

To amend Article 70 or not

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*One should be careful in making any radical changes to Article 70 since the senior members responsible to carry this task, comprising of those deprived of ministerial/advisory positions, may not have the right intent other than making it difficult for the leaders to keep their parties intact, writes **Hasanuzzaman***

THE Bangladesh media has recently preoccupied itself with news and views on possible constitutional reforms. The debate on whether to revert or not to revert to the constitution of 1972 is confusing many, especially the young people who have difficulty in understanding the legal complexities of such restoration.

The 14 amendments made to the constitution to date, and among them amendments to validate preceding changes (e.g. the 5th and 7th amendments), are puzzling and one finds it difficult to comprehend why the constitution, the supreme law of the land, underwent so many changes.

Both our major political parties have taken opposing stance on the constitutional issue, with the ruling Awami League arguing for the restoration of the 1972 constitution amongst other changes, and the opposition Bangladesh Nationalist Party opposing any changes to the constitution, in particular the caretaker government provisions brought about by the 13th amendment in 1996.

One can choose and pick from the many contentious issues of constitutional debate and this article will focus on the implications of releasing the lawmakers off their party shackles so that they are able to exercise their freedom in parliament.

Here, it would be pertinent to recall that the parliamentary form of government was introduced in Bangladesh following the promulgation of the Provisional Constitution Order 1972, whereby the prime minister became the de jure head of government. But this system was altered through the 4th amendment in early 1975 to the presidential form of government and then again to the parliamentary form after the 12th amendment in 1991.

What remains open to debate is that in this process, from 1975 to 1991, no significant change was introduced to streamline the balance of power between the prime minister and the president, and the former was simply replaced with the word prime minister (12th amendment).

Though the constituent assembly in the early 1970s was dominated by the then ruling Awami League, prime minister Sheikh Mujibur Rahman expressed his annoyance when KM Obaidur Rahman, a ruling party member, raised a vital question: Why was the constituent assembly not given legislative powers?

Subsequently, the then president, Justice Abu Sayeed Chowdhury, on the advice of the prime minister issued the Bangladesh Constituent Assembly (Cessation of Membership) Order 1972. This stipulated that any

resolution without the prior acknowledgement and approval of the party in the assembly would end in the expulsion of the member concerned.

Thus, Article 70 came into force. The article reads, 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.'

One of the advantages of this provision is that it reduces the scope for political 'nomadism' where a member leaves a party voluntarily or changes party in mid-term which can bring considerable instability to parliament.

For those advocating changes to Article 70, it would be pertinent to draw their attention to India's experience with parliamentary democracy.

The constitutional amendment passed by the Indian parliament in 1985, to 'combat the evil of political defections....which is likely to undermine the very foundations of democracy and the principles which sustain it,' disqualified a political party member not only if he or she gave up their party membership, but even if they voted contrary to the directions of their political party without prior permission. This provision was strengthened by a further amendment in 2003 to prevent whole party mergers.

Against this backdrop, one is compelled to ask why India, with its more stringent rules on lawmakers' ability to cross floor, continues to enjoy lively debates and deliberations. Do quality of lawmakers in terms of their ability to constructively debate against their opponents matter?

There are two arguments which can explain the healthy trend of debate and deliberation in India. Firstly, Article 70 should not be conceived as exterior to political forces. As one Bangladeshi MP observes, 'Changing Article 70 may not yield the desired outcome because this is built within the conscience of MPs who are a priori party members. There is ample scope for expressing different opinions within Article 70 itself and there are other platforms (e.g. committees, media) to ventilate opinions which may not please the leader.'

In view of the lack of transparency in the candidate selection process contesting national elections, this article governs the conscience of potential members since they have to praise and please their respective head of parties to come into their radar.

The basic institutions of democracy are crumbling because of such party politics which try to establish party supremacy through the 'rule of loyalty' over the rule of law. The prevailing quota system for women, which hoped to serve the objective of class representation, is an ideal example of such a 'rule of loyalty' system and undoubtedly, any incumbent, in the name of women empowerment, will try to increase this share without making any changes to its qualitative aspects.

Second, to make parliament more effective and participatory, the role of the speaker will require considerable attention. For instance, it is very discouraging that since the 7th parliament, no adjournment motions put forward by the opposition have been allowed by the speaker. Beetham (2006) concludes that in case of India, 'Shri Mavalankar [former speaker of the Indian Lok Sabha] demonstrated exceptional objectivity and never made any distinction between members belonging to the Government and the

Opposition. This tradition has been maintained over the years, and it is this which makes the Indian parliamentary system work.'

The above supports the importance of the character of a speaker in establishing a tradition of impartiality in the conduct of parliamentary business. In other words, not only formal rules but more pertinently, establishing such conventions and practices which are entirely dependent on the good intent of the members themselves, matter.

Therefore, one should be careful in making any radical changes to Article 70 since the senior members responsible to carry this task, comprising of those deprived of ministerial/advisory positions, may not have the right intent other than making it difficult for the leaders to keep their parties intact. At the same time, what is imperative is that the short-term benefit of releasing the members of their party shackles should be cautiously calculated with the long-term costs in the form of potential government instability, emergence of smaller parties and coalitions, which may cumulate in undermining the legitimacy of the two major political parties and more alarmingly, create space for unstable governments.

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