

Our Parliament: The Historical and Institutional Dynamics

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Being independent in 1971, Bangladesh chose a Westminster type Parliamentary government. Whether the system as devised in the Constitution was purely a Westminster one is debatable.¹ Like the British parliamentary system, a Cabinet, predominantly drawn from amongst the members of Parliament, was placed in charge of the Executive and made accountable to the Parliament.² Like the British Crown, President of the Republic was to act as a ceremonial head of the state.³ The judiciary, however, was designed more in an American fashion - an independent branch with a constitutionally secured tenure and power of judicial review.⁴ In a conspicuous deviation from the Westminster norms, the members of parliament were constitutionally restrained from voting against their respective political parties.⁵ As will be argued later in this note, this peculiarity of Bangladeshi system emerged as a key degenerating factor. For a better understanding of the argument, a historical account of the evolution of parliamentary politics in pre- and post-independence Bangladesh is necessary.

The Colonial Period

A pseudo-parliamentary system was introduced in British India in 1909.⁶ This was the first ever opening of elections, voting and native representations in the legislative and executive councils of India.⁷ The British Government was thereby seeking to streamline the unorganised armed rebellion in different parts of India and put it into some organised political channels.⁸ The Government of India Act 1909 was later substituted by the Government of India Acts, 1919 and 1935 consecutively.

While the substantial legislative and executive power remained within the tight grip of the colonial authority, the Indian people got the taste of politics, elections, deliberations and ideological and sectoral clashes in a parliamentary fashion. However, a negative side of the story is that Indians had a faulty start in parliamentary politics. The newly coined legislature remained a mere deliberative forum. The British Viceroy, Governor General and other

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¹ Nizam Ahmed (1998), In search of institutionalisation: Parliament in Bangladesh, *The Journal of Legislative Studies*, Vol. 4, Issue 4, pp. 34-65 at p 40. Available: <http://dx.doi.org/10.1080/13572339808420572> (Accessed on October 15, 2017).

² Constitution of the Peoples Republic of Bangladesh (1972), Articles 55 and 57.

³ *Ibid*, Article 48(3). Article 48(3) almost conclusively restricts the Presidential authority within the chain of the Prime Ministerial advice.

⁴ *Ibid*, Articles 26, 95, 96 and 102.

⁵ *Ibid*, Article 70. Article 70, famously known as the Anti-Defection Clause, puts the Members of Parliament in the risk of losing their seat in case they decide to vote in parliament against the party line.

⁶ The Government of India Act 1909 (Also known as the Morley-Minto Reform Act named after the Secretary of State for India Lord Morley and the Viceroy of India Lord Minto).

⁷ By 1909, the two major political parties of India were already formed (Indian Congress in 1885 and Muslim League in 1906).

⁸ Minto-Morley Reforms (1909), <http://historypak.com/minto-morley-reforms-1909/> (Accessed on 22 October 2017)

Governors would legislate, execute and rule. It will be seen later that neither the Pakistani nor the Bangladeshi political forces could come out of the taboo of this misguided introduction to parliamentary system.

The Pakistan Period

Thanks to the Indian Congress Party's political wisdom, the post-1947 India managed to consolidate the parliamentary system substantially.⁹ Pakistan, on the other hand, started its journey under Mohammad Ali Jinnah as the Governor General. Under the scheme of the Independence of India Act 1947, Governor General was considered analogous to the Crown in Britain. The Constituent Assembly elected for Pakistan in 1946 was to take the place and role of legislature. Prime Minister and his cabinet would hold the executive responsibilities.

Mohammad Ali Jinnah however made an exception. Instead of remaining a disinterested head of state, Jinnah started dominating the legislative and executive branches of the new republic. Hopes for a sustainable Westminster Parliamentary system was thereby nipped in the bud. Jinnah's death was soon followed by murder of the first Prime Minister, increased factionalism between the East and West wings of Pakistan and ever-increasing control of the civil-military bureaucracy over the political process. Later, political leaders and parties were suitably manipulated to control the majority in Constituent Assembly. The 1946 Constituent Assembly was "dismissed" in 1954 by Governor General Gholam Mohammad and a second one was later "constituted" by him.

By the time the second Constituent Assembly was giving the first ever constitution to Pakistan in 1956, presidency of Pakistan and Governorship in East and West Pakistan fell in the hands of civil-military bureaucrats. The politicians, political parties and politics in general stood utterly exposed and discredited. Army Chief Ayub Khan soon grabbed the power in 1958 and dismissed the 1956 constitution. It was replaced by one of his liking. After series of peculiar experiments with the system, Ayub's dictatorship ultimately settled in another constitution in 1962. With some trappings of Westminster parliamentary system and American presidential system, the 1962 constitution was a sui generis system suitable to Ayub's dictatorial presidency. It lasted until 1969 when Ayub was forced to resign by a political movement spearheaded in east Pakistan. Resigning Ayub however despised his own constitution and invited the military to power again. Army Chief Yahya Khan climbing the presidency put the death knell to the coffin of united Pakistan. After a bloody war of independence, Bangladesh became a sovereign peoples' republic in 1971.

Lessons from Pakistan

Overall lessons Bangladesh might have learnt from "internal colonial rule"¹⁰ of Pakistan were three-fold. First, constitution must be drafted and adopted the soonest. Second, parliament would remain a mere deliberative forum servile to the presidential desire unless either of a full pledged Westminster parliamentary system or American Presidential system with checks and balances was adopted. Third, political parties and politicians need be protected from manipulation by the civil-military elites. Bangladesh attempted all the three but with some half-hearted commitments and a less informed perspective.

⁹Zillur R. Khan (1997), *Bangladesh's Experiments with Parliamentary Democracy*, Asian Survey, Vol. 37, No. 6 (Jun., 1997), pp. 575-589 at p 575, University of California, Available: <http://www.jstor.org/stable/2645531> (Accessed on October 15, 2017).

¹⁰*Supra* note 1 at p 35

Bangladesh's Experiments with Parliamentary Democracy (1972-1975)

In 1971, revolutionaries formed a Constituent Assembly and opted for an absolutist presidential government as a war time arrangement.¹¹ Upon release and return of the Father of the Nation Bangabandhu (Friend of Bengal) Sheikh Mujibur Rahman from Pakistani jail in early 1972, a provisional constitution order was promulgated.¹² The presidential system was substituted by a parliamentary form of government. As per the new arrangement, Constituent Assembly formed in 1971 would now be placed in the position of legislature. Prime Minister and his Cabinet would be accountable to the constituent assembly. President would stand a symbolic head of state.

The Constituent Assembly, however, was struck by an inevitable accident. Committed to adopt a constitution within the least possible delay (first lesson from Pakistani colonial role), the provisional constitution stripped the assembly of its legislative power. Constituent Assembly being tasked with the sole responsibility of framing a constitution, Cabinet remained at the helm of law making. By the time, the Constitution was adopted on November 4, 1972,¹³ virtually the whole body of administrative and statutory public law was built by presidential orders and executive regulations. Constituent Assembly therefore essentially remained a mere deliberative and legitimising body. A consequence adversarial to the second lesson Bangladesh should have learnt from Pakistani colonial role. Quite a defective start again, parliaments of Bangladesh would remain so throughout the later part of its political history.

Second, driven by the third lesson from Pakistani period and seeking to stabilise and consolidate the political parties, an anti-defection clause, famously known as Article 70, was introduced in the constitution of 1972. As per the rule, a member of parliament elected in the nomination of a political party would be barred from voting against that party in the floor of parliament. Whatever amount of initial good intention might bethere, Article 70 later constituted a "Damocles' sword"¹⁴ upon the back benchers from ruling and opposition parties alike. It paved the way for Prime Ministers' dictatorial control over the party and parliament.

The First Parliament

Bangabandhu formed his regular government after the First Parliament election held in March 1973 under the new constitution of December 1972. Marred by subversive political opposition, degrading law and order situation, economic disasters and natural calamities, Bangabandhu declared emergency, called for his "Second Revolution" and decided to alter the parliamentary system into a French presidential one.¹⁵ Unlike the French system, however, an all-party-combined-in-one system was established in February 1975.¹⁶ President was made head of the state and government. Parliament and independence of Judiciary was substantially curtailed.¹⁷

¹¹ The Proclamation of Independence 10 April 1971 annexed to the Constitution of Bangladesh as the Seventh Schedule.

¹² The Provisional Constitution of Bangladesh Order, 1972

¹³ The Constitution came into force from 16 December 1972, the first anniversary of the independence of Bangladesh.

¹⁴ Justice Badrul Haider Chowdhury, Former Chief Justice of Bangladesh quoted in A.K.M Shamsul Huda, Constitution of Bangladesh, Vol 2, Rita Court, Chittagong, Bangladesh, 1997, p 560.

¹⁵ *Supra note 9*, at p. 580

¹⁶ Famously known as BAKSAL (Bangladesh KrishakSramikAwami League), the party was placed at the helm of a soviet style socialist system.

¹⁷ The Constitution (Fourth Amendment) Act 1975.

Bangabandhu's Second Revolution unfortunately was short lived. Pro-Pakistani elements within Bangladesh military seized the opportunity of his degrading popularity and staged a brutal *coup* on 15 August 1975. Bangabandhu was killed along with almost all his family members, except the two daughters one of whom, Sheikh Hasina, now leads his political party Awami League and remains the Prime Minister of Bangladesh. Martial law was proclaimed and it continued in force till 1979.

Martial Laws and the Presidential Governments (1975-1990)

Bangladesh military followed the foot step of their Pakistani predecessors. A series of coup and counter coup placed Major Zia in the Presidency. Like Ayub Khan, Zia sought to legitimise his regime by civilianising it. He continued the presidential system introduced by Bangabandhu but wanted to bring back the multi-party system as well. Election to the Second Parliament was held in 1979. Zia's hastily constituted party, Bangladesh Nationalist Party (BNP), got absolute majority over Awami League. Awami League got revived several years after Sheikh Mujib's assassination. Status of the parliament under Zia's presidential government however remained unclear.

While Zia's cohort boosted the Second Parliament as an "Independent and Sovereign" one, its inability to make the government answerable, president's absolute authority to dissolve the parliament and consistent by-passing of parliament through presidential ordinances earned it the badge of a "rubber stamp".¹⁸ Second parliament legitimised rather legislate.

In 1981, Major Zia was assassinated by the freedom fighters' section within the army. Army Chief Hossain Mohammad Ershad seized the opportunity and captured power. After two years of absolute Martial Law, Ershad also sought to civilianise his regime. As part of the process, formed his own political party, Jatiya Party (JP) and arranged election to the Third Parliament in 1986. Awami League under Sheikh Hasina participated the election. BNP under Begum Khaleda Zia (Major Zia's widowed wife) boycotted it. The result was widely believed to be rigged in favour of Ershad's Jatiya Party. Though Awami League took the opposition bench, the third parliament suffered from huge credibility crisis. Facing legitimacy crisis, Ershad dissolved the Third Parliament and called for election to the Fourth Parliament in 1988. This time, all the major political parties, Awami League included, boycotted the election. The Fourth Parliament comprised of some otherwise unknown political parties mockingly termed as "Domesticated Opposition Parties". Facing mass upsurge of late 1990, Ershad had to dissolve the Fourth Parliament as well and quit.

Issues haunting the post-1990 Parliaments

Operating under presidents hailing from the garrison, the second, third and fourth parliaments had very little to offer in terms of democratic legislation, oversight and policy formulation.¹⁹ Apart from being used as a legitimising tool for the presidential steps, parliaments barely got a place in national discourse. Ordinances promulgated by the presidents massively outnumbered the laws passed by parliaments. This insignificant existence of parliament as an institution during the first two decades of independent Bangladesh (1971-1991) therefore constituted a principal agenda for anti-Ershad

¹⁸ Azizul Haque (1980), Bangladesh 1979: Cry for a Sovereign Parliament, Asian Survey, Vol. 20, No. 2, A Survey of Asia in 1979: Part II (Feb., 1980), pp. 217- 230 at p. 221-2, University of California Press. Stable URL: <http://www.jstor.org/stable/2644025> (Accessed on 15 October 2017)

¹⁹ Nizam Ahmed (2001) Parliamentary committees and parliamentary government in Bangladesh, Contemporary South Asia, 10:1, 11-36, at p. 13-4, Available: <http://dx.doi.org/10.1080/09584930120062010> (Accessed on October 15, 2017).

movement. Parties struggling for Ershad's demise promised to forestall parliament in the centre of democratic governance in Bangladesh. Reviving the parliamentary democracy, however, was not the only challenge facing Bangladesh.²⁰ As shown in later experiences, survival of parliamentary democracy in Bangladesh would depend on some other issues directly impinging upon it.²¹

First, systematic subjugation of the Election Commission to political executives appeared the foremost stumbling block. Concerns surrounding a free, fair and credible parliamentary election would occupy Bangladesh's democracy in the days ahead.²² Constitution would be amended later to introduce an apolitical system of election time government in 1996.²³ That again came for a huge prize. Despite an encouraging start, the Fifth Parliament (1991-1995) was virtually paralyzed by continuous boycotting of the opposition parties pressing for the apolitical caretaker government.²⁴ More disturbingly, the caretaker system itself became controversial later. It was declared unconstitutional²⁵ and scrapped by Awami League in 2011.²⁶ Main opposition party BNP however remained adamant over retaining the caretaker system and boycotted the Tenth Parliamentary election of 2014. A severely incapacitated Election Commission now remains in the same place as it were in 1980s.²⁷

Second, the historical distrust and personal animosity between Awami League Leader Sheikh Hasina and BNP Leader Begum Khaleda Zia has haunted the development of bi-partisan parliamentary democracy in Bangladesh. Following Awami League's stiff opposition in the Fifth Parliament, Begum Khaleda Zia's party staged almost similar show of boycott and disdain to the Seventh Parliament (1996-2001).²⁸ Two parties switching the bench by turn, the trend continued throughout the Eighth (2001-2006) and Ninth Parliament (2009-2014).²⁹

Third, the grip of Article 70 appeared much wider than it was originally thought. Even a glossy analysis of the working of Fifth, Seventh, Eighth, Ninth and Tenth (2014-Present) Parliament would reveal that Article 70 has effectively tightened the tongue of the ruling and opposition party back benchers. Successive parliaments have invariably failed

²⁰ Talukder Maniruzzaman (1992), *The Fall of the Military Dictator: 1991 Elections and the Prospect of Civilian Rule in Bangladesh*, Pacific Affairs, Vol. 65, No. 2 (Summer, 1992), pp. 203-224, University of British Columbia Stable URL: <http://www.jstor.org/stable/2760169> (Accessed on 15 October, 2017)

²¹ Craig Baxter (1992), *Bangladesh a Parliamentary Democracy, if They Can Keep It*, Current History; Mar 1, 1992; 91, 563; Periodicals Archive Online. pp. 132-36

²² Nizam Ahmed (2011), *Critical elections and democratic consolidation: the 2008 parliamentary elections in Bangladesh*, Contemporary South Asia, 19:2, 137-152 at p. 149; Online: <http://dx.doi.org/10.1080/09584935.2011.563282> (Accessed on: October 15, 2017)

²³ The Constitution (Thirteenth Amendment) Act, 1996.

²⁴ Craig Baxter (1996), *Bangladesh: Can Democracy Survive?* Baxter, Current History; Apr 1996; 95, 600; ProQuest, pp. 182-186

²⁵ Civil Appeal No. 139 of 2005 with Civil Petition for Leave to Appeal No. 596 of 2005, at www.supremecourt.gov.bd/scweb/documents/526214_13thAmet.pdf

²⁶ The Constitution (Fifteenth Amendment) Act 2011

²⁷ Ali Riaz (2014), *Bangladesh's Failed Election* Journal of Democracy, Volume 25, Number 2, April 2014, pp. 119-130 at p. 121, Johns Hopkins University Press, Available: <https://doi.org/10.1353/jod.2014.0034> (Accessed on October 15, 2017).

²⁸ Boycotted by Awami League and other major political parties, the Sixth Parliamentary election didn't receive public endorsement. The Sixth Parliament was dissolved within months.

²⁹ Elora Shehabuddin (2000), *Bangladesh in 1999: Desperately Seeking a Responsible Opposition*, Asian Survey, Vol. 40, No. 1, A Survey of Asia in 1999 (Jan. - Feb., 2000), pp. 181- 188, University of California Press, Available online: <http://www.jstor.org/stable/3021232> (Accessed on 15 October 2017)

in criticising the governmental policies and action, let alone making it accountable.³⁰ Absence of democratic practice within the political parties coupled with the rise of family dynasty in politics has been able to effectively shut down the parliamentarians in the floor.³¹ Parliamentary question, though regularly asked and answered, disappointingly fail to touch upon key accountability issues of the government and bureaucracy.³²

Fourth, though the parliamentary committee system has been consolidated to some extent,³³ it has grown asymmetrically vis-à-vis the executive and bureaucratic apparatus of the state.³⁴ Though the tendency to promulgate presidential ordinances has declined recently, the political governments have been invariably seen to hastening the legislative proposals through the floor and there by effectively by-pass the committee stage.³⁵ Research, secretarial and political support for the parliamentary committees remain a mirage.³⁶ Most importantly, there is an apparent lack of political will in changing the status quo and allowing the committee system to stand on its foot.³⁷

Fifth, Speakers and Deputy Speakers of successive parliaments remained loyal to their party bosses and showed reluctance to assert least possible discretion beyond the party line. This has resulted in an endemic disincentive for the opposition parties to air their opposition through parliamentary channels.³⁸ Violence on the street and reckless use of force as a means of demonstration and control have faded much of the glories a workable Westminster parliamentary system is expected to possess.³⁹

³⁰ Muhammad Mustafizur Rahman (2008), Japanese Journal of Political Science, Vol 9 (1), pp. 39–62 at p 47-48, Cambridge University Press. Available: <https://doi.org/10.1017/S1468109907002812> (Accessed on: October 15, 2017).

³¹ Ahmed Shafiqul Huque, (2011) "Accountability and governance: strengthening extra-bureaucratic mechanisms in Bangladesh", International Journal of Productivity and Performance Management, Vol. 60 Issue: 1, pp.59-74 at p 68, Available: <https://doi.org/10.1108/17410401111094312> (Accessed on October 15, 2017)

³² Salahuddin Aminuzzaman (1993), Institutional Processes and Practices of Administrative Accountability: the role of Jatiyo Sangsad of Bangladesh, South Asian Studies; Jul 1, 1993; 10, 2; pp. 44-61 at p 55.

³³ The Seventh Parliament amended the parliamentary rules of procedure and provided for formation of parliamentary committees within the First Session of the Parliament. The Ninth Parliament allocated some committee chairmanship to the opposition party.

³⁴ A.T.M. Obaidullah (2011), Standing Committees on Ministries in the Bangladesh Parliament: The Need for Reorganisation; South Asian Survey 18(2) 317–342 at p 322, SAGE Publications, available: <https://doi.org/10.1177/0971523113513375> (Accessed on: October 15, 2017)

³⁵ Nizam Ahmed (1997) Parliament-executive relations in Bangladesh, The Journal of Legislative Studies, 3:4, 70-91 at p 77-8, <http://dx.doi.org/10.1080/13572339708420529>; Nizam Ahmed (1998) Reforming the parliament in Bangladesh: Structural constraints and political dilemmas, Commonwealth & Comparative Politics, 36:1, 68-91 at p 71, <http://dx.doi.org/10.1080/14662049808447761> (Accessed on October 15, 2017).

³⁶ Nizam Ahmed and Shahnaz Khan (1995), The Development of Parliamentary Oversight in Bangladesh: A Research Note Author(s): Source: Legislative Studies Quarterly, Vol. 20, No. 4 (Nov., 1995), pp. 573-583, Washington University, Available: <http://www.jstor.org/stable/440194> (Accessed on October 15, 2017)

³⁷ Muhammad Mustafizur Rahman (2010), The Limits of Foreign Aid in Strengthening Bangladesh's Parliament: Analysis of the U.N.'s Strengthening Parliamentary Democracy Project, Asian Survey, Vol. 50, No. 3 (May/June 2010), pp. 474-496 at p 483-94, University of California Press, <http://www.jstor.org/stable/10.1525/as.2010.50.3.474> (Accessed on October 15, 2017)

³⁸ Rounaq Jahan and Inge Amundsen, The Parliament of Bangladesh: Representation and Accountability CPDCMI Working Paper 2 at p 21-27, <https://www.cmi.no/publications/file/4422-the-parliament-of-bangladesh.pdf> (Accessed on: October 15, 2017)

³⁹ Nizam Ahmed (2003), From Monopoly to Competition: Party Politics in the Bangladesh Parliament (1973-2001), Pacific Affairs, Vol. 76, No. 1 (Spring, 2003), pp. 55-77 University of British Columbia Stable URL: <http://www.jstor.org/stable/40023989>; Nizam Ahmed (1997), Parliamentary Opposition in Bangladesh: A Study of its Role in the Fifth Parliament, Party Politics, Vol 3. No.2 pp.147-168, SAGE Publications, <http://journals.sagepub.com/doi/pdf/10.1177/1354068897003002001>, M. Moniruzzaman (2009) Parliamentary Democracy in Bangladesh: An Evaluation of the Parliament during 1991–2006,

Sixth, prolonged involvement of military in the politics has substantially weakened Bangladesh's prospect for civilian supremacy in national discourse. Interventionist tendency of the armed forces and the political parties' interest in keeping the military in touch and confidence has resulted in the forces consistently refusing to submit themselves to parliamentary oversight. This has put Bangladesh's parliamentary democracy in fault line.⁴⁰

Seventh, rise of a bourgeois elite pumped up by illegal channelling of state resources in private hands during the 1970-80s⁴¹ has discouraged open and fair access for all to the political process. Instead of favouring accountability and good governance, the political elites tend to tolerate corruption, lobbying and backdoor settlement with party bosses.⁴² It is therefore not unexpected that parliamentarians picked up through such a process would be less interested in seeing the parliament working in right spirit.⁴³

Concluding Note

The historical and institutional issues analysed above shows how and why the Westminster parliamentary system adopted in 1972 failed to live up to the mark. In Bangladesh Parliament as an institution has failed to attract the attention, respect and stature necessary for a democratic institution.⁴⁴ People of Bangladesh in general has shown least interest in petitioning the parliament. The Parliament has shown the least sensitiveness to popular concerns.⁴⁵ In Bangladesh, a 'democratic' parliament thereby continue to exist with much of its democratic semblances.

Commonwealth & Comparative Politics, 47:1, 100-126, DOI: <https://doi.org/10.1080/14662040802659017> (Accessed on: 15 October 2017)

⁴⁰ Syed Imtiaz Ahmed (2006), Civilian supremacy in democracies with 'fault lines': The role of the parliamentary standing committee on defence in Bangladesh, *Democratization*, 13:02, 283-302 Available: <http://dx.doi.org/10.1080/13510340500523994> (Accessed: October 15, 2017).

⁴¹ Rounaq Jahan (1976), Members of Parliament in Bangladesh, *Legislative Studies Quarterly*, Vol. 1, No. 3 (Aug. 1976), pp. 355-370, Washington University Stable URL: <http://www.jstor.org/stable/439502> (Accessed: 15 October 2017).

⁴² Quamrul Alam and Julian Teicher (2012), The State of Governance in Bangladesh: The Capture of State Institutions, *South Asia: Journal of South Asian Studies*, 35:4, 858-884 at p. 864; Online: <http://dx.doi.org/10.1080/00856401.2012.702723> (Accessed on: 15 October 2017).

⁴³ Rounaq Jahan (2015), The Parliament of Bangladesh: Representation and Accountability, *The Journal of Legislative Studies*, 21:2, 250-269, AT P. 252, Online: <http://dx.doi.org/10.1080/13572334.2014.975470> (Accessed on: 15 October 2017).

⁴⁴ A survey conducted in 2012 shows people of Bangladesh placed parliament even beneath the army when the question of institutional trust comes of trust come (Steinar Askvik and Ishtiaq Jamil (2013), *The Institutional Trust Paradox in Bangladesh*, Springer Science+Business Media New York, p 466-470)

⁴⁵ Statistics show that only three out of the 248 public petitions submitted to parliament between 1991 and July 2010 were accepted. The rest were either rejected, withdrawn, settled or simply lapsed (Nizam Ahmed (2012), *Parliament and Citizens in Asia: The Bangladesh Case*, *The Journal of Legislative Studies*, 18:3-4, 463-478, at p 467-8, Online: <http://dx.doi.org/10.1080/13572334.2012.706056> (Accessed on; 15 October 2017))