

# Concept of modern state and role of the judiciary

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THE government in its present form with three different organs performing three different functions did not come into existence until the emergence of the modern states. The executive, legislative and the judicial functions were concentrated in the hands of the monarchs before the advent of the modern states. Such concentration of powers resulted in the abuse of such powers. The gradual process of evolution from autocracy to democracy in the West created a demand for the need of a separation of powers so that each organ could act independently without interference from the other. Although it is true that some form of separation is necessary in order to minimise the ill effects of the concentration of powers in one branch, complete separation is neither possible nor desirable. It is true that each organ of government should be kept independent of the other, but some form of co-operation is essential between the executive and the legislative branch of the government for the smooth running of the administration because they cannot be divided into watertight departments.

The judiciary, on the other hand, can and should be kept completely independent of the other organs of government so that it can act independently, unhampered by interference of the executive branch in safeguarding the individual rights and liberties and protecting the constitution. The requirements for ensuring the independence of the judiciary should, among other things, include their method of appointment, salaries, tenure and permanence of office. The appointment procedure should be fair and impartial, requiring approval by a different body other than the appointing authority. The salaries should be adequate so that they can maintain a standard of living commensurate with their status. The removal of judges from the office should be rigid so that the security of the tenure of their office can be maintained. Most of these requirements have been adopted by the constitution of Bangladesh to secure the independence of the judiciary. In order to make the appointment procedure more fair and impartial a provision should be included in the constitution to get the appointment of the judges of the High Court and Supreme Court approved by two third members of the Parliament. Such procedure, if adopted, would prove effective in preventing the party in power from making partisan appointments.

The judiciary in the modern states, apart from acting as a guardian of the constitution, also plays a significant role in protecting the

individual rights and liberties. Fundamental right is a basic human right. It includes among other things, the right to life, liberty and property, freedom of thought, opinion, movement, expression and worship. There cannot be any compromise on the basic right and freedom of the citizen. Any attempt to violate such right by any body, no matter whether it is a government or individual person, should be thwarted by all possible means. In order to ensure that such rights can be properly safeguarded, most of the modern democratic states have made provisions for their incorporation in the constitution and enforcement by the court. The

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function of the judiciary in the modern states is not confined to settling any dispute between man and man, but also extends to deal with the efficient administration of justice between the individual and the state. Such disputes between the individual and the state are likely to arise when the misuse of the executive powers results in the violation of individual rights. It is not the use of the executive powers but their misuse, which the court will try to prevent. The court should insist that such powers must be exercised genuinely for the purpose for which they were conferred and not for any extraneous purpose. Any likely interference by the executive in the judicial matters involving a dispute between an individual and the state will certainly jeopardise individual rights and liberties.

The demand for the incorporation of the fundamental rights and their enforcement by the court gained ground in India and Pakistan after their independence. After the independence of Bangladesh, provisions were made for the incorporation of such rights in the constitution. Despite the fact that such rights are enforceable in the court of law, the inability of the judiciary to act independently has made it possible for the ruling party to exercise its powers arbitrarily to serve their political purposes. The magistrates court at the bottom layer of the judicial system, while dealing with cases involving disputes between the individual and the state, abused in most cases the judicial powers conferred on them in order to legally justify the arbitrary actions of the government.

They did not, while dealing with such cases, as expected of them, maintain a balance between the security of the state and the basic rights and liberties of the citizen. The British authorities in their attempt to suppress the terrorists, granted some judicial powers to some officers of the executive branch so that they could be in a better position to influence any verdict involving cases connected with the freedom movement. It is a pity that such a two-tier system devised by the British government has been retained by the successive governments in Pakistan and Bangladesh to suppress the opposition parties. The abuse of the

failure of the police and the judiciary to deal with the offenders effectively. The failure of the judiciary in Bangladesh to act independently in safeguarding individual rights and liberties resulted from the lack of courage, determination and independent attitude on the part of the judges to respect the constitution and their inability to remain above party politics.

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At the time the Bolshevik Revolution of 1917 took place in Russia Comrade Moni Singh was a young man. He and his comrades, both in Calcutta and Mymensingh, became highly jubilant, as if they themselves had caused the Revolution.

In India the first communist Party was founded by M N Roy in 1920. But the party officially started functioning in 1925. The British sought to nip the communist movement in the bud. They started three conspiracy cases -- one in Peshawar (1922-23), one in Kanpore (1924) and the third in Meerat (1929). The government took up the Meerat case very seriously.

Communist and working class leaders were apprehended all over India. Those arrested in connection with the Meerat case were: Muzaffar Ahmed, Dharani Goswami, Gopen Chakrabarty, Radharaman Mitra, Shamsul Huda, Gopal Basak, Kishor Lal Ghosh (non-communist), Phillip Sprat and Shibnath Banerjee. But the police did not spare comrade Moni Singh. His residence and textile union were searched. Newspaper men inquired of the I.B. officers if comrade Moni Singh had been arrested. As a result came out the news of Moni Singh's arrest.

In 1926 Comrade Moni Singh, along with a number of other comrades decided to visit Calcutta and call on Comrade Mazaffar Ahmed. Comrade Moni Singh opened an office in Calcutta and

tried to involve himself in working class movements. Three of them went to Metiaburuj and discussed worker-millowner relation. "We began working in the Keshoram Textile Mill" says Comrade Singh in his autobiography. Metiaburuj was an industrial area. A large number of workers used to work there day and night. Comrade Moni Singh and his comrades printed receipt books for the textile union. The workers themselves were very enthusiastic to work for their union. Once a dispute arose on the question of payment in pound (weight) or yard (length). The Mundelia (secretary) of Birla's Mills defended the new system of payment of wages on yard basis. The workers went on strike demanding payment on pound basis.

The workers supporting payment on the basis of pound invited Comrade Moni Singh to speak on this issue. Comrade Moni Singh spoke defending payment on pound basis. The organiser of the meeting left the place as the workers shouted slogans supporting the speech of Comrade Moni Singh.

Comrade Moni Singh was arrested in May, 1930. He was released in 1935 but was interned in their Susong home. He had to attend the police station every day. During his internment he got an opportunity of meeting the peasants and understanding their problems. The peasants discussed with Comrade Moni Singh the issue of 'Tanko'. Tanko meant a system of payment of paddy as tax. Peasants would have to give paddy even if the harvest failed for natural calamity or any other reasons beyond the control of the farmer. In this situation peasants unitedly decided not to pay Tanko if crop failed. After his release from jail in 1937 Comrade Moni Singh met the peasants and assured them that he would be with them in their anti-Tanko movement. He decided not to return to Calcutta for trade union activities. In 1939 a big peasant rally was organised in Kishoreganj.

In the mean time, a number of communist parties were formed in Sylhet (1935), Dhaka (1937), and other districts (1938). Bengal party's head office was set up in Calcutta. The World War Two was declared by Hitler on September 1<sup>st</sup> 1939. Communist leaders including comrade Moni Singh decided to go underground when warrants of arrest were issued against them.

The Government of India released in 1942 all the communists who were arrested earlier. Comrade Moni Singh was released in July, 1942. The ban on the Communist party was withdrawn. On this occasion a public meeting was held in Netrokona. Presided by comrade Baro Miah (Yahub Mia) of Comilla, the meeting was addressed by comrades Bankim Mukherjee, Bhupesh Gupta, Jyoti Basu, Monikuntala Sen and Moni Singh. Comrade Moni Singh and other comrades of Mymensingh took the advantage of their open activity to constitute the district committee of the party. Comrade Moni Singh was unanimously elected secretary of the Mymensingh District in 1942.

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LEST WE FORGET

## Comrade Moni Singh

A leader of all people

KG MUSTAFA

COMRADE Moni Singh, one of the national heroes of Bangladesh, adopted Marxism and Leninism at an early age. In his autobiographical book, 'Jiban Sangram', Comrade Moni Singh says that he joined the communist movement of workers and peasants during the last part of the twenties. He used to organise the workers first and subsequently he launched the struggle for the betterment of life of peasants and other toiling masses. During this time, Comrade Moni Singh met in Calcutta a number of famous communists including Comrade Muzaffar Ahmed.

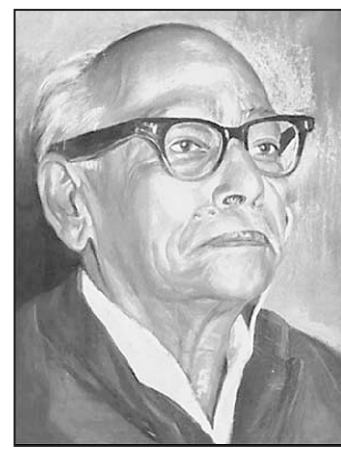
Comrade Moni Singh maternal uncle was a feudal lord or 'Raja' of Susong Durgapur in greater Mymensingh district. But Moni Singh turned an anti-British anti-feudal radical of the period. He organised secret societies or radical groups in the area and came in touch with the other groups who were working for the betterment of the ethnic minorities like Garo, Hajong and other downtrodden communities.

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primarily on the organising ability of Comrade Moni Singh. The conference was attended, among others, by PC Joshi, Bhabani Sen, Bankim Mukherjee, Krishnobenode Roy, Somnath Lahiri, Gurumukh Sing, Harkishan Singh Surjeet, Nambudiripad, Sundaraya, Dr ZA Ahmed and Kalpana Joshi. The successful conclusion of the peasant conference elevated the position of Comrade Moni Singh not only among the communists but also among the whole people of India. A large number of Muslims also attended the conference.

In the general elections of 1946, Comrade Moni Singh was a candidate from the Communist Party. His constituency included Netrokona, Kishoreganj and partly Mymensingh Sadar. The Congress candidate indulged in a nasty campaign, saying that the Communist were British agents who wanted to sabotage the quit India movement of Mahatma Gandhi. Only three of Communist Party's candidates returned to the provincial Assembly. They were comrade Jyoti Basu, Rup Narayan Roy and Ratan Brahmia.

The second world war was over in August, 1945. In comrade Moni Singh's area 'Tanko' movement was again launched. In December 1946, 'Tebhaga' movement was launched in Dinajpur, Rangpur, Mymensingh, Jessore, Khulna, Dhaka, Chittagong, Bogra, Pabna and Faridpur of East Pakistan. In West Bengal, India, Tebhaga movement had a positive impact on the government, in particular the provincial government. In East Pakistan white terror was let loose to suppress the Tebhaga movement.

The Communist Party of East Pakistan which was founded in March, 1948, elected in 1951, Comrade Moni Singh as secretary of the party. Over three years Comrade Moni Singh emerged as an efficient, hard-working and balanced party leader. He continued to be the secretary of the party's secretariat for a long time. Although he lived underground most of the time, his popularity continued to go up.

During the first provincial election of 1954, the Communist Party fielded eight candidates. For other seats the Communist Party led by comrade Moni Singh extended support to the United front of AK Fazlul Haq, Maulana Abdul Hamid Khan Bhasani and Hussein Shahid Suhrawardy. The United Front's massive victory also brightened the image of the communists. The Party declared full support to the front without being its members. However, four of the CP's candidates Purnendu Dasidhar and Sudhansu Bimal Datta of Chittagong, Prasun Kanti Roy alias Braun Roy of Sunamganj and Abhoy Barman of Rangpur were elected. The Party's policy of working in the Awami Muslim League and the Ganatantri Dal proved right when it was found that as many as 22 legislators who were elected as candidates of their respective parties belonged to the Communist Party.

The Awami Muslim League changed its nomenclature as Awami League by amending its

constitution in 1955. A large number of non-Muslims joined the Awami League after the amendment.

General Mohammad Ayub Khan and General Iskander Mirza seized power in Pakistan on October 7, 1958. They broke the United Front before declaring a country-wide Martial Law. Field Marshall Mohammad Ayub Khan's government leaked out a news that the President was going to give a constitution which would be based on his Basic Democracy concept.

In 1961 a meeting took place between the Ittefaq's Editor Toffazzal Hossain Manik Miah and Comrade Moni Singh of the Communist Party. Subsequently Manik Miah and Sheikh Mujibur Rahman used to attend the meetings. Sangbad's Editor, Jahur Hussain Chowdhury attended the first meeting held between Manik Miah and Comrade Moni Singh. The second meeting was held between Sheikh Mujibur Rahman and Manik Miah on one side and Comrade Moni Singh and Khoka Roy on the Communist side.

Talks went on for some time. Finally it was decided that the withdrawal of martial law, restoration of democracy, release of political prisoners, East Pakistan's autonomy based on 21-point programme of the United Front, students and workers demands would be placed in a declaration of the two parties. It was further decided that the Students League and the Students Union would launch a joint movement in the Dhaka University. They also discussed the question of independence of East Pakistan, an issue raised by Sheikh Mujibur Rahman. Comrade Moni Singh and Khoka Roy advised him to go slow on the issue. The result of Awami League and Communist Party discussions were made known to CP's various organisations. The Students League and the Students Union were advised to launch joint movement in all the campus on the issue of withdrawal of martial law, restoration of democracy, demands of workers and peasants.

Comrade Moni Singh regretted in his book that the Government of Pakistan used to fabricate conspiracies to turn the attention of the people from workers' demands. The Indo-Pak war of 1965 over Kashmir was one such conspiracy. And that imperialism, particularly the American imperialism was behind the Indo-Pak war.

Comrade Moni Singh's popularity reached a new high after the 1961 talks between the Awami League and the Communist Party. Comrade Moni Singh became a highly popular leader. The Communist Party's role during the liberation movement of 1971 took him to the position of a member of the Advisory Council of the Gano Prajatantri Bangladesh Government set up in Mujibnagar. Comrade Moni Singh was thus raised to the position of a leader of people. No wonder that on 2003 Victory Day Comrade Moni Shingh was posthumously awarded the *Jatio Padak*, the National Gold Medal.

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