

**PRINCIPLE OF CONSTITUTIONAL DEMOCRACY: A
CRITICAL ANALYSIS ON ACCOUNTABILITY OF THE PEOPLE'S
REPRESENTATIVES**



Daffodil
International
University

LLM THESIS

**THIS RESEARCH IS SUBMITTED IN PARTIAL FULFILLMENT OF THE
REQUIREMENTS FOR THE DEGREE OF MASTER OF LAWS BY
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Letter of Transmittal

To
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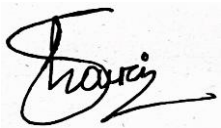
Subject: Submission of research paper on **“Principle of Constitutional Democracy: A Critical Analysis on Accountability of the People’s Representatives”**

Revered Sir,

It is a matter of satisfaction for me to present the research monograph on **"Principle of Constitutional Democracy: A Critical Analysis on Accountability of the People’s Representatives"** in partial fulfillment of my Master's Degree in Law. While doing this research, I have tried my best to maintain the required standards. I hope this thesis meets your expectations.

So, I pray and hope you will be kind enough to this dissertation on evolution. I am always available for further clarification on any part of this research paper for your convenience. Thank You

Sincerely Yours



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Declaration

It is hereby declared and confirmed that the research monograph entitled "**Principle of Constitutional Democracy: A Critical Analysis on Accountability of the People's Representatives**" is an original work done by me and the quotations are taken with due references. The work I have presented does not infringe any copyright.

I undertake to indemnify the University against any loss or damage arising out of breach of the foregoing obligations.

Thank You



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Certification

Dissertation report on “**Principle of Constitutional Democracy: A Critical Analysis on Accountability of the People’s Representatives**” by Nasir Uddin certified in partial fulfillment of the requirements for a law degree from Daffodil International University. The research report is guided by our guidelines and as a record of the true work completed successfully.

Thank You



.....
Dr. Kudrat-E-Khuda Babu

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Dedication

First of all, I express a lot of respect and gratitude to Allah. I would like to express my gratitude to my parents for their encouragement and giving me the opportunity of higher education.

Acknowledgement

First of all, I would like to acknowledge the infinite grace and infinite mercy of Almighty Allah, Professor Dr. Kudrat-E-Khuda Babu, Head of Department of Law, Daffodil International University, I am our respected research supervisor Dr. He gave me his valuable time and important information to complete the research report. Without his proper guidance it would have been impossible for me to complete the research.

Special thanks to Daffodil International University Public Library for allowing us to use library resources. I cannot express my gratitude and appreciation to my beloved Law Department, Daffodil International University, for giving me the opportunity to do this thesis.

I also express my gratitude to my parents and my family members who always encourage me. Finally, I thank my friends and well-wishers.



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Dept. of Law, FHSS, DIU LLM

PRINCIPLE OF CONSTITUTIONAL DEMOCRACY: A CRITICAL ANALYSIS ON ACCOUNTABILITY OF THE PEOPLE'S REPRESENTATIVES

Abstract

After the decolonization of the world, most of the newly independent countries became democratic regarding the governance policies. Since a newer concept emerged for development of democracy named Constitutional Democracy. Aspects of constitutional democracy emerged and developed by centering the people and participation of the people in the governance process. Accountability of the public office holders, specially the representatives of the people, elected by the people is a crucial core element of constitutional democracy. In this research, the legal framework of Bangladesh is analyzed under the focus of the accountability principle of the principle of constitutional democracy. In a qualitative way, this research aims to find out the existing legal mechanisms for ensuring accountability of people's representatives and the extent of effectiveness of such mechanisms. This study also tries to find out the current practice of accountability of public office holders in Bangladesh, based on data collected from previously conducted surveys. At the end this study recommended the necessary adoption of laws and policies for ensuring accountability of public office holders in Bangladesh and for ensuring participation of people in the governance process.

Key Words: Constitutional Democracy, Participatory Democracy, Accountability in Democracy, Accountability of People's Representative.

Chapter 1 - Preliminary

1.1. Background of the Study

After the decolonization of the non-European territories, the count of the sovereign states increased in a greater number within a very short span of time. Even though all the newly independent countries suffered lots of turmoil in the transitional and post transitional period for a time being regarding governance policy, almost all the newly established sovereign states chose to be democratic, having the people as the center and source of power. The second half of the twentieth century and the first three decades of the twenty first century had seen a massive development in democracy and democratic thoughts of the modern states and people of modern states. Even though the *Athenian* democratic thoughts emerged with the idea of participation of citizens not only in the decision making process, but also in functions of institutions which governed them. Even citizens of 18 years of age or above could have walked to the parliament and could speak about his issues before the parliament. To gain support from Persia in a war against Sparta, Athens changed its governance policy from absolute

democratic to oligarchy, and with this constitutional change of Athens, the democracy of the golden age of Athens was lost.¹

In the context of the current world, democracy only refers to the people's opinion in the process of electing representatives for the legislative body of the state, and in some states the local governments.

In the modern democratic process citizens are only allowed to choose their representatives. But it is hard to find any legal mechanism in the current world of modern democracy, which ensures accountability of people's representatives to the citizens, directly. To ensure proper participation of the people in the process of democratic governance, accountability of the representatives to the people is mandatory. But this concept of direct participation might have been overlooked by modern democratic minds of modern democratic states, which incorporated the idea of direct accountability. A systematic perspective of accountability should be introduced in the democratic arena which shall include vertical dimensions of accountability, meaning state institutions being accountable to citizens and private institutions, as well as, horizontal accountability, meaning inter-check between organs of the state.²

¹Mark Cartwright, 'Athenian Democracy' (*World History Encyclopedia*, 3 April 2018) <https://www.worldhistory.org/Athenian_Democracy/> accessed 27 February 2023

1.2. Statement of the Problem

Even though accountability is a central piece of good governance which ensures public control of the use of public resources,²the thought process of scholars and governments of the current world do not pursue the reflection of accountability as an embedded core concept of democracy. States are unwilling to make the elected people's representatives accountable to the citizens, as well as this concept of direct accountability is not discussed in the scholarly forum of intellectual minds, which contributes to the process of policy making. For the proper practice of democracy, accountability of the people's representatives is crucial and accountability of the people's representatives must be observed by every democratic state. But it can hardly be seen in developing countries and third world countries.

1.3. Research Questions

1. Whether the idea of direct accountability of people's representatives to the public, a crucial part of the principle of Constitutional Democracy, is emphasised in Bangladesh or not?
2. Whether the legal framework of Bangladesh is sufficient to establish accountability of the people's representatives or not?
3. What are the barriers in the way of ensuring accountability of the people's representatives in Bangladesh?

1.4. Research objectives

1. To analyse the concept of accountability under the focus of the Principle of Constitutional Democracy, in Bangladesh.
2. To find out the legal mechanism of accountability of the people's representatives, directly to the public.
3. To find the actual context of accountability of the people's representatives, in Bangladesh.
4. To find out the barriers in the way of ensuring accountability of the people's representatives directly to the people.

—

²'Democratic Accountability' (Governance SDC Network)

<https://www.shareweb.ch/site/DDLGN/topics/democratization/democratic_accountability/SitePages/Home.asp x>
accessed 1 March 2023

³ibid

1.5. Scope of the Study

Inclusion: This study focuses only on the aspects of accountability of the elected public office holders, which is only one of the embedded aspects of the principle of Democracy. The problem of this study is scrutinised under the theoretical approach of Social Contract Theory and Participatory Democracy Theory of democratic jurisprudence. Along with these two jurisprudential theories of democracy, the problem of the study is intersected under the light of the positive theory of law. In this research reference to previously conducted surveys was made.

Exclusion: Aspects other than the accountability of the elected representatives in democracy are not discussed in this research. There are many other jurisprudential theories relevant to democracy that are not discussed in the study, except the Social Contract Theory and Participatory Democracy Theory. Focus of the study is subjected only to positivist school of law and no other schools of law. There is no qualitative study in this study.

1.6. Limitations

The major limitation of this research is lack of relevant literature. Scholarly writings related to accountability of people's representatives in democratic process were hardly found. Short span of time is another issue for this vast research of qualitative methods. Due to lack of proper literature many notions of the study cannot be substantiated properly, with reference to scholarly articles. In addition to that, existing literature, which are relevant to democracy and the accountability principle of democracy, do not describe or elaborate any notion relevant to the idea of direct accountability of the people's representatives to citizens, which made this research difficult to connect with the issue of the research.

1.7. Justification of the Study

Bangladesh emerged as a democratic, sovereign and independent state due to non-democratic practices of then West Pakistan, nowadays Pakistan, where military and military supported martial law administrators wanted keep the power of ruling the people to themselves. In such The people of Bangladesh fought for a democratic and country where the will of the people would be reflected in the process of governance, and the people running the government would not be the ruler of the citizens, rather they would be the representatives of the citizens, representing the citizens' voice. But since the beginning the democratic right of the people was interpreted only within the limitation of voting.

The current time is the time of democratic flourishing, where the world is observing the fall of autocrats and authoritarian regimes and establishment of a new democratic government. Now the voice of the people are accounted as the driving force of governance. The accountability of the people's representatives might be considered as the last piece of perfecting the governance process through democracy, in which people's representatives, elected by the people, will be responsible and answerable to the people for actions taken by them.

This elaborative research is focused on establishing the rationales of the concept of accountability in democracy which is aimed to contribute to the overall democratic governance process.

1.8. Methodology of the Study

This research is qualitative in nature. The research is conducted based upon pre-existing literatures and statutes. As accountability of the people's representatives is a perspective based on people's opinion, and to acquire people's opinion regarding the accountability of the people's representative and extensive empirical study is required, for which a long period of time is required. For this reason, as for this current study, time is very limited, data acquired in previously conducted empirical research regarding accountability of people, are used, rendering the current study as a qualitative one. Most of the explanation of this study is limited to available literature like journal articles. In addition to that, the issue of the research is explained and elaborated based on existing statute. Legislation of Bangladesh and cases has been used as the primary resource of this research. Reference to jurisprudential principles has also been made in this research. Scholarly articles, previously conducted surveys and information collected from website blogs are used as secondary resources for this research.

1.9. Brief Structure of the Study

This research monograph titled '*Principle of Constitutional Democracy: A Critical Analysis on Accountability of the People's Representatives*' has focused its discussion on the overlooked concept of the accountability of the people's representatives. This study is composed of eight chapters. First chapter is the *Preliminary Chapter*, in which the background of the study, statement of the problem, research question, objective and scope of the study, limitations of the study, justification, methodology and brief structure is discussed.

Second chapter is the chapter of '*Literature Review*' in which, relevant literature of democracy and accountability, which are studied for this research, are discussed and reviewed.

Third chapter is of '*Conceptual and Theoretical Framework*', where theories and principles relevant to current research, like democracy, accountability, constitutional democracy, floor crossing, social contract theory, participatory democracy theory, etc. are discussed in detail.

Fourth chapter is of the '*Existing Legal Provisions Relevant to Accountability of People's Representatives*', where existing national legislation of Bangladesh, and other relevant international instruments, are discussed for elaboration of the research problem of the current study.

Fifth chapter is titled '*Current Context of Democratic Accountability in Bangladesh*'. In this chapter the current situation of accountability of people's representatives is discussed on the basis of legal mechanisms and from second hand data acquired from previously conducted studies. Along with the current situation of democratic accountability the barriers of ensuring accountability are also discussed in this chapter.

The sixth chapter titled '*Norway: The Country Having the Best Form of Accountability Mechanism*' is to demonstrate the democracy and accountability mechanisms of Norway, the top ranked country in the Democracy Index having the best mechanisms of democracy and accountability practice.

The seventh chapter is of '*Concluding Remarks*' which is composed of major findings of the research, recommendations and a concluding statement of the research.

Chapter 2 - Literature Review

2.1. Introduction

The current world is the world of democracy in which most of the states have democratic governments, elected by the general people of such states. The concept of democracy and accountability of the elected office holders to the electors, are affiliated from the emergence of these concepts. Yet the proper application of accountability is not observed. Scholars made attempts to link these two concepts. Nevertheless, a very few literatures are successful in providing the concept of connection between the accountability of the people's representatives and the principle of democracy.

2.2. Literature Review

The Constitution of Bangladesh,⁴ in Article 11 provides that there shall be effective participation of people in every level of administration through their elected representatives. But nothing related to accountability of such representatives is not mentioned there. Chapter III of Part-IV of the Constitution of Bangladesh provides provisions relating to local governments, where it has been stated that local governments shall be elected by the people according to law. It further provides power and functions about local governments, but does not mention any rule regarding accountability of the local governments. Article 70 of the Constitution of Bangladesh provides that, if a member of the parliament resigns from the political party or gives votes against the party in the parliament, his seat shall be vacated. This mechanism creates a notion of accountability of the parliament members to their affiliated political party. Otherwise, Chapter-I of Part V of the Constitution of Bangladesh, which has provided rules related to the legislature, is silent about the concept of accountability of the members of parliament to the people.

The Representation of the People's Order, 1972⁵ is the major law relating to election and electoral policy in Bangladesh. This statute has provided rules of election and about settlement of electoral disputes among the candidates. It also provides punishment for candidates and other persons for violating and contravening rules of the Order. But there is no provision for post-election accountability of the elected people's representatives to the public in general.

"Constitutional Law of Bangladesh",⁶ authored by Mahmudul Islam, one of the highest referenced commentary books of constitutional law of Bangladesh, has provided with detailed interpretation of almost all the provisions of the Constitution of Bangladesh along with judicial interpretation. But the author did not have any elaborative discussion regarding the concept of accountability of the people's representatives in the parts of democracy.

⁴The Constitution of People's Republic of Bangladesh, 1972

⁵The Representation of the People Order, 1972 (President's Order No. 155 of 1972)

Another famous constitutional commentary in Bangladesh, authored by M. Jashim Ali Chowdhury, titled “*An Introduction to the Constitutional Law of Bangladesh*”⁶ also provided many international aspects of the constitutional law of Bangladesh. This book is also silent about the concept of accountability of the people’s representatives to the people, while discussing the principle of democracy.

Justice Mustafa Kamal of the Supreme Court of Bangladesh had discussed many overlooked and undermined issues of constitutional law in the book authored by him, titled “*Bangladesh Constitution: Trends and Issues*”.⁸ This book also had not discussed anything regarding the concept of accountability under the principle of democracy.

Md. Mizanur Rahman, in his book “*Sangbidhanik Kromobikas, Sangbidhanik Ain O Bangladesher Songbidhan*”, stated that the Constitution of Bangladesh never added any feature which may ensure accountability of the government. He added that an accountable government can only be ensured, when the cabinet would be accountable to the parliament both jointly and separately. But our constitution does not have the feature of separate accountability of members of ministers to parliament.⁹ This author also referred only to the accountability of the executive to the legislative body, but not the people. And he further had not stated anything regarding accountability of the legislative body to its electors.

Sayed Ishtiaq Ahmed stated in his article titled “*Constitution and Democracy in Bangladesh since 1972*”, “the mandate of the people is required in every action and inaction in the mechanism of democracy and is evident in the whole fabric of the Constitution.”¹⁰ In this article the author discusses the concept of democracy in detail, even though he had not discussed the mechanism of accountability. In an article titled “*Accountability and Corruption: Political Institution Matter*”¹¹, the authors focused on the corruption done by the executive body of the state and how successfully established political institutions as the legislative body can reduce corruption of the executive by way of ensuring accountability of the executive body to the legislative body. But the authors have not discussed anything regarding corruption of political institutions, referring to the people’s representative who holds office in the legislative body.

John Paul in an article titled “*Democracies in Danger: The High Cost of Global Tax Liberalization*”¹², authored by him approached to find the relationship between the people’s representative and people in the lens of tax levying and claiming, where he pointed out that people’s representative may face protest and rebellion in the consequence of levying of undue amount of tax on the people and in such instance people’s representative may suppress such protest by using law enforcement and claim such taxes by using coercive power of the state. He was not able to discuss the notion of accountability of the people’s representatives to the people.

⁶ Mahmudul Islam, *The Constitutional Law of Bangladesh* (2nd reprint, 3rd edn, Mullick Brothers 2019) ⁷ M. Jashim Ali Chowdhury, *An Introduction to the Constitutional Law of Bangladesh* (4th edn, Book Zone Publication 2021)

⁸ Justice Mustafa Kamal, *Bangladesh Constitution: Trends and Issues* (3rd edn, Dhaka University Publication Bureau 2001)

⁹ Md. Mizanur Rahman, *Sangbidhanik Kromobikas, Sangbidhanik Ain O Bangladesher Songbidhan* (6th edn, Sufi Prokashoni, Dhaka) 33

¹⁰ Sayed Ishtiaq Ahmed, *Constitution and Democracy in Bangladesh since 1972*, 44 DLR Journal 52

While discussing accountability in a parliamentary system of government, Michael Laver and Kenneth A. Shepsle stated in a chapter of an edited book, titled “*Democracy, Accountability and Representation*”, stated that, the majority of the world's democracies operate under a parliamentary system, wherein the fundamental aspect is the accountability of the government (also referred to as cabinet, executive, or administration), to be accountable to the legislature. The electoral system keeps the legislature in check, creating a multi-tiered chain of accountability between the government and the electorate or voters in general. While citizens in parliamentary democracies have no recourse to sanctioning a government directly, they can change the composition of parliament by the operation of the voting process, which, in turn, may force changes in the composition of the cabinet. Although there may be a more extensive form of accountability, it is crucial to scrutinise the narrower issue of the government's

accountability to parliament. In reality, the latter is essential for any broader accountability.¹³ This Chapter of the edited book, the sole topic of discussion was accountability of the cabinet to parliament and challenges of the parliament in making the cabinet accountable to it. Sean Ingham, while discussing political representatives in the article titled “*Representative Democracy and Social Equality*”, stated that democratic officials, the term he used as synonymous of representative, have no arbitrary power. Rather all citizens have the power to influence elections, which ensures the distribution of arbitrary power. In the ideal world, elected officials should not be described as 'rulers', as rulers can exercise arbitrary power. If elected representatives are constrained to use their power for publicly defensible ends, they would be accurately described as public servants, rather than rulers. Persons upon whom the laws enacted by the elected officials would be applied, then would be referred to as of the status of citizens, not subjects.¹⁴ In this article the author emphasised that, even to uphold the status of the voters of a democratic world, accountability at the public end is necessary, creating a notion of direct accountability of people's representatives to the public. Daniel Bochsler and Andreas Juon had, in a jointly authored article titled, “*Power-Sharing and the Quality of Democracy*”, elaborated that the quality of democracy depends on the degree of fulfilment of democratic principles. Even though the minimum function of democracy has been reduced to the electoral functions. But it also encompasses many further principles. Principles like freedom, political equality, accountability, effective control of elected power, quality of political representation and the capacity of the government to implement its decisions.¹⁵

¹¹ Daniel Laderman, Norma Loayza, Rodrigo R. Sores, ‘Accountability and Corruption: Political Institutions Matter’ <<https://ssrn.com/abstract=632777>> accessed 13 February 2023

¹² John Paul, ‘Democracies in Danger: The High Cost of Global Tax Liberalization’ North East Journal of Legal Studies: Vol. 40, Article 3 <<https://digitalcommons.fairfield.edu/nealsb/vol40/iss1/3/>> accessed 14 February 2023

¹³ Michael Laver and Kenneth A. Shepsle, ‘Government Accountability in Parliamentary Democracy’ in Adam Przeworski, Susan C. Stokes and Bernard Manin (eds), *Democracy, Accountability and Representations* (Cambridge University Press first published 1999) 279

¹⁴ Sean Ingham, “Representative Democracy and Social Equality” (2022) 116 American Political Science Review 689

¹⁵ Daniel Bochsler and Andreas Juon, “Power-Sharing and the Quality of Democracy” (2021) 13 European Political Science Review 411

This article supports the notion that democracy and qualityful democracy operates beyond the limit of electoral function by the state and electoral participation by the citizens.

But the authors did not elaborate on any manner in which accountability mechanisms can be established. Rebecca Nelems in a chapter, titled “*Other Wise Democracies: What the Tree Canopies Know*”, of an edited book stated that Boaventura de Sousa Santos, a Brazilian sociologist recently observed that “democracies are dying democratically” as anti-democrats are being

elected throughout the world. The winning of antidemocratic parties in ballot elections gains public attention quickly throughout the world. However, Santos’ words point to an even deeper source of morbidity troubling Western democracies, warranting a deeper interrogation into the social conditions within which democracy might be dying by its own hands. The Author argued that the current democratic policy which only focuses on the ballot-based election, is gradually killing democracy.¹⁶ But the author was not able to suggest any ways which might have saved democracy or can do betterment to democracy.

Boaventura de Sousa Santos underlined the form of non-accountable democratic practices. In a chapter titled “*Democracies Can Perish Democratically Too: Brazilian Democracy on Edge*”, of the edited book of ‘*Democratic Multiplicity*’ he stated that throughout the world it had been observed, in the name of democratic practice, autocratic people are elected in ballot elections. These autocratic people, as they do not have any will for establishing accountability, find violent measures as solutions to all problems. They reject the rules of democracy, and as solutions to social problems, they make intimidating appeals. As they have the notion in mind that they are not be held accountable for their action, they participate in the election with an antidemocratic ideology and still be able to secure majority votes.¹⁷ The author successfully pointed out the situations in which people’s representatives evade accountability, but did not provide any suggestion for ensuring accountability.

In the article titled “*Dissecting Public Sector Corruption in Bangladesh: Issues and Problems of Control*”, the authors indicated and marked out that, the main reason behind high level of corruption in every level of the public sector, including people’s representatives, is an weak and ineffective legal and institutional mechanism for creating accountability of the public office holder and to take appropriate actions against perpetrators, committing offence of corruption in public sector.¹⁸ No suggestion related to accountability of people’s representatives directly to the people was not found in this literature.

¹⁶ Rebecca Nelems, ‘Other Wise Democracies: What the Tree Canopies Know’ in James Tully, Keith Cherry, Fonna Forman, Jeanne Morefield, Joshua Nichols, Pablo Ouziel, David Owen and Oliver Schmidtke (eds) *Democratic Multiplicity: Perceiving, Enacting, and Integrating Democratic Diversity* (Cambridge University Press 2022)

¹⁷ Boaventura de Sousa Santos, ‘Democracies Can Perish Democratically Too: Brazilian Democracy on Edge’ in James Tully, Keith Cherry, Fonna Forman, Jeanne Morefield, Joshua Nichols, Pablo Ouziel, David Owen and Oliver Schmidtke (eds) *Democratic Multiplicity: Perceiving, Enacting, and Integrating Democratic Diversity* (Cambridge University Press 2022)

Martin Loughlin in his article titled “*The Contemporary Crisis of Constitutional Democracy*”, elaborated that, constitutional democracy professes the idea of self-government, which includes not only the formation of government through election but other rights of the citizens including freedom of speech, and expression of their idea in the functions of governance. Such rights can be invariably bolstered by a documentary constitution which may introduce an institutionalised accountability mechanism. The parliamentary system of government is better than other systems, as this system, if the parliament is willing, is capable of framing changeable accountability mechanisms from time to time.¹⁹ Here the author referred to a law based mechanism through which accountability can be ensured.

In an co-authored article by Hannah S. Chapman, Margaret C. Hanson, Valery Dzutsati and Paul DeBell, titled “*Under the Veil of Democracy: What Do People Mean When They Say They Support Democracy?*”, it has been pointed out from survey conducted for a study that, most citizens of most of the democratic countries, conceptualise democracy only as the process of electing representatives by election, where citizens participate as electors. Even though the contemporary conceptualization of democracy includes personal liberty, participation of citizens in the governance process, contestation and accountability amongst others, in addition to the process of electing representatives.²⁰ Even though the authors agreed that accountability is also a part of democracy, they did not provide any manner in which accountability could be ensured.

Chris Thornhill has pointed out in a book authored by him, titled “*The Sociology of Law and the Global Transformation of Democracy*”, that the structures supporting organised opposition are rather weak; the dominant political party is in many ways an auxiliary of the state, and regular democratic turnover of executive power is unlikely to replace it. As a result, the government's accountability to political groups outside the executive machinery is decreased, opportunities for effective expression of popular citizenship rights are limited, and access to the political process is restricted.²¹ He also outlined that participation of the people in the legal proceedings against public institutions, has the possibility to raise the quality of accountability mechanism, which might replace the previously initiated weak executive structure, rendering non-accountability.²² No suggestion for better accountability policy was not made by the author.

In the joint authored article titled, “*Early Election Calling and Satisfaction with Democracy*’ the authors pointed out that, the power of the President, Prime Minister, and Cabinet to call for an early election tends to reduce the accountability and democratic performance of the politicians and political institutions. Opportunistic politicians may call for an early election to evade

¹⁸ Habib Zafarullah, Noore Alam Siddiquee, 'Dissecting Public Sector Corruption in Bangladesh: Issues and Problems of Control' (2001) Public Organization Review 1, 465

¹⁹ Martin Loughlin, 'The Contemporary Crisis of Constitutional Democracy' (2019) Oxford Journal of Legal Studies, Vol. 39, 435

²⁰ Hannah S. Chapman, Margaret C. Hanson, Valery Dzutsati and Paul DeBell, “Under the Veil of Democracy: What Do People Mean When They Say They Support Democracy?” (2023) Perspectives on Politics 1, 1

the political process is restricted.²¹ He also outlined that participation of the people in the legal proceedings against public institutions, has the possibility to raise the quality of accountability mechanism, which might replace the previously initiated weak executive structure, rendering non-accountability.²² No suggestion for better accountability policy was not made by the author.

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In the article titled “*Populism: A Health Check for Constitutional Democracy?*”, the author has connected populism as a connecting concept of observing constitutional democracy by populism as it encourages citizens to follow up the principles of constitutional democracy which include participation, accountability, and majoritarian rule.²⁴ The author only outlined the connection of populism and constitutional democracy, but there was not any elaboration of the concepts referred to by the author in this literature.

In the article titled “*The Electoral Cycle Effect in Parliamentary Democracy*” the authors pointed out that when a country follows the governance system of the majority ruling, the responsibility is more clear when a single-party government rules the country than a coalition government. When a coalition government rules the country, it becomes difficult for the voters to decide in the next election, which party is to be held accountable for the policies and decisions made by the coalition, even though it is presumably that the party having the most participation in the coalition might be held responsible. ²⁵ This article provides an area of challenge in ensuring accountability of the people’s representatives, but the author has not provided any suggestions.

In another co-authored article, the authors explained that, for having good governance in a country, the governance process must have eight characteristics, namely consensus oriented, accountability, participation of people, transparency, follows the rule of law, responsiveness, efficiency and effectiveness, equitability and inclusiveness. In this article the

²¹ Chris Thornhill, *The Sociology of Law and the Global Transformation of Democracy* (First published 2018, Cambridge University Press) 374

²² *ibid*, 477

²³ Edward Morgan-Jones and Mathew Loveless, ‘Early Election Calling and Satisfaction with Democracy’ (2021) *Government and Opposition* 1

²⁴ Oran Doyle, Erik Longo and Andrea Pin, “Populism: A Health Check for Constitutional Democracy?” (2019) 20 *German Law Journal* 401

authors emphasised on transparency, accountability and participation of the people in the governance process, which, according to the authors, would lead the governance process to more effectiveness and efficiency.²⁶ In this article even though the authors have emphasised on the accountability and participation of people, this article did not provide any detailed guideline for effective accountability mechanism.

In a quantitative research conducted by Rounaq Jahan, with the patronage of Center for Policy Dialogue (CPD), on representation of the people in parliamentary elections and accountability of the parliamentary members, Jahan found out that, the parliamentary representatives of people in Bangladesh is asked about all other problems and issues when they meet the people of their constituencies, except their parliamentary functions. Moreover there is no specific mechanism or legal provisions to hold the parliamentary representatives of the people accountable to the people.²⁷ In this quantitative study, it was laid down that, there is no effective mechanism for making the members of parliament accountable to the people, and the authors emphasised that it is very crucial for better democratic practice.

2.3. Gap in the Existing Literature

Even though materials related to democratic accountability have been developed in the world west, this concept has been overlooked in our country and in the sub-continent region. Accountability of the people's representatives is a sole part of effective democracy. As Bangladesh is not a practising country of such liberal democracy, first there is need of development of scholarly materials which can catch the focus of the policy maker for thinking about such an important part of the democracy. Most of the literature provides the idea of accountability of the executive and other governmental institutions to the legislative body. Some literature had displayed the idea of the accountability of the people's representatives, but that literature had provided incomplete elaborations of the idea of accountability of the people's representatives to the public. Moreover, none of the above discussed literature was not successful in suggesting a probable effective mechanism by which accountability of the people's representatives can be ensured, and which would make them accountable to the people in general. Moreover, if the topic of accountability of the people's representatives is discussed under the light of positivist theory of law, then it is hard to find any statute of democratic countries, which provides specific legal provision for ensuring accountability of the people's representatives to the people in general.

It is of great importance to address the issue of accountability in democratic countries. Without proper accountability the purpose of democracy will be frustrated, which can already be seen in today's democratic countries.

²⁵ Stefan Müller and Tom Louwerse, "The Electoral Cycle Effect in Parliamentary Democracies" (2020) 8 Political Science Research and Methods 795

²⁶ Badrul Hasan, Munira Sultana and Md. Nazmul Hasan, 'Good Governance in Bangladesh: Problems and Prospects', UITS Journal Volume 3, Issue 2, 22

²⁷ Rounaq Jahan, 'The Parliament of Bangladesh: Representation and Accountability' (2015) The Journal of Legislative Studies, Vol. 21, No. 2, 250

There is a lack of scholarly materials on development of scholarly materials which can catch the focus of the policy maker for thinking about such an important part of the democracy. Most of the literature provides the idea of accountability of the executive and other governmental institutions to the legislative body. Some literature had displayed the idea of the accountability of the people's representatives, but that literature had provided incomplete elaborations of the idea of accountability of the people's representatives to the public. Moreover, none of the above discussed literature was not successful in suggesting a probable effective mechanism by which accountability of the people's representatives can be ensured, and which would make them accountable to the people in general. Moreover, if the topic of accountability of the people's representatives is discussed under the light of positivist theory of law, then it is hard to find any statute of democratic countries, which provides specific legal provision for ensuring accountability of the people's representatives to the people in general. It is of great importance to address the issue of accountability in democratic countries. Without proper accountability the purpose of democracy will be frustrated, which can already be seen in today's democratic countries. There is a lack of scholarly materials on democratic accountability in our country, and no one had even thought about the accountability mechanism of the theoretical ideal democracy. So it is clear that there is a wide open option for discussing the notion of accountability, as well as, to adopt relevant legislation, either as constitutional provision or as general statute, for ensuring accountability of the people's representative of the legislative body and of local government bodies in Bangladesh.

2.4. Chapter Summary and Discussion

Accountability of the people's representatives is one of the least discussed topics in the arena of constitutional and democratic paradigm. Accountability of the public office holders is an embedded principle of the principle of constitutional democracy. The thoughts of democracy have been confined only to the rights, duties and process of polls, even though there are other aspects of democracy without which, democracy cannot be functioning at its best. Accountability of the people's representatives is the most overlooked issue of democracy. As people are becoming more aware of their rights nowadays, it is high time to acknowledge the rights of the people for the sake of practising peaceful democracy. There is a possibility that the accountability framework might introduce a new type of democracy, which might be better than the current situation or which might not be. But for practising absolute constitutional democracy, accountability principle shall be practised throughout the modern democratic world.

Chapter 3 - Conceptual and Theoretical Framework of the Study

3.1. Introduction

In this research, for proper elaboration of explanation, the concepts and theories relevant to democracy and accountability must be discussed. In this chapter, titled '*Conceptual and Theoretical Framework*' concepts and theories which are intertwined with the hypothesis of the research monograph, are discussed in detail. In the part of Theoretical Framework, jurisprudential theories related to democracy and accountability are discussed.

3.2. Conceptual Framework

In the part of conceptual framework, elaboration of concepts which are relevant to democracy, accountability and democratic accountability is made

3.2.1. Democracy

The term democracy (*dēmokratia*) originates from a combination of two different Greek words, namely, *dēmos*, which means the entire citizen body, and *kratos*, which refers to the notion of rule.²⁸ By conceptual interpretation from the words of origin, the meaning of democracy can be leading in two different ways, i.e. ruling of the people and rule by the people. But in Athens, *dēmokratia* referred to a system of governance, where the notion of 'rule by the people' was accepted. Male citizens were able to participate in the voting process of the assembly members, and they also could walk into the assembly and express their opinion and objection in any matter relevant to governance and civic life.

3.2.2. Constitutional Democracy

Constitutional democracy is a form of government founded on democratic and constitutional ideals. It is distinguished by a written constitution that establishes the framework for the exercise of political authority as well as the preservation of individual rights and liberties. Accountability is a basic element of constitutional democracy, and it refers to the need of public authorities to answer for their acts and decisions. Other key concepts of constitutional democracy, in addition to accountability, are the rule of law, separation of powers, and protection of human rights. The rule of law idea assures that all people, including public

officials are subject to the same rules and procedures. The separation of powers principle ensures that distinct branches of government are responsible for separate functions and can check and balance one another. Finally, human rights protection assures that people have the freedom to express themselves, practise their religion, and participate in political life without fear of persecution or prejudice.

²⁸ Cartwright (n 1)

These principles, when combined, form the cornerstone of constitutional democracy, ensuring that political power is wielded in an open, responsible, and respectful way of individual rights and freedoms.²⁹

3.2.3. Accountability

The next concept which is focused in this research is accountability. Accountability is an embedded principle of the principle of democracy. Being liable, answerable, or accountable is the general definition of accountability.³⁰ When any person or a body of persons, is entrusted with any duties or responsibilities, they shall be answerable to the person or body of persons who conferred such duties or responsibilities upon such body of persons, for their actions and decisions, made in the course of disposing the duties and responsibilities bestowed upon them. This process of accountability may include, presentation of reports to the appointing authority, answering the inquiry of the appointing authority, etc. The accountability of the executive branch of a state is broadly ensured and widely practised in today's democratic states. But the accountability of the legislative body or other people's representatives is overlooked in today's world.

Centre for Policy Dialogue (CPD), while conducting a survey divided two methods, in which accountability of parliamentarians can be ensured. One is **Direct Accountability** in which parliamentary representatives of people are required to present the accounts of their parliamentary functions to the people of their constituencies. Another method underlined by CPD is Code of Parliamentary Conduct, in which the parliament is required to adopt a code for controlling the conduct of the members of parliament, and there should be a specific agency, which is to be designed to implement the code, by horizontal implementation, and to be

bestowed with the responsibility of ensuring accountability of the members of parliament on behalf of the people.³¹

3.2.4. Democratic Accountability

Democratic accountability means, having the persons who are holding democratic offices, accountable to the people who installed such persons in such offices. To the context of today's practising democracy, the democratic offices means the elected people's representatives, who are elected by the people, as law makers or as part of the local government authority. The notion of accountability of people's representatives exists theoretically from date prior to modern democracy established in modern Westphalian states.

²⁹ Center for Civic Education, 'Constitutional Democracy' <<https://www.civiced.org/lesson-plans/constitutional-democracy>> accessed 8 May 2023

³⁰ 'Accountability', (*US Legal*) <<https://definitions.uslegal.com/a/accountability/>> accessed 2 March 2023

As discussed hereinbefore, the notion and practical implication of accountability of democratic public offices, i.e. assembly, existed in Athenian democracy and form of state governance.

3.2.5. Floor Crossing in Parliament

Floor crossing is the concept of parliamentary system of democracy. In general, crossing the floor means when a member of a parliament or an assembly gives his vote in any agenda of such parliament or assembly, against his party, such action of such member is known as floor crossing. But in a broader aspect, floor crossing means that a member of a parliament or assembly changes his allegiance from one party to another.³² Even though floor crossing establishes an accountability protocol within the legislative body itself, as when members will be able to vote against any unjust proposal of their parties, then an automated motion of accountability will be operated. Such a motion of accountability will work as a driving force for better governance. The Constitution of Bangladesh, prohibits any type of floor crossing, and it provides that, if any member gives a vote against his party, his chair will be vacated.³³

3.3. Theoretical Framework

In the theoretical framework, elaboration of theories which are relevant to democracy, accountability and democratic accountability are made.

3.3.1. Accountability in Democracy under Positive Theory of Law

Positivist theory of law or positive school of law is one of the most prominent thoughts of defining and understanding law. John Austin who is the major proponent of this thought of law, defined law as the command of the sovereign, which is considered as the positivist approach and definition of law. How a country is supposed to have democratic framework that is absolutely defined in adopted legislations mainly in the Constitution of such a country, implying the positivist model of law. Hence, for having accountability in the practice of democracy, the process of how such accountability would be sought, must be underlined in adopted legislation, which shall also specify the extent of such accountability; i.e. accountability of the executive body only, accountability of executive, legislative body and other local government bodies. If state legislation is not adopted, as per positivist definition of law, neither democracy nor accountability in democracy cannot be practised or ensured.

³¹ Rounaq Jahan, The Parliament of Bangladesh: Representation and Accountability (2015) The Journal of Legislative Studies, Vol. 21, No. 2, 250

³² Ace Project, 'Floor-Crossing', <https://aceproject.org/ace-en/topics/pc/pcd/pcd03/mobile_browsing/onePag> accessed 24 April 2023

³³ The Constitution of People's Republic of Bangladesh, Art. 70

3.3.2. Social Contract Theory

Social Contract Theory is as old as Philosophy itself. This theory is of the view that persons, while forming a society to live in, enter into a contract that makes them dependent on moral and political obligations as part of the contract, which they are bound to obey. Socrates is the founding proponent of this theory. He had elaborated discussion about social contract argument in the book *Crito*, for which he had to accept the punishment of imprisonment and later on, death. However, Thomas Hobbes had given the first full exposition of the social contract theory and showed that it is associated with modern moral and political theory. After Hobbes, John Locke and Jean-Jacques Rousseau played the most crucial role in the elaboration and development of this theory. This theory has been enormously influential and one of the most dominant theories as part of the moral and political theory, throughout the history of the modern West.³⁴

Thomas Hobbes had elaborated this theory in his famous book, *Leviathan*.³⁵ As per Hobbes, hypothetically, if all men are equally put into the earth, each having equal strength and provision, all men would be concerned about protecting their lives. Hobbes stated this hypothetical scenario as the State of Nature. He further argued that, as humans are rational, to avoid bloodshed, loss of lives and unnecessary wars, men would soon reach a contract by consent, where they are to be waiving some of their rights to a sovereign, in exchange of which sovereign is obliged to provide them security of life and properties. This mutual agreement was referred to by Hobbes as the Social Contract, by which men staying in the State of Nature creates a civil society. As per Hobbes, waiver of rights by men to a sovereign, creates duties of sovereign, to protect and to properly rule the men. Men are to be obliged to follow the rules set by the sovereign or they would be sanctioned by the sovereign. If the sovereign fails to fulfil its duties, men can withdraw their consent given in the social contract, and dispose of the sovereign, thus creating a two way accountability.

3.3.3. Participatory Democracy Theory

Participatory democracy theory emphasises the active participation of the citizens in the process of decision-making by the government. Carole Pateman, Paulo Freire, Sherry Arnstein, and Henry Giroux are the most notable key proponents of this theory, who argued this theory from different perspectives.

³⁴ Celeste Friend, 'Social Contract Theory' (*Internet Encyclopedia of Philosophy*) <<https://iep.utm.edu/soccont/#H2>> accessed 20 April 2023

³⁵ Thomas Hobbes, *Leviathan* (first published 1651, Penguin 1985)

³⁶ Carole Pateman, 'Participatory Democracy Revisited' (2012) 10 Perspectives on Politics 7

Carole Pateman is a political theorist who has contributed significantly to the concept of participatory democracy. Pateman argues that democracy necessitates not only citizen engagement but also the democratisation of participation. She believes that involvement should not be restricted to a chosen few, but should be available to all individuals, regardless of social or economic standing. She is of the view that, not only the people's representatives shall be deciding about the people, but the people shall also be part of the decision making process regarding them. According to Pateman, when citizens are participating in the process of decision making, they are able to make their representatives accountable to them, by checking their activities.³⁶

3.4. Chapter Summary and Discussion

The concepts and theories relevant to democracy suggest that accountability is a core element of democracy. Due to non-implementation of the accountability mechanism in the current democratic regimes, the sole values and manifests of democracy, which ensure good governance through participation of the people in all the spheres of the government and by making the policy maker and enforcer accountable to the government, are being undermined and frustrated. To ensure good governance through proper practising democracy, implementation of accountability mechanisms is a must to do, as this had been observed by the legal and social philosophers like Austin and Hobbes. For the proper implementation of accountability mechanisms, legal frameworks or statutory legislations must be adopted, as without statutory law, no one can be made accountable, according to the positivist theory of law.

Chapter 4 - Existing Legal Provisions Relevant to Accountability of People's Representatives

4.1. Introduction

Bangladesh is a country which emerged through violent war because the people of Bangladesh were denied their democratic rights as citizens of the State of Pakistan. People of Bangladesh fought for their democratic right and gained independence, for which since the birth, Bangladesh is conceptually and spiritually a democratic country. For ensuring the democratic practice in the country, as a sovereign state Bangladesh had enacted several laws. In this chapter the laws which had been enacted by Bangladesh for upholding the democratic principle in Bangladesh along with laws which confer the concept of democracy are discussed and the extent of accountability in provisions of those laws are also to be checked and elaborated. To establish the concept of accountability in democracy, discussion of international instruments relevant to the democracy and accountability principle is also included and elaborated in this chapter.

4.2. National Legal Provisions

In this part of the current chapter, elaboration and detailed discussion of the national legal provisions of Bangladesh, relevant to democracy and accountability, are to be made, including the Constitution of the People's Republic of Bangladesh.

4.2.1. The Constitution of the People's Republic of Bangladesh

The very first legal instrument related to democracy in Bangladesh is the Constitution of the People's Republic of Bangladesh. As Bangladesh emerged as an independent country, separating from the State of Pakistan, due to non-democratic practices of then West Pakistan, the Constitution of Bangladesh was adopted in such a structure where priority was given to democracy, exploitation free society, in which rule of law, fundamental human rights and freedom, equality and justice, political, economic and social, will be secured for all citizens.³⁷

In article 11 of the Constitution, it has been stated that Bangladesh as a state shall be of republic in nature with features of democracy, where effective participation by the people through their elected representatives shall be ensured.

Article 59 of the Constitution provides provisions of local government, and states that local government shall be elected by the operation of prescribed law. These laws are the hereinafter mentioned Local Governments Acts along the Representation of the People's Order, 1972. By the operation of these statutes, public representatives of the local government are elected by the direct polling produces, having the votes of citizens being casted.

Article 65 of the Constitution provides that, for forming the legislative organ of the state, three hundred members shall be elected by direct votes of the citizens. Fifty women members shall be elected by the transferable votes of directly elected members. The concept of the transferable votes, in relation to election of reserved female members, is not defined or elaborated in the concern provision or in the definition provision of the Constitution. The process of direct election of the members would be regulated by law, which is the Representation of the People's Order, 1972

Article 67 of the Constitution describes situations in which the chair of a member of parliament can be vacated. These situations include, legal disability, insolvency and being punished by a competent court for criminal offence for a term not less than two years, as described in Article 66 of the Constitution. If a member remains absent in the legislative procedure or in the parliament for ninety consecutive days, then his chair will be vacated. In addition to that, if a member crosses the floor in the parliament, as described in Article 70 of the Constitution, then his chair will be vacated. Moreover, if any member resigns from his chair, his chair will be vacated.

³⁷ Constitution of the People's Republic of Bangladesh, Preamble

Article 70 of the Constitution mainly deals with the concept of floor crossing. The concept of floor crossing has been elaborated in the part of the conceptual framework. Floor crossing literally means changing sides in the parliament, either by changing allegiance of a party or by giving a vote against the party to whom a member has allegiance. As per the provision of the constitution of Bangladesh, floor crossing is prohibited and if any member gives a vote against the party from which he was elected, in the parliament his chair will be vacated. Even though liberal voting approach might be used as an internal accountability mechanism within the parliament itself, ensuring good governance.

4.2.2. The Representation of the People Order, 1972

The Representation of the People's Order, 1972³⁸ is the statute which governs the procedural aspects of elections of the people's representatives, both in poll of the legislative body and of the local government bodies. This statute is a procedural one in nature. It outlines the provisions regarding processes of preparation of voters' list, announcing schedule of election, distributing and accepting nomination papers, scrutinising nomination papers, allotment of signs of nonparty candidates, casting procedure of votes, counting votes, declaring election results, receiving objections regarding election by specialised tribunal, disposing of those objection in view of statutory law etc. This statute does not provide any rule or underlying principle which defines aspects of democracy or accountability. Even though this statute does not provide any rule which is substantive in nature, this statute has a huge role in ensuring practice of democracy to the minimum extent which is to arrange a general election to elect the law makers and decision makers of the local government.

4.2.3. The Ombudsman Act, 1980

The Ombudsman Act, 1980³⁹ was enacted by incorporating provisions, which enable the Ombudsman with such power that could have made all persons functioning as a service holder in the service of the republic, including all people's representatives except members of parliament, accountable to the Ombudsman by way of investigating their actions. In section 6 of this Act, the Ombudsman has been authorised with the power to investigate any complaint received against any Ministry, a statutory public authority, or a public officer, if he does anything beyond his capacity or against any law, for the time being in force. In section 2(c), while defining public officers, the Act incorporated Mayor, Chairman and Member as public officers. According to section 9 of the Act, if the Ombudsman finds the complaint to be true after conducting the investigation in proper manner, he may recommend to the concerned authority to take disciplinary actions against such Ministry, statutory authority or public officer or to initiate judicial or departmental proceedings against such entity or person. In section 8 of the Act, the Ombudsman has been given the power of a District Judge, while in the course of conducting the investigation.

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³⁸ President's Order No. 155 of 1972

³⁹ Act No. XV of 1980

This Act has promising provisions, focusing on accountability of the executive and people's representatives of the local government. But this Act has not been in application in Bangladesh. Since the enactment and enforcement, not a single Ombudsman has been appointed in Bangladesh. In addition to that, the process of this Act, while ensuring the notion of accountability, is absolutely administrative in nature, where people do not have any voice regarding the decision. The only positive approach of this Act is that, general people have the scope to complain to the Office of Ombudsman, if they felt aggrieved and suffer injustice from any decision taken by any Ministry, statutory authority or public officer, if such decision is taken without lawful authority.

4.2.4. The Local Government (Union *Parishad*) Act, 2009

The Local Government (Union *Parishad*) Act,⁴⁰ is one of the three Local Government Acts, underlying the provisions related to formation and duties of the Union *Parishad*. All provisions related to functions of Union *Parishad* are incorporated in a detailed manner in this act. Along with rules of formation, functions and duties, this statute also provided accountability provision for making the Union *Parishad* accountable for their actions. The issue is, the accountability provisions of this statute had made the *Parishad* accountable to the central government, more precisely Executive Branch of the Government.

Section 39 - Motion of No Confidence: Section 39 of the Act, provides rules regarding 'Motion of No Confidence' upon the Chairman or any other Member of the *Parishad*. The motion of no confidence shall be submitted in writing to the *Upazila Nirbahi Officer* (UNO), by any of the members of the *Parishad*. Then UNO will call a meeting to hear the motion. After fulfilling the quorum as required by this provision the motion can be adopted by positive votes of 9 out of 12 members of the *Parishad*. Then UNO will send the result of the vote along with other necessary documentation to the higher authority, namely the Ministry of Public Administration for confirmation of the adopted motion of no confidence.

The motion of no confidence sets a perimeter for internal accountability within the institute itself, as while this provision is in existence, no member will be willing to go beyond his limit while performing the duties. But a motion of no confidence is kind of inoperative as for a motion being adopted, a minimum of 9 out of 12 votes is required, which is quite impossible in practical context. Moreover, if a motion is adopted, the final decision depends on the wish

of the central government. Even though the effective participation of the people in all types of decision making is a core principle of democracy, in this statute, people and the voice of the people are being overlooked.

⁴⁰ Act No. 61 of 2009

Section 77 - Termination of the *Parishad* and Re-Election: Another accountability provision of this statute is section 77 which elaborates the situation in which the central government can terminate a *Parishad* and declare for re-election. In situations, where the *Parishad* fails to pass its annual budget within the prescribed time, seventyfive per cent of the members of the *Parishad* had resigned from their position, seventyfive per cent of the members of the *Parishad* had been removed from their position due to reasons which make such members incapacitate to take part in election and if the *Parishad* misuse its power, the the government may dissolve the *Parishad* and declare for re-election.

In this provision again the *Parishad* is made accountable to the central government, and again the participation of the people and people's voice has been overlooked in such a crucial decision making process.

4.2.5. The Local Government (*Pourashava*) Act, 2009

The Local Government (*Pourashava*) Act, 2009⁴¹ is another of the three Local Government Acts. This statute provides the rules for formation and defining duties of the *Pourashava*. All provisions related to functions of *Pourashava* are incorporated in a detailed manner in this act. Along with rules of formation, functions and duties, this statute also provided accountability provisions for making the *Pourashava* accountable for their actions. Similar to the Local Government (Union *Parishad*) Act, this act also incorporated the accountability provisions that had made the *Pourashava* accountable to the central government, more precisely the Executive Branch of the Government.

Section 31 - Temporary Suspension of Mayor and Councilors: This provision incorporated a situation in which the Mayor or any Councilor of the *Pourashava* might be temporarily suspended. If the process of removal of the Mayor or any Councilor has been initiated, or any criminal case has been filed against the Mayor or any Councilor which has not been disposed yet, in such situation for protection of the interest of the *Pourashava*, the government can temporarily suspend such Mayor or Councilor of *Pourashava*.

This provision, while keeping the actions of the Mayor or Councilors of a *Pourashava* in check, has created a notion of accountability. But this little extent of accountability is totally executive procedure in nature, where there is no involvement of the people.

Section 32 - Removal of Mayor or Councilor: This provision of the Act provides rules and situations in which the Mayor or any Councilor of the *Pourashava* can be removed from his position. These situation includes, absence in three consecutive meetings of the *Pourashava* without any reasonable cause, involvement in any act of moral turpitude or any act which is damaging to the *Pourashava* or the State, unwilling or unable, due to physical or mental illness, to dispose of the duties of the *Pourashava*, misuse of power, absence in 9 out of 12 meeting held per year, failure to submit accounts of electoral expense or submission of falsified accounts of electoral expense etc.

⁴¹ Act No. 58 of 2009

Under the provision, the decision of the removal of the Mayor or any Councilor is taken by the central government, again overlooking the voice of the people, and not considering the issue of the participation of the people in the process of removal.

Section 38 - Motion of No Confidence: This provision of the current statute, operates almost similarly as the provision of motion of no confidence incorporated in the Local Government (Union *Parishad*) Act, 2009.⁴² The only difference is in the adoption policy of the motion. The motion of no confidence against the Mayor or a Councilor of a *Pourashava* will be adopted if that motion is passed by two-third positive votes of the total elected representatives of that *Pourashava*. The concerned Executive Office, i.e. Upazila Nirbahi Officer, will send the results and related documents of the motion of no confidence to the central government, and government in gazette notification will declare the position of concern Mayor or Councilor vacant. There is no option for deciding otherwise for the central government, if a motion of no confidence is adopted two-third majority of the elected representatives of the concern *Pourashava*.⁴³

According to this provision of the Local Government (*Pourashava*) Act, a notion of internal accountability is visible, as due to this provision, the Mayor or Councilors of the *Pourashava* will not be willing go beyond their jurisdiction while performing the functions of the duties relevant of the elected position. Nevertheless, here again the participation of people has been overlooked and minimised, as general electors will not be having any say in the whole process of the motion of no confidence.

4.2.6. The Local Government (City Corporation) Act, 2009

The Local Government (City Corporation) Act, 2009 ⁴⁴is one of the three local government acts. This statute also provides the rules for formation and defining duties of the City Corporation. All provisions related to functions of City Corporation are incorporated in a detailed manner in this act. Along with rules of formation, functions and duties, this statute also provided accountability provision for making the City Corporation accountable for their actions. Similar to the Local Government (Union *Parishad*) Act and Local Government (*Pourashava*), this act also incorporated the accountability provisions that had made the City Corporation accountable to the central government, more precisely the Executive Branch of the Government.

Section 12 - Temporary Suspension of Mayor and Councilors: This provision incorporated a situation in which the Mayor or any Councilor of the City Corporation might be temporarily suspended. If the process of removal of the Mayor or any Councilor has been initiated, or any criminal case has been filed against the Mayor or any Councilor which has not been disposed of yet, in such a situation for protection of the interest of the City Corporation, the government can temporarily suspend such Mayor or Councilor of City Corporation.

This provision, while keeping the actions of the Mayor or Councilors of a City Corporation in check, has created a notion of accountability. But this little extent of accountability is totally executive procedure in nature, where there is no involvement of the people.

⁴²The Local Government (Union *Parishad*) Act, 2009 s 39

⁴³The Local Government (*Pourashava*) Act, 2009 s 38

Section 13 - Removal of Mayor or Councilor: This provision of the Act provides rules and situations in which the Mayor or any Councilor of the City Corporation can be removed from his position. These situation includes, absence in three consecutive meetings of the City Corporation without any reasonable cause, involvement in any act of moral turpitude or any act which is damaging to the City Corporation or the State, unwilling or unable, due to physical or mental illness, to dispose of the duties of the City Corporation, misuse of power, absence in 9 out of 12 meeting held per year, failure to submit accounts of electoral expense or submission of falsified accounts of electoral expense etc.

Under the provision, the decision of the removal of the Mayor or any Councilor is taken by the central government, again overlooking the voice of the people, and not considering the issue of the participation of the people in the process of removal.

Section 14 - Motion of No Confidence: This provision of the current statute, operates almost similarly as the provision of motion of no confidence incorporated in the Local Government (Union *Parishad*) Act, 2009⁴⁵ and absolutely like the Local Government (*Pourashava*) Act, 2009.⁴⁶ The only difference is in the adoption policy of the motion. The motion of no confidence against the Mayor or a Councilor of a City Corporation will be adopted if that motion is passed by two-third positive votes of the total elected representatives of that City Corporation. The concerned Executive Office, i.e. *Upazila Nirbahi Officer*, will send the results and related documents of the motion of no confidence to the central government, and government in gazette notification will declare the position of concern Mayor or Councilor vacant. There is no option for deciding otherwise for the central government, if a motion of no confidence is adopted two-third majority of the elected representatives of the concerned City Corporation.⁴⁷

4.2.6. The Right to Information Act, 2009

The Right to Information Act, 2009⁴⁸ was enacted with a view to ensuring transparency in the governance process. The philosophical thought behind this Act is that, if the citizens can inquire about the governance process, then the corruption in the governance process would be reduced, thus creating an effective accountability mechanism. In the preamble of the Act, it is stated that if the right to information of the citizens is ensured, functions of autonomous, statutory and governmental institutions would be more transparent and it would create accountability of such institutions. This Act provided a legal framework for providing information to the citizens who are willing to acquire such information. Even though these rules of ensuring right to information creates transparency in the governance process, the direct accountability or accountability of the people's representatives is neither subject matter of this Act, nor it has been discussed in this Act.

⁴⁴ Act No. 60 of 2009

⁴⁵ The Local Government (Union *Parishad*) Act, 2009 s 39

⁴⁶ The Local Government (*Pourashava*) Act, 2009 s 38

⁴⁷ The Local Government (City Corporation) Act, 2009 s 14

⁴⁸ Act No. 20 of 2009

4.3. International Legal Provisions

4.3.1. Universal Declaration of Human Rights, 1948

The Universal Declaration of Human Rights⁴⁹ (UDHR) provides provisions referring to democratic freedom of citizens and the concept of representation. This instrument provides that every person has the right to take part in its government, either directly or via freely chosen representatives.⁵⁰ In addition to this, the UDHR provides that the basis of the authority of a country shall be the will of the people, which shall be assessed in periodic freely operated voting procedure.⁵¹

So, it is clear that the UDHR puts emphasis both on democracy and democratic accountability, as it puts emphasis on the free voting and will of the people.

4.3.2. International Covenant on Civil and Political Rights, 1966

The International Covenant on Civil and Political Rights⁵² provided in Article 25, every citizen shall have the right to participate in the conduct of public affairs, directly or through a representative who is chosen via a free voting process.⁵³ Every citizen has the right to express his will in choosing his representatives in a universal secret voting system, which shall guarantee effective reflection of his expression of will.⁵⁴

4.3.3. 2005 World Summit Outcome

In the Outcome of the 2005 World Summit⁵⁵ a separate section had been included titled democracy. In that section, the United Nations General Assembly reaffirmed that, democracy is a value of universal nature, where people shall freely express their will in determining their own political, social and cultural system, and through such freely expressed will, people shall have full participation in all aspects of their lives. The General Assembly further pointed out that, there

⁴⁹ UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III), <<https://www.refworld.org/docid/3ae6b3712c.html>> accessed 26 April 2023

⁵⁰ *ibid*, Art. 21 (1)

⁵¹ *ibid*, Art. 21 (3)

⁵² UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171, <<https://www.refworld.org/docid/3ae6b3aa0.html>> accessed 26 April 2023

⁵³ *ibid*, Art. 25 (1)

⁵⁴ *ibid*, Art. 25 (3)

⁵⁵ UN General Assembly, *2005 World Summit Outcome: resolution / adopted by the General Assembly*, 24 October 2005, A/RES/60/1 <<https://www.refworld.org/docid/44168a910.html>> accessed 26 April 2023

shall be nor universal form of democracy and each country shall determine their process of assessing the will of the citizens.⁵⁶

By adopting this paragraph in the Outcome of the 2005 World Summit, the world community has emphasised that each country shall assess the will of the people through a free democracy, in every aspect related to their lives.

4.3.4. United Nations Millennium Declaration

The United Nations Millennium Declaration⁵⁷ again reassured the aspects of democracy and accountability. This instrument provides that, the government of the countries shall be based on participatory democracy, in which free participation of the people shall be made at highest as of their rights.⁵⁸ The General Assembly further assured that the world community would spare no effort to promote democracy and strengthen the rule of law as well as all other fundamental human rights.⁵⁹ Emphasis on participatory democracy shall be made by the member states.⁶⁰

This instrument adopted by the United Nations General Assembly, gave emphasis on participatory democracy, while making discussion related to democracy, where free participation and expression of free will of the people was prioritised.

4.4. Judicial Precedents

Even though there are not any cases in Bangladesh, in which accountability of people's representatives was the core or sole or a significant issue of the case, but references to accountability of the people's representatives were made in a case while discussing other issues.

In the famous case of *Kudrat-e-Elahi Panir vs Government of Bangladesh*,⁶¹ while solving issue related to the local government bodies of Bangladesh, Mustafa Kamal J, underlined some of the key characteristics of the local governments, which includes local election, independent and notable source of income, detailed procedure of public accountability, areas where independent action can be taken, written documents of certain powers and duties, in the situation in which such power would be exercised also be stated.

4.5. Chapter Summary and Discussion

In this chapter, a detailed discussion on national legislation and international instruments related to democracy and accountability has been concluded.

⁵⁶ ibid, para 135

⁵⁷ UN General Assembly, *United Nations Millennium Declaration, Resolution Adopted by the General Assembly*, 18 September 2000, A/RES/55/2 <<https://www.refworld.org/docid/3b00f4ea3.html>> accessed 26 April 2023 ⁵⁸ ibid, para 6

⁵⁹ ibid, para 24

⁶⁰ ibid, para 25

Even though international instruments emphasise on participatory democracy where free expression of will of the people shall be the part of every aspect regarding their lives, which includes major aspects like choosing their representatives, making them accountable and if needed removing them from their office. But in provisions of national legislations relevant to accountability of people's representatives, the whole process of accountability and removal of the people's representatives has been incorporated as executive and administrative policies, in which general people do not have any expression. Even in these provisions, there is no scope left for the general people to complain, to any particular forum, against a people's representative, if he fails to perform the duties bestowed upon him, or if he misuses his powers, except of the Ombudsman, even though such office does not exist in Bangladesh.

Chapter 5 - Current Context of Democratic Accountability in Bangladesh

5.1. Introduction

This chapter is being focused on the current context of the democratic accountability in Bangladesh. In this chapter practical context of accountability of the people's representatives is discussed. The concept, context, necessity and implication of floor crossing in the parliament is discussed in this chapter. This chapter also tries to find relevancy of floor crossing and motion of no confidence, under the light of the constitutional law of Bangladesh. This chapter also included data collected from previously conducted surveys, on accountability of the people's representatives, which is to be analysed and elaborated in this chapter.

5.2 The Accountability Paradigm of the People's Representatives in Bangladesh

Even though accountability is an embedded policy within the democracy itself, as discussed in the part of the theoretical framework, in Bangladesh democracy is only limited to voting. For such mindset of the general people and the people who play the role of political leadership and offer themselves as candidate for position of public office, both people and the elected people's representatives does not intend to practise other aspects of democracy, like discussion for policy making, discussion for budget making, discussion for law making, presenting annual report to public in an easily accessible method, receiving complaint regarding public services and people related to such public services. For this reason, Bangladesh has been observed as a country of less democratic practice.

—⁶¹ 44 DLR (AD) 319

⁶² Md. Rezwanul Kabir, Mst. Taskin Ara Taznin Bithi, Tanzima Aktar Jyoti, Tabassum Rahman, 'A Unique Study of Corruption in Bangladesh' (2021) Saudi Journal of Humanities and Social Sciences 6(1), 18

Bangladesh's score in the Economist Intelligence Unit's Democracy Index plummeted to its lowest level ever in 2017, having its overall score of 5.43 out of 10 ranked it 92nd out of 165 countries evaluated.⁶² As there is no effective legal or institutional mechanism to ensure accountability of the elected public office holder, these office holders consider themselves invincible to the statutory actions against the corruption, and it is to find examples of initiation of actions against any elected people's representatives in Bangladesh. In the current era of institutionalisation and socialisation of corruption, most of the political figures take part in elections as candidates with a view of earning money by using their powers and capacity, after being elected. In most of the cases such political figures become elected and fulfil their aims of making unprecedented amounts of assets while having – the tenure of his office. Even though there are provisions of removing and suspending people's representatives of the local governments, these events happen rarely as the whole process depends on the other members of such a public entity, and all other elected members of such entities also pursue the same of self-gain. Another reason for the ineffectiveness of such a legal instrument is non-participation of the people in the accountability process. Whenever a public officer does not fulfil his duties, the immediate sufferers are the people, and they realise the hampering effect of the corruption and non-fulfillment of duties done by the people's representatives immediately. If people are authorised by law to initiate complaints or any other accountability mechanism against such corrupted people's representatives, the legal instruments and institutions will be able function more efficiently, and people's representatives will be more cautious about their actions, taken in the course of conducting their duties.

Bangladeshi governments of all stripes have declared their intention to combat corruption. This has resulted in a succession of high-profile, top-down efforts involving new legislation, the establishment of new organisations, and, eventually, the arrest of some officials. Despite initial enthusiasm among a large portion of the Bangladeshi populace, the success of these efforts has been limited.⁶³ The reason behind such failure is the lack of willingness of the top level policy maker to familiarise the accountability principle in the country with a long term view. Such actions of governments always remain a hot topic in the primary stage, but in the long term corruption prevails over rule of law and fulfilment of statutory duties bestowed by law.

The core reason behind lack of accountability in Bangladesh is weak legal and institutional mechanisms for ensuring accountability, and a bureaucracy which is eager to support corruption of the political figures holding the position of people's representative.⁶⁴

5.3. Floor Crossing and Accountability within the Parliament

The concept of floor crossing is incorporated in Article 70 of the Constitution of Bangladesh.⁶⁵ There are two type of floor crossing, namely absolute floor crossing, while a member of a parliament or an assembly permanently changes his allegiance from one political party to another; and the second type of floor crossing partial floor crossing, referring to a single event when a member of a parliament or an assembly gives his vote against his party. Both of these

—⁶³ ibid

⁶⁴ Habib Zafarullah, Noore Alam Siddiquee, 'Dissecting Public Sector Corruption in Bangladesh: Issues and Problems of Control', Public Organization Review 1, 465–486 (2001)

⁶⁵ Constitution of the People's Republic of Bangladesh, Art 70

actions are prohibited by Article 70 of the Constitution of Bangladesh, and if any member of parliament crosses the floor in the parliament, his chair shall be vacated. The absolute floor crossing, in which a member changes his allegiance to a political party is a process which may lead to anarchy and turmoil in national politics by creating political instability. But partial floor crossing, in which a member of a parliament or an assembly is free of any kind of constitutional or legal obligation to vote in favour of his political party, can establish an internal accountability mechanism within the parliament. When a member of parliament will be free of constitutional or legal obligations while giving his vote, he will be able to think for the welfare of the citizens, while giving his opinion in the decision making process in the parliament. If the ruling party proposes a legislation, which is bad in law and there is possibility that it might be hampering the rights of the citizens, members of the ruling party will rethink about giving his positive vote in adoption of that legislation, if he is not restricted for partial floor crossing. When such a choice will be open to the members of the parliament, the electors of their constituencies will ask them regarding their decision in the parliament, which will eventually create an accountability mechanism of the members of parliament.

Though there is a possibility of ensuring accountability and a way for expressing free opinion by the members of the parliament by opening the gate for partial floor crossing, the government of Bangladesh and the ruling party is not willing to do so. Recently the Prime Minister of Bangladesh, has commented in the Parliament session, that restriction on floor crossing is maintaining the political stability and giving permanency to the government and parliament, to complete full tenure.⁶⁶ If the members of the parliament do not change their political allegiance and express their opinion freely in the parliament, there is no chance of initiation of political turmoil. Rather it will open gates for progressive and effective governance.

5.4. Floor Crossing and Motion of No Confidence

As discussed above, partial floor crossing might be able to create a notion of internal accountability within the parliament.

The concerns expressed by the Prime Minister of Bangladesh regarding floor crossing and political turmoil and instability⁶⁷ is not relevant in any aspect. Rather the constitutional mechanism which may lead the country to political turmoil and instability is Motion of No Confidence.

The rules for motion of no confidence against the Prime Minister is incorporated in Article 57 of the Constitution of Bangladesh. The provision provides that if the Prime Minister ceases to retain support of the majority of the Members of the Parliament, then he shall resign from his post or shall advise the President to dissolve the Parliament. If the President, after being advised by the Prime Minister to dissolve the Parliament, is satisfied that no other member of the Parliament holds majority support in the Parliament, he shall dissolve the Parliament.

⁶⁶BSS Jatiya Sangsad, 'Article 70 gives stability to government, PM Hasina tells parliament', *Prothom Alo* (Dhaka, 11 April 2023) <<https://en.prothomalo.com/bangladesh/parliament/fsvzsrly90>> accessed 6 May 2023 ⁶⁷ibid

From this constitutional provision, it is very clear that motion of no confidence as a constitutional mechanism can alter the government of the country as well as political timeline. But there is no such possibility in respect of partial floor crossing and independent decision making by the members of the parliament, in the parliament.

5.5 Current Situation Accountability of People's Representatives

In a study conducted by the 'The Hunger Project', titled 'Enhancing Service Delivery by Engaging Active Citizens and Building Capacity of Local Government', which was sent to the World Bank in 2021, it pointed out features and extent of accountability of Local Government in Bangladesh. The General Meeting or *Shava* was considered as the most inclusive matter of local government bodies and it is unfamiliar in Bangladesh and not widely used. There is no participation of the people in the Open Budgeting Meeting of the local government bodies. Standing committees in local government would be helpful in the matter of engaging people in the governance process, but this manner is not practised in Bangladesh. Other meetings like participatory meeting, monthly meeting, public hearing, which could play an effective and crucial role in ensuring people's participation and accountability of the public office holder and people's representatives, are not widely practised in Bangladesh, rendering the local government bodies hardly accountable to the people. Right to information, even though it is ensured by law, is difficult to be accessed by the citizens.

Social Audit, which could work as a census, finding out the number of people belonging to different socio-economic levels.⁶⁹ In another research conducted under the patronage of Center for Policy Dialogue (CPD), Rounaq Jahan found that, there is no specific mechanism for making the members of parliament accountable to the people of his constituencies, for conducts done in parliamentary business, and people of the constituencies usually do not bother to ask their parliamentary representatives regarding their parliamentary functions. Interestingly whenever the members of parliament go to their constituency they attend various types of social functions within the constituencies, and solve various types of disputes happening between people of their constituencies. But neither have they willingly presented any statement or report of their parliamentary functions to the people of their constituencies, nor do the people of their constituencies ask them about the works for which they were elected by the people and were sent to the parliament as representatives of the people.⁷⁰

In a word, accountability in local government in Bangladesh is absent in the actual context of the operations, and only present in the law of the country.

As there are some legal provisions for accountability of the people's representative of the local government bodies, study had been conducted on that behalf. But there is no provision related to accountability of the Members of the Parliament, hence no study on this matter was not found to be conducted.

⁶⁸The Constitution of the People's Republic of Bangladesh, Art. 57 (2)

⁶⁹Badiul Alam Majumdar, John Coonrod, Nazmul Hassan, Kazi Rabeya, Carolyn Ramsdell and Leanna Albrecht Beaber, 'Enhancing Service Delivery by Engaging Active Citizens and Building Capacity of Local Government' (*The Hunger Project*, 21 December 2021) <<https://en.thpbd.org/wp-content/uploads/2021/09/Local-Government-Accountability-Mechanisms-in-Bangladesh-Dec-2012.pdf>> accessed 7 May 2023

The main barrier of ensuring accountability of the people's representatives to the people, is the unwillingness of the ruling political parties and people who advise the policymakers. In addition to this barrier, access to information related to governance of both central government and local government bodies, is difficult for citizens. Moreover citizens are not also aware of their right to hold the people's representatives accountable for their actions, done in the course of disposition of their duties as public office holders.

5.6. Chapter Summary and Discussion

Currently Bangladesh is in such a stage where accountability of the people's representatives as well as the executive body is almost invisible. Democracy is only limited to the people's participation in elections. Other aspects of democracy, including accountability of the public office holder is intentionally overlooked by the people governing the state. The legislative body is unwilling to implement an accountability mechanism which would make the public office holder accountable to the citizens. Even though the theories of democracy namely the social contract theory and participatory democracy theory emphasis on the both way relationship of the people's representatives and people, and participation of people in the process of governance, rules and decision making, such measures cannot be seen in the governance process in Bangladesh, neither in the process of central government and legislative procedure nor in the processes of the local government bodies. If the legislative body does not implement any laws for implementation of accountability of the people's representatives, they cannot be held liable as positivist theory of law believes in the command of the sovereign and nothing can be made possible without such statutory law.

⁷⁰ Rounaq Jahan, The Parliament of Bangladesh: Representation and Accountability (2015) The Journal of Legislative Studies, Vol. 21, No. 2, 250

Chapter-6-Norway:The Country Having the Best Form of Accountability Mechanism

6.1. Introduction

Norway gets the top spot (rank 1) in the SGI 2022 in terms of executive accountability, thanks to a diverse and effective set of oversight measures. Its score in this category has increased by 0.2 points since 2014.⁷¹ As Norway has ranked top in the accountability indicator, it can be considered as one of the best practising countries in ensuring democratic accountability by making the people participate in the governance process and developing countries like Bangladesh can follow the accountability mechanisms followed by Norway to ensure effective accountability mechanisms in their own country.

6.2. Democracy and Accountability Mechanism in Norway

Citizens in Norway are typically attentive and well-informed about government policies, actions, and activities, and they have a high level of trust in decision-makers. This is due to the country's small size and high levels of social capital, as well as the population's high level of education, very high newspaper circulation, and extensive access to the internet and television. Furthermore, the Scandinavian history of transparency in government assists the free press in reporting accurate information about public policies. However, the pace and complexity of policy making in Norway, like in many other nations, is increasing, while media habits are constantly changing and different media platforms attract diverse readers and consumers.⁷²

The government of Norway also has the intention of making the whole process of governance transparent and accountable to the citizens. The government makes data and information available to the public, making it simple for citizens to stay informed and keep the government responsible. Statistical data is freely accessible for free online, and a large amount of public data is made available on the internet. Many ministries and agencies assist in the interpretation of raw data and the publication of summaries to make the important features of the data more accessible to individuals without offering too much spin. Most government agencies also issue yearly reports that include financial accounts, policy goals and accomplishments, and risk assessments. Furthermore, the annual report of the general auditor, the Transparency Act, weekly parliamentary questions, and a vibrant media environment ensure that information regarding government operations (or lack thereof) is made public.⁷³

—⁷¹ SGI, 'Norway, Executive Accountability' (*Sustainable Governance Indicator*) <https://www.sgi-network.org/2019/Norway/Executive_Accountability> accessed 7 May 2023

⁷² *ibid*

Since 1962, Norway has had a parliamentary ombudsman entrusted with reviewing public complaints about unfairness, abuse, or errors committed by central or local government authorities. The ombudsman is also responsible for safeguarding the respect of human rights and conducting impartial investigations. Every year, the ombudsman's office reports to Parliament on its actions. The ombudsman is generally active and trustworthy. However, the ombudsman has recently expressed worry that he and his office are at risk of losing funds and public support since far too few of his suggestions are taken seriously and followed. The Ombudsman Agency has since been copied to other policy areas. An Ombudsperson for Children was established in 1981 and an Ombudsperson for Senior Citizens in 2021 for antidiscrimination in 2006.⁷⁴

Traditionally public accountability in Norway is considered as having the public officials as representatives of the people and they are accountable, for executing their designated tasks, to the public. Accountability is the idea that the account or explanation given is accessible to the citizens. In Norway, the traditional approach of accountability describes the idea that governments play the role of supreme actors in making and executing public policy. However, citizens can challenge and control the making and execution of public policy by making the politicians accountable. The reasons behind the emergence of these challenges mainly include changes in the relationship between the public and private sectors and changes in the relationship between government and citizens.⁷⁵

The local authority of Norway always tries to make the citizens participate in the functions of local authority, including the decision making process related to the decision making process of the local authority.⁷⁶

6.3. Chapter Summary and Discussion

Norway has ensured proper democracy and accountability mechanisms by adopting policies as described in the participatory democracy theory. Norway has placed in the top of the democracy index by ensuring participation of people on each and every aspect and levels of governance process. This can be an example for the developing and third world countries like Bangladesh. Bangladesh can also improve its accountability mechanism by encouraging and ensuring participation of people in the process of government, both in local government and central government, as well as legislative procedures. For ensuring participation of people in the process of governance, there shall be statutory law for establishing accountability mechanisms.

⁷³ ibid

⁷⁴ ibid

⁷⁵ Hilde Bjørnå and Jarle Weigård, 'From Public to Private Accountability in Norwegian Local Government' (2020) Sage Open Journal <<https://doi.org/10.1177/2158244020957042>> accessed 8 May 2023 ⁷⁶ ibid

Chapter 7 - Concluding Remarks

7.1. Major Findings

After scrutinising the relevant theories, concepts, national and international legal instruments and the current context of democratic accountability in Bangladesh, this research finds the following issues to be noted:

1. The provisions of the Constitution of the People's Republic of Bangladesh, neither do not contain any rules, which might be able to hold the people's representatives accountable to the people, nor provide any rules requiring the people's representatives to give account of their functions to the people.
2. The legal framework of Bangladesh does not provide any provision of ensuring accountability of the people's representatives. The Representation of the People Order, 1972 is a law for electoral procedures of parliamentary elections, where nothing relevant to accountability of the members of parliament is discussed or provided.
 - a. Section 39 of the Local Government (Union *Parishad*) Act, 2009 provides a provision for motion of no confidence against the Chairman and members, which must be put forward by any of the members of the *Parishad*, where there is no involvement of the people. Section 77 of the same Acts provides that, if seventyfive percent member of the *Parishad* resigns or if the *Parishad* fails to pass the annual budget within the prescribed time, then the government may terminate the *Parishad* and declare for reelection, in this process also there is no involvement of people, by which accountability to the people can be ensured.
 - b. Section 31 of the Local Government Act (*Pourashava*), 2009 provides a rule for temporary suspension of Mayor or Councilors, if they misuse their power or do not fulfill the duties bestowed upon them by the law. Such temporary suspension is also an executive decision, taken by the government. There is no involvement of the people in the process of complaint making or suspending such Mayor or Councilors. Section 32 of this Act provides rules for removal of Mayor or Councilors. If the Mayor or any of the Councilors is unable or unwilling to perform his duties, due to mental or physical illness, or has remained absent in 9 of 12 annual meetings, then the government may remove such Mayor or Councilor from his position.

In this process, there is also involvement of the people. Section 38 of this act provides rules for motion of no confidence, which functions similarly like the no confidence provision of the Local Government (Union *Parishad*) Act, 2009, in which the opinion or voice of the people is overlooked, and people are not involved in any stage of the whole process.

- c. Section 12 of the Local Government (City Corporation) Act, 2009 provides rules for temporary suspension for mayor or councilors, which functions similar to the temporary suspension provision of the Local Government (*Pourashava*) Act, 2009, having no involvement of people and only being an executive process.

Section 13 of this Act, provides rule of removal of Mayor or Councilor and section 14 of the motion of no confidence, which two also function as same as of the rules regarding removal of Mayor or Councilors and motion of no confidence provided in the Local Government (*Pourashava*) Act, 2009, having no involvement of people in any stage of the whole processes, and performing these processes as executive matters.

d. The Right to Information Act, 2009 emphasises on availability of information, relevant governance process, to citizens, which aims to make the governance process transparent and create a notion that, through transparency, accountability of the autonomous, statutory and governmental institutions will be ensured. But this Act does not provide any provision regarding accountability of the people's representatives, directly or indirectly.

e. The promising provisions regarding accountability can be found in the Ombudsman Act, 1980. This Act provides rules for complaint, inquiry and action recommendation mechanisms, in which complaints can be lodged by the citizens against any public office holders, including people's representatives of local government bodies. After receiving complaint from any person against any public office holder, who committed injustice while performing his duties, the Office of the Ombudsman is required to make proper inquiry regarding the complaint, and send a report to the concerned authority, and if such public office holder is found guilty of the allegation, such report, sent by the Office of the Ombudsman, may contain recommendation of punishment. But since the enactment of this Act, no Ombudsman has been appointed till now, and the Office of the Ombudsman practically does not exist.

3. Accountability of the people's representatives can be ensured by two methods, either by giving account of the work directly to the people by the people's representatives, or having a Code of Conduct which might require the people's representatives to give account of their works, to the people or to any horizontal institution, which will ensure accountability on behalf of the people. But in Bangladesh neither of these methods is practiced. At the local government level, where participation of the people could have played an important role in ensuring accountability and better democracy, people are not involved in any matters of governance. It has been shown in the study conducted by the Hunger Project that in local government bodies, participation of the people does not exist at all. In another study conducted by the Center for Policy Dialogue, it had been shown that the members of parliament often meet the people of their constituencies, mostly to attend social functions. But whenever such members of parliament meet the people of their constituencies, neither they willingly give account of their parliamentary functions to the people, nor the people of their constituency ask any questions regarding their parliamentary functions. Interestingly the members of parliament are asked about all other issues while he meets the people of his constituency, except for their parliamentary functions. In short words, accountability of the people's representatives in Bangladesh, both parliamentary representatives and representatives of local government bodies, does not exist.

4. The barriers in the way of implementing proper accountability mechanisms of the people's representatives is the unwillingness of the ruling political parties and head of the governments. The ruling political parties are not willing to give accounts of their work to the people. From such unwilling intentions, governments are not seeing any necessity of accountability of the people's representatives in the overall governance process. Another reason is lack of awareness of the people regarding their rights. People also do not wish to ask their representatives of all levels of government regarding their duties and responsibilities, which is also a great barrier in the way of ensuring democratic accountability.

7.2. Recommendations

Upon the aforementioned Findings, recommendations for ensuring a better accountability mechanism in Bangladesh are made hereinafter:

1. Amendments should be brought to the constitution of Bangladesh by incorporating provisions for ensuring accountability at every level of governance and of the public representatives. There should be constitutional provisions requiring people's representatives of all levels to give account of their functions, duties and responsibilities, to the people on a periodical basis by arranging public gathering functions.
2. A separate statute might be enacted, which would provide detailed guidelines regarding accountability of the people's representatives. This new statute might also be enacted as the Code of Conduct for the people's representatives.
3. Amendments should be brought in existing statutes relating to local government bodies.
 - a. In the Local Government (Union *Parishad*) Act, 2009 where motion of no confidence and termination of the *Parishad* is incorporated, it should be amended by incorporating rules for participation of the people in the whole process. In addition to that, new provisions should be incorporated requiring the *Parishad* to arrange a periodical public hearing functions, for giving account of their works and for taking complaints from citizens regarding the governance process and development and other programs. There should be provision of mandatory budgetary sessions with the people, before adoption of the budget in every fiscal year.
 - b. In the Local Government (*Pourashava*) Act, 2009 where temporary suspension of Mayor or Councilors, removal of Mayor or Councilors and motion of no confidence against the Mayor or any Councilor is incorporated, it should be amended by incorporating rules for participation of the people in the whole process. In addition to that, new provisions should be incorporated requiring the *Pourashava* to arrange a periodical public hearing functions, for giving account of their works and for taking complaints from citizens regarding the governance process and development and other programs. There should be provision of mandatory budgetary sessions with the people, before adoption of the budget in every fiscal year.
 - c. In the Local Government (City Corporation) Act, 2009 where temporary suspension of Mayor or Councilors, removal of Mayor or Councilors and motion of no confidence

against the Mayor or any Councilor is incorporated, it should be amended by incorporating rules for participation of the people in the whole process.

In addition to that, new provisions should be incorporated requiring the City Corporation to arrange a periodical public hearing functions, for giving account of their works and for taking complaints from citizens regarding the governance process and development and other programs. There should be provision of mandatory budgetary sessions with the people, before adoption of the budget in every fiscal year.

- d. In the provision of the Ombudsman Act, 1980, where the definition of public office holders were given, the members of parliament should also be incorporated as public office holders. In addition to that, parliament should appoint an Ombudsman as soon as possible. Parliament and government should take necessary actions on an emergency basis to bring the office of the Ombudsman into existence. The Office of the Ombudsman can perform as the accountability ensuring institution, on behalf of the people.
4. The parliament should enact a new statute, requiring the people's representatives of all stages to ensure participation of the people in the process of governance. Such participation of people will automatically seek account of the work of the people's representatives and thus this process will create democratic accountability and will introduce a better form of democracy. There should be provision in such statute requiring the people's representatives to discuss with the people regarding his duties by arranging public hearing functions. The Members of Parliament should at least meet once before every session of the parliament for discussing the agenda of the next session of the parliament with the people of his constituency, and he should inquire how the people want to respond or express their opinion on such agendas of the parliament.
5. As the ruling political parties are always unwilling to adopt statutory laws for ensuring accountability of the people's representatives, and the people's representatives are also unwilling to give account of their work to the people, the civil society should come forward by arranging dialogues and seminars, emphasising on the necessity of accountability of the people's representatives in the democratic countries, and should arrange sessions with the policy makers for convincing them to adopt such statute.

7.3. Conclusion

Even though there had been some autocratic regimes throughout the history of Bangladesh, Bangladesh has been a democratic country since its emergence. Through the course of the time, the democracy of Bangladesh has been only limited to electoral processes and elections of Parliamentary members and people's representatives of the local government bodies. But the principle of Constitutional Democracy consists of so many other aspects, and the research problem of this study, accountability of the people's representatives is one of the most crucial and important aspects of the principle of Constitutional Democracy.

After these many years of independence, the governments of Bangladesh never paid their attention to the development of democratic practices.

For being promoted to a developed country from a developing country, improvement in democracy is a must as it is seen in almost all the developed democratic countries. For improvement of democratic practice accountability of the public office holders to citizens is a must. The government of Bangladesh should adopt legislations and policies to introduce such accountability mechanisms and ensure accountability of the public office holders including the people's representatives, to the citizens.

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