

## A Legal Analysis of Local Government Institutions in Bangladesh with Special Reference to Their Origin and Development



Dr. Mohammad Abdul Hannan<sup>1</sup>, Md. Abdullah Al Jubair<sup>2</sup>

<sup>1</sup>Professor, Department of Law, University of Rajshahi, Rajshahi 6205, Bangladesh.

<sup>2</sup>Graduate Student, Department of Law, University of Rajshahi, Rajshahi 6205, Bangladesh.

### 1.1 Introduction

While simply put, that is, in order to examine the conceptualization of a legal analysis of local government institutions in Bangladesh generally, a careful treatment of the origins and evolution of those, along with their subsequent development in particular, is required through tracing back to thousands of years of rich heritage of this land. The crux of the matter lies in what one critically observes the historical origins of the local government institutions and their subsequent development not only in a continuous hierarchical order, but also with an intimate engagement of law, politics, economy, competing ideologies deeply rooted in collective memories of the people of this land. In what follows, however, the author proposes that, this particular topic be approached from two different but interrelated angles. They are-

- a. History-based generic analysis
- b. Institution-based specific analysis.

The first method will undertake a factual analysis of what the title of the paper indicates from the viewpoint of a historical evaluation of local government institutions with their hierarchical continuity i.e. the gross history of local government (from ancient period to 2010). Here, time remains a focal point. In this prospect, we will find an uninterrupted continuity of the history of origins and development of local government institutions in our country spanning from 1200 B.C. to 2010, while conducting this study. And the second one named here as 'Institution-based specific analysis' is whereby the particular local government institution will be treated as a major point of focus irrespective of its historical continuity. In addition, the discussion of historical continuity as to the evaluation of local government institution will be, if not totally, avoided and to some extent interrupted for the sake of convenience. Rather, the formation and activities of the local government institution will get preference. The same institution of different time span will be compared under this angle. In terms of analysis, both modes of methodology will be deployed here in a harmonious manner. We know that, in modern time, it is well recognized that the local government can be termed as the linchpin of good governance for any modern state generally, and as well as to attain political, economic and social welfare for the marginal groups of people within the state in particular. A strong local government system can ensure good governance by virtue of establishing transparency, accountability, effective participation and equal opportunities for all. It can also lay the foundation for a vibrant democratic system. The Constitution of Bangladesh which is the supreme law of the land gives special emphasis on local government and the need to entrust its bodies with necessary support so that they can perform efficiently in their expected functions. Promotion of local government institution is one of the fundamental principles of state policy which is generally treated as a sacred duty of the Government to implement.<sup>[1]</sup> Article 59 in particular highlights the role of such bodies in the preparation and implementation of plans relating to public services and economic development.<sup>[2]</sup> Article 60 also stresses on the need for local government bodies to have the power to impose taxes for local purposes, to prepare their budgets and to maintain funds<sup>[3]</sup>. It is evident that the legal basis of the local government is clearly spelt out in the Constitution through Article 59, in addition, Chapter III has ensured the devolution of power to local government bodies<sup>[4]</sup>. The incorporation of such stipulations within the Constitution underlines the significant role that is anticipated from local government as an institution. For that reason the need for functional, empowered, independent, accountable and democratically elected local government bodies is paramount.<sup>[5]</sup>

However, the emergence of local government as a distinct governmental unit is the outcome of several interacting factors— historical, ideological, and administrative. Historically, local government obviously preceded national government. Human beings first established their neighborhoods management authority, i.e. the village government or town government before they could even envisage a more remote authority such as national government. According to Wicker (1970), local government is the descendant of

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'historic communities' and as such reflects more of the natural history of man than any other part of modern civilization. Administratively, local government allows distribution of work on a tensional basis; prevents the central bureaucracy from forcing its unhealthy administrative uniformity on the country and facilitates use of knowledge of local conditions of tackling problems. Local government can help speed up the decision-making processes and provide people with prompt services through paving the way for better using local knowledge with empirical experiences, direct contact with citizens and greater ability to overcome communication problems. <sup>[6]</sup>

## **1.2 Rationale and Justification**

Local government remains at the heart of both functional democracy and structural democracy. Without staging a fair election of local government in every administrative unit of the Republic, the main object of democracy will remain unrealised. The purpose of democracy will stay unfulfilled. As the local government is a political institution, the structure of local government has a relationship with its political superstructure. Whereas Bangladesh is a unitary form of government, naturally local government is directly linked up with central government. It is widely known that in a unitary state the political base of central leadership depends on the local bodies and their leadership. Therefore, the necessity of the local government institution is perceived from all points of view.<sup>[7]</sup> At present, the local government institution is a burning issue. In the middle of January, Upazila Parishad chairmen and vice chairmen announced a course of action to be realised urgently their 10-point demand including establishment of Upazila parishad as an autonomous body, even if it amounts to the amendment of the existing laws. The 10-point demand, announced earlier, also includes filling up of one-third reserved posts for women immediately, removal of obstacles to exercising power by Upazila chairman as chief executive and carrying responsibility by a vice-chairman in absence of chairman, announcing separate national budget for the local government, reorganization of Zila parishad and enacting a "mother law" for all the tiers of local government. The present socio-political context of the society demands an elaborate and extensive updated paper work on the issue of evolution of local government institution. No research is available which includes and covers the latest enactment relating to local government institution. Which is why, the author finds the utmost rationality of engaging himself with this research work.

## **1.3 Scope**

Local government institution cannot be confined to a subject matter which will be analysed only by the students of law. Rather, it is also an important field of inquiry for the students of Political Science, Sociology, and Public Administration etc. Social, political and administrative factors highly contribute to the developments of local government. So these accounts naturally fall into a wider purview of research. But as I have been trained in a legal discipline, my special emphasis has been assigned to the legal analysis of the origins and subsequent development of local government institutions in our country. In this respect, most of the enacted laws passed in periods of British, Pakistan and independent Bangladesh have been analysed to be complied with the concerned research.

## **1.4 Significance**

In Bangladesh, the local government bodies had never been, 'self-governing' bodies in the true sense of the term. They could simply be labeled as an extension of the central government with guided and limited local participation. Consequently, local governments have always been institutionally and financially weak, poorly managed and lacked social and political credibility. The importance and significance of earlier reform efforts with regard to local government lie in their contribution towards some incremental strengthening of the system. However, there is a consensus that some steps should be taken into consideration in any future attempt to reform the local government institutions and reorganize them to make them truly decentralized, institutionally effective, financially viable, participatory, gender sensitive, transparent and accountable. Most challenges people face are local. Therefore, the best way to solve them is through local initiatives and local leadership by awakening and mobilizing people. The elected bodies can play a catalytic role in this regard by fomenting a social movement that can greatly contribute to the socio-economic resurgence of the country. Thus, the subsidiary principle, enunciated in the United Nation's World Charter of Local Self-Government states that public problem solving responsibilities should generally be exercised by those authorities who are closest to the citizen, and any allocation of responsibilities to higher authorities must be based primarily on the requirements of technical and economic efficiency.

## **1.5 Objectives**

The main objective of this study is to ascertain the origins of all sorts of existing local government institution in Bangladesh and simultaneously, to point out the subsequent development and changes of these institutions so that the historical origins of local government institution can be traced in a single document which will be convenient for scholars, academicians and students alike for further deep research of this arena. But it will be erroneous to project the objective of this paper only to identifying the origins and development of local government institutions of the land. The author expects that this paper will also reveal the factual scenario i.e. the problem such institutions usually face, limitations of proper implementation of related enactment, political consciousness,

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solution of the existing problems etc. Put this way, this paper may provide guidelines for the researchers in the arena of local government institutions. At present, however, whereas local government institutions are regarded as the core of good governance, it is hard to find comprehensive qualitative publication regarding this matter. Faced by the limitation of adequate research in this vein, the author endeavours his intimate interest to be invested in a serious scholarship in this particular issue with the object of contributing to a future research project by opening the doors for other scholars of Humanities and so on. For this very purpose all the enactments passed during the regime of Non Party Care taker Government (2006-2008) and the present Government (till 2010) will be highlighted in this paper. The author hopes that the readers will be able to get the updated data regarding the latest legal development undertaken in the arena of local government institution in our country.

### **1.6 Methodology**

The research monograph is basically based on one of the prominent procedures of research work namely Qualitative Method. We have to use facts and information already available and analyze these to make a critical evaluation. The data and information used was collected from websites; articles and books of renowned writers; and various legislations some of which had been passed even more than hundred years ago. The work is basically a combination of descriptive and analytical approach. We went online to visit more than 30 websites of various research organizations and publication for concerned data collection conducive to my study. We have visited The National Library of Australia through internet and found some materials of excellent quality. Subsequently, we went through the materials, then analysed them with relating issues and made up a skeleton of our research. Finally we drafted the thesis by putting those analyzed and critically examined materials into the structure on which this study has been built. Thus, this research paper was prepared and submitted.

### **1.7 Limitation**

This research paper contains four basic limitations:

- a. To comply with the title of the research the author confined himself only to legal analysis of the evaluation of local government institution. Analysis with regards to social or political evaluation of local government institutions has been proportionately avoided.
- b. In a similar manner, the very meaning of local government institution has been restricted only to the elected local representative body. Here, by local government is meant an elected government body of local area. Other local government departments like LGED are outside the purview of this research paper.
- c. Legal analysis as to the origins and development of local government institutions in Bangladesh has been drawn basically in reference to the enacted laws only. Legal decisions of the courts have not been given preference over laws.
- d. Finally, as to the time limitation this paper covers the ancient Bengal period to February 2010 in respect of the development of local government institutions.

### **1.8 Definitions and Terms used in the paper**

Before delving into the main discourse of the research, it will be convenient to unleash some important technical terms from their apparent abstruseness for better comprehension of this study. Here, an attempt has been taken to explain the general meaning of some of the terms as well as the particular meaning of those which has been clothed upon them for the purpose of the present paper. For example- the word local government institution has been used in the paper for thousands of times. The term has its own traditional meaning, academic meaning, etymological meaning etc. But in this paper, it is used in a simple meaning which will be the substance of its all types of meanings. That means, irrespective of the etymological, traditional, academic meaning, all the terms used in this paper will have their distinctive meaning. This attempt proceeds with the definition of local government institution. If we analyse the dictionary meaning of local government, we will find that an extensive variety has been existed there. Sometimes it is used in a sense that it is a political administration of the smallest subdivisions of a country's territory and population.<sup>[8]</sup> It can also be used in that it is a form of government covering an area less than that of the nation.<sup>[9]</sup> In wider sense, Local government refers collectively to the administrative authorities over the areas that are smaller than a state. The term is used to make a contrast with offices at nation-state level, which are referred to as the central government, national government, or (where appropriate) federal government. "Local government" only acts within the powers delegated to it by legislation or directives of the higher level of government and each country has some kind of local government which will differ from those of other countries. In primitive societies, the lowest level of local government is the village headman or tribal chief. In modern nations, local governments usually have some sort of powers as national governments do. They usually have some power to raise taxes which may be limited by the intervention of central legislation. In some countries, local government is partly or wholly funded by subventions from the central government taxation. The institutions of local government greatly vary country to country and even where similar arrangements exist, the terminology often varies. Common names for local government entities include state, province, region, department, county, prefecture, district, city, township, town, borough, parish, municipality, shire and village. However, all these names are often used informally in different countries and local government is the legal part of central government.<sup>[10]</sup>

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However, Professor Duan Lockard defines local government as a public organization authorised to decide and administer a limited range of public politics within a relatively small territory, which is a sub division of regional or national government. But this definition does not take into consideration the affairs of financial and legal status of the local government, nor does it specify its representative character. But the limitations of this definition has been overcome by the definition given by United Nations where local government has been defined as a political subdivision of a nation or state, which is constituted by law and has substantial control of local affairs, including the power to impose taxes. The governing body of such an entity is elected or otherwise selected. So according to these definitions, there is no scope to think that the local government department i.e. LGED is a local government institution in the true sense of the term. Because a Local government institution must be an elected body. The apex court of the country has also affirmatively pointed in the case of Kudrst-E-tlahi vs. Bangladesh to local government as entities meant for the management of local affairs by the locally elected persons. If Government's officers or their henchmen are brought to run the local bodies, there is no sense to make them reinin as Local Government Bodies.<sup>[11]</sup> So the main characteristics of local government institution are-

- a. It must be a statutory body
- b. It will be autonomous
- c. It has power to prepare its own budget
- d. While making policy, the local representatives have an opportunity to participate
- e. In most of the cases it works independently e.g. a Mayor of Ciry Corporation works independently but a Deputy Commissioner cannot do so
- f. Local government has a control over employees
- g. Local government will perform and take decision over the matters which are related to public welfare and economic development
- h. Local government has the power to impose taxes
- i. It has the power to prepare annual report.<sup>[12]</sup>

With a view to avoiding confusion, it is appropriate to differentiate 'local government' from 'local politics' and 'local administration'. Local politics is a wider term and covers a host of areas besides local government. On the other hand, local administration means implementation of decisions by not only local government institutions but also national/ provincial government units operating at the field level. In South Asia, local government is widely known as local self-government.<sup>[13]</sup>

For the purpose of this study, local government is defined essentially in terms of some attributes: first, its statutory status; second, its power to raise fmance by taxation in the concerned area under its jurisdiction; third, participation of the local community in decision making on specified subjects and administration; fourth, the freedom to act independently of central control; and lastly, its general function, in contrast to the single-purpose character of many autonomous bodies.

In this paper, Bangladesh perspective in local government has been classified into two types-

- a. Rural local government
- b. Urban local government

Here, we will focus on the origins and development of both types of local government in the context of our county. It is important to note here that, in spite of being a new country, Bangladesh has a long recorded history with various dimensions; in addition to that, the history of local government institutions in Bangladesh will also include the common history of other part of this subcontinent. Especially, in regard to the origins and earlier developments of local government institution, the territorial integrity of present Bangladesh will be relaxed. And finally, though the term 'institution' refers to any type of organization but in this paper this term will basically refer to the elected local government institution within the framework of various legislative enactment and Constitution.

The origins and earlier development of the local government institutions in our country have been discussed at the second chapter. The third chapter contains the detail legal analysis of the evolution of local government institution in between the periods of 1947 to 1971. Chapter four categorically entails the analysis of legal development of local government institutions in independent Bangladesh in different political regime. Finally, chapter five draws the conclusions and findings of the study as well as some recommendations to accelerate the development process of local government institutions in Bangladesh.

### **2.1 Origins & Earlier development**

It is usually assumed that local the government was the basic form of government in the subcontinent till the 6th century B.C., when large kingdom came into being and local government started playing second fiddle to the central authority. There are three types of local government in ancient societies. It will not be erroneous to say that the village self-government in the subcontinent is as old as villages themselves. The Rig Vedas<sup>[14]</sup> mention some forms of village self-government. Sir Charles Metcalfe (Governor General 1835-36) termed them as 'village republics'. These self-governing village communities are called 'Panchayet System'. Kamal Siddiqui in his edited book titled 'Local Government in Bangladesh', has shown that the village government in the subcontinent took different forms and functions in different times and places. These differences were a reflection of the great variations in the

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political and social organizations of the villages. He points out that the Headman and Panchayets which can be termed as village councils, were existed at that time and functioned properly. The brief details of these two institutions and their varieties across the subcontinent are given below.

**Headman:** Generally, the headman was the head of the most powerful family of the dominating caste. However, sometimes the state's princes were formally appointed headman. But it was never an elected post by the villagers. But it is important to note here that the local government under the village headman was originated from tax system which is one of the basic characteristic of modern local government institution.

**Panchayets:** Panchayets are also known as the village council. It was composed of the senior persons of the village and also responsible for contacts with higher authorities. But it cannot be definitely shown that the Panchayet system prevailed throughout the subcontinent.

During the 6<sup>th</sup> century A.D., the eastern and southern regions of modern Bangladesh came to be ruled by a number of independent kings. The Palas and Senas dynasties ruled Bangla for 600 years. But during their regime, no significant change in the character of local administration had been brought about.

### **2.2 Local government institutions in Medieval Bengal**

Historians reckon the beginning of medieval period with the establishment of Turko-Afghan rule in Bangladesh from the 13th century. It is believed by many but disputed by some, that the administration of villages in medieval times was left to the village. It is conceived that each village had its own council or Panchayet. It appointed or elected its own headman who served as a link between the village and the central government. The headman collected revenue from the cultivators and forwarded the revenue to the treasury. A Patwari or village accountant working under the supervision of headman used to keep records revenue. The Panchayet were entrusted with the task of looking after education, irrigation, practices and moral conduct of the villagers.<sup>[15]</sup> Thus, we see that, the basic characteristics of modern local government institution were present in the administration of Panchayet system of the 13th century. It is not clear whether the administrative units during the medieval period were the same as those in the ancient period, but it seems that the revenue collection became more organized during the Mughol period. Local administration was more geared up to the end. As a result, Sarkar/ Chakia and Pragma emerged as the focal point of revenue and general administration at that time. In this period, the towns gained importance in Bengal. The Mughals were essentially an urban people and their most remarkable contribution in respect of local government was in the urban areas. The office of Kotwal was developed as the cornerstone of municipal organization.<sup>[16]</sup> In light of what has been touched upon earlier, the history of local government at the medieval period of Bengal can be divided into two periods in broader prospect-

- a. Sultani period
- b. Mughol period

**2.2.1 Local government institutions at the Sultani Period:** This period begins in 1342 and lasted till 200 years. At this period, the only effective local government institution that can be found is the Panchayet or village council, discussion of which is found at the previous page.

**2.2.2 Local government institutions at the Mughal Period:** According to the previous discussion, we can classify the local government institutions of Mughal period into two types. They are-

- a. Rural Local government institution: Subedar, Najim, Faujdar, Shikder etc.
- b. Urban local government institution: Kotwal.

### **2.3 Local government in Bengal during Colonial period**

The present local government system in Bangladesh had its origins in British colonial period. Because, the British rulers in India did not adopt the indigenous institutions of local government which existed at that time. The institutions nurtured by them were modeled on their own. But it is important to note here that the local government institutions of rural and urban areas did not evolve along the same lines. Initially, municipal institutions were implanted for their own interest. However, the basic legal developments relating to the local government institution of the Bengal are discussed below in a brief way.

The British rulers abolished the traditional Pargana and Panchayet system. The new civil and criminal justice and its 'adalat' system became the basis of the local government and the landlords were made the natural leaders of the society. However, the zamindari institution lost its potency in the later part of the nineteenth century. The end of rule in 1858 and parliamentary commitment to take the people of the country in legislative, administrative and political partnership in phases led to many reforms leading to increasing participation of people in the local governance. Several legislative enactments had been passed for this purpose. A few of them which are most important in the local government arena for the better understanding of the development of local government institutions are discussed below.

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**2.3.1 The Bengal Village Chowkidari Act, 1870:** The Bengal Village Chowkidari Act of 1870 established panchayats with individuals nominated by district collectors with the sole purpose of levying and collecting chowkidari tax for the maintenance of village watchmen. The term of the panchayet was four years. Thus, the Act tried to revive the traditional Panchayet system. Under this Act the institution of Panchayet consists of five members.

**2.3.2 The Bengal Municipal Act, 1884:** The Bengal Municipal Act, 1884 was enacted for urban local government of Bengal, Orissa and Assam.

**2.3.3 The Bengal Self-Government Act, 1885:** The Bengal Council passed The Bengal Self-Government Act, 1885 which provided three-tier structure for rural Bengal. They are —

- a. The district board,
- b. The local board (for sub-division)
- c. The union committee.

Members of the union committee and local board were elected by a restricted electorate and the district board members were elected indirectly. The district board was made the principal unit of local self-government and the collector was the chair, exercising the real authority. Local board was abolished in 1936. Numbers of union committees were very limited. Elected chairman on an experimental basis introduced in 1916. He was elected for five years. Under this system, the Local Board acted as a supervising body of Union Committees, which were designed to administer, on an average, an area of twelve square miles in the village. Union committees, consisted of not less than five or more than nine members. The District Board was made the centerpiece in the local government system and entrusted with extensive powers and responsibilities.

**2.3.4 The Bengal Village Self-Government Act, 1919:** The Bengal Village Self-Government Act, 1919 was enacted for the creation of elected Union Boards with restricted electorates. Women were allowed to vote in 1950. The Union Board was given three types of functions: normal municipal functions such as sanitation, conservancy, water supply, maintenance of roads and drains; regulatory functions such as control over the construction of buildings; and development functions such as promotion of cottage industries, and establishment of primary schools or libraries. The board also exercised control over local police. The Union Board was composed of not less than six but more than nine members of whom two-thirds were elected and one third nominated. Elected members were chosen from union residents who attained the age of 21 years and had paid at least one rupee of land tax and at least another rupee as tax assessed by the board. After the election, the members elected the president and vice-president from among themselves. Nominated members of the board were to be chosen by the District Magistrate.

So the local government institutions introduced by the British are- Panchayet under The Bengal Village Chowkidari Act, 1870; the district board, the local board (for sub-division) and the union committee under the Bengal Council passed The Bengal Self-Government Act, 1885 and finally, Union Boards under the Bengal Village Self-Government Act, 1919. Besides, there were some urban local government institutions under several Acts i.e.

- a. The District Municipal Improvement Act, 1864
- b. The Local Government Act of 1873
- c. Bengal Mticipal Act,1876
- e. The Municipal Act, 1896
- f. Bengal Municipal Act, 1932
- g. Town Police Act, 1856
- h. District Town Committee Act, 1869

However, in 1947, there were 15 District Boards, 3581 Union Boards, and 43 Municipal Boards in East Bengal(now Bangladesh). It is important to note here that there was one town committee in the district of Sylhet at that time which was administered according to the Asam Municipal Act, 1923.

### **3.1 Legal analysis of the development of local government institutions at Pakistan regime (1947 to 1971)**

For the purpose of better understanding of the conditions of development of local government institutions during these 23 years, we will divide this period into several segments.

**3.1.1 During the period of 1947-1957:** In 1947, Pakistan and India emerged as the two separate independent states and the British colonial ruling in the subcontinent was terminated. But the most interesting point is that, the colonial situation of local government remained till 1959 in Pakistan. No major enactment was passed to create or modify the existing colonial local government system

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of the country to meet the pressing needs of the country. Only in 1956-1957, the United Front Ministry brought about some changes in laws relating to local government bodies in the province of East Bengal (the present Bangladesh) by Ordinance No. 1 of 1956. The major changes brought by this Ordinance are-

- a. Nomination system and reservation of seats for minority community in local bodies were abolished.
- b. The local bodies were wholly constricted with elected members.
- c. The election of the members was on the basis of adult franchise.

The amendment of 1957 introduced a symbol method in the secret ballot system of voting and the amendment has been provided for the appointment of one or more stipendiary magistrates as Municipal Magistrates for trial of certain offences made under Municipal law.

**3.1.2 During the period of 1958-1971:** On October 27, 1958, Martial Law was imposed in Pakistan. The Basic Democracy Order was promulgated in 1959. In contrast to the provincial character of the earlier local government enactments, this order was a central legislation having jurisdiction over the whole territory. Under Article 155 of the 1962 Constitution, each province was divided into 60,000 electoral units. The electors of all electoral units in both the provinces were known as members of the 'electoral college' which is also known as Basic Democrats. These members were the voters for electing the President of the country, the members of the National Assembly and Provincial Assemblies.<sup>[17]</sup> Dr. Kamal Siddiqui in his book pointed out that, the Basic Democracy system covered both rural and urban areas and it had four tiers in rural areas. From top to bottom, they were-

- a. Union Council- Total number of Union Council was 4036
- b. Thana Council- Total number of Thana Council was 393
- c. District Council- Total number of District Council was 17 and
- d. Divisional Council- Total number of Divisional Council was 4.

There was another institution named Provincial Development Advisory Council which was abolished in 1962.

In urban areas, there were 37 Town Committees and 29 Municipal Communities in the then East Pakistan (now Bangladesh).<sup>[18]</sup>

**3.1.2.1 Union Council:** A Union Council consisted of ten elected members. Its tenure was five years. The council elected one chairman and one vice-chairman from among its members. The vote of no confidence passed against a chairman or vice-chairman was not to be questioned in a court of law.

**3.1.2.2 Thana Council:** This institution comprised of elected representatives as well as official members. There were three categories of members i.e. representative members, official members and appointed members. The main function of Thana Council was to coordinate the activities of Union Council under its own jurisdiction.

**3.1.2.3 District Council:** Under the Basic Democratic Order, the District Council is brought under the control of the bureaucracy. The Deputy Commissioner was the ex-officio chairman of the District Council. All executive powers were vested in him.

**3.1.2.4 Divisional Council:** It was the highest tier among the rural local government bodies. Official and non-official members formed divisional council. The number of member of Divisional Council differed from Council to Council, which was decided by the government. However, the Divisional Council had no power to levy taxes.

### **3.2 Urban local government during the period of Basic Democracy**

In 1960, to bring the Municipalities in line with the so-called Basic Democratic institutions in rural areas, a new Municipal Administration Ordinance was enacted. There were 56 Municipalities at that time and 28 of which were declared as towns and a town committee was set up for each town. Other Municipalities were classified into three types. In urban areas, three types of committee had been established. They are-

- a. Town Committee
- b. Union Committee
- c. Ward Committee

### **3.3 Findings**

The Basic Democracy system did not bring anything new in East Bengal. Before partition in 1947, local government was quite well organised in Bengal, both in rural and urban areas. Under the system of Basic Democracy, the local government was used as the spring board of national politics. Local government became a direct agency of central government for executing government programmes and under this grab, huge funds were channelized to them which resulted in a strong dependency relationship. The

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Basic Democracy System of local government had failed entirely. Later on, it was abolished by a Presidential Order after the emergence of Bangladesh as an independent state.

### **4.1 Legal analysis of the development of local government institutions in independent Bangladesh (1971 to 2010):**

The history of legal development of local government institutions in independent Bangladesh ranging from 1971 to 2010 is filled with a variety of dimensions. So, the development process of local government institutions of this period will be discussed categorically on the basis of different political regime.

**4.1.1 During the period of 1971-1975:** It is well recognized that, at the pre-liberation period, all the local government institutions were used as the instrument of exploitation by the rulers. As a result, naturally there was strong desire among the people for complete change and break from the past. It has, however, become necessary to make some ad interim provisions for the performance of functions of the Local Council and Municipal Committees till such time as new local government institutions are going to be established. So, in January 1972, as the first effort to reorganise the local government, the President Order No. 7 of 1972 was made. The basic features of the Order passed at this period are discussed below.

**4.1.1.1 The Bangladesh Local Councils and Municipal Committees (Dissolution and Administration) Order, 1972:** Under the provisions of this Order-

- a. Union Council became Union Panchayet
- b. Town Committee became Shahar Committee
- c. District Council became Zilla Board
- d. Municipal Committee became Pourashabha.

It is interesting to note here that, it is said that the renamed Union Panchayet and their functions were to be performed by a Committee appointed by the Sub-Divisional Officer. Hereto, the power exercised by the elected representative in the local councils was being transferred to the government officials. Thus, the basic feature of local government (an elected body) was frustrated. Subsequently, an Order was made in February 29, 1972. By this Order, Article 3 and 4 of P.O. 7/72 have been substituted.

**4.1.1.2 The Bangladesh Local Councils and Municipal Committees (Dissolution and Administration) (Second Amendment) Order, 1972:** This amendment provided for the appointment of administrator in Union Panchayet, Thana Development Committee, Zilla Board and Pourashabha. Under this Order, Union Agriculture Assistant, Circle Officer, Sub-Divisional officer and other government officer authorised by the government for this purpose were considered fit for the post of administrator.

In spite of all these Orders, no perceptible progress could be made in organising local government for scarcity of funds, want of dedicated, honest and trained persons and finally, for lack of political and administrative wisdom.

In 1973, the Union Panchayet was renamed as Union Parishad but the function and sources of income remained almost the same as was in the Basic Democracy System. In the same year, election to the Union Parishad was held under the President's Order No. 22. Under this Order, a Union comprising of several villages was divided into three wards, and each ward was to elect three members, i.e. nine members in a Union.

**4.1.1.3 Impact on Local government institutions by the Fourth Amendment of the Constitution:** In 1975, under the Fourth Amendment of the Constitution, major changes in the Constitution were undertaken and the provisions relating to the local government bodies were scrapped. Provisions were made for the formation of certain types of local bodies, most of which were non-elective. Besides, the existing local government institutions were affected by the formation of a new national political party named BAKSAL. Under this system, Union Parishad was abolished and all sub-division turned into districts.

### **4.2 During the Period of 1976-1981:**

After the assassination of President Sheikh Mujibur Rahman and the fall of his government in August 1975, the development process relating to local government suffered a temporary setback. During the regime of Ziaur Rahman, some fundamental changes have been occurred. A couple of important enactments regarding local government have been passed and new local government institutions were introduced. The analysis of the important enactments and new local government institutions will be discussed in the following paragraphs.

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**4.2.1 The Local Government Ordinance, 1976:** In 1976, the government, headed by Ziaur Rahman promulgated a Local Government for the first time in independent Bangladesh. This Ordinance provides for the formation of three types of local government bodies in rural area. They are-

- a. Union Parishad at the Union Level
- b. Thana Parishad at the Thana level
- c. Zila Parishad at the District level

A brief description of these institutions is given below.

**4.2.1.1 Union Parishad:** Under this Ordinance, the composition and function of Union Parishad remained much of the same as was in Presidential Order No. 22 of 1943 (which has been discussed earlier), except for the abolition of the post of vice chairman and inclusion of two additional types of Union Parishad members i.e. two women and two peasant members to be nominated by the government.<sup>[19]</sup> Its term was five years. The Union Parishad was entrusted with 40 functions including public welfare, maintenance of law and order, revenue collection, development and adjudication etc.

**4.2.1.2 Thana Parishad:** It comprised of both representative and official members. All the members had voting rights. About the tenure of Thana Parishad the Local Government Ordinance, 1976 was silent. The primary function of Thana Parishad was to coordinate all development activities of Union Parishad within its jurisdiction.

**4.2.1.3 Zila Parishad:** Under this Ordinance, the Zila Parishad was composed of the elected, official and women members whose were to be determined by the government. The primary function of Zila Parishad was construction, maintenance and repair of libraries, hospitals, roads, culverts etc.

An amendment was brought about to Local Government Ordinance, 1976 in April, 1980 and a new institution named Swanirvar Gram Sarkar was introduced at village level.

**4.2.2 Swanirvar Gram Sarkar:** The Gram Sarkar was a body consisting of gram pradhan (village executive) and 11 elected members representing different classes of the village. The Gram Sarkar was a mini-government which could undertake planning and promotional programmes<sup>[20]</sup>. The Gram Sarkar was assigned the responsibility of increasing food production, eradicating illiteracy, reduction population growth, invigorating rural cooperatives and maintaining law and order in the village.

**4.2.3 The Panrshava Ordinance, 1977:** For the purpose of strengthening local government institutions in urban area, The Paurashava Ordinance, 1977 has been passed which has been amended five times between the period 1977 and 1979, and eleven times between the period 1982 and 1990.

**4.2.4 Thana Development Committee, 1978:** A tier parallel to Thana Parishad was established by a notification in May, 1978 issued by the Ministry of Local Government, Rural Development and Cooperatives. It was named as Thana Development Committee which was dissolved in November, 1982. Then its responsibility was transferred to the Upazila Parishad.<sup>[21]</sup>

**4.3 Findings:** The reforms endeavoured by the President Ziaur Rahman were different from the earlier policies of decentralisation. The bureaucracy was given a free hand to control the local councils once again. These bodies of local government remained as the deconcentrated form of decentralisation. The only exceptions were the Union Parishads and Gram Sarkars. The Gram Sarkar had many characteristics common to those of Mawhood<sup>[22]</sup> model of decentralisation. Although for the first time in Bangladesh, the Gram Sarkar provided for an equality of representation to various functional interests, many argue that implicit objectives of the reform package of decentralization during Zia's period was to gain direct political support for the military regime in its process of civilianization.<sup>[23]</sup>

### **4.4 During the period of 1982-1991**

On April, 1982, the new Martial Law Government headed by Ershad constituted a ten-member committee for administrative recognition or reform. Based on the committee's recommendation, the government adopted a resolution on 23 October, 1982 to recognize the administration at Thana level. Under the recognized set-up, Thana was designated as the focal point of administration. Responsibility for all development activities at the local level was transferred to the Thana Parishad. In addition to that, the government undertook major steps to bring about changes to the existing local government institutions including creating a number of new enactments. Some important laws are mentioned below.

**4.4.1 The Local Government (Thana Parishad and Thana Administration Recognition) Ordinance, 1982:** It was promulgated on December, 1982 introducing major changes with respect to local government at the thana level. The old Thanas were recognized

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as Upgraded Thanas and in 1983, by an amendment of the Ordinance of 1982, they were renamed as Upazilas. Subsequently, another Ordinance and five new Acts have been passed for recognizing other rural local government bodies. They were-

- a. The Local Government Union Parishad Ordinance, 1983
- b. The Local Government Zila Parishad Act, 1988
- c. The Bandarban Hill District Local Government Parishad Act, 1989
- d. The Khagrachhari Hill District Local Government Parishad Act, 1989
- e. The Rangamati Hill District Local Government Parishad Act, 1989
- f. The Path Parishad Act, 1989

It is crucial to note here that, all the institutions under these Acts were carrying out their duties properly except the Palli Parishad which was supposed to consist of one elected Prodhana and eight members, because of the reason that it was not created at all. However, a brief description of these local government institutions is given below.

**4.4.2 Union Parishad:** According to the Local Government Union Parishad Ordinance, 1983, each Union was divided into three wards. It was consisted of a Chairman, nine elected members and three nominated female members. Their functions, terms of office and removal, manner of conducting of Union Parishads business remained the same as was in The Local Government Ordinance, 1976.<sup>[24]</sup> There were also some additional functions of the institution.

**4.4.3 Upazila Parishad:** <sup>[25]</sup> It was a completely new local government institution and worthy of detail analysis because of the reason that it became the focal point of administration following the governmental policy of decentralization. They replaced the old districts as the pivot of administration under the recognized system.<sup>[26]</sup> It comprised of a number of members. They are-

- a. an elected chairman for the term of five years, all the Union Parishad's chairman under the jurisdiction of the concerned Upazila as representative member,
- b. three woman member nominated by the government from amongst the residents of the Upazila,
- c. specified numbers of Upazila based officials by virtue of their office (ex officio) without voting right and
- d. the chairman of the Upazila Central Cooperative Association.
- e. In addition, the government retained a discretionary power to nominate a male member who is eligible for election as a chairman of Upazila Parishad.

Various functions, which were formerly performed at district level, began to be carried out at the Upazila level by this institution. The Upazila Parishad was empowered to levy taxes. Other functions of Upazila Parishad included planning, promotion and execution of development programmes within the locality, agriculture, primary education, health and family welfare, irrigation, input supply services, population control services, rural water supply, cultural and social development etc. However, the Upazila Parishad was abolished in 1991 which will be discussed later.

**4.4.4 Zila Parishad:** According to the Local Government Zila Parishad Act, 1988 Zila Parishad composed of-

- a. Public representative such as Member of Parliament, Upazila Parishad and Paurashava Chairman of the concerned district.
- b. Nominated members.
- c. Nominated women members.
- d. Certain officials.

Local Government Zila Parishad Act, 1988 assigned twelve compulsory and sixty nine optional functions to the Zila Parishad, while the Basic Democracy Order, 1959<sup>[27]</sup> and the Local Government Order, 1976<sup>[28]</sup> enumerated twenty seven compulsory and seventy optional functions. The Zila was empowered to receive taxes, rates, toll on eight items as specified in the Act.

**4.4.5 Palli Pariahad:** The Palli Parishad Act, 1989 provides that Palli Parishad will be the lowest of local administration which will be restricted to the village area. According to the Act, Parishad will consist of one Village Prodhana and eight members. However, the concept of Palli Parishad is almost similar to Gram Sarkar system which has not been put into practice so far.

**4.4.6 Hill District Local Government Parishad:** Three separate Acts named Bandarban Hill District Local Government Parishad Act, 1989; Khagrachhari Hill District Local Government Parishad Act, 1989; Rangamati Hill District Local Government Parishad Act, 1989 created the three Hill District Local Government Parishad. These legislations were brought about in order to grant autonomy to the ethnic minorities living in this region. In general, these institutions comprised of a chairman, a number of tribal members and non tribal members. The requisites for election for the chairmanship were mentioned in the particular Act. The 1989 Acts provide each Hill District Local Government Parishad with twenty one functions.

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**4.4.7 Local self-government bodies in the urban areas within 1982-1991:** Within this Period, eleven amendments have been brought to the The Paurashava Ordinance, 1977 for the purpose of upgrading the relevant provisions relating to urban local government institutions and four major cities have been declared as Municipal Corporation by four separate Ordinance. They are

- a. Chittagong Municipal Corporation Ordinance, 1982
- b. Dhaka Municipal Corporation Ordinance, 1983
- c. Khulna Municipal Corporation Ordinance, 1984
- d. Rajshahi Mwcipal Corporation Ordinance, 1987

**4.4.8 The Local Government Laws (Amendment) Act, 1987:** By enacting this law, several existing provisions of different Acts and Ordinances were amended in 24th June of 1987.

**4.4.9 Paura Commission:** In 1989, a Paura Commission was formed by the Minister of Local Government, Rural Develop and Cooperatives. Scholars, journalist, educationalist, senior officials, eminent citizens and people representatives were included as member of Commission. Four full-fiedges Commission meetings, eleven working group meetings and a large number of informal discussion were held. The Committee finally submitted its report in December, 1990. The Commission made suggestion about the structure and composition of institution, central local relationship, finance, pianning, municipal services, housing and land policy etc. However, hardly any action has been taken on this report so far. The new government made a new Local Government Commission in 1991 which will be discussed at the subseuent portion of the paper.

**4.4.10 Findings:** Thus, some basic changes have been brought in respect of local government institutions during the period of 1982-1991. Gram Sarkar has been abolished. In hundreds of public meetings in the beginning of reform, Ershad and his associates of the Upazilla model pronounced that improving access and promoting participation were the primary goals of their reform. In contravention of this pledge to the nation, the military regime exploited every possible opportunity to weaken the democratic forces in the country and strengthened the autocratic bureaucracy. The political history of Bangladesh was repeated n the 1 980s as the Upazilla was politicised in favour of the ruling military regime the way Pakistan's dictator Ayub Khan used the system of Basic Democracies in the 1960s, and the Gram Sarkar of the 1970s.<sup>[29]</sup>

### **4.5 During the period of 1991-1996**

No significant development regarding to development of local government institution has been initiated during the period between 1991 and 1996. The notable feature of this government in this arena was the abolition of Upazila Parishad<sup>[30]</sup>. Beside this, election to constitute fresh Union Parishad were held in 1992 in accordance with the provision of Local Government (Union Parishad) Ordinance, 1983, but to constitute local bodies at other higher levels a bill to that end was submitted to the Parliament in 1992 which as, unfortunately, remained a pending case in the Parliament since 1996. Thus, local government reforms have remained in limbo throughout the period of 1991 to 1996. <sup>[31]</sup>

**4.5.1 Local Government Structure Review Commission, 1991:** After the abolishing of Upazila Parishad, the government, by a notification, constituted a high powered 'Local Government Structure Review Commission' like the previous government. The Commission composed of fourteen members headed by the Information Minister as its Chairman. Members of Parliament, academicians and senior civil servants were included in the commission as members.<sup>[32]</sup> Nineteen regular meetings of the Commission and fourteen meetings of Sub-Committees were held. The Committee submitted it report on 30 July, 1992. The Committee recommended a two-tier system of local government in Bangladesh i.e. Union Parshad and Zila Parishad. At the same time constitution of Gram Sabha as recommended. To constitute Thana Development and Coordination Committee was recommended with specific functions.

**4.5.2 The Local Government (Union Parishad) (Amendment) Act, 1993:** Under this Act a Union was divided into nine parts. Three seats were exclusively reserved for women according to the provisions of the Act who were to be elected by the elected Chairman and the members. Like the previous Acts or Ordinances provision for its function and sources of income were secured in the present Act.

**4.5.3 Thana Development and Coordination Committee, 1992:** According to the recommendation of the Local Government Structure Review Commission, Thana Development and Coordination Committee was established in 1992. It was comprised of a

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Chairman, ex officio member, nominated members and other official members. This institution was contemplated to act as a coordinating unit among the other existing local government institutions.

**4.5.4 Findings:** The basic features of this period are- the abolition of Upazila Parishad, the election to constitute fresh Union Parishad in 1992 in accordance with the provision of Local Government (Union Parishad) Ordinance, 1983, the incorporation of The Local Government (Union Parishad) (Amendment) Act, 1993, and the establishment of Local Government Structure Review Commission. However, the government failed to provide any new form of local government during this five-year term and has also been subjected to criticism for the persistent crisis in governance. Subsequently, The local government institutions have become weak. The NGO's effective intervention rendered the local government institutions purposeless since they failed to perform. The rural people apparently getting more resources from the foreign funded NGOs seemed to have distanced themselves from local government.<sup>[33]</sup>

### **4.6 During the period of 1996-2001**

Like the previous period, no fundamental changes has been brought into light regarding local government institution in the regime of the Sheikh Hasina government. Few laws had been incorporated but no effective attempts had been taken for the purpose of strengthening and improvement of local government institution which is, however, contemplated within the framework of the Constitution of/Bangladesh. In 1997, Union Parishad election was held and to facilitate increased and robust representation of women, one unique and unprecedented measure had been adopted in the form of their direct election in the three wards of Union Parishad. However, the prominent legal development and the legal analysis of this period regarding the promotion and development of local government institution are discussed below.

**4.6.1 The Local Government Commission, 1996:** As like the previous government in 1996, a highly powered Local Government Commission was established which was consisted of eight members headed by a Member of Parliament. The committee taking into consideration past experiences of the local government system in the country and the Constitutional provisions prepared a final report which includes fifteen chapters. The Commission recommended a four-tier system of local government including \

- a. Palli or Gram Parishad at village level
- b. Union Parishad at Union level
- c. Thana or Upazila Parishad at Upazila level
- d. Zila Parishad at the district level.<sup>[34]</sup>

The Commission tried its best to keep balance between the expectation and reality. Fundamental positive changes were suggested for the purpose of strengthening local government institutions so that they can meet the urgent need of the country. The unique feature of the recommendation was that the Palli or Gram Parishad at village level was suggested to be properly implemented.

**4.6.2 The Local Government (Gram Parishad) Act, 1997:** As per to the above mentioned recommendation, The Local Government (Gram Parishad) Act has been passed in the Parliament in 1997. It was expressed in the Act that, Gram Parishad would be treated as an administrative unit for the purpose of fulfilling the obligation enunciated in Article 59 of the Constitution. According to the Act, Gram Parishad was supposed to be constituted at the ward level comprising of a Chairman, nine male and three female members. The concerned ward member would act as the Chairman. It was not assigned to the power of taxation. However, the reality was that, the Grain Parishad could not be constituted due to the intervention of the High Court.<sup>[35]</sup>

**4.6.3 The Upazila Parhad Act, 1998:** According to the provision of Article 59 of the Constitution, the Upazila Parishad Act was passed at the Parliament in 03 December, 1998. Under Section 3 of the Act, the name of Thana mentioned in the First Schedule of the Act was declared as Upazila. The composition of Upazila Parishad was discussed in Section 6. The functions of the Parishad were categorically mentioned in Section 23 of the Act. Section 29 empowered the Chairman to constitute as many committees as he requires in regard to the mentioned sector. Section 37 and 38 provide the provision with its own fund and budget. Under Section 47 of the Act, the Upazila Parishad was empowered to collect taxes locally. Its term was five years. However, the next government abolished the Upazila Parishad.

**4.6.4 The Zila Parishad Act, 2000:** This Act has been promulgated with a view to repealing all existing law relating to Zila Panshad which is applicable throughout the whole county except the Hill Distracts. The Zila Parishad composed of-

- a. Chairman
- b. Fifteen members
- c. Five reserved women members.<sup>[36]</sup>

According to Section 61, the term of Zila Parishad is five years. The Zila Parishad has been entrusted with a variety of functions. It reserves the power to impose taxes and make its own budget.

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**4.6.5 Findings:** Thus, we see that, though no significant development of urban local government institutions had been initiated but Union Parishad election of 1997, the recommendation of the commission, the introducing of the Gram Parishad and finally the incorporation of the Upazila Parishad Act must be evaluated positively for the development of rural local development institutions of the country.

### 4.7 During the period of 2001-2006

New government was formed in 2001 but the history repeats again regarding the development of local government institution in our country. Institutions and policies introduced by the previous government were abolished and set aside and new sort of experiment has been initiated. The Government adopted some changes in the local government structure by introducing a new institution named Gram Sarkar instead of Gram Parishad. The government also repealed the Upazila Parishad Act. Along with this, a new law was incorporated namely, Village Courts Act in 2006 empowering the Chairman of the Union Parishad to constitute village court. Both of these enactments are discussed below.

**4.7.1 The Gram Sarkar Act, 2003:** By this Act, Gram Sarkar in place of the Gram Parishad had been introduced. These bodies were created at the Ward levels.<sup>[37]</sup> Each Gram Sarkar represented one or two villages comprising of 3,000 people at an average. The Union Parishad member elected from the Ward by virtue of his post was the Chairman of the Gram Sarkar. Besides, there were other members, both males and female, elected in a general meeting of the voters of the Ward under the supervision of a 'prescribed directing authority'<sup>[38]</sup> There are defined functions of the Gram Sarkar and other functions may be assigned to it as may be specified by the government from time to time.<sup>[39]</sup> Gram Sarkars had the right to constitute issue-based standing committees, when required, and determine the membership of such committees. Section 21 of the Act ensures the provision relating to the fund of Gram Sarkar. However, the way the Gram Sarkar Act had been passed and its members selected in each ward had been criticised by every section of society. It is obvious that this has been done for strengthening the power-base of ruling Bangladesh Nationalist Party in the rural areas.<sup>[40]</sup>

**4.7.2 The Village Court Act, 2006:** Whereas a Village Court is not a local government institution but it is closely related with one of the tier of rural local government i.e. the Union Parishad. This Act was incorporated in May, 2006. Under this Act, the Chairman of the Union Parishad has given the power to adjudicate certain civil and criminal matters.<sup>[41]</sup> According to the provision of the Act on the application of the litigant, the Chairman can form the Court with two nominated persons of each group<sup>[42]</sup>. Thus, the total number of the member of Court is five. The pecuniary jurisdiction of Village Court is 25, 000 taka.<sup>[43]</sup> The Court is empowered to issue summons and appeal against the decision of Village Court lies to the competent Court.<sup>[44]</sup>

### 4.8 During the period of 2006-2010

This period is very much important in case of legal analysis of the development of local government institutions in our country. Because, the army backed Care Taker Government has enacted a number of significant enactments including the law to establish a Local Government Commission which are very much crucial for further improvement and strengthening of local government institutions in our country. The present Government has revived the Upazila by The Upazila Parishad Act, 2009 and almost a successful election has been completed in 22 January 2009. But equally true is that, in spite of all these progresses, still there are huge problems in our country in respect of local government institutions. However, a brief analysis of the significant enactments incorporated at this period are provided in what comes next.

**4.8.1 The Local Government Commission Ordinance, 2008 (Ordinance no. 15 of 2008):** This Ordinance was promulgated on 12 May, 2008 primarily for the purpose of enhancing local government institutions by establishing a permanent Local Government Commission. The Commission is to be composed of a Chairman and not more than two members to be appointed by the President.<sup>[45]</sup> The qualification of the Chairman of the Commission and its members is provided in Section 8 and 9 of the Ordinance. The Commission is empowered to call meeting to determine its policy of working,<sup>[46]</sup> and the Committee may formulate one or more committees for the purpose of assistance.<sup>[47]</sup> The Commission is under an obligation to submit its annual report to the President.<sup>[48]</sup> The powers and functions of the Commission has been clearly specified in Section 22 and 23 which include all sorts of supervision of the local government institutions and make recommendation to the government to overcome their shortcomings. The Commission has given freedom to expend its allocated money and it is empowered to make its own budget.<sup>[49]</sup> The most important point is that, by this Ordinance, the Commission is empowered to make rules and regulations not inconsistent with the provision of the Act with the prior approval of the Government.<sup>[50]</sup> But, it is a matter of irony that no step has been taken by the government to establish a permanent commission specifically for the purpose of promotion and development of local government institution in our country.

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**4.8.2 Gram Sarkar (Rohitkoron) Ordinance, 2008 (Ordinance no. 23 of 2008):** By this Act, the local government institution established under The Gram Sarkar Ala, 2003 has been abolished as this Act has been declared unconstitutional and void by a judgment of High Court Division of the Supreme Court on the writ petition no. 4502 of 2003, against which the leave to appeal<sup>[51]</sup> has been dismissed.

**4.8.3 The Upazila Parishad Ordinance, 2008 (Ordinance no.32 of 2008):** This Ordinance has been passed on June 30, 2008. Under this Ordinance, every Upazila has been declared as an administrative unit as per to the Article 59(1) of the Constitution.<sup>[52]</sup> Section 4 provides that the government should take steps to establish an Upazila Parishad at each Upazila after the enactment of the Ordinance. A Upazila Parishad will be composed of-

- a. Chairman
- b. Two vice-Chairman of which one should be a woman
- c. All the Chairman of the Union Parishad within that Upazila
- d. If there is any Paurashava within the Upazila, the Mayor or nominated Councilor
- e. Women members of the reserved seat according to sub-section 4 of the present Section.<sup>[53]</sup>

The provisions relating to the election of the Chairman, Vice-Chairman and other members have been elaborately enunciated in the 'Third and Fourth Chapter' of the Ordinance.<sup>[54]</sup> The qualification and disqualification of the Chairman, Vice Chairman and other members has been mentioned in Section 16 of the Ordinance. The Upazila Parishad is under an obligation to organize at least one meeting every month.<sup>[55]</sup> It is said that each Upazila Parishad should establish a committee for two years term in respect of 9 specified fields mentioned in Section 34 of the Ordinance. However, the powers and functions of the Upazila Parishad as an administrative unit have been discussed in Section 34 and 35 of the Ordinance respectively. The Upazila Parishad has the power to impose taxes and make its own budget.<sup>[56]</sup>

**4.8.4 The Local Government (Paurashava) Ordinance, 2008 (Ordinance No. 17 of 2008):** This enactment has been passed in May 14, 2008 with the aim of furtherance of urban local government institutions of the country. 'Part Two' and 'Chapter One' of the Ordinance contained detailed provisions of the formation of the Paurashava. Each Paurashava should be divided into necessary wards by the government with the approval of the Commission.<sup>[57]</sup> The qualification and disqualification of the Mayor and Councilor has been provided in Chapter Three of the Ordinance. Provision relating to the removal of Mayor and Councilor has been enunciated in Section 32 of the Ordinance. However, the detailed provisions in respect of the administration of Paurashava, its powers and functions have been discussed in Chapter Three of Part two of the Ordinance. Each Paurashava is under an obligation to publish its annual report.<sup>[58]</sup>

**4.8.5 The Local Government (City Corporation) Ordinance, 2008 (Ordinance No. 16 of 2008):** This enactment has also been passed in May 14, 2008 with the purpose of strengthening urban local government institutions of the country. 'Part Two' and 'Chapter One' of the Ordinance contained detailed provisions of the formation of the City Corporation. Detailed provisions related to Mayor and Councilor have been provided in Section 7 to 22 of the Ordinance. Each City Corporation should be divided into necessary wards by an officer engaged for this purpose.<sup>[59]</sup> Provisions relating to election have been furnished in Section 31 to 39 of the Ordinance. Chapter Six of Part Two of the Ordinance categorically mentioned the power and functions of City Corporations. City Corporation is under an obligation to publish its annual administrative report.<sup>[60]</sup>

**4.8.6 The Upazila Parishad Act, 2009 (Act no. 27 of 2009):** The Upazila Parishad Ordinance, 2008 has been transmitted to The Upazila Parishad Act, 2009 under which a successful election has taken place in 22 January, 2009 throughout Bangladesh. As the detailed provisions of that Ordinance have been discussed earlier the author omits to reiterate the provisions further.

**4.8.7 The Upazila Parishad (Implementation of Functions) Rules, 2010:** By a notification in 14 February, 2010 this Rules has been promulgated by The Ministry of Local Government, Village Development and Cooperatives. This Rules provides a guideline to the Upazila Parishads to fulfill their objectives by functioning smoothly. The procedure of the meetings of the Upazila Parishad, maintenance of its fund, preservation of records, outline of running of Upazila administration have been elaborately discussed in The Upazila Parishad (Implementation of Functions) Rules, 2010.

**4.8.8 Findings:** During this period, some important enactments have been passed which may highly contribute to the development of local government institutions of our country. Specially, the role of a permanent local government commission cannot be avoided at modern time. With a view to establishing such an institution, The Local Government Commission Ordinance, 2008 has been passed, yet no initiative has been taken by the government to establish a permanent Local Government Commission. Although the election of Upazila Parishad has been held successfully but dissatisfaction was circulated among the members of Upazila Parishad

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because of the lack of a genuine carefulness of the government for the nourishment of local government. While it cannot not be ignored, this platform has been created on the basis of which further development of local government institution can be accelerated.

### 5.1 Conclusion

In Bangladesh, the local government bodies had never been 'self-governing' bodies in the true sense of the term. They could simply be labeled as an extension of the central government with guided and limited local participation. Consequently, local governments have always been institutionally and financially weak, poorly managed and lacked social and political credibility. Article 59 & 60 the Bangladesh constitutions have an outline of a local government system with elected representatives facilitating effective participation the people for each unit of administration. In compliance with the Constitutional requirement and to institutionalise the democratic aspirations in all walks of life, it is obligatory to ensure the operation of effective local government organizations in our country. But ironically, in spite of the importance and potential of local government institutions, they remain weak and are increasingly becoming weaker. In our centralized system, the local government bodies are deprived of functions, functionaries, finances and freedom. They are totally subservient to the bureaucracy and are now increasingly being taken under the undue control and influence of the Members of the Parliament.

Furthermore, their sources to generate funds locally are being drastically curtailed. It is clear that the future prosperity of our country and well-being of our people depend on a vibrant local democracy. Strengthening local government institutions would also require the transformation of conventional roles of the local government institutions so that they can be the real change-makers of the society. Further enhancement of local government institutions through addressing major issues like poverty reduction, good governance, infrastructure development, disaster management etc. is no more a matter of controversy; rather it is a consensus of the whole nation. There were Union Parishad elections seven times, City Corporation five times, Municipal Elections seven times, and Upazila Parishad elections two (now it should be read as three) times.<sup>[61]</sup>

In Bangladesh, there have been six major attempts to reform local government under six different governments. The objective of all, at least at the level of rhetoric, was to introduce participatory and accountable local governance through decentralization of functions and powers to locally elected institutions. All these governments also recognized the relevance of the role of decentralized local institutions in planning and implementing need-based development projects for poverty alleviation and reduction of socio-economic inequality. Yet, the objectives were not realized and the governments failed to keep their commitments towards grassroots democracy and to devolve power to the people at lower levels to manage their own affairs. Nevertheless, every successive government of Bangladesh has used the local government bodies to strengthen their own political base in the rural areas, ignoring the principles and importance of decentralization of power to the local level. Consequently, the primary goal of poverty reduction, economic equity and gender balance remained unfulfilled.<sup>[62]</sup>

So, initiative to enact new laws and amend the existing laws must be taken to establish effective local government institutions. In our country, only 2.34 percent of the national development budget is allotted for the local government bodies, whereas in other countries, the local government institutes receive up to 40 percent of the budget.<sup>[63]</sup> So, immediate steps should be taken to allocate more budgets for local government institutions.

The history of local government institutions depicted at this paper shows that the development of the local government institutions have been impeded in a regular interval with changes of government. Each new government has canceled and abolished the policy and institutions of previous government and what is most interesting is that, they has introduced the same type of institution, even with identical formulation, just in a different name. For that reason, even today, the benefit of local government cannot be reached to the people. So, it is highly needed to adopt long term integrated policy for the purpose of strengthening local government institutions including establishment of a high powerful permanent local government commission.

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<sup>[1]</sup> Article 9 of the Constitution of Bangladesh provides that "The State shall encourage local Government institutions composed of representatives of the areas concerned and in such institutions special representation shall be given, as far as possible, to Peasants, workers and women".

<sup>[2]</sup> Article 59 of the Constitution of Bangladesh provides that, (1) "Local Government Local Government in every administrative unit of the Republic shall be entrusted to bodies, composed of persons elected in accordance with law.

(2) Everybody such as is referred to in clause (1) shall, subject to this Constitution and any other law, perform within the appropriate administrative unit such functions as shall be prescribed by Act of Parliament, which may include functions relating to-

1. Administration and the work of public officers;

2. The maintenance of public order;

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3. The preparation and implementation of plans relating to public services and economic development.”

[3] Article 60 of the Constitution of Bangladesh provides that, ‘Powers of local government bodies For the purpose of giving full effect to the provisions of article 59 Parliament shall, bylaw, confer powers on the local government bodies referred to in that article, including power to impose taxes for local purposes, to prepare their budgets and to maintain funds”.

[4] Panday, Praab Kumar, ‘Local Government in Bangladesh’, South Asian Journal.

[5] The Daily Star issued on 02.02.2008

[6] Siddiqui, Kamal, Local Government in Bangladesh, the University Press Ltd., Dhaka, Third Edition, (2006) p. 6

[7] Huda, Shamsul, A.K.M., The Constitution of Bangladesh, Vol 2, Rita Court, Chittagong, First Edition, p.610-614.

[8] <http://encyclopedia2.thefreedictionary.com/local+government>

[9] <https://www.collinsdictionary.com/dictionary/english/local-government>

[10] [http://en.wikipedia.org/wiki/Local\\_government](http://en.wikipedia.org/wiki/Local_government)

[11] Kudrat-E-Elahi vs. Bangladesh 44 DLR (AD 1992).

[12] Islam, Shahidul, Administrative Law In Bangladesh Shams Publication, Dhaka, First Edition, (May 2009) p.281

[13] Siddiqui, Kamal, Local Government in Bangladesh, The University Press Ltd., Dhaka, Third Edition, (2006) p. 2-4

[14] The oldest Hindu religious writings, dating from approximately 1200 B.C.

[15] Islam Shahidul, Shams Publication, Dhaka, Administrative Law In Bangladesh, First Edition, (May2009), p. 288

[16] Islam, Shahidul, Administrative Law In Bangladesh. Shams Publication, Dhaka, First Edition, (May2009), p. 288-289 & Siddiqui, Kamal, Local Government in Bangladesh, The University Press Ltd., Dhaka, Third Edition, (2006), p.35-38.

[17] Indian Council Act, 1892 introduced Electoral College to choose representative to the legislature. Basic Democracy order 1959 took the county back to 1892.

[18] Huda Shamsul, A.K.M., The Constitution of Bangladesh, Vol.2, Rita Court, Chittagong First Edition, p.616

[19] Amendment of February 16, 1979 on The Local Government Ordinance, 1976

[20] Panday, Praab Kumar, ‘Local Government in Bangladesh’, South Asian Journal

[21] The details of Upazila Pishad will be discussed at the subsequent portion of the paper.

[22] Mawhood, Philip, 'Decentralization: The Concept and the Practice', Philip Mawhood (ed.), 1983: Local Government in the Third World: The Experience of decentralization in Tropical Africa, (New York: Chichester, 1983) p. 1-25.

[23] Hossain, G. ‘General Zia's BNP: Political Mobilization and Support Base’, E. Ahmed (ed.), Society and Politics in Bangladesh, Dhaka Academic publishers, 1989.

[24] This Act was discussed in page no.18 of this paper.

[25] This institution was made to the The Local Government ( Thana Prishad and Thana Administration Recognition ) Ordinance, 1982 in 1983

[26] Islam, Shahidul, Administrative Law In Bangladesh, Shams Publication, Dhaka, First Edition, (May2009), P. 302 and Siddiqui, Kamal, Local Government in Bangladesh, The University Press Ltd., Dhaka, Third Edition, (2006), p.78

[27] For details see page 14-16 of this paper

[28] See page no. 18 of this paper

[29] Rahman, H. R. T. and Kha, M.M., ‘Decentralization and Access: Theoretical Framework and Bangladesh Experience’, Asian Profile, vol 25, no. 6, December 1997.

[30] Upazila Pajishad was abolished by the Government (Upazila Parisbad and Upazila Administration Reorganisation) (Repeal) Ordinance, 1991

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- [31] Islam, Shahidul, Administrative Law in Bangladesh Shams Publication, Dhaka, First Edition, (May2009), p. 311
- [32] Siddiqui, Kamal, Local Government in Bangladesh, The University Press Ltd., Dhaka, Third Edition, (2006) p. 95-99
- [33] Rahman, H. R. T. and Khan, M.M., 'Decentralization and Access: Theoretical Framework and Bangladesh Experience', Asian Profile, vol. 25, no. 6, December 1997.
- [34] Where Local Government Structure Review Commission, 1991 suggested two-tier system of local government.
- [35] Siddiqui, Kamal, Local Government in Bangladesh, The University Press Ltd., Dhaka, Third Edition, (2006), p.110
- [36] Section 4 of The Zila Parishad Act, 2000
- [37] Section 3 of the Gram Sarkar Ain,2003
- [38] Section 4 of the Gram Sarkar Ain,2003
- [39] Section 16 of the Gram Sarkar Ain,2003
- [40] Panday, Praab Kumar, 'Local Government in Bangladesh', South Asian Journal.
- [41] First and Second Schedule of the Village Court Act,2006
- [42] Section 5 of the Village Court Act,2006
- [43] Section 7 of the Village Court Act,2006
- [44] Section 10 and Section 8 of the Village Court Act,2006
- [45] Section 4 and 6 of The Local Government Commission Ordinance, 2008
- [46] Section 14 of The Local Government Commission Ordinance, 2008
- [47] Section 16 of The Local Government Commission Ordinance, 2008
- [48] Section 18 of The Local Government Commission Ordinance, 2008
- [49] Section 29 and 31 of The Local Government Commission Ordinance, 2008
- [50] Section 37 of The Local Government Commission Ordinance, 2008
- [51] Civil Misc. Petition for leave to Appeal No. 545 of 2005
- [52] Section 3 of the Upazila Parishad Ordinance, 2008
- [53] Section 5 of the Upazila Parishad Ordinance, 2008
- [54] Section 8 to 15 of the Upazila Parishad Ordinance, 2008
- [55] Section 31 of the Upazila Paisbad Ordinance, 2008
- [56] 56 'Chapter Eleven' of the Upazila Parishad Ordinance, 2008
- [57] Section 13 of the Local Government (Paurashava) Ordinance, 2008
- [58] Section 55 of the Local Government (Paurashava) Ordinance, 2008
- [59] Section 27 of The Local Government (City Corporation) Ordinance, 2008
- [60] Section 43 of The Local Government (City Corporation) Ordinance, 2008
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