

# Oath of MPs-elect: No room for confusion

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In the last few days the newspapers, commentators and talk show experts have been proffering conflicting views as to the legality of the members-elect of parliament taking oath of office before the end of tenure of the ninth parliament on January 24. The discussion has quite unnecessarily caused confusions in the minds of the people. Some of the comments coming from the leaders of political parties are understandably politically motivated. It is, however, less easy to understand our learned legal scholars, constitutional experts, eminent editors of the dailies, and the pontificating stars of the TV talk shows making the same mistakes. This is largely because, unwittingly or unwittingly, the commentators are reading the constitution selectively or ignoring those parts of the constitution that do not fit their argument.

Our constitution is quite precise and clear, and it has left nothing in doubt. The references to "oath taking" and "assumption of office" are discussed in two different articles in the constitution. The first is a "general oath" that is applicable for offices that

not assume office as members of parliament except after the expiration of the term referred to therein." The constitution had correctly anticipated that election of new parliament would overlap the old by a few weeks and hence it made a separate provision taking this into consideration.

The framers of the constitution perhaps anticipating such confusion had further clarified the situation in the Third Schedule of the constitution. The text of the "Oaths and Affirmations" prescribed for the MPs-elect reads as follows: "I will faithfully discharge the duties upon which I am about to enter according to law..." The words underlined unequivocally distinguish between the taking of the oath and the assumption of the office by the new MPs on future date.

This clearly shows that there is no question of two parliaments -- 9th and 10th Parliaments -- existing at the same time. The 9th Parliament remains in place until it expires on January 24. The 10th parliament will come to life when convened by the president on January 25 or as soon as possible after that date.

Perhaps it would also be useful to clarify as to why there was an urgency to swear in the new members of parliament whilst the members of the 9th Parliament were still in situ. This arises both from constitutional and practical compulsions. Under Article 148 (2A) of the constitution it is obligatory for the Speaker of the Parliament to administer the oath to the members-elect. There are also some compelling practical and logistical reasons as to why the oath has to be administered.

First, it is only after the oath has been administered that the majority party can elect its parliamentary leader. Second, until the parliamentary leader is elected, the leader of the majority party cannot request the president to convene the new parliament (after the expiry of the old). Third, and perhaps most importantly, the person elected as the leader of the parliament is also the prime minister-designate. She/he must select her cabinet, swear them in and begin the work of the state without any delay.

The need for constitutional propriety and rule of law is vital for strengthening and institutionalising democracy. To that extent it is important that the newly elected government adheres to the constitutional norms and conventions. However, we must also be wary of creating unnecessary confusion, chaos and rancour that will distract the government from getting on with its task of addressing the urgent needs of the people. The people of the country have suffered for months. The violence, arson, deaths, mayhem, destruction of private and public property, the loss of livelihood and businesses, disruption of schools and college must be brought to an end. The minority community must be safe from death and carnage and be able to sleep in and pray in their temples without fear. Children should be able to play without being blown up bombs and explosives. The daily wage labours can bring home their income to feed their families. These are the important tasks ahead for the nation. We must not create further distractions or confusions. Instead come together, put aside our difference and make sure we put the interest of the people first.

The writer is an advisor to the prime minister and Professor Emeritus of public policy.

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require taking an oath; and the second refers only to the members-elect of the Parliament.

The general provision for "oath of office" is found in Article 148(3). It says: "Where under this constitution a person is required to make an oath before he enters upon an office he shall be deemed to have entered upon the office immediately after he makes the oath."

The confusion seems to have been caused by the phrase that a person "shall be deemed to have entered upon the office immediately after taking the oath." As will be seen, this provision is not applicable to the Parliament members-elect.

If one reads the constitution further one will discover that the constitution has made a clear exception for the Members of Parliament. Article 123 (3) proviso elaborates the conditions for the assuming of the office by the MPs when a parliamentary election is held "in the case of a dissolution by reason of the expiration of its term, within the period of 90 days preceding such dissolution." This was precisely the case with the January 5 election that was held under Article 123(3) sub-clause (a).

The proviso under Article 123 (3) says: the member-elect under Article 123(3) sub-clause (a) "shall

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