

FOCUS Law and Our Rights

The Dilemma of Article 70

by Abul Hasnat Monjurul Kabir

THE concept of representation through electioneering is now well founded in the constitutional mechanism in most of the countries having stems from the theme that all powers belong to the people. This is also the spirit of democracy.

Within a democratic state, those who govern should be accountable or responsible to those whom they govern. Since direct government by the people is impracticable, the constitution provides a framework within which the governors may be responsible to the people.

The constitution framers of Bangladesh had a cherished dream to establish a parliamentary form of government due to its acceptability than that of presidential in the sense that it (parliamentary form of government) is directly responsible to the parliament in other words to the people. Generally such responsibility comprises of the cabinet's collective responsibility as a whole to the parliament and every minister's individual responsibility to the parliament for his respective department. This is the core words of the British concept of ministerial responsibility.

In the original constitution, however, no provision for individual responsibility had been provided for. In Article 55, it has been stated that the cabinet shall be collectively responsible to the parliament. But this notion of collective responsibility has been a soundless vessel due to article 70 where it is conditioned that where in Parliament shall vacate his seat if he votes in the parliament against his party.

In this regard it is apposite to analyse briefly here the provision regarding floor-crossing of the original constitution of '72 and the changes brought by the 4th and 12th Amendments to the constitution.

Evolution of Article 70: From past to present

Original Constitution: Not only in the original constitution of 1972 even in the present amended constitution, the term 'defection' (falling away from loyalty to a political party) is used nowhere. But the Article 70 assumes the concept of defection.

Article 70 is one of the grounds of vacation of seats of members of parliament. But as the provision goes, it (Art 70) has been independently made in the constitution as an anti-defection law. In the original constitution of 1972, only two conditions were imposed against defection:

1) If a member resigns from his party; or 2) If he votes in parliament against his party (Article 70).

The 4th Amendment: On 25th January, 1975, by the 4th Amendment another two conditions were added by inserting an explanation of the words 'votes in parliament against his party'. They are:

1) If a member, being present in the parliament, abstains from voting; or 2) If he, ignoring the directive of the party, absents

himself from any sitting of parliament (which nominated him at the election as a candidate) (Article 70).

The 12th Amendment: Now, by the 12th Amendment (6th August, 1991) more stern measures have been taken to prevent floor-crossing Clause (2) and (3) were included through this amendment to the article 70. They are:

1) If a group or subgroup is formed from within a party as a result of which the leadership of that party is questioned, the speaker will call a meeting of that party and take a vote to decide which group will represent that party. Article 70 (1) will equally apply to the members of that party under the leadership so determined. [Article 70 (2)]

2) If a person after being elected as a member of Parliament as an independent candidate joins any political party, he shall be deemed to have been elected as a nominee of that party and in his case all provisions of floor crossing will apply as a member of that party. [Article 70(3)]

Full text of the present shape: Vacation of seat on resignation, etc.

70 (1) A person elected as a member of parliament at an election at which he was nominated as a candidate by a political party shall vacate his seat if he resigns from that party or votes in Parliament against that party.

Explanation.— If a member of Parliament— (a) being present in Parliament abstains from voting; or (b) absent himself from any sitting of parliament, ignoring the direction of the party which nominated him at the election as a candidate not to do so, he shall be deemed to have voted against that party.

(2) If, at any time, any question as to the leadership of the parliamentary party of a political party arises, the speaker shall, with seven days of being informed of it in writing by a person claiming the leadership of the majority of the members of that party in Parliament, convene a meeting of all members of parliament of that party in accordance with the Rules of Procedure of Parliament and determine its Parliamentary leadership by the votes of the majority through division and if, in the matter of voting in Parliament, any member does not comply with the direction of the leadership, he shall be deemed to have voted against that party under clause (1) and shall vacate his seat in Parliament.

(3) If a person, after being elected a member of Parliament as an independent, joins any political party, he shall, for the purpose of this article, be deemed to have been elected as a nominee of that party.

So after the 12th Amendment, a member of parliament can be unseated on six grounds mentioned in Article 70.

Article 70: The Paradox of Reality

In a liberal sense, political defection is a democratic right related to personal liberty and freedom of thought and of speech which is guaranteed by our constitution (Article 39). Right to vote against the party decision or to be absent in the House in protest of party's undemocratic decision or to abstain from voting is inextricably related with the personal liberty of a member. People's mandate is reposed on him not to act on undemocratic or unethical party line but to raise vote against undemocratic or impudent decisions taken in a narrow party interest. But the stern (and oppressive also) measures provided by Article 70 have made it impossible for any one or a group's belonging a particular party to raise his or their voice against whimsical, undemocratic party decision. The mandatory obligation imposed on MPs to vote on party lines has turned the parliament into the ruling party's high command's rubber stamp. It is, for this reason said that parliament does not legislate rather legitimates.

members tended to cross the floor for their selfish ends rendering the parliamentary system unworkable, which justify the incorporation of this provision in the constitution. [Dr Hamid Uddin Khan: Rule of Law Aspect of the Executive and Legislature And the Constitution of Bangladesh — The Dhaka University Studies, Part F June 1992]. In other words, it was the result of bitter experience of severe political defections in 25 years of the then Pakistan politics. Unfettered political defection and wide spread floor-crossing were the only cause of fall of parliamentary government in the then Pakistan. 'Party indiscipline and lack of self-discipline within the parties were manifested in the free use of threats and pressures. Members crossed the floor and changed parties freely and even charges of kidnapping and manhandling of assembly members were made by both sides.' (Mohammad Ayub Khan: Friends not Masters P. 55).

So anti defection law is a political reality of our country, however undemocratic it may be. To get rid of frequent political defections and floor crossings, the concept of anti-defection law has been incorporated in our constitution. But political scholars and observers opine that the cost of preventing such phenomenon is too high the desired political stability is still a mirage. Besides it becomes persons of dignity and of high moral-standard disinterested about politics which already severely lacks in minimum quality. In other words, in the name of political stability, it makes the national politics merit-less and a roaming ground for criminals, bank defaulters, retired army personnel, dishonest professionals, war-criminals, etc.

Least but not the last. We do everything in the name of democracy, for the sake of democracy, but its a matter of great regret that even a minimum sense of democratic culture is not established. Politics in third world countries like Bangladesh, Pakistan and India are hardly based on broad principles or real issues. Mostly the political parties are enriched with politics of conspiracy, self interest, power-tussle and greed. The personality oriented politics of Bangladesh is an easy prey of dictatorship.

A compromise process can be effectively applied for preventing floor-crossing and defection which will also help to restore the freedom of thought and conscience and of speech of the legislators.

The application of anti-defection law i.e. the provision of Article 70 can be restricted to a vote of no confidence motion only. A normal or general bill is not necessarily connected with the stability of the government.

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Campus: The Theatre of Violence

by Moniruzzaman Biplob and Iftequer Mahmood

STUDENT politics of Bangladesh have a glorious past. They have always been on the front row in our democratic movements. It could be in 1952 or could be in 1990s, whenever we were struggling for our democratic rights, students have led those movements to a success. The inception of such glorious past was the result of university oriented student politics. And it is quite undeniable that the impact of university oriented student politics over our national politics has been superlative. But unfortunately, since we have got our independence, there was some negative influences amalgamated with our student politics. In Pakistan period, Pakistani Raj introduced rowdy student politics through National Students Front (NSF). Till now we are shouldering the legacy of that rowdy politics.

In the present times violent politics has spread out not only in universities but also in colleges and schools. Dhaka University is the oldest and biggest university of the country. After its installation back in 1921, it is working as the most important institution for providing higher education and developing the educational status of our country. It was once called the Oxford of the east. But in recent days Dhaka University has earned a fame for its violent student politics. It is found, from a statistic, that in last twenty-five years sixty incidence of student killing have taken place only in Dhaka University. Rajshahi University also, at the same time, have experienced twenty-five killings.

After the democratic movement of 1990 an elected government took over the power. And quite naturally people began to think wishfully that there were going to be some changes. There was a general presumption among the student that the practice of armed politics have come to an end, there would be no more killing in the universities. But those dreams did not come to life. On the contrary, violence has planted its roots on college and school level and establish itself as one of the national problems. A debate started in a session of the 5th parliament on violent student politics. Then we thought, being a bit optimistic, that there would be a consensus among the political parties against the violent politics. A parliamentary committee was formed to find out necessary action against violence in educational institutions. Unfortunately the committee turned into a lethargic body. The indolence of different concerned institutions is also very alarming. Generally, university authority ends up their duty by forming an inquiry committee after every incidence of violence. The duty of such committee is to investigate and prepare a report suggesting some action to be taken by

the university authority. But the most agonizing truth is that not a single report has been published in last five years. Different organisation urged the university authorities to publish those reports but they did not show their nominal interest on this matter. In a report, published in the Daily Ittefaq it is said that university authority spend one and half crore taka every year in maintaining law and order situation in the university. Now the question is, why the law and order situation is not improving, while they are spending such mammoth amount of money?

Statistics of 1995

Law Review, University students central for legal research, has prepared a statistics based on violence that took place in the universities

Table with 4 columns: Institution, Person killed, Person injured, Causes of violence. Rows include Dhaka University, Chittagong University, Rajshahi University, Shahjalal University, BUET, Agriculture University, Jahangirnagar University, Total.

cording to the Laws of University. 4. To investigate to find out the sources of arms and ammunition and to arrest the illegal arms holder. They should be tried fairly, if necessary special tribunal can be formed according to the constitutional provisions.

Activities of communal fascist group Islami Chhatra Shibir

The statistics of violence of 1995 shows that the Islami Chhatra Shibir has established themselves as the number one violent organisation as they ranked top at the list of organisation which were involved in violence in 1995. After taking control over Chittagong University they continued their rowdy attacks on other universities all over the country. At the beginning of the year of 1995 they attacked Rajshahi University and killed 3 students. This fascist group who

are well known for their anti liberation war activities, attacked on a procession at the Agriculture University on the 16th December, our national Victory Day. Four students were killed by that barbarous attack.

Investigation and judicial process

Most of the cases of killing that took place in 1995 have lost their way in investigation stages. Some of the cases have been delegated to the Detective Branch (DB). But DB also was not effective enough. Some accused person were arrested but later on they were released from court or from police custody. Some police officer admitted that they did so after getting order from higher level. Most astonishing matter is that some alleged criminals of unbillable offence have been granted bail from the lower courts. (We are not giving detail description of the cases for the sake of fair investigation and trial) As the arrested person gets bail easily and there is always a deadlock in investigation, the University of Dhaka has been a happy hunting ground for the terrorists and rounthecks. They have established themselves as the sole authority in the student hostels. We have experienced, through our investigation, that a few incident of hoodlums was investigated. Because of intimidation and pressure from higher level most of the investigation lost their way. In most of the cases police authority

Recommendations The situations are not getting better. The condition prevailing in the universities is not, by any means, a study friendly condition. Considering this alarming situation Law Review recommends some steps against violence in educational institutions and for violence-free universities.

1. An order should be given by the government to accelerate investigation against all the incidences of violence. Judicial process should be started and the person adjudged guilty should be punished according to the law.

2. To expel the workers and the leaders from the respective party who are involved with violence.

3. To expel marked terrorists from the university, according to the Laws of University.

4. To declare religion based politics illegal, all over in Bangladesh as well as in the universities. For that matter, Article 38 (A) of the original Constitution may be revived.

5. Communal, fascist and terrorist force like Shibir should be banned.

6. To initiate the process of democratic practice among the student organisations.

7. Prior condition of democracy is tolerance. The student organisation should practice this prior condition of democracy.

8. To keep the student unions out of the influence of political parties.

9. To prepare a Code of Conduct, by way of consensus among all students organisations, on the political activities in the educational institutions.

10. To include a clear declaration in the election manifestos of the political parties to stop violence in the educational institutions.

11. To produce authentic news about violence incidences and follow up steps by the news medias to make the people know about the matter.

12. To arrange student union election regularly in all educational institutions.

13. To continue extra-curricular activities regularly alongwith academic programmes.

14. To declare all the universities as residential university and to solve the housing problem.

15. Realisation of 10-point demands of the students.

The Daily Star Entertainment Guide

Entertainment guide listing TV programs across various channels including STAR PLUS, CHANNEL V, ZEE CINEMA, DD7, EL TV, and ZEE TV.

Garfield comic strip by Jim Davis, featuring the cat Garfield and his owner Jon. Includes dialogue bubbles and a signature.

James Bond comic strip by Ian Fleming, featuring the character James Bond in a scene with a woman. Includes dialogue bubbles and a signature.