PARLIAMENT *scan*

Overhauling the parliament: Framing of issues

M. JASHIM ALI CHOWDHURY

IN Bangladesh our orientation with parliament is much more longer than many other developing countries. Article 65(1) of the Constitution provides for 'a Parliament for Bangladesh (to be known as the House of the Nation) in which ..... shall be vested the legislative powers of the Republic.' But the first two decades (1971-90) of Bangladesh politics are marked by a plethora of successful and abortive military coups, intermittent movements for the restoration of a democratic system, rigged elections, ineffective Parliament and the omnipotence of Chief Executives (Muhammad A. Hakim, Parliamentary Politics in Bangladesh in 1990s: Consensus and Conflict in 'Thirty Years of Bangladesh Politics,' p.103). Most of the times instead of becoming a sovereign parliament it remained a 'lame and tame parliament.'

Today even after seventeen years of the revival of parliamentary democracy, Parliament faces a huge credibility crisis. Confrontational politics and a "winner takes all" attitude have led to a situation that "boycott" of successive sessions and absenteeism have put a big question mark over its capability to remain the supreme watchdog of public interest. Consequently there is a hue and cry to recharge the parliamentary vigour to bolster democratisation.

This article is an attempt to accumulate the issues in this regard. Suggestions made by constitutional experts, civil society initiative 'Shujan' and columnists along with some of my own find place here.

Election of Collaborators to the parliament: Article 66(2e) of the 1972 Constitution debarred from election any person convicted of any offence under the Bangladesh Collaborators (special tribunals) Order of 1972. President Ziaur Rahman dropped this provision. Today's reality demands the revival of the dropped Article 66(2e).

Women's reserved seats: Presently, there are 300 directly elected MPs and indirectly elect 45 women members. These 45 reserved seats are allotted to parties in proportion to their representation in the Parliament. It is for this method of election that these 45 women members are being used as a ready tool or a vote bank at the hand of the majority rather than the true representation (Abdul Halim, 'Constitution, Constitutional Law and Politics: Bangladesh Perspective', p. 304). Rather the whole country should be divided in 100 zones and the electors should directly elect women members.

Summoning a dissolved parliament: Article 72(4) empowers the President to recall a dissolved Parliament if a state of war ensues before the next general election.

A very interesting result will arise if this article is applied. Then there will be a Parliament, a President and a caretaker government responsible to the President (Article 58B(2)). So the watchdog role of Parliament over the Executive during this crucial period will be missing. So article 58B(2) should be amended in the following way

'Provided that when the President summons the Parliament as per Article 72(4), the Caretaker Government shall be collectively responsible to the Parliament.'

Representation of ethnic groups: Provisions should be made to reserve some seats in Parliament for tribal people, who are ethnically, religiously and culturally different from the rest for the population. Such a step will be an affectionate reply to the just grievances of our ethnic groups.

Floor crossing: The painful necessity to prevent political instability made the way of Article 70 to the Constitution. This article is criticised to be violative of the freedom of expression and opinion ensured by Article 39(2)(a) of the Constitution.

In fact strong party discipline should suffice in controlling MPs. Absence of the restriction on voting against the party in the Constitution makes the leaders feel the pulse of their backbenchers. This unique opportunity has been waived through article 70. So article 70 should be made applicable only when an MP is required to vote

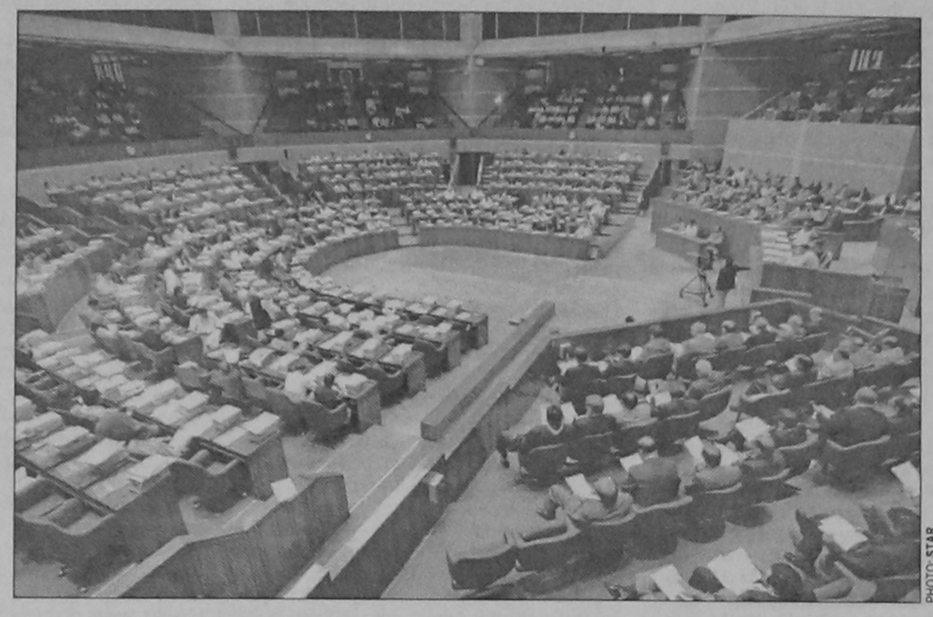

PHOTO: STAR

on a motion of no confidence or when a member is required to prove that he/she commands the support of the majority of MPs.

Functions of the MPs: In no case managing the affairs of administration and development works in his constituency is the concern of a Parliamentarian. The unfortunate result of ignoring this truth is the scene of angry mob chasing an MP in demand of electricity. Thus article 65(1) should be amended in following terms:

'Further provided that a Member of Parliament shall not involve himself in local development projects, local educational institutions or in any office of profit of the Republic. Nor shall he/she be engaged directly or indirectly in business relations with the government.'

Unauthorized absence from parliament: Article 67(1)(b) of the Constitution provides for loss of mandate on ground of absence from Parliament without the leave of Parliament for ninety consecutive sitting days. This provision being unable to cheek the continuous boycott, the word 'ninety' should be replaced by 'forty five'. The Constitution should also stipulate that a Member of Parliament shall attend 60 percent sittings of each session or shall lose his seat.

No remuneration for absentees: In the recent past the opposition parties showed an unethical consensus in boycotting the parliament and receiving parliamentary remunerations simultaneously. To prevent this a new proviso may be added to Article 68 of the Constitution:

'Provided that a Member of the Parliament absenting himself from the sitting of the Parliament session shall not be entitled to any remuneration or allowances for the period of such absenting.'

Speaker and Deputy Speakers: Instead of one Deputy Speaker, two Deputy Speakers, one of whom shall be from the opposition party, should be elected.

The Speaker and Deputy Speakers shall resign from their respective political party and shall not take part in any party activities during the tenure of the Parliament.

Money bill: Article 81(3) of the Constitution provides that certification of a bill by the Speaker as Money Bill shall be conclusive for all purposes and shall not be questioned in any court.

This provision restricts the already restricted say of the President on legislative procedure. Moreover it is vulnerable to potential abuse by a partisan Speaker as is shown in the case of the Public Safety Act, 2000.

As a check the House may be given voting right in this matter. A two third majority requirement for the confirmation of the Speaker's certification would make the treasury bench hear the voice of the opposition.

Private bill: Encouraging private legislative initiatives will make the MPs more attentive to their law-making role. In the United Kingdom House of Commons, twenty backbench MPs are selected by ballot to introduce a bill in each session. These bills are given priority for debate and have the best chance of success. Selection of such a panel of MPs in our Parliament may be considered.

Order on account: The President may make an order on account authorising withdrawal of money from the consolidated fund for a period not exceeding 60 days if Parliament denies to vote on account (Article 92(3)).

This should be scraped as it can be abused to save a Prime Minister who has lost support and to facilitate horse trading to regroup to the detriment of the democracy (Mahmudul Islam, 'Constitutional Law of Bangladesh', p.387).

Formation of parliamentary committees: The 1972 Constitution in Article 76(1) provided that the Committees be formed by the Parliament "at its first meeting in each session" This provision was later omitted under the Fourth Amendment of 1975 resulting in unprecedented delay in the formation of standing committees.

There should be provision for the formation of all Committees in the first session or at least within three months thereof.

Committee chairmanship: Though now a Minister cannot be the Chairman of Standing Committee, he/she is still an ex officio member of the Standing Committee (Rule 247). This is inconsistent with Rule 188 (2). A Minister should not take part in committee deliberation unless invited by the Committee and hence should not be granted ex officio membership.

The chairpersonship of not less than 50 percent of all Committees including the Public Accounts Committee and those of key ministries should rest with the opposition bench.

Powers of parliamentary committees

The Committees can only advise the ministries and review their activities but cannot enforce their decisions on the ministries.

The Standing Committee relating to a ministry cannot investigate a complaint from any person or interest group regarding a public functionary or a ministry without reference from the Parliament. (Rule 246 of the Rules of Procedure and Article 76(2)(c) of the Constitution)

Provision should be made that within three months of placing a report to the floor the concerned Minister has to give the explanations of the procedural steps taken by his/her Ministry on the basis of the report. Disregard of committee direction should be dealt with strictly.

Rule 246 should be amended empowering the Standing Committees to entertain individual complaints against the ministry and to call upon organised groups likely to be affected by a proposed legislation.

If the Standing Committee makes a special reference signed by the Chairperson to the Speaker to bring it into the notice of the House, presentation of the reference within one month before the House should be made compulsory.

Practice of secrecy

Rules 199 and 201 of the Rules of Procedure make all persons other than members of the Committee and officers of the Parliament Secretariat withdraw whenever the Committee is deliberating. Moreover rule 203 allows the Government to decline to produce a document by any committee on the ground of safety and interest of the State.

It is recommended that participation of MPs not member of a particular committee, media access and publication of the deliberations be allowed. Repealing the rule 203, provision for secret meeting to deal with sensitive documents may be made. Special treatment of sensitive issues may be justifiable but nothing should be withheld from the parliamentary oversight.

Laying international treaties before parliament

Article 145A provides for presentation of all international treaties before the Parliament. What ails article 145A is the ambiguity as to the role of the parliament. It seems that Parliament cannot do more than discussing. Such an exclusive denial of parliamentary control over international affairs is not tenable on any ground whatsoever. By amending this article, parliament must be given power to ratify or reject international treaty.

Second chamber: There is a profound belief that the scope of legislative responsibility is more unified with the presence of a second chamber.

As Bangladesh is a unitary state, the proposed second chamber should act only as a revising body. Composed of the technocrats from various professional groups, it is likely to provide adequate safeguard against the tyrannical use of power by the party or parties commanding a majority in the lower house. (The Role of Second Chamber in Democracy, A K M Abedur Rahaman, The Daily Star, May 25, 2006)

Some other recommendations: 1. Rule 248 of Rules of Procedure empowers the Speaker to direct the Secretary to call a meeting of a standing committee that fails to meet once a month. This should be given effect.

2.Any type of obstruction in Committee affairs should be considered a 'gross misconduct' and there should be provision for a motion of censure against the Prime Minister or Minister or MP so accused to be initiated upon the recommendation of the Committee and to be passed by a simple majority in the House and article 70 should be excluded in case of voting on this issue.

3.The President appoints the Chief Justice and other Judges of the Supreme Court. Article 95(1) of the Constitution should be amended granting Parliament the right to review or reject these appointments.

The evidence shows that the presence of a powerful legislature is an unmixed blessing for democratisation. Weakness on the part of the legislature undermines "horizontal accountability" -- the controls that state agencies are supposed to exercise over other state agencies. It also checks the growth of "vertical accountability" by weakening the ability of the people to control their representatives. (Stronger Legislature, Stronger Democracies, M. Steven Fish, Journal of Democracy, Volume 17, Number 1, January 2006). The suggestions discussed above may go a long way towards true democratisation of the country by ensuring both horizontal and vertical accountability.

The writer is a Lecturer at the Department of Law and Justice, Metropolitan University, Sylhet.

HUMAN RIGHTS *advocacy*

Children born of rape are deprived of their rights

SNIGDHA MADHURI

SOHELI Akhter of Manikganj curses herself for what happened to her in the last few years. She was married off in 1999, but her husband divorced her within three months to marry another woman. Six months later she met the worst thing that could happen.

Soheli (Not her real name) was raped by two goons at her neighbour's residence. She kept the dreadful incident secret as the rapists of the same village threatened to kill her. But that did not remain secret as Soheli became pregnant.

Soheli's father arranged an arbitration meeting, but the rapists flatly denied raping Soheli. On March 28, 2008, She gave birth to a lovely baby girl.

Soheli then filed a case with the Women and Children Repression Prevention Tribunal seeking justice and maintenance for the child. As happens always, the allegation of rape could not be proved for lack of evidence. The court acquitted the accused, leaving the child's maintenance issue unresolved.

There is nothing unique in the case of Soheli. Many rapists in Bangladesh go unpunished, as the crime they commit cannot be proved for lack of evidence and legal complications, and the children born of rape are deprived of their rights to maintenance.

Provisions 13(1) (C,D) and 13 (3) of the Women and Children Repression Prevention (amendment) Act, 2003 deal with the issue of children born of rape.

These provisions say that the responsibility of providing maintenance of a child born of rape goes to the state and it will bear the expenses of the child until s/he reaches 21. In case of a female over 21, the state will keep on providing maintenance until her marriage while for a disabled child until s/he is capable of doing so.

PHOTO: STAR

Under the law, the government can realise the maintenance cost from the rapist. If it is not possible to realise the money from the existing property of the rapist, it can be realised from the property the rapist will possess in the future.

"Although the law mentions these matters, it is hardly enforced," says Farida Yasmin, deputy director of Bangladesh Legal Aid and Services Trust (BLAST).

Asked why this law is not being enforced, Farida says, "The law itself is full of lapses. It says the victim has to prove the rape allegation and eyewitnesses are required to prove rape. In most cases, it is not possible for the victims to prove the rape allegations."

Farida says, "Even if the rape allegations are not proved due to lack of eyewitnesses, the court can order DNA test. For that the criminal law will have to be amended to include DNA testing. If it can be done, criminals will be easily identified."

Bangladesh Mohila Parishad general secretary Ayesha Khanam is also in favour of making DNA test compulsory to identify criminals. According to her, lack of transparency, accountability and independence of the judiciary, gender insensitiveness of lawyers and lack of positive attitude towards women are the reasons behind the non-enforcement of the law.

Lawyer Anisur Rahman, also a teacher of Stamford University of Dhaka, says, "As per the criminal law, the victim has to prove the rape allegation, which is very hard indeed."

For the effective enforcement of the Women and Children Repression Prevention (amended) Act, 2003, he emphasises the issues listed below:

- Not only the maintenance, the child born of rape will have to be made heir to the property of the father amending the law
- In a rape case, the onus of proof may be shifted to the accused. As a result, the accused will have to prove that he has not raped
- The lawyers will have to be more efficient, conscious and gender sensitive
- Everyone involved in the process of trial, including judges, lawyers, bench officials and peons will have to be gender sensitive shedding chauvinism
- There may be separate courts to deal with rape cases.

Lawyer Salma Jabin, who is the coordinator of the litigation unit of Ain O Shalish Kendra, says: "There are three cases with us about children born of rape. Two of the cases are under trial, while verdict has been pronounced in the remaining one."

But, the verdict has not gone in favour of the victim and Salma Jabin blames traditional pro-male perception and legal complications for this.

Farida Yasmin of BLAST says eminent lawyers and the civil society have recently requested the human rights organisations to come up to provide the cost of DNA test for identifying rapists. They also emphasise reduction of the cost of DNA test and extension of DNA profiling laboratory facilities across the country.

About the effectiveness of the DNA test, Yunus Ali, a scientific officer of National Forensic DNA Profiling Laboratory, says, "In many cases it's not possible to prove rape allegations for lack of evidence. So, DNA test is very important to identify criminals. The success rate of DNA test in identifying the father of a child is cent percent. He also strongly emphasises collection and preservation of exhibits for successful DNA tests.

– News Network.

RIGHTS *corner*

Australia apologises to indigenous people

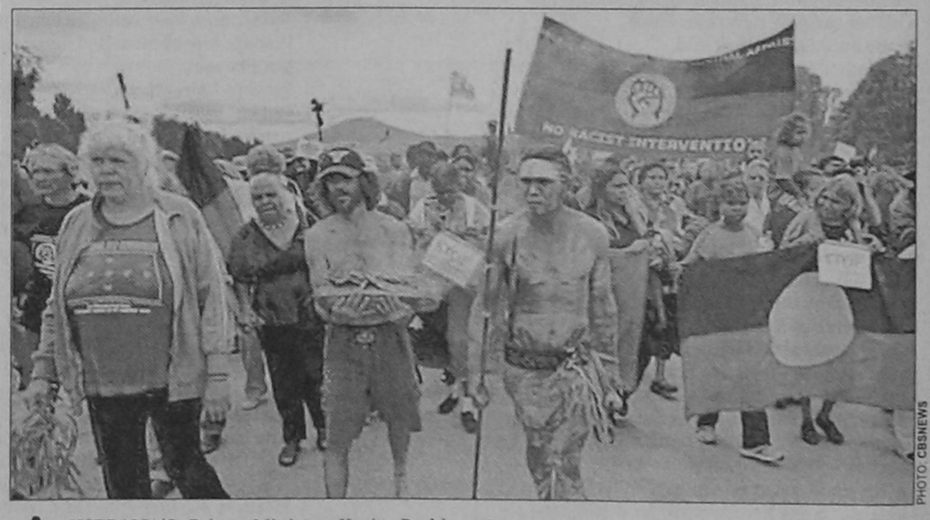

PHOTO: CBSNEWS

AUSTRALIA'S Prime Minister Kevin Rudd formally apologised to the Indigenous people who were members of the Stolen Generation and their families on Wednesday in Parliament. The speech, which has been described as a significant event in Australia's history, was televised live to cities all over Australia.

A spokesperson for Amnesty International said that the organisation is greatly encouraged by the Australian Government's decision to make a formal apology one of its first priorities. "We hope this gesture will be a symbolic end to the tragic legacy of horrific treatment of Aboriginal children, and the first step towards addressing the serious human rights violations Indigenous Australians face every day," said Rodney Dillon, Campaign Coordinator for Amnesty International's Australian Section.

"An apology will help develop respect and establish meaningful relationships between Indigenous and non-Indigenous Australians and is essential to reconciliation.

"We are calling on the Australian Government to now implement the recommendations in the Bringing Them Home report. Restitution, rehabilitation, guarantees against repetition and compensation are critical next steps."

The Human Rights and Equal Opportunity Commission's (HREOC) outlined 54 recommendations in the 1997 Bringing Them Home report, as a result of its enquiry into the removal of Indigenous children from their families. It found between 1 and 3 in 10 Aboriginal and Torres Strait Islander children were forcibly removed from between 1910 and 1970. Many were sexually, physically and mentally abused.

The report's recommendations are supported by international law, which provides that, where a person's human rights have been violated, they must have access to an "effective remedy".

Source: Amnesty International Press release.