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USA:

It is to my belief that the views expressed by our honourable President is shared by many. The main duty of a student is to indulge himself in the pursuit of knowledge. It is indeed very surprising how some students were polytricked with promises of success made easy; if they served the needs of certain quarters. These parties never hesitate to plunder our most valuable national JEWELS "the students". I hope they are ashamed of their heinous deeds. If they are indeed; President Shahabuddin's tenure would become a success.

Mitji Abdul Baten  
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Sweden:

In our 25 years of independent history we have got a neutral, brilliant and unprotestedly elected president in our country. His rule during the Caretaker period was above dispute. Recently his remarks on student politics hurt student-politicians in the country. Some student leaders have protested his statement. It is only protest without logic or value.

The student leaders in the country have no idea about the modern world and developed countries. They are so foolish that they can not realise the reality. If we look at the modern world, for instance, the USA, England, Canada, Australia, Sweden, we see the universities in these countries are above any dirty politics. There is no student branch or tail of main political parties at the universities in respective countries. Even in India, the universities are free of politics, resulted duly completion of study plans. That is why we see, every year a big portion of Bangladeshi students are crossing the border to India to take their higher studies and coming back having completed their courses in stipulated period. On the other hand, our students in the universities and colleges are being only frustrated as they are loos-

ing their valuable times in cause of sessionjam. But paradoxically we see that our student leaders are becoming millionaires or owner of industries, cars, houses, but how! This is the main fact to make protest against the statement of the president. The student means who is studying, but our student leaders are so far from studies. They should study regularly instead of doing politics to make our country happy and prosperous.

Yasir Simon Islam  
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USA:

The honourable President has done something which no one could ever do before. We all approve what he has done or said. It is definitely for the better of our country and we all will support it. For once the student bodies should start to think about the future of our country rather than what their leader says. Allah is with us, because we know we have a good and honest president and prime minister in hand.

## A letter to the President

October 17, 1996

Dear Mr. President:

During the past week your comment on a moratorium of student politics in educational institutions in Bangladesh has earned praise among Bangladeshi origin people outside Bangladesh. The history of student politics in Bangladesh has been marred with violence which has been more prominent since the creation of the country. Student violence in most institutions of learning has caused intellectual hemorrhage resulting in irreparable damage to society. The political parties in Bangladesh, by creating student wings have only added to this hemorrhage.

Many of us of Bangladeshi origin are involved in the cutting edge technologies which are benefiting countries other than Bangladesh. Because we were determined to have sound

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## Bangladesh

# President's view on student politics

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Of late many of your readers are sharing the newly elected President's statement on Student Politics. One of the reader termed it as 'politically correct'. I, however, believe it as an honest vow but an amateur & non-political idea. The participation of students in politics cannot be stopped if we do not change the existing nature of national politics and believe me that is a real big job. But can we take a different approach? Can we think of a situation when students won't participate in political activities even they

are asked to? For example, there is no strike or day-offs in the private universities? Why not? The students there pay for their education and behave in a more sensible way and like to make their money work for them.

Recently, we are all in favour of disinvestments. Can we disinvest the Dhaka University to some efficient management companies with high level of skill and manpower shrinking the size of the student population which in turn will only reduce the number of educated unemployed youths. The University must run as a viable industry. Deserving students should be given opportunity through "earn while you learn" projects. Today's Dhaka University student's tuition fees only give a picture of a sick industry, and a sick industry cannot produce sound products.

Joy Alamgir  
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USA:

The President of Bangladesh has taken a bold step in discouraging student politics. Obviously, people can say it is the right of the students to engage in politics. Politics is a part of education. But politics with violence, killings, strikes is never desirable. For the greater good of the whole society and country student politics I believe should be banned for atleast five years in all public educational institutions of the country. If stability is reached within five years, only then can student politics be again introduced. Bangladeshi leaders now needs to show that they are capable of taking bold steps. These steps might be unpopular to some people but in the long

run, the steps will pay off.

M D Kamrul Hassan  
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UK:

The country needed a brave, patriotic and bold leader like our newly elected President

Justice Shahabuddin Ahmed. The assumption of his job as a President is very timely and he proved it by suggesting a temporary moratorium on student politics in the country for the time being. At the threshold of a new century when every nation

## Let the students decide themselves

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Japan:

The remark of the outspoken President on the moratorium of student politics is praiseworthy but not a novel one from persons held in high esteem like him. Late Justice Abu Sayeed Chowdhury also appealed for the same thing a few days before his death during

the Ershad period. Unluckily, his voice got shrouded by the shouts of the so-called student-political parties, a section of intellectuals who are widely known as non-stop flatterers of major political parties. I am afraid, the present President's appeal will also meet the same fate. But can't we preclude this fate?

Obviously, it's not the students' right of politics, but the present partisan politics by them which has been implied by the President's call. I won't go for arguing in support of it. I don't feel the need, either. Without much talking about its justification, instead of giving unnecessary coverage to the so-called student leaders whose performance/ability as a student is not itself questionable, why not let the students of major educational institutes decide, through vote, whether they want the presence of stu-

dent political parties or not. At the same time, I urge our media-men to draw line between present student-politics and the politics it is meant. Our existing student leaders, being virtually brain-washed, hardly represent the students of the institute they belong to nominally. Whether student politics are permitted or not, students always play the pivotal role against unjust in any society. In Thailand, students moved to the street following the arrest of Chamelom and unseated Gen. Suchinda within a few days. Burmese students are still fighting against SLORC around the world. China saw Tianan Men square uprise. Even America had to face agitation from students in her own territory during the period of Vietnam war. In any case, students were not required to affiliate to any existing political parties. Common students are enough to rise to the occasion. That's why, I think it is meaningless to provide space to name-carrying students leaders for commenting against the President's call. Instead, please give more coverage to the ordinary students so that a vote by them can be realized. Otherwise, Justice Shahabuddin's appeal will follow the course of Justice Abu Sayeed Chowdhury's appeal.

is trying to bring dynamism in the country's economic sector we proved to be doing the opposite. The first condition to improve our strangled economy is to bring political stability in every sphere of life. It appears that higher education institutes and different labour organisations are the most important parameter to bring political stability to the country. In this letter, I would like to concentrate only on educational institute and student politics. Education institutes should be the place to study and the place of excellence not the battlefield of rival student groups. At this stage it remains to be defined what do we mean by student politics? Looking back to my experience of student politics I only can say that our so called student leader do not do politics instead they follow the command from respective parent party. They hardly learn to disagree with their leader. Disagreeing with idea of their leader is considered to be immoral. The student leaders nowadays are not academic. One can hardly find a student leader who is also good student. It seems two things can not go together, whereas it should not be the case.

Every year we loss many students due to gun battle between or among different student wings of main stream party. We became used to with this kind of news and it does not shock us with the same magnitude as we should be. We loss our precious time due to so called session jam we became used to with that as well. Spending more time in the University also means spending more money and bringing

frustration to the family who support students financially. We can not take a U-turn from this situation overnight. But, definitely time has come to take step towards this direction and I believe we have to start from the beginning by banning student politics, at least for the time it requires to bring normal academic atmosphere. Nevertheless, student politics in different college should remain ban.

I was very happy to see that immediately after the statement by the President many political parties supported the idea. But I am equally shocked that student wings of some political parties protested the statement by President Justice Shahabuddin Ahmed. I personally do think that banning student politics temporarily will help to bringing a congenial atmosphere to the country. I believe those leaders who protested the president's statement are not normal student. This is not to offend them but it is the fact that I observed during my student life. Politics has become a kind of profession for those student leaders and it provide a great magnitude of hope to become leader of their parent party in future. In many cases, these student leaders are the worst in the class as far as their academic performance is concerned. They are the most likely to protest and therefore it is not unlikely at all. It should be mentioned that they do not represent our normal student. I believe time has come for us to realize that enough is enough. We needed someone to ring the bell to tell us that student politics should be band temporarily and we have that brave man.

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# FOCUS

## Law and Our Rights

### INTERVIEW

## "To Treat Indemnity Ordinance as a Law is Itself Unconstitutional and Illegal" — Barrister Amir-ul Islam

Recently, the State Minister for Law, Justice & Parliamentary Affairs Abdul Matin Khasru MP submitted the report of the expert committee headed by the Law Secretary comprising of fully bureaucrats on the repeal of the Indemnity Ordinance to the Prime Minister. And the report sparks a controversy. Indemnity Ordinance written by a set of bureaucrats in 1975 and is now being interpreted by another set in the Ministry. In the proposed repeal drafted by them (bureaucrats) an indirect validation of the said Ordinance has been made! Abul Hasnat Monjurul Kabir talks to Barrister Amir-ul Islam, Senior Advocate of Bangladesh Supreme Court who was also one of the members of the Drafting Committee of the Constitution of Bangladesh, regarding the controversy.

Daily Star (DS): What is the status of the Indemnity Ordinance?

Barrister Amir-ul Islam (AI): As I am on record having written articles published in The Daily Star and other newspapers that Indemnity Ordinance is no piece of legislation. It is merely a decree of the killers. Power to provide indemnity is incorporated in our Constitution and that power is very limited under Article 46. The Article reads... "Parliament may by law make provision for indemnifying any person in the service of the Republic or any other person in respect of any act done by him in connection with the national liberation struggle or the maintenance or restoration of order in any area in Bangladesh or to validate any sentence passed, punishment inflicted, forfeiture ordered, or other act done in any such area". There are only two objects (i.e. in connection with Liberation War and or maintenance or restoration of order) for which the indemnity law can be passed. This power has been exclusively given to the parliament and cannot be exercised under the ordinance making power. In our Constitution power to make law is vested in the Parliament. The President can also by Ordinance make law when the parliament is not in session. But there are certain matters for which the Constitution has specifically designated the parliament to make the law and that specific delegation can not be delegated under the general scheme by resorting to the Ordinance making power. Indemnity law is that kind of law (which is specifically designated for the parliament) and the parliament alone can make (such law and for very limited purpose). Therefore, there is no

scope for any President or for that matter any killer to indemnify any act of crime by a decree. So on the day that this law was born or purported to have been given birth of was still borne. It was a dead letter on its very inception. So from the very beginning, this is simply not a law.

Secondly, another very crucial matter is that Khandaker Mostaque Ahmed who promulgated the Ordinance had actually no Constitutional right to do so. He was not a successor under the Constitution. According to the then Constitution when the post of the President fell vacant, the Vice President of the Republic was to take over as President. In the absence of the Vice President, the Speaker of the Jatiya Sangsad would become the President. He (Khandaker Mostaque) was then neither the Vice President nor the Speaker of Parliament. So the assumption of Presidency by him itself was unconstitutional and his status was no better nor worse than of an usurper.

Thirdly, that this ordinance was never placed before the parliament even after the parliament was restored or during the time when the parliament was in existence.

Therefore the Indemnity Ordinance which was still borne having not been placed before the parliament under Article 93 it has never had any legitimacy or efficacy as a law.

DS: But the six-member expert committee headed by the Law Secretary Aminullah in its recent six-page report submitted to the PM through the State Minister for Law Justice and Parliamentary Affairs Abdul Matin Khasru find the Law (Indemnity Ordinance) to be a legal one and the Law Commission, headed by former Chief Justice F K M A Munim expressed complete agreement with the findings of the bureaucratic committee. So what is your reaction in this regard?

AI: I was also surprised to read as you must have noticed that the committee report throws a totally different shed than the opinion expressed by the Law Minister himself. I find myself more in agreement with Mr Khasru. But unfortunately laws are written by the bureaucrats, interpreted as well as implemented by the bureaucrats.

Indemnity Ordinance must have been drafted by a predecessor of the present bureaucrat and the same is now interpreted by a set of present bureaucrats which is vetted by a Law Commission chaired by a former Chief Justice who despite his oath to uphold the supremacy of the Constitution by his own judgment in Helium Khan's case 30 DLR (SC.) 207 decided on January 4, 1978 treating Martial Law as a Supra Law and Constitution having according to his Lordship as he then was thus lost its supremacy despite Article 7 being then very much alive and in existence at the relevant time starting on the face of His Lordship "The Constitution is as the solemn expression of the will of the people, the supreme law of the Republic".

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DS: What do you think then is the impact of the fifth amendment vis-a-vis the Indemnity Ordinance?

AI: My only humble submission in this respect is that the 4th schedule provided under Article 150 of our Constitution is an one shot saving provided for the transition between the passage of the Constitution in 1972 and the Constitution coming into full force after the Parliament could be ushered in. 4th schedule is therefore time bound. No new law can be added to it. Not to talk about any instrument which was unconstitutional of its inception. Our Constitution does not contemplate ever a situation without a Constitution, as this is the Supreme Law and can not allow itself to be violated. It was contemplated at the time when the Constitution was passed that there would be a period of transition between the passage of the Constitution and the time when the Constitution would have come into force after the parliament is being elected and able to sit. So, during this period of transition we needed certain laws to be saved. And those provision which are there under the 4th schedule has to be read in conjunction with Article 150.

Subsequent amendment of the 4th schedule by adding new laws which was unconstitutional at its birth can not be validated by any means as the same was never within the contemplation either of Article 150 or of Article 7 nor the same can

I can not therefore imagine that any killing which is a crime can be indemnified by the decree of the killers, in such event this could become a country not of the Constitution nor under the Constitution but of the killers and under the killers. Therefore, to treat Indemnity Ordinance as a law itself is illegal and unconstitutional.



Therefore, there is no scope for any President or for that matter any killer to indemnify any act of crime by a decree. So on the day that this law was born or purported to have been given birth of was still borne. It was a dead letter on its very inception. So from the very beginning, this is simply not a law.

be within the contemplation of the concept of Constitutional governance and of its continuity.

His Lordship Mr Justice Mustafa Kamal in his Kamini Kumar Memorial lecture tersely comments that "Such a steady stream of intermittent indemnities mark out the Constitution of Bangladesh a unique one, leaving one to wonder whether indemnities are basic feature of the Constitution or not yet, apart from some bald generalization, the nature, extent and applicability of these provisions have not received an

indepth treatment so far." It is the basic structure of the Constitution or you may say the very concept of the Constitution that the Republic can not be efficacious without its Constitution. Therefore to allow any law to be included in the 4th schedule which has not been passed in accordance with the Constitution can not be validated merely by inserting it in the 4th schedule. If one would allow that to happen then this Constitution will lose its supremacy as is provided under Art 7 which provide that "This Constitution is, as the solemn expression of the will of the people, the supreme law of the republic". Irrespective of the political affiliation as a nation we all are committed to the constitutional government and the constitutional regime. ministries, our constitutional lawyers and our judges and any one who is dealing with the law as being the custodian or otherwise of the Constitution in direct or indirect manner ought

.... which is vetted by a Law Commission chaired by a former Chief Justice who despite his oath to uphold the supremacy of the Constitution by his own judgment in Helium Khan's case 30 DLR (SC.) 207 decided on January 4, 1978 treating Martial Law as a Supra Law and Constitution having according to his Lordship as he then was thus lost its supremacy despite Article 7 being then very much alive and in existence at the relevant time starting on the face of His Lordship "The Constitution is as the solemn expression of the will of the people, the supreme law of the Republic".

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not to allow the Constitution to be diluted as it has been allowed under the usurpers regime. So anyone who would say that the Indemnity Ordinance is still a law is actually saying that the Constitution is no longer the supreme law. Therefore, anti-Constitution to treat the Indemnity Ordinance as a law, if it need to be repeated it is merely in order to remove it from the statute book.

This Ordinance which is purported to give indemnity to the killers is also violative of the human rights and the fundamental rights contained in the Constitution in form of Article 31 and Article 32. I can not therefore imagine that any killing which is a crime can be indemnified by the decree of the killers, in such event this could become a country not of the Constitution nor under the Constitution but of the killers and under the killers. Therefore, to treat Indemnity Ordinance as a law itself is illegal and unconstitutional.

DS: Then, what do you think the Parliament should do?

AI: Parliament can certainly remove this Ordinance from the statute book by saying that it has never been passed by the Parliament nor such Ordinance is contemplated under Art 46 and hence it be removed from the statute book. I must appreciate the initiative in this regard taken at the instance of the Prime Minister and on the invitation of the Chief Whip and the PM's Parliamentary Affairs Advisor there was an expert's meeting in which the MP's of the ruling party were also present.

In that meeting former Chief Justice Kemaluddin Hossain, Barrister Syed Ishaq Ahmed, former Attorney General Mr Rafiqul Haque and myself were invited to give our opinion and we all four came to the common

conclusion that this Indemnity Ordinance is violative of the Constitution and could not have been contemplated as being a law within the meaning of the Constitution. Syed Ishaq Ahmed and Rafiqul Haque preferred that this matter need to be repealed. We all were maintain that it can be repealed by simple majority as it is not any part of the Constitution. It was suggested by me, however, that this Indemnity Ordinance should be challenged in the court and that it could also be referred to the government to the Appellate Division under Article 106 for their opinion. But as it seemed in that meeting other experts were in favour of not causing any speculation with regard to what might be the opinion of the Appellate Division of the Supreme Court. They rather preferred for early end of the Indemnity Ordinance. Therefore the leading trend was that since there is a majority of the ruling party in the parliament this could be repealed by simple majority but then I cautioned that if this so called law is going to be repealed, it ought to be buried in such a manner so that it may not give away impression that this was ever a law. My suggestion was that if this law has to be repealed by the parliament, let it be repealed as an attempt for the removal of doubt and it should be removed from the statute book saying very clearly that this was not within the contemplation of Article 46 of the Constitution and that the parliament had not passed such law. This Ordinance was totally without jurisdiction and was still born. In order however to remove any doubt the parliament is repealing this so-called Ordinance in order to remove the same from the Statute Book in a manner as to have effect as though this Ordinance has never been made or promulgated or to have had any effect of law whatsoever.