

# Justice will not be denied forever

James Harrington in his *The Commonwealth of Oceana* said: "The law is but words and paper without the hands and swords of men." That is, where law fails to deliver justice, hands and swords take over. And where the law is unable to protect public interest, the rule of the sword gets its way. That is when anarchy begins. This is the accumulated wisdom of human history. Are we heading that way?

DR. BADIUL ALAM MAJUMDAR

THE High Court Division of the Bangladesh Supreme Court, in a seminal judgment (*Abdul Momen Chowdhury and others vs Bangladesh*) delivered on May 24, 2005 directed the Election Commission (EC) to collect, with the nomination paper of each parliamentary election candidate, the following information in the form of an affidavit to be sworn by each of them: (a) academic qualifications with certificates; (b) any pending criminal accusations; (c) any records of past criminal cases and the results; (d) the candidate's profession/occupation; (e) sources of the candidate's income; (f) description of the role he/she played in fulfilling his/her commitment to the people, if the candidate was a parliament member before; (g) description of assets and liabilities of the candidate and his/her dependents; and (h) particulars and amounts of loans taken from banks and financial institutions personally, jointly or by a dependent, or bank loans taken by companies from Bank where the candidate is the chairman/managing director/director.

The EC was further directed to disseminate the information submitted by candidates to the voting public through the mass media. The purpose of this directive is to empower voters with information

about candidates as the "people have a right to know and such right is included in the right to franchise."

Unfortunately, the EC, for reasons unknown, failed to implement this historic judgment fully and completely, blatantly denying the people's right to know the antecedents of their future representatives. More seriously, very recently a petition has been filed for leave (permission) to appeal against the judgment, which gives rise to serious cause for concern regarding how it might undermine the public interest.

According to Article 111 of the Bangladesh Constitution, the High Court judgment has the force of law, and the EC has the solemn duty to judiciously and effectively implement both the letter and intent of it in order to help voters make informed choices during elections. Unfortunately, not only has the EC failed to fully and completely implement the judgment, the Chief Election Commissioner, as the head of the EC, has been instrumental to a misinformation campaign against it. It must be noted that Article 112 of the Constitution enjoins all authorities, executive and judicial in the Republic to act in aid of the Supreme Court.

Six by-elections -- in Narsingdhi, Sunamganj, Faridpur, Dinajpur, Manikganj, and Gaibandha -- have been held since the High Court judgment.

There were also elections to the reserved women's seats. The EC has made only a feeble effort since the Sunamganj-1 by-election to implement the judgment.

For example, it issued a circular with a pro-forma of an affidavit, asking the Returning Officer (RO) of Sunamganj to collect the information from the candidates and disseminate them through the mass media. Similar circulars were issued during the other by-elections and elections of the women's seats. However, the affidavits were not made public, although a summary of the information submitted by candidates was made available. The EC also did not make public the statements containing information about the candidate's sources of election expenses, assets and liabilities, annual income and expenditure, and copies of his/her income-tax return submitted by candidates under section 44AA of The Representation of People of Order (RPO) 1972.

We, as a coalition of concerned citizens committed to upholding voters' rights, formally asked for the copies of the affidavits and other statements, but never received them, although the EC is legally obligated under sec. 44D(2) of the RPO to provide them. Neither the Returning Officers nor the EC even bothered to reply to our written requests. More importantly, the EC took no action against candidates who

submitted false or misleading information or concealed information despite serious allegations of such wrongdoing by candidates.

More seriously, the CEC took the position that the said High Court judgment is directory rather than mandatory since there was no consequence for failure to comply provided in the judgment. What this contention appears to mean is that even if the candidates do not file affidavits or provide erroneous, incomplete or misleading information, their nomination papers would still be valid. This would appear to amount to making the submission of affidavits optional.

According to experienced jurists, Court judgments are directory only in the cases of interpretation of statutes. Even in interpreting statutes, Courts can make it mandatory for the concerned parties to accept and implement their findings by inserting "shall" and providing for adverse consequences for non-compliance. If the Court does not do so, the interpretation is directory. On the other hand, all other Court decisions are binding on the parties to the proceedings and are thus mandatory. Mandatory decisions can be enforced through execution proceedings or through contempt proceedings.

Clearly, the EC, if it wanted to, could fully and aggressively implement the High Court judgment requiring disclosures. It is a consti-

tutional body created to hold free, fair and impartial elections, and Article 119 of the Constitution gives it a reservoir of powers to do so.

As the Appellate Division of Bangladesh Supreme Court, in *Altaf Hussain vs Abul Kasem (45DLR(AD)(1993))* observed: "Election Commission's inherent power under the provision of 'superintendence, control and direction' should be construed to mean the power to supplement the statutory rules with the sole purpose of ensuring free and fair elections." Thus, the question that now haunts many citizens is: why is the EC so blatantly undermining the public interest?

Not only has the EC failed to fully implement it, we have just discovered that there was a recent petition for leave to appeal by one Md. Abu Safa against the above High Court judgment. The petition, according to the newspaper report, was heard by the Appellate Division on April 6, and the leave was granted.

Mr. Safa filed the appeal on the ground of discrimination. He claimed that he could not pursue his education beyond class VIII, although he is a self-educated person. He further claimed that he is a popular and credible leader in his constituency and intends to contest in the upcoming parliamentary election. He reasoned that disclosures of his educational qualifications, as mandated by the High Court, will result in discrimination against him and thus the disclosure will "impair the basic structure of democracy and Article 66 of the Constitution."

The High Court judgment of May 24, 2005 does not ask the voters to vote against the less

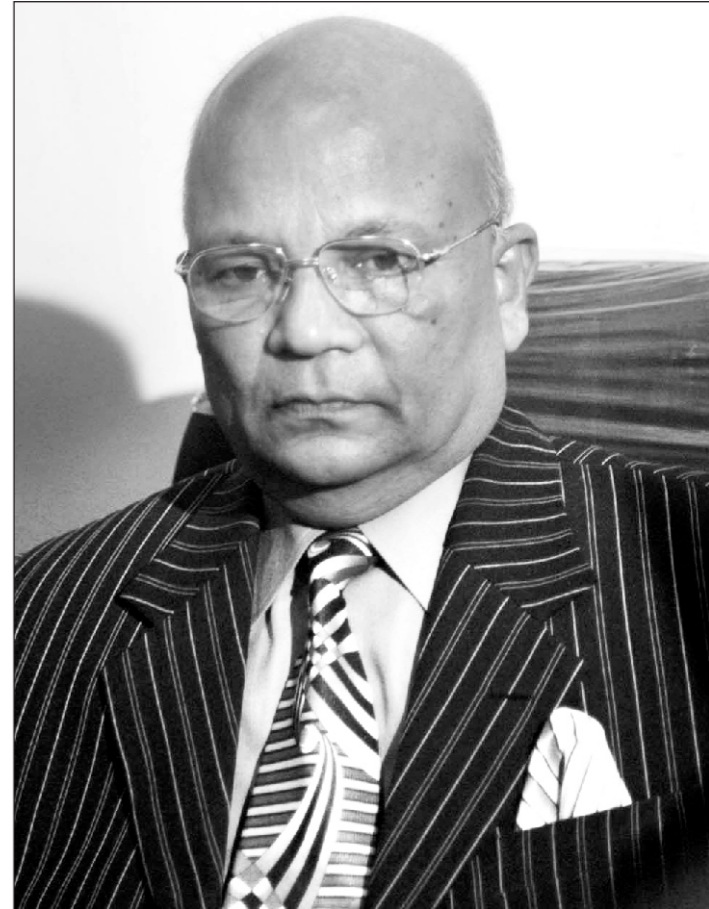
educated, it simply requires disclosures so that voters can make informed decisions. Such disclosures, according to the Indian Supreme Court, protect the voter's right to speech and expression:

"Voter's (right to) speech or expression in case of election would include casting of votes, that is to say, voter speaks out or expresses by casting vote. For this purpose, information about the candidate to be elected is a must. Voter's right to know antecedents including criminal past of his candidate contesting election for MP or MLA is much more fundamental and basic for survival of democracy. The little man may think over before making his choice of electing law-breakers as law-makers."

Similarly, the disclosures of educational qualification would enable the voter to make an informed choice among candidates -- that is, whether he or she wants to vote for a more formally educated or more informally educated person. Thus, the disclosures, mandated by the High Court, will only strengthen democracy, not impair its basic structure -- whatever it means, as claimed by Mr. Safa.

For democracy is the governance with the consent of the people, and without the informed consent of the citizens it will rather be weakened.

It must also be noted that the very purpose of disclosures is to allow the voters to discriminate -- in a positive sense -- and select candidates based on their antecedents. How are they otherwise going to make choices given various alternatives? Besides, in elections voters choose lawmakers, thus candidates' education



and experience are certainly relevant. It is thus clear that the "discrimination" mandated by the High Court judgment based on antecedents of candidates will promote democracy instead of hampering it.

The whole episode involving half-hearted efforts of the EC to implement the High Court judgment, the CEC's contention that the judgment is not mandatory, and the circumstances of filing the petition for leave to appeal represent deliberate attempts to undermine public interest, and they

have serious implications. James Harrington in his *The Commonwealth of Oceana* said: "The law is but words and paper without the hands and swords of men." That is, where law fails to deliver justice, hands and swords take over. And where the law is unable to protect public interest, the rule of the sword gets its way. That is when anarchy begins. This is the accumulated wisdom of human history. Are we heading that way?

Dr. Badiul Alam Majumdar is Secretary, Shujan.

# The widening rich-poor gap



ANM NURUL HAQUE

BANGLADESH has made notable progress in both income and human poverty reduction since independence, with national poverty dropping by nine percent in the last decade. But the level of inequality has increased, widening the rich-poor gap every year, posing a threat to social coherence. The distribution of fruits of poverty reduction steps has not been equal across the country and the growing income inequality poses a challenge to poverty alleviation.

The speakers in a pre-budget consultation meeting held on April 29 at National Press Club said that the income disparity between the poor and the richest five percent has increased from 18 times in 1990 to 84 times in 2004. The rich-poor gap in the country keeps widening as growth benefits have been unequally distributed. The extreme poverty and social deprivation tend to be higher in the case of matriarchal households.

The Poverty Monitoring Survey Report 2004 of the Bangladesh Bureau of Statistics (BBS) also revealed that income disparity between the rich and poor widened in the six years up to 2004. The household income comparison showed a grimmer picture: decreasing by four percent among the poor. On the other hand, the income of the rich increased to such an extent that the national household income raised by ten percent in the six years.

A look at the per capita income shows that it increased by 18 percent at the national level. But the share of the poor in this growth was very meager, accounting for only five percent, while income of the rich rose 20 percent. The participation of the poor in the sector of foreign remittance earning is almost nil which has further aggravated the disparity level between the rich and poor.

Though the number of people living below the poverty line in the country is reported to have been reduced from 44 to 40 percent over the last few years, more and more people continue to be rendered landless due to various reasons, including erosion of rivers, crop damage caused by frequent floods and droughts and extreme poverty. According to available statistics,

## BY THE NUMBERS

The highly skewed growth distribution has raised the income of the richest five percent of the population to 84 times that of the poorest five percent. Too much wealth in the hands of too few is plainly untenable. No amount of poverty alleviation measures under the PRSP will be able to halt the inexorable impulse of society towards polarization between the rich and poor unless the hardcore poor get a fair deal in policy decisions. The need for devising an effective tool to benefit the hardcore poor is imperative to allow them to escape the cycle of poverty.

the number of landless people has recorded a rise by 22 percent over the last 35 years. In 1972 only 28 percent of the country's total population were landless, but at present as many as 50 percent are landless.

Every year during the Bangla month of Kartik when Aush paddy is exhausted and Aman paddy awaits to be harvested, a severe joblessness for the agricultural labourers breaks out in many parts of the country, which is known as "Mora Kartik."

Researchers on chronic poverty in Bangladesh said that although Bangladesh has overcome famine, starvation is still persisting among the chronically poor people. According to the research paper, some 25 million people of the country are chronically poor. The poor have low consumption, under-nutrition due to hunger, lack of access to basic health services, illiteracy, and other deprivations. The paper also revealed that about 19 percent of the people subsist on two meals for a number of months in a year.

China has launched a new deal for its farmers, aimed at raising rural incomes with a combination of crop subsidies, tax cuts and infrastructure spending in inland areas. The plan, called the "New Socialist Countryside" is the centre-piece of a commitment by Hu Jintao and Wen Jiabao, the president and prime minister, to cut income inequalities between the urban and rural populations. The government also hopes to use the plan to rein in the widespread and often illegal confiscation of rural land for development; a trend it believes jeopardizes China's ability to be self-sufficient in basic foodstuffs.

India is also making the effort to tackle rural poverty by launching the "National Rural Guarantee Scheme" with a large population living on less than \$1 per day. Under the scheme, one member from each of India's 60 million rural households is guaranteed 100 days of work each year and will receive a minimum wage of \$1.35 or an unemployment allowance if there is no work. According to a BBC report, the first phase of the program will cover 200 of the coun-

try's poorest and least developed districts and will be extended to the entire country over the next four years. Bangladesh might also wish to consider such a pro-poor scheme for the hardcore poor.

Reduction of poverty in any economy depends crucially on acceleration of economic growth. The present rate of economic growth in Bangladesh is over 5 percent on an average. But this growth has skewed the lives and living of the preponderance of the people, such as farmers, who have given the nation at least 12 bumper crops in the recent past. The farmers in our country are hard hit with the persisting problems of fertilizer and fuel scarcity which are making them poorer.

The main characteristic of our clandestine economy is that the rich-poor gap has been widening at an alarming rate. The poor are getting poorer and the rich richer. A section of people has become rich overnight with questionable means of consumption while another section (majority of people) is hard pressed to obtain two square meals a day. This scenario, coupled with the spread of tentacles of black economy, heightens the need for combating inequality.

Section 19(1) and (2) of the Bangladesh constitution states: "(1) The State shall endeavour to ensure equality of opportunity to all citizens. (2) The State shall adopt effective measures to remove social and economic inequality between man and man and to ensure the equitable distribution of wealth among citizens, and of opportunities in order to attain a uniform level of economic development throughout the Republic."

This constitutional guarantee against social exploitation has become torpid in the absence of initiative by the government.

The widening rich-poor gap has become so distinct that it does not even evade the notice of short-term visitors. Phil Reeves, a reporter of the British newspaper, *The Independent*, recently carried a report in his paper based on his short visit to Dhaka. The report entitled: "Bangladesh becomes land of plenty, for those who can

afford it" said: "Bangladesh has always been the global brand name for poverty, an image periodically reinforced by cyclones and floods. Yet it does not always seem so. Will the growing display of consumer riches deepen the gap between the haves and the have-nots, hardening the strands of anti-Western Islamist sentiment in this generally moderate Muslim society?"

In fact, the struggle against poverty will never succeed without the strong political commitment by the government. The government should take a long-term view for durable solution to the chronic poverty, creating more jobs in the rural areas.

The Inequality Predicament Report on the World Social Situation 2005 (compiled by the UN) has identified the glaring economic and social inequality as the key predicament in the fight against poverty. The widening rich-poor gap in Bangladesh has reached such serious levels that social stability is threatened. Increased growth and poverty alleviation don't necessarily go together, unless the growth is poor.

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ANM Nurul Haque is a columnist of The Daily Star.

# Mission impossible



MUSLEHUDDIN AHMAD

NUCLEAR power is widely used, though any breakdown of a reactor may create havoc, as happened in Chernobyl, Ukraine twenty years ago. Nuclear weapon is undoubtedly the deadliest evil weapon on earth, and manufacturing and possession of any evil weapon should be treated as an evil act. Let President Bush decide whether those who are engaged in such evil act should fall within his definition of "Axis of Evil."

Not non-proliferation, total elimination is the only answer. The present stock of nuclear weapons can destroy this unfortunate earth many times over even before God himself goes for ending His creation. It is, however, true that in the event of man-made devastations, those responsible will have to face justice before God almighty.

The consequences of the use of these weapons are known to all as the world remains witness to the devastation created by the US in Hiroshima and Nagasaki. But the nuclear powers will never abandon these mass killing weapons. They will retain them in the name of deterrent and continue to go for vertical proliferations with a view to making these weapons more evil and more destructive. The world would also like to know from Nobel laureate Mohammad el-Baradei and his IAEA how Israel already produced some nuclear bombs. Did this advance the "peace" for which the Nobel Peace award was given?

Generally, the nuclear powers all gang up to stop others going nuclear. The argument is: we are civilized countries with sensible leadership; so we can have these weapons. We use these weapons only to remove other evils. What a bizarre justification! Now the latest is that nuclear bunker blasters are likely to be used by the US to remove alleged nuclear bomb production in Iran. Such wild speculations on existence of nuclear bomb led to the Iraq invasion. The result is Iraq is in civil war and the country is fast moving towards disintegration into three pieces.

If nuclear bomb is a deterrent and for self defense, what is the problem if Iran intends to have some? Pakistan and India defied these nuclear powers and pro-

## SPOTLIGHT ON MIDDLE EAST

Now the US is desperately fighting the terrorism it created in Afghanistan, as the same is now directed against it. Despite the long war in Afghanistan against the spread of communism and for oil, the present mess in the Middle East would have been preventable if the US had ever made an effort to stop Israel from having nuclear weapons. As the US is pledge-bound to protect Israel, it was never necessary for Israel to go nuclear; this only made Israel, the US, and the rest of the world unsafe.

duced nuclear bombs and there is a balance of power in that part of the world. Likewise, if Israel can have some 200 nuclear bombs, why Iran can't have some?

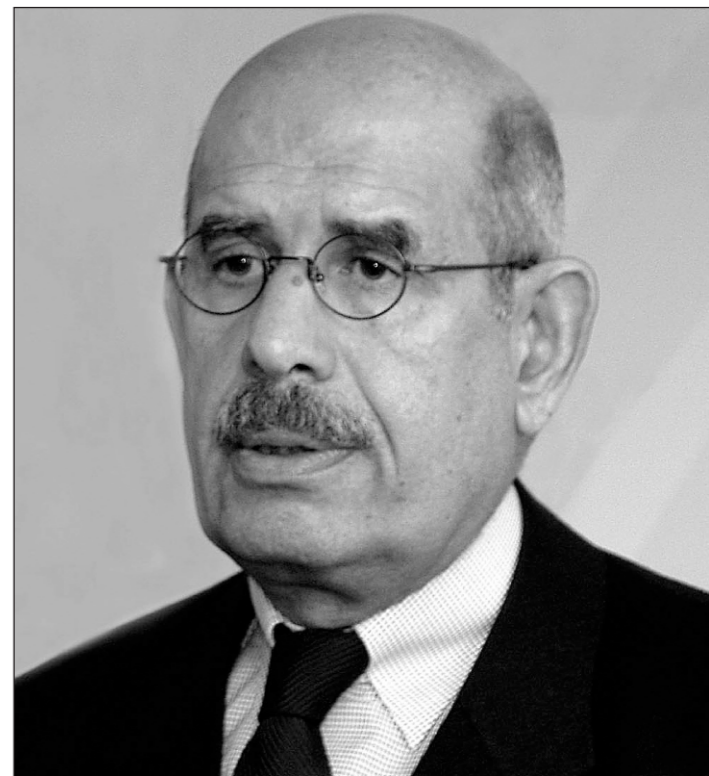
The presumption is that Israel can have nuclear bombs as it had and still has sensible leadership (only with the records of Sabra/Shatila Palestinian massacre to its credit and not Hiroshima and Nagasaki where its mentor and protector excelled). Israel kills only the Palestinian "terrorists" and tells the world that those Palestinians were making bombs or planting bombs, and the world accepts the Israeli version because the Israeli leadership, like the US leadership, do not tell lies. What an unjust world we live in!

Iran's leadership cannot be trusted as they have beards and use no neck-ties. Iran's leadership, in the absence of Saddam, may, one day, drop a bomb on Israel and that is the crux of the problem. And the "international community" has turned against Iran just on the speculation that Iran could have nuclear bomb in some ten years time.

Iran has reached 3.5% uranium enrichment which is needed to have nuclear power, but 80% is needed to make nuclear bomb and it's a very complex long-drawn enrichment process. There is hardly any chance, on the basis of present reports, for Iran to reach that stage, even if it wants, in some ten or fifteen years unless it has done it already in a clandestine manner which seems very unlikely. However, such speculation has apparently galvanized several of the nuclear powers (Russia and China may act differently) to go against Iran. The latest is that Iran has agreed to deal with the IAEA in an acceptable manner provided the case is withdrawn from the UNSC.

The issue of nuclear proliferation particularly in the Middle East engaged the US policy-makers even in 60s and 70s. During those days, a top policy maker in the US administration rightly predicted that "Israeli nuclear weapons would push the Arabs into a desperate attempt to acquire nuclear weapons."

Some policy makers of the US



Head of IAEA Mohammad el-Baradei faces impossible task of nuclear non-proliferation.

could see the dangers of nuclear proliferation and this is why it was later recommended that: "If Washington found itself having to consider using force to prevent the development or use of weapons of mass destruction by another nation, its option should include "pre-emptive action."

Though Israel developed nuclear weapons, Washington never said anything let alone took any pre-emptive action against Israel as was done against Iraq and is now being contemplated against Iran. This means that Iran or any other country which is not with the US cannot go even for nuclear power.

There is no doubt that if the US could have stuck to what one of its top policy-makers predicted in the late 1960s regarding Israel going nuclear and stop it from developing nuclear weapons, the face of the Middle East and indeed that of the world would have been different.

Probably, there would not have been any Iraq invasion, which continues to poison the rest of the world with the latest form of terror-

ism that originated in Afghanistan in the period of 60s to 80s under the good care of the CIA.

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Muslehuddin Ahmad is a former Secretary and Ambassador and founder VC of North South University.