

## **Technocrat minister and introduction of a bill in the parliament**

The crucial question of, whether a technocrat minister can introduce a bill in the parliament has been complicated by a number of factors

**Advocate Shah Monjurul Hoque and Barrister Muhammad Harunur Rashid**



The word “technocrat” stands for an expert in science, engineering, etc. who has a lot of power in politics and/or industry. The term “technocracy” is derived from the Greek word “tekhne” meaning skill and “kratos” meaning power. So the technocracy is system of government where decision maker is selected on the basis of their expertise and power in their areas of responsibility particularly scientific knowledge. This system explicitly contrasts with the notion that elected representative should be the primary decision makers in the government.

Neither the term “technocrat” nor “technocracy” has been contained in the Constitution of the People’s Republic of the Bangladesh. However, Article 56 (2) of the Constitution states that “The appointments of the prime minister and such other ministers, ministers of state and deputy ministers, shall be made by the president: Provided that not less than nine-tenths of their number shall be appointed from among members of parliament and not more than one –tenth of their number may be chosen from among persons to be qualified for election as members of parliament.”

The aforesaid article suggests that one-tenth of the total number of the prime minister, other ministers, deputy ministers and state ministers may be chosen from outside of the members of parliament who have the qualifications to become a member of parliament.

It seems that the true content of the term technocrat or technocracy has been set out in the self-contained provisions of the aforesaid article.

On the other hand, the term “Bill” has not also been defined in the constitution. It has only been referred in article 80 (1) of the constitution that every proposal in parliament for making a law shall be made in the form of a bill. But the word “bill” has been defined in the Rules of Procedure of Parliament of the People’s Republic of Bangladesh as “ a motion for making a law” (Rules of Procedure, Rule 2 (1) (b)).

The crucial question of, whether a technocrat minister can introduce a bill in the parliament has been complicated by a number of factors-

Firstly, the definition of the word “motion” given in the Rules of Procedure of the Parliament provides that it is a proposal made by a member for the consideration of the parliament relating to any matter which may be discussed by the parliament and includes an amendment. The term “member” has further been defined as a member of the parliament (Rules of Procedure, rule 2(1)(o)). It becomes clear from the above definition that for introducing a bill in the parliament, a minister has to be a member of the parliament. It may, therefore, put a bar on a technocrat minister to introduce a bill in the parliament.

Secondly, article 11 of the constitution provides that-“The republic shall be a democracy in which fundamental human rights and freedoms and respect for the dignity and worth of the human persons shall be guaranteed and in which effective participation by the people through their elected representatives in administration at all levels shall be guaranteed.” So if a bill is introduced in the parliament by an unelected representative like technocrat minister, then the question may, of course, arise as to how it would ensure the effective participation of the people through their elected representative in the parliament.

Thirdly, article 8 (2) of the constitution states that-“The principles set out in this part shall be fundamental to the governance of Bangladesh, shall be applied by the state in the making of laws, shall be guide to the interpretation of the constitution and of the other laws of Bangladesh and shall form the basis of the work of the state and of its citizen, but shall not be judicially enforceable.” This provision again enforces that the principle of democracy is to be ensured in the making of law, interpretation of the constitution and other laws of the Bangladesh including basis of the work of the state and of its citizens. It may, thus, debar a technocrat minister from introducing a bill in the parliament.

With all these complicacies in hindsight, a question needs to be asked as to whether it has been stated at all in our constitution about who would introduce a bill in the parliament. The article 80(1) of the constitution is silent about this. It only refers that every proposal in parliament for making a law shall be made in the form of a bill. Assistance, at this stage, can be sought from rule 75 (1) of the Rules of Procedure of the

Parliament. It states that-“A minister may move for leave to introduce a bill after giving to the secretary seven day’s written notice of his intention to do so...”

In Rule 75 (4), it is stated that when the item is called, the member in charge, shall move for leave to introduce the bill. Thereafter, the procedure laid down in sub-rules (2) and (3) of the rule 74 shall be followed. Rule 74(3) states that if a motion for leave to introduce a bill is opposed, the speaker after permitting, if he thinks fit, a brief explanatory statement by the member moving for leave and by the member opposing it, may without further debate put the question. Rule 74(4) further provides that “if leave is granted, the member in charge, when called, shall formally move forthwith to introduce the bill and on the motion being made, the bill shall stand introduced.”

In the provisions stated above, it appears that the words “minister” and “member in charge” have been used as far as the introduction of a bill in the parliament is concerned. The definitions of the words “minister” and “member in-charge” have been given in Rule 2 (1) (q) and (p) of the Rules of Procedure of Parliament respectively as follows-

“Minister” means a member of the cabinet and includes the prime minister, ministers of state and deputy minister. And “member in-charge” means, in the case of a government bill, any minister and, in the case of any other bill, the member who has introduced it or any other member authorised by him in writing to assume charge of the bill in his absence. As per the above definitions, a member of the cabinet, prime minister, state minister, deputy minister or any minister can introduce a government bill.

It is not stated in the definition of the word “minister” or “member in-charge” above that they have to be a member of parliament. It is possible that they may be both member of parliament and a non-member as per article 56 (2) of the constitution. When an unelected minister introduces a government bill in the parliament, it would generate a conflict between the definitions of the words “member” and “minister” or “member in-charge”. Some commentators may argue that the conflict may be resolved by interpreting those terms in the light of the article 8(2) of the constitution. Minister, in their view, may well have the meaning of a minister who is a member of parliament. If that argument is accepted the following complications may arise-

Firstly, the provisions of article 56(2) as regards the appointment of one-tenths of the total number of the prime minister and other minister and of the minister of state and deputy ministers by way of selection from outside of the members of the parliament may nearly appear to be redundant. These are the provisions which, perhaps, been made contemplating that there might be situations where an elected member of parliament may not be found to serve a ministry more properly given the requirement of a technical and scientific knowledge related to that ministry.

Secondly, when a technocrat minister is debarred from introducing a bill in the parliament relating to his ministry and another elected minister is given the charge of

introducing that bill then two mischiefs may be created. One is that the concerned minister may be sitting down lazily and another is that the minister who has been given the charge may be prevented from serving in his own ministry. This may, in turn, cause huge burden on the public exchequer.

Article 73A states that-“every minister shall have the right to speak in and otherwise to take part in the proceedings of parliament, but shall not be entitled to vote or to speak on any matter not related to his ministry unless he is a member of parliament also.”

The provisions of this article clearly debar a minister who is not an elected member of the parliament from exercising his right of vote and from taking part in any portfolio which is not related to his ministry but it gives him the right (1) to speak on his own portfolio and (2) to take part in the proceeding of the Parliament.

Proceeding of parliament has not been defined in the constitution or Rules of Procedures. Neither has it been defined in the General Clauses Act 1897. But it looks that the term is very wide in connotation. So taking part in the proceeding of parliament may potentially include introducing of a bill in the parliament.

If the framers of the constitution intended to debar a technocrat minister from introducing any bill in the parliament, they would have said so as candidly as they have said in respect of debarring them from exercising right of vote in the parliament. Moreover, if he is allowed to introduce a bill, the purpose for which he has been chosen would be served. Simultaneously, with the introduction of a bill, he is not having a final say on that bill by way of vote, thus it is not affecting the people’s representation in the parliament by an elected representative as stated in part II of the constitution i.e. democracy.

It is, therefore, concluded that the term “member” in “motion” meaning a member of parliament would have to be given extended construction including a technocrat minister when question of introduction of a bill in the parliament is raised. And thus a technocrat minister may introduce a bill in respect of the matter related to his own portfolio but cannot exercise right of vote.

*The writers are lawyers*