

FOCUS

Towards Freedom of the Lawmakers

Citizens' freedom of thought and conscience is integral to a democratic society, while such freedom for a legislator is a pre-requisite to give a parliamentary democracy a true representative character. But without an unfettered right to freedom of speech and expression, freedom of thought and conscience is nothing more than a political rhetoric. What is the use of freedom of thought and conscience, if one is not allowed to express his/her thoughts unconditionally, or act freely at the dictates of conscience?

The constitution of Bangladesh has made a distinction between freedom of thought and conscience, and freedom of speech and expression. It guarantees the former but makes the latter conditional.

A proviso added to the Article 39(1) says that the citizens' right to freedom of speech and expression is guaranteed, "subject to any reasonable restrictions imposed by law in the interest of the State, friendly relations with foreign states, public order, decency, or morality, or in relation to contempt of court, defamation or incitement to an offence."

The proviso is ambiguous, for the term 'reasonable' is relative and open to varied interpretation. Under the proviso, the ruling classes of the country have so far imposed a lot of 'legal' restrictions, in the form of both laws and rules, on freedom of speech and expression. The democratic minds have never found these restrictions 'reasonable'.

Besides, Bangladesh inherited from the British and the Pakistani regimes a number of laws restricting such freedoms, finding these 'reasonable' from a colonial point of view. But many of such laws are still extant in Bangladesh, as successive governments, irrespective of their political inclination, have considered it 'reasonable' to retain the laws even 29 years after the independence. But politically conscious sections of the society have still been fighting against these laws.

In terms of suppressing 'freedom of expression' and, that too, of elected representatives of the people, the last constitutional blow came in 1991.

Practically, the MPs hardly offer any independent view on any issue inside the House. This is primarily because they are afraid of the party high commands, rather the party chiefs who almost singularly enjoy the authority to make the final decision on any issue. So an MP cannot afford to oppose party views or, in other words, the views of the party chief who is practically accountable to none.

by Nurul Kabir

Ironically, it came a few months after a military dictator had been ousted in the face of a mass uprising parturient with democratic aspirations.

The fifth parliament, created through a general election under a non-party caretaker government, unanimously amended the Constitution to switch back from the presidential system of governance to a parliamentary one. The amendment this time vested all the executive powers a President used to enjoy under the previous system in the Prime Minister.

Essence of a democratic parliamentary system that strikes a check and balance of powers between Parliament, Prime Minister and President was thus undermined.

However, the change that directly affected the MPs' right to freedom of thought and conscience, speech and expression came in the form of an 'Explanation', added to Article 70(1).

The original article barred a parliament member from voting in the House against a political party s/he is elected on the ticket of. '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 of votes in parliament against that party.'

When the Constitution says that a lawmaker would lose seat if s/he resigns from the party s/he was elected on the ticket of, it clearly attaches more importance to a lawmaker's loyalty to his/her political party than to the opinion of the electorate.

Again, when the Constitution says that the MP would lose seat if s/he votes in the House against his/her party, it eventually stands in the way of an MP to act and react at the

dictates of conscience. Besides, it substantially limits an MP's right to the freedom of thought, conscience and expression, as voting is a means of expression of thoughts, while a lawmaker is expected to formulate thoughts conscientiously – keeping the democratic ideals as well as the interests of the electorate in mind.

In a bid to justify such an undemocratic provision, politicians argued that the provision would help stop political horse-trading in the parliament, contributing to political stability. Many, however, found the arguments acceptable, given the moral standards of the country's politicians and the importance of number games in a parliamentary democracy.

But in 1991, the mainstream political parties, especially Bangladesh Nationalist Party, Awami League and Jatiya Party, found the Article 70(1) still inadequate to 'control' the MPs. They, therefore, unanimously came up with a stronger shackles to make sure that no MP can escape punishment even if s/he keeps silent about a party decision, be it unjust or undemocratic. They added the following 'Explanation':

"If a member of parliament – (a) being present in parliament abstains from voting, or (b) absents 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 deemed to have voted against that party."

Article 70 (1), as mentioned earlier, has taken away the freedom of an MP to vote against his/her party. But s/he had at least the scope to abstain from the voting process, and thereby keeping the conscience clear. But, the 'Explanation' has made it a punishable offence for

a lawmaker to abstain from voting – no matter how undemocratic or anti-people a proposal is.

Clearly, all the avenues to follow the dictates of conscience have been blocked, especially when it comes to voting for or against a party proposal. When one is not allowed to cast vote conscientiously, freedom of expression becomes meaningless.

The result is obvious. The MPs do not dare to speak, let alone vote, against anything done or told by the party top notches, even when there is no whipping from the parliamentary parties. Who would risk his/her seat, especially when a successful candidate spends huge amount of money, of course illegally, in the parliamentary polls?

The sense of threat hovering over a lawmaker throws light on another impediment to effective functioning of the country's parliamentary democracy – the lack of democratic practices inside the political parties. Article 70(1), along with its explanation, is relevant when a motion is put to vote in the House. But for rest of the proceedings, the MPs are still free to speak on any issue freely unless they receive 'whips' from their respective parliamentary parties or groups.

But, practically, the MPs hardly offer any independent view on any issue inside the House. This is primarily because they are afraid of the party high commands, rather the party chiefs who almost singularly enjoy the authority to make the final decision on any issue. So an MP cannot afford to oppose party views or, in other words, the views of the party chief who is practically accountable to none.

The case of Akhtaruzzaman, a BNP legislator from a Kishoreganj constituency of parliament, is one example of what would happen to an MP offering an independent view without crossing constitutional barrier imposed by Article 70(1). A few sessions ago, the BNP lawmaker once spoke in the House against the party idea of boycotting parliament sessions. He did neither cast a vote against the BNP, nor did he abstain from voting. But Akhtaruzzaman's party

membership was suspended and he was served with a notice by the BNP high command asking him to explain as to why he spoke his mind in the House. He was also exposed to certain other means of humiliation. To regain the party position, Akhtaruzzaman eventually had to apologise for his 'misconduct'.

In another incident, a couple of ruling party women MPs recently found it impossible to protest against certain 'objectionable' comments made in the House by one of their male party colleagues.

Joyal Hazari, the AL legislator from a Feni constituency, demanded trial of a woman who was exposed to sexual harassment during New Year celebrations on the Dhaka University campus this year. While speaking on the issue in the parliament on January 25 last, Hazari found it 'only natural' that a woman would be assaulted by drunk youths when she joined such midnight parties.

Panna Kaiser, a female MP of the ruling party, found Hazari's statement 'quite insulting to the women'.

"But we could not protest it due to certain obligations," she told a Bangla daily on February 16 last.

Panna Kaiser did not explain her 'obligations'. But Chitra Bhattacharya, another ruling party legislator, did. She ascribed the failure to 'blindness of party politics'.

It is, therefore, clear that the article 70(1) of the constitution

People's Participation: An Elusive Dream

is really frustrating and sad that after so many years, our exhortations against one-sided decisions have always fallen on deaf ears. The leaders have gone ahead with "their" version of decisions, without consulting us. This is, however, hardly a new experience for us. Right from the very first day of Bangladesh's emergence, we, the people, have been tirelessly trying to impress the fact upon the politicians that we are the reason for them to be there. But with an amazing degree of obsessive consistency, they never tried to understand.

by Ekram Kabir

IN Seventy-one, it was tragic, fearful but "hopeful". And in Two-thousand, it is "dismal".

Hopeful, because at that dreadful time people got united against the worst enemies of democracy. Dismal, because after twenty-nine years of independence the people still remain politically neglected.

Today's bleak national scene – political instability and rising insecurity in public life – has overshadowed the grief for the martyrs of Seventy-one. The unity that fought against injustice and won freedom has suffered a setback by the political turns, accompanying the uncaring attitude of persons holding responsible positions, which have been created for people's "convenience". But we, the people, have been denied our rights; we have been divorced from national well-being; we have been deprived of finding true emancipation through the establishment of a true democratic, progressive social outlook.

The desired peace in public life has not been ensured.

Those of us who are eschewing politics are automatically wronged because peace becomes a reality only when we can participate in the political life of "our country". Till now, we have not. Why? Because we could not. The society would get sustenance when we will be able to take part in the decision-making process. That, too, we could not. Our bunch of leaders, mainly parliamentarians, detached from our everyday reality of the people, have always prevented us from having "our share" in the governance. It is politics which never accorded us all our "constitutional rights". And gullible, as we are, we lived with it.

The most disheartening aspect is the absence of people's participation in the law-making process. The latest fiasco over the Public Safety Bill 2000 is

yet another example of bypassing people's wish.

Here, we are also at fault, because we don't have adequate knowledge to challenge the ivory-tower community, the members of the parliament, for dodging our rights. Many of us even don't know that there is a 'petition committee' through which we can contest a law that may not serve our interest. We, however, are not offering any text-book definition here – as there isn't any – of the law-making process, but it certainly provides guidelines for law-making which more often than not have flaunted in our context.

The parliamentarians need to understand that if they for-mulate laws without fully reflecting our opinion, they will in all likelihood fail to bolster people's hopes and aspirations, decreasing thereby the acceptability of such laws before the public. The laws, which have not been well received by the masses simply because they lacked inputs from them, have to be remembered by the law-makers concerned.

It is really frustrating and sad that after so many years, our exhortations against one-sided decisions have always fallen on deaf ears. The leaders have gone ahead with "their" version of decisions, without consulting us. This is, however, hardly a new experience for us. Right from the very first day of Bangladesh's emergence, we, the people, have been tirelessly trying to impress the fact upon the politicians that we are the reason for them to be there. But with an amazing degree of obsessive consistency, they never tried to understand.

We register our protest

against the course of our politics; against how laws are passed in the Jatiya Sangsad

and how the opposition absent themselves from the parliament sessions. We want the element of grace in it, for the sake of our country. We want them to be a party to our nation-building and the "people's representatives" have to let us assert our needs.

A nation cannot democratically grow unless the people's opinion is reflected through the activities of their leaders. In the better democracies, the parliamentarians remain open and alert to public concerns.

In our case, sometimes even members of parliament could

The Future Belongs to Women

"We strongly oppose Jaynal Hajari's statement, but in Parliament we cannot say it. If I stood up and objected to his words, that would've been disregarding the Rules of Procedure. As a responsible MP, I do not have the right to do that. There are a lot of things that we cannot say in Parliament, that, at times, need to be said."

by Navine Murshid

THE women members of Parliament are seen as mere 'ornaments'. They are there just to look good... such is the general perception. This has been so for the greater part of our twenty-nine year old history. Over the years nothing much has changed. Only seven women MPs are directly elected at present. The others have all been nominated for the specified seats. At a time when women are fighting for their rights and trying to establish equality, the prospect of keeping aside seats for women does seem discriminatory against men! So was the idea when the decision was taken?

When Bangabandhu decided to set aside thirty seats specifically for women, he tried to encourage women, bring them into the political scenario. What he tried to do was emancipate women by this method. However, the political scenario here failed to stick to that notion!" said Panna Kaiser, a ruling party woman MP of the 'nominated seats'.

"Did Matiya Chowdhury need a lot of money to win?" was Taslima Hossain's reaction.

One of the major objections regarding the present system is that those who are nominated come into the picture through connections, and connections only. Most of them are not politicians, but have come into the scenario because of their links. This adds to the fact that most women politicians today are here because of their husbands, their fathers, brothers or sisters. Taslima Hossain, a directly elected Jatiya Party MP, feels that there are men as well who sit in Parliament today, because their father or brother were politicians before. Women are not the only ones. Doubts remain in the public eye about their significance. The women MPs are basically seen seated at most times, doing nothing. There are allegations that these women are there to make quorum only. Otherwise there is no use for them. Politically, they have no role to play.

Panna Kaiser said, "Before I joined as an MP in this seat, I believed that the women here are ornaments only. I came in hoping to change that phenomenon. I came in to try out and see if I can make some contribution. I am impressed with the work everyone does here. Every single woman in these seats are sincere, committed and works in the country's interest. People hardly know what we are doing."

Taslima Hossain feels that the disadvantage of not being directly elected is that most often the MPs don't know the people and their districts too well. They keep working for people they don't know and hence there are communication problems at times.

I have to say women MPs work a lot. It's just that they don't get much publicity. In most cases, when an MP goes somewhere he takes the camera along with him. We, women, are not like that. We work sin-

cerely. I have to understand my people, communicate with them, solve their problems not distribute wheat so that it would be shown on TV. There is so much to do. We don't have other interests. Men do. They have businesses and other things to think about. They have to work in their own interest at times it is their source of income. We don't have and hence we are the ones who can really contribute. Within the next five years women will play a much greater role," she said.

Political parties hardly give nominations to women. This is one reason why women representation is so little. Since thirty seats are allocated to them, parties do not feel the need to nominate women to contest in elections. There are allegations that political parties do not nominate women because, in most cases, women do not have money and a level of corruption in them that is required to win elections.

"Most of us in Parliament do not know our way around. We are elected and then seated. But we are not told what to do and how to go about different things. I am a housewife turned MP. I am sincere; I am here to give my best, but I don't know so many things. I have to study a lot. I'm not a very learned Parliamentarian but I am here to learn. We all are. We have to study so that we can tackle things, if the situation repeats itself."

When women have seats allocated for them in Parliament, the incentive to contest in elections is not there. Good connections are all that is required to be an MP. Why work day and night for campaigns and run the risk of not being elected. Lobbying may be a better option – less expenses, less work but huge gains. Not really. There is a lot of discrimination. There is a quota for wheat etc., for MPs. Nominated MPs get only 10 per cent of what the elected MPs get. If the nominated MPs want to say something, they have to wait for long hours before they are given the floor. There is a rule where MPs are asked to raise their hands to say something. In such cases, even if women MPs, especially from the nominated seats, raise their hands, they are ignored most of the time. On the whole, they are forced to feel alienated at times. This is the impression from Panna Kaiser's words.

"I am glad to see that the women MPs are not losing their patience. If their request is being rejected, they request again, and again, and again. Their perseverance speaks a lot for the future role of women MPs. I feel some changes need to be made. Men do not address women's issues and problems. But they need to be addressed. More women should be allowed to speak as well. A fair means of deciding who would speak should be determined by lottery. Then, women's participation would increase significantly. And we would not give the wrong picture of being ornaments anymore."

Panna Kaiser pointed to the Rules of Procedure where a party MP cannot raise a point of order to oppose a statement of another MP of the same party. "Of course we do not share his views. Why only women, a lot of men were irritated by his words. It hampered the status of women in general. We strongly oppose Jaynal Hajari's statement, but in Parliament we cannot say it. If I stood up and objected to his words, that would've been disregarding the Rules of Procedure. As a responsible MP, I do not have the right to do that. There are a lot of things that we cannot say in Parliament, that, at times, need to be said," she said. Taslima

was not present in Parliament that day. But even if she were, she would not have been able to object, because she does not know how to do that.

"Most of us in Parliament do not know our way around. We are elected and then seated. But we are not told what to do and how to go about different things. I am a housewife turned MP. I am sincere; I am here to give my best, but I don't know so many things. I have to study a lot. I'm not a very learned Parliamentarian but I am here to learn. We all are. We have to study so that we can tackle things, if the situation repeats itself."

When women have seats allocated for them in Parliament, the incentive to contest in elections is not there. Good connections are all that is required to be an MP. Why work day and night for campaigns and run the risk of not being elected. Lobbying may be a better option – less expenses, less work but huge gains. Not really. There is a lot of discrimination. There is a quota for wheat etc., for MPs. Nominated MPs get only 10 per cent of what the elected MPs get. If the nominated MPs want to say something, they have to wait for long hours before they are given the floor. There is a rule where MPs are asked to raise their hands to say something. In such cases, even if women MPs, especially from the nominated seats, raise their hands, they are ignored most of the time. On the whole, they are forced to feel alienated at times. This is the impression from Panna Kaiser's words.

"I am glad to see that the women MPs are not losing their patience. If their request is being rejected, they request again, and again, and again. Their perseverance speaks a lot for the future role of women MPs. I feel some changes need to be made. Men do not address women's issues and problems. But they need to be addressed. More women should be allowed to speak as well. A fair means of deciding who would speak should be determined by lottery. Then, women's participation would increase significantly. And we would not give the wrong picture of being ornaments anymore."

Panna Kaiser pointed to the Rules of Procedure where a party MP cannot raise a point of order to oppose a statement of another MP of the same party. "Of course we do not share his views. Why only women, a lot of men were irritated by his words. It hampered the status of women in general. We strongly oppose Jaynal Hajari's statement, but in Parliament we cannot say it. If I stood up and objected to his words, that would've been disregarding the Rules of Procedure. As a responsible MP, I do not have the right to do that. There are a lot of things that we cannot say in Parliament, that, at times, need to be said," she said. Taslima

was not present in Parliament that day. But even if she were, she would not have been able to object, because she does not know how to do that.

"Most of us in Parliament do not know our way around. We are elected and then seated. But we are not told what to do and how to go about different things. I am a housewife turned MP. I am sincere; I am here to give my best, but I don't know so many things. I have to study a lot. I'm not a very learned Parliamentarian but I am here to learn. We all are. We have to study so that we can tackle things, if the situation repeats itself."

When women have seats allocated for them in Parliament, the incentive to contest in elections is not there. Good connections are all that is required to be an MP. Why work day and night for campaigns and run the risk of not being elected. Lobbying may be a better option – less expenses, less work but huge gains. Not really. There is a lot of discrimination. There is a quota for wheat etc., for MPs. Nominated MPs get only 10 per cent of what the elected MPs get. If the nominated MPs want to say something, they have to wait for long hours before they are given the floor. There is a rule where MPs are asked to raise their hands to say something. In such cases, even if women MPs, especially from the nominated seats, raise their hands, they are ignored most of the time. On the whole, they are forced to feel alienated at times. This is the impression from Panna Kaiser's words.

"I am glad to see that the women MPs are not losing their patience. If their request is being rejected, they request again, and again, and again. Their perseverance speaks a lot for the future role of women MPs. I feel some changes need to be made. Men do not