

## Can the parliament expel one of its members?

The expulsion of Barrister Jamiruddin Sircar from the Jatiya Sangsad, if allegations against him are found to be true, appear to be within its lawful jurisdiction. However, we hope that the Parliament will show extreme caution in order to avoid creating a bad precedent, while ensuring that corruption of their leaders, if proven, must not go unpunished.

BADIUL ALAM MAJUMDAR

**A** sub-committee of the Special Parliamentary Committee was formed to investigate the alleged corruption of the former Speaker Barrister Jamiruddin Sircar. The report recommended that he be expelled from the House for "massive financial graft involving moral turpitude." The Special Committee and finally the full House will have to act on the recommendations. This is the first time the Bangladeshi parliament is faced with such an important decision. Can the parliament expel one of its members?

Article 78 of our constitution, dealing with parliamentary privileges and immunities, provides unlimited powers of free speech and immunity from anything said or done or spoken in legislative proceedings. The concept of privilege is based on the British principle that a sovereign legislature must be able to perform its functions freely and effectively in the face of royal tyranny.

Another set of privileges, known as penal jurisdictions, arise from the realisation that for Parliament to perform effectively, it must possess certain inherent powers to punish for contempt or breach of its privileges. Such punishment can be given to its members as well

as to outsiders. Punishment to its own colleagues can even be in the form of expulsion to get rid of those unfit to be legislators.

Our Constitution calls for legislation to determine and give effects to the parliamentary privileges, which has so far not been enacted. Given this, precedents should be used as the guide. However, we do not even have any such precedents in Bangladesh. In that case, we can follow the conventions, that is, examples of other countries, including that of Britain and neighbouring India.

If a member of the House of Commons or Lords is in breach of the privileges, he or she can be suspended or expelled. Such past breaches included giving false testimony to a Committee of the House, taking bribes and similar transgressions. This power was very commonly used in the 17th and 18th centuries, but nowadays it is used very rarely -- apparently it was used only three times in the 20th century. Britain does not have a written Constitution and hence its Parliament is considered to be supreme vis-à-vis other organs of government.

In India, the power to expel legislators were used a number of times. On September 25, 1951, H.G. Mudgal was expelled from the Lok Sabha after a

Special Committee of the House found that he accepted money for favours. Speaking on that occasion, Speaker Malvankar noted: "Even though there is a Committee of Privilege constituted under the rules, it is within the power of the House to constitute other special committees if there are any special circumstances and inquiries to be made."

On November 18, 1977, the Lok Sabha expelled Indira Gandhi from the House for obstruction of justice, harassment and institution of false cases. Leader of the House Morarji Desai moved the resolution for expulsion. However, on December 19, 1998, the House rescinded Mrs. Gandhi's expulsion. Several State Legislatures, namely Maharashtra, Haryana, Madhya Pradesh, Tamil Nadu also expelled several of their members over the years.

The biggest such episode was the expulsion of 11 MPs -- ten members of Lok Sabha and one from Rajya Sabha -- from major political parties on December 23, 2005 for cash-for-question scam, as shown on a private TV channel based on a sting operation. One expelled Lok Sabha member, Raja Ram Pal, challenged the decision before the Supreme Court that the Parliament did not have inherent powers to expel its members and that their fundamental rights had been violated as they had not been given a proper opportunity to be heard. Subsequently, another Lok Sabha member, Babubhai Katara, was expelled on October 21, 2008 with a resolution of the House.

Until recently, judicial decisions were divided on whether the Indian legislatures could expel their members. In a Special Reference in 1964, the Supreme Court of India observed that unlike the House of Commons, the Parliament and State Legislatures of India are not superior court of record and hence cannot com-



mit a person for contempt.

The privileges of the MPs, as laid in Article 87 of the Bangladesh Constitution, are not yet codified (which must be done forthwith) and a jurisprudence has not evolved. Hence we will have to depend on the conventions of other countries, such as India, which follow a similar Westminster system. Modelled after the British, parliaments of the countries like ours deemed to possess such powers and authority as are necessarily incidental to their proper functioning. Parliamentary precedents on the issue of expulsion of MPs are already established in India through removal of

several of its members from the House. The Indian Supreme Court in its latest decision recognised the Parliament's right to discipline its members. In addition, the punishment of lawmakers, who have become lawbreakers, are in utmost public interest.

Thus, the expulsion of Barrister Jamiruddin Sircar from the Jatiya Sangsad, if allegations against him are found to be true, appear to be within its lawful jurisdiction. However, we hope that the Parliament will show extreme caution in order to avoid creating a bad precedent, while ensuring that corruption of their leaders, if proven, must not go unpunished.

Otherwise the credibility of the Parliament itself will be tarnished. Members of Parliament hold an office of great responsibility and the protection given to acts done by them in good faith and furtherance of public interest cannot be extended to their mala fide acts. In this context, it should be remembered that the privileges to be enjoyed by our legislators must be governed by the principle of necessity rather than by historical precedents, and thus may not exactly replicate the powers and privileges found in the UK.

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## Reaping Bangladesh's interest

Two full ministerial meetings in Cancun and Hong Kong in 2003 and 2005 respectively, and several mini-ministerials could not result in any fruitful conclusions towards the completion of the Doha Round.

FAHMIDA KHATUN

**I**n order to break the impasse of the World Trade Organisation's (WTO's) Doha Round negotiations another ministerial meeting is now being planned for December 2009. Members of the WTO have been struggling almost for the last eight years since the ministerial meeting in November 2001 in Doha to arrive at a consensus on a number of issues including an agreement on modalities for liberalisation of agriculture, non-agriculture and service sectors.

Two full ministerial meetings in Cancun and Hong Kong in 2003 and 2005 respectively, and several mini-ministerials could not result in any fruitful conclusions towards the completion of the Doha Round which is commonly known as Doha Development Round (DDR) because of the development friendly components in the Doha

Ministerial Declaration. After several failed attempts to conclude the negotiation, member countries came closer to a consensus in July 2008 which finally could not be sustained due to opposed positions of the developed and developing countries on the issue of mainly special safeguard measures (SSM) in agriculture.

LDCs are yet to derive commitments from developed and advanced developing countries on a number of important issues including the duty free quota free (DFQF) market access for all products and market access opportunities for services from all LDCs. The demand of DFQF market access originated from the fact that LDCs pay much higher duty for exporting much less.

The higher duties are mostly on products where LDCs have comparative advantage, such as ready-made garments (RMG) from Bangladesh. Even if duties are less or zero for some products, devel-

oped countries make it difficult for LDCs to export their products by imposing non-tariff barriers (NTBs) and tough rules of origin (RoO) requirements.

At the Hong Kong Ministerial conference members agreed to provide DFQF access to all LDCs for all their products on a 'lasting basis' by 2008 or no later than the start of the implementation period. It was also agreed that members who find this difficult to do will provide DFQF market access for at least 97 percent of products. This agreement, however, meant very little for LDCs on several grounds. First, the date by which 100 percent coverage of products would be achieved was not stipulated. Second, how will the probable excluded products under 3 percent tariff lines be calculated. Third, most developed countries already provide DFQF to about 97 percent of the tariff lines. Therefore, such provision of DFQF access does not seem to be commercially meaningful for LDCs.

During the post Hong Kong period these issues along with market access for service providers under Mode 4 of the General Agreement on Trade in Services (GATS), the WTO Rules, Trade Related Intellectual Property Rights (TRIPS) and Aid for Trade (Aft) filled up the discussions at the WTO. Meanwhile, the global

economy has landed on an economic recession emanating from a financial meltdown originated in developed countries in 2008. This has broadened the ambit of the WTO activities.

Emphasising the difficulties without a successful DDR Bangladesh should argue its case broadly in six core areas. *First*, Bangladesh has active interest in case of non-agricultural market access (NAMA) as getting DFQF access, particularly in the USA is critical. An immediate DFQF market access is all the more important in view of the impact of the preference erosion on the Bangladeshi economy.

*Second*, as a labour surplus country Bangladesh has high interest in getting market access for the 'movement of natural persons' under Mode 4 of the GATS agreement. Modalities for LDCs adopted in September 2003 set out a number of important issues for LDCs including 'preferential market access mechanism' which should be created for achieving effective market access for LDCs to the developed markets. Members should open their markets to 'all categories of natural persons from LDCs, particularly unskilled and semi-skilled persons' without applying a so-called 'economic needs test'.

*Third*, in the face of apprehended

reduction of aid flows due to global recession Bangladesh has to work towards increased flow of funds under the Aft initiative. This will require identifying areas and specific projects for support under this initiative. In view of the upcoming second Global Aft Review in July 2009 we need to do the necessary homework as to where and how much support is needed.

*Fourth*, the commitment of the G-20 leaders to refrain from raising new barriers to investment or to trade in goods and services imposing new export restrictions, or implementing WTO inconsistent measures to stimulate supports has not actually been followed in reality. Bangladesh should be alert against any probable negative impact of protectionist measures of countries adopted in the face of global economic crisis.

*Fifth*, even with divergent interests among LDCs efforts towards forming strategic alliance with other LDCs and developing countries should be continued to make the case of Bangladesh stronger.

*Sixth*, the reliance on only strategic alliance does not improve the participation of LDCs. The ongoing financial crisis reemphasises the need for revisiting the performance of major global financial

regulators and institutions. The issue of institutional reform of the WTO is also being pronounced for a while in order to improve the global economic governance which would ensure increased engagement of LDCs in the decision making process on the key issues.

There is no denying that trade has been one of the engines of the growth process in Bangladesh since the last decade or so.

While as a founding member of the WTO Bangladesh has to comply with the rules of the WTO it is also exempted from undertaking many commitments including tariff reduction and is qualified for extended period for implementation of some agreements, such as obligations under TRIPS. These exceptions, however, do not imply that Bangladesh has any scope to remain content with the pace and any probable outcome of DDR negotiations. During the run up to the upcoming ministerial meeting Bangladesh has to gear up its activities backed by sufficient homework towards influencing countries to adopt full negotiating modalities which will contain issues of interest to LDCs such as Bangladesh.

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## Af-Pak prospects

The only way to defeat the Taliban is to provide Pakistanis (and Afghans) with ideals for which they can fight. They have to be provided with a social dispensation that meets the yearnings of the hopeless, landless, illiterate, unemployed peasant or artisan.

M.B. NAQVI

**A**FTER their recent summit in Washington Pakistan and the US Asif Zardari and Hamid Karzai wore wan smiles. This is because of the Americans' tactic. These tactics were the standard carrot-and-stick policy. The US brandished the stick first. They had disclosed earlier that the carrots are truly succulent. Ground preparation included the beating up the "Af-Pak" leaders with verbal sticks. They had rubbed the Pakistan president as being inefficient and weak.

In the campaign against the Zardari regime, the American government's State, Pentagon, CIA and NSC in the White House had done their jobs well. Afghan President Hamid Karzai also received similar treatment. The two were visibly diminished.

Ample aid was promised. The two Asian presidents were greatly relieved and pleased with the promised aid. They quickly agreed to do what the Americans wanted: prosecute the war in the way the

Americans would wish. This last condition was far more stringent for the Pakistan president.

The Americans now have Pakistan and Afghanistan where they wanted.

What lies ahead? Is a quick American victory in the war against Islamic extremists? These tactics were the standard carrot-and-stick policy. The US brandished the stick first. They had disclosed earlier that the carrots are truly succulent. Ground preparation included the beating up the "Af-Pak" leaders with verbal sticks. They had rubbed the Pakistan president as being inefficient and weak.

Neither side could really succeed and for the British the cost effective way of dealing with them was to let them be semi-independent while drawing a line on the map, the Durand Line in 1893 that divided many Pashto tribes in both Afghanistan and India.

Tribesmen were allowed to cross this frontier freely without passports or papers and were also allowed to keep arms. This meant they were more or less

permitted to attack and be attacked by the British.

Britain trained the British as well as Indian Army in these areas. The British expeditionary forces invaded Afghanistan thrice until 1910s. They lost each war. Afghans saw the British colonial Army for what it was. They defeated the Soviet Army similarly, which had adopted what seemed a colonial role. The Soviets were defeated and left Afghanistan in 1989.

In the 1970s and 1980s, the Americans tried to experiment with the same political tactic that the various Asian insurgents had employed in Korea, Indonesia, Vietnam, Algeria and elsewhere. The Americans could not win Korea, Vietnam or anywhere else of notable size. They did win small battles in Nicaragua and smaller states in Central America.

The Yanks adapted in 1980s the same tactic that Asians had employed in Algeria, Indonesia and Vietnam: Revolutionary ideas in the insurgents' heads against the Soviets. They dressed up the attractive ideas of social welfare in Islamic robes. In Afghanistan the Soviets appeared like a colonial army and no amount of explanations by the PDPA or Russian communists convinced the Afghans that Russians were anything but colonial. Which is why they had to withdraw unceremoniously.

Let no one forget that while Afghanistan was always a peaceful country, the people of Fata and other Pashto tribes living in the NWFP had always been tough rebels, fighting the British colonial power for two centuries.

In the war now being waged by the

Americans in Iraq and "Af-Pak," Americans have had their pro-democracy verbiage stripped away and were left to look like a colonial army.

The Iraqis, Afghans and even the Pakistani Taliban claim to be fighting against the world's biggest imperial power. The Taliban leadership has learnt tricks from recent history books. They have employed in Swat, the same tactics that Communists adopted in Vietnam.

They confiscated lands of bigger landlords and re-distributed it among the landless.

This is the most convincing method of buying near permanent loyalty from the peasants. Look at the success of the CPM in India. They could rule West Bengal for 37 years.

In Swat, the Taliban have employed this class war tactic and have given land to the landless. That seems to ensure insurgents' victory rather than that of the Americans' or their puppets in Kabul and Islamabad.

What are the Americans doing in Afghanistan? They have no businesses there. The only conclusion that people have drawn in the region is that US is there for the sake of what they call their strategic and national security interests.

Can Zardari and Karzai sell these interests to the people? Can the people be convinced? No Pakistani or Afghan has any business explaining America's

obscure purposes to his people. If the Americans have taken the trouble to come, let them explain why they are here.

While we are on the subject of national security and strategic interests of America, some Pakistanis are apt to lecture on Pakistan's own strategic importance.

Strategic location of Pakistan, they emphasise, is of being the junction of several Asian regions: South Asia in the east, Afghanistan, Iran, Turkey in the west, that were called the soft underbelly of the defunct Soviet Union, Persian Gulf, also in the west and Arabian peninsula, including the Gulf Sheikhdoms in southwest. Pakistan is thus important for any great power.

Look at the way the Chinese expect to be informed of what the Americans are doing. Just after this trilateral Af-Pak summit in Washington, President Obama was talking to Chinese President Hu Jintao and the conversation included Pakistan. Then Chinese ambassador in Islamabad talked about the 'substantial' Chinese interests in Pakistan.

He went further and quantified that over 10,000 engineers are working on 120 or so many projects; they had built the warm water seaport of Gwadar not too far from the choke point in the Gulf. Pakistan has now two or three significant warm water ports in the Indian Ocean and its subsidiaries with a direct route to China.

No ambitious power is likely to leave nuclear Pakistan severely alone or consign it to American interests.

Pakistan cannot be the sole property of any one great power at least. Additionally, it is the hotspot where a big war can take place. What Robert Blackwill said in Bangalore on May 7 confirms this.

The question of what the Americans are doing in Af-Pak cannot be left unanswered. They have to recognise that ugly ducklings, Taliban, are fighting against a foreign imperial power and this resonates with the people. How do you fight ideological insurgents in poor countries who look forward to a physically comfortable dispensation here and hereafter. Which is why they refuse to bow down to America's awesome military apparatus -- and are intent on defeating it. This is a real possibility.

The only way to defeat the Taliban is to provide Pakistanis (and Afghans) with ideals for which they can fight. They have to be provided with a social dispensation that meets the yearnings of the hopeless, landless, illiterate, unemployed peasant or artisan. Give them a political system that will make them citizens with concrete functions of a citizen that can later expand from initial small beginnings. Without education and good governance the Americans cannot hope to defeat Islamic terrorists.

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