



PARLIAMENT *scan*

## The Code of Conduct Bill for MPs: Some reflections

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THE Bangladeshi brand of parliamentary democracy is a species peculiar in itself. During the first two decades (1971-1991) of our history, parliament as an institution suffered a total inattention. In the next two decades (1991-2010) it has been able to draw some focus though not much for its role play. Absence, causal presence, irregular attendance and regular boycott have drastically reduced its capability. It has developed a credibility crisis as well. In an ingenious bid to make politics 'difficult for the politicians', peoples with questionable disposition found their place in politics and parliament en masse. And hence the allegations of misusing the duty free car import facility, telephone, medical, travel, dwelling and entertainment allowances do not surprise us any more. Recently added to these is the allegation of misappropriation of AC, refrigerator, furniture and even chul-dal-noon-tel from parliament cafeteria. Outside the parliament, patronizing the terrorists is a rule rather than an exception. Though there are some rules of conduct in the Rules of Procedure to make the Members behave within the House, absence of a full pledged Code of Conduct controlling both the indoor and outdoor activities has contributed to damage the collective image of the Parliament. Given the situation, the recently tabled Private Member Bill proposing a Code of Conduct for MPs shows us a stream in the desert.

### A skim through the Code of Conduct Bill

The Bill is based on a fundamental assertion that great honor of representation burdens the MPs with the great obligation to keep-up to people's expectation. The statement of objects and reasons of the Bill underscores the truism that spirit of democracy should first be implanted in the MPs themselves, if they are to establish the democratic and constitutional rights of the people. And hence the Bill aims at enabling the MPs to keep strict to their duties by setting examples before the nation.

**Ethical position of the MPs** - Section 3 of the Bill enumerates the intrinsic qualities a Member of Parliament is required to possess. These include humanity, com-

mitment towards the independence, sanctity and sovereignty of Bangladesh, profound belief in the equality of all irrespective of sex, religion, race, color etc, rational and constructive outlook, allegiance to the spirit of the liberation war, noninvolvement in any anti social activity and commitment towards the establishment of rule of law.

**Duties of the MPs** - Discharging parliamentary responsibilities as per the Rules of Procedure would be the core duty of the Members of Parliament. In doing so they shall play an active role in representing the people with commitment, in lawmaking and in ensuring the accountability of the executive (Section 4(1)(i)). They shall uphold the law in keeping with the trust the people deposited with them (Section 4(1)(ii)). They shall discharge their parliamentary and public duties without taking into account any material and financial gains (Section 4(1)(iv)).

**Basic principles of conduct** - The Bill lays down some behavioral norms which the Members of Parliament shall follow in discharging their duties. Section 4(2)(a)-(g) delineate the principles of selflessness, integrity, objectivity, accountability, openness, honesty and leadership. The Members shall declare personal interests and take steps to resolve any conflict of interest in a way that protects the public interest. There shall be openness regarding their decisions and actions. They must give reasons behind their decisions and may restrict information only when the wider public interest clearly demands. They shall take decisions solely in terms of the public interest and not to gain financial or other material benefits for themselves, their family or friends. They shall not place themselves under any financial or other obligation to outside individuals or organizations that might influence the performance of duties.

Additionally section 5(f),(g),(h) and (i) require them to refrain from recommending, influencing or changing the accepted rules of appointment in or promotion to or transfer from any public or private posts. They should also refrain from exerting personal or party influence in public procurement and approval or execution of public projects. Most importantly, as representative of the people they must refrain, in home or abroad, from doing all such things which may lower the image of Bangladesh as a sover-



eign country.

Section 6 embodies the 'No Paid Advocacy rule'. A Member of Parliament shall not make the public interest subordinate to any individual, coterie or party interest and must not vote on any bill or motion, or ask any question in the House or a committee, or promote any matter, in return for payment or any other material benefit.

Section 7 restricts the acceptance of gifts that may pose a conflict of interest or influence them in the exercise of their duties. They have to declare gifts exceeding 5000 taka to Ethics Committee to be formed under this Code and in 'appropriate cases', to submit the gifts or donations to the exchequer.

Section 8 provides that they shall utilize public properties and privileges as per law. Perhaps keeping in mind the In no circumstances the parliamentary privileges shall be used for income generating purposes.

Section 9 provides that subject to the Right to Information Act and any other law for the time being in force, Members must not knowingly and improperly use official information obtained in confidence in the course of their parliamentary duties, for the private benefit.

Section 10 requires the Members of Parliament to reflect democratic, progressive, tolerant, material and rational opinion in their speech and over all conduct.

In Section 11, the Members are prohibited to mislead the Parliament or the people consciously by their statement or speech. Even if one unwillingly makes any mistake, he/she 'must' correct the records on his/her own accord. Section 12 of the Bill reiterates what is said in Rule 270 of the Rules of procedure. A Member of Parliament is required to show respect, courtesy and civility towards other Members of Parliament.

**Conflict of interest and financial statement** - Section 5 of the proposed Bill reinforces the Rule 188(2) of the Rules of Procedures in a larger plane by requiring the Members to publish in the prescribed from their conflicting interests (Section 5(b)), wealth and income along with that of their family members before the first session of parliament ends to be updated on yearly basis. These statements shall be subject to the scrutiny of Ethics Committee which shall be empowered to publish any one if it thinks fit (Section 5(d)). They are also to arrange their private affairs so as to prevent real, potential or apparent conflicts of interests (Section 5(b)). To resolve the conflict of interests they may seek necessary guidance from the Ethics Committee (Section 5(c)).

**Ethics committee** - A Nine (9) Member Committee headed by the Speaker (Section 13(2)) with proportionate representation of the political parties shall be

formed (Section 13(3)) to oversee the enforcement of the Code of Conduct. The Committee may inquire into the allegations brought by any individual (Section 13(5)). Any incident covered by the electronic and print media may suo moto be inquired into (Section 13(6)). A show-cause notice will be served on the accused MP and if his response is found satisfactory, the Committee may discard the issue. If the response doesn't satisfy the Committee, it shall refer the issue to the House with recommendations for punitive measures (Sections 13(7) and 14(2)).

### Some gaps to be filled up

In spite of embodying so many progressive features, the Bill in its present form bears every risk of becoming a mere paper tiger unless some important issues are addressed sincerely and vigorously.

First, while framing a law regulating the conduct of MPs, we must not overlook the essential difference between a Code of Conduct and a Code of Ethics though they are often used interchangeably. This Bill also has mixed them up. A Code of Ethics identifies those ethical values within a particular culture, time and place that are regarded as the foundation of a profession or institution. Such a Code is usually aspirational rather than prescriptive. How to bring issues like fairness, accountability, faith in democracy, justice within the four walls of legal language to make them strictly enforceable? A Code of Conduct, on the other hand, is usually more focused on the core functions of the profession or organization, involving a sanction against violation. Bribery, corruption and conflict of interest etc can easily be subsumed under a law. So a Code of Conduct consisting of so many ethical principles, as it is the case with this Bill, would be a net with loopholes.

Secondly, even the core justiciable issues finding place in the Bill may be seen by the public only as window-dressing if the proposed Ethics Committee is not reconsidered. Similar Codes of Conduct failed to improved things in UK and US. The Ethics Committee consisting proportional representation of the political parties will surely take partisan stance by dividing along party lines.

Rather a parliamentary officer, like the Parliamentary Commissioner for

Standards in UK or Jurisconsult in Canada, may be assigned with the administration of the Code, while the enforcement shall rest with the Ethics Committee. The Commissioner shall have the duty to receive and investigate complaints concerning the Code, from parliamentarians and members of the public. On the basis of the recommendation of the Commissioner, ultimate sanctioning power shall be exercised by the Ethics Committee. To prevent the Committee from vitiating the recommendation, it may be provided that the Committee would ratify a report or reject it only on procedural grounds or because salient evidence has not been properly considered. In effect, the Committee shall operate as an appellate forum, charged with ensuring that procedural guarantees and natural justice have been observed. To attract vigorous public attraction, the report of the Commissioner must be made public before it is deliberated in the Committee. Moreover, to attract concrete punitive consequences for the Member found guilty, a breach of the Code should constitute misconduct and a breach of the privileges of Parliament.

Thirdly, while the Code requires the declaration of interests, it is slippery on the issue of specifying the specific interests that are required to be declared and registered. A concrete list may be inserted in the Bill defining the financial and non-financial interests which are always relevant and therefore must be registered.

Fourthly, best of the options shall be to introduce the Bill the House afresh as a Government Bill to do justice to the long felt demand for a binding Code of Conduct.

### Conclusion

There is no denying that simply adopting a Code of Conduct would not cause a sea change in the situation. Perhaps it would not mark any difference at all. While even the ballot box fails to prevent troublemakers entering the Parliament, what a mere Code can do? Yet isn't it significant that at least one of the Members of Parliament have realized the magnitude of the credibility crisis the Parliamentarians face today? For now let us congratulate the MP responsible for the Bill and demand the approval of the Bill with necessary adaptations in the House.

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## REVIEWING *the views*

### Religious sentiment versus the need of the hour

#### Reactions after Indian SC bans Burqa-clad photo in Voter ID

ZAHIDUL ISLAM BISWAS

WHEN a controversy triggered by the ban on full-length burqas has roiled France, attracting protests from clerics, the Indian Supreme Court came up with another decision on the religiously sentimental issue. The Supreme Court of India has said that burqa-clad women cannot be issued voter identity cards, rejecting the argument that religion prohibits them from lifting their veils.

This verdict came from a Supreme Court Bench comprising Chief Justice K G Balakrishnan and Justice Deepak Verma following an appeal against an order of the Madras High Court

upholding the Election Commission's insistence for a photograph without veils to be used in voter ID card

The Madras High Court had in a 2006 verdict held that faith and practice were on two different planes, and there was nothing wrong on the part of the Election Commission to insist on a photograph of the face of a 'purdah-nashin' woman for the purpose of preparing electoral rolls.

The counsel for petitioner M Ajam Khan had contended that asking 'purdah-nashin' women to lift their veil for being photographed would amount to sacrilege as their photographs would be seen by many men working as polling agents and electoral officials. He argued that '[i]t will hurt their religious

sentiments and the Election Commission must not insist on 'purdah-nashin' women to be photographed for inclusion of their name in the electoral rolls.'

The argument put forward on behalf of petitioners failed to impress the court. The Bench said: 'If you have such strong religious sentiments, and do not want to be seen by members of public, then do not go to vote. You cannot go with burqa to vote. It will create complications in identification of voters.'

When the petitioners again insisted on protection of religious sentiments, the Bench said: '[t]he photograph is for identification of a voter. If someone comes to vote in a burqa and the photograph was also taken with veil covering the face, how would anyone identify the voter?'

Explaining that right to vote was only a statutory right and not a fundamental right, the Bench said: 'Right to contest an election is an extension of the right to vote. Can anyone contest an election saying photograph of her face be not taken? Can she be photographed in a burqa with a veil and yet contest an election?'

Appearing for the Election Commission, counsel Meenakshi Arora said though electoral rolls were being prepared as per the judgment of the High Court, it would be better if the Supreme Court gave a verdict that would help reach a closure on the issue. The Supreme Court verdict then followed.

The verdict has created mixed reactions among Muslim population. The Muslim scholars also have given differing reactions; however, majority of the Muslim scholars have supported it. Senior cleric Maulana Abu Zafar

Hassan Nadvi maintains that the court should not have made it mandatory for the burqa-clad women to lift the veil at the time of voting. He has said, 'In the name of liberating women, we cannot accept something which is against Islamic values. In public, they must not be forced to lift the veil.'

But many other Muslim scholars and community leaders have urged the community not to oppose the Supreme Court ruling asking burqa-clad women to lift the veil at the time of voting so that their identities could be checked. Most Islamic scholars maintain that since face veil was not mandated by the Quran it should not be portrayed as a contravention of the scriptures.

Many respected scholars like Maulana Ashraf Ali Thanvi have said women could go in public without face veil. Uzma Naheed, head of Iqra Foundation (India), who wears a hijab but does not fully cover her face with a veil, has said, 'if the law of the land demands that women must show their faces in certain circumstances like at immigration counters and at polling booths, Muslim women should submit.

Noted Islamic scholar Asghar Ali Engineer maintains that the veil is a medieval and patriarchal practice. Muslim women who observe purdah shouldn't resist lifting the veil at the time of casting votes. The veil among Muslim women, like the ghonghat among a section of Hindu women, is mostly part of culture and, scholars say, cultural practices could be relaxed to stop impersonation at voting booths.

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## HUMAN RIGHTS *monitor*

### Abortion limits violate human rights

THE Irish government actively seeks to restrict access to abortion services and information both within Ireland and for its residents seeking care abroad, Human Rights Watch said in a report released.

The 57-page report, "A State of Isolation: Access to Abortion for Women in Ireland," details how women struggle to overcome the financial, logistical, physical, and emotional burdens imposed by restrictive laws and policies that force them to seek care abroad, without support from the state. Every year thousands of women and girls travel from Ireland to other European countries for abortions.

"Women in need of abortion services should, as a matter of international law and - frankly - human decency, be able to count on support from their government as they face a difficult situation," said Marianne Mollmann, women's rights advocacy director at Human Rights Watch. "But in Ireland they are actively stonewalled, stigmatized, and written out."

In Ireland, abortion is legally restricted in almost all circumstances, with potential penalties of penal servitude for life for both patients and service providers, except where the pregnant woman's life is in danger, but there is little legal and policy guidance on when, specifically, an abortion might be legally performed within Ireland. As a result, some doctors are reluctant even to provide pre-natal screening for severe fetal abnormalities, and very few - if any - women have access to legal abortions at home. The government has indicated that it has no current plans to clarify the possible reach of the criminal penalties. The government does not keep figures on legal and illegal abortions carried out in Ireland, or on the number of women traveling abroad for services.

"Irish law on abortion is in and of itself an affront to human rights," Mollmann said. "But

Safe and Legal (in Ireland) Abortion Rights Campaign

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it is made worse by the fact that even those who may qualify for a legal abortion in Ireland cannot get one due to deliberately murky policies that carry an implied threat of prosecution."

But women also face more active sabotaging of their health decisions by the state. Throughout the last two decades, the Irish government has used injunctions to prevent individuals from traveling abroad for abortion. As recently as 2007, a 17-year-old girl in the custody of the Health Services Executive had to go to court to get permission to travel to the United Kingdom for an abortion.

Organizations that provide information on how to access abortion services abroad face restrictions on when and how this information can legally be conveyed, under threat of penalties. And the government does nothing to prevent "rogue" agencies that represent themselves as providers of information about abortion from circulating blatantly misleading and false information.

"Women should not have to make decisions about their health and lives based on lies," Mollmann said. "Yet the law leaves 'rogue' agencies unregulated and threatens honest service providers with fines or worse if they help a distressed woman make a phone call to a clinic abroad."

Source: Human Rights Watch.

