

LAW OPINION

Making sense of the MPs' Constituency Works

M JASHIM ALI CHOWDHURY

How problematic the constituency activities of our MPs may appear, parliament members' constituency work is considered necessary in all types of representative democracies. Professor Philip Norton of the UK House of Lords has outlined at least seven aspects of the MPs' constituency work. They act as safety valve for the freedom of expression and participation of the people. They act as providers of authentic information on governance and public policies. They also act as local dignitaries, advocates of constituency causes, benefactors or welfare officers for individual constituents, powerful friends and lastly, as promoters of constituency interests. While constituency work may be considered an important public relations tool for the law makers, Bangladesh does not seem to bear the hypothesis. Bangladeshi MPs feature



elections in Bangladesh have their own problems. Fought mainly on partisan rhetoric and personality cults of the party leaders, MPs do not need to bother much about public opinion as long as their local power bases and party endorsement remain intact.

Within the parliament, our MPs are more constituency men than law makers and accountability watchers. They almost invariably use their parliamentary tools like ministerial question, draw attention notice, motion and general debate to pursue constituency benefits and mostly shun down their role in democratic accountability, legislative scrutiny and national policy making. Several arguments have been advanced to explain this type of total localisation of national politicians. One such explanation claims that development of intense bi-partisan competition between the AL and BNP in the recent past has reduced the number of 'safe' seats across the country. MPs therefore need to hold their ground strongly ever. Though this may be true for a few strongly favourite local heroes, MPs in general can barely rely on constituency work as an assurance of their re-election. People vote mostly in party line and for the selection of prime minister rather than individual MPs.

It appears that MPs do constituency work not to secure re-election. It is rather to secure re-nomination from the parties. The central leadership in each party "nominates" the candidates for parliamentary polls. Unlike the matured democracies, where constituency units of political parties play a decisive role in candidate selection, local units in Bangladesh simply lack the luxury. It is therefore vital for an incumbent to have a very strong hold over the constituency and the party units therein so that strong leadership contenders do not rise from within the party. They would nurture factionalism within the party and establish an army of loyal workers who would prevent leadership challenge and guard an 'undisputed' authority for them. An aged and long serving MP would install their children or family members to take on the baton. This, of course, is not to say that parties don't change candidates at all. They do. This, however, is not for the emergence of new talent

from the grass root. The old ones might have fallen out of favour of the central leaders. His/her political heir may have failed to garner enough hold over the local units.

There is a high command's interest too. Central party leadership needs to compensate the MPs against deprivation of their rightful involvement in national policymaking and parliamentary oversight. In diverting them away from parliament, party leaderships accomplish at least two important goals. First, subjugating and co-opting the autonomously elected local government bodies through political MPs is easier than trying this through administrative and bureaucratic machinery. Secondly, Bangladesh's political environment makes it seriously important that ruling party is not left solely with the administration and police forces to check anti-government mobilisation from grass-root. Alert and powerful MPs at the constituency level make sure that opposition or mass mobilisations do not rise from the root leaving the administration to deal only with the capital - Dhaka.

While the Supreme Court of Bangladesh has offered inconsistent views on the constitutionality of MPs' local government interferences - supporting it in *Barrister Ziaur Rahman Khan v Bangladesh* 20 BLD (HCD) 120 and opposing it in *Anwar Hossain Monju v Bangladesh* BLT (HCD) 86, the people should have been the arbiter of this democratic decay. Unfortunately, that too is failing badly. While the people in general are allergic to this phenomenon, their objection is not moored on institutional or constitutional role awareness. If they are frustrated, that is for the discriminatory or partisan treatment they might receive from their MPs, not for the MPs' neglecting their principal task - legislative and policy oversight of the government. Hence the parliamentarians' constituency work is duly acknowledged as a failure of formal political representation and a shape shifting towards informal representation where "politics meet culture".

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LAW REVIEW

An analysis on the draft NRCC Act 2020

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The National River Conservation Commission recently published the Draft National River Conservation Commission Act 2020 soliciting opinions on the Bill. The 2020 Bill is aimed at replacing the currently applicable legislation in this regard, namely the National River Conservation Commission Act 2013. The new draft containing 108 sections would be a substantial improvement to the existing laws and would incorporate provisions which address the increasing concerns on river encroachment and pollution.

The Draft Act has been formulated following the verdict of the Supreme Court conferring legal personality to rivers of Bangladesh. In a landmark judgment, the High Court Division recognised the importance of protecting the rivers of the country by shedding light on the immense significance of rivers as the source, depending on which trade, business and commerce have flourished since the beginning of civilisation. Not only their economic importance, but also their social, cultural and artistic significance of rivers and how they contribute to the scenic beauty of the country and have inspired generations of poets and novelists have also been highlighted with great eloquence.

The spirit of the High Court Division's verdict is largely reflected within the provisions of the draft. Most significantly, the law acknowledges the doctrine of Public Trust wherein the public's right to clean and healthy rivers, lakes, reservoirs, and habitable environment has been given form. As such, all rivers in the country have been declared



as public trust property under Section 16 and have been acknowledged as living entities under Section 15. In the same vein, 'causing death' to rivers, encroachment and pollution have been penalised in Chapter V of the Act.

One of the primary objectives of the draft is to ensure the independence of the National River Conservation Commission (NRCC). As it has been made the 'guardian in law' to the rivers of the country and is entrusted to act as the trustee, it is imperative that the law sufficiently empower the NRCC to take appropriate measures for the effective implementation of the Act and play its part in protecting the rivers from pollution and

encroachment. Chapter II lays down the provisions of forming the NRCC. Section 3(2) of the Act states that the NRCC shall be an independent, autonomous, and neutral organisation and shall perform its obligations with transparency, autonomy, and accountability. With a view to ensuring its fiscal autonomy, Section 4 states that a fixed budget shall be allocated by the Finance Ministry every year for the expenses of the NRCC and the NRCC shall not be bound to obtain the approval of the Government for expending the said allocated budget.

Significant changes would also be brought to the formation and constituent members of

the NRCC and the method in which they are selected. A Selection Committee headed by an Hon'ble Judge of the Appellate Division of the Supreme Court (selected by the Chief Justice) shall recommend the members of the Commission who shall be appointed by the President.

Chapter IV of the draft Act lays down the corresponding duties of different stakeholders with regard to protecting the special status of rivers. Interestingly, educational institutions have been directed to conduct a class on the importance of rivers at least once every two months and schools are directed to conduct field-visits to rivers in their respective localities. Respective Unions, Upazilas and Districts have been directed to employ necessary technology in order to draw up maps of their areas correctly displaying the rivers flowing through them. Bangladesh Betar and Television have been directed to broadcast documentaries on rivers weekly. Similar directions have been provided to industries and factories and their owners to properly educate their staff on rivers and their significance. These provisions echo the directions issued by the High Court Division and are certainly praiseworthy.

Chapter XII states that one or more River Conservation Tribunals shall be established in each division which shall be linked to the Divisional office of the NRCC. The court shall be presided over by one judge but they shall be assisted by three assisting members with specialist knowledge on rivers and shall be of national or international repute. Mobile Courts have also been empowered subject to requisitions issued by Upazilla offices of the Commission to try offences relating to river pollution in their areas.

YOUR ADVOCATE

This week Your Advocate is **Barrister Omar Khan Joy**, Advocate, Supreme Court of Bangladesh. He is the head of the chambers of a renowned law firm, namely, 'Legal Counsel', which has expertise in commercial law, family law, employment law, land law, banking law, constitutional law, criminal law, and IPR.

On gratuity scheme and associated income tax benefits

Query

Dear sir,
I work in the Human Recourse Department of a reputed multinational company. I am not very informed about the gratuity scheme and associated income tax benefits, as I hear different opinions from within my peer group. We would appreciate if you can enlighten us on the matter.
Jafrul Islam, Dhaka.

Response

Thank you for your query. Gratuity is a discretionary monetary benefit scheme offered by an employer upon completion of service of an employee. For every type of separation, the employee becomes entitled to an amount as either 'compensation' or 'gratuity' (if any), whichever is higher as stated in the relevant provisions under the Bangladesh Labour Act, 2006 (hereinafter referred to as BLA). In case, if an organisation does not have any gratuity scheme, then the employer is liable to pay compensation, as per the BLA at the time of separation. Gratuity or compensation payment shall be in addition to any payment of wage/salary in lieu of notice due to separation of service of an employee on different grounds.

An employee will be entitled to gratuity only when he has been in uninterrupted service for more than 01 (one) year with the organisation. The definition of gratuity stated in Section 2 (10) of the BLA indicates that more than 06 (six) months is considered as a full year. It is worth noting that completion of more than 06 (six) months of service will be deemed as 01



(one) year from the second year.

The amount of gratuity depends upon the duration of service. The amount of gratuity increases with the length of the service of an employee. Gratuity is calculated at the mentioned rate as per Section 2 (10) of BLA on the basis of the employees latest basic wages received for every completed year of service. Withholding of gratuity payment is permissible only in case of dismissal of an employee for misconduct under Section 23(4) (b) & Section 23(4) (g) of BLA and not otherwise.

Gratuity amount taxable or not

By adopting a gratuity scheme within an organisation, an organisation can claim tax rebate against the gratuity fund as well as the employee need not pay income tax on the amount either. It may be also mentioned that as per the Income Tax Ordinance 1984 (hereinafter referred to as ITO), gratuity amount up to BDT 2,50,00,000.00 (Taka Two Crore & Fifty Lac) only is not taxable.

However, to avail such income tax benefit, as per Section 2 (5A) of the ITO, the gratuity scheme needs to be recognised by the National Board of Revenue (NBR) in accordance with the provisions of Part C of the First Schedule of ITO. For such recognition, the organisation needs to create a separate gratuity fund, manage the fund by a board of trustees. In order to do so firstly the organisation has to form a trust and an application is to be made in writing by the trustees to the NBR through a prescribed procedure, along with the copy of the instrument (i.e Trust deed and rules) and other necessary documents as specified in the schedule. The Board, subject to fulfilling the conditions, approves the gratuity fund within 3 (three) months of the receipt of such application. The auditor shall have to audit the fund account annually as per rules of the fund. The fund will be treated completely separate from the fund of the organisation. Hence, as per the provisions of the Schedule, income derived from investments or deposits of an approved gratuity fund and any capital gains arising from the transfer of capital assets of such fund shall be exempted from payment of income tax.

I hope that the above shall help to you to understand the gratuity scheme.