

12th Amendment of Bangladesh Constitution: A Boon or Bane for Good Governance

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Abstract: Since 1972 the Constitution of Bangladesh has encountered 16 amendments. Where 4th amendment repealed Westminster model of Parliamentary democracy and introduced Presidential form of government whereas the 12th amendment repealed the 4th amendment of the constitution and reintroduced parliamentary form of government. 12th amendment of the Constitution reintroduced parliamentary democracy but the attitude of the ruling party towards parliament is to bypass the Parliament and to make law through promulgation. On the other hand, the oppositions' attitude is to boycott the parliament which assists the ruling party to pass any law without any fruitful debate. The political corruption in Bangladesh is much more concerning issue as the history shows that, though there some punishments have been implemented for financial corruption but the implementation of punishment for political corruption is rarely observed. Misuse of democratic rights and accusation and counter accusation game are common practice of the political parties. All over the world democratic government is the most desired form of government and as such democracy as a form of governance is highly appreciated. In the developed countries democracy is well practiced but the practice of democracy in the developing countries needs vast scrutiny. In Bangladesh parliament is seen barely functional and the bureaucracy is found highly politicized. In the Westminster model of parliament separation between executive and legislature can barely think of. If the executive and legislature show unwillingness to respect judicial orders where should the general people go? Democracy and good governance are not incompatible to each other. In Bangladesh, theoretically democracy and good governance coexist but in reality they are far from each other. Both democracy and good governance are necessary for a strong form of government and for the fulfillment of the desire of the people of Bangladesh. Bangladesh has faced a significant number of hardships for ensuring democratic practice in the country. To fulfill the desire of the people at large it is time ensure democracy and good governance to exist with each other in Bangladesh like most of the developed countries.

Key Words: 12th Amendment, Constitution, democracy, good governance, Bangladesh.

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1. INTRODUCTION

Bangladesh, a predominantly Muslim country, constitutionally adopted secularism and Parliamentary form of government. On the basis of religion it was a part of Pakistan, as India and Pakistan was departed in 1947 by the British Parliament. Bangladesh became independent in 1971 through the great liberation war against Pakistan. Military took over the power after the great political crisis occasioned in 1975. Direct and indirect military rule

continued till 1991. The Westminster model of Parliamentary democracy is rooted in the first constitution of Bangladesh adopted in 1972. However, this model faced multiple hurdles like- authoritarianism, one party system and personal rule. In spite of these hurdles, mostly accepted elected form of governments took over the power since 1991.

2. 12TH AMENDMENT OF BANGLADESH CONSTITUTION

Since 1972 the Constitution of Bangladesh has encountered 16 amendments. Where 4th amendment repealed Westminster model of Parliamentary democracy and introduced Presidential form of government whereas the 12th amendment repealed the 4th amendment of the constitution and reintroduced parliamentary form of government. 12th amendment of the constitution was passed on 6th August, 1991. This landmark constitutional development amended articles 48, 55-60, 70, 72, 109, 119, 124, 141A and 142. Through this amendment the President of Bangladesh is placed as the Head of the State and the Prime Minister is placed as the Executive head. This amendment abolished the post of Vice-President and held the Cabinet headed by the Prime Minister responsible to the Parliament for exercising their actions, powers and functions though all executive actions shall be taken in the name of the President. This amendment also ensured that the titular President (elected for not more than two terms) shall be elected by the members of the Parliament and the impeachment authority of the President is vested to the Parliament. Moreover, this amendment also introduced direct democracy in the local government bodies.

3. PRE 12TH AMENDMENT SITUATION IN BANGLADESH

President Hussein Mohammad Ershad announced parliamentary election on 26th April 1986 in order to resist the protest of the political parties (15 party alliance headed by the Awami League, 7 party alliance headed by Bangladesh Nationalist Party and Jamat-e-Islami) against Martial regime. To challenge the opposition political parties, Ershad formed a political party namely the Jatiyo Party. However, both the opposition political alliances at the first phase refused to take part in the election under military rule. Nonetheless, on 21st March, the mainstream opposition political party Awami League decided to take part in the election where the Bangladesh Nationalist Party alliances refused to take part in the election under military rule. Awami League's departure from the grand alliance allowed Ershad to be legally in power for another four years. In the parliamentary election of 1986, Jatiyo Party won 153 seats, Awami League won 76 seats, Jamat-e-Islami won 10 seats, Communist Party of Bangladesh won 5 seats, Muslim League won 4 seats, Jatiyo Samajtantrik Dal (JSD-Rob) won 4 seats, Krishak Shramik Awami League won 3 seats, Jatiyo Samajtantrik Dal (JSD-Siraj) won 3 seats, Workers' Party won 3 seats, National Awami Party won 2 seats, and independent participants won 32 seats. However, after the election the Jatiyo Party became stronger when 23 out of 32 independent members joined in Jatiyo Party and obtained 30 reserved seats for women. However, this election reflected the fulfillment of Ershad's commitment to civilianize his martial regime and the people's desire for the end of Martial rule. In the first session of the elected parliament most of the opposition members did not participate in the session claiming that democracy and martial law cannot go together as Hussein Mohammad Ershad was the then Chief of Army Staff. Therefore, General Ershad declared a presidential election on 15th October, 1986. After his retirement from Army Ershad joined in the Jatiyo party and became elected as its chairman. 12 candidates contested in the presidential election where President Ershad won in the election securing 83.57% votes. Being elected Ershad took oath as a president on 23rd October, 1986. Achieving formal legitimacy president Ershad summoned second session of the Parliament on 10th November 1986 and passed the 7th Amendment of the Constitution validating the martial law regime

since 1982. After that, President Ershad proclaimed withdrawal of martial law and revival of the Constitution.

4. POST 12TH AMENDMENT SITUATION IN BANGLADESH

12th amendment of the Constitution reintroduced parliamentary democracy but the attitude of the ruling party towards parliament is to bypass the Parliament and to make law through promulgation. On the other hand, the oppositions' attitude is to boycott the parliament which assists the ruling party to pass any law without any fruitful debate. Some prominent ordinances that turned into bills were- Anti-Terrorist Bill (1994), Ganges Water Sharing Treaty with India (1996), Chittagong Hill Tracts Peace Treaty (1997) and Anti-Terrorist Bill (2000). Apart from the bypassing scenario, the poor attendance of the Prime Minister in the Parliament was also observed in the recent past.

Where it is the duty of the opposition parliamentarians is to be present in the parliamentary session and to make constructive debate against any autocratic decision being made by the ruling part, the opposition parliamentarian is using the strategy of boycotting the parliament to put the ruling party under pressure. Therefore, the opposition political parties are exercising extra-parliamentary behavior and preferring street politics rather than parliamentary form of politics. The statistics of opposition's presence and boycott in the parliament is shown in the following:

Table 1: Oppositions presence and boycott of parliament

| Oppositions presence and boycott of parliament | | | | | | |
|---|------------------|----------|----------------|----------------|-----------------|-----------------|
| Under Study | Tenure | Sessions | At Work (days) | Boycott (days) | Presence (days) | Absenteeism (%) |
| 5 th Parliament (1991-95) | 4 years 8 months | 22 | 400 | 300 | 100 | 75.00 |
| 7 th Parliament (1996-2000) | 5 years | 18 | 382 | 156 | 126 | 40.83 |
| 8 th Parliament (2001-06) | 5 years | 23 | 373 | 223 | 150 | 59.78 |
| Total | | | 1159 | 679 | 376 | 58.78 |

Source: M. Moniruzzaman (2009)

Other common behaviors of the opposition political parties are rejecting the election result alleging corruption in the election, and threatening to boycott the oath taking session of the parliament. Apart from this, in the recent past in most of the cases the oppositions MPs presented in the parliament in order to maintain their parliamentary membership intact. However, general people do not appreciate the irresponsible attitude of the opposition leaders in the parliament rather they believe the opposition leaders could play a vital role in the parliament on behalf of the general people by criticizing the ruling party in the law making process.

Moreover, the opposition parliamentarians claim that, disproportionate time is allotted to them for delivering their speech in the parliament where more time is allotted to the ruling party members. In respect of the deliberation in the parliament three basic characteristics

among the parliamentarians are seen, they are- abusive speech, personality cult, and blame game among the politicians.

Table 2: Nature of Parliamentary Sessions (Partially from 2003-2006)

| Nature of Parliamentary Sessions (Partially from 2003-2006) | | | |
|---|---------------------------|----------------------|--------------------|
| Issues | Total Number of Incidents | Ruling Party MPs (%) | Opposition MPs (%) |
| Personality Cult | 1,058 | 74 | 26 |
| Discussion Switching to Irrelevant Issues | 962 | 70.79 | 29.21 |
| Warning Given to MPs for Irrelevant Discussion | 547 | 67 | 33 |
| Switching off Microphone | 66 | 50 | 50 |
| Accusation/Counter Accusation | 990 | 71.01 | 29.09 |

Source: M. Moniruzzaman (2009)

Regarding the blame game situation, the ruling party always thinks that they are always right and has the legitimate authority to stay in power and to pass any law. Apart from this, the ruling party always alleges that the opposition party's movement against the government is unconstitutional, vindictive, false and conspiratorial. Interestingly both the accusation and counter accusation of the political parties are mostly on the same issues; like- the government is using Special Power Act to oppress the opposition, the government is not willing to ensure independence of the judiciary and freedom of press media. However, none of the political parties are found interested in the near past to resolve these disputes rather they accuse each other for not resolving these disputes.

Parliamentary mechanism and parliamentary administration are other issues of debate. It is always claimed that the Speaker plays discriminatory role among the MPs and allots more time to the ruling party MPs for deliberation. Parliamentary accountability of the government is not always ensured. Prime Minister and Ministers deliberately bypass answering the question asked to them in the parliament. Moreover, the secretariat insufficiently follows the prescribed parliamentary rules and regulations. The office of Ombudsman has been made paralyzed since its creation. It has no power to investigate the administrative action of the government.

There are three basic factors that are responsible for dysfunctional nature of parliament. Firstly, the political culture of Bangladesh is mostly aggressive and violent. As such violence and disturbance is historically considered as a legitimate way for ensuring political demand which lead to dysfunctional nature of parliament. Secondly, the political parties in Bangladesh are mostly person based rather than philosophy based. As a result their personal command is considered as the supreme command of the parties which also lead to dysfunctional nature of parliament. Finally, lack of democratic practice in the political parties is also responsible for dysfunctional nature of parliament.

5. DIRECT AND INDIRECT DEMOCRATIC TOOLS

The political parties mostly use two types of tools to fight each other, they are- Direct Democratic Tools and Indirect Democratic Tools. Direct Democratic Tools include- voting rights cancellation; ban on religion bases political parties; one party system incorporation; and the military regimes. Indirect Democratic Tools on the other hand include- misuse of democratic rights; financial corruption; and political corruption.

Financial corruption as a part of Indirect Democratic Tools includes- corruption on the governmental projects, money laundering, bribing during election, bribing for tender and auction. Whereas political corruption includes- legalizing military regimes; fake voter roll making; political discrimination among government officers; giving care taker government a political flavor; making constitutional amendments hastily and without considering the view of the mass people. However, the political corruption in Bangladesh is much more concerning issue as the history shows that, though there some punishments have been implemented for financial corruption but the implementation of punishment for political corruption is rarely observed.

Misuse of democratic rights and accusation and counter accusation game are common practice of the political parties. The political parties prefer blockades, strikes, meetings, processions, rather than active participation in the parliament. In respect of the blame games between the two mainstream parties (Bangladesh Awami League and Bangladesh Nationalist Party) in Bangladesh, the major concerning issues are shown below:

Table 3: Conflicting Characteristics of Awami League (AL) and Anti-AL Forces

| Conflicting Characteristics of Awami League (AL) and Anti-AL Forces | |
|--|---------------------------------|
| Awami League (AL) Forces | Anti-Awami League Forces |
| Secular | Non-Secular |
| Pro-Liberation | Anti-Liberation or confusing |
| Pro-Mujib | Anti-Mujib |
| Pro-India | Anti-India |
| Anti-Pakistan | Pro-Pakistan |
| Bengali Nationalism | Bangladeshi Nationalism |

Source: Azad and Crothers (2012)

6. DEMOCRACY AND GOOD GOVERNANCE

All over the world democratic government is the most desired form of government and as such democracy as a form of governance is highly appreciated. In the developed counties democracy is well practiced but the practice of democracy in the developing counties needs vast scrutiny. In Bangladesh parliament is seen barely functional and the bureaucracy is found highly politicized. In Bangladesh the present political situation is nothing more than “winner takes all” situation and the Election Commission is observed to be functioning as an agent of the ruling political party. Parliament is mostly dysfunctional and the lack of assurance of governmental accountability in the parliament is not a new phenomenon. The current political crisis is occasioned by the incorporation and the cancellation of the care taker government provision. Judicial orders are not always welcomed by the parliamentarians as that should be. Judiciary has only judicial orders they have no

power to implement it and the responsibility of implementing the judicial orders is vested upon the executive. However, in the Westminster model of parliament separation between executive and legislature can barely think of. If the executive and legislature show unwillingness to respect judicial orders where should the general people go?

Voice and accountability is the first governance indicator identified by World Bank. However, in Bangladesh people's voice is not always heard rather they have the only opportunity to choose their representative once after five years, even this opportunity is sometimes curtailed off. Accountability in the governmental level is not significantly assured as the parliament is barely functional and bureaucracy is highly politicized. Press and media freedom is not maintained all the time in Bangladesh. Non Governmental Organization (NGOs) the only means to raise people's voice and to speak in favour of freedom of press and media are at times threatened by the government. Judicial independence, appointment and impeachment of judiciary have not reached to the expected level. Political stability is a vital apparatus for good governance which is still a myth for a country like Bangladesh.

Democracy and good governance are not incompatible to each other. Democracy can exist with good governance and it can assure good governance which is observed in the developed countries. In Bangladesh, theoretically democracy and good governance coexist but in reality they are far from each other. From the above discussion, it is clear from practical point of view that, democracy and good governance do not coexist in Bangladesh.

7. CONCLUSION AND RECOMMENDATIONS

Both democracy and good governance are necessary for a strong form of government and for the fulfillment of the desire of the people of Bangladesh. Bangladesh has faced a significant number of hardships for ensuring democratic practice in the country. To fulfill the desire of the people at large it is time ensure democracy and good governance to exist with each other in Bangladesh like most of the developed countries. To ensure democracy and good governance in the government some prescriptions are given below:

1. It is necessary to ensure democratic practice among the political parties.
2. The office of the Election Commission should not be used for political purposes and it should have power to scrutiny the financial status of the political parties.
3. The voice of civil societies should not be restricted rather their constructive criticism should be welcomed by the political parties.
4. Bureaucracy should not be politicized and the accountability of the government should be ensured by democratic form of practice.
5. Freedom of press and media should be totally ensued and their constructive criticism should be welcomed by the politicians and people at large.
6. Judicial independence should be ensured. Transparency in the appointment and impeachment of judiciary should be assured.
7. Political oppositions should not be intentionally harassed because of their political statements and ideologies.
8. Parliamentary form of democracy should be ensured by the ruling parties and oppositions. Walking out and boycotting the parliament should not be preferred.
9. Punishment for political corruption should be ensured like that of financial corruption.
10. People's direct access to the governmental bodies should be ensured. Government officers should bear in mind that they are the servants of the people. Moreover, to ensure the people's right to information the Right to Information Act 2009 should be made up-to-date and accessible to all.

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