

Cabinet approves proposal



Staff reporter

The Cabinet on Monday approved the draft of the 'Constitution (16th amendment) Bill, 2014' for restoring parliament's authority to impeach Supreme Court judges for their misconduct or incapability.

The approval, subject to the Law Ministry's vetting, was given at the regular weekly meeting of the Cabinet held at Bangladesh Secretariat with Prime Minister Sheikh Hasina in the chair.

Briefing reporters after the meeting, Cabinet Secretary M Musharraf Hossain Bhuiyan said as per the amendment, minimum two-thirds parliament members taking approval of the President will be able to impeach any judge for his or her misconduct or incapacity.

According to the existing constitutional provision, the Supreme Judicial Council, comprising the chief justice and two other senior most judges of the Appellate Division, investigates the allegations of misconduct against any Supreme Court judge and makes necessary recommendations to the President.

The President then takes steps as per the suggestions and he can also impeach a judge for having physical and mental incapacity to properly perform the functions of his office.

Musharraf Hossain said the Cabinet thinks that once the amendment is passed in parliament, the confidence of people in the independent judiciary will be enhanced while accountability to parliament or public representatives will be upheld.

He said if the Sixteenth Amendment Bill is approved in parliament, another law should be enacted determining the entire procedures of impeachment of judges, including investigations. Musharraf said the authority of impeachment was vested upon parliament through article 96 of the 1972 Constitution, formulated upholding the spirit and ideals of the Liberation War.

But, in absence of parliament, the authority was vested on the Supreme Judicial Council by a martial law proclamation in 1978 after the brutal assassination of Father of the Nation Bangabandhu Sheikh Mujibur Rahman.

The proclamation cancelled article 96 of the constitution which is contradictory to the article 7 of the Constitution.

In this connection, the Cabinet Secretary said the neutrality and accuracy of the impeachment decision could be questionable as an accused judge and a member of the Supreme Judicial Council usually work together in the same institution.

According to article 7 of the constitution, he said, people are the owners of all powers of the republic and the enforcement of these powers will be effective only under the Constitution.

As per the spirit of the Constitution of 1972, the ultimate accountability of the three organs of the state - Judiciary, Executive, and Legislative - was vested in parliament which is elected through peoples' mandate.

In light with that spirit, Musharraf said parliament was empowered with the authority of determining the tenure of jobs of the Supreme Court judges and their removal like other fundamental rules.

The Cabinet Secretary said once the 16th amendment of the constitution is passed in parliament, likely in its next session beginning from September 1, it could impeach any judge for his or her misconduct or incapability with vote of at least two-thirds members of the parliament.

The impeachment could not be executed without the order of the President.

He said there are consistencies in article 54, 74 (ga) and 57(2) with the main provision of article 96 of the 1972 Constitution.

Musharraf Hossain said the President of the Republic could be impeached through two-thirds majority of parliament members as per article 54 of the constitution while the Speaker of parliament could be impeached with simple majority of parliament members according to article 74 (ga).

On the other hand, no-confidence motion could be adopted against the Prime Minister with simple majority of the MPs according to 57 (2) article.

The Cabinet Secretary said the Law Ministry before drafting the Bill has reviewed the systems of other leading democratic countries like the UK, India, Canada, Australia, the USA and Sri Lanka.

Besides, the Law Commission at a meeting of the Parliamentary Standing Committee opined for the restoration of provision of parliament's authority to impeach judges.

Ministers, State Ministers and secretaries concerned attended the meeting.