

Concept of Rule of Law and Justice: Difficulties of Application in Bangladesh

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ABSTRACT

It is obvious that the area of Law is very vast and comprehensive. Side by side the practice and implementation of Law is also more difficult and complicated. "No free man shall be taken or imprisoned or despised or exiled or in any way destroyed nor will we go or send for him, except under a lawful judgment of his peers and by the Law of the land". This paper is a presentation of the concept of Rule of Law and difficulties its application, Dickey's theory of 'Rule of Law', Rule of Law in true and modern sense and Rule of Law in Bangladesh. In Bangladesh context I have discussed the provisions for ensuring Rule of Law in Bangladesh constitution. I also have discussed the provisions of the constitution, which are contrary to the concept of Rule of Law in Bangladesh. It has been also identified the difficulties of application of Rule of Law in Bangladesh.

Key words: *Rule of Law, Constitution's provision, Lawful Judgment, Ideological and Religious.*

Introduction

One of the basic principles of the English constitution is the Rule of Law. This doctrine is accepted in the constitution of U.S.A. and also in the constitution of Bangladesh. Now a day's Rule of Law is one of the most discussed subjects of developing countries. Developed countries and donor agencies always instruct the developing countries for sustainable development and good governance. Actually sustainable development and good governance mostly depends on the proper application of Rule of Law. Laws are made for the welfare of the people, to bring a balance in society, a harmony between the conflicting forces in society. One of the prime objects of making Laws is to maintain Law and order in society, a peaceful environment for the progress of the people. In true and real sense there is no Rule of Law in Bangladesh today. Law in Bangladesh follows a course of selective and discretionary application. Institution and procedures required for ensuring Rule of Law also are not effective in the country.

Concept of the Rule of Law

The term 'Rule of Law' is derived from the French phrase 'La Principe de Legality' (the principle of legality) which refers to a government based on principles of Law and not of men. In this sense the concept of 'La Principe de Legality' was opposed to arbitrary powers. The Rule of Law is old origin. In thirteenth century Bracton, a judge in the reign of Henry III wrote- "The king himself ought to be subject to God and the Law, because Law makes him king." Edward Coke is said to be the originator of this concept, when he said that the king must be under God and Law and thus vindicated the supremacy of Law over the pretensions of the executives.

Professor A.V. Dicey later developed on this concept in his classic book 'The Law of the Constitution.' published in the year 1885. Dickey's concept of the Rule of Law contemplated the absence of wide powers in the hands of government officials. According to him wherever there is desecration there is room for arbitrariness. The Rule of Law is a viable and dynamic concept and like many other such concepts, is not capable of any exact definition. Its simplest meaning is that everything must be done according to Law, but in that sense it gives little comfort unless it also means that the Law must not give the government too much power. The Rule of Law is opposed to the Rule of arbitrary power. The primary meaning of Rule of Law is that the ruler and the ruled must be subject to Law and no one is above the Law and hence accountable under the Law. It implies the supremacy of Law and the recognition that the Law to be Law cannot be capricious.

Rational of the Study

Rule of Law is one of the essential parts of a civilized society. In fact no civilized modern nation can't run without the implication of Rule of Law. Like every independent civilized modern country Rule of Law one of the basic principles of the constitution of Bangladesh. Today it is one of the most debated topics in Bangladesh. Although Laws are made for the welfare of the citizens, bring peace and harmony unfortunately in the context of Bangladesh it seems the implication of Rule of Law isn't for the common citizens. Law in Bangladesh follows a course of selective and discretionary application. Institution and procedures required for ensuring Rule of Law also are not effective in the country.

The prime and foremost expectation of the people of a country is to establish 'Rule of Law'. Our supreme Law i.e. the Constitution has made provisions for enforcement of Rule of Law in the country. If the constitution is followed in letter and spirit, there is no reason why Rule of Law cannot be achieved. Rule of law cannot be established in the society unless the people in general and people actively involved with the function of government as well as with politics have faith in the utility and effectiveness of Rule of Law and have commitment for it. It is a matter of regret that there is deficiency of respect for and commitment towards Rule of Law. In addition, corruption and pursuit of politician have seriously undermined Rule of Law in our country. In the line of the mandates of preamble of our constitution, it is high time to establish a socialist society where fundamental rights of the people, equality and justice, and most importantly Rule of Law are ensured.

Rule of law in the Constitution of Bangladesh

The Rule of Law is a basic feature of the Constitution of Bangladesh. It is categorically and specifically narrated in the third paragraph of the preamble of our constitution that, "Further pledging that it shall be a fundamental aim of the State to realize through the democratic process a socialist society, free from exploitation – a society in which the Rule of Law, fundamental Human Rights and freedom, equality and justice, political, economic and social, will be secured for all citizens."

Therefore it is seen from the versions and averments of the preamble of our Constitution that, the fundamental Human Rights and freedom, equality and justice, political, economic and social have been conspicuously and unequivocally described and expressed in our constitution to establish the Rule of Law in the country. It is also evident that, the Part II of the Constitution elaborately expresses about the Fundamental Principles of State Policy. The Article 7(1) declares the Supremacy of the Constitution. At the same time the Article 7(2) imposes the limitation on the legislature that, no law which is inconsistent with any provision of the constitution can be passed.

Whereas the Article 8(1) narrates the fundamental principles of State Policy. Besides this, the Article 8(2) denotes that, "The principles set out in this Part shall be fundamental to the governance of Bangladesh, shall be applied by the State in the making of laws, shall be a guide to the interpretation of the Constitution and of the other laws of Bangladesh, and shall form the basis of the work of the State and of its citizens, but shall not be judicially enforceable."

The Constitution of Bangladesh clearly and categorically contains the provisions to ensure Rule of Law in the country. In this respect the Article 11 describes that,

"The Republic shall be a democracy in which fundamental Human Rights and freedoms and respect for the dignity and worth of the human person shall be guaranteed¹[***]²[, and in which effective participation by the people through their elected representatives in administration at all levels shall be ensured]"

The Constitution has also ensured the equality of opportunity to all the citizens of the country. In this regard the Article 19(1) states that,

"The State shall Endeavour to ensure equality of opportunity to all citizens."

By the side of this the Article 19(2) deliberates that,

¹ The comma and words *, and in which effective participation by the people through their elected representatives in administration at all levels shall be ensured" were omitted by the Constitution (Fourth Amendment) Act 1975 (Act II of 1975), section 2.

² The comma and words *, and in which effective participation by the people through their elected representatives in administration at all levels shall be ensured" were inserted by the Constitution (Twelfth Amendment) Act, 1991 (Act XXVIII of 1991), section 2.

“The State shall adopt effective measures to remove social and economic inequality between man and man and to ensure the equitable distribution of wealth among citizens, and of opportunities in order to attain a uniform level of economic development throughout the Republic.”

The Article 19(3) also expresses that,

“The State shall endeavor to ensure equality of opportunity and participation of women in all spheres of national life.”³

In regarding the separation of judiciary, it is narrated in the Article 22 that, “The State shall ensure the separation of the judiciary from the executive organs of the State.”

The Part III of our Constitution has incorporated the Fundamental Rights of the citizens of the country. As like as the Article 7(1) & (2), the Article 26(1) & (2) of the Part III has also imposed the embargo to the legislature that, no law which is inconsistent with any provision of the Constitution can be passed. In this context the Article 26(1) expresses that,

“All existing law inconsistent with the provisions of this Part shall, to the extent of such inconsistency, become void on the commencement of this Constitution.”

Article 26(2) says that,

“The State shall not make any law inconsistent with any provisions of this Part, and any law so made shall, to the extent of such inconsistency, be void.”

Challenges to the Concept of the Rule of Law

Laws and Justice System all over the world are based upon the stern pillars of the Rule of Law. It acts as a guideline for the government to enact legislations and establishes procedures and regulations which are based on the concept of equality and equal treatment before the eyes of Law. The Rule of Law propounds equal treatment before the Law irrespective of caste, creed, sex, color, background, and religion, social, political and economic status. But this principle may be threatened. And there will be an attempt to assess and identify the core of those issues which are fundamental having the likelihood of causing potential threat to the concept of the Rule of Law in a particular State.

- In short, those fundamental issues can be identified thus:
- Economic growth
- Dictatorial discretion of the Government
- Violation of human rights
- Violation of due process of law
- Arbitrary use of power by the executives
- Lack of check and balance in the separation of powers
- Absence of independent judiciary
- Lack of proper Democracy
- Interference of political leaders in judiciary

Objectives of the Study

1. To identify the difficulties of application Rule of Law and Justice in Bangladesh.
2. To provide suggestions for creating awareness about Rule of Law and the ways of implementing the same.
3. To identify the role of Human Rights organizations for implementing the Rule of Law and Justice.

Methodology of the Study

Research Methodology

Primary and secondary sources of information or data are used in the study. Primary data preferred because of people of Bangladesh being felt no much interested in or concerned to what constitution means by principle rights, fundamental rights or even, in some cases, Human Rights and what will be the role of the concern

³ Clause (3) was added by the Constitution (Fifteenth Amendment) Act, 2011 (Act XIV of 2011), section 13

organizations to established Rule of Law in Bangladesh. Secondary data are collected from notable authorities on law, different journals, daily newspapers, various books, the newspaper, internet etc.

Sampling Method: Purposive sampling method will be used for data collection.

Sample Size: Total 300 (three hundred) respondents will be interviewed for data collection.

Sources of data: Data will be collected from primary and secondary sources.

Sources of primary data: Primary data will be collected from the respondents of the study area.

Sources of secondary data: Secondary data will be collected from books, journal, research, reports, internet etc.

Tools of data collection: Questionnaire will be used for data collection.

Method of data collection: Data will be collected through face to face interview with questionnaire and also primary and secondary sources.

Data analysis: Data will be analyzed by using computer software, Microsoft excel & SPSS Standard Programming for statistical survey.

Respondent and there details information:

Category	Quantity	Address	Qualification	Job title
Civil Society	100	Dhaka	Bachelor and above	Civil Society
Advocate	100	Dhaka	Bachelor and above	Civil Society
Police Person	50	Dhaka	Bachelor and above	Civil Society
Justice	50	Dhaka	Bachelor and above	Civil Society

Variables

Respondents category I

- a. Lawyers, senior & junior
- b. Baristers
- c. judges
- d. District Magistrate/Additional District Magistrate (ADM)

Respondents category II

- e. Bangladesh police/Law enforcing agencies
(Police, RAB, CID, NSI, SB etc.)
- f. Journalist

Respondents category III

- g. Teachers
- h. Physicians
- i. Businessman
- j. Civil society

Site: i. Dhaka District ii. Satkhira District iii. Pabna District iv. Comilla District v. Sylhet District vi. Barisal District vii. Mymensingh District & viii. Rangpur District.

Results and Discussion

From the result it was found that Age group 41-50 years was 28% which was maximum, Age group 31-40 years was 24% which was second position, Age group 21-30 years was 18% which was third position, Age group 51-60 years was 17% which was fourth position and age group above 61 years was 13% which was the minimum.

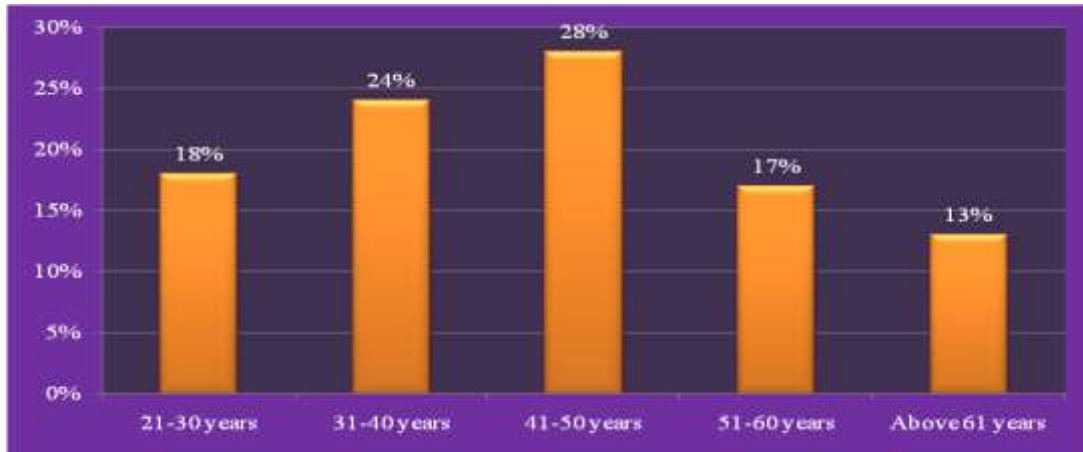


Figure 1: age group of the respondents

Source: Survey

Respondent’s Residence area have shown in the above graph. From the result it was found that out of 300 respondents, 73.30% respondents lived in urban area and 26.70% respondents lived in rural area.

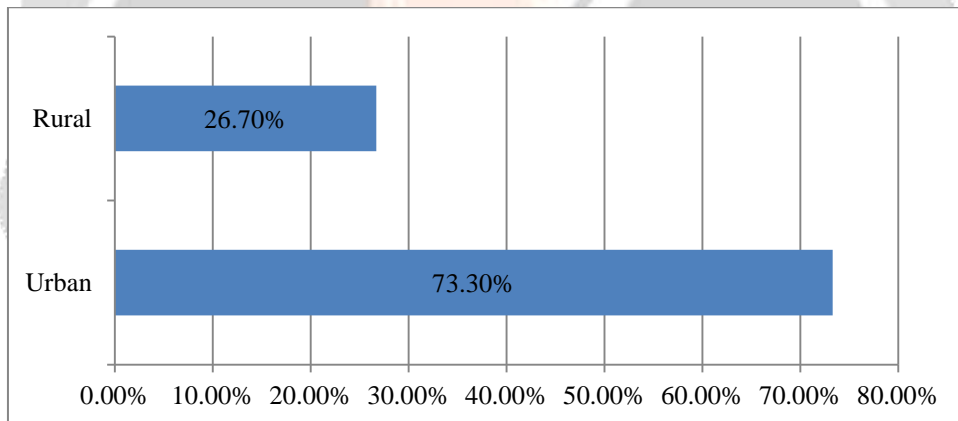


Figure 3: respondents’ residence area

Source: Survey

Respondents’ Religion has shown in the above graph. From the result it was found that out of 300 respondents 80% respondents were Muslim and 10% respondents were Hindu and others 10%.

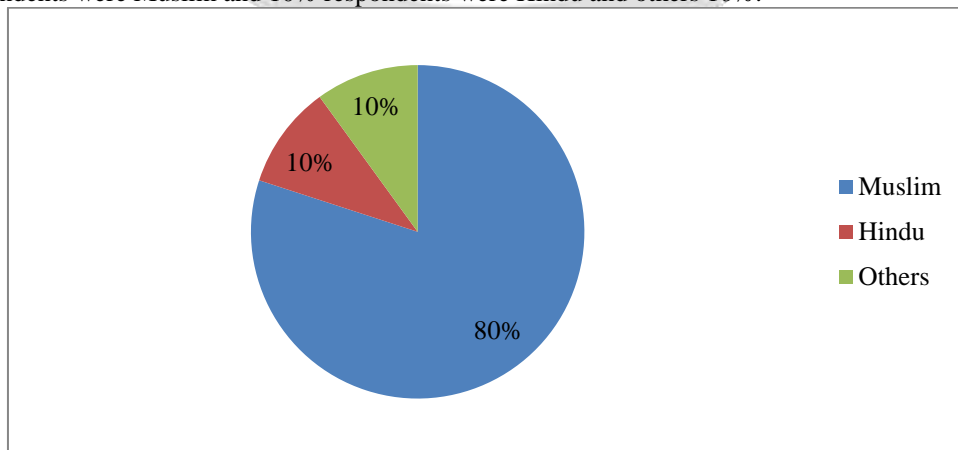
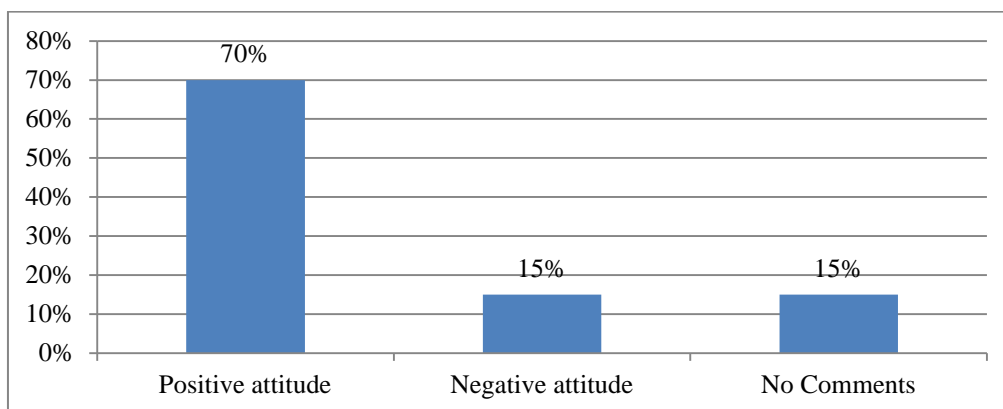


Figure 4: respondent’s religion

Source: Survey

Table 1: Respondents’ attitude about identified the problems of Rule of Law

Respondents’ opinion	Frequency	Percentage (%)
Positive attitude	200	70%
Negative attitude	50	15%
No Comments	50	15%
Total	300	100%

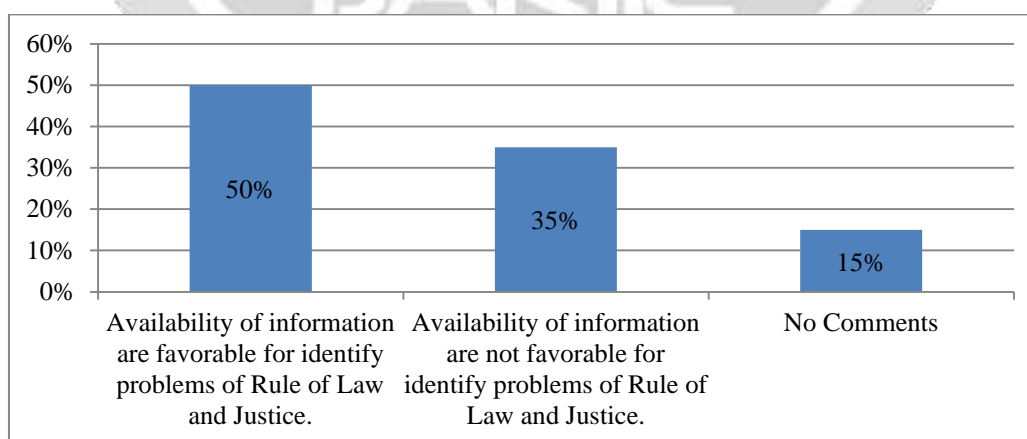


Source: Survey

From the result it was found that 70% respondents express positive attitude about identified the problems of Rule of Law and Justice in Bangladesh, 15% respondents express negative attitude about identified the problems of Rule of Law and Justice, and 15% respondents express nothing about identified the problems of Rule of Law and Justice.

Table 2: Availability of information is favorable for identify problems of Rule of Law and Justice in Bangladesh

Respondents’ opinion	Frequency	Percentage (%)
Availability of information are favorable for identify problems of Rule of Law and Justice.	150	50%
Availability of information are not favorable for identify problems of Rule of Law and Justice.	100	35%
No Comments	50	15%
Total	300	100%

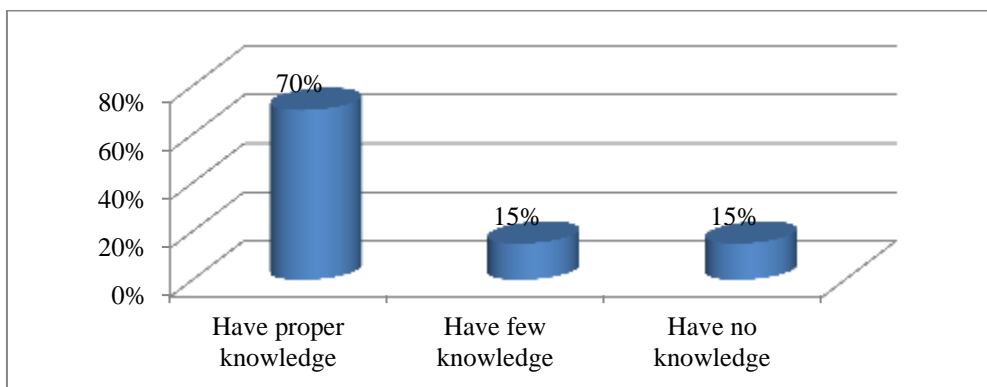


Source: Survey

From the result it was found that 50% respondents replied that availability of information are favorable for identify problems of Rule of Law, 35% respondents express that availability of information are not favorable for identify problems of Rule of Law, and 15% respondents express nothing about availability of information for identify problems of Rule of Law and justice in Bangladesh.

Table 3: whether respondents know proper knowledge about Rule of Law and Justice and Difficulties of Application in Bangladesh

Respondents' opinion	Frequency	Percentage (%)
Have proper knowledge	200	70%
Have few knowledge	50	15%
Have no knowledge	50	15%
Total	300	100%

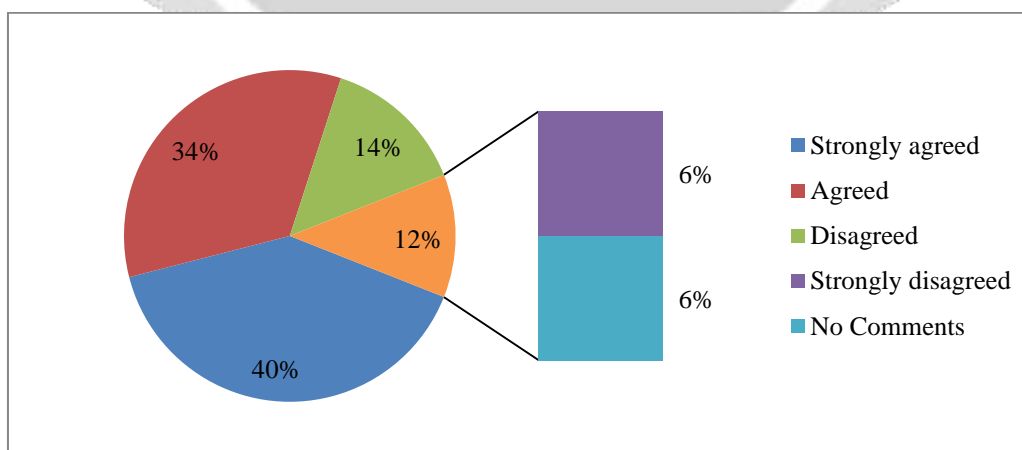


Source: Survey

From the result it was found that 70% respondents replied that they had proper knowledge about identify the problems about Rule of Law and Justice and Difficulties of Application in Bangladesh, 15% respondents replied that they had few knowledge about identify the problems about Rule of Law and Justice and Difficulties of Application in Bangladesh and 15% respondents replied that they had no knowledge about Rule of Law and Justice and Difficulties of Application in Bangladesh.

Table 4: Whether identified problems of Application the Rule of Law in Bangladesh

Respondents' opinion	Frequency	Percentage (%)
Strongly agreed	120	40%
Agreed	100	34%
Disagreed	40	14%
Strongly disagreed	20	6%
No Comments	20	6%
Total	300	100%



Source: Survey

From the result it was found that 40% respondents strongly agreed that identified problems of Application the Rule of Law is very much important for Human Rights development of Bangladesh, 34% respondents agreed that identified problems of Application the Rule of Law very much important for Human Rights development,

14% respondents disagreed that identified problems of Application the Rule of Law is not very much important for Human Rights development of Bangladesh. 6% respondents strongly disagreed that innovative methods of application of Rule of law is not very much important for Human Right development in Bangladesh and 6% respondents did not replied any answer.

Conclusion

Above discussions clearly shows that the present condition of Rule of Law in Bangladesh is not satisfactory. However, the proposed measures for overcoming the shortcomings of Rule of Law also are not final but these are fundamental. Independent and particular policy for Rule of Law is a must for overcoming the ambiguity and anomalies in Rule of Law. After all, government must be committed to ensure the security of life and property of the people, protection of individual rights and the dissention of Justice on the basis of the equality and fairness. On the other extreme, the opposition, civil society and social groups and organizations also have the moral obligations to help and cooperate with the government in this juncture.

Recommendations

The above discussion makes it clear that though there are some positive provisions for ensuring Rule of Law in Bangladesh Constitution, they are being outweighed by the negative provisions. Though our constitution provides for 18 fundamentals rights for citizens, these remain meaningless version to the masses because due to poverty and absence of proper legal aid the poor people cannot realize them. It also clear that the application of the principle of the Rule of Law is merely a farce in our country. However, prospects for establishing society purely based on the democratic principle of the Rule of Law are not totally absent from the polity. We have a constitutional government elected through a free and fair election. But what is needed for the very cause of the principle of democratic Rule of Law is-

- To separate the Judiciary immediately from the executive;
- To appoint an ombudsman for the sake of transparency and democratic accountability;
- To make the parliament effective and to let the law making body to do its due business in cooperation with each other government and opposition;
- To reform the law enforcing agencies and police force to rid them out of corruption and to free them from political influence so that they could truly maintain Rule by Law and can established the Rule of Law;
- To forge national unity and politics of consensus built around the basic values of the constitution, namely democracy, respect for each other's human rights, tolerance, communal harmony etc.
- The national and International Human Rights Organizations have to play an important role and take proper step to established Rule of law in Bangladesh.

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Biography



Md. Oliul Islam is Advocate, Supreme Court of Bangladesh. He has been working for Law & Human Rights in Bangladesh since 2010. Mr. Islam is engaged in research activities throughout his academic career more than 10 years and has published many research papers, participating international conferences.

