

**Human Resource Management of
Bangladesh Civil Service and
Role of Judicial Intervention**

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HUMAN RESOURCE MANAGEMENT OF BANGLADESH CIVIL SERVICE AND ROLE OF JUDICIAL INTERVENTION

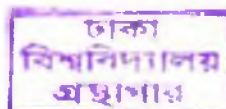
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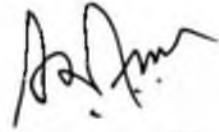


**A THESIS SUBMITTED FOR THE DEGREE OF DOCTOR OF PHILOSOPHY
IN THE DEPARTMENT OF LAW, UNIVERSITY OF DHAKA.**

MARCH, 2012

DECLARATION

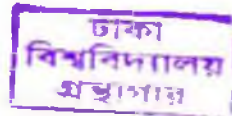
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CERTIFICATE

I have the pleasure to certify that the thesis entitled '**Human Resource Management of Bangladesh Civil Service and Role of Judicial Intervention**' is the original work of Mr. Md. Abdur Rob Howlader. So far my knowledge goes this is the candidate's own achievement and is not a conjoin work. He has completed this thesis under my direct guidance and supervision.

I also certify that I have gone through the draft and final version of the thesis and found it satisfactory for submission to the Department of Law, University of Dhaka for fulfillment of the requirements for the degree of Doctor of Philosophy in Law.



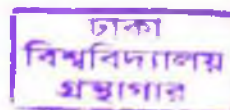
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LIST OF ABBREVIATIONS / ACRONYMS

AAT	Administrative Appellate Tribunal
ACR	Annual Confidential Report
AD	Appellate Division
AGM	Assistant General Manager
AIR	All India Report
App Cas	Appeal Cases
art.	Article
ASRC	Administrative and Services Reorganisation Committee
BADC	Bangladesh Agricultural Development Corporation
BARC	Bangladesh Agricultural Research Council
BARI	Bangladesh Agricultural Research Institute
BCS	Bangladesh Civil Service
BCSIRL	Bangladesh Council of Scientific and Industrial Research Laboratory
BFFWT	Bangladesh Freedom Fighter Welfare Trust
BHBFC	Bangladesh House Building Finance Corporation
BISE	Board of Intermediate and Secondary Education
BPATC	Bangladesh Public Administration Training Centre
BPSC	Bangladesh Public Service Commission
BRTC	Bangladesh Road Transport Corporation
BSC	Bangladesh Shipping Corporation
BSIC	Bangladesh Small Industries Corporation
BSR	Bangladesh Service Rules
BSRS	Bangladesh Shilpa Rin Shangstha
BTMC	Bangladesh Textile Mills Corporation
BUET	Bangladesh University of Engineering and Technology
BWDB	Bangladesh Water Development Board
ch.	Chapter
CJ	Chief Justice
CJI	Chief Justice of India
CMLA	Chief Martial Law Administrator
Co	Corporation
col.	Column
CPWD	Central Public Works Department
CSP	Civil Service of Pakistan
CSS	Central Secretariat Service
DG	Director General
DGM	Deputy General Manager
DIP	Department of Immigration and Passports
diss.	Dissertation
DLR	Dhaka Law Report
DPC	Departmental Promotion Committee
DU	Dhaka Univeristy

ed.	Editor, edition, edited,
EEO	Equal Employment Opportunity
EP	East Pakistan
EPCS	East-Pakistan Civil Service
Ex En	Executive Engineer
fig(s).	Figure(s)
fn.	Footnote
FR	Fundamental Rules
GDP	Gross Domestic Product
GoB	Government of Bangladesh
Govt.	Government
HCD	High Court Division
HR	Human Resource
HRIS	Human Resource Information System
HRM	Human Resource Management
HRP	Human Resource Planning
ICS	Indian Civil Service
IG	Inspector General
J(J)	Justice(s)
KFS	Key Functions for Success
KL	Kuala Lumpur
KPI	Key performance Indicator
LGRD	Local Government and Rural Development Division
LLM	Master of Law
Ltd.	Limited
Maj Gen	Major General
MD	Managing Director
MDS	Member Directing Staff
MLO	Martial Law Order
MLSS	Member of Lower Subordinate Service
Mo	Ministry of
MoE	Ministry of Establishment
MoF	Ministry of Finance
NBR	National Board of Revenue
NIPA	National Institute of Public Administration
n or no(s).	number(s)
NSI	National Security Intelligence
p.or pp.	page(s)
PDB	Power Development Board
PhD	Doctor of Philosophy
PIA	Pakistan International Airlines
PIL	Public Interest Litigation
PLD	All Pakistan Legal Decisions
PM	Performance Management
PM	Prime Minister
PO	President's Order

PPP	Public Private Partnership
PRP	Performance Related Pay
PSC	Public Service Commission
PSP	Police Service of Pakistan
Pvt.	Private
PWD	Public Works Department
RAJUK	Rajdhani Unnayan Katripakha
REB	Rural Electrification Board
SC	Supreme Court
SHRM	Strategic Human Resource Management
SR	Supplementary Rules
SRO	Service Rules and Orders
SSB	Superior Selection Board
TCB	Trading Corporation of Bangladesh
u/s	Under Section
UK	United Kingdom
UOI	Union of India
USA	United States of America
Vol.or vol(s)	Volume(s)
WP	Writ Petition

GLOSSARY OF FOREIGN TERMS

<i>Bonafide</i>	In or with good faith; honestly, openly and sincerely; without deceit or fraud.
<i>British Raj</i>	British Government.
<i>Certiorari</i>	To be certified of; to be informed of.
<i>Coram non judice</i>	Before a judge or the court that is not the proper one or that can not take legal cognisance of the matter.
<i>e.g., exempli gratia</i>	For example
<i>Espirit de corps</i>	Spirit binding together the members of an organization; Comradeship
<i>et.al.,</i>	and others
<i>etc.</i>	etecetera
<i>Habeus Corpus</i>	A writ demanding that a prisoner be brought before the court
<i>i.e., id est</i>	that is
<i>Ibid., ibidem:</i>	In the same place (when two or more successive footnotes refer to the same work, it is not necessary to repeat complete reference for the second footnote. Ibid. may be used. If different pages are referred to pagination must be shown)
<i>Inter alia</i>	Among other things; for example or including
<i>Kanungo</i>	Versed in law (A designation for a 2 nd class revenue officer)
<i>Malafide</i>	Bad faith.

<i>Mandamus</i>	A writ that commands an individual, organization (eg. government), administrative tribunal or court to perform a certain action, usually to correct a prior illegal action or a failure to act in the first place.
<i>Mutatis mutandis</i>	The necessary changes. This is a phrase of frequent practical occurrence, meaning that matters or things are generally the same, but to be altered, when necessary, as to names, offices, and the like.
<i>Pourashava</i>	Municipality; A town corporation; A self governing town
<i>Simpliciter</i>	In a simple degree or manner
<i>Ultra vires</i>	Without authority. An act which is beyond the powers or authority of the person or organisation which took it.
<i>v or vs., versus:</i>	Against
<i>Vid or Vide:</i>	See; Refer to
<i>Viz.</i>	Namely

ABSTRACT

The primary aim of this thesis, entitled 'Human Resource Management of Bangladesh Civil Service and Role of Judicial Intervention', is to systematically identify and study the deficiencies in the current framework of administrative law in the context of human resource management and the vital role that the judiciary plays in this politico-legal sphere of governance, in Bangladesh, but alongside, it also takes a futuristic approach to what practicable steps might be taken to correct the status quo, should it be established that there is indeed a necessity.

The thesis is divided into seven chapters. The first chapter scrutinises the objective, nature and structure of the Bangladesh Civil Service (BCS) with regard to Human Resource Management (HRM), and gives a scope for the appreciation of the role that judicial intervention currently plays and whether, and how, this should be extended. It introduces the research proposal including the statement of problems, objectives of the study, review of literature, justification of the study, the scope and limitations of the study, the research methodology, the questionnaire survey, definitions of terms and key expressions, and also the plan of the thesis. In this chapter an attempt has been made to examine the problems of HRM of BCS from a historical perspective. It was revealed that although national requirements and aspirations of independent Bangladesh has drastically changed to people oriented socio-economic development and welfare through innovative, quick and correct decision making and excellent service delivery at the door steps of the people from those of maintaining law and order and collecting revenue of British India without its significant reflection in the legal and institutional systems.

Rather old-fashioned legal and institutional systems have been continued and adapted with nominal changes. The study has also revealed that there has been no significant research in this sphere of convergence of executive and judicial functions to deal with HRM of BCS of the executive and role of judiciary through judicial intervention. In line with the above findings the objectives of the study were determined and both analytical and empirical methodology was used in carrying out the study.

The second chapter critically reviews the origin and development of BCS. It comprises the definition and main features of civil service, evolution of BCS, the Public Service Commission, the executive government, relevant findings of the questionnaire survey and a summary and assessment. The critical review corroborated the finding that these institutions are old fashioned and have been continued from the past with marginal changes only.

The third chapter analyses the concepts and practices of HRM of BCS particularly elements of HRM and its practices in BCS including relevant findings of the questionnaire survey and provides a summary and assessment. The analysis identifies several deficiencies in different functional areas of HRM of BCS and more particularly in the areas of Human Resource Planning (HRP) and Performance Management (PM).

A legal perspective is adopted to analyse the HRM of BCS, in the fourth chapter, where relevant constitutional provisions, statutory laws, rules, regulations and policies governing HRM of BCS are studied and analysed. It examines the laws relating to HRM of BCS, Human Resource Planning, Recruiting, Performance Management, Disciplinary laws, relevant findings of

the questionnaire survey, law related to judicial institutions dealing with HRM of BCS, relevant findings of the questionnaire survey and makes an overall evaluation. This analysis reveals the fact that there is almost absence of any legal framework in the areas of HRP and PM of HRM of BCS.

The goal of the fifth chapter is to present a systematised inspection and analysis of the nature and scope of judicial intervention in HRM of BCS, and the need and scope for updated and modern legislation relating to HRM of BCS, by which courts and tribunals can play a significant role in modernizing HRM of BCS and thus apply the great machinery of judicial review and intervention and ensure a modern HRM of BCS. It scrutinises the judicial system of Bangladesh, the principles and methods of judicial interventions, the legal scope for judicial intervention, judicial intervention by the Supreme Court of Bangladesh, judicial intervention by Administrative Tribunals, the relevant findings of the questionnaire survey and provides a summary and assessment of the chapter.

The sixth chapter enhances and elaborates on this further, but does so taking a practical approach to the analysis of judicial intervention in the HRM of BCS, cashing aside idealistic concept in favour of the ultimate reality in practice. It expounds also on the way in which judicial interventions by courts have given instructions or guidelines to improve HRM of BCS. This chapter is an analysis of judicial interventions with respect to Human Resource Planning, Recruiting, Performance Management, Discipline including relevant findings of the questionnaire survey and its evaluation including relevant findings.

The seventh and final chapter of this thesis summarises the findings of the study and the questionnaire survey and the informed conclusions that can be drawn as a result, and provides an overall assessment of HRM of BCS and the relevant role of judicial intervention in this area of governance. The survey revealed the widely held conviction that there exists a lack of adequately modernised laws and rules in respect of HRM of BCS which not only hinders welfare and advancement of the wider society but also deprives civil servants of their status and rights.

Thus, the branch of administrative law in Bangladesh aimed at dictating the rules of governance and management of human resources of BCS fails to embody its objectives and priorities of the 21st century. Its exponential advancement and consequent increase in complexity and intricacy make the updating and modernising reform of institutional mechanism and law relating to HRM of BCS an absolute necessity. This is precisely what this thesis aims to reveal and lay the humble groundwork for the realisation of BCS as one of the most efficiently and effectively structured and operated civil service in the world.

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Judicial Intervention in HRM of BCS is Helpful for Civil
Servants in Performing their Duties and Responsibilities
Better.

CHAPTER I INTRODUCTION

1.0 Prelude

In this era of globalization, developing countries like Bangladesh need efficient and effective administration for the socio-economic development of the country. Since the independence in 1971, Bangladesh has been facing severe problems in administrative management. After its independence, Bangladesh primarily focused on the efficient and pro-people civil service through holistic reforms that restore merit based recruitment and promotion, enhance career development through adequate training and meaningful experience and improving the skill mix.

Bangladesh inherited administrative structure and civil service system from British-India and United Pakistan, whose origin can be traced further back to the pre British era, particularly the period of Mughal rule of India. In fact the history of Bangladesh is intimately linked with that of the rest of the Indian sub-continent.¹ In this sub-continent, the British rulers introduced the prevalent civil service system more than 200 years ago. The British left the sub-continent more than 60 years ago. Like other countries of this sub-continent the then Pakistan and even Bangladesh follow the old British administrative structure and laws relating to civil service. Irrespective of political views, the Governments of Bangladesh have initiated different steps and measures for administrative reforms. However, the prevailing laws and practices are old and need to be updated. In achieving effective and efficient

¹ Syed Gias Uddin Ahmed, *Public Personnel Administration in Bangladesh* (1966) 1.

Human Resource Management (HRM) of Bangladesh Civil Service (BCS) judicial intervention can play an important role.

Generally every country of the world has its permanent civil service. The main features of the civil service are its permanence, political neutrality and anonymity. The permanent character of civil service ensures continuity in administration even after a change in the political government at a general election or otherwise. Permanent civil service has important role in shaping the future of a nation. Bangladesh has its own permanent civil service like other countries of the world. However, the nature and composition of BCS is different, to some extent, from others. The members of civil service are required to remain politically neutral. Hence, they are prohibited from standing for Parliament and from publicly expressing their political opinions. They must also follow conduct rules prescribed by the government.² The doctrine of ministerial responsibility embodied in the Constitution of Bangladesh requires Minister-in-Charge of a ministry/division or department, and not the members of the civil service, to answer questions in Parliament both at question time and before Select Committee enquiries.

The law and practice left by the British Government in India are the basis of HRM of BCS. These need to be updated and developed. It has not been updated and modernised (excepting some marginal modifications). The above view is supported by Dr. Siddiquee (2003) in the following words: 'Despite a few attempts made at reforming and modernizing the civil service during past

² H A Barnett, *Public Law* (2004) 97.

decades, traditional policies and practices continue to dominate its internal management.³

Dr. Siddiquee also added

Though at times political leaders have promised to modernise the management of civil service, rhetoric has outpaced actions. Evidence shows that the changes brought about are rather marginal and that personnel functions in most cases continue to be performed by and large in the old fashion.⁴

Bangladesh faces lack of proper modern laws relating to HRM of BCS. Related laws and rules are very significant for improving HRM of BCS. Moreover, judicial intervention can not play effective role in HRM of BCS without relevant laws. So it is a demand of the time to modernise, develop and update existing laws and rules for effective HRM of BCS to cope up with the present day demands of the highly competitive globe of the 21st century. This study has been undertaken to examine the issue. In the following sections of this introductory chapter, statement of problems in Section 1.1, objectives of the study in Section 1.2, review of literature in Section 1.3, justification for the study in Section 1.4, scope and limitation of the study in Section 1.5, research methodology in Section 1.6, the questionnaire survey in Section 1.7, definition of terms and key expressions in Section 1.8 and the plan of the thesis in Section 1.9 have been presented.

³ N A Siddiquee, 'Human Resource Management in Bangladesh Civil Service: Constraints and Contradictions' (2003) 26 *International Journal of Public Administration*, Kuala Lumpur 35.

⁴ *Ibid* 37.

1.1 Statement of Problems

Bangladesh Civil Service (BCS) has quite a long history. It was greatly reorganised and developed during British rule in India. The civil service in the modern sense of the term has come to us from the legacy of British rule in India.⁵ The mercantile service of the East India Company was transformed into a well-organised Covenanted Civil Service when the Company became the ruling power with administrative responsibilities.⁶ From 1947 to 1970, Bangladesh (the then East Pakistan) was a part of Federal Pakistan. BCS in fact originated from the Pakistan and British Indian Civil Service. The growth of the BCS, since the British Government in India, may be divided into three periods i.e. (i) The civil service under the Government of British-India (1757-1947) (ii) The civil service under the Government of Pakistan (1947-1971), and (iii) Bangladesh Civil Service since 1971.

Early years of the British rule envisaged a unitary system with strong centralised control that was first exercised by the Court of Directors of the East India Company and then by the Secretary of State for India who acted through the Governor General. The East India Company, mainly associated with English overseas expansion, was originally a trading organisation. Queen Elizabeth incorporated the Company into a chartered entity on the last day of December 1600.⁷ Under the Charter and Acts of Parliament the Company was given some powers to manage their own affairs. To this end, the Company's service was divided into two classes- civil and military. Such civil and military service assumed political power and played active role in the governance of Bengal in 1757 through their victory in the Battle of Palassey

⁵ R K Sapru, *Civil Service Administration in India* (1985) 105.

⁶ M A Chaudhuri, *The Civil Service of Pakistan* (1969) 4

⁷ Sapru, above n 5.

and subsequent grant of Dewani in 1765. The basic objectives of British Rule were to develop military and civil framework capable of maintaining law and order, collecting land revenue and establishing local institutions which would preserve the imperial presence in the country.⁸

Before 1853, recruitment to the civil service continued to be made on the basis of nominations by the Directors of the Company. However, on the passage of the Government of India Act, 1853, recruitment to the service was to be based on an open competitive examination. In 1854, a committee chaired by Macaulay recommended that the examination should aim at testing the general education of the candidates rather than specialised knowledge. However, the first competitive examination was held in 1855. This system of recruitment examination remains almost unchanged as on today. Subsequent Acts and regulations and finally the Government of India Act, 1935 along with the rules and regulations pursuant to that Act further consolidated and strengthened the legal footing of civil service in British India.

After partition of British-India into India and Pakistan, the Government of India Act, 1935 passed by the Government of British-India continued in Pakistan until adoption in the Constitution of the Islamic Republic of Pakistan, 1956. The constitution of 1956 provided for a parliamentary form of government within the framework of the Federal Constitution for Pakistan. All rules and orders dealing with terms and conditions of service of civil servants were also continued. The Constitution of 1956 was abrogated in 1958 and Pakistan was put under martial law administration till the inauguration of the legislatures (central and provincial) under the Constitution of the Islamic

⁸ Ahmed, above n 1, 2.

Republic of Pakistan, 1962. This constitution, like its predecessor contained a number of provisions with regard to civil service. These provisions were mainly reproduced from the Government of India Act, 1935 without any significant updating of the old provisions. However, there were some marginal variations in the substance of these provisions and the manner of their enforcement. The targets of Pakistan rule in the then East Pakistan and now Bangladesh were mostly similar to those of the British rule. During the Pakistan period and even after independence, Bangladesh practices the British Indian administrative structures and laws which are now backdated and can not fulfil the requirements of modern HRM of BCS.

After independence in 1971, BCS inherited different levels of civil services of Pakistan. The Government of Pakistan, like the British Government in India, constituted two categories of civil administrative service: the Central Civil Service of Pakistan and the Provincial Civil Service for East Pakistan popularly known as the Civil Service of Pakistan (CSP) and East Pakistan Civil Service (EPCS) respectively. There were other central services such as Foreign Service, Railway Service, Audit and Account Service, Taxation Service, Customs Service, Postal Service, Police Service etcetera (etc). However, it is important to note that they were called public services. Members of the civil administrative service especially were most privileged persons under the government. They constituted the elite class and enjoyed more privilege and prestige inside and outside the government. They were given the authority to dominate over all other services being placed in all important posts of the secretariat, the centre of policy making and as the heads of divisions, districts and sub-divisions. The members of the public services in Pakistan were not at all happy with this organisation of Pakistan.⁹

⁹ Ali Ahmed, *Bangladesh Public Administration and Senior Civil Servants* (1984) 106-107.

In 1971, after the independence of Bangladesh, the Bengali members of the CSP naturally became the servants of Bangladesh Government. The then Bangladesh Government took a drastic step in reorganisation of the public services by amalgamating it into the civil service. The step taken by Bangladesh Government has created a unified service called BCS.¹⁰

During the colonial period, the main role and responsibility of the civil servants were the maintenance of law and order and collection of land revenue. However, after independence in 1971, there has been a great change in their roles and responsibilities. The administration is now pro-people development-oriented. The development administration involves multifarious problems. The senior administrators have to give more attention to the solution of these problems. The maintenance of law and order and collection of revenue are still important functions of them but much more important is the development administration.¹¹ In Bangladesh, civil servants have a constitutional duty to strive at all times to serve the people.¹² They must be innovative, efficient and effective in meeting the rising expectations of the nation. They must adopt and utilise rapidly changing technologies to ensure quick service delivery at the doorsteps of the people.

It is clear that the duties and responsibilities of the members of BCS are different from those of the Pakistan and British-Indian Civil Service. To achieve the new targets and to ensure the success of the new system members of BCS need training and proper career planning. Training is equally important to build up their service career and to perform their duties and

¹⁰ Ahmed, above n 7, 113.

¹¹ *Ibid* 115.

¹² *The Constitution of the People's Republic of Bangladesh 1972*, Article 21(2).

responsibilities successfully. Bangladesh Government has introduced different kinds of training for civil service. It has also reorganised the training institutions and training curriculum integrated training for all civil servants.

The Laws Continuance Enforcement Order, 1971 provided that all laws that were in force in Bangladesh on 25 March 1971 shall, continue to be in force with such consequential changes as may be necessary on account of the creation of the sovereign independent state of Bangladesh and all government officials who take oath of allegiance to Bangladesh shall continue in their offices on terms and conditions of service so long enjoyed by them. The Order was made effective from 26 March, 1971. As a result of this legal provision the members of CSP and EPCS became members of BCS although as a matter of practice they continued to be identified as erstwhile CSPs and EPCSs. This provision of continuation of the inherited system opened the floodgate for continuation of the British based Pakistani provisions for HRM of BCS. In addition, the Constitution of the People's Republic of Bangladesh incorporates most of the provisions relating to services directly and in some cases with some marginal modifications from the 1956 and 1962 Constitutions of the Islamic Republic of Pakistan which, in turn, were based on the Government of India Act, 1935 and the rules and regulations of the British Indian Government as discussed later in the next chapter.

It is evident from the above examination of the historical development of BCS that the law relating to HRM of BCS handed down by the *British Raj* has not been updated to modernise HRM of BCS to ensure competency to meet the challenges of the present time. Even today HRM of BCS is primarily based on those outdated laws and practices. After independence Government of

Bangladesh has been attempting to develop the organisational arrangements for management of BCS *exempli gratia* (e.g.) structures and functions of the two major central personnel agencies: the Establishment Division and now the Ministry of Establishment (MoE) which exercises a considerable degree of centralised authority over the civil service in Bangladesh and the Bangladesh Public Service Commission (BPSC), a constitutional advisory body, with jurisdiction over specified HRM of BCS functions. However, proper and enough attention was not given to the laws relating to HRM of BCS. It has been observed that most of the prevailing laws and rules relating to HRM of BCS were formulated by the British Indian Government. Some laws have been modified and amended. However, modern and updated laws and rules to facilitate modernised HRM of BCS have not been formulated in this country. There is no comprehensive or effective plan, policy, strategy or programme of the Government of Bangladesh for modern HRM of BCS. Hence judicial interventions also can not play the required role to ensure modern HRM of BCS. From the above discussion, the research issues are:

- (i) What is the nature of the origin, development and practices of BCS?
- (ii) Are there modernised and updated laws and rules for effective judicial intervention to ensure modernised and updated HRM of BCS?
- (iii) What are the nature and scope of judicial intervention on HRM of BCS?
- (iv) Is judicial intervention helpful for HRM of BCS?
- (v) Why is formulation of modern and updated laws and rules for developing HRM of BCS important?

The study deals with HRM of BCS and role of judicial intervention. However, there is lack of adequate updated and modern laws and rules in this field. So

this study analyses the various aspects of HRM of BCS and role of judicial intervention as well as attempts to explore the reasons as to why proper initiatives need to be taken for modernising and updating laws and rules to ensure modern HRM of BCS.

1.2 Objectives of the Study

The main objective of the study in line with the above mentioned problems and issues is to examine and evaluate HRM of BCS and role of judicial intervention in such HRM of BCS. Moreover, this study will also discuss and examine other related issues. The specific objectives are as follows:

- (i) To review critically the nature of the origin and development of BCS;
- (ii) To analyse the concepts and practices of HRM of BCS, particularly, in four important areas namely, Human Resource Planning (HRP), Recruiting, Performance Management (PM) and Discipline;
- (iii) To analyse relevant constitutional provisions, statutory laws, rules and regulations governing HRM of BCS focusing on the need and scope of updating of such laws relating to the above mentioned four important areas of HRM of BCS;
- (iv) To analyse the nature and scope of judicial intervention in the field of HRM of BCS with a particular focus on judicial intervention in the four areas mentioned above; and
- (v) To summarise the study and make necessary conclusions.

1.3 Review of Literature

There has been few academic research specifically on the proposed topic so far this researcher's knowledge goes. There are a few researches and publications in the field of administrative law, a branch of public law, in Bangladesh including BCS related provisions in a nutshell as an integral part. Some works deal with civil service exclusively. Some works specially deal with government servants discipline rules or judicial interventions. However, the proposed field of research that is dealing with HRM of BCS and role of judicial intervention remains almost a virgin one to be explored. The available significant, relevant contemporary research works and publications in this and related fields of Bangladesh are reviewed as follows:

• Ali (2007)¹³

'Civil Service Management in Bangladesh - An Agenda for Policy Reform' by Mr. AMM Shawkat Ali, an ex-Adviser and a retired Secretary to the Government of the People's Republic of Bangladesh is a pioneering literature on civil service management in Bangladesh. The study is a unique blend of practitioner's knowledge and academic insight of the operation of the administrative machinery of Bangladesh. In this study ten key areas of BCS management have been identified, analysed and evaluated in depth with suggested actions for the future but the aspect of updating of relevant laws and practices dealing with HRM of BCS and role of judicial intervention has not been covered. The proposed study will cover that area and as such the scope of the two studies are different.

¹³ A M M Shawkat Ali, *Civil Service Management in Bangladesh: An Agenda for Policy Reform* (2007).

• **Siddiqui (2006)¹⁴**

'Towards Good Governance in Bangladesh' is a publication by Dr. Kamal Siddiqui, a retired Principal Secretary to the Government of the People's Republic of Bangladesh. This publication deals with problems of good governance in Bangladesh. This is a pragmatic and practical analysis in fifty essays that attempt to highlight governance issues in Bangladesh, their adequate solutions and means of implementation of those solutions. The issue of civil service has been dealt with as a predominant issue of good governance in Bangladesh. He has diagnosed various weaknesses and inadequacies in different aspects of human resource management of BCS and has also suggested several remedial measures to improve this situation. However, the scope of this publication is much wider than the proposed study. Yet the work does not have significant discourse on updated laws and practices of HRM of BCS and role of judicial intervention in this area which is the main focus of the proposed study.

• **Rahman (2005)¹⁵**

'The Constitution of the People's Republic of Bangladesh with Comments and Case-Laws' by Justice Latifur Rahman, former Chief Justice and Head of the Non-Party Caretaker Government of Bangladesh is a detailed article by article commentary on the Constitution of Bangladesh specifically with reference to the case laws passed by the Supreme Court of Bangladesh since the commencement of the constitution. It has quoted important passages of the judgments of the Supreme Court which has dealt with various vital legal issues touching different articles of the constitution. It also examines service

¹⁴ Kamal Siddiqui, *Towards Good Governance in Bangladesh* (2006).

¹⁵ L. J Rahman, *The Constitution of the People's Republic of Bangladesh with Comments and Case-Laws* (2005).

related provisions and case laws dealing with HRM of BCS and role of judicial interventions but only as an integral part of the publication. Hence, the scope of this publication is not similar to that of the proposed research.

• **Faruque (2005)¹⁶**

'Method of Judicial Control of Administrative Action in Bangladesh: Principle and Practice' is a research publication by Dr. Gazi Omar Faruque. The author was an Associate Professor of the Department of Law and Muslim Jurisprudence of the Islamic University of Kusthia. The publication has focused on the legal analysis of the principles and practices of judicial control of administrative actions in general in Bangladesh at present. Although this research has an integral part dealing with the principles and practices of judicial review of administrative actions, it does not explore the status of the relevant laws and practices dealing with HRM of BCS and the role of judicial intervention. Hence the scopes of the two studies are different.

• **Muslim (2005)¹⁷**

'Promotion of Accountability in Bangladesh Civil Service: Problems and Related Strategies' is an unpublished Ph. D. thesis by Dr. Sayed Naquib Muslim of the Department of Public Administration, University of Dhaka. The researcher is a retired Secretary to the Government of the People's Republic of Bangladesh. The core objectives of the thesis are to identify those constraints that are affecting the practice, enforcement and promotion of administrative accountability in the BCS and those that have not received

¹⁶ Omar Faruque, *Method of Judicial Control of Administrative Action in Bangladesh: Principle and Practice* (2005).

¹⁷ Sayed Naquib Muslim, *Promotion of Accountability in Bangladesh Civil Service: Problems and Strategies* (PhD Thesis, University of Dhaka, 2005).

elaborate treatment, and to recommend a few doable strategies for the managerial or executive solution of the identified problems. Thus, the scope of this study is wider and different from that of the proposed study which is concerned with the status of relevant law and practices dealing with HRM of BCS and role of judicial intervention.

• **Rashid (2004)¹⁸**

'The Civil Service at the Cross-roads: A Study of the Recruitment, Training, Performance and Prospects of BCS (Administration) Cadre' by Dr. S.A. Rashid is an unpublished thesis submitted in the Department of Political Science of the University of Dhaka for the degree of Doctor of Philosophy. The thesis traces the various external factors contributing to the present state of development of the BCS (Administration) cadre and the ways and means for its betterment by undertaking some human resource management activities in a right direction without focus on the relevant law or judicial intervention. However, the proposed research examines different areas of HRM of BCS and traces the status of relevant laws and practices and the role of judicial intervention in these areas and as such their scopes are different.

• **Hossain (2004)¹⁹**

'The Civil Service of Bangladesh: A Critical Study of Career Management' is an unpublished Ph.D. thesis by Dr. Muhammad Abul Hossain of the Department of Public Administration of the University of Dhaka. The specific objective of the research was to probe the career management of BCS,

¹⁸ S A Rashid, *The Civil Service at the Cross-roads: A Study of the Recruitment, Training, Performance and Prospects of BCS (Administration) Cadre* (PhD Thesis, University of Dhaka, 2004).

¹⁹ M A Hossain, *The Civil Service of Bangladesh* (PhD Thesis, University of Dhaka, 2004).

suggesting some administrative reform measures to improve career management and exploring feasibility of introduction of inducement for better performers of BCS, similar to what have been in effect in the civil services of Malaysia, the UK and the USA.

The main concern has been how to attract quality people to the civil service career. The research has been designed to investigate into different aspects of career management of BCS officers, diagnose inadequacies and then to pinpoint the reform needs. The thesis has identified inadequacies in the components of career management structure, recruiting system, training, performance appraisal, career progression and remuneration policy and suggested changes in all the components of career management to enhance attractiveness of the BCS career to brilliant students. The study investigates some aspects of career management of BCS with a view to making it more attractive by identifying the shortcomings and recommending actions for improving the efficiency and effectiveness of BCS through attracting brilliant students. But the proposed study focuses on the status of law and practices dealing with HRM of BCS and role of judicial intervention.

*** Islam (2002)²⁰**

'Constitutional Law of Bangladesh' by Mahmudul Islam, the former Attorney General of Bangladesh, is by far the most comprehensive and up-to-date commentary on the Constitution of Bangladesh. It dealt with different aspects of the constitutional provisions including service related issues elaborately and incorporated relevant contemporary judicial decisions. However, the book was written primarily for the students of law and members of the legal

²⁰ Mahmudul Islam, *Constitutional Law of Bangladesh* (2002).

profession. In this publication, the author made an attempt to deal mainly with the legal questions and issues which frequently confront the members of the legal profession, leaving aside those questions with which a public administrator or a government is more concerned. However, this book examines the service related provisions and relevant case laws. It does not have comprehensive treatment of the status of relevant laws and practices dealing with HRM of BCS and role of judicial intervention which is the central issue of the proposed research.

• **Rahman (2001)²¹**

Dr. A.T.R Rahman is a Professor of Public Administration at City University of New York. The study utilises global coverage to critically examine current civil service reforms policies, strategies, programmes and measures in order to identify trends and lessons for action by national governments and international development institutions. In terms of focus and orientation, the study uses these lessons in understanding and analysing prospects for civil service reforms in low income countries and countries recovering from civil strife including Bangladesh. These countries need them most, but sometimes they face insurmountable challenges in bringing about such reforms. However, the status of the relevant laws and practices dealing with HRM of BCS and role of judicial intervention is not focused in this study and as such it is different in scope from the proposed study.

²¹ A T R Rahman, *Reforming the Civil Service for Government Performance-A Partnership Perspective* (2001).

• **Howlader (1997)²²**

'Writ Jurisdiction of the Supreme Court of Bangladesh' by the present researcher, Md. Abdur Rob Howlader, is an unpublished LL.M thesis submitted for the partial fulfillment of the requirement of the degree of LL.M in the Faculty of Law, University of Dhaka. The thesis deals with judicial intervention by the Supreme Court in the exercise of its writ jurisdiction with reference to relevant cases from a historical perspective.

The proposed research focuses on the status of the relevant laws and practices dealing with HRM of BCS and role of judicial intervention. This research has some common issues with the proposed research but it lacks the centrality of the status of relevant laws and practices dealing with human resource management of BCS and role of judicial intervention. Furthermore, the objective and scope of the two researches are not similar.

• **Ahmed (1984)²³**

This book is a publication of the Bangladesh Administrative Staff College of the Government of Bangladesh where Dr. Ahmed served as a Member Directing Staff (MDS) for a number of years. The main focus of Dr. Ahmed's book is the analysis of the structure and the organisation of the Government of Bangladesh with particular reference to the role of civil servants' training and the training institutes. The main purpose of the publication is a search for the proper political system, administrative setup and the role of the senior members of the civil service responsible for public administration in Bangladesh. However, the proposed research aims at examining the status of

²² Md Abdur Rob Howlader, *Writ Jurisdiction of the Supreme Court of Bangladesh* (LL.M Thesis, University of Dhaka, 1997).

²³ Ahmed, above n 7.

the relevant laws and practices dealing with human resource management of BCS and role of judicial intervention. Hence their scope and objective are different.

From the above literature review it is evident that there are a few researches and publications in this field in Bangladesh dealing with relevant laws and practices of HRM of BCS and role of judicial intervention in a fragmented way. Some of those publications contain some information in respect of HRM of BCS as an integral part. However, they relate to the common issues of HRM of BCS with a limited or no focus on the aspect of role of judicial intervention. Government documents or articles exclusively dealing with the status of prevalent laws and practices of HRM of BCS and role of judicial intervention are very rare. Particularly, there has been no academic research dealing with this particular area so far the knowledge of this researcher goes. The aim of this research is to fill this gap.

1.4 Justification for the Study

The constitution has vested all the powers of the republic in the people.²⁴ It also provides that every person in the service of the republic has a duty to strive at all times to serve the people.²⁵ Therefore, endeavouring to render effective service to the people at all times is a constitutional obligation of every person in the service of the republic including every member of BCS. The BCS members together with the political government of the day shape the future of the nation through articulation, enactment and implementation of laws, rules, regulations, policies and guidelines. The actual work of enforcing

²⁴ *The Constitution of the People's Republic of Bangladesh 1972*, Article 7.

²⁵ *Ibid* Article 21(2).

the laws and policies of the government is done by persons in the civil service. The political government also supervises the enforcement of the laws and policies to achieve the results committed by them to the people through their political manifesto which is mandated by the people through their votes in general elections. Hence, the success of a government and welfare and development of a nation as desired by the nation largely depends on the efficiency and effectiveness of the human resource in the BCS delivering the government services. This delivering of the government services up to the satisfaction of the people through the delivery of promised results as articulated through their representatives in the form of laws, rules, policies, plans and programs is good governance.

The success of any organisation in terms of getting results depends on its human resource because the organisation must get the results through its human resource. Only human resources can put other resources to use and make the best out of it. Proper human resource planning, recruiting, performance management and disciplining them in compliance with modern laws incorporating modern best practices is the key to success. BCS is no exception. Therefore, improvement in the efficiency and effectiveness of persons in the BCS is a crying need of the day to achieve desired results for good governance. Appropriate laws²⁶ to ensure modern HRM of BCS and keeping it within the bounds of those laws through judicial intervention, where necessary, can help to meet that crying need. But HRM of BCS is based on outdated colonial practices and laws resulting in inefficiency and ineffectiveness. Even judicial intervention can not play effective role in

²⁶ Article 152 of the *Constitution of the People's Republic of Bangladesh, 1972* defines Law as follows: 'Law means any Act, ordinance, order, rule, regulation, bye-law, notification or other legal instrument, and any custom or usage, having the force of law in Bangladesh.'

modernising HRM of BCS in the absence of updated law for HRM of BCS. Updating the relevant law by incorporating the modern concepts and best practices of HRM will be very helpful in overcoming the problem. Under the above circumstances this study has been undertaken to explore the nature and scope of the laws and practices of four important aspects of HRM of BCS namely, Human Resource Planning (HRP), Recruiting, Performance Management (PM) and Discipline as well as the need and scope for updating the relevant laws and role of judicial intervention in these areas of HRM of BCS and drawing necessary conclusions of the study.

1.5 Scope and Limitations of the Study

BCS has a very long tradition and historical background. The scope of judicial intervention on HRM of BCS is primarily limited due to lack of adequate modernised rules and laws for the development of HRM. In the past, civil service meant the administrative service only. After reorganisation of services, the public services have become constituted cadre services since 1 September 1980. In a narrow sense, cadre services constitute the BCS. However, in a wider sense all persons in the service of the republic holding civil posts including both cadre and non-cadre services and posts in statutory corporations constitute BCS. At present, the size of BCS is quite large making HRM of BCS a gigantic task. The composition of BCS appears to be dominated by less skilled people although the nature of the functions require innovation, quick, accurate, efficient and effective decision making and excellent service delivery to the door-steps of the people. This can be achieved through talented and committed people. The legal framework on which the HRM of BCS is based is inherited from the British and has not been updated.

The study examines the nature and scope of HRM of BCS and role of judicial intervention. The scope of the study covers the importance of laws and regulations in the proper development of HRM of BCS. It describes the changing role and contribution of judicial intervention related to HRM of BCS. The central theme of this study is to find out the relevance of judicial intervention on HRM of BCS in respect of the four important areas mentioned earlier viz. (i) HRP, (ii) Recruiting, (iii) PM and (iv) Discipline.

Human Resource Management practices of BCS along with updating of relevant laws dealing with HRM of BCS and role of judicial intervention to ensure effective and efficient use of the human talent to achieve the results in terms of governmental goals is the main focus of this study. The prevalent practices are guided by relevant constitutional provisions, statutes, statutory rules, regulations and policies of the government. The nature and scope of HRM of BCS, relevant laws and judicial intervention are examined and analysed and necessary conclusions are made in this study.

In conducting this study several limitations were encountered. Lack of adequate modernised and updated laws and rules of HRM of BCS was found as the most dominant limitation. Most of the existing laws of HRM of BCS are adopted from the old and outdated British system introduced in India and then inherited by Pakistan. This system has been discarded even by the British long long ago. However, it is still continued in Bangladesh even after 40 years of independence. The lack of a sound institutional framework to remedy the situation has also caused dearth of materials to make this study a more in-depth and resourceful one. The absence of any research or exclusive work on HRM of BCS and role of judicial intervention also operated as a serious set

back. Time constraint was another limitation which also compelled to limit the scope of the study.

1.6 Research Methodology

With the designed objectives of the study in view primary and secondary sources of data were used. For secondary data collection relevant constitutional provisions, enactments, rules, legal literatures, executive orders, case laws and law and management books and journals were consulted. In addition, websites on related literature were searched and downloaded from internet and used as a source of information for the study. In order to make the study viable and realistic, primary data collection was undertaken. For this purpose selected respondents from practitioners of HRM of BCS were interviewed using properly designed questionnaire to ascertain their viewpoints and suggestions regarding the status of prevalent practices, laws of HRM of BCS and the role of judicial intervention. For general concept development about HRM of BCS information was gathered from primary source by using short interviews and discussion sessions. Moreover, interview with the employees and extensive study of the existing publications, documents and practical case observation was done.

The Content Analysis or Documentary Analysis Method was mainly applied here with a view to examine laws and practices of HRM of BCS and role of judicial intervention. In this method, secondary or raw data available were analysed, classified and rearranged for drawing inferences and conclusions. For this purpose, data/information on the following issues were collected: (1) state of relevant laws and practices of HRM of BCS; (2) role of judicial

intervention on HRM of BCS; (3) information regarding the civil service institutions; (4) information about the nature and scope of judicial intervention and their impact on HRM of BCS; and (5) constraints of existing procedure of judicial intervention. In addition to the above, the questionnaire survey method was used in the study. This method was applied by administering questionnaires to selected persons from various organisations. This research is both analytical and empirical. It is an analytical research in the sense that the facts and information on HRM of BCS and role of judicial intervention already available were used here and attempts were made to make a critical evaluation of those. It is an empirical research, because some primary data were collected, verified and analysed for drawing inferences and conclusions.

Data were used from official documents e.g the constitution, rules of business, allocation of business, establishment manuals, government orders, judicial report and judgment of the courts, rules and laws. Data were collected from both Primary and Secondary sources. Questionnaire Survey Method, one of the oldest methods of primary scientific information collection and reporting, has been used in this study extensively. The questionnaire survey method was applied, by and large, to collect data from individuals. Questionnaires were given to 10 selected officials of the judicial service and 25 officials from BCS practitioners including Ministries/Divisions and education services on pilot basis. Thereafter necessary modifications and validations of the questionnaire was made in the light of the results of the pilot study. Scheduled interviews were arranged to find out the opinions and suggestions of 500 officials of administration, judicial and education cadres. However, out of those 500 officers 449 responded. Secondary data involves official documents and

judgments of the courts, rules and laws, statistics and surveys carried out by the government and different institutes. Secondary information were also collected from relevant books, journals, and reports and written documents. Different offices were consulted for collecting secondary data.

After collection of data, the researcher analysed and interpreted those data. This is, because, mere accumulation of data is not enough for getting expected results of the research. For every accumulated data, its valid interpretation and analysis was undertaken. For this study, the collected primary data were analysed and tabulated for drawing inferences. Computer was used in tabulating and processing the data. Diagrams and other statistical figures were used. The accuracy of data was verified carefully. Qualitative data were analysed systemically. In the process of analysis, method of comparison was also followed, and different tables, diagrams and charts were presented for comparisons.

1.7 The Questionnaire Survey

As mentioned in the previous section, a questionnaire survey was conducted with a view to making this study more realistic and fruitful as well as to make an assessment of the futuristic hopes and aspirations in the areas of the study. It is pertinent to mention here that 500 officers from two cadres viz. BCS (Administration) and BCS (Education) and from Bangladesh Judicial Service were targeted for the questionnaire survey to collect primary data for the study²⁷. Some of these officers were working in the concerned ministries and others were undergoing training in Bangladesh Public Administration Training Centre (BPATC), Judicial Administrative Training Institute (JATI)

²⁷ See above section 1.6.

and National Academy for Education and Management (NAEM) respectively. These officers were selected because they were available in the close vicinity and they represented various civil services and civil service organisations. With respect to judicial intervention, the officers of Bangladesh Judicial Service are relevant on their own merit. Out of the targeted 500 officers, 449 officers responded. The targeted respondents had 1 to 10 years service length with varied experiences. A printed questionnaire was supplied to the respondents. All the respondents belonged to the age group of 25 to 35 years. Out of the 449 respondents 112 respondents constituting 25 percent were female cadre officers.

It was found that some of the respondents have not responded to some of the questions. On the available data, it has been decided to evaluate the percentage of respondents assigning '1' (Strongly agreed) to the concerned alternative answer. On the basis of percentage value, a comparison has been made among the alternative answers to a particular question. The alternative having the highest percentage value was taken as the best answer to the relevant question. The other closer values were also regarded as important factors.

The various problems and deficiencies identified in various chapters of this thesis were subjected to the comments of the respondents through a questionnaire comprising 27 questions. Out of these 27 questions, 4 questions related to origin and development of BCS are discussed under Chapter-II, 14 questions related to the concepts and practices of HRM of BCS are examined under Chapter-III, 4 questions related to legislation with respect to HRM of BCS have been dealt with under Chapter-IV, 5 questions related to nature and

scope of judicial intervention are examined under Chapter-V and finally 2 questions related to judicial interventions in specific areas of HRM of BCS have been interpreted under Chapter-VI. The views and comments of the respondents with respect to the problems and deficiencies identified in different chapters of the thesis are analysed and interpreted in a corresponding order at relevant places in the following chapters.

1.8 Definitions of Terms and Key Expressions

(i) Administrative Tribunal

Administrative Tribunal is considered as court, which deals with appointment and conditions of service including problems of appointment and disciplinary matters of civil service. There is provision for the establishment of one or more Administrative Tribunals²⁸ under the Administrative Tribunals Act, 1981²⁹ and the Administrative Tribunals Rules, 1982.³⁰ These Tribunals are playing an important role in resolving problems arising out of appointment and conditions of service of civil servants. This institution is a new addition after the British Government in India. In fact, this mechanism developed as a general feature after the Second World War period. This institution was introduced during Pakistan administration which was incorporated into the Constitution of Bangladesh.³¹ Here again there are inefficiency and duplication of efforts. After establishment of this institution the appellate, revisional and reviewing authorities in the executive government and the BPSC should have been relieved from their duties in respect of disciplinary matters and thereby removing duplication of efforts and inefficiency.

²⁸ *The Constitution of the People's Republic of Bangladesh 1972*, Article 117.

²⁹ *Ibid*

³⁰ *No-S.R.O. 30-L/82, 12 January 1982.*

³¹ *The Constitution of the People's Republic of Bangladesh 1972*, Article 117.

(ii) Bangladesh Civil Service

Popularly, Bangladesh Civil Service (BCS) is used to mean the cadre services of Bangladesh. The term BCS is also used in a wider sense. In this sense BCS or civil service refers to all persons in the service of the republic holding civil posts and the employees of statutory corporations. Civil service is used interchangeably with civil servants, government servants or government employees or public servants comprising both cadre and non-cadre posts. BCS constitutes all the civil posts in the Ministries/Divisions, Departments and also in statutory corporations. The term ‘person in the service of the republic holding civil posts’ has been described and defined as Bangladesh Civil Service by the Supreme Court on different occasions. Thus Bangladesh Civil Service was termed as “Civil administrative or executive service” by the Appellate Division of the Supreme Court.³²

(iii) Cadre

A small group of trained people who form the basic unit of a military, political, bureaucratic or business organisation. A small group of people who are chosen or trained for a particular purpose.³³ In BCS, cadre means a group of officers organised as a unit for delivering a well defined professional service of the government.

³² *Secretary, Ministry of Finance v Musdar Hossain* (2000) 52 DLR (AD) 82.

³³ *Cambridge Advanced Learner's Dictionary*, (3rd ed, 2008) 209.

(iv) Civil Service

Civil service is considered as regards its functions, the lifeblood or key agent of the executive branch of the state. Civil service means the body of appointed officials who carry out the functions of government under the direction and supervision of the Head of the Government, irrespective of the form of the government.

In fact, the function of civil service is to assist the political executive in the formulation of policy and execution of the policy decisions of government of the day. It acts as the lifeblood or principal agent of the executive, be it emperor, king, state or governments of various types, persists over time. However, the nature of its functions, challenges, capacity and performance varies with time, the role and functions of the state or government, and the ways it is organised, paid, motivated, supervised and managed.³⁴

(v) Civil Servants of Bangladesh

Civil servants of Bangladesh connote any member of the BCS cadre service recruited through the Bangladesh Public Service Commission. However, in a narrow sense, it means any member of a constituted cadre service. Under the Constitution of Bangladesh, civil servants are described as 'persons in the service of the republic'. This basically means servants of the state called the People's Republic of Bangladesh. Civil servants are also described as government servants. There is no apparent dichotomy between the terms 'servants of the state' and 'servants of the republic'.³⁵

³⁴ Rahman, above n 19.

³⁵ Ali, above n 11.

(vi) Constitution

Constitution of a state is the system of laws, customs and conventions which define the composition and power of organs of the state, and regulate the relation of the various state organs to one another and to the private citizen.³⁶

Constitution shows the way of life the state has chosen for itself. It defines various elements of the state. It lays down the composition, function and interrelationship between different organs of the government and other fundamental institutions and bodies. It is also concerned with the rule and powers of the institutions within the state and with the relationship between the citizen and the state. The constitution is a living dynamic organism which at any point in time will reflect the moral and political values of the people it governs, and accordingly, the law of the constitution must be appreciated within the socio-political context in which it operates.³⁷

(vii) Human Resource Planning (HRP)

Human Resource Planning (HRP) is the process which ensures the right number and kinds of people at the right place at the right time who are capable of performing their assigned tasks effectively and efficiently.

(viii) Human Resource Management (HRM)

Human resources constitute the most important component of modern organisations. The accomplishment of organisational missions and objectives depends, to a large extent, on having right persons in right positions as well as the commitment and contributions of those involved. A sound and effective human resource management is seen as the most significant variable that

³⁶ O Hood Phillips and Paul Jackson, *Constitution and Administrative Law* (1987) 5.

³⁷ Hilaire Barnett, *Constitutional and Administrative Law* (2002) 3.

determines the performance of an enterprise. The theorists and practitioners alike attach a considerable importance on the need for ensuring an efficient and effective use of human talents.³⁸ Tyson and York are among others who look at human resource management as a system, a set of interdependent parts each providing an input to another. They show the logical relationships between various elements of human resource management and underscore the importance of integrating them with the overall framework of the organisation.³⁹

(ix) Judicial Intervention or Judicial Review

Generally judicial intervention and judicial review is used as synonym. Judicial intervention refers to court's order containing a declaration, prohibition, direction, injunction or status- quo against any decision given by administrative body or lower court. Judicial review of administrative actions means the power vested in, the procedure followed or the remedy given by the superior courts while reviewing the legality and validity of actions and decisions of persons and bodies exercising administrative powers, whether of a legislative, executive, judicial or adjudicatory character. In judicial review the court is concerned with the question whether the action under review is lawful or unlawful and the basic power of the court in relation to the decision is to declare it legal or illegal. If the matter has to be decided again, the original authority must do it. Courts exercise the power of judicial review on the basis that powers can be validly exercised only within their true limits and a public functionary is not to be allowed to transgress the limits of his

³⁸ Siddiquee, above n 3, 36.

³⁹ S Tyson and A York, Human Resource Management: Made Simple Books (1996) Cited in N A Siddiquee, 'Human Resource Management in Bangladesh Civil Service: Constraints and Contradictions' (2003) 26 *International Journal of Public Administration, Kuala Lumpur* p 36.

authority conferred by the constitution or the laws. In addition the court can exercise the power of judicial review if the decision is malafide or in violation of the principles of natural justice. The role of the court in judicial review is essentially supervisory and the principle at work is basically that of *ultra vires*, which is synonymous with 'outside jurisdiction' or in excess of power. Under the Constitution of Bangladesh, the doctrine of judicial review can be explained from the viewpoint of constitutional law and administrative law. Articles 7, 26, 44, 102 and 103 of the Constitution of Bangladesh have embodied the substantive meaning of judicial review.

(x) Non-Cadre Posts

The majority of the posts of government service are not included in the cadre. Other than cadre service there are non-cadre posts. This bulk of the government personnel are parts of the civil service in a wider sense of the term. These non-cadre posts may be divided into the gazetted and non-gazetted posts.

(xi) Gazetted Posts

Both Class I and Class II persons in the service of the republic are included in this category. In case of non-cadre gazetted posts the recruitment is made through the Bangladesh Public Service Commission if it is a case of direct recruitment or promotion from non-gazetted to a gazetted post. The BPSC determines whether the selection will be made through written examination and viva voce or viva voce only.

(xii) Non-Gazetted Posts

All class III and class IV posts of the government are included in this category. For non-gazetted posts, the head of the office concerned of the Secretariat, Attached Departments and subordinate officers make recruitment. Such recruitment is made on the recommendation of the Selection Committee of the department or the Divisional Selection Board concerned.

(xiii) Performance Management

Performance appraisal means evaluating an employee's current or past performance relative to the person's performance standards. Performance management involves (1) setting work standards, (2) assessing the employee's actual performance relative to these standards, and (3) providing feedback to the employee with the aim of motivating that person to eliminate deficiencies or to continue to perform above par and to link performance to other HRM activities. The institutionalisation of a performance and results orientation in public sector agencies continues to be a primary focus of government. Efforts have been planned and implemented to enable public sector agencies to increase performance and results in line with their respective set organisational mission and objectives.

(xiv) Promotion

Promotion is elevation or advancement of an employee from a lower to a higher level of pay and status in the organisational structure. Promotion is an appointment from a given position usually of a lower grade to a position of a higher grade. Promotion of a government servant at the right time not only

boosts the morale and commitment of the employee but also increases efficiency of the organisation to which he belongs.

1.9 Plan of the Thesis

The structure of the thesis is planned as follows:

- Chapter-1 Introduction: This chapter comprises the prelude, statement of the problems, objectives of the study, review of literature, justifications for the study, scope and limitation of the study, research methodology, the questionnaire survey, definition of terms and key expressions and plan of the dissertation.
- Chapter-2 Origin and Development of Bangladesh Civil Service: A Critical Review comprises the prelude, the definition and main features of civil service, evolution of BCS, evolution of Public Service Commission, a constitutional body dealing with various aspects of HRM of BCS, scrutinises the development of the role of executive government including the Ministry of Establishment considered as the hub for HRM of BCS and other administrative ministries/divisions dealing with HRM of the members of BCS, under their administrative control, and provides the summary and assessment.
- Chapter-3 Human Resource Management of Bangladesh Civil Service: Analysis of Concepts and Practices comprises the prelude, the concept and evolution of HRM, the major areas of HRM and its practices in BCS and the summary and assessment of the chapter.
- Chapter-4 Human Resource Management of Bangladesh Civil Service: A

Legal Analysis comprises the prelude, examines the laws relating to HRM of BCS in general, laws related to HRP, scrutinises law related to recruiting, laws related to Performance Management, Disciplinary laws, laws related to judicial institutions dealing with HRM of BCS and finally the summary and assessment.

- Chapter-5 Human Resource Management of Bangladesh Civil Service: Analysis of Nature and Scope of Judicial Intervention comprises the prelude, analysis of judicial system of Bangladesh, principles and methods of judicial intervention, legal scope for judicial intervention, scrutinises judicial intervention by the Supreme Court of Bangladesh, judicial intervention by Administrative Tribunals and the summary and assessment of the chapter.
- Chapter-6 Human Resource Management of Bangladesh Civil Service: Analysis of Judicial Intervention comprises prelude, judicial intervention with respect to HRP, judicial intervention with respect to recruiting, judicial intervention with respect to Performance Management, judicial intervention with respect to discipline and the summary and assessment.
- Chapter-7 Summary and Conclusions comprises the prelude, summary of the findings of the study, findings of the questionnaire survey and the conclusion of the study.

The study of HRM of BCS and role of judicial intervention should include the nature and scope of the problems of HRM of BCS, the position of the relevant constitutional, legal and administrative provisions in law and the role of judicial intervention and their effectiveness must be examined thoroughly.

Such a study will be helpful in improving the efficiency and effectiveness of the members of BCS. With that objective the plan of the thesis has incorporated the relevant aspects as mentioned above. This introductory chapter introduces the study and the next chapter deals with the critical review of the origin and development of BCS.

CHAPTER II

ORIGIN AND DEVELOPMENT OF BANGLADESH CIVIL SERVICE: A CRITICAL REVIEW

1.0 Prelude

Bangladesh Civil Service (BCS) has a very long tradition and historical background. After independence in 1971, BCS succeeded both Central and Provincial Civil Services of Pakistan. New Government of Bangladesh started its administrative functions by the Ex-Pakistan Civil Servants who were citizens of the then East-Pakistan. This chapter critically reviews origin and development of BCS. Section 1.1 examines the definition and main features of civil service. Section 1.2 critically reviews evolution of BCS. Section 1.3 critically reviews evolution of Public Service Commission, a constitutional body dealing with various aspects of HRM of BCS along with relevant findings of the questionnaire survey. Section 1.4 scrutinises the development of the role of executive government including the Ministry of Establishment considered as the hub for HRM of BCS and other administrative ministries/divisions dealing with HRM of members of the BCS under their administrative control and relevant findings of the questionnaire survey. Section 1.5 provides the summary and assessment.

1.1 Definition and Main Features of Civil Service

Civil service is considered as the lifeblood or key agent of the executive branch of the state. As regards its definition and nature, Sapru mentioned:

Traditionally, Civil Service refers to the body of appointed officials who carry out the functions of government under the direction and supervision of

the Head of the Government, be it a democracy or dictatorship, monarchy or totalitarian government.⁴⁰

In fact, the function of civil service is to assist the political executive in the formulation of policy and execution of the policy decisions of government of the day. The basic role of civil service as the lifeblood or principal agent of the executive, be it emperor, king, state or governments of various types, persists over time. But the nature of its functions, challenges, capacity and performance varies with time, the role and functions of the state or government, and the ways it is organised, paid, motivated, supervised and managed.⁴¹

Generally every country of the world has its permanent civil service. The main features of the civil service are its permanence, political neutrality and anonymity. The permanent character of civil service ensures continuity in administration even after a change in the political government at a general election or otherwise. The members of civil service are required to remain politically neutral. Hence, they are prohibited from standing for parliament and from publicly expressing their political opinions. They must also follow conduct rules prescribed by the government. They can not be held responsible under the doctrine of ministerial responsibility embodied in the constitution to answer questions in parliament both at question time and before Select Committee enquiries.⁴² Bangladesh, like other countries, has its own civil service. However, its nature and functions are to some extent different from others.

⁴⁰ Sapru, above n 5, 105.

⁴¹ Rahman, above n 19, 1.

⁴² Barnett, above n 2, 97.

1.2 Evolution of BCS

Although in this subcontinent civil service has quite a long history, but as a distinct element in administration, civil service was greatly reorganised and developed during British rule in India. The civil service in modern sense of the term has come to us from the legacy of British rule in India.⁴¹ During the British rule in India present Bangladesh was the eastern part of the Province of Bengal. From 1947 to 1970, Bangladesh (the then East-Pakistan) was a part of Federal Pakistan till her independent in 1971. It will appear from the examination of the historical development of BCS that the law relating to HRM of BCS has been handed down by the *British Raj*. It has not been updated to modernise HRM of BCS. As a result it fails to ensure competency to meet the challenges of the present time. Even today HRM of BCS is primarily based on those outdated laws and practices.

BCS in fact originated from the Pakistan and British Civil Service. The growth of the BCS since the British Government in India may be divided into three periods i.e. i) The civil service under the Government of British- India (1757-1947), ii) The civil service under the Government of Pakistan (1947-1971) and iii) BCS since 1971.

1.2.1 The Civil Service under the Government of British-India (1757-1947)

Early years of the British rule envisaged a unitary system with strong centralized control that was first exercised by the Court of Directors of the East India Company and then by the Secretary of State for India who acted through the Governor General.

⁴¹ Sapru, above n 5, 105.

The British system in the early years of the British rule was modelled on an amalgamation of the then existing pattern of administration in Britain with the pattern operated by the Mughals in India. The basic objectives of British rule were to develop military and civil framework capable of maintaining law and order, collecting land revenues and establishing local institutions which would preserve the imperial presence in the country.⁴⁴ Securing and protecting the commercial interests of the home country and maintaining the social and legal customs of both the Hindu and the Muslim communities were the other important objectives.

The East India Company, mainly associated with English overseas expansion, was originally a trading organisation. The Company was incorporated into a chartered entity by Queen Elizabeth on the last day of December, 1600. Under the Charter and Acts of Parliament the Company was given some powers to manage their own affairs. The Company's service was divided into two classes- civil and military. This division was responsible for giving rise to the term "civil service" as distinguished from the term military service. Each factory was managed by a number of civil and military servants varying in size depending upon the volume of business transacted, who were subordinate immediately to the Governor or President-in-Council of the Presidency in which the factory was located. Ultimately, all servants of the Company, including the Governors and members of the Council, were subject to overall control of the Court of Directors of the Company in England.⁴⁵

⁴⁴ Ahmed, above n 1, 2.

⁴⁵ Sapru, above n 5, 106.

The civil servants of the Company were divided into five grades namely: apprentices, writers, factors, junior merchants and senior merchants. The apprentices were withdrawn from 1694 and since then youths were appointed straightway as writers. Writers were nominated by the Directors from 1714. Promotion from grade to grade went by seniority. On appointment the writers were to sign covenants which embodied their conditions of service, rights and obligations. Hence, the term 'Covenanted Civil Service'.⁴⁶ This hierarchic structure had been copied from Dutch and foreshadowed the typical civil service structure of the future.⁴⁷ The Company assumed political power and active role in the governance of Bengal in 1757 through their victory in the battle of Palassey.

The year 1765 witnessed a radical change, brought about by the grant of Diwani of Bengal, Bihar and Orissa by the Emperor of Delhi. This meant that the Company took over the revenue administration of the area while the Emperor himself continued to run the rest of the civil administration. As a result the servants of the company started asserting their right to collect revenue. From 1772, the mercantile service assumed the role of an administrative service. Warren Hastings, who assumed the role of Governorship in Bengal in 1772, laid the foundations in India of a civil service in the modern sense.⁴⁸ The Office of the Collector at the district level was established in 1772. He also reorganised revenue administration, remodelled the judicial system and freed trade from its existing abuses. O' Malley attributed the creation of the civil service to the worth of both Warren Hastings and Lord Cornwallis. He is cited, to have written, "The former laid

⁴⁶ Chaudhuri, above n 6, 3.

⁴⁷ Sapru, above n 5, 107.

⁴⁸ E N Gladden, *A History of Public Administration* (1972) 246.

the foundations on which the latter built up a superstructure'.⁴⁹ Warren Hastings divided the covenanted civil service into two categories. One was concerned with purely commercial functions, and the other with general administration. In each district a civil and a criminal court was also set up.

The Regulating Act of 1773 prohibited Collectors and other officers engaged in either the collection of revenues or the administration of justice from participating in the company's commercial transactions. Besides, the Act also forbade civil servants from accepting gifts from any of the natives of India. Pitt's Government of India Act, 1784 and the Charter Act of 1793 further introduced reforms in the civil service. These Regulations combined with Cornwallis' determination to reform them contributed to the development of an esprit de corps in the civil service. The Acts lent statutory recognition to the conditions of service of the employees of the company.

Before 1853, recruitment to the civil service continued to be made on the basis of nominations by the Directors of the Company. However, on the passage of the Government of India Act, 1853 recruitment to the service was to be based on an open competitive examination. In 1854, a Committee chaired by Macaulay recommended that the examination should aim at testing the general education of the candidates rather than specialized knowledge. However, the first competitive examination was held in 1855. This system of recruitment examination remains almost unchanged as on today.

The need for indianisation of civil service was badly felt after Sepoy Mutiny in 1857 and the taking over of the administration of British India by the

⁴⁹ Sapru, above n 5, 109.

Crown. However, the prevalent system of competitive examination alone could not meet those aspirations. In 1886, a Public Service Commission under the chairmanship of Sir Charles Aitchison was appointed. The Commission recommended that all civil services were to be divided into three groups- i. The Imperial Service; ii. The Provincial Services and iii. Subordinate Services.⁵⁰ However, the recommendation was accepted subject to the exception that the name of the covenanted civil service was not changed into the 'Imperial Civil Service' but into the 'Civil Service of India' which was popularly known as Indian Civil Service (I C S).⁵¹

In the face of agitation by Indians for simultaneous examination in England and India and for the raising of the age limits to facilitate entry of Indians into the covenanted civil service a few steps were taken with reluctance but without success. The Act of 1833, provided that no Indian would be disabled from holding any office in the administration on account of religion, place of birth, descent or colour. However, in reality, this could not change the situation. After several experimentations, rules were made under the Act of 1879 which allowed one-fifth of the vacancies in the covenanted civil service to be filled by nomination in British India. To give effect to this scheme, the number of appointments in the covenanted civil service made on the basis of the competitive examination was reduced by one-fifth in 1886. Thus, the statutory civil service was brought into existence.⁵² The Royal Commission appointed in 1912 under Lord Islington on public services in India submitted its report in 1917. The Commission made several recommendations including classification of civil service into four categories: these are Imperial, Central,

⁵⁰ Sapru, above n 5, 112.

⁵¹ Chaudhuri, above n 45, 22-23.

⁵² Chaudhuri, above n 45, 18-19.

Provincial and Subordinate. With regard to promotion, the Commission recommended that a member of a civil service promoted from a lower to a higher service should be considered on the same level as the direct recruits to the higher service, except in the case of ICS. The suggestions of the Commission were broadly accepted.

The Montagu-Chelmsford also called Montford Report's (1918) contribution to the civil service in India is on the position of the members of civil service vis-à-vis Ministers in the responsible government. The report advised the members of civil service to act as impartial advisers to Ministers in the policy-making process. Once a certain policy was laid down, it was their duty to implement it with efficiency, loyalty and impartiality. Similarly, the politicians were advised to realize that the effective and smooth functioning of government depended on the cooperation, good will, tolerance and confidence of Ministers and the members of civil service. Most recommendations of this Montford Report were incorporated in the Government of India Act, 1919. Part IV, Section 36 of the Act dealt with matters relating to the civil service. Under this Act, every member of civil service held office during the Majesty's pleasure. They could not be removed or dismissed from service by any authority subordinate to the one which appointed them. The Act also authorised the Secretary of State in Council to make rules for regulating the civil service in India, the methods of recruitment, the conditions of service, pay and allowances and discipline and conduct. The Fundamental Rules and Supplementary Rules (FR&SR) applicable to members of civil services under the rule making control of the

Governor General came into force with effect from 1st January, 1922.⁵³ These rules contained provisions relating to conditions of service including conduct rules and formed the model of service related rule making in this sub-continent including Bangladesh.

The Government of India Act, 1919 made ample provisions for the protection of the rights and interests of the members of ICS and other civil services. Section 96(B) of the Act dealt with the rights and interests of all categories of civil servants while sections 97 to 100 specifically dealt with the rights and interests of ICS. The Instrument of Instructions issued to the Governors required them to take personal interest in safeguarding the legitimate rights and interests of the members of civil service and to secure the due representation of the various communities in the provincial civil service. At the centre, however, there was no transfer of political power to any significant extent. Consequently, the central civil services, and the members of All-India Services working under the central government, remained in the same position as before and there were no political masters for them.⁵⁴

The civil services in British India received the close attention of three important bodies in the early thirties of twentieth century-the Indian Statutory Commission, a Sub-Committee of the Round Table Conference and the Joint Select Committee of both the Houses of the British Parliament. They dealt with the following aspects of the civil service:

- (i) the future of the all-India Services;
- (ii) the rate of Indianisation in these services;

⁵³ *Fundamental Rules and Supplementary Rules 1983.*

⁵⁴ Chaudhuri, above n 45, 33.

- (iii) representation of the various communities in the services;
- (iv) the adequate provision for the constitutional safeguards and protection for the legitimate rights and interests of the civil servants, and
- (v) the role of the Public Service Commission in maintaining adequate standards of recruitment and thereby ensuring efficiency in administration.

The three bodies made several valuable recommendations on those points but without full agreement on all points.⁵⁵

The Government of India Act, 1935 was a step forward in bringing into existence a federal system of government with more powers to the central government. The Act made elaborate provisions to safeguard the rights and interests of the civil servants, defined their tenure of office, recruitment and conditions of service etc. The Act provided that every member of the civil service of the Crown in India held office during His Majesty's pleasure.⁵⁶ Such person could not be dismissed from his service by any authority subordinate to his appointing authority.⁵⁷ He could not be dismissed or reduced in rank without giving him a reasonable opportunity of showing cause against the proposed action.⁵⁸ The Act also provided that no such opportunity needed to be given where a civil servant was dismissed or reduced in rank on the ground of conduct which had led to his conviction on a criminal charge. It was further provided that no such opportunity could be claimed where an authority empowered to dismiss a person or reduce him in

⁵⁵ Chaudhuri, above n 45, 38-41.

⁵⁶ *The Government of India Act 1935*, Section 240 (1).

⁵⁷ *Ibid* Section 240 (2).

⁵⁸ *The Government of India Act 1935*, Section 240 (3).

rank was satisfied that for some reason, to be recorded by that authority in writing, it was not reasonably practicable to give to that person an opportunity of showing cause.⁵⁹ The Act further provided for termination of contractual appointment before the expiration of agreed period for reasons of abolition of the post or for any other reasons rather than misconduct on payment of compensation.⁶⁰

The Act provided for appointment to civil service and posts in the case of Federation by the Governor General or his authorised person and in the case of Provinces by the Governor or his authorised person.⁶¹ The conditions of service could be regulated by rules made by the appointing Governor General or the Governor or by some person or persons authorised by them respectively in this behalf as the case might be. Such power could not be exercised to pass an order which altered or interpreted to a person's disadvantage any rule by which his conditions of service were regulated except by some person empowered by the Secretary of State to give direction in that respect.⁶² Rule making was not necessary to regulate the conditions of service of persons employed temporarily on the terms that their employment may be terminated on one month's notice or less.⁶³

It was provided that the tenure and conditions of service of civil servants could not be varied to their disadvantage. The rules which would be framed to govern the conditions of their service must permit at least one appeal to each member of the civil service against any order which would punish him, or

⁵⁹ *Ibid* Proviso (a) and (b) to Section 240 (3).

⁶⁰ *Ibid* Section 240 (4).

⁶¹ *Ibid* Section 241 (1).

⁶² *Ibid* Section 241 (1).

⁶³ *The Government of India Act 1935*, Proviso to Section 241 (2).

alter or interpret the rule affecting his service to his disadvantage or terminate his employment before he would reach the age of retirement. Consequently, when an order was passed in exercise of this power any person aggrieved by such order had the right to appeal to the concerned authorities from any order which-

- (i) punished or formally censured him; or
- (ii) altered or interpreted to his disadvantage any rule by which his conditions of service were regulated; or
- (iii) terminated his appointment otherwise than his reaching the age fixed for superannuation.⁶⁴

Every other person serving his Majesty in a civil capacity in India had at least one appeal against an order which altered or interpreted to his disadvantage any rule by which his conditions of service were regulated. But an order made by the Governor General or the Governor was not appealable.⁶⁵ The appropriate legislature was empowered to enact laws regulating the conditions of service and rules made under this section were subject to such Acts of Legislature.⁶⁶ However, these Acts could not limit the power of the Governor General or Governor to deal with any civil servant in such a manner which appeared to be just and equitable.⁶⁷ Furthermore, such dealing could not be less favourable than the rule or the Act.

The rules though formally made under this section were not intended to introduce any changes in the substance or effect of relevant existing rules.

⁶⁴ *Ibid* Section 241(3) and 248.

⁶⁵ *Ibid* Section 241 (3) (e).

⁶⁶ *The Government of India Act 1935*, Section 241 (4).

⁶⁷ *Ibid* Section 241 (5).

They were intended merely to reproduce the already existing rules with adaptation where necessary, and were thus derived from Fundamental Rules and Supplementary Rules which continued in force by virtue of section 276 of the Government of India Act, 1935.

A civil servant appointed by Secretary of State was given the right to complain to the authority passing an order to his detriment or disadvantage and such order could be made only by the Governor General or Governor as the case might be. Appeal could be preferred before the Secretary of State.⁶⁸ Disqualification of any particular sex for appointment to a civil service or post was prohibited by Article 275 of the Act and this right could be enforced by the High Courts under section 223 of the Act. Under this section, the High Court could exercise writ jurisdiction as exercised by the Court of King's Bench in England.⁶⁹ Appointment to ICS used to be made by the Secretary of State.⁷⁰

The Secretary of State was obliged to make rules specifying the number and character of civil posts under the Crown. All such rules were required to be laid before each House of Parliament.⁷¹ The conditions of service of all persons appointed to a civil service or a civil post by the Secretary of State were protected under special provisions laid down by the Secretary of State.⁷² It will be evident from the later sections of this chapter that the above legal provisions relating to HRM of civil service developed by the Government of

⁶⁸ *Ibid* Section 248.

⁶⁹ Howlader, above n 20, 56-61.

⁷⁰ *The Government of India Act 1935*, Section 244.

⁷¹ *Ibid* Section 246.

⁷² *Ibid* Section 247-9.

British India has been adopted and continued till today without any significant modernisation or updating.

1.2.2 The Civil Service under the Government of Pakistan (1947-1971)

After partition of British India into India and Pakistan, the Act of 1935, with nominal modifications, was continued in Pakistan under the Independence of India Act, 1947. This position remained unaltered until adoption of the Constitution of the Islamic Republic of Pakistan, 1956. This constitution provided for a parliamentary form of government within the framework of Federal Constitution for Pakistan. All rules and orders dealing with terms and conditions of service of civil servants were also continued. After abrogation of the Constitution of Pakistan in 1958, Pakistan was put under martial law administration till the inauguration of the legislatures, central and provincial, under the Constitution of the Islamic Republic of Pakistan, 1962. The Constitution of Pakistan, 1962 like its predecessor contained a number of provisions regarding civil service. These provisions were mainly reproduced from the British Indian Government enacted Act of 1935 without any significant updating of the old provisions. However, there were some marginal variations in the substance of these provisions and the manner of their enforcement. The most significant provisions are noted below:

Firstly, the Constitution of Pakistan, 1956 defined the status of the members of civil service. It laid down that the members of the central and all Pakistan services would hold offices during the pleasure of the President. In addition, it also provided that the members of the provincial services would hold offices

during the pleasure of the Governor.⁷³ The Constitution of the Islamic Republic of Pakistan, 1962 also contained this provision.⁷⁴ The Government of India Act, 1935 contained a similar provision.⁷⁵ Thus the above provisions are basically derived from the pre-existing British Indian provisions.

Secondly, both the constitutions have provided for the continuance of the ICS in the name of all Pakistan services. Thus ICS was inherited directly from the British Indian system.

Thirdly, both the constitutions had guaranteed important safeguards to the members of civil service to protect them against any arbitrary action.⁷⁶ No member of any civil service central, all-Pakistan or provincial could be dismissed or removed from office or reduced in rank by any authority subordinate to that by which he was appointed. This was identical with the British system.⁷⁷ It might be mentioned that Constitution of Pakistan, 1962 had provided that 'unless that subordinate authority had been expressly empowered to do so by an authority not so subordinate.' This did not exist in the Constitution of Pakistan, 1956.

Furthermore, it is evident that an order of dismissal or removal or reduction in rank would be declared by the Courts to be illegal if the person was not given the reasonable opportunity of showing cause against the action proposed to be taken in regard to him. Again, the requirement of reasonable opportunity

⁷³ *The Constitution of the Islamic Republic of Pakistan 1956*, Article 180.

⁷⁴ *The Constitution of the Islamic Republic of Pakistan 1962*, Article 176.

⁷⁵ *The Government of India Act, 1935*, Section 240 (1).

⁷⁶ *The Constitution of the Islamic Republic of Pakistan 1956*, Article 181; *The Constitution of the Islamic Republic of Pakistan 1962*, Article 177.

⁷⁷ *The Government of India Act 1935*, Section 240 (2).

would have to be fulfilled at two stages. At the enquiry stage, it was necessary that the charges should have been clearly framed and duly communicated to the person who was the subject of enquiry. He had to be given an opportunity to answer the charges, and the decision had to be taken after due and proper consideration of the defence produced. The course of enquiry was required to follow the principles of natural justice. Again, after the completion of enquiry a further opportunity had to be given to show cause against the action proposed to be taken. Reasonable opportunity at this stage implies that the person should be asked to show-cause against the particular punishment that is provisionally determined on the finding at the stage of enquiry. After such an opportunity was given a higher punishment than the one proposed could be awarded. The mandatory obligation under the article was that reasonable opportunity to show cause must be given. This provision was also introduced earlier by the Government of British India.⁷⁸

The two exceptions to the above provision of reasonable opportunity of showing cause embodied in the Government of India Act, 1935 were: (i) where a person was dismissed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge, and (ii) where an authority empowered to dismiss a person or reduce him in rank was satisfied that for some reasons, to be recorded by that authority in writing, it is not reasonably practicable to give to that person an opportunity of showing cause.⁷⁹ Article 177 (2) of the Constitution of Pakistan, 1962 contained two exceptions to the provision for reasonable opportunity of showing cause, which reflected a two-fold change from the corresponding provision in article

⁷⁸ *The Government of India Act 1935*, Proviso (a) and (b) to Section 240 (3) and Section 248.

⁷⁹ *Ibid* Section 240 (3).

181 (2) of the Constitution of Pakistan, 1956. First, under the Constitution of Pakistan, 1956, it was the President or the Governor who had to be satisfied that 'in the interest of the security of Pakistan or any part thereof, it is not expedient to give that person such an opportunity.' Under the Constitution of Pakistan, 1962, it was for the authority empowered to dismiss to decide whether to withhold such an opportunity on the ground of security of Pakistan. Second, it was expressly provided in the old constitution that the President or Governor had to record reasons. This requirement was dispensed with in the Constitution of Pakistan, 1962. The provisions of the latter constitution were more close to the provisions contained in the Government of India Act, 1935 with the only exception that recording was required under the British Indian Act.⁸⁰ Thus, basically the British Indian law was continued.

Article 177 of the Constitution of Pakistan, 1962 like Article 181 of the Constitution of Pakistan, 1956 contained constitutional limitations on the pleasure of the President or the Governor in cases where a civil servant was to be dismissed or removed from service, or reduced in rank. No statute or rules could take away or restrict these limitations. Nor could a member of a civil service could contract away his rights under this Article. In a case the Supreme Court of Pakistan observed, '... No contract which has the effect of taking away or curtailing either the protection given by the Act itself or the right required to be given by the rules framed under the Act, can be valid or binding'.⁸¹ Thus the above provisions have modified and fine-tuned some marginal aspects but the basic provisions have been consistent with those of

⁸⁰ *The Government of India Act 1935*, Section 240 (3) (b).

⁸¹ *Ghulam Sarwar v Pakistan* (1962) PLD SC 142.

the Government of India Act, 1935 enacted by the British.⁸² The British Indian Act introduced both the doctrine of pleasure and the rules of natural justice to protect civil servants from arbitrary actions and they were continued by the above constitutional provisions.

Fourthly, provisions were made in the Constitutions of Pakistan to secure certain guarantees to the members of civil service who were recruited by the Secretary of State before independence. The Government of Pakistan was eager to retain the services of the highly experienced members of the old Indian Civil Service. Consequently, provisions were incorporated into the constitution guaranteeing the same terms and conditions of service and the same rights to these higher officials as they enjoyed before independence. Thus, the legal provisions introduced by British Indian Government were continued in Pakistan without any updating in this case.

Fifthly, the constitution contained a provision to give equal representation to the provinces in all the Central and all-Pakistan Services. East Pakistan, in particular, had been very poorly represented in the services. There had been persistent demands to remedy the situation. In the course of debate in the Constituent Assembly, the East Pakistan members took a very strong view of the matter and demanded parity of representation in the services. It was provided in the 'Directive Principles of State Policy' that steps should be taken to achieve parity with regard to the representation of East Pakistan and West Pakistan in the services.⁸³ Similar provision existed in the 'Principles of Policy' of the Constitution of Pakistan, 1962. Although the provision was not

⁸² *The Government of India Act 1935*, Section 240 (1) and (3).

⁸³ *The Government of India Act 1935*, Section 275.

enforceable by courts, it had been acted upon. Similarly, the concept of Indianisation of the British Indian Civil Service which means representation of Indians in the civil service gained ground during the British Rule and the policy of parity is not a new innovation but an adaptation of the concept of indianisation.

Sixthly, provision was made in the constitution for the abolition of communal representation in the Services. It was provided that every citizen would be free to enter the service of Pakistan, if he was otherwise qualified irrespective of race, religion, caste, sex, residence or place of birth.⁸⁴ This principle also was based on the principle of non-discrimination already incorporated into the British legal system.⁸⁵ This guaranteed equality of opportunity to all citizens in respect of appointment in the service of Pakistan. However, the constitution also permitted the reservation of specified posts and services for persons of either sex, and for the first fifteen years, posts might be reserved for persons belonging to any class or area to secure their adequate representation in the services.⁸⁶ This was an elaboration or extension of the exceptions to the principle of non-discrimination already introduced by the British. Thus, the legal provisions related to civil services in Pakistan were based on British Indian provisions and there was no significant updating or modernisation of the same.

⁸⁴ *The Constitution of the Islamic Republic of Pakistan 1956*, Section 17(1); *The Constitution of the Islamic Republic of Pakistan 1962*, Section 17(1).

⁸⁵ *The Government of India Act 1935*, Section 275.

⁸⁶ Chaudhuri, above n 45, 49.

1.2.3 Bangladesh Civil Service

In the same way, as in Pakistan, the law relating to HRM of BCS was basically the law enacted by the Government of British India. This was first adopted by Pakistan as mentioned above and then inherited by Bangladesh as will be evident from the following comparative examination of the relevant provisions. On 26 March 1971 Bangladesh became independent and BCS inherited different levels of civil servants- Federal comprising the All Pakistan Civil Services such as Civil Service of Pakistan (CSP) and Police Service of Pakistan (PSP), the central civil service such as Central Secretariat Service (CSS) and Central Public Works Department (CPWD) and provincial civil service comprising Provincial Services such as East-Pakistan Civil Service (EPCS) and Public Services, and Subordinate Civil Services. The Laws Continuance Enforcement Order, 1971 provided that all laws that were in force in Bangladesh on 25 March 1971 shall continue to be in force with such consequential changes as may be necessary on account of the creation of the sovereign independent state of Bangladesh. It was also laid down that all government officials who took oath of allegiance to Bangladesh shall continue in their offices on terms and conditions of service so long enjoyed by them. The Order was made effective from 26 March 1971. As a result of this legal provision, the members of CSP and EPCS became members of BCS although as a matter of practice they continued to be identified as erstwhile CSPs and EPCSs. This provision of adaptation and confirmation of the inherited system opened the floodgate for continuation of the British based Pakistani provisions for HRM of BCS.

In addition, the Constitution of the People's Republic of Bangladesh incorporates most of the provisions relating to services directly and in some

cases with some marginal modifications from the 1956 and 1962 Constitutions of Pakistan which, in turn, were based on British law as discussed earlier. The Fundamental Rules and Supplementary Rules (FR&SR) and other rules were also continued under the Laws Continuance Enforcement Order. The main provisions are examined below:

Firstly, the provision of holding offices during the pleasure of the President as embodied in the 1956 and 1962 Constitutions of Pakistan has been incorporated into the Constitution of Bangladesh.⁸⁷ This provision has its basis in British law.⁸⁸ However, under the present constitutional provisions the President has to work on the advice of the Prime Minister⁸⁹ and this opens the door for politicization of civil service by the party-in-power.

Secondly, the provision that the tenure and conditions of service should not be varied to the disadvantage of the members of civil service as was embodied in Article 182 of the Constitution of Pakistan, 1956 and Article 178 (3) of 1962 has been done away with in the Constitution of Bangladesh, 1972. Article 136 provides that provisions may be made by law for the reorganisation of the services of the republic and such law may vary or revoke any condition of service of a person employed in the service of the republic. If this power is not exercised properly the morale, integrity and neutrality of the members of civil service may be jeopardized. A significant modification in this case from the British law is that the provision for appeal in case of alteration or

⁸⁷ *The Constitution of the People's Republic of Bangladesh 1972*, Article 134.

⁸⁸ *The Government of India Act 1935*, Section 240 (1).

⁸⁹ *The Constitution of the People's Republic of Bangladesh 1972*, Article 48(3).

interpretation of a rule to the disadvantage of the civil servant has been discarded.⁹⁰

Thirdly, Bangladesh being unitary government, the system of central and provincial services have been done away with. In this respect the Constitution of Bangladesh differs from the Government of India Act, 1935 of British India and Pakistan, Constitutions of Pakistan, 1956 and 1962 providing for dual system of governments and civil services.

Fourthly, the two important safeguards guaranteed to the members of the civil service by the 1956 and 1962 Constitutions of Pakistan⁹¹ to protect them against any arbitrary action has been incorporated into the Constitution of Bangladesh along with addition of new provisions. Under Article 135 of the Constitution of Bangladesh, no member of the civil service can be dismissed or removed from office or reduced in rank by any authority subordinate to that by which he was appointed. This provision was derived from British Indian law.⁹² Moreover, no member of civil service could be dismissed, removed or reduced in rank without being given a reasonable opportunity for self-defence. The Constitution of Bangladesh has adopted the provisions of the Constitution of Pakistan, 1956 and no authority subordinate to the appointing authority is allowed to impose any of the major penalties mentioned above and without giving an opportunity of showing cause.⁹³ This was derived from the Government of India Act, 1935.⁹⁴

⁹⁰ *The Government of India Act 1935*, Section 241 (3).

⁹¹ *The Constitution of the Islamic Republic of Pakistan 1956*, Article 181 and *The Constitution of the Islamic Republic of Pakistan 1962*, Article 177.

⁹² *The Government of India Act 1935*, Section 240 (2).

⁹³ *The Constitution of the People's Republic of Bangladesh 1972*, Article 135.

⁹⁴ *The Government of India Act 1935*, Section 240 (2) and (3).

As regards the two exceptions to the provisions for reasonable opportunity of showing cause laid down in British Indian law⁹⁵ these have been incorporated into Article 135 of the Constitution of Bangladesh, 1972. It is further provided in the Constitution of Bangladesh, 1972 that if a question arises whether it is reasonably practicable to give him an opportunity to show cause, the decision thereon of the authority empowered to dismiss or remove such person or to reduce him in rank shall be final.⁹⁶ As regards security of the State the provision of the Constitution of Pakistan, 1956 with the modification that no reason has to be recorded, has been incorporated into the Constitution of Bangladesh. If the President is satisfied that in the interests of the security of the state it is not expedient to give that person such an opportunity it shall not be required to give him any such opportunity.⁹⁷ So, the provision enacted by the British Indian Government in this regard by the Government of India Act, 1935 has only been continued without significant change.

Fifthly, although the provision regarding provincial parity contained in the Constitution of Pakistan, 1962 has been discontinued in the Constitution of Bangladesh, 1972, Article 29 of the latter constitution incorporates the state policy on equality of opportunity in public employment as a fundamental right. The main object of this Article is to create a constitutional right to equality of opportunity in employment in public offices. Certain positive rights in this respect are created under Clauses 1 and 2 of Article 29. However, these rights are confined to employment or appointment to offices under the Republic.⁹⁸ This provision is comparable with the provision of

⁹⁵ *Ibid* Proviso (a) and (b) to Section 240 (3).

⁹⁶ *The Constitution of the People's Republic of Bangladesh 1972*, Article 135 (3).

⁹⁷ *The Constitution of the People's Republic of Bangladesh 1972*, Article 135 (2) (iii).

⁹⁸ Rahman, above n 13, 61.

indianisation of British Indian Civil Service and principle of non-discrimination introduced by the Government of British India.⁹⁹

Sixthly, although citizens have right to equality of opportunity and employment, clauses 3 (a) and (b) of article 29 give a permissible basis for making exception to the general policy. Thus exceptions in respect of which state can make laws include reservation for backward sections of citizens, if not adequately represented in the service of the republic. Article 133 enables the President and the Parliament to make laws and rules to regulate the recruitment and conditions of service of the members of BCS. This provision is also derived from the British system.¹⁰⁰ Thus, the BCS has a very long heritage and a solid constitutional foundation but the legal bases for HRM of BCS are founded on old British laws and have not been updated. Rather some of the beneficial provisions such as right to appeal against any order which altered or interpreted to the disadvantage of a civil servant any rule by which his conditions of service were regulated have been discarded from the constitution.¹⁰¹ There was another provision that any rule made by the Secretary of State specifying the number and character of the civil posts under the Crown had to be laid before both the Houses of Parliament.¹⁰² These provisions have been continued in India but not in Bangladesh. Continuation of such provisions could improve the morale and competency of the members of BCS.

⁹⁹ *The Government of India Act 1935*, Section 275.

¹⁰⁰ *The Government of India Act 1935*, Section 241(2) and 241(4).

¹⁰¹ *Ibid* Section 241 (3).

¹⁰² *Ibid* Section 246 (3).

1.3 Evolution of the Public Service Commission

The Government of British India laid the foundation of modern Public Service Commission (PSC) in India. The Bangladesh Public Service Commission (BPSC) is a descendant of the PSC established by the British Indian Government. The BPSC, a constitutional body, is responsible for conducting all tests and examinations for selection of suitable persons for appointment to the civil service. In addition, it is supposed to advise the government on personnel matters and act as a “watch dog” on the latter’s dealings with civil servants and their conditions of service. In reality the BPSC acts more as a “recruiting agency” and staff/advisory agency of the government than anything else for it lacks any executive power. Like other service matters and institutions BPSC is adopted and continued from the PSC established by the Government of British India on the pattern of PSC of United Kingdom (UK) established in the middle of the nineteenth century. The historical evolution of BPSC is examined below:

1.3.1 The Public Service Commission of British-India

The origin of the BPSC, as mentioned above, can be traced back to the British era. The legal framework of BPSC also was derived from the British system and there is no evidence of any major updating. Different ad-hoc Public Service Commissions such as the Aitchison Commission (1886), the Islington Commission (1912-1915), the Lee Commission (1924) were established at different times by the government of British India to institute public enquiries into the problems of public services but no permanent Public Service Commission was established until 1926. The Lee Commission, established in 1924, made a strong plea for establishing a permanent PSC without delay as a safeguard against unhealthy political or personal influences over the selection

of the civil servants.¹⁰³ The Act of 1919 embodied a provision for the establishment of Public Service Commission.¹⁰⁴

The Public Service Commission was set up in British India in 1926.¹⁰⁵ It was entrusted with the function of recruitment like the Civil Service Commission in Britain and was also made responsible for advising the government on two important matters- disciplinary control and protection of the services.¹⁰⁶ The Act of 1935 contained elaborate provisions relating to the organisation and functions of the Public Service Commission.¹⁰⁷ The Act provided for the establishment of PSC, for the federation and also for the provinces or group of provinces.¹⁰⁸

The chairman and other members of a PSC were to be appointed by the Governor General in his discretion in the case of Federal Commission and by the Governor of the Province in his discretion in the case of Provincial Commission. The appointing authorities might, by regulation, determine the number of members of the commission, their tenure of office and their conditions of service, and make provisions with respect to the number of staff of the commission and their conditions of service.¹⁰⁹ The Act also provided that at least one-half of the members of every PSC shall be persons who at the dates of their respective appointments have held office for at least ten years under the Crown in India.¹¹⁰ On ceasing to hold office the chairman of the Federal Commission was ineligible for further employment under the Crown

¹⁰³ Chaudhuri, above n 45, 38.

¹⁰⁴ *The Government of India Act 1919*, Section 96 (2).

¹⁰⁵ Chaudhuri, above n 45, 38.

¹⁰⁶ *Ibid* 42.

¹⁰⁷ *The Government of India Act 1935*, Part X, Chapter III, Sections 264-268.

¹⁰⁸ *Ibid* Section 264.

¹⁰⁹ *Ibid* Section 265(2).

¹¹⁰ *Ibid* Proviso to Section 265(1).

in India. Similarly, the chairman of a Provincial Commission was ineligible for appointment under the Crown in India except as the chairman or a member of the Federal Commission or as the chairman of another Provincial Commission.¹¹¹

The PSCs were bound to conduct examinations for appointment to the services of the Federation or Provinces concerned.¹¹² Except where the requirement for consultation with PSC was done away with by regulation by the Governor General or the Governor, as the case might be, the PSC was to be consulted on the following matters:

- (i) all matters relating to methods of recruitment to civil services and to civil posts,
- (ii) the principles to be followed in making appointment to civil service and posts and in making promotions and transfers from one service to another and on the suitability of candidates for such appointments, promotions or transfers,
- (iii) all disciplinary matters affecting a person serving His Majesty in a civil capacity in India, including memorials or petitions relating to such matters;
- (iv) any claim by or in respect of a person who is serving or has served His Majesty in a civil capacity in India that any costs incurred by him in defending legal proceedings instituted against him in respect of acts done or purported to be done in the execution of his duty should be paid out of the revenues of Federal or Provincial Government concerned; and

¹¹¹ *Ibid* Section 265.

¹¹² *Ibid* Section 266(1).

- (v) any claim for the award of a pension in respect of injuries sustained by a person in India, and any question as to the amount of any such award and the PSC was duty bound to advise on any matter so referred to them and on any other matter which the Governor General or the Governor might refer to them.¹¹³

The Act also provided specifically that the PSC was not required to be consulted as respects the manner in which appointments are to be made and posts are to be allocated as between the various communities or in the case of subordinate ranks of the various police forces in India, as respects any of the matters mentioned in subparagraph (i), (ii) and (iii) above.¹¹⁴ The legislatures were empowered to provide for the exercise of additional functions. However, moving any Bill in this respect needed prior consent of the Governor General or the Governor of the Province as the case might be.¹¹⁵ Thus, the practice of consultation with PSC and making regulations for specifying cases where consultation with PSC is not required was also founded by the British and is continued till today.

1.3.2 The Public Service Commission under Pakistan

The PSC of Pakistan stood on the footprints of the PSC established by the Government of British India. The Constitutions of Pakistan made elaborate provisions in regard to the organisation and functions of the Public Service Commission.¹¹⁶ In the case of the Federal PSC the President and in the case of

¹¹³ *The Government of India Act 1935*, Section 266(3).

¹¹⁴ *The Government of India Act 1935*, Section 266(4).

¹¹⁵ *Ibid* Section 267.

¹¹⁶ *The Constitution of the Islamic Republic of Pakistan 1956*, Part X, Chapter II, Articles 184-190; *The Constitution of the Islamic Republic of Pakistan 1962*, Part VIII, Chapter II, Articles 180-190.

Provincial PSC the Governor could by regulation determine the number of the members of the commission and their conditions of service and also the number of the members of staff of the commission and their conditions of service.¹¹⁷ This provision was also incorporated into the next Constitution of Pakistan.¹¹⁸ The main functions of the Public Service Commission of Pakistan, like its British Indian predecessor was to maintain adequate standards of recruitment, to conduct examinations for appointments to the various services, and to advise the government in regard to the principles to be followed in making appointments to the various posts, promotion, transfer and disciplinary matters. Their functions could be extended by law. The President or Governor, as the case might be, could remove certain class of civil servants from the purview of the commission.

The Public Service Commissions were purely advisory bodies.¹¹⁹ Their recommendations were not binding on the government. The government could ignore or reject them. Some members of the Constituent Assembly wanted that the recommendations of the commissions should be made mandatory. It was pointed out that the commissions would not be the appointing authority. The ultimate responsibility for appointment would rest on the government. It was decided that the matter should be left to the development of conventions that normally the recommendations of the commissions should be accepted.

¹¹⁷ *The Constitution of the Islamic Republic of Pakistan 1956*, Article 185.

¹¹⁸ *The Constitution of the Islamic Republic of Pakistan 1962*, Article 181.

¹¹⁹ There were two types of Commissions in Pakistan- Federal Public Service Commission and Provincial Public Service Commission. The Federal Public Service Commission was subsequently renamed as the Central Public Service Commission.

To promote the independence, impartiality and integrity of the commissioners, it was decided that they should be removed completely from political influence. To secure this objective, a number of provisions were incorporated into the constitution. Firstly, the chairman and members of the Federal and Provincial Commissions were required to be appointed respectively by the President and Governor, each acting in his discretion under the Constitution of Pakistan, 1956. They would thus be appointed by an authority above party politics. The words 'acting in discretion' did not occur in the Constitution of Pakistan, 1962. The President and the Governor were not involved in party politics under the constitution. Secondly, the chairman of the Federal Public Service Commission was made not eligible for further employment under the Government of Pakistan. No further employment under the government would be open to the commissioners except the higher offices in the commission itself, or an appointment on the Federal Commission from the Provincial Commission.

There was no such provision in the Constitution of Pakistan, 1962, and in this respect it differed from the Constitution of Pakistan, 1956. In some cases the chairman of the Central Public Service Commission was appointed to higher positions in the government. In the past the arrangement was made to shield the chairman and the members against outside influence and temptation. This was highly conducive to independence and impartiality on the part of the commission. The departure from this salutary tradition does not appear to be appropriate. This provision should have been retained in the Constitution of Pakistan, 1962. Thirdly, the commissioners might not be removed from office except on the ground of misbehaviour, infirmity of mind or body. A member of the Federal Public Service Commission could not be removed from office

except by the procedure applicable to the removal of a High Court Judge. Similar provision existed in the Constitution of Pakistan, 1962.¹²⁰ A provincial commissioner would be removable by the Governor on a report from the Supreme Court made on a reference to it by the Governor. Finally, the tenures of their offices were specifically laid down, and it would be for period of five years. Under the Constitution of Pakistan, 1962 the members of the commission held office for a term of three years.¹²¹ This was too short a period. The provision for submitting annual reports to the President by PSC was first incorporated into the Constitution of Pakistan, 1956.¹²² This was continued in the next constitution as well.¹²³

1.3.3. Bangladesh Public Service Commission

The Bangladesh Public Service Commission (BPSC) also emerged as successor to the Public Service Commission of Pakistan and the British Indian Public Service Commission without any fundamental modernisation. After independence, BPSC was established to recruit civil servants of the People's Republic of Bangladesh. Chapter II of part IX of the constitution contains provisions regarding establishment, composition and functions of BPSC. Article 137 of the constitution provides for the establishment of one or more Public Service Commissions for Bangladesh. The Constitution of the People's Republic of Bangladesh provides that provisions shall be made by law for the establishment of one or more public service commissions for Bangladesh each of which shall consist of a chairman and such other members as shall be

¹²⁰ *The Constitution of the Islamic Republic of Pakistan 1962*, Article 184 (2).

¹²¹ *Ibid* Article 184 (1).

¹²² *The Constitution of the Islamic Republic of Pakistan 1956*, Article 190.

¹²³ *The Constitution of the Islamic Republic of Pakistan 1962*, Article 189.

prescribed by law.¹²⁴ A Public Service Commission has been established under the Bangladesh Public Service Commission Ordinance, 1977. This provision only reproduces the provision made by the Government of British India in this respect.¹²⁵

The chairman and other members of each Public Service Commission are appointed by the President.¹²⁶ Not less than one-half of the members of a commission are to be persons who have held office for twenty years or more in the service of any government which has at any time functioned within the territory of Bangladesh. The service length required for official members under the British system¹²⁷ has been doubled to enhance the capability of the Commission in Bangladesh.¹²⁸ Subject to any law made by Parliament the conditions of service of the chairman and other members of a public service commission are determined by order of the President.¹²⁹ This is a reproduction with slight contextual amendment of the provisions made by the Government of British India.¹³⁰

The commission is composed of six to fifteen members including the chairman.¹³¹ The determination of the number of members of the commission in Bangladesh has been handed over to the Legislature¹³² instead of the Executive as introduced by the British and continued in Pakistan. The tenure of office of the chairman and other members of a public service commission

¹²⁴ *The Constitution of the People's Republic of Bangladesh 1972*, Article 137.

¹²⁵ *The Government of India Act 1935*, Section 264.

¹²⁶ *The Constitution of the People's Republic of Bangladesh 1972*, Article 138(1).

¹²⁷ *The Government of India Act 1935*, Proviso to Section 265(1).

¹²⁸ *The Constitution of the People's Republic of Bangladesh 1972*, Proviso to Article 138(1).

¹²⁹ *Ibid* Article 138(2).

¹³⁰ *The Government of India Act 1935*, Section 265(1).

¹³¹ *The Bangladesh Public Service Commission Ordinance 1977*, Section 3.

¹³² *The Constitution of the People's Republic of Bangladesh 1972*, Article 137 (1).

shall expire five years after the date on which he entered upon his office, or when he attains the age of sixty-two years, whichever is earlier.¹³³ The chairman and other members of such a commission can not be removed from office except in like manner and on the like grounds as a judge of the Supreme Court.¹³⁴ There was no such provision in the Government of India Act. This updated provision borrowed from the Constitution of Pakistan¹³⁵ has ensured security of the members and chairman of the commission.

A chairman or other member of a Public Service Commission may resign his office by writing under his hand addressed to the President. On ceasing to hold office a member of a public service commission shall not be eligible for further employment in the service of the republic, but a chairman so ceasing shall be eligible for re-appointment for one further term; and a member (other than the chairman) so ceasing shall be eligible for re-appointment for one further term or for appointment as chairman of a public service commission.¹³⁶ These provisions are similar to those introduced by the Government of British India.¹³⁷

The functions of the commission are (i) to conduct tests and examinations for the selection of suitable persons for appointment to the service of the republic; (ii) to advise the President on any matter on which the commission is consulted; under clause (2) of Article 140 or on any matter connected with its functions which is referred to the commission by the President and (iii) such

¹³³ *Ibid* Article 139 (1).

¹³⁴ *Ibid* Article 139 (2).

¹³⁵ *The Constitution of the Islamic Republic of Pakistan 1956*, Article 187.

¹³⁶ *The Constitution of the People's Republic of Bangladesh 1972*, Article 139.

¹³⁷ *The Government of India Act 1935*, Section 265(3).

other functions as may be prescribed by law.¹³⁸ Article 140(2) provides that subject to the provisions of any law made by Parliament, and any regulation (not inconsistent with such law) which may be made by the President after consultation with the Public Service Commission, consultation with the commission is required with respect to: (i) matters relating to qualifications for, and methods of recruitment to, the service of the republic; (ii) the principles to be followed in making appointments to that service and promotions and transfers from one branch of the service to another, and the suitability of candidates for such appointments, promotions and transfers; (iii) matters affecting the terms and conditions (including pension rights) of that service; and (iv) the discipline of the service.¹³⁹ This provision can be traced back to British Indian time.¹⁴⁰ Evidently, most of the above provisions relating to BPSC are adopted and continued from the British system without significant modernisation or updating.

In pursuance of the constitutional provision contained in Article 137 for legislation to establish one or more Public Service Commissions the Bangladesh Public Service Commission Ordinance, 1977 was enacted.¹⁴¹ Section 4 of the Ordinance provides that the exercise of the functions of the commission under clause (2) of Article 140 of the constitution in respect of any matter referred to therein shall be subject to the provision of this Ordinance, any other regulation made under that Article or any other law for the time being in force affecting such matter. The Ordinance has excluded several matters from the list on which previously consultation with BPSC was

¹³⁸ *The Constitution of the People's Republic of Bangladesh 1972*, Article 140(1).

¹³⁹ *The Constitution of the People's Republic of Bangladesh 1972*, Article 140(2).

¹⁴⁰ *The Government of India Act 1935*, Section 266.

¹⁴¹ *Bangladesh Public Service Commission Ordinance 1977*.

necessary. The function of the commission shall also be subject to the Public Service Commission (Consultation) Regulations, 1979. The above functions are basically similar to those provided under section 266 of the Government of India Act, 1935. The provisions have been elaborated and made more specific, functions have been simplified but there appears no fundamental updating or modernisation of the relevant laws and practices for better HRM of BCS.

The system of annual reporting by the commission is an addition to British system. This was introduced under the Constitutions of the Islamic Republic of Pakistan¹⁴² and was incorporated into the Constitution of the People's Republic of Bangladesh¹⁴³ as follows:

- (1) Each commission shall not later than the first day of March each year, prepare and submit to the President a report on the performance of its functions during the period ended on the previous 31st day of December.
- (2) The report shall be accompanied by a memorandum setting out, so far as is known to the commission- (a) the cases, if any, in which its advise was not accepted and the reasons why it was not accepted; (b) the cases where the commission ought to have been consulted and was not consulted, and the reasons why it was not consulted.
- (3) The President shall cause the report and memorandum to be laid before Parliament at its first meeting held after 31st March in the year in which the report was submitted.

¹⁴² *The Constitution of the Islamic Republic of Pakistan 1956*, Article 190 and *The Constitution of the Islamic Republic of Pakistan 1962*, Article 189.

¹⁴³ *The Constitution of the People's Republic of Bangladesh 1972*, Article 141.

It was expected that public opinion would act as a deterrent to the government when they contemplated the rejection of the recommendations of the commissions.

The Public Service Commission is a very important constitutional body which can really facilitate effective functioning of HRM of BCS. But it is said that it is not receiving from higher quarters of the government due attention in accord with the high importance given to it by the framers of the constitution. The annual report submitted by PSC is not given the deserved consideration. There is no formal system to examine and act upon the report. The report seems to be submitted just to satisfy the legal requirement as a matter of ceremony.¹⁴⁴

In addition to its main responsibility to conduct the public competitive examinations for recruiting officers for the various services of the republic, the BPSC advises the government on recruitment and service rules, disciplinary cases and inter-service seniority of officers. The main function of BPSC is itself one hell of a job. Then this complex additional load of work handled by BPSC adversely affects its efficiency, effectiveness, goodwill and reputation. In disciplinary cases involvement of BPSC often delays the process and complicates matters through lightening of the punishment suggested from below.

At present BPSC has ample scope for improving its effectiveness. The following steps are proposed by an expert.¹⁴⁵ The BPSC can take the

¹⁴⁴ Siddiqui, above n 12, 160.

¹⁴⁵ *Ibid* 160-161.

initiative to hold a one-day structured workshop involving some of the most relevant policy makers and experts to discuss the annual report of BPSC and other pressing issues faced by BPSC, after the formal presentation to the President. The BPSC can then take up the recommendations emerging from this workshop at the appropriate level for decision and follow-up. BPSC should be relieved of its miscellaneous advisory functions and concentrate on the recruitment, promotion and transfers of officers through the public competitive examinations. The precise determination of inter-service seniority of officers can easily be handled by the Ministry of Establishment and other line ministries. Administrative Tribunals may be further strengthened rather than lengthening the trial process in disciplinary cases through involvement of BPSC. In the matter of service and recruitment rules, the BPSC should be concerned with formulating general guidelines and principles in the light of its experience and research in order to ensure the modern best practices of HRM in such rules, rather than examine and vet these case by case. However, where there are complaints of gross violation or deviation from these guidelines and principles, the BPSC should be allowed to intervene and set things right. Thus delay may be minimised and at the same time a degree of quality control may be ensured. This will help to create an opportunity to incorporate modern HRM of BCS.

1.3.4 Findings of the Questionnaire Survey

The questionnaire survey addressed the issue of annual report of BPSC and the issue of freeing BPSC and higher executive authorities from their involvement in disciplinary process. With regard to the annual report of BPSC a question was put forward to assess the views of the respondents as to whether the annual report of BPSC should aim at improving HRM of BCS, 406

respondents participated and 297 constituting 73.15 percent responded affirmatively while 109 constituting 26.85 percent expressed negative view. This is pictorially shown in figure (fig.) 1. A large majority of 157 out of 297 respondents constituting 52.86 percent of the affirmative view holders opined that this can be done by incorporating right content, information, analysis and recommendations. Another significant number 89 constituting 29.96 percent opined that this can be done by making it more realistic through seminars and symposiums. The different views are pictorially shown in fig. 2.

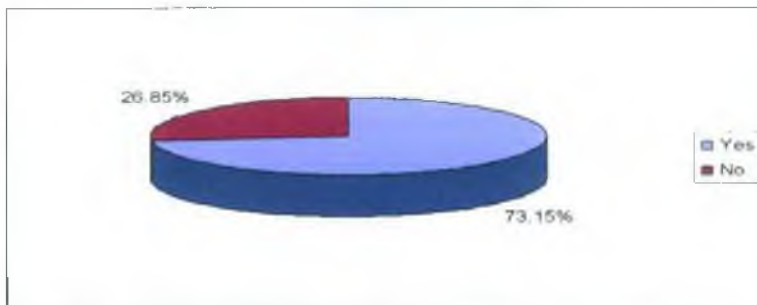


Figure-1: Showing the Respondents' Opinion whether the Annual Report of BPSC should Aim at Improving HRM of BCS

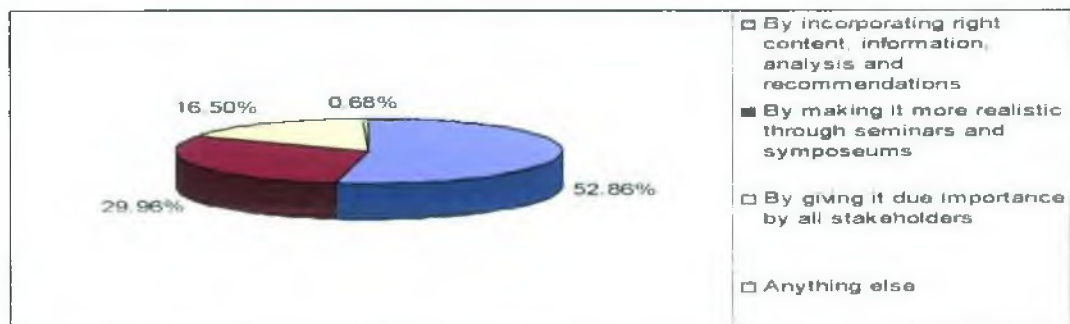


Figure-2: Showing the Respondents' Say as to how Annual Report of BPSC can Improve HRM of BCS

With regard to the question whether BPSC and higher executive authorities should be relieved of their involvement in the disciplinary process, 396 respondents participated and showed a sharp difference of opinion. The largest number 219 constituting 55.31 percent viewed that they should not be relieved from such involvement. Comparatively smaller number being 177 constituting 44.69 percent viewed that they should be relieved. This is

pictorially shown in fig. 3. Out of 177 respondents 95 constituting 53.67 percent opined that this is necessary for more efficient handling of disciplinary activities. Another 75 respondents constituting 42.37 percent thought it necessary to enable them to give more time to other HRM of BCS activities. The different views are pictorially shown in fig. 4.

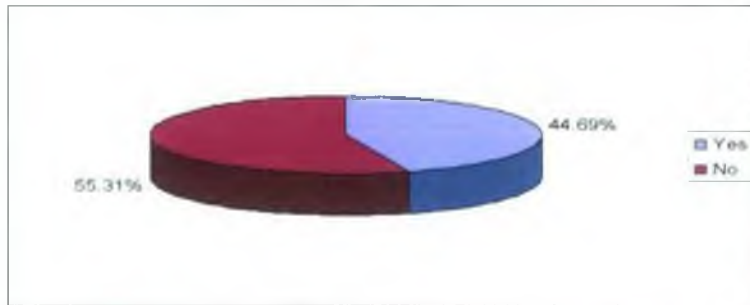


Figure-3: Showing Views in Favour and Against Relieving the BPSC and Higher Executive Authorities of their Involvement in the Disciplinary Process.

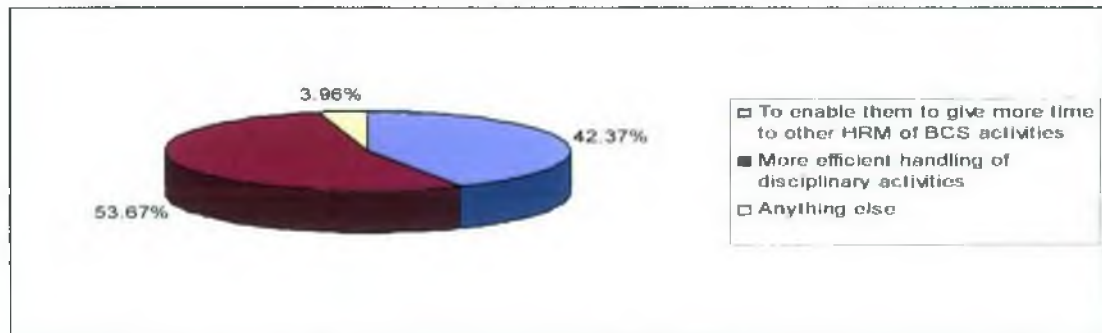


Figure-4: Showing Different Reasons for being Relieved of the BPSC and Higher Executive of Involvement in the Disciplinary Process.

1.4 The Executive Government

The system of playing predominant role by the executive government in HRM of civil service through different ministries/divisions also owes their origin to the Government of British India and remains mostly unchanged. The present system of allocation and transaction of government business including HRM of BCS is also derived directly from the British system. As regards rule making by the Governor General, the Government of India Act provided:

The Governor General shall make rules for the more convenient transaction of the business of the Federal Government, and for the allocation among ministers of the said business in so far as it is not business with respect to which the Governor General is by or under this Act required to act in his discretion.¹⁴⁶

The rule making power of the President for allocation and transaction of business under Article 55 of the Constitution of Bangladesh is derived from the above British provisions. Similarly, the service related rule making powers of the President of the Peoples Republic of Bangladesh under Article 133 of the Constitution of Bangladesh, 1972 has its root in section 241 of the Government of India Act, 1935. The civil service Institutions under the executive government dealing with HRM of BCS comprises the Ministry of Establishment (MoE) and other administrative ministries/divisions managing different cadres and other personnel under their administrative control. MoE acts as the central executive agency. Other Ministries acts as line agencies for relevant cadre(s) and non-cadre civil service. Their roles, functions and related problems and recommendations are examined below.

1.4.1 Ministry of Establishment

The Ministry of Establishment (MoE) is charged with the general responsibility of overseeing important aspects of HRM of BCS, although the routine control of personnel belonging to various ministries/cadres remains the responsibility of concerned ministries. The MoE lays down the broad policies, principles and regulations for managing the public service. It is where major decisions are made in respect of creation of a cadre, its

¹⁴⁶ *The Government of India Act 1935, Section 17(3).*

composition and strength, rules of recruitment and promotion. The MoE is also responsible for initial recruitment of all cadre service officials and for disciplinary actions and welfare of senior officials in the secretariat and outside. The Ministry of Finance (MoF), which is instrumental in determining the salary of civil servants, also wields a considerable influence in matters of HRM of BCS. Nevertheless, the MoE is the most important agency having jurisdiction over almost all aspects of HRM of BCS.

The MoE as the central organisation for HRM of BCS has been allocated as many as 40 functions under the Allocation of Business and also advisory roles under the Rules of Business, 1996 most of which relate to HRM of BCS.¹⁴⁷ The MoE is the central executive agency of the Government of Bangladesh entrusted with HRM of BCS. It has its research unit under the Organisation & Management Wing with its duty to review organisations, methods and procedures as well as to carry out its administrative research, management and reforms for better and economic execution of government business. But its present performance is far from desirable. MoE is responsible for periodical inspection and review of staff position in government offices for optimum utilisation of manpower but there is no visible practice in this regard. There is no effective mechanism or well-planned practice for human resource planning or performance management in BCS. The Ministry is busy in day-to-day routine executive functions. It does not have adequate capability, mechanism or practice of reviewing and recommending for updating the HRM of BCS to remedy the deficiencies and to incorporate the modern concepts of administration and management.

¹⁴⁷ *Rules of Business 1996*, Rule 12.

In the complex high-tech world of globalization today, it always pays to consult the best experts. Since they may not always be available in the Cabinet or the civil service, it becomes necessary to hire them from outside. There is no harm in seeking a fresh and disinterested second opinion from outside particularly when such opinion is not binding on the Hon'ble Prime Minister (PM).¹⁴⁸ However, there is no apex body, unit or central agency comprising such experts dedicated for updating HRM of BCS. Although, MoE acts as executive agency but there is no central agency or unit for exclusive review and recommendation for appropriate legislation and policy making for better and economic modern HRM of BCS.

In the UK, a policy unit consisting of seven professional members, drawn from both the private sector and the government has been institutionalised in the PM office. The PM meets this group regularly, and the group enjoys high prestige in all important circles. The group is therefore, effective in formulating policy and giving it a concrete shape.¹⁴⁹

In Malaysia, the panel of administrative improvements to the civil service chaired by the Chief Secretary to the government is the permanent committee which acts as the prime mover and coordinator for the implementation of administrative improvement programmes in the civil service. It ensures that administrative improvement efforts are undertaken throughout the civil service on an on-going basis. The overall objectives of the Panel are: (a) to generate ideas and programmes to further improve the system of public administration; and (b) to identify concrete measures to bring about

¹⁴⁸ Siddiqui, above n 12, 110.

¹⁴⁹ *Ibid* 109-110.

improvements in public administration.¹⁵⁰ However, there is no such arrangement in Bangladesh yet.

A central unit should be established at PM Office in line with the policy unit of UK or civil service Panel of Malaysia. It seems that in our context, an informal arrangement would be in order. To begin with, the PM could select the policy advisers from various fields including representatives from civil service practitioners, academic experts, legal experts, researchers and the civil society. They need not sit in the PM's office as full-time advisers. A senior officer in the PM's office could liaison with the group, and the PM could sit with the group once a fortnight and informally seek their views on pressing issues. In addition these advisers could also speak out their minds on matters which they consider important, and make written suggestions, recommendations and draft statutes, rules and regulations. A summary could then be prepared for the PM on the basis of these discussions and suggestions. Finally, the PM could independently, or in consultation with Cabinet colleagues, decide what to do next.¹⁵¹

1.4.2 Administrative Ministries/Divisions

The administrative Ministries/Divisions are managing HRM functions of the BCS cadres allocated to them¹⁵² as well as other members of BCS under their administrative control. Ministries have large number of human resources working in the ministries/divisions, departments and statutory corporations under their administrative control. They are to manage both cadre and non-cadre civil servants demanding huge HRM activities. These activities require

¹⁵⁰ Ahmad Sarji, *The Civil Service of Malaysia: A Paradigm Shift* (1994) 1-2.

¹⁵¹ Siddiqui, above n 12, 110-111.

¹⁵² Ministry of Establishment, *Personnel Manual* (1989) 33-34.

appropriate knowledge, skill and abilities. However, the ministries do not have any special unit with specialised knowledge of HRM. They perform these activities as a part of general and routine administrative activities without being able to give adequate time and attention it deserves. As a result they can not play the appropriate role in dealing with HRM of BCS under their respective jurisdictions. This contributes to the poor HRM of BCS resulting in inefficiency and ineffectiveness of BCS. Special units for HRM of BCS should be created in each ministry/division/department and statutory corporation. The personnel working in these units should be properly trained and utilised for proper HRM of BCS.

1.4.3 Findings of the Questionnaire Survey

In the light of the above findings of the study regarding origin and development of BCS, the views and comments of respondents were collected through two questions. With regard to the first question whether this backdated colonial institutional legacy requires any change, a total of 436 respondents shared their views and comments. Out of them 365 constituting 83.71 percent agreed that there should be institutional change. This is pictorially shown in fig. 5. Out of those 365 the highest number of respondents being 104 constituting 28.49 percent of the respondent's view is that there should be HRM unit in every organisation. The second highest number being 100 constituting 27.40 percent viewed that a central HRM unit should be established. The different views are pictorially shown in fig. 6.

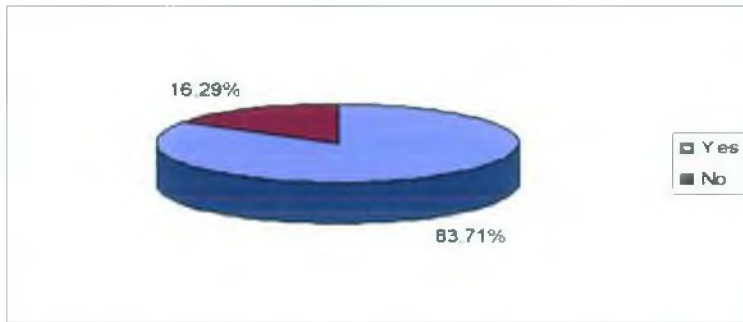


Figure-5: Showing the Response about the Institutional Change for Better HRM of BCS.

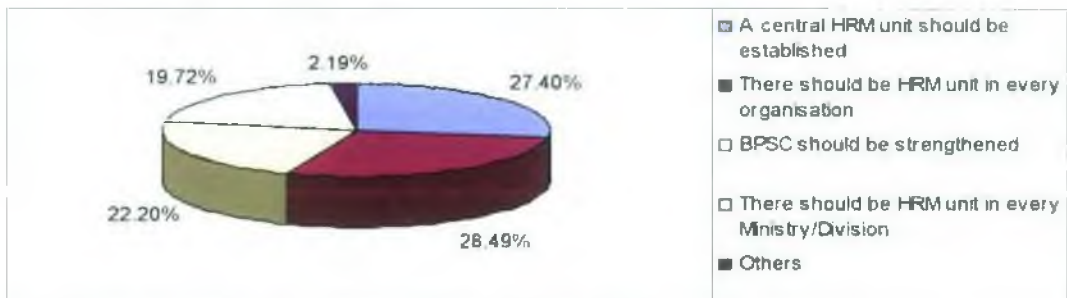


Figure-6: Showing the Institutional Change for Better HRM of BCS.

In response to the second question whether there should be effective, permanent institutional mechanism at the centre of government as well as organisational level, 392 respondents took part. Out of them 325 constituting 82.90 percent opined in the affirmative and others in the negative. This is pictorially shown in fig. 7. Out of the 325 respondents 113 constituting 34.76 percent opined that it is necessary for result oriented HRM of BCS, another 106 constituting 32.64 percent viewed that they are needed for strategic business planning for the government to achieve set goals or results. Different views related to this issue are shown in fig. 8.

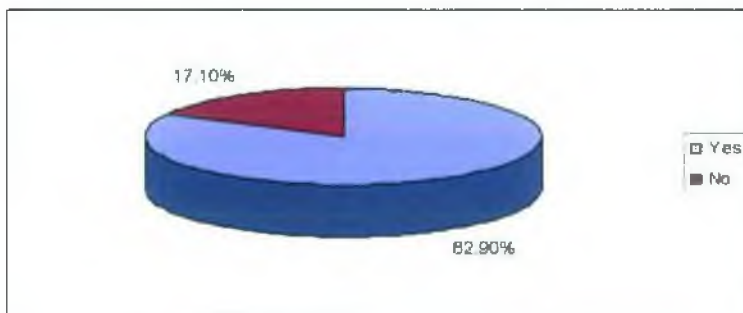


Figure-7: Showing whether there should be Effective Permanent Institution or Mechanism at the Centre of Government as well as at Organisational Level for HRM of BCS.

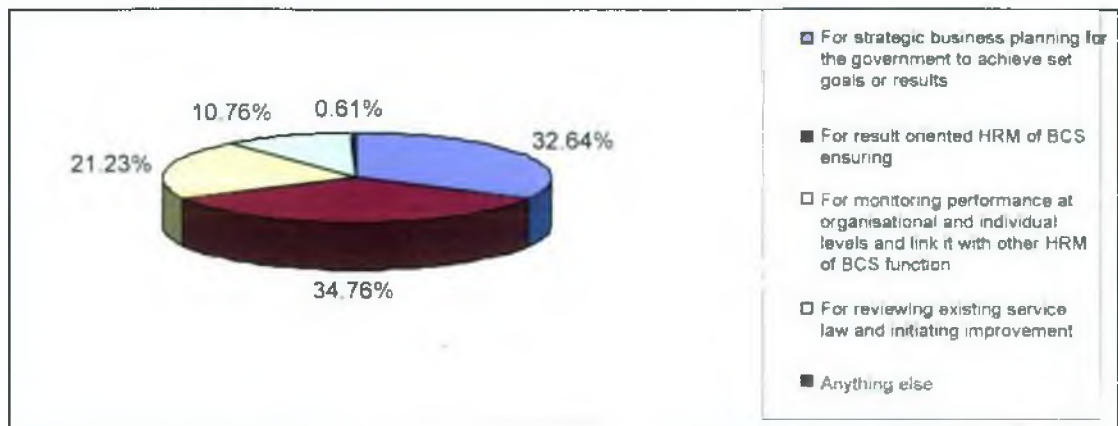


Figure-8: Showing Respondents' Opinion about Reasons for Effective Permanent Institution or Mechanism at the Centre of Government as well as at Organisational Level for HRM of BCS.

1.5 Summary and Assessment

In this chapter an attempt has been made to meet the first specific objective of the study i.e. to review critically the origin and development of BCS. It is clear from the above study that BCS has a very long tradition and historical background. In the past civil service meant the administrative service only. At present the size of BCS is quite large. The nature of BCS functions requires innovation, quick, accurate, efficient and effective decision-making and excellent service delivery to the doorsteps of the people. With the development of the country and increase in the composition and size of BCS, the HRM functions of BCS have increased. However, there has been no significant institutional reform to meet these changes.

Now, the BPSC has a gigantic HRM task in respect of cadre and non-cadre servants of the Republic. The annual report submitted by the BPSC should be made more effective in improving HRM of BCS. The BPSC should be relieved of advisory functions and allowed to concentrate on efficient recruiting, promotion, transfer and updating HRM of BCS so that selection and utilisation of right man for the right job can be ensured. There is a serious

inadequacy in institutionalisation at the central as well as organisational levels of the government for initiating intensive central review, updating legislation and policy making and its implementation at the organisational level to ensure modern HRM of BCS.

When the above findings were subjected to the comments of the respondents in course of the questionnaire survey, the majority of the respondents opined that annual report of BPSC should aim at improving HRM of BCS by incorporating right content, information analysis and recommendations. However, the finding of the questionnaire survey revealed that BPSC and other executive agencies should not be relieved from their involvement in disciplinary process. Naturally, it implies that they should be strengthened appropriately by expanding and improving efficiency and effectiveness to perform their increased onerous responsibilities.

It was also revealed that there should be institutional change and there should be HRM unit in every organisation including an HRM unit at the centre. There should be effective permanent institutional mechanism at the centre as well as at organisational level for strategic business planning and result-oriented HRM of BCS. There should be HRM unit at the center as well as at each ministry/division/organisation and there should be trained and specialised manpower to operate these units efficiently and effectively. In the next chapter, HRM of BCS: An analysis of Concepts and Practices will be presented.

CHAPTER III

HUMAN RESOURCE MANAGEMENT OF BANGLADESH CIVIL SERVICE: ANALYSIS OF CONCEPTS AND PRACTICES

1.0 Prelude

Bangladesh is one of the most densely populated countries of the world. The importance of Human Resource Management (HRM) of Bangladesh Civil Service (BCS) can not be overemphasised for a developing country like Bangladesh. HRM here is also less organised and less developed compared to that of the developed countries. HR is a primary resource without which other resources, physical and financial, can not be put into use. To achieve any organisational goal, HR requirement is assessed, located and harnessed. HRM is the comprehensive set of management activities and tasks concerned with developing and maintaining qualified workforce, human resources, in ways that contribute to organisational effectiveness. HRM is the design of formal systems in an organisation to ensure effective and efficient use of human talent to accomplish organisational goals.¹⁵³

The main purpose of this chapter is to examine the basic elements of HRM of BCS to identify the state of updating of HRM of BCS. This chapter examines the major areas of HRM: Human Resource Planning (HRP), Recruiting, Performance Management (PM) and Discipline practices. Section 1.1 analyses the evolution of HRM. Section 1.2 examines the elements of HRM and its practices in BCS. An attempt has been made to explore the modern concepts and practices, Bangladesh practices and scope of updating in the

¹⁵³ R L Mathis and J H Jackson, *Human Resource Management* (2005) 4.

major areas of HRM of BCS including relevant findings of the questionnaire survey. Section 1.3 examines HRP techniques and practices in BCS comprising HRP in BCS as well as composition and size of BCS with relevant findings of the questionnaire survey at appropriate places. Section 1.4 examines Recruiting comprising direct recruitment and promotion along with relevant findings of the questionnaire survey, Section 1.5 examines PM and includes relevant findings of the questionnaire survey. Section 1.6 examines Discipline and related findings of questionnaire survey and Section 1.7 is the summary and assessment of the chapter.

1.1 Evolution of HRM

Importance of HRM is increasing day by day. Developing countries emphasize more on HRM for their socio-economic development. However, the concept and evolution of HRM differs from one country to another. Human resources constitute the most important component of modern organisations. The accomplishment of organisational missions and objectives depends, to a large extent, on having right persons in right positions as well as the commitment and contributions of those involved. This is why HRM has acquired a growing significance in current organisational theory and practice. As a matter of fact, a sound and effective HRM is seen as the most significant variable that determines the performance of an enterprise. Thus theorists and practitioners alike attach considerable importance on the need for ensuring an efficient and effective use of human talents.¹⁵⁴ Tyson and York are among others who look at HRM as a system, a set of interdependent parts each providing an input to another. They show the logical relationships between

¹⁵⁴ Siddiquee, above n 3, 36.

various elements of HRM and underscore the importance of integrating them with the overall framework of the organisation.¹⁵⁵

The matter has gained even more prominence in the recent conceptualisation of HRM. Better known as Strategic HRM (SHRM). It emphasises, among other things, the following: (i) that it is human capability and commitment which distinguish successful organisations from others, (ii) that managing human resource is a matter of truly strategic importance, (iii) that HRM is an activity which is to be owned by all managers, and (iv) that the key levers must be internally integrated with each other and externally integrated with the organisational strategies.¹⁵⁶ Thus the current notion of HRM goes beyond simple emphasis of the role of human factor and advocates for integrating personnel functions with general strategic framework of the enterprise. Since HRM is seen as a strategic factor strongly influencing the success of the enterprise, SHRM model prescribes a highly flexible, decentralised and adaptive approach. The challenges emanating from socio-economic, demographic, political and technological transformation inevitably require such an approach that can adjust speedily to unstable and unpredictable environment.

The imperatives of the changing environment and the organisation's drive for obtaining 'competitive advantage' and the growing advocacy at academic circles have lately paved the way for a significant shift in terms of policy and practice of HRM, especially in the developed countries. As a result, personnel function in these countries is no longer treated as one of the operational tasks

¹⁵⁵ Tyson and York, above n 38, 36.

¹⁵⁶ Siddiquee, above n 3, 36.

like procurement, production, and marketing; rather, it has come to be regarded as an integral part of the management philosophy.¹⁵⁷

The nature and scope of HRM change with the change of socio-economic conditions of a country. The world economy is going through a seismic shift to intellectual capital from capital investment. Intellectual capital means human resources who are the people an organisation employs to carry out various jobs, tasks and functions in exchange for wages, salaries and other rewards. Talented employees are the cornerstones of an organisation's competitive advantage. If the organisation competes based on new ideas or innovations, outstanding citizen service, or quick accurate decision making, having excellent employees is critical.¹⁵⁸ Employees are a major source of performance, problems, growth, resistance and lawsuit. Designing system to effectively manage people with their needs, expectations, quirks, legal rights and high potential is a challenge. HRM focuses on doing just that.¹⁵⁹ HRM of BCS is still treated as mostly operational and the above changes in management philosophy have little influence there.

Need for employees must be planned, they must be recruited, selected, developed, compensated and managed. Each of these activities requires thought and understanding about what will work well and what may not. Research on these issues and the knowledge from successful approaches or best practices form the basis for HRM. In an environment in which the workforce keeps changing, technology changes, laws change and the needs of the employer change too, HRM must continue to change and evolve.

¹⁵⁷ Siddiquee, above n 3, 36-37.

¹⁵⁸ Mathis and Jackson, above n 152, 4.

¹⁵⁹ *Ibid.*

Understanding the challenges, problems and trends helps those who must deal with such evolution.

1.2 Elements of HRM and its Practices in BCS

The basic functions of management include planning, organising, staffing, leading and controlling. Planning includes establishing goals, standards and key performance indicators (KPIs), developing rules and procedures and developing plans and forecasting. The organising function deals with giving each subordinate specific tasks or roles, establishing working teams such as sections, branches, wings, divisions, departments etc. delegating authority to subordinates, establishing channels of authority and communication, coordinating the work of subordinates. The staffing function comprises determining what type of people should be hired, recruiting prospective human resource, managing performance, training and developing the human resource, compensating and disciplining human resource. The leading function consists in getting others to get the job done, maintaining morale and motivating subordinates. Finally, the controlling function is concerned with setting and cascading standards such as production levels, quality standards or quota for different tasks, checking to see how actual performance compares with these standards and indicators and taking corrective actions as needed. The staffing function or Personnel Management is called HRM.¹⁶⁰ HRM is composed of several groups of interlinked activities taking place within the context of the organisation. Each group includes several sub-groups of activities.

¹⁶⁰ Gary Dessler, *Human Resource Management* (2003) 2.

1.2.1 HRM Techniques and Practices in BCS

The basic concepts of modern management on which HRM activities are based and the present practices of HRM of BCS as well as the nature of the problems and scope of updating in these areas are examined and analysed in this study. Despite the prevalence of a broad consensus on the strategic importance of human resource factor, the paradigm shift is yet to take place in HRM of BCS. This is nothing surprising given that public agencies are expected to maintain uniformity in their policies and processes, uphold the principle of merit and fairness and safeguard the interest of the public. They operate within political, legal, and budgetary constraints and are usually susceptible to continuing pressures from various quarters. Also the rigidity of law and bureaucratic processes mean that there is little or no managerial discretion in the deployment of resources. Lack of commitment on the part of BCS officials is also an important problem for improved HRM of BCS. All these and a host of other factors serve as potential barriers to flexible and adaptive approach to HRM of BCS.

At times political leaders have promised to modernise the management of civil services, rhetoric has outpaced actions due to lack of strong political will. Evidence shows that the changes brought about are rather marginal and that personnel functions in most cases continue to be performed by and large in the old fashion.¹⁶¹ There has been no significant updating of the British practices of HRM of BCS. BCS has onerous responsibility in implementing the manifesto of the political government in the context of rapid socio-economic, political and technological changes. These require innovative, correct and quick decision making and excellent citizen services which calls

¹⁶¹ Siddiquee, above n 3, 36.

for talented civil servants. However, there is no effective mechanism to attract or retain such talented civil servants. The existing mechanism and practices of HRP, Recruiting, PM and Discipline are mostly operational and lacks such vision and objectives.

Bangladesh provides a typical case where the objective of developing a sound and rational system of HRM remains illusory. A recent World Bank study has focused, inter alia, on HRM and diagnosed some of its major ailments mentioned above that require urgent treatment, if the country's administrative system has to be vibrant and effective in order to be able to meet the challenges of the 21st century.¹⁶² The proposals are hardly revolutionary in that they are fundamental to a sound HRM system and earlier studies also underscored the need for such changes.

1.2.2 Findings of the Questionnaire Survey

In the light of the issues identified above three major issues viz. (i) major problem in improving HRM of BCS, (ii) factor that have historically contributed in the development of the problem and iii) major areas of HRM of BCS were investigated in the questionnaire survey. With regard to the first question relating to the main problems of HRM of BCS, 405 respondents have responded. The highest number of respondents that is 155 constituting 38.28 percent strongly agreed that lack of commitment of civil servants was the main problem. The second highest number that is 126 constituting 31.11 percent strongly agreed that lack of modern HRM was the main problem. Different views related to this issue are shown in fig. 9.

¹⁶² World Bank, *Bangladesh Government that Works: Reforming the Public Sector* (1996) 117-141.

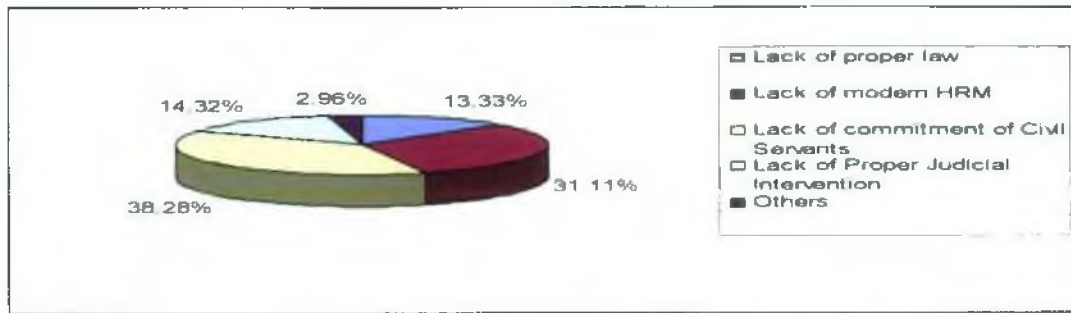


Figure-9: Showing Problems of Human Resource Management (HRM) of Bangladesh Civil Services (BCS)

In response to the second question relating to whether some factors have historically contributed and if so what are the factors which have historically contributed in the development of existing problems of HRM of BCS, 413 respondents have responded, out of which 372 respondents constituting 90.07 percent expressed positive view holding that some factors have historically contributed in the development of existing problems of HRM of BCS compared to 41 respondents constituting 9.93 percent only holding a negative view. This is pictorially shown in fig.10. Out of those 372 respondents the highest number of respondents that is 121 constituting 32.52 percent strongly agreed that weak political will was the main factor. The second highest number that is 104 constituting 27.96 percent strongly agreed that colonial attitude was the main factor that contributed to existing problems of HRM of BCS. Different views related to this issue are shown in fig.11.

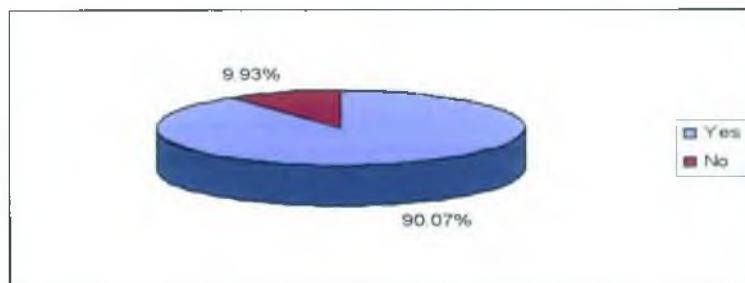


Figure-10: Showing Views whether Some Factors have Historically Contributed in the Development of Existing Problems of HRM of BCS

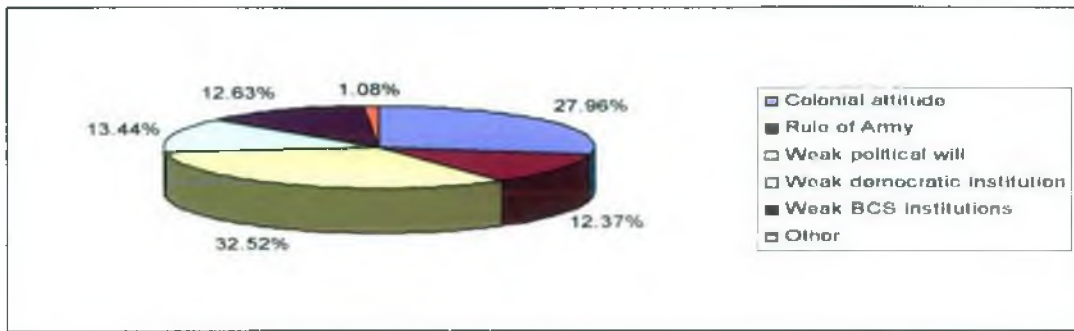


Figure-11: Showing the Percentage of Strongly Agreed Respondents for each Alternative Factor which has Historically Contributed in the Development of Existing Problem of HRM of BCS.

In the third question with a quest for identifying the major HRM area(s) for better HRM of BCS, 402 respondents have participated and among them 390 respondents constituting 97.01 percent expressed positive response with the view that the mentioned areas are important as pictorially shown in fig.12. Out of those 390 the highest number of respondents that is 125 constituting 32.05 percent strongly agreed that HRP was the most important area. The second highest number that is 73 constituting 18.71 percent strongly agreed that Recruiting was the next important area for better HRM of BCS. The next highest strongly agreed areas were PM opined by 15.89 percent and discipline supported by 9.48 percent respondents. Thus the survey data justifies focusing the study to the above mentioned major areas of HRM of BCS. Different views related to this issue are shown in fig.13.

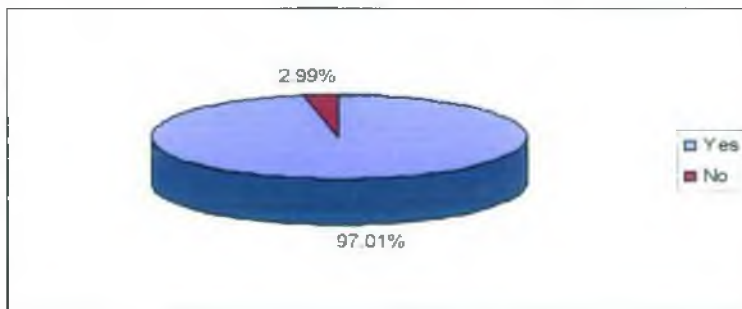


Figure-12: Showing Views Regarding the Important Areas for Better HRM of BCS.

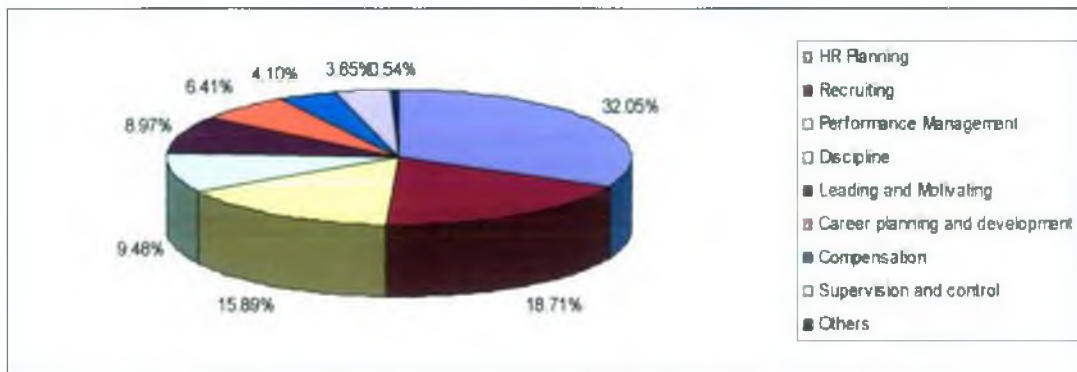


Figure-13: Showing Respondents' Comments on Areas which are Important for Better HRM of BCS.

Four specific major areas of HRM of BCS i.e. (i) HRP, (ii) Recruiting, (iii) PM and (iv) Discipline will be focused in this study. The nature and scope of the problems including some of the inadequacies, shortcomings and contradictions in the aforesaid four areas will also be identified and analysed.

1.3 Human Resource Planning Techniques and Practices in BCS

In this subsection HRP techniques and its practice in BCS is examined. The state of updating in this area is also identified. Every organisation exists to achieve its goals. In modern practice the goals are achieved through splitting it into tasks, duties and responsibilities and designing and redesigning them as jobs to be assigned to employees for performance. Ensuring proper performance helps to achieve organisational goals. Appropriate design of jobs helps to determine the type and number of employees required to perform those jobs. Through HRP, an attempt is made to anticipate forces that will influence the future supply of and demand for human resource. Having adequate human resource information systems (HRIS) to provide accurate and timely information for HRP is crucial. The importance of human resource in organisational competitiveness must be addressed as well. As part of maintaining organisational competitiveness, analysis and assessment of HR



effectiveness must occur. Human resource must also be appropriately trained, motivated and be willing to stay with the organisation for a reasonable time.

In modern HRM practice, HRP is used as a process which ensures that it has the right number and kinds of people at the right place at the right time who are capable of performing their assigned tasks effectively and efficiently. For maintaining output level and quality of performance HRP aims at: (i) Balancing demand, supply, distribution and allocation of human resources, (ii) Controlling cost of human resources, (iii) Formulating policies on transfer, succession, relocation of human resources, (iv) Ensuring diversity and productivity of human resources, and (v) Providing home and work adjustment flexibility.

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The effectiveness of HRM system largely depends on HRP which has both quantitative and qualitative aspects. Quantitatively, it involves the projection of number of people that would be required to be hired afresh taking into account promotion, resignation, retirement, and removal at different levels, over a specific period of time. Qualitatively, such planning involves projection of the type of people required in terms of education, experience and personality traits. HRP so conceived also require a linkage between the public service and educational institutions that take care of the supply side. HRP consists of a series of activities which includes forecasting HR needs, preparing inventory of present HR, anticipating problems of HR and meeting the HR needs.

Forecasting future HR needs is done either in terms of mathematical projections or in terms of judgmental estimates. Mathematical projections are

done extrapolating factors like, economic environment, development trends in industry etc. Judgmental estimates, on the other hand, are done depending on the specific future plans of the organisation by managerial discretion, which is based on past experience. These techniques are mainly used when establishing new offices or new functions or goals are added. Preparing inventory of present HR is an important activity in HRP. Such inventory contains data about each employee's skills, abilities, work preferences and other items of information. Inventory of human resources helps in assessing the extent of deploying such resources optimally. This inventory is maintained and used to determine the future vacancies that may arise due to superannuation, turnover, voluntary resignations and disciplinary actions. It also helps in planning proper allocation of HR. Such an inventory of data is referred to as Human Resource Information System (HRIS). Anticipating problems of HR is done by projecting present resources into the future and comparing the same with the forecast of HR requirements. This helps in determining the quantitative and qualitative adequacy of HR. HR need is met through a series of interrelated and planned HR activities such as direct recruitment, promotion, training, development, induction, placement, transfer, motivation, compensation and discipline to ensure that future HR requirements are correctly met.¹⁶³

Usually, three types of HRP is undertaken to identify future demand for and supply of human resource: short term, medium term and long term. Under short term HRP process the short term HR needs, usually for one year, created by retirements, resignations, dismissals etc. are determined. The HR need so determined is examined and rationalised. The medium term HRP process

¹⁶³ D K Bhattacharyya, *Human Resource Planning* (2002) 52.

covers a period of one to five years. This type of HRP helps to maintain continuity in the HRM process. The long term HRP usually extends over a period of more than five years and involves an evaluative account of the structure and processes of need assessment based HRP. This HRP is guided by longer-term organisational plans. It requires knowledge of strategic expansions or a reduction in operations and any technological changes that may affect the organisation. On the basis of such analysis, plans can be made for shifting employees within the organisation, laying off, abolishing posts and declaring the concerned personnel as surplus or otherwise cutting back the number of employees, retraining present employees or increasing the number of employees in certain areas. Factors to consider includes the current employees' knowledge, skills and abilities in the organisation and the expected vacancies resulting from retirements, promotions, transfers, discharges, terminations or dismissals.¹⁶⁴

HRP provides a roadmap for the future, identifying where employees are likely to be obtained, when employees will be needed and what training, development and discipline of employees must occur. Through succession planning, employee career paths can be tailored to meet individual needs that are consistent with organisational requirements. Successful HRP in an organisation ensures that the human resources are consistently aligned with the needs of the organisation over a period of time. Improper HRP may lead to over-recruiting increasing direct manpower costs such as salary and benefits, cost of training, amenities apart from the cost of production. Under-recruiting also affects production, morale and productivity. The forecasting of

¹⁶⁴ Mathis and Jackson, above n 152, 37.

future HR requirements in any organisation is based on need assessment relating to the size of HR.

1.3.1 Human Resource Planing in BCS

1.3.1.1 Techniques and Practices

There is no regulation incorporating the above mentioned techniques and practices requiring HRP in HRM of BCS. Need assessment in Bangladesh context is a less researched area. Bangladesh inherited a provincial government which was overnight transformed into a national government. Administrative and Services Reorganisation Committee (ASRC) formed by the Government of Bangladesh in 1973 dealt with the issue of need assessment in operational terms limited to the importance of recruitment of HR in a timely and orderly fashion. To this end it emphasised the need for HRP, which involves need assessment also.¹⁶⁵ ASRC called for careful examination of the growing need of HR and recommended that the HR needs should be examined once in every five years. Further reviews of HR as a whole should be made in order that recruitment may proceed in a planned manner. ASRC further called attention to the need for the preparation of an annual manpower budget covering a period of at least three years to address the issue of time required for completing the process of recruitment of HR and imparting initial training of those selected for appointment. It requires that each ministry and department should indicate as exactly as possible, its needs at all levels for various kinds of HR. It is clear from the above that ASRC proposed an institutional framework involving structures and processes to determine HR needs. ASRC does not, however, lay down any principle which should be followed other than saying that it should be carefully done in

¹⁶⁵ Ali, above n 11, 15.

advance. This implies that the principles will have to be prepared keeping in view the needs, which will vary from ministry to ministry or from department to department.¹⁶⁶

The cadre services are organised on functional basis usually managed by a particular ministry/division. Constituted cadre services like Indian Civil Service and Indian Police Service were introduced by the British Government in India.¹⁶⁷ Each Cadre has its own composition and cadre rules. BCS also has 28 cadres with cadre rules for each. These rules, which have come into force on 1 September 1980, provide for separate entity, hierarchy and different job responsibility for each cadre. In addition to 28 cadres of BCS there are non-cadre services and services in statutory bodies and corporations.

The Services Act, 1975 empowered the government to reorganise the services of the republic and for that purpose to create new services or amalgamate or unify existing services.¹⁶⁸ However, there is no law or regulation incorporating the modern practices of HRP in the HRM of BCS. Moreover, HRP practice in BCS is based on need assesment. However, need can be assessed when there are set goals for each organisation. But there is no system of setting goals and their achievement indicators for measuring. It makes modern HRP practices in BCS a difficult one. In the questionnaire survey the views of the respondents regarding set goal of organisation was examined.

¹⁶⁶ Ali, above n 11, 15-16.

¹⁶⁷ *The Government of India Act 1935*, Section 244.

¹⁶⁸ *The Services (Reorganisation and Conditions) Act 1975*, Section 4.

1.3.1.2 Findings of the Questionnaire Survey

As to whether every government organisation should have set goals 407 respondents have responded. Out of 407 respondents 378 constituting 92.87 percent expressed positive support for the view holding that they should have set goals as shown in fig. 14. Out of 378 the highest number of respondents that is 168 constituting 44.44 percent strongly agreed that the goal should be the basis of Human Resource Planning. The second highest number is 99 constituting 26.20 percent strongly agreed that the goal should be the basis of performance management. Different views related to this issue are shown in the Pie Chart in fig. 15.

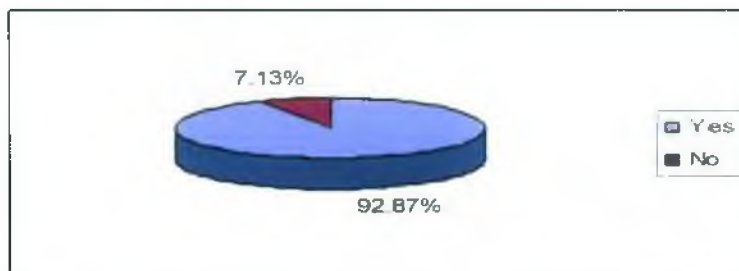


Figure-14: Showing Views Regarding Goals of Government Organisations.

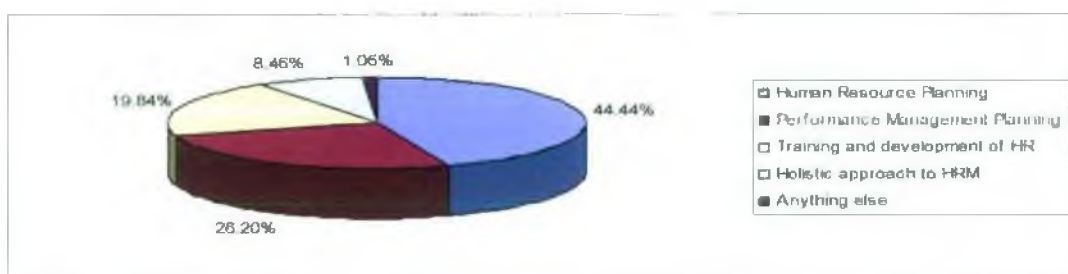


Figure-15: Showing the Percentage of the Strongly Agreed Respondents for each Alternative Use of the Goals of Government Organisations.

1.3.2 Composition and Size of BCS

1.3.2.1 Statistical Analysis

Human institutions everywhere, are the product of historical growth, slowly evolved under the stress of changing times and conditions.¹⁶⁹ In its structures

¹⁶⁹ Chaudhuri, above n 45, 1.

and methods, BCS forms a direct continuation of the Pakistan traditions of the civil service in British India. Popularly, BCS is used to mean the cadre services of Bangladesh. In this thesis the term is used in a wider sense which refers to all persons in the service of the republic holding civil posts and the employees of statutory public corporations. In this sense the size of BCS as reported in Civil Service Census Report, 2007 is 12, 56,039. Table-1 below describes the total sanctioned, existing and vacant posts of civil servants in Bangladesh:

Year	Sanctioned	Posted	Vacant
2001	1061089	937024	124065
2002	1063949	930026	133923
2003	1084854	940768	144086
2006	1111244	950087	161157
2007	1256039	1046855	209184

Table-1: Size of BCS over the Last Few Years¹⁷⁰

The size of BCS over the last few years is pictorially shown in the following Figure:



Figure-16: Size of BCS.

¹⁷⁰ Ministry of Establishment (MoE), *The Civil Service Census Reports* (2001-7).

The above figure shows that the number of civil servants is increasing gradually with a sudden rise in 2007. In this era of rightsizing organisations, Public Private Partnership (PPP) and outsourcing of certain services this increasing trend in the number of civil servants poses a problem for HRM of BCS. This is again further complicated by the high rate of unemployment and underemployment prevailing in the country. Generation of more and more employment in the private sector and rightsizing in the public sector through proper HRM activities deserve special consideration.

The composition of BCS may be analysed on the basis of the organisations to which they belong as well as on the basis of classes of civil servants. On the basis of organisations, out of the total number of civil servants only 10,517 employees are working in the ministries/divisions. Departments have 9,44,158 employees and statutory corporations have 3,01,364 employees. The organisation based composition of BCS comprising the ministries/divisions, departments and corporations in 2007 are presented in the next table and figure as follows:

Categories	Ministries/ Divisions	Departments/ Directorates	Autonomous Bodies /Corporations	Total
<i>No. of Civil Servants</i>	10517	944158	301364	1256039
<i>Percent of Total Civil Servants</i>	1%	75%	24%	100%

Table-2: Total Number and Percentage of Civil Servants in each Organisation in 2007

The above data when converted to a pie diagram it looks like the following figure;

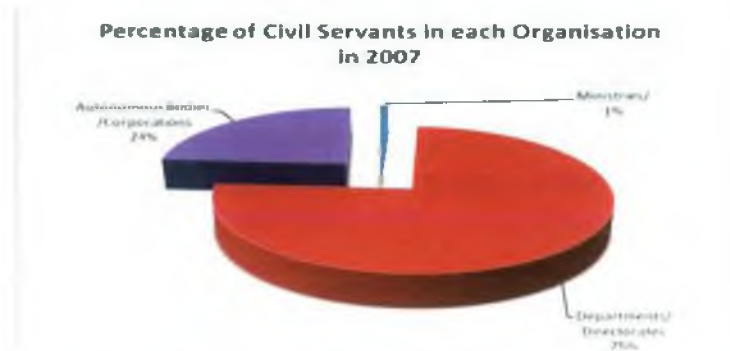


Figure-17: Organisation-wise Distribution of Civil Servants in 2007

It is evident from Table-2 and Figure-17 that 75 percent of the public servants are working in the departments/directorates. To rationalise the size of the government human resource it needs to be decided which of the agencies may be privatised, run under Public Private Partnership and modernised for improving efficiency.

The class-wise composition of the civil servants and the percentage share of each class out of the total civil servants are shown in the following Table and Figure.

Categories	Class I	Class II	Class III	Class IV	Total
<i>No. of Employee</i>	123006	72364	812062	248607	1256039
<i>Percent of Total Employees</i>	10%	6%	64%	20%	100%

Table-3: Class-wise Composition of BCS.¹⁷¹

¹⁷¹ Ministry of Establishment (MoE), *The Civil Service Census Reports (2007)*.

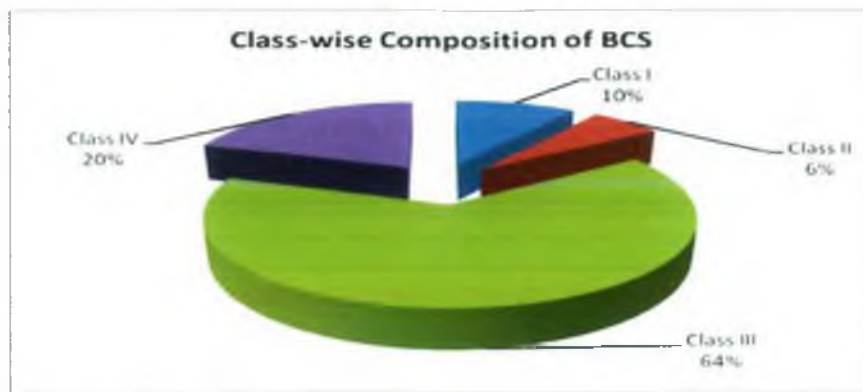


Figure-18: Class-wise Composition of BCS.

Table-3 and Figure-18 displays that Class I accounts for only 10 percent of the total civil work force of the Republic. Class III constitutes 64 percent of the total civil service. Usually they lack adequate training, skill and career planning. Class IV staffs are menial staffs and they represent 20 percent which is one fifth of the total workforce. It is said that this untrained, unskilled menial staff dominated composition of BCS is largely, responsible for its inefficiency, ineffectiveness and cost.

Modern HRP law or practice is virtually non-existent in BCS. The MoE, the key central personnel agency, has no effective mechanism to accord emphasis on such planning and is often compelled to decide rather arbitrarily the number of posts to be filled at the entry level. There is no other central agency responsible for the assessment of needs in terms of number and types in the next 5 or 10 years; nor does any linkage with educational institutions exist. The result is obvious: the universities keep on flooding the job market with generalists of whom the demand is extremely limited, while the public sector suffers from the shortage of skilled manpower. It is relevant to point out that despite the fact that poor pay characterises the public sector, the wage bill of the government is remarkably high compared with those of many other

countries of the region. An estimate shows that in 1994 it comprised 41% of government's revenue expenditure while it was only 9.14% in India and 26.2% in Malaysia. Over the years it has registered substantial increase both in nominal terms and as a percentage of GDP. This is due mainly to unwarranted increase in the staff as well as frequent salary revisions.

The external pressures and recommendations by enquiry commissions for expenditure control through downsizing public sector have had only limited impacts. The public sector is still huge in size employing more than one million people. While the problem of 'ghost workers' has largely been eliminated, the practice of recruiting staff under development budget and later absorbing them and those found redundant elsewhere into revenue budget, creation of new departments and ministries have all contributed to keep the size of bureaucracy almost unchanged.¹⁷² Rather the statistics shows that it is increasing.

1.3.2.2 Findings of the Questionnaire Survey

The views of the respondents regarding reduction of unskilled civil servants to improve the efficiency of BCS was examined in the questionnaire survey. The question dealing with this issue relating to the reduction of unskilled lower level class III and IV civil servants for improving the efficiency of BCS was responded by 413 respondents. Out of which 283 respondents constituting 68.53 percent expressed positive view for reducing them. This is pictorially depicted in fig. 19. The highest number that is 81 constituting 28.62 percent strongly agreed that efficiency of BCS can be improved by increasing numbers in skilled higher level and absorbing competent lower

¹⁷² Siddiquee, above n 3, 50.

level civil servants after retraining as needed. The second highest number being 78 constituting 27.56 percent opined that efficiency of BCS can be improved by reducing the number of lower level class III and class IV employees by creating employment opportunity elsewhere for redundant civil servants. Different views related to this issue are shown in fig. 20.

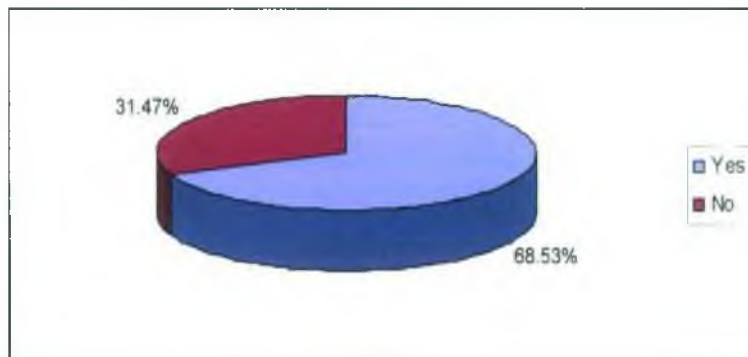


Figure-19: Showing the Percentage of Strongly Agreed Respondents about the Reduction of Unskilled Lower Level Class III and IV Civil Servant for Improving the Efficiency of BCS

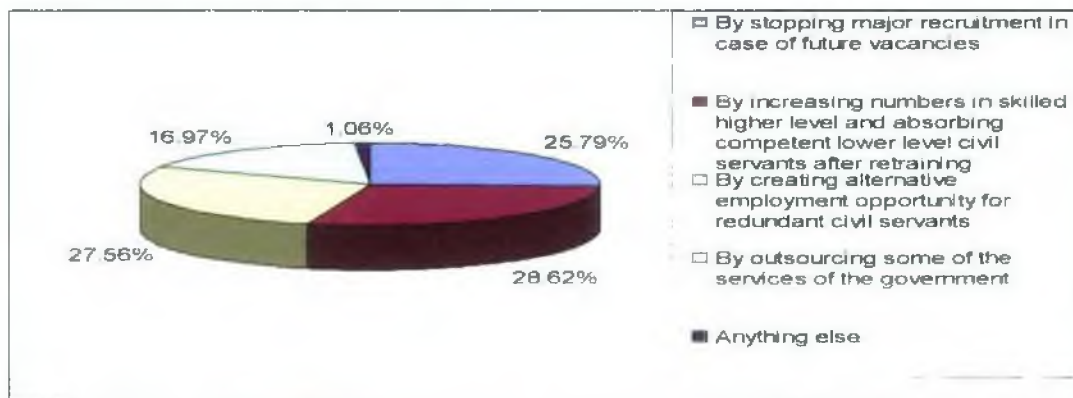


Figure-20: Showing the Percentage of Strongly Agreed Measures of how Unskilled Lower Level Class III and IV Civil Servant for Improving the Efficiency of BCS may be Reduced.

Another question enquired about the the determination of the size of civil service on regular basis and fixing an authority for the purpose, 402 respondents have responded and 285 respondents constituting 70.90 percent expressed positive response with the view. This is pictorially depicted in fig. 21. Out of these 285 the highest number of respondents that is 97 constituting 34.03 percent strongly agreed that it should be placed before experts. The

second highest number that is 87 constituting 30.54 percent strongly agreed that it should be placed before the Parliament as in India. Different views related to this issue are shown in fig. 22.

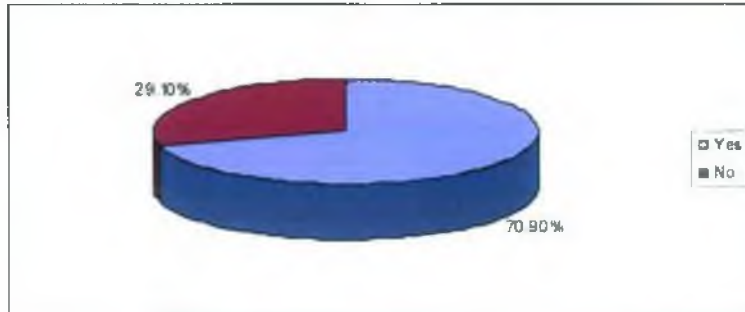


Figure-21: Showing the Percentage of Response about the Determination of Number of Civil Servants by Rules.

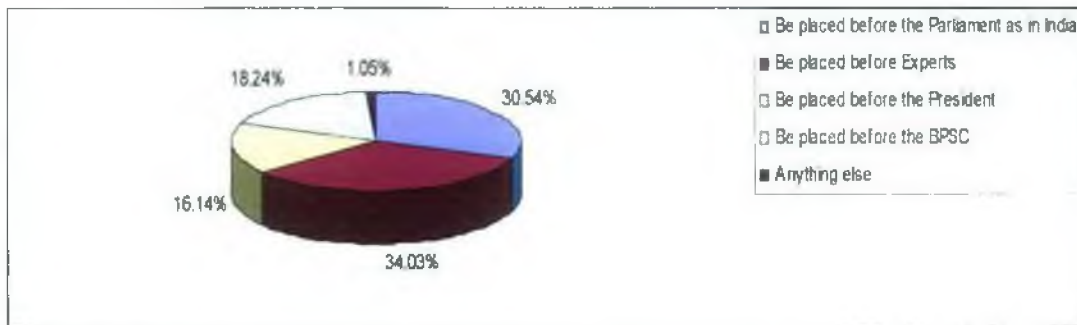


Figure-22: Showing the Percentage of Strongly Agreed Views on Methods for Determination of Number of the Civil Servants by Rules.

1.4 Recruiting

Once the government ascertains specific recruiting needs through HRP, it initiates an employment process that begins with direct recruitment and promotion. As elsewhere, in BCS the positions are filled in by a combination of direct recruitment and internal promotion. The direct recruitment to BCS posts is guided by recruitment rules and is made through competitive examinations conducted by BPSC. Recruiting activities are grouped under direct recruitment and promotion.

1.4.1 Direct Recruitment

1.4.1.1 Techniques and Practices

The first operative function of HRM is the procurement of personnel for the organisation. This is done through the process of recruitment according to predetermined standards of the quality of personnel desired for each job and specification of the number to be hired as determined through the process of HRP. Recruiting is the process of generating a pool of qualified applicants for organisational jobs.¹⁷³ Recruiting is the process of hiring qualified manpower for performing the jobs of an organisation efficiently and effectively. Recruitment involves personnel planning and using methods to build a pool of candidates so that the best employees can be recruited. The more qualified applicants you have, the higher your selection standards can be through the use of techniques such as effective testing and interviews.¹⁷⁴

Recruitment practices in HRM of BCS also involve identifying the qualified pool of candidates for BCS. The decision making with regard to recruitment is both centralised and decentralised depending on the level of recruitment. Authority is delegated to ministries/divisions and further on to the departments and subordinate offices to recruit human resource at lower levels of hierarchy of civil services. This is done on the basis of constitutional authority of the President delegated through recruitment rules approved by the President. There are separate rules for recruiting to BCS cadre and non-cadre posts. In the case of BCS cadres the administrative ministry/division managing the cadre concerned sends its demand to the Ministry of Establishment for recruitment to be made through the Public Service

¹⁷³ Mathis and Jackson, above n 152, 202.

¹⁷⁴ Dessler, above n 159, 89-123.

Commission. The Ministry of Establishment in its turn consolidates the demands of all the ministries/divisions including its own cadre and forwards the same to the commission with request to select and recommend candidates. On receipt of the requisition the Public Service Commission advertises the vacancies, holds examination including viva voce and psychological and intelligence tests. The Public Service Commission gets the qualified candidates examined medically by a medical board before selection.¹⁷⁵ The Public Service Commission then sends its recommendations to the Ministry of Establishment regarding the candidates keeping in view the quota reserved for different categories of persons and in order of merit, cadre-wise. The Ministry of Establishment arranges verification of the character and antecedents of the candidates through the Ministry of Home Affairs.¹⁷⁶ Thereafter, on satisfactory police report the Ministry of Establishment issues offer of appointment to the candidates after obtaining approval of the President. On receipt of acceptance from the candidates, formal notification of appointment is issued. A person is appointed on probation for a period of two years and is required to complete foundation training and pass the departmental examinations before s/he is confirmed to that position. Details regarding age, qualification, medical examination and other actions taken by the Public Service Commission are laid down in the relevant rules.¹⁷⁷

In case of Non-Cadre gazetted posts the recruitment is made through the Public Service Commission if it is a case of direct recruitment or promotion from non-gazetted to a gazetted post. The Public Service Commission

¹⁷⁵ *The Bangladesh Civil Service Recruitment Rules 1981*, Rule 4(3) (a).

¹⁷⁶ *Ibid.*

¹⁷⁷ *Bangladesh Civil Service (Age, Qualification and Examination for Direct Recruitment) Rules 1982.*

determines whether the selection will be made through written examination and Viva Voce or Viva Voce only. In such cases medical examination and police verification is arranged by the administrative ministry/division or the appointing authority. Details regarding age, qualification, etc. are laid down in the relevant recruitment rules. For non-gazetted posts in the Secretariat, attached departments and subordinate offices recruitment is made by the head of the office concerned. Such recruitment is made on the recommendation of Selection Committee or Divisional Selection Board of the office concerned. Details regarding age, qualification etc. are laid down in the relevant recruitment rule. Recruitment in statutory corporations is made by relevant authorities on a similar line incorporated into their respective service regulations.

The soundness of recruitment methods/techniques in HRM of BCS has been questioned by many quarters on different occasion. It is alleged that the recruitment tests are far from being objective, valid and reliable in terms of assessing the candidates' qualities and potentials. Though there are several phases that the candidates have to go through to qualify for a position, none of these is perfect. Also they do not offer any scope to measure the analytical ability, intelligence, and alertness of mind, strength of character, and or potential qualities of leadership, consequently, candidates selected turn out to be those who are 'mediocre good in memorizing rather than those who are unruffled but more thorough'. This explains, in part, the poor quality of Bangladesh's present civil service and its inefficiency in service provision.

Furthermore, the present recruitment policy has evoked serious criticisms for, among other things, centralisation, procedural delays and the failure to uphold

'merit'. It is often alleged that the principle of merit has been compromised by the adoption of quota system for certain types of people. However, in the questionnaire survey the views of the respondents in line with the above findings were examined.

1.4.1.2 Findings of the Questionnaire Survey

In this case in response to the question whether talented officers are required in civil service 417 respondents have responded. Out of the 417 respondents 391 respondents constituting 93.76 percent expressed positive view that efficient and talented officers are needed in civil service as against 26 respondents constituting only 6.24 percent expressing negative view which is pictorially depicted by a Pie Chart in fig. 23. Out of 391 the highest number of respondents that is 115 constituting 29.43 percent strongly agreed that quota system should be relaxed to fulfill the need. The second highest number that is 96 respondents constituting 24.55 percent strongly agreed that high salary and benefit package should be offered for talented and efficient officers. Different views related to this issue are shown in fig. 24.

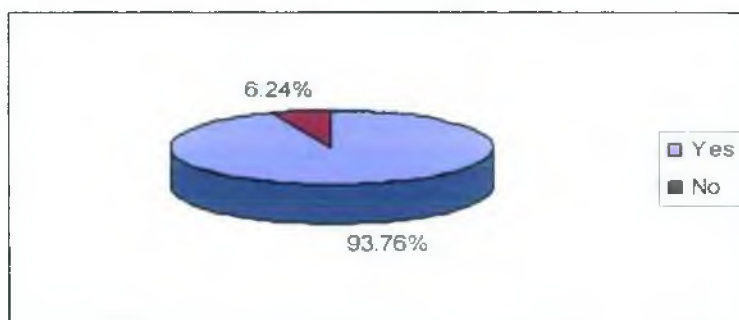


Figure-23: Showing Views Regarding the Need of Talented and Efficient Officers in BCS.

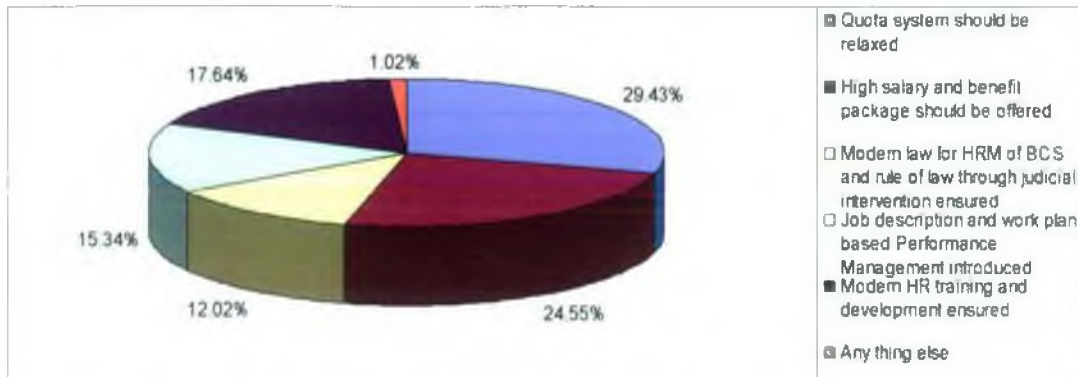


Figure-24: Showing the Respondents' Views as to how Talented and Efficient Officers may be Attracted.

1.4.2 Promotion

1.4.2.1 Techniques and Practices

Promotion is elevation or advancement of an employee from a lower to a higher level of pay and status in the organisational structure. Promotion is an appointment from a given position usually of a lower grade to a position of higher grade. The appointment involves a change of duties from lesser to a greater responsibility, this also causes a change of title and usually an increase in pay and fringe benefits.¹⁷⁸ Promotion of a government servant at the right time not only boosts the morale and commitment of the employee but also increases efficiency of the organisation to which he belongs. So it is imperative on the part of the administrative ministry/ division/ department/ corporation concerned to take prompt action on promotion cases of its employees when promotions are due. Civil service in Bangladesh is a career service that provides for a system of recruiting from within. Promotion within cadre service is governed by BCS Recruitment Rules, 1981, which stipulates that a cadre official can expect to get his/her first promotion upon completion of five years' of service, if s/he passes the promotion test conducted by PSC and obtains a favourable report from his superior. Subsequent promotions are

¹⁷⁸ Ahmed, above n 7, 168.

determined by his seniority and performance. Generally, promotions are to be based on merit plus seniority. For gazetted posts, seniority is determined by gradation list on the other hand, the merit is judged mainly on the basis of Annual Confidential Report (ACR). Thus, three elements are given consideration for promotion to higher positions. These three elements are: seniority, merit and adherence to rules of conduct or good conduct.¹⁷⁹

The administrative ministry/division is to send the names of candidates eligible for first promotion in the cadre services along with service particulars including ACRs for consideration, selection and recommendation of BPSC. The BPSC conducts written examination for employees nominated for promotion and may also interview such candidates, if it deems necessary. Upon receipt of the recommendation of the BPSC the administrative ministry issues necessary order to initiate promotion of deserving candidates. But a large number of the posts have been kept outside the purview of the BPSC. Honourable Prime Minister considers cases of promotion of officers to posts of Deputy Secretaries and above including heads of departments and all Grade-3 posts of autonomous bodies and corporations while the processing and recommendation for such posts are made by Superior Selection Board (SSB). There are also Special Promotion Committees and Departmental Promotion Committees (DPC) at each ministry/division and organisation which consider promotion of other officers. Such provisions have, in many cases, resulted in arbitrariness, in deciding promotion of officials. Promotion is an effective tool for HRM of BCS. This tool is used to ensure: attracting the best and the brightest by assuring an attractive pyramid; retention of

¹⁷⁹ Ali, above n 7,155.

professionally qualified persons and providing higher compensation package for promoted positions.¹⁸⁰

The mechanism for promotion also exhibits both centralised as well as decentralised control depending on the level of positions. Higher positions are centrally controlled by MoE acting as a secretariat of SSB, the apex body for making recommendations for promotion to be finally approved by the Prime Minister.¹⁸¹ The Board is headed by the Cabinet Secretary and consists mainly of Secretaries to the government. The process is highly centralised with a fair degree of political control. Below the higher level, decision-making on promotion is made by DPC. However, the DPC is also a recommending body consisting of representatives of relevant ministries such as Ministry of Establishment and Ministry of Finance. The final decision in case of mid-level posts rests with the relevant political authority and in other cases of lower positions with appropriate appointing and other designated authorities. Under the promotion system inherited from the British as discussed above the major criteria for promotion in BCS include seniority, merit based on performance and a clear record of service. Annual Confidential Report (ACR) is used as the basis for assessment of merit based performance. But in practice, merit could not be assessed accurately. On the other hand, ACR is often assailed as subjective and non-transparent, which tells practically nothing about an official's performance.¹⁸² Moreover, serious drawbacks in operational aspects of the promotion practices are quite evident. While promotion is generally recognised as an incentive for efficiency and higher performance in the absence of any objective criteria for assessment, the

¹⁸⁰ Ali, above n 7, 8.

¹⁸¹ No. ED/S:4-42-4/91-97, 04 December 1991.

¹⁸² Siddqui, above n 12, 93.

promotion system has failed to provide necessary incentive for improved work performance.

Officially, the criterion has been merit-cum-seniority. Since there is no yardstick to measure merit/performance objectively, seniority has emerged as the sole determining factor, unless the officer is rated 'below average'. The promotion system is, therefore, geared towards average performance. A junior officer passing the examination earlier than his senior will have his claim for promotion forfeited if the latter passes the test at a later date. Again, passing the examination is no guarantee that the official will be promoted-it is contingent on the availability of vacancies in the next higher rank. The principle of merit has again been compromised through the introduction of 'time scale promotion' for non-gazetted employees. Under the system the employees get automatic promotion to three higher levels of pay on completion of stipulated years of service. Since all employees from Grade 11-20 are entitled to time scale, the policy has not only distorted the pay structure but also created several other undesirable problems. The pay is no more related to performance; it has effectively taken away the incentives for hard work and improved performance.¹⁸³ The prevalent promotion practices should be updated to remove those anomalies.

Compliance with Equal Employment Opportunity (EEO) laws and regulations affects all other HR activities and is integral to recruiting. Civil servants must be aware of EEO requirements which is a broad concept holding that individuals should have equal treatment in all employment related actions. Individuals who are covered under equal employment laws are protected from

¹⁸³ Siddiquee, above n 3, 47-48.

illegal discrimination. The principle related to EEO in BCS is not codified in any consolidated form. Rather they are incorporated into the Constitution of the Peoples Republic of Bangladesh, 1972 and government orders in a scattered way.¹⁸⁴ The main objective of the above provision as embodied in Article 29 of the constitution is to create a constitutional right to equality of opportunity in employment in public offices. It is confined to employment or appointment to an office under the Republic subject to the exception clauses under the same article. Sub-articles (1) & (2) of this Article speak of certain positive rights with respect to EEO and Clauses 3(a), (b) and (c) are certain exceptions in respect of which the state can make laws for reservation for any backward sections of citizens, if not adequately represented in the service of the republic.

The exception clause also includes provision for prescription of professing a particular religion or belonging to a particular denomination, if the office is in connection with the affairs of any religious or denominational institution. Law can also be made reserving any class of employment or office for one sex on the ground that the nature of employment is unsuited to the members of the opposite sex. In brief Article 29(1) recognizes the general principle of EEO and declares it to be a right of all citizens in general terms. Article 29 (2) prohibits discrimination against a citizen on the ground of religion, race, caste, sex or place of birth. However, the provisions of Article. 29(1) do not exclude the laying down of selective tests, nor do they preclude the government and statutory public authorities from laying down qualifications for the posts in question. Such qualifications need not be only technical, but there can also be general qualifications relating to the suitability of the

¹⁸⁴ *The Constitution of the People's Republic of Bangladesh 1972, Article 29.*

candidate for public service. Article 29(1) or 29(2) requires that all these must be reasonable and not arbitrary and must have a rational relationship with the suitability of the candidates for the post or office. Educational criteria are acceptable for determining suitability for appointment to a particular post. Thus, the different educational qualifications prescribed for different posts in the Recruitment Rules of different departments are constitutional and valid. The recruitment system is dominated by the system of written examination on general educational capabilities as suggested by Macaulay in 1854 and has not been updated.

Article 29 (3) gives a permissible basis to make certain exceptions to the general right on certain grounds. The government has introduced the quota system as an exception to the general rights under the above mentioned principles. The quota system¹⁸⁵ provides that the vacancies in the various categories of posts in government offices are reserved and shall be filled on prescribed quota basis. A very significant cause of concern is the current recruitment policy, which allows laxity for certain types of people at the expense of quality and merit.

As noted above, merit has been relegated to a secondary position and the purpose of building a first-rate civil service has been frustrated by continuous reliance on the quota system. The present policy neither provides equality of opportunity for all nor ensures the selection of the best and the brightest. Since 55 percent of the positions are filled in through the quota system, relatively inferior candidates from certain districts/background make entry into the civil service. Quota for women, districts, wards of freedom fighters

¹⁸⁵ *No. Sha Ma(Bidhi-1)-s-8/95(Part-2)-56(500)*, 17 March 1997.

and tribal population though defensible under certain considerations, are inconsistent with the principle of merit-based recruitment. This has already affected the quality of civil service in general and fuelled factionalism within the civil service on regional, gender and/or other grounds. Thus, instead of developing esprit de corps and a robust civil service the quota system has heightened tensions between and among various groups exempli gratia, generalists and specialists, quota appointees and those appointed on the basis of merit, freedom fighters and non-freedom fighters. Neither has the quota system made any substantial progress in achieving overall demographic representation in the civil service. As unfilled quotas reserved for women, and tribal people are usually distributed among different districts on the basis of population, larger and well-represented districts benefit more making the whole idea of representative bureaucracy absurd.

1.4.2.2 Findings of the Questionnaire Survey

In the questionnaire survey the views of respondents with regard to promotion were explored in respect of existing criteria for promotion and justness and impartiality of the promotion system. In the first question relating to propriety of existing promotion criteria, 432 respondents have participated in this question and out of them 216 respondents expressed positive response with the view and the other 216 held that they were not proper and thus the respondents were equally divided in their opinion as shown in fig. 25. The highest number of non-agreeing respondents that is 39 constituting 18.05 percent strongly agreed that work plan based objective performance appraisal results should be the proper criteria for promotion. The second highest number that is 38 constituting 17.60 percent strongly agreed that seniority

cum merit should be the proper criteria. Different views related to this issue are shown in fig. 26.

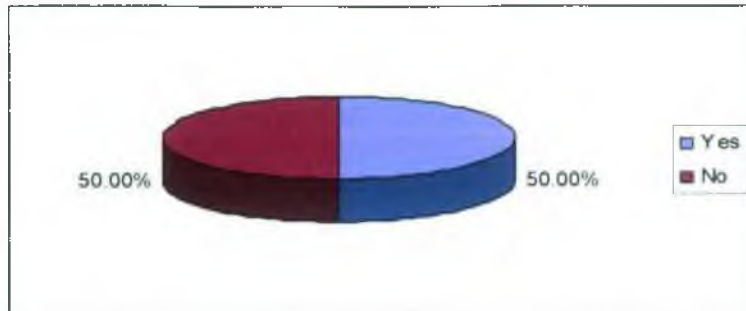


Figure-25: Showing the Percentage in Response about the Existing Criteria for Promotion

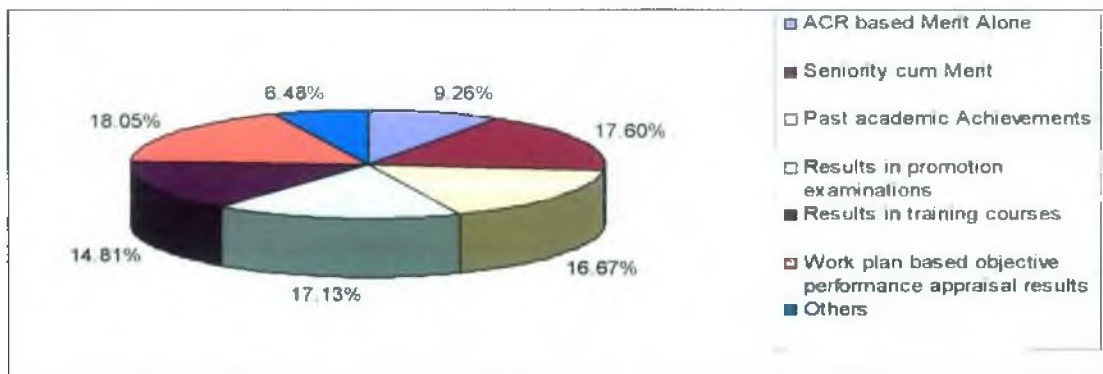


Figure-26: Showing Respondents' Views Relating to Proper Criteria for Promotion

With regard to the second question dealing with justness and impartiality in the existing promotion system, 414 respondents have responded. Among them 327 respondents constituting 78.99 percent expressed positive view holding that the existing promotion system should be made more just and impartial as shown in fig. 27. Out of those 327 the highest number that is 122 constituting 37.32 percent strongly agreed that examination at each level for promotion will make it more justified and impartial. The second highest number of respondents that is 111 constituting 33.94 percent strongly agreed that appropriate laws should be made for justified and impartial promotion system. Different views related to this issue are shown in fig. 28.

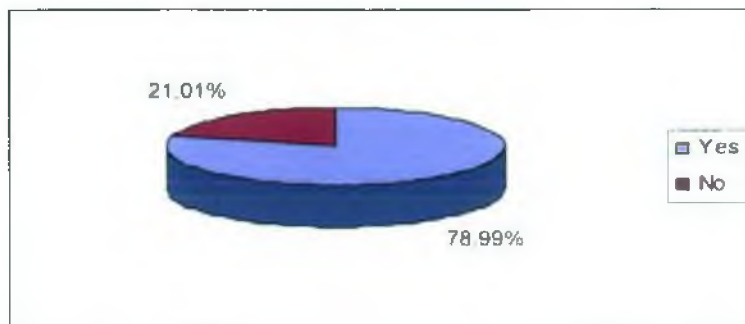


Figure-27: Showing the Percentage in Response about Formulation of More Justified and Impartial Promotion System

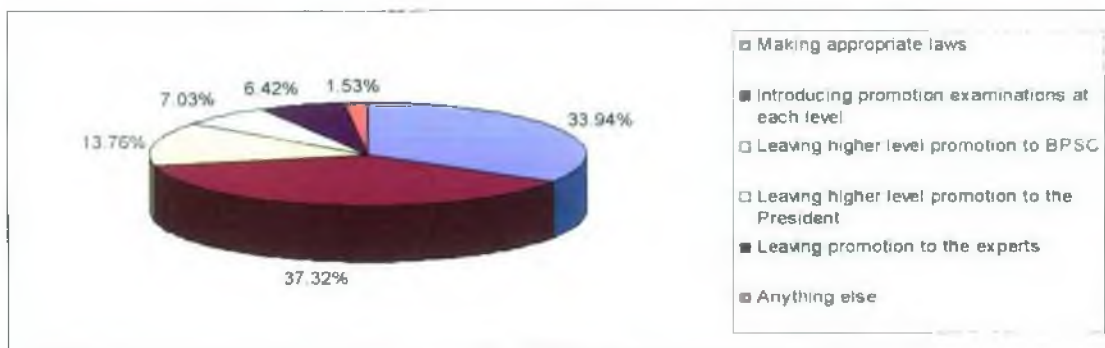


Figure-28: Showing Views as to how to Formulate More Justified and Impartial Promotion System

1.5 Performance Management

Performance appraisal means evaluating an employee's current or past performance relative to the person's performance standards. Performance management involves (i) setting work standards, (ii) assessing the employee's actual performance relative to these standards, and (iii) providing feedback to the employee with the aim of motivating that person to eliminate deficiencies or to continue to perform above par.¹⁸⁶ The institutionalisation of a performance and results orientation in public sector agencies continues to be a primary focus of government. In developed countries laws have been made and implemented to enable public sector agencies to increase performance and results in line with their respective set organisational mission and objectives.

¹⁸⁶ Dessler, above n 159, 241.

1.5.1 Concepts and Techniques of Modern Performance Management

The modern practice of PM requires every organisation to establish a system of performance management in line with its goal(s) to ensure that set targets and results are achieved. For this purpose identification of suitable Key Functions for Success (KFS), verifiable indicators and performance standards which are relevant, translating required performance to jobs and linking it to overall HRM must be done for modern performance management.

Government organisations are established to undertake functions in order to fulfil the specific needs of the public and the nation as specified by policies enunciated by the government. In line with set policies, every organisation has its own objectives and functions. These functions are carried out through the implementation of specific programmes and activities. To enable organisations to implement their programmes and activities, the government allocates certain resources. In utilising these resources, it is mandatory for the organisations to abide by prevailing laws and regulations to ensure fiscal, managerial and programme accountability. This requires organisations to establish/identify the key functions for success of the organisation and to measure the performance of their programmes and activities intended to be undertaken to perform those functions.

Performance measurement involves establishing indicators and performance standards and the systematic gathering, analysis and reporting of information on the performance of programme and activities to relevant authorities who have the right to this information. Measurement of programme and activity performance could be viewed from two aspects, namely: (i) Efficiency: The efficiency aspect measures the extent to which the resources of an agency are

utilised optimally to produce outputs (goods or services); e.g. Efficiency= Output/Input, HR efficiency = Total Product/Total HR Cost. (ii) Effectiveness: The effectiveness aspect measures the extent to which the objectives of a programme or activity are achieved. To facilitate the measurement of effectiveness, it is necessary that the objectives set be specific, measurable and realistic in terms of the intended effect and impact, e.g. rate of increase in revenue collection; percentage of applications disposed within time; percentage of increase in customer satisfactions. Information pertaining to the efficiency and effectiveness of programme and activities will enable management to evaluate: (i) the achievement of programme and activity objectives, (ii) the relevance of a programme or activity in fulfilling the needs identified or in resolving current problems, and (iii) the extent to which resources have been used optimally.¹⁸⁷

A performance standard can be defined as a management tool that is used to measure the performance of a programme or activity. Information obtained from performance standard could be used to evaluate the performance of a programme or activity. In addition, standards assist management in planning and implementing corrective measures as well as for improving the decision making process in the agency. Performance standards are based on specific key functions for success used for evaluating a particular programme or activity. The common forms of measurement pertain to specific aspects of the output such as quantity, quality, timeliness and cost. The characteristics of a good performance standard are: (i) Crucial or at least relevant in determining the performance of the programme or activity being evaluated, (ii) Quantitative as far as possible to enable measurement and analysis, (iii) Cost

¹⁸⁷ Sarji, above n 149, 615.

effectiveness with regard to its formulation and usage, and (iv) Based on verifiable data. In addition, the number of standards for each programme or activity should be appropriate to enable analysis and facilitate understanding.¹⁸⁸

The organisational goals as expressed in terms of missions and objectives are achieved through organisational performance. This requires performance to be sub-divided into different departments or divisions which is cascaded down to different sections and ultimately to the individual levels and incorporated into their job descriptions. As a result the sum total of the performance of all individuals of the organisation is the organisational performance required to achieve the desired results targeted and expressed in terms of missions and objectives of the organisation. The performance management must be transparent and results used in overall HRM. Thus Malaysia has enacted law providing for performance related pay to recognise and reward and thereby motivate better performance.

1.5.2 Performance Management Practices in BCS

There is no enactment or any serious endeavour providing for introduction or practice of modern performance management system in HRM of BCS. There is a system of routine evaluation of the performance of civil servants which dates back to the British period. The long-standing system of Annual Confidential Report (ACR) written on the ability, productivity and personal trait of the officer, serves as the basis for performance assessment. The ACR that evaluates the conduct of an officer on a rank from 'very good' to 'below average' is regarded as an important document in that it is to be taken into

¹⁸⁸ Surji, above n 149, 620.

account at all stages of his career e.g. posting, transfer, promotion, deputation, training and incentives. Usually the ACR of an officer is written by his superior and countersigned by an officer higher than the reporting officer. The present system of appraisal is largely subjective, for it depends purely on the subjective judgment and evaluation made by reporting officer. The ACR is not based on job performance. Rather it measures personal traits. It is confidential and hence, does not give any feedback to the incumbent official. It lacks objectivity and does not encourage innovation and creativity. Reporting is often based on blurred memory rather than on any systematic documentary basis and often used as a tool of harassment. Furthermore, this system does not link performance to other HRM activities in real life. Moreover, ACRs prepared by officials reflect numerous contradictions and irregularities, which often delay and complicate government decisions pertaining to upgradation and promotion of officials. Thus, ACR has lost much of its value and there is an urgent need for its replacement with a more objective, rational and scientific method of performance management. In Bangladesh, the performance appraisal format known as ACR is used annually to assess the officials' performance. Merit is determined solely on the basis of marks obtained in the ACR.¹⁸⁹

1.5.3 Improving Performance Management in BCS

As pointed out above, the existing mechanism of ACR is inherently problematic as it fails to realistically measure levels of individual's performance. As indicated, it is too subjective and hence fails to provide any fair and objective evaluation of one's job performance. As a matter of fact, performance appraisal has become an annual ritual of no practical

¹⁸⁹ Ali, above n 11, 166.

significance. It is seen merely as a means of legitimating promotions. Rarely, does it focus on performance improvements. Since the officer reported is kept in dark about the content of the report there is little or no scope for constant updating and performance improvement. Usually, ACR is studied after several years when a promotion case is to be processed, thereby revealing that the officer had performed poorly. So job description based and organisational goal/result oriented objective PM system should be introduced to improve efficiency and effectiveness of BCS. Appropriate legislation and judicial intervention may also play a very important role in this regard.

PM should be related to compensation and other HRM activities. Although the government has from time to time adjusted the compensation system to make it consistent with the cost of living, still it is far from rational. Salary increases are not tied to merit and performance leaving the efficient and inefficient on the same boat. Thus, it is common for officials- irrespective of their work performance to expect an automatic pay hike at the end of the year. Furthermore, the present compensation system is characterised by equal pay for unequal tasks. The salary structure does not allow differences in skills, education levels, and nature of jobs. Hence, all officers entering Class I positions receive the same salary. It also shows a decline in absolute and relative levels of salaries over the years. An estimate shows that compared to 1962 base, the basic pay of a Secretary has declined by 87 percent. This is largely because of government's policy of expanding employment while eroding salary. It is seen as a major cause for low efficiency, poor morale, and corrupt tendencies among civil servants. It is not unreasonable to assume that

such a trend, if allowed to continue, will have serious impact on the civil service, especially in attracting and retaining the best and the brightest.¹⁹⁰

Training may also help to improve performance. Properly designed and implemented training will develop knowledge and skills of civil servants to perform their current duties more efficiently and develop their capacity for undertaking higher responsibility in future. Training may be both on the job or institutionalised. Members of BCS learn on their jobs under the guidance of their superiors. They are also trained in the training institutes at different stages of the career. There is at least one training institute for each cadre. BPATC provides generalised training for all cadres. But the training capacity is not adequate. There is no legislative enactment providing for need based appropriate training design, implementation, monitoring and updating.

1.5.4 Findings of the Questionnaire Survey

In line with the above findings four questions were devoted to explore the area of performance management. The first question obtained views of respondents on the point whether the performance management system in HRM of BCS should be changed, 403 respondents have responded to the question and out of them 391 respondents constituting 97.02 percent expressed positive view that performance management system in HRM of BCS should be changed. This is pictorially depicted in fig. 29. Out of these 391 respondents the highest number of respondents that is 155 constituting 39.64 percent strongly agreed that it should be done by introducing objective and result oriented performance management. The second highest number that is 106 constituting 27.11 percent strongly agreed that it can be achieved by

¹⁹⁰ Siddiquee, above n 3, 49-50.

linking PM to other HRM of BCS activities. Different views related to this issue are shown in fig. 30.

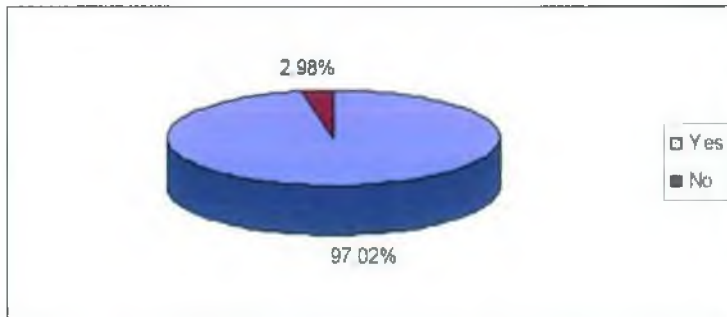


Figure-29: Showing the Percentage Response about Performance Management System in HRM of BCS

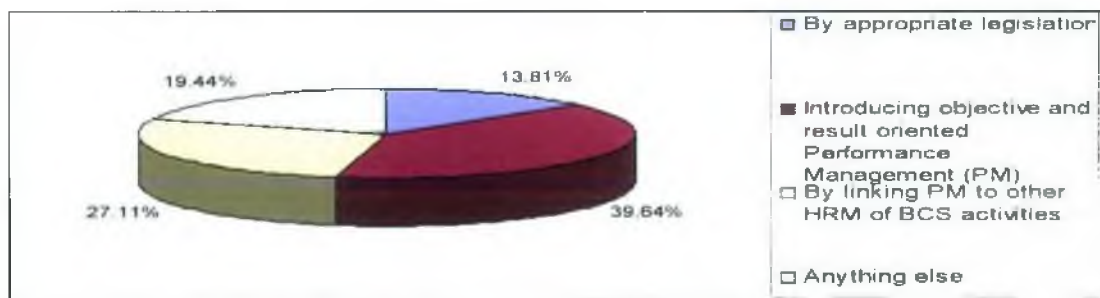


Figure-30: Showing how Performance Management System in HRM of BCS Should be Changed

The second question dealing with PM focuses on the acceptability of the Annual Confidential Report (ACR) as a tool of PM, 411 respondents have responded to the question and 329 respondents constituting 80.04 percent have expressed positive response with the view supporting the change. This is pictorially depicted in fig. 31. Out of those 329 the highest number of respondents that is 127 constituting 38.60 percent strongly agreed that participatory and open ACR system should be introduced. The second highest number that is 101 constituting 30.70 percent strongly agreed that ACR should be job description and work plan based. Different views related to this issue are shown in fig. 32.

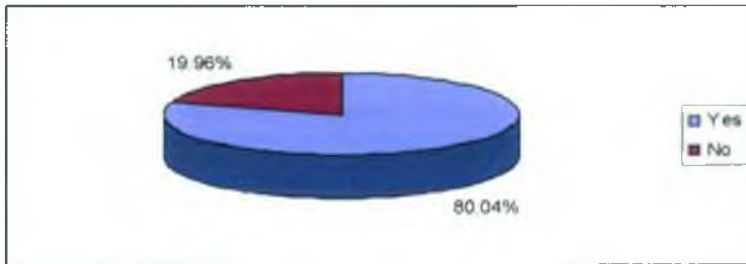


Figure-31: Showing Views on the Changing of Existing Annual Confidential Report (ACR) System

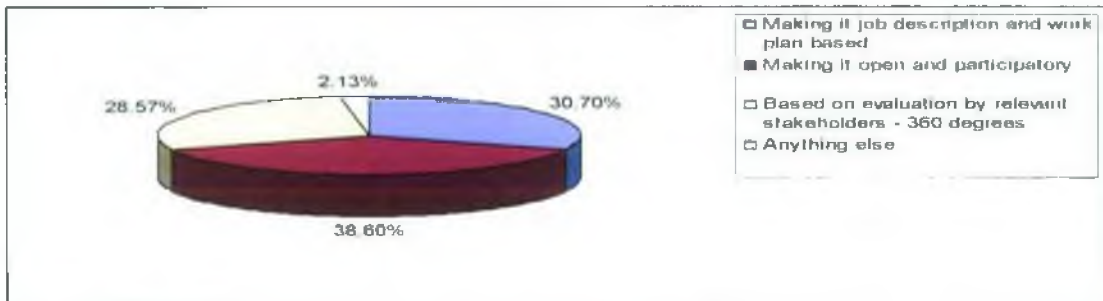


Figure-32: Showing Views as to how to Change the Existing ACR System

As regards the third question related to PM whether BPATC and other training institutions are sufficient for HRM of BCS, a total of 411 respondents participated out of which 128 constituting 31.15 percent responded in the affirmative and the remaining 283 constituting 68.85 percent responded negatively. This is pictorially depicted in fig. 33. Out of the negative view holders the largest number of 123 constituting 43.46 percent identified that the reason for insufficiency is lack of modern and improved training facilities while another 96 respondents constituting 33.94 percent identified lack of adequate, improved and updated laws and rules for training. Different views related to this issue are shown in fig. 34.

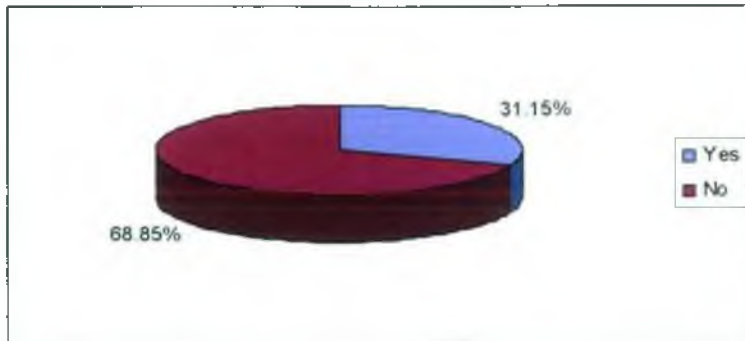


Figure-33: Showing Sufficiency of the Training Provided by BPATC and Other Training Institutions.

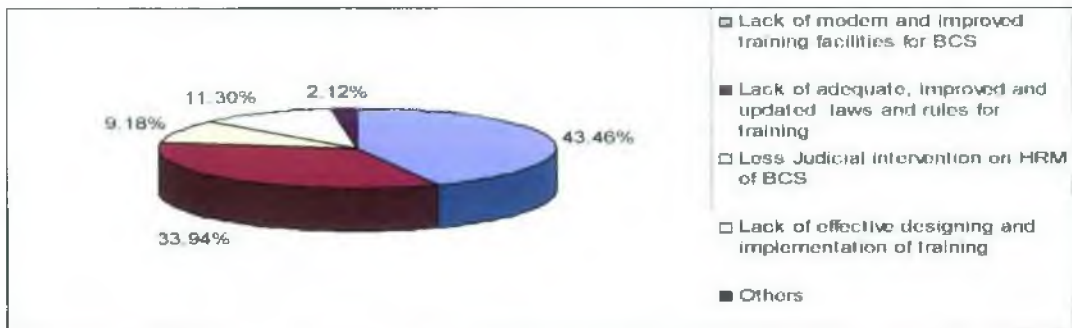


Figure-34: Showing Views as to Insufficiency of Training Provided by BPATC and other Training Institutions for HRM of BCS.

The fourth and last question related to PM focused on the effectiveness of training programmes for civil servants, 408 respondents have responded to the question. Out of them 375 respondents constituting 91.91 percent held that the training programmes for civil servants should be made more effective. This is pictorially depicted in fig. 35. Out of these 375 the highest number of respondents that is 248 constituting 66.13 percent strongly agreed that need based designing and implementation of training programmes can make it more effective. The second highest number that is 62 constituting 16.53 percent strongly agreed that proper monitoring of results and updating of training programmes can make it more effective. Different views related to this issue are shown in fig. 36.

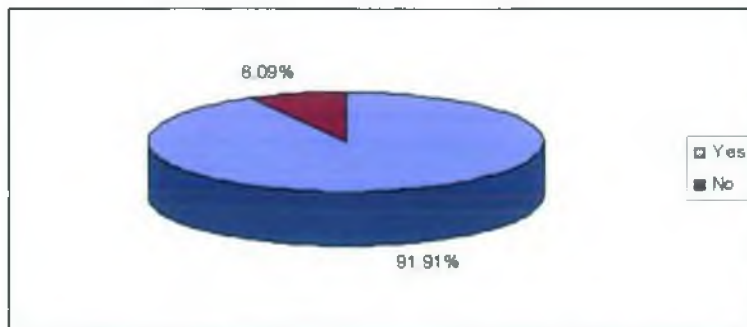


Figure-35: Showing the Percentage of Responses about Effectiveness of Training Programme for Civil Servants.

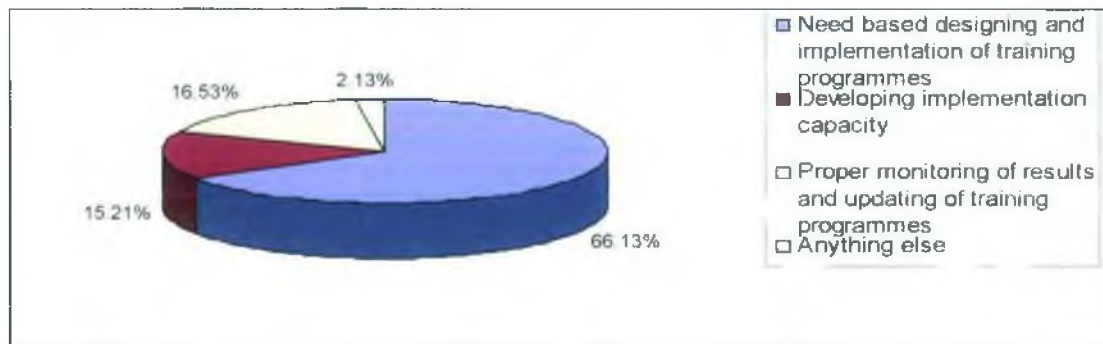


Figure-36: Showing the Percentage of Responses Holding Different Views as to how Training Programme for Civil Servants can be Made More Effective.

1.6 Discipline

1.6.1 General Provisions Regarding Discipline

Discipline is an essential aspect of civil service. This is exercised through rules of conduct to which a civil servant is subject. The mechanism for enforcement of discipline in civil service is exercised through defined rules of conduct.¹⁹¹ Discipline is a process that enforces organisational rules. The disciplinary system can be viewed as an application of behaviour modification to problem or unproductive employees. The best discipline is clearly self-discipline. When people understand what is required at work they can usually do their jobs effectively. It is also believed that the prospect of external discipline helps self-discipline. This philosophy has led to the development of

¹⁹¹ Ali, above n 11, 137.

the positive discipline approach. A fair and just discipline process is based on three prerequisites: rules and regulations, a system of progressive penalties and an appeal process.¹⁹² Discipline is best thought of as a form of training. Although self-discipline is the goal, sometimes positive or progressive discipline is necessary to encourage self-discipline.¹⁹³ Common disciplinary issues caused by problem employees include, inefficiency or productive deficiency, absenteeism or desertion from work, misconduct including insubordination, corruption and subversion.

1.6.2 Disciplinary Practices in BCS

There are laws and rules enacted by successive governments since the British time and adopted by the government in order to discipline public officials for inefficiency, insubordination, misconduct, and corruption. There are five sets of Rules/Ordinances relevant to discipline among employees of BCS. These are (i) The Government Servants Conduct Rules, 1979, (ii) The Government Servants (Special Provisions) Ordinance, 1979, (iii) The Public Employees Discipline (Punctual Attendance) Ordinance, 1982, (iv) The Government Servants (Discipline and Appeal) Rules, 1985, and (v) The Public Servants (Dismissal on Conviction) Ordinance, 1985. There are some references to public servants' conduct and discipline in the Bangladesh Service Rules (BSR) and Fundamental Rules and Supplementary Rules (FR&SR). Many administrative circulars have also been issued on this subject.¹⁹⁴ Moreover, some constitutional provisions are also relevant to conduct and discipline of civil servants. The disciplinary rules mentioned above also derive their

¹⁹² Dessler, above n 159, 297.

¹⁹³ Mathis and Jackson, above n 152, 538.

¹⁹⁴ Siddiqui, above n 12, 80-81.

authority from the Constitution.¹⁹⁵ The rules/orders allow disciplinary actions like dismissal from service, suspension, demotion, and reduction in pay. The disciplinary measures are to take the shape of departmental proceedings and are seen as quasi-judicial in nature. A penalised official, however, has the right to appeal against any order to an authority immediately superior to the appointing authority. Also there are administrative tribunals with exclusive power to adjudicate the complaints against the government by aggrieved civil servants.

Notwithstanding several legal provisions, the present status of discipline in the civil service is far from satisfactory. Though corruption, inefficiency and mismanagement are endemic in administration, actions are not initiated against those involved for a variety of reasons. Most often pressures from service associations and political factors make the personnel control infeasible. In addition to these, sometimes the process is too cumbersome which discourages concerned official to take any action. Lack of job descriptions and other standards for non-performance or poor performance of tasks, makes it difficult for heads of departments to take any action against non-performing officials. As such, dismissal or reversion on ground of inefficiency is a rare event. As a matter of fact, no civil servant has ever lost his job for non- performance or poor performance of his/her job. Usually soft options in the form of convenient transfer are attempted with or without results.¹⁹⁶

¹⁹⁵ *The Constitution of the People's Republic of Bangladesh 1972.*

¹⁹⁶ Siddiquee, above n 3, 50-51.

One of the undesirable developments in the public service in recent past years was the increased lack of discipline among civil servants. Frequent agitations and strike in the highest seat of the government spoke of the poor enforcement of discipline in public service. The secretariat witnessed such strikes very often called mostly by lower level employees. Although such programmes are forbidden by rules and strike laws are available to discipline and summarily dismiss civil servants on ground of strikes, rarely actions were taken against them. While employees do such things with impunity under the banner of so-called welfare associations, the government does not dare to be tough fearing that the opposition may join hands with civil servants. Instead, the government has always shown tolerance to this, made negotiations with agitating employees and conceded to many of their demands in an attempt to quell the situation. Thus disorder and violence were rewarded.¹⁹⁷

1.6.3 Improving Discipline in BCS

There are a number of areas where discipline deserves to be improved and made more effective, in order to maintain high morale and ethical standards in BCS in a rapidly changing situation.¹⁹⁸ The following actions are suggested: Firstly, there should be an automatic and permanent process to review existing administrative rules/regulations, including those on discipline of the employees and their implementation. Obviously, the government at the policy making level should be the prime mover in this regard. During the deliberations, wide consultation with officials and informed segments of the society would be of utmost importance. The establishment of the Ombudsman

¹⁹⁷ Siddiquee, above n 3, 50-51.

¹⁹⁸ Siddiqui, above n 12, 81-82.

system as envisaged in the Constitution may also be very helpful in this regard.

Secondly, after the specific improvements have been accepted, the five sets of rules, the FR&SR and BSR provisions, the relevant constitutional provisions and pertinent administrative circulars on conduct and discipline should be amalgamated to produce a single legal code. Based on this code, the government should bring out a booklet in Bangla in ordinary non-legal language for wide distribution among employees, particularly the fresh entrants.

Thirdly, in effecting improvements mentioned earlier, the government should be able to delete, amend and add to the existing provisions in the light of objective conditions and our democratic norms and values. Thus, involvement of the Public Service Commission in the disciplinary process seems quite unnecessary, since there is adequate provision for redress in the administrative tribunals. Similarly, the provision for appeal to higher administrative authorities also needs to be examined carefully.

Finally, to improve the existing code of ethics, conduct and discipline we should have as few provisions as possible in the conduct and discipline rules but ensure their fullest implementation across the board. At the same time, we should avoid vagueness, red tape and impracticability in deciding on the various provisions of rules.¹⁹⁹

¹⁹⁹ Siddiqui, above n 12, 81-85.

1.6.4 Findings of the Questionnaire Survey

In line with the above findings and suggestions the views of respondents were examined in the questionnaire survey. The first suggestion has already been corroborated by finding in the questionnaire survey. The HRM unit at the central level as suggested by respondents earlier may perform this function.²⁰⁰ As regards second and fourth suggestions relating to effectiveness of the current discipline practices in HRM of BCS, 440 respondents have responded to the question relating to the ineffectiveness of current disciplinary practices for BCS, in which 296 respondents constituting 67.27 percent expressed positive response with the view that the present disciplinary practices are not effective. Out of those 296 the highest number of respondents that is 115 constituting 38.85 percent strongly agreed that imparting well-designed training can improve effectiveness of the current disciplinary mechanism. The second highest number that is 112 constituting 37.84 percent strongly agreed that introducing reward and punishment system can improve it. Different views related to this issue are shown in the following Pie Charts:

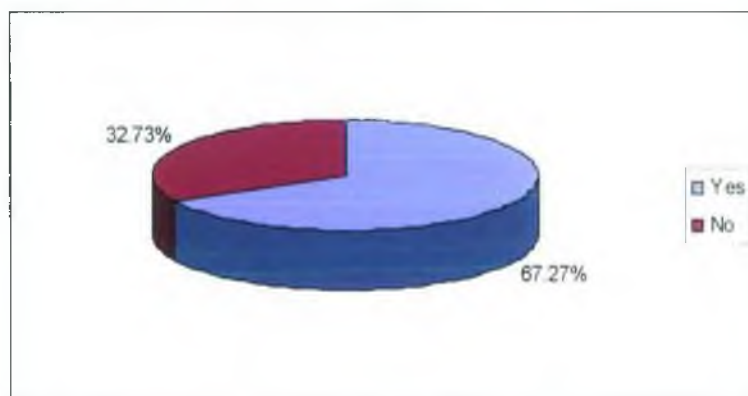


Figure-37: Showing the Percentage of Responses about Effectiveness of Current Disciplinary Mechanism

²⁰⁰ See Page 79-80

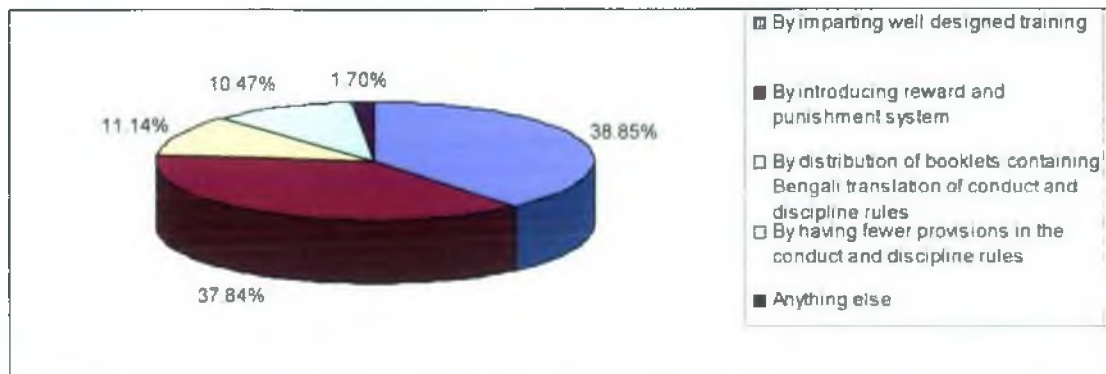


Figure-38: Showing the Percentage Response Holding Different Views as to how Effectiveness of Disciplinary Mechanism can be Improved.

The third suggestion was subjected to the views of the respondents. The view of the respondents was in favour of continuing the present involvement of BPSC and higher executive appellate authorities in the disciplinary process.²⁰¹ They did not support the idea that they should be relieved from the responsibility in disciplinary matters. It implies that BPSC and concerned authorities should have enough strength in the HRM unit to deal with these issues.

1.7 Summary and Assessment

Bangladesh Civil Service faces challenges and problems along with limitations in its current HRM of BCS practices. Traditional rules, policies and practices of BCS were inherited from Pakistan and British-India. Those rules still continue and dominate the HRM of BCS. Several attempts were made at reforming and modernising the civil service since independence. Despite all these moves, it is obvious that Bangladesh has failed to devise and practise an appropriate and efficient system of HRM of BCS. Lack of commitment on the part of the civil servants and lack of strong political will

²⁰¹ See Page 72-73.

to improve HRM of BCS mainly accounts for this failure. The present approach to HRM is clearly unsatisfactory and needs extensive updating. There are multitude of anomalies and deficiencies including the lack of HRP, inappropriate recruiting policy and practice, discriminatory system of promotion, absence of any objective PM and linking it to other activities of HRM as well as deficient disciplinary practices.

The findings of the questionnaire survey also corroborate the above findings. The findings of the questionnaire survey as regards HRM of BCS in general majority of the respondents opined that lack of commitment of civil servants and lack of modern HRM are the main problems of HRM of BCS. The factors that historically contributed to the development of the problem is the lack of strong political will to improve HRM of BCS. The respondents agreed that the most important areas of HRM of BCS were HRP, Recruiting, PM and Discipline and these areas are the focus of this study.

In brief, the major views of respondents participating in the questionnaire survey regarding HRP were that every government organisation should have set goal and this goal should form the basis of HRP and PM. The efficiency of BCS can be enhanced by increasing skilled higher level employees and absorbing competent lower level employees after retraining and reducing unskilled lower level posts.

As regards recruiting, both direct recruitment and promotion were subjected to the views of the respondents. With respect to direct recruitment the majority of the respondents viewed that the quota system should be relaxed and higher salary and benefits should be offered for attracting and retaining

talented and efficient officers. As regards promotion, the critical view is that the existing criteria for promotion is not proper and that workplan based objective performance appraisal results should be the proper criteria for promotion. Promotion examination at each level and proper legislation was suggested for developing proper criteria for promotion.

As regards PM several views were expressed by the respondents. It was opined that PM should be done by objective and result-oriented performance appraisal and linking PM to other HRM activities. It was also opined that ACR should be open, participatory, job description and workplan based. The existing training institutes were evaluated as inadequate due to lack of modern and improved training facilities. The training provided was considered ineffective. It was opined that need-based design and implementation of training as well as proper monitoring of training results and updating of training programmes will improve effectiveness of training.

According to majority of respondents present disciplinary practices were viewed as ineffective. Well designed training and reward and punishment system will improve effectiveness of disciplinary mechanism. These deficiencies combined with bureaucratic corruption and increasing incidence of politicisation adversely affect the quality and performance of civil service. They also pose a great challenge for the future in that they stifle the flowering of merit, professionalism and integrity in the civil service. The next chapter analyses the legal issues of HRM of BCS.

CHAPTER IV

HUMAN RESOURCE MANAGEMENT OF BANGLADESH CIVIL SERVICE: A LEGAL ANALYSIS

1.0 Prelude

It has already been stated in the previous chapter that effective Human Resource Management (HRM) of Bangladesh Civil Service (BCS) is important for Bangladesh. In this Chapter, it is intended to analyse the existing legal provisions providing for HRM of BCS functionalities and for judicial intervention in the major areas of HRM of BCS namely, Human Resources Planning (HRP), Recruiting, Performance Management (PM) and Discipline. Government of Bangladesh initiated several steps towards improving HRM of BCS. However, those steps are not enough to make a modern and updated civil service. Moreover no significant measure relating to updating laws, rules and regulations dealing with HRM of BCS has been undertaken to incorporate the modern practices of HRM and to make the BCS ready for the present day. Due to lack of modern and updated laws relating to HRM of BCS, advancement of BCS compared to the other developed countries even the neighbouring country of India is the minimal.

This chapter will examine and analyse the legal issue and related findings of the questionnaire survey. Section 1.1 examines the laws relating to HRM of BCS in general, Section 1.2 analyses laws related to HRP, Section 1.3 scrutinises law related to recruiting, Section 1.4 deals with laws related to PM, Section 1.5 examines Disciplinary laws, Section 1.6 analyses the findings of the questionnaire survey, regarding law related to specific areas of HRM of

BCS. Section 1.7 concentrates on laws related to judicial institutions dealing with HRM of BCS and finally Section 1.8 is the summary and assessment.

1.1 Laws Relating to HRM of BCS

1.1.1 Related Laws

HRM of BCS is operated within the framework of the Constitution and a plethora of statutory and non-statutory laws, rules and regulations framed thereunder. The constitution and other regulations adopted from time to time, provide the legal framework for HRM of BCS. Relevant provisions of the constitution provide for equality of opportunity for all citizens in public employment and empower the government to enact laws regulating appointment and terms and conditions of service of persons in the service of the republic. Rules lay down government's power to deal with civil servants as well as safeguard the rights and privileges of civil servants. Civil servants in Bangladesh have the right to seek the protection of a court of law and or administrative tribunals in the event of infringement of their rights and privileges.²⁰² The relevant constitutional provisions and statutory and non-statutory laws, rules and regulations relating to different areas of HRM of BCS are examined and analysed below.

Bangladesh Constitution provides constitutional basis for HRM of BCS. The constitutional provisions relating to the services of Bangladesh for persons in the service of the republic including BCS are provided in chapters I and II of Part IX.²⁰³ Chapter I Article 133 of the Bangladesh Constitution provides for service law making by Parliament and where no such law is made by

²⁰² Siddiquee, above n 3, 35-60.

²⁰³ *The Constitution of the People's Republic of Bangladesh 1972*. Articles 133 - 141.

Parliament then rule making by the President. Presidential rules are special laws and not supreme laws and as such are always subject to any Act made by Parliament. Such Act or rule will be made subject to other provisions of the constitution and to regulate appointment and conditions of service of persons in the service of the republic.²⁰⁴ The Presidential rules and executive instructions, guidelines and schemes made under the authority of the constitution provided in Article 55(6) have full constitutional validity when made for gap filling and when these are not inconsistent with the constitution, or any statutory or Presidential rule. The existing constitutional provisions dealing with HRM of BCS are as follows.

Bangladesh Constitution lays down the rights and privileges of persons in the service of the republic. A person in the service of the republic has a legally defined status and is entitled to enjoy his rights and privileges according to his service rules. If he is deprived from these privileges, he may claim his rights according to the service rule filing a petition in the court or tribunal. In case of violation of service rights incorporated into the constitution the Bangladesh Constitution itself is the shelter of an employee.²⁰⁵ Except as otherwise provided by the constitution every person in the service of the republic holds office during the pleasure of the President.²⁰⁶ This provision is just an adaptation of the British principle on the point.²⁰⁷ A person who holds any civil post in the service of the republic cannot be dismissed or removed or reduced in rank by an authority subordinate to that by which he was appointed. A person cannot be dismissed or removed or reduced in rank until

²⁰⁴ *The Constitution of the People's Republic of Bangladesh 1972*, Article 133.

²⁰⁵ *Ibid* Article 102.

²⁰⁶ *Ibid* Article 134.

²⁰⁷ *The Government of India Act 1935*, Section 241.

he has been given a reasonable opportunity of showing cause as to why that action should not be taken. Exception to this principle is indicated below. The above requirements are not applicable: (i) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction of a criminal offence, or (ii) where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for a reason recorded by that authority in writing, it is not reasonably practicable to give that person an opportunity of showing cause, or (iii) where the President is satisfied that in the interests of the security of the state, it is not expedient to give that person such an opportunity. If in respect of such a person the question arises whether it is reasonably practicable to give him an opportunity to show cause as aforesaid, the decision thereon of the authority empowered to dismiss or remove such person or to reduce him in rank shall be final. Where a person is employed in the service of the republic under a written contract and that contract is terminated by due notice in accordance with its terms, he is not, by reason thereof, to be regarded as removed from office for the purposes of Article 135.²⁰⁸ These provisions are reproduced from the British legal system with marginal modifications only.²⁰⁹

One important rule is the Rules of Business, 1996 and the Allocation of Business made thereunder. It establishes the Ministry of Establishment as the central agency of HRM of BCS. The other ministries/divisions/departments and bodies are also allocated HRM functions of particular service cadres and other human resource under their administrative control. The BPSC secretariat is also allocated business under these rules. However, this

²⁰⁸ *The Constitution of the People's Republic of Bangladesh 1972*, Article 135.

²⁰⁹ *The Government of India Act 1935*, Section 240 (3).

provision is derived from that contained in the British legislation.²¹⁰ Moreover, the British legal system required that any rule made by the executive government specifying the number and character of the civil posts to be filled by the Secretary of State had to be placed before both the Houses of the Legislature who could either confirm or annul the rules.²¹¹ The British Indian law also provided that any rule which interpreted or varied any condition of service to the disadvantage of any civil servant could be appealed against at least once. But the Bangladesh Constitution has discarded this useful provision. Rule making power of the Executive to regulate conditions of civil service is not new and updated provision. This is just a reintroduction of the British Rule contained in the Act of Parliament of the government of British India.²¹²

The constitution provides for making of law for the reorganisation and amalgamation of services of the republic by the creation, amalgamation or unification of services and such law may vary or revoke any condition of service of a person employed in the service of the republic.²¹³ Under this constitutional provision two important legislative instruments were made.²¹⁴ The Services (Reorganisation and Conditions) Act, 1975²¹⁵ empowered government to take measures for the reorganisation of the services of the republic and of public bodies and nationalised enterprises, and for prescribing unified grades and scales of pay and other terms and conditions of service for persons employed in such services. The BCS (Reorganisation) Order, 1980, was passed by virtue of Article 136 of the constitution and section 4 of the

²¹⁰ *The Government of India Act 1935*, Section 241(2)(4).

²¹¹ *Ibid* Section 246.

²¹² *Ibid* Section 241.

²¹³ *The Constitution of the People's Republic of Bangladesh 1972*, Article 136.

²¹⁴ *The Services (Reorganisation and conditions) Act 1975 and the BCS (Reorganisation) Order 1980*.

²¹⁵ *The Services (Reorganisation And Conditions) Act 1975*.

Services (Reorganisation and Conditions) Act, 1975 empowered the government of the People's Republic of Bangladesh to create a sound administrative system to ensure implementation of the government policies as effectively and efficiently as possible and the existing civil service and public services were reorganised into 28 service cadres constituting the BCS.

However, the above mentioned Act or the Order does not provide for strategic HRM, human resource planning, performance based objective evaluation system or performance related pay. The Act and Order deals with about 40 thousand of public servants belonging to different cadre services and is silent about the rest of more than a million public servants. Moreover, this Act or Order does not provide any thing which was not there at all in the British law but it takes away the right of appeal against an order which alters or interpretes to his disadvantage any rule by which his conditions of service are regulated and thus discards the principle of equity and fairness introduced by the British legal system.²¹⁶ It has affected service security and morale of civil servants in Bangladesh.

Other than the above legislative provisions and a few fragmented provisions such as the Public Servant Retirement Act and Rules made thereunder no significant legislative measure has been introduced in exercise of the vast constitutional power to incorporate the modern best practices of HRM into HRM of BCS and to provide a strong enforcement system.

1.1.2 Findings of the Questionnaire Survey

The findings of the questionnaire survey are also consistent with the above findings. Two questions were designed to examine the views of respondents

²¹⁶ *The Government of India Act 1935*, Section 241 (3).

regarding the above issues. The first question focused on the deficiencies in the legal system related to HRM of BCS. All the 449 respondents have responded to the question relating to the deficiencies in the legal system related to HRM of BCS, out of which 320 respondents constituting 71.26 percent expressed positive view that there are deficiencies. This is pictorially depicted in fig. 39. Out of those 320 the highest number of respondents that is 106 constituting 33.14 percent strongly agreed that modern best practices was not incorporated. The second highest number that is 79 constituting 24.68 percent strongly agreed that strong enforcement system was not provided. Different views related to this issue are shown in fig. 40.

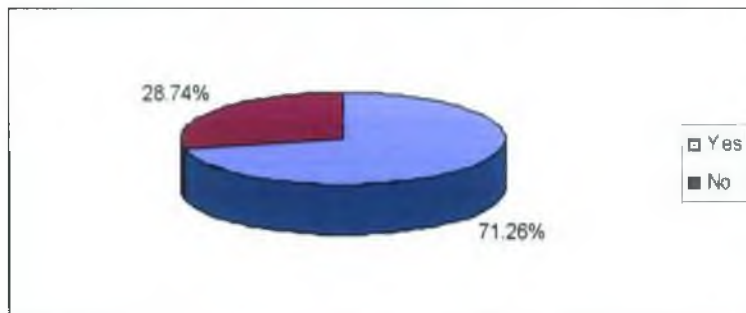


Figure-39: Showing the Percentage of Response about the Deficiencies in the Legal System Related to HRM of BCS.

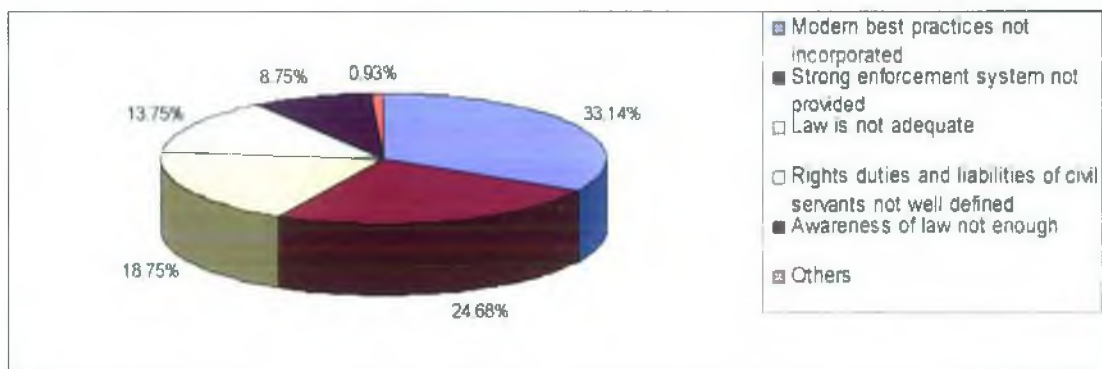


Figure-40: Showing the Percentage of Strongly Agreed Respondents' Views as to what are the Deficiencies in the Legal System Related to HRM of BCS.

As regards the second question relating to the introduction of modern practices of HRM of BCS through legislation, 441 respondents have

responded. Among them 413 respondents constituting 93.65 percent expressed positive response with the view. This is pictorially shown in fig. 41. Out of those 413 the highest number of respondents that is 115 constituting 27.84 percent strongly agreed that it is necessary to improve efficiency of HRM of BCS. The second highest number that is 97 constituting 23.50 percent strongly agreed that it is necessary to establish justice in HRM of BCS. Different views related to this issue are shown in fig. 42.

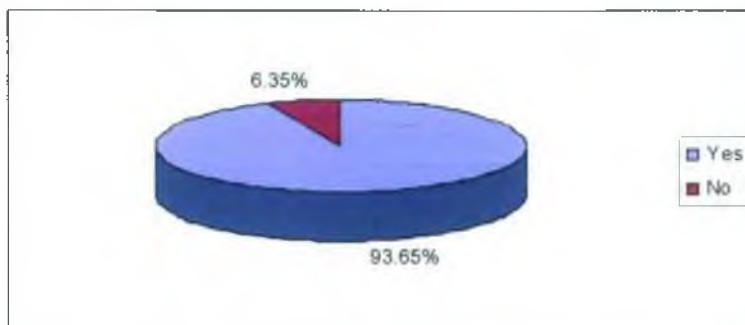


Figure-41: Showing the Percentage in Response about the Question Related to the Introduction of Modern Practices of HRM of BCS.

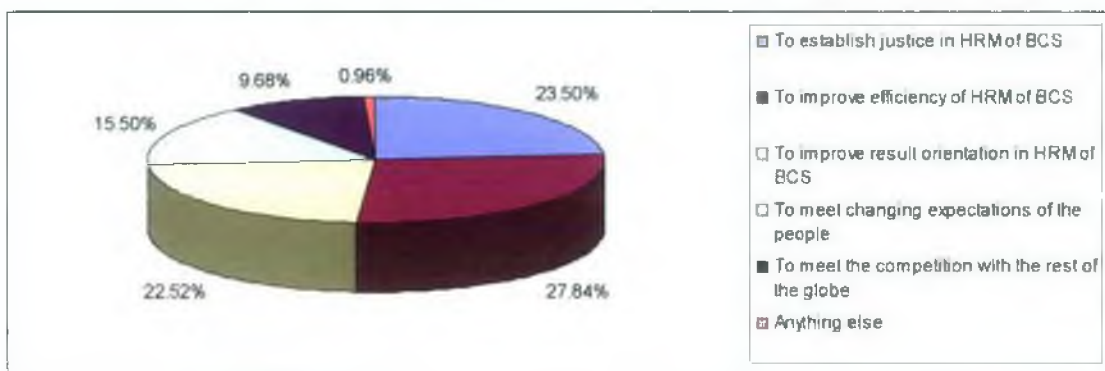


Figure-42: Showing the Percentage of Respondents Holding Different Views as to the Objective of the Introduction of Modern Practices of HRM of BCS

1.2 Human Resource Planning

In the constitution, there is no specific guidance on HRP in HRM of BCS. The Rules of Business, 1996 and Allocation of Business mention the

responsibility of such HRP.²¹⁷ There are a few executive instructions for internal guidance of ministries/divisions and departments for preparing HR plans but there is no statutory rules or practice in BCS in this respect. The HRP, the most crucial component of HRM of BCS, thus lacks any sound legal basis or modern practice. Neither the Parliament nor the President has exercised the enabling power vested under Article 133 of the constitution or Article 55 to address this issue. In this respect, it seems that we have moved rather one step backward. Because, as mentioned earlier, even in British India there was clear legal provision for determining the number and character of civil posts to be filled by the Secretary of State and for placing those rules before Parliament.

1.3 Recruiting

The constitutional and legislative provisions do not show any concern for integration of HRM of BCS with the strategic framework of the government. The constitution provides for law making regulating the appointment and conditions of service of persons in the service of the republic in general²¹⁸ but unlike the Indian Constitution²¹⁹ the Bangladesh Constitution does not embody any specific conditions for constituted services. Nor has Bangladesh enacted any law in this regard like the All India Services Act which prohibits prejudicial rule making with retrospective effect and which requires all rules related to All Indian Services to be laid before Parliament.²²⁰

²¹⁷ *The Rules of Business 1986*, Rules 12 & 13.

²¹⁸ *The Constitution of the People's Republic of Bangladesh 1972*, Article 133.

²¹⁹ *The Constitution of India 1949*, Article 312.

²²⁰ *The All Indian Services Act 1951*, Section 3.

On a good number of occasions, recruitment rules were modified to meet urgent situations without following any uniform criteria. All these were done under dissimilar conditions of eligibility in respect of age, educational qualifications and allotment of marks for the subjects included in the syllabi. There is an imperative need of designing an Act of Parliament as envisaged in the constitution to set limit on executive authority in HRM of BCS. It is necessary to put a halt to the continuing process of arbitrary management of civil service through the rule-making authority of the President who has to act on the advice of the Prime Minister. This creates adequate scope of abuse in civil service management, on political, partisan or other grounds.²²¹

1.3.1 Direct Recruitment Laws

Every post, whether permanent or temporary, must have recruitment rules. Such rules are framed by the administrative ministry/division in consultation with the Ministry of Establishment, the Public Service Commission and the Ministry of Law and Justice and notified in the Bangladesh Gazette with approval of the President. A recruitment rule contains, inter alia, provisions on the following points: (i) title, (ii) definition of important terms, (iii) methods of recruitment, (iv) qualification, (v) age, (vi) nationality, (vii) medical examination, (viii) police verification, (ix) probation and (x) confirmation etc.²²²

Each cadre of the BCS has Composition and Cadre Rules.²²³ Provision of these rules include the following: composition of the cadre initial encadrement; induction through the Public Service Commission; lateral entry

²²¹ Ali, above n 11, p 53.

²²² Ministry of Establishment, *Personnel Manual* (1989) 19-20.

²²³ *Ibid* 19.

in certain cases; posts borne in the cadre; entry posts and hierarchical positions with their strength; appointing authority: President or an officer authorized by him; procedure for recruitment: direct recruitment and promotion; eligibility: age, qualification, etc; probation and confirmation: for direct recruitment and for promotion; Seniority: according to BCS Seniority Rules, 1983.²²⁴ The main features of these rules are more or less uniform, in that they have (i) constitution of service, (ii) posts borne in the cadre, (iii) appointing authority, (iv) procedure for recruitment, (v) eligibility for recruitment, (vi) probation and confirmation, and (vii) seniority, but the rules do not provide for modern HR development practices including proper training, career management, compensation and objective performance management.²²⁵

In addition to cadre officers, non-cadre officers both gazetted and non-gazetted also constitute a lion share of the BCS. Different departments and bodies have their own recruitment rules for recruitment of their various types of gazetted and non-gazetted, technical and non-technical civil servants. For example, Department of Immigration of Passports (DIP) has Gazetted Officers Recruitment Rules, 1981 for recruitment of gazetted officers by direct recruitment, promotion and deputation. Similarly, the DIP Non-gazetted Recruitment Rules, 1985 provides for recruitment of non-gazetted Class III and IV staff. Furthermore, the following recruitment rules have been made for recruitment of civil servants as follows: There is a recruitment rule for recruitment of Stenographers and Steno Typists namely-The Stenographers and Steno typists (Ministries/Divisions and Attached Departments)

²²⁴ Ministry of Establishment, *Personnel Manual* (1989) 67-68.

²²⁵ *Ibid* 70.

Recruitment Rules, 1978.²²⁶ There is recruitment rules for recruitment of Typists namely-The Typist (Ministries/Divisions and Attached Departments) Recruitment Rules, 1978.²²⁷ There are recruitment rules for recruitment of Lower Division Assistants-cum-Computer Operators namely- The Lower Division Assistant–Cum-Computer Operators (Ministries/Divisions and Attached Departments) Recruitment Rules, 1979.²²⁸ The Surplus Public Servants Absorption Ordinance,1985²²⁹ for recruitment of surplus employees by absorption. The Mujibnagar Employees (Conditions of Service) Rules, 1980 for absorption of Mujibnagar Employees.²³⁰ The Ministries and Divisions (Upper Division Assistant and Section Assistant) Recruitment Rules, 1985 for recruitment of those staff.²³¹ The Lower Division Assistant–Cum-Typist, Plain Paper Copier, Duplicating Machine Operator, Despatch Rider, Dofitory and MLSS (Ministries/Divisions and Attached Departments) Recruitment Rules, 1993 for the recruitment of those staff.²³² Nazir, Teleprinter Operator, Franking Machine Operators, Carpenter, Cane Worker and Polisher (Ministry of Establishment) Recruitment Rules, 1985 for the recruitment of those civil servants.²³³ The Accounts Cells of Ministries/Divisions Officers and Staff Recruitment Rules, 1995 for recruitment of those officers and staff,²³⁴ and The Computer Personnel (Government and Local Authorities) Recruitment Rules, 1985 for recruitment of computer personnel.²³⁵ All the above recruitment rules have provisions on the seven points mentioned above in common. However, they lack any job

²²⁶ Ministry of Establishment, *Establishment Manual* (1989) 183-192.

²²⁷ *Ibid* 176-182.

²²⁸ *Ibid* 165-172.

²²⁹ *Ibid* 154-169.

²³⁰ *Ibid* 170-171.

²³¹ *Ibid* 193-201.

²³² *Ibid* 202-208.

²³³ *Ibid* 209-215.

²³⁴ *Ibid* 225-234.

²³⁵ *Ibid* 235-264.

description or performance measurement standards or other modern concepts or best practices of HRM.

Evidently the recruitment laws of HRM of BCS are not adequate to attract and retain the best and the brightest to the BCS. The quota system has made merit secondary. As unfilled quotas are distributed among the neighbouring districts of the division and in some cases among different districts on the basis of population, larger and well-represented districts benefit more making the whole idea of representative bureaucracy frustrated. The recruitment system is highly traditional based on testing general qualification introduced by the British long ago. This system does not help to recruit the right man for the right job. There is no parliamentary supervision on recruitment rule making providing scope for arbitrary rule making and politicization in recruitment. There is no law requiring demand projection or linking demand with supply of human resource. Another pitfall in recruitment laws related to BCS is contractual appointments or re-employment. The Indian law does not provide for such contractual appointments in cadre services or posts.²³⁶

1.3.2 Promotion Laws

There is no parliamentary enactment to regulate the promotion system in HRM of BCS. Promotion is based on merit and seniority. There is no effective legal framework for objective evaluation of merit. However, for cadre officers some rules have been framed to assess their merit. For instance the BCS (Examination for Promotion) Rules, 1986 have been made to judge the merit of entry level BCS cadre officers for promotion to the next higher level. Similarly, Deputy Secretary, Joint Secretary, Additional Secretary and

²³⁶ *The Indian Administrative Service (Recruitment) Rules 1954, Rule 4.*

Secretary to the Government Promotion Rules, 2002 also attempts to consider some of the factors of the BCS cadre officers to evaluate their merit. These factors include educational qualifications, Annual Confidential Reports, good service record and absence of complain, departmental proceedings and conviction in service career, reputation and importance of the posts held. For determination of seniority of cadre and other officers, in addition to the general principles of seniority, different rules have been framed depending on how they were recruited to the service or post concerned. Thus, there is BCS (Seniority) Rules, 1983 for determining seniority of BCS cadre officers, BCS (Foreign Affairs) Seniority Rules, 1983 for determining seniority of foreign cadre officers, Government Servants (Seniority of Freedom Fighters) Rules, 1979 for determining seniority of Freedom Fighter officers and Defence Services Officers (Appointment and Fixation of Seniority in Civil Posts) Rules, 1983 for fixation of seniority of those defence officers. In all other cases general principles of seniority and government orders form the basis for fixation of seniority of civil servants of Bangladesh.

Promotion is made on the following bases: (i) promotion to the posts of Deputy Secretary, Joint Secretary, Additional Secretary and Secretary to the Government is based on the promotion rules made for them,²³⁷ (ii) the BCS (Examination for Promotion) Rules, 1986 for promotion of cadre officers from initial post to the next higher post, (iii) relevant recruitment rules form the basis for promotion to other posts and services, (iv) promotion from a lower class of service to a higher class, such as from Class II to Class I or from Class III to Class II, is made on the basis of merit with due regard to

²³⁷ *The Promotion (Deputy Secretaries, Joint Secretaries, Additional Secretaries and Secretaries) Rules, 2002.*

seniority, (v) for promotion within the same class of service, the departments are to draw a distinction between 'promotion posts' and 'selection posts'. For 'promotion posts' selection is made on the basis of seniority cum-fitness, while the criterion for promotion to 'selection posts' is 'merit with due regard to seniority', (vi) The criterion for promotion to 'selection grade' posts in any service cadre shall be seniority-cum-merit. In certain services/posts appointments are made both by direct recruitment and by promotion from feeder posts where such provision exists in the relevant recruitment rules. In case of appointment by promotion the ratio between direct recruitment and promotion is specifically laid down in the recruitment rules.

The Public Service Commission (PSC) Consultation Regulation, 1979 provides for cases where consultation with PSC is necessary in cases of promotion from a lower Class of service to a higher Class.²³⁸ In case of promotion from Class IV to Class III, however, consultation with PSC is not necessary. On the contrary, in cases where consultation with the Public Service Commission is required as per recruitment rules, names of the candidates eligible for promotion are forwarded to the Public Service Commission along with their service particulars including confidential reports for consideration, selection and recommendation. On receipt of recommendations of the Public Service Commission, the administrative ministry/division/department concerned issues necessary orders. If any recommendation is considered unacceptable it is referred back to the Public Service Commission for reconsideration, (i) If the Public Service Commission still adheres to its original recommendation, the administrative authority concerned may, if considered justified, submit the case to the President for

²³⁸ *The Bangladesh Public Service Commission (Consultation) Regulation, 1979, Rule 8.*

overriding the recommendations of the Public Service Commission,²³⁹ and (ii) Proposals to override the Public Service Commission's recommendation are processed through the Ministry of Establishment.²⁴⁰

Articles 137 to 141 of the constitution deal with matters relating to the establishment, function and other aspects of the Bangladesh Public Service Commission (BPSC). The two important legislative instruments made in this area are: i) the Public Service Commission Ordinance, 1977.²⁴¹ This Ordinance unified the then two PSCs and provided for the discharge of its constitutional functions under Article 140 and excluded certain matters from the purview of consultation with PSC and ii) the Bangladesh PSC (Consultation) Regulations, 1979.²⁴² The regulation lays down the detailed provisions regarding consultation by government with BPSC in HRM matters. The BPSC and the above legal position relating to BPSC is almost a copy of the provisions contained in the Government of India Act, 1935.²⁴³ For appointment the civil servants have to comply with the general conditions of service as contained in Bangladesh Service Rules derived from the Fundamental Rules and the Supplementary Rules made by the British Government in India in 1921 and continued till today. The conditions of service continued in these old rules are out dated and is not attractive any more and requires thorough updating.

The only note-worthy updating of the system after the British Indian Government was the incorporation of the provision for submitting annual

²³⁹ *The Rules of Business 1975*, Rule 6 (iii) (c).

²⁴⁰ *Ibid* Schedule III.

²⁴¹ *The Bangladesh Public Service Commission Ordinance 1977*.

²⁴² *No. S R O 308-L/79/ED/RV-8/77*, 27 October 1979.

²⁴³ *The Government of India Act 1935*, Part X, Chapter III, Sections 264 - 8.

report to the President by BPSC. Although this reporting mechanism was introduced during Pakistan period to establish a parliamentary control over the arbitrary administrative actions with respect to the advice given by the PSC but the Bangladesh Constitution has changed the very essence of the mechanism making it practically ineffective. Under the previous constitutional dispensation, the executive authority had to explain the reasons for violation of the advice given by PSC. But under the 1972 constitution they don't have to send any explanation rather the burden has been shifted to PSC to explain the non-compliance with its advice by the executive authority. By these Ordinance and Regulations one single PSC has been established with limited human resources but onerous responsibilities and functions. The law should be amended to strengthen BPSC by relieving it of the less important functions and extending its function in the areas of recruitment and promotion. They may be given the authority, responsibility and resources to incorporate the best practices through initiating appropriate model rules for recruitment and promotion of civil servants of Bangladesh.

The general principles of promotion in HRM of BCS are outdated and of British origin. The modern rules and concepts have not been incorporated into HRM of BCS through appropriate legislation. In the prevalent practices of HRM of BCS merit has no significant nexus with performance. There is a lack of transparency and ample scope for malpractice in determining merit of civil servants of Bangladesh. The Promotion Committee recommending for promotion of civil servants at various levels is constituted by executive officers liable to be influenced by the political government. However, in India the Promotion Committee is headed by a chairman or member of the Public Service Commission and other members of the committee do not belong to

the concerned service.²⁴⁴ This composition gives a very independent and neutral character to the Promotion Committee. This ensures fairness in promotion system and help to keep it free from politicisation. But this arrangement is not provided by the legal system of HRM of BCS.

The constitutional provisions relating to equal employment opportunity contained in Article 29 can be traced back to British era.²⁴⁵ It says:

All citizens enjoy equality of opportunity in respect of employment or office in the service of the Republic. All citizens irrespective of religion, race, caste, sex or place of birth are eligible for employment or office in the service of the Republic. However, the state may (a) make special provision in favour of any backward section of citizens for the purpose of securing their adequate representation in the service of the Republic; (b) give effect to any law which makes provision for reserving appointments relating to any religious or denominational institution to persons of that religion or denomination; and (c) reserve for members of one sex any class of employment or office on the ground that it is considered by its nature to be unsuited to members of the opposite sex.²⁴⁶

The quota system illustrates such exception. The quota system has been introduced by executive order of the government. The government has prescribed the following quota system:

Distribution of Vacancies	Class I and Class II Posts	Class III and Class IV Posts
(a) Merit Quota	45%	-
(b) District Quota-		

²⁴⁴ *The Indian Administrative Services (Appointment by Promotion) Regulation 1955*, Regulation 3.

²⁴⁵ *The Government of India Act 1935*, Section 275.

²⁴⁶ *The Constitution of the People's Republic of Bangladesh 1972*, Article 29.

(i) Woman Candidates	10%	15%
(ii) Wards of Freedom Fighters	30%	30%
(iii) Tribal People	5%	5%
(iv) Ansar and village Defence	-	10%
(v) Orphans of Shishu Sadan	-	1%
(vi) Balance (for distribution District-wise)	10%	39%

District quota system is a glaring example of permissible exception to the general right to equality in public employment of all citizens. The main purpose of this system is to ensure adequate district based representation in the service of the republic. In order to achieve more equitable representation of the people of all the districts of Bangladesh in the various services and posts under the Government of the People's Republic of Bangladesh has decided, as an interim measure, to fill all future vacancies, by the candidates from all the districts on the basis of population of the districts. When the number of vacancies is so small that it cannot be distributed district wise the vacancies shall be distributed division wise on the basis of population. The district/division wise quotas shall be calculated class wise. For the purpose of distribution of vacancies district/division-wise the posts may, whenever necessary, be grouped into classes.

When the number of vacancies is smaller than 4, the divisions having least representation in a particular service should be given weightage in future recruitment. The offices having jurisdiction over only one district will fill their vacancies from the district concerned. Offices having jurisdiction over more than one district will fill vacancies by candidates from the districts over

which they have jurisdiction on the basis of population. Offices having jurisdiction over all the districts will fill vacancies from the candidates of all the districts in accordance with the procedure mentioned above. In distributing vacancies district wise, the fractions will be rounded to lower whole number and the remaining vacancies shall be distributed division-wise in accordance with the procedure laid down above. The above procedure will apply to recruitments made through Bangladesh Public Service Commission as well as by the respective offices themselves or otherwise. This quota will not, however, apply to the appointments made by way of absorption of persons appointed at Mujibnagar or Bangalee officer and employees returning from Pakistan on repatriation. This will also not apply to the vacancies filled by promotion or transfer. In order to give opportunity to the Public Service Commission to distribute the vacancies properly to all the districts all appointing authorities communicate to the commission their present and anticipated vacancies annually so that the commission can prepare the annual or bi-annual panels.

As a matter of general policy relaxation is allowed in respect of different conditions and qualifications for appointment of the tribal candidates to various posts within district quota. In order to implement this decision the respective ministry/division identifies the fields, other than those requiring technically qualified personnel, and the extent to which such relaxation may be allowed consistent with the requirement of public service. For implementation of this decision provision has been made in the BCS (Age, Qualification and Examination for Direct Recruitment) Rules, 1982, for relaxation of age of a backward section of citizen by such period as the government may, from time to time, specify by notification, in the official

gazette. In case any clarification is required, the appointing authorities may take up the matter with the Ministry of Establishment.²⁴⁷ For appointment in technical post/posts in educational institutions the district quota system will stand relaxed to the extent that if suitable candidates are not available in a district as per its quota, then candidates from any other district of the country may be considered for filling the vacancies.²⁴⁸ When the number of qualified candidates is less than the number of posts distributed for a district under any special quota the vacant post of that district shall be filled from qualified candidates for the district, under the relevant greater district, having the least number of service holders. If the posts can not be filled from the greater district concerned, they shall be filled from the qualified candidates of the district, under the relevant division, having the least number of service holders.²⁴⁹

1.4 Performance Management

There is no Act, Ordinance or other statutory legal instrument relating to PM of HRM of BCS. Of course there are some executive instructions and memoranda for annual confidential reporting which does not ensure job description based objective performance appraising. These instructions and memos are issued for internal guidance of the government and they do not create any legal right or obligation enforceable in a court of law. Training plays an important role in improving performance of civil servants. Government of Bangladesh is imparting different types of generalised and specialised training to improve the performance of civil servants and has established several training institutes under different ministries/divisions for

²⁴⁷ *No Estab./RI/R-73/72-109 (500)*, 5 September 1972.

²⁴⁸ Ministry of Establishment, *Personnel Manual* (1989) 13.

²⁴⁹ *Ibid.*

this purpose. The government has also formulated the Public Administration Training Policy.²⁵⁰ The policy provides an articulated basis and administrative guideline for training of civil servants of Bangladesh. The policy introduces itself by a preamble which includes its objectives and strategies. It has adopted elaborate programmes and incorporates priorities and coverage, the clientele, training fields, provision for foreign training, modalities of organising training, training methodology, consultancy, mobilisation of resource persons, incentives for trainees and trainers, post training utilisation, training career advancement, government and private sector collaboration, institution-building activities for training institutions, resource - budgetary provision and networking with counterpart training institutions. However, all these are policy guidelines and do not make any legally binding provision. It does not tie up training with performance or link training with other activities of HRM of BCS.

This important area of HRM of BCS lacks any legal framework as already mentioned. It is pertinent to mention here that USA enacted Government Performance and Result Act in 1993, Australia introduced similar Act in 1980s, New Zealand introduced Result Areas and Key Result Areas in the late 1980s, Netherlands introduced Integrating Performance Measurement in the 1990s, UK introduced Citizen's Charter in 1991, France introduced Public Service Charter in 1993, Canada introduced Declaration of Service Quality in 1994 and Quality of Service Initiative in Canada in 1995. Similarly, Malaysian introduced New Performance Appraisal System and Malaysian Remuneration System providing for Performance Related Pay (PRP) system in 1990s; Thailand introduced Civil Service Act, 1992 to manage and improve

²⁵⁰ No. Sha Ma/Bi Pro/Cia - 10/2003 - 29, 6 May 2003.

the performance of their respective civil services. Bangladesh should take appropriate legislative measures in line with the international best practices.

1.5 Disciplinary Laws

There is a set of six Rules/Ordinances for the regulation of conduct and discipline among civil servants in Bangladesh. These regulations are important guidelines for becoming a good officer of BCS. Besides, there are some references to public servants conduct and discipline in the Bangladesh Service Rules (BSR), the Fundamental Rules and Supplementary Rules and the Civil Service Regulations. Finally, certain administrative circulars have also been issued on this subject. The conduct and discipline related rules for civil servants were incorporated by the British Government in India as part of the Fundamental Rules and Supplementary Rules during the 1920's. Thereafter during the 1930's a separate rule called the Civil Service (Classification and Control) Appeal Rules was made. The subject matter of Public Servants (Dismissal on Conviction) Ordinance, 1985 was derived and introduced from the British law.²⁵¹ The basic conduct and discipline rules were introduced by the British and those have been continued with minimal modifications, adaptations and additions in some cases without updating the legal provisions by incorporating the modern concepts and practices of HRM.

In the constitution, there is no elaborate provision for the disciplinary matters relating to BCS. Only some safeguards are incorporated into the constitution.²⁵² The constitution also embodies enabling provisions to make laws by the Parliament and rules by the President to regulate the disciplinary

²⁵¹ *The Government of India Act 1935*, Section 240.

²⁵² *The Constitution of The People's Republic of Bangladesh 1972*, Articles 134 and 135.

matters of the members of BCS. In addition there is a set of statutory instruments comprising special laws, Acts and Ordinances to govern this area of HRM of BCS. The set of six Acts, Rules and Ordinances relevant to discipline among civil servants in BCS as mentioned earlier are (i) the Government Servants (Conduct) Rules, 1979, (ii) the Government Servants (Discipline and Appeal) Rules, 1985, (iii) the Public Servants (Dismissal on Conviction) Ordinance, 1985, (iv) the Government Servants (Special Provisions) Ordinance, 1979, (v) the Public Employees Discipline (Punctual Attendance) Ordinance, 1982, and (vi) the Administrative Tribunals Act, 1981, and (vii) the Administrative Tribunal Rules, 1982 are remarkable legal instruments relating to discipline in HRM of BCS.

The Government Servants (Conduct) Rules, 1979 deals with employees' conduct regarding a host of activities such as the acceptance of gifts and foreign awards, public demonstrations in honour of officers, raising of funds and collection of subscriptions by public servants, lending and borrowing, the sale of properties both movable and immovable, the construction of buildings, declaration of property, disclosure of liquid assets, speculation and investment, promotion and management of companies, private trade and employment, insolvency and habitual indebtedness, communication of official documents and information, approach to Members of Parliament etc, management etc of newspapers or periodicals, radio broadcasts and communication to the press, criticism of government and publication of information or opinions upon matters relating to foreign countries, evidence before committees, taking part in politics and elections, propagation of sectarian creeds etc, nepotism, favouritism and victimisation etc, conduct towards female colleagues, conflict of interest, vindication by employees of

their public acts or character, membership of service association, use of political or other influence, opposing government decisions, orders etc, approaching foreign missions and aid giving agencies etc.

The Government Servants (Discipline and Appeal) Rules, 1985 delineate (a) the various administrative offences such as inefficiency, misconduct, desertion and corruption, (b) their punishment such as censure, stoppage of promotion and pay increment, recovery of losses caused through fines, demotion to a lower scale or post, compulsory retirement, removal and dismissal from service; and (c) the in-house review and appeal available against such punishment. The Public Servants (Dismissal on Conviction) Ordinance lays down that a public servant convicted of a criminal offence of which the maximum punishment is a fine of Taka 1000 or more or any imprisonment for a term exceeding six months will automatically stand dismissed from service. The Special Provisions and Punctual Attendance Ordinances provide the government with summary powers to take action against unauthorised absence and trade union picketing and other acts of indiscipline.

The relationship between government as employer and civil servants as employees must be handled effectively if both the organisation and the employees are to prosper together. Employee rights must be addressed. It is important to develop, communicate and update HR policies and procedures through appropriate service laws so that government and civil servants alike know what is expected. The legal fountain from which service laws for persons in the service of the republic flows is Article 133 of the constitution. Article 136 also provides for such law making covering cases even where

services require reorganisation. There are two services of civil nature which fall outside the purview of Articles 133. Under Article 79, Parliament may by law and in the absence of any such law the President in consultation with the Speaker may by rules regulate the terms and conditions of service of persons appointed to the secretariat of Parliament. Under Article 113 appointments to staff of the Supreme Court shall be made by the Chief Justice, or any Judge or officer of that court as the Chief Justice may direct, in accordance with rules made by the Supreme Court with the prior approval of the President, and subject to the provisions of any Act of Parliament the conditions of their service shall be such as prescribed by the rules made by the Supreme Court. Paragraph 10(1) of the fourth schedule to the constitution provides that any person who immediately before the commencement of the constitution was in the service of the republic shall continue in that service on the same terms and conditions as were applicable to him before such commencement and paragraph 10(2) provides that the provisions of paragraph 10(1) shall not prevent the making of any law varying or revoking the conditions of service of persons continuing in the service of the republic under paragraph 10(1).

In the discipline area of HRM of BCS, there seems to be multiple laws, rules and regulations. The agenda are too many without proper mechanism for implementation and monitoring. There is no effective system of updating the rules and regulations. The disciplinary system should encourage an approach that consists of minimum content but maximum implementation rather than to be all-inclusive as far as content is concerned but quite lax in implementation.²⁵³ For example conduct rules²⁵⁴ in Bangladesh contains 34

²⁵³ Siddiqui, above n 12, 84.

²⁵⁴ *The Government Servant (Conduct) Rules 1979.*

provisions relating to conduct of civil servants in Bangladesh whereas in India Conduct Rule has only 25 rules.²⁵⁵ Disciplinary law should aim at improving performance by requiring devotion to duty as explicitly laid down in the Indian law.²⁵⁶ But this is not so in conduct rules regulating HRM of BCS.

The constitutional and legislative provisions do not show any concern for integration of HRM with the strategic framework of the government. The constitution provides for law making regulating the appointment and conditions of service of persons in the service of the republic²⁵⁷ in general but unlike the Indian Constitution²⁵⁸ the Bangladesh Constitution does not embody any specific conditions for constituted services. Thus Bangladesh Constitution lacks specific provision for HRM of BCS and there is no legal basis or mechanism for modern strategic HRM of BCS leaving rooms for numerous undesirable consequences. It is evident that despite a few attempts made at reforming and modernising the civil service during past decades, traditional policies and practices continue to dominate its internal management. The current legal framework suffers from a multitude of anomalies and deficiencies.

1.6 Findings of the Questionnaire Survey

The finding of the questionnaire survey is also consistent with the above finding. The question dealing with laws related to HRM of BCS explored the views of respondents as to whether the existing laws and rules in the four selected areas of HRM of BCS namely human resource planning, recruiting,

²⁵⁵ *The Central Civil Service Conduct Rules 1964.*

²⁵⁶ *Ibid* Rule 3.

²⁵⁷ *The Constitution of the People's Republic of Bangladesh 1972, Article 133.*

²⁵⁸ *The Constitution of India 1949, Article 312.*

performance management and discipline are sufficient, 401 respondents have responded out of which 271 respondents constituting 67.58 percent expressed negative response supporting that these were not sufficient. This is pictorially shown in fig. 43. Out of these 271 the highest number of respondents that is 98 constituting 36.16 percent strongly agreed that special rules and laws for HRM of BCS was the deficit area. The second highest number that is 75 constituting 27.67 percent strongly agreed that civil service rules were the deficit area. Different views related to this issue are shown in fig. 44.

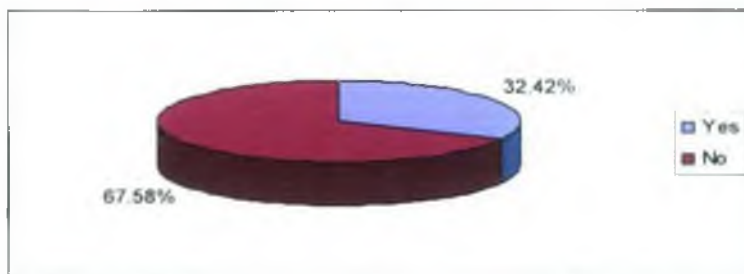


Figure-43: Showing the Percentage of Response about Existing Laws and Rules on Four Selected Areas of HRM of BCS

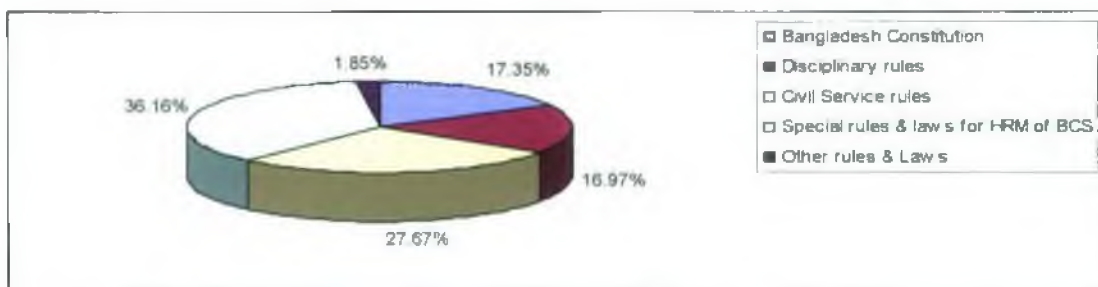


Figure-44: Showing the Percentage of Strongly Agreed Measures for the Existing Laws and Rules on Four Selected Areas of HRM of BCS.

Bangladesh has not enacted any civil service Act like the All India Services Act which prohibits prejudicial rule making with retrospective effect and which requires all rules related to All Indian Services to be laid before Parliament.²⁵⁹ This is based on the legislative provision introduced by the British Government in India.²⁶⁰

²⁵⁹ *The All Indian Services Act 1951*, Section 3.

²⁶⁰ *The Government of India Act 1935*, Section 241 (3).

In the questionnaire survey one question enquired into the views of respondents about the necessity of an Act of Parliament for HRM of BCS, A total of 405 respondents have responded to this question. Out of them 308 constituting 76.04 percent respondents expressed positive response holding that such an Act is necessary. This is pircorially depicted in fig. 45. Out of this 308 the highest number of respondents that is 83 constituting 26.94 percent strongly agreed that the Act is necessary to introduce modern practices in HRM of BCS. The second highest number that is 77 constituting 25.00 percent strongly agreed that it is necessary to set limit to intervention in HRM of BCS by administration. Different views related to this issue are shown in fig. 46.

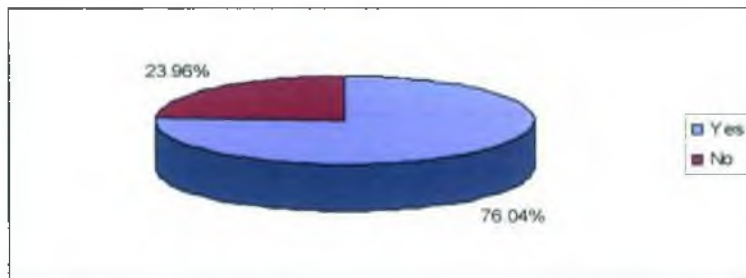


Figure-45: Showing the Percentage in Respondents on the Question Related to Necessity of an Act of Parliament for HRM of BCS.

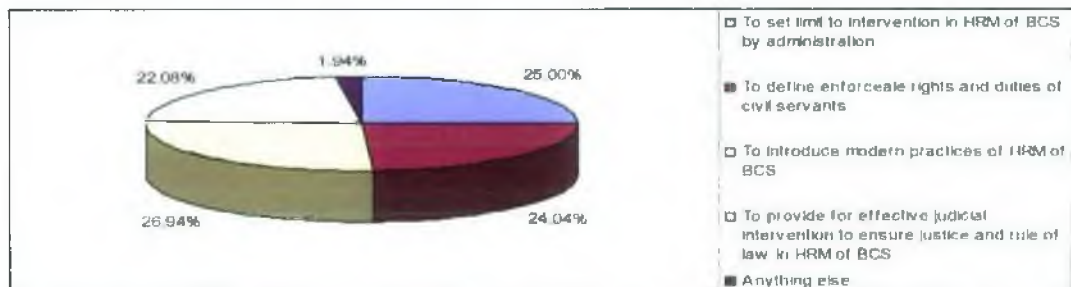


Figure-46: Showing the Percentage of Strongly Agreed Views on Purposes for which Act of Parliament is Needed for HRM of BCS

1.7 Law Related to Judicial Institutions dealing with HRM of BCS

These judicial institutions provide opinion and judgment relating to HRM of BCS of persons in the service of the republic. The Supreme Court of

Bangladesh and Administrative Tribunals are the two judicial institutions dealing with HRM of BCS.

1.7.1 The Supreme Court of Bangladesh

The Supreme Court of Bangladesh has constitutional jurisdiction to review administrative actions and make appropriate judicial interventions under Articles 102 to 105 of the Constitution of the People's Republic of Bangladesh, 1972. Under the 1972 constitution of Bangladesh there are two divisions of the Supreme Court of Bangladesh namely the High Court Division and the Appellate Division. The jurisdiction of the High Court Division is dealt with under Article 102 while that of the Appellate Division is mentioned in Articles 103 to 105 of the constitution. Various types of orders which can be made by the High Court Division in the exercise of its power of judicial review are contained in Article 102 of the Bangladesh Constitution in the following words:

- 102 (1) The High Court Division on the application of any person aggrieved, may give such directions or orders to any person or authority, including any person performing any function in connection with the affairs of the Republic, as may be appropriate for the enforcement of any of the fundamental rights conferred by part III of this Constitution.
- (2) The High Court Division may, if satisfied that no other equally efficacious remedy is provided by law-
- (a) on the application of any person aggrieved, make an order-
- (i) directing any person performing any functions in connection with the affairs of the Republic or of a local authority to refrain from doing that which he is not permitted by law to do or to do that which he is required by law to do; or

- (ii) declaring that any act done or proceeding taken by a person performing functions in connection with the affairs of the Republic or of a local authority has been done or taken without lawful authority and is of no legal effect; or
- (b) on the application of any person make an order-
 - (i) directing that a person in custody be brought before it so that it may satisfy itself that he is not being held in custody without lawful authority or in an unlawful manner; or
 - (ii) requiring a person holding or purporting to hold a public office to show under what authority he claims to hold that office.
- (3) Notwithstanding anything contained in the foregoing clauses, the High Court Division shall have no power under this article to pass any interim or other order in relation to any law to which article 47 applies.
- (4) Whereon an application made under clause (1) or sub-clause (a) of clause (2), an interim order is prayed for and such interim order is likely to have the effect of-
 - prejudicing or interfering with any measure designed to implement any development program or any development work; or
 - being otherwise harmful to the public interest, the High Court Division shall not make an interim order unless the Attorney-General has been given reasonable notice of the application and he (or an advocate authored by him in that behalf) has been given an opportunity of being heard, and the High Court Division is satisfied that the interim order would not have the effect referred to in sub-clause (a) or sub-clause (b).
- (5) In this article, unless the context otherwise requires, "person" includes a statutory public authority and any court or tribunal, other than a court or tribunal established under a law relating to the

defence services of Bangladesh or any discipline force or a tribunal to which article 117 applies.

The Article virtually reproduces the provisions contained in Article 98 of the 1962 Constitution of Pakistan. Although the word writ has not been used anywhere in Article 102 the Rules followed in practice are those of writs and the powers exercised under that Article are virtually the powers which used to be exercised under writ jurisdiction by the High Courts during British Indian Government.²⁶¹ Article 102 empowers the High Court Division to issue orders which are in substance writs in the nature of prohibition and mandamus,²⁶² certiorari, habeas corpus and quo warranto.²⁶³ Moreover the word writ is specifically used in Article 104 while conferring powers on the Appellate Division of the Supreme Court.²⁶⁴ However, in this study the two words writ and order will be used interchangeably. The jurisdiction of the Appellate Division to review administrative action and make necessary interventions are contained in articles 103, 104 and 105 which runs as follows:

103. (1) The Appellate Division shall have jurisdiction to hear and determine appeals from judgments, decrees, orders or sentences of the High Court Division.
- (2) An appeal to the Appellate Division from a judgment, decree, order or sentence of the High Court Division shall lie as of right where the High Court Division-
 - (a) certifies that the case involves a substantial question of law as to the interpretation of this Constitution; or
 - (b) has sentenced a person to death or to imprisonment for life; or

²⁶¹ Howlader, above n 20, 56-60.

²⁶² *The Constitution of the Peoples Republic of Bangladesh 1972*, Article 102(2) (a) (i).

²⁶³ *Ibid* Article 102 (2) (b) (ii).

²⁶⁴ *Ibid* Article 102.

- (c) has imposed punishment on a person for contempt of that division; and in such other cases as may be provided for by Act of Parliament.
 - (3) an appeal to the Appellate Division from a judgment, decree, order or sentence of the High Court Division in a case to which clause (2) does not apply shall lie only if the Appellate Division grants leave to appeal.
 - (4) Parliament may by law declare that the provisions of this article shall apply in relation to any other court or tribunal as they apply in relation to the High Court Division.
104. The Appellate Division shall have power to issue such directions, orders, decrees or writs as may be necessary for doing complete justice in any cause or matter pending before it, including orders for the purpose of securing the attendance of any person or the discovery or production of any document.
105. The Appellate Division shall have power, subject to the provisions of any Act of Parliament and of any rules made by the Division to review any judgment pronounced or order made by it.

In addition section 6A of the Administrative Tribunal Act provides for judicial review and intervention with respect to the judgment and order of the Administrative Appellate Tribunal by the Appellate Division of the Supreme Court under Article 103 of the constitution which runs as follows: 'It is hereby declared that the provisions of Article 103 of the Constitution shall apply in relation to the Administrative Appellate Tribunal as they apply in relation to the High Court Division.'

1.7.2 The Administrative Tribunals

The Administrative Tribunals developed as a general feature after the Second World War period. This institution is a new addition after the British

Government in India. These tribunals are playing an important role in resolving problems arising out of appointment and conditions of service of civil servants. This institution was first introduced during Pakistan administration²⁶⁵ and thereafter it was incorporated into the Bangladesh Constitution.²⁶⁶ There is constitutional provision for the establishment of one or more Administrative Tribunals.²⁶⁷ Article 117 of the constitution runs as follows:

117. Administrative Tribunals

- (1) Notwithstanding anything hereinbefore contained, Parliament may by law establish one or more administrative tribunals to exercise jurisdiction in respect of matters relating to or arising out of-
 - (a) the terms and conditions of persons in the service of the Republic, including the matters provided for in Part IX and the award of penalties or punishment;
 - (b) the acquisition, administration, management and disposal of any property vested in or managed by the Government by or under any law, including the operation and management of, and service in any nationalised enterprise or statutory public authority;
 - (c) any law to which clause (3) of article 102 applies.
- (2) Where any Administrative Tribunal is established under this article, no court shall entertain any proceedings or make any order in respect of any matter falling within the jurisdiction of such tribunal;
Provided that the Parliament may by law provide for appeals from, or the review of decisions of any such tribunal.

²⁶⁵ *The Constitution of the People's Republic of Bangladesh 1972*, Article 116.

²⁶⁶ *Ibid* Article 117.

²⁶⁷ *Ibid* Article 117.

Accordingly, an Act called the Administrative Tribunals Act, 1980 has been enacted.²⁶⁸ Section 3 of the Act provides for the establishment of one or more Administrative Tribunals. An Administrative Tribunal consists of one member appointed by government from persons who are or have been a District Judge. The Administrative Tribunal has exclusive jurisdiction to hear and determine applications made by any person in the service of the republic or of any statutory public authority, as may be specified by government from time to time, in respect of the terms and conditions of his service, including pension rights or in respect of any action taken in relation to him as a person in the service of the republic. An aggrieved person may submit an application to the Administrative Tribunal for redress of his grievances; but he can not do so until he has represented his case to his higher authority and the higher authority has taken a decision in the matter. The time limit for submission of application is six months from the date of decision by the authority against which the application is made.

An application to a Tribunal shall be submitted personally by the aggrieved person himself or through an authorised person or by registered post. The application should contain the following particulars: (i) The name of the Tribunal, (ii) The name, description and address of the applicant, (iii) The name, description and address of the opposite party, (iv) The facts constituting the cause of action, and when and where it arose, (v) The facts showing that the Tribunal has jurisdiction to entertain the application, (vi) The relief which the applicant claims, and (vii) Any matter on which the applicant intends to rely.

²⁶⁸ *No. S.R.O. 30-L/82, 12 January 1982.*

An application shall be accompanied by as many copies of the following documents as there are opposite parties: (i) Application, (ii) Order complained of, if any, and (iii) Documents, if any, in the possession or power of the applicant upon which he intends to rely. A fee of Taka twenty plus an additional fee of Taka five for each copy of the application meant for the opposite parties shall be paid by the applicant in court fee stamp affixed to the application and crossed and signed by him. Facts stated in an application shall be verified (i.e. certified as true) at the foot of the application and signed by the applicant.

A Tribunal shall admit an application if it is found in order in all respects. If an application is rejected by the Tribunal for procedural defects the applicant may submit a fresh application if it is not barred by any provision of the Administrative Tribunal Act. Further details are laid down in the Administrative Tribunals Rules, 1982. Article 117 read with Article 102(5) of the constitution provides for establishment of one or more Administrative Tribunals to adjudicate exclusively on matters relating to terms and conditions of persons in the service of the republic or of any statutory public authority.

The Administrative Appellate Tribunal consists of one chairman and two other members. The Appellate Tribunal has jurisdiction to hear and determine appeals from any order or decision of an Administrative Tribunal. An aggrieved person may prefer an appeal to the Appellate Tribunal within three months from the date of order or decision of the Administrative Tribunal. However, an appeal may be admitted after three months but not later than six months, if the appellant satisfies the Administrative Appellate Tribunal that he had sufficient ground for not preferring the appeal within three months. The Appellate Tribunal may set aside, vary or modify any order or decision of

the Administrative Tribunal, and the decision of the Administrative Appellate Tribunal in an appeal shall, subject to application of Article 103 of the constitution, be final. The Administrative Appellate Tribunal shall have power to punish for contempt of its authority or that of any Administrative Tribunal as if it were the High Court Division of the Supreme Court.

1.8 Summary and Assessment

The legal framework for HRM of BCS is highly fragmented, backdated and inadequate. Comprehensive law making to modernise and to ensure efficient and effective HRM of BCS is a crying need of the day. The constitution provides for such law making but there is no adequate law or robust institutional mechanism for making such law. There is almost absence of statutory law making in the fields of HRP and PM. Whatever laws we have in other areas of HRM of BCS are backdated and inadequate. An Act of Parliament should be enacted to address these issues.

The findings of the questionnaire survey also corroborate the above findings and reveal that the existing law related to HRM of BCS is deficient as it does not incorporate modern best practices and strong enforcement system. Introducing best practices through legislation is necessary to improve efficiency of HRM of BCS. There is deficit in special law to facilitate modern HRM of BCS. An Act of Parliament should be enacted to introduce modern practices of HRM of BCS and to address all other related issues.

Appropriate law and its proper implementation is essential for improving HRM of BCS. Judicial intervention is made on the basis of existing law. If the law is not updated judicial intervention has limited scope in updating law or modernising and updating HRM of BCS. This will be evident from the next chapter.

CHAPTER V
HUMAN RESOURCE MANAGEMENT OF BANGLADESH
CIVIL SERVICE: ANALYSIS OF NATURE AND SCOPE OF
JUDICIAL INTERVENTION

1.0 Prelude

It has been mentioned in the previous chapters that laws and rules related to HRM of BCS originated from British-Indian civil service and have not been modernised and updated in line with the requirements of the nation. The efficient and effective implementation of government programmes and rights, privileges and commitments of civil servants must be aligned properly in the greater interest of achieving national goals and aspirations. If the alignment is based on satisfactory modern and updated legislative provisions any conflict of interest or disputes due to deviations from those provisions may be resolved by judicial intervention. The judicial system dealing with HRM of BCS, the principles, methods and laws providing for judicial intervention with respect to HRM of BCS as well as the jurisdiction of judicial institutions such as courts and tribunals together determine the nature and scope of judicial intervention with respect to HRM of BCS.

Various aspects of the issue have been examined in the following sections. Section 1.1 analyses judicial system of Bangladesh, Section 1.2 examines principles and methods of judicial intervention. Section 1.3 examines legal scope for judicial intervention; Section 1.4 scrutinises judicial intervention by the Supreme Court of Bangladesh, Section 1.5 analyses judicial intervention by Administrative Tribunals, Section 1.6 examines the findings of the

questionnaire survey and Section 1.7 is the summary and assessment of the chapter.

1.1 Analysis of the Judicial System of Bangladesh

Administration of justice is part of the total administration of the country. Bangladesh inherited a system of administration of justice from the British colonial rulers who had gradually replaced the Mughal system of administration of justice then prevalent based on the Islamic law. Naturally the system of administration of justice introduced by the colonial rulers was modelled on the common law system existing in England in the 19th century. Under the provisions of the Indian Independence Act, 1947 passed by the British Parliament colonial administration of the British came to an end and British-India was divided into India and Pakistan. But under the Act the pre-existing colonial laws and rules were continued. Eastern part of the province of Bengal after partition formed the province of East Bengal and became the eastern wing of Pakistan.²⁶⁹

The High Court of Bengal (Order) 1947 promulgated under the provisions of section 9 of the Indian Independence Act, 1947 provided for establishing a separate High Court for East Bengal known as the High Court of Judicature for East Bengal at Dhaka (Dacca). The said High Court when established was popularly known as Dacca High Court.²⁷⁰ Dhaka High Court was vested with all the appellate and revisional jurisdictions of the Calcutta High Court and also the original jurisdiction of that court as far as practicable. The Province

²⁶⁹ Kazi Ebadul Hoque, *Administration of Justice in Bangladesh* (2006) 1.

²⁷⁰ Badrul Haider Chowdhury, *Evolution of Supreme Court of Bangladesh* (1991) 5.

of East Bengal was subsequently renamed as East Pakistan under the Constitution of Pakistan, 1956.²⁷¹

After independence of Bangladesh, High Court of Bangladesh Order, 1972 (President's Order No. 5, of 1972) was promulgated on 17 January 1972. The High Court of Judicature at Dhaka in East Pakistan known as High Court at Dhaka existing on the 25 day of March 1971 was deemed to have existed since 26 March 1971. The High Court of Bangladesh consisted of the Chief Justice and other Judges as might be appointed by the President. The High Court of Bangladesh has been made a court of record and to have such original, appellate, special, revisional, review procedural and all other powers as exercised by the High Court at Dhaka except any power to issue any writ, order or direction in the nature of habeas corpus, mandamus, prohibition quo warranto or certiorari. The High Court of Bangladesh (Amendment) Order 1972 (President's Order No. 91 of 1972) was promulgated on 2 August 1972 by the President. This Order took away the power of the High Court of Bangladesh to pass any order or direction in the nature of habeas corpus under section 491 of the Code of Criminal Procedure to release a person illegally held in custody and also provided for abating all proceedings against conviction and sentence for offences against the state under chapter VI of the Penal Code or for any offence under any other law specified by the government.

It also provided for constituting an Appellate Division of the High Court of Bangladesh consisting of the Chief Justice and two other Judges appointed by the President in consultation with the Chief Justice and for transferring all

²⁷¹ Hoque, above n 270, 21.

appeals and petitions arising out of matters within the territories of Bangladesh pending before the erstwhile Supreme Court of Pakistan to the Appellate Division. It also provided that all rules made by the erstwhile Supreme Court of Pakistan before 26 March 1971 shall continue in force with necessary modifications and shall apply in all cases.²⁷²

As stated above, the Supreme Court of Bangladesh, the apex court of the country, consists of two divisions – the Appellate Division and the High Court Division. All the courts of Bangladesh are under the direct and indirect supervision and control of the Supreme Court. According to Article 94 of the Bangladesh Constitution ‘There shall be a Supreme Court for Bangladesh (to be known as the Supreme Court of Bangladesh) comprising the Appellate Division and the High Court Division’.²⁷³ The High Court Division has power of judicial revision. The lower courts are located at the district level. The magistrates deal with only criminal cases, whereas the judges at the district and upper levels deal with both criminal (including appeals) and civil cases. The High Court Division hears appeals from district courts and may also judge original cases. The Appellate Division reviews appeals of judgments of the High Court Division. The High Court Division of the Supreme Court is empowered under Article 102 also to review HRM of BCS and to issue different orders in the nature of writs and the Appellate Division is empowered under Article 103 of the constitution to review administrative actions including actions in HRM of BCS for doing complete justice and to issue orders, writs and decrees under Article 104 for that purpose.

²⁷² Hoque, above n 270, 26-27.

²⁷³ *The Constitution of the People's Republic of Bangladesh 1972*, Article 94.

Under Article 117 of the Constitution of the People's Republic of Bangladesh the government of Bangladesh is empowered to establish one or more Administrative Tribunals to deal with petitions arising out of HRM of BCS. In exercise of that constitutional power the government enacted the Administrative Tribunals Act, 1980. Under section 5 of the Act Administrative Tribunals and under section 6 of the Act Administrative Appellate Tribunal has been established by the government. The Administrative Tribunal directly deals with reviewing decisions and orders of the executive government relating to HRM of BCS with respect to civil servants of Bangladesh. The Appellate Tribunal hears and determines appeals against judgments and orders of the Administrative Tribunals. In addition section 6A of the Administrative Tribunals Act provides for judicial review and intervention with respect to the judgment and order of the Administrative Appellate Tribunal by the Appellate Division of the Supreme Court under Article 103 of the constitution in the same way as they do in relation to the High Court Division.

1.2 Principles and Methods of Judicial Intervention

Nature and scope of judicial intervention relating to HRM of BCS depend on relevant laws, practices and institutions. It differs from one country to another. A country where the machinery of justice is based on the common law, there is scope of judicial review and intervention on administrative actions including HRM of civil service. It has become an established feature of governmental system in modern times that vast legislative and quasi-judicial powers are being exercised by the administrative authorities and administrative tribunals, so that it is no longer correct to say that the legislative function is exercised by Parliament and the judicial power is vested

in the Courts. The problem arises as to how to maintain the traditional legislative sovereignty of Parliament and the rule of law or supremacy of the ordinary courts of the land in the face of the altered situation. The solution has been found, largely, in the ultimate control of these administrative authorities by the courts themselves, through the application of certain immutable principles and the enforcement of certain judicial remedies which were available to the Judiciary from before, under the ancient Common Law of England. With the traditional principles of judicial review two new doctrines have been evolved in the legal system namely: Doctrine of Proportionality and Doctrine of Legitimate Expectations. It is by means of these principles and methods of judicial control of administrative actions that the rule of law and individual liberty is still maintained in England.²⁷⁴

In Bangladesh the power and jurisdiction of the government are defined in the constitution, so the judicial intervention relating to HRM of BCS is done according to the constitution and laws. In Britain most of the powers of the government bodies are subject to judicial control because in a society under rule of law government bodies performing public functions are subject to judicial review. In Bangladesh when an authority takes an action which is unconstitutional, contrary to law, improper, unreasonable or irrational, a court of law can interfere with such action by exercising power of judicial review. The judicial review of HRM of BCS action is limited to testing whether the HRM action has been fair and free from the taint of unreasonableness and has substantially complied with the norms of procedure set for it by laws and usages of public administration. Judicial review is made not against the decision, but is confined to the examination of the decision making process.

²⁷⁴ D Basu, *English Constitution Law* (1974) 53.

1.2.1 Principles of Judicial Intervention in HRM of BCS

In judicial review the court is concerned with the question whether the action under review is lawful or unlawful. Courts exercise the power of judicial review on the basis that powers can be validly exercised only within their true limits and a public functionary is not to be allowed to transgress the limits of his authority conferred by the constitution or the laws. The court can exercise the power of judicial review if the decision is malafide or in violation of the principles of natural justice. The role of the court in judicial review is essentially supervisory and the principle here at work is basically that of *ultra vires*, which is synonymous with 'outside jurisdiction' or in excess of power.²⁷⁵ Judicial review of administrative actions means the power of the superior courts to review the legality and validity of actions and decisions of persons and bodies exercising administrative powers, whether of a legislative, executive or judicial or adjudicatory character.²⁷⁶

This judicial review of administrative action or inaction should be made in public interest and within the permissible limits.²⁷⁷ The entire development of administrative law is characterised as controlling and structuring the discretion conferred by the state on its officers. Thus, in almost all the democratic countries, it is accepted that discretion conferred on the administration is not unfettered, uncontrolled or non-reviewable by the courts. To keep the administration within its bounds, the courts have evolved certain principles and imposed some conditions and formulated certain tests and taking recourse to those principles, they effectively control the abuse or

²⁷⁵ William Wade, *Administrative Law* (2004) 280; *Shamsul Huda v BTMC* (1980) 32 DLR 114.

²⁷⁶ M David Walker, *The Oxford Companion to Law* (1980) 675.

²⁷⁷ Omar Faruque, *Method of Judicial Control of Administrative Action in Bangladesh: Principle and Practice* (2005) 319.

arbitrary exercise of discretionary power in course of HRM of BCS by the administration. Any member of BCS claiming to be aggrieved by any HRM activity may also invoke judicial review of administrative action for a wide range of purposes including the followings:

1. To have an order, act or decision of a public body quashed or declared invalid on the ground that it is ultravires or outside jurisdiction usually by an application for an order of certiorari;
2. To obtain the reversal or variation of an order or determination for error of law;
3. To restrain the performance or continuance of unlawful action. This may be achieved by an application for an order of prohibition or for an injunction or a declaration, or by a statutory application;
4. To secure an authoritative statement of the law governing a specific legal dispute by means of a binding declaration awarded by the courts;
5. To secure the performance of a public duty, normally the judicial remedy for a wrongful omission will be an order of mandamus; sometimes non-performance of a public duty will give rise to an action for damages;
6. To defend one in proceeding which rely on the validity of a law, an administrative act or order. If one is prosecuted for breach of a by-law, one can set-up the defence that the by-law is ultravires; and
7. To enforce the principles of natural justice by ensuring equal and fair treatment by law and due process of law.

The remedy of judicial review is different from the remedy of appeal. In appeal, the appellate authority goes into the merit of the case either on point

of law or on points both of law and fact, re-assess the evidence and can substitute its own decision for that of the body appealed from. An administrator might do what is authorised by statute but if motives or considerations that are not pertinent to the authorised purpose prompt him, judicial review and intervention will be called for to deal with both improper or unauthorised purpose and ulterior motives.²⁷⁸

In judicial review of administrative actions in course of HRM of BCS, the court has to start with the presumption of regularity of the official act and the burden of proof is on the person who alleges the contrary. Whenever a power is given by a statute to an authority, whatever may be, fairly regarded as incidental to or consequential upon things authorised by the legislature should not be declared *ultravires*.²⁷⁹ In modern times HRM of BCS involves rule making under delegated legislative authority and quasi-judicial functions in departmental proceedings. To make these activities amenable to rule of law the courts themselves adopted certain measures through the application of the above mentioned immutable principles and the enforcement of certain judicial remedies which were available to the judiciary from before. These principles of judicial intervention on HRM of BCS and the methods discussed in the next section can help improvement of HRM of BCS through rule of law and providing a congenial atmosphere for improving HRM of BCS.

These principles include the principle of individual liability of civil servants, liability of government authorities, compliance with statutory provisions, doctrine of proportionality and doctrine of legitimate expectation. Every civil

²⁷⁸ M A Fazal, *Judicial Control of Administrative Action in India and Pakistan* (1969) 170.

²⁷⁹ *Mostafa Kamal v Commissioner of Customs* (1999) 51 DLR (AD) 1; *A. G. v Great Eastern Rly Co.* (1880) 5 App Cas 473; Mahmudul Islam, *Constitutional Law of Bangladesh* (2002) 444.

servant is individually liable in tort as well as criminally for any action which is not justifiable by law. Government authorities including Government of Bangladesh may sue or be sued in the name of Bangladesh.²⁸⁰ When a civil servant exercises statutory power dealing with HRM of BCS it is the duty of the court to see that the law as laid down by Parliament, (i) is not ultravires the constitution, and (ii) the exercise of the power is fully and properly carried out by the administrative authority who has been entrusted by Parliament in the matter, and (iii) the authority does not abuse the statutory power. These issues are further analysed below:

(i) The Constitution of Bangladesh has described the power of Parliament in making laws and has reposed on the Supreme Court the constitutional responsibility to adjudicate upon the validity of the laws.²⁸¹ The Court, in deciding the constitutionality of any law passed by the legislature, follows certain principles in keeping with the necessity of harmonious working of the different organs of the state. These principles are stated below:

1. When the constitutionality of a law is challenged the court is to begin with a presumption of constitutionality of the law and the person challenging the validity of the law must show that the law is clearly unconstitutional.²⁸²
2. Where the constitutionality of a law is assailed and there are two possible interpretations, one of which would render the law constitutional, while other unconstitutional, the former

²⁸⁰ *The Constitution of the Peoples Republic of Bangladesh 1972, Article 146.*

²⁸¹ *Anwar Hossain Chowdury v Bangladesh* (1989) BL.D (SP) 1.

²⁸² *Keramat Ali v Bangladesh* (1998) 50 DLR 372.

interpretation is to be preferred and the constitutionality of the law upheld.

3. The constitutionality of a statute will not be questioned by the court to undertake hypothetical, abstract or academic exercise. The court will not pronounce a statute invalid unless a decision on that very point becomes necessary to the determination of the cause.
4. The court will not decide a larger constitutional question than is required by the case which means that the court will decide a constitutional question only when, and to the extent, necessary for the disposal of a case.
5. The court will not hear an objection regarding the constitutionality of a law by a person who has not been affected by it.
6. A law cannot be held unconstitutional on the ground that it violates one or more of the principles of liberty, or the spirits of the constitution unless such principles or the spirit are found in terms of the constitution.
7. In deciding the constitutional validity of a law, the court is not concerned with the wisdom and justice of the law and the law, even though harsh, will be held valid if it is not prohibited by the provision of the constitution. But if a law is unnecessarily harsh or unreasonable a question may arise whether the act is ultravires Article 31 or 32 of the constitution.²⁸³
8. If a law is found bad in part and the bad part can be severed from the good part, the court will declare void the bad part only.²⁸⁴

²⁸³ *Kudrat-e-Elahi v Bangladesh* (1992) 44 DLR (AD) 319.

²⁸⁴ Islam, above n 18, 444.

ii) If the statutory power is exceeded, the courts would nullify the administrative action by the application of the doctrine of ultra vires which means beyond competence or jurisdiction. Thus,

- a) Where the power to make subordinate legislation such as rules and regulations, is vested in an administrative authority, the court will hold the rules and regulations to be invalid if it finds that they have been made contrary to the limitations or procedure laid down by the statute.
- b) If the administrative authority is empowered to do an administrative act, the Court would intervene if he does an act, which is, on a proper judicial interpretation, not authorised by the statute

iii) The Court would also intervene where the authority abuses the power, which is practically another aspect of acting contrary to the statute. Thus,

- a) Where the authority refuses to exercise discretion where he owed a duty to an individual to exercise the discretionary power or where he exercised it improperly by taking into consideration extraneous matters not envisaged by the statute.
- b) Where the power vested in the authority is quasi-judicial, the Court would intervene if the rules of natural justice are violated. The rules of natural justice are the primary rules of justice which any tribunal or authority which has to determine the rights of individuals must observe, even though it may not be a regular court of justice and may not have to follow the technical rules of procedure or evidence of a court of law. Broadly speaking these rules of natural justice are:

1. No man must be a judge in his own cause, id est (i.e.), in a matter in which he has a direct interest. This rule secures the impartiality of the tribunal which has to adjudicate upon the right of another person.
2. No man shall be condemned unheard, i.e. without giving him an opportunity of stating his case or showing cause against the action proposed against him.
3. The decision must be made in a good faith, that is to say, the judicial power should not be used to secure an object other than for which it was conferred.

The Doctrine of Proportionality is applied by courts for judicial intervention with respect to HRM of BCS. The doctrine ordains that administrative measures in HRM of BCS must not be more drastic than is necessary for attaining the desired result. If an action taken by an authority is grossly disproportionate, the said decision is not immune from judicial scrutiny. The doctrine is applied when apart from the fact that the measure is improper and unreasonable exercise of power, it shocks the conscience of the court and amounts to evidence of bias and prejudice.²⁸⁵

The Doctrine of Legitimate Expectation is also applied by courts while making intervention with respect to HRM of BCS. A civil servant may have a legitimate expectation of being treated in a certain way by an administrative authority even though he has no legal right in private law to receive such treatment. Where a decision of an authority adversely affects legal rights of an individual, duty to act judicially is implicit. But even in cases where there is

²⁸⁵ William Wade, *Administrative Law* (2004) 403.

no legal right, he may still have legitimate expectation of receiving the benefit or privilege. Such expectation may arise either from express promise or from existence of regular practice which the applicant can reasonably expect to continue. In such cases, the court may protect his expectation by invoking principles analogous to natural justice and fair play in action. The court may not insist an administrative authority to act judicially but may still insist him to act fairly.²⁸⁶ The doctrine of 'legitimate expectation' has its own limitations. The concept of legitimate expectation is only procedural and has no substantive impact and this does not apply to legislative activities. This also does not apply if it is contrary to public policy or against the security of state.²⁸⁷ The doctrine of legitimate expectation in essence imposed a duty to act fairly. Legitimate expectations may come in various forms and owe their existence to different kinds of circumstances.

1.2.2 The Methods of Judicial Interventions

The methods or instruments by which the judicial intervention is made and the foregoing principles applied against the abuse of administrative power in HRM of BCS are- (i) Ordinary Actions, and (ii) The Prerogative Writs. A civil servant who is affected by a wrongful HRM activity may himself file a petition against such wrongful activity. Where he is prosecuted for an offence he may plead that the regulation which created the offence is ultravires the statute and hence no offence has been committed. He may also bring a declaratory action for having it declared that the act of a public authority is ultravires and invalid. He may also obtain an injunction to restrain the authority from doing an illegal act, in proper cases. When a right of appeal to

²⁸⁶ *Halsbury's Laws of England, volume 1(1)*, 151; *Schmidt v Secretary of State* (1969) All ER 904.

²⁸⁷ C K Thackwari, *Lectures on Administrative Law* (1998) 282.

the courts of law is provided by a statute, a civil servant aggrieved by an order of an administrative authority may have his redress from the court of appeal in the ordinary manner. Some statutes enjoin an administrative authority to state a case to the High Court. This creates a corresponding right to the aggrieved civil servant to compel the authority to state a case by means of a Writ.

The prerogative writs are the great engines of judicial intervention. They may be issued in the form of writs or orders in the nature of prohibition, mandamus and certiorari. The former writ of prohibition was a prerogative writ, issued by a superior court to an inferior court, directing the inferior court not to exceed the limits of its jurisdiction in the performance of its judicial duties.

Mandamus literally means command. It was a prerogative writ or order issued by the Court of Kings Bench in England which would demand some positive act on the part of the body or person to whom it was addressed. It had been used to command the person to whom it was addressed to perform a public duty and the performance of which could not be enforced by any other adequate legal remedy. Failure to obey it might lead to proceedings for contempt of court. In addition or in lieu the court might direct that the act be done by some one else at the cost of the defaulter. Mandamus was a public law remedy and would not, therefore, lie in respect of duties of a private nature. As Blackstone said:

A writ of mandamus is, in general, a command issuing in the King's name from the Court of King's Bench and directed to any person, corporation or inferior court of judicature within the King's domain.

requiring them to do some particular thing therein specified which appertains in their office and duty.....²⁸⁸

Thus mandamus would not be issued unless the applicant had a legal right to the performance of the legal duty of a public nature and the party against whom it was sought was bound to perform that duty. The object of mandamus was only to compel any public authority, including administrative and local bodies, to act, when it had been shown that the authority had declined to consider matters which it ought to have had considered or had not decided the case according to law. It was a discretionary remedy and the court might refuse to grant mandamus where more effective remedy than mandamus was available. However, as against public authorities, it was available, principally in the following cases:

- a) Where the authority was required by a statute to perform a duty, it would be issued to compel him to perform that duty.
- b) Where the statute had not imposed a duty but empowered the authority to do a discretionary act or to exercise a power, the mandamus might be issued to quash the act of the authority, if it has exercised the power ultra vires the statute or malafide or unreasonably.
- c) Where a public official had a public duty to perform, even if it was a non-statutory i.e. a common law duty, mandamus would lie on the application of the person interested in its performance to compel him to perform that duty.

²⁸⁸ Md A R Howlader, *Writ Jurisdiction of the Supreme Court of Bangladesh* (LL.M Thesis, University of Dhaka, 1997) 32-33.

To be entitled to seek judicial review the applicant must have what the Court considers 'sufficient interest' in the matter to which the application relates. Thus it was held that mandamus was not available against the Crown itself, nor against a servant of the Crown to enforce a duty owed exclusively to the Crown as the applicant did not have sufficient interest in the performance of the duty concerned. Under Article 102 of the Constitution of the People's Republic of Bangladesh the order in the nature of mandamus may be issued against a person performing functions in connection with the affairs of the republic and in such cases the above mentioned principles will apply *mutatis mutandis* on the ground of equity, justice and good conscience.

Certiorari is a writ or order which would be issued by a superior court requiring that, 'The record of the proceedings in some case or matter pending before an inferior court should be transmitted into superior court to be there dealt with'. The writ was so named because in its original Latin form it required that the King should 'be certified' of the proceedings to be investigated. The object of this prerogative writ was to secure by the exercise of the authority of a superior court that the jurisdiction of the inferior tribunal be properly exercised. Whenever any body of persons (i) having legal authority, (ii) to determine questions affecting rights of subjects and having the duty to act judicially, (iii) acted in excess of their legal authority, certiorari might be issued to remove the proceedings from such body to the superior courts and to quash a decision which was found to be *ultra vires* i.e. beyond jurisdiction.

The writ of certiorari would not be issued against purely administrative action. It would be issued only if the authority had a duty to proceed judicially

i.e. to come to a decision after hearing the parties interested in the matter and without reference to any extraneous considerations but that is not complied with. It might also be issued against administrative authorities only where the decision of that authority was quasi-judicial in nature. What was an inferior court for this purpose, or whether a person or body exercised powers of a judicial or quasi-judicial nature was a question for the court to decide. A writ of certiorari could be issued only after trial of proceedings were over and with the object of quashing an order or proceeding which was without jurisdiction or in violation of the principles of natural justice or in excess of jurisdiction of the court or tribunal which disposed of it or there was an error on the face of record. The conditions necessary for the issue of certiorari were:-

- a) There must have been a tribunal or officer having legal authority to determine questions affecting rights of subjects and having a duty to act judicially.
- b) Such tribunal or officer must have acted (i) without jurisdiction or in excess of the legal authority vested in such quasi-judicial authority or (ii) contrary to the principles of natural justice or (iii) has committed an error of law apparent on the face of the record.

(i) Want or excess of jurisdiction

An act without jurisdiction or in excess of jurisdiction is ultravires and is liable to be quashed.

(ii) Denial of natural justice

Where the power vested in the authority was judicial or quasi-judicial, the Court would interfere if the rules of 'natural justice' were violated. The rules of natural justice are the primary rules of justice any tribunal which has to

determine the rights of individuals must observe, even though it may not be a regular Court of justice and may not have to follow the technical rules of procedure or evidence.

(iii) Error on the face of the record

These are errors of law falling short of excess of jurisdiction and may arise for example, when a tribunal takes into account extraneous considerations which it ought to have ignored in reaching its decision, or fails to consider relevant considerations or in any way fails to apply correctly the relevant law. Under Articles 102, 103 and 104 of the Constitution of the People's Republic of Bangladesh the order in the nature of prohibition, mandamus and certiorari may be issued against a person performing function in connection with the affairs of the Republic and in such cases the above mentioned principles will apply *mutatis mutandis* on the ground of equity, justice and good conscience.

1.3 Legal Scope for Judicial Intervention

The legal scope for judicial intervention in HRM of BCS is based on relevant constitutional and non-constitutional legal provisions including statutory and delegated legislations both for persons in the service of the republic as well as for persons in statutory public corporations. Some of the legal provisions have been continued from the pre-liberation period while others have been made under the authority of the constitution or statutory delegation. All these provisions as expounded and positive contributions adjudicated by courts through judicial interventions in different cases have been examined in this section.

1.3.1 Constitutional Scope

The Bangladesh Constitution has embodied substantive provisions for judicial review and intervention in Articles 7, 26 and 44. The constitutional protections extended to the persons in the service of the republic are provided in Articles 27, 29 and 135. Judicial review and intervention is also made to protect their legal rights under statutes and delegated legislations whether under continued or newly made laws and to ensure natural justice. The authority to make laws relating to HRM of BCS has been enshrined in Articles 133, 55(6) and 136. Civil servants serving in statutory corporations are entitled to judicial review and intervention for protection of their statutory rights and natural justice. For enforcement of the abovementioned constitutional protections, rights and rules of natural justice the adjective or procedural provisions for High Court Division are laid down in Article 102 and for the Appellate Division in Articles 103, 104 and 105. Finally, the constitutional provision for intervention by Administrative Tribunals in HRM of BCS has been embodied in Article 117. The judicial review and interventions with respect to substantive provisions have been examined in this section and the judicial interventions with respect to procedural provisions related to the High Court Division and the Appellate Division of the Supreme Court of Bangladesh have been examined below in section 1.4 and the judicial interventions with respect to the Administrative Tribunals have been examined in section 1.5.

Now turning to the substantive provisions contained in the constitution with respect to judicial review and intervention, Article 7 declares the core of constitutional supremacy. It says, 'This constitution is, as the solemn expression of the will of the people, the supreme law of the republic, and if

any other law is inconsistent with this constitution that other law shall, to the extent of the inconsistency, be void.' Though the provisions of Article 7 give an umbrella-coverage of constitutional supremacy to the whole constitution. Article 26 gives a double sanctity on the provision of fundamental rights. Article 26 says,

1. All existing law inconsistent with the provisions of this part (Part-III) shall, to the extent of such inconsistency, become void on the commencement of this constitution.
2. 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.

Article 44(1) gives an unconditional substantive right to move the High Court Division for enforcement of fundamental rights and includes it in Part III of the constitution as a fundamental right in the following words: 'The right to move the High Court Division in accordance with clause (1) of article 102, for the enforcement of the rights conferred by this Part is guaranteed'.

The doctrine of supremacy of the constitution elaborated above has been recognised and applied by the Supreme Court of Bangladesh while intervening in HRM of BCS in several cases. Constitution is the supreme law of the land. As regards legislation it was held that Parliament's authority to make law and President's authority to make rules for HRM of BCS under Article 133 is subject to the supremacy of the other provisions of the constitution. In the leading case on the point *Dr. Nurul Islam v Bangladesh* (Ruhul Islam, J) it was laid down as follows: 'Under Article 133 Parliament

can make a law regulating the service conditions of government servants, but this power is not absolute, it is subject to the constitutions'.²⁸⁹

Furthermore, in the same case it was held that a law or rule dealing with termination of service must safeguard fundamental rights or protection under article 135 and any law authorising termination of service without hearing and not in public interest is not sustainable in law. In addition any law lacking guidance for imposing punishment introduced under the law is ultravires and a law providing for discriminatory treatment is not valid and also a valid law must apply equally to all the members. In other cases it was held that a law taking away a vested statutory right is not by itself unconstitutional,²⁹⁰ a law inconsistent with the principle of equality is unconstitutional.²⁹¹ General Clauses Act will apply while interpreting constitutional supremacy,²⁹² a law providing a rational basis for protecting public servants from arbitrary exercise of power by the government is valid.²⁹³

As regards executive actions with regard to HRM of BCS in violation of constitutional supremacy it was held that the pleasure doctrine of the President contained in Article 134 is limited by the constitutional guarantee under Article 135. In the leading case *Dr. Nurul Islam v Bangladesh* (Ruhul Islam, J) it was elaborated as follows:

Article 134 provides that except as otherwise provided by the constitution every person in the service of the Republic shall hold office during the pleasure of the president. The very opening words, namely, 'except as

²⁸⁹ *Dr Nurul Islam v Bangladesh* (1981) 33 DLR (AD) 201.

²⁹⁰ *Bangladesh v Md. Azizur Rahman* (1994) 46 DLR (AD) 19.

²⁹¹ *Zainal Abedin v Bangladesh* (1982) 34 DLR (AD) 77.

²⁹² *Sayed Nurul Hossain v Bangladesh* (1999) 51 DLR 226.

²⁹³ *Habibullah Khan v SA Ahmed* (1983) 35 DLR (AD) 72.

otherwise provided by the constitution' indicate that the 'pleasure of the President' doctrine is not absolute. This is subject to other constitutional provisions.²⁹⁴

In the same case it was further held that new mode of termination not complying with constitutional protection will be knocked down under judicial intervention, any notification issued under an ultravires law legislative classification inconsistent with constitutional equality suffers from unconstitutionality. In other cases it was held that termination in violation of constitutional provision is liable to judicial intervention under Article 102 even when alternative remedy is available,²⁹⁵ when government retires a public servant without assigning any reason the court may direct government to produce materials in justification of its action and the government is the best judge to decide what is public interest while terminating a public servant.²⁹⁶

Finally, in the following cases involving judicial intervention in HRM of BCS constitutional supremacy was not violated and the court held that constitutional supremacy does not require absolute equality rather it recognises different real world experiences, rationalities and realities. Thus in the leading case on this point *Bangladesh v Azizur Rahman* (Shahabuddin Ahmad, CJ) it was classified as follows:

The term 'equality before law' should not be interpreted in its absolute sense to hold that all persons are equal in all respects disregarding different

²⁹⁴ *Dr Nurul Islam v Bangladesh* (1981) 33 DLR (AD) 201.

²⁹⁵ *Fazlul Haq v Bangladesh* (1978) 30 DLR 336.

²⁹⁶ *Habibullah Khan v SA Ahmed* (1983) 35 DLR (AD) 72.

conditions and circumstances in which they are placed or special quality and characteristics which some of them possess but lacking in others.²⁹⁷

Furthermore, in different cases on this point it was also held that: the constitutionality of any law will not be brought into question where there is an alternative way to dispose of the case and disposal of a cases on the basis of 'malice in law' was considered to be a valid alternative rather than its disposal on the basis of inconsistency with the constitution.²⁹⁸

1.3.2 Non-Constitutional Scope

In addition to the constitutional provisions other statutory or delegated legislative provisions may also provide basis for judicial review and intervention with respect to HRM of BCS. But such law must be valid law, including continued or new law made by competent authorities and delegated legislation. The Constitution provides an inclusive definition of law in Article 152 in the following words: 'Law means any Act, Ordinance, Order, rule, regulation, bye-law, notification or other legal instrument, and any custom or usage, having the force of law in Bangladesh'. Such law forms and determines scope of judicial intervention in HRM of BCS of both persons in the service of the republic as well as the persons serving in the statutory corporations. Judicial interventions themselves create judge-made law or precedent to form a part of the law of the land. But they differ from other sources of law. In this context the Supreme Court of India held as follows:

Reliance on decisions of courts can not be placed without discussing whether it was rendered in same factual and legal background. Judgments of courts

²⁹⁷ *Bangladesh v Md. Azizur Rahman* (1994) 46 DLR (AD) 19.

²⁹⁸ *Dr Nurul Islam v Bangladesh* (1981) 33 DLR (AD) 201.

can not be construed as statutes - since judges interpret words of statutes. Such judge-made law requires being consistent with rules and principles on public policy. Not following the same, would result in chaos in administration of justice.²⁹⁹

1.3.2.1 Valid Laws

As regards valid statutory laws relating to HRM of BCS, it was held that law made bonafide to meet urgent situation will be valid,³⁰⁰ a subsequent amendment of a statute to provide a guideline will be valid,³⁰¹ improvement in service law will be valid,³⁰² pension rules are valid statutory rules,³⁰³ the saving clause of a repealing law is a valid legal basis,³⁰⁴ law of promissory estoppel is valid law,³⁰⁵ any action denying application of promissory estoppel is not sustainable in law.³⁰⁶

1.3.2.2 Continued Laws

Continued laws of HRM of BCS from the past without any updating or modernisation form the bulk of the law in this field. Continuance of previous service laws by competent authority gives them legal validity. These backdated laws form the basis of judicial intervention in HRM of BCS. All persons in the government service of erst-while Pakistan who took the oath of allegiance of Bangladesh were continued in service and all laws that were in force in Bangladesh on the 25 March 1971 have been continued in force with

²⁹⁹ *Ashwani Kumar Singh v Uttar Pradesh Public Service Commission and others* (2003) 90 AIR, SC 2661

³⁰⁰ *Bangladesh v Md Azizur Rahman* (1994) 46 DLR(AD) 19.

³⁰¹ *Abdur Rashid v Bangladesh* (1978) 30 DLR 41.

³⁰² *Bangladesh v Mohammad Faruque* (1999) 51 DLR (AD) 112.

³⁰³ *Bangladesh Retired Government Employees v Bangladesh* (1999) 51 DLR(AD) 121.

³⁰⁴ *Chairman, BCSIR v Abdul Khaleque* (1991) 43 DLR(AD) 209.

³⁰⁵ *Abdul Hai v TCB* (1988) 40 DLR 109.

³⁰⁶ *Kazimuddin v Bangladesh* (2008) 60 DLR 61.

consequential changes under the Laws Continuance Enforcement Order, 1971. The Order conferred legal validity on the pre-existing service laws. Several judicial interventions have expounded the position of the law on this point. Thus it was held where no new law was made pre-existing law will be applicable. In the leading case on this point *Faizullah v Bangladesh* (ATM Masud, CJ) ordained as follows:

No new rule has been made in Bangladesh when the impugned promotions were made, to determine the seniority of the officers including the petitioners. The rules therefore applicable to the petitioners would be the rules which were applicable to them on the 25 March 1971 as provided under the Laws Continuance Enforcement Order.³⁰⁷

In the same case it was further held that all government employees who took oath of allegiance and all pre-existing service laws shall continue to be in force, former central and provincial services will continue to be managed by their respective former rules, the continuance of the pre-existing service laws and services were subject to variation made by law, counting of seniority of pre-existing service was to be made under the pre-existing service laws, legal vacuum can be filled by old law. In another case on this point it was held that promotion of pre-existing employees will continue under pre-existing service rules subject to regulation by the supreme law making body.³⁰⁸

1.3.2.3 New Laws

As regards new law making the constitutional power vested in the Parliament or the President under Article 133 to make laws relating to HRM of BCS is only enabling and not obligatory in nature. A number of judicial interventions

³⁰⁷ *Md. Faizullah v Bangladesh* (1981) 33 DLR 16.

³⁰⁸ *Abdur Rashid v Bangladesh* (1979) 31 DLR 233.

have interpreted the nature and scope of this law making power. Thus it was held, that no court can direct the Parliament to make a law or direct the President to make rules. The leading case on the point *Bangladesh v Shafiuddin Ahmed* (Mustafa Kamal, J) laid down that:

It is not obligatory for the Parliament to make laws. No Court can direct the Parliament to make laws. Nor is it obligatory for the President to make rules. No court can similarly direct the President to make rules, because the rule making power of the President is identical with that of the Parliament.³⁰⁹

In the same case the following further observation were made: if both the legislations are harmonious both will be applicable but if they contradict Act of Parliament shall prevail, service law making under Article 133 relates to terms and conditions of service and rules of business will be supplemental thereto, in the absence of Parliamentary Act or Presidential rule under Article 133 there is precedence of exercise of executive power in the name of the President under Article 55 of the constitution, this power can also be exercised to fill any void created by absence of law or rules under Article 133. In another case it was observed that the constitution provides for parallel and primary legislation both by the Parliament and the President, but when the Parliament passes a law on the same issue presidential rule will become secondary.³¹⁰

There is lack of enough law making for modernising or updating in exercise of the above enabling legislative and executive powers but judicial interventions made some positive contributions in that direction. Thus it was

³⁰⁹ *Bangladesh v Shafiuddin Ahmed* (1998) 50 DLR (AD) 27.

³¹⁰ *Zainal Abedin v Bangladesh* (1982) 34 DLR 77.

held, a civil servant is entitled to beneficial interpretation of service law to protect his right without violating the language or meaning of the law.³¹¹ Adverse provisions can not operate in isolation ignoring the protection clauses, removal from service under a law violating constitutional protection was not sustainable, a law providing arbitrary power to the government without any guidance for its exercise was held not sustainable, law providing for arbitrary termination of one out of a number of similarly situated civil servants is removal with stigma and protection under Article 135 was attracted.³¹² In other cases it was held that the exercise of the power of the government to retire a government servant must be rational and must have good grounds,³¹³ such power can be exercised only on the ground of public interest,³¹⁴ even directives were issued by the Supreme Court requiring government to frame service rules for judicial service. In the leading case *Secretary, Ministry of Finance v Masdar Hossain* (Mustafa Kamal, CJ) laid down: 'Judicial autonomy requires that judicial appointments shall be made on merit by a separate Judicial Service Commission which may be established either by a statute or by the President while framing rules under Article 115'.³¹⁵

But there is no such instance as yet for making updated laws and rules under Articles 133, 136 or 55 of the Constitution of the People's Republic of Bangladesh to address the issue of HRM of BCS as identified in Chapter II, III and IV of this dissertation. However, in Indian jurisdiction the Supreme

³¹¹ *AKM Nurul Alam v Bangladesh* (1994) 46 DLR(AD) 113.

³¹² *Dr Nurul Islam v Bangladesh* (1981) 33 DLR (AD) 201.

³¹³ *Abdur Rashid v Bangladesh* (1979) 31 DLR 233.

³¹⁴ *Dr Nurul Islam v Bangladesh* (1981) 33 DLR (AD) 201.

³¹⁵ *Secretary, Ministry of Finance v Masdar Hossain* (2000) 52 DLR (AD) 82.

Court of India played a more proactive role when it ordered to reframe the rule which was found ultra vires the statutory rules and the constitution.³¹⁶

1.3.2.4 Delegated Laws

Delegated legislations authorised by the Parliament through statutory delegation of power are valid laws. Delegated legislation is a widely practiced legislative method in public law. The statute enables the delegated authority to make laws for the implementation of the objects of the parent statute keeping itself within the bounds of the parent statute. As regards delegated legislation it was held that delegated authority has the same law making authority as the sovereign delegating authority for the purpose of carrying out the object of the statute by which the authority is delegated. In the leading case *BSIC v Mahbub Hossain* (Mahmud Hussain, CJ) held:

It is an accepted concept of the constitutional law that a competent law making body which has derived its powers from the sovereign has the authority to delegate its own legislative power to another body by enacting a statute enabling thereby the said body to make rules, regulations, bye-laws et cetera for the purpose of carrying out the object of the said statute and that the said body acting under the delegated authority exercises the same law making power as belongs to the sovereign.³¹⁷

The following further observations related to delegated legislation were made in the same case: a regulation framed by a statutory body under statutory authority has a statutory origin, a notification made with the intention of frustrating the judgment of a court or with any other intention not bonafide is

³¹⁶ *IK Gupta v State of Jammu and Kashmere* (2004) 91 AIR (SC) 2523.

³¹⁷ *BSIC v Mahbub Hossain* (1977) 29 DLR (SC) 45.

invalid.³¹⁸ In another cases following observations were made: a mere circular by executive fiat is not a legal basis for fixing antedated seniority,³¹⁹ an office memorandum not based on a delegated legislative authority and demanding an illegal undertaking from a civil servant is not valid.³²⁰ Rare and occasional order can not be regarded to have been passed in exercise of delegated legislative authoritys and hence can not form a valid basis for legitimate expectation,³²¹ any law delegating arbitrary authority to the government is bad,³²² generally delegated service law can not be made with retrospective effect,³²³ but if the rule is amended before the joining of the incumbent civil servant so that he had notice of the amendment before joining then the amendment is not with retrospective effect,³²⁴ a delegated legislation to settle a pre-existing problem is not deemed to have retrospective effect and is valid.³²⁵

1.4 Judicial Intervention by the Supreme Court of Bangladesh

Both the High Court Division and the Appellate Division of the Supreme Court of Bangladesh are authorised under Articles 102 and 103 respectively to review and intervene with respect to administrative actions taken in course of HRM of BCS.

³¹⁸ *Dr Nurul Islam v Bangladesh* (1981) 33 DLR (AD) 201.

³¹⁹ *Abdul Quddus v Bangladesh* (1981) 33 DLR (AD) 50.

³²⁰ *Jahurul Huque v NBR* (1980) 32 DLR 13.

³²¹ *Kazi Liakat Ali v Chairman, Civil Aviation Authority* (2004) 56 DLR 595.

³²² *Dr Nurul Islam v Bangladesh* (1981) 33 DLR (AD) 201.

³²³ *BADC v AKM Abdus Salam* (2006) 58 DLR(AD) 57.

³²⁴ *Moinuddin Zulfiquer v Bangladesh* (2007) 59 DLR (AD) 162.

³²⁵ *AHM Mustain Billah v Bangladesh* (2005) 57 DLR (AD) 41.

1.4.1 Judicial Intervention by the High Court Division

Article 102(1) of the constitution confers power on the High Court Division to enforce fundamental rights, while Article 102(2) confers power of judicial review in non-fundamental right matters. In this section the jurisdiction of the High Court Division from the procedural point of view will be examined.

1.4.1.1 Judicial Intervention Extended

From the procedural point of view the jurisdiction of the High Court Division was extended to cases involving enforcement of fundamental rights and constitutional protections. The principle was clearly laid down in *Aftabuddin v Bangladesh* (Naimuddin Ahmed, J.) as follows:

Even assuming that a person might have concurrent remedy before any forum including an Administrative Tribunal for redress of grievance, if it is established that enforcement of the fundamental rights conferred by the constitution is involved, for redress of such grievance such a person can certainly choose this court (High Court Division) as his forum in view of clause (1) of Article 102 of the Constitution despite the fact that remedy may also be provided by any other forum.³²⁶

Same view was maintained in other cases.³²⁷

In different cases it was further held that High Court Division also intervened while dealing with vires of law and ultravires actions,³²⁸ prevention of arbitrary deprivation of rights³²⁹ even when they were mixed with law and

³²⁶ *Aftabuddin v Bangladesh* (1996) 48 DLR 1.

³²⁷ *Abdur Rahim v Bangladesh* (1996) 48 DLR 538; *Sazedur Rahman v Bangladesh* (1998) 50 DLR 407; *Begum Shamsunnahar v Bangladesh* (2006) 58 DLR (AD) 7.

³²⁸ *Ali Hossain Fakir v Bangladesh* (1998) 50 DLR 231; *Debwur Hossain Mia v Bangladesh* (2000) 52 DLR(AD) 120; *Samiran Halder v Bangladesh* (2007) 59 DLR 410.

³²⁹ *Professor Nurul Islam v Bangladesh* (2000) 52 DLR 413.

facts³³⁰ and alternative remedy was not exhausted,³³¹ execution of lawful orders of higher authorities,³³² examining the legality of HRM of BCS actions such as termination with stigma³³³ and premature HRM of BCS actions,³³⁴ examining adequacy of reasons related to HRM of BCS actions,³³⁵ rectifying errors,³³⁶ in cases of major penalties after all the alternative remedies were exhausted,³³⁷ reviewing orders of executive appellate authorities,³³⁸ HRM of industrial workers in exceptional cases, malafide HRM of BCS actions,³³⁹ enforcement of legitimate expectations,³⁴⁰ against persons performing functions of the republic or of a local authority,³⁴¹ to protect statutory rights and ensuring natural justice to the employees of statutory corporations,³⁴² to grant consequential relief,³⁴³ to entertain a petition to recover cost by the party winning partially,³⁴⁴ paying cost of a judicial intervention generally by orders of declaratory nature.³⁴⁵

1.4.1.2 Judicial Intervention Not-Extended

On the other hand judicial review and intervention in exercise of the writ jurisdiction of the High Court Division was refused in the following cases of

³³⁰ *Bangladesh v Md. Azizur Rahman* (1994) 46 DLR (AD) 19.

³³¹ *Nurul Haq v REB.* (1993) 45 DLR 666

³³² *Matiur Rahman v Bangladesh* (1998) 50 DLR 357.

³³³ *Anil Krishna Mondal v Chairman* (1993) 45 DLR 367.

³³⁴ *Shahjahan Howlader v Bazlur Rahman* (2000) 52 DLR (AD) 358.

³³⁵ *Misfor Ali v Ministry of Power* (1981) 33 DLR 153; *Habibullah Khan v SA Ahmed* (1983) 35 DLR (AD) 72.

³³⁶ *AHM Mustain Billah v Bangladesh* (2005) 57 DLR (AD) 41; *Giasuddin Ahmed v Bangladesh* (1981) 33 DLR 329.

³³⁷ *Serajul Islam v Director General of Food* (1991) 43 DLR 237.

³³⁸ *Bangladesh v Zahangir Hossain* (1982) 34 DLR (AD) 173.

³³⁹ *Faruque Hasan v Titas Gas* (2006) 58 DLR 316.

³⁴⁰ *Dr. Abeda Begum v PSC.* 59 DLR (2007) 183.

³⁴¹ *Bangladesh v Zahangir Hossain* (1982) 34 DLR (AD) 173; *BSIC v Mahbub Hossain* (1977) 29 DLR (SC) 41.

³⁴² *BSIC v Mahbub Hossain* (1977) 29 DLR (SC) 41; *MH Chowdhury v G.M.T.G.T.D.Co.* (1981) 33 DLR (AD) 186; *M Rashiduzzaman v Bangladesh* (1997) 49 DLR 43; *BFFW Trust v Burhanuddin* (1981) 33 DLR (AD) 321; *Serajul Islam Bhuiyan v BWDB* (2004) 56 DLR 120; *Abdul Hoque Sikder v BADC* (1996) 48 DLR 574.

³⁴³ *Bangladesh v Mahbubuddin Ahmed* (1998) 50 DLR (AD) 154.

³⁴⁴ *Habibullah Khan v SA Ahmed* (1983) 35 DLR (AD) 72.

³⁴⁵ *Bangladesh v Mahbubuddin Ahmed* (1998) 50 DLR (AD) 154.

HRM of BCS. Such review and intervention was refused in cases when enforcement of fundamental or statutory right was not involved,³⁴⁶ or involved contractual employment,³⁴⁷ or claim to constitutional protection by employees of statutory corporations,³⁴⁸ or HRM actions of a council not being a local authority,³⁴⁹ or where departmental proceeding only were involved,³⁵⁰ or cases triable exclusively by administrative tribunals,³⁵¹ or where alternative remedies were not exhausted,³⁵² or where a person held office during the pleasure of the President,³⁵³ or where the HRM of BCS actions including departmental proceedings complied with statutory provisions and there was no malafide or colourable exercise of power,³⁵⁴ or where no major penalty was imposed,³⁵⁵ or where enquiry of fact was involved,³⁵⁶ or where company employees were involved,³⁵⁷ or where HRM of BCS actions were taken under martial law,³⁵⁸ or where HRM actions with respect to an industrial worker was challenged.³⁵⁹

³⁴⁶ *Junnur Rahman v BSRS* (1999) 51 DLR (AD) 166; *Abdul Mannan v Bangladesh* (1980) 32 DLR (AD) 75.

³⁴⁷ *Ch Md Yusuf v Bangladesh Biman* (1979) 31 DLR 199.

³⁴⁸ *Lutful Kabir v Secretary, Agaz Rubber Industries* (1977) 29 DLR 45.

³⁴⁹ *A Z Rafique Ahmed v BCSIRI* (1979) 31 DLR 222.

³⁵⁰ *Serajul Islam v Director General of Food* (1990) 42 (DLR) 199; *Junnur Rahman v BSRS* (1999) 51 DLR 166;

³⁵¹ *Bangladesh v Abdur Rab* (1981) 33 DLR 143; *Jihad Ahmed v Bangladesh PDB* (2000) 52 DLR (AD) 75; *Bangladesh v SM Fariduddin* (2002) 54 DLR (AD) 95; *Mujibur Rahman v Bangladesh* (1992) 44 DLR (AD) 111.

³⁵² *A Hamman Khan v Bangladesh* (1991) 43 DLR 131; *Bangladesh v Administrative Tribunal* (2001) 53 DLR (AD) 112.

³⁵³ *Bangladesh v Zahangir Hossain* (1982) 34 DLR (AD) 173.

³⁵⁴ *Habibullah Khan v SA Ahmed* (1983) 35 DLR (AD) 72.

³⁵⁵ *Abdur Rashid v Bangladesh* (1979) 31 DLR 233.

³⁵⁶ *Serajul Islam Thakur v Bangladesh* (1994) 46 DLR 318.

³⁵⁷ *MH Chowdhury v G.M.T.G.T.D.Co.* (1981) 33 DLR(AD) 186.

³⁵⁸ *Lutfur Rahman v DME* (1999) 51 DLR 133; *Abdur Rashid Sarker v Bangladesh* (1996) 48 DLR (AD) 99.

³⁵⁹ *Abdul Hoque Sikder v BADC* (1996) 48 DLR 574.

1.4.2 Judicial Intervention by the Appellate Division

The power of judicial review and intervention with respect to HRM of BCS vested in the Appellate Division of the Supreme Court under Clause (3) of Article 103 to do complete justice is very wide. The nature and scope of this power has been elaborated and applied to cases related to HRM of BCS through a few judicial interventions. The court will intervene whenever there is miscarriage of justice due to failure of basing the decision on proper evidence, or the action is arbitrary, malicious or non-compliant with principles of fair treatment or natural justice. Thus it was laid down (MH Rahman, J) in *Bangladesh Bank v Administrative Tribunal* in the following words:

Under the new dispensation that Article 103 of the Constitution shall apply in relation to Administrative Appellate Tribunal the petitioners have only right to seek leave for appeal. The Court's power under Clause (3) of Article 103 is very wide. It is neither possible nor expedient to lay down any general rule, but where there is some substantial question of law of public importance which deserves to be decided by this court, where grave miscarriage of justice has resulted from illegality or from misreading of evidence or from excluding or illegally admitting material evidence or when a person has been dealt with arbitrarily or that a court or tribunal has not given a fair deal to a litigant this court will not be deterred by any technical hurdles, even by its own rule of limitation, because it is the duty of this court to see that an injustice is not perpetrated.³⁶⁰

In another case the Applete Division intervened when the Administrative Appellate Tribunal fails to give the parties a fair hearing and misguides itself

³⁶⁰ *Bangladesh Bank v Administrative Tribunal* (1992) 44 DLR (AD) 239.

to address wrong questions and give wrong decision,³⁶¹ is available in any cause or matter pending before it³⁶² and when the case has merit³⁶³ and to do complete justice while complete justice may be according to law, fairness equity and good conscience or arbitration or justice tempered with mercy or pure common sense or the inference of an ordinary reasonable man and so on. The meaning of complete justice was elaborated in *NBR v Nasrin Banu* (Mustafa Kamal, J) in the following words:

The words 'complete justice' do not yield to a precise definition. Cases vary situations vary and the scale and parameter of complete justice also vary. Sometimes it may be justice according to law, sometimes it may be justice according to fairness, equity and good conscience, sometimes it may be in the nature of arbitration, sometimes it may be justice tempered with mercy, sometimes it may be pure commonsense, sometimes it may be the inference of an ordinary reasonable man and so on'.³⁶⁴

Thus the Appellate Division has ample power to review and intervene in HRM of BCS to do complete justice. It may also issue and execute any process and also review its own judgments to ensure complete justice. The Court has intervened by upholding or by reversing the decisions of the High Court Division or Administrative Appellate Tribunal with regard to HRM of BCS and ensured justice according to law and equity. But there is no significant evidence to show that the Court directed modernisation of relevant laws by incorporation of the modern best practices of HRM of BCS.

³⁶¹ *AK Mohammad Idris v Bangladesh Krishi Bank* (1996) 48 DLR(AD) 48.

³⁶² *NBR v Nasrin Banu* (1996) 48 DLR (AD) 171.

³⁶³ *Secretary, Ministry of Health and Family Welfare v Purvin Sultana* (2005) 57 DLR (AD) 111.

³⁶⁴ *NBR v Nasrin Banu* (1996) 48 DLR (AD) 171.

The Supreme Court of India also held that power to do complete justice to parties before the Supreme Court is its exclusive jurisdiction. Order passed by the Supreme Court to grant benefits to the parties before it are confined to those parties only. Similar benefits can not be extended by the High Court to others by relying on the order of the Supreme Court.³⁶⁵ Although this point has not yet been reported to have been decided in Bangladesh jurisdiction but the above stated Indian provision seems quite relevant.

1.5 Judicial Intervention by Administrative Tribunals

The Administrative Tribunal established under the Administrative Tribunal Act, 1981 is an executive court and is adequately empowered to enforce its own decisions and also to execute the order of the Administrative Appellate Tribunal. Moreover, the Appellate Tribunal can punish a person for contempt of its authority. There are two types of tribunals for making intervention on HRM of BCS, namely the Administrative Tribunals and the Administrative Appellate Tribunal. There have been several judicial interventions to examine their jurisdictions. Relevant adjudications are examined below.

1.5.1 The Administrative Tribunal

There are many adjudications dealing with the nature and scope of judicial interventions by Administrative Tribunals. The scope of jurisdiction of administrative tribunals in terms of subject matters as well as persons dealt with has been examined later in this section.

As regards nature of the jurisdiction of judicial intervention in HRM of BCS by the Tribunal it has been held that it is exclusive. *Abdullahel Based v*

³⁶⁵ *State of Jharkhand v Brijay Kumar* (2008) 95 AIR SC 1446.

Secretary, Ministry of Health and Population Control (AR Khan, J) provided as follows:

So by reading the provision of Article 117(2) with reference to the definition provided in Article 152(1) the constitutional provision in that regard means that where any Administrative Tribunal is established under Article 117 no court including the Supreme Court shall entertain any proceeding or make any order in respect of any matter falling within the jurisdiction of such tribunal.³⁶⁶

In the same case it was further held that the jurisdiction of the Tribunal is not amenable to the writ jurisdiction of the High Court Division. In other cases it was held that it has constitutional jurisdiction and is accompanied by power to devise its own practices and procedures where existing codes can not be followed and they can execute their own decisions and orders.³⁶⁷ The power of the Tribunal is quasi judicial and they can strike down an order but not rules.³⁶⁸ Administrative tribunals can not strike down the law on the ground of unconstitutionality.³⁶⁹ all issues except vires of law falls within the jurisdiction of administrative tribunals.³⁷⁰

As regards subject-matters defining the scope for judicial intervention by Administrative Tribunals in HRM of BCS included enforcement of terms and conditions of service. This applies even when terms and conditions of services of judicial officers are concerned. This is the leading case *Secretary, Ministry of Finance v Masdar Hossain* (Mustafa Kamal, CJ) it was observed:

³⁶⁶ *Abdullahel Based v Secretary, Ministry of Health and Population Control* (1986) 38 DLR 409.

³⁶⁷ *Saifur Rahman v Secretary, Ministry of Agriculture* (1989) 41 DLR 538.

³⁶⁸ *Mujibur Rahman v Bangladesh* (1992) 44 DLR (AD) 111.

³⁶⁹ *Retired Government Employees v Bangladesh* (1994) 46 DLR 426 .

³⁷⁰ *Samiran Halder v Bangladesh* (2007) 59 DLR 410.

Independence of the subordinate judiciary will in no way be compromised if the members of the judicial service are to seek relief before the administrative tribunal in respect of matters relating to or arising out of their terms and conditions of service.³⁷¹

In other cases observations were made as follows: compliance with statutory time limit,³⁷² conducting departmental proceeding and court cases concurrently,³⁷³ the extent of granting relief by tribunals,³⁷⁴ rehearing HRM of BCS issues,³⁷⁵ exhaustion of alternative remedies³⁷⁶ execution of own decision,³⁷⁷ and the persons falling under the scope of such intervention by the Tribunals.³⁷⁸

As regards persons who come under the purview of judicial intervention by Tribunals holders of civil posts, civil employees in defence services³⁷⁹ and employees of scheduled banks and other statutory public authorities are included.³⁸⁰

³⁷¹ *Secretary, Ministry of Finance v Md Masdar Hossain* (2000) 52 DLR (AD) 82; Same view has been expressed in the following cases: *Jinnur Rahman v Bangladesh Shilpa Rin Shangstha* (1998) 50 DLR 39; *BHBFC v Chairman, Labour Court* (1989) 41 DLR 341; *Abdul Mannan Talukder v BHBFC* (1990) 42 DLR (AD) 104; *Shamsul Haque v Bangladesh* (1997) 49 DLR 62; *Khandaker Golam Najib v Chairman* (1997) 49 DLR (AD) 109.

³⁷² *DGM Rupali Bank v Shah Jalal* (1991) 43 DLR 193; *Bangladesh v Muhibuddin Ahmed* (1998) 50 DLR (AD) 154.

³⁷³ *Bangladesh v Abdul Karim* (1995) 47 DLR (AD) 146.

³⁷⁴ *Quazi Nazrul Islam v BHBFC* (1993) 45 DLR (AD) 106; *Bangladesh v Md Anwarul Islam* (2010) 62 DLR (AD) 273; *Kamrul Hassan v Bangladesh* (1997) 49 DLR (AD) 44.

³⁷⁵ *Abu Taleb v Bangladesh* (1993) 45 DLR (AD) 45.

³⁷⁶ *Moulvi Golam Moulvi v Bangladesh* (1992) 44 DLR 195.

³⁷⁷ *Mozammel Hossain v Post Master Faridpur* (1991) 43 DLR 415.

³⁷⁸ *Serajul Islam Thakur v Bangladesh* (1994) 46 DLR 318; *Abdul Latif v Bangladesh* (1991) 43 DLR 446; *Mansur Ali v Janata Bank* (1991) 43 DLR 394.

³⁷⁹ *Serajul Islam Thakur v Bangladesh* (1994) 46 DLR; *Abdul Latif v Bangladesh* (1991) 43 DLR 446.

³⁸⁰ *Mansur Ali v Janata Bank* (1991) 43 DLR 394.

1.5.2 The Administrative Appellate Tribunal

The various decisions of the Supreme Court of Bangladesh clarify the jurisdiction of the Administrative Appellate Tribunal (AAT). The AAT has jurisdiction to hear and determine appeals from judgments and orders of the Administrative Tribunals. The relevant adjudications have laid down that when this jurisdiction is validly exercised on correct appreciation of the relevant law and fact no further interference even by the highest court is called for. Thus in *Bangladesh v Khondoker Khairul Kabir* (Tafazzul Islam J) it was laid down:

The Administrative Appellate Tribunal on correct appreciation of the law that the authority (NSI) failed to consider at all whether there is a ground for proceeding against the respondent allowed the appeal and, as such, no interference is called for in this case.³⁸¹

In other cases it was also observed that AAT has jurisdiction to determine the period of limitation.³⁸² It was also decided that the appellate jurisdiction of the AAT continues even after it has arrived at a wrong decision.³⁸³ But when the Administrative Appellate Tribunal wrongly exercised its jurisdiction being unaware of the relevant laws and when it was under some misconception in deciding the point of limitation the AAT renders its judgment liable to adjudication by the Appellate Division.³⁸⁴ Similarly, when the AAT does not consider the matter in its proper context and arrives at an erroneous decision the Appellate Division will exercise its power of review of administrative actions and rectify the wrong decision.³⁸⁵ The above examination of the

³⁸¹ *Bangladesh v Khondoker Khairul Kabir* (2006) 58 DLR (AD) 18; *Bangladesh v Aftabuddin* (2007) 59 DLR(AD) 175.

³⁸² *Abdul Latif v Bangladesh*, 43 DLR (1991) 446.

³⁸³ *Abu Taleh v Bangladesh* (1993) 45 DLR (AD) 45.

³⁸⁴ *Shaikh Mustainul Haque v Inspector General of Police* (1995) 47 DLR(AD) 157.

³⁸⁵ *Mokbul Hossain v Bangladesh* (2007) 59 DLR (AD) 215.

judicial interventions so far made in this field shows that they dealt with jurisdiction and other related aspects of the Administrative tribunals. Modernisation of the relevant law or incorporation of the modern practices into HRM of BCS has not been touched upon.

1.6 Findings of the Questionnaire Survey

In the light of the findings of the above study three questions were formulated to explore the views of respondents regarding nature and scope of judicial intervention with respect to HRM of BCS. The first question enquired about whether there is now limited scope for judicial intervention in HRM of BCS, 397 respondents have responded to the question relating to the limited scope for judicial intervention in HRM of BCS, in which 272 respondents constituting 68.51 percent expressed positive response with the view. This is pictorially depicted in fig. 47. Out of these 272 the highest number of respondents that is 136 constituting 50.00 percent strongly agreed that the reason for such limited scope is lack of modern and updated laws and rules. The second highest number that is 58 constituting 21.32 percent strongly agreed that the reason is the hurdle created by the need for government sanction. Different views related to this issue are shown in the following Pie Chart in fig. 48.

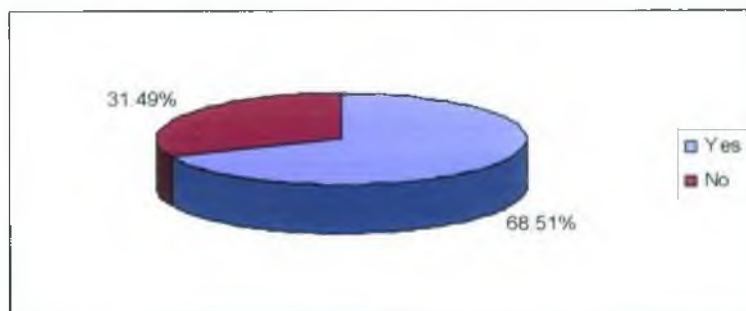


Figure-47: Showing the Percentage of Response about the Scope of Judicial Intervention in HRM of BCS

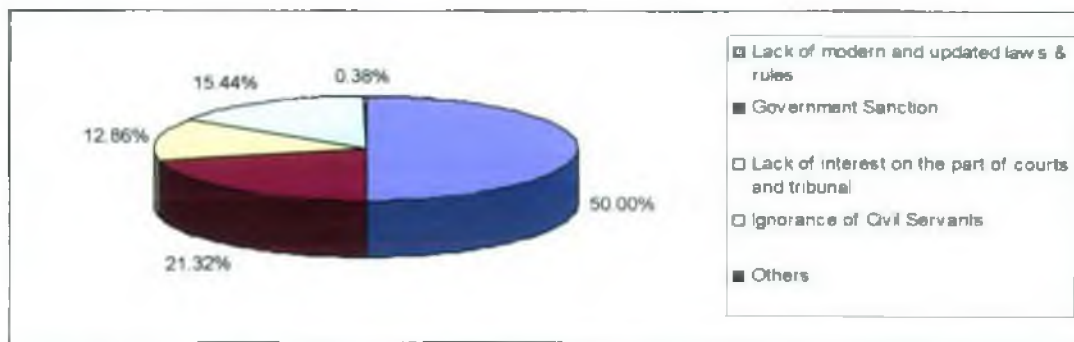


Figure-48: Showing the Percentage of Strongly Agreed Views about the Reasons for the Limited Scope of Judicial Intervention in HRM of BCS

The second question was designed to evaluate the opinions of respondents specifically as to whether judicial intervention based on laws incorporating modern best practices of HRM will be helpful in improving HRM of BCS. A total of 398 respondents have responded to the question and out of them 270 respondents constituting 67.84 percent expressed positive view. The views related to this issue are shown in the following Pie Chart in fig. 49.

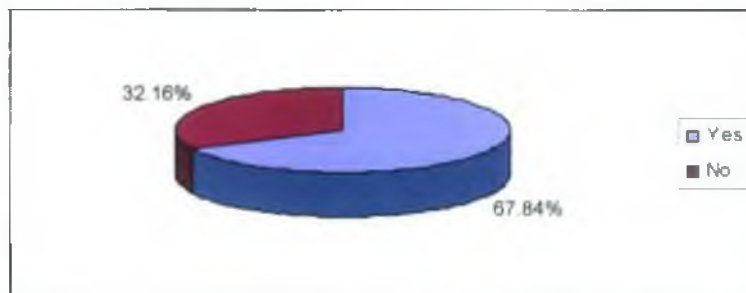


Figure-49: Showing the Percentage of Responses Regarding Helpfulness of Judicial Intervention Based on Laws Incorporating Modern Best Practices of HRM

The third and last question in this area, however, explored the views of the respondents as to the possibility of a more pro-active role by the Supreme Court of Bangladesh in promoting HRM of BCS, 439 respondents have responded to the question and 270 respondents constituting 61.50 percent expressed positive view. This is pictorially shown in fig. 50. Out of these 270 the highest number of respondents that is 116 constituting 42.96 percent strongly agreed that this can be done by the Supreme Court by directing the

appropriate authorities for formulating modern rules. The second highest number that is 88 constituting 32.60 percent strongly agreed that this can be done by the Supreme Court by more proactive interpretation of existing laws. Different views related to this issue are shown in the following Pie Chart in fig. 51.

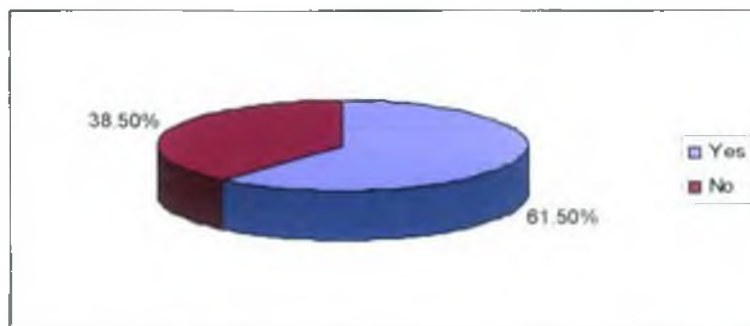


Figure-50: Showing the Percentage of Response about the Pro-Active Role of the Supreme Court of Bangladesh in Promoting HRM of BCS

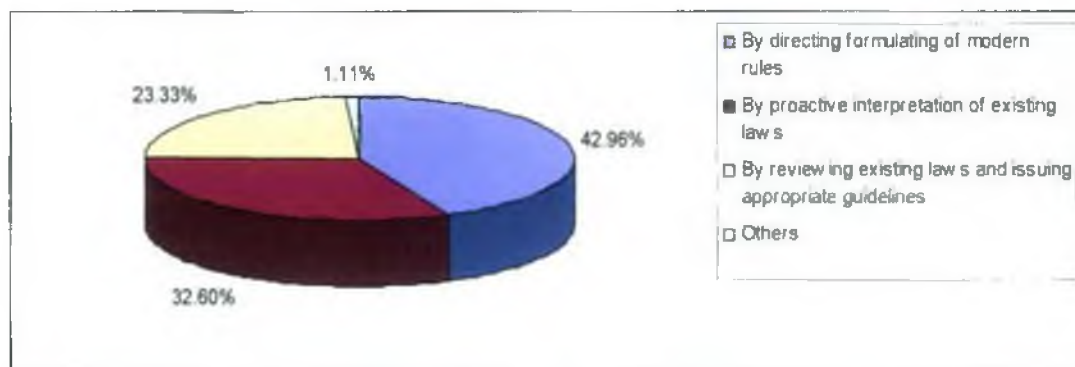


Figure-51: Showing the Percentage of Strongly Agreed Views on Measures for the Pro-Active Role of the Supreme Court of Bangladesh in Promoting HRM of BCS

1.7 Summary and Assessment

It is evident from the above study that there are elaborate constitutional, statutory and non-statutory provisions for judicial intervention with regard to HRM of BCS. Most of these provisions have continued from the past and does not incorporate the modern best practices of HRM of BCS, although there is wide constitutional scope for legislation to modernise HRM of BCS.

But the laws related to HRM of BCS have not been developed and modernised in line with the changed requirements and aspirations of the nation. Modernised laws and rules related to HRM of BCS can give wide scope for judicial intervention to make it compliant with modern needs and aspirations of the nation. Modern and updated laws and rules together with their proper application can ensure the right HRM of BCS. So, adequate law incorporating modern best practices of HRM of BCS will widen the scope of judicial intervention in HRM of BCS. Such intervention will help to improve HRM of BCS. The judiciary may also play a more proactive role by utilising the existing mechanism in improving laws related to HRM of BCS by directing the appropriate authorities to make such law and by pro-active interpretation on the existing law.

The findings of the questionnaire survey also reveal that lack of modern and updated laws and rules provides limited scope for judicial intervention in HRM of BCS. It was corroborated that judicial intervention based on laws incorporating modern best practices would be helpful in improving HRM of BCS. The Supreme Court can play more pro-active role by directing appropriate authorities to formulate modern rules and also by pro-active interpretation of existing statutes and rules. The judicial interventions in the areas of HRP, Recruiting, PM and Discipline will be analysed in the next chapter.

CHAPTER VI

HUMAN RESOURCE MANAGEMENT OF BANGLADESH CIVIL SERVICE: ANALYSIS OF JUDICIAL INTERVENTIONS

1.0 Prelude

The exercise of the power of judicial review of administrative actions with respect to HRM of BCS results in judicial intervention in the form of adjudication or judge-made law to resolve relevant disputes, conflicts and questions. Such interventions related to selected areas of HRM of BCS namely, Human Resource Planning (HRP), Recruiting, Performance Management (PM) and Discipline are examined below to evaluate the role played by such judicial intervention in the relevant areas of HRM of BCS. In this chapter section 1.1 deals with judicial intervention with respect to HRP, section 1.2 examines judicial intervention with respect to recruiting, section 1.3 examines judicial intervention with respect to PM, section 1.4 deals with judicial intervention with respect to discipline, section 1.5 analyses the findings of the questionnaire survey and section 1.6 is the summary and assessment.

1.1 Judicial Intervention with respect to Human Resource Planning

This section deals with judicial intervention with respect to HRP including composition of BCS and HRP functions.

1.1.1 Composition of BCS

Under this head, judicial intervention with respect to composition of BCS as well as the distinctive features of BCS which distinguishes it from other

government services and services under private companies and individual employers have been identified and examined. The relevant judicial interventions have been categorised under three heads namely, persons in the service of the republic holding civil posts, civil servants in statutory corporations and non-civil servants. BCS is composed of personnel referred to in the first two categories. The adjudications examined in the third category distinguish BCS from others. The judicial interventions under the above mentioned three categories are examined and analysed below:

1.1.1.1 Persons in the Service of the Republic Holding Civil Posts

The judicial interventions provided various interpretations relating to status of persons in the service of the republic and their relationship with the government. The apex court held that the relationship between the government-employer and the civil servant-employees is not an ordinary contractual relationship between master and servants. Civil servant's position is one of status regulated by law. The duties of status are fixed by law and society has an interest in the enforcement of these duties. It is a condition or membership of a group having duties and powers exclusively determined by law and whenever this status is illegally or unreasonably affected the court will intervene to remedy the situation. In the leading case *Dr. Nurul Islam v Bangladesh* (Ruhul Islam, J) it was laid down:

Relationship between the Government and its servant is not like an ordinary contract of service between a master and servant. The legal relationship is something entirely different, something in the nature of status. It is much more than a purely contractual relationship voluntarily entered into between the parties. The duties of status are fixed by the law and in the enforcement of these duties society has an interest. In the language of jurisprudence status

is a condition or membership of a group of which powers and duties are exclusively determined by law and not by agreement between the parties concerned. Whenever this legal relationship is illegally or unreasonably affected the court will intervene to remedy the situation.³⁸⁶

In other cases the court also clarified their distinctive features compared to other persons in the service of the republic not holding civil posts, and thus the term 'Person in the service of the Republic holding civil posts' were described as permanent civil servants and has been distinguished and defined by the Supreme Court elaborately on different occasions. They were termed as 'civil or administrative service' by the Appellate Division of the Supreme Court. It interpreted the position of members of judicial service, by providing that members of judicial service and magistrates exercising judicial functions were in the service of the republic holding civil posts for purposes of constitutional protection under Article 135 which deals with dismissal, removal and reduction in rank of a person holding civil posts in the service of the republic, including the posts in Parliamentary Secretariat and the Supreme Court of Bangladesh. The purview of civil service was extended by judicial intervention to include employees of Parliament Secretariat and Supreme Court within its ambit although employees of Parliament Secretariat and Supreme Court are governed by different terms and conditions yet they are also held to be public officers in the service of the republic.³⁸⁷

Temporary civil servants having long and uninterrupted service are part of civil service and were held to be entitled to protection as other persons in the service of the republic holding civil posts. In the dawn-making case of HRM

³⁸⁶ *Dr Nurul Islam v Bangladesh*, (1981) 33 DLR (AD) 201.

³⁸⁷ *Secretary, Ministry of Finance v Masdar Hossain* (2000) 52 DLR(AD) 82.

of BCS *Md. Ismail Hossain v Bangladesh* (Shahabuddin Ahmed, J) it was laid down that those temporary civil servants with uninterrupted long service in a post of indefinite duration, unlike other temporary civil servants, acquire a distinct status recognised and protected by law. Any violation of such status comes under the purview of judicial intervention under Article 135 of the Constitution. The above observations were made in the following words:

The term 'temporary service' has been interpreted as a service purely temporary in nature – a service created to tackle sudden rash of business or to meet exigencies of public service. Long and continuous service in a temporary capacity was not contemplated in the Rules. Temporary employees with a continuous service for several years stand on a different footing than other temporary employees. They are entitled to the protection guaranteed by Article 135 of the Constitution and its violation is met by judicial intervention.³⁸⁸

In other cases it was observed that civilian employees in defence services are part of the civil service in the sense of persons in the service of the republic holding civil posts and hence they are entitled to legal remedies as such. In *Ishaquddin v Commandant, Bogra Cantonment* (Mustafa Kamal, J) it was observed: 'For legal remedies in service matters civilian employees in Defence Services can well invoke the jurisdiction of Administrative Tribunals.'³⁸⁹ The protection can be claimed not only by individual civil servants but also by their legal associations on their behalf by prosecuting public interest litigation (PIL).³⁹⁰

³⁸⁸ *Md. Ismail Hossain v Bangladesh* (1975) 27 DLR 353.

³⁸⁹ *Ishaquddin v Commandant, Bogra Cantonment* (1999) 51 DLR (AD) 144.

³⁹⁰ *Retired Government Employees v Bangladesh* (1994) 46 DLR 426; Md AR Howlader, *The Writ Jurisdiction of the Supreme Court of Bangladesh* (LLM Thesis, University of Dhaka, 1997); N Ahmed, *Public Interest Litigation: Constitutional Issues and Remedies* (1999); Hossain et al, *Public Interest Litigation in South Asia, Rights in Search of Remedies* (1997).

Members of the police force are also considered as persons in the service of the republic holding civil posts. In the leading case in this context *Bangladesh v Zahangir Hossain* (Kamal Hossain, CJ) it was observed that members of police force are not part of defence service. They hold civil posts and are entitled to constitutional protection available to persons in the service of the republic holding civil posts.³⁹¹

1.1.1.2 Civil Servants in Statutory Corporations

Although the employees of statutory corporations are included in the definition of civil servants in the wider sense of the term for the purpose of this study in fact, they do not enjoy all the constitutional benefits and protections like those persons. But the employees have some characteristics of persons in the service of the republic which distinguishes them from employees of private organisations and private individuals. The judicial interventions in different cases including the leading case *BSIC v Mahbub Hossain* (Mahmud Hossain, CJ) it was pointed out that they shared many characteristics of persons in the service of the republic holding civil posts, they have public character, are government servants for the purposes of the statute and are entitled to some constitutional protections to safeguard their statutory rights and right to natural justice.³⁹² Similarly, it was further clarified that the relationship between the statutory corporations and their employees are not that of master and servant as in private organisations.³⁹³

Even before Administrative Tribunal was established in 1981 an employee of a statutory public corporation who was dismissed or terminated from his

³⁹¹ *Bangladesh v Zahangir Hossain* (1982) 34 DLR (AD) 173.

³⁹² *BSIC v Mahbub Hossain* (1977) 29 DLR (SC) 50.

³⁹³ *Bangladesh Bank v Md Abdul Mannan* (1994) 46 DLR (AD) 1

service in violation of a mandatory statutory provision had a right of action in a court of law. However, in many judicial interventions it was explicitly pointed out that they were not persons in the service of the republic in the true sense of the term and were not entitled to constitutional protection under Article 135 of the constitution.³⁹⁴ In a recent case it was observed that statutory corporations are created and guided by some legislative instruments. These legislative instruments such as Acts, rules and regulations define the legal ambit of such statutory corporations. The government in the ministry is mainly a policy making body. But a statutory body is responsible for implementing those policies exercising the discretion and powers enjoined on them by the statute to implement those policies and guidelines.³⁹⁵ Evidently ministries/ divisions and departments as well as statutory corporations have public character and intimate functional relationships.

1.1.1.3 Non-Civil Servants

In this study persons other than those working in the service of the republic holding civil posts or in the statutory corporations have been considered as non-civil servants. Several judicial interventions have identified who are not civil servants and thus differentiated BCS from other services. Thus judicial interventions provided that members of military services falling within the category of 'disciplined forces' namely army, navy and air force, a member of the disciplined force excluding police forces is not a person in the service of the republic holding civil post.³⁹⁶ In the leading case in this context *Major*

³⁹⁴ *BSIC v Mahbub Hossain* (1977) 29 DLR (SC) 50; *Ch Md Yusuf v Bangladesh Biman* (1979) 31 DLR 199; *AZ Rafique Ahmed v BCSIRI* (1979) 31 DLR 222; *Ashutosh Chakma v RAJUK* (2008) 60 DLR 273; *Md Lokman v BADC* (1980) 32 DLR 83.

³⁹⁵ *Ashutosh Chakma v RAJUK* (2008) 60 DLR 273.

³⁹⁶ *Bangladesh v Abdur Rah* (1981) 33 DLR(AD) 143; *Major Hafizur Rahman v Bangladesh* (1977) 29 DLR 36; *Abu Saleh Md Nasim v Bangladesh* (1999) 51 DLR (AD) 101.

Hafizur Rahman v Bangladesh (Shahabuddin Ahmed, J) it was provided that maintenance of discipline in the defence forces being a matter of paramount importance to the state, they have been placed on a different footing. Military servant's employment being dependent on Presidents pleasure their right in respect of their service can not be enforced by a court. Defence personnel hold office during the pleasure of the President. It was laid down as follows:

Difference between civil servants and military servants so far as the terms and conditions of service are concerned, is great and unlike the civil servants, the military servants' employment depends solely upon the President's pleasure. They, therefore, got no right which can be enforced by a court in respect of their service.³⁹⁷

The view that military personnel have no exception to the doctrine of pleasure was also upheld by the Appellate Division.³⁹⁸

The High Court Division does not entertain any review petition with respect to service matters of defence service personnel. HRM related decisions of courts or tribunals established for defence service or disciplinary forces or tribunal established under Article 117 of the Constitution are excluded from the jurisdiction of judicial review.³⁹⁹ A member of disciplined force can not invoke writ jurisdiction of the High Court Division to review any HRM action unless it is vitiated by coram non-judice or malafide or enforcement of fundamental rights.⁴⁰⁰

³⁹⁷ *Major Hafizur Rahman v Bangladesh* (1977) 29 DLR 36; Same view was maintained in *Maj Gen Moimul Hossain v Bangladesh* (1998) 50 DLR 370.

³⁹⁸ *Abu Saleh Md Nasim v Bangladesh* (1999) 51 DLR (AD) 101.

³⁹⁹ *Bangladesh v Abdur Rab* (1981) 33 DLR(AD) 143.

⁴⁰⁰ *Bangladeesh v Zahangir Hossain* (1982) 34 DLR (AD) 173; *Col Md Hashmat v Bangladesh* (1995) 47 DLR (AD) 134.

Furthermore, contractual employees,⁴⁰¹ private bank employees even when some benefits of civil servants are provided⁴⁰² and employees of private organisations even when government service rules were adopted were also excluded from the definition of civil servant.⁴⁰³ The non-civil servants were held not to be entitled to the constitutional protection by invoking writ jurisdiction under Article 102.⁴⁰⁴

1.1.2 Human Resource Planning Functions

There being no legislative instruments or modern practices providing for HRP in HRM of BCS, HRP is done on the basis of administrative need assessment. The posts are created and abolished on the basis of felt needs. There is no fixed or well defined criterion for need assessment. Due to absence of any legislative basis there is very limited scope for judicial intervention in this important activity of HRM of BCS. The research has identified only three judicial interventions on creation and abolition of posts in the area of HRP of BCS. A post created for a specified period becomes automatically abolished on expiry of that period. They become non-existent on completion of the term for which the posts were created.⁴⁰⁵

However, if a post is created for indefinite period and continued for a long period the presumption may be otherwise. Such a long continuation may operate as a promissory estoppel against the government authority, even though the post was not created observing the relevant rules and procedures.

⁴⁰¹ *Ch Md Yusuf v Bangladesh Biman* (1979) 31 DLR 199.

⁴⁰² *Janata Bank v Shah Alam Sardar* (1999) 51 DLR (AD) 138.

⁴⁰³ *Bangladesh v Alauddin* (1986) 38 DLR (AD) 81.

⁴⁰⁴ *Bangladesh v Abdur Rab* (1981) 33 DLR (AD) 143; *Rear Admiral A A Mustafa v Bangladesh* (1993) 45 DLR 395.

⁴⁰⁵ *NBR v Nasrin Banu* (1996) 48 DLR (AD) 171.

Promissory estoppels debar the government from backing out.⁴⁰⁶ However, only a departmental instruction for creation of post or appointment is not enforceable in a court of law for issuing a writ of mandamus. The claim for such a writ must be based on a statute or statutory law.⁴⁰⁷

1.2 Judicial Intervention with Respect to Recruiting

1.2.1 Direct Recruitment

Various judicial interventions identified different modes of recruitment and different course of actions in recruitment and their consequences. As regards modes of recruitment it was held that recruitment could also be made by continuance in service,⁴⁰⁸ reinstatement in service,⁴⁰⁹ transfer of employees subject to statutory conditions,⁴¹⁰ transfer of the entire undertaking to a succeeding organisation⁴¹¹ but not by officiating appointment to fill a temporary vacancy.⁴¹²

As regards various actions and their consequences in course of direct recruitment it was held that non-consultation with BPSC does not render recruitment invalid,⁴¹³ but the court may intervene in such a case,⁴¹⁴ initial irregularity in direct recruitment is cured by long service and confirmation,⁴¹⁵ appointment can not be cancelled on the ground of irregularity.⁴¹⁶

⁴⁰⁶ *Abdur Rahim v Bangladesh* (1996) 48 DLR 538.

⁴⁰⁷ *Nurul Islam v Bangladesh* (1994) 46 DLR 46.

⁴⁰⁸ *Md Faizullah v Bangladesh*, 33 DLR (1981) 16; *Ch Md Yusuf v Bangladesh Biman* (1979) 31 DLR 199.

⁴⁰⁹ *Md Mahammad Morshed v Bangladesh* (1980) 32 DLR (AD) 77.

⁴¹⁰ *Ch Md Yusuf v Bangladesh Biman* (1979) 31 DLR 199.

⁴¹¹ *M A Qasem v B. Corporation* (1981) 33 DLR(AD) 181.

⁴¹² *Md Ismail Hossain v Bangladesh* (1975) 27 DLR 353.

⁴¹³ *M A Rashid v Bangladesh* (1981) 33 DLR 366.

⁴¹⁴ *Bangladesh v Shafiuddin Ahmed* (1998) 50 DLR(AD) 27.

⁴¹⁵ *Kanaklata Halder v Barisal Pourashava* (1990) 42 DLR533; *Kazimuddin v Bangladesh* (2008) 60 DLR 61.

⁴¹⁶ *Khorshed Ali v LGRD* (2002) 54 DLR 381.

classification of persons for recruitment based on a rational principle and logically related to the purpose was held to be valid,⁴¹⁷ but singling out a person from a class on the basis of irrational and irrelevant criteria was held to be bad in law,⁴¹⁸ the principle of estoppels was applied when government finally nominated a Mujibnagar employee and then refused to absorb,⁴¹⁹ reemployment without due compliance with statutory conditions was held to be bad in law,⁴²⁰ five year's continuous service raises a reasonable expectation of being regularised by absorption,⁴²¹ similarly a person who passed the written examination was held to have a legitimate expectation of not being excluded from viva voce examination arbitrarily without any hearing,⁴²² when consistent practice raises reasonable expectation and the expectation is treated differently judicial intervention will be attracted,⁴²³ occasionally judicial intervention expressed strong views for improving HRM of BCS recognising the need for protection of public servants from politicisation. Thus in the leading case *Bangladesh v Shafiuddin Ahmed* (Mustafa Kamal, CJ) it was held:

There is a strong need to protect the public servant from the propensity of politicisation of administration by a party government by keeping the marks for interview as minimum as possible so that the scope of arbitrariness and the possibility of pick and choose are absolutely minimised.⁴²⁴

⁴¹⁷ *Nurul Islam v Secretary, Ministry of Law* (1994) 46 DLR (AD) 188.

⁴¹⁸ *Gazi Jashimuddin v Bangladesh* (1998) 50 DLR 31.

⁴¹⁹ *Abdul Hakim v Bangladesh* (1998) 50 DLR 137.

⁴²⁰ *Sayed Nurul Hossain v Bangladesh* (1999) 51 DLR 226.

⁴²¹ *Rahia Bashri Irene v Bangladesh Biman* (2000) 52 DLR 308.

⁴²² *Dr. Abeda Begum v PSC* (2007) 59 DLR 183.

⁴²³ *Managing Director, Bangladesh Biman Corporation v Rabia Bashri Irene and others* (2003) 55 DLR (AD) 132.

⁴²⁴ *Bangladesh v Shafiuddin Ahmed* (1998) 50 DLR(AD) 27.

1.2.2 Promotion

There have been several judicial interventions expressing strong views in this area of HRM of BCS. These interventions have examined the right to promotion and expounded different aspects of promotion practices. As regards right to promotion it was laid down that promotion is not a right and it has to be earned, there is no constitutional right to be promoted, and hence judicial intervention by writ for its enforcement is not available.⁴²⁵ The civil servant has no right to promotion but he has a right to be considered for promotion, moreover equality of treatment in case of promotion also is a fundamental right, promotion of a junior officer without consideration of the case of a cleared senior officer is unlawful.⁴²⁶ A civil servant has a desirable claim when he is selected for promotion the list should continue until it is exhausted, non-application of mind to a claim for promotion is non-consideration that hits the principle of equality under Article 29, placing proposal with the comment that there is no scope for consideration amounts to non-consideration.⁴²⁷ But curtailment of opportunities for promotion is not deprivation of claim for consideration for promotion.⁴²⁸ However, a civil servant under suspension or accused of bad performance has no right to be considered for promotion.⁴²⁹ A person not being a civil servant has no right to promotion to be protected by law.⁴³⁰

With respect to promotion practices it has been found that promotion is made on the basis of seniority and merit, factors like efficiency, suitability, honesty

⁴²⁵ *Md Ekhlash Mia v Bangladesh* (1976) 28 DLR 397.

⁴²⁶ *Md Faizullah v Bangladesh* (1981) 33 DLR 16.

⁴²⁷ *Syed SM Hasan v Bangladesh* (2008) 60 DLR (AD) 76.

⁴²⁸ *Bangladesh v Md Azizur Rahman* (1994) 46 DLR (AD) 19.

⁴²⁹ *Chairman, BISE v Nazir Ahmed* (2005) 57 DLR (AD) 137.

⁴³⁰ *Major General Moimul Hossain v Bangladesh* (1998) 50 DLR 370.

and reputation are also taken into consideration,⁴³¹ malafide termination of service of a senior officer can not be the ground for promotion of a junior officer, discriminatory practices in fixing seniority can not be the basis for promotion, in case of contractual employment the employer can fix the seniority, fixing antedated seniority under non-statutory rules not subject to the constitutional provisions applicable to public servants is allowed.⁴³² A revision of seniority list on the basis of executive memoranda is not allowed,⁴³³ when seniority is given to a civil servant without hearing the other relevant civil servants such seniority is not legal,⁴³⁴ when determining seniority every party affected thereby has an enforceable right to hearing.⁴³⁵

Furthermore, consideration of academic qualification can be a valid basis for promotion,⁴³⁶ appointment to higher post by competent authority on the recommendation by BPSC is promotion,⁴³⁷ recommendation for promotion by BPSC creates a legitimate expectation,⁴³⁸ long and continuous service in a higher post of indefinite duration is protected as promotion under Article 135 of the Constitution,⁴³⁹ promotion to a higher post does not require the use of the word promotion,⁴⁴⁰ but allotment of current charge is not promotion,⁴⁴¹ and when the order does not mean to be an order of promotion long and uninterrupted service is not protected under Article 135 of the Constitution.⁴⁴² promotion relates to terms and conditions of service and hence falls within the

⁴³¹ *Md Ekhlash Mia v Bangladesh* (1976) 28 DLR 397.

⁴³² *Ch Md Yusuf v Bangladesh Biman* (1979) 31 DLR 199.

⁴³³ *Abdul Quddus v Bangladesh* (1981) 33 DLR (AD) 50.

⁴³⁴ *Mahubur Rahman v Taslimuddin Ahmad* (2002) 54 DLR (AD) 97.

⁴³⁵ *Hafizuddin v Bangladesh Bank* (1997) 49 DLR (AD) 147.

⁴³⁶ *A Rahman v BADC* (1981) 33 DLR 373.

⁴³⁷ *Md Ismail Hossain v Bangladesh* (1975) 27 DLR 353.

⁴³⁸ *Faruk Ahmed v Bangladesh* (2009) 61 DLR (AD) 150.

⁴³⁹ *Md Ismail Hossain v Bangladesh* (1975) 27 DLR 353.

⁴⁴⁰ *Amwarul Huq v Bangladesh* (1979) 31 DLR 21.

⁴⁴¹ *Munir Hossain v Dhaka Water Supply* (1996) 48 DLR 121.

⁴⁴² *Bangladesh v Md Fazlul Huq* (1991) 43 DLR (AD) 144.

jurisdiction of Administrative Tribunals,⁴⁴³ but a great injustice not for any fault of the civil servant may be remedied in course of complete justice by the Appellate Division of the Supreme Court of Bangladesh,⁴⁴⁴ only valid regulation,⁴⁴⁵ seniority rules by which a civil servant is governed or when no new rules are framed pre-liberation rules⁴⁴⁶ can be valid basis for promotion. Violation of regulation⁴⁴⁷ or invalid reasoning not supported by rules⁴⁴⁸ can not be valid ground for promotion. Consultation with BPSC is not mandatory,⁴⁴⁹ but judicial intervention may be attracted in the public interest if there is no consultation.⁴⁵⁰

1.2.3 Equal Employment Opportunity

Ensuring equal employment opportunity in all employment matters including recruitment and promotion in civil service is a constitutional requirement. The Constitution of the Peoples' Republic of Bangladesh has guaranteed equal employment opportunity in the service of the republic as a fundamental right. Various judicial interventions have defined the scope of the constitutional right and determined where such right was violated and where there was no violation of the right. It was held that the right includes all matters in relation to employment subject to reasonable rules framed by the government, the right requires two components: reasonableness of the rules and its nexus to the objectives,⁴⁵¹ equality does not mean absolute equality.⁴⁵² Unreasonable

⁴⁴³ *Junnur Rahman v Bangladesh Shilpa Rin Shangstha* (1998) 50 DLR 39.

⁴⁴⁴ *Raziul Hasan v Badruzzaman Khan* (1996) 48 DLR (AD) 71.

⁴⁴⁵ *Munir Hossain v Dhaka Water Supply* (1996) 48 DLR 121.

⁴⁴⁶ *Md Faizullah v Bangladesh* (1981) 33 DLR 16.

⁴⁴⁷ *Bangladesh Biman v Md Tipu Sultan* (2001) 53 DLR (AD) 31.

⁴⁴⁸ *Md Faizullah v Bangladesh* (1981) 33 DLR 16.

⁴⁴⁹ *Shafiuddin Ahmed v Bangladesh* (1995) 47 DLR (AD) 81.

⁴⁵⁰ *Bangladesh v Shafiuddin Ahmed* (1998) 50 DLR(AD) 27.

⁴⁵¹ *Gazi Jushimuddin v Bangladesh* (1998) 50 DLR 31.

⁴⁵² *Bangladesh v Md Azizur Rahman* (1994) 46 DLR (AD) 19; *Retired Government Employees v Bangladesh* (1994) 46 DLR 426.

criteria applied to a single person,⁴⁵³ using a general ground such as administrative convenience for dismissing a particular person,⁴⁵⁴ any HRM of BCS action under unconstitutional law and discretion exercised contrary to guidelines as well as termination of service with stigma of a single government servant out of several similarly situated government servants,⁴⁵⁵ classification of persons on the basis of unrelated criteria,⁴⁵⁶ arbitrary executive or legislative act,⁴⁵⁷ a double standard treatment,⁴⁵⁸ depriving a person of legal right by retrospective amendment of regulation,⁴⁵⁹ appointment of some officers from a list and leaving others,⁴⁶⁰ gender based discrimination,⁴⁶¹ unjustified service guidelines,⁴⁶² equal treatment of officers of different grades,⁴⁶³ different treatment to similarly situated persons in the service of the republic,⁴⁶⁴ arbitrary denial of benefits to some hitherto enjoyed by all⁴⁶⁵ and retrenchment of officers not based on 'last in first out principle'⁴⁶⁶ were held to be violation of the right to equal employment opportunity.

On the other hand when government servants were classified without perfect criteria for allowing or not allowing purchase of abandoned property,⁴⁶⁷

⁴⁵³ *Gazi Jashimuddin v Bangladesh* (1998) 50 DLR 31.

⁴⁵⁴ *Md Ismail Hossain v Bangladesh* (1975) 27 DLR 353.

⁴⁵⁵ *Dr Nurul Islam v Bangladesh* (1981) 33 DLR (AD) 201.

⁴⁵⁶ *Retired Government Employees v Bangladesh* (1994) 46 DLR 426.

⁴⁵⁷ *Aftabuddin v Bangladesh* (1996) 48 DLR 1.

⁴⁵⁸ *Abdur Rahim v Bangladesh* (1996) 48 DLR 538; *AL Howlader v Bangladesh* (2009) 61 DLR (AD) 707.

⁴⁵⁹ *Dalia Parveen v Bangladesh Biman* (1998) 48 DLR 132; *BADC v AKM Abdus Salam* (2006) 58 DLR(AD) 57.

⁴⁶⁰ *Bangladesh v Jahangir Hossain* (1999) 51 DLR (AD) 148.

⁴⁶¹ *Managing Director, Bangladesh Biman Corporation v Rabia Bashri Irene and others* (2003) 55 DLR (AD) 132; *Rabia Bashri Irene v Bangladesh Biman* (2000) 52 DLR 308.

⁴⁶² *Abdul Mannan v Bangladesh* (2003) 55 DLR 237.

⁴⁶³ *Salohuddin Talukder v Bangladesh* (2004) 56 DLR 161.

⁴⁶⁴ *Bangladesh v Md. Shamsul Huq* (2007) 59 DLR (AD) 54.

⁴⁶⁵ *Dr Abeda Begum v PSC* (2007) 59 DLR 183.

⁴⁶⁶ *Shamsuddin Ahmed v Mukli Juddah Kalyan Trust* (1992) 44 DLR 524.

⁴⁶⁷ *Afia khatun v Bangladesh* (1992) 44 DLR 225.

classification of persons on the basis of status,⁴⁶⁸ classification of persons on the basis of last pay drawn,⁴⁶⁹ making rules to deal with certain limited aspects of service,⁴⁷⁰ different benefits for persons with different qualities,⁴⁷¹ HRM of BCS actions in compliance with terms and conditions of service,⁴⁷² equal treatment to persons holding equal positions,⁴⁷³ and different treatment to persons on different footing⁴⁷⁴ were held not to be violation of the right to equal employment opportunity.

1.3 Judicial Interventions with Respect to Performance Management

There is no Act, Ordinance, Rules or Regulations providing for modern performance management. However, the superior court held that advancement in service is to be based on good performance.⁴⁷⁵ But there is no statutory legal basis for measuring good performance. The age-old practice of using Annual Confidential Reports (ACRs) is condemned for lack of objectivity and nexus with the job performed by the civil servant. ACRs have been treated as disputed questions of facts and beyond the scope of judicial review and intervention in the review jurisdiction.⁴⁷⁶ Thus the absence of proper legal provision limits the scope of judicial review and intervention with respect to performance management.

⁴⁶⁸ *Nurul Islam v Secretary, Ministry of Law* (1994) 46 DLR (AD) 188.

⁴⁶⁹ *M M Shahidur Rahman v Bangladesh* (1994) 46 DLR 187.

⁴⁷⁰ *Bangladesh Government Retired Employees Welfare Association v Bangladesh* (1999) 51 DLR (AD) 121.

⁴⁷¹ *Nurul Islam v Bangladesh* (1994) 46 DLR 46.

⁴⁷² *Jihad Ahmed v Bangladesh PDB* (2000) 52 DLR (AD) 75.

⁴⁷³ *Abdul Mannan v Bangladesh* (2003) 55 DLR 237.

⁴⁷⁴ *AHM Mustain Billah v Bangladesh* (2005) 57 DLR (AD) 41.

⁴⁷⁵ *Md Ekhlash Mia v Bangladesh* (1976) 28 DLR 397.

⁴⁷⁶ *Abdullah-ar-Rabbani v Bangladesh* (1990) 42 DLR 258.

1.4 Judicial Interventions with Respect to Discipline

An examination of the cases reported in DLR reveals that there are a large number of judicial interventions dealing with different issues of discipline of HRM of BCS. They include (i) grounds for disciplinary actions, (ii) reasonableness in disciplinary actions, (iii) enquiry, (iv) consultation with BPSC, (v) suspension, reinstatement and special provisions, (vi) appeal and review, (vii) constitutional protection under Article 135, and (viii) disciplinary laws in statutory public corporations. The different judicial interventions relevant to each issue were examined and found that the following principles were laid down.

1.4.1 Grounds for Disciplinary Actions

With regard to this issue the fact of entering into the office room of a superior officer without permission and thereby constituting misconduct,⁴⁷⁷ six month's delay in performing the job ordered by higher authority constituting inefficiency and negligence to duty,⁴⁷⁸ were held to be good grounds for departmental proceeding and abuse of disciplinary proceeding was deprecated.⁴⁷⁹ But it was held that there was no ground for departmental proceeding where the basis was adverse remark in the confidential report,⁴⁸⁰ an interpretation of preamble which does not justify penalty,⁴⁸¹ when charges are vague and does not mention the time, place and manner of the occurrence,⁴⁸² when on the same facts a criminal charge was proved unfounded⁴⁸³ and when the allegations constitute a criminal offence.⁴⁸⁴

⁴⁷⁷ *AZ Rafique Ahmed v BCSIRL* (1979) 31 DLR 222; *Quazi Nazrul Islam v BHIFC* (1993) 45 DLR (AD) 106.

⁴⁷⁸ *Bangladesh v Matiar Rahman* (1982) 34 DLR (AD) 285; *Nurul Huq v REB* (1993) 45 DLR 666

⁴⁷⁹ *Ex EN v Md. Ali* (1989) 41 DLR(AD) 64.

⁴⁸⁰ *Government of Bangladesh v Dr M Nasir Uddin* (1980) 32 DLR 214.

⁴⁸¹ *Misfor Ali v Ministry of Power* (1981) 33 DLR 153.

⁴⁸² *AKM Hedayetul Islam v BARC* (1992) 43 DLR 44.

⁴⁸³ *Misfor Ali v Ministry of Power* (1981) 33 DLR 152.

⁴⁸⁴ *State v Osman Ghani* (1980) 32 DLR 298.

1.4.2 Reasonableness in Disciplinary Actions

The judicial review and interventions were made to determine the reasonableness of disciplinary actions in several cases. A disciplinary action was held to be reasonable when it was based on rules of law and principles of natural justice,⁴⁸⁵ but not when it involved violation of a legal right,⁴⁸⁶ or natural justice,⁴⁸⁷ delayed action is not unreasonable if not vitiated by wrongful gain or wrongful loss,⁴⁸⁸ a second proceeding is reasonable when first proceeding was disposed of on technical grounds,⁴⁸⁹ arbitrary power authorised by law is reasonable,⁴⁹⁰ mere technical defect will not make a disciplinary action unreasonable,⁴⁹¹ but disproportionate punishment,⁴⁹² punishment not warranted by facts and circumstances,⁴⁹³ excessive punishment,⁴⁹⁴ punishment by unauthorised person or on incomplete facts,⁴⁹⁵ actual punishment different from the one proposed in the notice,⁴⁹⁶ arbitrary or malafide order passed by unauthorised person,⁴⁹⁷ government's different view from that of the tribunal not supported by reasons,⁴⁹⁸ a belated afterthought,⁴⁹⁹ disciplinary action to frustrate the order of a court,⁵⁰⁰ malicious notification under ultravires law,⁵⁰¹ malafide exercise of pleasure,⁵⁰²

⁴⁸⁵ *Habibullah Khan v SA Ahmed* (1983) 35 DLR (AD) 72; *Parjatan Corporation of Bangladesh v Shahid Hossain* (1991) 43 DLR(AD) 154; *Bangladesh v Abul Khair* (2004) 56 DLR (AD) 183.

⁴⁸⁶ *Abdur Rashid v Bangladesh* (1979) 31 DLR 234.

⁴⁸⁷ *BSIC v Mahbub Hossain* (1977) 29 DLR(SC) 41; *Ch Md Yusuf v Bangladesh Biman* (1979) 31 DLR 199.

⁴⁸⁸ *Chairman, BCSIR v Abdul Khaleque* (1991) 43 DLR (AD) 209.

⁴⁸⁹ *Bangladesh v AKM Yusuf Mia* (1998) 50 DLR (AD) 200.

⁴⁹⁰ *Md Rajaul Hoque v Bangladesh* (1976) 28 DLR 39.

⁴⁹¹ *Shahimur Alam v Bangladesh* (1998) 50 DLR (AD) 211.

⁴⁹² *Misfor Ali v Ministry of Power* (1981) 33 DLR 153.

⁴⁹³ *Bangladesh v Matiur Rhaman* (1982) 34 DLR (AD) 285.

⁴⁹⁴ *Nurul Huq v REB* (1993) 45 DLR 666.

⁴⁹⁵ *Salehuddin Khan v Bangladesh* (1982) 34 DLR 120.

⁴⁹⁶ *Giasuddin Ahmed v Bangladesh* (1981) 33 DLR 329.

⁴⁹⁷ *Md Ismail Hossain v Bangladesh* (1975) 27 DLR 35.

⁴⁹⁸ *Golam Mostafa Miah v Bangladesh* (1999) 51 DLR 248.

⁴⁹⁹ *Bangladesh v AKM Fazlul Haque* (2006) 58 DLR (AD) 166.

⁵⁰⁰ *Faruque Hasan v Titas Gas* (2006) 58 DLR 316.

⁵⁰¹ *Nurul Islam v Bangladesh* (1981) 33 DLR (AD) 201.

⁵⁰² *Rear Admiral AA Mustafa v Bangladesh* (1999) 51 DLR (AD) 146.

exercise of statutory power for a collateral purpose to frustrate order of a court,⁵⁰³ disciplinary action based on unreasonable grounds,⁵⁰⁴ order violating the order of the head of the government,⁵⁰⁵ order without proper approval,⁵⁰⁶ wrongful dismissal⁵⁰⁷ and non-compliance with the provisions of relevant regulations⁵⁰⁸ were held not reasonable. When a civil servant is wrongfully dismissed his period of unreasonable dismissal will be treated to be in service entitling him to all service benefits.⁵⁰⁹

1.4.3 Enquiry

Judicial interventions with respect to enquiries in disciplinary proceedings were made under circumstances which provided that termination of service can be based only on the result of a fair and just enquiry,⁵¹⁰ findings of Enquiry Officer can be rejected by the appointing authority only if sufficient reasons are given,⁵¹¹ enquiry report can be revised by the appointing authority only on good reasons,⁵¹² when enquiry is not mandatory its validity can not be questioned in a court of law,⁵¹³ but when an enquiry is held it must follow statutory provisions,⁵¹⁴ when there is no statutory manner of enquiry government can lay down the manner,⁵¹⁵ in a mandatory enquiry non-compliance with statutory provisions renders the enquiry and all orders based

⁵⁰³ *Nurul Islam v Bangladesh* (1981) 33 DLR (AD) 201.

⁵⁰⁴ *Misfor Ali v Ministry of Power* (1981) 33 DLR 153.

⁵⁰⁵ *BSC v Raquibudin Ahmed* (1994) 46 DLR 470.

⁵⁰⁶ *Sheikh Roushan Ali v BISE, Jessore* (1998) 48 DLR 128.

⁵⁰⁷ *Bangladesh v Mahbubuddin Ahmed* (1998) 50 DLR(AD) 154.

⁵⁰⁸ *BADC v Shamsul Haque* (2008) 60 DLR (AD) 152.

⁵⁰⁹ *Bangladesh v Mahbubuddin Ahmed* (1998) 50 DLR (AD) 154.

⁵¹⁰ *BSIC v Mahbub Hossain* (1977) 29 DLR (SC) 45.

⁵¹¹ *Mid Torab Ali v BTMC* (1989) 41 DLR 138.

⁵¹² *Maimul Haque v Bangladesh* (1999) 51 DLR 136.

⁵¹³ *Government of Bangladesh v Dr M Nasir Uddin* (1980) 32 DLR 214.

⁵¹⁴ *Government of Bangladesh v Dr M Nasir Uddin* (1980) 32 DLR 214.

⁵¹⁵ *Saleh Ahmed Khan v Additional Secretary, Rural Development, Ministry of Local Government* (1989) 41 DLR 210.

on it bad in law,⁵¹⁶ the provision of timely submission of enquiry report is not mandatory unless non-compliance was made penal,⁵¹⁷ enquiry officer can not recommend for punishment,⁵¹⁸ higher punishment on misrepresentation of findings of enquiry officer is bad in law,⁵¹⁹ enquiry report must be supplied with second show cause notice,⁵²⁰ enquiry report by invalid enquiry committee is illegal,⁵²¹ and disposal of disciplinary proceeding has to be self explanatory.⁵²²

1.4.4 Consultation with Bangladesh Public Service Commission

The provisions regarding consultation with BPSC by the President under Article 140(2)(d) with respect to the discipline of the service is directory and not mandatory. The judicial interventions held that dismissal will not be illegal for non-consultation with BPSC⁵²³ in fact consultation with BPSC will not be required for passing a legal order,⁵²⁴ but when it is consulted its advice is required to be considered.⁵²⁵ An order deviating from the recommendation of BPSC must have proper reasons.⁵²⁶ But consultation with Supreme Court in respect of Magistrates exercising judicial functions is mandatory.⁵²⁷

1.4.5 Suspension, Re-instatement and Special Provisions

Suspension is not a punishment but it is a disciplinary action and there has been several judicial interventions regarding suspension. Judicial

⁵¹⁶ *Government of Bangladesh v Dr M Nasir Uddin* (1980) 32 DLR 214.

⁵¹⁷ *Giasuddin Ahmed v Bangladesh* (1981) 33 DLR 329.

⁵¹⁸ *Chairman, BCSIR v Abdul Khaleque* (1991) 43 DLR (AD) 209.

⁵¹⁹ *Md Torab Ali v BTMC* (1989) 41 DLR 140.

⁵²⁰ *Mostofa Mia v Chairman, Ist Labour Court* (1994) 46 DLR 373.

⁵²¹ *Ayub Ali Chowdhury v Bangladesh* (2005) 57 DLR 578.

⁵²² *ATM Jahangir Kabir v Bangladesh* (2008) 60 DLR 574.

⁵²³ *Giasuddin Ahmed v Bangladesh* (1981) 33 DLR 329.

⁵²⁴ *Abdul Khaleque v Bangladesh* (2000) 52 DLR(AD) 147.

⁵²⁵ *Bangladesh v AAM Salekuzzaman* (2000) 52 DLR (AD) 166.

⁵²⁶ *Bangladesh v Matur Rhaman* (1982) 34 DLR (AD) 285.

⁵²⁷ *Bangladesh v Md Abu Bakar* (2005) 57 DLR (AD) 186.

interventions provided that suspension is valid when it is ordered in connection with a departmental proceeding and is based on definite opinion that suspension is unavoidably necessary.⁵²⁸ Suspension order made without proper authority is invalid and forced leave is an alternative to suspension.⁵²⁹ Order of suspension in connection with a criminal case can not be declared without lawful authority when an appeal is pending against the order of acquittal.⁵³⁰ Non-application of mind of the authority makes it invalid, when suspension is followed by compulsory retirement such retirement becomes effective from the date of suspension and in that case benefits are available up to the date of suspension.⁵³¹ A civil servant can be re-instated when specifically directed by the tribunal⁵³² and contractual employment does not support action for re-instatement.⁵³³

1.4.6 Appeal and Review

In this section judicial interventions with respect to appeal and review have been dealt with. As regards appeals under disciplinary laws the appellate authorities mentioned in the Police Officers (Special Provision) Ordinance, 1976 are the executive appellate authorities and not judicial authorities. The petition of appeal must include the memo of appeal and a copy of the order appealed against.⁵³⁴ Where appeals are submitted repeatedly to an authority having no jurisdiction and presented to the tribunal after the expiry of the period of limitation such appeal is not maintainable.⁵³⁵ However, limitation for moving the Administrative Tribunal starts from the date of the memo,

⁵²⁸ *Anwarul Huq v Bangladesh* (1979) 31 DLR 21.

⁵²⁹ *Salehuddin Khan v Bangladesh* (1982) 34 DLR 120.

⁵³⁰ *A F M Hamidul Haque v National Savings Directorate* (2003) 55 DLR 455.

⁵³¹ *Anwarul Huq v Bangladesh* (1979) 31 DLR 21.

⁵³² *AKM Ali Imam v Director General, BARI* (2002) 54 DLR (AD) 5.

⁵³³ *BSIC v Mahbub Hossain* (1977) 29 DLR (SC) 41.

⁵³⁴ *Bangladesh v Zahangir Hossain* (1982) 34 DLR (AD) 173.

⁵³⁵ *Bangladesh v Abdul Latif Chokder* (1997) 49 DLR (AD) 29.

communicating the result of the appeal.⁵³⁶ There is no merit in an appeal preferred at a later time after accepting the order of dismissal by an act which appears like an waiver of the right to appeal.⁵³⁷ In a disciplinary proceeding against a civil servant there is provision for one appeal. There is no provision for further appeal.⁵³⁸ The time limit for preferring an appeal is three months. This period can be extended by another three months thus making six months in whole. This additional three months will be allowed only if sufficient cause is shown for failure to prefer the appeal within three months time.⁵³⁹

Now turning to review petitions when a disciplinary proceeding is initially disposed of on facts and law an application for review of the decision will lie if there is an error apparent on the face of the record or any relevant statutory provision was overlooked resulting in miscarriage of justice.⁵⁴⁰ In calculating the period of limitation the time spent in review proceeding is excluded.⁵⁴¹ The above view that the period spent in review is excluded from the calculation of the period of limitation was reiterated in another case.⁵⁴² When a review petition is filed before a competent authority for reviewing a disciplinary action the review petition shall be disposed of, if necessitated by changes in the law, by creating new forum for that purpose. The civil servant petitioner has a right to get review of his grievance of which he can not be denied.⁵⁴³ The authority has an obligation to communicate the decision taken on a review petition to the petitioner.⁵⁴⁴

⁵³⁶ *Bangladesh v Abdul Karim* (1995) 47 DLR (AD) 146.

⁵³⁷ *Bangladesh v Mahbubuddin Ahmed* (1998) 50 DLR (AD) 154.

⁵³⁸ *Bangladesh v Nurul Huq Miah* (2001) 53 DLR (AD) 59.

⁵³⁹ *Bangladesh v Abdur Razzak* (2007) 59 DLR (AD) 94.

⁵⁴⁰ *AHM Mustain Billah v Bangladesh* (2005) 57 DLR (AD) 41.

⁵⁴¹ *AKM Nurul Alam v Bangladesh* (1994) 46 DLR (AD) 113.

⁵⁴² *Jahangir Kabir v Bangladesh* (1996) 48 DLR (AD) 156.

⁵⁴³ *Lutfur Rahman v DME* (1999) 51 DLR 133.

⁵⁴⁴ *Dewan Abdul Karim v Bangladesh* (2002) 54 DLR 231.

1.4.7 Right to Protection under Article 135 of Bangladesh Constitution

The right to protection under article 135 of the constitution is available to persons in the service of the republic. Judicial interventions decided that it was available to permanent and temporary civil servants,⁵⁴⁵ judicial officers and persons serving in Bangladesh Supreme Court and in the Bangladesh Public Service Commission⁵⁴⁶ and only the diligent civil servants.⁵⁴⁷ But the protection was not available to members of defence services⁵⁴⁸ and to the employees of statutory corporations.⁵⁴⁹

The constitutional protection was extended to cases involving major punishments such as dismissal, removal and reduction in rank. Judicial interventions laid down that termination of service and reduction to lower post,⁵⁵⁰ compulsory retirement,⁵⁵¹ compulsory retirement by way of penalty,⁵⁵² compulsory retirement in public interest not supported by materials,⁵⁵³ retiring a public servant on completion of 25 years' service,⁵⁵⁴ dishonourable dismissal,⁵⁵⁵ punishment in disguise,⁵⁵⁶ malafide exercise of pleasure,⁵⁵⁷ even after taking some benefit by illegally terminated employee⁵⁵⁸ will attract judicial intervention. But no such judicial intervention or

⁵⁴⁵ *Md Ismail Hossain v Bangladesh* (1975) 27 DLR 353.

⁵⁴⁶ *Secretary, Ministry of Finance v Md Musdar Hossain* (2000) 52 DLR (AD) 82.

⁵⁴⁷ *Fazlur Rahman v Bangladesh* (2000) 52 DLR (AD) 116.

⁵⁴⁸ *Serajul Islam Thakur v Bangladesh* (1994) 46 DLR 318; *Ahu Saleh Md Nasim v Bangladesh* (1999) 51 DLR (AD) 101.

⁵⁴⁹ *Bangladesh Bank v Md Abdul Mannan* (1994) 46 DLR (AD) 1; *Abdul Mannan v BWDB* (2007) 59 DLR 610.

⁵⁵⁰ *Md Ismail Hossain v Bangladesh* (1975) 27 DLR 353.

⁵⁵¹ *Fazlul Haq v Bangladesh*, 30 DLR (1978)336.

⁵⁵² *Bangladesh v Abdul Motaleb Dewan* (1993) 45 DLR (AD) 108.

⁵⁵³ *Mamun-ur-Rashid v State* (2005) 57 DLR 100.

⁵⁵⁴ *Dr Nurul Islam v Bangladesh* (1981) 33 DLR (AD) 201.

⁵⁵⁵ *Abdul Jalil v BSEC* (1991) 43 DLR 474.

⁵⁵⁶ *BRTC v Shahidullah* (2002) 54 DLR (AD) 124.

⁵⁵⁷ *Rear Admiral AA Mustafa v Bangladesh* (1999) 51 DLR (AD) 146.

⁵⁵⁸ *BSC v Rafiquddin Ahmed* (1994) 46 DLR 470.

protection will be extended where there is no disciplinary action,⁵⁵⁹ retirement with eligible benefits after 25 years' service,⁵⁶⁰ termination simpliciter,⁵⁶¹ retiring a public servant in the public interest under a valid law however the court may call for records to see whether there are materials to show public interest⁵⁶² judicial intervention in respect of terms and conditions of service will be made by administrative tribunals under Article 117 of the constitution.⁵⁶³

The constitutional protection could be claimed where major punishment was inflicted by a subordinate authority or non-service of show cause notice or denial of the right to precedent hearing occurred. A civil servant is entitled to a show cause notice for any disciplinary action resulting in major punishment. Several judicial interventions have dealt with different aspects of show cause notice as an instrument of disciplinary action in HRM of BCS. Thus it was laid down that an order containing a grievous charge with stigma,⁵⁶⁴ inflicting major penalty without a second show cause notice,⁵⁶⁵ arbitrary deprivation of the right to pay and benefits,⁵⁶⁶ termination of service of a civil servant on the alleged ground of adverse reports as to his confidential antecedents and termination of an employee on a charge containing materials that may affect his career⁵⁶⁷ proposing major penalty after enquiry,⁵⁶⁸ proposing major

⁵⁵⁹ *Abdur Rashid v Bangladesh* (1978) 30 DLR 41.

⁵⁶⁰ *Habibullah Khan v SA Ahmed* (1983) 35 DLR (AD) 72.

⁵⁶¹ *Bangladesh Bank v Md. Abdul Mannan* (1994) 46 DLR(AD) 1; *MA Gafur v Bangladesh* (2004) 56 DLR (AD) 205.

⁵⁶² *Habibullah Khan v SA Ahmed* (1983) 35 DLR (AD) 72.

⁵⁶³ *Bangladesh v Mohammad Faruque* (1999) 51 DLR (AD) 112.

⁵⁶⁴ *Barkatullah Khan v Bangladesh* (2005) 57 DLR 302.

⁵⁶⁵ *Director General, Prisons v Nasim Uddin* (2001) 53 DLR (AD) 30.

⁵⁶⁶ *Helal Uddin v Bangladesh* (2003) 55 DLR 506.

⁵⁶⁷ *Abdur Rasheed v Bangladesh* (1978) 30 DLR 231.

⁵⁶⁸ *Fazlul Haq v Bangladesh* (1978) 30 DLR 336.

penalty after enquiry without second show cause notice,⁵⁶⁹ order of compulsory retirement under the relevant service rules,⁵⁷⁰ imposing major penalty on either temporary or permanent civil servants,⁵⁷¹ reverting a civil servant to a lower post,⁵⁷² exercise of pleasure doctrine⁵⁷³ and statutory requirement of giving opportunity of showing cause violated by not giving the show cause notice the civil servant will be protected by judicial intervention under Article 135 of the constitution.

But no such notice is required to be given if the appointing authority was satisfied that it was not reasonably practicable to give the civil servant an opportunity to show cause the authority may, after recording sufficient reasons, dispense with such notice. It is within the competence of the authority to take such a measure within proviso (ii) of clause (2) of article 135 of the constitution of the republic. But sufficient reasons must be recorded in writing. Thus where there was sufficient reason,⁵⁷⁴ it was just verification of antecedents of an intending employee and not a punitive measure⁵⁷⁵ and retiring with full pension after 25 years' service⁵⁷⁶ no such notice was required.

1.4.8 Law of Disciplinary Actions in Statutory Bodies

Although the discipline of employees of corporations are not governed by the disciplinary laws of persons in the service of the republic, but if the disciplinary laws of such persons are applied by the corporation they can not

⁵⁶⁹ *A Z Rafique Ahmed v BCSIRL* (1979) 31 DLR 222.

⁵⁷⁰ *Fazlul Haq v Bangladesh* (1978) 30 DLR 336.

⁵⁷¹ *Dhirendranath v Bangladesh* (1979) 31 DLR 151.

⁵⁷² *Md Ismail Hossain v Bangladesh* (1975) 27 DLR 353.

⁵⁷³ *Bangladesh v Zahangir Hossain* (1982) 34 DLR (AD) 173.

⁵⁷⁴ *Md Ismail Hossain v Bangladesh* (1975) 27 DLR 353.

⁵⁷⁵ *Abdur Rasheed v Bangladesh* (1978) 30 DLR 231.

⁵⁷⁶ *Dr Nurul Islam v Bangladesh* (1981) 33 DLR (AD) 201.

subsequently deny the applicability of such rules. Detailed procedure followed in departmental proceedings against persons in the service of the republic need not be followed by statutory corporations, but the principles of natural justice has to be complied with, honest enquiry is not vitiated by refusal to show records.⁵⁷⁷ In statutory corporation when an employee is dismissed an action for reinstatement may lie due to the application of the principles of natural justice or due to contravention of a mandatory statutory provision but if the dismissal is without any blame then no such action for reinstatement will lie.⁵⁷⁸

Employees of statutory public corporations are not persons in the service of the republic and their right to precedent hearing is not protected under Article 135 of the constitution. But they have a right to show cause notice as a matter of natural justice protected under Article 102 of the constitution. Thus wrongful dismissal of employees of statutory public corporations, dismissal by incompetent authority without notice,⁵⁷⁹ even when notice not mentioned in the statute or non-service of second show cause notice when required by statute,⁵⁸⁰ or required by regulation,⁵⁸¹ order of termination with stigma and without opportunity to defend himself⁵⁸² will attract judicial intervention. Different types of employees of statutory corporation have different rights and liabilities regarding disciplinary actions. An employee holding a non-statutory post in a statutory corporation has only a limited right to maintain action in a court of law. For criminal misconduct an employee of a statutory corporation

⁵⁷⁷ *Md Loqman v BADC* (1980) 32 DLR 83.

⁵⁷⁸ *BSIC v Mahhub Hossain* (1977) 29 DLR (SC) 41.

⁵⁷⁹ *Saleh Ahmed Khan v Additional Secretary, Rural Development, Ministry of Local Government* (1989) 41 DLR 211.

⁵⁸⁰ *Abdul Jalil v BSEC* (1991) 43 DLR 474.

⁵⁸¹ *Fazlul Karim v Agrani Bank* (1993) 45 DLR 375.

⁵⁸² *Momshad Reza v Chairman, BPATC* (1990) 51 DLR 376.

is regarded as a public servant and he is allowed to maintain an action for a declaration of nullity.

Entity of government companies and statutory corporations are distinct and separate from the government and their employees are not regarded as civil servants. It, therefore, follows that the disciplinary laws of persons in the service of the republic are not automatically applicable to the employees of such companies or corporations. A corporation may function either as a government department or as a government agency or as a hybrid organisation. When it functions as a government department it is implied that the disciplinary laws of civil servants may be applicable to its employees subject to the statute creating the corporation.⁵⁸³

Now, as regards disciplinary action against employees in a statutory body the procedure provided by the service rules has to be followed. Detailed procedure followed in a court of law or the constitutional provisions under articles 133 and 135 are not binding on the employers for taking disciplinary actions. Principles of natural justice should be observed in the conduct of domestic enquiries against employees of statutory corporations by giving them reasonable opportunities to be heard. In a departmental enquiry in statutory corporations compliance with the principles of natural justice is enough. The accused should be given a reasonable opportunity to defend himself. The detailed technical procedure followed in regular trial need not be followed in a departmental proceeding. If the enquiry is held honestly and bonafide refusal to show records and other details will not vitiate the enquiry

⁵⁸³ *BSIC v Mahbub Hossain* (1977) 29 DLR (SC) 47.

or its results.⁵⁸⁴ If the principle of natural justice is substantially followed while compulsory retirement of an employee of a corporation is ordered the constitutional protection will not be available.⁵⁸⁵

Although employees of statutory corporations are not persons in the service of the republic and hence not entitled to the show cause notice. Under Article 135 they are charged with duties of public character. They are entitled, as a matter of natural justice, to show cause notice before their dismissal from service.⁵⁸⁶ The employees of statutory corporations are not private service holders and are entitled to show cause notice against a proposed major penalty even though there is no such provision in any statute. In a statutory corporation an employee is entitled to an opportunity to defend himself against a proposed major penalty in compliance with the principles of natural justice. But they are not automatically entitled to the second show cause notice if it is not required under the laws of the corporation.⁵⁸⁷

If any regulation is framed in a corporation requiring second show cause after the enquiry is held but before the penalty of dismissal is imposed the employee is entitled to a second show cause notice and a failure will make the dismissal illegal.⁵⁸⁸ When the order of termination of service of an employee of a statutory corporation such as BPATC contains blame against the employee the termination is combined with stigma and it is no longer a

⁵⁸⁴ *Md Loqman v BADC* (1980) 32 DLR 83.

⁵⁸⁵ *Abdul Mannan v BWDB* (2007) 59 DLR 610.

⁵⁸⁶ *A Z Rafique Ahmed v BCSIRL* (1979) 31 DLR 222; *Ch Md Yusuf v Bangladesh Biman* (1979) 31 DLR 199.

⁵⁸⁷ *Abdul Jalil v BSEC* (1991) 43 DLR 474.

⁵⁸⁸ *Fazlul Karim v Agrani Bank* (1993) 45 DLR 375.

termination simpliciter. Such a termination is illegal if the employee is not given an opportunity to show cause before such termination.⁵⁸⁹

1.5 Findings of the Questionnaire Survey

In view of the above study two questions were designed to survey the opinion of respondents in this area. The first question enquired whether increased judicial intervention will be more cordially accepted by all concerned, 402 respondents have responded to the question of which 257 respondents constituting 63.93 percent expressed the view that it will not be cordially accepted. This is pictorially depicted in Pie Chart in fig. 52. Out of those 257 the highest number of respondents that is 120 constituting 46.70 percent strongly agreed that civil servants would not cordially accept more judicial intervention. The second highest number that is 71 constituting 27.62 percent strongly agreed that conscious citizens would not cordially accept. Different views related to this issue are shown in the following Pie Chart in fig. 53.

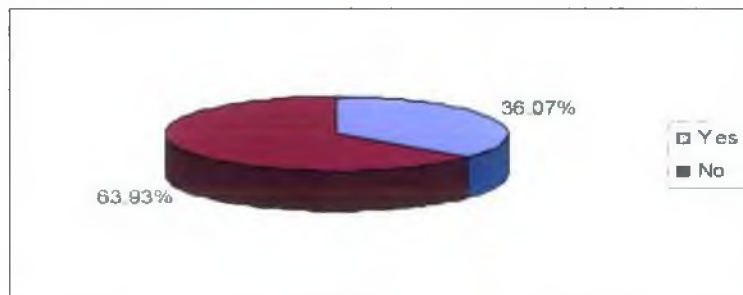


Figure-52: Showing the Percentage of Response as to whether Increased Judicial Intervention will be more cordially Accepted by all Concerned.

⁵⁸⁹ *Momshad Reza v Churman, BPATC (1990) 51 DLR 376.*

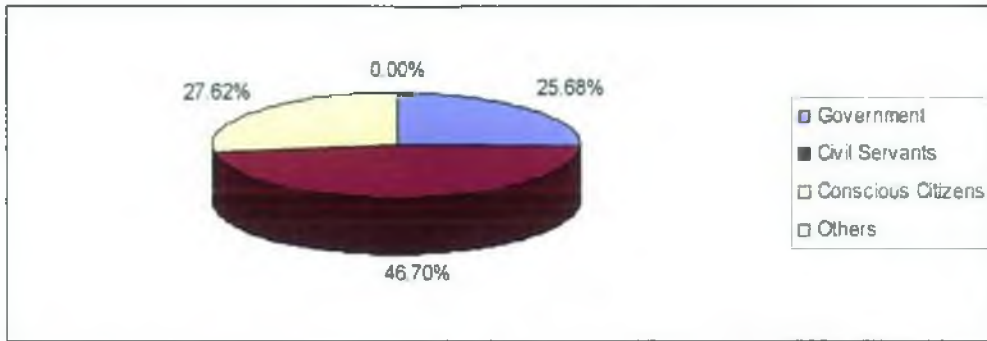


Figure-53: Showing the Percentage of Strongly Agreed Responses as to who will not Cordially Accept Increased Judicial Intervention

The second and last question enquired whether judicial intervention in HRM of BCS is helpful for civil servants in performing their duties and responsibilities better, 375 respondents responded to the question. Out of them 196 respondents constituting 52.27 percent expressed "to some extent". The second highest number that is 88 constituting 23.47 percent positively agreed that such interventions are helpful in better performing the duties and responsibilities of civil servants. Different views related to this issue are shown in the following Pie Chart in fig. 54.

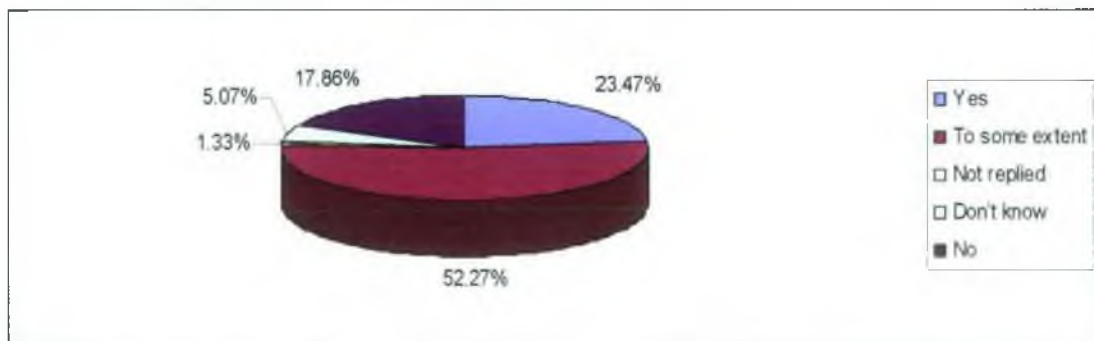


Figure-54: Showing the Percentage of Response as to whether Judicial Intervention in HRM of BCS is Helpful for Civil Servants in Performing their Duties and Responsibilities Better.

1.6 Summary and Assessment

Evidently, the judiciary has intervened whenever any real or supposed misapplication or deviation from the existing law was brought to its notice.

The courts have kept HRM of BCS within the bounds of existing laws effectively. The courts have consistently interpreted and applied the existing law with equality and fairness ensuring stability and rule of law in HRM of BCS.

It may be noted that the judicial interventions examined above have made the composition, status and protection of the members of different categories of civil service distinct, detailed and clear as amongst themselves as well as from those of defence services. Evidently, the persons in the service of the republic holding civil posts are separate and distinct from defence services, and persons in the service of private companies and individual persons. They are involved in the governance of state itself and enjoy certain constitutional protections and status. However, although the persons holding service in corporations do not enjoy constitutional protection to the same extent but they are not like private servants. They enjoy protection under the relevant statutes and the doctrine of natural justice. The defence or military service is not entitled to some of the constitutional protections enjoyed by members of civil service for reasons of maintaining discipline.

In the four selected areas of HRM of BCS the judicial review and interventions have paved a long way to interpret, classify and stabilise the legal position and define and advance HRM of BCS on the basis of existing law. This is also operating as deterrent against ultravires HRM of BCS related law making and arbitrary enforcement of such law keeping HRM of BCS smooth and compliant with the relevant law. As the laws are outdated and have not incorporated modern best practices of HRM the judicial interventions are not being able to ensure modern HRM of BCS. It is clear

that the areas of HRP and PM have very infrequent judicial intervention with respect to HRM of BCS. This finding is consistent with the finding in chapter IV that these areas are also lacking adequate legal provisions. Evidently, the courts review and intervene with respect to HRM of BCS on the basis of the existing law. As the law is not modernised judicial intervention can't ensure modernised HRM of BCS through judicial intervention or direct the concerned authorities to make modernised and updated laws to ensure modernised HRM of BCS. Therefore to make judicial intervention more fruitful laws and rules embodying modern practices of HRM need to be made.

The findings of the questionnaire survey are very interesting and are consistent with popular view. It may be noted that, in response to the first question 63.93 percent respondents viewed that increased judicial intervention will not be cordially accepted. However, in response to the second, more than 75 percent respondents have opined that judicial intervention will be helpful in better performing the duties and responsibilities of civil servants. The next chapter will summarise the findings and conclusions of the study.

CHAPTER VII

SUMMARY AND CONCLUSIONS

1.0 Prelude

Effective Human Resource Management (HRM) of Bangladesh Civil Service (BCS) is essential for the country's law and order, strong administration and socio-economic development. In order to ensure modern HRM of BCS, the judiciary can play a vital role if there are updated laws and rules relating to HRM of BCS. The objective of judicial intervention in the field of HRM of BCS is to build effective and efficient HRM of BCS. However, existing laws and rules relating to HRM of BCS are backdated and lacking modern concepts and practices. So, Government of Bangladesh has initiated and introduced several rules for HRM of BCS but the modern concepts, best practices and proper institutional support for implementation, monitoring and regular updating of such laws and rules have not been incorporated into its legal system.

In fact, Bangladesh inherited administrative structure and civil service system from Pakistan and British India. In this sub-continent, the British rulers introduced the prevalent civil service system more than 200 years ago. The British left the sub- continent more than 60 years ago. Like other countries of this sub-continent the then Pakistan and even Bangladesh follow the old British administrative structure and laws relating to civil services. The law and practice left by the British Government in India are the basis of HRM of BCS. However, the prevailing laws and practices are old and need to be updated. Government of Bangladesh, irrespective of political views initiated different steps and measures for administrative reforms without significant

improvement. Still Bangladesh faces lack of proper modern laws relating to HRM of BCS. BCS related laws and rules are very important for improving HRM of BCS. Moreover, modernised laws and rules of HRM of BCS are needed for effective judicial intervention. So it is a demand of the time to modernise, develop and update existing laws and rules for HRM of BCS for coping up with the present day demands of the highly competitive globe.

Under the above circumstances this thesis mainly aims at investigating into four major areas of HRM of BCS namely, (i) Human Resource Planning (HRP), (ii) Recruiting, (iii) Performance Management (PM), and (iv) Discipline of HRM of BCS and the role of judicial intervention on HRM of BCS. Besides, existing laws and rules relating to HRM of BCS relevant judicial interventions also came under the investigation to give the study a complete shape. In order to benefit from the study of HRM of BCS and the role of judicial intervention with a view to improving the efficiency and effectiveness of the members of BCS, the nature and scope of the problems of HRM practices in BCS has been evaluated in this study. Furthermore, the position of the relevant constitutional, legal and administrative provisions in the law and the role of judicial intervention and their effectiveness has been examined thoroughly.

1.2 Summary of Findings of the Study and Questionnaire Survey

A short summary and assessment of the important and significant findings of the study and questionnaire survey was added at the end of each of the foregoing chapters to answer the research objectives. However, this section presents a synchronised summary of all the significant findings as the basis of final conclusions of the study. The sectionwise summary of findings are presented below.

1.2.1 Origin and Development of BCS: A critical Review.

The first objective of the study was achieved by examining the nature of the origin and development of BCS in chapter-II. To achieve this objective, the evolution and development of British-Indian Civil Service and Civil Service of Pakistan were reviewed and examined. BCS has a very long tradition and historical background. During the British rule before 1947, Bangladesh was a part of a province of British-India known as Bengal. From 1947 to 1970, Bangladesh (the then East Pakistan) was a part of the Federation of Pakistan.

In fact, Bangladesh Civil Service originated and developed from the Pakistan and British Indian Civil Service. The early years of British rule in India was a unitary system with strong centralised control. The central civil services and the members of All-India Services were working under the Central Government. As mentioned earlier, the basic objectives of British rule were to develop military and civil framework capable of maintaining law and order, collecting land revenues and establishing local institutions which would preserve the imperial presence in the country.

After partition of British India into India and Pakistan all rules and orders dealing with terms and conditions of service of civil servants prevailing under the Government of India Act, 1935 were continued under the Indian Independence Act, 1947. After abrogation of the 1956 Constitution of the Islamic Republic of Pakistan in 1958, Pakistan was put under martial law administration till the inauguration of the legislatures, central and provincial, under the Constitution of the Islamic Republic of Pakistan, 1962. The Constitution of Pakistan, 1962 like its predecessor contained a number of provisions in regard to the civil service. These provisions were mainly

reproduced from the British Government enacted Act of 1935 without any significant updating of the old provisions.

However, there were some marginal variations in the substance of these provisions and the manner of their enforcement. After independence in 1971, BCS inherited the existing old fashioned colonial legal system as well as different levels of Pakistan civil services. New Government of Bangladesh started its administrative functions by the Ex-Pakistan civil servants who were citizens of the then East Pakistan. These different levels of civil servants included federal civil service comprising the all Pakistan Civil Services such as CSP and PSP, the central civil service such as CSS and CPWD and provincial civil service comprising provincial services such as EPCS and public services, and subordinate civil services.

After independence, the Laws Continuance Enforcement Order, 1971 provided that all laws that were in force in Bangladesh on 25 March 1971 shall, continue to be in force with such consequential changes as may be necessary on account of the creation of the sovereign independent state of Bangladesh and all government officials who take oath of allegiance to Bangladesh shall continue in their offices on terms and conditions of service so long enjoyed by them. The Order was made effective from 26 March 1971. As a result of these legal provisions, the members of CSP and EPCS became members of BCS although as a matter of practice they continued to be identified as erstwhile CSPs and EPCSs. These provisions of adaptation and confirmation of the inherited system opened the floodgate for continuation of the British-based Pakistani provisions for HRM of BCS.

In addition, the Constitution of the People's Republic of Bangladesh incorporates most of the provisions relating to services directly and in some cases with some marginal modifications from the 1956 and 1962 constitutions of Pakistan which, in turn, were based on British law as discussed earlier. The Fundamental Rules and Supplementary Rules (FR&SR) and other rules were also continued under the Laws Continuance Enforcement Order.

The nature of the BCS functions requires socio-economic development through innovation, quick, accurate, efficient and effective decision making and excellent service delivery to the doorsteps of the people. With the development of the country and increase in the cadre number and functions of BCS, the functions and jurisdiction of Bangladesh Public Service Commission (BPSC) has increased. But there is no updating or modernisation in the composition or functions of BPSC or other significant institutional development for modern HRM of BCS.

It is clear from the above study that BCS has a very long tradition and historical background. In the past, civil service meant the administrative service only. At present the size of BCS is quite large. The nature of BCS functions requires innovation, quick, accurate, efficient and effective decision making and excellent service delivery to the doorsteps of the people. With the development of the country and increase in the composition and size of BCS, the HRM functions of BCS have increased. However, there has been no significant institutional reform to meet these changes. Now the BPSC has a gigantic HRM task in respect of cadre and non-cadre servants of the republic. The annual report submitted by the BPSC should be made more effective in improving HRM of BCS. The BPSC should be relieved of advisory functions

and allowed to concentrate on efficient recruiting, promotion, transfer and updating HRM of BCS so that selection and utilisation of right man for the right job can be ensured. There is a serious void in institutionalisation at the central as well as organisational levels of the government for initiating intensive central review, updating legislation and policy making and its implementation at the organisational level to ensure modern HRM of BCS.

When the above findings were subjected to the comments of the respondents in course of the questionnaire survey the majority of the respondents opined that annual report of BPSC should aim at improving HRM of BCS by incorporating right content, information analysis and recommendations. However, the finding of the questionnaire survey revealed that BPSC and other executive agencies should not be relieved from their involvement in disciplinary process. Naturally, it implies that they should be strengthened appropriately by expanding and improving efficiency and effectiveness to perform their increased onerous responsibilities. It was also revealed that there should be institutional change and there should be HRM unit in every organisation including an HRM unit at the centre. There should be effective permanent institutional mechanism at the centre as well as at organisational level for strategic business planning and result-oriented HRM of BCS. There should be HRM unit at the center as well as at each ministry/division/organisation and there should be trained and specialized manpower to operate these units efficiently and effectively.

1.2.2 HRM of BCS: Analysis of Concepts and Practices

The second research objective has been achieved by investigating HRM of BCS in terms of its concepts and practices in chapter-III. The analysis reveals

that although Bangladesh is one of the most densely populated countries of the world but HRM is less organised and less developed here compared to those of the developed countries. Presently, importance of HRM is increasing day by day. It is so because HR is the only resource that can activate and utilise other resources. HRM is the comprehensive set of management activities and tasks concerned with developing and maintaining qualified workforce, human resources, in ways that contribute to organisational effectiveness. HRM is the design of formal systems in an organisation to ensure effective and efficient use of human talent to accomplish organisational goals.

The main purpose of this study is to examine the basic elements of HRM and its practice in BCS. In Bangladesh, HRM of BCS is still treated as mostly operational. HRP is an important element of civil service of any country. HRP is used as a process, which ensures that it has the right number and kinds of people at the right place at the right time who are capable of performing their assigned tasks effectively and efficiently. There has been no significant updating of the British Indian practices of HRP of BCS. Efficiency and effectiveness of civil servants depend on HRP practice. But modern HRP and PM practices are almost absent in HRM of BCS.

There are multitude of anomalies and deficiencies in HRM of BCS including the lack of human resource planning, inappropriate recruiting policy and practice, discriminatory system of promotion, absence of any objective performance management and linking it with other areas of HRM of BCS. It is widely alleged that these deficiencies combined with

bureaucratic corruption and increasing incidence of politicisation adversely affect the quality and performance of BCS. They also pose a great challenge for the future in that they stifle the flowering of merit, professionalism and integrity in the BCS.

Evidently, Bangladesh Civil Service faces challenges and problems along with limitations in its current HRM of BCS practices. Traditional rules, policies and practices of BCS were inherited from Pakistan and British-India. Those rules still continue and dominate the HRM of BCS. The attempts made at reforming and modernising the civil service since independence has failed to devise and practice an appropriate and efficient system of HRM of BCS. Lack of commitment on the part of the civil servants and lack of strong political will to improve HRM of BCS mainly accounts for this failure. The present approach to HRM is clearly unsatisfactory and needs extensive updating.

The findings of the questionnaire survey also corroborate the above findings. As regards HRM of BCS in general majority of the respondents opined that lack of commitment of civil servants and lack of modern HRM are the main problems of HRM of BCS. The factors that historically contributed to the development of the problem is the lack of strong political will to improve HRM of BCS. The respondents agreed that the most important areas of HRM of BCS were HRP, Recruiting, PM and Discipline and these areas are the focus of this study.

The major views of respondents participating in the questionnaire survey regarding HRP were that every government organisation should have set goal

and this goal should form the basis of HRP and PM. The efficiency of BCS can be enhanced by increasing skilled higher level employees and absorbing competent lower level employees after retraining and reducing unskilled lower level posts.

As regards recruiting, both direct recruitment and promotion were subjected to the views of the respondents. With respect to direct recruitment the majority of the respondents viewed that the quota system should be relaxed and higher salary and benefits should be offered for attracting and retaining talented and efficient officers. As regards promotion, the critical view is that the existing criteria for promotion is not proper and that workplan based objective performance appraisal results should be the proper criteria for promotion. Promotion examination at each level and proper legislation was suggested for developing proper criteria for promotion.

As regards PM, several views were expressed by the respondents. It was opined that PM should be done by objective and result-oriented performance appraisal and linking PM to other HRM activities. It was also opined that ACR should be open, participatory, job description and workplan based. The existing training institutes were evaluated as inadequate due to lack of modern and improved training facilities. The training provided was considered ineffective. It was opined that need-based design and implementation of training as well as proper monitoring of training results and updating of training programmes will improve effectiveness of training.

According to majority of respondents present disciplinary practices were viewed as ineffective. Well designed training and reward and punishment system will improve effectiveness of disciplinary mechanism.

1.2.3 HRM of BCS: A Legal Analysis

The third objective of this study has been achieved by analysing existing legal provisions relating to HRM of BCS focusing on the need for updating them in chapter-IV. The purpose of this study was to examine and analyse relevant constitutional provisions, statutory laws, rules, regulations and notifications governing HRM of BCS focusing on the need and scope of updating of such laws relating to the four important areas of HRM of BCS viz. HRP, Recruiting, PM and Discipline. As a developing country of the world, Bangladesh has been facing multifarious socio-economic and administrative problems since the independence in 1971. Government of Bangladesh initiated several steps to reform HRM of BCS. But those steps have not been enough to make a modern and updated civil service. Moreover, no significant measure relating to updating laws, rules and regulations relating to HRM of BCS has been undertaken to incorporate the modern best practices of HRM to meet the present day requirements. Due to lack of updated laws relating to HRM of BCS advancement of our BCS compared to the other developed countries even the neighbouring country of India is the minimal.

HRM of BCS is operated within the framework of the constitution and statutory laws, rules and regulations framed thereunder. The Constitution of Bangladesh provides legal support to HRP, Recruiting, Performance Management and Discipline in HRM of BCS. The constitutional provisions

relating to the persons in the service of the republic including BCS are provided in chapters I and II of part IX of the constitution. Most of the provisions contained in these chapters are derived from the British Indian legal system. The constitution and other regulations adopted from time to time, provide a detailed framework for HRM of BCS. Relevant provisions of the constitution provide equality of opportunity for all citizens in public employment and empower the government to enact laws regulating 'appointment and conditions of service' of persons in the service of the republic. Some of the provisions relating to HRM of BCS deal with government's power to deal with civil servants while others safeguard the status, rights and privileges of civil servants. Civil servants in Bangladesh have the right to seek the protection of a court of law and or administrative tribunals in the event of infringement of their status, rights and privileges. The relevant constitutional provisions and statutory and non-statutory laws, rules, regulations and notifications relating to different areas of HRM of BCS are, however, derived from the British Indian legal provisions in this regard and are not updated to incorporate the modern concepts and best practices was partially revealed in the previous chapters.

It has been observed that the constitution supports law-making for HRM of BCS but only constitutional provision enabling law making is not sufficient. There seems to be a lack of effective institutionalisation. The legal framework for HRM of BCS is highly fragmented, backdated and inadequate. Comprehensive law making to modernise and to ensure efficient and effective HRM of BCS is a crying need of the day. However, there is no permanent institutional set up at the center for initiating gap filling and updating the legal framework to ensure such HRM of BCS. Particularly, there is almost absence

of statutory law making in the fields of HRP and performance management. The legal system does not provide for a central HRM unit that could initiate legislative proposals and monitor enforcement. Whatever provisions we have in other areas of HRM of BCS are backdated and inadequate as well as often violated in practice. Appropriate law and its proper implementation, monitoring and regular updating are essential for improving HRM of BCS.

The findings of the questionnaire survey also corroborate the above findings and reveal that the existing law related to HRM of BCS is deficient as it does not incorporate modern best practices and strong enforcement system. Introducing best practices through legislation is necessary to improve efficiency of HRM of BCS. There is deficit in special law to facilitate modern HRM of BCS. An Act of Parliament should be enacted to introduce modern practices of HRM of BCS and to address all other related issues including provisions for robust institutional mechanism at the central as well as organisational levels.

Appropriate law and its proper implementation is essential for improving HRM of BCS. Judicial intervention is made on the basis of existing law. If the law is not updated judicial intervention has limited scope in updating law or modernising and updating HRM of BCS. This will be evident from the next section.

1.2.4 HRM of BCS: Analysis of Nature and Scope of Judicial Interventions

The fourth objective of the study has been achieved by analysing the nature and scope of judicial intervention in the field of HRM of BCS in chapter V with particular focus on judicial interventions in the four selected areas of

HRM of BCS in chapter VI. The efficient and effective implementation of government programmes and rights, privileges and commitments of civil servants must be aligned properly in the greater interest of achieving national goals and aspirations. If the alignment is based on satisfactory modern and updated legislative provisions any conflict of interest or disputes due to deviations from those provisions may be resolved by judicial intervention. The governmental system dealing with HRM of BCS, the principles, methods and laws providing for judicial intervention and judicial institutions such as courts and tribunals together determine the nature and scope of judicial intervention with respect to HRM of BCS.

After independence in 1971, Bangladesh continued Pakistani administrative and judicial systems under the Indian Independence Act, 1947 which was modeled on the common law system existing in England in the 19th century and have not been modernised and updated in line with the present requirements and aspirations of the nation. According to Article 94 of the Bangladesh Constitution 'There shall be a Supreme Court for Bangladesh (to be known as the Supreme Court of Bangladesh) comprising the Appellate Division and the High Court Division'. The High Court Division of the Supreme Court is empowered under Article 102 and the Appellate Division is empowered under Article 103 of the constitution to review administrative actions including actions in HRM of BCS. The lower courts are located at the district level. The magistrates deal with only criminal cases, whereas the judges at the district and upper levels deal with both criminal and civil cases including appeal cases. The High Court Division hears appeals from district courts and may also judge original cases. The Appellate Division reviews appeals of judgments of the High Court Division. All the courts of

Bangladesh are under the direct and indirect supervision and control of the Supreme Court.

Under Article 117 of the Constitution of the People's Republic of Bangladesh the Government of Bangladesh is empowered to establish one or more Administrative Tribunals to deal with HRM of BCS. In exercise of that constitutional power, the government enacted the Administrative Tribunals Act, 1980. Under section 5 of the Act Administrative Tribunals and under section 6 of the Act Administrative Appellate Tribunal has been established by the government. The Administrative Tribunal directly deals with reviewing decisions and orders of the executive government relating to HRM of BCS with respect to civil servants of Bangladesh. The Appellate Tribunal hears and determines appeals against judgments and orders of the Administrative Tribunals. In addition, section 6A of the Administrative Tribunals Act provides for judicial review and intervention with respect to the judgment and order of the Administrative Appellate Tribunal by the Appellate Division of the Supreme Court under Article 103 of the constitution in the same way as they do in relation to the High Court Division.

It has been observed in Bangladesh that vast legislative and quasi-judicial powers are being exercised by the administrative authorities. Although there are adequate constitutional provisions for new law making related to HRM of BCS, there is lack of modernised laws and rules on the basis of which aggrieved officers can claim justice and modern practices of HRM of BCS can be ensured as well as wide scope for judicial intervention to make it compliant with modern needs and aspirations of the nation can be given. The laws related to HRM of BCS have not been developed and modernised in line

with the changed requirements and aspirations of the nation while facts remain that modern and updated laws and rules together with their proper application can ensure the right HRM of BCS.

Due to these constraints, courts' intervention is also limited. However, we can not say that aggrieved officers are totally deprived of justice. There are numerous constitutional, statutory and non-statutory legal provisions in this regard. Judicial powers of the courts are exercised under service related laws, rules and by the application of the discretionary powers of the court considering the merit of the case. The solution has been found, largely, in the ultimate control of these administrative authorities by the courts themselves, through the application of certain immutable principles and the enforcement of certain judicial remedies which are available to the judiciary. So, there is need for updated and modern laws relating to HRM of BCS by applying which courts and tribunals can play a significant role in modernising HRM of BCS and thus application of this great machinery of judicial review and intervention can ensure modern HRM of BCS.

It is evident from the above study that there are elaborate constitutional, statutory and non-statutory provisions for judicial intervention with regard to HRM of BCS. Most of these provisions have continued from the past and does not incorporate the modern best practices of HRM of BCS, although there is wide constitutional scope for legislation to modernise HRM of BCS. The judiciary may also play a more proactive role by utilising the existing mechanism in improving laws related to HRM of BCS by providing positive guidelines to the appropriate authorities to make such law and by pro-active interpretation on the existing law.

The findings of the questionnaire survey also reveal that lack of modern and updated laws and rules provides limited scope for judicial intervention in HRM of BCS. It was corroborated that judicial intervention based on laws incorporating modern best practices would be helpful in improving HRM of BCS. The Supreme Court can play more pro-active role by directing appropriate authorities to formulate modern rules and also by pro-active interpretation of existing statutes and rules. The judicial interventions in the areas of HRP, Recruiting, PM and Discipline will be analysed in the next section.

1.2.5 HRM of BCS: Analysis of Judicial Interventions

Chapter-VI analyses judicial interventions in four selected areas of HRM of BCS. The analysis reveals that the Supreme Court of Bangladesh delivered significant decisions in these areas in several cases. In the case of *Dr. Nurul Islam v Bangladesh* important observations relating to relationship between the government and its servants were made. According to the verdict powers and duties of the civil servants are exclusively determined by law and not by agreement between parties concerned. Again in the leading case *Secretary, Ministry of Finance (MoF) v Masdar Hossain*, Appellate Division of the Supreme Court defined the civil or administrative service of the republic and differentiated them from other categories of persons in the service of the republic. Judicial Interventions have made the composition, status and protection of the members of different categories of civil servants distinct, detailed and clear as amongst themselves as well as from those of defence services and persons in the service of private companies and individual persons. They are involved in the governance of state itself and enjoy certain constitutional protections and status. However, although the persons holding

service in corporations do not enjoy constitutional protection to the same extent but they are not like private servants. They enjoy protection under the relevant statutes and the doctrine of natural justice. The defence or military service is not entitled to some of the constitutional protections enjoyed by members of civil service for reasons of maintaining discipline.

The judiciary has intervened whenever any misapplication or deviation from the existing law was brought to its notice. The courts have kept HRM of BCS within the bounds of existing laws effectively. The courts have consistently interpreted and applied the existing law with equality and fairness ensuring stability and rule of law in HRM of BCS. This is also deterring ultravires HRM of BCS related law making and arbitrary enforcement of such law keeping HRM of BCS smooth and compliant with the relevant law. Sometimes, judicial interventions by courts have given instructions or guidelines to appropriate authorities to improve HRM of BCS. The examination of judicial interventions in the selected areas of HRM of BCS has revealed that judicial interventions have resolved relevant disputes, conflicts and questions of HRM of BCS in the light of the prevailing laws and practices. However, the laws related to HRM of BCS have not been developed and modernised in line with the changed requirements and aspirations of the nation and to widen scope for judicial intervention to make it compliant with those laws. Modern and updated laws and rules together with their proper application through judicial intervention when necessary can ensure the right HRM of BCS. Such intervention will also help to improve HRM of BCS.

As the laws are outdated and have not incorporated modern best practices of HRM, the judicial interventions are not being able to ensure modern HRM of BCS. It is clear that the areas of HRP and PM have very infrequent judicial intervention with respect to HRM of BCS. This finding is consistent with the finding in chapter IV that these areas are also lacking adequate legal provisions. Evidently, the courts review and intervene with respect to HRM of BCS on the basis of the existing law. Therefore, making modern laws incorporating best practices and thereby widening scope for judicial intervention will help to improve HRM of BCS by making it compliant with those improved laws.

The findings of the questionnaire survey are very interesting and are consistent with popular views as expressed in the above findings. In response to the first question, 63.93 percent respondents viewed that increased judicial intervention will not be cordially accepted. However, in response to the second question, more than 75 percent respondents have opined that judicial intervention will be helpful in better performing the duties and responsibilities of civil servants. The next section has summarised the findings and conclusions of the study.

1.3 Conclusions of the Study

Finally, now it is the time to achieve the fifth and last objective of the study by summarising the study and making necessary conclusions. To sum up, it may be said that after introducing the study in chapter I, chapter II and III revealed that the institutions relating to HRM of BCS as well as HRM of BCS practices were backdated and were based on old British laws and regulations. The analysis of the existing laws and rules relating to HRM of BCS in chapter

IV also corroborated those findings. In chapter V and VI it was also revealed that due to lack of modern laws and regulations, the scope for judicial intervention to introduce modern best practices in HRM of BCS was limited.

The findings of the questionnaire survey was also supportive of those findings and the majority of respondents opined that there should be institutional change providing for HRM unit in every organisation including an HRM unit at the centre for strategic business planning and result-oriented HRM of BCS. The BPSC should be strengthened to play more active role in modernising HRM of BCS. They also opined that goal-directed HRP and PM should be introduced. There should be effective manpower planning to ensure skilled HR to facilitate achievement of set goals. Quota system should be relaxed and attractive compensation packages should be offered to encourage recruitment and retaining of bright manpower in civil service. Promotion should be based on workplan based objective performance appraisal results and examination at each level and the results should be linked to other HRM activities as well. The disciplinary system should provide for reward and punishment and supplemented by well designed training mechanism. Adequate provision for judicial intervention to ensure above mentioned modern practices will make the system sustainable.

Evidently there is lack of adequately modernised laws and rules in respect of HRM of BCS. Existing laws and rules are inherited from Pakistan and British India. The situations and objectives of these laws and rules made by the Pakistan and British Indian governments have changed. These are not updated and modified in line with the present demands of BCS. Bangladesh is a democratic country. The present national objectives and priorities are

different from those of Pakistan and British India such as maintaining law and order and ensuring collection of revenue. At present the members of BCS are to ensure welfare of the citizens through innovative, quick and pro-people decision making as well as efficient delivery of good quality services to the doorsteps of the citizens. The rights and duties of the civil servants as well as the technology available and the context as a whole have also changed. Laws have to be made from those perspectives.

On the other hand, civil servants expect equality, justice and impartiality from the government. However, due to lack of sufficiently modernised and updated laws and rules civil servants are being deprived. In this situation there is need for both updated laws of HRM of BCS and judicial intervention on the basis of those laws whenever necessary. Courts can ensure justice to civil servants and protect their status and rights but they are facing constraints and could not apply their powers and discretionary authorities in this field for lack of adequately modernised and updated laws and rules of HRM of BCS. Modernised law incorporating best practices relating to HRM of BCS and providing for appropriate institutional framework for their implementation and updating is the pressing demand of the day. Thus for introducing modern HRM of BCS and making it sustainable through judicial intervention requires adequate institutional set up both at the centre as well as at organisational levels for initiating modern legislation incorporating best practices providing for better HRM of BCS. It is, therefore, suggested that:

1. Adequate institutional setup should be established at the centre and organisational level and BPSC should be strengthened.
2. Adequate modern laws for better HRM of BCS should be made, implemented, monitored and updated on regular basis.

This research has concentrated on HRM of BCS and role of judicial intervention and has explored the deficiencies in the existing laws and rules with respect to HRM of BCS. To assess and evaluate the above issues, the researcher also examined the role of training institutions, training policy, the functions of BPATC, BPSC and the Ministry of Establishment which are closely related to HRM of BCS. However, HRM of BCS is a wide area and it has many issues which could not be given due weightage in this study. Dealing with a large number of issues within the scope of a single study is neither possible nor desirable. The present study would encourage further researches on HRM of BCS with respect to the following areas:

- A comparative study in HRM of BCS and role of judicial intervention with those of neighbouring countries and developed countries.
- A study on the subject incorporating more law reports in addition to Dhaka Law Reports (DLR), All Indian Reports etc. and
- A similar study examining the views and opinions of more and varied cross-sections of the society.

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CONSTITUTION-BANGLADESH

<u>Year</u>	<u>Short Title</u>
1972	The Constitution of the People's Republic of Bangladesh

CONSTITUTION-INDIA

<u>Year</u>	<u>Short Title</u>
1949	The Constitution of India

CONSTITUTION-PAKISTAN

<u>Year</u>	<u>Short Title</u>
1962	The Constitution of the Islamic Republic of Pakistan
1956	The Constitution of the Islamic Republic of Pakistan

CODES-BANGLADESH

<u>Year</u>	<u>Short Title</u>
1908	The Code of Civil Procedure
1898	The Code of Criminal Procedure

ACTS-BANGLADESH

<u>Year</u>	<u>Short Title</u>
1994	The Companies Act
1981	The Administrative Tribunals Act
1979	The Public Servants Retirement Act
1975	The Service Act

1975	The Services (Reorganisation and Conditions) Act
1974	The Public Servants (Retirement) Act
1952	The Bangladesh Army Act
1897	The General Clauses Act

ACT-FRANCE

<u>Year</u>	<u>Short Title</u>
1993	France Public Service Charters

ACTS-INDIA

<u>Year</u>	<u>Short Title</u>
1951	The All Indian Services Act
1947	The Indian Independence Act
1935	The Government of India Act
1919	The Government of India Act
1853	The Government of India Act
1784	The Government of India Act

ACT-NEW ZEALAND

<u>Year</u>	<u>Short Title</u>
1990	New Zealand Integrated Performance Management Act

ACT-THAILAND

<u>Year</u>	<u>Short Title</u>
1992	Thailand Civil Service Act

ACTS-UK

<u>Year</u>	<u>Short Title</u>
1991	Citizen Charter, UK
1981	The Supreme Court Act
1793	The Charter Act
1773	The Regulating Act

ACT-USA

<u>Year</u>	<u>Short Title</u>
1993	USA Government Performance and Results Act

ORDINANCES-BANGLADESH

<u>Year</u>	<u>Short Title</u>
1985	The Surplus Public Servants Absorption Ordinance
1985	The Public Servants (Dismissal on Conviction) Ordinance
1982	The Public Employees Discipline (Punctual Attendance) Ordinance
1979	The Government Servants (Special Provisions) Ordinance
1977	The Bangladesh Public Service Commission Ordinance
1977	The Biman Corporation Ordinance
1976	The Police Officers (Special Provisions) Ordinance
1975	The Services (Reorganisation and Conditions) Act
1969	The Industrial Relations Ordinance
1961	The Voluntary Social Welfare Agencies (Registration and Control) Ordinance
1959	The Public Conduct (Scrutiny) Ordinance

ORDERS-BANGLADESH

<u>Year</u>	<u>Short Title</u>
1982	The Martial Law Order
1980	The BCS (Reorganisation) Order
1972	The High Court of Bangladesh Order
1972	The High Court of Bangladesh (Amendment) Order
1972	The General Clauses (Amendment) Order
1972	The President's Order No.2
1972	The President's Order No.9
1972	The President's Order No.126
1971	The Law Continuance Enforcement Order

ORDER-INDIA

<u>Year</u>	<u>Short Title</u>
1947	The High Court Bengal Order

ORDER-PAKISTAN

<u>Year</u>	<u>Short Title</u>
1958	The Laws (Continuance in force) Order

RULES-BANGLADESH

<u>Year</u>	<u>Short Title</u>
2002	The Promotion (Deputy Secretaries, Joint Secretaries, Additional Secretaries and Secretaries) Rules
1995	Nazir, Teleprinter Operator, Franking Machine Operator, Carpenter-cum-Worker, Polisher (Ministries/Division and Attached Department) Recruitment Rules
1993	The Lower Division Assistant-cum-Typist, Plain Paper Copier,

- Duplicating Machine Operator, Doftory and MLSS
(Ministries/Division and Attached Department) Recruitment Rules
- 1986 The Bangladesh Civil Service (Examination for Promotion) Rules
- 1986 The Rules of Business
- 1985 The Computer Personnel (Government and Local Authorities)
Recruitment Rules
- 1985 The Accounts Cell of Ministries/Divisions and Local Authorities
Recruitment Rules
- 1985 The Government Servant (Discipline and Appeal) Rules
- 1985 The Ministries and Divisons (Upper Divison Assistant and Senior
Assistant) Recruitment Rules
- 1985 The Non-gazetted Recruitment Rules
- 1985 The Gazetted Officers Recruitment Rules
- 1983 The Bangladesh Civil Service (Foreign Affairs) Seniority Rules
- 1983 The Bangladesh Civil Service Seniority Rules
- 1983 The Defence Service Officers (Appointment and Fixation of
Seniority in Civil Posts) Rules
- 1983 The Fundamental Rules and The Supplementary Rules
- 1983 The Bangladesh Service Rules
- 1982 The Administrative Tribunal Rules
- 1982 Bangladesh Civil Service (Age, Qualification and Examination for
Direct Recruitment) Rules
- 1981 Bangladesh Civil Service Recruitment Rules
- 1980 The Mujibnagar Employees (Conditions of Service) Rules
- 1979 The Government Servants (Seniority of Freedom Fighters) Rules
- 1979 The Lower Division Assistant –cum-Computer Operator
(Ministries, Divisions and Attached Departments Recruitment
Rules
- 1979 The Government Servant (Conduct) Rules
- 1978 The Stenographer and Steno typists (Ministries, Divisions and
Attached Departments) Recruitment Rules
- 1975 Rules of Business

RULES-INDIA

<u>Year</u>	<u>Short Title</u>
1954	The Indian Administrative Service (Recruitment) Rules

RULES-PAKISTAN

<u>Year</u>	<u>Short Title</u>
1965	The Central Civil Services (Classification, Control and Appeal) Rules
1964	The Central Civil Services Conduct Rules

REGULATIONS-BANGLADESH

<u>Year</u>	<u>Short Title</u>
1979	The Bangladesh Public Service Commission (Consultation) Regulations,
1968	Civil Service Regulations

NOTIFICATIONS-BANGLADESH

<u>Year</u>	<u>Short Title</u>	<u>Dated</u>
2003	No. Sha Ma/Bi Pro/Ga - 10/2003 - 29	12.05.2003
1997	No. Sha. Ma (Bidhi-1)-s-8/95(Part-2)-56(500),	17.03.1997
1991	No. ED/SA-4/2-4/91-97	04.12.1991
1989	No. SRO.286-L/80/ED/(IC) SH-92/80-98	01.09.1989
1982	No-S.R.O. 30-L/82	12.01.1982
1979	No. S.R.O. 308-L/79/ED/RV-8/77	27.10.1997
1972	No. Estab./R1/R-73/72-109(500)	05.09.1972

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<i>Abdullah-ar-Rabbani v Bangladesh</i> (1990) 42 DLR 258.	231
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APPENDIX: THE QUESTIONNAIRE

Questionnaire Serial No:

Questionnaire Survey

Human Resource Management of Bangladesh Civil Service and Role of Judicial Intervention.

Researcher : **Md. Abdur Rob Howlader**
Ph. D Fellow
Department of Law, Faculty of Law,
University of Dhaka.

Supervisor : Professor Liaquat Ali Siddiqui
Department of Law, Faculty of Law,
University of Dhaka.

General Information

1. Respondent's Name : _____
2. Age : _____
3. Nationality : _____
4. Level of Education (Optional) : Graduation
Post-Graduation
Ph. D
5. Occupation (Optional) : Justice/Judge
Civil Service
Lawyer
Politician
Expert on Relevant Law
Professor
Others

A. Origin and Development of BCS: A Critical Review

Q.1. Do you think that the annual report submitted by BPSC should aim at improving HRM of BCS? [Please ✓ mark on the blank]

Yes

No

If the answer is “Yes,” how? [Put an assessment mark in order of priority.]

SI No.	Measures	Ranking
1	By incorporating right content, information, analysis and recommendations	
2	By making it more realistic through seminars and symposiums	
3	By giving it due importance by all stakeholders	
4	Anything else (Please specify)	

Q.2. Do you think that the BPSC and higher executive authorities should be relieved of their involvement in the disciplinary process? [Please ✓ mark on the blank]

Yes

No

If the answer is “Yes,” why? [Put an assessment mark in order of priority.]

SI No.	Measures	Ranking
1	To enable them to give more time to other HRM of BCS activities	
2	More efficient handling of disciplinary activities	
3	Anything else (Please specify)	

Q.3. Do you think that there should be any institutional change for better HRM of BCS ? [Please ✓ mark on the blank]

Yes

No

If the answer is “Yes,” what changes should be made for better HRM of BCS ? [Put an assessment mark in order of priority.]

SI No.	Measures	Ranking
1	A central HRM unit should be established	
2	There should be HRM unit in every organisation	
3	BPSC should be strengthened	
4	There should be HRM unit in every Ministry/Division	
5	Others (Please specify)	

Q.4. Do you think that there should be effective permanent institutional mechanism at the centre of government as well as at organizational level for HRM of BCS? [Please ✓ mark on the blank]

Yes
No

If the answer is “Yes,” why? [Put an assessment mark in order of priority.]

Sl No.	Measures	Ranking
1	For strategic business planning for the government to achieve set goals or results	
2	For result oriented HRM of BCS ensuring	
3	For monitoring performance at organisational and individual levels and link it with other HRM of BCS function	
4	For reviewing existing service law and initiating improvement	
5	Anything else (Please specify)	

B. HRM of BCS: Analysis of Concepts and Practices

Q.5. What are the three main problems of Human Resource Management (HRM) of Bangladesh Civil Service (BCS) ? [Put an assessment mark in order of priority.]

Sl No.	Measures	Ranking
1	Lack of proper law	
2	Lack of modern HRM	
3	Lack of commitment of Civil Servants	
4	Lack of Proper Judicial Intervention	
5	Others (Please Specify)	

Q.6. Do you think that some factors have historically contributed in the development of existing problems of HRM of BCS ? [Please ✓ mark on the blank]

Yes
No

If the answer is “Yes,” what are those factors ? [Put an assessment mark in order of priority.]

Sl No.	Measures	Ranking
1	Colonial attitude	
2	Rule of Army	
3	Weak political will	
4	Weak democratic institution	
5	Weak BCS institutions	
6	Other (Please Specify)	

Q.7. Do you think that all the following area(s) is/are the important one(s) for better HRM of BCS ? [Please ✓ mark on the blank]

Yes
No

If the answer is "Yes," which areas are the most important? [Put an assessment mark in order of priority.]

Sl No.	Measures	Ranking
1	HR Planning	
2	Recruiting	
3	Performance Management	
4	Discipline	
5	Leading and Motivating	
6	Career planning and development	
7	Compensation	
8	Supervision and control	
9	Others (Please specify)	

Q.8. Do you think that every government organization should have set goals? [Please ✓ mark on the blank]

Yes
No

If the answer is "Yes," should this goal be the basis for ? [Put an assessment mark in order of priority.]

Sl No.	Measures	Ranking
1	Human Resource Planning	
2	Performance Management Planning	
3	Training and development of HR	
4	Holistic approach to HRM	
5	Anything else (Please specify)	

Q.9. Do you think that for improving the efficiency of BCS, percentage of unskilled lower level Class III and IV civil servants be reduced? [Please ✓ mark on the blank]

Yes
No

If the answer is "Yes," how? [Put an assessment mark in order of priority.]

Sl No.	Measures	Ranking
1	By stopping major recruitment in case of future vacancies	
2	By increasing numbers in skilled higher level and absorbing competent lower level civil servants after retraining	
3	By creating alternative employment opportunity for redundant civil servants	
4	By outsourcing some of the services of the government	
5	Anything else (Please specify)	

Q.10. Do you think that the number of civil servants should be determined by rules on regular basis? [Please ✓ mark on the blank]

Yes
No

If the answer is "Yes," should such rules? [Put an assessment mark in order of priority.]

Sl No.	Measures	Ranking
1	Be placed before the Parliament as in India	
2	Be placed before Experts	
3	Be placed before the President	
4	Be placed before the BPSC	
5	Anything else (Please specify)	

Q.11. Do you think that talented and efficient officers are needed in BCS? [Please ✓ mark on the blank]

Yes
No

If the answer is "Yes," How this need can be fulfilled? [Put an assessment mark in order of priority.]

Sl No.	Measures	Ranking
1	Quota system should be relaxed	
2	High salary and benefit package should be offered	
3	Modern law for HRM of BCS and rule of law through judicial intervention ensured	
4	Job description and work plan based Performance Management introduced	
5	Modern HR training and development ensured	
6	Any thing else (Please Specify)	

Q.12. Do you think that the existing criteria for promotion is proper? [Please ✓ mark on the blank]

Yes
No

If the answer is "Yes," then what should be the proper criteria ? [Put an assessment mark in order of priority.]

Sl No.	Measures	Ranking
1	ACR based Merit Alone	
2	Seniority cum Merit	
3	Past academic Achievements	
4	Results in promotion examinations	
5	Results in training courses	
6	Work plan based objective performance appraisal results	
7	Others (Please specify)	

Q.13. Do you think that the existing promotion system should be made more just and impartial? [Please ✓ mark on the blank]

Yes
No

If the answer is “Yes,” how? [Put an assessment mark in order of priority.]

SI No.	Measures	Ranking
1	Making appropriate laws	
2	Introducing promotion examinations at each level	
3	Leaving higher level promotion to BPSC	
4	Leaving higher level promotion to the President	
5	Leaving promotion to the experts	
6	Anything else (Please specify)	

Q.14. Do you think that the performance management system in HRM of BCS be changed? [Please ✓ mark on the blank]

Yes
No

If the answer is “Yes,” how? [Put an assessment mark in order of priority.]

SI No.	Measures	Ranking
1	By appropriate legislation	
2	Introducing objective and result oriented Performance Management (PM)	
3	By linking PM to other HRM of BCS activities	
4	Anything else (Please specify)	

Q.15. Do you think that the existing Annual Confidential Report (ACR) system should be changed? [Please ✓ mark on the blank]

Yes
No

If the answer is “Yes,” how? [Put an assessment mark in order of priority.]

SI No.	Measures	Ranking
1	Making it job description and work plan based	
2	Making it open and participatory	
3	Based on evaluation by relevant stakeholders - 360 degrees	
4	Anything else (Please specify)	

Q.16. Do you think that training provided by BPATC and other training institutions are sufficient for HRM of BCS? [Please ✓ mark on the blank]

Yes
No

If the answer is "No," why? [Put an assessment mark in order of priority.]

Sl No.	Measures	Ranking
1	Lack of modern and improved training facilities for BCS	
2	Lack of adequate, improved and updated laws and rules for training	
3	Less Judicial intervention on HRM of BCS	
4	Lack of effective designing and implementation of training	
5	Others (Please specify)	

Q.17. Do you think that the training programmes for civil servants should be made more effective? [Please ✓ mark on the blank]

Yes
No

If the answer is "Yes," how? [Put an assessment mark in order of priority.]

Sl No.	Measures	Ranking
1	Need based designing and implementation of training programmes	
2	Developing implementation capacity	
3	Proper monitoring of results and updating of training programmes	
4	Anything else (Please specify)	

Q.18. Do you think that the current disciplinary mechanism for BCS is ineffective? [Please ✓ mark on the blank]

Yes
No

If the answer is "Yes," how can it be improved? [Put an assessment mark in order of priority.]

Sl No.	Measures	Ranking
1	By imparting well designed training	
2	By introducing reward and punishment system	
3	By distribution of booklets containing Bengali translation of conduct and discipline rules	
4	By having fewer provisions in the conduct and discipline rules	
5	Anything else (Please specify)	

C. HRM of BCS: A Legal Analysis

Q.19. Do you think that there are deficiencies in the legal system related to HRM of BCS ?

[Please ✓ mark on the blank]

Yes

No

If the answer is “Yes,” what are they ? [Put an assessment mark in order of priority.]

SI No.	Measures	Ranking
1	Modern best practices not incorporated	
2	Strong enforcement system not provided	
3	Law is not adequate	
4	Rights duties and liabilities of civil servants not well defined	
5	Awareness of law not enough	
6	Others (Please specify)	

Q.20. Do you think that the modern practices of HRM should be introduced in HRM of BCS through legislation? [Please ✓ mark on the blank]

Yes

No

If the answer is “Yes,” what should be the objective? [Put an assessment mark in order of priority.]

SI No.	Measures	Ranking
1	To establish justice in HRM of BCS	
2	To improve efficiency of HRM of BCS	
3	To improve result orientation in HRM of BCS	
4	To meet changing expectations of the people	
5	To meet the competition with the rest of the globe	
6	Anything else (Please specify)	

Q. 21. Do you think that existing laws and rules on HR planning, Recruiting, performance management, and discipline are sufficient for HRM of BCS [Please ✓ mark on the blank]

Yes

No

If the answer is “No,” the deficit area is? [Put an assessment mark in order of priority.]

SI No.	Measures	Ranking
1	Bangladesh Constitution	
2	Disciplinary rules	
3	Civil Service rules	
4	Special rules & laws for HRM of BCS	
5	Other rules & Laws (Please specify)	

Q.22. Do you think that there should be an Act of Parliament for HRM of BCS? [Please ✓ mark on the blank]

Yes

No

If the answer is "Yes," why? [Put an assessment mark in order of priority.]

Sl No.	Measures	Ranking
1	To set limit to intervention in HRM of BCS by administration	
2	To define enforceable rights and duties of civil servants	
3	To introduce modern practices of HRM of BCS	
4	To provide for effective judicial intervention to ensure justice and rule of law in HRM of BCS	
5	Anything else (Please specify)	

D. HRM of BCS: Analysis of Nature and Scope of Judicial Intervention

Q.23. Do you think that there is now limited scope for judicial intervention in HRM of BCS? [Please ✓ mark on the blank]

Yes

No

If the answer is "Yes," why? [Put an assessment mark in order of priority.]

Sl No.	Measures	Ranking
1	Lack of modern and updated laws & rules	
2	Government Sanction	
3	Lack of interest on the part of courts and tribunal	
4	Ignorance of Civil Servants	
5	Others (Please explain)	

Q.24. Do you think that judicial intervention based on laws incorporating modern best practices of HRM will be helpful in improving HRM of BCS? [Please ✓ mark on the blank]

Yes

No