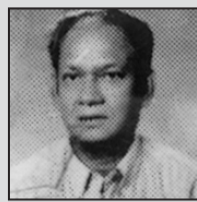


Armed forces dedicated to a cause



ARSHAD-UZ ZAMAN

THE HORIZON THIS WEEK

Ata Turk's revolutionary reforms have taken strong roots ... Ata Turk threw away the chains of slavery following the defeat of the Ottoman Empire, and made his Armed Forces the guardian of his revolutionary reforms.

semi entry amongst some Turkish women in the shape of what is known here as 'tesettur', that is a long coat with head scarf and face open. This has, however, caused controversy here as for instance Turkish ladies will not be invited to accompany their VIP husbands to state functions. There is problem in the education field as in France, where head scarf is disallowed for students in the seats of learning.

Of all the reforms of AtaTurk, the centerpiece is no doubt secularism. In other words AtaTurk decreed that state affairs must remain separate from religious practices. His argument was that in the collapse of the Ottoman Empire the fact that religion played a role in state affairs was largely responsible. The Arab component of the Empire had largely disappeared although the Sultan in Istanbul continued to hold the title of Sheikh-ul-Islam and protector of the two Harams in Makkah al Mukarramah and Madinat al Munawara. Steeped in superstition due largely to illiteracy, AtaTurk decided that one way to extricate his society from backwardness was through separation of state from religion.

Mustafa Kemal AtaTurk made his Armed Forces the guarantor of all his reforms. And the Turkish Armed Forces take this responsibility very seriously. When they sensed that the policies of Prime Minister Necmettin Erbakan was a threat to the secular principles of Turkey, they intervened directly and removed Erbakan. Thanks to a very high degree of integrity and discipline the actions of the Armed Forces are accepted by the Turkish population unquestioningly. As the Armed Forces are patriotic in the real sense of the term, they enjoy great affection. The

Women's emancipation was one of important targets of AtaTurk and he forbade the veil. The veil has made a

Turkish Armed Forces operate through the National Security Council, which meets regularly under the President of the Republic and is attended by the Prime Minister, the Minister of Defence and high officials and top brass of the Armed Forces. This is the highest policy making body of Turkey.

Multiparty democracy started in Turkey in 1950, with the election of the opposition Democrat party to power. This half century journey has not been very smooth. Right now an elected Government led by Prime Minister Recep Tayyip Erdogan holds the reins of power. His newly formed Justice and Development Party (AKP) won an astonishing victory nearly two years ago. This centre right party has Islamic leanings but is careful not to fall in the pitfalls of Erbakan. The Armed Forces keeps a wary watch on all such matters.

It is an interesting thought that of all the strong rulers that emerged after the First World War only Lenin has half survived although his system collapsed. Mustafa Kemal AtaTurk has not only survived for more than six decades now, his revolutionary reforms have taken strong roots and seems to gain in strength with the passage of time. It must be due to the great love of freedom that the Turkish people have and that AtaTurk threw away the chains of slavery following the defeat of the Ottoman Empire. AtaTurk made his beloved Armed Forces the guardian of his revolutionary reforms.

Arshad-uz-Zaman is a former Ambassador.

Higher judicial appointments must be kept above controversy

M. ABDUL LATIF MONDAL

WHEN the two issues, namely the recent devastating flood ravaging the national economy, and the daylight bomb and grenade attack on an Awami League (AL) rally in the very heart of the capital on August 21, killing 19 people including Ivy Rahman, women affairs secretary of AL's central body and injuring many others, have engulfed the whole nation into deep crisis, another issue appears to take the form of a grave crisis. This is the Supreme Court Bar Association's (SCBA) rejection of the recent appointments of 19 Additional Judges to the High Court Division which, according to SCBA, were made on political grounds.

It appears from the newspaper reports that the SCBA has demanded cancellation of appointment of the newly appointed 19 Additional Judges of the High Court Division and resorted to a court boycott programme including the court of the Chief Justice as he ignored their demand for cancellation of the swearing-in of the aforesaid new 19 Additional Judges. The bad news is that the SCBA has not only brought the allegation of political patronage in the appointment of these 19 Additional Judges but it has questioned their fitness for appointment to these posts: "Who can not write a sentence in English and who does not know how to proceed a case will now deliver judgement. He will hand down death sentence without hearing the case. It's a shame," said the eminent jurist Dr. Kamal Hossain in the SCBA's meeting on August 29. It is further learnt from the press reports that the SCBA has decided to serve notices on the Minister for Law and Parliamentary Affairs and the Chief Justice of Bangladesh seeking explanations from them as to what consideration was applied to the appointment of these 19 Additional Judges. The Bar would file a writ petition with the High Court to challenge the aforesaid appointment after receiving the explanations.

The Constitution of the People's Republic of Bangladesh provides that there shall be a Supreme Court

for Bangladesh comprising the Appellate Division and the High Court Division. The Supreme Court shall consist of the Chief Justice and such number of other Judges as the President may deem it necessary to appoint to each division (Article 94). Regarding the appointment of Additional Judges, the Constitution provides that if the President is satisfied that the number of the Judges of a division of the Supreme Court should be for the time being increased, the President may

Constitution incorporated an article which provides that the state shall ensure the separation of the judiciary from the executive organs of the state (Article 22). But this constitutional obligation still remains unimplemented.

Being fully aware of the need for ensuring neutrality in the appointment of judges in the higher judiciary i.e. in both the divisions of the Supreme Court, the framers of the Constitution incorporated a provision requiring the President to

a former Attorney General of Bangladesh, in his book *Constitutional Law of Bangladesh*, published by Bangladesh Institute of Law and International Affairs, thus writes that the present practice of consultation with Chief Justice in the appointment of judges of the Supreme Court is not a formal matter. It must be an effective consultation and the recommendation of the Chief Justice should not be by-passed unless there be very cogent reasons for it. It is felt that our policy makers

be consulted.

Article 95 of the Constitution empowers the President to appoint the Chief Justice and other judges of the Supreme Court. But according to clause (3) of Article 48 of the Constitution, the President in the exercise of all his functions, save only that of appointing the Prime Minister and the Chief Justice, shall act in accordance with the advice of the Prime Minister. The President, therefore, cannot independently exercise his authority in the matter of appointment of judges of the Supreme Court.

The importance of neutrality in the matter of appointment of judges of the Supreme Court can hardly be overemphasised. If the political parties, particularly the major political parties, can abandon their narrow partisan view on the issue and come to an understanding to help enact necessary amendment(s) to the Constitution, they will do a great service to the nation. Recurrence of the present unpleasant affairs in the Supreme Court could probably be avoided.

M. Abdul Latif Mondal is former Secretary, Government of Bangladesh

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appoint one or more duly qualified persons to be Additional Judges of the division for such period not exceeding two years as he may specify. The appointment of such an Additional Judge may however be extended.

Article 95 of the Constitution states in pertinent part:

A person shall not be qualified for appointment as a Judge unless he is a citizen of Bangladesh, and he (a) has been an advocate of the Supreme Court for at least ten years, or (b) has held judicial office in the territory of Bangladesh for at least ten years, or (c) has such other qualifications as may be prescribed by law for appointment as a Judge

Judiciary is one of the three basic pillars of the state, the other two being executive and legislature. The executive is composed of the President, the Prime Minister, and the Cabinet, comprising such Ministers as the Prime Minister may from time to time designate. Aware of the "long arm" of the executive and conscious of the need of the independence of the judiciary in the country, the framers of the

consult the Chief Justice in the matter of appointment of Judges in the High Court Division and the Appellate Division of the Supreme Court. But this provision was omitted by The Constitution (Fourth Amendment) Act, 1975 (Act No. 11 of 1975) by the then Awami League government. Although there is a convention for the consultation with the Chief Justice, such a consultation need not be a formal one, and the recommendation, if any, of the Chief Justice is not binding on the executive. As a result, during the last thirty years or so, there has been continuous allegation of politicisation of appointment in the higher judiciary. The allegation is not totally baseless.

The Presidential form of government introduced by the fourth amendment was replaced by the parliamentary form of government through the Constitution (Twelfth Amendment) Act, 1991 (Act No. 28 of 1991). But the provision requiring consultation with the Chief Justice for appointment of judges of the Supreme Court was not revived. The executive does not want to shorten its reach. Mahmudul Islam,

and the legislators will give a serious thought for the revival of the relevant article of the original Constitution requiring the President to consult the Chief Justice in the matter of appointment of judges of the Supreme Court. It can be mentioned that Article 124 of the Constitution of India provides that in the case of appointment of a judge other than the Chief Justice, the Chief Justice of India shall always

7.5X3

3X1

3X1

8.5X2

4.5X2

4.5X2

5X4