
SEPARATION OF POWER IN BANGLADESH: THE ROLE OF PUBLIC ADMINISTRATION

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ABSTRACT

This paper talks about the nature and extent of public administration in connection to legal administrative accountability in order to reestablish accountability within our political/administrative system. This paper will try to address what the government of Bangladesh has failed to address, which are the topics that must concentrate on enhancing the legal accountability of public administrators through the concept of separation of powers.

INTRODUCTION

The Constitution states that there should be Separation of Powers. Legislation, Judicial and Executive powers must all be autonomous and free from any dominant influence amongst them selves. The constitution must delegate to Administrative bodies due to expertise, time, and that they can not act quickly at the same time must be held accountable. The differences between the private sector and the public sector concerning authority is that; in the private sector one may do what they wish until they run into laws prohibiting certain behavior; whereas in the public sector, unless the law specifically identifies and allows action, it cannot be done.

The Legislature may defer to administration for two types of authority:

1. Quasi-legislative ability to engage in rule making. Legislative body does not have the expertise to perform specific legislative actions. Let administration fill in the blanks in legislation. There for when rules are promulgated they will have the same force as if they are a statute enacted by congress.

2. Quasi-judiciary. Administration acts as a judge, enforcing certain rules under their expertise. When agencies go out and enforce the rules it deals with specific individuals and cases.

CIVIL SERVICE TILL 1971

During when Bangladesh (East Pakistan) was a part of Pakistan the civil service used to follow the British tradition. Members of a highly elitist and strictly profession oriented higher civil service “the Civil Service of Pakistan (CSP)” controlled key policy ranks and took on the task of making all the vital decisions. (Maniruzzaman, T. 1981)

There were several other central services like police, foreign, taxation, customs, etc, apart from CSP. The CSP quota has not been properly distributed between Bengalis (East Pakistan) and Punjabis, as most of the elite people and civil service were from West Pakistan, a biasness was created and it always helped the West Pakistan. This was one of the reasons East Pakistan (Now Bangladesh) had to disaffiliate from West Pakistan. (Sayeed, 1968; Khan and Zafarullah, 1982)

When Bangladesh separated from Pakistan, the civil service system that the country inherited from British, then India and ultimately from Pakistan had all the characteristic

of a modern bureaucracy. The civil servants were well-qualified, sufficiently trained, quite handsomely paid, and had the skills necessary to manage a war destroyed country. (Zafurllah, Khan and Rahman, 1997)

Bangladesh began its nationhood with parliamentary democracy. But authoritarian inclinations of the first regime routed democratic values. This set the scene for a military takeover, which lasted for over fifteen years. Authoritarian rule came to an end in 1990 followed by a process of democratization, which is still in progress (Khan and Hossain, 1996)

Economically a developing country with a per capita income of US\$220, state intervention in all area of economic and social life has dominated over the years. The growth of the private sector has been slow-moving but current programs of economic liberalization are geared to endorse private initiatives in numerous sectors of the economy, previously the monopoly of the government. (Zafurllah, Khan and Rahman, 1997)

ORGANIZATION

Bangladesh Civil Service (BCS)

Role and Power

After independence, heavy burden was felt on political leadership and civil servants and to rebuild a nation, which was heavily damaged, by a war. The political leadership had to depend upon the civil servants to undertake the huge task of nation building. So the role of the civil servants in the administration of the country was again pointed out. The success of government policies is the duty of the Bangladesh Civil Service, a group of trained

administrators who form the nation's most powerful group of civilians (Civil Servant). (Khan,1991)

Style

After independence, an officer in the civil service has been one of the most privileged careers in the country. The benefits for senior civil servants are government housing at a standard rate of 7.5 percent of base salary, transportation, medical care, and a pension and the prestige and influence that come with an administrative career. (Country Studies, 2005)

Power system

The administration of public services is still guided within a combined structure. The Ministry of Establishment (ME) work as the central personnel bureau of the Bangladesh government. Because of this reason the political effect is always there, meaning those who should be appointed to this Ministry, usually the pro- government civil service officers, get the appointments (patronized appointments). And when the opposition wins the elections, these officers were posted in other ministries even some might get forced retirement. The ME is under the direct control of the Prime Minister. The highest-ranking career civil servant of the Ministry, the secretary, is responsible to the Prime Minister. (Khan,1991) In the present system of power, the Prime minister holds the power and authority of the chief executive of the government. The President has the status and privileges of the head of state. (Europa, 2005)

The responsibilities of ME are to establish the broad policies, principles, rules and regulations for the management of public services. ME is also responsible for all preliminary recruitment of the whole 30 cadre and for

disciplinary action and welfare in respect to all employees and officers in the secretariat and outside. (Khan,1991)

Presently, there has been a recent development to strengthen the Prime Minister's Secretariat (PS) at the cost of the ME. The secretary of the PS, known as the Principal Secretary to the Prime Minister is one of the senior most officers of the Bangladesh Civil Service (BCS) cadre. Many of the senior officers of the PS belong to same cadre. So, it is basically a conflict within a particular cadre. It is also expected that the PS will be more strengthened in course of time, as all crucial decisions must be approved by the Prime Minister. So the senior officers of the PS have figured that it is within their power to monitor and coordinate all-important dealings carry out and decision approved by the Prime Minister. (Khan,1991)

THE PUBLIC SERVICE COMMISSION (PSC)

The public Service Commission (PSC) in Bangladesh is a legitimate organization and their responsibility consists of conducting tests and examinations for the selecting of the cadre civil servants and other categories of public servants. But, actuality, the PSC has become a simply advisory body. The government has intentionally overlooked the advice and suggestions of the PSC. The disobedience of the PSC's orders can also be recognized to the main position of the ME in the public service system. It may be mentioned that, very often, the ME tried unjustifiably to influence and obstruct the activities of the PSC. (Khan and Zafurallh, 1984)

The PSC's position has been more weakened by an acute shortage of qualified personnel, and dependence on adequate space and buildings. (Zafarullah and Khan, 1983). Also the members of the PSC have been appointed mostly

on political grounds. As consequences the majority of the members, lack both the background and the ability to perform their assigned tasks satisfactorily. Lately, the government has decided to make the PSC a division of the PS under the direct control of the Prime Minister. This action may facilitate the PSC to remain outside the control of the ME, but to what extent it will be able to perform its designated functions with out interference from the PS remains to be seen (Khan, 1991). Most of the policy making is done by the ME; if all the authority lies with PSC, then the ME cannot perform the policy making plans in their own way and this would be most beneficial for the current government.

DILEMMA OF ADMINISTRATION

Bangladesh is still not thriving in institutionalizing an administrative structure, which fits to the needs and goal of the people of an independent country. The civil service still continues to be influenced by colonial traditions and practices of the past. Therefore an elitist, and top-heavy administrative system is in active in Bangladesh. (Khan,1989)

THE POLITICAL SYSTEM

Law, Judiciary, Administration, Political office and the People

Former President Sheikh Muzib (1971-1974), Lt. Gen Ziaur Rahman (R) (1975-1981) and Lt. Gen. Ershad (R) (1982-1990) have all maneuvered the political system to hold on to power. Elections have been manipulated. People s confidence in the election system has been destroyed. Individuals have become more important than the organization they represent, resulting in lack of faith

political institution, political parties, the legislature, and the judiciary. The political system has become the shadow of one man so long as he is in power. The executive member of the government keeps on playing the most dominant role compared with other governing body and the judiciary. (Khan and Zafarullah, 1990)

The political system has a major impact on the civil service. As a result civil servants have lost faith and condolence in the politicians. Parliamentary control over the activities of the civil servants is missing. But the chief executive, who happens to be the Prime Minister, because of her widespread powers has been in a position to control the activities of the senior civil servants. But, in reality, chief executive has rarely used her powers to regulate, coordinate and systematically control the activities of top-level civil servants. Instead their senior officers have mostly controlled the civil servants. (Khan, 1991)

The senior civil servants closeness to the chief executive is what caused the bypass ministries to make high-level policy decisions. The other reason is that most of the ministers are not very educated and they are not acquainted with the civil systems and the rules and regulations, and the Prime Minister is aware of it. Therefore the ministers do not feel bad about it; because they need fame and money, not work. This explanation does not apply for all the ministers.

Both Presidents Zia and Ershad have awarded many senior civil servants with membership to the cabinet. Most of these civil servants turned into politicians who used to hate political control of the civil service. (Khan, 1991) The reason for the animosity is that they cannot show that they are interested in politics; it was taught in their entry exam that they couldn't use political methods while they are in the service. It is the ethical issues that they work with.

Bangladesh Army now working indirectly to help the current Government. Even the Chief of Army staff, is selected not by merit or seniority, it is now selected by political influence, whether the nominated chief of Army can serve for the present government, no matter if it is lawful or not.

One of the conditions needed for blocking corruption under democracy is that legislators must be free and accountable so that they are not individually and jointly beholden to vested wealthy interest lobby. (Muzzafer, nd)

This brings forward the topic of public accountability and public scrutiny as a remedy, which are tough to recognize on the part of elected or non-elected officials in an autocratic or in a democratic system. Restrictions of political power presume separation of Judiciary from executive and legislative division of the government. (Muzzafer, nd)

In addition countries that have devoted themselves to pluralistic democracy (competitive political system) they have not establish laws to administer these markets and judges have very modest experience in reconciling the problems occurring out of the deals in these markets. Therefore a corrupt and politically dependent judiciary can facilitate corrupt practices in these areas (Buscaglia and Dokalias 1996). Bangladesh suffers from the problems of ancient laws, jungle of laws and poorly equipped judiciary including the bar creating uncertainty and dire fit between law and reality (Linarelli 1996). It also promotes attitudes for getting around the court leading to the acceptance of additional legal measures. (Dasgupta and Mookherjee 1998)

The objective of reform affecting operation of private markets requires well drafted, comparatively clear

and commonly available dependable set of laws to decrease the opportunities for corruption. (Paris Rodriques, 1995) But even with clearly drafted laws, lack of confidence in judiciary as a result of delays and backlogs create situations for pay off to accelerate decisions even when judges themselves are not corrupted. (Buscaglia, 1995) Thus judicial reform to improve professionalism, pay, working conditions, creation of specialized courts and better case management techniques are considered necessary. However they are not sufficient unless pricing of court services are such as to keep the regular litigants out of the system while the disadvantaged and poor are not denied access to justice. Regular check ups on disposal of cases, incentive for high-quality judgment and positive costs for 'distortive' legal practice by lawyers and litigants are considered supportive (Lawyers Committee, 1996). But the courts cannot monitor honesty of the other divisions of the government. The major procurement deals or privatization instructions may not be confronted under the present system if the motions of rules and regulations have been obeyed on paper. For deals such as these to be confronted, one not only calls for laws but also independent pro-active judiciary that command shows respect for its competence and ethics. But when private business acts like a group and plan to make deals with public officials for procurement contracts, concessions and privatization then an honest judiciary become helpless and powerless in the face of corruption-friendly and administration environment. The disposal of cases in Bangladesh indicates a universal problem that is unable to verify additional- legal acts. (Muzzafer, nd)

CORRUPTION

Bangladesh holds the top place in public sector in the world when it comes to corruption. A review by the business funded lobby group Transparency International

(TI) released its annual rankings of corruption, which says that the other nine most corrupt nations were: Nigeria, Uganda, Indonesia, Kenya, Cameroon, Bolivia, Azerbaijan, the Ukraine, and Tanzania. As Transparency International chairman Peter Eigen said in a press release, it is "*essential that corrupt governments do not steal from their own people. This is now an urgent priority if lives are to be saved.*" (BBC, 2002) Even in 2005, the issue is still that Bangladesh continues to be the number one corrupted country in the world. "According to the annual survey by the Berlin-based organization Transparency International, the world's least corrupt country is seen as being Iceland and the countries perceived as most corrupt are Bangladesh and Chad." (In fop lease, 2005)

Corruption takes place mainly because of political reasons. If the political process becomes corrupt, then bureaucratic corruption automatically boosts as natural fallout. Recently too much political influence is observed in the current social context of Bangladesh. The administrative officials rely on political groups for advancing their own interests. Corruption spreads as an outcome. Many among the people's representatives are lacking of adequate knowledge about government rules, regulations and policy. The civil servants who are at the top take advantage of this ignorance of elected representatives. (TI Bangladesh, 2004)

Corruption has been institutionalized in the civil service. Former Presidents Muzib, Zia and Ershad, including the present government and the recent past government had manipulated and corrupted the civil service for their own benefits. BCS was not corrupted previously. Now the corruption has surrounded the civil servants. The level of corruption has swallowed up the civil servants. The level of corruption depends on how

influential the civil servants position is. The civil servants have become habituated to living a life style, which is far beyond their legal/ real income. The civil service has been corrupted with incompetence, noncompliance, misbehavior and exploitation of official positions. (Zafarullah, 1987)

THE ROLE OF THE ARMY

Bangladesh Army is currently helping the Government in various ways, especially of administratively. The Bangladesh Army serving on Disaster management, rehabilitation, in aid to civil administration, military collegiate school. (Bangladesh Army, 2005)

Retired Army officers eventually becoming civil administration have been a frequent scenario since President Zia's time, who was previously former chief of Army staff. Many key posts in the civil service including the foreign service have been given to either serving or retired military officers. These introduction has significantly increased during the eight year reign of President Ershad, who was also previously a former Chief of Army staff. This practice has opened up significant new career opportunities for military officers. But at the same time this has badly affected the career prospects and consequently confidence of cadre civil servants. Recently these trends are not as effective as they were in the past. The government is now giving priority to the civil service and the present Prime Minister is not formerly from the Army (though her husband was the former Chief of Army staff and later became President) she is surrounded by all her political colleagues.

Recently the Bangladesh Army has gone far away from the political area, because of the shift in power to civil government 14 years ago, and thus the civil service role is

increasing. The people of Bangladesh are exasperated with the Army dictatorship and they have become more comfortable with the civil service. Previously the Army has had a major role in the political arena; the last two presidents were former Chiefs of the Bangladesh Army.

WHY THERE IS NO “SEPARATION OF POWERS” BETWEEN EXECUTIVE AND LEGISLATIVE AUTHORITY

There is no „separation of power in the system between executive and legislative authority. The legislature – the parliament- passes law. The prime minister and cabinet who are chosen by the majority in parliament and who themselves are members of parliament (MPs) governs the country. This country is governed by the prime minister, cabinet, and Members of Parliament (MPs) which are elected by the majority in parliament. The government can pass and approve laws and modify policies because of their majority in parliament. Election is the main way of preventing abuse of power, which permits voters to replace the majority party with an opposition party.

THE CONCEPT OF AN “A POLITICAL AND IMPARTIAL CIVIL SERVICE” DISTINCT FROM “THE GOVERNMENT”

The implementation of a specific design policy should depend on knowledgeable experts who, being impartial civil servants, are devoted to the state and the government. The government's role is to decide upon a goal and the amount of money they can grant, while the civil servants role is to show the best possible means to reach the goal. This way there can be a limit to who has power over the other.

The following policy research that may be applicable in an administrative setting in Bangladesh civil service:

1. Corruption has been institutionalized in the civil service. To find a way to stop Corruptions have to be removed from the civil service. There are many ways we can take out the corruption, though it is a long process but the eliminating of corruption process should start immediately. How we can remove the corruption?
 - a. Initial way to reduce corruption is to provide more benefits, namely, financial benefits, educational benefits for the civil servants dependents, housing, and various domestic services. It will also raise the demand of the civil service to the young students.
 - b. Second, Bangladesh is a poor country; in fact one of the poorest countries in the world, poverty is the main reason for this corruption. So this country needs more aid from the rich countries and the UN. But when the government will receive the aid, it should be thoroughly watched periodically by a higher power body, comprised by all the political parties and review the process how the work is going on.
2. We have to put more religious belief into the Civil Service. It will make the moral and ethical issues stronger;
 - a. The moral and ethical issues must be sustained, other wise the nation will soon collapse into anarchy.

3. The political play has a major impact on the civil service. As a result civil servants have lost faith and condolence in the politicians.
 - a. The BCS has to be out of political pressure.
4. The power still lies in the hand of the top-level secretaries and high businessmen who are very close to the prime minister and it is very much active in Bangladesh.
 - a. The power should be transparent, it should not be in the hand of the high level secretaries rather it should distributed to the all rank of the officers so that nobody can try to do any kind of manipulations.
5. For the senior civil servants, the chain of command should be maintained, meaning top-level secretaries should not bypass ministries in making high-level policy decisions.
 - a. The reason of bypassing is that, most of the ministers are not very educated and they are not acquainted with the civil systems and the rules and regulations. So the political party should not elect the Minister by seeing how much money they have given to the party but also see whether they are educated or not.

6. The retired secretaries should not join the parties just after they are retired, they should at least wait for a few years,
 - a. Because the secretaries still have the silent authority towards the civil service, which might deviate the policy.
7. Bangladesh Army should not involve in the political matters and government policy.
 - a. If they do then the democracy will again go in vein and the international donors will again stop giving money to this country.
8. The civil service runs in an active and dynamic atmosphere but it is not always open for change like flexibility, innovativeness, the ability to solve problems, an outward-looking attitude and a keen political awareness.
 - a. It should have broad perceptions.
9. Bangladesh civil service is still not been successful in developing and institutionalizing an administrative system.
 - a. BCS should have more optimistic view in connection to developing institutionalizing an administrative system.
10. The public Service Commission (PSC) should be active.
 - a. The ME should not have authority as the central personnel bureau and organizational

reform of the Bangladesh government. The PSC should be rebuilt with new active and skilled professional people. So the patronized appointments will be stopped.

11. Currently 20 percent chosen are women in BCS.
 - a. It should be increased at least 50 percent. Women are more methodically sound and loyal to their profession than Men. (Particularly in a country like Bangladesh)
12. Former Army personnel absorbed in higher civil service positions, even the rank of the Secretary (highest rank in the civil service).
 - a. It should not be appropriate, as they did not go through the BCS process of succession.
13. The civil service runs in an active and dynamic atmosphere but it is not always open for change like for flexibility, innovativeness, the ability to solve problems, an outward-looking attitude and a keen political awareness.

The reasons are given bellow:

(a) The civil service still continues to be influenced by colonial traditions and practices of the past. As a result the power still lies in the hands of the top level secretaries and high businessmen who are very close to the prime minister and who are very active in Bangladesh.

(b) The senior civil servants, because of their closeness to the chief executive, can bypass

ministries in making high-level policy decisions. The other reason is that most of the ministers are not very educated and they are not acquainted with the civil systems and the rules and regulations, and the Prime Minister is aware of this discrepancy.

14. Bangladesh is still not been successful in developing and institutionalizing an administrative system.

The reasons are given below:

- (a) The civil service as a whole still continues to be influenced by imperial traditions and practices of the past.
- (b) Most of the administrative policy making is done by the Ministry of Establishment, ME; and all the authority lies with this Ministry, instead of public service commission, PSC.
- (c) The public Service Commission (PSC) in Bangladesh is a legitimate organization and their responsibility is conducting tests and examinations for the selecting of the cadre civil servants and other categories of public servants and developing institutionalization. But, actually, the PSC has become a simply advisory body.
- (d) The government has intentionally overlooked the advice and suggestions of the PSC. The disobedience of the PSC's orders can also be recognized to

the main position of the ME in the public service system.

- (e) It may be mentioned that, very often, the ME tried unjustifiably to influence and obstruct the activities of the PSC. The PSC's position has been weakened by an acute shortage of qualified personnel, and dependence on adequate space and buildings.
- (f) Most of the members of PSC have been appointed on political ground. As consequences the majority of the members, lack both the background and the ability to perform their assigned tasks satisfactorily.
- (g) Lately, the government has decided to make the PSC a division of the PS under the direct control of the Prime Minister. This action may facilitate the PSC to remain outside the control of the ME but to what extent it will be able to perform its designated functions without interference from the PS remains to be seen.
- (h) Most of the policy making is done by the ME; if all the authority lies with PSC, then the ME cannot perform the policy making plans in their own way, meaning the way in which the present government would most benefit.

- (i) The political effect is always there. Those who should be appointed to the Ministry of Establishment, are usually the pro- government civil service officers, they get the appointments (patronized appointments).

15. Most of the ambitious top civil servants also become a member of a political party.

The reasons are given below:

- (a) Most of the civil servants are conversant about the bureaucratic system, because of their long association with the service and they may be familiar with all the loopholes.
- (b) If they join in government parties they can utilize the supreme power because they do not need any assistance from the civil service.
- (c) The retired civil servants are very much demanded by the political parties.
- (d) If they join the political parties they will receive lots of financial gain.
- (e) There are no other challenging options to do after retirement, because of the less-job-opportunities.

CONCLUSION

The general image of Civil servants

Van Braam (1957) of Netherlands made the following comments:

“Neither in our country nor elsewhere has civil servants ever been popular. They are considered: a bit lazy, not completely unreliable, 'bureaucratic', inflexible and too powerful. Stressing the negative aspects seems to facilitate the chances of the adoption of reform proposals. These stereotypes more or less mirrors general opinion of the Dutch toward (their) civil servants seen as a group” .

We hope that justice, not power, can be supplant suppression. As Lincoln said in his greatest trial, “We, even we here, hold the power and bear the responsibility”. (Al Gore, 2004)

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