

Upholding the majesty of judiciary and all that



MUHAMMAD NURUL HUDA

STRAIGHT LINE

Judicial independence is indeed the foundation of rule of law as manifested in equality before the law and the superiority of the law. In other words, it is an essential ingredient of the protection of individual liberty and equality. The strength of a judicial system indeed depends on its independence. The independence of our judiciary should be considered a basic feature of our constitution and as such unalterable by Parliament even by constitutional amendment.

At a time when the performance of the corrective and regulatory institutions of Bangladesh society are less than satisfactory owing to a host of politico-historical factors, it is indeed sad to see highly placed politicians talking derisively about judicial figures. Such judicial personalities, who at present are occupying quasi-judicial constitutional positions or may be installed in a predominantly executive assignment of historic significance, may for reasons of the complexity and sensitivity of their job, be subject to comments and discussion but that cannot be a justification for subjecting them to unbridled innuendos bordering on insults. This is so because the preeminence of the judiciary cannot be ensured if its senior members become the target of the invectives of the politicians.

In any civilised democratic society it is only natural that people will turn and look towards the judiciary for conflict resolution, whether civil or criminal. In fact people wait for the judiciary to provide relief and succor when other avenues of grievance redressal have been exhausted. One has to recognise that the legitimacy of the law is based on the democratic process. In our situation as elsewhere, the Courts have been held to be the guardians of the constitution. They are required to ensure its observance by all the other functionaries and organs of the State.

The judiciary has to acquire a

central position in our situation because it is looked upon to declare, reiterate, enforce and compel implementation of the recognised norms of good governance and social progress.

The Superior Judiciary of Bangladesh has risen to the occasion at the critical juncture of our history. The invalidation of the Constitution (Eighth Amendment) Act 1988 insofar as it relates to the creation of permanent benches of the High Court Division by the Appellate Division of the Supreme Court is an example. Another example is the Supreme Court's refusal to suspend the execution of a High Court judgment invalidating a government notification which empowered ministers and others with charge of different districts to take care of development work and law and order in their respective areas. In both these judgments, the judiciary showed its competence and importance as final arbiter of legal questions and protector of the rule of law.

Some political thinkers are of the considered view that our constitutional provisions of having a caretaker government to oversee the conduction and management of national election sadly betray the lack of nation's trust in the credibility and integrity of the political class. Whatever be the interpretation, one has to admit that it was the legislator's wisdom forced by people's power that brought into being the caretaker concept. The legislators

who enjoy being executive soon after getting elected had to repose the nation's trust in the supreme judiciary of the country. In such a scenario, it is only proper that we talk reverentially and remain within decency and decorum when taking issue with the judiciary and judicial personalities. We have recognised that judicial intervention results in public trust and confidence.

The top Bar of our country consisting of educated, disciplined and distinguished lawyers, through their competence and contribution can ensure the quality and standard of the judiciary. However, the ground reality is that there is a growing conflict between the bench and the bar, as more and more political and administrative controversies taint their professional duties. We need a change of attitude and resetting of goals.

We have to remember that an effective criminal justice system ensures law and order, generates security and confidence, and releases all other faculties and resources of the individuals to contribute their best to the achievement of national goals and ensure economic prosperity of the nation. All the good things that all human beings aspire for depend on a visibly just, expeditious, and inexpensive system of criminal justice.

The issue of supremacy and separation of the judiciary from the executive
The Supreme Court's authority over

other government instrumentalities is enshrined in Article 112 of the Constitution, which states: "All authorities, executive and judicial, in the Republic shall act in aid of the Supreme Court". Furthermore, the Supreme Court is undisputedly the final authority in declaring and interpreting the constitution and the laws.

Regarding the separation of the judiciary from the executive, the political, social and institutional considerations should not, after the landmark decision of the Supreme Court, stand in the way of separation, because the judgment has attained constitutional and moral irrevocable finality. Instead, these considerations should be harnessed by all available means to help and advance that goal. In fact, the Bar, civil society and the political parties in the country should relentlessly pursue the issue of separation of the judiciary until the constitutional dignity and efficacy of the Supreme Court's order is fully established.

In order to carry out the decision of the Supreme Court regarding separation of the judiciary from the executive, organisationally speaking, the measures have to be taken on a priority basis are:

- (i) Creation and establishment by the President of a distinct, altogether separate, judicial service including a magistracy exercising judicial functions;
- (ii) Establishment either by legislation or by framing Rules

under Article 115 or by executive order having the force of rules, a Judicial Services Commission composed of majority of members from the senior judiciary of the Supreme Court and the subordinate courts for recruitment to the judicial service on merit with the objective of obtaining equality between men and women;

(iii) Promulgation of law or rules or executive orders having the force of rules relating to posting, promotion, grant of leave, discipline (except suspension and removal), pay allowances and pension (as a matter or right not favour), and other terms and conditions of service consistent with Articles 116 and 116A of the judicial service and magistrates exercising judicial functions.

(iv) Establishment of a separate Judicial Pay Commission as a part of the rules to be framed under Article 115 to review the pay, allowances and other privileges of the judicial service which shall convene at stated intervals to keep the process of review a continued one;

(v) Promulgation of law or rules or executive orders having the force of rules to secure the essential conditions of judicial independence, namely, security of tenure, security of salary and other benefits and pension, institutional independence from the parliament and the executive.

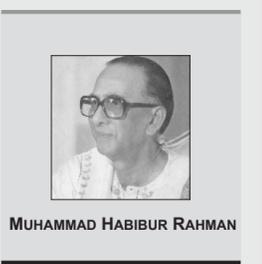
Judicial independence is part of the Universal Declaration of Human Rights. Article 10 states that, "Ev-

eryone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and if any criminal charge against him." This is repeated in Article 14 of the International Covenant on Civil and Political Rights as well.

Judicial independence involves freedom from direction, control or interference in the exercise of judicial powers by either the legislative or executive arms of government. It includes the independence of an individual judge as well as that of the judiciary as a branch of government. Individual independence is to be able to decide according to law (decisional independence); and personal independence is by way of merit-based appointment, guarantee of tenure, adequate compensation and security. Both types of independence are intended to allow judges to consider the facts and the law of each case with an open mind and deliver unbiased judgement. When truly independent through increased professionalism, training and experience, judges are not influenced by personal interests, preferences or relationships, the identity or status of parties to the litigation or external economic, political or cultural pressures or considerations.

Judicial independence is indeed the foundation of rule of law as manifested in equality before the law and the superiority of the law. In other words, it is an essential ingredient of the protection of individual liberty and equality. The strength of a judicial system indeed depends on its independence. The independence of our judiciary should be considered a basic feature of our constitution and as such unalterable by Parliament even by constitutional amendment.

Muhammad Nurul Huda is a former Secretary and IGP.



MUHAMMAD HABIBUR RAHMAN

Just a little more care

Just a little care, a little more care
They do not like any more beguiling snare.

They remember how eight hundred years back
Two children crusades were taken aboard
And floundered and sundered
In the Mediterranean

The French children were offered
A free transport from Marseilles to Jerusalem,
The Holy Land
But in the end they were sold away
In the slave markets in the North African bay.
The German children were also assured and allured
By a pious promise of a safe journey to Jerusalem,
The Holy Land.
But they could only travel up to Italy
Just to die there out of starvation and disease.

In their dismal lives of miseries of abuse and misuse
The children are scared of the man.
They are scared of the cruellest of the animals.

They toil for him as errand boys and cheap labours,
And as his mercenaries to act as innocent carriers
Of mines and mortars, rifles and rockets
The arms heavier than their body weight,
And as sex workers for the lust, fun and fancy
Of the old pedophilic scoundrels.
And as camel jockeys
For amusing the sportive sheikhs
In their frolicsome fancy.

Luckily for them they have on their side the same man,
The kindest of the animals
Who will take care, a little more care for them.
This time there will be no children's crusade.
No raising of the fathers' brigade,
But the fathers will take more care of them
There will be no raising of the mothers' brigade
But the mothers will take more care of them
There will be no raising of the citizens' brigade
But the citizens will take more care of them.
A little more care
For all the children of the world,
Our future, the citizens of the world.

Muhammad Habibur Rahman is former Chief Justice and head of caretaker government.

Let not the dialogue fail



MD. ASADULLAH KHAN

BITTER TRUTH

History abounds with instances of great leaders imbued with statesmanship and pragmatism playing a very crucial role in setting the record straight and saving their country from ignominy. At the moment, the ruling alliance and the opposition are caught in a crisis of unusual dimensions with the possibility of either rising to the occasion or failing. We only wish wisdom prevails and we advance to polls with prudence.

There are times when some event is so enormous in terms of the attention it demands that everything else pales in comparison. In recent times the dialogue between the general secretaries of BNP and AL over the issue of the selection of the chief of the caretaker government and EC restructuring has assumed such significance.

This is because people in the country do not any more want to see a rigged, flawed, or poorly conducted election. And this unseemly talk-fest has hit an institution that should by and large be above controversy, especially at this critical time of the nation in a land where almost everything concerned with public office has been touched by ignominy and scandal.

With the EC being blissfully oblivious of what was happening around the polling centres in the

country in past elections, people were intimidated to cast their votes as musclemen directed. With a weak EC having neither the armour nor the charisma to rein in the saboteurs, there occur stuffing of ballot boxes and fake voting, and there were apprehensions of such drama being repeated in the forthcoming election.

In view of the bitter memories of the past people feel that in absence of a tough, dynamic, charismatic and neutral chiefs of both the CG and EC, election result may be flawed again and such election will not resolve the contentious issues in the country but will only add to the misery of the people.

As for Justice Hasan, he comes with records that show he belonged to a party holding a very responsible position that brought laurels for him as an ambassador although he never served in the foreign service. Secondly, as Chief Justice of the

Supreme Court, he felt embarrassed to hear the appeal of the Bangabandhu murder case quite justifiably as one of the convicted persons happened to be his close relative. But he could have made recommendation to the President of the Republic asking for fresh appointment or elevation of judges so that the hearing could go on even without him.

Apparently with a clear objective in mind, BNP extended the retirement age of the judges of the apex court so that Chief Justice KM Hasan could be the chief adviser of the interim caretaker government during election 2007. Facts reveal that the then Chief Justice Mahmudul Amin's proposal for enhancing the retirement age of the Supreme Court judges on March 6, 2002 was not acted upon at that time until after Mahmudul Amin retired on June 18 the same year.

Had his proposal been imple-

mented at that time, he would have retired in June 2005 turning out to be the last retired judge and would have been the eligible candidate to hold the post of the chief adviser. Doubts and conjectures remain as to whether Justice Hasan will return the favour and even if he does, how he will return it.

It is quite natural for Justice Hasan, an eminently sensible and meritorious person as he is, to refuse to accept such stupendous responsibility at such a crucial time in the interest of the nation. It goes without saying that judges, whether they are in service or retired, when appointed in different probe bodies or commissions as public crusaders cleaning up the system, have always won all-round applause.

People quite reasonably expect that these men who have delivered the most hard-hitting judgments would themselves remain accountable to the public and would not

allow their images to be tarnished, especially at such an unstable time in the nation's history. If Justice Hasan feels embarrassed once again, his role will be an exemplary one and he can help steer the nation out of the mess it is in.

The electorate, though they number among the poorest and oppressed in South Asia, would after decades of neglect and impoverishment like to vote in a free and fair manner to bring about a change in their lives.

With the top leaders of both the parties never talking to each other and the chiefs hurling threats the dialogue may ultimately become a solemn farce and the result a foregone conclusion.

Pictures of shops with shutters down, vehicles torched, and police beating the protesters and picketers in no way boost the image of the country, already ravaged by power outage, fertilizer crisis, and acute

transportation problem.

The country has begun to look quite helpless with debts deepening, inadequate revenue collection, services falling apart, prices of essentials spiraling, crime and drugs peddling rising and the most vicious of all being academic institutions becoming non-functional as a consequence of murderous activities in the campuses.

In a word, a sinking feeling has come over the whole nation. But leadership in such a crisis is a superhuman quality that must be called into play. There is no doubt that almost all crises are consequences of blunders we have committed earlier.

History abounds with instances of great leaders imbued with statesmanship and pragmatism playing a very crucial role in setting the record straight and saving their country from ignominy. At the moment, the ruling alliance and the opposition are caught in a crisis of unusual dimensions with the possibility of either rising to the occasion or failing. We only wish wisdom prevails and we advance to polls with prudence.

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Infrastructure financing with local resources

FIDA HASSAN RANA

Poor infrastructure amenities retard economic growth and plunge any country into a vicious cycle of underdevelopment. Improvement in infrastructure is increasingly being recognized as a key factor in fighting poverty. According to World Bank estimates, the impact of infrastructure on poverty reduction in the late 1990s showed that infrastructure investments cut poverty by as much as 2.1 percent in low-income countries and 1.4 percent in middle-income countries. Another World Bank study reveals that developing countries need to invest about seven percent of GDP for both investment in new, as well as maintenance of, existing infrastructures. For low income countries, the requirement can potentially be as high as nine percent of GDP. Based on this estimate, Bangladesh needs to invest approximately \$ 5.5 billion every year for new and existing infrastructure.

Infrastructure investment calls for huge financing resources and neither the government nor the conventional funding sources in Bangladesh can fill the need. For a developing country like Bangladesh, it is imperative to develop a long term investment plan for infrastructure improvement. Sporadic and ad hoc investment may not result in optimum benefit, and not necessarily be the most cost-effective way. The dismal power sector of Bangladesh stands

Infrastructure, in economic terms, is primarily a "public good." Sometimes it can be of "quasi public" nature, but can never be in the private domain. Instead of looking at the ever shrinking soft loans for infrastructure development, hasn't the time come to develop a "home made" solution? Setting up a local currency infrastructure fund can be a modest start in this regard.

as a glaring example of this fact. Multilateral and bilateral organizations have remained as the primary sources of infrastructure financing for developing countries. Occasionally, few infrastructure projects in these countries receive the blessings of international commercial lending. Developing countries cannot do away with commercial lending for infrastructure projects, even though it is expensive. On the other hand, to attract commercial lenders to develop infrastructure projects in developing countries, multilateral and bilateral organizations assumed the role of "catalyst funding source" by offering softer lending terms and conditions, thus leaving room for the commercial lenders to charge what they deem as commercially viable.

Against this backdrop, in the early 1990s, international and regional development banks undertook large scale infrastructure investment programmes for developing countries. These efforts were supplemented by offering technical services for capacity building to implement and manage these projects. These initiatives resulted in establishment of a number of infrastructure funds and fund man-

agement companies. The "Emerging Africa Infrastructure Fund," created in January 2002, aims at providing long-term debt financing to commercially viable private sector infrastructure projects in 44 Sub-Saharan African countries. Jeddah based Islamic Development Bank, in collaboration with some Gulf states, established \$ 1.5 billion infrastructure fund to invest in similar projects in its 56 member countries. In 1998, the governments of Japan and the United Kingdom, in collaboration with the World Bank, set up Public-Private Infrastructure Advisory Facility for offering technical assistance to developing countries to tap the full potential of private involvement in infrastructure projects.

Unfortunately, neither in Bangladesh nor elsewhere did such initiative achieve what it was meant to. Some commercial lenders financed infrastructure projects jointly with development banks, but they never delved into such ventures alone in developing countries on a large scale. Development banks still remain the preferred lenders to project sponsors, and preferred co-financiers to the commercial banks. After one and half decades of PPI endeavour one lesson is clear -- private commercial lenders can never be the leading infrastructure financing source in Bangladesh, at least in the near future.

There can be many hypotheses as to why infrastructure projects in Bangladesh and other developing countries fail to attract commercial lenders to a desired level. Chief among the factors is the country risk profile, a parameter which reflects a country's position on a global risk

scale based on a host of macro-economic factors. High risk perception regarding Bangladesh does not prompt commercial banks to take a larger role in infrastructure financing. Hence, the issue of infrastructure development and scarcity of commercial financing calls for a holistic diagnosis. Pointing fingers to stand alone factors such as lack of adequate government initiative, sector reform, underdeveloped local capital market etc. will only give a partial answer to the problem.

Will Bangladesh continue to rely on soft infrastructure financing from development partners until such time when macro-economic factors are on a strong footing? The journey from aid dependence to self reliance has to be guided by a sound economic policy agenda, of which infrastructure investment is a critical constituent.

Infrastructure, in economic terms, is primarily a "public good." Sometimes it can be of "quasi public" nature, but can never be in the private domain. Instead of looking at the ever shrinking soft loans for infrastructure development, hasn't the time come to develop a "home made" solution?

Setting up a local currency infrastructure fund can be a modest start in this regard. It may not be a panacea to the host of issues mentioned earlier, but at least it will be a good start in addressing the issue of foreign exchange risk and creating an appetite among local bankers for infrastructure financing. The fund will also lessen the pressure on project sponsors to attract longer term cross-border financing, and the associated currency exchange rate risk.

The obvious difficulty is the availability of resources to establish a local currency infrastructure fund. It is unlikely that the government, being handicapped by budgetary constraints, will be in a position to make a large contribution for setting up the fund. However, the government can accumulate the funds gradually by making annual contributions, even by imposing a minor infrastructure duty if necessary.

In 1976, when a professor of the University of Chittagong launched a small credit programme in a remote village of Chittagong, nobody imagined that this embryonic operation would reach more than one hundred million borrowers across the world. If the Grameen Bank history is any guide, a local currency infrastructure fund may also become a role model for other developing countries to follow.

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Dipawali Festival of lights

PREM RANJAN DEV

THE Indian civilization is an unending procession of festivals. Dipawali or Diwali, one of the biggest and grandest natural festival of Hindus, is celebrated in the month of Kartika (October-November). Dipawali literally means row of lamps and Diwali, as it is popularly known means the 'festival of light'. It is an important and popular festival of Hindus across the world in one form or the other. As a matter of fact at places it is a five-day long festival, but the main celebration takes place on the day of Dipawali. One myth says that on this auspicious day, 'Lakshmi', the goddess of wealth and good fortune, roams about and visits the houses of people. So, people tidy up their houses, establishments and shops and decorate them lavishly with light to welcome the goddess. In the night she is worshipped with great devotion. It also commemorates the triumph of Lord Rama over Ravana, and Rama's return to Ayodhya. It is also on this day that Lord Krishna killed the demon Norkasura.

The 'Skanda Purana' refers that people worshipped Bali at night. They were to draw his image on the ground with different colours and worship it with fruits and flowers. They were also to give presents in his honour and light lamps. King Harsha has described it as 'Diparatipadotsava' in his 'Nagananda'. According to him, the bride and the bridegroom were presented gifts on this festival. Rajasekhara in his 'Kavyamimamsa' has mentioned it as Dipamalka. The houses were white washed and lamps were burnt in every house, streets and market places. It was a gay occasion for all. Somadeva Suri in his 'Yasastilaka Champu' says that on Dipawali, the palaces and other buildings in the city were decorated with white flags and rows of lights on terraces. In the evening temples, buildings, river banks, gardens and gateways were decorated with innumerable lamps. Entertainments like dances and musical concerts were arranged.

Similar interesting details have also been provided by Merutunga in his 'Prabandhachintamani' and Hemachandra in his 'Desinamamala' and 'Divyasrayakavya'. The paramara king Bhoja of Malwa in his 'Rajamartanda' describes this festival as Sukharati. According to him on this occasion, Lakshmi was worshipped at dusk and lamps were lit up every where in the houses of

both the rich and the poor. Jimutavahana in his 'Kavyaviveka' also refers to the Sukharati-Vrata (the vow of a happy night) performed in the month of Kartika. Alberuni puts the celebration of the festival on the first of the new moon day of Kartika, when the sun reached the zodiacal sign Libra. Dipawali was celebrated with equal zest by the Jainas. According to the Jaina Hariavamsa Purana, the members of the community joined the celebrations because it was the Nirvana day of Lord Mahavira, the twenty-fourth Tirthankara.

Dipawali is no mere occasion of congregation of men, women and children, but in fact they reflect the inherent feelings of the people having a long cherished historical and rich cultural background. Dipawali also marks the advent of new season and sowing of new crops. The new Vikrama era begins on this day and account books are opened. The famous king Vikramaditya, after whom the era is named, was crowned on this day.

In Bengal, goddess Kaili is worshipped with great fervour and devotion on this day. In fact, to many, Kalipuja occurring after only twenty days of Durgapuja, appears as a continuity of the festivity that began earlier. Thus it also is celebrated with similar gaiety. On this occasion people ask for each other's forgiveness for the wrongs done knowingly or unknowingly and mutual relations are reestablished and strengthened. Thus all enmity is forgiven and forgotten and people embrace one another.

Lots of sweets are prepared and exchanged along with greetings. Thus, this great festival of lights symbolises man's urge to move towards light of truth from darkness of ignorance and to happiness from unhappiness.

We know that the Hindu festival, fasts, rituals, holy baths and observance of sacred days are part and parcel of the great cultural heritage of Indian civilization. They are religious and social and great source of spiritual and moral enrichment. The Hindu festival are more than what they appear to be. They are essentially a way of living and thinking in the course of existence. Dynamic spirituality and beauty of Dipawali can contribute so much to life and its fulfillment not only for the Hindu community but also for others.

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