

## Justice detained!

Recent developments inside the court and on its premises will no doubt send all the wrong signals to the people of the country. Undeniably, it is the last resort for people to turn to with the hope of receiving justice. Now, the question that arises is, how can the country expect dispassionate dispensation of judgment, and impartial justice in cases of disagreement from the highest of court, if a supreme person like the chief justice tends to bow down to perceived pressure, and the lawyers confront each other in the manner they did.

KAZI SM KHASRUL ALAM QUDDUSI

WE attained independence, brought back democracy and we claim to have made arrangements for ensuring equitable justice. However, we could not enjoy the fruits of independence, democracy and justice to the extent that we could call our society a truly civilized one, as the stated phenomena are still hemmed in by some invisible hands or equations. And our frustration and apprehension were compounded when we learnt of the chief justice's (CJ) recent unprecedented move, and the mayhem thereafter.

The country witnessed an unmatched, dreadful, and violent scene at the Supreme Court on Thursday, and the apex court's sanctity and its standing as the last repositories of the nation's faith have been grossly undermined in the process. The lawyers who resorted to violence and vandalism are surely not to be

excused. The chief justice's stay order, which sparked the violence, was delivered moments before a High Court bench was about to issue ruling after hearing the case for two days, has, according to eminent jurists, no precedent either.

Moreover, some legal experts are of the opinion that it was a violation of the Constitution as well. In this regard, former Chief Justice Mostafa Kamal's observation seems really befitting. According to him, the chief justice reserves the constitutional right to constitute or reconstitute any bench. Theoretically, therefore, the CJ has the power, but how he exercises the authority depends on him, and its nature determines whether he has used the power in a bona-fide or mala-fide manner.

He also said that in his 40-year legal career he had never seen any chief justice exercising his power in this manner. Thus, the questions, very rightly raised by the Daily Star editorial arise: Why did the CJ prevent his two colleagues from carrying out their

judicial duties, and why did he intervene minutes before the order was to be issued? Did he intervene to serve justice, or was it to prevent justice from being served?

Regrettably, even the manner in which the CJ's order was carried by the Attorney General (AG) to the HC bench is something new in the history of court proceedings. Reportedly, a special section of the court has been delegated the duty, and those who perform the carrier's duty are called super-intendents. The AG has no business here. Painfully, though, this is the last thing one would want to happen to our apex court, particularly after all our institutions have been made controversial.

Arguably, today, the office of the president is fraught with controversy, thanks to lajuddin Ahmed's continuing allegiance and regular order taking from the BNP. And the current caretaker government is yet to shake off the stigma of controversy with one-third of its tenure gone. The Election Commission (EC) is

reeling under partisanship, and more so with the induction of at least one more blatantly BNP-aligned commissioner last week.

Meanwhile, NDI's very recent survey-based revelation of 1 crore 22 lac fake voters in the updated voter's list must have been the last nail in the coffin of the current EC's credibility. Arguably, the bureaucracy is now so embedded with the BNP and Jamaat's own people that removing even the slightest partisan colour of its ranks is a gigantic task. Now, of course, the higher judiciary has been added to the list of institutions of the state that our so-called democratic regimes have successfully tainted.

Admittedly, this was not the first case of perceived indiscretion by our chief justice. Previously, among many other instances, on June 18, 2005, a Division Bench, comprising Justice Shah Abu Nayeem Mominur Rahman and Justice Mainul Islam Chowdhury, of the High Court Division issued a rule calling upon the respondents to show cause as to why the holding of two constitutional posts at the same time by CEC Justice MA Aziz should not be declared to have been done without any lawful authority. Interestingly enough, within an hour of issuance and hearing of rule, the concerned judges' writ jurisdiction was taken away.

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doubt send all the wrong signals to the people of the country. Undeniably, it is the last resort for people to turn to with the hope of receiving justice. Now, the question that arises is, how can the country expect dispassionate dispensation of judgment, and impartial justice in

cases of disagreement from the highest of court, if a supreme person like the chief justice tends to bow down to perceived pressure, and the lawyers confront each other in the manner they did.

In fact, all our achievements are now poised to be ruined. Shall I be out of context if I say that all our

institutions are also being destroyed, just like systematic annihilation of a nation in a war? However, the people caught up in no man's land are being forced by the rulers and aristocrats to endure a unique happy ride down the drain. While the insatiable greed of our politicians has a

major role in this downfall, recent fallacies and frailties of some supposedly key individuals have also turned out to be critical.

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## A tale of four discourses

The discourse on dialogue is created by our foreign mentors, usually very low ranked bureaucrats (e.g. under secretaries, assistant secretaries etc) at the foreign offices of powerful countries like the US and UK. As I wrote in the past, dialogue is touted in the West as a popular method of dealing with conflicts. The success of a dialogue depends on many factors. First, the issue creating the controversy has to be solvable through dialogues. Second, a leveling playing field needs to be created for the conflicting parties. Finally, the conflicting parties have to be willing to sit together for dialogue.

AJM SHAFIUL ALAM BHUIYAN

FOUR discourses -- a discourse on peace, discourse on dialogue, discourse on a timely election, and discourse on the chief adviser's resignation -- are now at play for dominance in our political field. Not every discourse is equally powerful. At a given time a particular discourse becomes hegemonic and dominates the others. Discourses are created by social actors to sway public opinion in favor of their goals. By nature, every discourse highlights some issues and ignores some. Let us dissect the discourses.

The discourse on peace is the newest in the field. As its name suggests, it has been created by our Nobel Laureate Professor Yunus. He has asked our two principal political parties, AL and BNP -- to sign a peace deal, participate in the election, and form a coalition government. But, is this a timely call? Does it reflect the current political reality? No. Then why does a man who, I believe, deserves a place in world history for adding a humane character -- microcredit -- to capitalism, propose such a deal. Is he not aware of our political realities? I think he knows better than anyone else because he established an empire -- the Grameen Bank -- from

scratch. He lives his everyday life mingling with people from grass-roots.

I believe that he has proposed the deal because he has been frustrated by the way our political parties bicker, and how they always fail to stand together for national interests. But the call is, nonetheless, untimely and unrealistic because the problem in front of us at the moment is to ensure a fair election.

Despite all the good efforts of the advisers, it seems that the chief adviser (CA) has been implementing the design of his political party BNP, intentionally or unintentionally, reducing the chances of a fair

election. What is needed from a man like Prof. Yunus in this situation is for him to create pressure on the CA to stop his partisan maneuvers and behave like the guardian of the state.

The discourse on dialogue is created by our foreign mentors, usually very low ranked bureaucrats (e.g. under secretaries, assistant secretaries etc) at the foreign offices of powerful countries like the US and UK. As I wrote in the past, dialogue is touted in the West as a popular method of dealing with conflicts. The success of a dialogue depends on many factors. First, the issue creating the controversy has to be solvable through dialogues. Second, a leveling playing field needs to be created for the conflicting parties. Finally, the conflicting parties have to be willing to sit together for dialogue.

But the controversy, which we have in our political field at the moment, is hardly an issue for dialogue. Rather it is a matter of making all the arrangements necessary to conduct a fair election. During its tenure the BNP-Jamaat alliance had manned the Election

Commission (EC), the law enforcement agencies and key bureaucratic positions, such as home secretary and establishment secretary, with its flunkies so that it could manipulate the election.

The job of the caretaker government is to undo this, and man those institutions with efficient non-partisan people. And it is not a novel job, but routine work for a caretaker government. All the previous caretaker governments did this. But this time the CA is destroying the spirit of the caretaker government by making decisions in favor of the BNP-Jamaat alliance.

We developed the caretaker government system because our political parties don't trust each other, and they try to use every possible means to manipulate elections. When we have such a situation, why do our foreign mentors call for a dialogue? They are either not aware of our political reality or are assured that whoever comes to power would be loyal to them. And they do not need to worry about a fair election.

The third discourse, the dis-

course on a timely election, is being operationalized by the BNP-Jamaat alliance. They persuaded the CA to declare the election schedule so that they could have an election with their party men controlling the EC, bureaucracy, and other state machineries. The AL also tried to employ the same strategy in 2001, but failed.

The caretaker government at the time rightly did not heed AL's advice. It took speedy steps to fix the EC and bureaucracy to ensure the fairness of the election. At that time the CA was a non-partisan man, but this time the CA is a partisan man. So far, the third discourse seems to be the dominant one in terms of its ability to influence the important structures of the state such as the caretaker government, election commission and bureaucracy.

The discourse demanding the resignation of the CA is in the process of evolving. History suggests that it has a chance of becoming dominant over time. Examples are myriad at home and abroad. This type of discourse became dominant many times in

our political history. General Ershad could not stay in power even after holding unfair elections in 1986 and 1988. He had to step down. The BNP could not sustain its rule, holding an unfair election in February 1996.

The discourses on resignation take some time to establish themselves. They need mass support. But the context is ready for the ascendance of the discourse on resignation. The AL has created the context by its recent actions. The best move the AL made was that it willingly or unwillingly accepted a BNP man as the CA, and gave him time to show that he could rise above petty partisan interests.

So far the man has totally failed in the task. His everyday actions suggest that he does not put his money where his mouth is. He tells everyone, mainly foreign delegates, that he is doing everything necessary to ensure a fair election, but his actions demonstrate otherwise. A few days ago Mahfuz Anam, a leading political commentator and the Editor of The Daily Star, noted with sadness how the CA has turned "problem creator" instead of a

"problem solver."

The CA's last controversial effort was the appointment of two men of the BNP-Jamaat alliance as new election commissioners. His actions suggest that either he is a man of double standards, or someone is twisting his arm from behind the scene. But we don't know for sure which one is true. We certainly know that as a teacher at the University of Dhaka he led the pro-BNP faction of the teachers, and was rewarded with the chair of the University Grants Commission (UGC) and presidency of the Republic for his political activism.

If the CA continues to serve his benefactors, fails to put his money where his mouth is, and the advisers ultimately fail to bring him to the right direction, the discourse demanding his resignation will gain ground. The 14 party alliances just needs to make sure that its movement is non-violent, and sensitive to the well-being of ordinary people and the country's economy.

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## Gamble with people's trust

The initial victory of the movement led by the 14-party alliance has been described by the alliance leaders as victory of the people. Some enthusiasts among them even compared the size and magnitude of the movement with the mass upsurge in 1969 against the Pakistani military hegemony. Conveniently enough, the BNP chairperson Begum Khaleda Zia also thought that it was people's victory, though in a different context.

KAZI ALAUDDIN AHMED

LUST for power is considered to be almost a chronic malady with every human being who had tasted it at least once in life. And those who have had it a number of times in the past are, at times, forgetful that there may be a few better contenders for the power base. They are virtually complacent about their achievements, being persistently pampered by the ever-present side-kicks or sycophants. They beat their own drums, dispensing the self same state rhetoric against their nearest rivals in the race, for public consumption. This is an outrageous obsession to which many succumb. It accelerates moral degeneration.

The great English poet John Milton writes in Lust: "Capricious, wanton, bold and brutal lust is meanly selfish; when resisted, cruel; and, like the blast of pestilential winds, taints the sweet bloom of nature's fairest forms."

Our country is currently passing through a very critical juncture. The political turmoil over the 11-point demand of the Awami League led 14-party alliance has been partially productive. The stubborn, appar-

ently unbending to tremendous public pressure, Chief Election Commissioner Justice MA Aziz at last agreed to go on three months' leave.

At an earlier stage in the 14-party alliance movement Justice KM Hasan, the prospective chief adviser of the caretaker government declined to accept the position, plainly he bowed down to popular demand without much ado. The AL led 14-party alliance celebrated these two separate incidents as a partial victory. The blockade program across the country was again suspended, as if it had achieved success on the remaining counts in the 11-point demands.

In the meantime, the LDP of Col (ret'd.) Oli Ahmed and Bikalpa Dhara of Dr. Badruddoza Chowdhury formed a ceremonial merger and decided in favor of joining hands with the 14-party alliance parallel to its blockade program. Somewhat amusingly the Bangladesh Jatiya Party (BJP) of Ershad also opted for independent participation in 14-party blockade program. Abdul Kader Siddiqui and ASM Rab together followed suit, even though it had little or no

impact. Besides, many professional bodies and socio-cultural organizations are now very much in the movement for total reorganization of the Election Commission, in tune with 14-party alliance demand.

The initial victory of the movement led by the 14-party alliance has been described by the alliance leaders as victory of the people. Some enthusiasts among them even compared the size and magnitude of the movement with the mass upsurge in 1969 against the Pakistani military hegemony. Conveniently enough, the BNP chairperson Begum Khaleda Zia also thought that it was people's victory, though in a different context. She would consider CEC MA Aziz going on leave, instead of being removed by the president, as a direct vindication of the country's constitution.

She and her 4-party alliance have been, of late, very vocal advocates of the inviolability of the constitutional provisions in respect of CEC. So, she took it as victory of the people's verdict. It is expected that every citizen of the country have an unwritten moral obligation to uphold the dictates of the consti-

tution, more so, when our political leaders are concerned. There is indeed no scope for anyone to interpret the provisions in the constitution in a way that would suit one's overt or political purpose. Such a one-eyed approach is deplorable.

The former prime minister is extra-ordinarily vocal against any infringement of the constitution, but is yet to admit that the president, a BNP beneficiary for all practical purposes, flagrantly violated the constitution by assuming the concurrent responsibility of the chief adviser of the caretaker government. Legal experts consider such an act on his part as dubious, hence, unacceptable. A number of writ petitions against Dr lajuddin Ahmed now awaits hearing in the High Court.

Besides harping on the old tune of conspiracy by the Awami League, the BNP chairperson told her listeners in a meeting of the BNP faction of a professional association very recently that there was no rise in prices of essential commodities. She accused the news media of catering untrue stories about price hikes. On the contrary, she claimed that the purchasing capacity of the ordinary people has increased. She must have, by now, seen in the newspapers, and on the TV, the reaction of the low and middle-income group of people used to visiting bazaars. An old man was observed reacting seriously, and insisting that only those who

were not required to do their own shopping could make such cruel joke.

Assuming, however, that she was right, a pertinent question could be put to her: why, then, did she go all-out to control rising prices? Why were three commerce ministers changed successively to stop the trend? Was it, then, a political hoax to appease the people and to bid time? Her assessment of the price index also sent a funny message to the noted economists of the country.

We have yet another awfully intriguing statement from the BNP chairperson during her address to the members of the Doctors' Association of Bangladesh (DAB) last week. Although she is yet to start formal election campaigning, she didn't miss the opportunity to entreat her professional listeners to treat their patients free from now on and, in return, ask them to cast their votes in favor of the 4-party alliance. By any sensible definition, such an approach on the part of any political leader in the topmost echelon is unbecoming, to say the least.

The 14-party alliance and other like-minded political, social and cultural organizations, the Bar Association, Economists Association etc, have identified themselves with the 11-point demands of the 14-party alliance. The Awami League led 14-party alliance organized a protest rally around Bangabhaban on November 27, and they

observed a similar program around the Election Commission on November 28.

Coincidentally, following a late night rendezvous with the president/chief adviser of the caretaker government, the secretary of the Election Commission, Abdur Rashid Sarker, held a press conference on November 27. Among others, the agenda of the press briefing included announcement of the contentious election schedule. On the contrary, the 14-party alliance leaders have been categorically asking the president/chief adviser to defer announcement of election schedule till the large-scale mistakes in the voter list are removed. The hurried announcement, incidentally, satisfies the demand of the BNP led 4-party alliance.

The situation was about to calm down, but such a provocative act by the Election Commission might spark off a terrible crisis in the country. The 14-party alliance, most likely, will take it for a challenge and will resume a full-throated protest to foil the behind the curtain machinations. They have, in the meantime, strongly condemned the action of the EC and straightway rejected the proposition from the pulpit of the "gherao" program of Bangabhaban. The 4-party alliance, on the other hand, and as could be easily anticipated, thanked the Election Commission for announcing the schedule of the election.

The Awami League presidium members already had an emergency meeting at their Dhanmondi office. Sheikh Hasina presided over both the meetings on the next course of action that the alliance would take. Away in the streets around Bangabhaban the Liberal Democratic Party procession, led by Mahi B Chowdhury, joined the 14-party alliance siege of Bangabhaban.

Notwithstanding the massive protest against his failure to be neutral, and the writ petitions in the High court, the president/chief adviser of the caretaker government appears to have succumbed to the pressure of his benefactors by granting tacit consent to announcement of the election schedule. Pitiably enough, the ten advisers had not been taken into confidence on this issue.

In actual practice, the advisers of the caretaker government appear to have been deliberately ignored in decision making. They have been rendered as mere entities, having no say in the policy options being unilaterally exercised by the president/chief adviser of the caretaker government.

It appears that the incumbent president/chief adviser of the caretaker government has a running mate in the person of Justice Mahfuzur Rahman, the acting chief election commissioner. By convention and traditional practices in the bureaucratic system of government the

Chief Election Commissioner Justice MA Aziz was requested to make over charge of his office to the next senior most election commissioner, in this case Justice Mahfuzur Rahman.

Since he went on long leave on the advice/request of the head of the state, and since he didn't consider it necessary to formally hand over charge, it was incumbent upon the president himself to assign the officiating charge to anyone whom he considered suitable. It was very unfortunate that Justice Mahfuzur Rahman thought it convenient to assume the "acting" responsibilities, evidently on the strength of his relative seniority over the other two ECs.

Yet, the process he adopted had an intriguingly strange resemblance to the manner that the president appointed himself as the chief adviser of the caretaker government. Moreover, his pre-emptive remarks that he would not accept anyone from the executive cadre on his head was also uncalled for. He added, too, that as a member of the judiciary belonging to the High Court none in the executive branch of the government could be his boss. His remarks to the pressmen on the controversial voter list alleged to be containing 1 crore 22 lakh fictitious voters, was also not at all re-assuring.

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