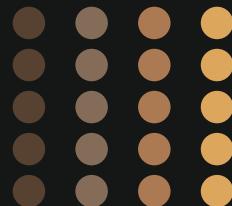


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# ARTICLE 70 OF THE BANGLADESH CONSTITUTION: A CRITICAL ANALYSIS OF ITS IMPACT ON THE RULE OF LAW AND LEGISLATIVE INDEPENDENCE

*Md. Arif Rayhan\**

## Abstract

*Article 70 of Bangladesh's Constitution, also known as the 'anti-defection law,' was first enacted in a bid to prevent Members of Parliament (MPs) from political defection and maintain political stability. This provision aimed to prevent instability caused by internal political party conflicts or extreme politicisation. Nevertheless, its overreliance has raised constitutional and democratic issues over time. Article 70 has been a topic of debate regarding the relationship between party discipline and legislative independence, as it affects the legislature's independence, rule of law, good governance, and the democratic process, where MPs are coerced into complying with the party line or face automatic disqualification.*

*This study adopts a doctrinal approach, using constitutional provisions, court decisions, and a comparison of anti-defection laws across the jurisdictions of India, Pakistan, the United Kingdom, and Germany. It examines historical cases to understand Article 70's evolution and examines its legal parameters to assess its significance in Bangladesh's parliamentary democracy. The results reveal a contradiction: Article 70 effectively promotes party cohesion and reduces political strife, while also diminishing the basic rights of MPs. In essence, this anti-defection provision consolidates executive authority within party leaders, making the legislature a mere tool for the executive's control, hindering democratic oversight, diminishing good governance, and restricting strong debates in the Parliament.*

*The research suggests significant reforms, including recalibration of Article 70 through the restructuring of institutions and the amendment of the constitutional provision. Proposals include rules for intra-party debates, the development of a judicial oversight framework dealing with MPs' disqualification, and allowing limited cases of voting against the party line on specific issues. The transformations aim to establish a stable party system by ensuring the legislature's independence and the party's control over MPs. The implementation of these reforms will enable MPs to effectively represent their constituents and maintain political order.*

**Keywords:** *Anti-Defection Law, Legislative Independence, Rule of Law, Good Governance, Parliamentary Democracy*

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## I. INTRODUCTION

In the Westminster system of government, the party that holds the majority of the seats in Parliament forms the government and continues its tenure in Parliament as ruling party as long as it holds or commands the confidence of Parliament,<sup>1</sup> and during such time, the Members of Parliament (MPs) elected by the direct votes of the people observe the crucial duty of law and policy making by the way of scrutinising and criticising the law and policies put before them for deliberation.<sup>2</sup> The parliamentary system of government assigns direct accountability to the legislature, where the executive depends on maintaining parliamentary majority support, which will result in failure if it loses that support. To ensure effective deliberation, both ruling and opposition parties should enjoy independence and freedom while opposing laws and policies proposed for legislative approval in Parliament. Such independence and freedom enable the MPs to engage in scrutiny of the executive's functions without fear of losing their seats or engaging in direct collision with the party that has nominated them for the election, and consequently, ensuring MPs' independence contributes to the development of a deliberative democracy.<sup>3</sup>

Article 70 of the Constitution of Bangladesh contains a provision regarding the vacating of the seat of an MP if he resigns from the party that nominated him as the candidate for the election or votes against the party. This provision, known as the 'Anti-Defection Law,' was placed in the Constitution with a legitimate intent to ensure stability of the government by ensuring discipline among the members of the political parties to eradicate corruption and instability within politics,<sup>4</sup> and the main spirit behind the enactment was to ensure continuance of the allegiance of the MPs to the party that has nominated them for the election.<sup>5</sup> Considering a historical perspective of the incorporation of this anti-defection provision into the Constitution, it is apparent that this provision was influenced by the bitter

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1 Meg Russell and Philip Cowley, 'The Policy Power of the Westminster Parliament: The "Parliamentary State" and the Empirical Evidence' (2016) 29(1) Governance 121 <<https://onlinelibrary.wiley.com/doi/10.1111/gove.12149>> accessed 29 July 2024.

2 Ayodele Arowolo Grace, 'Oversight Functions of the Legislature: An Instrument for Nation Building' (2010) 1(1) Nnamdi Azikiwe University Journal of International Law and Jurisprudence 27 <<https://www.ajol.info/index.php/naujilj/article/view/138178>> accessed 31 July 2024.

3 SS Visweswaraiah, 'Deplorable Defections: In Search of a Panacea' (1997) 39 Journal of the Indian Law Institute 47, 48 <<https://www.jstor.org/stable/443951678>> accessed 23 August 2024.

4 Mahmudul Islam, *Constitutional Law of Bangladesh* (3rd edn, Mullick Brothers 2012).

5 *Secretary, Parliament v Khandker Delwar Hossain* [1999] BLD (AD) 276.

experience of political defections or floor crossings in the democratic system of Bangladesh (formerly East Pakistan).<sup>6</sup> With an intention of deterring corrupt practices, such as defecting to fulfil personal ambitions of becoming cabinet ministers, the framers of the Constitution placed Article 70 as the anti-defection law; however, they also stressed the need to ensure MPs' independence as well.<sup>7</sup> Nevertheless, the endeavour of maintaining a proper balance between anti-defection measures aimed at ensuring good governance, parliamentary democracy, and party discipline, and the freedom and independence of MPs to engage in free deliberation in Parliament, even while voting against undemocratic party decisions, remains a critical challenge that requires nuanced legal reforms and institutional safeguards. This idea of maintaining a balance between these two is elusive in the political context of Bangladesh, as Article 70, with its provision of vacating the seat of an MP while voting against the political party, has tended to make the parliamentary government become an elected dictatorship.<sup>8</sup> Moreover, Article 70 imposes a threat to the 'principle of democracy'<sup>9</sup> a fundamental principle of governance enshrined in the Preamble of the Constitution, the rule of law,<sup>10</sup> and the fundamental rights of the MPs like personal liberty,<sup>11</sup> freedom of thought, conscience and speech,<sup>12</sup> freedom of association,<sup>13</sup> etc., and in some instances may force the MPs to contradict the oath taken as per Article 148 by supporting any undemocratic decisions, laws, and policies in the Parliament proposed by the political party nominating him.

This article critically examines Article 70 of the Constitution of Bangladesh and its effects on parliamentary democracy. It explores how Article 70 limits MPs' independence, leading to an all-powerful executive and hindering parliamentary institutionalisation. It also discusses a few judicial responses, comparatively examines the anti-defection laws of some other jurisdictions like India, Pakistan, the United Kingdom, etc., and finally offers recommendations to liberalise Article 70,

6 Allen McGrath, *The Destruction of Pakistan's Democracy* (OUP 1996).

7 Peter Slinn and Karen Brewer, 'The Commonwealth Principles (Latimer House) on the Relationship Between the Three Branches of Government: Twenty Years On' (2019) 30 The Denning Law Journal 101 <<https://doi.org/10.5750/dlj.v30i2.1700>> accessed 25 December 2024.

8 Md. D. I. Bhuiyan, 'Constitutionalizing Political Loyalty: A Critical Examination of the Anti-Defection Law from the Bangladesh's Constitutional Landscape' (2025) 15(4) BLR 2081, 2088 <<https://doi.org/10.4236/blr.2025.154116>> accessed 8 July 2025.

9 Constitution of the People's Republic of Bangladesh 1972 (Constitution of Bangladesh), art 8(2).

10 *ibid* art 27.

11 *ibid* art 32.

12 *ibid* art 39.

13 *ibid* art 38.

while balancing political stability and safeguarding parliamentarians' independence.

## **II. EVOLUTION OF ARTICLE 70 IN LIGHT OF ITS HISTORICAL BACKGROUND**

The dysfunction of the parliamentary system is nothing new to Bangladesh; rather, such experience can be dated back to the time when Bangladesh was a part of Pakistan (then East Pakistan). Afterwards, Bangladesh attained its independence on 16 December 1971 through a heroic liberation struggle where thousands of patriotic freedom fighters laid down their lives for the sake of the freedom of the country. Political instability, dysfunction of both central and provincial governments, and incidents of floor-crossing were embedded in the political history of Pakistan, originating from its colonial legacy.<sup>14</sup> At that time, MPs used to cross the floors by defying the directives or instructions of the parties nominating them for the election, which used to result in parliamentary instability and dysfunction and thus, involved indulging in 'factionalism'.<sup>15</sup> More than ideological disparities with the political party that recommended MPs for election, they crossed the floor for a variety of motives, the most common of which were an ambition for ministerial office, financial advantages, and different personal interests that ranged from a lack of satisfactory courtesy demonstrated by officials to not being included in various committees in Parliament.<sup>16</sup>

The independent People's Republic of Bangladesh embraced its Constitution in 1972; however, the contentious lessons learned from previous political turmoil, as well as perceptible fear of government breakdown, marked the way for the adoption of parliamentary democracy as one of the fundamental principles of governance integrated into the Constitution's Preamble.<sup>17</sup> Prior to the enactment of the Constitution in 1972, the father of the nation, Sheikh Mujibur

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14 M Ehteshamul Bari and Pritam Dey, 'The Anti-Defection Provision Contained in the Constitution of Bangladesh, 1972, and Its Adverse Impact on Parliamentary Democracy: A Case for Reform' (2020) 37(3) Wisconsin International Law Journal 469, 471 <<https://dx.doi.org/10.2139/ssrn.3721469>> accessed 25 August 2024.

15 *ibid.*

16 Sabir Ahmed, 'Article 70 of the Constitution of Bangladesh: Implications for the Process of Democratisation' (2010) 31 Bangladesh Institute of International and Strategic Studies (BISS) Journal 1, 4-5 <<https://archive.biiss.org/web/uploads/documents/202312/1209/11/1.pdf>> accessed 25 August 2024.

17 Rounaq Jahan, 'Bangladesh in 1972: Nation Building in a New State' (1973) 13(2) Asian Survey 199, 199–201; Constitution of Bangladesh, Preamble.

Rahman, issued the Provisional Constitution of Bangladesh Order on January 11, 1972, introducing parliamentary democracy in Bangladesh with the goal of putting first the manifestation of the people's aspirations, which was never respected by the Pakistani military junta.<sup>18</sup> In 1972, the Bangladesh Constituent Assembly Members (Cessation of Membership) Order stipulated that a member of the Constituent Assembly, whose mandate was to draft the Constitution of Bangladesh, was to resign or be expelled from the political party that had nominated him in elections for membership in the Assembly and thus, would forfeit his seat in the Assembly.<sup>19</sup> Finally, the Constitution Drafting Committee incorporated Article 70 in the Constitution of Bangladesh, as 'a candidate nominated by a political party must vacate his seat if he resigns or votes against that party in Parliament, but he is not disqualified from reelection';<sup>20</sup> which is similar to the current state of Article 70 after the Fifteenth Amendment. The main idea behind incorporating Article 70 into the Constitution was undoubtedly to establish a steady democratic government system and reduce the number of floor-crossings impeding the orderly functioning of the government; however, this provision is now frequently being used to suppress MPs' opinions and limit the scope of deliberation by compelling them to affirm fidelity to party decisions, despite being unconstitutional.

Subsequently, constitutional amendments drastically altered the substance and ramifications of Article 70, affecting the democratic structure, parliamentary governance, and political landscape within political parties. The Fourth Amendment, intended to eliminate remaining constitutional opposition to the government's exercise of state power, has been the most controversial of the constitutional amendments affecting Article 70.<sup>21</sup> The Fourth Amendment added an explanation to the meaning of 'voting in the parliament against the party' and provided that the MP shall forfeit his seat not only because he has resigned and voted against his party in the House, but also because he has ignored the directions of his party, such as by absenting himself from voting or being absent from the

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18 M Ehteshamul Bari, *States of Emergency and the Law: The Experience of Bangladesh* (Routledge 2017).

19 The Bangladesh Constituent Assembly Members (Cessation of Membership) Order 1972, s 3.

20 Constitution of Bangladesh, art 70.

21 Ridwanul Haque, 'What is Constitutional Reform, How This to be Carried Out?' *Prothom Alo English* (6 November 2024) <<https://en.prothomalo.com/opinion/op-ed/nq8f928us7>> accessed 6 August 2025; BDLRP Team of Khulna University, 'Article 70 of the Constitution of Bangladesh – A Comparative Study' (BDLRP, 9 October 2022) <<https://bdlrp.com/article-70-of-the-constitution-of-bangladesh-a-comparative-study/>> accessed 8 July 2025.

House in violation of party orders.<sup>22</sup> By displacing parliamentary democracy with a presidential system modelled on the American model, the Fourth Amendment, in the first place, eliminated parliamentary democracy; however, the newly instituted system conveniently did not incorporate the checks and balances that underpin the American presidential government.<sup>23</sup>

The Constitution (Twelfth Amendment) Act was passed in 1991, and this landmark constitutional development repealed the Fourth Amendment to the Constitution and restored parliamentary government. Article 70 was one of the Articles that was amended by this amendment.<sup>24</sup> This amendment to the Constitution, besides reintroducing parliamentary democracy, added to Article 70 a new condition that prohibited the formation of dissident groups within the party, as well as introduced a stricter anti-defection law on independent members who join any political party; thus, it presented more stringent measures to the provision as a whole.<sup>25</sup> The inclusion of Article 70 by the Twelfth Amendment to the Bangladesh Constitution limited MPs' ability to vote based on morality, undermining the goal of re-establishing parliamentary democracy because it failed to liberalise anti-defection, ultimately restricting the parliamentary responsibilities of the executive branch. Finally, the Awami League (AL) government passed the Fifteenth Amendment in 2011, which repealed the Thirteenth Amendment amid an opposition boycott of Parliament, with only one dissenting vote cast by an independent MP, and reinstated the original provisions of Article 70 as in effect today.<sup>26</sup>

The anti-defection provision in the Bangladesh Constitution, aimed at curbing unprincipled floor-crossing by MPs, has been criticised for negatively

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22 M Islam, 'The Politics Behind the Passage of Fourth Amendment to the Constitution of the People's Republic of Bangladesh and Its Provisions: A Modest Analysis' (2014) 4(9) IISTE 55, 60 <<https://iiste.org/Journals/index.php/PPAR/article/viewFile/15674/16071>> accessed 25 August 2024.

23 Ehteshamul Bari (n 18).

24 Shahajadi Khanom, '12th Amendment of Bangladesh Constitution: A Boon or Bane for Good Governance' (2017) 1(3) International Journal of Law, Humanities & Social Science 35, 36 <<https://www.ijlss.com/wp-content/uploads/2017/08/12th-Amendment-of-Bangladesh-Constitution-A-Boon-or-Bane-for-Good-Governance.pdf>> accessed 21 August 2024.

25 Md Abdul Halim, *Constitution, Constitutional Law and Politics: Bangladesh Perspective - A Comparative Study of Problems of Constitutionalism in Bangladesh* (4th edn, CCB Foundation 2008).

26 Constitution (Fifteenth Amendment) Act 2011 (Act XIV of 2011); Ali Riaz, 'Bangladesh in Turmoil: A Nation on the Brink' (Testimony before the Subcommittee on Asia and the Pacific, Committee on Foreign Affairs, United States House of Representatives, 20 November 2013) <[https://www.wilsoncenter.org/sites/default/files/media/documents/article/Bangladesh\\_In\\_Turmoil-Riaz\\_Congressional\\_Testimony.pdf](https://www.wilsoncenter.org/sites/default/files/media/documents/article/Bangladesh_In_Turmoil-Riaz_Congressional_Testimony.pdf)> accessed 6 August 2025.

impacting their personal liberty, freedom of thought, and conscience.<sup>27</sup> This article critically analyses the implications of this provision on parliamentary democracy, government stability, and the rule of law, highlighting the need for further evaluation and reform.

### **III. THE IMPACT OF ARTICLE 70 ON FUNDAMENTAL RIGHTS AND RESPONSIBILITIES OF MPs: PERSONAL LIBERTY, THOUGHT, CONSCIENCE AND SPEECH**

The salient feature of a parliamentary democracy is that the legislature operates as a strong check on the administration in order to safeguard the rule of law.<sup>28</sup> The independence of MPs to operate without direct influence from the political parties when assessing the actions of the executive and other critical national developments is crucial for Parliament to properly perform its oversight role and functions, and such autonomy enables MPs to be able to challenge executive actions without the fear of losing their seats and to debate important national issues. In order to do so, it is also critical that the executive and opposition members exercise their supervisory roles without the control of political parties that sponsor their elections.

The anti-defection provision contained in the Constitution, which was expected to provide a robust check on immoral switching of parties, has, on the contrary, undermined the independence of MPs by making them toe the line of their party in Parliament. Apart from that, Article 70 contains a strict provision against MPs that if they resign or if they vote against the party's whip, it will result in the automatic removal of an MP from their parliamentary seat.<sup>29</sup> However, it is also argued that it limits the freedom of MPs, undermines democracy itself, leads to the oppression of contrary views, and reduces the accountability of those who are elected. This clause has also limited its effectiveness in checking the excesses of the executive and has adversely affected the constitutional rights of the MPs in Bangladesh, more especially the right to freedom of thought, conscience, and speech as provided for in Article 39 of the Constitution of Bangladesh, which does not distinguish between MPs and any other citizen of the country. In view of these criticisms, however, Article 70 continues to be an enabling law on parliamentary practice in Bangladesh.

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27 Md. Asraeul Alam, 'Anti-Defection Law and Its Impact over Constitutionalism in Bangladesh: An Analytical Study' (27 January 2025) <<https://ssrn.com/abstract=4708257>> accessed 9 July 2025.

28 Otabek Khasanov, 'Parliamentary Oversight and Effective Governance: Implications for Central Asian Transition Democracies' (2016) The Advanced Science Journal 55.

29 Constitution of Bangladesh, art 70.

Political defection, dissenting against undemocratic decisions of the party, and not taking part in votes are considered to be rights such as freedom of thought, freedom of conscience, and liberty for MPs. Whereas, such actions constitute democratic rights that MPs hold, and their exercise exemplifies the fulfilment of the democratic responsibilities that have been placed under their guardianship by the electorate.<sup>30</sup> Article 70 has a detrimental effect and imposes limitations on the right of expression of MPs, which compels an MP to adhere to the party instructions even when the MP disagrees with them.<sup>31</sup> MPs might be compelled to engage in self-censorship by complying with the party's direction or refraining from expressing dissenting opinions due to the fear of consequences, including party expulsion or being stripped of their MP position.

Strict enforcement of Article 70 hinders the freedom of thought, conscience and freedom of expression of the MPs; which may ultimately result in the chilling effect on political debate and disclosure, as MPs may become reluctant to engage in open debate, discussion, and deliberation on the sensitive issue relating to the party's policies or decisions for the fear of losing their parliamentary seat.<sup>32</sup> Such reluctance may even extend to public forums, media, and social media platforms, where MPs may feel hesitant to engage in criticism of party decisions, no matter how undemocratic they are. The widespread phenomenon of MPs engaging in self-censorship out of fear of reprisal is a significant problem that affects the range of viewpoints expressed in parliamentary discussions, and such behaviour is typically motivated by worries about becoming politically isolated and disconnected from both other MPs and constituents.<sup>33</sup> Most significantly, MPs' reluctance hinders policy change and innovation since they play a vital role in policy and lawmaking, as well as impede the potential for legislative reform and creativity to address changing social, political, and economic needs.

Several constitutional scholars and civil society activists contend that Article 70 violates several fundamental rights outlined in Part III of the Constitution,

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30 Halim (n 25) 186.

31 Philipp Mai, 'Division of Labour and Dissenting Voting Behaviour of MPs in a "Working Parliament"' (2024) 16(1) European Political Science Review <<https://doi.org/10.1017/s1755773923000152>> accessed 27 August 2024.

32 Steven Shavell, 'Do Excessive Legal Standards Discourage Desirable Activity?' (2006) Harvard Law and Economics Discussion Paper No. 540 <<https://ssrn.com/abstract=921423>> accessed 27 August 2024.

33 Qinfeng Zhu and Marko M Skoric, 'When Politics is Personal: Curating Safe Spaces Through Disconnection on Instant Messaging Platforms' (2023) 22(1) Journal of Information Technology & Politics 98 <<https://doi.org/10.1080/19331681.2023.2231938>> accessed 27 August 2024.

consequently restricting the rights of activists of MPs in terms of freedom of thought and speech; furthermore, there is a contention that ‘Article 70 has essentially encroached upon the authority of MPs to advocate for the interests of the people, particularly the population who elected them to serve in parliament’.<sup>34</sup>

As per Article 38 of the Constitution, every citizen, including MPs, shall have the right to form associations subject to reasonable restrictions mentioned in the said Article; however, dissenting from the party’s decision is not included in any of those restrictions. Article 70 can impede the freedom of peaceful association for MPs by deterring them from expressing dissent within party politics; additionally, MPs may be reluctant to voice disagreement with their party leadership or engage in dissenting factions within the party due to the potential consequence of losing their parliamentary seat.<sup>35</sup> The fear of facing consequences might hinder MPs from establishing coalitions rooted in common ideologies or interests, thus limiting their capacity to execute this basic entitlement.

Article 39 of the Constitution of Bangladesh guarantees MPs the freedom of thought, a right also afforded to all citizens, subject to reasonable limitations; consequently, MPs possess the inalienable right to freedom of thought, encompassing the capacity to articulate their views within Parliament. Article 39(2) of the Constitution safeguards the right to freedom of speech and expression for all individuals, including MPs. This right is, however, subject to reasonable legal limitations, including the preservation of state security, maintenance of amicable relations with foreign nations, safeguarding public order, upholding decency or morality, preventing contempt of court, defamation, or incitement to an offence.<sup>36</sup> None of these reasonable limitations implies a restriction on the democratic right of defection or floor crossing,<sup>37</sup> which means that voting against the party or abstaining from voting on any undemocratic decision of the party cannot be considered a justifiable restriction under Article 39(2) for limiting the freedom of expression of the MPs.

34 M Abdul Latif Mondal, ‘Floor crossing in the House’ *The Daily Star* (Dhaka, 13 June 2005) <<https://archive.thedailystar.net/2005/06/13/d50613020430.htm>> accessed 29 August 2024.

35 Mahbuba Sultana, ‘A Critical Analysis of the Need for Constitutional Reforms for Democracy in Bangladesh’ (2023) 6(3) International Journal of Law and Society 181 <<https://www.sciencepg.com/article/10.11648/j.ijls.20230603.12>> accessed 29 August 2024.

36 Constitution of Bangladesh, art 39(2).

37 Dawinder Kaur, ‘Anti-Defection Law: Curbing Dissent Along with Defection’ (2018) 5(12) International Journal of Emerging Technologies and Innovative Research 337 <<http://www.jetir.org/papers/JETIRDT06039.pdf>> accessed 4 September 2024.

The anti-defection restriction significantly limits the autonomy of MPs in fulfilling their responsibilities in Parliament since MPs who do not adhere to party instructions face the possibility of losing their parliamentary membership.<sup>38</sup> The existence of an anti-defection provision in the Constitution may cause the MPs to engage in self-censorship and refrain from expressing their dissenting opinions or constructive criticism regarding undemocratic party decisions, policies, and leadership.

Article 70 limits MPs' freedom of thought by requiring them to adhere to their party's directives, regardless of their personal beliefs or opinions, which could hinder their ability to express their genuine views and engage in independent discourse. Moreover, Article 70 can hinder MPs' ability to effectively represent their constituencies in Parliament due to party directives prioritising party interests over the interests of the electorate, leading to a loss of public trust and impaired democratic practice.<sup>39</sup> The Republic is a democracy where effective participation by the people through their elected representatives in administration at all levels shall be ensured,<sup>40</sup> and MPs shall be elected in accordance with the law from the single territorial constituencies by direct election<sup>41</sup> to represent the constituency from which he/she has been elected, and MPs are constitutionally obliged to represent the interests and concerns of their respective constituencies in the Parliament. A crucial prerequisite for maintaining this independence is to ensure that MPs have the liberty to articulate their thoughts, opinions, and arguments during parliamentary deliberations while examining legislative and executive actions and evaluating the government's accountability to both the electorate and the Parliament as a whole. Therefore, the independence of MPs is essential for promoting the development of a deliberative democracy, maintaining the rule of law, and preserving governmental stability.

It is undeniable that Article 70 of the Constitution addresses unethical party-switching and its impact on political instability; however, it also restricts the basic

38 Asraeul Alam, 'Global Perspectives on Anti-Defection Laws: Assessing Impacts on Constitutionalism and Democratic Governance of Bangladesh' (2025) 13(1) *Journal of Political Sciences & Public Affairs* 1, 4 <<https://www.longdom.org/open-access-pdfs/global-perspectives-on-antidefection-laws-assessing-impacts-on-constitutionalism-and-democratic-governance-of-bangladesh.pdf>> accessed 9 July 2024.

39 N Jackson and D Lilleker, 'MPs and E-representation: Me, MySpace and I' (2009) 4(2) *British Politics* 236 <<https://doi.org/10.1057/bp.2009.2>> accessed 27 August 2024.

40 Constitution of Bangladesh, art 11.

41 Constitution of Bangladesh, art 65(2).

rights of parliamentarians by requiring them to comply with party directions, thereby reducing their autonomy, hindering free and open discussion essential for a healthy democracy, and stripping lawmakers of the autonomy they need to hold the executive branch accountable. As MPs put their fear of losing their seats ahead of their responsibility to speak out for their citizens, the clause leads to a chilling effect and increased self-censorship results in a decline in democratic governance, stalled policy innovation, and diminished Parliament's monitoring powers, as MPs are unable to fulfil their constitutional duties. Balancing party discipline and MPs' rights is crucial for parliamentary autonomy, allowing dissent, constituency interests, and a deliberative democracy. An intricate approach to anti-defection rules can promote legislative autonomy, strengthen the rule of law, and build public trust in parliamentary procedures.

#### **IV. COLLECTIVE RESPONSIBILITY OF THE CABINET AND ARTICLE 70**

The principle of collective responsibility of the cabinet has its origins in England, which is the hallmark of responsible government as well as the core of the effective functioning of the parliamentary system.<sup>42</sup> Under the system of parliamentary government, the cabinet is headed by the Prime Minister and comprises other ministers designated by the Prime Minister, who serve as the executive body of the government, and this may remain as long as it retains the support of the majority of the MPs. Key characteristics of this system are that executive decision-making in cabinet government is also binding, with the Prime Minister and ministers taking collective responsibility for the conduct of the business of government and public service operations.<sup>43</sup> In this case, the government lasts in the parliamentary system when there is an explicit election date set, even if it is stated that the term is five years. Article 55(3) of the Constitution of Bangladesh reads: The cabinet shall be responsible collectively to Parliament, which means that the cabinet, in its functional parts and as a whole, responsible to the Parliament in its work. The Cabinet takes decisions jointly and is collectively responsible to the Parliament, and it has to conform to the provisions of Article 55(3) to be in power and hold the confidence of the majority in the Parliament.

Nevertheless, collective cabinet responsibility does not imply that every minister participates in or agrees to the creation of policies or the passage of every

42 Sean Kippin and Robert Pyper, 'Collective Ministerial Responsibility in British Government: the Testing of a Convention, 2010–2019' (2021) 92(3) *The Political Quarterly* 522 <<https://doi.org/10.1111/1467-923x.13012>> accessed 9 July 2025.

43 Richard Rose, *The Problem of Party Government* (Palgrave Macmillan 1974) 359.

law; nor is it required that the minister attend the cabinet meeting when the decision is made.<sup>44</sup> The concept of collective responsibility in a cabinet context implies that while not every minister may personally agree with or participate in the formulation of every policy or law, they are nonetheless expected to publicly support the decisions made by the cabinet as a whole.<sup>45</sup> This notion is essential to the operation of cabinet administration, providing a united face notwithstanding any private conflicts among ministers. Furthermore, the distribution of ministerial responsibility in coalition governments can be strategically used to handle sensitive policy matters, demonstrating the importance of collective responsibility in political administration.<sup>46</sup> The minister is accountable to the Parliament for any actions or decisions taken in the Parliament or by his ministry; however, this accountability may be political rather than personal.<sup>47</sup>

Under the anti-defection provision of Article 70, MPs are often required to vote based on party instructions, reducing their personal responsibility to the electorate and preventing them from acting on their own will or in accordance with their constituency's local needs,<sup>48</sup> which hinders their collective responsibility to the Parliament. The fundamental principles of parliamentary democracy are deliberation, debate, and consensus-building among diverse viewpoints; however, anti-defection laws can limit Parliament's role as a platform for meaningful discussion and undermine collective decision-making by requiring MPs to strictly follow the party line.<sup>49</sup> Anti-defection laws can centralise power within party leadership by requiring members to vote according to the party line, thereby controlling MPs and weakening their individual role in decision-making processes and collective accountability to Parliament.<sup>50</sup>

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44 Islam (n 4) 412.

45 House of Commons Library, 'The Parliament Acts' (1996) Research Paper 96/55 <<https://researchbriefings.files.parliament.uk/documents/RP96-55/RP96-55.pdf>> accessed 11 September 2024.

46 K Jonathan Klüser, 'Keeping Tabs through Collaboration? Sharing Ministerial Responsibility in Coalition Governments' (2024) 12(1) Political Science Research and Methods 27 <<https://doi.org/10.1017/psrm.2022.31>> accessed 11 September 2024.

47 *A Sanjeevi v Madras AIR* (1970) SC 1102.

48 Madhav Khosla and Milan Vaishnav, 'Democracy and Defections' (2025) 22(2) International Journal of Constitutional Law 400 <[https://scholarship.law.columbia.edu/faculty\\_scholarship/4512](https://scholarship.law.columbia.edu/faculty_scholarship/4512)> accessed 27 December 2025.

49 *ibid.*

50 *ibid.*

The principle of collective responsibility facilitates the formation of a cohesive unit among diverse groups, including ministers, while accommodating differing opinions; however, under the anti-defection law, coalition ministers are coerced to follow a common line, undermining the cabinet's principle of collective responsibility as per Article 55(3).<sup>51</sup> Article 55(3) promotes collective responsibility; however, Article 70's anti-defection provision has made this democratic principle ineffective by preventing ministers from voting against party decisions or having differing opinions, making them more accountable to the party. Consequently, the cabinet becomes confident in its ability to avoid defeat due to a vote of no-confidence, which can lead to a transformation of a democratic administration into an authoritarian one.

Thus, it's evident that Article 70 of the Constitution undermines collective cabinet responsibility, restricting MPs' autonomy and requiring party allegiance, thereby compromising the government's cohesion and accountability. This engenders a paradox: as collective responsibility aims to improve consensus and accountability in the parliamentary system, it creates a situation where MPs and ministers are more accountable to party leadership. The centralised reallocation of power towards the executive branch threatens parliamentary democracy by diminishing the functions of discussion, debate, and dissent, thereby facilitating authoritarian tendencies, which necessitates a thorough reassessment of Article 70 to maintain collective responsibility.

## V. PARLIAMENTARY PRIVILEGES OF MPs AND ARTICLE 70

The legislature is granted certain immunities and privileges collectively to ensure the efficient execution of legislative tasks and parliamentary obligations, safeguarding its legitimate authority, power, and functions, and preventing any interferences or obstacles.<sup>52</sup> MPs enjoy a wide range of freedom, immunity, and privileges in fulfilling their legislative duties, parliamentary affairs, and authority, as outlined in Article 78 of the Constitution, which provides for their immunities and privileges as follows:

- The validity of Parliament's proceedings cannot be challenged in any court. [Article 78(1)]

<sup>51</sup> Csaba Nikolenyi, 'Government Termination and Anti-Defection Laws in Parliamentary Democracies' (2021) 45(3) West European Politics <<https://doi.org/10.1080/01402382.2021.1880719>> accessed 11 September 2024.

<sup>52</sup> Islam (n 4) 558.

- In employing his responsibilities to regulate procedure, conduct business, or maintain order in Parliament, a member or official of Parliament is not subject to judicial jurisdiction. [Article 78(2)]
- An MP is not accountable in court for whatever he says or votes in Parliament or a committee. [Article 78(3)]
- A person is not liable for court proceedings related to the publication of any report, paper, vote, or proceeding by or under Parliament's authority. [Article 78(4)]
- Subject to Article 78, Parliament can set its committee and member privileges by Act. [Article 78(5)]

Sub-articles (1) to (4) specify the privileges of Parliament and its committees and members, whereas sub-article (5) stipulates that, subject to the provisions of Article 78, privileges and immunities of MPs and members of the committees can be determined by the Act of Parliament. MPs enjoy extensive privileges and immunities concerning their parliamentary matters, including debates and discussions in Parliament, legislative operations, and so on; and cannot be subjected to judicial proceedings or end up vacating seats for these procedures, conduct business, deliberations, or even disagreement with party policy or undemocratic legislation. Article 70 restricts MPs' freedom of speech and expression during parliamentary debate, forcing them to follow party direction regardless of personal or opposing views, thereby hindering their parliamentary privileges and immunities.<sup>53</sup>

In addition to regulating its own internal affairs and procedures, Parliament has the authority to resolve the issues and disputes that arise within its jurisdiction.<sup>54</sup> Legitimacy of parliamentary proceedings cannot be contested in court, even if the Parliament does not adhere to the norms of process; however, the Parliament has the authority to suspend any procedural rule in certain matters.<sup>55</sup> The court shall not intervene in the parliamentary procedures, even if they pertain to the early phases of law-making or the presentation of the money bill.<sup>56</sup> Nevertheless, the court can only challenge the legitimacy or constitutionality of legislation once it has been enacted.

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53 Dawinder Kaur (n 37).

54 Islam (n 4) 563.

55 *MS M Sharma v Krishna Sinha* (1960) AIR SC 1189.

56 *Bihar v Kameshwar Singh* (1952) AIR SC 252.

Parliament has the power to maintain parliamentary discipline, suspend or expel MPs who violate it, and the court is not allowed to intervene in such cases.<sup>57</sup> Article 70 mandates that MPs who oppose a party decision or vote against it must vacate their seat, despite this contradicting their privileges regarding their statements in Parliament, even if they contradict party choices or wills. In such a scenario, the Speaker has the authority to implement appropriate measures to uphold the order of the House and therefore suspend or remove the MP. However, it is important to note that depriving the MPs of their seats can never serve as an effective solution or deterrent. MPs are afforded a significant degree of freedom of speech and expression within the Parliament in order to effectively carry out their legislative duties, and if a member surpasses the restricted limit of their freedom of speech as stipulated by the Constitution, the Speaker can address the issue.<sup>58</sup> Therefore, compelling the MP to leave the seat in this particular situation will undoubtedly exceed the boundaries of Article 78, thereby hindering his legislative obligations and parliamentary privileges.

Indeed, Article 78 does not include any clause addressing the violation of these privileges and contempt. Nevertheless, the significance of these parliamentary privileges would be rendered futile without the authority granted to the Parliament to implement disciplinary measures as a consequence of such violations. Every legislative body has the authority to govern its procedures and the enforcement of discipline by its members, and in the exercise of this authority, the Parliament has the right to suspend or expel a member if the circumstances warrant such a measure;<sup>59</sup> and this viewpoint is analogous to that of the Parliament of Bangladesh.

Parliamentary privileges, such as protection from legal actions and freedom of expression, are intended to uphold the system of checks and balances operating inside the government. Nevertheless, the efficacy of the legislative body in holding the administration responsible may be diminished by anti-defection measures, since it may discourage dissent inside the party, thereby undermining these checks and also significantly contradicting the parliamentary privileges and immunities that are constitutionally granted to the MPs.<sup>60</sup> Vacating the seats of MPs in the event of

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57 *Bradlaugh v Gossett* [1884] 12 QBD 271.

58 Islam (n 4) 567.

59 *Gunupati Kesava Rao v Nafisul Hassan* (1954) AIR SC 636.

60 Csaba Nikolenyi, 'The Adoption of Anti-Defection Laws in Parliamentary Democracies' (2016) 15(1) Election Law Journal <<https://doi.org/10.1089/ELJ.2015.0345>> accessed 19 December 2024.

violating party wishes or voting against the party cannot be seen as a democratic move aimed at preserving government stability, regardless of the specific situation being discussed.

## VI. IMPACT OF ANTI-DEFECTION ON THE RULE OF LAW

The Preamble of the Constitution of Bangladesh outlines the concept of the ‘Rule of Law’ as a fundamental aim of the state to be secured for the citizens. The concept of A.V. Dicey on the rule of law comprises three basic points: (i) the persons in authority do not enjoy wide, arbitrary or discriminatory power wherein there is supremacy of the common law as opposed to the influence of arbitrary power;<sup>61</sup> (ii) there is equality before the law for everyone, and every man shall be subject to the jurisdiction of the court irrespective of his position and rank;<sup>62</sup> (iii) the basic fundamental rights of every person shall be protected by the law.<sup>63</sup> From this concept, it is clear that to ensure the ‘rule of law,’ the absence of arbitrary power and legal safeguarding of some basic fundamental rights for every citizen are the cornerstones. As per the concept of the rule of law, the rulers (including the MPs) are subject to the law, and all the authorities (legislative, executive and judiciary) must be under the subordination of the basic principle of law, the ideals of basic fundamental rights, moral principles, fairness and due process.<sup>64</sup>

The absence of arbitrary power is essential for ensuring the rule of law; the discretion exercised by the rulers must be within the limit prescribed by the law and must not be such that it amounts to abuse of the power so conferred.<sup>65</sup> The rule of law demands that power conferred must be exercised in a just, fair and reasonable manner; and not in a capricious or arbitrary way, creating a scope of arbitrariness.<sup>66</sup> To achieve the rule of law, which is one of the State’s essential goals, the Constitution has provided substantial provisions under Articles 7 and 31 for the formation of a policy in which every state functionary is required to defend their actions with reference to the law.<sup>67</sup> Article 27 outlaws any kind of discrimination in the law of the state, and Article 31 includes the concept of due process, which

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61 *Entick v Carrington* [1765] 19 St Tr 1030.

62 *Conway v Rimmer* [1968] AC 910.

63 *Ridge v Baldwin* [1964] AC 40.

64 Islam (n 4) 81.

65 *SG Jaisinghani v Union of India and Ors* AIR (1967) SC 1427, 14.

66 *Delhi Transport Corporation v DTC Mazdoor Congress* AIR (1991) SC 101.

67 Islam (n 4), 84.

prevents arbitrary or discriminatory legislation or state action.<sup>68</sup> Part III of the Constitution enshrines Fundamental Rights, including freedom of opinion, speech, and expression (applicable to MPs as well), to preserve the dignity of human life and liberty.<sup>69</sup> The anti-defection legislation, intended to preserve political stability, has elicited apprehensions over its possible effects on the core principles of representative democracy and individual freedom of speech. The conflict between party discipline and individual conscience has ignited discussions among law experts and political observers. The implementation of anti-defection measures has elicited apprehensions over the precarious balancing of power between the executive and legislative branches, potentially affecting the system of checks and balances vital to the rule of law.<sup>70</sup>

The rule of law is profoundly affected by anti-defection measures from a constitutional standpoint. The basic idea behind anti-defection laws is to discourage politicians from switching parties during their term in office; however, these laws have the potential to undermine democratic values like justice, impartiality, and the independence of lawmakers.<sup>71</sup> Moreover, anti-defection laws aim to support democratic values by preventing politicians from defecting, but they could inadvertently undermine these principles by reducing parliamentarians' autonomy and perhaps causing biased decisions by adjudicatory authorities such as the Speaker.<sup>72</sup> Furthermore, the application of the anti-defection statute might be disparate, which may undermine public faith in the judicial system and the democratic process.<sup>73</sup> The anti-defection statute has been criticised for failing to provide the expected effects and being susceptible to manipulation by political leaders.<sup>74</sup>

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68 *Government of West Pakistan v Begum Agha Abdul Karim Shorish Kashmiri* (1969) 21 DLR (AD) 1, 12.

69 Islam (n 4).

70 Sri Manas Halder, 'Defection Game and India's Anti-Defection Law – A Reflection' in *Futuristic Trends in Social Sciences* (IIP Series, vol 3, Book 11, Part 7, 2024) 122 <<https://iipseries.org/assets/docupload/rsl20258B93764527C15BB.pdf>> accessed 19 December 2024.

71 Darsan Guruvayurappan, 'Rethinking Defection: An Analysis of Anti-defection Laws in India' (2023) 76 Parliamentary Affairs 443 <<https://doi.org/10.1093/pa/gsab054>> accessed 19 December 2024.

72 Halder (n 70).

73 Palka Sharma, Sunita Sinha, and Vinod Kumar Saini, 'The Impact of Political Defection on Democratic Stability: A Case Study of India' (2023) 8(6) Research Review: International Journal of Multidisciplinary 137 <<https://doi.org/10.31305/rrijm.2023.v08.n06.018>> accessed 22 December 2024.

74 Nikolenyi (n 51).

Professor Wade states that the rule of law is composed of three main ideas: (i) it expresses the desire for law and order within a community as opposed to anarchy, warfare, and constant conflict; (ii) it expresses a fundamental legal doctrine, which states that governance must be conducted in accordance with the law and that the requirements of that body in disputed cases are declared by judicial decisions; and (iii) it refers to a body of political opinion about what the declared rules of law should provide in matters both of substance and of procedure.<sup>75</sup> For the establishment of the rule of law within society, law and order are essential as opposed to anarchy, which ensures stability and predictability within the government, and for such purposes, it is essential to maintain the freedom of MPs in discussing, debating, and even dissenting in accordance with the interests of their constituencies. Perhaps Article 70 contributes more to an autocratic government where party leaders have the power to dictate the policies, creating a paradoxical order that suppresses the rule of law and democracy. Two main aspects of the rule of law, as per the ideas of Professor Wade, are transparency and accountability, which can significantly be impeded by the provision of Article 70, which can centralise the political power to a specific political party or ruling party, fostering an autocracy in the guise of a democratic process and rule of law. Bangladesh has been facing such an issue for over a decade, where the ruling party drastically turned into an autocratic one, extended its 15 years in power with another five-year term, and the dominant party often developed maladies that harmed the country's governance, and Article 70 had its own contribution to this.<sup>76</sup> Concerns about the nation's possible transition to a one-party state have arisen as a result of this process, which has been referred to as democratic backsliding, with the ruling party implementing ideational and constitutional procedures that justify undemocratic behaviour.<sup>77</sup>

Deliberation, discussion and constructive criticism of the laws and policies in the Parliament ensure the diversity, effectiveness, inclusivity and lawfulness of the laws to be passed in both terms of substance and procedure; however, Article 70 in some cases suppresses the ability of the MPs to advocate for the diversity and comprehensive lawfulness of the statutes, resulting in the lawmaking process being

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75 A W Bradley and K D Ewing, *Constitutional and Administrative Law* (14th edn, Pearson Education Limited 2023).

76 Geoffrey Macdonald, 'A Perilous Moment for Bangladesh's Democracy: Greater Political Competition is Needed to Avoid the Governance Pitfalls of Single-Party Politics' (*United States Institute of Peace*, 4 March 2024) <<https://www.usip.org/publications/2025/03/perilous-moment-bangladesh-democracy>> accessed 25 December 2024.

77 Riaz (n 26) 209-19.

a reflection of the political will of the ruling party, reducing the democratic practice, and diminishing the concept that ‘law should be shaped by the body of the political opinion to ensure the rule of law’. Here, the passing of the 16th Amendment substituted the provisions of the Supreme Judicial Council, reviving the original Article 96 of the 1972 Constitution, by the political party with the majority vote in the Parliament, to shift the power to dismiss judges from the Supreme Judicial Council to the Parliament<sup>78</sup> with an intent to impede the freedom of the judiciary, is an ideal example.

The democratic principle of the rule of law promotes the separation of powers, checks and balances, and elected representative independence. Article 70 undermines these principles, allowing MPs to prioritise party interests over constituent interests, posing a conflict between constitutional loyalty and democratic freedom and legal autonomy. In some cases, Article 70 can impede the scrutiny and debate supporting the majority just to pass legislation, even compromising the quality and legitimacy of the law. This directly contradicts the concept of the rule of law, which has also been pointed out by Professor Wade in this idea of the rule of law.

The rule of law is directly associated with the upholding, protection, and enforcement of constitutional rights, including freedom of speech, thought, and conscience. Article 70 has a curbing effect on this particular fundamental right of the MPs, as discussed earlier. Perhaps, Article 70 seeks to prevent political instability; it does so at the cost of democratic freedom, restraining the fundamental rights of the MPs, forcing them to be more aligned with the party’s will rather than their own conscience principles of justice, fairness, and accountability, and thus undermining the principle of the rule of law.

## **VII. CONTRADICTION OF ARTICLE 70 WITH THE PRINCIPLES OF CHECK AND BALANCE AND THE SEPARATION OF POWERS**

Legislative, executive, and judicial authority are the three pillars upon which the state’s functioning rests, as per the principle of separation of powers. The power to make laws rests with the legislature, the power to enforce those laws with the executive, and the power to adjudicate disputes arising under these laws with the

<sup>78</sup> Rehan Abeyratne and Po Jen Yap, ‘Constitutional Dismemberments, Basic Structure Doctrine, and Pragmatic Justifications in Context: A Rejoinder’ (2022) 20(2) International Journal of Constitutional Law 905 <<https://doi.org/10.1093/icon/moac047>> accessed 20 December 2024.

judiciary.<sup>79</sup> It's true that 'a watertight separation' between these three branches is not possible or desired.<sup>80</sup> The principle of checks and balances mandates that after the primary exercise of authority has been assigned to an individual or entity, it is necessary to ensure the involvement of other individuals or entities in areas such as legislation and enforcement, judicial review and pardon, budget and execution.<sup>81</sup> The objective of the separation of powers is to avoid the consolidation of authority in any one branch and to provide a mechanism of oversight and equilibrium.<sup>82</sup>

By imposing inflexible party discipline on MPs, Article 70 of the Constitution of Bangladesh undermines the principle of separation of powers and disrupts the intended checks and balances between the legislative and executive branches. It is the responsibility of legislators to exercise their judgment, conduct policy analyses, and enact laws that put the interests of their constituents and the public interest first, since they are representatives of the people. Another vital purpose of the legislative branch is to ensure that government policies are legitimate, effective, and in line with the public interest and to serve as a check upon the executive branch in terms of the implementation of laws; however, according to the principle of separation of powers, the legislative branch should run independently from the executive and judicial branches.<sup>83</sup> Article 70 of the Constitution requires MPs to vote according to their party's directives, making them extensions of the executive branch, especially if the head of government controls the party, resulting in the legislature losing its independence and becoming a rubber stamp for executive policies. In parliamentary systems, party leaders often hold both executive and legislative power (e.g., the Prime Minister being the head of the executive,<sup>84</sup> and the leader of the majority party in the legislature<sup>85</sup>). Article 70 restricts Parliament's capacity to independently examine or reject executive acts,

79 Ahmad Abdullah, 'Declassifying Theory of Separation of Powers and Its Inherent System of Checks and Balances: A Comparative Study' (2023) 2(1) *Zakariya Journal of Social Science* 31 <<https://doi.org/10.59075/zjss.v2i1.231>> accessed 19 December 2024.

80 *Bangladesh v Md Aftabuddin* (2010) BLD (AD) 1.

81 'Constitutional Government and Democracy (rev. ed.), by Carl J. Friedrich. Ginn and Company, Boston. 1950. Pp. xvi, 688.; Interpretation of Uniform Commercial Laws, by Frederick K. Beutel. The Bobbs-Merrill Company, Inc., Indianapolis, 1950. Pp. xxiii, 881'(1951) 11(3) *Louisiana Law Review* 399.

82 Riaz(n 26).

83 Boratova Ziyoda, 'The Principle of Powers Separation and Its Role in The Functioning of The State Mechanism' (2020) 2(2) *The International Journal of Social Sciences World* 15 <<https://www.growingscholar.org/journal/index.php/TIJOSSW/article/view/48>> accessed 19 December 2024.

84 Constitution of Bangladesh, art 55(2).

85 Constitution of Bangladesh, art 55(1).

subordinating it to the executive and breaking checks and balances and the separation of authority.

Article 70 prevents the governing party's MPs from questioning executive actions, even if they are damaging or against the public interest, reducing the legislature's ability to hold the administration responsible,<sup>86</sup> causing an imbalance of power in which the executive dominates the legislative, weakening the constitutional design of separation of powers and checks and balances. The principle of separation of powers in the legislative process is a crucial aspect of democracy, requiring independent judgment and voting based on conscience, expertise, and constituent interests. However, Article 70 of the Constitution removes MPs' ability to participate meaningfully in the process, stifling genuine debate and deliberation. This results in a mechanistic lawmaking process, driven by the party leadership's will rather than democratic deliberation and collective judgment. The executive can control the legislative process by commanding a party-line vote, leading to laws passed based on executive preferences with minimal input from the legislature, further distorting the balance of power between the two branches.<sup>87</sup>

The principle of separation of powers aims to prevent concentration of power within a single government branch and involves maintaining distinct roles and responsibilities to prevent any branch from becoming too powerful or unaccountable. The anti-defection law in Article 70 leads to a concentration of power within the executive branch, as the ruling party's MPs must follow the party leader's directives, providing the executive with unchecked power to influence the legislative agenda without fear of opposition from within and outside its own party.<sup>88</sup> Opposition parties often lack sufficient numbers to counter the majority's votes, which are rigidly aligned with the executive's preferences, which centralise power, undermining the spirit of the separation of powers.

The judiciary is essential in interpreting the Constitution and in ensuring that laws are constitutionally sound; perhaps, no part of the Constitution expressly grants the authority to interpret the Constitution. This jurisdiction to interpret the Constitution is derived from the power of judicial review, which is granted to the

86 Rounaq Jahan, 'The Parliament of Bangladesh: Representation and Accountability' (2014) 21(2) The Journal of Legislative Studies 250 <<https://doi.org/10.1080/13572334.2014.975470>> accessed 19 December 2024.

87 Ahmad R Pawane, Mohammad S Wijaya, and Ilham Ilham, 'Local Political Power in The Legislation Process' (2023) 2(2) Journal of Contemporary Local Politics 42 <<https://doi.org/10.46507/jclp.v2i2.462>> accessed 19 December 2024.

88 Khosla and Vaishnav (n 48).

court by Article 102 of the Constitution. Article 7(2) of the Constitution states that if a law is found to be inconsistent with any provision of the Constitution, it will be declared void, giving the Supreme Court the implied authority to interpret the Constitution. Nevertheless, the constitutional provision of Article 70 creates a situation where legislatures cannot challenge executive overreach, limiting judicial review from legislative ends.<sup>89</sup> This weakens the judiciary's role, as MPs from the ruling party cannot vote independently, allowing laws favouring the executive to pass through Parliament without significant challenge. This weakening of both branches exacerbates the power imbalance in favour of the executive, undermining the separation of powers.

Article 70 of the Constitution of Bangladesh requires MPs to follow party directives, turning the legislature into an extension of the executive and reducing its independence and effectiveness in overseeing government actions. The executive branch's concentration of power disrupts government balance, stifles democratic speech and substantial discussion, and limits the judiciary's capacity to restrict executive overreach, escalating the power imbalance.

## **VIII. THE ROLE OF ARTICLE 70 IN FACILITATING THE 16TH AMENDMENT AND UNDERMINING JUDICIAL INDEPENDENCE**

The 16th Amendment to the Constitution is a significant and contentious event in the history of Bangladesh's judicial and constitutional system, as this issue has been the subject of legal and political debates as it pertains to the authority to remove Supreme Court judges.<sup>90</sup> The 16th Amendment to the Constitution of Bangladesh was enacted by the Parliament with the objective of amending Article 96 in order to establish a procedure for the removal of the judges of the Supreme Court from office. The original Constitution of Bangladesh (1972) stipulated that judges could only be removed by presidential order, which was founded on a resolution enacted by Parliament with a two-thirds majority in accordance with the provisions of Article 96, which delineated the procedure for removing judges from their positions. Originally, Article 96 of the 1972 Constitution allowed the President

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89 Robert F Williams, 'State Constitutional Limits on Legislative Procedure: Legislative Compliance and Judicial Enforcement' (1987) 17(1) *Publius: The Journal of Federalism* 91 <<https://doi.org/10.1093/oxfordjournals.pubjof.a037637>> accessed 19 December 2024.

90 M Ehteshamul Bari, 'The Recent Changes Introduced to the Method of Removal Judges of the Supreme Court of Bangladesh and the Consequent Triumph of an All-Powerful Executive over the Judiciary: Judicial Independence in Peril' (2021) 4(2) *Cardozo Int'l & Comp L Rev* 653 <[https://www.cardozociclr.com/\\_files/ugd/bc0e09\\_820a921a1f784953a2ccc1a3b24cad17.pdf](https://www.cardozociclr.com/_files/ugd/bc0e09_820a921a1f784953a2ccc1a3b24cad17.pdf)> accessed on 6 August 2025.

to remove Supreme Court judges for proven malfeasance or misbehaviour by submitting a resolution to the Parliament that was adopted by a two-thirds majority. Nevertheless, the Fourth Amendment to the Constitution, passed in 1975, eliminated the necessity for a parliamentary resolution, granting the President the authority to remove justices by order.

The provision was amended by a Martial Law Proclamation—The Proclamations (Amendment) Order, 1977 (Proclamations Order No. 1 of 1977), which established a Supreme Judicial Council (SJC) consisting of the Chief Justice of Bangladesh and the two next senior judges as per Article 96(3).<sup>91</sup> The initiation of the proceedings of the Council was left absolutely in the hands of the President, as he could initiate the proceeding upon any information received from the Council or any other source; even then, he must have reason to ‘apprehend’ that a judge is physically or mentally incapacitated or has committed gross misconduct as per Article 96(5).<sup>92</sup> If the council makes a positive recommendation, the President shall, by order, remove the judge from office as per Article 96(6).<sup>93</sup> After the Parliament had come into being, it passed the Fifth Amendment of the Constitution, which ratified and confirmed the Martial Law proclamation.<sup>94</sup> In 2005, the High Court Division declared the Fifth Amendment illegal, leading to the abolition of the SJC from the Constitution.<sup>95</sup>

The Fifteenth Amendment to the Constitution, passed in 2011, preserved the provisions of Article 96, enabling the SJC to remain as the entity responsible for removing judges from office,<sup>96</sup> which guaranteed judicial accountability while protecting the judiciary’s independence from excessive political interference. Following an investigation to ascertain whether the judge is incapable of fulfilling

91 Nirmal Saha and M Jashim Chowdhury, ‘Advocate Asaduzzaman Siddiqui v. Bangladesh Bangladesh's Dilemma with Judges’ Impeachment’ (2017) 3(3) CALQ 7 <<https://docs.manupatra.in/newsline/articles/Upload/76182C04-3861-493F-9BDF-9E1D8EB6B77B.pdf>> accessed 9 July 2025.

92 M Jashim Ali Chowdhury, *An Introduction to the Constitutional Law of Bangladesh* (3rd edn, Book Zone Publications 2017).

93 *ibid.*

94 Shishir Manir, ‘Judgement Review of Government of Bangladesh and Others vs. Advocate Asad Uz Zaman Siddiqui and Others’ (21 September 2020) <<https://shishirmanir.com/review/judgment/government-of-bangladesh-and-others-vs-advocate-asad-uz-zaman-siddiqui-and-others>> accessed 19 December 2024; Ashutosh Sarkar, ‘Supreme Judicial Council Restored’ *The Daily Star* (2 August 2017) <<https://www.thedailystar.net/frontpage/supreme-judicial-council-restored-1442266>> accessed 25 December 2024.

95 Manir, ‘Judgement Review’ (n 94).

96 *ibid.*

the responsibilities of the position due to physical or mental incapacity or has committed gross misconduct, the President may remove a Supreme Court judge from office upon the recommendation of the SJC, as stipulated by the Constitution. The SJC should consist of the Chief Justice and the two most senior judges of the Appellate Division.<sup>97</sup>

The SJC provisions were replaced in September 2014 by provisions of Article 96 of the original 1972 Constitution by the Constitution (Sixteenth Amendment) Act, 2014, which aimed to restore the legislative mechanism for removing Supreme Court judges by the parliamentary process.<sup>98</sup> The main features of this amendment were that judges might be dismissed for misconduct or incompetence by a two-thirds majority vote in Parliament, which would act on recommendations made after investigations into charges against a judge. The Sixteenth Amendment faced significant challenges in courts, with critics arguing it undermined the independence of the judiciary,<sup>99</sup> and afterwards, lawyers of the Supreme Court contested the validity and lawfulness of that amendment by virtue of Article 102 in November 2014.<sup>100</sup> In May 2016, a Special Bench declared the amendment void and ultra vires the Constitution as it violated the basic structure doctrine of the Constitution, as judicial independence is an essential part of the Constitution's basic structure, and the parliamentary removal process would have been compromised. In July 2017, the Appellate Division dismissed the appeal, declaring the amendment ultra vires and void, stating that it posed a threat to the judiciary's independence. A review petition is pending before the Appellate Division, which has not yet been heard.<sup>101</sup>

97 Constitution of Bangladesh, art 96 (3), (5), (6); Md. Awal Hossain Mollah, 'Independence of Judiciary in Bangladesh: An Overview' (2012) 54(1) International Journal of Law and Management 61 <[https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2732318](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2732318)> accessed 25 December 2024.

98 Manir, 'Judgement Review' (n 94).

99 Observer Online Report, 'Spirit of 16th Amendment Case was to Undermine Judicial Independence: SC' *Daily Observer* (5 June 2025) <<https://www.observerbd.com/news/528815>> accessed 6 August 2025; Tribune Desk, '16th Amendment Debate: Here is What You Need to Know' *Dhaka Tribune* (18 August 2017) <<https://www.dhakatribune.com/bangladesh/79908/16th-amendment-debate-here-is-what-you-need-to>> accessed 6 August 2025.

100 NTV Bangladesh, 'SC Releases Full Text of Verdict on 16th Amendment' (NTV Online, 1 August 2017); News Room, '16th Amendment: Judges Caught in Political Divide, Govt in Quicksand' (*Lawyers Club Bangladesh*, 9 September 2017) <<https://lawyersclubbangladesh.com/en/2017/09/09/16th-amendment-judges-caught-in-political-divide-govt-in-quicksand/>> accessed 10 July 2025.

101 TBS Report, 'Hearing on Review Petition Against 16th Amendment Verdict Sunday' *The Business Standard* (19 October 2024) <<https://www.tbsnews.net/bangladesh/court/hearing-review-petition-against-16th-amendment-verdict-sunday-970796>> accessed 6 August 2025; Desk Report, '16th Amendment Verdict: Hearing on Review Petition Underway' (*The Rising BD*, 20 October 2024) <<https://www.risingbd.com/english/national/news/107878>> accessed 6 August 2025.

The Bangladeshi judiciary has the responsibility to uphold the rule of law by closely examining government acts and legislation in accordance with the Constitution.<sup>102</sup> The independence of the judiciary, as guaranteed by Articles 22, 88(b), 89(1), and 94(4) of the Constitution of Bangladesh, was compromised by the Sixteenth Amendment to the Constitution, which is seen as a crucial component of the basic structure of the Constitution.<sup>103</sup> However, the government granted the Parliament control over this crucial duty by repealing the process of the SJC for dismissing judges from the Supreme Court of the country through the ratification of the Sixteenth Amendment;<sup>104</sup> and here, the clear purpose of this amendment was to give the executive branch more influence over the judiciary.

In this case, Article 70 was crucial and made matters worse by placing restrictions on MPs to vote according to the party's decision, and as a result, it became almost impossible for them to act independently of party directions, even when they were arbitrary, while using their potential authority to remove a Supreme Court judge. As a result, during the parliamentary vote on the 16th Amendment, it was passed unanimously, with a 327-0 vote.<sup>105</sup> By means of this constitutional amendment, the government established its supremacy over institutions such as the judiciary, which serve as a check on its powers and guarantee the upholding of the rule of law. As a matter of fact, by virtue of Article 70, the amendment was passed with no discussion or protest from MPs, which revealed not just the diminishing room for criticism and the escalating authoritarian methods used by the government but also indicated that the distinctions between the state, government, and governing party were becoming indistinct or perhaps eradicated.

The 16th Amendment of the Constitution created a critical tension between parliamentary authority and judicial independence by replacing the SJC with a parliamentary mechanism for removing judges, as the amendment transferred

<sup>102</sup> *Anwar Hossain Chowdhury v Bangladesh* (1989) 18 CLC (AD); Md Milan Hossain, 'Bangladesh Supreme Court and Rule of Law: Constitutional Approach and Practice' (2021) 7(2) International Journal of Law 127 <<https://www.lawjournals.org/assets/archives/2021/vol7issue2/7-2-20-648.pdf>> accessed 6 August 2025.

<sup>103</sup> *ibid* 416.

<sup>104</sup> M Ehteshamul Bari, 'The Functioning of the Supreme Judicial Council, the Changes Introduced to the Method of Removal of Judges of the Supreme Court of Bangladesh in 2014 and the Subsequent Scathing Attack on the Judiciary' in *The Independence of the Judiciary in Bangladesh: Exploring the Gap Between Theory and Practice* (Springer Singapore 2022).

<sup>105</sup> Shameema Rahman, 'Bangladesh: Sixteenth Amendment to Constitution Empowers Parliament to Impeach Justices' (*Library of Congress*, 10 November 2014) <<https://www.loc.gov/item/global-legal-monitor/2014-11-10/bangladesh-sixteenth-amendment-to-constitution-empowers-parliament-to-impeach-justices/>> accessed 7 October 2025.

significant power to the legislature, raising concerns about potential political influence over the judiciary. While proponents argued it was intended to enhance accountability, detractors consider it an effort to undermine the judiciary's autonomy and concentrate governmental power. The critical role of Article 70 in this process exacerbated the problem by prohibiting MPs from voting against party directives, effectively eliminating any possibility of dissent. It also serves as a reminder of the delicate balance between governmental powers and the need to protect institutions that uphold democracy, accountability, and judicial impartiality.

## **IX. RECOMMENDATIONS**

Article 70 of the Constitution states that the MPs are bound by the party's directives, thereby diminishing their democratic engagement in the legislative functions. It is proposed here that this Article be amended in order to facilitate flexibility in voting in accordance with their conscience, particularly on matters not substantially relating to the party's survival, resulting in the loosening of the stranglehold of the anti-defection law on party politics while encouraging inner-party democracy. These proposed measures point to the need to strike a balance between conformity to party rules for effective governance and independence of parliamentarians for effective position-taking, as well as voting within the Parliament on key political questions.

To begin with, political parties need to reform their internal framework so as to foster democracy and prevent MPs from being coerced into voting on a strict party position due to a lack of intra-party conversations. In this regard, every political party has to convene an extraordinary meeting to revise its internal constitution or charter. Such changes would institute formal bodies within the party's structural framework, such as instituting specific policy units or policy councils, enhancing the standards for the MPs so that they could reach consensus and briefly discuss relevant policy issues before making the final decision.

Political parties need to form specialised policy deliberation committees to enable MPs and other party members to participate in organised discussions on policy matters. A proportion of party members (e.g., 10-20%) should have the authority to initiate an internal vote on significant policy issues prior to the issuance of directives. Training programs provided by specialists from non-governmental organisations and political think tanks should be conducted by parties, emphasising consensus-building, negotiation, and debating abilities.

Implementing a ‘Hybrid Anti-Defection Model’ inspired by Pakistan’s constitutional framework may prove to be an effective strategy. Article 63A of Pakistan’s Constitution prohibits defections while permitting a more adaptable framework compared to Article 70 of Bangladesh’s Constitution, and Pakistan’s Constitution permits MPs to express disagreement on matters except votes of no-confidence, budget approvals, and constitutional revisions.<sup>106</sup> This offers more freedom while maintaining party discipline on fundamental matters. Bangladesh may use a hybrid approach like Pakistan’s framework, whereby desertion is penalised just for designated, high-priority votes, thereby reconciling party discipline with individual liberty.

Article 70 should be amended to liberalise the anti-defection laws, granting MPs better autonomy in specific legislative contexts (e.g., votes not pertaining to national stability or significant policy matters), thereby augmenting MPs’ independence and their capacity to represent their constituents’ perspectives in Parliament. It’s undeniable that amending Article 70 would be a complex issue, as it involves balancing the need for political stability and party discipline with ensuring legislative independence and safeguarding democratic rights. However, the current provision, as discussed in this article, has raised concerns about the erosion of parliamentary sovereignty and MPs’ freedom to represent their constituents effectively. The proposed amendment should clearly specify the contexts in which MPs are bound by party directives to prevent misuse and overreach of the provisions of Article 70, which can be done by restricting the application of Article 70 to votes of confidence or no-confidence, money bills, and constitutional amendments, as these are the matters of critical national importance where party unity is essential, allowing MPs to exercise their judgement and vote independently on regular legislative matters, fostering a more vibrant and deliberative Parliament.

Such an amendment should propose the incorporation of judicial review of any decision regarding the disqualification of MPs under Article 70, allowing MPs to challenge their disqualification in the High Court on grounds of procedural irregularity or violation of fundamental rights, which would ensure a fair process and uphold the principle of checks and balances. A formal judicial oversight mechanism can be established to ensure that the invocation of Article 70 is subject to

<sup>106</sup> Waqas Rafiq, Farhana A Rana, and Waheed Rafique, ‘Securing Parliamentary Party Allegiance through Anti-Defection Laws in Pakistan: A Legislative and Judicial Discourse’ (2022) 3(3) Journal of Development and Social Sciences 361, 367 <[https://doi.org/10.47205/jdss.2022\(3-III\)35](https://doi.org/10.47205/jdss.2022(3-III)35)> accessed 2 January 2025.

checks for constitutionality and fairness, with the specific role of reviewing cases related to Article 70. In this regard, a model based on India's Tenth Schedule (Anti-Defection Law) can be adopted, which was introduced to prevent party defections, while still allowing certain exceptions for issues of conscience or internal party matters. To preserve political legitimacy, the Indian Government introduced the Anti-Defection Bill, becoming the 52nd Constitutional Amendment,<sup>107</sup> and added the Tenth Schedule to the Indian Constitution, containing provisions for the disqualification of elected representatives, addressing the issue of defection in Indian politics.<sup>108</sup> While the law enforces strict party discipline, it also includes procedural safeguards and a quasi-judicial process for deciding disqualification cases by establishing an independent body or tribunal (akin to the Speaker's role under India's system) to adjudicate cases of defection where the grounds for defection were clearly defined, including voluntary resignation from the party, voting against party directives in confidence votes, or abstaining from votes;<sup>109</sup> along with specific exceptions where MPs may vote independently on conscience issues or non-critical policies. India's model also allows MPs who face disqualification to appeal the decision in a court of law,<sup>110</sup> ensuring that the process is subject to judicial review, which mirrors the checks and balances, while ensuring that the Speaker's decision can be challenged. Similarly, in Pakistan's system, MPs have the right to appeal decisions related to defection through a transparent and impartial appeals process, ensuring fairness in enforcement.<sup>111</sup> Countries like Germany and South Africa have established constitutional courts to review laws, actions of the government, and parliamentary decisions for their compliance with the Constitution, which provides judicial oversight and can offer rulings on the constitutionality of legislative decisions.

Here in Bangladesh, following in the footsteps of India, Pakistan, and Germany, there is no separate constitutional court, though the High Court Division

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107 N S Gehlot, 'The Anti-Defection Act, 1985 and the Role of the Speaker' (1991) 52(3) *The Indian Journal of Political Science* 327, 340 <<https://www.jstor.org/stable/41855565>> accessed 28 December 2024.

108 *ibid.*

109 *Keisham Meghachandra Singh v The Honble Speaker Manipur* (2020) 2 SCALE 329.

110 Poornima, B, 'Explicating the Contemporary Debates on the Anti-Defection Law in India' (2024) 11(1&2) *Journal of Polity and Society* 60, 66.

111 Ishwah A Khawaja and Usama Jamil, 'An Extensive Evaluation of The Anti-Defection Clause In Pakistan: A Curative Strategy' (2022) 2(1) *Current Trends in Law and Society* 23 <<https://journals.internationalrasd.org/index.php/ctls/article/view/1146>> accessed 7 October 2024.

has the power of judicial review and judicial enforcement under the provisions of Article 102 of the Constitution to check the constitutionality of the legislation passed and executive actions. Bangladesh should establish a separate Constitutional Bench under the provision of Article 107(3) with the specific mandate to review cases involving Article 70, providing a robust check on any disqualifications of MPs made under Article 70. The bench would be composed of senior judges who are constitutional experts, appointed through a transparent and merit-based process, and would have the authority to interpret constitutional provisions, including the application of Article 70. The Bench would develop a set of procedural guidelines for how Article 70 cases are brought before it. Moreover, MPs who are subjected to disqualification under Article 70 and are aggrieved by the decision of the Bench should be provided with the opportunity to appeal and seek redress from the Appellate Division, which should consider whether the political defection was constitutionally permissible or whether the party whips' measure was too strict. If necessary, the Bench should also have the power to suggest how the process of judicial review can be improved.

For the purpose of formulating adjustments to Article 70, parliamentary committees should be established, comprising constitutional experts, civil society representatives, and legal professors. The amendment must protect the right of MPs to exercise autonomy while voting on the no-confidence resolutions, but at the same time, allow discretion in voting in cases of issues that are policy-related. This raises the possibility that a trial phase might be in order, where MPs have some control in selecting certain votes and practically assess the system. Subsequently, an evaluation must be carried out in order to understand the influences of the changes exerted on governance and accountability. The key concentration element of the proposed amendment to Article 70 should be to restrict the application of the 'anti-defection' mechanisms to votes of no confidence motions only and on relevant critical issues of national interest, such as the national budget and foreign policies. An alternative measure, such as an Independent Parliamentary Commission, could also be used to monitor the results and submit systematic reports about their implications.

The proposed amendment also needs the addition of explicit provisions that aim at offering precise and detailed safeguards in relation to the fundamental rights of the MPs that are associated with the freedom of speech and conscience within the Parliament. It is also important to state that nothing in Article 70 shall restrict the

rights of MPs as contained in Articles 38 and 39, or both, except where it is absolutely essential to enforce party discipline during important occasions, and to align Article 70 with the constitutional framework of fundamental rights.

A ‘conscience vote clause’ can be introduced to allow MPs to vote against their party under certain conditions without facing automatic disqualification, thereby introducing mechanisms to balance Article 70 with MPs’ rights under Article 39, which guarantees freedom of thought and expression. MPs may vote against their party on issues of moral, ethical, or constituency-based concerns, provided they formally record their reasons with the Speaker prior to the vote, protecting MPs’ right to represent their constituents and express dissent while maintaining transparency and accountability. Additionally, establish a parliamentary committee under Article 76 (1)(c) or Article 76(2)(b) responsible for identifying and categorising which types of issues would fall under this ‘conscience vote’ provision. The committee would regularly update the list as new legislative challenges emerge.

The role of the Speaker within the Parliament in regulating the parliamentary process and procedure is of a significant nature in the constitutional context of Bangladesh and can be of great utility in minimising the effect of Article 70 in curbing the fundamental rights of the MPs and impeding democracy. The role of the Speaker can be enhanced to mediate disputes arising from the enforcement of Article 70 by specifically empowering the Speaker to adjudicate whether an MP’s vote against the party constitutes a violation of Article 70, considering the reasons recorded by the MP, thereby paving an impartial mechanism for resolving disputes and preventing arbitrary or politically motivated disqualifications. In addition, this would provide a formal avenue for MPs to express grievances about party discipline without escalating to public defection or legal consequences. A neutral mediation body within Parliament under the direct supervision of the Speaker, composed of senior, respected MPs from various parties, as well as independent mediators, can be established to act as an intermediary between MPs and party leadership when disputes arise over voting directives and the application of Article 70, before moving to the Bench of the High Court Division, which was recommended earlier. For the smooth functioning of the body, a clear procedure should be proposed to the Parliament under Article 75(1)(a), for how disputes will be brought to the mediation body; MPs should be allowed to submit formal grievances confidentially, and mediation sessions should be held before any punitive action (like expulsion from the party) is considered.

In addition to a constitutional amendment, one approach could be institutionalised to allow MPs to change their party affiliation under specific conditions, such as a significant change in party leadership or ideology that conflicts with their values, enabling MPs to maintain their integrity and represent their constituents' interests without the fear of losing their seats. This could be exercised in either of two ways, i.e., MPs could be allowed to switch parties after a certain period, ensuring that they are not making impulsive decisions, or MPs could seek approval from their constituents through a referendum or a local assembly vote before changing parties.

As mentioned earlier, immediately amending Article 70 would be a complex and difficult step; however, institutionalising parliamentary free vote days by designating specific 'Free Vote Days' in the parliamentary calendar, where MPs are allowed to vote independently, free from party discipline, can be a fruitful and exceptional approach to mitigate the effect of Article 70. These free vote sessions would be limited to no-confidence motions, symbolic resolutions, or issues not directly tied to national security or the government's core agenda. To implement such a procedure, the parliamentary rules should be amended to include 'Free Vote Days' in the annual legislative calendar and also outline which types of issues qualify for a free vote and establish guidelines to ensure that party leaders cannot penalise MPs for voting against party lines on these days. In every case, there is a free vote day; the performance and impact should be reviewed by the parliamentary committee with respect to governance, level of party unity and control, and the autonomy of MPs. On these matters, appropriate mention can be made to the UK parliamentary system where, on some selected topics considered to be of moral or ethical nature for which the party has not enforced party discipline, the MPs are allowed to cast a free vote, which gives different slants of autonomy in issues to be decided but at the same time maintains the autonomy of the party on serious political issues like votes of confidence.

Another efficient tool that can be introduced in addition to the one stated above is the establishment of a 'Parliamentary Whistle-blower Protection System,' which will enable MPs to report instances where coercive orders are issued to them to vote along the party lines in a clandestine manner, through self-reporting, especially within the limits of respect and law. Drafted legislation should provide for the protection of whistle-blowers, including MPs, providing anonymity and protection of the law for MPs who reveal unethical practices relating to the coercion

of members or unethical conduct in respect to voting under Article 70. Also, to ensure this instrument works properly, it would be necessary to create a safe and anonymous source where the members can address any forms of threats or violence that they receive from the heads of the party regarding the vote.

Finally, one of the most useful but yet unutilised constitutional provisions with regard to the parliamentary affairs within the constitutional and political context of Bangladesh is the establishment of the Office of the Ombudsman under the provision of Article 77 of the Constitution, in terms of promoting an authentic democratic society based on democratic values and political order in a parliamentary system, so that the welfare of the people is assured. The mechanisms of Article 70, which has been notoriously known for its unduly several drawbacks, can be effectively managed by establishing the office of Ombudsman and by ensuring the critical elements of democracy, which are legislative independence, fairness, accountability and transparency in the application of Article 70, the office of the Ombudsman can safeguard MPs' rights, legislative independence, and democratic governance in the case of Bangladesh.

An Ombudsman might seek to safeguard against the misuse of Article 70 of the Constitution by political parties to punish or silence MPs considered a threat to their authority, intervene to ensure that the provision is employed within its defined operational boundaries and not as an instrument of policy discipline, and even prevent wrongful disqualification of MPs in order to uphold their basic fundamental rights. The Ombudsman may also investigate whether MPs of political parties had the opportunity to give their opinion regarding the decisions of the party that directly affected the MPs and whether the decisions taken by the parties were democratic and transparent. The Ombudsman, by ensuring procedural fairness, also equips MPs to exercise their legislative functions with more zeal and assurance, without any undue fear of retribution. The inclusion by the Ombudsman in its annual report of analyses of trends, problems, and possible solutions related to Article 70 of the Constitution could make it possible for the public to have greater trust in the legislative process, further political stability, and strengthen democratic principles. Ensuring procedural transparency would highly likely make people be treated as stakeholders, and thereby their trust in the processes of legislation would be enhanced, which would promote the stability of politics, preserve democracy, and further strengthen it.

## **X. CONCLUSION**

An appropriate balance between the supremacy of legislation and consistency in politics is imperative in a robust democracy, and diversion or alteration leading towards the instability of the governance and rule of law is inconsistent with democratic governance and goes against its rationale. The purpose of introducing Article 70 of the Constitution of Bangladesh was to stop defection in politics, but it has transformed into an impediment to parliamentary independence. The practice of this provision has altered the context of democracy by concentrating authority with party heads and demoting MPs to mere agents of party direction. The existence of this dual provision has indeed maintained party discipline, but that has been at the cost of serious debate and legislative independence.

This research has highlighted the deficiencies of Article 70, showing that it has not only adversely affected the representation of MPs' constituents but also the rule of law and even freedom of expression; and as a consequence, these recommendations discussed here offer some practical measures to adjust this provision to meet democratic standards, such as modifying anti-defection provisions or including the provision of judicial review and intervention of the court in their enforcement.

As the Constitution of Bangladesh is in the process of evolution, a major question which arises is whether it is possible to exercise good governance without undermining the fine line between legislative autonomy and party discipline. It can be said that for a more effective and well-reasoned parliament, there must be a delicate balance of institutional strengthening and constitutional restructuring. The approach must be willing to adapt in order to guarantee the preservation of democracy. This research has suggested that the issues of Article 70 reform should be prioritised and addressed to foster a more inclusive and deliberative parliamentary democracy.



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