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## Ruling the Represented: Understanding Politics in Laws

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### Abstract

A law-less society is arguably perilous for both the weak and the strong living in it. Social construction with laws with compromising characters roots into political consensus which also works as the basis for civilization, especially at an immature stage. Public choice on the questions related to statehood, for myriad reasons, is a basic term to understand relations between politics and law. With a set of arguments, we will focus to sense the genesis of consensus in laws adopted by nations. The process of 'consensus-urged-laws' fundamentally and inevitably connects politics. Of course, every law goes through a fundamental political process, but in the disciplinary typology, these two are different. This work intends to find public connection with national laws that have judgmental relativity terminologically-the 'soft law'; not laws with scopes for concrete judgment i.e. the 'hard laws'. With this in mind, civil public laws, public policies and institutional procedures may be considered lying in one category and criminal laws on the other. We will roam within the first one, as laws-with-relativity or soft laws are much vulnerable for misinterpretation and misuse thereby. Normative approaches to solve socio-political problems are often seen to have failed getting responded by the legal systems when issues with less or no Morales, sensitively connected to the common people led society; necessarily not the religious ones, but with mere 'time's demands' may get democratically applauded-which basically is grounded on the course of majoritarian democracy. This juncture files a number of both theoretical and practical problems that might not be felt in a short run. Politics having basis only with, in this connection, popular representation does not act independently of values. It intends either to control to reach its own lands i.e. bearing almost every conformity for gaining legitimacy for ruling over the represented or gets bound to act according to the public choices.

**Key words:** Society, Politics, Law, Democracy, Consensus, Governance.

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## **Understanding Common Facts by Deeper Senses**

Laws around the world in a generalized state are of two kinds; Civil law and Criminal Law. Almost all the criminal cases have solid judgment; there are certain penalties set upon to act for when a law is broken and almost all are well explained by laws shaped in categorical respects. If any judgmental process acts otherwise, certain reactionary responses appear both from external and internal actors to the judicial process. But laws, rules and procedures having no solid explanation of determining verdicts, especially those are in a state of 'if violated', cannot straightway be reacted with word like 'broken', but 'undermined'. This has become a pivotal point of argument, agreement and disagreement amongst the researchers and practitioners. It is conceivable that nations worldwide intend to impose laws which demand to bear both international standards and somewhat conformity to the society-the practical ground for laws made. Irrespective of societal differences this scenario is common; a sharp gap between the laws, policies and rules made and their enforcement is a universal phenomenon. Instead of rampant reform-advocacies, no radical changes have been possible by the national governments, or in other sense-states for getting out of this dire condition. With the evolving nature of societies, there has been a drastic change in the number of laws; scopes of new law-making has still been kept very wide, but not that much in the magnitudes of laws especially for those having greater relativity in nature, those having connection with customs, traditions and religious beliefs. Here comes the pragmatism, to understand the fundamental reasons behind those 'deliberate stagnancies', we are to escape the normative stratum at least for some steps forward. To understand the dynamics of what we are living with, we will make some concurrent laws and policies help us with data, analysis and arguments.

Laws, what we mean here the 'Laws with Relativity' can of course develop, improve only if a society accedes, but that needs time, may be ages after ages despite having a dire urgency behind. Majoritarian democracy here plays a vital role. It counts the numbers only, not the qualities that, in true sense, change the society towards all good, bring welfare for the represented. On the other hand, quantities may be counted well in this regard, if that goes hand in hand the public welfare oriented international standards, if the old aged tradition allows that to happen, if the societal norms do not negatively affect. It might be religiously-connected if the society wants it to take place in a constitutional manner. Government as a political organization must ensure this welfare based constitutionalism, legal procedures, and policies. In my upcoming work, *Functional Attitude of a Legitimized Government*, I have thrown my sights into the policy making steps of governments of basically developed

nations where it is shown that how a government conforms to the true consensus; what a government does, and what it does not. In this write up, a narrow, but deeper look has been developed in a value free manner to understand the dynamics of how governments have to conform to the majority led political system, the 'ultimate electorates', 'the true determiners', even if things do not match the international standards and globally appreciated norms.

### **Course of the Hard Laws and the Soft Laws**

In the discipline of legal studies, public laws in its primary sense may be divided into two parts-the hard law and the soft law. In the language of this work the hard law is replaced by 'laws with solid judgment', and soft law is by 'laws with relativity'. This does not merely mean to have created some new academic juncture. By the terms hard laws and soft laws scopes of understanding distorted explanations of 'some laws for the common causes' has been made narrow. Understanding the deeper dynamics of misinterpreted laws needs a sincere study which-by this general division of laws-is many ways interrupted. One may feel that distortion of the meaning and use of any manner of the laws with relativity is also included as a legal activity. A Society sometimes learns to adapt things, though it is not wilful to do so and does not perceive them necessary for a natural evolution of the society. But seems to be practicing for at least an amount of time, as it has legal bindings; in some cases, it is not surprising, if the society gets used to them, since human society can be more tolerant than any other.<sup>2</sup>

The represented mass, public and private institutions and the rulers in democratic settings of government system are bound by hard laws; if laws of this type are broken one is taken into the solid account and judged according to the set ends. In terms of soft laws, and if laws are broken, the individuals, the institutions or even the alleged section of the rulers are not straightway judged with that set ends, rather it goes through complex

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<sup>2</sup> In rulings citizens are primarily suppressed and not allowed to speak against the government in power. If the condition run further, most of the people are seen to have left talking about the ruling system; they rather talk about thing that are less important in political system and not threatening for the prevailing authoritarian government. The Suharto regime in Indonesia, Muammar Gaddafi in Libya, Hosni Mubarak in Egypt, in this line, prevailed for an amusingly long period of time. People were rather made more concentrated to the material gaining instead of demonstrative move for a regime change. Until the out-break of so called 'Arab Spring' in Tunisia countries mentioned could barely think of democracy. It is not that, the suppression rate suddenly got higher and people woke up; rather there was needed a success story of ouster a dictator with authoritative character, Mohammad Ben Ali's ouster set the example for other dictatorships in Arab.

investigative activities and multi structural judicial analysis and determines results.

### **Framing National laws: the Makers and the Subjects**

Framing national laws goes through a careful scrutiny. This scrutiny works are done both in formal and informal manners. Though Informal process of understanding the public psyche is often a productive one, but very seldom it is appreciated. Law makers do not allow themselves to think beyond formal constitutional lines. In some cases, if laws in constitution do not agree to satisfy their interests, legislators do not think twice before amending them in their favor. This culture is a common one in most of the nations where there is no consolidated democracy, institutionalization is inadequate, civil society is hardly listened to, no institutional independence in real sense and where there is no place for political consensus.

Before we understand the law making procedures, the actors functioning in it and the importance of the subjects, we need to divide the monograph of interests in few pertinent parts. A public authority generally passes laws that would satisfy broad national interests, along with its party interests, and interests that accommodate the both. In most of the cases for making laws, the third in the row is seen to have been more exemplary. An elected government cannot pass laws that solidly ignore public choice. Government lacking legitimacy often undermines the popular consent in passing laws; either it aimed at bringing bring public welfare or merely the party benefits. Question here may arise-why should it be a problem, if a government, either legitimized or not, passes laws that ensures public welfare. Answers include: (a) There remains a high vulnerability that an illegitimate government my pass another law that may not bring welfare for a long run but, tends to put a silent pressure on the people not to raise voice before the experimental program , of law imposition, is implemented. But fact remains that an erroneous law as a political decision may not be soon recovered; (b) A culture of absolute non-conformity to established social norms may develop, most of the political decisions presume to conserve the narrow oligarch-interests; (c) It develops a possibility of national anarchy and (d) Gaining legitimacy by the party-in-power may become an issue with least or no importance at all.

In a majoritarian democracy, popular choice may be overestimated and over-emphasized. Failure of number of public-choice-based laws and

policies proves these overestimated and over-emphasized half-broken hulks non-productive ones.<sup>3</sup>

### **Value-free Stance and Preparedness for Oppositions**

Politics as a term is of great complexity; forming a party ideology, going for elections, maintaining communication with the electorates have both two ends i.e. these may respond positively or act otherwise. And again, if an action is responded positively, one should not completely get dependent on it, and if another response is opposite to one's expectations, one should not give up hopes. With this in mind, it may be presumed that no political action has absolute ends. But in nations where political culture is at a mature age, parties are observed to have given importance to meet 'demands of the moment. Very scarcely, government forming parties take risks going beyond or against popular will. There is no parameter fixed that popular choice is always and all the ways proof worthy; some public-choice-based rules are evidently wrong. This hinders a possible expected development of a nation.

Undermining capability of political parties of popular choices that may hinder development is a beauty of governance. But in majoritarian democracy undermining popular choices is equal to getting into a power-emptiness which couples with mass hatred, collective opposition, and scopes for political sabotage. But, if political development is rampant; democratic institutions evolve to get independent; civil society stays aloof the narrow economic gains oiling government; pressure groups are set free to make comments; communal harmony becomes the core of national ideology; international policies are set on win-win basis; economy is skilfully managed; bureaucratic and military intervention in politics is absent or reluctant; rights of the opposition political parties are duly reserved; accountability and transparency of government activities to the politically aware masses are made real, parties with guts to impose welfare

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<sup>3</sup> Lay outs from the Child Marriage Restraint Bill-2017 in Bangladesh, as resourced from 'Bangladesh Sangbad Sangstha (Bangladesh News Agency) by The daily Prothom Alo on February 27 following other news on the child marriage on 25<sup>th</sup> February, 2017 are the other sources of proof that the majoritarianism again got over the consensus, the perfect most system of understanding public will; here only a section of majority religion in a country plays the role in framing laws. It is assumable that the 'amended' law of marriage in Bangladesh is prone to rather child marriage. In spite of opposition from different quarters there remains flexibility that 'in special cases marriage can be possible at an earlier age than the legal one. The law could not impress the civil society, global welfare organizations that work in healthcare sector, but a section which speak of religious bindings, makes issues political that should be rather remain a healthcare issue than a religious one. The law could be standard if the section would consider the health issue and remain somewhat callous to it. Government also had the role to play here, but they arguably seem to have ignored the global welfare advocacy; as majoritarianism remains the important most fact.

laws do not have to bear much pains. But where fact is reversal, political party having undermined popular will remains at stake. At a later event the fact which acts reversely becomes an example and a culture of ignoring public choice-when it is not politically beneficial and not recognized by the global actors-starts disappearing.

### **How Does a Public Choice Form?**

In most of the cases, Public choice forms by ‘spread-consciousness’ which may take ages or may be a result of historically favored traditions.<sup>4</sup> The focal point of this work is about the choices that are made on the basis of a sudden trend. Since, trend fundamentally is of complete relativity, public choices basing on it may prove to be a non-productive and/or a dangerous one and of course on the other hand it may not. Media of every type play a premier role in framing public choices. Physical communication by the political parties via traditional means like rhetoric, demagogue, verbal dictation, providing leaflets, person to person interactions and showing demonstrations in public places are also possible means of forming public choice. Citizen charter or undemocratically made laws, that are already functional, are also the means for the citizens to know what are to get abide by and to thus make their own choices.

Civil society in this regards feels urgent to let the people know what they are going into. Are they set to a paradise or to a hell? Therefore, they appear to be the ‘information-bridge’ between the citizenry and the government. They, likewise the political parties in opposition, let the people know pros and cons of any programmed policy or an under consideration law. If they are not given heed on any recommendation they made, they try to form public opinion against the authoritative decision of the government.

In an anomalous state of governance, governments tend to become authoritative. Media, civil society, opposition political parties and pressure groups (both national and international) fail to articulate common public choices. Sometimes, they become unable to sense them too. This *vacuum* is filled by some petty important issues. Governments also encourage the handy stakeholders to speak of them time and again. One power seeking section of the society feels urgencies to have good tie with the government, the party-in-power. And in a distorted democracy, it should not seem to be surprising that the power-hungry section is backed by the

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<sup>4</sup> Media, Political parties, NGOs or even the individuals may play the role of spreading consciousness among the people with a particular agendum in mind. This remains irrespective, the disseminated consciousness is a true one or manifested by the parties.

government itself to raise louder voices in favor of it, and they make the majority-the authoritarian government backing majority and vice versa. The gamble playing group collectively make anything happen which help them keep in touch of power both as rulers and rent seekers. This in further run poses irremovable hurdles for the national developments.

### **State of the Society with Public Choice Urged Laws**

Evolution of a Society may be felt or even observed. Social change influences the individuals, it acts upon the treatment of the state for its citizens; fact remains, the impact of such change on the state and citizens does not necessarily be always parallel. Social change, as a result behavioral change of the citizens and shift in state-citizens relations are interconnected. This interconnection is not fully uncontrolled; human society may play the role of influencing powerhouse, or *in lieu* the representing bodies may determine the type of the communication. If public choices are evaluated by sacred will of the state within a set of factors, viz., cultural values, national ideology, social norms and economic prosperity of a nation, states has to make a heedful balance to convert them into laws. Of course, there are conditions that the advocates of these state fundamentals must closely concern themselves with the law making process and demand for the upholding of these very basics by the state.

If there remains an environment of majority accommodation only, electoral governments intends to give heed to the voices, not their gravity. Even if the numeric difference not mention worthy and as the major becomes the only acceptable, nationally urgent issues also get side lined. Result of such a situation may be manifold, state may divide in many lines; the government may fall into fallacy while deciding a policy; a complete undemocratic situation may arise.<sup>5</sup>

### **Question of Political Responsibility and Governance**

In a system of politics where majority are to decide their political system, choose their rulers, elect their representatives, sections that become the power exercising authority in this process are meant to be yawningly

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<sup>5</sup> The BREXIT triumph in the UK, the 'majority backed government system' resulting in the compulsive British leave from the EU made a section of citizens minor. Though the difference between the winning and defeated parts is hardly big and arguably solid, a serious issue of interests of the defeated section could not be accommodated. After the referendum, the British Supreme Court said, "the government has gain the green signal from the House of Commons", on January 10<sup>th</sup>, the court gave its positive verdict for BREXIT.

responsive to the people, the represented, the electorates, the ultimate source of political authority. Now, question is, is it a democratic value that elected representatives should always heed to their electorates in any decisive moment? Or they should just listen to them when they are believed to have clear understanding of issues that need decisions? Democracy in the developing nations worldwide is evidently less consolidated. This system of the government in the developed nations is also mistakenly connected with public affairs especially when national election is at doors. The problems with the first norm i.e. asking opinion of the electorates in every matter are: Public opinions are deliberately overestimated resulting in petty trick with them of serious national issues in the future; people may conform with only popular verdict, not the one that reflects a true and justified national or global values; institutional opposition to the popular verdict both from parties and civil society may get narrow or subdued despite constructive criticisms. Here remains a fundamental problem with democracy. In majoritarian democracy, as we are meaning, it is a customary scenario that governments should ensure public participation, go for referendum on deciding a policy. Referendum in democratic set ups are part and parcel and are referred on any issue that is seriously connected with public choice. But, is there any public policy which is not deeply connected with the people. In terms of policies that are made by the governments for private cartel, public choice may become secondary or sometimes unnecessary. Public policies made following traditions may not create vibrate the concerned people, but in issues with serious concerns of the people may not be done without consensus. By referendum it traces back to the same process i.e. majoritarianism. So, referendum as a democratic system of understanding public choice is fundamentally flawed. But consensus to determine public policies, system of governance, legal decisions, intra-national or intra-organizational relations may stand as a solution. I have another work under process on how consensus be used as to determine national issues or even government system.<sup>6</sup>

### **Who Controls What: The Unresolved Question on Politics and Law**

The disciplinary origin of Law and Politics traces to society and its survival. Society again as a scientific organism survives where law plays the role of directive force and politics emerges as the destination; the management of the governed sets in a way society collectively and

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<sup>6</sup> Choudhury, Hasanuzzaman in his book published in 2016 'Mapping Political Consensus Building Magnetic Touch of Thematic and Pragmatic Dimensions' argued that Consensus as a political decision reflecting process of the electorates is entirely different from Referendum. In referendum, almost every character of majoritarianism exists, but in Consensus, almost totality is taken into account.



wilfully chooses. Politics cannot dominate a legal system by choice for good. On the other hand laws are not made without political decisions. Now fact is, does the correlation bases on win-win basis? Or there can another equation be conceived? Politics here plays the role of scopes creator for society to be managed and thus laws to regulate the managed society. Law on the other hand does not allow politics to behave at its own will; paradoxes of the politics while treating its subjects at any possible level are controlled by laws. It is not surprising that politics sometimes appears for legal treatment and prosecution.

At the conceptual point here, law can be said as the social binding guard appointed by politics. This equation doesn't play fair where politics gainsays law or law cannot bind politics for it has structural loopholes; though politics is a premier responsible entity for such a imbalance. This Misbalance cannot merely be said a result of malgovernance or authoritarianism; democracy has provided every authority to politics to play this way if it wants to. Histories of democracies that bases on merely majoritarianism worldwide in this respect do give us hope at all. The politics-controlling bodies have almost in every case used this scope and subdued law, the represented, the faiths and the trust.

### **Is Democracy the Only Solution?**

We barely feel interested to get guided by our values; logics, rationality and laws do not let us do things that values lets us do. And the factors-logics, rationality and laws are more democratic some words than the one which does not make us bound to run by set direction-our values. Values may originate from our culture, our belief and our sacred conscience. Today, this has become a dire necessity of our society to embrace the form of government, no matter if this is democracy. But the only goal should be our collective betterment in a more democratic way. Democracy did not of course come to divide our society, create scopes of mass oppression, and make us stagnant to some systems that have proved to be malfunctioning in today's realities of absolute distrust. Democracy evidently is the only hygiene common government system worldwide. Let us not any more argue about any form of democracy today, let us reform the system we have embraced predominantly. Let us add value as the premier most components in the heart of democracy we are practicing by our choice.

What values as inseparable socio-political ingredient may do hand in hand democracy are: bridge between the social demands and political decision on the basis of commonly accepted standards; helps the represented and representatives stand on a common ground which fundamentally connects

democracy; creates a society that bases on conscience, norms, mutual honor and trust.

### **The Ways Out**

In a broader sense, Society makes laws, men makes society. Laws are as good as men can make them to be. The political representatives are the chosen and selected section of a society in a democratic political set up. They are fundamentally no different from the represented mass. No representative stay in power for good; they are chosen for a specific period. In this line, they must be accountable and transparent to the represented, as they should be to themselves. What makes them do so? In our understanding-nothing but the values, where all others evidently fail, when demands-outputs theory does not act properly i.e. when collective consents do not reflect in the laws made, and even when public choices do not form in a way that conform global standards, long standing socio-religious norms, we need to think otherwise. Mere blaming the polity or the laws would not produce usable results in this question. When we talk about values, we mean the values of societies that have history of mass acceptance. The process of embracing values as the cornerstone of solving socio-political or even legal problems of the kinds that has much a clear connections to politics and society might seem complex and utopian in the age of a relative social setting where 'nothing could be exactly said'- and where an 'inclusive and comparative 'political education has prime role to play. The more a nation politically educates its population, the better the people get to know issues, problem, and their potential solutions.

By political education, we mean a start-up of academic endeavor in national education system which ensures the secondary understanding of politics, governance, and public policy from the primary level to the highest in disciplines that may not have a broad connection to those conceptions. Proportionately, a big number of Citizens can avoid technical-vocational, business studies, but not the education on governance, laws, national economy and public policy as they have to deal all these at least for a number of times throughout the whole life-sketch. While citizens have to take voting decisions, buying lands, handling familial deals, choosing option among posed upon policies by the law makers, getting full advantages of citizen charters, paying government a fixed taxes, getting public or service allowances, they are to know facts, rules, procedures and systems fair and clear. Lack of education will not only press them behind, but also represents as facts behind a collective shortcoming as a whole. Scenario in education in nations may be satisfactory, but it does not mean, all the citizens are politically educated

which we have been urging here. Notes may be kept, here we are not talking about the deeper education on politics, governance and laws in particular; a primary education on political process will also not play a satisfactory role, what we need today is a common but wide understanding of political facts that affect citizens in their day to day activities. Here comes the question of secondary education on politics and governance which ensures a clear understanding on political studies and law making process and thereby works as the basis of 'rational-choice' of any political decision. Again, there are all very important roles of the states and the citizens; while states here can play the executive role, and on the other hand, citizens can call for an urgency on change in education system and move for a rational change. Demand-output theory in practicality will then act rationally, public scrutiny will determine its well-thought choices and add them into demand diagram. And as states in all consolidated democratic system have to listen to the represented, they may not avoid them. Public choice in this process represents and/or turns into the popular-political consensus. Rationales and logics merely may lead to darkness; determining national policy basing on these has evidently failed. If nations add values and ethics as their decision-making standards, there is a less vulnerability towards political failure. States must play value free while making laws, policies, rules and regulations in terms of following the predominantly embraced ideologies. They should not underestimate national values, universal individual ethics which forms only on the basis of assuring public welfare. States with the realities today think anew of their stances they have been stuck into; unproductive imitation of global-political ideologies should now be reconsidered; a policy of either leaving them behind or mixing them together would probably result better.<sup>7</sup>

What values are we talking about here? Of course, this is a valid question and needs a fair clarification. The intended values may be of different kinds; religious values, conventional values, traditional values, national spirit ignited values etc. are the ones we mean here. A self posed question here arises-on what basis should they be embraced? National political consensus can play an investigative role; what should be more emphasized, what should be less, and even what should be given a heed and what should not be. Idea of referendum has cannot come out the true scenarios of the national expectations; to get the idea of at least an apparent reality, states must talk to the representing quarters i.e. the true

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<sup>7</sup> Aftermath the independent war of Bangladesh, the father of the nation, Bangabandhu Sheikh Mujibur Rahman embraced Socialism, Secularism, Democracy and Nationalism as the basis of the national identity. There are myriad global examples that each of the philosophies may be separately considered the basis of a nation. In terms of Bangladesh, all of them were accommodate inspite of ideological contrasts; they were intended to bring about a total welfare together.

stakeholders. Civil society, professional leaders who have been democratically elected and not debated afterwards, the working class representing unions, political leaders from different quarters, the new generation are the key factors for determining a consensus.

The potential results of emphasizing consensus in making national laws may be: there would be least scope for debate over the laws made and executed by the states from the stakeholders, the ad-hoc laws, ordinances, rules and policies can be easily made and can be considered, they are ascertained with popular conformity, policies on fundamental national questions may get shortly resolved; in the time of abrupt national jeopardy, nation as a whole does not get divided i.e. narrow group-interests does not get space to flourish.

When in the developing nations, there are all dire urgencies to implement development policies for the recovery of poverty trauma; they cannot afford divisions among themselves in the fundamental ideological or conceptual national questions. What states need to do now is- to unite people, get them ready to respond the forthcoming disasters like poverty, violent fanaticism, extremism; environmental hazards and insecurities of all potential types.

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