



# *Kathmandu School of Law Review*

ISSN 2091-2110

Volume 4; Issue -1; 2014



**“QUALITY AND DIVERSITY”**

# **Is Anti-Floor Crossing Law in Bangladesh Contrary to the Spirit of the Constitution of Bangladesh? An Inquiry**

**Sheikh Mohammad Towhidul Karim<sup>1</sup>**

## **Abstract**

*Anti-floor crossing laws existing in many commonwealth countries, and are criticized for being a hindrance in ensuring rule of law in parliamentary democracy. This paper reviews the anti-floor crossing laws of Bangladesh, with a view that the anti-floor crossing laws are inherently undemocratic, stifle free speech and freedom of association, and endanger the opinion of people. It explains how it poses restrictions on the members of the parliament (MPs), who cannot represent their constituents. It elaborates specifically why and how often legislators switch parties, and also makes a comparative study with the United Kingdom. It also reflects on some backlashes that floor crossing laws might result in, and provides recommendations on how they might be practically and logically mitigated by the parliament.*

## **Introduction**

Floor crossing is one of the sensitive and debatable issues in the contemporary world. Anti-floor crossing law is a matter of great national concern in many developing countries including Bangladesh. Bangladesh is traversing through four decade of having an anti-floor crossing law in force. This law, basically, not only blocks the economic development of the country but also the development of the parliamentary government. However, the State and the parliament can play laudable role in improving and ensuring freedom of expression, opinion and finally exercising democratic practice in the country.

---

<sup>1</sup> Assistant Professor, Department of Law, International Islamic University, Chittagong, Bangladesh; email: smtk\_5@yahoo.com.

This task and initiative can accelerate the economic and political development within the country.

Generally, floor crossing means voting against the party, party decision or abstaining from voting against the directive of the party. In politics, the term 'floor crossing' can mean either to vote against party lines, especially where this is considered uncanny or controversial, or to describe a member who leaves their party entirely and joins the opposite side of the House, such as leaving an opposition party to support the government (or vice versa), or even leaving one opposition party to join another.<sup>2</sup> The term was first used to describe the process when Members of the British House of Commons crossed the floor to join the group of people (members of another political party) that was seated on the opposite site of the floor.<sup>3</sup> In a number of Commonwealth countries, there are no legal restrictions against floor crossing among members of the parliament (hereinafter MPs), and as such it is common behaviour in the countries like the United Kingdom, Australia and Canada. In Australia, for example, 245 MPs crossed the floor between 1950 and 2004, representing a total of 24% of MPs seated in parliament during that period.<sup>4</sup>

Bangladesh (officially called the People's Republic of Bangladesh) is a country in South Asia. After a nine months bloodshed war against Pakistan, it became independent on 16 December 1971. It is bounded by India on the west, the north and the north-east, Myanmar on the south-east and the Bay of Bengal on the south. It has a total area of 1,47,570 square kilometre. The total population of the country is estimated at 156.6 million.<sup>5</sup> Bangladesh adopted a progressive Constitution in 1972 with a parliamentary system of government. In Bangladesh, which is also a commonwealth country, the MPs are directly

---

<sup>2</sup> The term originated from the British House of Commons, which is configured with the Government and Opposition facing each other on rows of benches. An MP who switched parties would need to cross the floor. Wikipedia, Crossing the Floor <[http://en.wikipedia.org/wiki/Crossing\\_the\\_floor](http://en.wikipedia.org/wiki/Crossing_the_floor)> accessed 29 October 2013. 'Crossing the Floor', *Wikipedia* available at

[http://en.wikipedia.org/wiki/crossing\\_the\\_floor#Voting\\_against\\_party\\_line](http://en.wikipedia.org/wiki/crossing_the_floor#Voting_against_party_line), accessed on 10 October 2014.

<sup>3</sup> *Ibid.*

<sup>4</sup> D McKeown, R Lundie & G Baker, 'Crossing the Floor in the Federal Parliament 1950-2004', *Parliament of Australia, Department of Parliamentary Services, Research Notes* available at

<http://www.aph.gov.au/library>, accessed on 5 November 2013.

<sup>5</sup> 'World Bank Report, Bangladesh: Country at a glance', World Bank, 2013 available at <http://www.worldbank.org/en/country/bangladesh>, accessed on 10 October 2014.

elected by the vote of general people for a term of five year<sup>6</sup>, through a national election. Subsequently the MPs that win the most seats form the government<sup>7</sup> and make the laws of the state. In this connection, MPs have played an important role in a functional parliament. After the independence of Bangladesh, the Constitution adopted the provision of anti-floor crossing clause in 1972 under article 70. During the recent decades, this issue has become more political rather than ethical. This study argues that article 70 is contrary to the spirit of democracy and constitutional law of Bangladesh. Therefore, it is a bar to formulate a functional parliament that contention will be proved by the paper.

### Article 70 of the Constitution of Bangladesh

According to the *Constitution of Bangladesh*, MPs basically have no power to vote against their own party in parliament, in terms of decision making or passing law. This means that floor crossing is totally prohibited in Bangladesh. Under article 70 of the *Constitution of Bangladesh*, the provision of anti-floor crossing reads as follows:

A person elected as an MP at an election, at which [he/she] was nominated as a candidate by a political party shall vacate [his/her] seat if [he/she] –

- (a) resigns from that party ; or
- (b) votes in Parliament against that party ; but shall not thereby be disqualified for subsequent election as a Member of Parliament.

It is articulated by the above article that the MPs have to ensure loyalty to the party and cast his/her vote in accordance with the command of the party under which banner he/she was elected as an MP. Otherwise, he/she will lose his/her seat in parliament. Many MPs have lost their seats as they voted against and resigned from their respective party. For example, Major (Retired) Md. Aktaruzzaman, one of the leading MPs of Bangladesh Nationalist Party (hereinafter BNP) was elected from Kishorganj-2 constituency by the Seventh

---

<sup>6</sup> Parliament shall stand dissolved on the expiration of the period of five years from the date of its first meeting. *Constitution of the People's Republic of Bangladesh*, 1971, Bangladesh (hereinafter Constitution of Bangladesh), art. 72(3).

<sup>7</sup> The President shall appoint as Prime Minister the member of Parliament who appears to him to command the support of the majority of the members of Parliament. *Ibid*, art. 56(3)

National Parliamentary Election of 1996. Meanwhile, the *Awami* League came to power in this election and formed a parliament. BNP refused to join in the 19<sup>th</sup> session of parliament on 10 September, 2010. But Mr. Aktaruzzam alone joined the parliament session and violated party decision<sup>8</sup> of BNP. Similarly, many MPs resigned from their party. Three MPs<sup>9</sup> namely, Mr. Ebadur Rahman Chowdhury, Major General Mahmudul Hasan and Mr. Paritosh Chakroborty in the Fifth Parliamentary Election of 1991 and again three MPs namely, Md. Habibur Rahman Shawpon, Dr. Alauddin and Mr. Anwar Hossain Monju in the Seventh Parliamentary Election of 1996 and Mr. Kazi Sirajul Islam<sup>10</sup> in the Eight Parliamentary Election of 2001 crossed the floor respectively. These incidents indicate that anti-floor crossing law is hindering the democratic process of the country, and as such, the party and government can take autocratic decision very easily as MPs cannot vote against party decision. The author believes that the leadership of democratic and developed countries in the world are based on quality and honesty. In this lieu, the paper shall elaborate on how Article 70 of the *Constitution of Bangladesh* is allowing the government to become irresponsible and unaccountable towards the parliament and is also providing the government enough room to practice dictatorship.<sup>11</sup> Although, it is noted that leadership is basically based on pure democratic beliefs in all developed countries of the world, the leadership of almost all the parties in Bangladesh is based on lineal inheritance, which could lead to dictatorship in the country, whereas, as shall be now in the paper, is not possible in the UK.

### The Scenario of Floor Crossing in the UK

The UK is a long-established parliamentary democracy, with a constitutional monarch as the Head of State. For the past 150 years, the Parliament of UK has effectively worked as a two-party system (namely the Conservative and Labour

<sup>8</sup> *Khondker Delwar Hossain, M. P. v. Major (Rtd) Md. Aktaruzzaman*, Election Commission, Bangladesh, Case no. 1 of 2000.

<sup>9</sup> *See Khondker Delwar Hossain and others v. Speaker, Bangladesh Jatiyo Sangshad* (Parliament and others), Supreme Court, Bangladesh, 51 DLR 1, para. 10.

<sup>10</sup> Mondal, M. Abdul Latif. 'Floor crossing in the House' *The Daily Star*, 13 June 2005 available at <http://archive.thedailystar.net/2005/06/13/d50613020430.htm>, accessed on 10 September 2014.

<sup>11</sup> 'Floor Crossing Law under Bangladesh Constitution', *Lawyers and Jurists*, 12 November 2010, available at

<http://www.lawyersjurists.com/resource/articles-and-assignment/floor-crossing-law-under-bangladesh-constitution/>, accessed on 5 November 2013.

parties), with one party forming the government of the day, and the other the opposition.<sup>12</sup> Conventionally, the British electoral system of First Past the Post (FPTP) allows floor-crossing of MPs to a certain extent.

Although, there is no explicit anti-floor crossing law in the UK, it is discernable from various incidents and customs that floor crossing is permitted in the UK. Essentially, the MPs automatically do not lose their seats upon switching away from their party. For example, Clare Short, elected by the people of Birmingham Ladywood in the 2005 general election as a Labour MP, left the Labour Party but did not resign from her seat in parliament. She will continue to sit through the present parliament as an independent.<sup>13</sup> Another significant example in this regard is the former British Prime Minister, Tony Blair, who suffered his first voting defeat in parliament when as many as 49 MPs from his own party voted against a bill to extend the tenure of the detention of suspected terrorists in 9 November 2005. As soon as the government attempted to introduce the bill in the parliament, civil liberty groups campaigned against the law and lobbied with the MPs. Despite having the overwhelming majority in parliament, Blair did not manage to pass the bill. Scholars opine that, in this case, the MPs crossed the floor and voted against the 'proposed draconian law'.<sup>14</sup> Although, floor crossing is allowed in Britain, the MPs cannot change their political identity; for example, they cannot resign from their own party to join another party. If any parliamentarian does this, his/her seat becomes vacated.

## Drawback of Anti-Floor Crossing Law

### *Curtailment of freedom of speech*

Freedom of speech generally means the right to say what people want, without fear. It is essential for ensuring democracy and people participation in decision

---

<sup>12</sup> X Majola, E Saptoe & C Silkstone, 'Floor Crossing: Germany, United Kingdom, Canada, Brazil, Lesotho and Kenya' *Information Services Section Research Unit*, January 2007, p. 5 available at <http://www.pmg.org.za/docs/2007/070130floorcross.doc>, accessed on 5 October 2014.

<sup>13</sup> D McKie, 'No sense in self-denial' *The Guardian*, 01 November 2013, available at <http://politics.guardian.co.uk/commons/comment/0,,1931636,00.html>, accessed on 01 January 2014.

<sup>14</sup> **Oli Chowdhury, Md. Abdullah** 'Floor Crossing and Expanding Horizon of MPs', *Daily Star*, Dhaka, 16 April 2011.

making in the country. It is a fundamental right in modern societies, and it has particular significance in relation to the well-functioning of the constitutional democratic process.<sup>15</sup> The concept of freedom of speech has been developed and recognised by various international instruments. For instance, article 19 of the *Universal Declaration of Human Rights* (UDHR) 1948, article 19 of the *International Covenant on Civil and Political Rights* (ICCPR) 1966 and article 10 of the *European Convention on Human Rights* (hereinafter ECHR) have ensured this right. In regard to the article 10 of ECHR, the European Court of Human Rights expresses that ‘freedom of expression constitutes one of the essential foundations of a democratic society and one of the basic conditions for its progress and each individual’s self-fulfilment.’<sup>16</sup> The term freedom of speech has been defined in a landmark case *Dewan Abdul Kader v. Bangladesh*<sup>17</sup> as ‘a right to express one’s own opinion absolutely freely by spoken words, writing, printing or in any other manner which may be open to the eyes and ears.’ It, thus, includes expression of one’s ideas on any matter by any means including even gestures, postures, banners and signs. Hence, it appears that this freedom is wide enough to include expression of one’s own original ideas, and also expression of one’s opinion in the form of comments, explanations, annotations, solutions and answers to questions on the ideas expressed by others. It is a paradox that the *Constitution of Bangladesh*, which should be the most inspiring source of parliamentary democracy, places the MPs under strict party control and limits their political freedom in parliament.<sup>18</sup> Article 70 of the *Constitution of Bangladesh* is the right example about restriction on the political and democratic rights of MPs, in contrast to article 39 of the same, which guarantees the freedom of thought and conscience, and of speech of every person. It is quite obvious that anti-floor crossing law infringes the democratic rights of the MPs and for this reason, article 70 has come under the sharp criticism of several jurists that deem it an infringement of the freedom of thought, expression and opinion of an MP.

### *Parliamentary Democracy*

Bangladesh opted for parliamentary democracy after its independence in 1971. That is why the *Constitution of Bangladesh* has inserted some provisions, for

<sup>15</sup> Beatson & Cripps, *Freedom of expression and freedom of information: essays in honour of Sir A. Mason*, Oxford University Press, Oxford, 2000, p. 17.

<sup>16</sup> P. Van Dijk et al., *Theory and practice of the European Convention on Human Rights*, 4<sup>th</sup> edn, Intersentia, Antwerpen, 2006, p. 774.

<sup>17</sup> *Dewan Abdul Kader v. Bangladesh*, Supreme Court, Bangladesh, [1994] 46 DLR 596.

<sup>18</sup> Rahaman, Muhammad Mustafizur, *Party Influence and Parliamentary Behaviour: The Decay of Democracy in Bangladesh*, Osaka University Japan, 2008, p. 13.

example, preamble<sup>19</sup>, Article 7(1)<sup>20</sup>, 8(1)<sup>21</sup>, 11<sup>22</sup> and 59<sup>23</sup> for upholding the democracy throughout the country. The core value of democracy is that it ascertains an accountability relationship between the electorate and the MPs through parliament. Though the MPs in developed countries have full freedom to vote in any matter in parliament, such exercise is quite impossible for the MPs in Bangladesh due to constitutional barrier, that is the provision of anti-floor crossing law. Due to such imposition, the MPs are always responsible and accountable to the prime minister practically, not the people. They have to ensure loyalty to the party under whose banner they were elected for.<sup>24</sup> By this power, the government can potentially pass any undemocratic or black law as the MPs cannot cast their vote against the will of government though it is written in the *Constitution of Bangladesh* that the Cabinet shall be collectively responsible to the Parliament.<sup>25</sup>

The success of parliamentary democracy depends on democracy and discipline within the political parties. It is difficult to maintain democracy at the governmental level if there is no if there is no democracy within the party unit.<sup>26</sup> Functionally, parliament becomes inactive in the case of decision making. Consequently, political corruption could expand to the members of the public, as well as society through the leader of the ruling party.

---

<sup>19</sup> The provision reads, 'Pledging that the high ideals of nationalism, socialism, democracy and secularism, which inspired our heroic people to dedicate themselves to, and our brave martyrs to sacrifice their lives in, the national liberation struggle, shall be the fundamental principles of the Constitution.'

<sup>20</sup> The provision reads, 'All powers in the Republic belong to the people, and their exercise on behalf of the people shall be effected only under, and by the authority of, this Constitution.'

<sup>21</sup> The provision reads, 'The principles of nationalism, socialism, democracy and secularism, together with the principles derived from those as set out in this Part, shall constitute the fundamental principles of state policy.'

<sup>22</sup> The provision reads, 'The Republic shall be a democracy in which fundamental human rights and freedoms and respect for the dignity and worth of the human person shall be guaranteed, and in which effective participation by the people through their elected representatives in administration at all levels shall be ensured.'

<sup>23</sup> The provision read, 'Local government in every administrative unit of the Republic shall be entrusted to bodies, composed of persons elected in accordance with law.'

<sup>24</sup> R Jahan, 'Members of Parliament in Bangladesh', vol. 3, no. 3, *Legislative Studies Quarterly*, 1976, pp. 355-370

<sup>25</sup> See Constitution of Bangladesh (n 6), art. 55 (3).

<sup>26</sup> Moudud Ahmed, *Bangladesh: Era of Sheikh Mujibur Rahman*, The University Press Limited, Dhaka, 1983, p.437.



While developed countries such as the UK are attempting to incorporate democratic culture in every sphere of life, the provisions such as article 70 of the *Constitution of Bangladesh* raise the question about establishment of true democracy through parliament. It is articulated from the British Parliament that MPs should have been given freedom to cast their votes in parliament which, the author believes, might not only help to establish parliamentary democracy in Bangladesh but also facilitate to establish a functional parliament.

### *Rule of Law*

The Supreme Court of Bangladesh recognises rule of law as one of the basic features of the Bangladesh constitution by virtue of the landmark case of *Anwar Hussain Chowdhury v. Bangladesh*<sup>27</sup>. Yet, the spirit of this case is not reflected in practice. In addition, the *Constitution of Bangladesh* has incorporated several provisions to ensure rule of law in the country such as articles 27, 31, 44, 55, 56, 57, 65 (2) and 102, including 18 fundamental rights, a preamble and some other provisions, which are indirectly related to the concept of rule of law. Article 70, however, poses a barrier in the development of the parliamentary government and rule of law. Simply stating, one of the most basic functions of any parliament is to make laws. Theoretically, a bill is presented before parliament and after a long discussion and debate, if a bill is passed by the majority of the MPs and assented to by the President, it becomes a law. But practically, the members of a ruling party cannot exercise their opinion, vote against the government due to the apprehension of losing their seats.

One pertinent example is that the present Government of Bangladesh was able to split the Dhaka City Corporation into two by passing a law named *Local Government (City Corporation) Act 2009* ‘within four minutes’. Ignoring widespread criticism and protests of opposition parties, parliament hurriedly passed this bill<sup>28</sup> dated 29 November 2011, as majority of the MPs belong to the present ruling party *Awami League*. This evidences that the Government of Bangladesh has ample power to pass any law, albeit undemocratic, due to the subservience of the MPs, as the democratic exercises of debate and argument or any other legislative actions within the parliament do not take place at all. It is unreasonable to expect

---

<sup>27</sup> *Anwar Hussain Chowdhury v. Bangladesh*, Supreme Court, Bangladesh, 41 DLR 165, [1989] BLD ( SPL) 1.

<sup>28</sup> Shakhawat Liton and Rashidul Hasan, ‘JS splits DCC in 4 minutes’, *The Daily Star*, 30 November 2011 available at <http://archive.thedailystar.net/newDesign/news-details.php?nid=212277>, accessed on 10 November 2013.

democracy to flourish under this circumstance.<sup>29</sup>

For the reasons stated above, it is concluded that article 70 of the Constitution of Bangladesh has failed to effectively mirror the aims and aspirations of the people of Bangladesh. It is a pretext for an irresponsible government, since rule of law and democracy are very important in order to achieve a responsible government.<sup>30</sup>

### Some Cons of the Floor Crossing Law

Although allowing floor crossing is essential for parliamentary democracy, it is not immaculate; it can be misused if the MPs intentionally cross the parliament. Sometimes the MPs switch the floor for their personal interest or due to illiteracy or lack of wisdom, and pressurize the government. In extreme cases, it may result in the government being forced to resign. It was because of these reasons that the *Constitution of Bangladesh* included the provision of floor crossing laws.<sup>31</sup> In addition, highlighting on the political factionalism in Bangladesh, Baxter has said, in a frequently quoted statement, that ‘one Bengali is one party, Two Bengalis two political parties; and three Bengalis, two political parties with dissident faction in one of them.’<sup>32</sup>

But the author disagrees with the comment of Baxter, as it is an exception and does not expose the real scenario of the parliament of Bangladesh. Certainly, allowing floor crossing is sometime bound to create instability in the country, hindering the normal flow and development of parliament and the country respectively. Not to mention, Pakistan has had bitter experiences after the insertion of floor crossing provision in their Constitution. Due to the frequent floor crossing, Pakistan saw six governments between 1955 and 1958.<sup>33</sup> However, Bangladesh and Pakistan are incomparable, as Bangladesh has long

<sup>29</sup> M. A. Halim, *Constitution, Constitutional Law and Politics: Bangladesh Perspective*, 3<sup>rd</sup> edn, CCB Foundation, Dhaka, 2006, p. 177.

<sup>30</sup> Blais Fournier, Gidengil Nadeau, and Neviite, ‘Issue Importance and Performance Voting, Political Behavior’, vol. 25, no. 1, *Springer* 51, March 2003, pp. 51-67.

<sup>31</sup> N Ahmed, ‘From Monopoly to Competition: Party Politics in the Bangladesh Parliament 1973-2001’, vol. 76, no. 1, *Pacific Affairs* 55, 2003, pp. 55-77.

<sup>32</sup> C Baxter, *Government and Politics in South Asia*, 2<sup>nd</sup> edn, West View Press, Oxford, 1991, p. 248.

<sup>33</sup> N Chowdhury, *The Legislative Process in Bangladesh: Politics and Functioning of East Bengal Legislative Assembly 1947-1958*, Dhaka University, Dhaka, 1980.

gained independence from the latter, where political instability is still a common scenario.

Nevertheless, the value of floor crossing supersedes its cons. Allister Sparks, a veteran and respected journalist, has rightly remarked that

‘I do not believe the floor-crossing process has been either immoral or undemocratic, as many critics are asserting. Floor-crossing is a long established parliamentary practice: Winston Churchill did it, as did Prime Minister Barry Hertzog, as well as Helen Suzman and all other members of the Progressive Party who broke from the United Party in 1959.’<sup>34</sup>

As asserted earlier, allowing floor crossing is indispensable for improving and ensuing rule of law, functional and democratic parliament. In addition, an MP can exercise his/her opinion freely by the way of floor crossing. Also, the human rights and fundamental freedoms of the MPs and thus, indirectly, the people’s opinion can be ensured by exercising this power.

Hence, it is obvious that benefit of floor crossing is consequential, and as such, article 70 of the *Constitution of Bangladesh* has to be amended, with some necessary recommendations for a functional and democratic parliament, where all the MPs can play a vital role for the development of country.

## Recommendations

It is articulated from the above discussed issues on rule of law, democracy and freedom of speech that it is high time the provision of article of 70 of the *Constitution of Bangladesh* is changed. In order to expect radical change and get maximum benefit from the parliament, the current restriction imposed upon MPs through article 70 of the constitution needs to be relaxed. In this vein, the recommendations the author propose are:

- (a) A person elected as an MP at an election at which he/she was nominated as a candidate by a political party shall not vacate his/her seat if he/she resigns until and unless he/she joins the other party. He/she should be considered as an independent candidate, as in the UK, as if he/she were elected as a member of an independent candidate for the rest of his/her period in Parliament. It is mentionable here that sometimes the MP himself/herself

<sup>34</sup> Sparks, ‘Leaping rats expose sinking ships’, *The Star*, 9 April 2003, p.14

resigns from his/her party to join the other party intentionally or by taking bribe. In such a case, the author opine that he/she should not be allowed to resign from his/her party as of moral obligation because he/she undertakes the people of his/her constituency as well as his/her political party where he/she receives nomination. It is noted that he/she can not violate the oath he has taken, having been elected an MP.

- (b) A person elected as an MP at an election at which he/she was nominated as a candidate by a political party shall not vacate, as in the UK, if he/she votes in Parliament against own party; because it is the democratic right of every MPs, according to the spirit of the Constitution of Bangladesh. In addition, the people of a constituency elect an MP as a representative for them. If any MP is entitled to vote against his/her own party without fear, a concrete decision can be passed before the parliament. The MPs can speak and present their opinion against their dishonest party leaders when needed. This way the dictatorship of leaders will not only be abolished, but also no undemocratic, backward law and irrational decision can be passed by the parliament. As a result, the MPs can play a crucial role in the functioning of representative democracy.

## Conclusion

Although, Bangladesh was inspired by the parliamentary democracy of Britain, the aspiration is far from achieved in Bangladesh due to existence of provisions such as article 70 of the Constitution. Anti-floor crossing law threatens the notions of democracy and rule of law. People expect the political parties and ministers to be transparent, honest, accountable and visionary to their functions. It can be concluded that amending article 70 of the *Constitution of Bangladesh* is a positive step towards fulfilment of such expectation of the people of Bangladesh. However, the provision needs to be amended with a logical and practical approach, subject to a certain extent as mentioned in the recommendation by the author. Such approach would ensure a democratic and truly functioning parliament in Bangladesh.