

## **Weber's Concept of Legitimate Authority in Bangladesh Perspective**

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Max Weber has been termed as the Sociologist but looking at his career it would not be wrong to say that he was a historian, economist and a jurist. Readers would find Weber a difficult author. His political writings are mainly criticism of Hohenzollern Germany and is probably out of context of the pattern of political thinking and development in Bangladesh. His concepts in his political writings particularly in relation to the theory of institutional structure is of importance in study of parliamentary democracy which he thought was the political form necessitated by the growing industrial society. Weber's idea of constant political compromise as the ultimate arrangement in political life is of immense importance in the background of constant conflict of political thoughts and practices.

It is accepted that the human society grows both in the advanced civilised society and in the most backward society. The present society and institutions are the products of a continuous process of evolution,

A sociologist is dependent upon various information for the study of social forms and institutions. A brief study of human law in its evolution generally is necessary to appreciate the concept of legitimate authority that Max Weber advocated. In this regard a study of ancient laws assume a greater importance in the study of the social history of a race and the evolution of society.

On the study of ancient laws divergent views were expressed by Sir Henry Maine, who underscored the study of laws on genetic method. Contemporaneously the great German jurist Rudolph Von Ihering studied ancient laws on similar lines. There, however is a fundamental difference in the methods of Ihering and Maine. They both studied and tried to arrive at the course of evolution from historical facts. Ihering studied such facts critically while Maine's method was primarily empirical. Ihering pointed out that historical jurists object is not to study the external history of legal institutions but their inner chronology which means their inner evolution. According to him chronological sequence of facts and institutions often gives an erroneous impression of their genetic order. The actual method according to him is to interrogate the historical facts critically for arriving at the inner evolution of judicial phenomena by searching in the motives of their being, for their hidden springs and ultimate roots and their spiritual interdependence.

Since Maine and Ihering, study in this field has added much to the knowledge. Fustel de Coulanges, Letourneau, Kohler, Tarde and a host of other scholars

studied the juristic evolution with ability and from much more materials than were available either to Maine or Ihering.

This study of laws in their evolution, not the laws of any particular country or particular age are the basis of human laws generally and may be broadly termed as Sociological jurisprudence.

The term legitimate authority in the modern context can be split into two 'legitimate' and 'authority'. When one speaks of legitimate authority one speaks of an authority exercised by an individual or a body of person on the basis of laws formed by competent authority and are based on well accepted loyal norms. Weber having died soon after the first world war did not have to expose the authority exercised in his own country by the most authoritarian regime which brought miseries to mankind in general. Weber also had not been faced with the authority exercised by the armed forces in the developing countries after overthrowing of the legitimate regimes. He was also not confronted with coup d'etat staged by revolutionary or counter revolutionary forces around the world.

The existence of legitimate authority, as Weber suggests is oriented in the social conduct or social relationship of the individuals. In such orientation it is termed as the validity of the authority in question. This can be split into an 'authority' which assumes 'validity' form social conduct or social relationship as determined by custom or self interest. The social jurisprudence show that an individual obeys rules or regulations in a given society as a matter of duty

which the individual concerned accept as of absolute value.

Webers view is that such social relationship represent 'authority' as it originates from certain established principles, when such orientation to principles are regarded by the individuals as binding or at least constitute a system required to be followed it acquires to the individual 'validity'. This conduct or social relationship is oriented to the authority for a number of reasons, the most important of which is that it presents a uniform conduct to the individuals comprising that society, who accept it as a binding custom. Various other reasons are attached to it one of which is expediency whose acceptance is only for meeting a particular situation for the purpose of stability in the class or society. Those conduct which are custom oriented enjoy stability and a lasting binding effect because of its long standing following which for it brings what Weber termed as 'legitimacy' which means lawful.

This posulates a study in the different forms of laws which would require examining Maine's theory of the evolution of forms of laws. Laws are termed in custom or usages. In his 'Ancient Laws' Maine holds that general proposition of law are later than specific decisions on particular points. Webers custom oriented conduct which gives legitimacy to the authority can be traced back to the Themistes referred to by Homer. Particular cases brought before the chief for decision and the decisions or judgements given in them in every case were supposed to have been derived by direct inspiration from the gods. The Themistes by

repetition developed into general rules of rudimentary custom which are also to be found in the Homeric term 'Dike'. In a monarchical form of society whatever resulted from the direct inspiration of the King was considered legitimate. Legitimacy in this society was what the King willed. Monarchs were in course of time superseded by some form of aristocracies. In an ancient society the preeminence of the chief who alone maintained authority did not generally pass to his successors. Therefore, the authority of a weak or incapable chief tended to grow less and less and replaced by aristocracy.

Aristocracy assumed different forms depending upon the society. In Sparta or India real authority was not vested in the monarch, it was in fact exercised by a body of men who by virtue of their descent claimed to be the legitimate authority. In Athens or Rome the authority vested formally and factionally in the aristocrats themselves. Aristocracy in some places consisted of the spiritual or intellectual classes and in some places it was of military classes. When the authority was derived by the aristocracy consisting of the military classes, the inspiration was more from the arms but in other cases it was from the sacred person the King. The change corresponded according to Maine to a change in law. The legitimate authority in the ancient society was associated with god whether it was claimed by the King or the aristocracies. This according to Maine is the second stage in the evolution of the forms of law that is the customary law.

Valid authority does not necessarily carry with it obedience, what is to be noted in a valid authority is its acceptance as a valid norm and its effect on the behaviour even when it is avoided or deliberately violated. Weber in his analysis of the systems of authority, has correlated in the legal sense to the empirical situation.

Weber's view that legitimacy of Authority is derived from an individual's emotional or rational or religious attitude. Acceptance of the legitimacy of authority may also come from a kind of self interest resulting in same kind of personal benefit.

Firstly, obedience to authority is conventional which comes from the perception that any deviation from it will be within a particular social group meet with disapproval.

Secondly, its obedience is secured by law and any violation would be met by punishment by a group of men in the society authorised on that behalf.

Thus the legitimacy of authority is either conventional or legal. Convention signifies that in a given society a certain custom is recognised as valid and its violation is disapproved and in this it differs from law where obedience is compulsorily enforceable. A violation of convention might result in social ostracism which Weber thinks can be even more effective than legal sanctions. In convention there is no specialised agencies to compel obedience but in law the functionaries are named whose duty is to enforce law and order. It is not unusual that conventional guarantee becomes legal guarantee. This is particularly noticeable

in a country without a written constitution as in England.

The concept of law for the purpose of the present study is that there is a body of persons whose duty is to enforce the authority. Thus the body acts on the basis of some sort of rules. According to this concept legitimacy of authority is based on the principle that its violation is punishable under these sets of rules which again are made by an authority set up under a law to frame these sets of rules.

In the present age the commonest form of legitimacy is based on the concept of legality which means the compliance with enactments which have been imposed. In the past the legitimacy of authority depended upon its universal acceptance by that society. The authority in the present times derives its legitimacy from the acceptance by majority in the society and suffered by the minority. In the parliamentary democracy it is imposed upon the minority by the majority.

Incidents are also not rare when the minority imposes an authority by a violent ruthless method and eventually is regarded as legitimate by the opposing majority. In the method of election it often happens that the will of the minority becomes a formal majority and the majority suffers it and the majority rule is negatived.

When authority is complied with on being by one man or several either in matters of expediency or rather fear, the legitimacy of such authority is derived from the source imposing it.

When authority is accepted, it is so done for variety of reasons or combination of reasons. Those who comply with authority may not always be aware

as to the particular reason for compliance.

The statutory rules of corporate relationship originate either through voluntary agreement or is imposed upon from outside and later accepted. The statutes of a corporate group can be imposed upon the members and non-members alike if they live within the territorial jurisdiction where they reside or where born and functions within the area. Such system authority is called territorial validity.

Authority means something which has been imposed because it is not an aggregate of free and voluntary agreement. In the modern concept the majority decision demands submission of the minority and that affects its legitimacy.

Free agreements are often also the results of imposition as in the case of obschtschina and consequently the actuality is to be considered.

Webers concept of power and domination concerning legitimate authority is that power means in a social relationship the opportunity to carry out ones own will even against resistance and regardless of the basis on which this opportunity rests.

'Domination' means the opportunity for a specified context obeyed by a giver group of persons and 'discipline' means opportunity to obtain prompt and automatic obedience from a given group because of orientation towards a command.

In his inaugural lecture at the University of Freiburg Weber said "the power and interests of nation are the last and decisive interests which economic policy has to serve the national state is for us the secular power orga-



nisation of the nation and in this national state the *raison d'état* is for us the ultimate yardstick for economic consideration's. Weber admired Bismarck for faithfully following Machiavelli and this led many critics of Weber to hold that Weber like many other German scholars hardly cared for the implications of Machiavellism. The critics accused Weber of failing to see the moral element inherent in any political power. If the interests of the state and not truth, justice and morality be the criteria of political action then that is bound to lead to a kind of despotism and the state power resting on authority, bureaucracy and monopoly over the legitimate use of force would hardly be acceptable in a modern state. In a modern state the state power is reserved for the community and is based on legal values which commands belief in the legitimacy of the state authority. State to Weber was the "last source of all legitimate violences." Weber viewed all competition and conflict between social groups as a struggle for power. After the first World War he acted as expert advisor on the confidential committee for constitutional reform. The introduction of Art 41 into the Weimar constitution, which provided for the election of the President by popular vote meant to him that the politically elected President of the new Reich would provide a charismatic leadership and shall not act as authority whose power rests in the Parliament. This view of the popularly elected President proved to be highly romantic when the President made an arrogant use of emergency power under Art. 48.

Bangladesh won its freedom after a long struggle which ended in a bloody war which took a heavy toll

economically and of lives and turned the country into a graveyard. The state that emerged after independence was a democratic state the state power rested in the Parliament. The authority of the Parliament was based on the Proclamation of Independence order dated 10th April 1971, Laws Continuance Enforcement order of the same day and the Provisional Constitution of Bangladesh Order 1972 dated 14th January, 1972. The constituent Assembly charged with the task of framing the constitution comprised of the members of the erstwhile Provincial and National Assemblies elected in the general election held in December 1970 and January and March 1971.

The constituent Assembly framed a constitution which came into force on 16th December, 1972 providing for parliamentary democracy. The reason being that the people of Bangladesh have had elected local bodies introduced by the British first in Bengal in 1885 and the elected legislature came in 1935. Another reason for chooging parliamentary democracy was that the ruling party the Awami League from its inception in 1949 pledged to the people a parliamentary system in the country. Throughout the political history of the country, the movements were built on this basis. In 1951 a 21 point programme, 6 point programme of 1966, 11 point programme of 1969 and finally the geneal elections of 1970-71 pledged firmly for a democratic system with a parliamentary form of government. The long cherished ideal was fulfilled with the adoption and enactment of the constitution of the Peoples Republic of Bangladesh on 4th November, 1971.

The constitution of Bangladesh, based on West minister model contained in its Art-7 provision declaring the supremacy of the constitution 7 (1) All powers in the Republic belong to the people, and their exercise on behalf of the people shall be effected only under, and by the authority of, this constitution. (2) The 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". This Article if analysed would present the true spirit of the constitution. All powers vest in the people and the exercise of such powers by any authority shall be on behalf of the people of the country and its legitimacy shall be dependent upon its obedience to the constitution. The constitution is the supreme law of the land and all other laws derive their legitimacy from the constitution and any inconsistency with the constitution would render that law to that extent invalid.

Weber's idea of 'plebiscitarian democracy' is rooted in the constitution but not what he thought of the position of the President of the Weimar Republic. Weber thought that the President would provide a charismatic leadership. The Bangladesh constitution does not contemplate the development of a charismatic leadership for the development of the Republic. The will of the people was the focal point for all developments. The leadership is to be provided by the people. He thinks that if the people elect a President, he would develop a charismatic leadership. His view was proved wrong by the misuse by the President of the emergency power

contained in Art 48 of the Weimar constitution. The adoption of the Weimar constitution in July 1919 made Germany a parliamentary republic. It contained civil freedoms, introduced universal suffrage. The President, however, exercised his authority not wholly for the benefit of the people. On the contrary by a special law the Reichstag deprived the working class of many rights. The reactionary sections attempted to abolish even the small democratic achievements that were reflected in the constitution. In 1919 a fascist party emerged in Germany and on January 30, 1933 President Hindenburg appointed Hitler Reichskanzler (the head of the Government). Thus came the end of the peoples rights.

By the middle of 1972 in Bangladesh a small group of the students front of the Awami League broke away from the mainstream and this was repeated in the peasants and workers front and these breakaway groups started all over the country anti establishment activities for capturing state power in undemocratic manner and here Weber's concept power seems to have worked in as much as the small groups carried out their projects defying the executive authority and misusing the constitutional privileges. This led to the introduction of emergency provisions by the second Amendment Act of 1973 (Act XXIV of 1973) in the constitution. The emergency provisions were hitherto absent in the constitution and pursuant to these special enactments were passed by the Parliament and emergency was proclaimed. On the Proclamation of Emergency some of the fundamental rights guaranteed under the constitution were

suspended. The supreme courts powers were also curtailed in the enforcement of the citizens rights conferred by Part III of the constitution. The provision for preventive detention was also introduced. The amendment was made with the sanction of the Parliament.

The main feature of the constitution of 1972 was that the Supremacy of the Parliament was ensured and Art 80 provided that when a Bill was passed it was to be assented by the President within 15 days but except a Money Bill he could return the Bill to the Parliament which the Parliament after consideration would send it again to the President who shall assent to the Bill failing which the Bill would be deemed to have been assented by him.

Art 22 ensured the separation of the Judiciary from the executive organ of the state. This guaranteed the concept of the rule of law and Art 22 contains one of the fundamental principles of State policy. The writ jurisdiction granted to the supreme courts for the enforcement of the fundamental rights of the citizens proved that the executive actions of the state must be proved legitimate with reference to the authority given to it by the constitution. The executive Government was accountable to the Parliament.

Bangabandhu Sheikh Mujibur Rahman the father of the nation provided a charismatic leadership to the people of Bangladesh and the difference in his charismatic leadership and Weber's ideal charismatic leadership was that his charisma was there before he was elected by the people and it was only confirmed on his assumption of high office of Prime Minister,

A broad and basic change was brought about by the Parliament, in the constitution when it passed Constitution (Fourth Amendment) Act 1975 (Act II of 1975) on 25th January, 1975. This amendment changed the parliamentary system to the Presidential system of government providing for in Art 48 a President, who shall be directly elected. This provision is similar to Art. 41 of the Weimar constitution which went to the credit of Weber. It is however, yet to be seen whether this would provide a here charismatic leadership. By this Fourth Amendment the President was made the chief executive of the Republic, who could be removed from office on specified grounds as enumerated the Art. 54. The President could be impeached by the Parliament on a charge of violating the constitution or of grave misconduct. The legitimate authority of the President even though he was the chief executive and all powers were concentrated in him, is enumerated in the frame of the constitution. His council of Ministers were merely his advisers and were not accountable to the Parliament. (Art. 58).

In the matter of appointment of the chief Justice and other Judges of the Supreme Court the President under this amendment was the appointing authority and was not under any obligation to appoint the judges in consultation with the Chief Justice as was provided prior to this amendment. In matter of appointment of the Chief Justice the provisions remained unaltered. A Judge could only be removed from his office by order of the President on the ground of misbehaviour or incapacity (Art. 96) after he has been given a reasonable

opportunity of showing cause against the action proposed to be taken against him. The appointments to subordinate judiciary could be made by the President under rules framed for the purpose and was no longer required to take recommendation from the Supreme Court. In matters of Writ jurisdiction of the Supreme Court some basic changes were made. It would not be inaccurate to say that by this amendment the Supreme Court's authority was undermined, although their independence in the exercise of their function was not disturbed at any level, as long as, it was within the frame of the Constitution.

Another fundamental change brought by this amendment was the power given to the President to direct to have only one political 'National Party' and with it all other political parties shall stand dissolved. This was a new experience in a country which traditionally had many functioning and non-functioning political parties and was considered to be an arbitrary power given to the President and is against the norms of democracy.

The supreme authority of the constitution and the supremacy remained unaltered because Art 7 was not amended by the Fourth Amendment. The effect of the fourth amendment and the working of the Constitution and testing of its authority could not be done as the President of the Republic was murdered and martial law was proclaimed on 15th August 1975.

By the Proclamation of Martial Law the supremacy of the constitution was denied and it was assigned a position subservient to the Martial Law. An individual

placed the country under Martial Law and declared himself to be the President of the Republic on the basis of the powers wielded by the armed forces. He by that proclamation suspended Art. 48 and 55 partially, modified Art 148 partially and form I of the third schedule to the extent that before taking any oath of office, the President may enter upon office. This assumption of authority without any ceremonial oath was not legitimate under the constitution and lacked moral element required of the charge of his duties. Its legitimacy was in itself. The legitimacy of the Proclamation was the Proclamation itself because clause (g) of the Proclamation provided no court including the Supreme Court or tribunal or authority shall have any power to call in question in any manner whatsoever or declare illegal or Void this Proclamation or any Martial Law Regulation or Order (or other order) made by me in pursuance thereof, or any declaration made, by or under this Proclamation, or mentioned in this Proclamation to have been made, or anything done, or any action taken by or under this Proclamation, or mentioned in this Proclamation to have been done or taken or anything done or any action taken by or under any Martial Law Regulation or Order (or other order) made by me in pursuance of this Proclamation" "(h, I may by order notified in the official Gazette, amend this Proclamation." The country was ruled under this Proclamation whose legitimacy or legitimacy of the authority exercised under it could not be questioned anywhere. The self proclaimed President was the source of all laws and the laws were made for his interest which he could change to wit any



expediency, not necessarily for the purpose of stability of the country as Weber thought obedience to the Martial Law authority was by coercion under the pains of special punishment prescribed in that behalf. Any violation of the authority was to be punished by special agency set up under the Proclamation. The agency was not formed to follow the conventional norms of crime and punishment which came to be accepted in the process of evolution of law. The punishment prescribed for violation of the Martial Law are not accordance with the social process and for that Martial Law itself is not compatible with the process of evolution of law or a custom or convention. The violation is met by a group of men who are not guided by rationality or for social reasons but are backed by force.

The constitution was relegated to a subordinate position by Clause (e). The constitution of the People's Republic of Bangladesh shall subject the Proclamation and the Martial Law Regulation or Orders (and other orders) made by me the pursuance thereof, continue to remain in force". Thus the supremacy of the Constitution which is the testing ground of legitimacy of any authority, in a democratic society was gone not by the will of the people but under the cover of force.

Before the Martial Law was lifted an election was held for the Parliament and before that the President was elected by the vote of the people. It was not the sort of election thought of by Weber. The Martial Law Authority planned the desired result of the election both in the case of the President and the Parliament. The "plebiscitarian democracy," of Weber

was very far. The constitution was constantly amended under the authority vested by Martial Law and basic state policies were amended. When the Parliament met before the Martial Law was lifted the Constitution (Sixth Amendment) Act 1979 was passed by the Parliament giving legitimacy to all authority exercised under the Martial Law and thus the legitimacy was given by the constitution to the Martial Law itself which short of this legitimacy would be rendered violation of the constitution and bereft of rational authority. Those who were associated with the functioning of Martial Law did not believe in its legality which forced them to get the legitimacy through the amendment of the constitution by the normal process prescribed for the amendment. The amendments of the constitution by Martial Law were also legitimatised in this process.

In March 1982 again the legitimate authority of the President elected directly by the people was negated by the Proclamation of Martial Law of 24th March 1982. This Proclamation was distinct from the previous one in that the judges of the Supreme Court were to be appointed by the Chief Martial Law Authority a functionary exercising arbitrary power, and whose legitimacy was derived from the Proclamation. The judges of the Supreme Court could be removed at the pleasure of the same Authority who derived power from the Proclamation. This time also the authority exercised under the Proclamation was legitimatised by the Constitution (Seventh Amendment Act) 1986. Before this Amendment lot of other amendments to

the constitution were made under the authority of the Martial Law. The concept of legitimate authority to Weber found no place either in the Proclamation of Martial Law or in the manner illegality of authority was legitimatised by the process unknown to custom, convention consensus or morality which from the inception were the forces for the exercise of legitimate authority.

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