

FOCUS

Who Protected the Killers?

by Prof Abu Sayeed

With the holding of trial of the killing of the father of the nation Bangabandhu, it has become "very clear to the people that there are two courses of politics in the country. On the one side, there is a course of killing, coup, conspiracy and anti-independence activities while on the other end, the course for establishing the values of independence and war of liberation, democracy, justice, rule of law and social progress."

KHANDAKAR Mustafa Ahmed and his fellow conspirators usurped power illegally on August 15, 1975 by assassinating the father of the nation and elected President of the country Bangabandhu Sheikh Mujibur Rahman. These conspirators clamped martial law regulations by suspending the Parliament and the Constitution in force, which was a fundamental contradiction.

The Constitution provided for the discharging of the responsibility of the office of the President by the Vice President and then, by the Speaker in absence of the President and the Vice-President. So, Khandakar Mustafa was totally an illegal President in the light of these provisions of the Constitution. The constitutional bindings were not known to Mustafa either and that was why Mustafa in his unilateral declaration of martial law promulgation on August 20 that year made in the name of Allah and the people said, "I am assuming the post of the President of the People's Republic of Bangladesh and assuming the office of the President from the morning of August 15, 1975."

Indemnity Ordinance was promulgated on September 26, 1975, almost over a month after the assassination of the father of the nation Bangabandhu Sheikh Mujibur Rahman and members of his family. This was done for protection of the killers. To this day, this repugnant Ordinance is dubbed by the world conscience as a total violation of the Constitution and of all norms of humanity and fundamental rights. The Indemnity Ordinance said, "This ordinance is promulgated to prevent the taking of any legal action against anybody for formulating and executing plan and taking any steps for effecting the historic change and declaring martial law in the morning of August 15, 1975."

Indulging in the politics of coup and conspiracy, Ziaur Rahman captured state power on November 7, 1975. The book titled *Last Phase in Bangabandhu* written by Justice Abu Sadat Mohammed Sayem exposes Zia's politics and shows the true nature of his activities.

Ziaur Rahman took over as Chief Martial Law Administrator from President Justice Sayem on November 29, 1976. The martial law promulgation (third declaration) said, "The affairs of the country shall be conducted as per law that the Ziaur Rahman will decide or promulgate." That meant the country was being governed under military autocracy and one-man rule.

Ziaur Rahman then elevated himself to the post of the President through a "yes-no" referendum under the cover of martial law, prohibiting any right to assembly and meeting, curbing fundamental rights. This was done to legalise his illegal activities, to consolidate power and in violation of military rules. Foreign press cast doubt on the referendum and reported that bagging of 99 per cent votes

could be achieved only through unfair means. For many, it was a blatant use of vote rigging. Despite elevating himself to the office of President and the so-called referendum, Zia continued with martial law.

After assuming power, Ziaur Rahman held a farcical election under martial law while the Constitution remained suspended. The elections were not designed to establish democracy in the country as he tried to project, but to set up a rubber stamp parliament to legalise all his illegal activities.

The first sitting of that rubber stamp parliament was held on April 4, 1979. The power that a parliament should have under a democratic system was absent in the rubber-stamp parliament created by Zia. Yet it was claimed that the parliament was sovereign. The Deputy Leader of the Opposition of that parliament once questioned the Leader of the House, "where lay the power of the House?" In reply the Leader of the House said, "it has power, but that is in secrecy." That means everything of that parliament was veiled in secrecy and beyond the knowledge of the people.

Next day, on April 5, 1979, on the eve of passing of the infamous Indemnity Ordinance, it was protested by saying: "the law that was being passed in the parliament under gun point and under martial law will remain as the blackest chapter in our history." It was said in the parliament, "if this law (Indemnity Ordinance) is enacted, it will forestall investigation of the killing of the father of the nation Bangabandhu and with the passage of the legislation, the law of the same nature promulgated after August 15 will remain in vogue."

Protesting the enactment of the Indemnity Ordinance it was also stated in the parliament that if this law was passed then the trial for the killing in jail of the four great leaders who led the war of liberation for independence of Bangladesh — Syed Nazrul Islam, Tajuddin Ahmed, M Mansur Ali and Kamruzzaman — could not be held.

The 5th amendment to the Constitution was adopted in the parliament on April 6, 1979 totally ignoring the demand raised within and outside the parliament for holding trial of the killings of the father of the nation and of the four leaders.

In a nutshell, the trial of the killing of Bangabandhu was stopped through the passage of the 5th amendment. This amendment, at the same time, legalised coups and killings of many patriotic members of the armed forces, political leaders and workers without trial. It also legalised usurping power illegally, violation of army act and all illegal activities since August 15, 1975.

Mustaq promulgated the Indemnity Ordinance after the assassination of the father of the nation and Ziaur Rahman made a permanent arrangement to exempt the killers by incorporating this notorious ordinance into the Constitu-

tion. In the meantime, on September 18, 1980, a commission was constituted in London under the leadership of Sir Thomas William for investigation into the killing of Bangabandhu and four leaders in the Dhaka Central Jail. The terms of reference of the commission included investigation into the matters that were obstructing the process of law and trial of the persons responsible for the killing of the father of the nation, the members of his family and the four leaders inside the jail.

When the commission wanted to come to Dhaka, the government of Ziaur Rahman on January 13, 1981 refused visa. The commission ultimately came to the conclusion that (a) the process of law and trial of the killers were not allowed to proceed in its own course, (b) it was evident that the government was responsible for obstructing this process and (c) law and justice should be allowed to follow their own course by removing the obstacles.

The observation, analysis and review of the internationally constituted investigation commission made it clear that Ziaur Rahman was 'associated' with the killings of August 15 by obstructing the process of justice. The statement of Faruq, one of the principal conspirators in the murder of Bangabandhu, corroborated this.

Faruq in his statement said, "Ziaur Rahman knew about the plan for killing of Bangabandhu. Faruq even challenged, 'If Zia has the guts, let him hold my trial'."

Faruq's admission was justified from the fact that Ziaur Rahman even rewarded the self-confessed killers by giving them diplomatic assignments in different countries. On June 8, 1976, Ziaur Rahman appointed 12 of the killers in various embassies. They were: (1) Lt Col Sariful Haq Dalim as First Secretary in Bangladesh mission in Kuwait, (2) Col Aziz Pasha as First Secretary in Argentina mission, (3) Major Mohiuddin as Second Secretary in Algerian mission, (4) Major Shahriar as Second Secretary in Indonesia, (5) Major Bazul Huda as Second Secretary in Pakistan, (6) Major Rashid Chowdhury as Second Secretary in Saudi Arabia, (7) Major Noor as Second Secretary in Iran, (8) Major Sariful Hossain as Second Secretary in Kuwait, (9) Capt Kismat Hossain as Third Secretary in Abu Dhabi, (10) Lt Khairuzaman as Third Secretary in Egypt, (11) Lt Nazmul Hussain as Third Secretary in Canada and (12) Lt Abdul Majid as Third Secretary in Senegal.

The framework of the three alliances worked out in 1990, can be termed as the *magna carta* of the movement against the autocratic regime of Husain Mohammad Ershad. Awami League-led 15 parties, BNP-led 7 parties and Left Front-led parties — the three alliances — singled this framework. The downfall of Ershad came through mass upsurge that united the people under the banner of this framework.

The caretaker government was formed in accordance with this framework of the three alliances. BNP getting more seats, but less popular votes in the election in 1991 under caretaker government, formed the subsequent government. After the election the BNP chairperson tried to form a Zia-Ershad-type presidential system of government deviating from the outline of the framework of the three alliances which called for the formation of parliamentary system of government. BNP, according to its party constitution, did not believe in the parliamentary system of government. Begum Zia was compelled to accept the parliamentary form of government under indirect pressure from the chief of the caretaker government and for the fear of losing public opinion in face of strong public opinion countrywide mobilised by Sheikh Hasina. The parliamentary system was re-established by amending the Constitution on August 6, 1991.

On the eve of reverting to the parliamentary system of government, the former Speaker Sheikh Razzak Ali and others came to Bangabandhu Bhavan and assured Sheikh Hasina on behalf of Begum Khaleda Zia that they would take steps to repeal the notorious Indemnity Ordinance to pave the way for trial of the killing of Bangabandhu.

But, ironically, they betrayed their commitment. The framework of the three alliances clearly expressed its commitment to put an end to the politics of killings, conspiracy and coup. But BNP betrayed its pledges time and again for establishment of rule of law, justice and fundamental rights by not abolishing the notorious Indemnity Bill and holding the trial of killers of Bangabandhu.

In this backdrop, at the instruction of the then Leader of the Opposition, Sheikh Hasina, the then Chief Whip of the Opposition, Mohammad Nasim, introduced the Indemnity Ordinance Repeal Bill-1991 at the Jatiya Sangsad on August 8, 1991.

After introducing the bill, Mohammad Nasim proposed the formation of a special committee to examine and scrutinise the bill in the light of the Constitution and other laws of the land and submit its report within one month. The then Minister for Law, Justice and Parliamentary Affairs Mirza Golam Hafiz was proposed as the chairman of the committee while Education Minister Dr Badruddoza Chowdhury, Deputy Leader of the Opposition, Abdu Samad Azad, Agriculture, Irrigation, Water Resources and Flood Control Minister Major General (retired) Majedul Haque, Deputy Speaker Sheikh Razaque Ali, Local Government, Rural Development and Cooperatives Minister Abdus Salam Talukdar, Chief Whip Khondkar Delwar Hossain, State Minister for Labour and Manpower Minister Mohammad Rafiqul Islam, State Minister for Food Minister Begum Sajeda Chowdhury, Mr Suranjit Sengupta, Mr Sudhanshu Shekhar Haldar, Opposition Chief Whip Mohammad Nasim, Advocate Fazole Rabbi and Sheikh Ansar Ali were proposed as members of the committee.

When the then Deputy Speaker as chairperson of that particular sitting invited the Law Minister to speak on the matter, Mirza Golam Hafiz said, "Mr Mohammad Nasim has proposed for a select committee on the Indemnity Ordinance, 1975. I wholeheartedly support his proposal. Though it's not time to make statement yet I would like to speak a few words in its support. I have said twice before that this law is very complicated and later I also said that it has many knots to be unknotted. Previously I alone tried to untie the knots. Now we are fifteen. Now I believe that we shall be successful by jointly putting in our efforts in untying the knots."

Mirza Golam Hafiz further said: "All excepting one or two of the honourable members who have been proposed as members in the select committee were in the select committee for the election and two amendments of the Constitution. There they also confronted such problems and came out successful in untying many complicated knots and could pass the two bills unanimously. I think that was a great success. Such a success is rare in the constitutional history. We shall sit together with those honourable members and hope our sincerity and congenial atmosphere will help us to solve the problems easily. We shall try to untie the knots in the select committee through discussion among ourselves and submit the final report as early as possible."

But in reality nothing tangible was done. That is why, the

tenure of the committee was extended further by 60 days on October 11, 1991. But even then no progress could be attained. On June 25, 1992, the tenure of the committee was extended further for another 70 days for the second time.

Even then no progress could be made to repeal the Indemnity Ordinance. After this, on March, 1992, another 70 days were allowed to the committee for the third time. But practically nothing was done. All these extension of time appeared to be tactics to deceive the people and to kill time.

Even after all this on July 15, 1993, the tenure of the committee was extended by another 80 days for the fourth time. Yet no progress could be achieved in respect of repealing the Indemnity Ordinance.

In the meantime, public opinion demanding the trial of the killers of Bangabandhu and members of his family became stronger and stronger throughout the country. Side by side corruption, nepotism, inefficiency and repression and oppression by the Khaleda Zia government reached to such height that a mass movement demanding elections under a caretaker government brewed up and members of the opposition under the leadership of Sheikh Hasina had to tender resignation from the parliament. Repressions were perpetrated on thousands of leaders and workers just to retain power. Several hundred Awami League leaders and workers were killed.

BNP leader Begum Khaleda Zia held a farcical election on February 15, 1996 in a desperate bid to retain power. The nation rejected that election. The foreign journalists commented that they had not seen such voterless farcical elections anywhere in their lives. The final movement for toppling the government began. Crores of Bangladeshis at the call of people's leader Sheikh Hasina embarked on a non-cooperation movement.

The government of Begum Khaleda Zia fell on March 30 through a mass-upsurge. The date of elections was fixed on June 12, 1996. The Awami League president Sheikh Hasina in her address to the nation on the eve of elections expressed her firm commitment to establish rule of law and that if voted to power she will repeal all black laws including the infamous Indemnity Ordinance, 1975.

The Awami League won the elections held in a free and fair atmosphere under the caretaker government and formed the government on June 23, 1996.

On July 23, 1996, the State Minister for Law, Justice and

Parliamentary Affairs Advocate Abdul Matin Khasru introduced a bill on the floor of the Jatiya Sangsad for repealing the Indemnity Ordinance, 1975 and sent it to the special committee constituted at the proposal of the Leader of the House Prime Minister Sheikh Hasina.

The bill said: any action or any steps, any certificate issued or any order or any instruction or any right achieved under the act or any facilities or privileges or responsibilities or liabilities created for the government or any authority under the ordinance, in all such cases, the provisions under section 6 of the general clauses act 1979 shall not be applicable and such action, steps, certificates or instructions, or achieved right or created liabilities and responsibilities shall be ineffective and cancelled with the repealing of the ordinance through sub-section 1 of the bill.

The statement containing the objects and reasons of the bill said: the 1975 Indemnity Ordinance is contrary to the fundamental human rights and basic rights and rule of law as enshrined and guaranteed by the Constitution. This bill has been brought before the House as it is imperative and necessary to repeal the ordinance to preserve the rights of seeking the shelter of law for ensuring rule of law in the country.

A high powered six-member committee headed by Law Secretary was formed with regard to the bill. The bill was sent to the permanent law commission headed by former Chief Justice Dr F K M A Munim seeking its opinion. Justice Amin-ur Rahman Khan and Justice Nayeem Uddin Ahmed were included in the commission.

They, on October 17, 1996 gave the following opinion: "the Law Commission has examined the Indemnity Ordinance, 1975 with reference to paragraph 18 of the fourth schedule to the Constitution inserted by S.2 of the Constitution (Fifth Amendment) Act, 1979 and Article 142 of the Constitution. The commission was of the opinion that the Indemnity Ordinance, 1975, can be repealed by an act of parliament passed by a simple majority under article 80 of the Constitution or by promulgating an Ordinance under Article 93 of the Constitution, and for repealing the Indemnity Ordinance, 1975, the procedure laid down in Article 142 for amendment of the Constitution need not be followed."

The Indemnity Bill was introduced before the Jatiya Sangsad on November 19, 1996. At the time of its introduction, the members belonging to the BNP and the Jamaat-e-Islami remained absent from the House. The House unanimously sent the bill to the special committee of Jatiya Sangsad.

Advocate Rahmat Ali (Awami League) was the chairman of the special committee, while its members were Agriculture Minister Begum Matia Chowdhury, State Minister for Law, Advocate Abdul Matin Khasru, Abdul Mannan, Sayeda

Sajeda Chowdhury, Col (retired) Shawkat Ali, Dr Mizanul Haq and Sheikh Fazul Karim Selim from Awami League, Khondkar Delwar Hossain, Barrister Jamiruddin Sircar from BNP, Advocate Fazole Rabbi, Tajul Islam Chowdhury from Jatiya Party and Kazi Shamsur Rahman from Jamaat-e-Islami.

Though the members belonging to BNP became members of the special committee, they remained absent from the committee meetings.

After 21 years, one month and 16 days, on November 12, 1996, the Indemnity (Repeal) Bill, 1996 was passed unanimously by the Jatiya Sangsad in an emotion-charged atmosphere. The bill was taken up for consideration by the House at 8.46 pm and after deliberations it was adopted at 10:00 pm.

BNP members remained absent from the House on that day too. Their behaviour clearly showed that they did not want to be associated in any way with the process of repealing the Indemnity Ordinance.

Ziaur Rahman rewarded the killers. Ershad too, as a beneficiary, kept the self-confessed killers in their jobs in comfort. In a similar way, Begum Khaleda Zia put a stigma on the Jatiya Sangsad through electing one of the key conspirators in the murder of Bangabandhu, Rashid, as a parliament member in the farcical elections of February 15, 1996. She allowed him to sit in the seat of the Leader of the Opposition in the sacred Jatiya Sangsad.

The conspicuous absence of BNP and Jamaat members from the Sangsad session during the introduction, consideration and passage of Indemnity Repeal Bill proved that they wanted to perpetuate the politics of killings and of conspiracies.

With the holding of trial of the killing of the father of the nation Bangabandhu, it has become "very clear to the people that there are two courses of politics in the country. On the one side, there is a course of killing, coup, conspiracy and anti-independence activities while on the other end, the course for establishing the values of independence and war of liberation, democracy, justice, rule of law and social progress. The Awami League in order to fulfil the aspiration of the people is firmly committed to steer ahead in the latter course."

The writer is an Awami League MP and is the State Minister for information and Broadcasting.

Pakistani Women in Dread of Islamisation Bill

Cassandra Balchin writes from Lahore

It was like Zia's time," commented a woman journalist recalling the early 1980s under Gen. Zia-ul Haq's martial law regime when 'Islamisation' had led to direct attacks on women. Indeed, both Prime Minister Nawaz Sharif and his detractors claim Gen. Ziaul Haq as their mentor.

CHANTING "15th Amendment-Not Personal Dictatorship-Not Democracy-Yes!" some three thousand demonstrators took to the streets here recently to protest against Pakistan's proposed 15th Constitutional Amendment Bill. Along with religious minorities and labour, women made up a large portion of the demonstrators. Organised by the Joint Action Committee for People's Rights, which brought together 35 non-governmental organisations and human rights organisations, the protest was the largest anti-government demonstration seen in months.

Asma Jehangir, Chairperson of the Human Rights Commission of Pakistan, in a typically fiery address, said, "After the passage of the 15th Amendment, the rights of the people will be exploited by the rulers in the name of their own version of Islam and Sunnah. The people will be fooled in the name of paradise."

The Bill was passed in Pakistan's National Assembly on October 9 by 151-16 votes. Several smaller parties effectively abstained by being absent during voting. Opinion is divided over whether the government will secure the two-thirds majority it now needs in the upper house, the Senate, for the Bill to become law. Given hectic government lobbying designed to bring round individual Senators, women's and human rights groups are trying to buttress opposition. But whether or not the Bill is eventually passed, its impact on the country's women is already palpable.

In the days leading up to the Bill's presentation in the National Assembly, rumours spread in the cities of women wearing short sleeved shirts being slashed with knives in public places and of girls being injected with AIDS-infected needles in cinemas and restaurants. National dailies have carried major articles clarifying that the likelihood of contracting AIDS in such a manner was slim.

Zia's time," commented a woman journalist recalling the early 1980s under Gen. Zia-ul Haq's martial law regime when 'Islamisation' had led to direct attacks on women. Indeed, both Prime Minister Nawaz Sharif and his detractors claim Gen. Ziaul Haq as their mentor.

The feminist Women's Action Forum (WAF) has condemned the bill as "a recipe for social and political disaster," adding that, "The use of religion as a short cut for legitimising political power has fragmented society and led to intolerance, sectarian divisions, and extreme violence."

WAF's statement on the Bill highlights past experience: "Since 1977 Pakistan has witnessed a series of so-called Islamisation measures that have intrinsically eroded the concepts of democracy and human rights. Such measures specifically undermine the rights of women, minorities and other marginalised sections of society. The crux of the 15th Amendment is clause 2, which after stating that, 'The Holy Quran and Sunnah shall be the supreme law of Pakistan,' goes on to add that, 'The Federal Government shall be under an obligation to take steps to enforce the Shariah... The provision of this Article shall have effect notwithstanding anything contained in the Constitution, any law or judgement of any Court.' Human rights groups are concerned that fundamental rights relating to freedom of speech and association, as well as the rights of the accused will come under attack."

For women, the threat is very real. The Bill, if passed, will open the gates to a direct attack on women's legal rights. At present, the Constitution contains fundamental rights provisions guaranteeing freedom from discrimination on the basis of sex, as well as principles of policy allowing the government to pursue affirmative action. For women, the threat is very real. The Bill, if passed, will open the gates to a direct attack on women's legal rights. At present, the Constitution contains fundamental rights provisions guaranteeing freedom from discrimination on the basis of sex, as well as principles of policy allowing the government to pursue affirmative action. For women, the threat is very real. The Bill, if passed, will open the gates to a direct attack on women's legal rights. 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