

THESIS DISSERTATION

on

**Critical Evaluation of the Article 70 of the Constitution of
Bangladesh and its Contravention with the Constitution**

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**Critical Evaluation of the Article 70 of the
Constitution of Bangladesh and its Contravention
with the Constitution**

Consent Form

Consent for the dissertation titled “**Critical Evaluation of the Article 70 of the Constitution of Bangladesh and its Contravention with the Constitution**”

Submitted by Md. Mohaimen Hossain, ID- 2018-1-63-019. Submitted to Adity Rahman Shah, Senior Lecturer, Department of East West University for the fulfillment of the requirement of Course 406 (Supervised Dissertation) for LLB (Hons.) degree offered by the Department of Law, East West University is hereby approved for submission.

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Signature of the Supervisor

Date:

Declaration

I do hereby declare that, I am Md Mohaimen Hossain from the department of law East west University. I have completed my legal research for the accomplishment of my curriculum requirements for my Undergraduate program of LLB honors and done my thesis dissertation on my own and by not any illegal means. I have duly provided the references and furthermore this paper is not submitted nor accepted anywhere else for any other cause.

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Abstract

Anti-defection or the article 70 of the constitution of Bangladesh puts a blockade to the establishment of rule of law in the country by taking away the rights of the parliamentary members of their free speech, freedom of opinion association, assembly and in the process taking away the rights of the people of the country. This article 70 or the anti-defection law is not only violating the fundamental essence of the core of our constitution but this law is used by the political party's for establishing their own interest and achieve their own goal in the process. This anti defection law is used by the self-interested people and doing something totally in violation with the law, but because of this law they are ensuring rule of one man and rule of party hierarchy rather than ensuring rule of law, as it should have been.

Chapter 1: Introduction

1.1 Introduction of Floor Crossing

At present day of the world democracy has become an essential or an integral part of the modern-day administrative system of the state, otherwise termed as the sine quo non or the indispensable part of the state mechanism¹ .

Democracy, which is embedded in the core of our constitution gets violated by the article 70 Or also known as the anti-defection law, which in definition says that members cannot defect from the party or party swapping in literal meaning².

This article 70 the anti-defection or political defection law is not only violating the preamble of our constitution but article 7,26,37,38,39 ,55 of the constitution and at the same time puts an adverse effect on the fundamental rights ensured by the constitution of our country.

The main problem with this anti-defection law in a democracy is that it one way or another takes away the fundamental rights of the member of the parliament and in the process indirectly takes away the rights of the people who elected them at that place, furthermore elected by the people for the very purpose, so that their voice can be heard, their rights can be ensured, and their interests can be fulfilled.

As President Lincoln said the whole purpose of the government stands on that ‘government is of the people by the people for the people’³ .

But problem arises when an obstacle puts a blockade (here in this case article 70), to establish rule of law or a state where rights of the people are served, are far from the present scenario of our country as the peoples who were elected as representatives of the citizens of the state are deprived of their basic fundamental rights by this article 70 or anti defection law made them servant of the hegemony of the party or government⁴.

In this Thesis, Anti defection, Floor crossing, party swapping or party hopping, these aforesaid terms will be synonymous to each other and will bear the same meaning to it.

¹ Ziaur Rahman, ‘Democracy: Freedom of Speech and Floor-crossing interface’ [2014 April]

² Jus Corpus, “What Is ANTI DEFECTION Law?” (*Jus Corpus* August 6, 2022) < WHAT IS ANTI-DEFECTION LAW? - Jus Corpus> accessed November 3, 2022

³ Grover Harpreet, “Of the people, by the people, for the people “Indian society of periodontology,20 may 2020 <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7307473/>> Accessed November 3, 2022

⁴ Md Jasim Uddin and Kamal Hossain, Constitutional Law (Second edition February 2016)

1.2 Objectives of the Paper

An essential part of every research is that the object of the research or thesis is shown on the paper, the following are the objectives of my paper:

- A) Elaborating and providing a proper meaning and history of the anti-defection (Article 70) law from the perspective of Bangladesh
- B) Providing The Purpose of incorporating the anti-defection law by our constituent assembly members.
- C) Giving a proper scenario of the international obligation which are getting violated by the anti-defection law.
- D) Giving the mechanism by which, this anti-defection and its purpose can be protected under the purview of Bangladesh.
- E) Protecting The fundamental rights provided by our constitution which are in contravention with the anti-defection law and also with the preamble.

1.3 Problem Statement

The hypothesis question of this paper is to provide the peoples liberty, freedom and ensuring the fundamental rights provided by the constitution of Bangladesh to the people of the country and analyzing its violation by the anti-detection law (Article 70 Of the constitution).

1.4 Thesis Question

- A) Whether the Anti-defection law is in violation with the Preamble of the constitution of Bangladesh?
- B) How the anti-defection law article 70 is violating the fundamental principles and Rights of the parliament member?

1.5 Scope and Limitation

The scope of this research paper includes the floor crossing Law and its inconsistency with the fundamental principles provided by the constitution of the Peoples Republic of Bangladesh. Limitation and the parameters of this study is to emphasize on the perspective of Bangladesh and the constitution of the country, the parameters will be limited to such specific area only.

1.6 Research Methodology

This research paper is highly relied on the qualitative methodology for collecting data required for this thesis. Secondary materials like websites, journal. Articles, thesis, Books, Commentaries, scholarly writing, newspaper articles and documents and primary sources as like the act's laws, international conventions, international laws and the list goes on. I have tried my level best and ensured with my effort to provide this research with recent and up to date information necessary for this thesis.

Chapter 2:
Floor Crossing: History from the Perspective of
Bangladesh

2.1 Foundation:

Floor crossing a term which is almost unknown to the most of the people but to the ones who are related to the legal sector and even then, very few has the actual idea of this term and its meaning or purpose it holds and along with it the significance it carries with it.

The legislature or the architects behind the anti-defection law was to counter and deal with the threat of floor crossing and how much it can adversely affect the stability of the government and with it, the whole state. Defecting at a vital moment and crossing the floor by any means necessary for preserving his own interest is considered to be an administrative failure of the state and a corrupt one at best⁵.

In this part of the world where people are often used and for their own interest, most of the time for their own gain against the other. It's in our own nature to have a difference of opinion and most of the time which is good in a democratic country where everyone has a voice or everyone has right to share and express their feelings as they deem fit and not caring of what others are thinking of it but the reality seems a bit complex and harsh and very far from the purpose behind the legislature and their intention in bringing the non-defecting laws in our constitution of people's republic of Bangladesh. So, that the object which were the legislature of constitution were chasing can be achieved by good means.

2.2 History of Floor Crossing

As a country we emerged from a series of dissention between different groups of people belonging to different faith and before the advent of our country it was the part of the British Empire. In this short period of our independence as a country we have seen and been through a lot.

Even though this term is not new, as it originated from the United Kingdom of British house of commons, a lower house of the parliament which also includes an upper house which is house of lords. In the year 1904 sir Winston Churchill then a member of the conservative party crossed the floor or in simple terms changed his political affiliation with the party he was elected as and changed his political party due to his view to the protectionism and house of

⁵Thangamchandy, '*Crossing the floor - the need for reform in anti-defection legislation*'
<<https://www.theparalegal.org/post/crossing-the-floor-the-need-for-reform-in-anti-defection-legislation>> Accessed: November 4, 2022.

treasury was pushing for taxing foreign imports and tariffs as he thought was wrong for his country's people and their interest.⁶

In our country's perspective in 1954, united front or otherwise known as the Jukto front won the election and duly formed the government but then just because of some peoples self-interest and their own gain, political leaders defected to the other opposition party just to achieve their self-interest and later on because of such side swapping, united front was torn into pieces and just like the domino effected one event was caused because of another, the whole parliamentary system broke down due to such internal squabbling and in result military intervention took place and grasped the power to their own hand because of this internal political dilemma.⁷ These concerns created a solid and strong base for our law makers to incorporate this blockade to stop this political leverage which is held by our power hungry politicians by this Article 70.⁸

In the case of the republic of India which can be a prime example of this term which by their own language is called 'Aye ram Gaya ram' or a person hopping around one place to another. where in the 4 and 5th Lok Shava in the Floor crossing was used for self-serving gains and which was misused by the political parties at an alarming rate as the numbers of party hopping was nearly 52 percent. As a result, state government was failing and due to this political crisis, there had to be some kind of shield to safe guard the very essence of the democracy or whatever is left of it regarding this floor crossing, or else this problem would not see any ray of solution ever, as they were being used by everyone and every political party as they deem fit to serve their own interest. By the 52 second amendment of the Indian constitution, such safe guard to the aforesaid national concern was dealt with by incorporating anti swapping law or anti hopping law into their constitution.⁹

In Bangladesh, to cope up with this issue our constituent assembly members or our law makers, by incorporating article 70 of the constitution which created a major barrier or more specifically a blockade, concerning this floor crossing or party swapping issue and tried to create a unified parliamentary system which will be based on principles, ethics and for the purpose such system was built in in the first place but which was in reality very far from the actual truth. In present scenario, most of the politicians in our country tend to run as elected candidate just to ensure

⁶ *Crossing the floor of the House* (2008) *BBC News*. BBC. Available at: http://news.bbc.co.uk/2/hi/uk_news/politics/82032.stm (Accessed: November 5, 2022).

⁷ *Explain the concept of "floor crossing in Article 70 under the Constitution of Bangladesh"* (2019) *The Lawyers & Jurists*. Available at: <https://www.lawyersjurists.com/article/floor-crossing-article-70-constitution-bangladesh-opinion/> (Accessed: November 6, 2022).

⁸ "Floor Crossing Laws in Bangladesh" (no date) *MSR BLOG*. MSR BLOG. Available at: <http://msrblog.com/assign/arts/law/floor-crossing-laws-bangladesh.html> (Accessed: November 6, 2022).

⁹ Shekhar, H. (2019) *How Haryana gave the term 'Aaya Ram Gaya Ram' to Indian politics*, 10 October. Available at: <https://www.indiatvnews.com/elections/haryana-assembly-polls-2019-how-haryana-gave-the-term-aaya-ram-gaya-ram-to-indian-politics-555590> (Accessed: November 7, 2022).

that they get what they want. Most politicians are power hungry capitalist business man using their power, influence and financial capacity to earn their nomination from whatever the political party they deem fit to earn their personal gain nothing more, so that whatever administrative barrier left out of their control or whatever wall is standing in front of them, after gaining such power they become reckless and immune to everything. In a developing country where the uneducated, illiterate persons become politicians asking more from them will be a fool's dream¹⁰.

2.3 Political Factionalism

In this region of the world, more specifically South East Asia where the poverty is a day-to-day name to the most, greed eventually knocks at their door. Most of this region's country notably India, Bangladesh, Pakistan Afghanistan, Malaysia, Nepal, these country's has large number of political entities, but rather than having a strong unified body which works for the benefit or betterment of the people these so-called political entities tend to be more self-interested to their own agenda than thinking of anyone else in that matter. Very few numbers of people have the capacity to take their ideology and moral principles hold the upper hand rather than engulfing into the power hungry, self-interest and greed in this line of work. Now a days it's easy to be corrupted rather than be an honest one and that's where the self interest of our country's political agenda come in to play¹¹. As because of this anti-democratic approach and factionalism phenomenon, where political leader's tend to be more towards swapping their own political pretty and gain their personal interest rather than an unified strong political party where uniformity will be present and along with it, a country with political principle and ideology triumph over the factionalism of small greedy people who were not capable or worthy of their position at the first place as there's a saying by Baxter that ' one Bengali one party , two Bengali two party , three Bengali, two political party with a dissident faction in one of them¹² .

2.4 Purpose Behind the Floor Crossing Law in Bangladesh

Our country got its independence from the West Pakistan (Pakistan) in 1971, and became the people's republic of Bangladesh. As a nation we struggled our way through tough time, we have endured strong time before coming to a stable situation and in the meantime some self-

¹⁰ Mohammad Hasan, 'Public sector corruption in Bangladesh: Political and Bureaucratic ' [2007] 3(5) public sector Corruption in Bangladesh: Political and Bureaucratic

¹¹ Abdul Halim, Constitution, Constitutional Law and Politics: Bangladesh Perspective: A comparative study of problems of constitutionalism in Bangladesh (9th edition, Beacon 2022)

¹² C. Oberst Robert, Government and Politics in South Asia (7th edition, Routledge 2014)

interested person from time to time by using the political ladder gained everything and on the other hand as a democratic country in a true sense, which would have worked for the betterment of its citizen and its people which is owed to them, as that was the purpose of our law makers before they drafted our constitution. Our Constitution, which is the supreme law of the land standing on some principles from which deviation must not take place, namely socialism, secularism, Nationalism and democracy which is embedded in our preamble of the constitution. In the land mark case of Golak Nath vs state of Punjab (1967 AIR 1643, 1967 SCR (2) 762)¹³ said that the fundamental rights cannot be curtailed in any way by the parliament and in another land mark case- Keshab Ananda Bharti v. The state of Kerala [1973 4 Sc 225; Air 1973 Sc 1461¹⁴ said that the preamble is a basic structure of the constitution which cannot be amended.

A country based on equality, basic fundamental rights of a human, a place where a person is treated as a human being. Soul of the democracy lies on the fact that the people hold the power of the nation to their hand as by their elected representative to the parliament and as a representative of the people they will take measures which are benefiting to the mass and not in any way detrimental to the peoples of the country and their interests and in addition to that individual civil liberties and human dignity are upheld, as well as freedom of expression of the people¹⁵ .

But when it comes to the western developed nation and country like ours where we often hear the excuses as like we are a new born country, compared to the more developed country's we can't tend to be comparative to their version of democracy, Which in spirit holds that the government should be accountable to the legislatures in parliament but in reality, a third world country like ours, things are much different from the contextual sense, hence articles like 70 were incorporated in our constitution and kept by our law makers for a reason even though the article had a chequered history on its own . Keeping in mind our politicians will whenever or wherever get the chance, will misuse their power as the present scenario of our country's politics have become clientelist form of politics¹⁶ , which in literal meaning stating that, politicians of our country in exchange of goods or services tend to give political influence to others for their own self gain, but such power was in fact was entrusted to them by the people as they were elected by them. Our politicians tend to forget the fact that they were elected for a purpose, not to fulfill their self-gain neither for their own interest. Given the fact in mind ,before the constitution was created there was a series of incidents which tend to prove the fact that our politicians are driven by their own egocentric thought and are narcissists, who are thinking just for their own benefit , and history repeatedly proves that as a fact and these

¹³ Golak Nath vs state of Punjab (1967 AIR 1643, 1967 SCR (2) 762)

¹⁴ "Kesavananda Bharati V. The State of Kerala [1973] 4 SCC 225; Air [1973] SC 1461

¹⁵ Robert Longley, 'What Is Democracy? Definition and Examples'. Available at: <<https://doi.org/https://www.thoughtco.com/democracy-definition-and-examples-5084624>> accessed November 7 2022.

¹⁶ Jashim Ali Chowdhury, 'Democracy and political parties in Bangladesh, *The Daily Observer, Law and Justice* (14 March 2020). < https://www.academia.edu/42216526/Democracy_and_Political_Parties_in_Bangladesh> Accessed: November 9, 2022.

circumstances made our law makers to think a bit out of the book and create a safe guard, so that the problem which were faced before, can be avoided but which came with a really high cost, which I think is needed to be changed. not because for the fact that our country developed as a whole and so did our politicians but to the fact that by inputting articles like 70, which is creating problems which are larger than the purpose they were created for in the first place. In addition to that, from the perspective of a laymen or a voter they elect a person to be their representative in the parliament for the greater good, for the state and for its citizens but articles like 70 puts a barrier to the representatives which is in reality putting a bloc to the rule of law as a whole¹⁷ .

In the western or oceanic Country's where democracy plays a major significant role to their democratic system and actually stands with the definition, what a democratic country should be in reality and does justice to that definition though some might differ as there will always be some difference of opinion but no one can deny the fact that the westerns or more specifically developed countries are undoubtedly much ahead of us than developing or third world country in this aspect.

Third world countries like ours, where we hide our corruption by hiding behind the veil of so-called democracy but we are nowhere near the term we are using and its meaning. In a democracy where there shall be freedom of expression freedom of thought and conscience, freedom of assembly or other fundamental human rights ensured by the states to all of its citizen and more importantly a government system where everyone is under proper accountability and everyone is equal before the law. No matters how much power such person holds will have consequences for his wrongdoings and will be held accountable for such act.

¹⁷ Bd lex, 'Floor crossing law under Bangladesh Constitution ' (*BD Lex*, 10 November 2010) <<https://www.linkedin.com/pulse/floor-crossing-law-under-bangladesh-constitution-bdlexmanupatra>> accessed 9 November 2022

Chapter 3

Floor Crossing Law: Inconsistency with the Constitution of Bangladesh

3.1 Analyzing Legal Basis of Floor Crossing law and its Impact on International Scale

Politics of our country has become clientelist in nature, where give and take policy takes place, where he who holds the economic and financial capability, such person or business man in the society tend to be more misusing the political influence for their own gain. This is where the article 70 takes the situation to a bad turn as the article is intertwined with the basic fundamental rights and dignity of a person which is co related and incidental to the political ideology and principles we thought of getting from the creation of our country, where human will have their rights ensured, where people are free to express their feeling and their conscience through their representative in the parliament.

In reality, where a different political parties with their different ideology and their interest in place, if no barrier like the article 70 is not present, problems are set to born without any doubt. As it is highly unlikely there will be any cohesion between the political parties and among their leaders. None the less such article is publicized in a manner that it creating controversy in the legislative body and its procedure, which is in a sense somewhat true to its nature, which can't be denied¹⁸ . But other side of the story still remains.

On the other hand, On the international law Things are much more complicated than it already is. In our globalized day, all nations are interconnected, whether directly or indirectly. Bangladesh joined the UN on September 17, 1974¹⁹. Bangladesh is a signatory to international treaties that protect citizens' fundamental rights. Bangladesh guarantees its citizens' fundamental rights and obligations under its supreme law and international obligations ratified by the state. For example, the United Nations Charter, which for the first time gave massive importance to the fundamental rights and freedom of a human being, the Universal Declaration of Human Rights, which emphasizes the 30 distinct fundamental rights and freedoms under international law and is recognized by states worldwide, and the ICCPR, which discusses civil

¹⁸ Jashim Ali Chowdhury, 'Democracy and Political Parties in Bangladesh'. <<https://www.observerbd.com/news.php?id=249139>> (Accessed: December 23, 2022).

¹⁹ UN news, 'Bangladesh marks 40 years as Member State of the UN'. <<https://news.un.org/en/audio/2014/09/592702>> Accessed 10 November 2022

and political rights and has obliging obligations²⁰. Article 70, an anti-defection law in our constitution, violates our domestic laws, our country's principles, and international law, which our state is required to follow but fails to do so, violating people's fundamental rights and creating a mess ²¹.

3.2 Parliamentary Democracy and Consequence of Article 70

Article 70 of the constitution which was incorporated in our constitution with a specific function in mind, so that in a government system where it consists of many members in the parliament, with the responsibility of ministries entrusted to them, to run and make a sustainable or a reliable system for all and establish rule of law in the process, but the problem arises when the true purpose was to make the government's decision firm and a strong one which cannot be deviated and no one can go against such decision of the government shifts. This in reality is creating a tyrannical situation in the scenario, which is affecting the basic fundamental rights of a citizen of our country.

As because, such decision which is detrimental to the interests of the people and not questioned upon by anyone or any party will likely to bring chaos for the people and as well as for the state.

Article 70 puts up an obstacle for the establishment of the rule of law in the country as it is creating an obstruction to the law makers to make responsible and raise their concerns for the interest of the state against the arbitrary decision of the government, if it does make any and stop them from taking any unethical measures that is devastating for the country as without any accountability in the legislative body, disorder will likely to follow²².

3.3 Violating the Principles of State Policy of the Constitution

In our preamble of the constitution, where it specifically states that, the core principles of our constitution shall be nationalism, socialism, democracy and secularism, which shall be the groundwork or the fundamentals of our constitution.

²⁰ The Lawyers & Jurists., 'Human rights and the constitution of Bangladesh (international law of human rights)'< <https://www.lawyersjurists.com/article/human-rights-constitution-bangladesh-international-law-human-rights/> >Accessed 15 November 2022

²¹ IBID

²² Sabbir Ahmed. 'Article 70 of the constitution of Bangladesh: implications for the process of democratization'. [2010]

Furthermore, it shall be responsibility of the state to ensure fundamental goals by a democratic process, a society free from enslavement and profiteering in nature, where rule of law thrives, human rights and freedom, equal opportunity and justice shall be guaranteed for all of the state's citizens²³ .

Besides that, article 7 which states about the supremacy of the constitution says that all authorities and power belong to the people and exercised through the jurisdiction of the constitution and as the solemn expression of the people of the republic, any legislation detrimental to the interest of the people shall be void. This Gives a clear picture of how much our constitution gives its significance to the people.

Though the preamble and the fundamental principles of state policy is not judicially enforceable, but part 2 of Article 8 states, along with the core principles (as stated before) it strengthens the fundamental principles and shall be used as a 'foundation' of all the laws in our country. Furthermore, it carries significant importance to it as it lays down the interpretative and jurisprudential path for legislature and lawmakers to make laws for the state and interpret them in necessary²⁴.

Article 70 is violating the preamble and the core essence upon which our constitution stands. In an ideal Democracy, where people through their elected representatives raises their voice and democracy's soul lies in the fact that the people holds the power or self-governance in nature , where the power is dispersed equally among the people of the country through their representatives but Article 70 is adversely effecting these the core essence of our constitutions preamble and our constitutions indispensable characters by putting a barrier to the parliament members in the name of ensuring stable government. This is no excuse at all as the history proves that the anti-defection law presence could not stop the devastating blow which took place in 1975 in coup d'état. Forsaking our fundamental rights will not bring any solution to the table rather bring more problems than there already was ²⁵.

In addition to that this floor crossing article is not only tearing the principles of the national laws but the also the principles and ideals of the state on an, international scale too.

In the following, a brief elaboration regarding the detrimental effect of the Anti-defection law with obligation of international laws are stated:

²³ Assignment Point, 'Fundamental principal constitution of Bangladesh'. <<https://assignmentpoint.com/fundamental-principle-constitution-bangladesh/>> (Accessed: December 25, 2022).

²⁴ The Constitution of People's Republic of Bangladesh, 1972

²⁵ Nitisha, 'Democracy: Definition and explanation (2015) <<https://www.politicalsciencenotes.com/democracy/democracy-definition-and-explanation/831>> Accessed: December 25, 2022.

3.3.1 UN Charter

After World War 2, humanity realized that war in whatever form is never a solution and only brings destruction and suffering²⁶. For the greater good, world leaders were adamant that some principles or lines had to be drawn to protect the rights of every human being and provide fundamental rights and freedoms for everyone. For the first time through this charter, such rights were internationalized and prioritized, for the importance such matter holds for all. But as a state party to this document our state is not ensuring basic humans' facilities to its subjects²⁷.

3.4 Human Rights Violation by the Anti-Defection Law and Breaching Obligations of UDHR and ICCPR

The following articles of the constitution of Bangladesh are contrary to the article 70 (which talks about anti defecting law):

- Article 11 says that our state shall be a republic where human rights and along with fundamental human rights and freedom shall be guaranteed by the state and shall be fortified by the state and the republic shall ensure that through the effective participation of the citizens by their elected officials at all levels of the administration.
- Article 19 says about the equal opportunity for all.
- Article 26 says any law inconsistent with the provisions of the part 3 which talks about the fundamental rights, shall become void to the extent of such inconsistency.
- Article 27 states about equality before law where state shall treat all its citizens equally and no discrimination on ground of any racial, religion or on any ground.
- Article 31 says every person shall be treated in accordance with law and no action detrimental to life shall be taken except without due Couse of law.
- Article 37 and article 38 says that, freedom of assembly and association shall be ensured by the state respectively.

²⁶ United nations, 'United Nations Charter (1945)' (*United Nations Archives*, 15 March,2022) <<https://www.archives.gov/milestone-documents/united-nations-charter>> Accessed 25 November 2022

²⁷ United nations, 'United Nations Charter' (*United Nations Charter*, 6 March 2016) <<https://www.un.org/en/about-us/un-charter>> Accessed 2 December 2022

- Article 39 says freedom of thought and conscience and speech will be ensured by the republic
- Furthermore, article 55(3) says that the cabinet members of the government shall be collectively held responsible and accountable to the parliament.²⁸

From the preamble of our constitution which basically holds the purpose of the act and the objective it is going to secure, states that the basic fundamental rights given by the constitution to, the people²⁹.

Article 7 further clarifies the matter but the before mentioned articles are not only violating the essence of those articles and losing its object but also violating purpose of those articles and constitution in the process. Article 7 states that the people shall hold the power of the republic, they shall be the power source of the constitution and the republic but where the parliamentary members cannot exercise their fundamental rights where it mostly needs to do, the whole purpose shatters in the process , as parliament members are the one who should have the capability to their hand to exercise their power and use such power handed over to them by the people of the country for greater good and for preserving the interest of the people and raise their voice against any bill which is detrimental and against the interest of the people of the country but such anti defection law article 70 takes away the rights of the parliament and along with it takes away the power from the people and makes our government system an autocratic one , which is heartbreaking given the fact how much devastation our nation has gone through to get the independence we so much wanted where fundamental rights of a human being is ensured and fulfilled by the state organ, not the other way around .

In addition to that, article 26 of the part 3 of the constitution of Bangladesh which incorporates the fundamental rights of the peoples says that, any law contradicting any fundamental rights ensured by the constitution shall be void to the extent of such contradiction of the law but when the article 70 or the anti-defecting law is clearly contradicting the fundamental rights for instance article 37 or 38 or even 39 which is freedom of assembly , association and freedom of thought and conscience respectively, this issue raises question without any doubt .

Besides that, article 55(3) which states that the cabinet of the government in power shall be collectively responsible to the parliament. As, in a democratic system government is always held accountable and responsible for their acts to the parliament. In a parliamentary system government always has to ensure that the majority of the parliament members are in support of

²⁸ Faizunnessa Taru, 'Application of Fundamental Rights of Bangladesh Constitution: An Analysis on the Light of International Human Rights Instruments'. [2016]

²⁹ Shabnam Barsha, 'The Significance of The Preamble of Bangladesh Constitution' (Scribdcom, 2018) <<https://www.scribd.com/document/316854849/TheSignificance-of-the-Preamble-of-Bangladesh-Constitution-docx#>> Accessed 23 December 2022.

the decision made by the government and in the course of action government accountability for the government is ensured by it, But Anti defection law or article 70 puts up a hindrance to the democratic process and violates the corer principles or our constitution along the way³⁰.

Article 70 states that the parliament member when elected and from the political party from which he was nominated shall vacate his seat if he resigns or if the parliament members vote against the party from which he was nominated as. A parliament member simply becomes a toy for playing and being used by the ruling government at their wish and pass whatever the bill or laws to their interests. Whether such bill or law expresses the interests of the mass or not, really does not matter at his present scenario of our parliament system. As, the accountability mechanism put up by the article 55 loses its objective and effectiveness by the article 70 and our parliamentary democracy falls in a mess³¹ .

Furthermore, Situation gets much worse when core Principles like the Universal Declaration of human rights and its obligation gets breached by this law of Floor Crossing

3.4.1 UDHR and Its Obligation

Universal Declaration of Human Rights³² After the United Nations was founded on December 10, 1948, it was time to recognize that to save humanity from heinous crimes and war, the rights of every human must be protected without regarding race, caste, religion, or any other characteristic that distinguishes one person from another. For the first time, the entire community agreed on a topic and underlined that all nations should recognize it.

Article 1 states that all human beings are free and equal, Article 8³³ states that everyone has the right to seek justice when their rights are violated, Article 18³⁴ states that everyone has the right to freedom of thought, conscience, and religion, Article 19³⁵ states that everyone has the right to freedom of opinion and expression, Article 20³⁶ states that everyone has the right to peaceful assembly and association, and Article 30 states that no one is should take away rights provided by the Universal Declaration of Human Rights³⁷.

³⁰ Moudud Ahmed, Bangladesh, *Era of sheikh Mujibur Rahman*. (The University Press Limited, First Published 1983)

³¹ IBID

³² Universal declaration of human rights [Internet]. Amnesty International. 2022 [cited 2022Dec5]. Available from: <https://www.amnesty.org/en/what-we-do/universal-declaration-of-human-rights/>

³³ George j. Andrianopoulos. 'Universal Declaration of Human Rights'. <<https://www.britannica.com/topic/Universal-Declaration-of-Human-Rights>> Accessed 10 December 2022

³⁴ IBID

³⁵ IBID

³⁶ IBID

³⁷ IBID

Article 70 violates the Universal declaration and breaching the rights of the parliament members hence breaching the rights of the people in the process, and takes away the freewill of the people by the Floor crossing law.

3.4.2 Liability on Bangladesh by the International Convention on Civil and Political Rights (ICCPR)

Bangladesh is a signatory to the most of the human rights covenants and treaties, which protects basic human rights and obligations. International Convention on Civil and Political Rights or (ICCPR) compels signatory nations, so that states under these treaties ensure rights and fundamental criteria a human being needs to survive. Along with it, a person's inalienable universal rights gets protected under this convention, which has a binding responsibility on the concerned states and its population, regardless of caste, race, or religion. The state owes its inhabitants a standard and pleasant livelihood.

It binds ratifying nations and as Bangladesh is a signatory, which means the state must acknowledge every person's inherent dignity and grant its inhabitants civil and political rights to preserve and protect basic human life and establish and safeguard fundamental human rights³⁸.

This convention enshrines the following civil and political rights: right to life, equality before the law, freedom of movement and expression, association and assembly, political participation (through freedom of association and assembly), and so on³⁹.

Furthermore, the international covenant on civil and political rights preamble states that, as well as the ideal and values laid down by the United Nations charter, such covenant shall acknowledge the inalienable rights and dignity of a human being, which is the corner stone of universal freedom, justice and peace.

Part 1 article 1 indicates that everyone has the right to self-determination and freedom to choose a political party or pursue economic, social, or cultural advancement⁴⁰.

³⁸ "International Covenant on Civil and Political Rights (ICCPR)" (CCLA June 13, 2021) <<https://ccla.org/privacy/surveillance-and-privacy/summary-international-covenant-on-civil-and-political-rights-iccpr/>> Accessed December 15, 2022

³⁹ Dr. Mohammad Shahabuddin, 'National Human Rights Commission, Bangladesh' [March 2013] 6(8) The International Covenant on Civil and Political Rights: A Study on Bangladesh Compliance

⁴⁰ 'International Covenant on Civil and Political Rights'. <<https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>> Accessed December 20, 2022

Part 2 article 2 indicates that the state is bound under the covenant to ensure its residents, regardless of race, color, language, religion, birth, or other factors, are not discriminated against within its territorial jurisdiction⁴¹.

Part 2 item 3 requires covenant states to ensure citizens' civil and political rights⁴².

As a signatory to the aforementioned convention, Bangladesh is under international obligation to maintain and ensure those rights, but article 70, which infringes on those rights, clearly violates the convention's core principles and its essence, but our state organs are unconcerned about its gross violation of the fundamental rights of its subjects, the people.

3.5 Violation of International Obligation by the Article 70 (Floor Crossing)

Bangladesh is bound by the UN charter, UDHR, and ICCPR. Articles prohibiting a parliament member from voting against the party from which he was elected and nominated and preventing a person from asserting his rights, which the state is required to preserve and ensure under international law and its obligations, violate article 70 of the constitution. Our constitution, in Article 39, guarantees freedom of thought and conscience, and the UDHR, in Articles 18 and 19, guarantees freedom of opinion and thought. Article 70 offers a right and then takes it away, creating a hole in the constitution and our country's core legal principles.

In addition, UDHR specifies in article 20⁴³ that every individual has the right to form an association and assembly, which is guaranteed by our constitution in articles 37 and 38. Article 70 prohibits all of the above on an international and domestic level, and Article 30 of the UDHR states that no one should take away a person's human rights⁴⁴, but the anti-defection law implicitly violates everyone's rights without any protest.

Even though some may disagree, the fact that article 37, 38, or 39 has a legitimate restriction does not indicate that other articles can violate our constitution's fundamental rights. Article 70 applies to elected officials who represent the people and their interests for which they were elected.

Restrictions, which violate their fundamental rights but have some reasonable restriction enforced on them, are causing more problems than for the purpose it was incorporated by the constituent assembly members in the original constitution of our country, which was to save it from the state's self-interested people.

⁴¹ IBID

⁴² IBID

⁴³ Universal declaration of human rights (2022) Amnesty International. Amnesty International. Available at: <https://www.amnesty.org/en/what-we-do/universal-declaration-of-human-rights/> (Accessed: December 22, 2022).

⁴⁴ Articles 16-30, 'United Nations declaration of human rights: Youth for Human Rights'. <<https://www.youthforhumanrights.org/what-are-human-rights/universal-declaration-of-human-rights/articles-16-30.html> > (Accessed: December 22, 2022).

3.6 Rule of Law in Disarray

Rule of law which says that, society shall abide and ruled by law, where everyone should be treated equally and everyone shall be responsible and accountable for their doings, every person shall be underneath the law not above. Rule of law in a country ultimately determines the stability and the real picture of the overview of that country as a whole and in our country where the parliament members rights are getting violated and sometimes are referred to as the puppet of the ruling party, gives out a subtle picture of our country's present aspect of rule of law and its existence in our country⁴⁵.

Article 70 is not only is detrimental to the rights of the people, it is also directly violating the rights of our parliament members by making them a tool to use for passing laws which can't be questioned upon or cannot be even up for any discussion in the parliament and pass the laws in questions without any problem and not having any consequences with such acts, as there's is no mechanism which is can hold the government accountable for their work and question their work in any possible way.

⁴⁵ Obaidullah Siam, 'Rule of Law in Bangladesh: Illusion or Reality' [2020] Vol 2(Issue 2)
< https://www.academia.edu/76979992/Rule_of_Law_in_Bangladesh_Illusion_or_Reality>

Chapter 4:

Opinion/ Legal Recommendation Regarding: Floor Crossing Law of the Constitution

4.1 Parliamentary Mechanism and much needed Reformation for Floor Crossing Law

Constitution of our country which is the supreme law in our country and lays the basis of all the laws in our country and gives an ideology of what path as a country we would be following along.

Every bad side of the coin also hold a good side opposite to it , here in the case of the anti-defection law , which is has driven our constituent assembly members to incorporate a law which is detrimental to core principles of the constitution is that such law was incorporated so that the ruling party's decision can be made a firm and a strong one , so that a sustainable stable government system can be introduced , as the history of our south Asian sub-continent for floor crossing is somewhat concerning when we look at the statistics of it and much such power of defections was misused by our politicians and their leader for their own self benefit .

Makers of our constitution ,keeping in mind that in order to cope up with the future obstacles this constitution might face and to tackle such complexity , article 142 of the constitution was included in the constitution , so that when the time comes for any reformation required, for the sake of protecting the rights of the people and which is not prejudicial to the people of the state , so that by such included mechanism, our law makers can take necessary decisions to uphold the interest of the people of the country . But sadly 17 amendments has been passed so far to our constitution⁴⁶ but not once such question was raised by our politicians, not by our political leaders nor by their party in any way, even though this matter attracts a significant amount of importance to it but sadly ignored by all political party's whoever came to hold of the power.

⁴⁶ Star Online Report '17th Amendment to Constitution Passed' The Daily Star (Dhaka 8th July 2018)

4.2 Article 70s Possible Alteration

At present scenario our parliamentary system and members of the parliament has been ruled by the rule of man, not by the rule of law as it was supposed to be, as that was the end goal of our constitution and the intention behind our constituent assembly member's when they drafted the initial constitution back in the day when our constitution originated. In a parliamentary democracy its main soul lies on the fact that people talks and different of opinion by the parliament members are encouraged as it would be the proper way of practicing the democracy as embedded in our constitutional pillar.

As the constituent assembly members intended for a stable and sustainable government system, there are other alternatives which can be implemented and at the same time the purpose of the anti-defection law in the constitution can serve along with other rights conferred on by the supreme law of the country.

4.2.1 Secret Ballot

Most notably this method is used, so that the anonymity of the voter is protected and no one really knows who voted for whom, every person can freely vote whomever they want. This method is also known as the Australian ballot⁴⁷.

In this method voters are free from any form of intimidation or obstacles by anyone and in the process true from of parliamentary democracy can be ensured, which will be not only beneficial for the establishing rule of law but also this parliament will not be influenced by one man rule rather a form of government system where accountability and an answerable government mechanism can be ensured by adding the secret ballot process for passing any bill put through the parliament.

⁴⁷ *Encyclopedia Britannica*, 'Australian ballot' < Available at: [https://www.britannica.com/topic/Australian ballot](https://www.britannica.com/topic/Australian-ballot) > Accessed: December 31, 2022.

4.3 Ensuring Freedom for the Member of the Parliament

In the sixteenth amendment case which mainly focuses on the power of the impeachment right which is taken away from the judicial council to the parliament by this process but their basis was not the anti-defection law although they did mention the article 70 as it was a question regarding the free speech of the concerning member in the parliament as they hold the matter as regards to the fact they were the one who were going to vote in impeaching the judges and in the process take control over the judiciary system in the country⁴⁸ .

This puts to the fact that article 70 which basically puts a blockade to the fundamental rights and freedom of the parliament members, not only carries major role by itself rather this article carries other roles which is incidental to it and attached to it hence the mentioning of this articles in the question of impeachment by the parliament members of the judges of the judiciary, as the concerning fact is when the parliament members of the country are simply voting to save their seats at the parliament , asking for a free and upholding the interest of the people as the representatives of them is ironic as they are merely following the path which is laid down by the party hierarchy and blindly without even questioning, vote for the bill. As long as they don't go against the party's interest, they can keep their position at parliament at a safe zone.

4.3.1 Parliamentary Liberty at Stake by the Floor Crossing Law

Ensuring the free speech and rights of the parliament members is no easy task, as this only can take our parliamentary democracy at a level which can be exemplary to everyone and rule of law can prevail at this way or if not secured this may put a tag of deficient parliamentary system of the country and as a result a broken state where rule of law is in bits.

Anti-defection was a result of defecting politician on unprincipled grounds, which ultimately paved the way for the anti-defection law and justified the intention of the constituent assembly members when they incorporated the article 70 on the constitution. but the problem was in order to defer the politicians on party swapping they forgot to put up a mechanism, which would stop the parliament members on swapping their allegiance, to the party by which they got elected without any ground or when on swapping or voting against the unprincipled or arbitrary cause of the party interest which is detrimental to the cause of the people. They looked away to a more balanced way of ensuring the freedom of the parliament as well as stopping

⁴⁸ Rahman MH, "16th Amendment of Bangladesh: Empowering the Parliament to Remove Judges or Establishing the Government's Control over the Judiciary" [2015]

party hopping at the same time which would have been a more appropriate way of looking and solving the matter at hand⁴⁹.

4.4 Vitalize Parliamentary Democracy

In order to ramp up the democratic system in the parliament at first change has to be done by amending the article 70 to form which not only stops the party swapping but also ensures free speech and opinion of the members. In order to do that article 70 (a) which says member shall vacate his seat when he resigns and (b) says when he votes against the party such member shall vacate his seat from the parliament. Instead, if there is provision which lets the parliament members to vote against the party on arbitrary laws which will adversely affect the people and their interest, may vote against the decision of the party and which in consequence may disband such person from the political affiliation he was elected as at the first place and join another political party in the parliament. This method will bring accountability on the government and also in the parliamentary democracy a bit closer to what we always expected from.

Clause (b) shall put a limit to the resignation on the parliament members to a subtle form. For example, at present scenario parliament member cannot even put a word against the party hierarchy and their decision but by inputting a subtle deviation from it may change the situation to a more suitable and a preferable one which would be a blessing for our country's democracy at the end⁵⁰.

By including grounds which is unprincipled and arbitrary decision taken by the government which is against the party and parliament principles and ideals which they stand upon only then such power of voting against the party can be well founded and properly justified and at the same time parliament members are always at risk and very careful about when they are going to use such power and in result put up a barrier against parliament members party swapping on their own benefit⁵¹.

⁴⁹ Ehteshamul Bari, "The Anti-Defection Provision Contained in the Constitution of Bangladesh, 1972, and Its Adverse Impact on Parliamentary Democracy: A Case for Reform" [2020]

⁵⁰ *ibid*

⁵¹ *ibid*

Chapter 5: Conclusion

5.1 Concluding Remarks

Even though there are some steps towards eradicating the article 70 of the constitution and writ has been made and high court bench observed that the Articles 70 protects Democracy⁵². But we have to understand the fact that the previous history in our subcontinent is not which we can relish about as the history about floor crossing is very concerning⁵³.

By changing and amending the constitution may bring parliamentary democracy in literal way but we require our political leader and party to take a stand and take their responsibility as they should be, then we would not need any anti-defection law or any other method to stop the party swapping by the politicians. To enjoy a democracy, we all cherish and dream off. This present scenario cannot be drastically change overnight given that the political culture of our country, it would foolish to even think that. At the end of the day, it all depends on the politicians and their desire to establish a democracy where accountability and responsible government system will be a reality not a dream of the people⁵⁴.

⁵² Star Online Report, 'Article 70 Safeguards Democracy: HC' *The Daily STAR* (May 25, 2018)

⁵³ BD Lex, "Floor Crossing Law under Bangladesh Constitution" (*LinkedIn* March 23, 2022) <<https://www.linkedin.com/pulse/floor-crossing-law-under-bangladesh-constitution-bdlex-manupatra>> Accessed December 31, 2022

⁵⁴ *Ibid*

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