

Dispersal of power for check and balance

C M SHAFI SAMI

In Bangladesh, for some time now, various constitutional issues are receiving extensive public attention the like of which has never been seen before. Many of these issues focus on the democratic deficit in the country and a plethora of ideas have been floated on the need for dispersal of power in the government at the central level to overcome that. In dealing with these issues it is important to keep in perspective the history of constitutional developments and its pitfalls in Bangladesh as well as in the regional countries.

The constitution of Bangladesh provides for a parliamentary system of government with a unicameral legislature on a modified Westminster model. The members of the legislature—the Jatiyo Sangsad—are elected by universal adult suffrage. A member who the President feels commands the confidence of the majority in the parliament is invited to be the Prime Minister. The cabinet is headed by the Prime Minister who selects the ministers to be appointed by the President. The President is the head of the state and 'executive actions' of the state are taken in 'the name of the President'. But 'all executive powers' are vested in the Prime Minister. The constitution provides for a powerful and strong Prime Minister and the presidency is largely a ceremonial office. In the exercise of 'all his functions' except for the appointment of the Prime Minister and the Chief Justice of the Supreme Court, the President is obliged to act in accordance with the 'advice of the Prime Minister'. The President cannot dismiss the Prime Minister; he does not have the powers to dissolve the parliament, except on the advice of the Prime Minister. The President is the Supreme Commander of the Armed Forces. He also has the prerogative of mercy and can grant pardon, remit, suspend or commute any sentence. In these areas too he acts on the advice of the Prime Minister.

In neighboring India executive power is 'vested in the President'. The Council of Ministers 'aids and advises' the President and 'he acts in accordance with such advice'. The executive powers are thus virtually 'vested in the Cabinet'. The Prime Minister is the head of the Council of Ministers and in that perspective he is a 'primus inter pares'—a first among equals. In contrast all executive powers in Bangladesh are vested in the Prime Minister and not the Cabinet. Indian constitution provides that the Prime Minister will act as a channel between the President and the Cabinet. The President of India may require the Cabinet to reconsider such advice, either generally or otherwise, and the President is obliged to act in accordance with the advice tendered after such reconsideration. The Prime Minister is appointed by the President and the other Ministers are appointed by

The current imbalance in Prime Ministerial power is many faceted; the imbalance is not only vis-à-vis the President but also vis-à-vis the Cabinet itself, the other ministers as well as the legislature. The issue needs to be seen in a holistic manner and addressed in its entirety. Secondly, between 1947 and 1956 when the Constitution of Pakistan was adopted there indeed was a balance of power between the Prime Minister and the Governor General who could dismiss the former as well as dissolve the parliament. Pakistan's constitutional history of this period is replete with instances of how that power was used to weave palace intrigues.



him on the advice of the Prime Minister. The Council of Ministers is collectively responsible to the House of the People the Lok Sabha. The ministers including the Prime Minister hold office during the pleasure of the President. In other words the President has the power to dismiss them. He also enjoys power to dissolve the Lok Sabha. The supreme command of the Defence Forces is vested in the President and the exercise thereof shall be regulated by law.

The President has never, on his own volition, exercised the power to dissolve the Lok Sabha, nor has he exercised the power to dismiss the Prime Minister. Reportedly President Giani Zail Singh toyed with the idea of dismissing Prime Minister Rajiv Gandhi but ultimately refrained from doing so. With regard to removal of a minister from office the President defers to the advice of the Prime Minister. In reality the Cabinet, in accordance with the tenets of parliamentary democracy, exercises full executive powers, albeit in the name of the President. It is evident that at a substantive level the powers of the Indian President are not significantly more than those in Bangladesh. That notwithstanding, the linguistic formulation of various provisions of the constitution, together with powers that he prefers not to exercise and the democratic tradition in India have conferred on the office of the

President the dignity and prestige it deserves. The government also gives highest respect and all due ceremonial honour to the presidency.

The provisions of Bangladesh constitution undoubtedly tilt the balance of power heavily toward the Prime Minister. The situation is further aggravated by certain ground realities. In 1991, when the presidential system was discarded, however, it was incongruously decided to retain for the Prime Minister some executive powers and establishments of the Presidential system as well as some trappings of the presidency. Some of these measures were innovative creations of President Ershad to perpetuate his dictatorial strangle hold on the civil and military establishment at the expense of the powers of other ministries. Most of these are not compatible with the temperament of traditional parliamentary system and are unfriendly to the concept of joint cabinet responsibility and authority. For instance the Armed Forces Division, which diluted the powers of the Defence Ministry and strengthened presidential control over the armed forces, was retained under the direct control of the Prime Minister. The Presidential Secretariat with all its centralized powers continued under the new nomenclature of the Prime Minister's Office. This undermined the all important & acknowledged role of the Cabinet Division in a parlia-

mentary government and reduced powers, influence and image of the Cabinet significantly. Even the ceremonial frills like the institutions of Military Secretary to the President and ADC were retained by the new Prime Minister Begum Khaleda Zia, unlike the practice in most parliamentary forms of government. This was perpetuated by the following regimes. The Presidential Military Guard Regiment and the Special Security Forces became embellishments of the Prime Minister's Office. These impinged unfavourably on the public image of the office of the President which prompted a respected President of the country Mr. Justice Shahabuddin to lament that the power of the President was confined to offering prayers at the grave of national leaders.

Furthermore, the Prime Minister in Bangladesh can effectively remove a minister from office; he can ask a minister to resign and if he does not oblige the Prime Minister can advise the President to terminate the appointment of such minister. In the British House of Commons failure of an MP to obey even an all important 'three-line whip'—that is issued on crucial occasions like a no-confidence motion is usually seen as a rebellion against the party—may result in disciplinary action, such as suspension from the parliamentary party. However, the membership is never taken away as it represents the sov-

ereign will of the electorate. In Bangladesh an elected member of the Jatiyo Sangsad loses his membership if he votes against the direction of the party or abstains or absents from the relevant sitting. Coupled with the fact that the Prime Minister—and not the Cabinet—is the repository of executive powers, these constitutional provisions apart from giving him domination on the executive branch of the government ensures for him an iron grip on the legislative branch as the leader of the majority party in the legislature. The concentration of powers in his hands has thus curbed the independence of the Sangsad members, diluted the power of the line ministries and undermined the image of the Cabinet. The situation has been further aggravated by an unhealthy practice that many of the Cabinet decisions before implementation are placed to the Prime Minister for ratification. As a result a hybrid system, with primacy of the Prime Minister rather than the Cabinet, has emerged in Bangladesh that many critics term as a Prime Ministerial form of government.

When the Romans abolished monarchy and established republic they designed a set of checks and balances to prevent too much accumulation of power in the hands of one person. Centuries later, faced with parliamentary challenges to English royal authority King Charles I was obliged to accept a check and balance system to curb the

power of monarchy. This culminated in an 'ideal balance among democracy, aristocracy, and monarchy'. Gradually legislatures and courts became central features of the evolving democracies and the concept of checks and balances became more closely associated with the political doctrine of separation of powers among the three branches of government—the legislative, the executive and the judiciary. This is more relevant in a Presidential form of government. In a parliamentary system, while the judiciary may enjoy the benefits of separation of powers there is an overlap of executive with the legislative branch. The executive branch is drawn from the members of the parliament and to sustain itself in power it must have the confidence of the majority in one of its chambers. The concept of checks and balances, in this context, thus seeks to disperse political power and prevent its accumulation in one hand. The idea is to preclude any single group or individual from dominating state power and thus make it more difficult for the government to abuse its authority or become a tyranny. Many observers believe that to promote good governance in Bangladesh, the country has to find a system to remedy the excessive accumulation of power in one hand at the central level of statecraft and its balanced dispersal among other actors.

Views have been expressed that remedial measures could include relaxation or repeal of the constitutional provision in article 70 giving an undue

power of the party leader on the vacation of a member's parliamentary seat that curbs his independence. Similarly, constitutional provisions may be adopted and rules of business framed so that, instead of the Prime Minister's, the primacy of the Cabinet is upheld. This precept is of critical significance in a parliamentary democracy.

Of the many other ideas, one advocates that a more balanced sharing of powers between the President and the Prime Minister will contribute to democratic stability and good governance. In examining this proposal two factors deserve consideration. Firstly, the current imbalance in Prime Ministerial power is many faceted; the imbalance is not only vis-à-vis the President but also vis-à-vis the Cabinet itself, the other ministers as well as the legislature. The issue needs to be seen in a holistic manner and addressed in its entirety. Secondly, between 1947 and 1956 when the Constitution of Pakistan was adopted there indeed was a balance of power between the Prime Minister and the Governor General who could dismiss the former as well as dissolve the parliament. Pakistan's constitutional history of this period is replete with instances of how that power was used to weave palace intrigues. Starting with the notorious dismissal of Prime Minister Khwaja Nazimuddin by Governor General Ghulam Mohammad, successive prime ministers of Pakistan were victims of those

CONTINUED ON PAGE 11