

Dispersal of power

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palace intrigues that subverted democracy and thwarted constitutionalism. In the more recent times, the 1973 Constitution of Pakistan also envisaged a parliamentary system of government with the balance of power tilted heavily towards the Prime Minister. The President was obliged to exercise his powers with the concurrence of the Prime Minister. When democracy was restored after this constitution remained suspended for 11 years, Pakistan's National Assembly in 1985 adopted the Eight Constitutional Amendment aimed at bringing a balance between the powers of the Prime Minister and the President. Importantly, the amendment gave to the President power to dissolve the National Assembly at his own discretion. As result of such dissolution the office of the Prime Minister would become vacant.

Instead of bringing about the desired balance, the amendment created a virtual diarchy in administration, creating a source of constant friction between the President and the Prime Minister. As a result, in a period of ten years, the National Assembly was dissolved four times using this power by successive Presidents and the Prime Minister stood dismissed. The growth of parliamentary process suffered with elected governments surviving for about two years on the average. After the elections of 1997 another amendment was adopted taking away this power of the President to dissolve the National Assembly. A see-saw followed and in 2003 General Pervez Musharraf's loyal national assembly restored that power to the President, subjecting it to Supreme Court's approval or otherwise within thirty days. As a consequence the government in Pakistan has reverted back to diarchy with a heavy tilt toward the presidential form.

Another idea has recently been floated that Presidential form of government will be more suited for Bangladesh. The proposal ignores the basic issue that a Presidential form of government instead of dispersing power concentrates those in one hand. In examining this idea one also has to bear in mind our bitter experience both in pre-1971 Pakistan and in Bangladesh as to how Presidential governments, through that accumulation of power, turned into despotic and tyrannical regimes. Let us not forget that in 1991, after a prolonged mass movement Bangladesh moved back from presidential form government to parlia-

mentary system. Among others, a major reason for the mass upsurge against President Ershad was that there was too much accumulation of powers in his office. Without the benefit of iron clad checks and balances and without a well delineated separation of powers among the three branches of government - the executive, the legislature and the judiciary the citizens were suffering tyranny from the abuse of that unchecked powers.

On occasions the idea of bicameralism has also been floated as a way for achieving dispersal of power from one person in the power structure of Bangladesh to ensure its more balanced sharing. A bicameral parliament consists of two houses and requires a majority in both to pass legislation.

The concept of bicameral parliament gained ascendancy in medieval Europe in the context of balancing the interests of separate constituents like the aristocracy and the commoners. The USA found a new rationale for bicameralism: the upper house would have states represented equally, and the lower house would have them represented by population. In subsequent constitution making, federal states have often adopted bicameralism to balance the principle of democratic equality with the principle of federalism all citizens are equal in one house while the federating units are equal in the other. Although bicameralism is more popular with federal structure many unitary states have also opted for it. Japan, France, Italy, the Netherlands, the Philippines, the Czech Republic, the Republic of Ireland, Romania Spain and South Africa are examples of bicameral systems existing in unitary states. Furthermore, most federating states in the USA and India also have bicameral legislatures. The second chamber is principally entrusted with the scrutiny of the decisions of the lower house. In case where legislation is initiated in the second house, the responsibility for such scrutiny falls on the first house. In most parliamentary structures the second chamber is indirectly elected.

The proponents of bicameralism argue that the 'checks and balances' provided by the model prevents the passage into law of ill-considered legislation. It provides for a more careful scrutiny of issues in calmer atmosphere and plays a corrective and complementary



role to the first chamber. It can bring a sober look at issues without being swayed by transient political passions and acts like a brake in a fast moving vehicle that ensures safety. A second chamber shares the voluminous burden of legislative and financial work of the first chamber. More importantly, it can be a safeguard against the tyranny or despotism of a single chamber or majority party, providing a systemic remedy against the existing political order of 'the winner-takes-it-all'. Its existence will in still a sense of responsibility on the members of the other chamber as they know that their decision will be scrutinized by another body. In many countries like in India, a second chamber has taken benefit of the expertise, knowledge & experience of talented people who are not otherwise inclined to take to the hustings in a general election on adult franchise. A second chamber does not have a fixed tenure and unlike the

first house of parliament it is not subject to dissolution. This ensures continuity to democratic process and, in the context of Bangladesh, could provide for a more democratic alternative forum for caretaker government instead of the present arbitrary and unelected dispensation. The term of office for a member of second chamber could be for six years, with one third of the members facing re-election every two years. The staggering of elections could effectively insulate the chamber from the impact of emotional pendulum like shifts in the verdict of our electorates and bring about an evenhanded presence of various political views. Similar benefits could accrue to the relationship of the two houses. A bicameral arrangement is also likely to promote a political culture of tolerance and accommodation of differing views. Additionally, this could heal the sharp social divide that characterizes the political environment in Bangladesh.

A properly designed system of proportional representation in the chamber would also bring about a better balanced representation of popular will. As is well known, in our general elections of 2001 the BNP-led four party alliance secured no more 34% of country-wide popular votes which translated in to a two-thirds majority in the Jatiyo Sangsad; in Pakistan Prime Minister Nawaz Sharif achieved two-thirds majority with only 19% of popular votes in their 1997 elections.

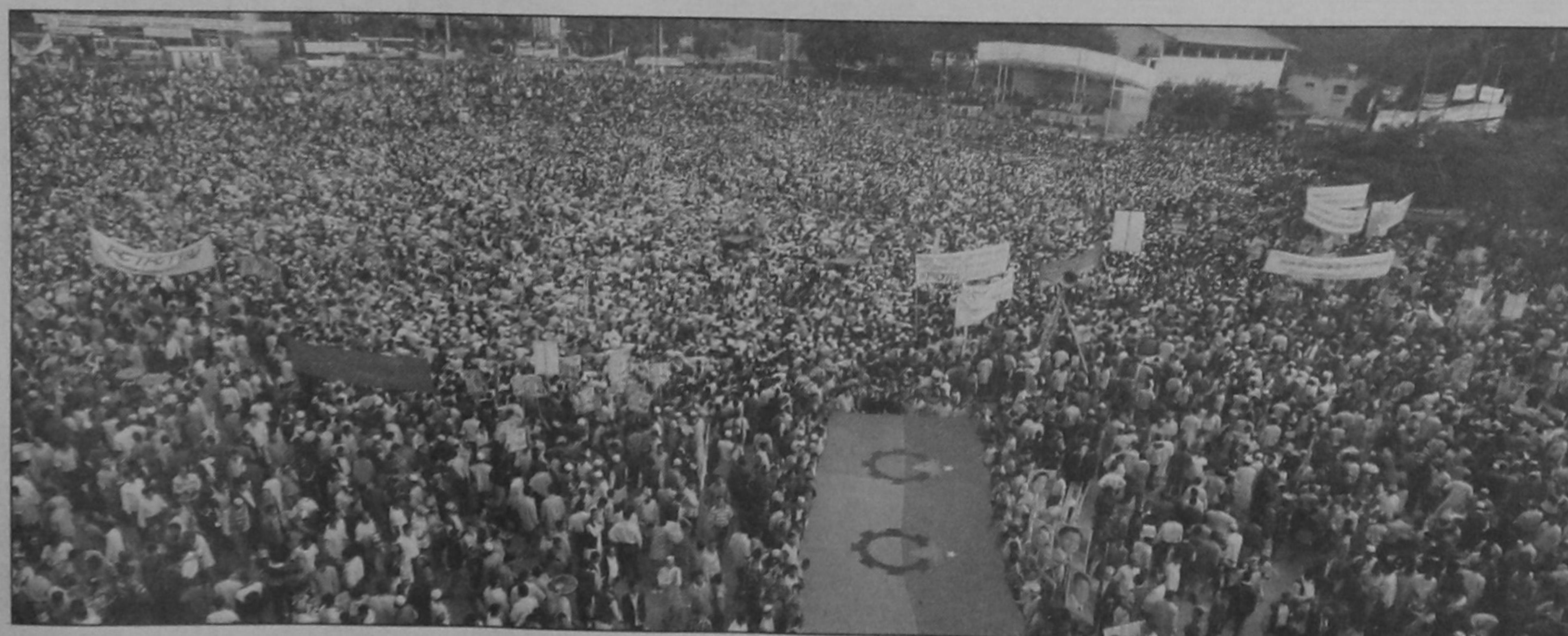
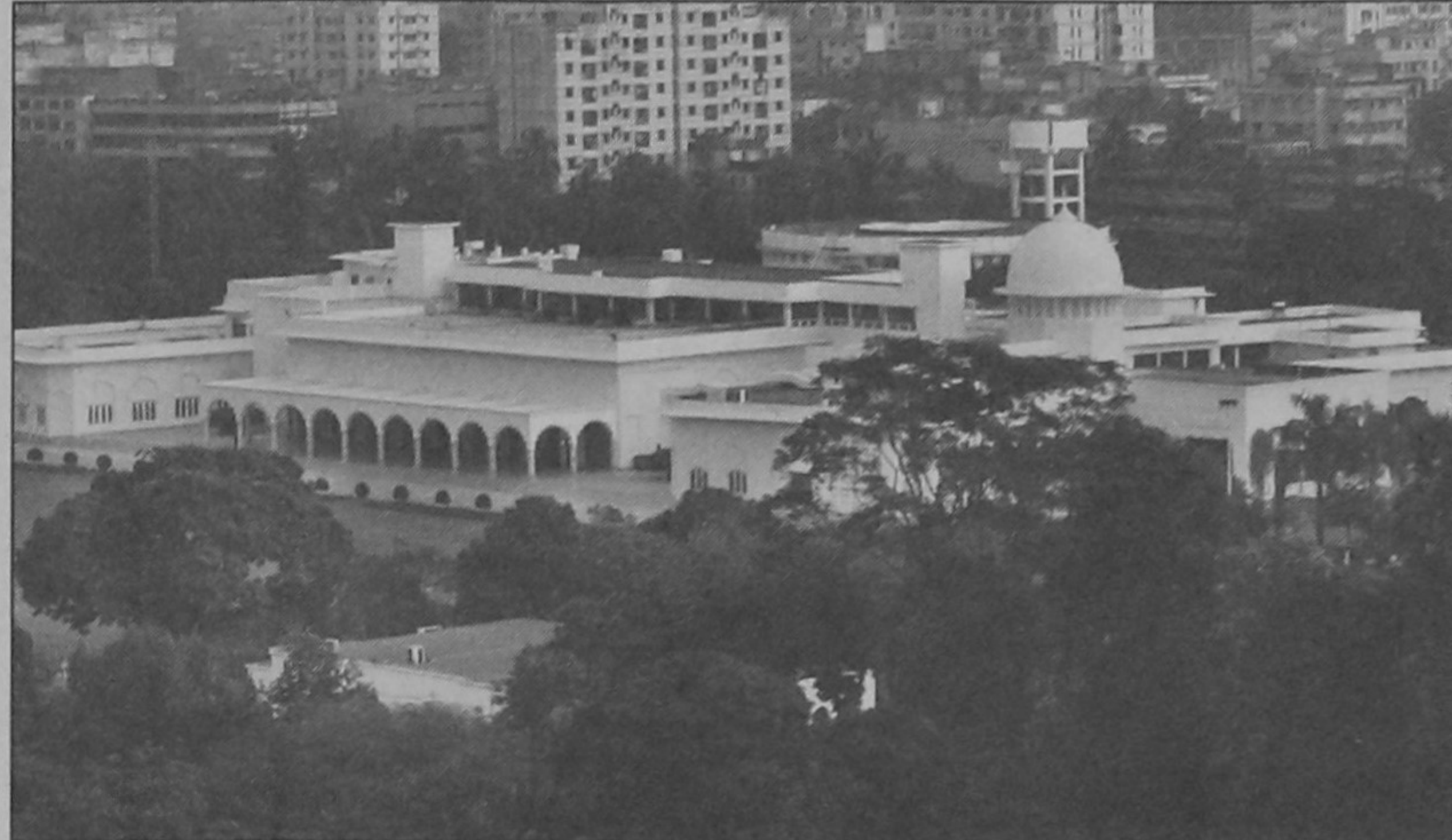
However there are strong opposing views to idea also and the issue has been a matter of intense debate among political scientists and constitutional experts in many countries. The opponents of the concept argue that it is undemocratic for an indirectly elected second chamber to scrutinise the decisions of a first chamber that, being elected through universal adult franchise, articulates people will. A second chamber amounts to

subverting people will. A strongly articulated view is that 'if a second chamber dissents from the first it is mischievous; if it agrees, it's superfluous'. A unicameral system is simple and offers the government more freedom of action to pursue their aims on a faster track. A bicameral system is inefficient and slow, it duplicates the work of the first chamber, delays legislation and causes extra burden on the tax payers' money. A bicameral system may also cause impasse in decision making. That impasse becomes illegitimate if one chamber is elected through universal franchise and the other appointed or elected on limited franchise. That impasse becomes a catastrophic deadlock if both chambers have equal legitimacy through popular mandate.

The issues before the nation are grave; our future parliamentarians will have to debate these with urgency and choose from the wide range of available ideas and

views. It will be worth its while to involve the nation at large with the process. With collective wisdom and foresight the nation has to find appropriate constitutional and systemic response to these issues. At the same time we must remind ourselves that even the best legal framework will be meaningless and ineffective unless we are able to create and sustain a democratic political culture that supports it. In promoting that political culture, it is of paramount importance for all actors in the political system to realise that the essence of democracy lies in accommodation and compromise, respect and tolerance of the other view, in applying restraint in the exercise of power and in inclusion rather marginalisation of others from the process of governance.

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Proportional representation

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Government will almost always represent the majority population of the country. Theoretically this seems to be a sound proposition.

One problem will be that of independent candidates; they will forfeit the right to contest the elections in this dispensation. The other problem may be the inertia of citizens to move away from the present system and court all of a sudden a radically different system necessitating a

drastic reform in the constitution. A possible way out may be to strike out a compromise between the present system and the proposed one. To start with, a portion say, 30 to 50% of the seats may be earmarked for proportional representation and the rest left for constituency based elections, the number may gradually be reduced for the latter system. This will not be a completely new thing; some sort of proportional division of seats is already in

vogue in case of women's seats in the parliament. The country may try out the comprise formula; if this succeeds well it may ultimately shift to undiluted proportional system. That will in all odds usher in an improved democratic practice with markedly reduced use of money and muscle in national elections.

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