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## RECONSTRUCTING LAW AND DEMOCRACY FOR FUTURE BANGLADESH

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### **Abstract:**

Bangladesh was continuously questioned about ensuring democracy by the people and also by the world in the past. After 5th August 2024, initiatives are taken to change the constitution, involving questions about whether Bangladesh should rewrite or reform the constitution. However, the interim government has decided to reform the constitution recently. Also, they are taking suggestions from individuals via website. This study concentrates on how such changes should be incorporated. The objective is to ensure a sustainable democratic system for Bangladesh's future. The study involves different opinions, proposals, facts and surveys conducted by individuals to discover the best.

**Key-Words:** Constitution, Reform, Administration, Election, Parliament, Service, Democracy,

### **Chapter: 1**

#### **1.1 Methodology and Limitations of the Study:**

Simply by democracy, this study is not restricted to discussing within parliamentary democracy as usually most people think of democracy, but in every aspect where rule by the people is necessary, such as in the executive, judiciary, administration, as well as in the economy and human rights mechanisms. Also, the theme reserved scope for discussion of social democracy and direct democracy. This study will find out how democracy can be ensured in Bangladesh even through existing challenges and capacity, do Bangladesh needs and people of it wants constitutional changes or not; by qualitative and quantitative method, not only by scrutinizing relevant laws and practices, but also with the help of surveys on specified topics and targeted audiences, to achieve sustainability.

Democracy is a notoriously vague term and varies with practices worldwide. Considering the categories in which EIU measures democracy:

1. Electoral Process and Pluralism
2. Functioning of Government
3. Political Participation

#### 4. Political Culture

#### 5. Civil Liberties

Without following principles such as equality, freedom, fairness, a transparent system, democracy is a failure. Further, the existing democratic system raises questions for several reasons. One of them is that there is no actual person of a specific class of people, such as farmers' representative in parliament or administration or the economic sector. Democracy refers to majority rule, the dirty game of gaining collective support by immoral means and retention of the accumulated majority is problematic. In addition, the merit, education, capacity of individuals and representatives is a question in the path of effective democracy. The least developed economy, lower ethical values, and a massive population obstruct the establishment of democracy practically. There is also a question whether, for attaining democracy are we neglecting individual desires and rights or not. We are so obsessed with democracy, but is democracy really effective system for Bangladesh is another but relevant question. Negotiation among people for effective collectivism is just a waste of time or plays a vital role and has to be ascertained. Winston Churchill once quoted "No

one pretends that democracy is perfect or all-wise. Indeed, it has been said that democracy is the worst form of government except for all those other forms that have been tried from time to time.” The truth has to be determined by assessing Bangladesh. It is proved that present laws aren’t capable of ensuring democracy. As the law is known for a regulatory system of actions, by refocusing on and determining exact problems in papers and practices, initiative towards reform be taken, and efficient regulatory actions can be framed.

But for reasons of lack of enough time, resources and participations, this study isn’t complete, may not give solutions to all problems and as this is a topic involving broad scope and debates, further study is needed.

### **1.2 Reform or Rewrite:**

Reform may lead to declaring changes null and void as the existing government isn’t formally elected, parliament is dissolved, and any amendments are unconstitutional. A rewrite and a general vote to support the rewriting could be more effective.

## **Chapter 2**

### **2.1 New Commissions:**

Corruption, unfair elections, violations of human rights and lower practice of democracy emerged as great concern in Bangladesh. No matter how better system is introduced in a country corruption and lower ethical values destroys the good initiatives. Bangladesh ranked 149<sup>th</sup> out of 180 countries in corruption perception index where 72% people think government corruption is a big problem and 24% of public service users paid bribe in a year.<sup>49</sup> Bangladesh ranked 75<sup>th</sup> in democracy index conducted by EIU and categorized as hybrid regime.<sup>50</sup> Bangladesh scored 2 out of 10 where 10 indicates most fair

election.<sup>51</sup> Existing commissions has failed clearly to satisfy people of Bangladesh. This study proposes, with support of the survey, to establish and reestablish an independent Ombudsman, the Election Commission, the Anti-Corruption Commission, the Human rights commission, the Democracy protection commission, the Office of Comptroller and Auditor General. Ombudsperson, Election Commission, will hold the upper status over those. Officials will be appointed from the Cabinet, the Judiciary, law enforcement agencies, Services, Education and others with suitable character, profession and experience. The proposed commissions may have advisory body of independent eminent scholars or philosophers like USA, or like independent directors of corporates, but shouldn’t be appointed by officials of such commission.

### **2.2 New Laws:**

A law regulating political parties is mandatory. Political parties play the game of majority rule by gaining collective support through immoral means and retention of the accumulated majority. Members get their self-interest fulfilled while the party gets the parliament. Such culture has to be reformed through law and practice. Also, when parties have a huge number of members, they fail to control actions. Surveys suggest holding a conference in every local area divided by constituencies of parliament every 2 years. Votes can be counted collectively by particular classes, such as farmers, teachers, laborers, engineers, lawyers, students (who have reached the age of 18). Such a system will build engagement and trust between political leaders and laypeople. Each party shall also have published a constitution, violation of which will be a punishable offense. The number of elected party members may not exceed 100 in each territorial constituency. Members should be educated enough. Functions of political parties should be transparent and fair; peaceful competition is expected. The only one who wants

<sup>49</sup> Transparency International, 'Bangladesh' (Transparency International, 2024) <<https://www.transparency.org/en/countries/bangladesh>> accessed 4 November 2024.

<sup>50</sup> Star Digital Report, 'Democracy Index: Bangladesh Slips Two Notches' (*The Daily Star*, 15 February 2024) <<https://www.thedailystar.net/news/bangladesh/rights/news/democracy-index-bangladesh-slips-two-notches-3544671>> accessed 4 November 2024.

<sup>51</sup> Bertelsmann Transformation Index, 'Free and Fair Elections Score' (2024) [Dataset] processed by Our World in Data <<https://ourworldindata.org/grapher/free-fair-elections-bti>> accessed 18 November 2024.

good for the country's benefit in return for nothing is someone who is truly eligible for political service.

New laws for regulating proposed changes is mandate. A law for appointing commissioners for the Election Commission is required which is not in existence till now. Government interferes regarding Anti-Corruption Commission's actions under existing law<sup>52</sup> which needs a change. As no case can be filed under Anti-Corruption Act, 2004 without prior sanction<sup>53</sup>, if such isn't changed, Penal Code 1860 should contain severe provisions against different types of defined corruptions and should be of easy access under CRPC.

### **2.3 The ipso-facto system:**

This study suggest a mere demo illustration for purpose of achieving efficient structure and democracy as followed:

A lawyer, by votes of lawyers elected as representative in local government. He is also representative in local ministry office. The local ministry head and representative together discuss, conduct duties and take all decisions. Further, local ministry is accountable to such representative and such representative is to others of same profession in local area.

After assessing a lawyer's report from Anti-Corruption Commission, Human Rights Commission, and decision of local government representatives (subordinate to Democracy Protection Commission), if overall grading of an active professional who has at least 4 years of experience, is above 80%, top 20% of such 80% will be promoted ipso-facto. The reports shall be published separately through effective local media but within a limited period. Bangladesh Bureau of Statistics or other departments may volunteer for measuring and publishing overall grading under any provision of law. If Dhaka Bar have 32000 lawyers, we assume top 20% of such number have managed to achieve 80% overall grade. From 6400, through examination 1200 (1 for 17,734 people of Dhaka) will be judges in lower

courts and tribunals, other 5200 will be Supreme Court lawyer. They will be given choice to select a route based on their examination result. Increase in number of judges will ensure democracy as Bangladesh don't have effective judiciary and criticized for backlog all the time.

This concept is nothing but similar to HRM policy systems of grading for performance appraisal and career development.

After having additional 8 years of experience as judge/SC lawyer, 1 from each group will be selected for ACC office (local), 1 from each to HRC (local), 1 from each to DPC (local), will be appointed on based of best grading. Such appointment will be made by Ombudsman in consultation with High Court Division and local governments where such officer conducted his professional life. Provided they must be of at least 40 years old

Suppose 50 districts will have 10 commissioner in each and 14 districts will consist with 14 in each. After additional 8 years of experience, out of total 696 people, 250 having best grade will be promoted to ACC (central), and if possible, by national election. People should engage in such procedures as corruption is mostly one and only complain and concern of laypeople. Otherwise question will always remain, culture won't be established if they don't engage. Or if not possible, by president, to appoint commissioners in hierarchy of posts. Rest 446 must vacate their office, although they may get certificate or title of honor for their service which will be highly respectable in society. If suppose government offer quota to children of persons who vacated, as honor for their honesty and service, for a limited period, may result more useful than liberation quota for country.

From ACC (central), best will be promoted to office of Ombudsman and Election Commission by president with consultation of Appellate Division in cases of law background.

This way, from local to central, from root to peak, route is no-corruption, no human rights-violation, connection with people and through promotion and promotion only with experience.

<sup>52</sup> Anti-Corruption Commission Act 2004, sec 23(3), 36

<sup>53</sup> Anti-Corruption Commission Act 2004, sec 32

If mentioned system is introduced, a change in article 95, 98 and 115 will be needed where judges and offices of judicial service are appointed by president. Such will ensure separation of the judiciary from executive organ of states under article 22.

### **Chapter 3**

#### **3.1 The Republic:**

Display of the portrait of the Father of the Nation, Bangabandhu Sheikh Mujibur Rahman is mandated in certain offices.<sup>54</sup> Such practice leads to brainwashing, change of history, inappropriate advantage, unnecessary pride, less progress, and even dishonor. It affects our nationalism greatly. Bangladesh doesn't need such a requirement constitutionally, people should respect by their own will. Constitution should also limit that names of certain persons can't be used for naming certain things and places. Ethnic groups aren't Bangalees by culture. They have separate identities and they should be known by those identities. But they should be regarded as Bangladeshis.

#### **3.2 Fundamental Principles of State Policy:**

Justice Mustafa Kamal commented "It is the Law of the Constitution itself that the fundamental principles of state policy are not laws themselves but 'principles'. To equate 'principles' with 'laws' is to go against the Law of the Constitution itself."<sup>55</sup> The principles are fundamental to the governance of Bangladesh, shall be applied in making laws but shall not be judicially enforceable.<sup>56</sup> As these are not laws and also not judicially enforceable, no mechanism at all to oblige the government to ensure these principles. However, the principles hold great inherent value in establishing political and economic democracy. Democracy and human rights, socialism and freedom from exploitation, aren't binding on governments to ensure. These are mere promises without any mechanism to observe gradual growth. In addition, no specific provisions about consequences if such

requirements aren't fulfilled. Democracy, dignity and worth of the human person, freedom from exploitation of man by man, emancipation of peasants and workers from all forms of exploitation, and principles of ownership have to be incorporated as mandates also absolute, these should be fundamental rights for Bangladesh to represent itself as People's Republic. Exploitation leads to inequality which opposes democracy, but Bangladesh has to define fairness differently from distributive justice. For distributive justice, Bangladesh needs surety of gradual growth in building a socialist economy, equal opportunity, ensuring basic needs, free education, rural development, and others. To give such effect, the ombudsman is mandatory. Besides, Bangladesh is facing corruption problem more than resource problem. Survey suggests that the government should ensure gradual growth regarding constitutional promises and failure of such has to be punishable. The Constitution may include clauses like whoever as prime minister fails to establish constitutional mandates within one year and ensure gradual growth for full accomplishment of constitutional means year by year shall be removed by the president. Such a clause can be declared as fundamental obligation which can't be amended. The survey also suggested there should be defined ethical moralities as obligation in the constitution to abide by every citizen.

#### **3.3 Fundamental Rights:**

Fundamental rights need clarity. What is reasonable restriction of law should be defined. Freedom of assembly, freedom of thought and conscience is subject to any reasonable restrictions imposed by law.<sup>57</sup> Such reasonable restrictions lead to highly criticized DSA 2018. Article 29 (c) also needs specification of 'unsuited'. Article 33 (3) justifies preventive detention but in Bangladesh a large number of political workers and leaders are detained without trial through the preventive detention under the Special Powers Act 1974 known as a "Black Law".<sup>58</sup>

<sup>54</sup> Constitution of the People's Republic of Bangladesh 1972, Art 4A.

<sup>55</sup> *Kudrat E-Elahi v Bangladesh* (2005) 44 DLR (AD) 319, 346 [84].

<sup>56</sup> Constitution of the People's Republic of Bangladesh 1972, Art 8(2).

<sup>57</sup> Constitution of the People's Republic of Bangladesh 1972, Arts 37, 39.

<sup>58</sup> Md Nazir Ahmed, 'Preventive Detention, Violation of Individual Human Rights: An Overview from Bangladesh Perspective' (2015)

Bangladesh scores 40 out of 100 regarding freedom where score of political rights is 15/40.<sup>59</sup> There is no direct provision as right to vote in elections. Prohibition on forced labor is ensured by constitution but in practice when extra labor by requirement of business isn't done with consent, management authority treats like trash. Country like Finland considers working 40 hours per week is enough while Bangladesh can't establish ideal labor standard with opportunity of 170 million people. South Africa's constitution states Bill of Rights as cornerstone of democracy. Meanwhile Bangladesh didn't comply with most of the clauses of international bill of human rights. Except article 13, reservations and declarative interpretations on article 1, 2, 3, 7, 8, 10 of ICESCR are not linked with resource constraints.<sup>60</sup> The Constitution of Bangladesh doesn't comply with articles 10 (3), 11 of ICCPR also not with second protocol relating death abolishment. Sec 54 and 167 of CRPC lead to arbitrary arrest and torture in name of protecting public order and security, sec 144 of CRPC is imposed or actions taken under chapter IX of CRPC, 1898; which leads to hindrance of political expressions. Curfew orders were non-acceptable by people recently. There should be reasonable interpretation of grounds also limitations on opinions, powers of magistrates, law officers, and governments. What will be such limitations is a matter of what scholars and people think as it should be. Media are greatly biased or self-centric in practice. The survey suggests that a rule declaring no person having background in politics can own media may result effectively. Further, Human Rights Commission and Democracy Protection Commission should monitor the actions, accuracy and truthfulness, reliability and networks between the government and media.

Actions of the Executive and Legislature and their day to day conducts should be transparent and accountable to citizens and such should be

<<https://muis.manarat.ac.bd/download/Issue-05/08.pdf>> accessed 5 November 2024.

<sup>59</sup> Freedom House, 'Bangladesh' (Freedom House, 2024) <<https://freedomhouse.org/country/bangladesh/freedom-world/2024>> accessed 5 November 2024.

<sup>60</sup> Abdullah Al Faruque, *International Human Rights Law* (2nd edn, reprint 2023) 51.

incorporated as fundamental right. Bangladesh do have Sangsad Bangladesh Television but survey suggests for a monthly report of government conducts including spending and actions, reviewed by ACC, HRC, DPC, published in newspapers and such reports should be judicially enforceable.

### **3.4 Local Government:**

Survey suggests there should be elected local representatives of specific classes. Local governments will have representatives of peasants, laborers, industrialists, minorities, wholesale or retail sellers, sports, finance, and other professionals. Professions have to be categorized according to ministries. This may encourage co-operative system too. Such representatives will hold chair of local representative in local ministry offices by relevance of their profession. For example, representatives of peasants in a local area will hold chair in local office of Ministry of Agriculture. Such representatives will be elected by votes of related classes. For example, farmers' representative will be elected by vote of only farmers. Such elected farmers will hold representative's chair in local government and local office of ministry of agriculture. Term of local representative's office should be 2.5 years in local government as well as in local ministry. A person who is rendering service under any ministry shall not be eligible to be a candidate of local representation. A person having any background or connection with political parties won't be eligible either.

In practice local governments are vastly depended and influenced by local MPs regarding their functions, MPs even influence the result of election, which have to be changed. Integration between local government and central government beyond biasness of political tag should be ensured.

### **3.5 The Executive and Administrative Tribunals:**

Existing ministerial system has to be changed and Bangladesh should prioritize the needs of people differently in forthcoming days. The existing National Human Rights Commission is a statutory

body. Bangladesh has ministry for liberation war affairs, has a separate ministry for shipping as well as for religious affairs, but don't have ministry of human rights. Bangladesh also needs a specific ministry for business and economic development. Bangladesh needs more partnership businesses and co-operative societies for socio-economic stability. Inclusion of minorities in department of religious affairs is mandate. Bangladesh has established ministries more than UK but didn't ensure work much. Planning and execution within said period are necessary. Government officials mostly don't prioritize individual needs when they seek service, and create unnecessary hassle by neglecting their duties. Government has set down rules of business for ministries.<sup>61</sup> Those implicate what to do but not how to do. Most plans don't describe a specific time limit for execution and what will happen if such is unreasonably delayed. Ministry of Social Welfare and Ministry of Women and Children Affairs both focus on national policy. But Ministry of Social Welfare's website contains latest notice of entertainment allowance and Ministry of Women and Children affair's website contain 2 PDFs in news section. Easy access and transparency needs to be ensured. One of the objectives of Ministry of Social Welfare's Jatiyo Shuddhachar Koushal is to focus heavily on anti-corruption measures. In result, it's mockery but nothing. Allegations against ministry of disaster management and relief is that they misappropriate accumulated funds. Nearly 40 percent of 1,08,360 registered companies are doing business in the country without taxpayer identification number.<sup>62</sup> Policies of MoWCA focus on quota improvement which needs to be updated.<sup>63</sup> For severe misconduct and other crimes by an officer, investigation is conducted by officers of same ministry.<sup>64</sup> On other hand,

administrative tribunals have jurisdiction only related to terms and conditions and action taken in relation to aggrieved.<sup>65</sup> Survey suggests that new ministries and structural change in existing ministries is required. Survey also suggest among local representatives of local offices of ministries over whole country, one representative shall be elected by votes of local representatives from each local ministry office as candidate for each central ministry office from each district, and from such candidates, by lottery, on condition that two representatives in two ministries can't be elected from a single district, one representative should be selected. Proper utilization of officials, efficient management and connection to route level with humble behavior is necessary. Administrative tribunals should also have jurisdiction regarding allegations of negligence, inefficient management, and such others as suitable, against public officers by people or others.

Ministers are designated by prime minister,<sup>66</sup> also can advise president to terminate appointment of ministers.<sup>67</sup> This study with support of survey ensure democracy, by local representatives in ministries as well as in Parliament under reserved seats. Also when ministers are accountable to parliament those representatives are too. Further in political parties, members are educated by conference and Political Party Act. So when a candidate for parliament is nominated, they are at least educated. Survey suggest Bangladesh's ministers should have vast knowledge regarding their related ministry function so that they can take innovative and efficient initiatives without mostly depending on secretariat or other departments. The rule of appointing ministers from parliament can be softened and Prime Minister should form cabinet with at least half scholars and professionals. Such won't harm the accountability of ministers to parliament or people's representation in ministries as well as democracy. They are subject to judiciary and should be responsible for ensuring gradual growth by constitution. However, ministerial

<sup>61</sup> Bangladesh Cabinet Division, *ALLOCATION OF BUSINESS AMONG THE DIFFERENT MINISTRIES AND DIVISIONS* (2024) [https://cabinet.gov.bd/sites/default/files/files/cabinet.portal.gov.bd/legislative\\_information/5c66427b\\_bf0c\\_4c61\\_8d59\\_594cc38a9b5b/6615%20PDF.pdf](https://cabinet.gov.bd/sites/default/files/files/cabinet.portal.gov.bd/legislative_information/5c66427b_bf0c_4c61_8d59_594cc38a9b5b/6615%20PDF.pdf) accessed 6 November 2024.

<sup>62</sup> Rakib Hasan, '40 pc registered cos hold no TIN' (24 October 2022) *NEWAGE* <<https://www.newagebd.net/article/184568/40pc-registered-cos-hold-no-tin>> accessed 5 November 2024.

<sup>63</sup> National Women Development Policy 2011, clause 33.4

<sup>64</sup> The Government Servants (Discipline and Appeal) Rules 2018, rule 7.

<sup>65</sup> The Administrative Tribunals Act 1980, section 4.

<sup>66</sup> Constitution of the People's Republic of Bangladesh 1972, Art 55.

<sup>67</sup> Constitution of the People's Republic of Bangladesh 1972, Art 58.



cabinet may remain collectively responsible to parliament.

Government jobs are messed, facing backlog, less innovation, corruption, bureaucracy, nepotism more and more. They can't be stopped by only fear of law or commissions or by accountability for long. Ministries should run like efficient corporate administrations. Arbitrary power of management should be taken away. Targets, goals and achievement ratio should be measured. Each local ministerial office should be compared for their actions. Survey suggests the amount they spend for professional tours to learn and observe, and while executing plans, should be obliged to implement as much to recover those spending by law and accountability. Currently MoWCA works with NGOs and other ministries may take help of suitable organizations. The officials working in civil service should be appointed differently from current measure and syllabus of examination have to change. We will discuss such in service of Bangladesh section.

Prime Minister isn't disqualified to hold office until his successor has entered upon office.<sup>68</sup> Under this article, Sheikh Hasina is still prime minister of Bangladesh. This is real bad, as Bangladesh have now one constitutional government and another student-people accepted government supported by doctrine of necessity. Bangladesh saw Sheikh Hasina and Begum Khaleda Zia again and again even there was other more capable leaders inside those political parties, mostly for reason of unity among members. Prime ministers should be removed by impeachment on some moral and ethical obligatory ground. This study suggests there should be no prime minister for 30 days (election arrangement), but president shall hold the office. Constitution says the President shall appoint as Prime Minister the Member of Parliament who appears to him to command the support of the majority of the members of Parliament.<sup>69</sup> Survey suggests prime minister should be elected by 75% vote of parliament. And when 75% is not attained by any member of

parliament, 51% of vote will be enough but such person will act only for 2.5 years. That Person can't be prime minister in same parliamentary term again. And if 51% isn't attained and negotiations are impossible to determine who will be the prime minister, majority party can form a coalition government with minor political parties to attain requirement of 51%, and if coalition government is failure, closest political party in general election will must have to support the majority party in selecting prime minister and they will get an additional post of deputy prime minister. This will ensure democracy and political participation as well as diversity more, understanding among MPs will remain no matter from what political parties they are, and Bangladesh may get an efficient cabinet. Again, prime minister shouldn't hold such post for a term exceeding 10 years in lifetime. As president is elected by indirect votes, and is head of the Bangladesh, survey suggest he should be selected by votes of executive, legislature and judiciary, by support of every organ forming government and representing them.

The study proposes that president shouldn't be impeachment by parliament<sup>70</sup> but in manner of he was appointed. This way network between parliament and president can be broken and Bangladesh may ensure effectiveness of the head of state. By existing constitution, President isn't answerable in any court for anything done or omitted by him in the exercise or purported exercise of the functions of his office.<sup>71</sup> But president should be answerable to the people of state.

Officials should be bound to perform obligations and duties they are trusted with. But again structural reforms of ministries have to be done and also have to be consistent with all new proposals. For example, Trade Corporation or RJSC or Directorate of Consumers' Right Protection can't stay under same ministry. It's just these may find similarities but their motives or actions differs way much. Besides, Trade Corporation may have representative having

<sup>68</sup> Constitution of the People's Republic of Bangladesh 1972, Art 57 (3).

<sup>69</sup> Constitution of the People's Republic of Bangladesh 1972, Art 56 (3).

<sup>70</sup> Constitution of the People's Republic of Bangladesh 1972, Art 52.

<sup>71</sup> Constitution of the People's Republic of Bangladesh 1972, Art 51.

knowledge of economics or of those who are in trade, but a social activist or a person among consumers is more suitable for Consumers' Right Protection. One representative can't represent 2-3 class of people too. Representative for Ministry of Foreign Affairs may seem difficult in local areas, such ministry may not require to hold office in local area either. But the seats of representatives must be limited to 50/60.

Bangladesh don't have separate Ministry of Justice yet. In addition, role of eminent jurists in making laws is important. Scope of judicial review is a post-stage, after enactment of law which creates difficulties. President may seek opinion of Supreme Court when question of law arises or likely to.<sup>72</sup> Survey suggests any law before while drafting should be subject to advice of Ministry of Justice and officials of such ministry have to be from judiciary. Such draft will be more better if is debated by a bench of Supreme Court. Further, incorporation of a clause stating organs of state are accountable to human rights commission regarding drafting laws, and not considering widely accepted human rights which Bangladesh is capable to implement will be punishable.

President should act with prime minister's advice or not depends on each functions and how they make such happen. Detachment of existing vast power of prime minister in functions of president is necessary. In addition, balance should be established. History says from 1996 presidents were dummy but nothing.

### **3.6 The Legislature:**

The US, Finland don't have any reserved seats in parliament for women. Bangladesh reserves 50 seats exclusively for women who are elected by votes of members of parliament.<sup>73</sup> This scopes the majority party to manipulate the parliamentary decisions. Survey suggests for no need for reserved seats for women as they are indirectly elected. Representatives of special classes in ministries shall hold special seats in Parliament substituting the reserved seats for women.

Survey suggests development is necessary but not unrequired or debatable development. Such as Mirsarai port wasn't needed for Bangladesh as it is not so far from Chittagong port and international trades are not enough for being a reason. Elevated expressway is more for rich people rather than for average people who needs most. It is allegation against government that they implement such projects to fill own pockets from budgets. If there was enough representation of political parties, as well as debates, such developments could appear with more reasonability.

Parliament consists of the majority party. So in practice every good and bad is decided by one party, which power was greatly misused in Bangladesh in recent decades. Turkey introduced threshold system for party stability.<sup>74</sup> Germany too has threshold system but protects minority interests.<sup>75</sup> Although Bangladesh right now needs party diversity rather than stability, those countries do curtail democracy by barring elected representatives to parliament for better achievement. System of proportional representation of political parties was introduced in New Zealand when large majority of those who voted favored a change in the voting system, and the most clearly favored option was MMP.<sup>76</sup> Existing constitution of Bangladesh also curtails democracy when seat vacates if elected goes against party.<sup>77</sup> Survey suggests limiting seats for political parties by proportion of when 3 parties each of them get more than 30% casted votes, get 35%-33%-32% of voting power in parliament regarding won seats, based on numbers of votes, and when 2 parties each of them get 40% of casted votes get 50-50% of voting power in parliament regarding won seats, based on numbers of votes. And when just one political party gets more than 40% of casted votes, proportional representation of political parties. Such proportional representation must be of in a

<sup>72</sup> Constitution of the People's Republic of Bangladesh 1972, Art 106.

<sup>73</sup> Constitution of the People's Republic of Bangladesh 1972, Art 65 (3).

<sup>74</sup> Turkey, Parliamentary Elections Law 1983, Art 33

<sup>75</sup> Germany, Federal Elections Act 1993, section 6(3).

<sup>76</sup> **New Zealand Parliament**, Chapter 3: *Electoral* <<https://www.parliament.nz/mi/visit-and-learn/how-parliament-works/parliamentary-practice-in-new-zealand/chapter-3-electoral/>> accessed 6 November 2024.

<sup>77</sup> Constitution of the People's Republic of Bangladesh 1972, Art 70.

way where a political party doesn't hold more than 45% of total voting power. For example, if we think there was no reserved seats for women and 50 seats for local representatives existed who are not from any political background, Awami League won 224 seats in 2024, meaning 64% voting power, meaning 36% voting power outside of one political party was ensured including 14.29% voting power of local representatives. To make it 55%, 19% more voting power is needed to balance. Such will be formed by coalition of other parties who casted at least 5% of total votes and each party will have members subject to vote number they gained in election, there must be 2 parties. And if still it doesn't fill the need, like happened in 2024 when Jatiyo Party secured only 11 seats, other coalition members will be elected by national election, where the party won more than 50% won't participate. Provided that independent candidates must have clean background having no involvement with any political party in past. This may lead to 2 different situations, one is more political party, other is more independent candidates. Such will cover almost all people's representation in parliament, but procedure shall be amended and restored to present system when Bangladesh achieves political diversity with the existence of strong political parties. Bangladesh may avoid including mentioned reform in constitution and promulgate ordinance. And really hope we won't see a situation where 2 parties got 5% and one got 90%.

There are 2 major political parties in Bangladesh, Awami League and BNP. There exists a huge group who do not either want BNP nor Awami League. If Bangladesh force such group to vote only between Awami League and BNP, citizens will be deciding who big thief and who small. If BNP gets 150 and Awami League gets 150, still it won't represent the true desire of neutral laypeople. As those parties have criticized background, new political parties and independent candidates are in need. Survey says people want a leader who is not from those parties but doesn't desire to be involved in politics. There isn't any other strong party existing either. Using this chance immoral characters get involved.

But when they will see they don't even get enough seats but they should be involved in politics to ensure the efficiency of the parliamentary decisions as majority party can't take all decisions by themselves, it may encourage people by ordinary prudent to be involved in politics. The election commission before the next election may fix time of 3-4 months to form new political parties, and then an additional 1-2 months. After expiration of such, may fix time to be an independent candidate. But at first, the environment of political practice needs to be sanctified.

Article 78 says that a member of Parliament shall not be liable to proceedings in any court in respect of anything said, or any vote given, by him in Parliament or in any committee thereof, a person shall not be liable to proceedings in any court in respect of the publication by or under the authority of Parliament of any report, paper, vote or proceeding. Survey suggests that when a member is corrupted, proceeding is always in question. Parliament and other persons should be liable when they give false, manipulative words, reports instead of being accountable. So a change in immunities should be introduced. Also, Anti-Corruption Commission, Human Rights Commission, Democracy Protection Commission should monitor the conducts of parliament.

In case of vote buying or other immoralities by members, ACC or HRC or DPC shall file to judiciary and they have to be punished. Besides, they won't be qualified for being candidate for election ever again.

Article 75 says proceedings of parliament won't be invalid because of vacancy in membership or persons who were not entitled to present, voted. Well there may arise circumstances when membership is in question but proceedings also need. And as survey favors in both yes and no closely, reasonable limitation on proceedings when there is question about membership may should introduced. Bangladesh won't need such provision if efficient peaceful impartial election is ensured.

Prime Minister have power to advise president to dissolve parliament.<sup>78</sup> Survey suggests that such power should not exist. As this study and survey suggest overall change, such provision may lead to unnecessary complexity.

### 3.7 The Judiciary:

Complete separation of judiciary have to be ensured and every citizen should be subject to judiciary. Survey was conducted on topic of Chief Justice and Attorney General should be appointed by majority of parliament. But let's assume a case is filed against government. If chief justice is appointed by parliament, political parties may manipulate the judiciary. Newly appointed Attorney General is from BNP background<sup>79</sup> who by conduct will favor his political party. This leads to immunity of political leaders and an escape route from judiciary. Even though this study proposed for change in parliament, it is better if Bangladesh can establish an ipso-facto system or election system for appointment of chief justice and attorney general. Or if president is selected by executive legislature and judiciary, such may represent the whole government and give capacity with present provisions where president appoints chief justice. But surely attorney general shouldn't be appointed with advice of prime minister. Further, establishment of more courts and easy access to justice is mandatory.

### 3.8 Elections:

Fairness and impartiality regarding elections have been questioned in recent decades. An elected representative in rural areas said the officers threatened him to stop campaigning for an independent candidate of national election.<sup>80</sup> Article 118 reserves scope for law relating appointment of commissioners. But Bangladesh

don't have such law till now. Present interim government have had formed a search committee for recommendation<sup>81</sup>, although such is unconstitutional and president could promulgate ordinance for immediate action (article 93). There is a major problem about search committee too, save only that of appointing the Prime Minister and Chief Justice, president acts in accordance with the advice of prime minister (art 48). Such influence obstructs efficiency of election commission. Eminent jurist Shahdeen Malik said the last two ECs had utterly failed to perform their functions properly, saying the government is tricking the people when it comes to forming a search committee to appoint CEC and ECs.<sup>82</sup>

Election commission needs a proper list of professionals, with proofs. There should be election commission parallel to ombudsman. A general election of the members of Parliament is held within the period of ninety days preceding dissolution or in the case of a dissolution otherwise than by reason of expiration, within ninety days after such dissolution.<sup>83</sup> Survey suggests for a change and no elections before expiration of term of existing parliament. Beside, Election Commissioners must have to arrange election within 30 days after parliament dissolves and take initiatives for election before dissolution of parliament. In Turkey, elections and referenda is held under the direction and supervision of the judiciary, in accordance with the principles of free, equal, secret, direct, universal suffrage, and public counting of the votes.<sup>84</sup> In the Council of State of Finland, the Ministry of Justice acts as the highest election authority.<sup>85</sup> Bangladesh may exercise such practice, besides according this study if Bangladesh establish ACC, HRC, DPC, they may monitor the electoral conducts.

<sup>78</sup> Constitution of the People's Republic of Bangladesh 1972, Art 57 (2).

<sup>79</sup> Star Digital Report, 'Advocate Md Asaduzzaman appointed new attorney general' *The Daily Star* (8 August 2024) <<https://www.thedailystar.net/news/bangladesh/crime-justice/news/advocate-md-asaduzzaman-appointed-attorney-general-3672321>> accessed 5 November 2024

<sup>80</sup> Faisal Mahmud, 'Dummy Candidates, Coerced Voting: Inside Bangladesh's Election Charade' *Al Jazeera* (3 January 2024) <<https://www.aljazeera.com/news/2024/1/3/dummy-candidates-coerced-voting-inside-bangladeshs-election-charade>> accessed 5 November 2024.

<sup>81</sup> Special Correspondent, 'EC Search Committee Formed with Justice Zubayer Rahman Chowdhury as Chairman' *Prothom Alo* (31 October 2024) <<https://en.prothomalo.com/bangladesh/politics/s4r04fd32o>> accessed 5 November 2024.

<sup>82</sup> Staff Correspondent, 'How to Select an Election Commissioner' *The Daily Star* (19 December 2021) <<https://www.thedailystar.net/news/bangladesh/elections/news/how-select-election-commissioner-2227221>> accessed 5 November 2024.

<sup>83</sup> Constitution of the People's Republic of Bangladesh 1972, Art 123.

<sup>84</sup> Constitution of the Republic of Turkey 1982, Art 67.

<sup>85</sup> Electoral Act 714/1998 (Fin), sec 10, as amended by Act 218/2004.

Survey suggests that a recommendation committee formed of each member from Ombudsman, Election Commission, Anti-corruption Commission, Human rights commission, Democracy protection commission, Judiciary, Law enforcement agencies, Service Commissions, Education may select candidates from Ombudsman, Anti-corruption Commission, Human rights commission, and Democracy protection commission. Background check by judiciary- appointed by president may ensure fairness and fitness of commissioners as well as of election. The recommended candidates should not have any political or questionable background. Identification of voters should be transparent so that fraudulent measures come to end. The law should specify what happens if commissioners fail to hold undoubtable election. There must be more than one political party, such pluralism have to be diverse and operative.

### **3.9 The Services of Bangladesh:**

The network between services, executive and legislature have to be broken. Existing practice is when a new political party comes to power, they appoints people who supports their party. The recommendation system made our services so unfair and ugly. For a change, an ipso facto system can be introduced. System of appointing in BCS, BJS and other service sectors should be changed, as it is proved for service of republic not only talent but also responsibility, understanding needs of individuals, welfare, development, and other such qualities are mandate. Promotion of them should be subject to ACC, HRC, and DPC's report. Provided such reports shall be judicially enforceable.

### **3.10 The Comptroller and Auditor General:**

The Auditor-General have access to all records, books, vouchers, documents, cash, stamps, securities, stores or other government property in the possession of any person in the service of the Republic.<sup>86</sup> As Auditor-General plays vital role and audit reports surely help other regulatory commissions, and by constitution he is not

subject to control or direction of any authority, it should be parallel to ombudsman, and auditor general should be appointed through same process as ombudsman officials are appointed. The audit reports should be published annually, in such form which is easily accessible and understandable to all citizen of Bangladesh. Ombudsman, Election Commission and Auditor General's office shouldn't be appointed by votes of parliament but must be accountable to parliament.

## **Chapter 4**

### **4.1 Economic Democracy:**

Capable industries (determined by ministry and legislature) can initiate policy of adequate training, less working hours and more laborers primarily, for short term. Further, informal jobs and HRM standard should be formalized. Like France, Bangladesh won't face labor freelancing as it is blessed with huge population and if proper laws are enacted. Further, may stimulate laborers to have business/farm of own.

Such may lead to reluctance of businesses, as reason of cost management. On other hand, for a society free from exploitation opportunity of limitless profit should be curtailed too. Another headache is foreign investments and loans, discouraging them about Bangladesh. The law may stay soften regarding foreign investments, but not harming the local products and fair competition. Even so, Bangladesh is facing decrease in foreign investments due to currency instability.

If Bangladesh limits profit for big industries, it will result a time when government will have handle big productions. If Bangladesh make engage partnership firms and co-operatives more in production, this may lead to minimization of dependence on big industries. Further, Bangladesh needs to focus more on transportation. For example, Raw materials are transported to industries, industries transport them to warehouse, from warehouse transported to retailers. Again from field rice is transported to mohajan, mohajan transports to wholesaler, wholesaler transports to retailer. There are so

<sup>86</sup> Constitution of the People's Republic of Bangladesh 1972, Art 128.

many families relying on existing supply chain. Government may take over the transportation system which may lead to minimization of costing of products. Also may stimulate members working in such supply chain in production, with help of subsidies, availability of industrial machines. Further, farming is a work with dignity, Bangladesh need increase of farmers in upcoming days. Bangladesh needs to efficiently use the blessing for farming it have. Rural development doesn't necessarily mean it has to be urbanized. Protecting and encouraging existing businesses which took place in culture long ago can also be scope for development.

#### **4.2 Law Enforcement:**

Rickshaw drivers, CNG drivers, persons who conduct businesses at night, suggests security have to be more tightened at night.

If a person wants to file a complaint in police station against a police officer, section 166 of Penal Code refers to mere punishment of public servant who disobeys the law with intent to cause injury, also is a non-cognizable offence. Further, such remains rare in practice. If such Police station doesn't take complaint, a person may file directly to magistrate under section 190 of CRPC. But in practice police and magistrate have always some sort of connection. And if such complaint is taken even after so much hassle, police may not conduct inquiry at all, or who will determine the truthfulness of such inquiry is a question. This leads to naraji petition for a long run. Justice remained as difficult access to people for long period. Judiciary, Democracy Protection Commission and Ombudsman will have a vast responsibility to break biased favoring and networks among people in service.

Sheikh Hasina's regime lead to such consequence that Awami League didn't need any political members, but law enforcement agency was enough for her dictatorship. Police used to say no person is more Awami league than them. In many countries police and law enforcement agencies are not under ministry of justice but subordinate to other ministries like ministry of justice or ministry of defense. Bangladesh may practice

such, Bangladesh may also try to establish an independent law enforcement system.

#### **4.3 Miscellaneous:**

There can be a separate commission of eminent scholars, as advisory commission, or be adjusted with other commissions.

General and Specialized education will be vast major need. Bangladesh will be in need of more universities and courts to keep up with people's need. A government must be obliged to ensure growth of such in his term by constitution. More primary and secondary schools are also needed as we see most of the renowned schools and colleges of capital Dhaka contains more than 70-80 students in a classroom.

Bangladesh need a budget change for effective and efficient mentioned reforms. Proposed resource distribution for operating and development budget including subsidies, incentives and pensions for public administration was 1,838,880,000,000 (1.83888 trillion) for FY 2024-2025.<sup>87</sup> Bangladesh don't have too much money problem and can make a budget for adequate salary if there exists increased number of government officers, but Bangladesh do have many other problems. Before collapse of Awami League government news was that heat officer doesn't take any salary. But after, news revealed she took 8 lac per month.<sup>88</sup> Proper investment, management and transparency with easy access of information is mandatory. Awareness for contribution and participation of people is big mandate. Further, government is a thief, Bangladesh learned it from previous existed governments. The system needs less corruption and more accountability. This study trying to ensure such as possible and suitable.

Without participation of Awami League next election won't be fair as Awami League is rooted in culture and independence of Bangladesh. Not

<sup>87</sup> Md Jamil Sharif and Niluthpaul Sarker, 'The Significance of the National Budget 2024-25 for the Economic Development of Bangladesh: A Critical Analysis' (2024) <<https://icmab.gov.bd/wp-content/uploads/2024/08/The-Significance-of-the-National-Budget-2024-25-for-the-Economic-Development-of-Bangladesh-A-Critical-Analysis.pdf>> accessed 5 November 2024.

<sup>88</sup> ATN News, 'Heat Officer Bushra used to get monthly salary of 8 lac taka' (17 October 2024) <<https://www.youtube.com/watch?v=QSEKdRA0OIE>> accessed 11 November 2024.

only Awami League, but every political party existing right now, especially BNP is also liable for existing mess, mentioning attack of 21<sup>st</sup> August 2004. At least 43 high-profile criminals and militants have walked out of jail on bail after the fall of Hasina-led government on August 5.<sup>89</sup> It seems practice of interim government violating, and every government who came to power has violated in past, the principle of equality before law. Every person liable for existing mess should be held liable and punished equally. Political leaders should be banned for their mess, not political parties. But survey suggest that in a secular country, political parties who aim to establish religion-based system should be banned.

When ombudsman and auditor-general is inspecting conducts and accounts of public servants, they may form a team including two respectable person of that locality.

Democracy creates delay in every decisions, especially in budget. And with population of 170 million, from root level to presidential level, in every sector, every action is slow. However, this study tried to find a way even through long process, but to establish strong system with sustainability, the way to break existing loops. Efficient mechanisms and structures have to be established in a way where democracy is easily ensured. And where mechanisms are of no help, for example deciding the budget, negotiations and time limits can be introduced by law in which decisions and actions must have to take. Co-operation for country's interest is essential. As study and survey suggest change in parliament, sometimes, it may occur when decisions have to be taken in limited time but majority of parliament isn't gained. In those circumstances president may interfere and assure such urgency with his assent, as president is selected by vote of executive, legislature and judiciary, he is the supreme and representation of all organs of constitution. As this study barred on political

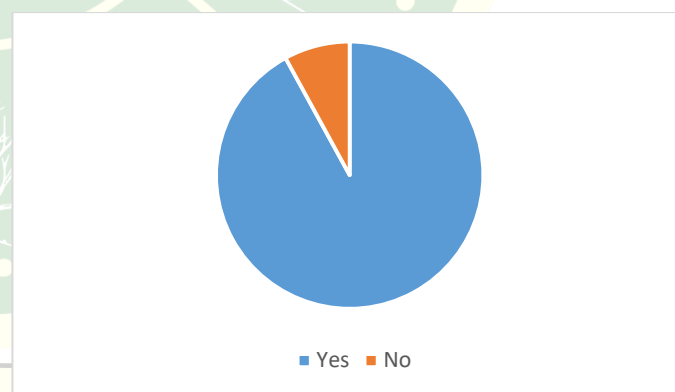
parties with requirements, it's a hope that members of parliament will be purified from self-interest measures. Education should include democracy from primary level and shouldn't be used to brainwash generations. Democracy Protection Commission and Judiciary will have to play major role regarding such factors. Otherwise democracy will fail to suit with Bangladesh and rather autocracy or dictatorship will suit better. Cold-war era ended long ago and there is nothing wrong now to merge the ideas of capitalism and socialism more adequately, even Bangladesh don't get support of outside world. This study focuses on democratic system for future Bangladesh. And if Bangladesh can't ensure the needs of democracy, other study may focus on other forms more closely which will be suitable with present Bangladesh.

## Chapter 5

### 5.1 Surveys:

#### Survey conducted upon 1000 people of age 24-45 to ensure sustainability of proposed changes.

Ombudsman, to which government and public servants are accountable for their actions, needs to be formed as soon as possible.



Anti-Corruption Commission in every local area should be formed. In addition, professionals having background of not being corrupted in their profession shall be appointed ipso-facto.

<sup>89</sup> Staff Correspondent, '43 Top Criminals, Militants Freed on Bail Since Aug 5' *The Daily Star* (18 September 2024) <<https://www.thedailystar.net/news/bangladesh/crime-justice/news/43-top-criminals-militants-freed-bail-aug-5-3705401>> accessed 11 November 2024.



Human Rights Commission should be formed. Officials will have functions all over Bangladesh including monitoring elections and law enforcement's actions. Also check if a proposed law violates human rights.



There should be elected local representatives of specific classes, such as of farmers, lawyers, in local government and ministry office. Such representatives will be elected by votes of related classes.



No political party in parliament should have more than 45% of voting power.



A law regulating political parties is mandate. Political parties should have limited educated members in a particular area, hold conference in every 2 years where members will be selected by votes. Each party should have published constitution, violation of which will be punishable offence.



Democracy protection commission should be formed. Officials will have functions all over Bangladesh including monitoring elections and ensuring media neutrality,

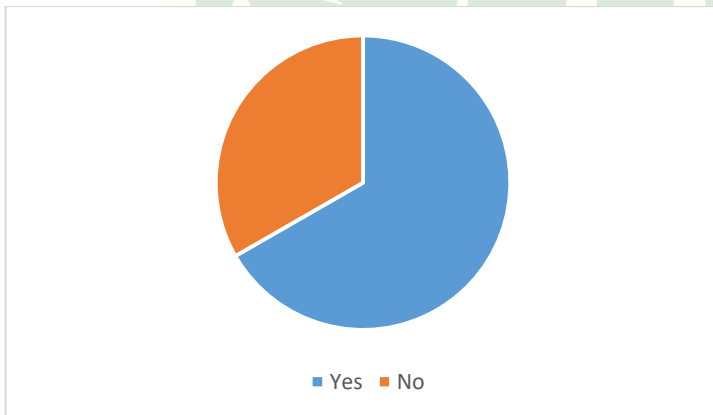




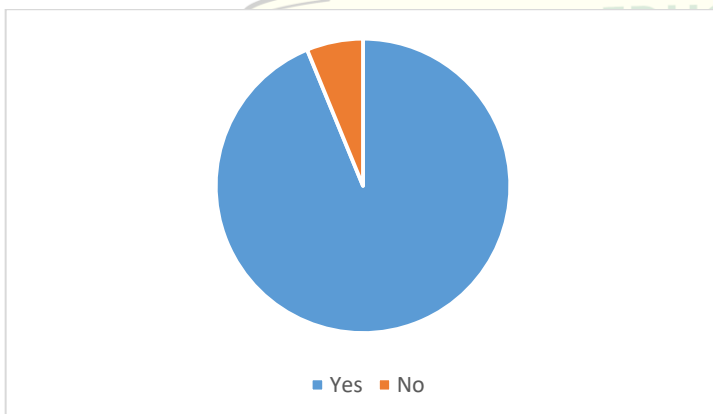
A monthly report of government conduct, including spending, reviewed by ACC, HRC, DPC, should be published in newspapers and such report shall be judicially enforceable. This will increase accountability and transparency of government's actions.



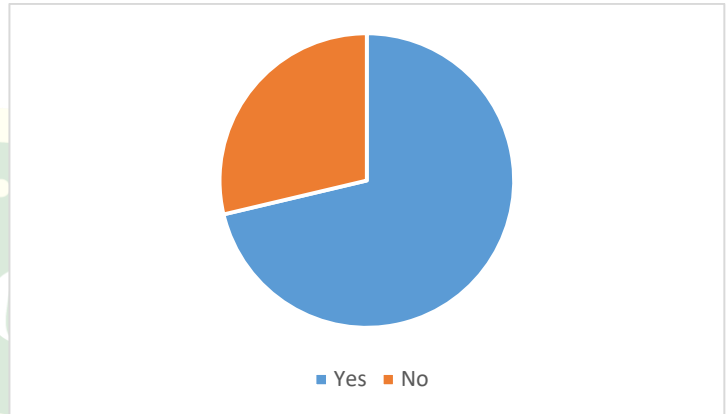
Prime minister should be elected by 75% votes of parliament, president should be elected by votes of every constitutional organ.



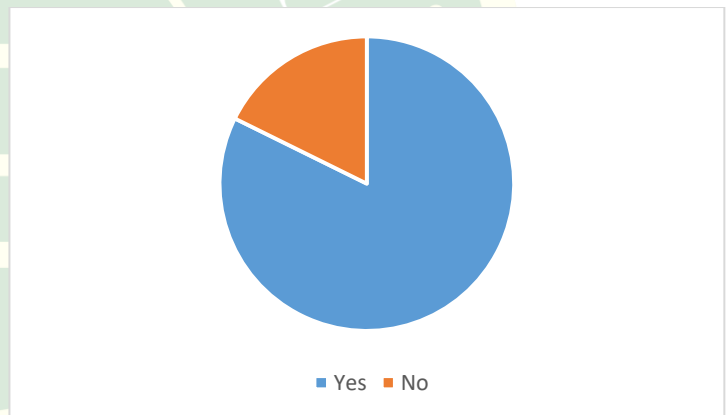
There is no MP who is a Farmer, or laborer. From local representatives in local ministries one should be selected as Central ministry office representative who will hold reserved seat in parliament.



Ombudsman, Election Commission and Auditor General's office shouldn't be appointed by votes of parliament but must be accountable to parliament.



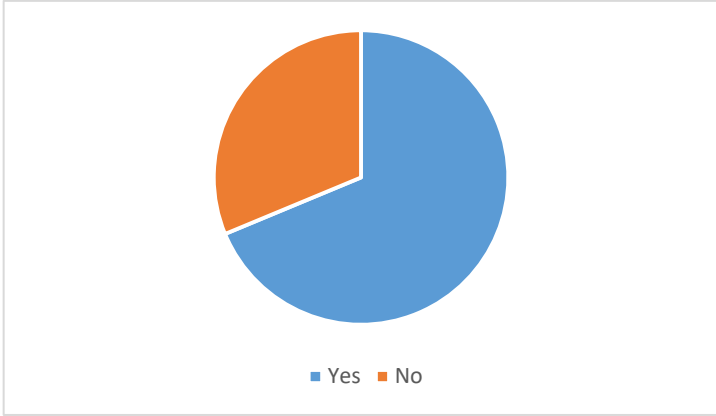
No need for reserved seats for women as they are indirectly elected by parliament members.



Any law while drafting should be subject to ministry of justice and officials of such ministry have to be from judiciary.



In a secular country, political parties who aim to establish religion-based system should be banned.



No elections before expiration of term of existing parliament.



Governments should ensure gradual growth regarding constitutional promises and failure of such have to be punishable.



Formation of new ministries and structural change of existing ministries is required.



Parliament should not proceed when there is any vacancy of membership.



There should be defined moralities as obligation in constitution to abide.



The amount govt. officials spend for professional tour to learn and observe, and in other plans while executing, should be obliged to implement as much to recover those spending by law.



From field rice is transported to mohajan, mohajan transports to wholesaler, wholesaler transports to retailer. Government may take over such transportation systems which may lead to minimization of costing of products.



Prime Minister should not have the power to advise president to dissolve parliament.



When a MP is corrupted, proceedings of parliament is always in question. Reports of parliament should be easily accessible to people and laypeople must have the power to institute/case regarding such report.



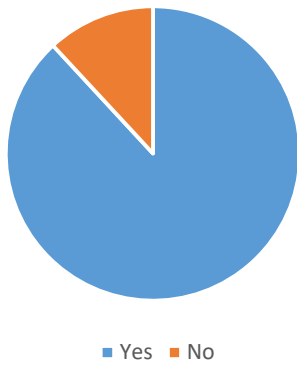
System of appointing in BCS, BJS and other service sectors should be changed, promotion of them should be subject to ACC, HRC, DPC's report.



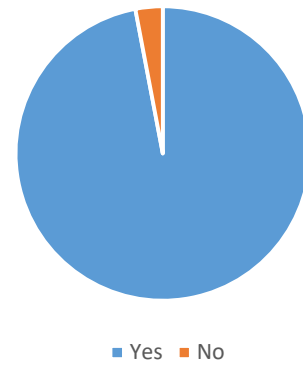
Anti-Corruption Commission, Human Rights Commission, Democracy Protection Commission will monitor conducts of parliament.



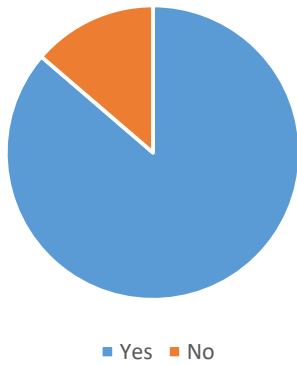
In the exercise of all his functions, save only that of appointing the Prime Minister and the Chief Justice, the President shall act in accordance with the advice of the Prime Minister. Such have to be changed.



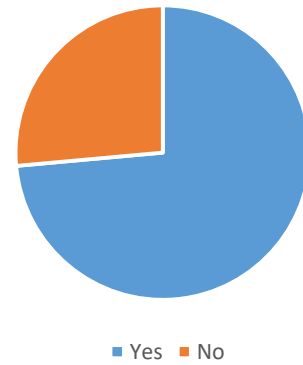
Chief Justice and Attorney General should be appointed by majority of parliament.



Laypeople want a leader who is not from Awami League or BNP.



Election should be held by an independent Election Commission consisting officials of Ombudsman+ promoted officials of Anti-Corruption Commission, Democracy Protection Commission and Human Rights Commission, within 30 days after dissolution of parliament.



We need more partnership firms and co-operatives. Big industries should have restrictions on unlimited profit and government should engage in big productions.

## Chapter 6

### 6.1 Conclusion:

Bangladesh is still far behind from ensuring democracy. However, a step towards reorganizing and truly establishing democracy must be taken. As functions of government as well as organs are so inter-connected and depended on each other, it's hard to ensure democracy in existing culture. Bangladeshis are disappointed with Bangladeshis themselves, comparing with dog's tail which will never be straight. Penal Code and CRPC have so much provisions and widely described for every possible situation which most countries of our territory size don't have. It is discussed and opinioned that such insertion is reason of people of this sub-continent will find loophole one way or another. This leads to strict regulatory system, resulting in laws of which we are not very proud of. But For a cultural change, confidence, faith, desire and unity is required. As people plays major role in democracy, at the end they have to ensure democracy. They have to be well known of consequences of their decisions and

participations. People of Bangladesh are living in a situation where nationalism is in such peak that a government has collapsed by revolution and new government is ruling without election. Such nationalism have to grow, and should be not just a flow, but rational and progressive. Democracy is effective system for Bangladesh if people of it makes it effective. If thief wants to steal, he will find any measure in every system. Country's interest have to be regarded as best interest. Negotiation among people for effective collectivism will be blessing if cooperation for betterment of country is established. Current democracy isn't perfect, proposed one also maybe neither. But an idea towards forward with hope of light in depth of sea.

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