

DHAKA MONDAY FEBRUARY 23, 2009

Article 70 (1): Impediment to accountability

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FOR quite sometime people of Bangladesh had been looking forward to having a representative government elected through a free and fair election in a neutral political environment. The election to the ninth parliament took place on the 29th of December, 2008 fulfilling that aspiration. The results showed a massive victory for Awami League-led grand alliance known as 'Mohajote' having absolute majority with a wide margin against its opponent four-party alliance known as 'Chardolijote'.

To many the result was unexpected, especially the margin of difference was considered too big. But, if the mood of the people could be felt properly before election it was more or less obvious. For the second time in recent history of Bangladesh the peo-

Bangabandhu Mujibur Rahman spearheaded that movement. The national parliament election of Pakistan held during that period in 1970 delivered a landslide victory to the Awami League in this part of Pakistan, now Bangladesh (AL won 167 seats out of a total of 169 earmarked for the then East Pakistan). The movement ultimately turned into war of independence which created independent Bangladesh as a consequence in the early seventies.

Unfortunately, the dreams of the people for a change of being free from the blight of poverty, discrimination, fundamentalism or bad governance remained unfulfilled after the lapse of so much time since independence. Many put the blame of the failure to the killers of Bangabandhu Sheikh Mujibur Rahman, the father of the nation who was assassinated on the

were to blame for the failure.

Instead of being the vehicle of advancement of the interest of people and the country politics started to be perceived as a means of grabbing power by hook or by crook by a group of politicians. Politicians were considered as people who tended to enjoy the benefit of power by abusing it at random and trying to perpetuate power by any means, even unethical and illegal. Politics was found to be a factor for disruption of normalcy in the day-to-day life of people; was seen as a cause for terrorism, destruction, untimely death, corruption, partisan attitude and a hindrance to economic development and prosperity.

A strong desire surfaced within people to have a radical change again, this time, to the entire political culture that existed. People wanted this in order to fulfill their aspirations

appointed after promulgation of state of emergency took up some institutional and legal reform measures to ensure free and fair election. In addition, they initiated some measures to curb corruption, improve law and order and governance in line with the aspirations of people.

When the schedule for the postponed 9th parliament was declared again people by and large aspired to have the change or reforms continue by the next political government. It was widely believed that the grand alliance or 'mohajote' would be more committed towards obtaining that goal. It may be because grand alliance gave leadership to the movement in the first place prior to 11th January. It may also be for the belief that AL the main component of grand alliance historically has the reputation to be in movement for realisation of people's demands. People's confidence consolidated further with the inclusion of Jatiya Party in the AL-led fourteen-party alliance to form the grand alliance which then came to underpin a much stronger electoral prospect.

In order to fulfil the aspiration for change, some basic changes are needed now to be incorporated in the overall governance system in the first place. Our constitution has certain contradictions. At the core of these seems to lie Article 70(1) which bars floor crossing by an elected member of parliament. In case, he/she votes against the decision of his/her party from which he/she has been elected he/she would lose MPship as per the said provision of the Constitution.

Article 55 (3) says, 'The Cabinet shall be collectively responsible to Parliament'. This provision is made to ensure accountability of the government to the people on the floor of the parliament through the elected representatives of the people or MPs. This provided the parliament members belonging to both the ruling party and opposition with the responsibility of ensuring accountability of the government through parliament.

But, in our existing political culture, leader of the ruling party becomes leader of the ruling party's parliamentary party and head of the government. So ruling party MPs who constitute the majority in parliament are to abide by the decisions of the government and provide support to all actions of the government on the floor of the parliament. That guarantees approval of all proposals put forward by government in parliament with captive support of majority MPs. Parliament's authority thus becomes too weak compared to government's power to ensure proper accountability of the government.

For the same reason provision of no-confidence motion against the

government as per Article 57(2) which forces the Prime Minister to resign in case he/she loses support of the majority in parliament cannot be made enforceable in real-life situation.

Article 70(1) thus creates an imbalance of power between parliament and government making government all powerful without any scope for check and balance by the parliament. Parliament is the institution which is supposed to enforce accountability on the use of power by the government. In our case that objective is not fulfilled.

The provision was incorporated in the first place to stop horse trading of MPs or frequent change of side by MPs on consideration of personal interest. Without this provision government could become vulnerable and unstable. Moreover, the opposite may also happen in which case opposition MPs may side with government all the time on receipt of personal benefit and skip their role of making government accountable. Thus, a sweeping abolition of Article 70 (1) might not lead to a practical solution to the problem.

An alternative proposal could be perceived to amend the Article 70 (1) to have a new type of anti-floor crossing provision in line with what exists in the Indian constitution. In the new provision any group of MPs elected from a party may vote against the party line or cross the floor if they can constitute one-third (33 percent) of the total numbers of MPs elected from that party.

It would make the government party comparatively safe as defection would need to be in a group consisting of a considerable number which could be difficult to muster. The government need not buy support from opposition MPs and would be discouraged to do so as this may also create grievance among the ruling party MPs. Both stability of the government and the accountability of their activities could be reasonably ensured through parliament by adopting the proposed option.

Politics in our country has taken up the role of a business generating profit at the cost of the peoples' interest because of the existing governance system. This allows government to abuse power, authority and wealth in the absence of any effective means of accountability. All other evils surface as a consequence frustrating the aspirations of the people. In order to fulfil the expectations of the people the priority should be to put an end to the scope of autocracy in our system by making necessary changes in the Constitution.

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The constitution of the People's Republic of Bangladesh (As modified up to 17 May, 2004)

Article: 70

Vacation of seat on resignation, etc.

(1) A person elected as a member of Parliament at an election at which he was nominated as a candidate by a political party shall vacate his seat if he resigns from that party or votes in Parliament against the party. Explanation: - If a member of Parliament-

(a) being present in Parliament abstains from voting, or

(b) absents himself from any sitting of Parliament, ignoring the direction of the party which nominated him at the election as a candidate not to do so, he shall be deemed to have voted against that party.

(2) If, at any time, any question as to the leadership of the Parliamentary party of a political party arises, the Speaker shall, within seven days of being informed of it in writing by a person claiming the leadership of the majority of the members of that party in Parliament, convince a meeting of all members of Parliament of that party in accordance with the Rules of procedure of Parliament and determine its Parliamentary leadership by the votes of the majority through division and if, in the matter of voting in Parliament, any member does not comply with the direction of the leadership so determined, he shall be deemed to have voted against that party under clause (1) and shall vacate his seat in the Parliament.

(3) If a person, after being elected a member of Parliament as an independent candidate, joins any political party, he shall, for the purpose of this article, be deemed to have been elected as a nominee of that Party.]

ple desired to have a real change. Whenever people of Bangladesh aspired for a real change they went wholeheartedly to achieve the same. The voting pattern reflected the desperation of the people and the concentration of support towards the side they considered more apt to implement the change.

People of Bangladesh (or the then East Pakistan) first dreamed of a change during end sixties. They waged a movement for liberation, to become free from the curse of poverty, discrimination, religious fundamentalism and misrule. AL under the leadership of its legendary chief

15th of August, 1975. The killers and the subsequent rulers made all out efforts to frustrate the fundamental principals established as a result of independence on the basis of which people's aspirations were to be met.

Democratic rule was re-established after a mass movement in 1991. Unfortunately the subsequent governments could not provide the level of good governance and social justice in line with the expectation of the people. They failed to ensure rule of law, equitable distribution of wealth, poverty-free and discrimination-free society. Political leaders operating under an opaque political culture

through proper politics and political leadership. People desired to be liberated from poverty, corruption, terrorism, religious fundamentalism, discrimination and from overall bad governance through a changed political culture. Prior to the national election for ninth parliament people waged a movement to have a free and fair election with a view to achieving all the above objectives in phases. The AL-led grand alliance provided leadership to that movement.

Subsequent to that movement state of emergency was declared on the 11th of January, 2007. The interim care-taker government that was

their duties creditably and we will perhaps not see the unwarranted walk-outs, rows, shouts and disobedience on the floor of the House.

The office of Speaker needs to be de-politicized and must not be regarded as an office of patronage. Our legislators need to be well-versed in parliamentary norms and decorum. Like his British counterpart our Speaker should be entitled to a fabulous pension after retirement so that he is content and does not need to

aspire for any political post. This is expected to significantly ensure his neutrality.

Ours is a written Constitution and therefore, our Speakers must scrupulously adhere to the spirit of the provisions of the constitution. The Speaker should neither be the Government's man; nor the opposition's man but the House's man.

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Speaker his own man

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He keeps his party membership to seek re-election after a period of five years. Therefore, the question of political ties of a Speaker has always been agitating the opposition, particularly regarding the impartiality of the office.

It would be pertinent to recollect that the British institution of Speaker is the product of evolution of the political struggle in the different phases and this struggle led to have its own traditions and conventions. The

British Speaker firstly was a king's man, then a party man and lastly became an impartial, non-political presiding officer after a severe political struggle. In the sub-continent including Bangladesh this has not been the case. One would not be far from right in saying that the British Institution of Speaker was transplanted in our situation without the benefit of behavioural appropriateness and necessary modifications.

Our political parties in power have

not desired to follow British traditions, especially of a candidate for Speaker being selected by 'Consensus Compromise' and not marked by disagreement between the opposition and the government and that his seat from constituency not being contested in the general elections so as to ensure his re-election for the Chair subsequently and to inspire the confidence of all members of the House. The introduction of such tradition will empower the Speakers to discharge

their duties creditably and we will perhaps not see the unwarranted walk-outs, rows, shouts and disobedience on the floor of the House.

The office of Speaker needs to be de-politicized and must not be regarded as an office of patronage. Our legislators need to be well-versed in parliamentary norms and decorum. Like his British counterpart our Speaker should be entitled to a fabulous pension after retirement so that he is content and does not need to