

Imperial Prime Minister: How to make *the office* accountable?



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ANDRE Mathiot, a shrewd analyst of the British Political System, has stated that present position of the British Prime Minister does not correspond to what Lord Morley once defined it as 'Primus inter Pares' and Sir William Harcourt as 'inter stellas luna minors.' The British Prime Minister has turned out to be more than first among equals and virtually a sun around which other minor planets revolve. Yet it cannot be said, Andre Mathiot asserted, that the British Prime Minister is free to determine policy just as he thinks fit. There are many constitutional conventions which provide an effective safeguard against any attempt at his autocratic personal rule. First and foremost are the basic principles of parliamentary government itself. Then he must abide by the political convention in regard to the sovereign i.e. the king or queen. Theoretically the cabinet is still an informal gathering of "His/Her Majesty's trusted servants." Lastly, no Prime Minister can exercise personal supervision over the entire range of departmental activities; rather he does it to a large extent through his colleagues in the government. The British Prime Minister for all that has grown to be a powerful potentate but less than an autocrat.

The position of the Prime Minister in Bangladesh is however different. s/he is not only "the keystone of the cabinet arch" -- central to its formation, central to its life and central to its death, s/he is much more than that. Article 55(2) of the Constitution of the People's Republic of

Bangladesh states: "The executive power of the Republic ... shall be exercised by or on the authority of the Prime Minister." As leader of the House of the Nation, s/he enjoys the confidence and support of all members belonging to her/his party. Having that package of unconditional support in his bag, s/he can easily sail through any stormy weather in her/his attempt to get any law enacted by a majority vote, however unpopular it might be, because in addition to all these s/he can point out from his arsenal the Damocles Sword of Article 70 to the recalcitrant members. As the leader of the party, s/he can determine right from the beginning of the electoral process, who might be members of her/his cabinet through her/his active role in the Parliamentary Committee. If he fails to get her/him or them elected that way, s/he can induct her/him or them through Article 56(2) of the Constitution.

There is a constitutional obligation of the Prime Minister to the 'sovereign,' in Bangladesh, to the head of the state, the President. Article 48(5) provides that the Prime Minister shall keep the President informed on matters of domestic and foreign policy, and submit for the consideration of the cabinet any matter which the President may request him to refer to it." In practice, this obligation has become only a constitutional nicety. First, the head of the state is an ornamental constitutional head, exercising all her/his functions in accordance with the advice of the Prime Minister "save only that of appointing the Prime Minister pursuant to Clause (3) of Article 56 and the Chief Justice Pursuant to

Clause (1) of Article 95 [Article 48(3)], which are in reality recognition of fait accompli. Secondly, the President, being a nominee of the ruling party, as compliant as s/he is supposed to be and quite often from the higher rank of the party, feels obliged when the Prime Minister comes down to her/his office and speaks a few words. Much unlike the British King or Queen the President of Bangladesh does not enjoy the right to be consulted or right to warn. At the first session of the Parliament each year the President reads out obediently the write up prepared for her/him by the Prime Minister's secretariat. The Prime Minister of Bangladesh has transformed his constitutional authority into personalised power through her/his secretariat, indeed a super-secretariat, which not only coordinates but also controls the activities of different ministries. In addition to the ministries and other key departments, there are a few such constitutional bodies as the Election Commission, Office of the Comptroller and Auditor-General, Public Service Commission and so on. These bodies play pivotal roles in shaping up the nature of the polity. Through the Prime Minister's Secretariat, Prime Minister selects and finally appoints the top officials in these bodies and becomes dominant over the structure of power. In theory such top level officials as the Chief Election Commissioner and other commissioners of the Election Commission, Comptroller and Auditor-General, Chairman and members of the Public Service Commission (Articles 118, 127, 138) are appointed by the President, but he in fact puts her/his signature on the dot-

ted lines. The Prime Minister's Secretariat, moreover, determines who would be the Chief Justice of Bangladesh and it is the Prime Minister who in reality appoints the Chief Justice and other judges of the Supreme Court though according to constitutional provisions the President appoints them (Article 95). One fundamental principle of parliamentary government refers to the role of effective opposition. The phrase 'His Majesty's Opposition', coined by Hobhouse, though used in an ironical sense, describes accurately the contemporary situation of the British political system. In fact an opposition is acknowledged to be an essential element of the system of government by the majority party. It also serves as a check to the autocratic behaviour of the government. In Bangladesh this is conspicuous by its absence, however. The Prime Minister of Bangladesh for all that can do whatever he likes without involving her/his counterpart. S/he can on his own initiate basic changes in the system. S/he can reach an agreement with any foreign power without involving the opposition. S/he can manage the full term of her/his office even without talking to, and meeting with, the leader of the opposition.

One can say for all these that the Prime Minister of Bangladesh is more powerful than any public functionary operating anywhere in an elective system. Such a concentration of power in the hands of a public official has never been salutary. Analysing the relationship of state and nationality, Lord Acton once stated that power corrupts and absolute power corrupts absolutely. He suggested that for a comfortable social living, both at national and international levels, absolute power needs to be

checked. Much in the similar vein James Madison, one of the founding fathers of the American Union, has categorically stated that any public official cannot be trusted with power. In her/his own words, "If men were angels, no government would be necessary." In fact it was s/he who advocated and finally initiated the process of making the US political system a balanced one by checking the absolute powers both of the Congress, Supreme Court and the Presidency.

For having a people-oriented balanced political system in Bangladesh we have to think and ultimately go for instituting checks on the powers of the three branches of government. There is no alternative to this. Some of them may be formal and some, informal. The Prime Minister of Bangladesh, heading a parliamentary system of government must be the Leader of the House, piloting the law-making process. S/he must also be the head of the cabinet, implementing the laws enacted by the Sangsad. While doing this he should act as the Prime Minister of all people and all political parties in the country, not as the Prime Minister of the party s/he leads. That dignified position necessitates that s/he must not head the political party that commands majority in the legislature. Politic and governance for all that should be separate and as far as possible be autonomous. Politically organised parties themselves should undertake this mature and sagacious move. Since the Prime Minister of Bangladesh heads the cabinet, and that is an integral part of the parliamentary system, s/he must be prevented from choosing members of the cabinet from outside the Jatiya Sangsad. For the purpose, Article 56 (2) of the Constitution should be

amended. Article 70 of the Constitution should be partly amended for the purpose. This was intended to prevent floor-crossing of the members on flimsy grounds with a view to stabilising the government and to that extent this Article played a stabilising role. It has however been used by successive Prime Ministers as a positive threat to the conscientious members, making them and their free will hostage to a constitutional provision. Article 48 (5) should also be amended to the effect that the President might enjoy the rights to be consulted and to warn the government. At the first session of the Jatiya Sangsad each year the President should have the right to say whatever s/he thinks fit in the interest of national welfare. In the constitutional bodies, appointments of the key officials should be done by the President on the recommendations of the committees of experts, of national proportion. Before the appointment, the President may get the committee recommendation approved by the relevant standing committee of the Jatiya Sangsad. Some members of the opposition political parties are most likely to be there. This process may be followed in the appointment of the judges of the Supreme Court. In this case, the committee should consist of the Chief Justice and other senior judges, and the committee report should be approved by the relevant standing committee of the Jatiya Sangsad. Having these in view the relevant Articles of the Constitution of the People's Republic of Bangladesh needs to be amended.

Apart from these formal steps, some informal or conventional measures are in order. Democratic system becomes meaningful only if it is closely associated with democratic culture, and democratic culture demands, above everything else, a close collaboration with the opposition in handling issues of national interest. This is of crucial importance in defending individual's right to life and property and in safeguarding freedom of speech and religion. This is absolutely needed in sustaining the rule of law in the society. In the parliamentary system of government, which is in fact the government of the majority with consent of the minority, the head of the government always takes the opposition into confidence. The British Premier begins his foreign tour after exchanging views with his counterpart and coming back he keeps him informed of the outcome. Even in matters of honors and decorations which are awarded each year on New Year's Day and on the Queen's birthday, and also on such special occasions as a coronation or jubilee, the Premier invites attention of the leader of the opposition with a view to having an agree upon list. By virtue of his position the Prime Minister of Bangladesh is amply qualified for this onerous task. But I believe power will not be of any help, nor will the size of his following. It's the creative leadership and democratic culture, tintured with a lofty vision of a bright future, which can help her/him crossing the ocean of distrust and doubt. That is perhaps the easiest way for the Prime Minister of Bangladesh to become the national leader.

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