims of crimes. They were asked to rank their top three preferences out of the nine options about what they would do if such a situation occurs in their life. The issues/factors were weighted according to their rank of preference by multiplying the first ranked attributes by 3, the second ranked by 2, the third ranked by 1 and the 'no rank' by 0. The summed up scores of each attribute was indexed to 100 to arrive at results.

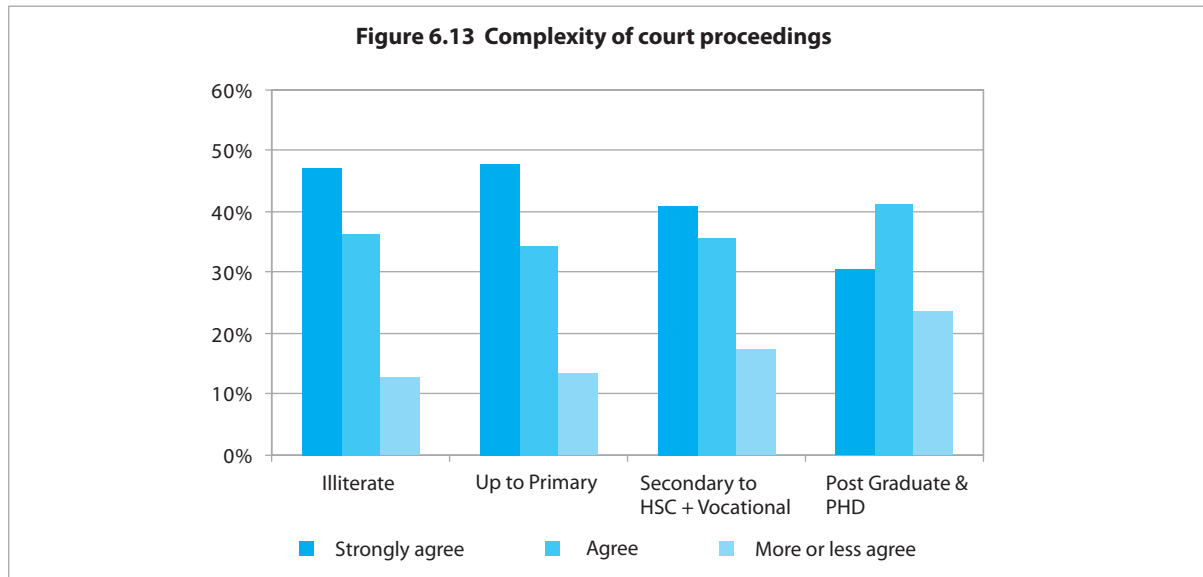
This survey found that the majority of the general and professional respondents prefer to seek help from their elected representatives at national and local level (60 percent from general people and 46 percent from the professionals) as reflected in Figures 6.10 and 6.11. The second preferred option to general people is to consult a local respected person (51 percent). But professionals appear to prefer to take their own initiatives rather than consult a local respected person. Thus, a significant response was also received for the option 'undertake own initiative', reflecting the lack of trust in the formal institutions.

Preference for negotiation over the judicial system for dispute resolution



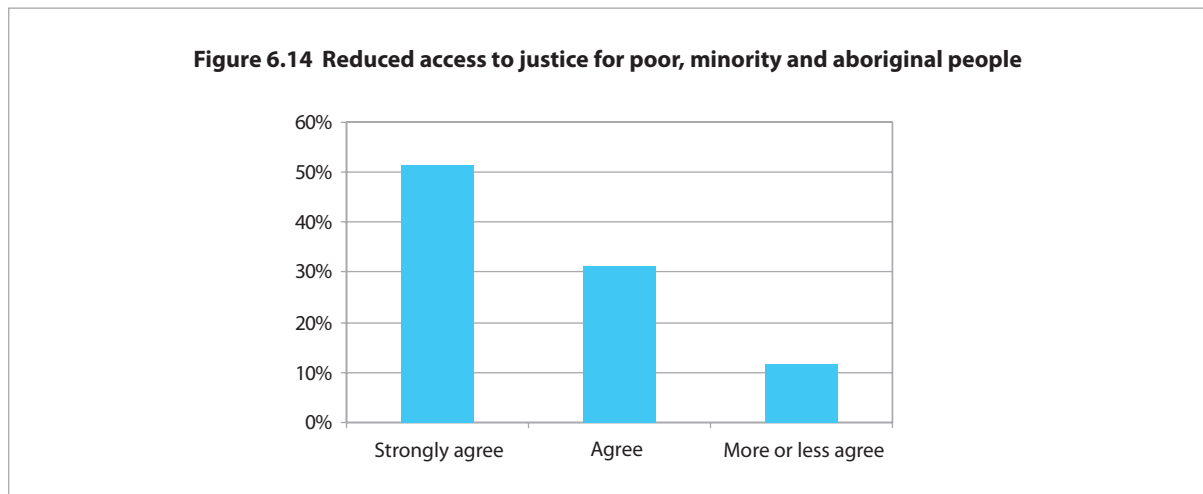
Almost 56 percent of the respondents strongly agreed that it is more convenient for them to go for negotiation to resolve disputes than to go before a court (Figure 6.12), quite possibly because of the delays, bribery and harassment, and potentially unfair outcomes. Most general respondents prefer to resolve disputes by their own initiative rather than by taking the matter to the court.

General public unfamiliar with court proceedings



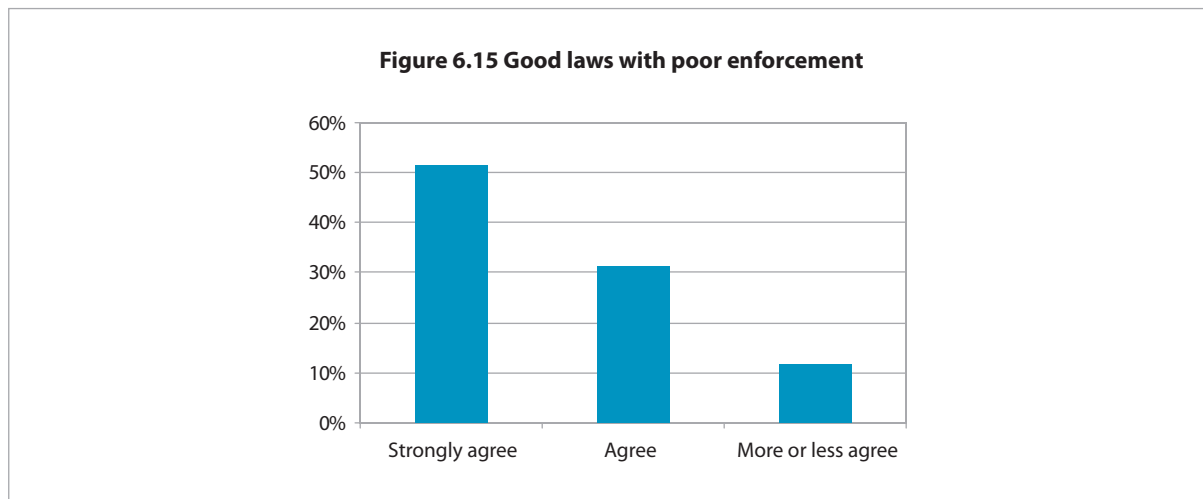
The jargon of the court and complexity of its procedures are in all likelihood the reasons why more than 80 percent of respondents, irrespective of their experience of courts, opined that it is hard to understand court proceedings. The difficulty in understanding was found to be more or less the same for both illiterate as well as literate respondents, with 48 percent of the respondents having primary education strongly agreeing that they could not understand court procedures (figure 6.13). Forty-eight percent of illiterate respondents agreed with the statement. Forty-one percent respondents with HSC and 31 percent of respondents with post graduate as well as PhD degrees agreed that it is difficult for them to understand the language employed in courts. Also, 95 percent of both general and professional respondents agreed that common people have less access to court as they cannot afford to bear the cost of drawn-out court proceedings.

Justice denied to poor, minority and aboriginal people



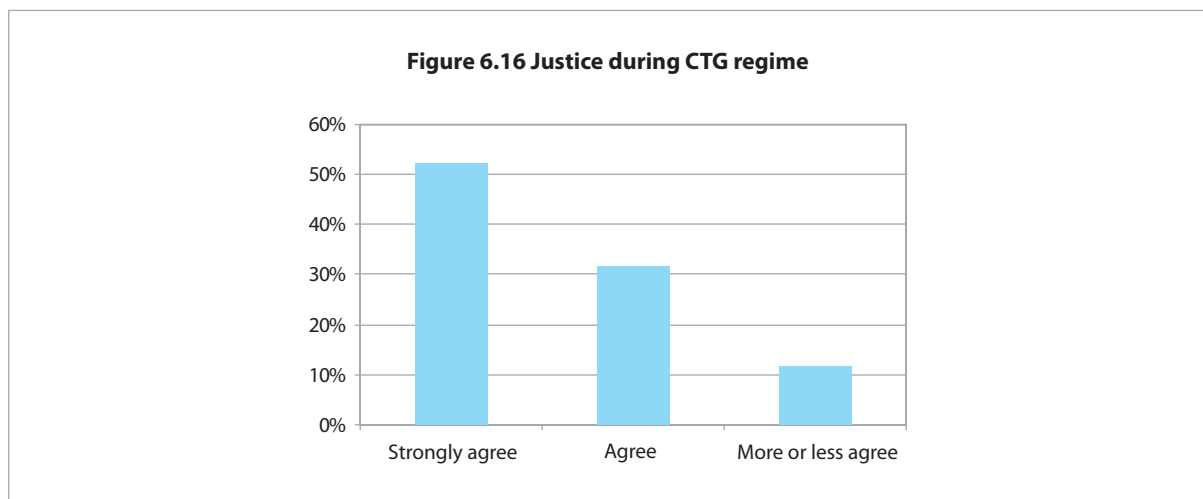
The general consensus among respondents was that the overall justice system in Bangladesh has not been accessible for the indigenous, minority and poor. The social and institutional arrangements of the legal system have especially marginalised the rights of the indigenous people. Almost 83 percent of general respondents agreed that the existing justice system failed to provide justice for all strata of the society (Figure 6.15), and that access to justice for the poor, minority groups and indigenous people is more elusive than for the population at large. This reflects a good awareness among the common people of the discrimination suffered by these groups.

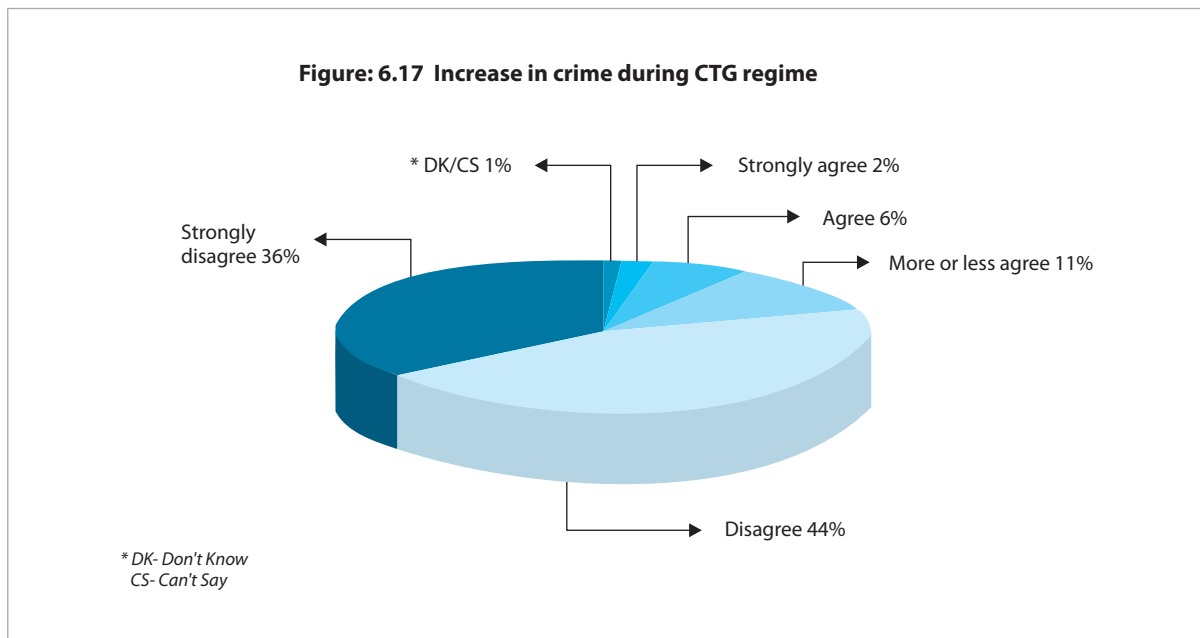
Lack of enforcement makes laws largely ineffective



Almost 93 percent of respondents agreed with the statement that poor law enforcement renders laws ineffective (Figure 6.16), while amongst this group, 52 percent strongly agreed with the idea. Citizens also perceived that there is a greater tendency to violate laws and rules due to the lack of any proper enforcement mechanism. There is a strong correlation with respondents' responses to questions relating to the police sector, with almost 67 percent of the general sample and 80 percent of professional respondents agreeing that police is one of the most corrupt sectors in Bangladesh.

Improvement of Law & Order during CTG tenure





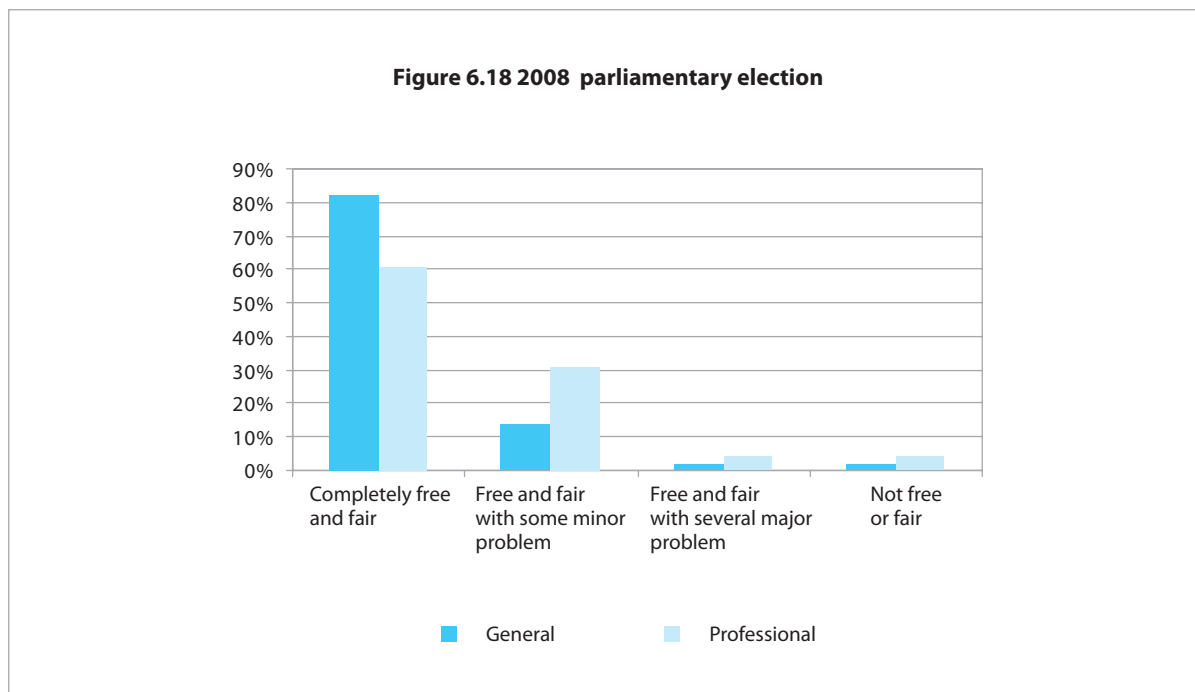
Despite the lack of trust in law enforcement agencies, the CTG regime was perceived to perform better than previous political regimes in bringing down crimes. Figure 6.16 shows that 80 percent of both general and professional respondents disagreed with the statement that crime has increased during CTG regime, hardly a surprising result during a period when the military was responsible for maintaining law and order in the country. Ninety percent of the respondents agreed that the possibility of getting justice during the CTG regime was much higher than that of during political regimes (Figure 6.17). Only six percent of respondents disagreed with the statement. According to the survey findings, almost 34 percent of the respondents agreed that the police in 2008 (under the CTG regime) was more active in their locality in curbing criminal and political violence and terrorist acts. This overwhelming positive perception regarding CTG's performance in law and order appears to imply that in the absence of political pressure and influence, law enforcement and judicial systems can work better so that people get justice.

6.9 Parliamentary Election 2008

In light of the history in Bangladesh of election results being repudiated by the loser, and the credibility of the election process itself, respondents were asked for their opinions about the parliamentary election in 2008.

The survey suggests that the general election was free and fair. The electronic media was active in disseminating election-related information. Citizens chose their candidates mostly on the basis of their qualifications and their political party identity, although at the same time the huge amount of money being distributed by the candidates may have also been a deciding factor.

Most of the respondent views that the election 2008 was free and fair



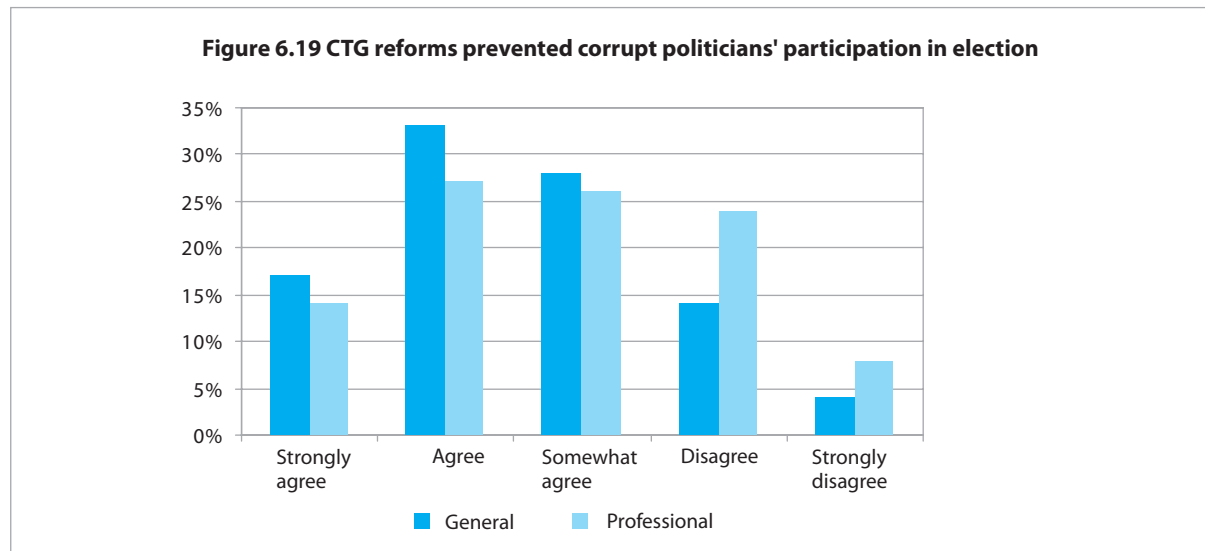
Eighty-two percent of those who were surveyed responded that election of 2008 was completely free and fair (Figure 6.18), although the perception of the professional group differs slightly. Among the professional groups, 61 percent perceived the election as completely free and fair whereas 31 percent of the professional respondents stated that the election was free and fair although there were some minor problems. The International Republican Institute (IRI) conducted an exit poll⁶ during parliamentary election 2008, where the opinion on different issues of election was collected from 150 polling centres. The result showed that 93 percent of the respondents stated the election environment to be very good. This perception survey reflects a similar finding. The survey results also revealed that there is a slight variation of opinion between urban and rural respondents; 87 percent of the rural and 71 percent of urban respondents believe that the election was completely free and fair. The response did not vary across gender, though it is interesting to note that the percentage decreases with an increase in educational qualifications among general respondents. While 89 percent of respondent having no formal education responded that the election was completely free and fair, only 63 percent of the respondents with graduate level education (or higher) responded with the same answer.

6 <http://www.iri.org/pdfs/2009%20January%206%20Exit%20Poll%20Bangladesh%20Parliamentary%20Elections,%20December%2029,%202008.pdf>

Table 6.4 Variation in public perception at different levels of education

Opinion on Election	Percentage of response			
	Illiterate	Up to Primary	Secondary to HSC + Vocational	Tertiary
Completely free and fair	89	85	79	63
Free and fair with some minor problem	9	11	17	30
Free and fair with several major problem	1	1	2	4
Not free or fair	1	2	2	3
Don't know	0	0	0	1

Respondents also perceived that the CTG was able to restrain the participation of corrupt politicians in the election. A large number of politicians were charged with corruption-related offences during 2007. According to the Cabinet committee on Law and Order, starting from January 11, 2007 until January 2008, a total of 4,40,684 people were arrested among which 200 politicians were included under corruption charges.⁷



Half of the respondents agreed that the CTG's efforts to reform the legal electoral framework could restrain the participation of corrupt politicians in the election, while 28 percent somewhat agreed with the statement. This was a common trend found among professionals and general respondents, as 14 percent of them strongly agreed and 26 percent of them somewhat agreed with the statement (Figure 6.19). Nevertheless, 18 percent of general respondents and 32 percent of professionals perceived that the reforms initiated by the CTG could not stop the corrupt politicians contesting the election.

Bangladesh Election Commission: Highly trusted

An effective, independent and non-partisan Election Commission is a *sine qua non* for holding a free and fair election. Historically in Bangladesh, debate centred on the performance and integrity of the Bangladesh Election Commission (BEC). The CTG, being a non-partisan government which had the delivery of a credible election as the fundamental aim of its tenure, initiated some reform initiatives to enable the BEC to perform independently and more efficiently. As a result, the role of the BEC was greatly appreciated in the last election by the general public.

7 <http://www.achrweb.org/reports/SAARC-2008.pdf>

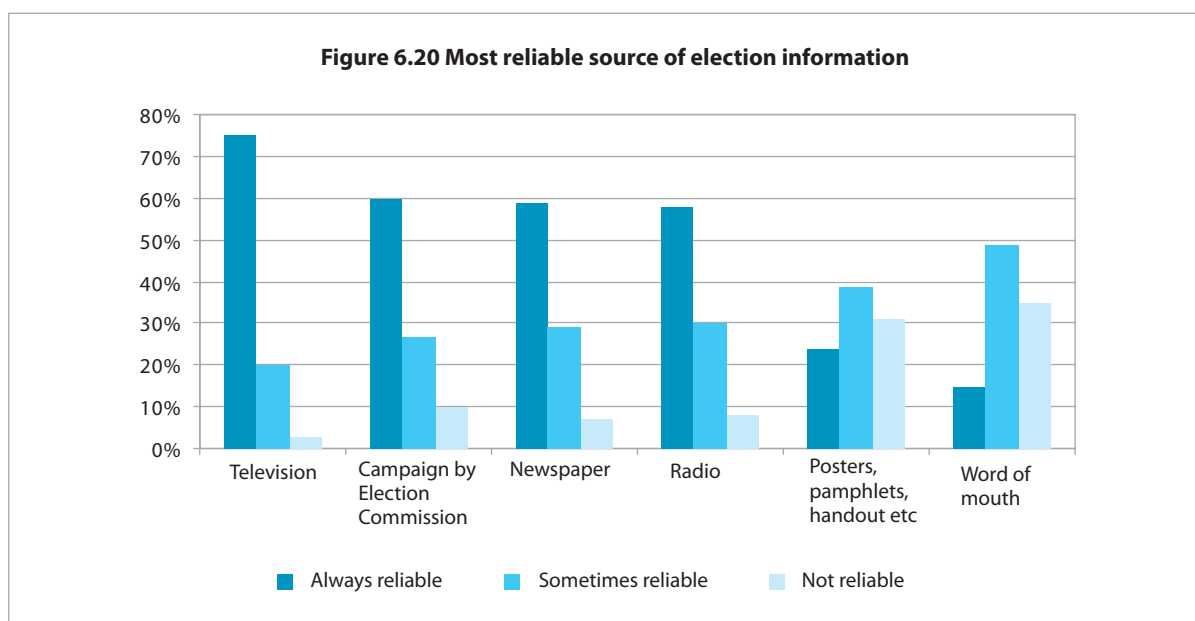
Table 6.5 People's trust in the Bangladesh Election Commission (BEC)

Groups of Respondents	Percentage of response				
	Trust completely	Can trust	Trust more or less	Cannot trust	Cannot trust at all
General	19	43	27	6	2
Professional	18	42	30	8	3

The Bangladesh Election Commission (BEC) was mandated to conduct a credible and fair election by the end of 2008. Its programmes relating to the preparation of the voter list and the digital voter ID card brought the institution to all strata of Bangladeshi society. The survey found that 89 percent of general respondents answered positively when asked about their trust in the BEC with 19 percent claiming complete trust in the BEC. Only eight percent of general respondents and 11 percent of professional respondents claimed not to have any faith in the BEC. The general trust in the BEC is also reflected when respondents were asked about the 2008 Election. Around 82 percent of general people opined that the general election in 2008 was completely free and fair. Moreover, 61 percent of professional respondents agreed that the 2008 general election was free and fair. Thus, the CTG's various compromises during 2008 to ensure the participation of the major political parties in the December election did not affect people's trust in BEC.

BEC and Media: Most reliable source for election information

The survey revealed that a significant percentage (88 percent) of the respondents trust the Bangladesh Election Commission as a reliable source of information.

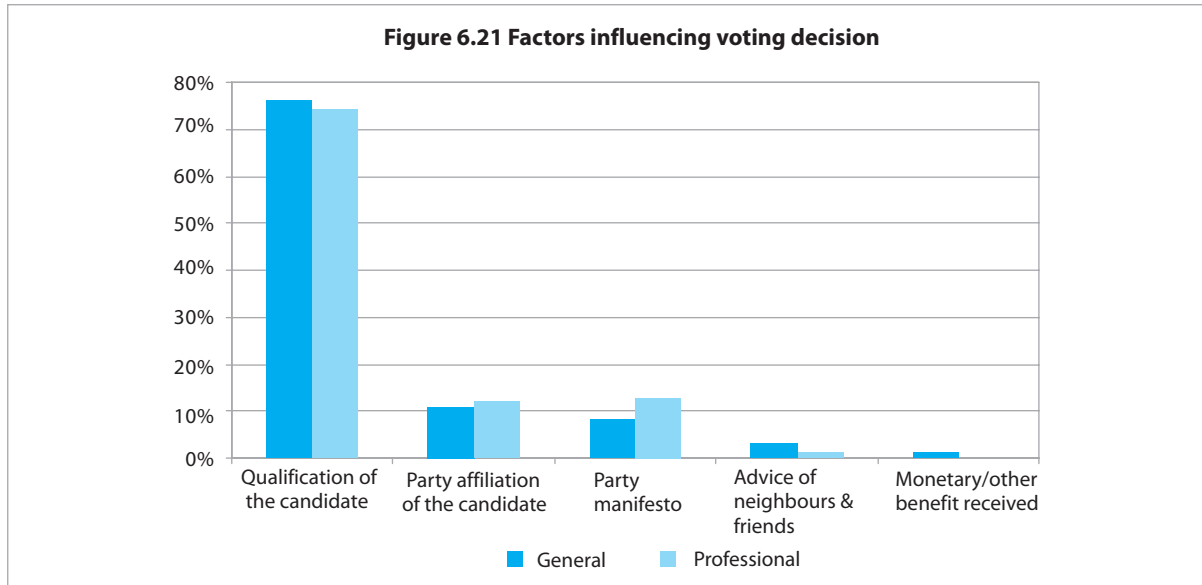


The survey also found that people rely on media as the authentic source of information. More than 75 percent of respondents described television as always reliable, whereas 20 percent said it is sometimes reliable (Figure 6.20). Less than five percent of respondents think television cannot be relied upon as a source of election information. Further, 59 percent and 58 percent of general respondents respectively consider newspaper and radio as always reliable, where almost 30 percent of respondents consider them as sometimes reliable. Citizens have relatively lower trust in word of mouth, posters or pamphlets as sources of election information.

Factors influencing voting behaviour

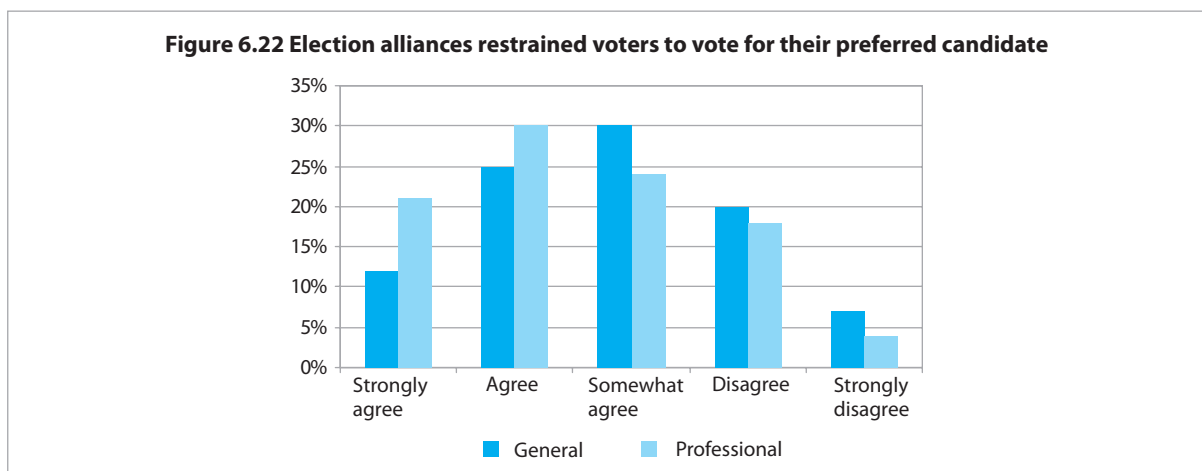
The survey attempted to explore factors influencing the voting behaviour of respondents. The findings are as follows.

Qualification of candidate tops list



Respondents were asked to rank several issues according to importance that influenced their vote in the 2008 national election. Most of the respondents (75 percent) ranked the option 'qualification of a candidate' as the most important factor that they considered (Figure 6.21). This factor was also recognised by 74 percent of professional respondents as the biggest influence on voting decisions. Party affiliation is considered as the most important factor by 11 percent of general and 12 percent of professional respondents, whereas the party manifesto is ranked as the priority factor by eight percent of general and 13 percent of professional respondents. Though there has always been a complaint of *vote buying* during election in the past, only one percent of general respondents admitted they were offered money to influence their votes. These results may be compared with IRI's exit poll 2009 where 93 percent of the respondent participated in the poll stated that they were not offered any gift, favour, food or money by any candidates, their surrogates or the party.

Party alliances restrained voters from voting for their preferred candidate



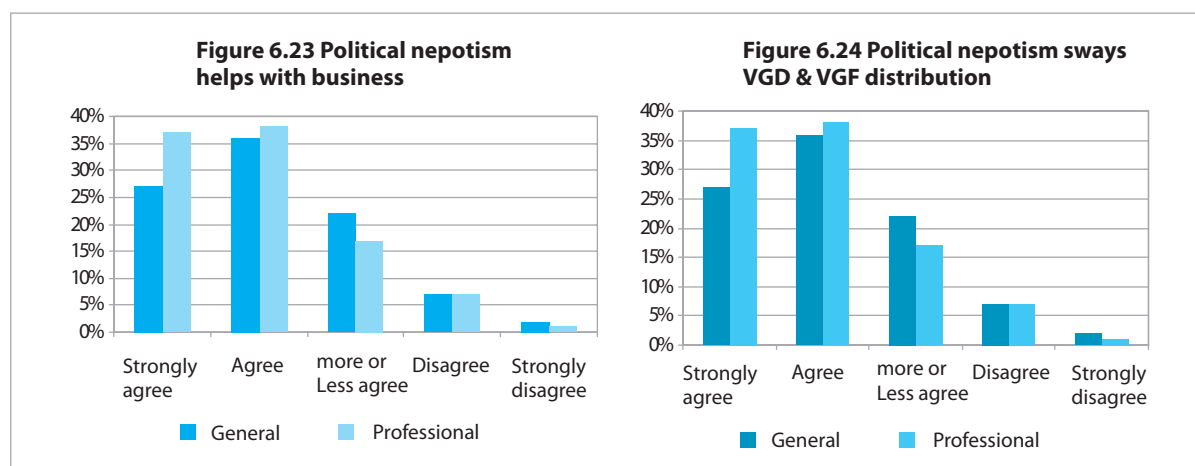
Election alliance has been a widely discussed issue in 2008 parliamentary election, which has been embraced by major parties as an effective 'winning' formula. Due to election alliances, two or more parties may agree to field only one candidate in a constituency. One downside of the alliance formula is that it might hold the voters back from voting because their preferred party/candidate might not have contested from their constituencies because of negotiation among parties. When the respondents were asked if they faced any problem in voting because of election alliances, 37 percent of general and 51 percent of professional respondents agreed with the statement that they could not vote for their preferred candidate because of the alliance. However, 27 percent of the general respondents and 22 percent of professional respondents did not face any such problem due to alliances (Figure 6.22).

6.10 Political Governance

Public attitudes about political legitimacy and current political practices identify the trajectory of political culture in any country. During the survey, respondents were asked to express their perceptions about different aspects of political governance in Bangladesh. This section analyses their knowledge about the state of political parties, political culture, stakeholder management in Bangladesh and their views about the legitimacy of political parties and the political discourse.

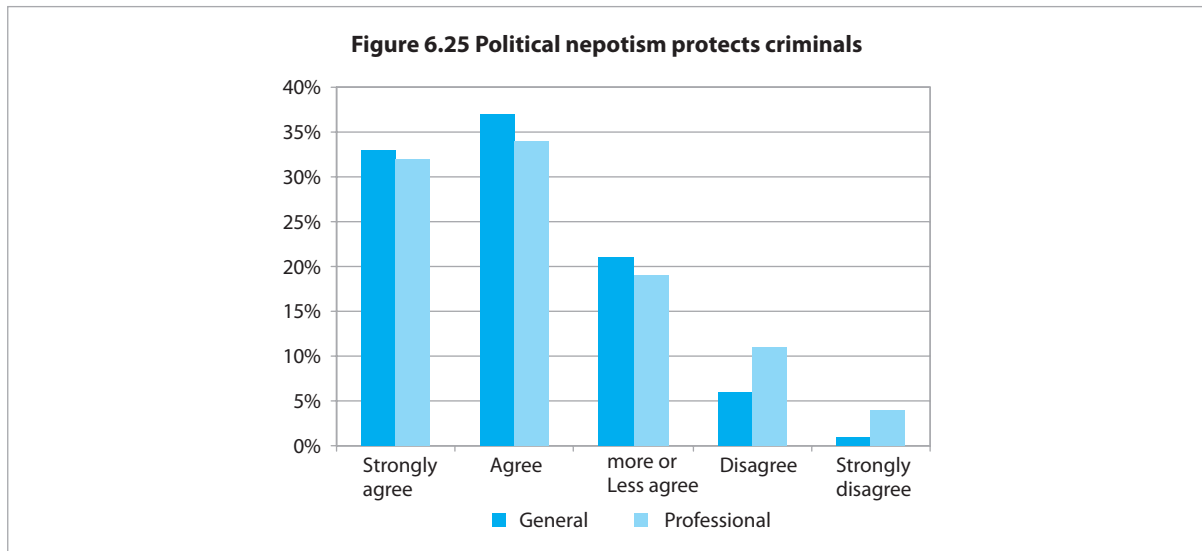
The survey findings revealed that public perception about the political culture of Bangladesh is not very positive. Citizens perceived that like other parliaments in the past, absenteeism, walk-out without proper reasons, unnecessary demands by the opposition parties and the dominance of the government parties will remain the same in the Ninth Parliament. In fact, citizens have demonstrated a high level of awareness about the existing state of play. Respondents opined that political nepotism in Bangladesh is pervasive in the political, economic and social lives of the citizens. Citizens also perceived that only people having political affiliation can grant the major share of the government provided safety net facilities for the poor. More importantly, political party influence over the legal system guarantees impunity from prosecution for those with the relevant connections. The important findings are discussed below.

Political Nepotism Bypasses Rule of Law



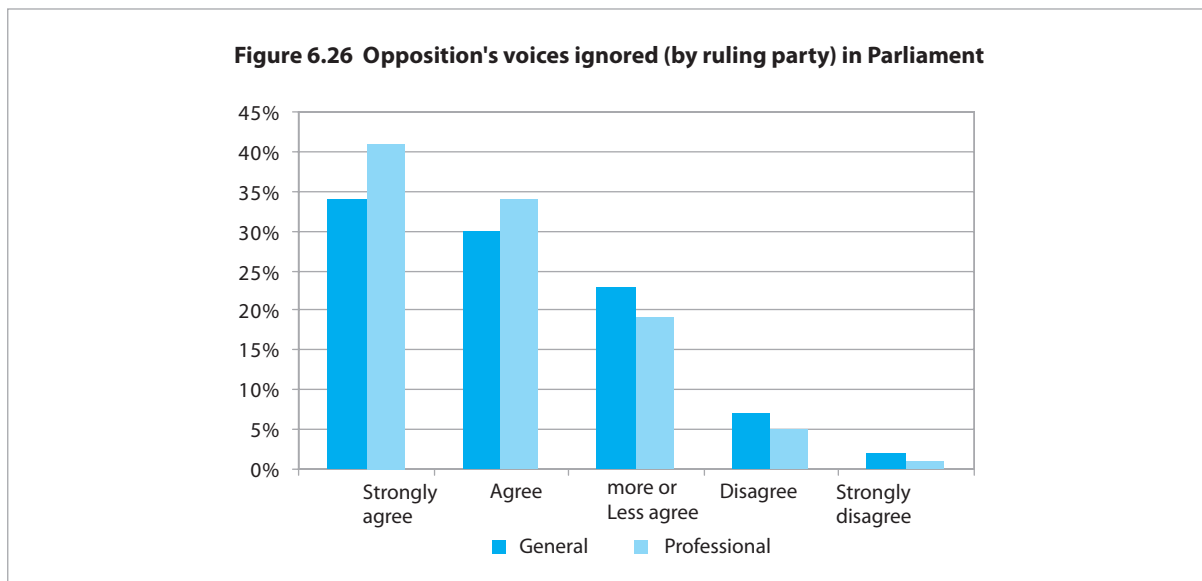
According to the respondents, the prevailing political culture in Bangladesh results in a very high degree of political nepotism. Such nepotism encompasses the rise of relatives and associates of political actors to positions of power which enable them to capture major shares of economic and political benefits.

Almost 38 percent of general respondents agreed that affiliation with the political parties helps businesses to have leverage in Bangladesh (Figure 6.23). Of the general respondents, 37 percent strongly agreed that the Vulnerable Group Development (VGD) and Vulnerable Group Feeding (VGF) benefit distribution system in Bangladesh is largely manipulated by the political parties (Figure 6.24). This signifies that party membership or affiliation to a large extent is seen as a primary eligibility criterion to access those social services, ignoring the real poor who are in need of a social safety net. During 2008, respondents felt that they had better and more neutral access to the social service distribution system. The survey findings demonstrated that almost 57 percent of general respondents and 66 percent of professional respondents were satisfied with the Government-led social safety net programmes during the period.



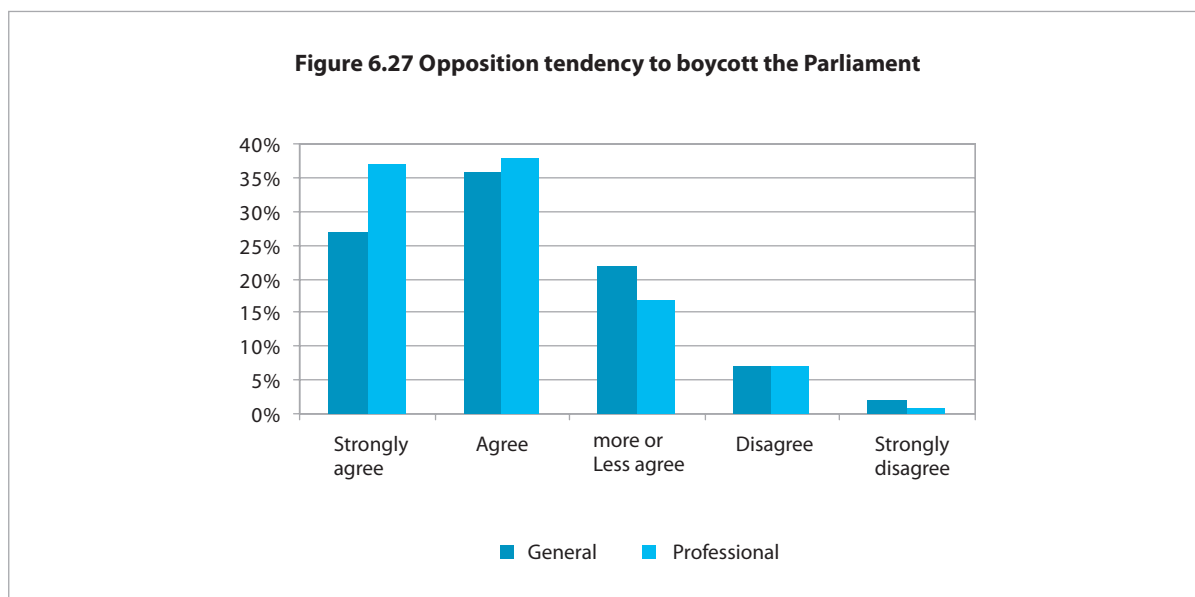
A most striking finding is that almost 37 percent (Figure 6.25) of general respondents thought that party favouritism could save its members from the legal processes of the state after committing crimes. Twenty-one percent of general respondents more or less agreed that political nepotism in Bangladesh favoured its members and thus overlooked the law of the country. There is consistency between both professionals' and the general sample's responses as to how political nepotism benefits party members and followers in Bangladesh.

Unconstructive roles of ruling and opposition parties in Parliament



The bulk of respondents indicated that Parliament was far from being a forum for constructive debate, ensuring executive accountability, or sharing opinion on relevant national issues among the ruling and opposition parties. More than 65 percent of the general respondents agreed that the ruling party always ignores the opposition party's opinion while 41 percent of the professional respondents strongly agreed with the statement (Figure 6.26).

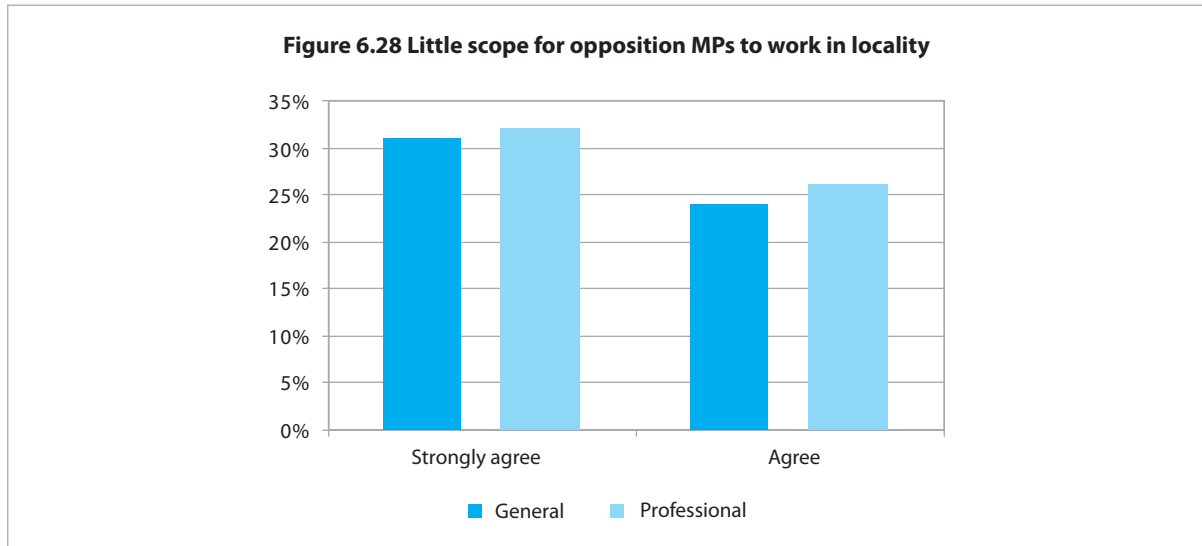
Parliament boycott tendency of opposition



The opposition's absenteeism in the Parliament and boycott of the sessions have become a regular phenomenon since multi-party electoral politics re-emerged in 1991. Both professional and general respondents agreed that opposition parties are keen to boycott the Parliament regardless of the merits of a particular issue and that they deliberately disrupt the functioning of the parliament. The respondents also agreed that whenever there is a disagreement, opposition calls for a strike (UNDP 2005).⁸ However, the respondents also felt that the ruling party is expected to play a more constructive role in the Parliament by providing adequate space and ensuring voice of the MPs but most of the time they dominate the proceedings and engage in debates on issues seemingly irrelevant in terms of the national interest. Both general and professional groups agreed with the statement and almost 41 percent of professional respondents strongly agreed that ruling and opposition parties usually do not agree upon the important national issues.

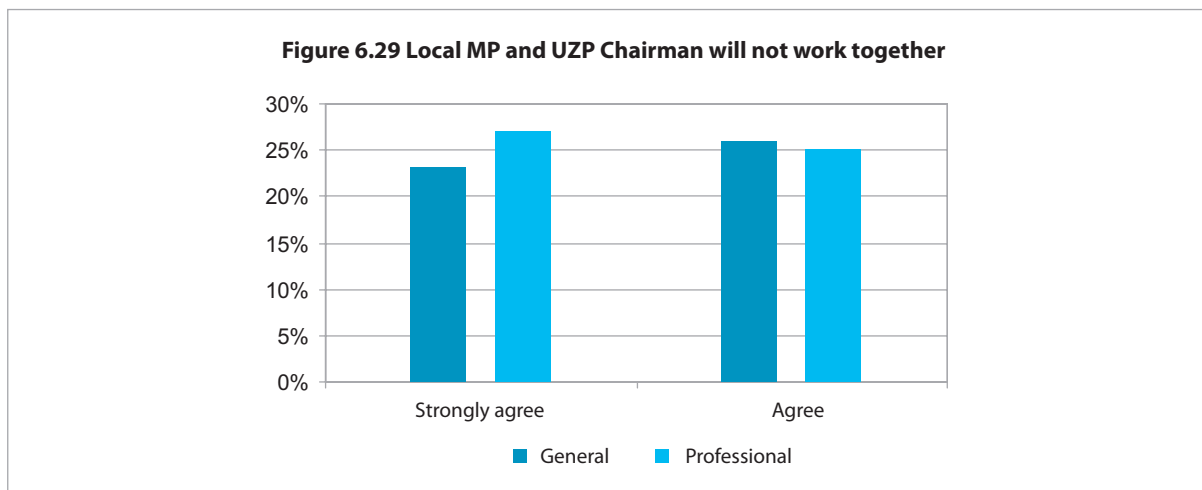
8 The result of the opinion survey conducted by UNDP (2005) revealed that 95 percent of their respondents views that *hartal* has a very negative or somewhat negative impact on the country. Lack of political unity has been stated as the major reason behind this, where illiteracy also has been stated as another cause. Seventy percent of the respondents view that there are other alternatives to *hartal*.

Party affiliation irrelevant for MPs to work for their constituencies



More than 32 percent of general respondents and 26 percent of professional respondents thought that Members of Parliament, regardless of their party affiliation, can make a positive contribution to their constituency (Figure 6.28). In this regard, almost 32 percent respondents strongly agreed that government could not influence or bypass opposition MP's efforts/activities at the local levels.

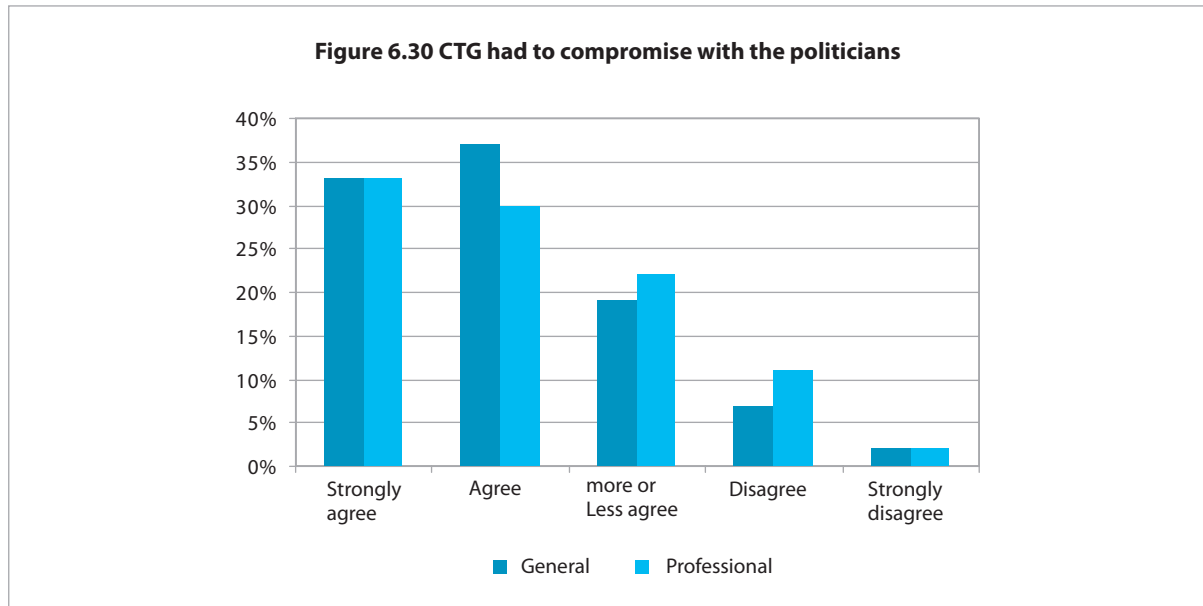
Citizens' anxiety about the power and role of Upazila Chairs



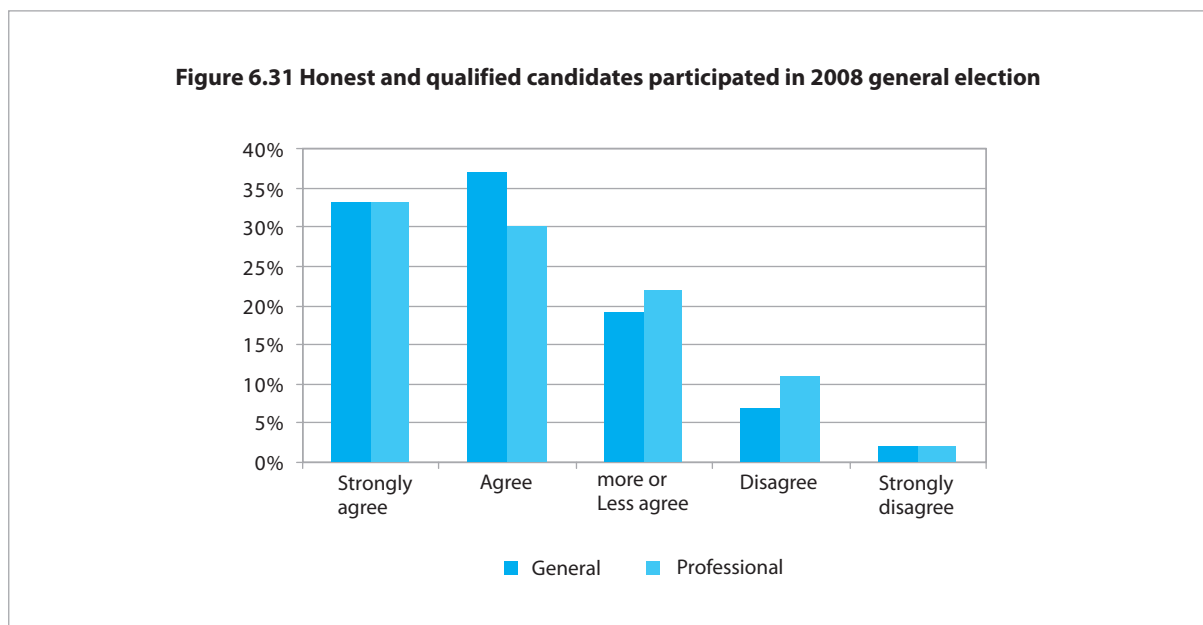
Upazila elections and the respective roles of UZP Chair and MP have been a much debated issue over the year. While the Upazila Parishad (UZP) is a tier of Government established by the Constitution (in Articles 9, 59 and 60 depict the powers and functions of the local government). This tier of government was only established in 2009 through elections that were originally planned to be held during the CTG tenure. A major concern is whether there will be effective power-sharing between MPs and the UZP chairs in the future, where the two are from different parties. On that issue, more than half of the respondents from both the general (49 percent) and professional (51 percent) groups anticipated that the local MP and UZP chairman from two different parties will not work together and this will slow down the development work in the locality (Figure 6.29).

Consequences of CTG-proposed reforms on Bangladeshi Politics

Respondents showed a high awareness of the compromises that the CTG made to secure the participation of the parties in the 2008 general election. Conducting a free and fair election with the new voter ID card was amongst the most lauded achievements of the CTG, although there was disappointment that accused politicians were allowed to participate in the general election. The drive against corruption was next in popularity. On the other hand, closing down jute mills and eviction of slums were identified as two most negative steps undertaken by the CTG.

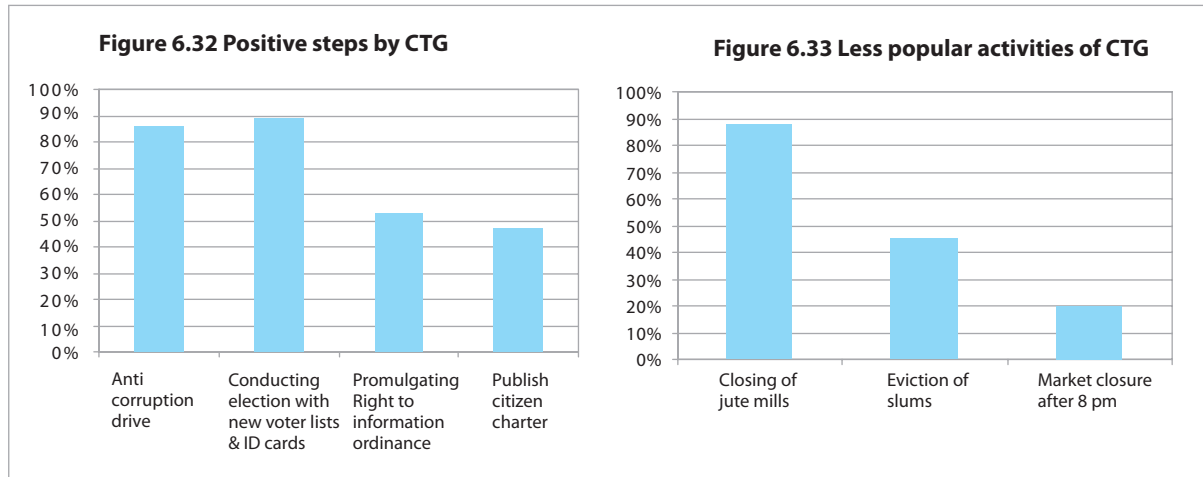


The CTG came to power with pledges to initiate effective political reform initiatives in Bangladesh. It attempted several activities throughout its two year tenure. During the survey, questions were asked to elicit public opinion about the CTG reform agenda.



Both general and professional respondents (37 and 30 percent respectively) agreed that the CTG had to compromise with the politicians to ensure their participation in the 2008 election while 34 percent of the professional respondents strongly agreed with the statement (Figure 6.32). However, at the same time, it was felt by respondents that the CTG's political reform agenda ensured more honest and qualified candidates in the 2008 general election. Almost 33 percent of both general and professional respondents strongly agreed that a comparatively greater number of honest and qualified candidates participated in the 2008 election.

Positive versus negative initiatives of CTG



A 'performance evaluation' of the last CTG had been a focal point of the perception survey. People were given some information about the best known initiatives of the government. Around 90 percent of the respondents remarked that the best initiative of the CTG was to conduct the general election with new voter lists and ID cards (Figure 6.33). This move to prevent fake voters from being registered was seen as the most important step in ensuring that the election was free and fair. Furthermore, in the case of people's perceptions about the 2008 general election, it was found that 81 percent of them opined that it was held completely free and fair. In that case there is convergence of opinion among the respondents about the performance of the CTG.

An overwhelming majority of general respondents - 86 percent - identified the anti-corruption drive as a good initiative of the CTG. In addition, promulgation of 'Right to Information Act' and 'Citizen's Charters' were identified by the public as two more excellent steps by the CTG.

People were also asked about the policies of the CTG which adversely affected citizens. Almost 88 percent of the respondents identified that closing the jute mills in different parts of the country was the worst step taken by CTG (Figure 6.33). People had identified slum eviction as the second most negative step. Moreover, decisions undertaken by the CTG to close shops after 8 pm was ranked as the third negative step.

6.11 Conclusion

The *State of Governance in Bangladesh 2008* report provides an account of how the winning party has customarily captured the state apparatus (i.e. the Parliament, the Judiciary and the bureaucracy) to control resources. Partisan influence renders the accountability mechanisms largely futile. This is the context in which the survey findings are situated, which have shown mixed results. On the one hand, citizens

expressed their satisfaction with the CTG reform efforts and free and fair parliamentary election. They have high hopes that the MPs and local government representatives will be able to work constructively for citizens and their locality. In fact, contrary to general belief, the survey revealed that citizens seek help from their elected representatives when faced with disputes/crimes. On the other hand, citizens perceive that political influence will continue to cripple the institutions of accountability (e.g. judiciary) and hamper the service delivery (e.g. law and order and social safety nets). Respondents also expressed their strong opinion that the opposition parties will exercise the negative political norm of boycotting Parliament and there will be lack of political consensus among the ruling and opposition political parties on important national issues. In terms of the performance of the CTG, although respondents largely supported the reform activities of the CTG, they remained dissatisfied with the performance of the power sector, price hike of essential and existing state of unemployment. Respondents also opined that CTG initiated anti-poor initiatives like closing down jute mills and evicting slums. Finally, citizens are found optimistic about the state of governance in the years to come. The majority of the respondents hoped that this fairly elected political government will bring some much awaited positive outcomes for better functioning of democracy in Bangladesh.

Conclusions

Over almost two decades, Bangladesh moved from what may be considered a 'minimalist democracy' - regular free and contested elections, peaceful transfer of power, fundamental freedoms, civilian control over policy and institutions - to what has been called illiberal democracy - misuse of state power for partisan and personal gain; and institutions brought under partisan political pressure. The practice of partisan politics has severely undermined the accountability mechanisms of the political system and rendered it largely dysfunctional. The institutions of the democratic multi-party state have been dominated and undermined by partisan politics and party patronage networks run by the major parties. Bangladesh is further characterised by high levels of competition between major parties, absence of intra-party democracy, highly centralised decision-making and personalisation of internal party structures. These have had a negative impact on the overall governance of the country.

The *State of Governance in Bangladesh 2008* report has focused on the functioning of formal accountability mechanisms particularly prior to 1/11 and has attempted to identify how comprehensive accountability mechanisms can help ensure functional democracy in Bangladesh in the years to come. The Report has attempted to demonstrate how institutions meant to instil accountability in and of government have been systematically and increasingly impaired. Throughout the Report, the research has repeatedly demonstrated the diminution amongst the political class of a commitment to the idea of a self-restraining state. Specifically, it has outlined the main gaps and weaknesses that have impaired the effectiveness of these accountability mechanisms, assessed the extent to which the Caretaker Government-proposed reforms have addressed those deficiencies, and discussed the importance and challenges of deepening these reforms under a political government. It needs to be stressed that the Report, and the nationwide survey conducted to support the analyses, is a portrayal of the situation in Bangladesh in 2008 and does not necessarily reflect the conditions as they are in 2009.

The target audience is academics, researchers and expert practitioners in the field of governance and development, among whom it is hoped it will provide a basis for discussion and debate. It is also expected to provide information for students on the increasing number of courses devoted to the study of governance and development in Bangladesh. Criticisms and comments are actively welcomed, as the State of Governance in Bangladesh research project continues beyond the publication of this Report.

7.1 Findings

The *State of Governance in Bangladesh 2008* Report contends that core prerequisites for a functional democracy are manifest in - effective checks and balances that strengthen accountability. A functional democracy has been defined as a system which is representative, responsive, transparent and accountable. Formal and properly functioning accountability mechanisms are deemed essential to establish and sustain stability, and are designed to inhibit the incumbent government from manipulating the state apparatus with possibly disastrous consequences for the public interest. Against this backdrop, this Report has attempted to analyse the informal norms that affect the political game in Bangladesh through review of political parties, the bureaucracy, institutions of accountability (e.g. the Bangladesh Election Commission, the Anti-Corruption Commission, the Public Service Commission, and the Office of the Comptroller and Auditor General), the Parliament and the Judiciary - through both primary and secondary research, and solicited public opinion on governance issues through a nationwide survey.

There is no doubt that an important goal of all modern political parties is to acquire and exercise power. In fact, power is an important resource that parties often use to reach other goals, which may range from implementing commitments they make to the people and popularising party ideology, to expanding the party base and rewarding the patrons providing the support base of the party. In other words, power is a means to an end, and not an end in itself. The concentration of power within the political parties in Bangladesh has constricted the space to develop an effective, intra-party, accountability framework. This has translated into a degradation of the organisational constitution, failure in management of party resources and capacity, and purposeful neglect of building a new generation of leaders. In a resource scarce polity (and society) along with an underdeveloped network with non-state actors, political parties have turned to the organs of the State to support its sustainability. The Parliament, Judiciary and other oversight institutions have all become instruments in the hands of the ruling party to be used in the 'winner takes all' system that has evolved in Bangladesh.

The Executive has come to acquire the culture of the 'politburo', monopolising the organs of the State and using them as instruments of control. Political parties continue to undertake practices which perpetuate the existing norms and show little sign of undertaking reform measures. This Report has extensively analysed the motivating factors of political parties in supporting the current norms. Internal, operational and decision-making mechanisms of political parties have been examined at length, as have intra-party coordination and mobilisation of resources (focusing on the mechanism of the patron-client relationship). The political party-bureaucracy nexus has also been closely examined, as bureaucracy, being the implementing apparatus, has to work closely with the ruling party. We have seen that unbridled politicisation of the bureaucracy has become a natural corollary where the incumbent tends to uphold partisan interest in recruiting, promoting or transferring civil servants. The Report has attempted to identify the loopholes that allow the incumbent to manipulate the bureaucracy and analysed the (in)effectiveness of their internal accountability mechanisms.

In its analysis of the institutions of accountability in Bangladesh, the Report concludes that even though these institutions enjoy the necessary Constitutional and statutory protection, their leadership has unfortunately not been pro-active enough to exercise this in their favour. Rather, in many cases they are perceived to be partisan and compliant to external pressure. There is extensive evidence of Executive influence through avenues of human resources and budget. Appointment of the leadership appears to be the main channel of politicisation. Structural and systematic loopholes often become constraints to effective functioning. The successes are overlooked mainly due to corruption and partisan behaviour. The human

resources for the most part lack capacity and motivation, and the issue of deputation makes the scenario worse. Dependence on the Executive, for both fiscal and human resources, curbs independent functioning to certain extents and also prevents long-term capacity building.

Bangladesh embarked on its second phase of parliamentary democracy in 1991, and with renewed vigour attempted to create a balance between the two distinctive roles of the Parliament: consensus-building and policy-making. The initial attempt of the framers of the 1972 Constitution to provide adequate checks on the Executive through the legislative institution was marred due to the political turmoil, amendments to the Constitution, and changes in political dimension and actors. Consequently, the Parliament has turned into an institution which has failed to hold the Executive accountable and play the 'consensus-building' role.

Since early 1991, certain reforms have been made in the formal arrangements of the Parliament in general, and into the committee system in particular. These include broadening the jurisdictions of standing committees to deal with legislation and oversight simultaneously, replacing ministers by backbenchers as committee chairs, establishing an independent parliamentary secretariat and an Institute of Parliamentary Studies (IPS) for research support, introducing the Prime Minister's Question Time (PMQT), and broadcasting the proceedings of the Parliament on the national radio. However, despite these efforts to make the Parliament an effective institution of accountability, due to long boycotts of the Parliament by the opposition, the refusal of the ruling party to give enough opportunity to the opposition to criticise the government and the inadequacies of the parliamentary committees transformed the Parliament into a rubber stamp institution. The Report provides a critical review of the performance of contemporary Parliaments in Bangladesh in performing their key functions in general and the role of parliamentary sessions and committees in holding the government accountable in particular. Through an analysis of the formal rules and identification of the informal rules, the Report has explored how the combination of these two has generated an entirely new rule of the game which governs the activities of the MPs both in the plenary session and standing committees of the Parliament. It is this new informal rule of the game that determines the effectiveness of the institution in holding the Executive accountable. However, recent changes in the electoral laws - initiated by the CTG - had a positive impact on the Ninth Parliamentary election as candidates with comparatively cleaner images were selected by the political parties. This positive momentum has led to the formation of all standing committees in the first session of the Parliament and with two chairman positions (of standing committees on ministries) being held by opposition party members. This 'empowerment' of the opposition in the parliamentary procedure is a very welcome change and hopefully marks the change in the hitherto displayed authoritarian attitude of the ruling party. This may in the long run pave the way for positive change in the existing culture of confrontational politics.

The Report also analyses impediments to an independent Judiciary, including partisan political influences, bribes, nepotism and corruption, which have severely circumscribed the common people's access to court. While there have been many changes to the formal institutional framework, judicial independence has principally been undermined in recent years through the appointments process, with significant numbers of partisan and less able appointees to the bench. This has had an obvious effect on the quality of justice, on the fairness and impartiality of decisions as poor quality judges are often beholden to those who appoint them, and are more open to improper influence and corruption. This Report recognises corruption and external interference in the lower courts as a serious problem, and highlights the growing recognition that the superior courts have suffered a long term decline in both quality and integrity. The legitimacy of the courts and citizens' trust in their decisions have thus been undermined.

The Reports finds that the informal rules - that have developed over time - which have governed the Judiciary appear to have such strong roots that substantial changes to the formal legal framework have had

relatively little impact. Thus, while the formal incentives within the Judiciary may not have changed substantially over the last three decades, the informal incentives have changed or become accentuated in recent years as patrimonialism has expanded. This in turn has distorted the application of formal processes such as appointments and promotions, and led to the breakdown in routine monitoring and supervision.

The 2008 State of Governance in Bangladesh report provides an account of how the winning party has customarily captured the state apparatus (i.e. the Parliament, the Judiciary, the oversight institutions and the bureaucracy) to control public resources through all encompassing informal norms. Partisan influence has rendered the formal accountability mechanisms of the state largely futile. This is the context in which the nationwide perception survey was situated. The objectives of the survey were, broadly, to gauge public perceptions about the state of the governance, the political system and political culture in Bangladesh. It also attempted to ascertain citizen's perceptions and opinions about the institutional reform initiatives of the CTG, especially their effectiveness, sustainability and impacts on the political system in Bangladesh. The survey also evaluated the performance of CTG in holding fair and credible election and initiatives against corruption. Last but not the least, it tried to determine public opinion about service delivery in education, health, water, and electricity sectors, their living standards and price hike situation compared to the previous year.

Survey findings have shown mixed results. On the one hand, citizens expressed their satisfaction with the CTG reform efforts and free and fair parliamentary election. They have high hopes that the MPs and local government representatives will be able to work constructively for citizens and their locality. In fact, contrary to general belief, the survey revealed that citizens mostly seek help from their elected representatives when faced with disputes/crimes. The majority of the respondents also expressed hope that the fairly elected political government would bring some positive outcome to help the better functioning of democracy in Bangladesh.

On the other hand, citizens perceive that political influence will continue to cripple the institutions of accountability (e.g. judiciary) and hamper the service delivery (e.g. law and order and social safety nets). Their opinions uphold the Report findings that the eschewed framework of governance for political parties has injected within the arteries of the State a culture of impunity, patronage, and a gradual institutionalisation of practices which uphold partisanship within State organs. Citizens perceive that people having political identity and/or strong political ties can easily grasp the major share of the VGD (Vulnerable Group Development), VGF (Vulnerable Group Feeding) and other government provided safety net facilities for the poor people - thus placing the survival of the real poor in jeopardy. Citizens also felt that political party influences over the law and order and legal systems guarantee impunity from prosecution for those with the right connections. Respondents also expressed their strong opinion that the opposition parties will continue to exercise the negative political norm of boycotting Parliament and there will be lack of political consensus among the ruling and opposition political parties on important national issues.

The role of the Fakhruddin-led Caretaker Government had been a much discussed issue throughout the year 2008. The CTG demonstrated a strong desire to rid the Bangladeshi political system of undemocratic elements by launching an ambitious anti-corruption drive and reform agenda. Both the anti-corruption drive and reform efforts of public institutions and initiatives to bring accountability and transparency to the government were initially met with broad support from the public. However, the price of essential goods and unemployment problem had gone up since mid-2008 which fused negatively with the people's living standards, and led understandably to an ebb in the all-out support the CTG regime enjoyed in 2007. The attempts of the CTG at balancing the power of government has manifested itself in the long-awaited separation of the Judiciary from the Executive and the untangling of the stronghold that the political party

in power (*vis-à-vis* the Executive) had maintained over key institutions of accountability. However, in pursuing the objective of a fully-functional democracy in Bangladesh, it is widely agreed that the Caretaker Government took certain liberties that were contrary to their constitutional mandate. Nevertheless, citizens showed a high degree of awareness of the compromises that the Caretaker Government had to make to secure the participation of the parties in the 2008 general election. In terms of the overall performance of the CTG, although respondents largely supported the reform activities of the CTG, they remained dissatisfied with the performance of the power sector, price hike of essential and existing state of unemployment. Respondents also opined that CTG initiated anti-poor initiatives like closing down jute mills and evicting slums. Finally, citizens were found optimistic about the state of governance in the years to come.

With regard to the Ninth Parliamentary election - arguably the most awaited event of the year 2008, the majority of the populace opined that it was free and fair. The role of BEC in conducting the election was very much appreciated by the common people. They mostly appreciated the BEC initiative to prepare a new voter list and the voter ID card. The electronic media actively disseminated election-related information and citizens claimed to have chosen their candidates mostly on the basis of their qualifications and their political party identity, although at the same time speculation was rife that a huge amount of money was being distributed by the candidates. That the CTG was successful in preventing corrupt politicians from participating in the election was agreed across the board. The public was also confident that both the winning party and the opposition will learn a lesson from the anti-incumbency voting culture, and expressed the hope that competition for the political stakes between the ruling and opposition parties was going to be circumscribed in future. However, it was widely agreed that free and fair elections cannot alone guarantee the continuity of stable democratic governance and sustainable development. This must be complemented by other functional institutions including parliament, judiciary, media, civil society and others, as has been stressed throughout the Report.

7.2 Recommendations

The Report identifies one possible solution to this 'winner take all' political game by reducing the stakes of political competition. The opportunity of the incumbent to monopolise the state apparatus for serving its partisan interests must be limited through strengthening of the formal rules, thereby reducing the stakes to a tolerable level. Critical to this process is the establishment of credible mechanisms of accountability, for the parameters of the stakes are defined in large part by such mechanisms. Such mechanisms, if placed properly, will provide checks on the natural imperative of the Executive to monopolise control over state institutions.

After careful analysis of the accountability mechanisms of the Bangladeshi political system, and their consistent failure to hold the ruling party accountable, the Report proposes deregulation of state functions, which will make the state 'pie' smaller. This would in turn reduce the pervasive unhealthy competition for state resources. Uniformity and transparency in appointments, promotions and transfers in the civil service would also serve to reduce scope for politicisation of the bureaucracy. In order to raise awareness among the public - the owners of the Republic as per the Constitution - a stronger media and civil society must be built to create opinion against confrontational politics and the high costs of unhealthy political competition.

The Report calls for institutionalisation of accountability mechanisms in all oversight institutions, both internal and external, to reinforce efficiency and effectiveness. These measures moreover, have to be rationalised to the citizens. Institutionalisation of the accountability mechanisms, both internal and external,

is likely to reinforce efficiency and effectiveness. The Report also strongly recommends that dependence on the Executive should be reduced, for both fiscal and human resources, as this curbs independent functioning and also prevents long-term capacity building. Of course, political will is the main catalyst that can bring about the real changes necessary to make the institutions of accountability effective in a democratic framework. This, in turn, is likely to ensure good governance for the society as a whole.

A positive momentum from the Ninth Parliamentary election has led to the formation of all standing committees in the first session of Parliament and the appointment of two opposition MPs as committee chairs. It is glaringly obvious that a few good practices may not result into an effective Parliament. This Report recommends that in order to make Parliament truly effective in holding the Executive accountable, there must be political consensus in bringing about significant changes in the Rules of Procedure. For example, introduction of opposition days or the provision for regular unscheduled debates to subject the government policies and measures to more effective parliamentary scrutiny would allow the opposition a better opportunity to be pro-active. At the same time, an effective Parliament would also require the presence of pro-active government backbenchers. A coalition between government backbenchers and opposition members would cause the government to respond positively - as we have seen in the case of the Fifth Parliament (regarding the introduction of parliamentary democracy). This Report feels that in attempting to ensure parliamentary accountability, the focus should be on reforming the Rules of Procedure to facilitate the forming of such a coalition. This 'empowerment' of the opposition in the parliamentary procedures would arise out of a change in attitude of the ruling party and may in the long run pave the way for change in the existing political culture.

In case of the Judiciary, while the appointment procedure of judges has been largely freed from Executive control at the sub-ordinate Judiciary level (although the Report notes the remaining administrative and financial reliance upon the Government), apart from the brief interlude of the Supreme Judicial Commission during the CTG, the situation has changed little for the upper courts. It is hoped that the Government would comply with the recent Appellate Division judgment which requires consultation with the Chief Justice. Greater transparency and credibility in appointments would strengthen and endure the confidence of the litigants and public in the judiciary. Apart from a transparent process for appointments with a greater role for the Judiciary, the Report deems it necessary to overhaul the compensation package for the judges by delinking it from the central government salary system and restoring it to the levels prevailing in the 1950s.

There is little doubt that amongst the efforts taken to bring about qualitative changes in the functioning of the political parties during 2008, the change in electoral laws perhaps had the most positive impact as candidates with comparatively cleaner images were fielded by the political parties. However, citizens have unanimously agreed that free and fair elections cannot alone guarantee the continuity of stable democratic governance and sustainable development. This must be complemented by other functional institutions including parliament, judiciary, media, civil society and others, as has also been stressed throughout the Report.

7.3 Looking ahead

The establishment of accountability mechanisms is critical for the country to move from the existing 'winner takes all' culture to a new equilibrium based on checks and balances that will encourage both winner and losers to engage in rational negotiation instead of disruptive, if not violent, conflict. Political parties must be encouraged to behave in a more 'responsible' manner. Developments of 2008 however clearly demonstrate

that reforms need to be achieved through a political process, rather than a bureaucratic one. Furthermore, such reforms need to focus on systems as well as individuals, and need to be sustained through continuous political mobilisation of support. Although civil society and media will advocate and mobilise support for the reforms, the political parties will have to take leadership of the reform agenda. Political parties need to be responsive to the demands for political reforms, develop the understanding about the necessity of reforms, and need to make a commitment to carry the reform agenda forward.

The process of introducing adequate checks and balances under a political government should therefore focus on bringing about sustainable systemic changes through a process in which players both within and outside the government play constructive and complementary roles. The agenda of political reforms should therefore be taken up by political parties, civil society, citizens and media with the ultimate goal of ameliorating the dysfunctional political system.


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2008 has been a dynamic and important year of events that had direct impact on democratic governance in Bangladesh. This Report builds on two previous *The State of Governance in Bangladesh* reports and conveys a clear yet devastating message about the trend of governance in the country. It provides a detailed analysis of various levels of political activities in the institutional network of the state with a discussion of how and why governance fails. The Report proposes a definitive break between party and state - accompanied by the apposite checks on power - and an accountable policy program that responds appropriately to the needs of the citizenry. Anyone interested to have a broad understanding of the way the systems of accountability work in the context of confrontational politics in Bangladesh should be delighted to find this Report an indispensable read.

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The Report displays a solid grasp of recent literature and a sound analytical framework on ensuring functional democracy in Bangladesh. There is a balanced assessment of the competition between political parties, stakes in political competition, and how benefits and costs are distributed between different actors. The Report's discussion on the informal norms that affect the performance of the formal accountability mechanisms should serve to add a new dimension to the current public debate in the country. The Report is a must read for all who want a better understanding on the deliberations on governance in the country.

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