



## LAW opinion



## LAW news



# Proposed increase of seats in the Parliament: A legal view

BARRISTER HARUN-UR-RASHID



PHOTO: STAR

BEFORE, I discuss the question of the proposal of increasing seats of parliament, it seems appropriate to ask: What is a Constitution of a country? To use a homely simile, a constitution is a costume made to measure and is actually worn and not to hang in the wardrobe.

Most constitutional experts consider possession of Constitution a necessary part of existence of statehood. It is a sign of political independence and maturity. A Constitution is often called a fundamental law because it cannot be amended by a vote of simple majority of members of parliament. Ordinarily it can be amended either by a vote of two-thirds or three-fourths majority of the total number of members of parliament.

A constitution is a fundamental document on the basis of which a democratic state is run. It has primarily two objectives: (a) laying down economic and social goals of the people and (b) enumeration of functions of the three organs of a state, namely, executive, parliament and judiciary. The executive arm administers, parliament enacts laws and judiciary interprets and applies laws. It was the English political philosopher John Locke (1632-1704) who first distinguished between three organs of a state.

In 1831, a 25-year old French aristocrat, Alexis de Tocqueville journeyed for nine months through America and wrote a book "Democracy in America" in which he wrote: "I saw in America more than America; it was the shape of democracy itself which I sought" under the unique provisions of American Constitution.

The above paragraphs indicate the importance of a Constitution as it goes to the heart of running a state. The debate and discussion by framers of Constitution suggest that a Constitution is adopted on the basis of consensus of elected members of all political parties.

Many political scientists insist that democracy is more than holding periodic elections. At its base is tolerance, respect for other's views and compromise for a peaceful society. To discover the type and amount of democracy in a country is to judge as to what extent these attributes exist or not. Although democracy is the rule of the majority where the minority has the right to criticise the majority for its misuse or abuse of power, tyrannical majority and recalcitrant minority are the enemies of democracy, according to an eminent constitutional expert, Sir Ivor Jennings.

A lack of consensus among political parties on the nature of Constitution is likely to paralyse the political process in a democratic society. In other words democratic governments are run with consent of the people that is expressed ably from Rousseau's concept of "general will".

Let us now examine the proposal of increase of seats in the Bangladesh parliament. It has been reported that the ruling coalition government led by BNP proposes to increase from 300 to 450 parliamentary seats (50 reserved seats for women elected indirectly).

In this connection a question that merits

attention is: Did the increase of seats in the parliament find a place in the 2001 election manifesto of BNP and Awami League- the two main political parties in the country?

It appears that BNP's election manifesto included "a 500-strong parliament and increased reserved seats for women", while that of Awami League, "sixty parliamentary seats for women and direct election to these" was incorporated. Therefore, both the main parties proposed increase of parliamentary seats, but the numbers varied.

The BNP-led coalition secured 201 seats (now it has 219) out of 300 in the parliament following the election in October 2001. This means that they have two-thirds majority in the parliament required to amend any provision of the Constitution (Article 142). Hence, the ruling BNP-coalition government is legally empowered to amend any provision of the Constitution.

One central question needs to be asked: Can the ruling coalition government amend a provision of the Constitution (increase of seats in parliament) without consensus of other political parties represented in the parliament? Many factors are involved to answer this question but five in particular deserve mention:

First, political power is not to be exercised arbitrarily. Power entails obligation and responsibility. There are two important legal principles involved in the exercise of power in amending the Constitution. One is the doctrine of palpable fairness and the other is doctrine of purpose. This means that people should perceive fairness in the proposal and further the purpose of the proposal must be seen to be in the public interest, benefit of any political moti-

vation.

Second, the constitution of 1972 reflects the wishes and aspirations of the entire people of Bangladesh. In its preamble it states that the Constitution is the "embodiment of the will of the people of Bangladesh" (paragraph 4 of the preamble of the Constitution). This means that the will of the people of the country is reflected through the Constitution. Accordingly it is reasonable to argue that consensus of members of all political parties represented in the parliament is required.

Third, during the 2001 election, the popular vote of political parties as reported in the media was as follows: Awami League 40.13%, BNP secured 40.97%, Islami Jatiya Oikyo Front led by H.M. Ershad 7.25%, Jamaat 4.28%, Bangladesh JP 1.12% and Islami Oikyo Jote 0.68%. Record shows that both BNP and Awami League in fact increased their popular vote in the 2001 election from their position in 1996.

Fourth, since Awami League has obtained a little more than 40% of popular vote, it represents a sizeable section of population of the country, although it was only able to secure only 62 seats (now it is 58) in the parliament because of the existing first-past-the-post electoral system. Had it been a proportional representation, Awami League would have 40% of the 300 seats (i.e. 120 seats) in the parliament. Consequently, from the point of view of popular vote, one may argue that the views of Awami League cannot be ignored in the proposal of increasing the number of seats in the parliament. However Awami League seems to disappoint the will of the voters in boycotting the parliament.

Finally, can Bangladesh, being a least developed country, afford to carry the burden of huge additional expenditure required to upkeep the needs of additional MPs?

A constitution is a living document. It has to march with the time and adapt itself flexibly to the exigencies of the situation. At the same any amendment affects the whole society. Given the increase of population, the proposal *per se* seems to be consistent with manifesto of both BNP and Awami League. But the catch is in the process of implementing the proposal.

Politics cannot totally be separated from morality and therefore the process must be seen to be fair and the purpose should be in the interest of public. The proposal should not suffer from political motivation or ulterior motive. The process must be transparent and should reflect the wishes of the people.

It may be argued that there are two ways of doing it: (a) a consensus to be arrived at by members of all political parties represented in the parliament or (b) a referendum may be held to elicit the wishes of the people.

Although the provision of referendum as provided in Article 142.1A of the Constitution, is restricted only to amendment of Article 8 (fundamental principles of state policy), Article 48 (President's power) and Article 56 (Prime Minister's power), there seems to be no legal bar for the parliament, being the supreme elected body of people, to adopt a resolution holding a referendum, thereby giving a chance to people to express their views on this important national question.

Barrister Harun-ur-Rashid is former Bangladesh Ambassador to the UN, Geneva.

ELISABETH ZIMMERMANN

Almost 59 years after the death of Dutch resistance fighter Jan Houtman, the trial of 88-year-old former Nazi SS (SchutzStaffel) member Herbertus Bikker opened on September 8, 2003, in the German district court of Hagen. Bikker is accused of shooting the 27-year-old Houtman to death on November 17, 1944, on a farm in the Netherlands district of Dalfsen.

The trial sheds light on the brutal occupation of the Netherlands by Hitler's National Socialist regime and the terrible consequences for resistance fighters at the hands of both the military secret service and their helpers, Dutch collaborators.

Thus, according to the German Constitution of 1949, they could not be turned over to other countries. The "Führer-edict" decreed in May 1943, which designated them to be German nationals.

But, according to the German Constitution of 1949, they could not be turned over to other countries. The "Führer-edict" decreed in May 1943, which designated them to be German nationals.

It took another six years before Bikker was summoned to appear before a Dortmund court in the mid-1950s, but the case was discontinued due to "lack of evidence." The Netherlands' courts were reluctant to hand over their evidence to the German courts.

Bikker lived undisturbed in Hagen in North-Rhine Westphalia for the next 50 years. It was only by virtue of Bikker's own boast of having shot Jan Houtman, in a 1997 interview with Stern reporter Werner Schmitz, that a lawsuit was finally undertaken.

Describing the events on November 17, 1944, as he lined up and shot Houtman, a member of the resistance group "knokploeg," Bikker told Schmitz, "And then I gave him the final shot."

After the fall of the Nazi dictatorship in May 1945 and the liberation of the Netherlands, Bikker was initially sentenced to death in 1949 by a Netherlands court.

After an appeal the sentence was altered to life imprisonment. On December 26, 1952, Bikker and six other convicted war criminals, all members of the Dutch Waffen-SS or the secret police, managed to escape from the prison in Breda. They fled over the German-Netherlands border and reported to a German police station. There they were told to pay a 10 deutscher mark fine for illegally crossing a border and were able to con-

tinued their escape unhindered. They received assistance in Germany from former SS members who were once again occupying influential positions.

The legal basis upon which authorities refused to extradite Bikker and other escapees to the Netherlands rested upon a "Führer-edict" decree issued in May 1943, which designated them to be German nationals.

It took another six years before Bikker was summoned to appear before a Dortmund court in the mid-1950s, but the case was discontinued due to "lack of evidence." The Netherlands' courts were reluctant to hand over their evidence to the German courts.

Bikker lived undisturbed in Hagen in North-Rhine Westphalia for the next 50 years. It was only by virtue of Bikker's own boast of having shot Jan Houtman, in a 1997 interview with Stern reporter Werner Schmitz, that a lawsuit was finally undertaken.

Describing the events on November 17, 1944, as he lined up and shot Houtman, a member of the resistance group "knokploeg," Bikker told Schmitz, "And then I gave him the final shot."

After the fall of the Nazi dictatorship in May 1945 and the liberation of the Netherlands, Bikker was initially sentenced to death in 1949 by a Netherlands court.

After an appeal the sentence was altered to life imprisonment. On December 26, 1952, Bikker and six other convicted war criminals, all members of the Dutch Waffen-SS or the secret police, managed to escape from the prison in Breda. They fled over the German-Netherlands border and reported to a German police station. There they were told to pay a 10 deutscher mark fine for illegally crossing a border and were able to con-

tinued their escape unhindered. They received assistance in Germany from former SS members who were once again occupying influential positions.

The legal basis upon which authorities refused to extradite Bikker and other escapees to the Netherlands rested upon a "Führer-edict" decree issued in May 1943, which designated them to be German nationals.

It took another six years before Bikker was summoned to appear before a Dortmund court in the mid-1950s, but the case was discontinued due to "lack of evidence." The Netherlands' courts were reluctant to hand over their evidence to the German courts.

Bikker lived undisturbed in Hagen in North-Rhine Westphalia for the next 50 years. It was only by virtue of Bikker's own boast of having shot Jan Houtman, in a 1997 interview with Stern reporter Werner Schmitz, that a lawsuit was finally undertaken.

Describing the events on November 17, 1944, as he lined up and shot Houtman, a member of the resistance group "knokploeg," Bikker told Schmitz, "And then I gave him the final shot."

After the fall of the Nazi dictatorship in May 1945 and the liberation of the Netherlands, Bikker was initially sentenced to death in 1949 by a Netherlands court.

After an appeal the sentence was altered to life imprisonment. On December 26, 1952, Bikker and six other convicted war criminals, all members of the Dutch Waffen-SS or the secret police, managed to escape from the prison in Breda. They fled over the German-Netherlands border and reported to a German police station. There they were told to pay a 10 deutscher mark fine for illegally crossing a border and were able to con-

tinued their escape unhindered. They received assistance in Germany from former SS members who were once again occupying influential positions.

The legal basis upon which authorities refused to extradite Bikker and other escapees to the Netherlands rested upon a "Führer-edict" decree issued in May 1943, which designated them to be German nationals.

It took another six years before Bikker was summoned to appear before a Dortmund court in the mid-1950s, but the case was discontinued due to "lack of evidence." The Netherlands' courts were reluctant to hand over their evidence to the German courts.

Bikker lived undisturbed in Hagen in North-Rhine Westphalia for the next 50 years. It was only by virtue of Bikker's own boast of having shot Jan Houtman, in a 1997 interview with Stern reporter Werner Schmitz, that a lawsuit was finally undertaken.

Describing the events on November 17, 1944, as he lined up and shot Houtman, a member of the resistance group "knokploeg," Bikker told Schmitz, "And then I gave him the final shot."

After the fall of the Nazi dictatorship in May 1945 and the liberation of the Netherlands, Bikker was initially sentenced to death in 1949 by a Netherlands court.

After an appeal the sentence was altered to life imprisonment. On December 26, 1952, Bikker and six other convicted war criminals, all members of the Dutch Waffen-SS or the secret police, managed to escape from the prison in Breda. They fled over the German-Netherlands border and reported to a German police station. There they were told to pay a 10 deutscher mark fine for illegally crossing a border and were able to con-

## FACT file



# Use of child soldier continues unabated



Children continued to be used as soldiers, sexual slaves, labourers, porters and spies throughout 2003 in both newly-erupting and long-standing conflicts, according to a report released by the Coalition to Stop the Use of Child Soldiers. The report details evidence of governments and armed groups recruiting and using child soldiers in numerous conflicts worldwide. The Coalition calls for action by the UN Security Council to insist upon and enforce an end to child recruitment.

The 50-page report, "Child Soldier Use 2003", is intended to help the Security Council formulate concrete solutions during its annual debate on children and armed conflict. The Coalition report identifies 18 different countries in Africa, Asia, Latin America and the Middle East where child soldier issues remain part of the gross abuse of human rights in an armed conflict or its aftermath.

The Coalition's report provides evidence that in many conflicts, such as Côte d'Ivoire, parts of the Democratic Republic of Congo (DRC) and Liberia, a massive increase in recruitment occurred during 2003. Horrifying reports emerged from the DRC of children

being raped and tortured, as well as forced to commit atrocities against civilians. Abductions of children in northern Uganda are at the highest point of the conflict's 17-year history. Thousands of children in northern Uganda continue to flee their homes at night to avoid being abducted into brutal combat and servitude.

In Myanmar there was little if any progress in ending child soldiering, with an estimated 70,000 children in the government armed forces. Exiled children told of being abducted by government forces and taken to military camps where they were subject to beatings, forced labour and combat. Recent reports from Colombia reveal that the number of children used by armed groups may have increased to around 11,000 in recent years, with children as young as 12 trained and deployed to use explosives and weapons. In Sri Lanka the forced conscription of children by the armed opposition Tamil Tigers of Eelam (LTTE) continues, despite LTTE pledges to demobilise children from their ranks.

The Coalition recommends that Security Council members should:

Make sure there is an annual updated list of all parties to armed conflict that recruit or use child soldiers;

Follow up on this list by asking those using child soldiers to provide within 90 days information on steps they are taking to end recruitment and use of child soldiers;

Designate a UN representative to start talks with those using child soldiers, and to assist them in developing action plans with them to end such practices;

Verify whether armed groups and forces are implementing such action plans;

End weapons flows, particularly small arms, to those recruiting and using children; and

Use other means to enforce an international ban on child soldiering, such as travel restrictions on leaders using children in their armies, banning them from attending international events and organisations, ending military assistance to their governments or groups, and restricting the flow of financial resources to the parties concerned.



Sources: Amnesty International.