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## The Challenges of Institutionalising Democracy in Bangladesh<sup>†</sup>

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## EXECUTIVE SUMMARY

Bangladesh joined what Samuel P. Huntington had called the “third wave of democracy”<sup>1</sup> after a people’s movement toppled 15 years of military rule in December 1990. In the next 15 years, the country made gradual progress in fulfilling the criteria of a “minimalist democracy”<sup>2</sup> – regular free and contested elections, peaceful transfer of governmental powers as a result of elections, fundamental freedoms, and civilian control over policy and institutions.

However, despite these achievements, there were indications that the country was not making significant progress in consolidating its democratic institutions. Over the years, the country gradually turned into what Fareed Zakaria has termed an “illiberal democracy”.<sup>3</sup>

Though parliamentary elections were hotly contested, parliament never functioned as an effective forum of deliberation. Regardless of which party was in power, the main opposition party boycotted most of the parliamentary sessions, alleging government repression and impediments to voicing its views. Power was concentrated in the hands of the chief executive, the Prime Minister. The two prime ministers who alternated in state power – Khaleda Zia and Sheikh Hasina – were dynastic inheritors of their respective party’s leadership position where they held undisputed authority for nearly quarter of a century. Over the years, political competition between the two major parties, the Awami League (AL) and the Bangladesh Nationalist Party (BNP), degenerated into political confrontation. The politics of exclusion and violence created increasing pressure on the fragile democracy and after three national elections held in 1991, 1996 and 2001 it became difficult to maintain even the minimalist democratic criteria of organising free and fair elections.

Bangladesh initiated an innovative system of Caretaker Government (CTG) to ensure organisation of free and fair elections. The first CTG in 1991 was an ad-hoc arrangement when, after the overthrow of the military rule by a mass movement, a civilian non-party government headed by the then chief justice, was installed to organise a free and fair election. The CTG system was later institutionalised in 1996 through a constitutional amendment. The organisation of elections was to be the main responsibility of the CTG and elections were to be held within 90 days. Two successive elections, in June 1996 and October 2001, were held under the non-partisan CTG, but the CTG system itself became compromised when, after the 2001 election, the ruling BNP led coalition government sought to manipulate the composition of the CTG and the Election Commission (EC) to ensure an electoral outcome favourable to them.

The country plunged into a crisis when, on 27 October 2006, the BNP led coalition government stepped down but its nominee to head the CTG, retired Chief Justice K.M. Hasan, refused to take the reins of the CTG in the face of mounting street violence unleashed by the political opposition who challenged Hasan’s nomination alleging his partisan loyalties to the BNP. Instead of choosing another retired chief justice, as provided for under the constitution, the BNP-led government then chose to install President Iajuddin Ahmed as the CTG head. This choice blatantly compromised the neutrality of the CTG as Iajuddin was a known BNP supporter.

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<sup>1</sup> Samuel P. Huntington, “Democracy’s Third Wave,” *Journal of Democracy* 2 (2), pp 12-34, 1991.

<sup>2</sup> Adam Przeworski, “Minimalist Conception of Democracy: A Defense,” in Ian Shapiro and Casiano Hecker-Gordon eds, *Democracy’s Value*, Cambridge University Press, Cambridge, 1999.

<sup>3</sup> Fareed Zakaria, “The Rise of Illiberal Democracy,” *Foreign Affairs*, November/December 1997.

Exposed to persistent evidence of the partisan character of the Iajuddin CTG, the political opposition eventually took the fateful decision to boycott the election and threatened to thwart the holding of the elections scheduled for 22 January 2007. Faced with the prospects of a near civil war, the military finally stepped in on 11 January 2007, and compelled Iajuddin Ahmed to dissolve his own caretaker government and declare an emergency. The next day, a second “caretaker” government, under the leadership of Dr Fakhruddin Ahmed, a former World Bank official, and a former governor of Bangladesh Bank who was chosen by the military leadership, was inducted into the office of Chief Advisor. In order to ensure an element of constitutional legitimacy, the military remained in the background but emerged as the main power behind the new civilian government.

Though it called itself a “caretaker government,” the military backed Fakhruddin Ahmed government soon began to function as an “interim government” taking on a two-pronged agenda of organising a free and fair election, which is the primary role of a caretaker government, as well as introducing major administrative and political reforms that fall beyond the mandate of a caretaker government. The government has given itself a two-year time-frame promising a national election before December 2008. However, the government’s main focus appears to be the agenda of cleaning up politics. The prominent leaders of the AL and the BNP, including the presidents of the respective parties, Sheikh Hasina and Khaleda Zia, have been arrested on corruption charges. This strategy, branded as the “minus two formula,” does not appear to be working as the so called reformists within the two parties who pledged to push political reforms have up to now failed to get the support of the rank and file members. The latter have remained loyal to the two dynastic leaders. The prospects of a third political force emerging as a champion of reforms also seems improbable. The power behind the government, the military, has given conflicting signals about its intentions. The army’s Chief of Staff, General Moeen U. Ahmed, talked about Bangladesh constructing “its own brand of democracy,” but faced with criticisms, expressed in the media, quickly assured the public that the armed forces have no interest in ruling the country.

Bangladesh appears to be at the crossroads. After 15 years of routinising national elections, the country is again facing the foundational challenges of democracy. The present government’s anti-corruption drive has popular support, yet there are concerns about how far the drive is following the due process of law. When and how Bangladesh will get back on the track of organising not only regular free and fair elections but also ensure other features of democracy such, as fundamental freedoms, rule of law and accountability is not very clear.

This paper illustrates why a focus on the minimalist criteria of democracy, that is, regular free and fair elections, is not sufficient in institutionalising democracy. It argues that for democratic consolidation, new democracies need to simultaneously address foundational challenges such as routinising free and fair elections, and keeping the military from interfering in politics, as well as pay attention to the challenges of giving substance to the form of electoral democracy, by establishing the rule of law, the guarantee of fundamental freedoms, ensuring horizontal and vertical accountability, and being responsive to citizens’ needs and demands.

The paper is organised in seven sections. Following the introduction, Section 2 examines the various theories of democracy and develops an analytical framework of the study using four indicators to assess progress towards democratic consolidation. Sections 3 to 6 then analyses Bangladesh’s performance along these four indicators: organisation of free and fair elections (Section 3), establishing the rule of law (Section 4), guaranteeing fundamental freedoms

(Section 5), and ensuring accountability (Section 6). The conclusion (Section 7) summarises the major arguments and discusses the prospects of institutionalising democracy in Bangladesh.

# The Challenges of Institutionalising Democracy in Bangladesh

## 1. Introduction

Bangladesh joined what Samuel P. Huntington had called the “third wave of democracy”<sup>1</sup> after a people’s movement toppled 15 years of military rule in December 1990. In the next 15 years, the country made gradual progress in fulfilling the criteria of a “minimalist democracy”<sup>2</sup> – regular free and contested elections, peaceful transfer of governmental powers as a result of elections, fundamental freedoms, and civilian control over policy and institutions. Bangladesh organised three successive national parliamentary elections in 1991, 1996 and 2001, which were certified as free and fair by national and international observers. As a result of the elections, state power rotated more or less peacefully (based on constitutional guidelines) between the two major political parties – the Awami League (AL) and the Bangladesh Nationalist Party (BNP) – with the incumbents being defeated both in the 1996 (BNP) and the 2001 (AL) parliamentary elections. During this time, the media and civil society became free from overt government control. The military remained under civilian control showing little interest in getting involved in domestic politics. Instead it became increasingly drawn to international peacekeeping operations.

However, despite these achievements, there were indications that the country was not making significant progress in consolidating its democratic institutions. Over the years, democratically elected political leaders started behaving in an autocratic manner using state power to reward political supporters and punish and repress political opposition. The country gradually turned into what Fareed Zakaria has termed an “illiberal democracy.”<sup>3</sup> 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.<sup>4</sup> Horizontal accountability mechanisms, a critical feature of democracy, instead of being strengthened, started eroding.

Though parliamentary elections were hotly contested, parliament never functioned as an effective forum of deliberation. Regardless of which party was in power, the main opposition party boycotted most of the parliamentary sessions, alleging government repression and impediments to voicing its views. Power was concentrated in the hands of the chief executive, the Prime Minister, who did not behave as *primus inter pares*, as is the custom in a parliamentary democracy. The two Prime Ministers who alternated in state power – Khaleda Zia and Sheikh Hasina – were dynastic inheritors of their respective party’s leadership position where they held undisputed authority for nearly quarter of a century. Over the years, political competition between the two major parties, the AL and the BNP, degenerated into political confrontation. The parties and their leaders shunned the path of democratic dialogue and tolerance of dissent, embracing instead the politics of street agitation and violence. The politics of exclusion and violence created increasing pressure on the fragile democracy and

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<sup>1</sup> Samuel P. Huntington, “Democracy’s Third Wave,” *Journal of Democracy* 2(2), pp 12-34, 1991.

<sup>2</sup> Adam Przeworski, “Minimalist Conception of Democracy: A Defense,” in Ian Shapiro and Casiano Hecker-Gordon eds, *Democracy’s Value*, Cambridge University Press, Cambridge. 1999.

<sup>3</sup> Fareed Zakaria, “The Rise of Illiberal Democracy,” *Foreign Affairs*, November/December 1997.

<sup>4</sup> Rounaq Jahan, “Bangladesh” in *Countries at the Crossroads: A Survey of Democratic Governance*, Freedom House, New York 2005; and Rehman Sobhan, “Structural Dimensions of Malgovernance in Bangladesh”, *Economic and Political Weekly*, Bombay, EPW Special Article, 4 September 2004.

after three national elections; it became difficult to maintain even the minimalist democratic criteria of organising free and fair elections.

Bangladesh initiated an innovative system of Caretaker Government (CTG) to ensure organisation of free and fair elections. The first CTG in 1991 was an ad-hoc arrangement when, after the overthrow of the military rule by a mass movement, a civilian non-party government headed by the then Chief Justice, was installed to organise a free and fair election.<sup>5</sup> The CTG system was later institutionalised in the wake of another mass mobilisation led by the AL, following widespread allegation of vote rigging by the incumbent BNP government in a parliamentary by-election held in 1994. After a fraudulent national election in February 1996, boycotted by the major opposition parties, the loss of legitimacy by the BNP regime invoked a mass mobilisation led by the opposition parties which drew in elements of civil society and eventually led to non-cooperation from the civilian bureaucracy which brought the machinery of state to a stand still. The BNP regime, then, had no option but to resign after legislating a constitutional amendment which stipulated that national parliamentary elections would be organised by a non-partisan Caretaker Government (CTG) to be headed by the most recently retired Chief Justice.<sup>6</sup> The organisation of elections was to be the main responsibility of the CTG and elections were to be held within 90 days.

Two successive elections, in June 1996 and October 2001, were held under the non-partisan CTG, but the CTG system itself became compromised when, after the 2001 election, the ruling BNP-led coalition government sought to manipulate the composition of the CTG and the Election Commission (EC) to ensure an electoral outcome favourable to them. The government selected candidates for appointment in the EC and the leadership of the CTG who were unacceptable to the AL led 14 party opposition alliance. The latter alleged that these candidates were not neutral and non-partisan. But the BNP led government refused to enter into any dialogue with the opposition to overcome these differences. The impasse continued for over two years. The opposition parties then threatened to boycott the national election scheduled for January 2007 but the BNP led coalition government pushed ahead with its unilateral plans.

The country plunged into a crisis when on 27 October 2006, the BNP led coalition government stepped down but its nominee to head the CTG, retired Chief Justice K. M. Hasan, refused to take the reins of the CTG in the face of mounting street violence unleashed by the political opposition to challenge his assumption of office.<sup>7</sup> Instead of choosing another retired Chief Justice, as provided for under the constitution, the BNP-led government chose to install President Iajuddin Ahmed as the CTG head. This choice blatantly compromised the neutrality of the CTG as Iajuddin was a known BNP supporter and as such was rewarded with the office of the President. Iajuddin Ahmed further compromised the credibility of the CTG by refusing to take the advice of his own CTG colleagues who attempted to find a compromise package formula to solve the conflicting positions of the two political forces led by the AL and the BNP. On 11 December 2006, four of Iajuddin's advisors resigned pointedly referring to his unilateral actions and partisan conduct.

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<sup>5</sup> Fakhruddin Ahmed, *The Caretakers: A First Hand Account of the Interim Government of Bangladesh (1990-91)*. The University Press Ltd. Dhaka, 1998; and Muhammad A Hakim, *Bangladesh Politics: The Shahabuddin Interregnum*, The University Press Ltd. Dhaka, 1993.

<sup>6</sup> Government of Bangladesh, *The Constitution of the People's Republic of Bangladesh*, <http://www.pmo.gov.bd/constitution/index.htm>.

<sup>7</sup> "Hasan Unwilling to be the Caretaker Chief," *The Daily Star*, 28 October, 2006

Exposed to persistent evidence of the partisan character of the Iajuddin CTG, the political opposition eventually took the fateful decision to boycott the election and threatened to thwart the holding of the elections scheduled for 22 January 2007. President and Chief Advisor Iajuddin then called out the armed forces to aid the civilian administration to frustrate the challenge to the election by the opposition. Faced with the prospect of having to take sides and use force to protect the BNP backed CTG, the military finally stepped in on 11 January 2007, and compelled Iajuddin Ahmed to dissolve his own caretaker government and declare an emergency. The next day, a second “caretaker” government, under the leadership of Dr Fakhruddin Ahmed, a former World Bank official and a former Governor of the Central Bank, who was chosen by the military leadership, was inducted into the office of Chief Advisor. In order to ensure an element of constitutional legitimacy to the change of government the military remained in the background but emerged as the main power behind the new civilian government.

Though it called itself a “caretaker government,” the military backed Fakhruddin Ahmed government soon began to function as an “interim government” taking on a two-pronged agenda of organising a free and fair election, which is the primary role of a caretaker government, as well as introducing major administrative and political reforms that fall beyond the mandate of a caretaker government. The government has given itself a two-year time-frame promising a national election before December 2008. It has appointed new election commissioners who appear to be non-partisan and thus more acceptable to political and civil society. The reconstituted EC is moving forward with various preparatory actions for organising a credible election.

However, the government’s main focus appears to be the agenda of cleaning up politics. The prominent leaders of the AL and the BNP, including the presidents of the respective parties, Sheikh Hasina and Khaleda Zia, have been arrested on corruption charges. The government seems to be pursuing a political strategy of ousting the two dynastic leaders, Sheikh Hasina and Khaleda Zia, from the party leadership and fostering alternative leadership from within the AL and the BNP in the expectation that these leaders would be more inclined to carry out political reforms. This strategy, branded as the “minus two formula,” does not appear to be working as the so called reformists within the two parties have up to now failed to get the support of the rank and file members who have remained loyal to the two dynastic leaders. The prospects of a third political force emerging as a champion of reforms also seems improbable.

The power behind the government, the military, has given conflicting signals about its intentions. The army’s Chief of Staff, General Moeen U. Ahmed, talked about Bangladesh constructing “its own brand of democracy,”<sup>8</sup> but faced with criticisms, expressed in the media, quickly assured the public that the armed forces have no interest in ruling the country. In a recent, well publicised TV interview on 20 January, 2008, General Ahmed once again declared that the armed forces have no intention of taking over power and that Martial Law is nowadays unacceptable to the international community.<sup>9</sup> However, he and his colleagues have repeatedly reaffirmed their strong support for the reform agenda. And on 20 February 2008, launching a book consisting of his speeches and interviews, General Moeen U Ahmed reiterated his arguments as to why Bangladesh needs its own brand of democracy.<sup>10</sup>

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<sup>8</sup> “Bangladesh to Have Own Brand of Democracy,” *The Daily Star*, 3 April 2007

<sup>9</sup> “Army takeover, Martial Law Not Acceptable in Modern World” *The Daily Star*, 20 January, 2008

<sup>10</sup> “Bangladesh Should have own brand of democracy”, *The Daily Star*, 20 February 2008.

Bangladesh appears to be at the crossroads. After 15 years of routinising national elections, the country is again facing the foundational challenges of democracy. Though unlike Pakistan, the military has not taken over overt control and Bangladesh has not faced sanctions from international organisations like the Commonwealth, the country is still being ruled under emergency powers by an unelected government backed by the military. The government's anti-corruption drive has popular support, yet there are concerns about how far the drive is following the due process of law. When and how Bangladesh will get back on the track of organising not only regular free and fair elections but also ensure other features of democracy such, as fundamental freedoms, rule of law and accountability is not very clear.

This paper illustrates why a focus on the minimalist criteria of democracy, that is, regular free and fair elections, is not sufficient in institutionalising democracy. It argues that for democratic consolidation, new democracies need to simultaneously address foundational challenges such as routinising free and fair elections, and keeping the military from interfering in politics, as well as pay attention to the challenges of giving substance to the form of electoral democracy, by establishing the rule of law, the guarantee of fundamental freedoms, ensuring horizontal and vertical accountability, and being responsive to citizens' needs and demands. The paper highlights the pressures that are created when only one aspect of democracy – regular free and fair elections – is privileged over all other aspects of democratic experience. A prolonged focus on only electoral competition can generate many dysfunctions in the body politic which may ultimately jeopardise even the organisation of free and fair elections.

Though Bangladesh is the focus of this study, I have contextualised the analysis of Bangladesh experiences within the global discourse on the challenges of democratic consolidation. As the brief discussion in Section 2 shows, Bangladesh's experiences are not unique; many "third wave" democracies are beset with similar problems. In this section, I have examined the various theories of democracy to identify a few core elements which I have used to develop a framework of the study. The framework highlights four key features of democratic consolidation. The challenges faced by Bangladesh then are analysed under these four indicators: organisation of free and fair elections (Section 3), establishing the rule of law (Section 4), guaranteeing fundamental freedoms (Section 5), and ensuring accountability (Section 6). The conclusion (Section 7) summarises the major arguments and discusses the prospects of institutionalising democracy in Bangladesh.

## **2. The Challenges of Democratic Transition and Consolidation: A Global Discourse**

According to Freedom House, 122 of the world's 193 countries can now be classified as electoral democracies,<sup>11</sup> a significant progress achieved over a relatively short period of half a century. What is remarkable about this achievement is that the majority of these countries belong to the South. The spread of democracy, defined in terms of holding free and fair elections, had been welcomed and celebrated by many, including the citizens of these new democracies who wait patiently in long lines to vote every four to five years to elect their rulers. Adam Przeworski argues that at the very least these elections offer a peaceful way to change governments.<sup>12</sup>

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<sup>11</sup> Freedom House, *Freedom in the World 2006: Selected Data from Freedom House's Annual Global Survey of Political Rights and Civil Liberties*.

<sup>12</sup> Adam Przeworski, "Minimalist Conception of Democracy," *op cit*.



However, many others differentiate between a minimalist electoral democracy and a more substantive form of democracy. They emphasise a wider conceptualisation of democracy including other elements such as the rule of law, protection of individual freedoms and rights, an independent judiciary, inclusive pluralism, citizen participation, deliberation and debate about choices, accountability, and so on. Different terms, such as liberal, deliberative, and participatory are used to describe and differentiate between different types of democratic system.

Whether and how countries make the democratic transition of moving from an electoral to a more substantive form of democracy has been a major topic of inquiry by scholars and international agencies. For example, Linz and Stepan have argued that when democracy becomes “the only game in town,” that is elections are routinised and no actor in society seeks to overturn the democratic order, we can assume that the process of democratic consolidation has taken place. They emphasise free and contested elections, institutional guarantee of free elections, the ability of elected leaders to make public policy and appoint all powerful officers as well as the rule of law as minimum conditions for consolidating democracy.<sup>13</sup>

Other scholars, however, have put forward a more extensive list of qualities for democratic consolidation. For example, Larry Diamond and Marc F. Plattner have identified five requirements of a liberal democracy: fundamental freedoms, rule of law, independence and neutrality of the judiciary and of other institutions of horizontal accountability, an open pluralistic civil society including a free mass media, and civilian control over the military.<sup>14</sup> In another article, Larry Diamond and Leonardo Morlino have provided a more complex framework for assessing the quality of democracy. They have highlighted five procedural and three substantive qualities. Procedures include the rule of law, participation, competition, vertical accountability and horizontal accountability. Substantive qualities include freedom, equality and responsiveness<sup>15</sup>.

When we use the non-electoral measures of democracy, we find that in many countries democracy is not being consolidated or deepened. Increasing political liberties, particularly regular free and fair elections, have not gone hand in hand with constitutional liberalism as in the West and in many cases, democratically elected governments have imposed harsh restrictions on civil liberties. Fareed Zakaria has argued that “of the countries that lie between confirmed dictatorship and consolidated democracy, 50 percent do better on political liberties than civil ones. In other words, half of the ‘democraticising’ countries in the world today are illiberal democracy”.<sup>16</sup> Zakaria further warns that illiberal democracy is a growth industry, that their numbers are rising and many countries are “settling into a form of government that mixes a substantial degree of democracy with a substantial degree of illiberalism . . . [and] Western liberal democracy might prove not to be the final destination, but one of the many possible exits.”<sup>17</sup>

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<sup>13</sup> Juan Linz and Alfred Stepan, “Towards Consolidated Democracies,” *Journal of Democracy*, 7(2), pp 14-33, 1996.

<sup>14</sup> “Introduction,” in Larry Diamond and Marc F. Plattner eds. *The Global Divergence of Democracies*, The Johns Hopkins University Press, Baltimore, 2001.

<sup>15</sup> Larry Diamond and Leonardo Morlino, “The Quality of Democracy: An Overview,” *Journal of Democracy*, 15 (4) pp 20-31, 2004.

<sup>16</sup> Fareed Zakaria, “The Rise of Illiberal Democracy,” *op cit*.

<sup>17</sup> *Ibid*.

Other observers have expressed similar pessimistic views about the prospects for the deepening of democracy in these third world countries. For example, a report by the United Nations Development Programme reviewing democracy in Latin America has found that while significant progress has been made in routinising democratic elections and reducing the power of the military, checks on the powers of the executive have been limited.<sup>18</sup> In many countries, the executive branch has interfered with the independence of the judiciary and bypassed parliament. Political parties have failed to effectively represent the interests of citizens and their relationship with civil society organisations is often adversarial. Poverty and rising inequality are undermining the expansion of social citizenship. As a result people are losing confidence in democracies.

In Asia, where many countries have long standing experiences with regular elections, the promise of democracy is yet to be realised. Party politics and electoral processes are mired in black money, criminalisation and political dynasty rule. Representative institutions are weak.<sup>19</sup> In Africa too, the introduction of multi-party elections has not led to democratic consolidation. Many regimes have adopted such elections under external pressure and/or have subverted the electoral process by doctoring voter lists, stuffing ballot boxes, sponsoring splinter parties, using violence against the opposition and so on. The new democracies of Eastern Europe and Central Asia have followed similar patterns of election-rigging, restricted freedoms and unaccountable governance. Within South Asia, only two countries, India and Sri Lanka, have succeeded in institutionalising at least electoral democracy. Nepal, Pakistan and Bangladesh have swung between autocratic and democratic rule. The monarchy in Nepal and the military in Pakistan have repeatedly seized absolute power overthrowing elected governments. Since the return of electoral democracy in 1991, the military in Bangladesh has not demonstrated any interest to rule. Yet the continued politics of confrontation between the two major political parties that resulted in repeated street violence and strikes, finally led the military to intervene in politics. Since 11 January 2007, the military has emerged as the main political player though it has remained in the background behind the façade of a civilian caretaker government. The failure of political leaders to settle their differences peacefully and remain within the bounds of democratic competition ultimately facilitated the reentry of the military in Bangladesh's politics. The political leadership persistently violated democratic norms and practices, which weakened all major institutions in the country.

In the following four sections of this paper, I shall briefly analyse how Bangladesh fared in the last 15 years in fulfilling some of the minimum requirements of being a democracy. The conceptual framework used in this study to assess progress towards democratic consolidation includes four key indicators: (1) free and fair elections, (2) rule of law, (3) civil liberties and fundamental freedoms, and (4) accountability. I consider the presence of these four elements to be critical in the functioning of any democratic system. They are also interlinked, and as Diamond and Morlino argue “tend to move together either towards democratic improvement and deepening or toward decay.”<sup>20</sup> The first indicator used in the conceptual framework, that is, free and fair elections, is only the first step in laying the foundations of a democracy. Through elections, citizens are able to freely choose their representatives who would govern the country. But this choice is meaningless unless the other three features of democracy are also present. The second indicator, the rule of law is essential in ensuring that the democratically elected peoples' representatives do not abuse power and turn despotic after

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<sup>18</sup> United Nations Development Programme, *Democracy in Latin America: Towards a Citizen's Democracy*, 2004.

<sup>19</sup> *The State of Democracy in South Asia Report*, SDSA Team, Lokaniti. New Delhi, 2007.

<sup>20</sup> Larry Diamond and Leonardo Morlino, “The Quality of Democracy”, *op cit*

they get into positions of power. The third indicator, civil liberties and fundamental freedom, is again, essential as this guarantees citizen's democratic rights including the right to choose those who would govern the country through elections. Finally, the last indicator, accountability is essential as this is the mechanism through which the citizens control their rulers in a democracy.

### **3. The Challenge of Organising Free and Fair Elections**

After the overthrow of 15 years of military rule, the first challenge Bangladesh faced in its transition to democracy was to organise a free and fair election. After all, the country witnessed many elections during the military rule but none was deemed to be free and fair. This eroded citizens' trust in the institutions overseeing the elections. Regaining citizens' trust and creating a level playing field for all contestants to participate freely in the elections, thus, became a major challenge for the country. The organisation of a free and fair election required removing any undue advantage to any contestant, creating a peaceful atmosphere to eliminate voter intimidation and exclusion, and ensuring a correct vote count. While in many countries an independent EC is regarded as enough of a safeguard for conducting a free and fair election, in Bangladesh the pro-democracy movement that ousted the military dictator Ershad opted for an additional safeguard: institution of a neutral, non-partisan caretaker government.

In fact, in early November 1990, prior to the fall of General Ershad the three political alliances involved in the pro-democracy movement came to an agreement that following Ershad's ouster, a free and fair election would be organised within ninety days under a neutral, non-partisan caretaker government and the caretaker government will handover executive power to the party which will command a majority in the parliament elected freely by the citizens.<sup>21</sup>

The pro-democracy movement demanded institution of a non-partisan, neutral caretaker government to oversee elections because there were widespread allegations that the military rulers have misused state power to engineer election outcomes. The two military rulers, Major General Ziaur Rahman (1975-1981) and Lt. General Hussain Muhammad Ershad (1982-1990) organised several referendums, and parliamentary and local elections to "civilianise" and legitimise their rules. All these elections were perceived as rigged. The EC was not independent. It remained under the control of the incumbent government. It was alleged that the civil administration and the military intelligence services were used to manipulate the election results.<sup>22</sup> Even fake opposition parties were created to project the illusion of a fair election. After the fall of Ershad in December 1990, the pro-democracy movement endorsed the institution of a non-party caretaker government (CTG) headed by the then Chief Justice Shahabuddin Ahmed with the primary responsibility of organising a free and fair elections within 90 days.

#### The 1991 Election under the CTG of Justice Shahabuddin Ahmed

The caretaker government of Justice Shahabuddin Ahmed took some immediate steps to create conditions for a free and fair election.<sup>23</sup> The EC was reconstituted. Three Supreme Court judges were made election commissioners and the EC was given independence and

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<sup>21</sup> Fakhruddin Ahmed, *Caretakers, op cit.*

<sup>22</sup> *Ibid.*

<sup>23</sup> *Ibid.*

authority to conduct a free and fair parliamentary election. To ensure impartiality of the election administration at the district level, heads of civil and police administration in most of the districts were transferred. And all the restrictions on freedom of press, imposed by the military rulers, were withdrawn. A large number of international observer groups, most notably from the SAARC, Commonwealth, Britain and Japan were invited to observe the national parliamentary election. Elections were held on 27 February 1991 and they were on the whole peaceful. Fifty five percent of the voters cast their ballots, of which 53 percent were men and 47 percent were women.<sup>24</sup> All observer groups expressed satisfaction with the conduct of the elections and deemed the process to be free and fair.

The results of the 1991 parliamentary elections established several trends in the country's politics (see Table 1 in the Appendix). First, it showed that the two major political parties, the AL and the BNP enjoy near equal popular support. Both parties polled 31 percent of the popular vote (BNP 31.4 percent and AL 31.1 percent). Second, the results demonstrated a wide gap between the popular vote and winning of seats in parliament. For example, with a near equal popular vote, the BNP won 138 seats while the AL won only 86 seats. Third, two other smaller parties emerged. The Jatiya Party (JP), founded by the military dictator Ershad, won 35 seats and 12 percent of vote share. It may be noted that during the course of the election Ershad was under detention on charges of corruption and could play no part in the election campaign. The Islamist Party, Jamaat-e-Islami (JI), won 18 seats with a 12 percent vote share. The left leaning National Awami Party (Muzaffar) and the Communist Party, Bangladesh, both of whom were part of an electoral alliance with the Awami League each own 5 seats. In all, small parties together with independents won 19 seats in Parliament.<sup>25</sup>

Since the AL and the BNP could not form the government on their own as neither commanded an absolute majority, JP and JI were in a position to exercise leverage over the two major parties. Alliances with smaller parties, thus, became an important strategy for the two main parties. The BNP succeeded in getting the support of the Jamaat which enabled the party to secure a majority vote of confidence in the parliament. The caretaker government of Justice Shahbuddin Ahmed, then, handed over power to the BNP. Sheikh Hasina, leader of the AL, was initially reluctant to accept the election results arguing that there were "subtle" riggings but since all election observer groups agreed that the elections were on the whole free and fair, she accepted the results.

#### Elections under the BNP Rule (1991-1996)

In the first two years of the BNP rule, there was fierce competition between the AL and the BNP in fifteen by-elections to the parliament. But serious disagreement about the fairness of the electoral process began from 1993 onwards when the AL alleged that the by-election in Mirpur was rigged by the BNP government. In the following year, the AL won the mayoral elections in the capital city, Dhaka, and the port city, Chittagong, but the elections were marred by bloody clashes between the parties, resulting in the killing of several AL supporters.

In 1994, the opposition political parties, including even the JI who helped the BNP form the government in 1991, started a nation-wide agitation demanding the institution of a non-partisan caretaker government to organise the next parliamentary election. The immediate

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<sup>24</sup> *Ibid.*

<sup>25</sup> *Virtual Bangladesh: Politics Elections 1991.* ([http://www.virtualbangladesh.com/bd\\_polls\\_91.html](http://www.virtualbangladesh.com/bd_polls_91.html))

cause of the agitation was the victory of a BNP candidate in a by-election in Magura which was an AL stronghold for over 40 years and even in 1991, the AL candidate won the seat with an overwhelming majority. The chaos and confusion over that election was compounded by the hasty departure of the Chief Election Commissioner (CEC), Justice Rauf from the scene, in apprehension of his inability to ensure a free election which lent credence to the opposition's charges of vote-rigging by the government. The failure to conduct a fair and transparent election in Magura was a blow to the image of the EC which appeared to have demonstrated its weakness in coping with the intimidating behaviour of the ruling party and the partisan conduct of the administration.<sup>26</sup>

Instead of opening a dialogue with the opposition, the BNP outright rejected the demand for a neutral, non-partisan caretaker government. In protest at the non-responsiveness of the regime, the opposition parties initiated a boycott of the parliament backed by a series of protest activities including *hartals* (strikes), rallies and public meetings. In December 1994, the opposition comprising nearly half of the members, 147 in total, resigned from Parliament. The country was, thereby, plunged into a full blown crisis. Several efforts were made by international organisations including the Commonwealth Secretary General, and a national citizens' group known as G-5 to mediate the crisis and bring the two sides to a negotiated settlement.<sup>27</sup>

The *en masse* resignation created a dilemma: whether to call for fresh elections or to hold by-elections in the vacated seats. The Supreme Court ruled in favour of by-elections to be held in September 1995. In the meantime, the opposition parties intensified their agitational program and the EC used floods as an excuse to invoke the "act of God" clause to postpone the by-elections further till December 1995. On 24 November 1995, the BNP government then dissolved the parliament thus avoiding the necessity of holding by-elections in half the seats of parliament whose five year term was anyway coming to an end by February 1996. The dissolution of parliament in November 1995 made it mandatory for the EC to organise elections within 90 days, that is, by 21 February 1996.<sup>28</sup>

After changing the dates a few times, the EC settled on 15 February 1996 as the final date for the elections. The BNP and the opposition parties, however, could not resolve their differences over the need for a neutral, non-partisan caretaker government to oversee the elections. The two main protagonists, Khaleda Zia and Sheikh Hasina, refused to meet face to face and were adamant in their respective stands. The opposition eventually decided to boycott the February 1996 elections but the BNP pushed ahead with a one sided election.

The voterless February 1996 elections strengthened the opposition's claims that the election results, held under a party government, could not be trusted. More seriously, it severely compromised the legitimacy of the BNP government which was reelected to power from such a flawed election. The opposition then started a nonstop, non-cooperation movement and *hartal* starting from 1 March 1996 demanding the resignation of Khaleda Zia as Prime Minister and fresh elections under a neutral, non-partisan caretaker government. The non-cooperation movement now drew in a cross section of civil society spreading across the country, and paralysing both the administration and arteries of communication. Government officials, concerned about the loss of legitimacy by government, refused to cooperate with the

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<sup>26</sup> Fakhruddin Ahmed, *Caretakers, op cit.*

<sup>27</sup> Rehman Sobhan, "Mediating Political Conflict in a Confrontational Environment: The Experience of the G-5," in *Journal of Bangladesh Studies*, 1(2), June 2000, pp 1-9.

<sup>28</sup> Fakhruddin Ahmed, *Caretakers, op cit.*

newly “elected” BNP government. Faced with a complete breakdown of the authority of the regime, the BNP government finally acceded to the demands of the opposition. It convened the Sixth parliament “elected” on 15 February 1996 which met only once to pass the 13<sup>th</sup> amendment of the constitution introducing a system of non-party caretaker government to oversee future national elections.<sup>29</sup> The opposition, was initially reluctant to cede legitimacy to the 6<sup>th</sup> Parliament by recognising its right to amend the constitution. However, the opposition leaders finally accepted this arrangement as the most practical way out of the impasse.

### The 13<sup>th</sup> Amendment: The Non-Partisan Caretaker Government System

The 13<sup>th</sup> amendment stipulated that after a five year term, Parliament will be dissolved and the incumbent government will step down. A non-party caretaker government (CTG) will then be sworn in whose main responsibility will be to organise a free and fair election within a ninety day period.<sup>30</sup> The CTG will not get involved in any long term policy making decision. The CTG will consist of ten advisors with the status of ministers and will be headed by a Chief Advisor (CA) who will have the status of the Prime Minister. The CA and the advisors cannot be members of any political party and they will not contest the election. The amendment laid down the criteria for the selection of the CA. The President will appoint the last retired chief justice of the Appellate Division of the Supreme Court or the one before; and if they are unavailable from retired judges of the High Court and failing availability of judges, an eminent person following consultation with the political parties. If all these possibilities are exhausted, then the President can act as the CA. The key feature of the CTG system is, the neutrality and non-partisanship of the government. The CTG will be accountable to the President but all executive powers will be vested in the CTG. However, one critical exception was made which later created controversies. The Ministry of Defense was kept under the control of the President and not the CA.

Five days after the passage of the 13<sup>th</sup> amendment, Khaleda Zia requested the President to dissolve the parliament and the following day, on 31 March 1996, she resigned. The President then invited the last retired chief justice, Muhammad Habibur Rahman, to take on the responsibility of CA and a ten member Council of Advisors were sworn in on 9 April 1996. Thus a two year long movement by the opposition, marked by repeated *hartals* and violence, came to an end.

Though the CTG system temporarily resolved the long-term impasse over the organisation of a free and fair national election and was later projected as a model for other developing countries facing similar problems, the system was still not fool proof against manipulation by an incumbent government. As the discussions that follow will illustrate, two specific problems emerged in Bangladesh, First, the designation of the last retired chief justice as the head of the CTG opened up opportunities for the incumbent government to involve the judiciary in partisan contestations. The appointment and the tenure of the judges became highly contested and controversial as all major parties started to identify judges who would be acceptable to them as the CTG head. Second, the allocation of the Ministry of Defence to the president rather than the CA created opportunities for the incumbent government to control the military via the president, who was after all an appointee of the incumbent government.

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<sup>29</sup> *Ibid.*

<sup>30</sup> Government of Bangladesh, *The Constitution of the People’s Republic of Bangladesh*, <http://www.pmo.gov.bd/constitution/index.htm>.

## June 1996 Elections under the CTG of Justice Habibur Rahman

The CTG of Justice Muhammad Habibur Rahman emulated many of the steps of the 1991 CTG headed by Justice Shahabuddin Ahmed. The EC was reconstituted after consultation with all major parties and was given independence, and powers to demonstrate its neutrality and effectiveness. For example, the EC was given power to withdraw any officer on election duty or stop voting at any polling station. On the advice of the EC, again, large scale transfer of officials took place to ensure neutrality of the civil and police administration. The EC barred bank defaulters from contesting the elections.

However, in May 1996, barely a month before the scheduled 12 June election, a crisis developed due to a dispute between the President and the Army Chief which underscored one major weakness of the 13<sup>th</sup> amendment: that is, keeping the Ministry of Defense under the control of the President and not the CA. Normally, under a parliamentary system, the defense ministry stays under the control of the Prime Minister. Therefore, under the 13<sup>th</sup> amendment, the defense ministry should have been placed under the control of the CA who acts as the Prime Minister in a CTG. The placement of the defense ministry under the control of the President created a dual administration and opened up possibilities for partisan interference via the office of the President. This was particularly problematic since President Abdur Rahman Biswas was not non-partisan; rather he was selected for the post because of his partisan loyalty to the BNP.

On 20 May 1996, President Biswas, without consulting the CA suddenly dismissed the Chief of the Army staff, Lt. General A.S.M Nasim, and appointed a new army chief, Major General Mahbubur Rahman (who after retirement joined the BNP). This led to a near confrontation between troops loyal to the opposing sides. However, a bloodbath was avoided and the crisis was diffused when the CA, Justice Habibur Rahman, went on T.V. and radio and appealed for peace and discipline. The AL leader, Sheikh Hasina, charged that the dismissals in the army were motivated by “BNP’s conspiracy to sabotage the polls.” The opponents of the AL, on the other, accused General Nasim and other dismissed officers of being AL sympathisers and planning a coup.<sup>31</sup> This charge was questionable since General Nasim had been appointed to the post of Chief of Staff, by Prime Minister Khaleda Zia, superseding several officers senior to him in the army hierarchy.

The 12 June 1996 election organised by the Habibur Rahman CTG saw large scale involvement of Bangladeshi non-governmental organisations (NGOs) in voter education and election monitoring activities. A group of civil society organisations joined together to form a Fair Election Monitoring Alliance (FEMA). In addition, a total of 200 foreign observers from 35 countries came to observe the polls.<sup>32</sup> Voting turn out was exceptionally high: 75 percent of eligible voters cast their ballots, of which 51 percent were men and 49 percent were women. Polling was generally peaceful. Again all observer groups, domestic as well as international, certified the elections to be free and fair.<sup>33</sup>

The results of the June 1996 elections (see Table 2 in the Appendix) again showed that the two main parties, the AL and the BNP, have near equal popular support. The AL secured 37.4 percent and the BNP secured 33.6 percent of the popular vote. This time, however, the AL won more seats than the BNP. AL’s seat strength was 146 and the BNP’s 116. JP’s strength

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<sup>31</sup> Fakhruddin Ahmed, *Caretakers, op cit.*

<sup>32</sup> *Ibid.*

<sup>33</sup> *Ibid.*

remained roughly the same as in 1991. It secured 32 seats with 16.4 percent of popular vote. JI, however, suffered a setback with only 3 seats and 8.6 percent of popular support. The other smaller parties who won in 1991 lost out winning only 3 seats and 4 percent of the vote. Particularly striking was the loss of seats by all left leaning parties. Several popular leaders won from multiple seats; 24 seats were thus won. The election results indicated that in 45 seats out of the 300 member parliament electoral victory was won with a very small margin of less than 3000 votes difference.<sup>34</sup> These marginal seats became the subjects of much controversy and influenced coalition politics in the next election. Again as in 1991, no party was able to get an absolute majority in parliament and both the AL and the BNP started wooing the smaller parties for support.

Khaleda Zia initially refused to accept the AL as the winner and the BNP offered various deals to the JP to secure its support including a pledge to release its President, Ershad, from jail. But the JP threw in its lot with the AL which then gave the AL a clear majority in parliament. On 23 June 1996, eleven days after the election, Sheikh Hasina was finally sworn in as the Prime Minister and the AL returned to power after 21 years. One of Sheikh Hasina's first acts was to appoint a non-partisan, well-respected person, Justice Shahabuddin Ahmed, as President. Justice Shahabuddin had already served as President and head of the first Caretaker Government set up after the fall of the Ershad regime at the end of 1990 and had earned universal respect for presiding over a free and fair election.

#### Elections under the AL Government (1996-2001)

Though during its tenure in government, the BNP was opposed to the notion of a nonpartisan CTG, once the AL came to power, the BNP started agitating for a more extensive system of CTG. It began to demand that all elections, including local elections, be held under a CTG system. After initially participating in several by-elections, the BNP also started to boycott the by-elections alleging vote-rigging by the AL. Within a year, from 1997 onwards, the party resorted to walking out of and boycotting parliamentary sessions, mounting street agitations and *hartals*, and repeatedly calling for the AL government's resignation. The AL and the BNP supporters continued to confront each other in violent street clashes all through the five years of the AL rule.

As the 2001 elections approached, to increase its vote share, the BNP entered into an alliance with two Islamist parties – JI and Islami Oikya Jote (IOJ) and a faction of JP. Since 45 out of 300 Parliamentary seats were won with a narrow margin in 1996, the BNP's election strategy was to pull together all the anti-AL votes to ensure victory in these marginal seats.<sup>35</sup> The AL, on the other hand, could not keep the JP as its ally as the JP was divided into three factions with one faction joining the BNP, and the other two contesting on their own.

#### The 2001 Election under the CTG of Justice Latifur Rahman

The AL government resigned after completing its five year term and a caretaker government was sworn in with the last Chief Justice, Latifur Rahman, as Chief Advisor. Immediately after his inauguration, Latifur Rahman reshuffled many of the top bureaucrats. He also transferred the officials in the districts. These steps were taken to ensure the neutrality of the

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<sup>34</sup> *Bangladesh Parliamentary Elections, June 12, 1996*, The Report of the Fair Election Monitoring Alliance (FEMA), 1996.

<sup>35</sup> Rehman Sobhan, "Misreading the October Elections: Lessons for Both Parties," *The Daily Star*, 8 October 2001.



administration in the electoral process as the BNP had complained that the AL had posted partisan officials. Again, a large number of national NGOs and international observer groups monitored the election process. Nearly 300,000 domestic observers and 250 international observers monitored the polls. Several multi-organisation civil society networks including FEMA, a new group called Election Monitoring Working Group (EMWG) and others tried to achieve national coverage of domestic observers.<sup>36</sup> Elections were held on 1 October 2001. Voter turn out was high – 75.5 percent with 51.6 percent men and 48.4 percent women.

The election results again showed the AL and the BNP to be near equal in the popular vote. (see Table 3 in the Appendix).<sup>37</sup> The AL received 40.1 percent and the BNP received 40.9 percent of the popular vote. This time, however, the seat difference between the two parties was huge. The BNP won 193 seats whilst the AL retained only 62 seats. The BNP's electoral ally, Jamaat, received 17 seats with 4 percent of the vote. Islami Oikya Jote, another partner of the BNP's electoral alliance secured 2 seats with less than 1 percent of votes. As noted earlier, the JP, divided in three factions, suffered significant loss of support. The faction headed by Ershad, which contested the election as an alliance termed the Islami Jatiya Oikya Front, secured 14 seats with 7 percent of the vote. The faction that joined the BNP alliance won 4 seats with 1 percent of the vote and the third faction headed by Anwar Hossain Manju got 1 seat with less than 1 percent of the vote. Again the left parties could not win a single seat. Independents won 6 seats with 4 percent of the vote. Unlike the 1991 and 1996 elections, the 2001 elections produced a victor with an absolute majority in Parliament. Indeed the BNP alliance won a massive victory, a two-thirds majority in Parliament, sufficient to not only form the government but also to amend the constitution.

Unlike the 1991 and 1996 elections, the 2001 elections were preceded and followed by widespread violence and clashes between the rival parties.<sup>38</sup> For example, according to EMWG report between August and September 2001, 127 people were killed, 7729 were injured and 540 incidents of violence took place, all related to the elections. The aftermath of the elections saw even more violence. For 10 days, the supporters of the victorious BNP-led coalition unleashed unprecedented violence, killing opponents, looting property and raping women.<sup>39</sup> The supporters of the BNP led coalition ousted the AL supporters from control of various key institutions to exert control over major constituencies and to extract money. The minority Hindu community, who was alleged to be AL supporters, was particularly targeted.<sup>40</sup> The CTG could not immediately control the situation. After initial denial the government moved slowly to stop the atrocities.

The AL again charged that the polls had been “crudely” rigged, accusing the President, CTG and the EC of mismanagement and partisanship.<sup>41</sup> However since the President, the EC, and the CTG had been installed by the AL government, it was difficult to convince the poll observers that all three institutions had conspired to work against the AL. Initially the AL refused to accept the results and demanded fresh polls in all 300 constituencies. However, under pressure from domestic and international observer groups, who certified the elections to be fair, the AL finally accepted the results.

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<sup>36</sup> *Election Day 2001: Nationwide Observations*, A Report of the Election Monitoring Working Group, 2002.

<sup>37</sup> *The Results of the 2001 Elections*, Election Commission, Bangladesh.

<sup>38</sup> *Election Day 2001: Nationwide Observations*, *op cit*.

<sup>39</sup> *Ibid*.

<sup>40</sup> *Ibid*.

<sup>41</sup> *Ibid*.

The controversies surrounding the 2001 election results, and the government's inability to control the massive post-election violence tarred the image of the Latifur Rahman's CTG. While before the 2001 elections the demand was to institutionalise a non-partisan CTG, after the elections ensuring the neutrality of a non partisan CTG became the opposition's main demand.

#### Elections under the BNP-Led Alliance Government (2001-2006)

The EC, particularly the CEC, who was appointed by the AL government and oversaw the 2001 elections which resulted in the BNP-led alliance's victory, became repeatedly embroiled in contestations with the government over the conduct of elections. In 2003, the CEC requested deployment of the army to oversee peaceful conduct of Union Parishad (lowest tier of local government) elections but the government steadfastly refused arguing that the law and order situation had improved. Failing to get government support for his request the CEC remarked that the elections would be a futile exercise.<sup>42</sup> This drew much flack from the government, and in parliament some BNP lawmakers demanded that the CEC be sacked. Over a period of 51 days elections were held in 4,243 union parishads (total numbers of UPs are 4,488) which saw 80 people killed and 7500 injured.<sup>43</sup>

Similar contestations developed between the government and the EC over the conduct of by-elections. The most noteworthy was the by-election in the Dhaka 10 constituency in 2004, won by a candidate from the BNP alliance, where there were widespread allegations of vote rigging by the political opposition, media and civil society groups. The EC admitted that the election was unsatisfactory but argued that it was legally powerless to cancel the elections or challenge the results.<sup>44</sup> The relationship between the government and the EC deteriorated to such an extent that for several months the government stopped paying the salary due to the EC to penalise it and bring it under government control.

From 2004 onwards, a major confrontation started between the AL-led political opposition and the BNP-led alliance government over the issue of the neutrality of the next CTG overseeing the 2007 parliamentary elections. In 2004, the BNP-led government which held a two-thirds majority in Parliament passed the 14<sup>th</sup> amendment of the constitution increasing the retirement age of the Supreme Court justices from 65 to 67 years. The AL charged that this was done to ensure that the current chief justice will not retire before 2006 which will then allow Justice K. M. Hasan, the last retired chief justice, to assume the leadership of the next CTG. As Justice Hasan had previously served as the International Secretary of the BNP and was then appointed an ambassador under a previous BNP government, the AL claimed that he was a BNP sympathiser and hence not acceptable to the AL to serve as the head of the next CTG. The AL demanded the selection of a neutral non-partisan former justice as the next CA. The BNP-led alliance government, however, refused to enter into any dialogue with the opposition over the issue of the neutrality of the next CTG.

The BNP-led government also selected a new CEC, Justice M. A. Aziz, without consulting the opposition parties. Again, the opposition objected to this selection. The new CEC soon became controversial as the EC's methods of preparing the voter's list were faulted by the

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<sup>42</sup> Rounaq Jahan, "Bangladesh in 2002: Imperiled Democracy," *Asian Survey*, XLIII(I) pp 222-229, January/February 2003.

<sup>43</sup> Rounaq Jahan, "Bangladesh in 2003: Vibrant Democracy or Destructive Politics?" *Asian Survey*, XLIV(I) pp 56-61, January/February 2004.

<sup>44</sup> Rounaq Jahan, "Bangladesh," in *Countries at the Crossroads, op cit.*

political opposition as well as civil society groups. Even an independent study commissioned by the US-based National Democratic Institute (NDI) found the voter's list to be faulty. It claimed that one out of twelve names in the voters list were erroneous.<sup>45</sup>

In 2005, the AL formed an electoral alliance with 14 opposition parties in an effort to increase its vote share as well as strengthen its anti-government mobilisation on the issue of the CTG system. The 14 party alliance drew up a 23-point common program demanding reforms of the CTG system, the EC, and the electoral processes.<sup>46</sup> The 23-point program demanded that the President select the CA and the members of the advisory council of the next CTG on the basis of consultation and consensus with all political parties. It also demanded that the Ministry of Defense be placed under the control of the CA and not the President. The 23-point program put forward several proposals for reforms of the EC, which included appointment of the Election Commissioners on the basis of a consensus agreement among all parties and the institutionalisation of the independence of the EC from the control of the government. It further pledged political party reforms, including the elimination of influence of black money and muscle power from the election process.

The sweeping measures, endorsed by the 23 points attempted to include some of the demands voiced by civil society groups and the media who have been agitating for several years for clean politics and clean candidates. While the two main parties were locked in a deadly game of confrontational politics blaming each other for undemocratic behaviour, media and civil society groups emphasised the democracy deficits of both parties.<sup>47</sup> They voiced demands for governance and political reforms. Governance reforms included eradicating corruption, reversing the politicisation of the government machinery, restoring the rule of law, and establishing transparency and accountability. Political reforms included democratising decision-making within political parties, removing the influence of black money and *mastaans* (muscle men) in party and election politics, establishing transparency in campaign finance and so on. Many of these demands for reforms found their place in the *Report of the Nagorik Committee 2006*, a citizens' forum established to mobilise public opinion in support of a vision and policy agenda to move the country forward.<sup>48</sup>

However, civil society's campaign for clean politics had little impact on the actual behaviour of the political parties. The two contesting political alliances continued to "sell" their nominations to prospective candidates who could capture votes through money and muscle power. At the same time, while the AL-led 14-party opposition was preparing to participate in the 2007 elections, it threatened that it would boycott the elections if the government did not accede to its two demands: appoint the next CTG head and a new CEC on the basis of a consensus between the government and the opposition.

Civil society initiatives as well as moves by the international community failed to broker a peaceful negotiated settlement between the two contending political forces to resolve the impasse over the CTG and the EC. The government pushed ahead with its plans which the opposition branded as "election-engineering."

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<sup>45</sup> "One Out of Twelve on Voter List Erroneous: Reveals NDI Survey," *The Daily Star*, 15 August, 2005.

<sup>46</sup> "Ovinnya Nunnatama Karmashuchi" (Minimum United Program), The AL, 11-Party, JSD, and NAP, November 27, 2005.

<sup>47</sup> Rounaq Jahan, "Bangladesh at a Crossroads," *Seminar*, 576 (August) 2007, pp 57-62.

<sup>48</sup> Report of the Nagorik Committee, 2006, See CPD website: <http://www.cpd-bangladesh.org/policy percent20 brief/index.html>

## The [First] Caretaker Government under President Iajuddin Ahmed

As noted earlier on 27 October 2006, when the BNP-led alliance government stepped down, the government's designated CTG head, Justice K. M. Hasan, refused to take the office of the CA in the face of mounting violence. Instead of choosing another former chief justice or a former judge of the High Court or an eminent citizen acceptable to all parties, President Iajuddin Ahmed installed himself as the CA and the CTG head. The legality of his eligibility to be the head of the CTG was challenged in a court of law but this legal challenge was frustrated when some BNP stalwarts pressured the Chief Justice to order the High Court to suspend the hearing of the challenge to the right of the President to head the CTG. The President and CA, Iajuddin further compromised the neutrality of his government by repeatedly taking unilateral actions without consulting his colleagues in the Advisory Council. This led to the resignation of four advisors on 11 December 2006.

It soon became apparent to all of Bangladesh and even the international community that the head of the CTG was not his own person but was discharging his mandate on the instructions of the BNP leadership. Under such circumstances, the scope of holding a free and fair election under Iajuddin Ahmed as CTG became untenable.<sup>49</sup>

In January, 2007, the opposition political parties finally decided to boycott the parliamentary elections scheduled for 22 January 2007, and also threatened to thwart them. The opposition launched a nationwide blockade on 7-8 January 2007. But Iajuddin, acting under pressure from the BNP alliance, pushed ahead to hold a one-sided election. The BNP and its allies also threatened to confront the opposition on the streets. The country seemed to be on the verge of a civil war.<sup>50</sup>

The international community, the diplomats, as well as the UN started publicly voicing their opposition to a one-side election. The US government, European Commission and the UN urged Iajuddin to take steps to ensure that all parties could participate in the upcoming elections.<sup>51</sup> Finally, the international election observers refused to come to Bangladesh to monitor the scheduled polls. The military, which since the ouster of the Ershad regime, had kept aloof from political involvement, then decided to intervene as it did not wish to take sides and use force to protect the BNP-backed Iajuddin CTG and push through a one-sided election. On 11 January 2007, the military forced Iajuddin to declare a state of emergency, resign as CA, postpone the scheduled 22 January 2007 elections, and promise a new and more acceptable CTG capable of organising credible elections within "the shortest possible time."<sup>52</sup> Failing to get their first choice, Nobel Laureate Professor Muhammad Yunus to agree to be the next CTG head, the military installed Dr Fakhruddin Ahmed as the CA of a new "caretaker" government.

## Election Preparations under the CTG of Dr Fakhruddin Ahmed

The CTG of Dr Fakhruddin Ahmed has moved slowly with the preparations of the next elections. In his first broadcast to the nation on 21 January 2007, Dr Fakhruddin Ahmed pledged to organise a free and fair election but at the same time he and his colleagues

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<sup>49</sup> Rehman Sobhan, "The Twilight of Caretaker Governance?" Forum 2(1) January 2007.

<sup>50</sup> Fahim Quadir, "Bangladesh" in *Countries at the Crossroads, Survey of Democratic Governance*, Freedom House 2007 <http://www.freedomhouse.org>.

<sup>51</sup> *Ibid.*

<sup>52</sup> *Ibid.*

underscored the commitment of the government to create a congenial environment for “truly democratic” elections. The Law Minister asserted that the government is not interested in “holding an election for election’s sake; rather it wants to hold an election for restoring democracy.”<sup>53</sup>

The government reconstituted the EC with three new commissioners who have been perceived as non-partisan. The EC started to correct the disputed voters list and undertake other measures such as the introduction of tamper-proof voter ID cards and transparent ballot boxes. It has sought independence from the executive branch of the government. After a long delay, the EC announced that it would take 18 months to complete all the preparations for a credible election and promised to hold the next parliamentary elections by December 2008. The EC has already proposed several measures which have for some time been on the agenda of civil society reformists, including registration of political parties, democratisation of party decision-making, reservation of 33 percent of seats for women in all party decision-making bodies, ban on front organisations of parties, scrutiny of income and asset statements of the candidates and so on.<sup>54</sup> Civil society groups have on the whole been positive to these proposed measures while political parties have expressed reservations about some of them.

However, the prospects of the next elections appear to hinge largely on the outcomes of the government’s agenda of political reforms. The reforms agenda includes, several items, the most prominent being (1) democratisation of political parties; (2) cleaning politics from the corrupt influence of black money and muscle power; and (3) undoing “doliokoron” (patrisanisation) of all major institutions of governance. All these issues have been widely discussed by civil society as well as political parties for many years. But, apart from public discussion and debate very little concrete action was forthcoming from the democratically elected governments and political parties to address these problems. In the last thirteen months, the Fakhruddin government has unveiled several reform proposals and has undertaken a number of concrete measures to push these proposals.

First, the government as well as the EC has repeatedly asked the political parties to introduce reforms which will facilitate democratic decision making within the parties. For a longtime, there has been persistent complaint that there is no democracy within the political parties that all major parties are run by dynastic leaders who have centralised and personalised all power. To address this problem, the EC and the government has proposed that parties hold regular elections though secret ballot to elect different office bearers at various levels of party organisations, that election to party presidency be limited to two term and that ministers be barred from holding positions in party organisations.

Second, the government and the EC have proposed several reforms to limit the influence of black money and muscle power. The measures include banning the front organisations of political parties which often include a large number of musclemen, limiting election expenses, transparency in election and party funding and so on. The government also initiated a massive anti-corruption drive against top political figures and prominent members of the business community. Many have been arrested and held without bail pending investigation and trial; some have been charged with various corruption and extortion cases, and sentenced to prison under the emergency provisions.

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<sup>53</sup> “Reforms, Polls, Within Next Year: Mainul”, *The Daily Star*, 11 June 2007.

<sup>54</sup> “Provision for No Vote, 33 percent Women Office Bearers in Parties”, *The Daily Star*, 20 May 2007.

Third, the government started a process of undoing the “doliokoron” (partisanisation) of major public institutions. For example, the partisan appointees of the EC, Anti-Corruption Commission (ACC), Public Service Commission (PSC) and the University Grant Commission were all asked to resign and new and credible appointments were made in all these institutions.

However, the government has not yet succeeded in getting the support of credible political leaders for its reforms agenda. The prospects of a new political party committed to reforms and clean politics died prematurely when Nobel Laureate Professor Muhammad Yunus announced his withdrawal from the political arena on 3 May 2007, barely two months after he announced his decision to launch a new party.<sup>55</sup> Attempts by a relatively unknown political figure, Ferdous Ahmed Qureshi to float a new party, which was popularly believed to be sponsored by some elements in the military generated much criticism and controversy, particularly since the country is still being ruled under emergency laws, which prohibits political activity.

The failure of new parties to emerge as a third political force led to the realisation that the reforms agenda can not be implemented by the government on its own without the active support of existing mainstream parties, that the agenda will have to be owned and initiated by the mainstream political parties themselves. This realisation, then, led to the search for “reformists” within the mainstream political parties who would support the government’s reforms agenda. Individuals within the two main parties, the AL and the BNP were found who started talking publicly about the reform agenda, including democratising decision-making within their parties. But these reformists were proved ineffective challenging the two undisputed dynastic leaders, Sheikh Hasina and Khaleda Zia. The government initially tried to exile the two leaders but they refused to leave the country. Finally, the government decided to imprison both of them under a host of corruption charges. Following Khaleda’s arrest, the BNP became divided into pro- and anti-Khaleda factions. In contrast, Hasina’s arrest triggered an outward show of unity within the AL. All factions, within the AL pledged party reforms, but only under Hasina’s leadership. The reformist leaders in both parties appear to lack the support of rank and file members who remain loyal to Sheikh Hasina and Khaleda.<sup>56</sup>

The difficulties the government is facing in implementing its strategy of ousting Sheikh Hasina and Khaleda from Bangladesh’s politics underscores the uncertainties about the prospects of political reforms as desired by the Fakhruddin government or at least by its military backers. If the parties are not willing to change their leadership to accommodate the concerns of the military leadership who may thereby pressure the CTG to delay the holding of the elections within the schedule promised by the EC, the country may again face an impasse between the military and the political parties. This would not bode well either for a smooth transition to democracy or social stability in the country. In the concluding section, I shall analyse these prospects more fully.

What lessons can we draw from Bangladesh’s experiences with organising free and fair elections? Bangladesh did succeed in organising three successive elections, resulting in rotation of power between the two main political parties, but the country finally faltered in routinising elections as the political players did not abide by the rules of democratic competition. A democratic competition assumes existence of agreed rules, an environment of

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<sup>55</sup> “Professor Yunus Gives Up on Political Mission”, *The Daily Star*, 4 May 2007.

<sup>56</sup> Rehman Sobhan, “Exit Strategies – the Way Forward,” *Forum*, 2(10), 2007.

tolerance, a referee whose arbitration is binding, accountability for violating the rules, and ultimately a rule of law enforcing the rules. But in Bangladesh, the contestants routinely violated agreed-upon rules which put the competition in jeopardy. For example, the BNP was initially opposed to the idea of a neutral, non-partisan CTG, but after accepting the notion in 1996, the party still violated the principle of neutrality of the CTG after it assumed power in 2001. The BNP's refusal to come to an agreement with the AL on the 2006 CTG and its imposition of a partisan President as the CTG head finally derailed the elections.

Additionally, the contestants in Bangladesh never satisfactorily institutionalised the EC as an independent referee. The losing party always claimed that the polls had been rigged, even when independent election monitors confirmed them to be free and fair. On the other hand, when independent observers claimed vote-rigging, as happened in the February 1996 elections and the by-election in Dhaka 10 constituency in 2004, the ruling BNP government pressured the EC to legitimise such fraudulent elections. This could be done because the EC remained under the control of the government and dependent on government funds for budgetary support. Successive governments either appointed their supporters in the EC or put undue pressure on independent minded election commissioners which made the EC ineffective.

In addition, to the weakness of the electoral institutions and its governance the culture of electioneering was far from being democratic. Election contests became what were popularly known as "showdowns," which often resulted in violent clashes between supporters of rival political parties. Disagreements could never be resolved through negotiations and dialogues. The political players could continue to disregard rules and norms of democratic competition because there was no rule of law. The violators of laws and rules were not punished if they happened to be in state power. The Bangladesh experiences thus underscore the critical importance of the rule of law as one of the requirements of even a minimalist democracy. In the next section I shall briefly analyse the performance of the governments since 1991 in establishing the rule of law in the country.

#### **4. The Challenge of Establishing the Rule of Law**

Bangladesh formulated a constitution within a year of its independence in 1972, adopting a parliamentary form of democratic government with multiple parties and fundamental freedoms. However, within three years the country fell under a military rule in 1975 which continued for the next 15 years. Under military rule, the constitution was abrogated, fundamental rights were curtailed, the judiciary was controlled and the state machinery was used to consolidate and sustain two successive military regimes. It was hoped that the return to democracy in 1991 would lead to the establishment of the rule of law in the country.

However, the three democratically elected governments have paid little attention to this fundamental task of governance. On the contrary, they have continued many of the old practices of the military regimes. They have used state machinery for partisan and personal gain. They have politicised the civil administration and lower judiciary which made law enforcement partisan. Corruption became pervasive. Bangladesh was ranked as the world's number one corrupt country by Transparency International (TI) for four years in a row starting in 2001. Various global surveys ranked Bangladesh's performance in establishing the rule of law poorly. For example, Freedom House's survey on Bangladesh in 2005 gave

Bangladesh a score of 3.4 out of a possible score of 7.<sup>57</sup> The 2007 survey gives an even lower score of 2.7.<sup>58</sup> Similarly the World Bank's global survey on governance indicators rank Bangladesh between the 20-25 percentile, with an increasing of deterioration in establishing the rule of law (see Figure 1).<sup>59</sup>

### The Judiciary

The legal system of the country is outdated, inefficient, and ineffective with long delays in the delivery of justice. The judgment of the lower courts are influenced politically by the party in power as the appointments, transfers, and promotions of the lower court judges and magistrates are controlled by the executive branch of government, which in turn is directly influenced by the ruling parties. This has, in practice, meant that political opponents of the party in power can be arbitrarily taken into custody on flimsy legal grounds, can be denied bail, and kept in custody for a long time until the victims get bail from a higher court. Public prosecutors are appointed by governments, again, according to their party affiliation. These prosecutors can hardly be expected to take independent action, particularly when political opponents are in the dock.

The higher courts, composed of the High Court and the Appellate Division of the Supreme Court, historically have been relatively independent and impartial but in recent years, appointments to the higher courts have also been exposed to political influences and have become controversial. For example, in 2004, the government appointed 19 judges to the High Court at a single instance.<sup>60</sup> But a number of these appointees were deemed by the Supreme Court Bar Association (SCBA), the principal representative body of the Bar, to be professionally incompetent and their elevation was seen to be largely an act of political patronage. The SCBA appealed to both the government and the chief justice to rescind some of the more egregious appointments. Failing to elicit a response, the SCBA finally boycotted the courts of the more unacceptable of the judicial appointments. And as noted earlier, after the passage of the 13<sup>th</sup> Amendment to the constitution, the appointment of the chief justice became a subject of political consideration and controversy since the amendment stipulated that the chief justice would some day head the caretaker government.

Though both major parties in their election campaign always pledged to establish an independent judiciary by separating the judiciary from the executive branch of the government, once they came to power they put the issue on the back burner. Finally in 1999 the Supreme Court (SC) issued a ruling on the government to free the courts from the control of the executive branch. Neither the AL government which was then in power or the BNP-led alliance government which came to power in 2001 implemented the SC order. Finally, the military-backed Fakhruddin Ahmed CTG has taken the decision to separate the judiciary from the executive branch of government, which will bring the lower courts under the control of the Supreme Court.<sup>61</sup> However, one part of the lower courts, the magistrates who remain under the executive branch, have been successful in retaining a number of important judicial functions within their jurisdiction, including summary trials, which can still be used by a partisan government to intimidate political opponents and reward partisan supporters.

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<sup>57</sup> Rounaq Jahan, "Bangladesh", in *Countries at the Crossroads*, *op cit*.

<sup>58</sup> Fahim Quadir, *Bangladesh: Countries at the Crossroads*, 2007, *op cit*.

<sup>59</sup> *Governance Matters*, 2007, The World Bank. <http://www.govindicators.org>.

<sup>60</sup> Rounaq Jahan, "Bangladesh," in *Countries at the Crossroads*, 2005, *op cit*.

<sup>61</sup> Fahim Quadir, "Bangladesh", in *Countries at the Crossroads*, 2007, *op cit*.



It is still too early to speculate how the process of separating the judiciary from the executive will be operationalised and what impact it will have in ensuring the independence of the judiciary. Mere separation of the two branches of the government will also not necessarily result in a less corrupt and more accountable judiciary. Additional measures will have to be put in place to make the judiciary more efficient, responsive and accountable. These measures will have to be designed in the light of the actual performance of the judiciary after its separation from the executive branch of the government.

### Civil and Police Administration

A worrisome development was the increasing politicisation of the civil bureaucracy under the democratically elected governments.<sup>62</sup> Though civil service is in principle recruited on merit and has inherited a tradition of neutrality, over the years there has been a growing tendency to use partisan criteria in the selection and promotion of the civil bureaucracy. The extension of services of senior civil servants on contract after they have crossed the compulsory retirement age has been one of the instruments used to compromise the political autonomy of the bureaucracy. There have also been allegations of partisan influence in the recruitment of officials at various levels as well as their promotions.<sup>63</sup> The image of the PSC, the agency in charge of recruiting government officials, has been severely tarnished. Partisan supporters of the ruling party have been appointed as members of the PSC. In recent years, the opposition political parties and the media have publicised a series of allegations against the PSC, highlighting how decisions regarding recruitment and promotions have been politically influenced by the ruling BNP alliance.<sup>64</sup>

This trend towards partisanship has seriously eroded citizens' trust in the neutrality and integrity of the civil and police administration. Their role becomes particularly controversial during the time of elections. As noted earlier in Section 3, each Caretaker Government had to transfer a large number of officials in the civil and police administration to assure the opposition political parties that the administration in the headquarters as well as at the constituency level would remain neutral and would not influence the electoral process.

The Fakhruddin government is currently considering proposals for police reforms. It is planning to substitute the old and out dated. Bengal Police Act (1861) with a new police ordinance that will introduce a number of reforms to make the police force pro-people, transparent and accountable suitable to work in a democratic state and society. The proposed ordinance is expected to include a Code of Conduct for the police personnel, guidelines for respecting human rights during search, arrest, detention or interrogation of suspects, guideline for dealing with women and children, community policing, summary courts for police personnel who abuse power, a National Police Commission (NPC) and a Police Complaint Commission (PCC) and a variety of other measures to insulate the police force from partisan political pressures.<sup>65</sup> The Fakhruddin government also set up a high powered Advisors' Council Committee headed by the CA on 'Public Administration Reforms and Good Governance' to steer a reforms process in the civil services. It is planning to develop a strategic perspective for improving the quality of the civil services, beginning with recruitment and promotion polices and practices.<sup>66</sup>

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<sup>62</sup> Rounaq Jahan, "Bangladesh", in *Countries at the Crossroads*, 2007, *op cit*.

<sup>63</sup> Fahim Quadir, "Bangladesh", in *Countries at the Crossroads*, 2007, *op cit*.

<sup>64</sup> *Ibid*.

<sup>65</sup> *The State of Governance in Bangladesh*, (draft), BRAC, 2008.

<sup>66</sup> *Ibid*.

## Violence

The failure of three successive elected governments in establishing the rule of law is made evident by pervasive political as well as non-political violence which plagued the country and undermined citizens' sense of security and trust in politicians. The World Bank's global survey on governance indicators ranks Bangladesh very low, placing the country between the 10 to 20 percentile ranking (see Figure 2).<sup>67</sup>

The politics of confrontation practiced by the two major parties led to repeated violent clashes between their supporters, often resulting in murders and grievous injuries. Vendetta and violence marked not only BNP-AL contestations, factional fights within the two major parties were also settled through murder and violence. In the initial years of elected governments, the incidences of political violence were confined to the less well known party workers. But as the confrontation between the two major political forces intensified, top level leaders were targeted for assassination. For example, in May 2004, a Member of Parliament belonging to the opposition AL, Ahsanullah Master, was assassinated at a public meeting by a group of gunmen.<sup>68</sup> On 21 August 2004, a grenade attack at an AL rally in the capital city Dhaka killed 23 people including senior AL leader Ivy Rahman and maimed and injured hundreds. The AL chief, Sheikh Hasina, was targeted but narrowly escaped death with minor injuries.<sup>69</sup> On 27 January 2005, S. M. A. S. Kibria, another AL Member of Parliament, and a former Finance Minister, and once an under Secretary-General within the UN system, was assassinated while addressing a meeting in his constituency in Sylhet.<sup>70</sup> None of these high-profile political murders was properly investigated, nor were the real culprits brought to justice.

The AL leaders, and some of the family members of the assassinated leaders, have persistently claimed that some members of the BNP led alliance government were involved in these violent attacks against the AL. New evidence made public after the Fakhruddin government came into power suggests links with Islamist extremist groups, such as Harkatul Jihad-i-Islami (HUJI). However, investigations have not been completed and the allegation of links with the BNP-led alliance government still persists.

Similarly, bomb and grenade attacks on political and cultural events and assassination and murder of prominent secular intellectuals, which started from 1999 onwards, went on unabated, again, without proper investigation and punishment of the culprits. A large arms shipment was intercepted in 2004 being unloaded at a landing jetty of a state-owned enterprise, yet the government investigation failed to identify or bring to justice the culprits.

All through 2004, newspapers widely publicised the spate of killings and abductions carried out by an Islamist militant outfit, *Jagrata Muslim Janata Bangladesh* (JMB) in the northern region but top government officials, including ministers, persisted in denying the existence of its leader, Siddiqui Islam alias Bangla Bhai.<sup>71</sup> They claimed that Bangla Bhai was the figment of the media's imagination. In 2005, JMB claimed responsibility for 400 co-ordinated bomb attacks that targeted government offices in 63 out of the country's 64 districts killing two and injuring hundreds. As the criticism against the government's inaction against

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<sup>67</sup> *Governance Matters 2007, op cit.*

<sup>68</sup> Rounaq Jahan, "Bangladesh" in *Countries at the Crossroads*, 2005, *op cit.*

<sup>69</sup> *Ibid.*

<sup>70</sup> Fahim Quadir, *op cit.*

<sup>71</sup> Rounaq Jahan, "Bangladesh", in *Countries at the Crossroads*, 2005, *op cit.*

the Islamist militants grew, the BNP-led government finally outlawed four of the extremist groups – including the JMB – in 2006 and arrested over 300 militants including Bangla Bhai. Twenty-nine militants were sentenced to death or to life imprisonment. Six receiving the death sentence were executed in March 2007, during the tenure of the Fakhruddin CTG.<sup>72</sup>

Violence was not confined to only political contestations. It affected the everyday lives of ordinary citizens. *Mastaans* (armed thugs), often linked to powerful politicians, terrorised business and civic life through extortion, kidnapping, murder, and rape. A BBC report in 2002, quoting Bangladesh police statistics, alleged that on average 325 murders, 320 rapes, and 18 acid attacks took place in a month.<sup>73</sup> Again, many of these criminals could not be prosecuted because they were blessed with the patronage of politicians, particularly from the ruling party.

### Corruption

The massive and systemic corruption was another indicator of the absence of the rule of law (see Figure 3). As noted earlier, from 2001 until 2005, Bangladesh was ranked as the most corrupt country in the world by the TI. While all agencies of the government have become corrupt, according to TI surveys, the tax administration and law enforcement agencies were identified as particularly corrupt. The nexus between politics and business contributed to corruption at high levels. Nearly 60 percent of all Members of Parliament elected in 2001 were businessmen.<sup>74</sup> Many of them reportedly used their political power to secure control over disbursement of public resources and public procurements.

Allegations of corruptions, particularly by politicians, were given wide and extensive ventilation in the news media, but these allegations were rarely investigated or prosecuted without prejudice. Indeed, successive governments have increasingly used anti-corruption laws to pursue partisan interests. High-profile corruption cases have been lodged against leaders from the political opposition for actions taken during their tenure in office but again these cases have been dropped when the same opposition came back to power after winning an election. A government rarely moved to file anti-corruption cases against high-ranking members of the government or of the ruling party.

The Fakhruddin Ahmed CTG has moved forward with a number of initiatives to improve the situation with regard to the rule of law. As noted earlier, the judiciary has been separated from the executive and the government has launched a massive anti-corruption drive, particularly against corruption of top politicians and business people. Many are being tried and convicted. However, these cases are being tried under Emergency rules, and it is not clear what will happen to these cases when the Emergency is withdrawn and appeals against the convictions in the lower courts will be heard in the higher courts.

The Fakhruddin government has also initiated other steps to strengthen institutions that can uphold the rule of law. For example, new rules are being formulated to make the Anti-corruption Commission independent from government control. As noted earlier, the appointment of retired General Hasan Mashud Chowdhury, who has the reputation of being honest and independent, has generated public confidence in the work of the ACC. The government is also preparing rules for setting up an independent Human Rights Commission.

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<sup>72</sup> Fahim Quadir, *op cit*.

<sup>73</sup> Rounaq Jahan, “Bangladesh in 2002: Imperiled Democracy”, in *Asian Survey*, *op cit*.

<sup>74</sup> Fahim Quadir, *op cit*.

To sum up: Since 1991, elected political regimes have not attempted to establish the rule of law because that would run counter to their partisan interests. They have compromised the neutrality of the civil bureaucracy and lower judiciary by influencing their recruitment and promotion. Through a partisan administration and judicial system, successive elected governments have rewarded their supporters and oppressed their opponents. Law enforcement became partisan. Corruption and violence became endemic. The Fakhruddin government has recently initiated a number institutional reforms to establish the rule of law. However, it is too early to assess their long term impact on the ground. A lot will depend on the ownership of these reforms by the next elected government. The next section of this paper will briefly discuss the impact of the weakness of the rule of law on the state of civil liberties and fundamental freedoms, another core element of democracy.

## **5. The Challenge of Guaranteeing Civil Liberties and Fundamental Freedoms**

The Bangladesh constitution guarantees fundamental rights and civil liberties.<sup>75</sup> Political, cultural, and religious freedoms for all groups are permitted. All citizens are recognised as equal irrespective of their ethnicity, gender, and religion. The constitution also mandates affirmative action measures to promote equality and eliminate discrimination. But over the years, Bangladesh has also formulated some laws that limit civil liberties whilst in practice, women, ethnic and religious minorities often face discriminations.

### Extra-judicial Killings and Torture

With the overthrow of military rule and return of democratically elected governments, the constitutional guarantees of fundamental freedoms were restored in principle. In practice, however, fundamental human rights were violated in many different ways. The most publicised were the incidents of extra-judicial killings by law enforcement agencies of the government. As the rates of violent crimes soared, the BNP-led alliance government introduced special anti-crime drives using the military and the paramilitary, Bangladesh Rifles (BDR). With each drive, the law and order situation improved temporarily, but there were also allegations of human rights violations and extra-judicial killings. In October 2002, the government introduced “Operation Clean Heart,” using the military. Human rights organisations claimed that 44 people had been killed due to excessive use of force during the drive. The drive was withdrawn in January 2003 when it became apparent to the government that many of the criminals being detained by the military were from the ruling party whilst other targeted hoodlums had become fugitives.<sup>76</sup> With local government elections about to take place Operation Clean Heart was seen as prejudicing the electoral prospects of the ruling party in the forthcoming elections. So the operation was abruptly terminated and the law and order situation once again deteriorated.

The government subsequently initiated other drives such as Operation Spider Web, using the BDR. It eventually established speedy tribunals and formed special law enforcement forces such as the Rapid Action Teams. Again, these measures were able to tackle only criminals who were not affiliated with political bosses. But as the cabinet secretary, the senior most government bureaucrat, complained in a seminar in 2003, these forces could not work impartially and effectively due to the interference of political leaders.<sup>77</sup>

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<sup>75</sup> *The Constitution of the People’s Republic of Bangladesh, op cit.*

<sup>76</sup> Rehman Sobhan, “Clean Politics as a Way to a Cleanheart” *The Daily Star*, 20 February 2003.

<sup>77</sup> Rounaq Jahan, “Bangladesh in 2002: Imperiled Democracy”, *op cit.*

In 2004, the government formed a special security force called the Rapid Action Battalion (RAB), composed of personnel from the police and the military. Though the RAB enjoys public support because of its success in cracking down on *mastaans* and criminals, its method of work has made the RAB controversial. The RAB has been accused of arresting and torturing innocent people on unfounded criminal charges, killing alleged criminals in what it called “crossfire,” and generally denying the fundamental rights of arrested individuals to be tried in a court of law.<sup>78</sup> According to one recent report, as of March 2007, the RAB had arrested 17,332 people on various charges and killed 327 people in “crossfire.”<sup>79</sup>

Not only the RAB, but the police forces have also been accused of routinely making arbitrary arrests and torturing arrested individuals to obtain confessions. Deaths in police custody are not uncommon. For example in 2006, some 51 prisoners were reported to have died in police custody.<sup>80</sup>

### Freedom of Association and Assembly

Though the constitution guarantees freedom of association and assembly, these rights were repeatedly violated by the democratically elected governments. Their partisan supporters or police cracked down on the meeting, rallies, and protest marches of the political opposition. From 2004 to 2006, police often resorted to mass arrests, picking up hundreds of innocent people and keeping them locked up for weeks without trial. For example, police arrested 8,500 people between 18 April and 30 April 2004 in the run up to the “30 April deadline” given by the AL to oust the government. Again, from 23 to 29 September, ahead of the AL’s planned 3 October mass rally, police arrested 5,748 people.<sup>81</sup> In the last few years even peaceful demonstrations and spontaneous public protests were dealt with through excessive application of force by the law enforcement agencies. For example, in 2006 at least a dozen local people, protesting the shortage of electricity at a remote rural area, Kansat, were killed by police firing. The government has not brought anyone responsible for these killings to justice. After the imposition of emergency rule on 11 January 2007, civil and political rights have been suspended. Nearly 200,000 people have reportedly been imprisoned and kept in custody without bail. Many have allegedly been torture while in custody.

The membership of trade unions had remained low even under the democratically elected regimes. The principal export industry, ready-made garments, with US\$6 billion in cumulative investment and US\$8 billion in annual exports, employs some two million workers, mostly women. But the industry severely discourages unionisation of its workers. Following a series of deadly fires in the garment factories that killed scores of women, workers have begun to organise themselves demanding a minimum wage, safe working environment, and better employment conditions. But the workers have often been subjected to physical attacks and dismissals. In May and June 2006, striking workers were assaulted by police as well as gangs reportedly loyal to the factory owners. Although a tripartite Minimum Wage Board recommended increasing the minimum wage, most of the workers’ demands have been ignored by the government and the owners.<sup>82</sup>

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<sup>78</sup> Fahim Quadir, *op cit*.

<sup>79</sup> *Ibid*.

<sup>80</sup> *Ibid*.

<sup>81</sup> Rounaq Jahan, “Bangladesh”, in *Countries at the Crossroads*, 2005, *op cit*.

<sup>82</sup> Fahim Quadir, *op cit*.

## Rights of Minorities

Again, the Bangladesh constitution guarantees rights of ethnic, religious and other groups, but in practice these groups often face discrimination and suppression. There have been areas of success as well as failure in dealing with minority groups.

After nearly two decades of armed insurgency and brutal military operations during the military rule, the AL government was able to negotiate a peace accord with the insurgents in the Chittagong Hill Tracts (CHT) in 1997. Peace in the CHT can be regarded as a major success of a democratic regime. However, the AL government was not able to fully implement the peace accord. The BNP had been opposed to the peace accord and hence has not taken any steps to expedite the implementation of the accord or increase the security of the indigenous people against mass attacks by the Bengali settlers, often supported by the military.

As discussed earlier in Section 3, Hindus faced serious assaults immediately following the 2001 elections. Since then, the government has attempted to protect the observance of Hindu religious festivals, but the Hindu community remains vulnerable and feels marginalised and excluded.<sup>83</sup>

In the last few years, attacks on a small Muslim minority group, the Ahmadiyya sect, comprising roughly 100,000 people, drew national and international attention. One of the partners of the BNP-led alliance, IOJ started a mass agitation to put pressure on the government to declare the Ahmadiyya community as non-Muslims. The government resisted the pressure and indeed the police protected the Ahmadiyya mosques from attacks by the extremists, but the government banned Ahmadiyya publications. This government decision was, however, later rejected by the Supreme Court.<sup>84</sup>

All governments since 1991 have continued with policy support for gender equality. Indeed, girls' enrollment in primary and secondary schools has increased significantly over the last decade due to initiatives taken by the government, such as special scholarships for girls. Similarly, progress was registered in reducing gender gaps in life expectancy and child mortality. Maternal mortality rates have also started registering a decline.

Successive governments have maintained strong commitment to and budgetary support for social development. As a result, all through the 1990s, the country achieved significant gains in various social indicators, such as school enrollment, health, and gender equality. Both the BNP and the AL governments passed laws to modify social customs that discriminate against women, such as marriage, dowry, and domestic violence. They also supported special quotas for women in Parliament as well as in local governments. However, both parties reneged on their pre-election pledges to introduce a system of direct election to Parliament for the women's reserved seats, though for years all women's groups have been agitating for a system of direct election.

The AL introduced a direct election system for 30 percent of reserved women's seats in the local elections in 1997, but it did not take any initiative regarding the national Parliament. The BNP-led government maintained the system of indirect election for women's reserved

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<sup>83</sup> *Ibid.*

<sup>84</sup> Rounaq Jahan, "Bangladesh", in *Countries at the Crossroads, op cit.*

seats in Parliament when it passed the 14<sup>th</sup> amendment to the constitution, which, however, increased the numbers of women's reserved seats in Parliament from 30 to 45.<sup>85</sup>

The Fakhruddin CTG has set up a local government reforms commission which has recommended 40 percent reserved seats for women to be elected directly. The EC has recommended 33 percent reserved seats for women in all decision-making committees of political parties. The parties have, however, expressed reservations about this high quota for women in parties and local councils.

In sum: the return of democratic rule in 1991 did restore fundamental civil and political rights, which have again been curtailed after the imposition of emergency rule on 11 January 2007. However, even during the democratic era, fundamental human rights were violated in many different ways. The special security forces, formed to combat crimes, resorted to extra-judicial killings with impunity. The police harassed and obstructed supporters of opposition political parties from participating in meetings and rallies. Trade union activities were suppressed, particularly in the country's biggest export earning industry, garments, where young women worked under exploitative terms and conditions. Minority groups were threatened and felt insecure. Violence against women remained widespread.

But how could these violations take place and persist with impunity under democratic rule? What roles did the accountability mechanisms play? In the next section, I shall briefly assess how accountability fared during 15 years of democratic rule.

## **6. The Challenge of Ensuring Accountability**

Larry Diamond and Leonardo Morlino define accountability as “the obligation of elected political leaders to answer for their political decisions when asked by voters or constitutional bodies.”<sup>86</sup> They distinguish between two types of accountability: vertical and horizontal. Vertical accountability runs “upward” from citizens to leaders. Andreas Schedler identifies three main features of vertical accountability: information, justification, and punishment (or compensation).<sup>87</sup> These roughly describe the stages in which citizens learn of public actions presented by leaders, and decide whether to punish the leaders or reward them (most often by either turning them out of or continuing them in office).<sup>88</sup> Political competition and participation are critical conditions for vertical accountability. Competition and power distribution needs to be fair enough for genuine electoral alternatives at various levels. The ongoing process of monitoring, questioning, and demanding justification is equally important for consolidating democracy. Civil society and media play an important role in this process of ongoing monitoring.

Horizontal accountability, in contrast, refers to “one arm of the government... answering to another in a roughly lateral way rather than as part of a regular command-and-obedience relationship.”<sup>89</sup> Horizontal accountability institutions include the political opposition in the legislature, investigative institutions set up by the legislature, the courts, audit agencies,

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<sup>85</sup> *The Constitution of the People's Republic of Bangladesh, op cit.*

<sup>86</sup> Larry Diamond, and Leonardo Morlino, “The Quality of Democracy”, *op cit.*

<sup>87</sup> Andreas Schedler, “Conceptualizing Accountability”, in Andreas Schedler, Larry Diamond and Marc F. Plattner eds. *The Self-Restraining State: Power and Accountability in New Democracies*, Lynn Reinner, Boulder, Colo. 1999.

<sup>88</sup> Larry Diamond, and Leonardo Morlino, “The Quality of Democracy”, *op cit.*

<sup>89</sup> *Ibid.*

independent election administration, central bank, anti-corruption commission, human rights commission, state ombudsman, and other such bodies “whose mission is to scrutinise and limit the power of those who govern.”<sup>90</sup>

### Vertical Accountability

During the 15 years of democratic rule, vertical accountability institutions worked better than their horizontal counterparts. The electoral system, despite its many shortcomings, did provide the space for competition and participation. Though the citizens were not provided with many alternative choices during elections, they did have a choice between two major parties and they exercised their right to reward and punish the leaders. Voter turnout was extremely high, nearly 75 percent, in the 1996 and 2001 elections, and in both the voters punished the incumbent governments by voting them out.

Civil society and media also played a very positive role, always keeping the pressure on the government of the day, monitoring and questioning government decisions. In Bangladesh, there is a very large and proactive civil society and NGOs which have gained international reputation both in delivering services and in advocacy. Though the various governments did exert some control over the NGOs through the requirements of NGO registration and approval for donor funding, on the whole the NGOs were able to access donor funding and operate relatively freely in service delivery operations. Under democratic rule, even the advocacy NGOs were able to operate relatively freely and openly, often criticising government’s policies and actions. For example, civil society, particularly human rights organisations, were in the forefront of protests against extra-judicial killings by the RAB, banning of the publications of the Ahmadiyya community, attacks on the Hindu community and the indigenous groups in the CHT, political repression against opposition political parties and so on. Several rights groups filed a public interest litigation in the High Court challenging the government’s mass arrests in April 2004.<sup>91</sup>

However, a number of NGOs and civil society groups did face harassment and repression from the government. The most well-known is the case of Proshika, one of the largest NGOs in the country. Proshika and a few of their allies were targeted by the BNP coalition government for their alleged pro-AL sympathies. Several officials and workers of Proshika including its chief, Kazi Faruque Ahmed, were imprisoned on alleged charges of corruption and sedition and were freed after months of protracted legal battles. Donors funding Proshika refused to accept the government’s allegations of corruption and instituted their own audit that cleared Proshika. However, the persecution of Proshika continued even under the Fakhruddin CTG. The government refused to release nearly US\$29 million of donor funding to Proshika in February 2007 on the grounds of its being engaged in “anti-government activities.”<sup>92</sup> Proshika’s chief, Kazi Faruque Ahmed, was again imprisoned, but was later released.

Transparency International Bangladesh (TIB), another vocal civil society organisation focusing on government corruption, has also faced repeated harassment by successive governments. Their funding had been repeatedly audited. The office-bearers of TIB had to similarly face repeated audits of their personal income tax returns.

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<sup>90</sup> *Ibid.*

<sup>91</sup> Rounaq Jahan, “Bangladesh,” in *Countries at the Crossroads, op cit.*

<sup>92</sup> Fahim Quadir, *op cit.*



Since 1991, the media has emerged as another effective vertical accountability institution. Print media has done an outstanding job in investigating and reporting on government and political corruption, rise of extremists, particularly Islamist fundamentalist groups, the role of *mastaans* in party and electoral politics, partisanships of civil bureaucracy and judiciary and other such democracy deficits. The growth of a privately-owned media – newspapers and television channels – has boosted a healthy competition amongst the different media though concerns have been raised that some of these privately owned media may propagate a partisan viewpoint.

Though during the 15 years of democratic rule, media was relatively free from state control, journalists did face pressures from state and non-state actors. In 2004 alone, five journalists were killed, and 111 injured in the line of duty. Cases were lodged against 63 journalists and 263 received death threats. Journalists faced attacks by both political party activists and police. Editors of four leading newspapers faced libel cases; indeed, libel cases were frequently used to harass newspaper editors as well as civil society leaders.

Despite these limitations, vertical accountability institutions, particularly civil society organisations and the media, did scrutinise government actions, mobilise public opinion and create pressures on the government to be answerable. Indeed of all the democracy indicators, Bangladesh has consistently scored the highest in civic engagement and monitoring and media independence (see Figure 4). Since the imposition of emergency rule on 11 January 2007, both media and civil society organisations are under stricter government control. The government has issued repeated warnings to the media that it cannot publish reports criticising the emergency. During August 2007, when protests broke out in the capital city Dhaka and later all over the country, the media was ordered not to provide live coverage of the protests. Many newspapers and TV channels have adopted a severe policy of self-censorship. Civil society has similarly been somewhat muted after the emergency.

### Horizontal Accountability

In comparison to vertical accountability, horizontal accountability institutions fared poorly under the democratic rule. Parliament, the most significant horizontal accountability mechanism, hardly functioned as the political opposition mostly boycotted the parliamentary sessions, alleging government suppression of their voices. As noted earlier in Section 3, the opposition, AL started boycotting the parliamentary sessions from early 1994 and resigned in December 1994, thus missing nearly half of the tenure of the Parliament elected in 1991.

After the June 1996 election, the BNP, which, then, became the opposition, started behaving in the same way, walking out and boycotting the parliamentary sessions. Unlike the AL, the BNP members did not resign from the parliament, but they too missed half of the parliamentary sessions, registering their nominal presence occasionally in order to avoid losing their parliamentary seats.

Between 1996-2001, the parliamentary committees, however, functioned better and the political opposition participated regularly in the committee meetings. But after the 2001 elections, the BNP-led government did not constitute the Parliamentary committees owing to differences of opinion with the political opposition. The opposition, citing the Indian example, demanded chairmanship of the committees, but the BNP alliance was unwilling to accede to this demand. The AL did not resign from Parliament this time, but it refrained from participating in Parliament for prolonged periods. Since the opposition was mostly

absent, members of the governing parties also frequently missed parliamentary sessions resulting in a lack of quorum.

Severe restrictions were put on members of Parliament, limiting their freedom to criticise the actions of their own party. In the absence of scrutiny and oversight by the legislative branch, the executive branch of the government started to function as a “viceregal” system inherited from the British and Pakistani colonial days with few checks on its actions.<sup>93</sup>

Other horizontal accountability institutions also did not perform well. As discussed in Section 4, the judiciary, particularly the lower judiciary was under the control of the executive branch of the government. Instead of working as a check on the government, it was often used to further the partisan interests of the party/parties in power. The EC was never given independence. The EC could not prevent the rigging of by-elections, nor could it challenge the government’s electoral malpractices. Several CECs publicly expressed their frustrations in not being able to hold the ruling party accountable for vote fraud.

After much foot-dragging, the BNP-led coalition government finally established an ACC in 2004. But the ACC was staffed poorly and it soon became a contested body with members of the ACC in contention with each other and with the government over rules of appointment and staffing. Only under the Fakhruddin CTG some steps have been taken to make the ACC independent from the control of the executive branch of the government. As noted earlier, the new ACC chief, Lt. General Hasan Mashud Chowdhry, a former Chief of Staff of the Army has moved vigorously against high-level corruption in politics, civil administration, and the bureaucracy.

In sum: During democratic rule, vertical accountability worked relatively well. The three national elections were relatively free and fair. Voter turnout was exceptionally high in the last two national elections, which were also marked by voter rejection of incumbent governments. The media and civil society organisations worked in a relatively free environment and played an important proactive role in monitoring the government’s actions/inactions.

In contrast, horizontal accountability institutions did not function well. Parliament became a rubber stamp as the opposition members were mostly absent. They were denied full participation when they attended the sessions but nearly half the time the opposition members boycotted the sessions alleging government repression. Other horizontal accountability institutions, such as the judiciary, the EC, and the anti-corruption commission were not given authority and resources to check the misbehaviour of the government. The weakness of the horizontal accountability institutions was a major challenge in institutionalising democracy in Bangladesh. As Larry Diamond and Leonardo Morlino note: “The agencies of horizontal accountability constitute a system of their own, and if this system is to work it must have institutional capacity, training, and leadership that are at once capable, vigorous, and responsible. Like the law itself, the agencies of horizontal accountability can be used as a weapon against political opponents, but only at the possible cost of undermining the credibility enjoyed by the entire institutional network.”<sup>94</sup>

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<sup>93</sup> Rounaq Jahan, “Why Are We Still Continuing With a ‘Viceregal’ Political System?” *The Daily Star*, 31 January 2004.

<sup>94</sup> Larry Diamond and Leonardo Morlino, “The Quality of Democracy”, *op cit.*

## 7. Conclusion

The challenges Bangladesh faced in institutionalising democracy are not unique. Many new democracies are also struggling with similar challenges. In many countries, political leaders who have successfully waged pro-democracy movements and have overthrown autocratic regimes often find it more convenient to rule following the patterns of previous autocratic regimes, rather than break away from the old mold and chart a new democratic path. As Larry Diamond and Leonardo Morlino point out, “there are... several dozen ‘illiberal democracies’ in the world today where competitive elections and popular participation co-exist with considerable lawlessness and abuses of power.”<sup>95</sup> They warn that “the very illiberalism of such regimes (including their lack of truly law-based rule) imperils their democratic character.”<sup>96</sup>

In Bangladesh, this is precisely what has happened. Though the country went through three free and fair national elections, absence of the rule of law weakened all other pillars of democracy such as fundamental freedoms and accountability and ultimately even regular elections could not be routinised.

Diamond and Morlino argue that the different elements of democracy “are closely linked... The linkages among the different elements are... interactive and overlapping... Without civil and political rights... citizens will not have the ability to participate in the political process... Unless there is fair and unimpeded access to the electoral arena, vertical accountability may be greatly diminished... civil and political rights are... critical to the vigorous participation and competition of parties, interests, and organisations... They are necessary as well for horizontal accountability... but none of this is possible without a rule of law... Neither can a rule of law be sustained without strong institutions of horizontal accountability... At the same time participatory citizens... are the last lines of defense against potential executive efforts to subvert rule of law.”<sup>97</sup>

As the previous analysis of the workings of democracy in Bangladesh (Sections 3-6) show, the different qualities of democracy were not nurtured in an interactive and positive way to converge into a system. As a result, the country gradually moved towards democratic decay. What are then the prospects of democratic renewal in Bangladesh? Will Bangladesh get back on the path of electoral democracy any time soon?

Making predictions about a country’s political future is always hazardous, particularly for a country which has a history of unstable and turbulent politics. Still, we can identify a number of factors that can shape the future direction of Bangladesh’s politics, particularly the prospects of institutionalising democracy. The key factor is the attitude and role of the major power groups vis-à-vis democracy. If these groups want a democratic renewal, then the country will move back to democracy. If, on the other hand, a number of powerful groups find it more beneficial to be under non-democratic rule, then return to democracy will be harder.

Let us then briefly analyse the interests of various power groups. At present, the most powerful group is the military, which has nevertheless remained behind the scene, backing a civilian CTG. What are the corporate interests of the military: to take over direct control? To

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<sup>95</sup> *Ibid.*

<sup>96</sup> *Ibid.*

<sup>97</sup> *Ibid.*

stay behind but have a say in the country's governance? Or to leave governance and politics in the hands of political leaders? It appears that taking direct control of the country's governance does not serve the military's corporate interests. During the military regimes, particularly during the latter part of General Ershad's rule, the military as an institution started becoming unpopular as its top leadership earned a reputation for being corrupt and despotic. The decision of the military in not supporting Ershad, against a popular movement in 1990, and its later decision to remain aloof from the country's partisan contestations, enhanced the image of the military. Its increasing involvement in UN peacekeeping missions improved the professionalism of the military. At the same time, peacekeeping missions opened up opportunities for earning income, which is valued by the soldiers as well as the officers, as a source of ensuring their personal income security. As an institution, the military is, thus, not keen to take over direct control of governing the country as such intervention will risk international sanctions and prejudice opportunities to participate in UN peacekeeping missions. This, of course, does not mean that a few military leaders are not tempted to take over power. But since there is no unanimity amongst the officers about taking direct control, it is unlikely that these ambitious leaders will either make a move for a direct power grab or even if they do, will succeed as they will face opposition within their own ranks.

The more likely scenario is that the military may make a bid to keep an institutionalised foothold in politics and governance by insisting on establishing a National Security Council (NSC) and becoming members of the NSC. The idea of an NSC was also floated by Ershad before he took over power in 1982. The Fakhruddin CTG is again talking about a NSC. Political parties and many in civil society and the media are strongly opposed to the idea of a NSC. They argue that this is a mechanism through which the military has kept control over politics and governance in Pakistan.

Up to now, the military leaders have repeatedly said that they have no long term interest in running the country, that they are only "assisting" the civilian CTG of Dr Fakhruddin Ahmed to push through a political and governance reform agenda. Indeed, on many occasions the military leaders had to face questions about their intentions by civil society and the media, and on each occasion they reiterated their commitment to hold a free and fair election by the end of 2008.

If the military is not very keen to run the country, then are there other powerful groups who would want to see a continuation of an unrepresentative civilian government backed by the military? It always serves the interest of the civil bureaucracy to have a civilian government backed by the military because under such dispensation, civil bureaucracy becomes all powerful, unfettered by the control of political leaders. However, over the last 15 years, civil bureaucracy has become highly partisan, with close ties with political parties and leaders. Civil bureaucracy has also become deeply involved in systemic corruption. So civil bureaucracy's continued support for a military-backed unrepresentative government pushing a strong anti-corruption agenda seems uncertain.

What about the business community, the emerging power group which has also dominated the political scene in recent years through their funding and direct involvement in party politics? The support of this group for the continuation of a military-backed unrepresentative government, again, appears to be tenuous. The anti-corruption drive of the Fakhruddin CTG has hit many members of the business community hard, particularly many who have used politics to further their business interests. In the last 15 years, the business community, too, has learned to do business and accumulate massive wealth in a corrupt and lawless

environment. So this group, too, will not be averse to go back to the rule by elected politicians.

Civil society and the media are the two groups who have been in the forefront pointing out the deficits of democracy in Bangladesh and demanding a more substantive form of democracy in the country. They support the political and governance reform agenda of the Fakhruddin CTG, but they are concerned about the restrictions on civil liberties and fundamental freedoms, and they are ideologically committed to democratic rule. So these two groups will find it difficult to support a prolonged period of rule by a military-backed unrepresentative government.

The international community, diplomats, and donor agencies play an important role in influencing the actions of major domestic players in Bangladesh. In fact, it is the withdrawal of the international community's support that led to the collapse of the Iajuddin CTG and intervention by the military on 11 January 2007. The international community has persistently sent strong signals that it would not support a military take-over of the country and would want restoration of a civilian government through free and fair elections.

The two main political parties, which have ruled Bangladesh for the last 15 years, will obviously not support a prolongation of an unrepresentative CTG. In fact, both the AL and the BNP have repeatedly called for early elections and a return to elected political rule. Initially, when the Fakhruddin CTG arrested top BNP leaders, including Khaleda's son Tariq Rahman, the AL leader Hasina publicly supported the anti-corruption drive of the CTG and promised immunity to their actions if the AL returns to power after the elections. However, since the arrests of many top AL leaders including Hasina, the AL has started to take a more antagonistic position against the Fakhruddin CTG.

There is no popular support for military rule or a rule by unrepresentative bureaucrats/technocrats in Bangladesh. Citizens do want to get back to routinised elections to choose their leaders, but they also want a rule of law and an accountable government. They want guarantees of fundamental freedoms. But above all, they want the political leaders to manage their competition and contestations in a democratic and peaceful manner. Bangladesh may very well return to electoral democracy by December 2008 as promised by the Fakhruddin CTG, but the prospects of institutionalising democracy will depend on the political will of political leaders and their commitment to establish other elements of democracy such as the rule of law, fundamental freedoms, and accountability.

**Table 1: Results of Parliamentary Elections, February 1991**

Party	percent of Votes	Number of Seats
Bangladesh National Party	31	140
Awami League	31	88
Jatiya Party	12	35
Jamaat-e-Islami	6	18
Communist Party of Bangladesh	-	5
National Awami Party (Muzaffar)	-	5
Workers Party	-	1
Jatiyo Samajtantrik Party [Siraj]	-	1
Ganotantri Party	-	1
Islami Oikya Jote	-	1
National Democratic Party	-	1
Independents	-	3

Source: [http://www.virtualbangladesh.com/bd\\_polls\\_91.html](http://www.virtualbangladesh.com/bd_polls_91.html)

**Table 2: Results of Parliamentary Elections, June, 1996**

Party	percent of Votes	Number of Seats
Bangladesh Awami League	37.44	146
Bangladesh Nationalist Party	33.60	116
Jatiya Party	16.40	32
Jamat-E-Islami Bangladesh	8.61	3
Islami Oikya Jote	1.09	1
Jatiya Samaj Tantrik Dal (RAB)	0.23	1
Independent	1.06	1
Other Parties	1.67	0

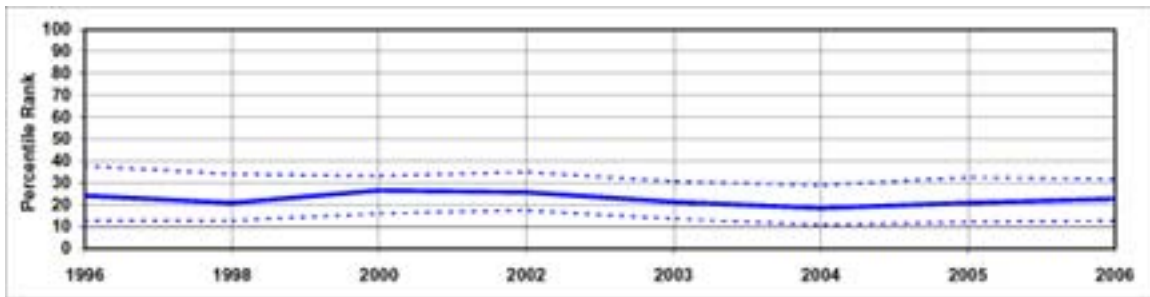
Source: *Bangladesh Parliamentary Elections, 12 June 1996, The Report of the Fair Election Monitoring Alliance (FEMA), 1996*

**Table 3: Results of Parliamentary Elections, October, 2001**

Party	percent of Votes	Number of Seats
Bangladesh Nationalist Party (BNP)	193	40.97
Bangladesh Awami League	62	40.13
Islami Jatiya Oikya Front	14	7.25
Jamaat-e-Islami Bangladesh	17	4.28
Independent	6	4.06
Bangladesh Jatiya Party (N-F)	4	1.12
Islami Oikya Jote	2	0.68
Krisak Sramik Janata League	1	0.47
Jatiya Party (Manju)	1	0.44

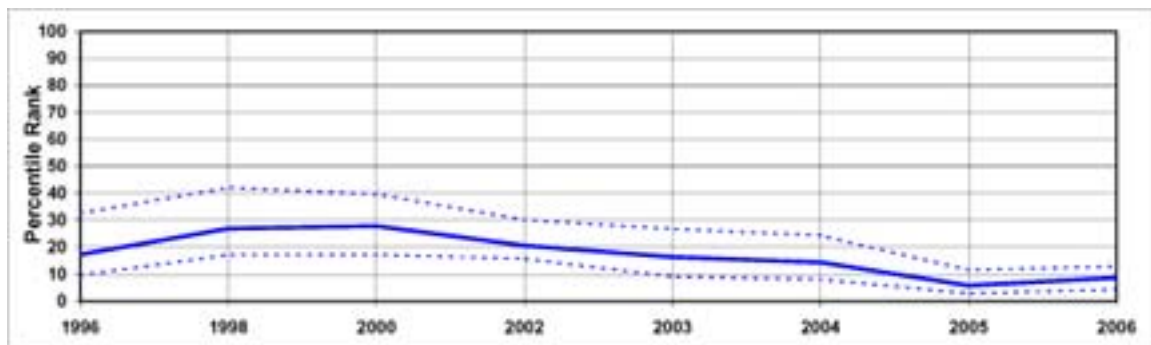
Source: The 8<sup>th</sup> National Assembly Elections, October 2001, A Report by ASHA

**Figure 1: Aggregate Indicator: Rule of Law**



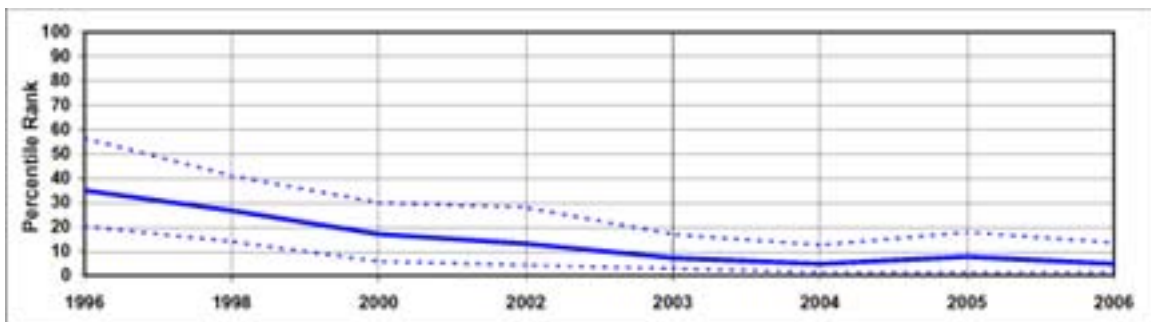
Source: <http://info.worldbank.org/governance/wgi2007/pdf/c20.pdf>

**Figure 2: Aggregate Indicator: Political Stability and Absence of Violence**



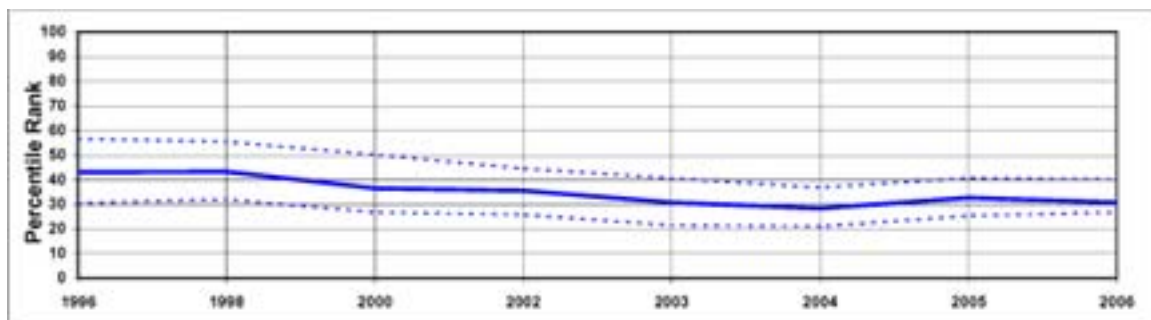
Source: <http://info.worldbank.org/governance/wgi2007/pdf/c20.pdf>

**Figure 3: Aggregate Indicator: Control of Corruption**



Source: <http://info.worldbank.org/governance/wgi2007/pdf/c20.pdf>

**Figure 4: Aggregate Indicator: Voice & Accountability**



Source: <http://info.worldbank.org/governance/wgi2007/pdf/c20.pdf>