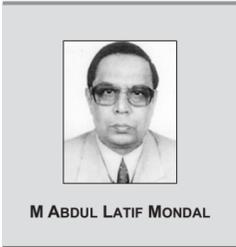


# A look into the Public Procurement Act



M. ABDUL LATIF MONDAL

## BARE FACTS

A closer look into the PPA reveals that it is an improvement upon the PPR. There is, therefore, an immediate need to take all necessary measures to make the PPA effective in order to check the last moment rush for approval of irregular procurement proposals on political considerations.

chase Manual" that was absolutely inadequate for guiding procurement in the large public sector. The pervasive corruption in public sector procurement, in the absence of a comprehensive legal document to guide procurement, and the insistence of the development partners, in particular the World Bank (WB), for such a comprehensive legal document led to the formulation of the "Public Procurement Regulations (PPR) 2003" that came into force from September 30 of the same year.

Soon it was found that, since the PPR was not an act of parliament, it could be easily amended by the executive to meet the party/alliance interests. This led the WB to request the government to transform the PPR into Public Procurement Act (PPA) which would make it difficult for the executive to make changes according to

its own sweet will. The WB even tagged the transformation of the PPR into PPA for releasing the Development Support Credit (DSC).

In the cabinet meeting held on November 2, 2005 some powerful members of the cabinet objected to the inclusion of certain provisions of the PPR into the draft law. Anyhow, the cabinet approved, in principle, the proposal for transforming the PPR into PPA on the condition that a cabinet sub-committee would examine, and suggest amendments to, certain contentious provisions of the draft law.

The revised draft law, approved by the cabinet on February 20, and vetted by the parliamentary standing committee on the planning ministry, was passed by the parliament on July 2. The president assented to it on July 6, to make it an act of parliament.

Now, let us take a look at the major changes that have been brought into the PPA, and see whether these changes would bring improvement in the PPR to make public sector procurement more transparent or not.

- The PPR provided for a standing consultative committee on public procurement (CCPP) composed of not more than twelve members, including the chairman, appointed by the government from amongst experts and specialists in procurement for a period not exceeding two years, to aid and advise the government in bringing improvement to the public procurement process, and make recommendations to achieve that objective. The PPA has abolished the CCPP. This has deprived the government of the expert opinions and recommendations needed to improve

the procurement system.

- The PPA has made the advertisements inviting tenders more transparent.
- A limited tender process can be followed only if it is found logical on technical and economic grounds. For the sake of convenience, a procuring entity can split a particular purchase into several packages on approval of the appropriate authority. Earlier, the procuring entity could bypass scrutiny while dividing a single purchase into several small packages.
- The lottery provision has been omitted and negotiation has largely been cancelled.
- The PPR provided that tenders would be opened in the presence of the members of the tender evaluation committee (TEC). The PPA has provided for a separate tender opening committee (TOC) composed of a member of the TEC and such other persons as may be necessary. Experience has shown that it is hardly possible to ensure attendance of all the members of the TEC for the opening of the tenders on the scheduled date and time. The TOC is expected to ease the opening of tenders on the scheduled date and time.
- The PPR provided that a procur-

ing entity would appoint only one TEC consisting of at least five members, of whom two should be experienced in procurement and from outside of the procuring entity, to open, examine, evaluate, and prepare a report with recommendations, following the prescribed guidelines for evaluation, for submission directly to the appropriate approving authority. Although the PPA has empowered a procuring entity to constitute only one TEC to evaluate its tenders, the formation of the TEC will not be possible till the framing of rules that will determine the number of members in the TEC, and prescribe its responsibilities and methodology of work. It would have been better if the PPA could determine the maximum number of members, including the chairman of the TEC, indicate the criteria for their nomination, and prescribe the responsibilities and methodology of work of the TEC. This is because of the fact that rules are made by the executive and it can, at any time, amend the rule relating to the composition, functions etc. of the TEC, to meet party interests.

- The PPA has provided for formation of one or more review panels comprising of: (a) per-

sons who have been legal professionals; (b) persons who have technical expertise in purchasing or obtaining of goods, works and intellectual and professional services; and (c) persons who have expertise in management and procurement, for reviewing and giving the final decision on appeals in which the administrative authority fails to give a decision within a reasonable period of time, or in cases where the tenderer is not satisfied with the decision of the administrative authority. No person in the service of the republic shall be eligible for inclusion in a review panel. Such a review panel(s) may lead to disposal of appeals in a fair manner.

- The PPA has the provision of making public purchases following the procedure for direct purchase, or any other method in case of emergencies or catastrophe, or in public interest, on the recommendations of the cabinet committee on economic affairs. This is apparently all right provided exceptions do not become the rule.
- The PPA has provided that if an officer commits any irregularities he will be charged under the Government Servants (Disci-

pline and Appeal) Rules, 1985 or under Prevention of Corruption Act, 1947.

- The PPR shall remain in force till the framing of rules under the PPA, which shall come into force on such date as the government may, by notification in the official gazette, specify. It may be mentioned that rules are framed for the elaboration of the provisions of act(s). It may be difficult to find an instance where operation of an act of parliament has been stayed until the framing of rules thereunder. The alliance government has less than two months to hand over power to the caretaker government. So, there is little, or no, possibility of framing rules under the PPA during the remaining days of the alliance government. This means that the making of PPA effective has become uncertain.

A closer look into the PPA reveals that it is an improvement upon the PPR. There is, therefore, an immediate need to take all necessary measures to make the PPA effective in order to check the last moment rush for approval of irregular procurement proposals on political considerations.

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# Jeopardising the judiciary

Admittedly, judicial supremacy ought to be upheld for the sake of both, the government and the opposition parties. The people are, however, not excluded from it, or rather, more dependent on it, as they have to look to the judiciary whenever all other organs fail and frustrate them. To ensure that, however, there is no alternative to the stemming of the

KAZI SM KHASRUL ALAM QUDDUSI

POLITICISATION is out to eat into the vitals of our body politic. The last resort of justice that is the judiciary has also been afflicted severely in this surge of reckless politicisation. Though politicisation of the judiciary, in the form of politicised appointments of judges and violation of seniority, is not a new phenomenon in Bangladesh, things are constantly drifting, creating unwarranted commotion in the arena of justice. The utterance of deploring comments by legal experts is thus not unfounded.

In the recent past, the judiciary showed activism on many occasions, facilitating our hard-earned democracy and upholding human rights. However, separation of the judiciary is not at all popular with our ruling political parties as has been exposed by even the present government's lukewarm attitude toward putting that into effect. The government's inordinate delay in implementing it, and stiff resis-

tance from the bureaucracy are glaring instances of the attempts at delaying and, if possible, choking the call for separation of the judiciary.

To this failure has been added the glaring examples of politicisation of the judiciary. In this regard the Supreme Court Bar Association (SCBA) prepared a letter, as they thought they needed to take some steps to protect the judiciary as an effective body, and handed it over to the chief justice. The letter mentioned some points which triggered resentment among lawyers. Couple of the points are:

The senior-most judge of the High Court Division, having to his credit a number of important and outstanding judgments, was superseded several times by his juniors and was elevated to the Appellate Division. He has now been given the limited work of a single judge, thereby depriving the country of the quality and contribution of an experienced judge with great potentiality for contributing to Bangladesh jurisprudence.

The final hearing of the writ petition challenging the legality of the holding of two constitutional posts at the same time by the CEC M A Aziz appeared in the daily cause list of the Division Bench comprising Justice Md. Awlad Ali and Justice Begum Zinat Ara. But, just before the court could take up that particular item for hearing, the power of that bench to hear cases filed in the year 2005 was taken away in the midst of the bench hearing the daily list.

Meanwhile, a news item published recently in The Daily Star discloses that -- since coming to power in 2001 -- the BNP-led alliance government has appointed forty-five additional High Court judges in the last five years. Of them, the government confirmed the services of thirty-seven. In all of these appointments, there had been allegations of politicisation and nepotism. There are also allegations that some of these judges had been active leaders of the BNP.

The alliance government appointed eleven additional judges in July 2002, nine judges in

April 2003, six in August 2003, and finally nineteen in August 2004. The SCBA brought allegations of blatant politicisation against all these appointments. These appointments also triggered forceful agitation on the High Court premises. Regrettably, however, the trend was almost the same, though of a lesser magnitude, during the previous AL rule.

The AL government refrained from appointing Justice KM Hasan to the Appellate Division, although the chief justice had recommended in favour of him. KM Hasan was the senior-most judge. But the AL government appointed his juniors above him at the Appellate Division. After coming to power, the alliance government took "remedial" measures by elevating his position. Even a High Court Division Bench, in 2002, recommended that the appointment of the judges should be kept above political considerations. It also observed that the Supreme Court recommendations on judges' appointments must be made effective and meaningful.

In fact, appointment of judges on the basis of political complexion has reached unmanageable proportions these days. Undeniably, such appointments should be free from influence of partisan politics to ensure justice for the people. Eminent citizens made such remarks at a discussion held recently. They also said

that the absence of an independent and impartial judiciary, inordinate delay in adjudication of cases, high cost of litigation, and a dearth of legal aid are hindering justice for the people.

Accordingly, many legal experts repeatedly called for removal of all judges who were appointed on political considerations in the last two years. Ironically, however, most of them have been confirmed, including two even without the chief justice's recommendation. And violation of seniority in promoting a specific judge has added fuel to the fire. Legal experts very rightly remark that respect for the constitution and rule of law are lamentably absent now, and that increasing inefficiency and corruption in law enforcing agencies are resulting in unabated deterioration of law and order.

Admittedly, judicial supremacy ought to be upheld for the sake of both, the government and the opposition parties. The people are, however, not excluded from it, or rather, more dependent on it, as they have to look to the judiciary whenever all other organs fail and frustrate them. To ensure that, however, there is no alternative to the stemming of the unbridled politicisation of the judiciary.

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## LEST WE FORGET

# A vanguard of secularism

HASAN TARIQUE CHOWDHURY

AUGUST 28 was the 19th death anniversary of eminent philosopher and educationist Professor Sydur Rahaman. He was one of the leading personalities who played a vital role to establish secular ideas in this country and was one of the vanguards that shown the way to freedom of thinking in hard communal Pakistani days. Devoting his golden period of life he struggled with his sharp pen to establish the secular and progressive ideas in the former Indian subcontinent as well.

Despite being born in an ordinary peasant family of Rasullahbad, an interior village of Brahmanbaria district, on May 15, 1909, he marked excellent position in merit in every sphere of his educational career. In 1931 and 1932 he passed BA (Hons) and MA respectively with first class in philosophy from Dhaka University.

In his vibrant professional life he served as a professor in Dhaka College, Eden College, Sylhet MC College, Chittagong College, and Jagannath College. He was also professor of philosophy, Dhaka University.

As an educationist and social worker he closely observed the 2nd World War, the famine of 1945, the brutal communal riot of Kolkata, creation of Pakistan, the Language Movement, and founding of independent Bangladesh following a great liberation war. These histori-

cal events strongly influenced his psychology and thinking from the beginning and finally drove him towards secularism and socialism.

But he recited the Holy Quran from his childhood. Nevertheless he had been criticised as an "atheist" and "communist" by some critics for nurturing progressive ideas.

As an activist for building secular Bangladesh he was harassed by the Pakistani government. He was even forced to resign from the chair of principal of Jagannath College due to political differences with the despot East Pakistan governor Monam Khan.

Recently in Bangladesh, religious extremism and fundamentalism has emerged as an immense danger to the nation. The bomb blasts and other sabotages over the recent period have shown the cruel face of religious extremism. At such time we feel more the need of people like Prof Sydur Rahaman.

Prof Sydur Rahaman was a prominent scholar from the not so progressive Muslim community. He explained religions with their secular and humanitarian facades. His writings always included the concept of modern science and logic. His famous book "An Introduction to Islamic Philosophy" has become widely known to the society.

Being a thoroughly modern man, he felt pain for the backwardness of our society. He wrote: "Progressive evolution is the natural rule of earth, societies also evolve in the same way. Religion also followed the



Professor Sydur Rahaman

same path like philosophy and science. In modern days, religion has been replaced by philosophy and science. Within the journey towards social progress, human beings are now able to resolve their own problems without the support of miracles."

Addressing the younger generation he wrote: "The object to explain the life and nature is to change and modify of its goal, not to stuck with any utopia." He also wrote in this regard: "We should not push our society 1,000 years back."

When religious extremism is hitting at the existence of our civilisation in renewed way, his writings could be more relevant to combat this danger. On the occasion of his 19th death anniversary we deeply felt his absence, specially at this point of time. We believe his memory will be our inspiration.

Hasan Tarique Chowdhury is a leader of peace and solidarity movement.

# A race against time

Reza Pahlavi was just a teenager in 1979 when an Islamic revolution in Iran ousted his father, the shah. In the years since, Pahlavi, who now lives in Maryland, has been involved with activists both inside Iran and abroad who seek to overthrow the mullahs from power. As the Iranian government continued to stonewall on the nuclear issue -- with the United States calling for sanctions despite Iran's offer to "talk seriously" -- Newsweek's Rachel Makabi spoke to Pahlavi, 46, to get his thoughts on the standoff, the effectiveness of US policy toward Iran and his ongoing work with Iranian dissidents.

**Makabi:** What do you make of Iran's latest nuclear proposal?  
**Pahlavi:** The regime's response to (UN) Security Council Resolution 1696 was predictable, as it was simply a variation of double talk -- a tactic they have now mastered to an art form. What does the regime's offer to "seriously talk" really mean? Will it seriously discuss its violations of human rights at home? Will it seriously discuss its patronage of regional militancy? I think not. (This) is a race against time. Will it get the bomb first, thereby bullying the world into appeasement, or will there be an actual convergence of domestic and international pressures (on the regime)?  
**What do you think will happen if China or Russia resists imposing sanctions?**

**Are you in favor of military intervention?**  
We need to steer away from the mind-set that either we have to diplomatically negotiate or talk about any kind of military intervention. Neither one can solve the situation. What's obvious is to invest in the people of Iran themselves because you have the most natural ally among the Iranians.  
**You've long been active with dissidents. What does your involvement entail?**  
I have been in touch with a number of organizations and groups, within and outside Iran, who are working directly with activists on civil disobedience as well as the treatment of political prisoners. It is very critical that we keep dissidents operating inside.  
**Can moderate reformists like former president Mohammad Khatami change the system from within?**

**exile community can and should play?**  
In the short term, the exile community is a natural conduit (to express) what is the state of affairs in Iran to the international community. In the long term, the diaspora has tremendously dedicated and talented individuals who have been quite successful, and this (will be) a very important human aspect for our nation once we recover from this state of repression and liberate our country.  
**Do you think the regime is close to collapse?**  
It is completely at odds with what the people of Iran stand for. There is a generational battle taking place. There is a fight of capital from Iran; the people of Iran are clear as to the consequences. They look at it as a whole -- our country is going down and all of our resources are being badly managed by corrupt officials. The people of Iran are committed to putting an end to it. This regime will not survive -- I have no doubt about that, but it should be at the hands of the Iranian people and not foreign intervention. Right now, we need to help the people help themselves.



**What would be the ideal government to replace the existing one?**

We will have a constitutional assembly, and within that debate, the Iranian people will determine a final form of government. Our issue is to make sure we have a secular, democratic system.

**What role would religion play?**  
What you see today is a clear example of what happens when religion is directly involved with the government. One should not confuse secularism with something that may sound like you are against religion. It is in everyone's interest to have a clear line of separation.

**What role do you see yourself playing?**  
My only focus today is to bring the country to the point where people can go to the polls and decide their fate and their future. That date, for me, is my finish line. The use I have is based on the Iranian people and whether or not they want me to play a more prominent role or not.

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# Silent Sistani

Sistani never wanted the spotlight. Before the war he was a quiescent Islamic scholar in a long tradition of Shiite moderation. After the invasion, when Iraqis called for him to take more of a leading political role, he went along. His primary goal was to ensure that the long-oppressed Shiite majority gained its rightful place at the table. He succeeded in that aim, but at the cost of making himself indispensable to the political process.

SCOTT JOHNSON

THE plea from the Grand Ayatollah Ali al-Sistani was an unusually modest one. With thousands of American troops sweeping through the streets of Baghdad to prevent an escalation of civil war, and Sunni and Shiite militias continuing to murder civilians every night, Sistani -- Iraq's leading Shiite religious authority -- had a simple request. "Desist from traveling abroad," he cautioned his country's politicians in a statement issued through a spokesman, "Come down to the streets and be in touch with the people, to feel their suffering."

It seemed a reasonable enough request. But Sistani's appeal was also striking in its limited ambition. For months, calming statements from the ayatollah held Shiites back from retaliating for killings by Sunni insurgents. But three years of insurgency, sectarian tensions and miserable living conditions have shrunk the space for temperance and given extremists plenty of room to operate. ("Sistani" doesn't have the same degree of influence," says Joost Hilterman, director of the International Crisis Group's Iraq program, based in Jordan. "He may be saying the same things, but fewer people are listening to him." As much as anything, the battle now is about which voices will shape the future of Iraq.

Not too long ago Sistani would have won that contest hands down. When Moqtada al-Sadr, the young radical Shiite leader, laid siege to the Imam Ali shrine and fought US

Marines to a standstill in Najaf in the summer and fall of 2004, Sistani put an end to the insurrection in a matter of days upon his return from London, where he was receiving medical treatment. He successfully lobbied to hold elections on an Iraqi timetable and convinced US officials of the need for a referendum on the Iraqi constitution. Sistani's

But last February, when terrorists struck one of the most important sites in Shiite Islam, the Askariya shrine in Samarra, it unleashed a wave of bloodshed that even Sistani couldn't control. "I reiterate my appeal to realize the magnitude of the danger threatening the future of (our) country," he said after the Samarra bombing. Since then the violence has only gotten worse, and Sistani has retreated further into his inner sanctum. "We have noticed that some people aren't protecting them," says Shiite politician Ali al-Dabbagh, who consults with Sistani on a regular basis. "We notice gangs coming out doing revenge. If the violence continues there will be more and more people who won't listen to calls for restraint."

The astute Sistani may be keeping quiet precisely because he realizes the limits of his power -- and wants to husband what's left of it. "What would be the decisions that Sistani can make in these circumstances?" says Ihsan Abdul Ridha, 40, a computer technician in Baghdad. "What is the power he has while sitting inside his four walls?" Sistani's constituency, too, has changed, says the ICG's Hilterman. "Sistani's people are still

there, but it's mostly elite Shiite support," he says. "The Street is increasingly prone to supporting militias and radical preachers who say what they like to hear -- take revenge for the killings."

Even the ayatollah's closest advisers know that his most powerful weapons -- the fatwas, or binding religious edicts, that he can issue -- no longer carry the same weight among this desperate population. They see no point in undermining his authority any further. "Some people ignore those instructions," says Hamid al-Khalaf, a chief Sistani spokesman. "What can we or the clergy do? This ignorance is one reason behind (Sistani's) being silent." Sheikh Maher Hussein al-Hamra, a Sistani aide in Baghdad, agrees: "It is wise now to keep silent. What can Sistani say?"

The problem is that militia leaders are using Sistani's weakened position to carve out bigger roles for themselves. One such radical is Mahmud Hassani, a Shiite preacher in Karbala whose forces recently engaged in skirmishes with US forces. Hassani has publicly criticized Sistani, and challenged his religious authority on several occasions. Like the fighters in Sadr's Mahdi Army, Hassani's followers are armed and pushing for further confrontation. Recently, Shiite militiamen staged a demonstration in the Shiite stronghold of Khadimiya, where they heaped abuse upon Sistani's chief representative in Baghdad, the revered cleric Hussein al-Sadr. Marching through the streets, hundreds of young men chanted "Damn

the one who embraced Bremer," a reference to an incident in 2003 when the Sistani representative embraced former head of the Coalition Provisional Authority Paul Bremer during a meeting recorded by TV cameras.

To be fair, Sistani never wanted the spotlight. Before the war he was a quiescent Islamic scholar in a long tradition of Shiite moderation. After the invasion, when Iraqis called for him to take more of a leading political role, he went along. His primary goal was to ensure that the long-oppressed Shiite majority gained its rightful place at the table. He succeeded in that aim, but at the cost of making himself indispensable to the political process.

Now, having pushed hard for a strong political class, Sistani has no choice but to accept what it delivers. "He is concerned about the security threat. But if he is viewed as the eminence grise that defines political outcomes, that would be a step back (politically)," says a high-ranking US military-intelligence officer in Baghdad, who asked to remain anonymous because he is not authorized to speak publicly to the press on sensitive issues. Al-Dabbagh recently asked Sistani what he thought of federalism, and was told that he didn't think anything -- it was an issue for Iraqis and their elected representatives to figure out. "He's still playing a quiet role," says Dabbagh. But by limiting his public comments, "politicians will be freer to make decisions and be held accountable." The problem is that Sistani, with his moderate ideas on religion and democracy, may be one of the few forward-thinking leaders left in Iraq. The ability of his words to sway, or even save, a nation may be fading at just the wrong time.

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