

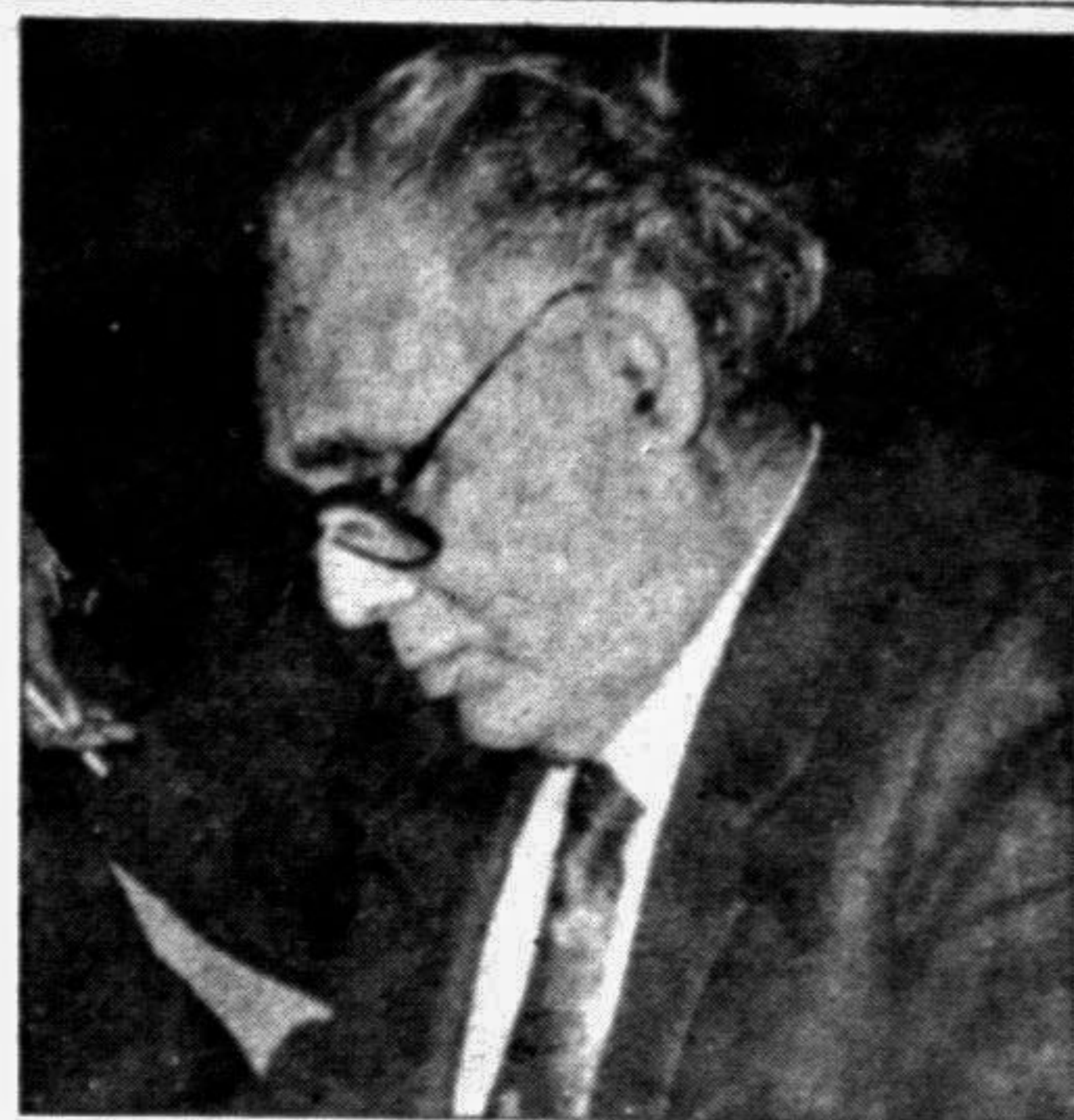
CONVERSATION

'Right to Resign is Not Unfettered'

Members of the Parliament have the right to resign. But that right is backed by an obligation to represent the constituency from which a member has been elected. Resignation cannot be used as a weapon to hinder the democratic process as a whole. These, and many more insightful comments were made by Speaker Shaikh Razzak Ali during a lengthy interview he gave to *The Daily Star*.

The historic but controversial ruling has given rise to many questions in the public mind. Was the Speaker being used as a pawn by the ruling party, to implement its own plan? Or was he actually trying to strengthen the parliamentary process? Was not the Speaker going beyond his power by refusing to accept the resignations? Why did he wait so long before giving his ruling? In order to clear the air on these important issues, we decided to pose these questions to the Speaker. Shaikh Razzak Ali, over a three-hour period, spoke candidly and in great detail, to our Chief Reporter Anwarul Haq and senior correspondent Asiuzzaman and answered the above and many other questions. We hope, our humble effort will help to further the understanding of our Constitution and the parliamentary process.

We invite our readers to send us their comments or reactions which we will pass on to the Speaker for further clarification, if necessary.



DS: Mr Speaker, the ruling on the resignation of the Opposition MPs has created a lot of controversy, as you are aware. How do you respond to this?

SR: Speaker Shaikh Razzak Ali (SR): As you have said, it has raised some controversy. I have noticed that this decision has been hailed, although with certain comments, by eminent jurists like Dr Kamal Hossain, Barrister Mainul Hossain, also Khandkar Ishtiaq Ahmed, Dr Moniruzzaman. But others have their own comments. But, you know, in the ultimate analysis, those who have criticised it have not resented the decision we have made.

I have given my findings based on reasons. I have also cited rulings of the Supreme Court, and also the constitutional position in other countries. So, in short, I would like to say that whatever decision I have given, that decision is based on reason and on an acceptable constitutional interpretation.

DS: But the reason was more political, than legal. Do you agree?

SR: Yes, I will comment on this. The question is...

DS: Even on reasons acceptable?

SR: On reasons which I think acceptable. And I have also based... this is a reasonable construction, or a reasonable...

DS: Premise?

SR: No. Reasonable, as you say, interpretation of the constitutional provision.

DS: I want to put the question now, whether it is more political or more based on technical constitutional interpretation....

SR: Yes, I must give my answer to that. As you know, and everybody who knows the constitution, they will also agree with me, that the constitution is based on people's aspirations, and the people as the ultimate sovereign. Our people have struggled since 1947 to establish their democratic right, freedom and everything connected with democracy. They have struggled all along. And the whole constitutional structure is based on these democratic ideals, democratic norms, democratic principles. These you will find in the preamble to the constitution, in the fundamental principles of the constitution, as well as in the preamble to the Twelfth Amendment of the constitution.

So if you want to interpret the constitution in the light of all these, the preamble, the fundamental principle and the aspirations of the people, what do the people want? They want that a democratic system should be established in the country, it should continue and it should be made more strong. Keeping these principles in view, the constitution is to be interpreted.

Now, you will also notice one thing, the interpretation of the constitution and the interpretation of a subordinate law are two different things. Subordinate law is made under the constitution without violating the constitutional principles. So you have to interpret the subordinate law as it is, in verbatim. You cannot add anything, you cannot just take away anything or give, impart another meaning to it.

So when you are to interpret a constitution, you have to take into stock the aspirations of the people, desires of the people, the fundamental principles laid down in the constitution in accordance with the desire of the people, the preamble to the constitution, the preamble to the Twelfth Amendment. And in the light of that, I have given my decision.

DS: So, your ruling is in the light of interpretation of the constitution?

SR: In the light of the accepted principles of interpretation of constitution.

DS: And the direct legal provisions?

SR: No, no. Direct legal provision is there, in the Article. The law is there, in Article... 67.

DS: Yes in Article 67.

SR: In Article 67, that Article, the language is there, I have also quoted that. I have argued, you will see that in Great Britain, a Member of Parliament is never allowed to resign. There is no law. As you know, there's no written constitution in Britain. There is the convention that no Member of Parliament can resign. They have a right to resign, true, but that right is backed by an obligation to represent his or her constituency, their demands, their grievances and all that, in Parliament. An MP is meant for that, he or she has undertaken that obligation by asking for votes from the people of his constituency. So, he is obliged to serve them in Parliament.

DS: So you think a similar practice should apply to Bangladesh...

SR: I don't think that. Because we have not reached that stage of parliamentary practice. I do not want to impose the British Parliamentary practice in Bangladesh. But the fundamental principles should be applied.

Never has it been done anywhere in the world, that the right to resign, which should be taken as a normal and natural right, should be used as a weapon to destroy the democratic system itself. I won't say 'to destroy it, to, to...'

DS: Hinder

SR: Hinder, yes, to hinder the democratic system itself. I don't want to use that harsh word, "destroy."

DS: Is it your contention that never, anywhere in the world, has the right to resign... been so used, as here?

SR: Never used as a weapon to hinder the democratic process.

DS: So you tried your best, according to you, to prevent that move?

SR: Yes, in the light of the desire of the people, in the light of the aspirations of the people, in the light of the preamble to the constitution, in the light of the fundamental principles enunciated in the constitution, I have given my deputation that the right to resign cannot be used as a weapon to hinder... to create a constitutional crisis, which might lead the nation to something unpredictable.

DS: But you could accept all the resignations... there was no major flaws...

SR: Technicality is one thing, and legality is entirely different.

A resignation letter might be technically valid. Supposing somebody comes to resign, and says, "Mr Speaker, I want to resign." Well, alright, he resigns, finished...

DS: On which grounds can an MP resign?

SR: He can resign if he is unable to work, if he is physically incapable to work, or if he has, say, any difference of opinion with his party, he can say, "Alright, I resign from the party, and my seat will be automatically vacated," or, "I resign from my Membership." This is a normal and natural right that has been given, in my opinion.

DS: But the Opposition insisted that their decision was also for the people, that the resignation reflects the people's desire.

SR: That I have also dwelt upon in my decision. The question is, the Opposition says that... but is there any ground for such a claim? I don't think so. Because in a democracy, you know, democratic principle is the right of the majority to rule.

Now, while there are several parties in a country,

well, votes will naturally be divided. Even then, a party getting less than fifty per cent of votes, if that party gets a majority in the House, then that party will rule. That is the principle of democracy. When you say that our demand is the people's demand, then, have the people given any mandate?

DS: Have you (the parties) taken any mandate from the people? No, No.

If all the political parties, taken together, might have received more than fifty per cent of votes, but this was never an issue before the voters during the 1991 election. There was never an issue of the caretaker government. I don't say whether it can be materialised or not, I have no comment on that.

But, if you say that it is the people's demand, then, I would say that first, the people have given no mandate on this issue, to my knowledge. Number two, that there was no issue of any caretaker government before the people in the 1991 election. If there would have been any issue like that on which the people had voted, then you could have argued that, well, this is the people's verdict. Because in the manifestoes of the political parties, there was no demand or issue or anything like that, about a caretaker government.

DS: But some party may have raised this issue at that time...

SR: No. No party raised it during the election. But, when we were deliberating on the Twelfth Amendment, this point was taken up by Jamaat-e-Islami, but that was rejected by all the parties at that time.

DS: Why did you delay so long in giving your decision? I think you compounded the problem, and the credibility of your office was also affected. One question that arises in public mind is that may be the Speaker has sat on it for too long. Hence they attribute political motive to your decision.



SR: I certainly owe an explanation and I am thankful to you that you have asked me this question. It is a fact that I was sick, I have had heart ailments for a long time. Previously once I was also sick. But that did not divert me from work for so many days. My decision was actually complete by, if I remember correctly, the 8th. And I told respected reporters who frequently used to visit my office at that time that I would be giving my decision within a day or two. You know, and all concerned reporters know that some exercise was going on, because on the 28th night when the resignation letters were submitted, three honourable ministers came. They came to my call-on room, and informed me that all the leaders, including the honourable leaders of the Opposition, of the three parties, that the Prime Minister has decided to resign thirty days before the election. Well, since they also gave certain conditions, these were not accepted too. On the 29th of December, it came out in all the papers that the Opposition said if we would have known about the decision of the Prime Minister, then we would have reconsidered about submission of our resignation letters. And the Prime Minister gave her speech on the 29th, or 30th, I do not remember exactly. And she reiterated her commitment, willingness to resign.

So a new situation was created, and actually negotiations were going on to which I was also a party. So, what happened, I'll tell you. I must tell the truth to the nation. Then, on the 7th or 8th, I was told by responsible leaders, I should not disclose names because they may get into trouble, but I was told that on the 10th, the honourable Leader of the Opposition was going to make a new announcement...

DS: This was told to you from the Opposition party?

SR: Yes.

DS: From top positions? From responsible persons?

SR: Yes, top positions, of course...

DS: That the Leader of the Opposition...

SR: Would give a new proposal on the 10th. I will not disclose the name because that will create another problem. But rest assured that I will not tell anything that is not true.

On the 10th, in fact a new announcement came from the leaders of the Opposition. Mr Salauddin Quader Chowdhury was authorised from before 28th December, to negotiate on behalf of the Opposition. After the 10th, four of us — Mr Salauddin Quader Chowdhury, Mr Khondkar Delwar Hossain, myself and Col Oli Ahmad — we sat together, I must emphasise, unofficially, and formulated certain points of the new decision.

Ultimately, I was informed by Salauddin Quader Chowdhury that although he had tried to contact the honourable Leader of the Opposition, but at that time the son of Suhrawardy — Shahed — was visiting Bangladesh, and so the proposal that was formulated, could not be finalised.

DS: And you could not contact the Leader of the Opposition?

SR: We failed to do that, because Shahed Suhrawardy was in the city and the Leader of the Opposition was busy. That was what I was told.

DS: And there was no follow up?

SR: No, there was no follow up. And when the matter was in the process of being followed up the writ petitions came up on the 18th.

DS: And after the writ petitions?

SR: After the writ petitions, my hands were tied.

DS: But the writ petitions did not bar negotiations? You were waiting for the Oppositions negotiator's call, or...?

SR: Actually, after the 18th I talked to Mr Salauddin Q Chowdhury, and although the signal was 'hold on, please hold on,' nothing actually came out after the 10th. So on the 17th night, I decided it would be unfair on my part to hold on any further I realised that I have been (already) misunderstood.

DS: So it will partially prove that you delayed because of negotiations?

SR: Yes. The time taken by me after the 4th of January was in anticipation of the solution of the political crisis. In view of the new situation, the two new proposals given by the Honourable Prime Minister, and by the honourable Leader of the Opposition. And you will appreciate that if I had not waited, and if really the Opposition had no connection with that proposition, then there would be no fresh proposal on the 10th. The fresh proposal from the Opposition on the 10th could come only because I waited for it.

DS: But, constitutionally, were you right?

SR: Constitutionally, I committed no wrong in waiting. I also talked with the Chief Election Commissioner. I ascertained that for holding a by-election, it does not take more than 65 days, in any case. I ascertained this from the Election Commission. I knew that my decision, or the Court's decision will not solve this political problem. The political parties must solve it.

DS: Does the constitution give you that right to disallow resignations by 147 members?

SR: Certainly. The constitution... I have explained it in my ruling, gives me the right, and to enunciate this point, I have quoted the constitutions of different countries. If somebody comes and gives a resignation letter, certainly I have something to do, I have the right to test it, whether it is genuine and voluntary. I have got the right to decide. This right is there.

DS: You say in the ruling that the "right to resignation is not unfettered and absolute." Why not? Please explain.

SR: Yes. Because when a candidate goes to his constituency and asks for its support for being elected as a member of parliament, he gives up a part of his absolute right, to the voters. He is undertaking an obligation that he will come to Parliament and raise the grievances of his constituents, as well as the whole nation, that he will contribute to solving the problems of the nation by working as a member of parliament inside the House. These are all the obligations he undertakes as soon as he asks for the support of the people. So, if he thinks, 'I will not work anymore,' this absolute right no longer rests with him. Because you have come with a mandate from the people that you will work. Of course, if you become unfit to work, you may resign.

DS: But by making this comment you are taking away the fundamental right...

SR: No, no, no, I am not taking away any fundamental right. I have said you have the right to resign, in the normal and natural course of events. You have the right to bring a no-confidence vote in the House, if you are aggrieved by the activities of the government. But my question is, can this natural and normal right to resign be used as a weapon to create such conditions as to destabilise the democratic system of the country, and to impede the constitutional process itself and lead the country towards an unknown destination.

DS: If you reject the idea of en masse resignation, how do you explain the provision of all MPs being bound by the party decision and the fact that they may lose their seats if they violate it? This is in the constitution.

SR: You see, here you are talking about Article 70. That they are bound by the party decision. Party decision on what? If you look at Article 70, it is the party decision to vote inside the house. Article 70 does not say the party decision to resign or anything like that.

DS: One thing, since Mr Salahuddin Q Chowdhury, according to you, has represented the Opposition, the Opposition may try to wriggle out by saying that he was not the authorised representative. If you have anything to show that he was...



SR: Yes, lot of things. From the 27th to the 28th, all the time, Mr Salahuddin Quader Chowdhury was negotiating, with Colonel Oli Ahmad. All these two days I have seen that they were negotiating, on the telephone as well as through other channels.

DS: Your basic position is that resignation is only acceptable on normal circumstances.

SR: The en masse resignation of the Opposition is not conceivable under this constitution. You see with this constitution it is just like a wall, one brick after another. You read Article 11, but all of it has to be read, we often read just one section... in many cases people have written, as in 'Jai Jai Din', I regret the language this respected reporter has used, he has every right to criticise me, but the language that he used was really shocking.

DS: You have said looking at the constitution, technicality is one thing...

SR: Technicality is one thing, and legally it may be different.

DS: Which means?

SR: Even if a resignation is technically valid, when that particular gentleman in collaboration or in joining hands with others, all of them, in pursuance of a common intention it may be illegal. Because I have found that, technically, the resignation letters of Mr Salahuddin Q Chowdhury and some other gentlemen were technically valid. But when I was considering the second point, all 147 resignation letters were given in pursuance of a common intention...

DS: So we can understand that our constitution does not permit en masse resignation?

SR: Yes. Our constitution, considered as a whole, considering the people's aspirations as a whole, does not contemplate that all the members of the Opposition will join hands and submit resignation letters to

undo the democratic process. Because if they are not happy with the government they have the right to bring a no-confidence vote in the House. This right they have been given in the constitution. If they are also not happy with the government, people will not vote for that particular party which is in power and which is not conceding to the demands of the Opposition. The ultimate judgement lies with the people. People will bring a no-confidence vote against the ruling party by voting in another party. This is the democratic process.

DS: So after election, MPs should confine their activities inside Parliament for the duration of their term?

SR: If you look around, you may see one or two cases where the MPs came down on to the streets with slogans and such... But generally the democratic process demands the settlement of everything inside parliament.

DS: Your ruling that resignation is being used to create a constitutional crisis? Does it mean that you are accusing the Opposition?

SR: No I have not said anything about intention or of malice against anyone.

DS: But you have said that the resignation is being used to create a constitutional crisis. We would like you to comment further on that.

SR: Yes, mass resignation has been used for creating a constitutional crisis.

DS: A technical point. Seats will become vacant if MPs are away from the Parliament for more than 90 days. And this is likely to happen very shortly. How do you plan to deal with this situation? Would you just overlook the issue?

SR: I have no right to overlook any constitutional provision.

DS: Of course you will not overlook the constitution, but in case of President Ershad's continued absence, his seat has not been vacated.

SR: The word absence to me means voluntary absence. As per Article 67, 1B if you are "absent from Parliament without leave for 90 consecutive sitting days." It has always been interpreted by the superior courts that such absence must be voluntary.

DS: What about the resignation letters?

SR: Resignation from Parliament is another matter. Someone must come to me about resignation from the concerned party.

DS: What about remuneration? What provisions are there that for an MP to attend parliament?

SR: There is a provision, that if he stays here for attending Parliament session...

DS: What does 'stay here' mean?

SR: It means if he is available, staying in the city in Dhaka. Remuneration, we have given... There is a High Court order, we have taken clearance from the law.

DS: What about the receiving of duty-free cars?

SR: After the resignations, duty free cars have been taken, after the ruling was given.

DS: And all remunerations have been taken?

SR: They have partially availed themselves of... We can check on the remunerations for you.

DS: Going back to the earlier question, there is 5 days left... What will you do? What pronouncement will you make?

SR: I will definitely have to... let me look up Article 67... "If he is absent from Parliament, without the leave of Parliament for more than 90 consecutive days" definitely we will have to take action, as provided in the constitution.

DS: But how exactly will this be done? In many cases, MPs have not attended Parliament, but signed the attendance book. How will you check this?

SR: I have to study the whole thing, what constitutional provisions there are, I'll have to see.

DS: How many more days are there exactly until the 90 days are over?

SR: If the law compels me, then I will do what is required, I will not look left or right. There are those that criticise my decision, politicians, but not actually constitutional experts. I am sure a true appreciation will come when this decision will contribute a lot to the democratic process.

DS: How would you evaluate the fifth parliament?

SR: It could have been the most effective parliament. However for reasons known to you, we could not attain our desired objective. One aspect that is mentionable is that since 1992, the parliamentary standing committees have started functioning. You will appreciate the report given by the Undertaking Committee against Sonali Bank, by another committee the Public Accounts Committee and the Undertaking Committee against Mongla Port. We started identifying the irregularities.

DS: Why the investigation against the Ministry of Irrigation was abandoned?

SR: Actually it was not abandoned. There are seven members from the opposition and seven members from the party in power, and I was the Chairman. They could not agree on the terms of reference of the committee. As Speaker I had to play a very neutral role. I did not open my mouth. If you read the 500-page report you will find the Speaker scarcely speaking. But since they could never agree I had to print all the deliberations and submit it to the House with the recommendations that please formulate the terms of reference and then send it to the committee. It has not been closed. It is still open.

DS: How do you now see the future of the fifth parliament in the absence of the opposition members? Do you think it should be dissolved?

SR: I still hope and I would seriously urge upon the party in power and also the opposition to open a dialogue at a high level and solve this political problem for the greater interest of country, and in the greater interest of democracy. And I believe the difference is very narrow now and this could be solved by a dialogue. And if the politicians want the people to be with them it is their solemn duty now to do it. At least they have got another opportunity by the decision (ruling) to do that.

DS: There is criticism that on occasions you had been influenced by your party?

SR: Unfortunately, in our country ill motive is assigned for many decisions. I have worked as Speaker for four years, I have always tried to remain impartial. At any time, the Speaker of the House would belong to one party or another. But he cannot resign his party membership, because according to Article 70 if he resigns, his parliamentary membership would be cancelled. So definitely he will belong to a party. Some of the decisions go against the opposition while some go against the ruling party but the question is how far he has acted impartially in the House. Those who have followed the entire proceedings during my tenure can judge whether I acted impartially or not.