

Functioning of Local Government in Bangladesh: Legal and Practical Spheres

Md. Abu Jakaria Nishat

Department of Economics and Enterprise Management
Moscow State University of Technology "STANKIN" (MSUT STANKIN)

Dmitry Popov

Associate Professor
Department of Economics and Enterprise Management
Moscow State University of Technology "STANKIN" (MSUT STANKIN)

Shanjay Kumar Mukharjee

Assistant Professor
Department of Public Administration and Governance Studies
Jatiya Kabi Kazi Nazrul Islam University, Trishal, Mymensingh, Bangladesh

Avakova Olga Victorovna

Ph.D. in Philosophy, Associate Professor
Department of Foreign Language
Moscow State University of Technology "STANKIN" (MSUT STANKIN)

Bikram Biswas

Lecturer, Department of Educational Administration
Noakhali Science and Technology University

ABSTRACT

Local government is a fundamental part of Government and undeniable part of development in all spheres of a country. While most of the constructions in the worlds pronounce various provisions of having local government, it's got more significance in recent time. Moreover, without overall participation of the population of a country, development of all sectors can't be achieved. Participation of grassroots people are encouraged and ensured by local institutions. It also provides the opportunities to the population oriented of making policies and implementing decision better for them which is ultimately a step forwarding sustainable development. Since the time of independence from Pakistan in 1971, Bangladesh has local government system in the constitution of the country. Various amendments regarding local government have been brought basically when regimes changed. Thus, till to date, the constitutional provisions have been far dream from the reality. In the very root level the local government established maintaining the constitutional provisions can extend the practice of democracy. Thus, following constitutional scheme and to enhance good governance at all levels of the society, it's ripe time for the concerned authority to be more conscious to establish local government.

Keywords: Decentralization, Local Government, Constitution, Effective participation, Bangladesh

INTRODUCTION

In the modern global arena People don't want the power to be vested in one hand. People in the modern world want to participate effectively, enjoy certain rights, and also demand their wishes to be fulfilled easily effectively. Thus, they elect the representative for central government to represent their desires properly. But it's hardly possible for the central government to provide all facilities to the grassroots people effectively due to some reasons. The theory of decentralization has been attractive to most of the world leaders already to overcome the circumstances.

Decentralization is the transfer of powers and factions to local institutions from central one literally. So, in a specific region, the elected body which perform its duties on behalf of central government in accordance of laws is defined as local government.

Through the participation of local people to establish local government is a step of forwarding equal development and upholding fundamental rights of citizens. The concept enables the local people to think themselves as a significant part of government. Though the establishment of local government is a constitutional mandate of Bangladesh, the application of such provision accordingly is a far dream to the reality still to date.

OBJECTIVE OF THE STUDY

The objective of the research is to represent the real scenario of local government and discover its importance in the context of Bangladesh. It also shows some inconsistencies with the scheme of Bangladesh's constitution in establishing local government. It also analyze the problems regarding the same and to make possible suggestions for a strong local government.

RESEARCH METHODOLOGY

The research is based on primary and secondary sources of data. Primary data was collected through structural and semi-structural questionnaires and face-to-face interview. A set of 20 questionnaires was given to 65 selected persons involve local government ranging from upazella chairman to village police. The sources of secondary data were several, books, article published in national and international journals, research materials, the constitution of the People's Republic of Bangladesh, Laws, Newspapers and internet.

WHAT IS LOCAL GOVERNMENT?

In simple words, local government can be defined as an internal part of central government which is established through locally elected representatives to facilitate welfare activities delegated lawfully. It is building a bridge, connects local people with central government providing services and grants.

SIGNIFICANCE OF LOCAL GOVERNMENT

Local government establishes and spreads the democracy and democratic institutions to the lowest level of the society and ensures the development to the local and root levels. It's gradually set up to implement the state and development policies of central government. Thus, local government can ensure sustainable development all spheres of the society and improve the

quality of life. Resources can easily be allocated to local citizen from local institutions by strong and well democratic local government. In implementing policies or given opinion or raising voice against the policies and activities of central government, effectiveness and security can be observed in deferent governmental system is possible by an effective and strong local government system. Accountability, transparency, responsiveness, effectiveness and security can be observed in different governmental system by the way. Decentralization reflects various stages of progress in achieving good governance as outcome of decentralization due to several dimensions.

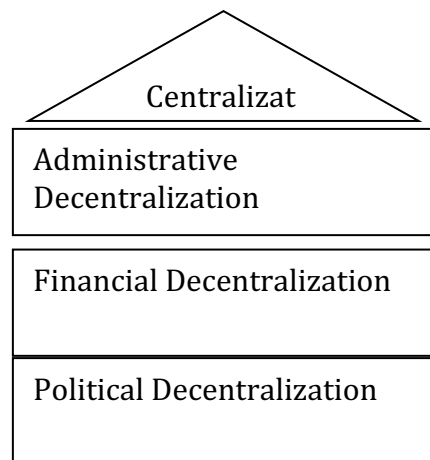


Figure 1: Decentralization of local government

The actual formula of decentralization of powers and functions from the highest authority to the lowest one can be observed in the above figure. Basically, local government is a process of political decentralization and it should be done in democratic way. Political decentralization can fully be effective only when the other 2 components of the above figure are added at a time. The objectives the local government can be enhanced and fulfilled by them. But it is a matter of fact that according to laws of the different countries in the world the functions and performance of local government can be different. But there are some factors such as ensuring potable water, sanitation, solid waste collection, health care and other major economic activities, are widely considered as the functions of local governments. Some indicators may be considered to verify the functions and accountability of local government. These include availability of budget and financial report of local government jurisdiction to councilors, the public and media existence of internal and external audits in accordance with public, media existence of internal and external auditing in accordance with require schedules, existence of a citizen complaint mechanism and use of input, response time for citizen complaint, increased level of monitoring of corruption, human rights violation, minimum wages, actual performance reported to public and local government measurement of citizen satisfaction.

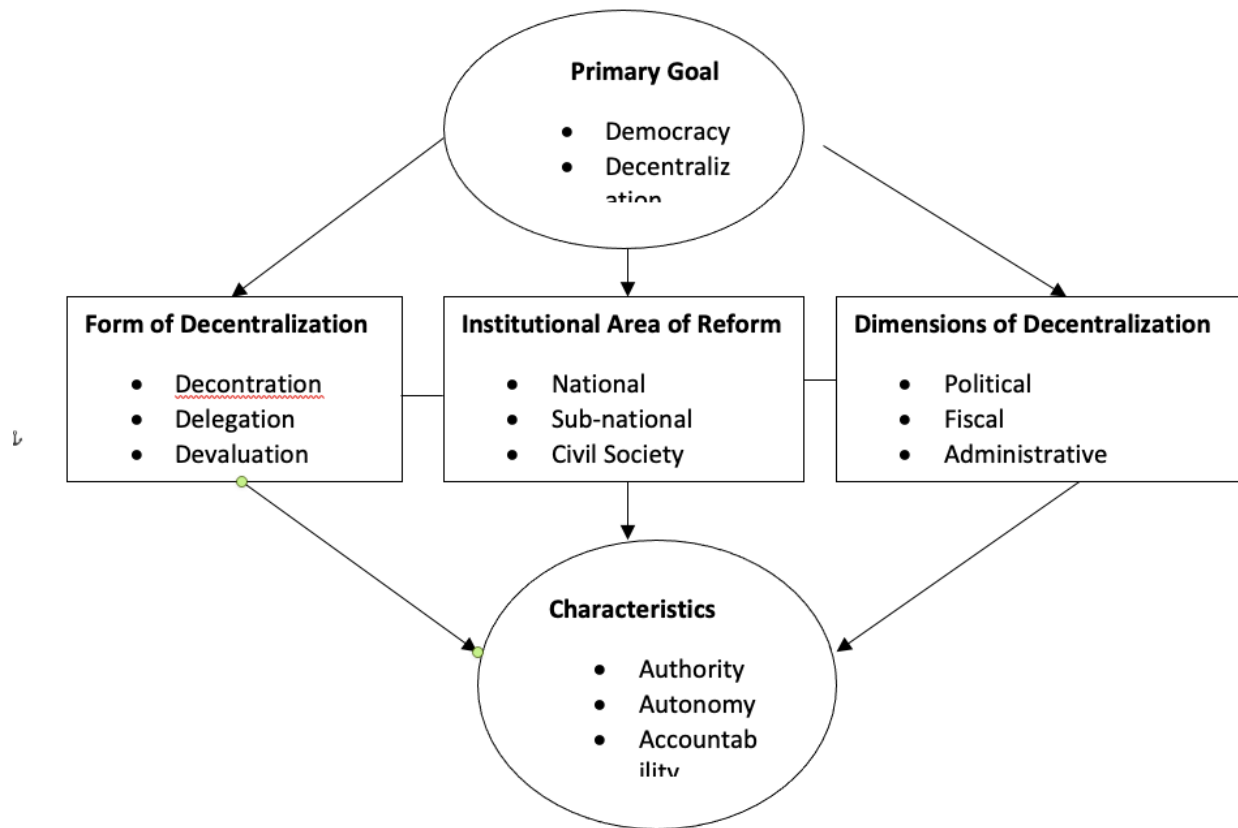


Figure: 2 (Strategic Frame Work of Decentralization) (USAID, 2009)

Among government decentralization's different forms started in the figure, devolution stands out as the best and it refers to the transfer of functions or decision making authority to legally incorporated and elected local government bodies (Siddiqui 2005).

Decentralization is basically done within the government office though it denotes the transfer of power to local institutions. Central Government exercise full control over office in the process. Delegation, on the other hand, is involved for the same with less control of central government. So, the obligation incorporated in our constitution regarding local government may only be the result of devolution [Constitution of the People's Republic of Bangladesh: Article 59 (1)]

EVOLUTION OF LOCAL GOVERNMENT IN BANGLADESH

Local government is one of the primitive institutions of Bangladesh. It is as old as the village of Bangladesh. In the Hindu ruling period, it came into being structurally first with headman and panchayet but the system was exercised based on custom and practices rather than any legal framework.

The post of headman was basically on the basis of hereditary privileges while the panchayet was constituted of villagers (Hasan 2000). To maintain public order was the most important of those Panchayets; they had to perform both policies as well as judicial duties (Siddique).

Regarding local government, the first legal instrument was village Chaukidari act 1870 which was promulgated by the British Government during the colonized era. Under that Act the district magistrate was authorized to nominate 5 members for panchayet. To maintain law and order, collect revenue and to appoint village police the District magistrate was given power. (Talukder 2009).

As the 2 major initiatives for the establishment and development of local government, the Bengal Local Self-Government Act 1885 and Bengal Village Self-government Act 1919 were promulgated. So, local government in Bangladesh is not a new thought.

After the independence of Bangladesh in 1971, the constitution of Bangladesh included a strong mandate of establishing local government from the very first of its commencement. After the independence of Bangladesh, first president of the new born country took steps to introduce strong local government. Subsequently, local government was established in District, Thana (Subdistrict) as well as Union level by the new order 7 of 1972 of the president.

The Local Government of Bangladesh was categorized into Zilla Board, Thana Development Committee and Union Panchayet (Khan 2011). In short order, the Union Panchayet was converted into Union Parishad by a presidential order. Union Parishad was divided into 3 words and got a new shape. In 1973 the 1st Union Parishad Election was held consisting a Chairman, a Vice-chairman and 3 members for each word. It was the first initiatives to implement the constitutional provision and ensure the public participation eventually. The provisions of local government in the constitution were absent from 1975 to 1991. People of Bangladesh observed 2 undemocratic martial laws between 1975 and 1990. Those governments were unconstitutionally formed. The chief martial law administrators of both governments stepped a lot to establish local government. But it is a matter of fact that all initiatives consisting the same were not taken to fulfill the constitutional mandates rather it was basically to make a close relation with people validate their position as the head of the government. During the period, no initiatives were also taken to restore the provision of local government in the constitution.

However, democratic government through national election came back again in 1991. In 1991 the new elected government made the Local Government Review commission (Siddique 2005). As local government Union Parishad Act was amended in her regime (Amendment) Act, 1993. Union Parishad was divided into 9 words under that amendment. With an elected chairman and 9 members a Union Parishad is composed by the voters of concerned Union and wards representative, and 2 women members elected by parishad's chairman and members.

Existing Scenario of Local Government Structure in Bangladesh:

Local government system of Bangladesh can be categorized distinctly for rural and urban areas. There are now 3 tiers of Local Government in rural area are: Zilla Parishad; Upazilla Parishad; and Union Parishad. There are 2 tiers of Local Government in urban area are: City Corporation; and Paurashava. Local Government is presently conducted by the various laws and acts of Bangladesh including Zilla Parishad Act 2000, Upazilla Parishad Act 1998, Local Government (Union Parishad) Act 2009, and Local Government (Paurashava) Act 2009 for operating all stages of Government of Local Government.

Table 1: Present Structure of Local Government in Rural Areas

Level	Unit	Quantity	Name	Headed by	Election Method
Upper most tier	District	64	Zilla Parishad	Elected Chairman	Indirect Election
Central Point	Upazila	495	Upazilla Parishad	Elected Chairman	Direct Election
Lower tier	Union	4,562	Union Parishad	Elected Chairman	Direct Election

Table 2: Present Structure of Local Government in Urban Areas

Level	Unit	Quantity	Name	Headed by	Election Method
Mega City	City Corporation	12	City Corporation	Mayor	Direct Election
Small City	Paurashava	410	Paurashava	Chairman	Direct Election

Zilla Parishad is consists of a chairman, 15 members and 5 women members from the reserved sets according to section 4 read with section 17 of the Zilla Parishad Act 2000. The Chairman and the members of the Zilla Parishad shall be elected by the vote of the representative of other Local Government institutions, for example, Mayor and Councilors of City Corporation, Chairman of Upazilla Parishad, Mayor and Councilor of Paurashava, Chairman and members of Union Parishad though the election of Zilla Parishad has not held yet. To conduct Zilla Parishad the Government appointed 61 administrators since 2011. Upazila Parishad is the next tier of Zilla Parishad. Upazilla Parishad constitutes of a Chairman and 2 vice-chairman including a women. Chairmans of all Union Parishads under the concerned of Upazila. Mayor of Paurashava reserve sets for women too. Reserved sets depend on the quantity of Union Parishad or Paurashava. The lowest level of the Local Government is the Union parishad which is divided into 9 wards. Union Parishad, according to section 10 of the Union Parishad Act, 2009, is consisted of a chairman and 12 members, of whom 9 members are from 9 wards and 3 female members from reserved seats. According to the City Corporation Act 2009, a city corporation in a mega city area consists of a mayor and councilors. Under section 5 of the City Corporation Act 2009, the member of the councilors will be determined by the government with gazette notification and 1/3 of the seats will be reserved for women. Finally, Paurashava of small city consists of a mayor, a councilor from each ward; 1/3 of sets of the councilors will be reserved for woman according to section 6 of the Paurashava Act 2009.

CONSTITUTIONAL OBLIGATION AND PRACTICE OF LOCAL GOVERNMENT

From the time of the commencement of the local government of Bangladesh the constitution of the country holds various provisions. These factors have made the constitution of Bangladesh since no other constitution of the world holds such provision as like it (Kudrat E Elahi Panir vs Bangladesh 1992). Any law inconsistent with the constitution of Bangladesh shall be void as the constitution is the supreme law of the country. According to article 7 of the constitution of Bangladesh, the constitution is the solemn expression of the will of the people, the supreme law of the Republic. This provision secures the movement of local government. Effective participation through elected representative is one of the fundamental principles of state policy of the constitution of the People's Republic of Bangladesh. The People's Republic of Bangladesh

shall be democratic in which fundamental human rights and freedoms and respect for the dignity and worth of the human person shall be guaranteed, and in which effective participation by the people through their elected representatives in administration at all levels shall be ensured under article 11 of the constitution. This provision requires the local government to be existence in Bangladesh. Thus, it can be stated that democracy, fundamental rights and the local government are correlated and interconnected. But it is a matter of fact that article 11 is a part of fundamental principles of state of the constitution of the People's Republic of Bangladesh which is judicially unenforceable. In making laws this provision has been found in the constitution as the guideline for legislatures. It will also be used in interpreting constitution and other laws, under article 8(2). Article 11 plays a vital role to ensure effective participation through local government in these contexts. On the other hand, to establish the local government, article 59 and 60 of the constitution directly impose obligation. It is an important matter of fact that declaration of an area as an admission unit is an important requirement to establish any tire of local government. It will have to make a declaration before constituting any tire of local government though government is free regarding the matter. Administrative unit, under article 152(1), means a district or other designated by law for the purposes of article 59. In article 59(2), the functions of the local government are elaborately discussed. These functions, determined by the act of parliament, cover broad administrative areas including administration and the work of public office, the maintenance of public order, the preparation and implementation of plans relating to public services as well as economic development. Under article 60 of the constitution of Peoples' Republic of Bangladesh, local government bodies are given some powers, such as imposing taxes for local purposes, preparing their own budget as well as maintain funds. Relating to the local government, the constitution has been given absolute power to make any law. But the powera are required to exercise the constitutional mandate. As containing unconstitutional provision, the Gram Sarkar was declared void by the Supreme Court in 2003 (Blast case:2008). Upazila Parishad, a tire of local government, was established in 1982 was abolished in 1991. Though it was challenged in the Supreme Court, a historical judgment was given by the Supreme Court considering the matter that it was not entirely local government institution. Many provisions were inconsistence with the main goal of local government. All of these refer the supremacy of the constitution. Moreover, to conduct the Zilla Parishad, 61 administrators were appointed in 2011 under article 82(1) of Zilla Parishad Act 2009. To act as an administrator in any tire of local government, no provision is found in the constitution.

Finally, it is to be noted that government is not bound to establish a tire of local government. It must be according to the Constitutional mandate if parliament makes any law for the purpose otherwise it will be treated as colorable legislation.

Recommendation for a Strong Local Government in Bangladesh:

- To make any law concerning local government provision provided in the fundamental principles of state policy, the constitution of Bangladesh should be guideline.
- The Article 59 and 60 of the constitution of Bangladesh which are directly connected with the local government should be kept in mind while making laws to establish local government.
- All bureaucratic institutions to control over the local government should be eliminated for speed and effective works.

- To strength local government institutes to get real benefit from it, effective laws should be legislated.
- To make a strong local government system not only administrative decentralization but also financial devolution is needed.
- To act independently local government institutions should be given opportunities.
- For a strong and effective local government the local government' election should be free from central government's influence.
- The local representatives' administrative performance should be given preference rather than political identities.
- Cooperation and coordination between central and local governments are needed to implement the state policies.
- All personnel of local government institutes should have knowledge and should be aware of their functions according to laws.
- Provision relating to income of local government should be effectively designed
- According to the concerned laws, election of different tiers of local government should be arranged on time.
- Political pressure to local government should be eliminated.
- In making local government autonomous body meaningful, initiatives should be taken effectively.

Accountability and audit proceeding of local government institutions should be kept free from corruption as well as modern technology should be introduced all over the country to encourage local government in Bangladesh.

CONCLUSION

In Bangladesh Administrative decentralization is one of the most flourish democracies. Moreover, in Bangladesh good governance can be ensured by the local government. On the basis of necessity of grass root people, various policies, activities and functions are taken and performed here by the local government. Thus, sustainable development can easily be ensured in all spheres by the local government. To connect the central government with local people, local government through decentralization process can play a significant role. So, to establish a strong and effective local government in all administrative stages of government, it is our expectation that the government shall take initiatives to fulfill the constructional mandate.

References

- Hasan, Sadik. Local Government at Village Level: A Study of Gram Parishad Act, 1997 and Gram Sarkar Act, 2003, The Chittagong University Journal of Law, Vol. V, 2000, pp. 123-145.
- Henry, C C. Barnett, P.Minis. and VanSant, Jerry. "Democratic Decentralization" (1997).
- Research Triangle Institute. Available at www.rti.org/pubs/Democr_Decen.PDF, Accessed on 20 November, 2012.
- The Independent, The Daily Newspaper, "Govt. appoints 61 Zila Parishad administrators", 16 December, 2011, Available at <http://www.theindependentbd.com/paper-edition/frontpage/129>, Accessed on 20 September, 2012.
- Islam, Mahmudul. Constitutional Law of Bangladesh, "The Executive", Dhaka, Mullick Brothers, 2003, p-334.
- Khan, Mohammad Mohabbat. Local Government in Bangladesh: Some Contemporary Issue and Practices, "Evolution of Local Government Structure in Bangladesh", Dhaka: A H Publishing House, 2011, p-11.
- Siddiqui, Kamal. (ed). Local Government in Bangladesh, "Local Government in Bangladesh: A Short Introduction", Dhaka: The University Press Limited, 2005, pp-4, 32, 66-95.
- Talukdar, M R Islam. Rural Local Government In Bangladesh, "Conceptual Framework", Dhaka: Osder Publications, 2009, pp-6-7
- USAID, ARD Inc., Democratic Decentralization Strategic Assessment: Indonesia. Washington, D.C. US Agency for International Development", 2009, Available at http://pdf.usaid.gov/pdf_docs/PNADQ231.pdf. Accessed on 20 September, 2012

List of Laws:

The Constitution of People's Republic of Bangladesh, 1972 Local Government (Union Parishad) Act, 2009 Local Government (City Corporation) Act, 2009 Local Government (Paurashava) Act, 2009 Upazila Parishad Act, 1998 (24 of 1998) Zilla Parishad Act, 2000

List of Cases:

BLAST vs Bangladesh, 60 DLR (2008) 234. BLAST and others vs. Bangladesh and others ['Gram Parishad Ain, 1997' Case]. Kudrat E Elahi Panir vs Bangladesh, 44 DLR (AD) (1992).