

The 13th amendment and Bangladesh politics *They deserve to be happy*

KAZI ANWARUL MASUD

Do we again, as we have done in the past, dismiss Senators Ted Kennedy and John Kerry's "strong concern over the recent wave of political terrorism in Bangladesh" as inconsequential? Do we again, as we have done in the past, ignore the State Department's latest Human Rights Report which has noted an increase in the politically motivated attacks in Bangladesh seriously undermining further political progress? What more will our authorities need to wake up and notice the repeated cautionary signals hoisted by the domestic and international forces that the ship of Bangladesh state is heading towards rocky mountains and the ship's captain is either unable or unwilling to see the light house amidst the tidal waves raging in the turbulent sea all around the ship?

Non-governmental forces' demand (defined as all Bangladesh oppositional and neutral forces) for reform in the 13th amendment merits serious consideration. The opposition's arguments against the present caretaker government's system center mainly around the following:

(a) though the Chief Adviser of the Caretaker government has been accorded the status of the Prime Minister he has been made subservient to the President. The President is not bound to act according to the advice of the Chief Adviser. Moreover the President retains the power to cancel any decision of the Caretaker government. One may argue that since the Caretaker government does not consist of elected representatives while the President is elected by the parliament it would be logical for the President to have powers superceding those of the Caretaker government. The contra argument can be that the supra-caretaker government powers vested in the President is quintessentially against the philosophy of the 13th amendment which was enacted to hold elections under a non-political and impartial body. Since the President is elected by the majority party he could theoretically act in favor of the party which elected him. Unfortunately like developed countries many developing countries are yet to be wedded to the spirit of liberal values of tolerance and impartiality particularly in political and electoral process. Wining the elections by all

means becomes the be all and end all of politics because politics today has become so commercial that it can be described as the conduct of public affairs for private gains. One can not but be surprised at George Orwell's prescience shown in his observation that there is no such thing as keeping out of politics as all issues are political in nature where "politics itself is a mass of lies, evasions, folly, hatred and schizophrenia". Opposition parties' fear of the Caretaker government in its present form can be traced back to the 1996 February elections the results of which was totally rejected by the by the people and then government in power was compelled to pass the 13th

a former Chief Justice has expressed himself to be against the existing provision that the immediate past Chief Justice should be made head of the Caretaker government. He feels that if necessary the head can be chosen from among former Chief Justices. But then the 13th amendment already provides for a larger field from which Chief Advisor can be appointed by the President albeit under certain conditions. The 13th amendment provides that the President shall, after consultations, as far as practicable, with major political parties, appoint the Chief Advisor from among citizens of Bangladesh. Though the opposition political parties are expected to come up with their draft amendment by the

existence only as long as the group keeps together. In money driven politics in countries like Bangladesh distinction between political functions and power becomes blurred. Consequently as Professor David Ingram argues, democracy can become despotic if it permits the majority to legislate according to its particular advantage. In such an event one can be faced with the emergence of tyranny of the majority and Henry David Thoreau's reluctance to surrender totally man's conscience to the will of the legislators becomes relevant. Democracy essentially should reflect the will of the people. Developing countries face manifold problems in translating this "will" into

Malaysian leaders who saw through the proponent of the theory as being an advocate of despotism.

Bangladesh's tryst with democracy, interrupted more than once by extra-constitutional forces but regained at great cost, needs to be further developed if the people are to be freed from "poverty trap" they find themselves in. The country bedeviled with overpopulation, unequal distribution of resources, endemic corruption eating into the vitals of the economy, inadequate educational and employment opportunities, environmental degradation and social inequities is now facing unfavorable external conditions. While both quantum of aid and dependency on aid have decreased international inquisitiveness into hitherto domestic affairs have increased. As the inexorable forces of globalization are transforming global politics into an "incipient global neighborhood" international community is demanding that "global civic ethic" be adopted by all countries and embodied in international law where necessary by adapting existing norms of state sovereignty. The 1995 Commission on Global Governance has recommended that in situations where people are subjected to massive suffering a state's right to independence must be weighed against its people's right to security. The Commission recommended that article 2 of the UN Charter should be qualified by human rights. Profession to democracy should not be enough. Its practice from basic unit to the national level must be ensured.

The 1995 Commission on Global Governance has recommended that in situations where people are subjected to massive suffering a state's right to independence must be weighed against its people's right to security. The Commission recommended that article 2 of the UN Charter should be qualified by human rights. Profession to democracy should not be enough. Its practice from basic unit to the national level must be ensured.

amendment of the Constitution; and,

(b) during the tenancy of the Caretaker government the President retains full powers over defense though under ordinary circumstances the President remains the supreme commander of the armed forces his powers are totally circumscribed by the Constitutional requirement that he at all time act according to the advice of the Prime Minister. But during the tenancy of the caretaker government the President, should he so wish, can use the armed forces in a partisan manner. Given the extra-constitutional history of Pakistan (when Bangladesh was East Pakistan) and of Bangladesh such fear can not be totally dismissed.

The central idea of having a caretaker government is to hold a free and fair election which opposition parties do not believe can be held under a government in power. One suspects that the present oppositional demand for further revision to the 13th amendment is fuelled mainly by two factors. Firstly the 13th amendment was incorporated in the Constitution without any discussion with the opposition parties. Secondly, by raising the retirement of the judges of the Supreme Court the government has calculatively chosen the person who will become the next head of the Caretaker government. Interestingly

end of this month the ruling party has already rejected the idea of any change in the 13th amendment. As the major political parties refuse to participate in the elections without amending the 13th amendment the country has become sharply polarized into two camps.

In the event the two sides remain inflexible in their respective positions Bangladesh may see intense political agitation and consequent governmental action to suppress the political movement through political terrorism. As it is Bangladesh is gaining infamy for increased human rights violations. Explosion of untrammelled political violence would not only cause innocent political lives to be lost but would further increase the divide between the government and the opposition, a divide filled with violence and hatred.

One may wish to interrogate the desire of the government to hold on to power and that of the opposition to secure it. There is nothing inherently wrong in trying to capture power. After all politics is the art of capturing power. What is debatable is the process of acquisition of power. German born political scientist Hannah Arendt sees power corresponding to the human ability not just to act but to act in concert. Power, writes Hannah Arendt, is never the property of an individual; it belongs to a group and remains in

actions aimed at welfare of the people. Since Athenian democracy is not possible in modern nation-states the "will" is exercised by the people through general elections which effectively gives away carte blanche to the legislators. This is more true in parliamentary system where brute majority can effectively deny reflection of the will of the minority. And if the election is flawed, which is alleged more often than not in developing countries, then it becomes difficult to identify and distinguish between the real "majority" and "minority" and other fragmented political community. To safeguard against habitual infringement of basic human rights by state agents in the name of "security" it is absolutely necessary for the democrats of the world to unite to monitor progress of democracy in different parts of the world. International community owes to its conscience and to the victims of modern day Auschwitz and Buchenwald that such tragedies do not recur as they did in Rwanda, Sebrenica, Darfur and Congo and that democracy deficits are not tolerated because, for example, Asians see more merit in collective welfare at the cost of individual freedom as opposed to western conviction that individualism is non-negotiable. Lee Kwan Yew's theory of Asian penchant for discipline has rightly been challenged by the

SULTANA NAHAR

I was recently watching with keen interest a talk show regarding the marriage of Charles and Camilla. The comment made by the anchor of the show on marriage and the love affair of Charles and Camilla prompted me to say a few words on the issue. The anchor commented that the marriage would bring them together and thus the ecstasy and longing for each other would be lost and very soon they would divorce.

In my personal opinion, for obvious reasons Camilla and Charles cannot afford to make a mistake at this belated stage of their life, and they have given ample proof that they are not. Whatever people may say, this marriage is not going to fail.

Most love marriages fail because the lovers and later the husband and wife become the victims of infatuation and not of true love. There are also other reasons for failed marriages. For that matter, many arranged marriages that take place after thorough scrutiny by parents also fail. Love affairs of young people which culminate in marriage, more often than not bring forth a frustrating result. If such a marriage breaks, it is better. If it lingers on, both the parties experience endless pain and suffering.

Frustration that emanates from misunderstandings, and in some cases betrayal, creates many obstacles that ultimately lead the parties nowhere. Failing to derive true happiness, they engage themselves in activities that negate the true essence of marriage. When one is found engaged in activities that shake the very foundation of trust and faith, the erosion of the bond begins. The wife usually tries to mend the strained relationship by forgiving the husband for acts that would not be acceptable to him if were committed by her.

Mostly this age-old practice proves a futile exercise. There are marriages where the husbands at one point in time come back to their senses and attempt to make married life worthwhile by refraining from activities that are not congenial for happy married life. But such examples are rare.

Not necessarily all love marriages fail. It fails when the good man is missing in the husband or the good woman is missing in the wife. Whether the husband is a son of a lord or himself a lord, a prince, or a pauper does not matter. What matters is the man inside the husband and woman inside the wife.

Wayward young husband and wife, when they attain maturity and experience, may sometimes venture to live a happy life reposing trust in each other, but it hardly works because both the parties by this time have created an unholy world it is difficult to exit.

This situation prevails where both the parties are engaged in forbidden affairs to acquire placebo happiness this way or that way. In many cases the wife is the worst sufferer because of her lost beauty, love for children, social stigma, family prestige, etc.

This is more true when the wife is unable to earn her livelihood or she has to depend on her husband. Economic emancipation of a wife can drastically reduce the high-handedness of the husband. Economic freedom of a wife is not the only criterion to make the home happy, respect for each other is also imperative. There are cases where loyal husbands and loyal wives are doing good jobs and earning good money, yet sticking to one woman or one man tends to be difficult.

When the whole world is open before them, the possibility of developing a passionate relationship with someone other than the life partner cannot be brushed aside. An old man falling for a young woman is not uncommon. These are the cases where lust dominates the affair. A young woman falling for an old man is also induced by many considerations. This type of relationship may look successful for the time being, but most ultimately fail.

Nevertheless, there are couples who are happy and



know the art of remaining happy. A few days ago I was in a gathering where one of the guests commented that they were married for 43 years, but enjoyed a feeling that they had married only yesterday. One of my neighbours once told me that the secret of her good health was the love, affection, and respect of her husband for her. To be happy both have a role to play. One party's dedication hardly can bring any desired result. Marriage is a pious relationship. It is heavenly if properly nurtured. It is not only lust and ecstasy. The other name of love is trust and respect for each other. Let me remind the skeptics that marriage is a bond that has many dimensions. It is not confined to physical lust and sexuality only. Nor should proximity diminish one's attachment. There are people like this, but certainly all can not be bracketed under this category.

The love affair of mature persons when physical beauty of one person or of both has taken a back seat is supposed to be stable, and they make happy couple. They care for intrinsic values and abiding faith. Physical beauty and youth are transitory assets.

Diana's death was shocking. If that death hadn't taken place, history would have been different. If we find reasons to blame Prince Charles for Diana's disastrous end, then we also need to analyze the fact that Diana could not confine her love to one man. She kept on falling in love here and there. To be happy, she should have married someone, or she could even maintain a single friendship with someone. It is indeed difficult to live a lonely life. One has to share one's time with someone and has to have someone to love.

Charles is responsible for one mistake, he knew that he still loved Camilla, yet he married Diana, and then failed to love her. He should not have consented to this marriage. Charles did not involve himself with any woman other than Camilla. He has been maintaining this relationship for 35 years. This is amazing and this evokes respect in me.

That the relationship is not tinged with lust is evident from their reticence about the public reaction and from the absence of display of any raw emotion. Camilla never uttered anything offensive against anyone while many have used nasty words about her. Both of them have shown remarkable patience and profound respect for each other.

The relationship is now mellow, so its fruitfulness cannot be denied or prevented with any degree of criticism. Sensible ones will pray for their happiness, and I shall do so even louder, because I firmly believe that they deserve to be happy and they deserve to enjoy the reward of their abiding love for each other.

Sultana Nahar is an Advocate of the Supreme Court.