

Independence Day Special

Of Parliamentary Norms and Practices

by Nazmul Huda

At the end of the day it is the majority in the Parliament which is taking this decision but in so deciding, the party in power must understand that the opposition could also be helpful in bringing about points missed by the ruling party or by bringing into the notice of the government some such points which may adversely affect the people.

It has been declared unequivocally by the Constitution of the People's Republic of Bangladesh that 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 the Constitution. In Article 11 of the Constitution, the Constitution does indeed lay down how and in what manner such power and authority shall be exercised. In no less categorical terms, the Constitution declares that the Republic of Bangladesh shall be a democracy in which fundamental human rights and freedoms, and respect for the dignity and worth of the human person shall be guaranteed and in which effective participation by the people through their elected representatives in administration at all levels shall be ensured. At the very national level, it is the Parliament consisting of the people's representatives that govern the country on behalf of the people by electing from its floor a Prime Minister who, in turn, selects his cabinet colleagues leaving the rest of the elected representatives with the responsibility to hold the government in power accountable to the people.

Democracy has been termed by political philosophers as a government by consultation, a government by discussion, an accountable government, a responsible government. At one stage in the history of Bangladesh, this power of the people's representative was taken away, and to consolidate the power in one hand, presidential system to be backed by a one-party system was set up

only to be repealed, inasmuch as the one-party system was concerned, later, leaving the presidential system intact for several years to come. Begum Khaleida Zia, the then Prime Minister and the Leader of the House of the 5th Parliament introduced the 12th Amendment Bill in the Parliament for conversion of the presidential system of government into a parliamentary system of government, thereby restoring to the representatives of the people the right to exercise the power and the authority of the people from the floors of the Parliament. The House of the Nation now consists of 300 members elected by the direct vote of the people from the different constituencies of Bangladesh who, in turn elects 30 members to the reserved seats for women. These 330 members decide the fate of the country by deliberating on the floors of the Parliament and holding the government accountable to the people. This is how the government becomes responsible. Issues are supposed to be discussed and decided on the floor of the Parliament through the interaction of the government and the opposition.

The leader of the opposition plays a very important role in holding the government accountable to the people by criticising its activities which cannot be supported in the interest of the people and, at the same time, by supporting the government in its action which truly serve the interest of the people. It is, therefore, essential that the leader of the opposition should have a great say in the affairs of the Parliament and its proceedings, and that she

should be allowed to intervene any time in the course of discussion on any issue in the Parliament.

Bangladesh is infested with problems and all the problems are supposed to be discussed in the Parliament so as to enable the government to take a decision thereon and in this discussion the opposition is supposed to play its due role by helping the government either through its support or through its criticism. Either way, this is the opposition's co-operation, which helps the government arrive at a decision. During the recent visit of US President Bill Clinton, this point came up for discussion when the US President made no pretence in saying that Bangladesh is a promising country and that United States and the European States view Bangladesh as a country of tremendous possibilities for the future, particularly, when India and Pakistan have locked themselves up in nuclear armament. The leader of the opposition, Begum Khaleida Zia was asked by the US President as to why Bangladesh could not fulfil this expectation of US and the European States in really

becoming a promising country by making the Parliament more participatory and more viable. The reply was not a surprise for the President because he must have been already aware of it. Begum Khaleida Zia said how could you expect anything from this Parliament when the opposition is not allowed to play its due role. She referred to the two treaties, namely the Water Treaty and the Chittagong Hill tract Treaty, the two most important national issues not at all being allowed to be discussed in the Parliament. She specifically mentioned the degrading treatment being meted out to the opposition MPs by the administration under the control of the party in power. She made no reservation in saying that the members of the Parliament are assaulted on the street and several false cases have been lodged against them. If a member of the opposition stands up in the Parliament to bring these abuses to the notice of the Speaker and through the Speaker to the people of the country, they are not given the floor. In what way can this Parliament, therefore, be made meaningful? The leader of the

opposition categorically stated that it was her government which introduced the Parliamentary system once the system was disrupted by the previous government of the present party and it was her government again which ensured the opposition to play its due role in the 5th Parliament following the reintroduction of the Parliamentary system and it was the desire of her party, the Bangladesh Nationalist Party, to make the Parliament meaningful and it is because of this that an early election to the Parliament is now being sought by her party. What the leader of the opposition said are not merely allegations -- these are the reasons as well why Parliament is not functioning. These are the reasons why the proper exercise is not being made of the power of the people by their representatives. These are the reasons why the country is in shambles because the people's institutions are non-functioning. These are the reasons why the system of election, judiciary and all other democratic institutions are being destroyed one by one. The nation must address this issue most seriously and try to do whatever

it can to save itself.

Parliament has to be made meaningful and the centre point for discussion of all the important national issues. Unfortunately, in this Parliament "discussion" itself is an issue, a problem. This difficulty is not difficult to surmount. This is a question of attitude as to whether the people representing the Parliament would make the institution work properly. It is a question of attitude as to whether constitutional provision for the transfer of power should be upheld or not. It is a question of attitude as to whether the parliamentary provision should be given a goodby by making street agitation and other unconstitutional exercise the means for the transfer of power. Discussion has to be made easy on the floors of the Parliament. Opposition has to be given the adequate opportunity to play its due role holding the government accountable and responsible to the people. It is true that to avoid unnecessary irrelevant discussion the Parliament's time has to be controlled but unfortunately what has been happening in the Parliament

now is that the control is more on useful issues so as to enable the Parliament to discuss undesirable and irrelevant issues. Filthy language is used -- members attack each other on personal considerations. Leader of the House uses offensive language towards the Leader of the Opposition -- the environment is not conducive for smooth functioning of the Parliament. Issues bygone by generations become the focal point of discussion followed by mudslinging which has no qualification. Ceaseless efforts are being made by the parties to condemn each other on issues that are no more real or important. All these attitudes have to be changed. Parliament has to be made the focal point of all the national issues. These issues have to be discussed with no limit to discussion, with no restriction on the opposition and with the opposition given the opportunity to intervene freely. The leader of the Opposition should have right to the floor as that of the leader of the House. With the pressing of the button, the floor should be made available to her and she should be allowed to intervene instantly with the pressing of the button.

The party in power must understand that the participation in a discussion by the opposition will help them although this may mean criticism from the opposition. At the end of the day it is the majority in the Parliament which is taking this decision but in so deciding the party in power must understand that the opposition could also be helpful in bringing about points missed by the ruling party or by bringing into the

notice of the government some such points which may adversely effect the people. In every way it helps. Opposition should also be having an attitude of co-operating with the government by criticising it not always in the interest of bringing the government down but also to help the government in arriving at a decision in the interest of the people. There should be healthy interaction of the government and the opposition on the floor of the Parliament. Personal considerations have to be totally discarded. Frontal personal attack has to stop. That the Members of the Parliament are representing the people and are there in the Parliament to serve the interest of the people should be primarily in their mind and not even for a moment they must realise that the time taken in the floor are the people's time and they are not their personal time and for each moment that they spend of the people's time, they must account for it to the people.

I hate to tell the truth. Yet, however hateful it may be, I must tell it. The truth is, the personal attitude of the leaders towards each other has become the partisan attitudes of one party against the other and selfish partisan attitudes of the parties within the House of the Nation are engulfing the whole nation.

The solution is change of attitude.

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How Can the Parliament Work Better

Continued from page 7
quire the CAG to submit such functions in addition to those already mentioned. And the report of the CAG is to be laid to the Parliament and public accounts committee which ought to scrutinise the same to be discussed in the House. People are not aware of any discussion or the report or even the existence of such a report.

In the pre-constitutional law on the CAG made by the President's Order 15 of 1972 has not been updated nor the functioning of it has been detailed by making a proper and appropriate legislation in this respect effective, strict and vigorous. Implementation of financial discipline as envisaged under the Constitution is an urgent need for strengthening financial discipline.

Making Laws and Controlling Delegated Legislation

Legislative powers of the Republic are vested in the Parliament. Hence, the legislative function is its primary domain. Legislative work starts with the initiation of Bills which still remains within the control of the Executive. Under Article 76(2) and under the corresponding Rules of Procedure the committee can examine the draft Bill and other legislative proposals. Under our Constitution it is possible to examine a Bill at the drafting stage and also at the stage of the legislative proposals. This provision is independent of the function of a Select Committee on Bills. The power given under the Constitution has been further reinforced by allowing the power to the Select Committees under Rule 246. It is, therefore, possible to have the legislative proposal from the Ministry or a draft Bill to be examined by the standing Committee of the particular Ministry before the same is introduced by way of a Bill. This power so far has not been exercised by any Committee. The Parliament through its Committee has yet to embark on this unexplored possibility and take initiative in finalising and settling the Bill prior to its introduction. It is important therefore that the select Committee ought to exercise these functions. Parliament keeps on losing its initiative especially on three counts:

a) Firstly, due to the long absence of ministerial standing committees legislators did not have any association with the preparation of Bill. Even though ministerial committees have been constituted, the Bills are not handled by these committees during the preparatory stage, nor they are involved in scrutinising the draft and examining the legislative proposals and to ascertain whether the draft Bill actually reflects the policy behind the law; whether it is likely to accomplish the objects it claims to achieve; whether the law has adequate mechanism for efficient enforcement; whether it is likely to cause any undue hardship on any group of individuals and whether it provides adequate objective criteria so that the law does not become arbitrary in its application and whether the law adequately prescribes the guidelines or controls to legislative policy and the fundamental principles of State policy. The present practice is that the bureaucrats draft the Bill, prepare the policy, and vetted by the Law Ministry and after being approved by the Cabinet it is placed before the Parliament. But there are issues and details, which cannot be examined by the Cabinet in details nor it has the time, nor it

is the job of the Cabinet to perform. Cabinet can also thus benefit by encouraging these Committees to be involved with the Bill at the policy and at the drafting stage of the Bill.

b) Secondly, the Bangladesh Parliament often loses its efficacy in the law making because of allowing the executive to make the law by Ordinance. There are instances when ordinances occupied 60 per cent of the total laws passed by previous Parliaments. The practice of the present government is a significant improvement, as almost all laws are passed by this Parliament. One hopes this trend will continue with future parliaments and the governments. Ordinance making power of the President is an extraordinary emergency measure provided as an exception rather than a rule. During any time when Parliament stands dissolved or is not in session, if the president is satisfied that circumstances exist which render immediate action necessary, he may make or promulgate such ordinances as the circumstances appear to him to require. The satisfaction of the President which is in effect a satisfaction of the cabinet or the Prime Minister, whether subjective or objective satisfaction, is a question yet to be answered by the Court. Sometimes, Ordinances are passed even a week before the Parliament is scheduled to sit or soon after it is prorogued. Nani Palkiwala, an eminent Indian jurist contends that it is patently unconstitutional to bypass the Parliament with impunity. A case in point is Anti Terrorism Act, 1992. How a major legislation such as the Dissolution of Upazila was made by an abrupt form of an Ordinance known as the Bangladesh Upazila Parishad and Upazila (Reorganisation) (Local Ordinance) is another case in point. This ordinance promulgated only a week before the Parliament was scheduled to sit. The ordinance was challenged on various grounds as being ultra vires to Articles 9, 11, 59 and 60. Question was also raised that the repealing Ordinance was ultra vires the power of the President and Constitution "since Article 93 did not empower the making of the impugned ordinance for the following reasons:

i) An organic law providing for a vital aspect of the structure of Government cannot be made by Ordinance circumventing the Parliament.

ii) No facts have been presented by the Government to show that circumstances existed which rendered immediately legislation necessary.

iii) The repealing Ordinance has circumvented the law making procedure of the Parliament.

These arguments which were advanced in the case of Kudrat-e-Elahi Panir was noted in the Judgment delivered by the Appellate Division, but it was bypassed and not answered by the Court as their lordships observed, "The repealing Ordinance having been made into an Act of Parliament the question raised is now academic."

While the scope for judicial review on this ground still remains open, there is no reason, however, why the legislators should not exert their rights to censure the Government for promulgating any Ordinances and even to move the resolution that the executive government should restrain itself adequately and should not bypass the Parliament should there arise such an occasion. Law making through the promulgation of Ordinances should thus

be discouraged at all levels.

c) Thirdly, in addition to this eroding devices to deny or exclude the power of the legislature in law making there is another device through which the major power of law making is delegated by way of Rule making power. An Act of Parliament can delegate the power to make order, Rule, Regulation, by-laws or other instruments having legislative effect. What happens, however, in reality is that a very inadequate piece of legislation is often enacted providing only the skeleton and allowing the officials and executive to frame by-laws, regulations and orders thereby making the executive the real law-makers. Often these Acts of Parliament even omit to provide the guidelines and criterions for making the Rules and for the exercise of the discretion by the Executive. Quality of law thus becomes very poor leaving major area uncertain in the hands of the bureaucrats and executive at the mercy of their unbridled discretion. This excessive delegations almost amount to the abdication of the legislative power of the Parliament. During the wartime in England this form of delegation increased in numbers. Besides many economic and social legislation warranted the delega-

being consulted to enable them to tender advice and a sufficient opportunity to tender the advice before the mind of the authority becomes unduly fixed. Consultation may also take place on a more informal non-statutory basis.

All these devices need to be tried and adopted in the law making processes by our Parliament so that bureaucrats and executive authorities do not become absolutely despotic. Unguided and unwieldy discretion given under the law can cause serious economic hazard and become the source of breeding corruption.

Parliament in Policy Formulation

It is the Parliamentary practice that all major policy issues must be deliberated in Parliament. Parliament thus becomes the centre for policy Statement, policy debates and deliberations, whereas in Bangladesh policies are announced in public meeting, press conference and even during reception meetings. Even the fiscal laws and policies relating thereto are determined in the government secretariat without any deliberation or consultation with the affected groups in the society. Same is in

Parliamentary government has to take every step counting the pulse of the majority members of the legislature, for it may at any time be defeated' on the floor. It is called responsible government mainly because of its two intrinsic features -- individual responsibility of the ministers and collective responsibility of the cabinet.

tion to various commissions for the management of these laws. Craig writes "while wide delegated power could be expected during war or emergency there was growing disquiet about their scope and number in peace time. Some felt that the whole scale of delegation was out of control raising fear that we were about to be ruled by the bureaucrats. The Chief Justice Lord Heward in 1929 voiced these fears castigating this development in the 'new despotism'. As a result committee was appointed to consider delegated legislation and the making of judicial or quasi-judicial decisions by a Minister. Its conclusion can be summarised briefly as follows:

"Delegated legislation is inevitable but could be improved by clear terminology; by defining the delegated power as clearly as possible; and the adequate facilities for publication and legislative scrutiny". Result was the Statutory Instrument Act 1946. There are numerous ways in which delegated legislation may come before the House. Various methods can be identified:

1) The empowering legislation may simply require the subordinate legislation to be laid before the House and the laying should take place before the Instrument comes into force.

2) Second mechanism accords the control on the floor of the House. This may be supplemented by the scrutiny committee. This can also be controlled through consultation. A general discretion may be left with the relevant authority to consult such interest group as appeared in the Statutes may be more explicit as to which interest should be consulted. Where a duty to consult exists, it requires the authority to supply sufficient information to those

the area of policy making. Wide and unguided discretions are enjoyed by officials. Laws and regulations are made in such manner so that they can be easily twisted in favour of a particular group or can be so interpreted as to make it difficult for people for whose benefit those law or rules are to be applied. Thus, the entire perspective gets lost. Full advantage of Article 76 through Committee system to bring the bureaucracy under Parliamentary control has not been availed yet. The hearing in the committee needs to be within the public view in order to have transparency in the policy making. The role and thinking of those associated with the policy making are also known to the public. Hence, necessary changes to the law need be made so that bureaucrats also become accountable through committee system and through scrutiny which be done within public view.

It is a parliamentary convention or culture that major governmental policy statements are first made in parliament. If the parliament approves the policy, only then the government can implement it. But no such parliamentary culture has yet been developed in our parliamentary democracy. There need to be more deliberations, public debates and access to information regarding government's policy making process.

Parliamentary Control of the Executive: A Myth or Reality

Traditionally the spirit of Parliamentary government lies in the sense that unlike Presidential form of government, this form of government is directly responsible to the legislature. Parliament does not govern the country but government

is formed from within the Parliament and Parliament retains the stick to beat the government any time it goes beyond the limits expected of it. The underlying principle of a Parliamentary system is that the government is directly responsible to the legislature. Parliamentary government has to pass every step counting the pulse of the majority members of the legislature, for it may at any time be defeated on the floor. It is called responsible government mainly because of its two intrinsic features -- individual responsibility of the ministers and collective responsibility of the cabinet. The principle of collective responsibility is said to be the greatest device of making the government responsible to Parliament and public. Article 55 of our Constitution provides for collective responsibility to the effect that "the cabinet shall be collectively responsible to Parliament." But ironically enough, this provision for collective responsibility has become a soundless vessel because of Article 70 of the Constitution. The cabinet is always sure that it is not going to be defeated by motion of no confidence or no member of the party has right to vote against the party.

Art. 70: A Restraint on Freedom of Conscience but a Necessity to Prevent Party Defection

The cabinet does not need to feel the pulse of the majority members. It is the legislators who go by the pulse of the party leaders. So obviously it is easier for the Prime Minister to exercise dictatorial power and hence the lofty idealism with which the Parliamentary government was originally conceived has been negated. On the one hand, article 70 has undoubtedly undermined the spirit of parliamentary democracy and on the other hand, anti-defection law under article 70 is a political necessity in Bangladesh, may be also necessary for other developing countries, however undemocratic it may appear. It should not, however, be forgotten that in the name of stable government the whole spirit of responsible government and freedom of conscience can be negated either. But such has been the outcome of Article 70 when major laws of vital national interest were made by Ordinances and got approval without any protest or challenge. Again, politics in developing countries like Bangladesh is not necessarily based on broad principles or issues. Mostly political parties are characterised by the politics of convenience, self-interest, greed and power expectation. They are personality oriented with followers clustering around a party leader who in turn becomes virtual dictator. So what is urgently needed is to find a compromise process whereby floor crossing can be prevented and the spirit of responsible Parliamentary government can also be sustained. The existing provision of article 70 is quite destructive to the spirit of Parliamentary Democracy. Normally a Bill is not necessarily connected with the stability of the government, the provisions of article 70 may be restricted to a vote of a no-confidence motion only. The government may fail to pass a bill, be it a money bill or cut motion or any other bill. But failure to pass a bill or even defeat in a cut-motion does not mean the fall of the government. The government has to face a no-confidence motion and loose before it falls. If this anti-defection

law is applied only to motions of no confidence, MPs will have freedom to oppose an undemocratic bill or refuse approval of an Ordinance. As a result, rule of law and the spirit of responsible Parliamentary government may not be totally lost. A proviso may, therefore, be inserted by way of an amendment to article 70 to the following effect:

"Provided that the provision of this Article shall be applicable only when the government faces a motion of no-confidence or in an extra ordinary circumstance when the party gives a whip passed by two third majority in the Parliamentary Party."

Conclusion

Ultimately it is the belief and the commitment of the leaders and the legislators whether they perceive the Parliament as a mere ladder for climbing to power or as institution for people to be effective participant in governance. It is such commitment and competence of their representatives both collectively and individually which will make the Parliament function in its proper context and with the Constitutional objectives. It is necessary therefore to create an environ-

ment for healthy Parliamentary culture to grow. Quality of debates must improve in order to establish its influence and credibility over the society. The present state of environment and the poor quality of debate and the lack of content in the debate may be due to lack of Parliamentary culture. May be also due to lack of interest in the Parliamentary work and obviously due to lack of continuity in Parliamentary practice. Many of them may not have experience nor do they possess the necessary knowledge to undertake the legislative work. In evaluating the quality of debate in the Indian Parliament, it was said that reason for deterioration was the fact that the quality of membership had deteriorated. "For this every Political Party is responsible. Party tickets are no longer given on consideration of merit, on the potentiality of the person to develop as a serious and dedicated member of the highest legislature of the country, but on consideration other than merit. Unflinching loyalty to a person is a unique norm for selecting party candidates and it has no parallel in the annals of any country with a democratic system of government."

In order to increase healthy and democratic culture both in party as well as in the Parliament, political party and the leadership must be made accountable to the nation like any other institutions. Ways must be found as to how this can be achieved through public opinion building, conducting voters' education and through media campaign. It has also become very important to introduce necessary reforms in the electoral laws so that election expenses can be brought to the minimum.

The most negative trend in the present Parliament is the boycott of the session by the opposition. Their grievance is that they do not get adequate time in Parliamentary deliberation. If that be the case then there should be renewed vigour for getting adequate time of the House but not to deprive the people their right to representation. If it is the protest against any repressive measure by the government against opposition it needs to be ventilated in the Parliament so that people may come to know the grievance and hear what the government has to say in reply.

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ওয়াসা

রক্তস্রাব

মহন

স্বাধীনতার

সকল

শহীদদের

প্রতি

জনাই

গভীর

শ্রদ্ধাঞ্জলি

শুধু মৌসুমে পানির চাহিদা স্বাভাবিকের তুলনায় অনেক বেশী। তাই পানি ব্যবহারে মিতব্যয়ী হয়ে অন্যের পানি প্রাপ্তিতে সহযোগিতা করুন। অপ্রয়োজনে পানির কল খোলা রাখবেন না। ক্রেতায়ুক্ত পানির কল বদলিয়ে ফেলুন।

বালতি, ড্রাম বা অন্য কোন পাত্রে জমিয়ে রাখা পানি ব্যবহার না করলেও বাসি হয় না। এ' পানি ফেলে না দিয়ে নিত্য প্রয়োজনীয় কাজে ব্যবহার, এমনকি ইচ্ছে করলে ফুটিয়ে পান করতে পারেন।

গোসল, কাপড় কাঁচা, হাত-মুখ ধোয়া প্রভৃতি কাজে পানি ব্যবহারে যতটা সম্ভব মিতব্যয়ী হোন।

বাড়ীর ভূ-গর্ভস্থ ও হাদের জলাধার থেকে পানি উপচে' পড়া রোধে স্বয়ংক্রিয় ফ্লোট ডাঙ্ক/ বলক্ব ব্যবহার করুন।

গাউনিং ও গাড়ী ধোয়ার কাজে পানির ব্যবহার পরিহার করুন। জরুরী প্রয়োজনে হোস পাইপের পরিবর্তে বালতি বা কানে পানি রেখে ব্যবহার করুন।

পানির লাইনে কোন লিকেজ পরিলক্ষিত হলে তৎক্ষণিকভাবে ঢাকা ওয়াসার অভিযোগ কেন্দ্রে জানান।

আপনার সেবায় নিয়োজিত

ঢাকা ওয়াসা