

**RULE OF LAW ASPECT OF THE EXECUTIVE AND
LEGISLATURE AND THE CONSTITUTION OF BANGLADESH.¹**

by

Dr. Hamid Uddin Khan

Introduction

Rule of Law basically means the whole corpus of law of a democratic government, with emphasis on individual rights, liberty, property and political participation. Propounded by Dicey in the mid 19th century, the concept has taken deep roots in the juristic thinking of the international community, demanding its clear definition and concerted action in view of the vast political, social and economic changes following the two World Wars, which led to the adoption of the charter of the United Nations in 1945 and subsequently the Universal Declaration of Human Rights in 1948, it has assumed an international character. After the declaration of International Bill of Human Rights by the United Nations in 1976 and thereafter, the provisions and ideals thereof have been reflected in many international organisations, conventions and national Constitutions and the concept of the Rule of Law has now been a dynamic legal principles of political, economic and social system, where the pople can enjoy Universal Human Rights.

Rule of Law can be realized only under a system of government established by the will of the people, providing means to balance the freedom of executive to act effectively with the protection of the rights of the individuals. It may be emphasized that the protection of the individual from unlawful or excessive interference by government is one of the elements of the Rule of Law. The Rule of Law, therefore, is now both an operative system of an advanced

1. The Rule of Law aspect of the judicial system in Bangladesh has been discussed in the first issue of the Dhaka University Studies, Part F, Vol. 1, June 1989.

democratic countries and an ideal for the developing countries in different levels of achievements.

While considering the Rule of Law aspect of the executive and legislature, it is observed that Bangladesh has been characterised as a unitary, independent and sovereign republic to be known as the People's Republic of Bangladesh² with a multi-party democratic system governed by a written constitution. It proclaims that sovereignty is derived from the people and the constitution is the supreme law of the land.³ It incorporates a number of rights known as the Fundamental Rights; any law inconsistent therewith made by the legislature shall be void to the extent of inconsistency.⁴ It proclaims Rule of Law and provides protection of law as the inalienable right of every citizen wherever he may be and of every other persons for the time being living in Bangladesh.⁵ Since constitutionality of executive and legislative acts are determined by the judiciary, the importance of an independent judiciary has also been stressed,⁶ and the means for judicial enforcement of the fundamental rights have also been provided.⁷ Having thus referred to the basic requirements of a democratic society and the general outline of the constitution of Bangladesh, we may now turn to consider the constitutional provisions relating to the executive and legislature in order to show their relation with the modern concept of the Rule of Law and its adoption in the constitution as well as the gaps between the ideal and real in Bangladesh.

The Executive

After the victory in the Liberation War on 16 December 1971, the Constitution of Bangladesh was passed on 16 December 1972; it envisaged a Westminster type of Parliamentary system of govern-

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2. Part I of the Constitution of the People's Republic of Bangladesh.
 3. Article 7 of the Constitution of Bangladesh.
 4. Article 26, Part III of the Constitution of Bangladesh.
 5. *Ibid*, Art. 31.
 6. Article 94 (4)
 7. Article 44 read with Article 102.

ment reflecting the aspirations of the people. The President was put into a titular position being only a constitutional figurehead. In view of the bitter experiences with the presidential form of government in undivided Pakistan and the clear public commitment made, all measures were taken to pave the way for a parliamentary democracy to take its firm root in the country, where the government would be run by a cabinet of Ministers headed by the Prime Minister collectively responsible to the Parliament and would remain in power so long it enjoyed the confidence of the majority members of the Parliament. One significant feature of this form of government was that excepting appointing the Prime Minister,⁸ the President in the exercise of his functions in all and every other matters was to act in accordance with the advise of the Prime Minister. The President would be elected by the members of the Parliament and the provisions relating to his qualifications were similar to those in other such constitutions. No person could hold office of the President for more than two terms more in line with the 1956 constitution of Pakistan. The Indian Constitution and the 1962 Constitution of Pakistan provided eligibility for re-election with no bar on the terms of holding office. In Bangladesh the term has been limited deliberately to curb an over-ambitious president.

The Constitution of Bangladesh originally enacted in 1972 completely avoided giving any discretionary power to the President. Accordingly, it provided not only that the President would act in accordance with the advice of the Prime Minister⁹ but also that the executive power of the Republic was to be exercised by or on the authority of the Prime Minister.¹⁰ The only time the president, as head of the state, would exercise power was when a person was able to command a clear majority in the Parliament for appointment as Prime Minister. Once this issue is solved the President becomes a functional head only.

8. Article 56(3) of the Original Constitution, 1972.

9. Article 48(3).

10. Article 55(2).

The Fourth Amendment and the Presidential Executive.

Bangladesh adopted a presidential form of government with the passage of the Fourth Amendment Act, 1975,¹¹ promulgated on 25 January, 1975, which provided that the president would be chosen in a direct election for a term of five years and, as Head of State and of government, would take precedence over all other officials. The amendment also provided for a Vice-President, a Prime Minister, a Council of Ministers and Attorney-General all appointed by and responsible to the President to hold office during the pleasure of the President. The executive power of the Republic was vested in the President which he exercised independently either directly or through officers subordinate to him. The President could make rules for the allocation and transactions of the business of the government. The appointment of the Council of Ministers was not made dependant on the approval of the Parliament in order to safeguard against abuse of powers as well as for the existence of an effective government under the Rule of Law. There was no effective check on the exercise of extensive power by the executive there being no statutory body to exercise restraint on the head of the executive. The newly inserted article 73A provided that "every Minister shall have the right to speak in and otherwise to take part in the proceedings of the Parliament but shall not be entitled to vote unless he is a member of the Parliament." The executive was thus completely separated from the parliament.

In this connection, mention may be made that even under the leading written Constitution of U. S. A. strict separation having been proved unworkable, exception has been made to the general rule; the executive power of the President to make important appointments has been limited and made subject to approval of the Senate. In the words of Thomas Jefferson, one of the American Presidents, "An elective despotism is not what we fought for but one in which powers of Govt. should be so divided and balanced that none could transcend the legal limits without being effectively checked and restrained by the other". Society today is too

11. . Constitution Fourth Amendment Act (Act II of 1975).

complex for a single person, without cheek and balance, to be able to do justice in matters of vital importance coming to him for decision. Since powers tends to corrupt and, according to Lord Action, 'absolute powers corrupt absolutely', disinterested advice would not be available to the President if it is only optional on his part to take advice.

As to the term of office of the President, in the original provision of the Constitution of Bangladesh, no person could hold the office for more than two terms, but in the 4th amendment no such restriction was mentioned meaning that the President could hold office for an unlimited number of terms. Since popular election gives the President too much authority at the expense of government and parliament, if a person is allowed to hold office of Paresident for unlimited terms he may feel tempted to continue as the autocratic ruler which may corrrput and in view of the recent Bangladesh's bitter experience with the presidential executive, this position of the President has, however, been altered with the restoration of Parliamentary democracy by the 12th Constitution Amendment as discussed below.

The Twelfth Constitution Amendment, 1991¹² and Restoration of Parliamentary Executive.

The presidential democracy introduced by Awami League Government headed by its unchallenged leader late Sk. Mujibur Rahman on 25 January 1975 unfortunately degenerated into one-man dictatorial rule and thereafter nine years alleged autocratic rigime of President Ershad from 24 March, 1982 triggering political movement against autocratic regim burst forth into an uncontrollable mass up-surge forcing him to abdicate on 6 December, 1990. The democratic process initiated thereafter under the neutral government headed by the acting resident Justice Shahabuddin, nominated by the three party-alliances, concieved its first issue in the form of a free, fair and neutral parliamentary election held on 27 February, 1991 in which Bangladesh Nationalist Party (B.N.P.)

12. Amendment of Part IV, Ch. I and II by the Constitution (Twelfth Amendment Act, 1991).

came out as a majority party with its leader Begum Khaleda Zia who was then declared as country's first woman premier of the council of Ministers under the existing presidential form of government by the acting president on the following day.

The democratic process thus actuated by the parliamentary election of 27 February 1991 conceived its second issue in the form of the 12th Constitution Amendment Bill introduced in the Parliament on 2 July, 1991 providing for reversing to parliamentary democracy from the presidential system, which after long discussion was passed rather unanimously on the midnight of August 6, 1991, and received favourable verdict of the people in the referendum held on 15 September, 1991 under Article 142 of the Constitution giving institutional shape to the parliamentary form of government. And on the resignation of Prime Minister Begum Zia as head of the Council of Ministers under the presidential system, the Acting President dissolved the Council of Ministers to make way for completing the transition to the Westminster type of democracy and with her swearing in as country's first woman Prime Minister to head the Cabinet form of government on 19 September, 1991, came to an end the 16 year old presidential executive that had been in force since 25 January 1975.

The last on the agenda for reverting to parliamentary democracy was the election of a new President of the Republic by members of Parliament under the recently introduced parliamentary democracy,¹³ and in the presidential polls held on 8 October, 1991 the ruling B. N. P. candidate former Speaker Mr. Abdur Rahman Biswas was elected the 12th President of the Republic by all 300 members of the Jatiya Sangsad (Parliament) securing 172 votes against 92 votes obtained by the Awami League nominee former Chief Justice Mr. Badrul Hyder Chowdhury. The new President Mr. Abdur Rahman Biswas formally took oath of office of the President on 9 October, 1991 vacated by the acting President Mr. Justice Shahabuddin, who automatically ceased to be the President of the Republic and returned to his office of the Chief

13. Article 48(1) of the constitution, Fifth Schedule, as amended.

Justice of Bangladesh¹⁴ and thereby an arduous journey to democracy came to an end after sixteen years of presidential rule.

With the completion of the process of transition to parliamentary executive the president has again been put into a titular position being only the constitutional figurehead with powers to exercise and perform the duties conferred and imposed on him by the constitution and by any other law.¹⁵ On the question of removal of the President on grounds of incapacity and/or inability by way of impeachment, the procedure remained the same as before the 12th Amendment¹⁶ and are similar to those in other constitutions of the sub-continent. With regard to the term of office of the President, one significant feature of the amendment is that no person shall hold office as President for more than two terms (of five years each) whether or not the terms are consecutive¹⁷ and thereby, unlike other constitutions of the sub-continent, the term of President's holding office has been limited unambiguously so as to prevent a person from holding the office for an unlimited number of terms. Thus the position of the President has been relegated to that in line with the original constitution of Bangladesh enacted in 1972.

The supreme command of the defence services of Bangladesh, as in many other countries, shall vest in and be exercised by the President and all matters relating thereto shall be regulated by law to be made by the Parliament.¹⁸ The notable feature of this chapter is the provision relating to war that no war shall be declared nor shall the country participate in any war except with the assent of the Parliament.¹⁹ This proclaims rule of law and reflects a new democratic thinking which is not found in other constitutions of the sub-continent.

14. The Constitution (Eleventh Amendment) Act, 1991 Fourth Schedule.

15. Article 48(2), Ch. I substituted by 12th Amendment, 1991

16. See Part IV, Ch. I, of the Constitution before and after the 12th Amendment, 1991.

17. Article 50(3) of the Constitution as amended.

18. Article 61 of Ch. IV of the Constitution.

19. Article 63. The interesting feature of this Chapter is that on the one hand clauses (2) and (3) of Art. 63 were omitted and on the other hand provisions for emergency and preventive detention were made.

The Prime Minister and the Cabinet²⁰

As already stated, the present Constitution of Bangladesh as amended in 1991 envisages a Westminster type of parliamentary system of government reflecting the aspiration of the people. The scheme provides that there shall be a Cabinet for Bangladesh headed by the Prime Minister and comprising also such other Ministers as the Prime Minister may from time to time designate,²¹ and that the government is to be run by the Cabinet which shall be collectively responsible to the Parliament,²² and shall remain in power so long it enjoys the confidence of the Parliament.²³ One significant feature of the present constitution, is that it has completely avoided giving any discretionary power to the President.²⁴ Accordingly, it provided not only that, except appointing the Prime Minister²⁵ and the Chief Justice,²⁶ the President shall act in accordance with the advice of the Prime Minister²⁷ but also that the executive power of the Republic shall be exercised by or on the authority of the Prime Minister²⁸ as the head of the Cabinet.

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.²⁹ The appointments of other Ministers, Ministers of State and Deputy Ministers, as determined by the Prime Minister, shall also be made by the President, provided that not less than nine-tenths of their number shall be

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20. Chapter II of the Part IV substituted by Act XXVIII of 1991
 21. Article 55(1) of the Constitution of Bangladesh.
 22. Article 55(3) of the Constitution.
 23. Article 57(2) of the Constitution.
 24. Part IV of the Constitution has been amended by Act XXVIII of 1991 by substituting new Ch. I and II (relating to President as functional head and the Cabinet headed by the Prime Minister as executive head) for Ch. I and II inserted by the 4th amendment making provisions for president as executive head, and Vice-President and Council of Ministers
 25. Under Cl. (3) of art. 56
 26. Under Cl. (1) of art. 95
 27. Clause (3) of art. 48
 28. Cl. (2) of art. 55
 29. Art. 56(2) of the Constitution.

appointed from among members of Parliament and not more than one-tenth of their member may be chosen from among persons qualified for election as members of Parliament.³⁰ If the Prime Minister ceases to retain the support of a majority of the members of Parliament, he/she shall either resign or advise the President to dissolve Parliament, and in the latter case the President shall, if he is satisfied that no other member of Parliament commands the support of the majority of the members of Parliament, dissolve Parliament accordingly.³¹

Preventive Detention and Emergency

The most significant features of the original Constitution of Bangladesh enacted in 1972 was the absence of any provisions relating to special powers of the President like preventive detention and proclamation of emergency and suspension of fundamental rights, and the right of protection from arrest and detention³² was guaranteed without the provision for preventive detention although it has been the common practice in the constitution-making of the sub-continent to include such provisions in the constitution not only to handle a situation of war or threat of external aggression but also to combat internal disturbances.³³ Keeping in view the extreme bitter experience of the arbitrary exercise of power by the executive by application of such provisions in Pakistan, the framers of the Bangladesh Constitution considered such authoritarian power as contrary to the concept of nourishing a living democracy. But by a subsequent amendment of article 33 of the Constitution³⁴ and by adding a new part IXA³⁵ such provisions were made in line with article 22 of the Indian Constitution, but

30. Article 56(2) (3) of the Constitution

31. Article 57 (2).

32. Articles 31 and 32 of the Constitution of Bangladesh.

33. The Indian Constitution contains provision for preventive detention and proclamation of emergency in article 22, and in 1956 as well as 1962 Constitutions of Pakistan similar provisions were embodied in Art. 7 and 6(2) respectively.

34. Substituted by Act XXIV of 1973 for original article 33.

35. Part IXA was inserted by Act XXIV of 1973.

unlike India, detention in Bangladesh can go on for an unlimited period if the Advisory Board thinks that sufficient cause existed for such detention which may undermine the safeguards against arrest and detention as contained in the Constitution. Although preventive detention is justified on the ground of safety of the community at large, it may create an atmosphere affecting the community in general and liberty of the person in particular. Save during a period of public emergency threatening the life of the nation, no person of sound mind should be deprived of his liberty except upon a charge of specific criminal case, and preventive detention without trial is contrary to the Rule of Law, because indiscriminate use of power, vague suspicion by the police and an insensitive lack of concern and callous disregards of the detainee are the chronic and common causes of such detention.

In order to remove these abuses and to limit the power of the police, preventive detention laws should be drawn in such a way that they specify the particular kinds of actions which make a person liable for detention which require that detention be employed only when the legislature declares a state of emergency which will terminate automatically after a fairly short period of time unless extended by an Act of legislature. However, the new articles 141A, 141B and 141C of Part IXA relating to the proclamation of emergency showed not only improved draftmanship but also candidness compared to the provisions of the other three Constitutions of India and Pakistan. Another distinguishing feature not contained in any of those constitutions is the proviso to article 141A (1) that such proclamation "shall require for its validity the prior counter-signature of the Prime Minister", which reflects democratic thinking. This was incorporated in order to safeguard the abuse of power by the President as had been experienced in the past under a parliamentary system. Thus, the power to proclaim emergency in reality rests with the Prime Minister.

The Legislature

Part V of the Constitution of Bangladesh deals with matters relating to the Legislature. It envisages a unitary, one-house

parliament vested with plenary legislative powers of the Republic. It is the supreme law making body although it is not sovereign like the British Parliament as the written Constitution of Bangladesh is the supreme law of the land³⁶ and as the power of legislation is limited or restricted by Article 26 according to which laws inconsistent with the fundamental rights are to be void³⁷.

As Parliament is the Supreme law-making body, Acts of Parliament subject to the constitutional restrictions, are binding on all courts taking precedence over all other sources of law under the constitution, the responsibility of deciding whether the legislature has power to make law is that of the legislature although under Article 7 read with Article 26 of the Constitution the Courts have been empowered to declare laws inconsistent with the fundamental rights or against the basic provisions of the Constitution to be void³⁸.

Legislation consists of laws made by or under the authority of Parliament and may comprise statute-law or statutory instruments, which are orders, rules and regulations made by a ministry under the authority of a statute or by laws made by a local government or other authorities exercising powers conferred upon them by the legislature. This system of delegated legislation³⁹ empowers ministers and other authority to regulate administrative details under the authority of a particular Act of Parliament. It is for the courts to give effect to the general intention of the Parliament by ensuring that the delegated legislations conform to that intent and that the authority exercised has not been wider than the terms of delegation. The judicial power in this field is based upon the doctrine of *ultra vires*. The reviewing courts in Bangladesh, exercising constitutional competence, can invalidate administrative or subordinate legislations not only because they are *ultra vires*

36. Art. of the Constitution.

37. Article 26 of Part III of the Constitution, which incorporates Fundamental Rights.

38. *A. Hossain Chowdhury Vs. Govt. of Bangladesh* on the 8th Amendment of the Constitution of Bangladesh, 41 D. L. R. (A. D) 165.

39. Proviso to art. 65(1) of the Constitution of Bangladesh.

the enabling Act in the strict sense, but also they are unreasonable. This may be compared with the authority of courts in Britain over the subordinate or ancillary legislation of local authorities.

The Parliament is to consist of three hundred members to be elected from single territorial constituencies⁴⁰ by direct election with adult franchises, and, in addition thereto, there shall be thirty seats reserved exclusively for women, who shall be elected by the members aforesaid which will remain in operation until dissolution of the Parliament occurring next after the expiration of ten years from the date of the first meeting of the Parliament next after the parliament in existence at the time of the Constitution (Tenth Amendment) Act, 1990.⁴¹ Article 66 was also amended by inserting sub-clause (dd) of clause (2) by which the original provision of sub-clause (f) of clause (2) (which was previously omitted by Act II of 1975) was restored⁴² providing that a person holding any office of profit in the service of the Republic, other than an office declared by law not to disqualify its holders, would be disqualified for being a member of Parliament, but this provision was qualified by inserting a new clause (2A) by which it was declared that a person would not be deemed to hold an office of profit by reason only that he is a President,⁴³ Prime Minister, Minister, Minister of State or Deputy Minister.⁴⁴

The most distinguishing feature of this part of the Constitution is article 70⁴⁵ which provides that a member shall vacate his seat

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40. The number was increased from 15 to 30 by an amendment of art. 63(3) by the Second Proclamation Order IV of 1978 issued by the then President and C. M. L. A. Maj. Gen. Ziaur Rahman. Thus 330 members shall be designated as M. Ps.
 41. Substituted by Act XXXVIII of 1990. (Previously the period of operation of the said reserved seats was increased from 10 to 15 years from the commencement of the Constitution enacted on 4.11.72).
 42. Substituted by 2nd Proclamation Order IV of 1978.
 43. Substituted for "he is a Prime Minister" by the 6th Amendment Act XIV of 1981.
 44. The Words "Vice-President" and "Deputy Prime Minister" inserted by Proclamation Order XIV of 1978 have been omitted by Act XXVIII of 1991. (w. e. f. 18.9.91).
 45. Substituted by the (4th Amendment) Act II of 1975, S. 7.

if he resigns from the party which nominated him as a candidate or if he votes in Parliament against that party. The explanation inserted therein provides that even abstaining from voting and absenting from sitting of Parliament ignoring the direction of the party shall be deemed to be voting against the party. This is a new provision not incorporated in any other country where democracy is in practice. Neither the 1956 nor the 1962 Constitutions of Pakistan contained any such provision. Although it would encourage party dictatorship, which appears to be against the principle of democracy, but the past experience of parliamentary system in Pakistan and India showed that once elected the members tended to cross the floor for their selfish ends rendering the parliamentary system unworkable, which justify the incorporation of this provision in the Constitution.

As regards the parliamentary sessions, under the Constitution of Bangladesh, like in all other constitutions, the President is to summon, prorogue and dissolve the Parliament, but unlike the former presidential system,⁴⁶ empowering him to exercise the power according to his discretion by public notification, under the present Parliamentary system he is empowered to take such actions only with the advice of the Prime Minister,⁴⁷ and thereby the danger of the President exercising the power to dissolve the Parliament arbitrarily on any pretext has been averted. The proviso to article 72 (1) has also been amended to provide for holding of parliamentary sessions more frequently in that a period exceeding sixty days shall not intervene between the end of one session and the first sitting of the next session⁴⁸. The former proviso⁴⁹ to article 72 (1) existing before this amendment abolished the frequency of sessions altogether with the minimum of only two sessions in a year as a result of which the Parliament could not effectively exercise control over the Ordinance making power of the President, as provided in article 93. Because, if the Parliament is summoned to meet for the second session after about a year from the

46. As provided by the 5th Amendment Act II of 1975.

47. Substituted by Act XXVIII of 1991 (W. e. f. 18.9.91).

48. Substituted by Act XXVIII of 1991 for the former proviso.

49. The former proviso to art. 72(1) was substituted by Act II of 1975.

first session held after the general election, the Parliament will be unduly prevented from playing its role in controlling the Ordinance making power of the President, and thereby making the Ordinance more effective and rendering the Parliament ineffective and meaningless. But we cannot make the Parliament ineffective and undemocratic through any device. The recent amendment providing for frequency of parliamentary sessions reflects democratic zeal and has made the Parliament more and more significant and important.

As to legislative procedure, sovereignty of Parliament is maintained inasmuch as the President has to give his assent to a Bill within the time limit failing which the Bill shall be deemed to have been assented to by the President⁵⁰; no tax shall be levied or collected except by or under an Act of the Parliament⁵¹, and the custody and payment of public moneys as well as regulation of all matters relating thereto shall be regulated by Act of Parliament⁵². However on the question of the President assenting to a Bill, although his action has been restricted to a time limit only, he can unnecessarily delay a Bill, other than a Money Bill⁵³, being passed into law by the application of partial veto by withholding his assent and returning the same to the Parliament with a message for reconsideration of the Bill or any of its provision with any amendment specified by him⁵⁴ and thereby changing the complexion of the Bill altogether. In order to make democracy and the popular Parliament more effective and meaningful, it may be suggested that in all legislations involving development measures of utmost public importance the President should not be empowered to withhold assent to a Bill passed by the Parliament so as to avoid unnecessary delay in progressive legislation being given effect to for the general welfare of the developing nation. Subsequently

50. Art. 80(3) of the Constitution of Bangladesh.

51. Art. 83, Constitution of Bangladesh.

52. Art. 85, *Ibid.*

53. Under art. 82, no Money Bill, nor any Bill which involves expenditure from public moneys shall be introduced except on the recommendation of the president, but it is not necessary for moving an amendment for reduction or abolition of any tax.

54. Act. 80(4), Constitution of Bangladesh.

with the important addition of clauses 1A, 1B and 1C to Article 142⁵⁵, when a bill for amendment of the preamble or any provision of articles 8,48,56 or this Article 142⁵⁶, is presented to the President for assent, he shall, within seven days after presentation of the Bill, have to cause it to be referred to a referendum and the President shall be deemed to have assented or withhold assent according to the majority of the total vote cast, which reflects democratic thinking and sovereignty of the people.

Ombusman

Another important feature of the Bangladesh Constitution, which reflects supremacy of Parliament in controlling the executive, is the provision made in Article 77 of the Constitution for the office of an Ombudsman providing a machinery to overview the activities of the civil bureaucracy. The Parliament has been given the power to provide by law for establishment of such a sophisticated office, which will be entirely independent of the executive and responsible only to Parliament. It shall exercise such power and perform such functions as Parliament may, by law, determine, including the power to investigate any action taken by a Ministry, a public officer or a statutory public authority and shall prepare and lay before the Parliament an annual report concerning the discharge of its function for necessary action. This institution will surely strengthen the functioning of democracy in the country but unfortunately this important and ideal provision has not yet been put into operation. Here is the gap between the ideal and actual. In order to bridge over the gap, immediate attempt should be made to establish the office of Ombudsman and put into operation the law relating thereto for more effective functioning of democracy in accordance with the aspiration of the people.

Conclusion

The foregoing discussion about the nature and character of Bangladesh as an independent state as well as the functions of the

55. Clauses 1A, 1B and 1C were inserted by the 2nd Proclamation Order IV of 1978.

56. Articles 58,80 and 92A were omitted by Art. XXXIII of 1991.

different organs of its government under the Constitution reveals that the Constitution-making process in Bangladesh has a very cheequerd career. In view of the bitter experiences with the presidential form of government in undivided Pakistan and the clear public mandate made in the original Constitution enacted in 1972, the form of government was rightly decided to be a parliamentary one but unfortunately it failed to work successfully due to absence of well-organised and highly disciplined parties which are essential for stability and successful working of the purely parliamentary system of government. Although under the Rule of Law, we can see no other alternative than a representative form of government, in 1975 the parliamentary system was replaced by the presidential system which was professed to be a safer form to be adopted in order to meet the prime need for a stable government. Though presidential system is also a democratic one, but with the adoption of presidential executive without evolving a system of cheek and balance in the absence of a statutory body with power to exercise restraint on the head of the executive, all the established ingredints of a parliamentary form of government were removed, which degenerated into a one-man dictorial rule triggering anti-autocratic movements and mass-upsurge as in December, 1990 forcing the despotic ruler to abdicate resulting in the utter failure of the presidential executive too. And after long nine year's relentless struggle and sacrifices, as aforesid, a sovereign parliament installed by popular election and a government accountable to the people through parliament have finally seen the light of the day and thereby people's long cherished democracy has been consolidated, which will pave the way for translating the ideals of democracy into reality.

The fundamental aim of the state is to realise through the democratic process, a socialist society, free from exploitation - a society in which the Rule of Law, fundamental human rights and freedom, equality and justice, political, economic and social, will be secured for all citizen, as the preamble of th Constitution proclaims. Without diving deep over again into the details of relation with checks and balances between the executive and legislature in a democratic state, where human dignity is protected

in terms of the U. N. Human Rights Declaration, it may be said that they have now been substantially provided in Bangladesh. But the problem with us, like many other developing countries, lies with effecting the basic formulation of the principle of the Rule of Law, more or less entrenched in the Constitution, in the real life of the people. Illiteracy, ignorance, poverty and other social factors akin to illiteracy are great impediments to the representative government reaching its highest expression and fullest realisation in Bangladesh as a developing country. So the entrenched principles existing as ideals must be realised in practice so that no hiatus is left between the ideal and the actual.

The function of the legislature in a free society under the Rule of Law is to create and maintain the conditions which will uphold the dignity of man as an individual, which requires not only the recognition of civil and political rights but also the establishment of social, economic, educational and cultural conditions which are essential to the full development of his personality. To implement the above principles, the powers of the legislature have since been fixed and determined by fundamental constitutional provisions, which guarantee that the people, through their representatives, decide on the content of the law; confer on the legislature the exclusive power of enacting general principles; provide for control by the people's representative over the exercise by the executive such subordinate legislative functions as are necessary to give effect to legislation; and organise judicial sanctions enforcing the above principles and protect the fundamental rights. The prime need of the time is to work honestly and relentlessly for implementation of the above principles.

Before concluding, it may be observed that in the civilized world human life without Rule of Law is not possible as it is the instrument of social order and through it society is preserved and man is enabled to live, love and labour in peace. It is not only the foundation of society but also the index and foundation of civilisation. The law must be firm but flexible and capable of adapting itself to a changing world. This is especially so in a developing country. Poverty, lack of opportunity and gross inequa-

lity require leaders to understand the need for revelutionary change so that every citizen may look to a future in which each may realise his full potential as an individual in a free society. Let objective reasons shape all of our state activities, under the Rule of Law, so as to strike the balance between the authority of the state and the fundamental human rights of the citizen by proper and prompt application and enforcement of the law on which rest the peaceful and civilized existence of the society.