



FLOOR CROSSING IN THE CONSTITUTION OF THE PEOPLE'S REPUBLIC OF BANGLADESH: A COMPARATIVE LEGAL PERSPECTIVE

MOHAMMAD BELAYET HOSSAIN

Lecturer in Business Law, Faculty of Business, Curtin University Malaysia, Sarawak, Malaysia.

belayet.hossain@curtin.edu.my

Article Info

Article type:

Research Article

Article history:

Received

24 March 2024

Received in revised form

30 April 2024

Accepted

1 May 2024

Published online

30 June 2024



https://ijicl.qom.ac.ir/article_2834.html

Keywords:

Floor Crossing,
Democracy,
Article-70,
Bangladesh,
Constitution.

ABSTRACT

Whether floor crossing is democratic or undemocratic under Article 70 of the Bangladeshi Constitution is a significant question. The major goal of this rule is to prevent Members of Parliament (MPs) from voting against their party, lest their seats in Parliament be vacated. However, this article's violation of the Members of Parliament's (MPs') right to free speech is a major matter for worry, as it violates their fundamental rights. The primary purpose of this study is to examine the existing floor crossing law to determine whether or not it constitutes a breach of fundamental rights as embodied in the Bangladeshi Constitution, and to identify the gaps prevalent in the provision regulating floor crossing. This paper employs the doctrinal research methodology, utilizing journal articles, textbooks, academic databases, and online resources. In this study, we've attempted to introduce the provisions of floor crossing and describe it with historical context, Article 70 of the Constitution of the People's Republic of Bangladesh, and provisions in other nations such as the United States, the United Kingdom, and India. We have reviewed the rationale for barring floor crossing and why this provision will not be altered. We have also reviewed a recent incidence involving floor crossing and a case study that constructively critiques the regulation. We have determined that floor crossing is abandoning one's party in Parliament to vote for the opposing party during the bill's voting or passage, and we have provided recommendations to fix this issue and make the provision of floor crossing acceptable for the benefit of our people.

Cite this article: Belayet Hossain, M. (2024). "Floor Crossing in the Constitution of the People's Republic of Bangladesh: A Comparative Legal Perspective", *Iranian Journal of International and Comparative Law*, 2(1), pp: [165-179](#).



© The Authors

[doi](https://doi.org/10.22091/ijicl.2024.10422.1092)10.22091/ijicl.2024.10422.1092

Publisher: University of Qom

Table of Contents

Introduction

1. Definition of Floor Crossing

2. History of Floor Crossing in Bangladesh

3. Provision of Floor Crossing in Bangladesh

4. Floor Crossing in Other Countries:

5. Reasons Behind Prohibiting Floor Crossing in Bangladesh

6. Findings

7. Recommendations

Conclusion

Introduction

Floor Crossing typically entails voting against the party from which the member was nominated. It also bans members of parliament from selecting their vote during the voting period. Not only is it illegal for a member to cross the floor, but the law also states that he will lose his membership if he is absent during a vote when a bill is passed, or if he does not vote. Floor crossing stripped Members of Parliament of the right to 'freedom of speech,' because under this law, they cannot vote independently against their party line to maintain their membership.

Floor crossing is a prevalent concern in all democratic nations. Democracy is the most prevalent form of government in the modern world. It indicates that the government is managed by the people of the country and that the people elect their representatives through a voting process. Representatives hail from a single or multiple political party. However, majority-affiliated party representatives from the government and parliament become the sources of all authority, and the government is responsible and accountable to parliament for its acts. However, in 1972, our constitutional drafters added Article 70, which prohibits floor crossing in Bangladesh. Although the rule was initially enacted owing to the instability of the newly formed nation, it is today a violation of human rights¹.

Floor crossing and defections have had implications for governance, political stability, and democratic processes in Bangladesh. Critics argue that frequent floor crossing undermines democratic norms, weakens party structures, and reduces accountability to voters. Proponents of anti-defection laws argue that such measures are necessary to prevent opportunistic behavior and ensure the stability of the parliamentary system.

Article 70 of the Bangladeshi constitution restricts the freedom of members of parliament. Members of Parliament cannot vote against their party in any circumstance, even a vote of no confidence². Even if he leaves the party, he will not be a member of the legislature. However, a member of Parliament should be allowed to vote and express his opinion on any matter before the chamber. Consequently, these regulatory measures must be entirely removed.

1 Karim, Sheikh Mohammad Towhidul. "Is Anti-Floor Crossing Law in Bangladesh Contrary to the Spirit of the Constitution of Bangladesh? An Inquiry." *Kathmandu Sch. L. Rev.* 4 (2014): 123.

2 Hossain, Md Mohaimen. "Critical Evaluation of the Article 70 of the Constitution of Bangladesh and its Contravention with the Constitution." PhD diss., East West University, 2023.



1. Definition of Floor Crossing

Floor crossing is a prevalent issue in all democratic nations. Political defection, often known as 'floor crossing' or 'side switching', is the act of resigning from one's political party or leaving one political party to join another. Article 70 stipulates that a Member of Parliament's seat is vacated if he resigns from the party that nominated him for election or votes against that party in Parliament.

The definition of floor crossing is when a Member of Parliament leaves his or her political party to join another or run as an independent. The word was first used to describe the process by which members of the British House of Commons crossed the floor to join the group of individuals (members of a different political party) sat at the opposite end of the chamber.

When a member of parliament votes against his or her party during the voting period or to approve a bill, this is referred to as floor crossing. Therefore, "crossing the floor" refers to voting against one's party in the parliament or resigning from one's party to join another. Lastly, we can say that if a Member of Parliament votes against his party in Parliament or resigns from his party, his seat will be considered vacant; this is known as floor crossing.

2. History of Floor Crossing in Bangladesh

Floor crossing in Bangladesh refers to the act of members of parliament (MPs) or elected representatives switching their political party affiliation or allegiances after being elected to office. The history of floor crossing in Bangladesh is intertwined with the country's political developments, transitions, and legal frameworks. Below is an overview of the history of floor crossing in Bangladesh:

- **Early Years (1970s-1980s):** Bangladesh gained independence in 1971, and parliamentary democracy was established. In the early years, floor crossing was not uncommon, and MPs frequently changed party affiliations based on political expediency, ideological shifts, or personal interests. There were instances of MPs crossing the floor to join or support different political alliances or governments¹.
- **Constitutional Amendment and Anti-Defection Laws (1980s-1990s):** In 1979, the Constitution of Bangladesh was amended to introduce provisions related to defection and floor crossing. The Anti-Defection Act was enacted in 1986 to discourage MPs from switching parties and to maintain political stability. The Act prohibited MPs from crossing the floor without resigning from their seats and seeking re-election under their new party affiliation. Despite the legal framework, instances of floor crossing continued to occur, albeit with legal and political consequences for the defectors.
- **Political Turmoil and Party Alliances (1990s-2000s):** Bangladesh witnessed periods of political turmoil, including frequent changes of government, alliances, and political confrontations. Floor crossing became a strategic tool for political parties to gain or maintain power, leading to allegations of opportunism and lack of ideological commitment among some MPs. The Anti-Defection Act was amended and strengthened

¹ Rahman, Ziaur. "Democracy: Freedom of Speech and Floor-crossing interface." *Northern University Journal of Law* 1 (2010): 2438-.

in response to political developments and challenges to uphold the integrity of the parliamentary system¹.

- Contemporary Developments (2010s-Present): In recent years, floor crossing has remained a topic of debate and controversy in Bangladeshi politics. The legal and political landscape regarding defection and floor crossing continues to evolve, with occasional debates on the effectiveness and enforcement of anti-defection laws. Political parties and coalitions have implemented internal mechanisms to deter floor crossing and maintain party discipline among their members.

Overall, the history of floor crossing in Bangladesh reflects the complexities of the country's political landscape, including power struggles, ideological shifts, and the interplay between legal regulations and political practices. The ongoing debate surrounding floor crossing underscores the challenges and considerations in balancing political freedom with the need for stable and accountable governance.

3. Provision of Floor Crossing in Bangladesh

Article 70 of the Bangladesh constitution states “A person elected as a member of parliament at an election at which he was nominated as a candidate by a political party shall vacate his seat if he –

- a. Resigns from that party;
- b. Votes in parliament against that party;

but shall not thereby be disqualified for subsequent election as a member of parliament”

Under the Constitution of 1972, there were primarily two conditions prohibiting floor crossing. We are aware that the purpose of Article 70 was to prevent members of parliament from crossing the floor. This clause was influenced by the anarchy of the past and the dysfunctional circumstances caused by the parties. These are the two prerequisites:

- i. If a member leaves his party; or
- ii. If he votes against his party during parliamentary votes.

The fourth amendment of 1975 added two additional qualifications by introducing an explanation of the phrase "votes against his party in Parliament." They are:

- i. if a member is present in parliament but does not vote; and
- ii. if a member does not attend the direction of his party and is absent from any parliamentary session.

Again, the 12th Amendment of 1991 included two additional criteria. The following are:

- i. Article 70 has rendered the formation of a group within the parliamentary party of a political party virtually impossible;
- ii. It is a violation of Article 70 if an elected independent member joins another political party.

¹ Ibid.



After the 12th Amendment, Article 70 permits the removal of a member of parliament for six reasons. Thankfully, the 15th Amendment has reinstated the original Constitutional provisions on Article 70, although the culture surrounding this alteration has yet to flourish. These reforms were established to reserve legislative authority for the executive branch. Thus, we stated that Amendments can be used to implement dictatorship¹. There is no possibility of democracy here. Whatever the executive will determine will be final. Other party members are unable to protest. As our country's executive is the prime minister, he or she is not required to account to the legislature and can do anything he or she pleases.

4. Floor Crossing in Other Countries

Floor crossing is also observed in certain other jurisdictions, which will be examined in the subsequent discussion.

4.1. India

Floor crossing in India refers to the act of Members of Parliament (MPs) or Members of Legislative Assembly (MLAs) changing their party affiliations after being elected to office. The history of floor crossing in India is intertwined with the country's political developments, electoral dynamics, and legal frameworks. Before India gained independence in 1947, floor crossing was not uncommon in the legislative bodies of British India. Political alliances and affiliations often shifted based on regional, ideological, and personal considerations. In the early years after independence, floor crossing occurred sporadically but did not attract significant attention or legal regulation. Political parties were evolving, and coalition politics was prevalent, leading to occasional instances of MPs or MLAs changing parties.²

The 1980s and 1990s witnessed a surge in floor crossing and political defections across India, particularly at the national level. Several high-profile defections and changes in party allegiances occurred, impacting government stability and political equations. In response to the growing concerns about political instability due to floor crossing, the Tenth Schedule of the Indian Constitution, also known as the Anti-Defection Law, was introduced in 1985. The Anti-Defection Law aimed to curb defections by disqualifying MPs or MLAs who voluntarily gave up their party membership or violated party whips during votes. The Anti-Defection Law significantly reduced the frequency of floor crossing and defections in Indian politics. MPs or MLAs who switch parties are subject to disqualification unless they meet specific criteria outlined in the Tenth Schedule.³

Over the years, the Anti-Defection Law has faced legal challenges and interpretations, particularly regarding the scope of disqualification and exceptions for mergers or splits within parties. The law has been upheld by the judiciary as a crucial mechanism for preserving party discipline and ensuring the stability of governments. While the Anti-Defection Law has been

1 Bari, M. Ehteshamul, 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." *Wisconsin International Law Journal* 37, no. 3 (2020): 487.

2 Janda, Kenneth. "Laws against party switching, defecting, or floor-crossing in national parliaments." In *World congress of the international Political Science association, Santiago, Chile*, pp. 12-16. sn, 2009.

3 Bari, M. Ehteshamul, 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." *Wis. Int'l LJ* 37 (2019): 469.



effective in curbing large-scale defections, occasional instances of floor crossing still occur, often leading to political controversies and debates. The law continues to play a significant role in shaping party politics, coalition formations, and government stability in India.

Overall, the introduction of the Anti-Defection Law marked a significant shift in addressing floor crossing and defections in Indian politics, leading to greater party discipline and stability in legislative bodies. However, the occasional instances of defections highlight ongoing challenges and debates regarding the balance between party loyalty and individual conscience in representative democracy.

4.2. The United Kingdom

In the United Kingdom, floor crossing refers to the act of Members of Parliament (MPs) or Members of the House of Lords changing their party affiliations or sitting as independents after being elected. The history of floor crossing in the UK has evolved, influenced by political developments, party dynamics, and legislative frameworks. Throughout British parliamentary history, there have been instances of MPs crossing the floor or changing party allegiances for various reasons, including ideological differences, personal beliefs, and political expediency.¹

Before the 20th century, floor crossing was relatively common in the British Parliament, reflecting the fluidity of party politics and the absence of strict party discipline. MPs often switched parties based on changing political circumstances, government policies, or disagreements with party leadership. The 20th century saw the emergence of stronger party discipline and whip systems within major political parties in the UK. Party leaders exerted greater control over their MPs, reducing the frequency of floor crossing and defections.

Despite increased party discipline, there have been notable instances of floor crossing in modern UK politics. For example, in 1974, several Labor MPs crossed the floor to join the Conservative Party, leading to shifts in parliamentary balance and government stability. The UK does not have specific anti-defection laws comparable to those in some other countries, such as India. MPs in the UK Parliament have the freedom to change party affiliations or sit as independents without facing immediate legal consequences².

Floor crossing can have implications for government stability, parliamentary majorities, and political dynamics in the UK. It can influence coalition formations, parliamentary votes, and the balance of power within the House of Commons or House of Lords. Floor crossing occasionally sparks public debate and discussion about political integrity, representation, and the role of MPs in representing their constituents' interests versus party mandates. In recent decades, instances of floor crossing in the UK have been relatively rare compared to earlier periods. MPs who choose to cross the floor often do so based on significant policy disagreements, shifts in party ideologies, or personal convictions. Overall, while floor crossing has been a historical feature of British parliamentary politics, the prevalence and impact of such actions have diminished over time due to increased party discipline, changing political norms, and a lack of formal anti-defection laws in the UK.

1 Malebeswa, Tendekani E. "Floor Crossing and Elective Office: Freedom of Choice or Betrayal of Trust?-The Case of Botswana." *U. Botswana LJ* 28 (2020): 81.

2 Horn, Geoff. "Crossing the floor: Reg Prentice and the crisis of British social democracy." *Crossing the floor* (2016): 1256-.



4.3. The United States of America

In the United States, floor crossing, or the act of elected officials changing their party affiliations, is less common compared to parliamentary systems found in other countries. However, there have been notable instances of floor crossing in U.S. politics, especially at the congressional level. Throughout U.S. history, there have been instances of elected officials changing their party affiliations for various reasons, including ideological shifts, policy disagreements, and political considerations. The U.S. political system is characterized by strong party affiliations and party discipline, which often discourages floor crossing. Elected officials typically align with either the Democratic Party or the Republican Party and tend to adhere to party platforms and agendas.¹

While floor crossing is less common in the U.S., there have been notable instances of elected officials changing parties or becoming independents. For example, in recent years, some members of Congress have switched parties or become independents due to policy disagreements, leadership changes, or electoral considerations. Floor crossing can have implications for legislative dynamics, committee assignments, and the balance of power in Congress.² It can influence the majority party's control over legislative agendas, committee chairs, and procedural outcomes.

Floor crossing may also be influenced by electoral considerations, such as changes in constituency demographics, political realignment, or electoral prospects for reelection. The U.S. Constitution does not explicitly address floor crossing or impose restrictions on elected officials changing parties. Elected officials have the freedom to change party affiliations or become independents without facing legal consequences. Floor crossing occasionally sparks public debate and discussion about political integrity, representation, and accountability. Critics may view floor crossing as opportunistic or driven by personal ambitions, while proponents argue that elected officials have the right to follow their convictions and represent their constituents' interests.³

In recent years, there have been a few instances of floor crossing in Congress, although they are relatively rare compared to other political phenomena, such as party realignment or ideological shifts within parties. Overall, while floor crossing is less common in the United States due to strong party affiliations and party discipline, it remains a part of U.S. political dynamics, especially in contexts where policy disagreements or political considerations lead elected officials to reassess their party affiliations or become independents.

5. Reasons Behind Prohibiting Floor Crossing in Bangladesh

The Floor crossing law is necessary for maintaining party discipline in the country, but it also impedes the development of parliamentary government and undermines the rule of law; yet, it will not be repealed. Our constitution had seventeen changes, but neither the government nor political parties moved to revise or repeal this provision. They did not obtain the necessary two-thirds majority vote to alter or eliminate this statute. In 2008, the Bangladesh Awami League took power

1 Smiles, Joseph. "Floor-crossing: a controversial democratic process." *Journal for Contemporary History* 32, no. 1 (2007): 130148-.

2 Joubert, Leonardus Kolbe. "The Mandate of Political Representatives with Special Reference to Floor Crossing: A Legal Historical Study." PhD diss., University of South Africa, 2006.

3 Rahman, Ziaur. "Democracy: Freedom of Speech and Floor-crossing interface." *Northern University Journal of Law* 1 (2010): 2438-.



with more than two-thirds of the seats. However, they never acted to delete or alter this provision.¹

Floor crossing was included in Article 70 for the sole purpose of maintaining the government's stability and effective operation. Honorable speaker Barrister Jamiruddin Sarker stated to the eight defendants of Article 70 of the Bangladeshi constitution, which bars floor crossing by members of parliament, that "it will assist strengthen and stabilize parliamentary democracy in the country". Some constitutional scholars claim that Article 70 of the Constitution "was crafted with great deliberation to guarantee stability and strengthen parliamentary democracy".

The purpose of the article is to ensure the stability and continuity of administration, as well as the discipline of political party members, to eradicate corruption and instability from national politics. In addition, politicians are pleased with this provision since it allows them to implement an authoritarian system in which no party or individual can be opposed.

Another rationale for this rule is that "it ensures solidarity among the members of a single party, yet there are major difficulties such as parliamentary contradictions, a lack of responsibility, and the expansion of dictatorship". Contradictions in the system or constitution impede the application of the rule of law. The primary issue, however, is that corruption can occur sporadically as a result of this, which is Bangladesh's primary systemic problem. To achieve stability and continuity of government, at least for the team that is elected, is another motive². Article 70 of the United States Constitution guarantees a robust, stable, and functioning parliamentary democracy. While there are arguments both for and against the prohibition of floor crossing, these reasons reflect the underlying objectives of ensuring stable governance, preserving party discipline, protecting electoral mandates, and promoting accountability and public trust in Bangladesh's political system.

5.1. Recent Incidents of Floor Crossing in Bangladesh

Kazi Sirajul Islam, who was elected MP from the Faridpur-1 constituency on an Awami League (AL) ticket in the 2001 general election, defected to the ruling party Bangladesh Nationalist Party (BNP) on June 4, 2001. He went to the Prime Minister's office, presented Khaleda Zia with a bouquet, pledged fealty to her leadership, and declared his intention to join the BNP. Premier Khaleda Zia applauded Kazi Sirajul Islam's decision to join the BNP. Kazi Sirajul Islam initiated the first-floor crossing of the Eighth Parliament.

In July 2009, Awami League general secretary Abdul Jalil again spoke out against this party's activities. As a result, he was forced to confront a massive scandal, and he ultimately resigned from the party. "I am resigning today from my position as general secretary of the Bangladesh Awami League," Jalil declared in a brief press release from his Gulshan home, adding, "I have no other choice". In June 2012, Tanjim Ahmad Sohel Taj, the son of the nation's first prime minister Tajuddin Ahmad, resigned from his position as a lawmaker and announced that he would no longer be actively participating in politics. He had been elected to this parliament, but his views differed from those of his colleagues, and he lacked the courage to improve his political region. A particular example of Sultan Mansur's parliamentary membership aids in

1 Alam, Md Asraeul. "Anti-Defection Law And Its Impact Over Constitutionalism In Bangladesh: An Analytical Study." Available at SSRN 4708257 (2024).

2 Hossain, Kamal. "The Making of the Bangladesh Constitution." In *The Emergence of Bangladesh: Interdisciplinary Perspectives*, pp. 57-65. Singapore: Springer Nature Singapore, 2022.



comprehension: Mr. Sultan Mansur, the elected representative from the Moulvibazar-2 seat under the banner of Gono-forum. In March 2019, he finally took his oath as a member of parliament. On the same day, hours after taking the oath, he was dismissed from the party because he had broken the party's resolve not to join parliament. Referring to Article 70 of the constitution, Attorney General Advocate Mahbubey Alam told the media that Sultan Mansur's parliamentary membership will stand because he neither resigned from the party nor voted against it. Furthermore, he is the only Gono-Forum lawmaker who has taken the parliamentary oath.

Professor Dr. Ridwanul Hoque of Dhaka University disagrees and believes that Mr. Mansur's seat in parliament has become vacant following Article 70. Constitutional law expert Mahmudul Islam asserts that a violation of any party directive will not inevitably result in the vacating of a seat. Therefore, under the current circumstances, Sultan Mansur will not lose his membership in the assembly. Article 66(4) of the constitution stipulates that, if a dispute arises regarding whether a member of parliament has, after his election, become subject to any form of disqualification listed in Article 66(2), or whether he should vacate his seat under Article 70, the dispute shall be referred to the "Election Commission" for adjudication, and the commission's decision shall be final.¹

In December 2021, a faction of the Jatiya Party (JP) led by GM Quader, brother of late President HM Ershad, announced their decision to join the ruling Awami League-led Grand Alliance. This move was seen as a significant development in Bangladeshi politics, as it reshaped political alliances and strengthened the ruling coalition. In October 2021, Kazi Firoz Rashid, a prominent MP and former leader of Jatiya Party (Ershad), announced his departure from the party. Rashid cited differences in ideology and organizational matters as reasons for leaving the party, signaling a shift in political alignments.

The Bangladesh Nationalist Party (BNP) has experienced internal divisions and defections in recent years, with several MPs and leaders either leaving the party or being expelled. These defections have influenced political dynamics and coalition formations, contributing to a fluid political landscape. In June 2021, a faction of the Jatiya Samajtantrik Dal (JSD) led by ASM Abdur Rab announced their decision to join the Awami League-led Grand Alliance. This move was seen as a strategic realignment within the opposition and ruling coalitions, impacting parliamentary dynamics².

Apart from national politics, defections, and floor crossing have also been observed in local government bodies, including municipalities and city corporations. These local-level defections can influence governance at the grassroots level and impact political alignments in different regions. It is important to recognize that political developments in Bangladesh are fluid, and alliances can shift based on evolving circumstances, ideological considerations, and strategic calculations. The incidents mentioned above are indicative of the dynamic nature of Bangladeshi politics and the role of floor crossing in shaping political outcomes.

1 Al Faruque, Abdullah. "Role of Parliament in Ensuring Democratic Accountability in Bangladesh: Setting the Agenda for a Strengthened Parliamentary System." In *The Constitutional Law of Bangladesh: Progression and Transformation at its 50th Anniversary*, pp. 121-137. Singapore: Springer Nature Singapore, 2023.

2 Hossain, Md Mohaimen. "Critical Evaluation of the Article 70 of the Constitution of Bangladesh and its Contravention with the Constitution." PhD diss., East West University, 2023.



5.2. Effects of Article 70 in Bangladesh

The effects of Article 70 of the Bangladeshi Constitution are as follows:

5.2.1. Article 70 is inconsistent with the basic rights of members of parliament

Article 70 of the Constitution of Bangladesh is inconsistent with the fundamental rights of members of parliament, including personal liberty, freedom of association, freedom of thought and conscience, and freedom of expression. Political defection is a democratic right associated with individual liberty and freedom of expression. The right of a member to vote against a party's choice, to be absent from the chamber to protest an undemocratic party decision, or to abstain from voting is tied to his or her liberty. A lawmaker who is directly elected by the people is always expected to act democratically. The mandate of the people is for him to speak out against undemocratic decisions, not to follow an undemocratic party line.

Article 70, however, prohibits members of the ruling party from exercising their rights even when the government passes an undemocratic law; as a result, this rule violates human rights and is used to persecute innocent persons. Some constitutional experts and members of civil society contend that Article 70 of our constitution "contradicts the fundamental rights enumerated in part (iii) of the constitution, consequently restricting the rights of the MPs in terms of freedom of thought and expression".

Thus, we might conclude that this law is detrimental to the state. It prohibits MPs from freely expressing their opinions in the House of Representatives and from speaking freely in party meetings. Moreover, because no member of Congress may speak out against his party's choice, their fundamental rights are readily violated.

5.2.2. Conflict among members of parliament

Article 70 prohibits members of parliament from voting against undemocratic party decisions. In other words, it prohibits MPs from protesting or having differing ideas on party choices. Consequently, the majority of members of parliament do not talk openly or express their opinions during party meetings or seminars. This indicates the primary aim of democracy has not been achieved. Article 70 was deemed dictatorial by numerous members of the 5th and 7th Congresses. The question then comes as to why they are not attempting to alter or eliminate the law. The expertise of these legislators is also an issue, as they are unaware of Article 70's comprehensive application. Thus, the attitude of the legislators is somewhat paradoxical.

5.2.3. Lack of responsibility and scope of dictatorship

The principle of parliamentary democracy is that the executive is directly accountable to the legislative branch. Parliamentary government must count the pulse of the majority of legislators at every step, as it may be defeated at any time on the floor. Responsibility of government consists of two types: individual responsibility of ministers and collective responsibility of the cabinet. However, the Constitution of Bangladesh makes no provision for individual responsibility and collective responsibility to the effect of Article 55, but the provision for collective responsibility has been rendered ineffective by Article 70, as the cabinet is always confident that it will not be deposed by a motion of non-citizens. Therefore, it is simpler for the Prime Minister to be authoritarian. No member of Congress is permitted to speak against the party line, preventing the



development of democracy. This law allows the Prime Minister, in his capacity as head of state, to practice dictatorship. Article 70 has thereby transformed a responsible government into an elected dictatorship.

5.2.4. Article 70 is a great hindrance to the ensuring rule of law in the country

Rule of law should create a situation where there will be a chance of discussion over a bill. The members or MPs should have their right to argue or debate on a proposed issue or over a proposed bill but in Article 70 no dissenting opinion can be made by the members of the ruling party and as a result every bill, however undemocratic it may be gets quickly passed on approved. Bangladesh has been victimized due to this law, not once but multiple times. Dr. Badruddoza Chowdhury, a former member of the Bangladesh Nationalist Party and the president of the People's Republic of Bangladesh at the time, had minor disagreements with the ruling party in August 2003. And he was forced to resign without ceremony (Hossain, 2018).

When a bill is introduced in the parliament, there is an opportunity to discuss it; this discussion should be conducted by both parties so as not to undermine democracy. This discussion, however, is impeded by Article 70, which prohibits any member of Parliament from speaking out against a party decision. This is why the rule of law is being disregarded and why it is detrimental to democracy. Therefore, Article 70 has transformed the rule of law into the rule of the party.

6. Findings

From the preceding discussion, we have learned a great deal about the significance of this study. The following text discusses these results:

1. Regarding floor crossing, we've discovered that it entails abandoning one's own party in Parliament to vote for the opposing party during voting or bill passage. In addition to floor crossing, a member of parliament will lose his seat if he is absent from the chamber during a vote or the passage of a measure.
2. We have also discovered that under a democratic state, MPs represent the general populace in Parliament and the government is governed by the people. A floor crossing statute prevents members of Congress from criticizing their own party, even if it goes against the will of the people.
3. This floor crossing law under Article 70 was added to the Bangladeshi constitution in 1972 in an effort to settle the volatile situation, but it today violates all human rights.
4. 4) The concept of a floor crossing law originated in the British House of Commons. No member of parliament is permitted to cross the floor and vote for the opposing party; if he does so, his position in parliament will be vacated.
5. Additionally, we discuss the history of floor crossings. MPs used to cross the floor from one party to another for personal reasons, which is a major hindrance for the government; therefore, the administration is compelled to make this decision in order to maintain normal flow between the parties.
6. From the preceding discussion, we have also learned about the floor crossing provision of the Constitution of Bangladesh, which states that no mem-



- ber of parliament can be absent during the voting or passage of a bill in parliament, nor can he vote against his own party, lest he lose his seat in parliament.
7. We've discovered that Article 70 of the Bangladeshi Constitution has been modified by the 4th and 12th amendments. Through the 15th Amendment, the original provision was later reinstated.
 8. We have also discovered that floor crossing or anti-defection law has been enacted in India by their 52nd constitutional amendment. The British House of Commons created the law governing floor crossing. In the United Kingdom and the United States, there are many examples of floor crossings.
 9. We are also aware that regardless of whose government is in power, this clause cannot be altered. Because this clause ensures the government's stability. There is no reason to replace it, according to some Constitutional scholars, because it maintains the stability and strength of parliamentary democracy.
 10. This clause of the Bangladeshi Constitution directly violates the Constitution since it denies the MPs their basic rights. Personal liberty, Freedom of Association, Freedom of Thought and Conscience, and Freedom of Speech, these rights are fundamental to a citizen as enshrined in the constitution, but MPs cannot exercise these rights, they cannot give their opinion freely, and they cannot express their opinion in opposition to their party. Therefore, we can conclude that this provision infringes the fundamental rights of legislators and is therefore fully incompatible with the Constitution.
 11. This provision perpetuates the government's dictatorship. Because it ensures the stability of the government, no government will ever alter this provision. This restriction hinders democracy because representatives cannot vote against their party. There are numerous opportunities for the government to exercise its dictatorship. Although Article 70 was inserted to the Constitution to preserve a dynamic situation, to maintain discipline among members of Congress, and to eliminate political corruption, the article also serves to maintain MP discipline and prevent political corruption. In the end, though, it ensures a dictatorship, which poses a direct threat to a country's democracy.
 12. This clause is a direct impediment to the rule of law in a country. As a result, if a measure is offered in the parliament, a member of parliament cannot express his opinion against the will of his party, even though it is their right to fight about the bill, whether it is right or wrong. However, due of this rule, members of Congress cannot vote out of fear that their seats may be abandoned. Due to these hurdles, the rule of law is impeded.

7. Recommendations

As a result of the preceding discussion on floor crossing in light of our constitution, the following actions are suggested:

- a. Regardless of the reason for not changing or repealing the Anti-floor Crossing law, I



- believe that a stable and effective government system is always more important than the floor crossing system, even if it is undemocratic.
- b. In Bangladesh, corruption, self-interest, greed, and a desire for power have been and continue to be the norm among political figures, as demonstrated in the past and present. Therefore, it would be impractical for Bangladesh to simply eliminate this law.
 - c. If this law were repealed, it would create another impossible scenario, and the government could collapse, as it did between 1954 until 1958. Therefore, the avoidance of floor crossing is necessary for the government's stability.
 - d. The prevention of floor crossing and defection is only necessary for the government's stability. Through a vote of confidence or non-confidence, the government's stability is examined. The applicability of the anti-defection law, Article 70, must therefore be limited to a vote on a motion of non-confidence or confidence. A typical or general bill is not always related to the government's stability.
 - e. If the anti-defection rule is applied just to motions of no-confidence or confidence, members of parliament will be allowed to reject undemocratic legislation, be it a spending bill or an ordinance approval. As a result, the spirit of responsible parliamentary administration and rule of law will not be hindered to the same extent.
 - f. Article 70 should grant MPs the right to vote on money bills and budget passes, as these have nothing to do with the government's stability and will not impede the government's functioning.
 - g. This law restricts legislators from voting freely, which is detrimental to democracy. To remedy this issue, it is necessary to empower MPs to independently cast their regular votes (votes other than votes of no confidence or confidence). This provision should be preserved exclusively in the event of a vote of no confidence or confidence, so that the government can function effectively.
 - h. If democracy is to thrive in a country, this provision must be amended, and MPs must be able to freely voice their opinions and exercise their fundamental rights. Only thus can democracy be enhanced and government tyranny be prevented, both of which are essential for a country's democracy.

Therefore, even if this section is amended, the legislature will not be fully effective. Nonetheless, it will aid us in establishing a stable political system and implementing the rule of law and democracy, which are crucial for achieving a responsible government. Therefore, if this law is altered, the government will not fall and the rule of law will still be maintained. And members of Congress have the opportunity to voice their opinions in the House of Representatives, which is also essential for Parliamentary democracy.

Conclusion

After the preceding discussion, it is quite evident that Article 70 of the Bangladeshi constitution's provision for floor crossing is detrimental to our democracy. If we examine the history of floor crossing, it was introduced at a period when the country's position was uncertain and it was



vital to pass any law in the legislature, even if it was for the people's benefit. However, after 50 years of independence as a developed and democratic nation, we should change Article 70 of the Bangladesh Constitution following the above recommendations. As we profess to be a democratic nation, we should quickly introduce an amendment to ensure democracy in our legislature. The provision of floor crossing should be limited to motions of no-confidence or confidence, and removed from all other parliamentary votes.

We desire a competent government and responsible representatives in Congress. Members of Congress are permitted to vote honestly, even if it goes against their party. This law must be removed, but because our political leaders are crooked, this cannot be accomplished easily. As I suggested in the recommendation section, it can be modified slightly so that we can experience some democracy. We believe that, as a result of this shift, we will have a responsible government and responsible legislators, and will be able to implement the rule of law. Consequently, we will have a significantly more accountable legislature.



References

Books

Horn G, *Crossing the Floor: Reg Prentice and the Crisis of British Social Democracy* (2016) 1256-.

Al Faruque A, 'Role of Parliament in Ensuring Democratic Accountability in Bangladesh: Setting the Agenda for a Strengthened Parliamentary System' in *The Constitutional Law of Bangladesh: Progression and Transformation at its 50th Anniversary* (Springer Nature Singapore 2023) 121137-.

Hossain K, 'The Making of the Bangladesh Constitution' in *The Emergence of Bangladesh: Interdisciplinary Perspectives* (Springer Nature Singapore 2022) 5765-.

Articles

Bari ME and Dey P, '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* 487.

Janda K, 'Laws Against Party Switching, Defecting, or Floor-Crossing in National Parliaments' in *World Congress of the International Political Science Association* (Santiago, Chile 2009) 1216-.

Karim SMT, 'Is Anti-Floor Crossing Law in Bangladesh Contrary to the Spirit of the Constitution of Bangladesh? An Inquiry' (2014) 4 *Kathmandu School of Law Review* 123.

Malebeswa TE, 'Floor Crossing and Elective Office: Freedom of Choice or Betrayal of Trust?—The Case of Botswana' (2020) 28 *University of Botswana Law Journal* 81.

Rahman Z, 'Democracy: Freedom of Speech and Floor-Crossing Interface' (2010) 1 *Northern University Journal of Law* 2438-.

Smiles J, 'Floor-Crossing: A Controversial Democratic Process' (2007) 32(1) *Journal for Contemporary History* 130148-.

Theses and Dissertations

Hossain MM, 'Critical Evaluation of the Article 70 of the Constitution of Bangladesh and Its Contravention with the Constitution' (PhD Dissertation, East West University 2023).

Joubert LK, 'The Mandate of Political Representatives with Special Reference to Floor Crossing: A Legal Historical Study' (PhD Dissertation, University of South Africa 2006).

Online Sources

Alam MA, 'Anti-Defection Law and Its Impact Over Constitutionalism in Bangladesh: An Analytical Study' (2024) SSRN 4708257 <https://ssrn.com/abstract=4708257> accessed September 20, 2024.