



LAW opinion

CEC exposed to removal for gross misconduct

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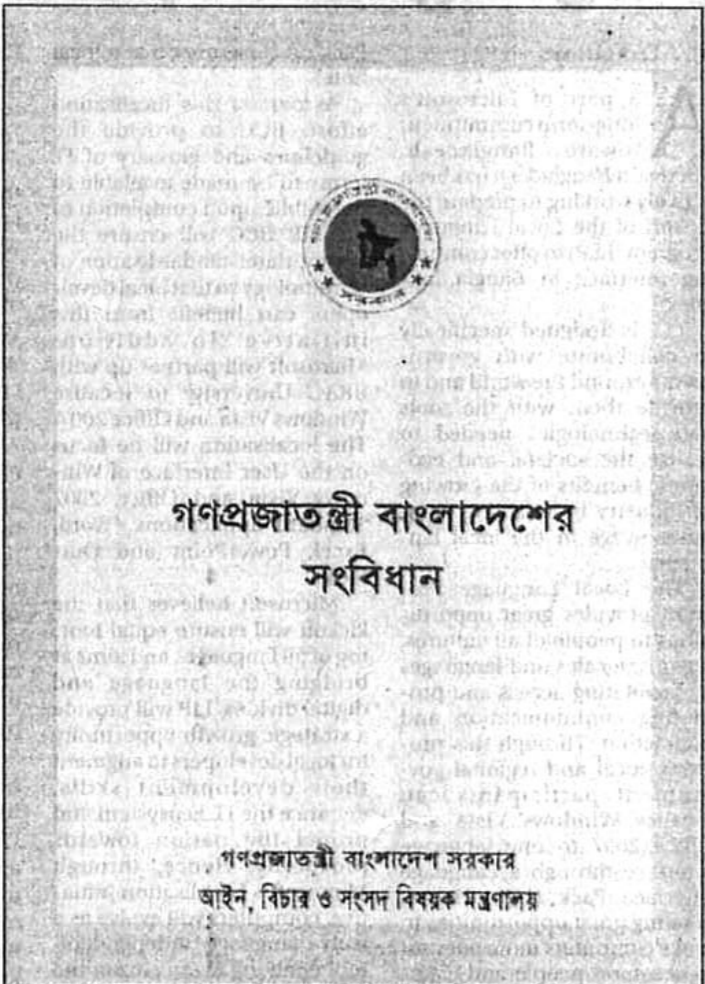
THE just-ended BNP-Jamat regime has left a legacy of wholesale politicization of all the state machineries as well as the educational institutions like the universities, colleges and constitutional bodies like the Election Commission and the Public Service Commission. The Supreme Court itself could not escape the tentacle of vicious and desperate politicization.

Appointments, promotions posting etc. in public offices and constitutional posts made exclusively on partisan consideration assumed such an epidemic scale that it looked like as if the regime was deliberately working on a hidden agenda of cleansing the people said to have mental leaning to opposition political parties primarily with a view to gaining advantage in the ensuing election.

CEC and the Supreme Court

Along the line came the appointments of the present Chief Election Commissioner (CEC) Justice MA Aziz and other three Election Commissioners. Appointment of Justice Aziz as the CEC, in particular, was protested by the then opposition political parties as one given absolutely in partisan consideration and no free, fair and impartial election under him was possible. The murmur of skepticism could have settled one day had the CEC demonstrated his guards, transparency and fair play in action. Having assumed his office unaccepted by the then opposition political parties he might have directed himself on a path that resolved the speculations besetting him and inspired confidence in the people. He, instead, stoutly took up preparation of a fresh voters' list in disregard of the existing list which, as claimed by the opposition political parties, was done at the behest of the then BNP-Jamat alliance government.

The decision was challenged before the High Court Division substantially on the ground that there is no scope in law for preparation of fresh voters' list. What it could do was upgradation on the basis of the existing list. High Court Division having heard the petition



গণপ্রজাতন্ত্রী বাংলাদেশের সংবিধান

গণপ্রজাতন্ত্রী বাংলাদেশ সরকার আইন, বিচার ও সংসদ বিষয়ক মন্ত্রণালয়

allowed it with direction to the Election Commission, amongst others, to upgrade the list instead of making a fresh list. The CEC chose to ignore the directives issued by the High Court Division and decided to prefer appeal against the order of the High Court Division which was reportedly attended with dissent by two other Election Commissioners since retired. Government immediately responded by appointing two new Election Commissioners with an apparent intention to supply aides to the CEC. Finally the appeal that was filed by the Election Commission became counterproductive. The Appellate Division took notice of the inefficiency of the CEC.

It is only when the Supreme Court has interfered the CEC reverted back to upgradation

campaign. But by the time he was brought back on compliance of the High Court's order Election Commission had spent around six crores Taka in preparation of fresh voter's list a question which still remains unanswered.

Credibility crisis

The CEC came under fire not as much for his supposed partisan leaning as for inefficiency to hold the high post of the CEC. He by his series of acts, comments and gestures lapsed into controversy and virtually relegated himself from the sublime to the ridiculous. Not to speak of the 14-party alliance which demanded removal of the CEC by now there are hardly any people in Bangladesh, except politically motivated persons, who believe that there can be any fair, free and impartial election under

him and two other Election Commissioners now in place. This credibility crisis has recently been further worsened by the open stand taken by BNP and Jamat alliance in favour of the present Election Commission who are out to defend the CEC on constitutional excuses.

With that backdrop of facts press persons fondly look for the interview of the CEC and whenever they can avail one ask a question in common: 'Mr. CEC, what is your reaction about the widespread demand of your resignation?'. He always tries to bypass or if stuck pointedly says as he always does: 'This is a constitutional post. I have a constitutional duty to hold an election. People of Bangladesh want election and there shall be an election'.

Express refusal to resign

To our utter dismay, the Chief Election Commissioner finally has declined to resign his office in express words on the 5th instant. The refusal of the Chief Election Commissioner to stand down, apart from worsening the crisis, has touched off many speculations. At least now it seems amply clear that his mission and the mission of BNP-Jamat are closely tuned together. He as well as the BNP-Jamat alliance has turned a blind eye to the popular sentiment and concern and the concern of the foreign delegates about practicability of holding a free and fair election under the present Election Commission.

Constitutional protection

The constitutional mechanisms are designed to materialize its fundamental principles for the people not to protect the post of an individual or individuals against the interest of the people. By the same token the constitutional protection of the services of the CEC and other Commissioners is also designed to defend the independence and impartiality of the Election Commission as against the executive government not against the people in their pledge to ensure free, fair and impartial election. It is a paradox in the constitutionalism to say that the constitutional post of a particular

individual irrespective of popular confidence enjoyed by him is sought to be protected by the constitution. The main indicator of bona fide of a person in a constitutional post either removable or not removable by ordinary procedure is to see whether he can carry out the purpose of the chair. The protection provided in the constitution is not to facilitate sticking to the chair but to keep it free from the influence of the executive government so that the person holding it can freely and independently serve the public purpose of the same. It is the most legitimate expectation attached to such a chair that if a person finds himself incapable of doing justice to it or his continuation in the chair tends to frustrate its purpose he must resign.

But if any such person does not resign of his own, as in case of our CEC, and takes shelter of the constitutional protection what is left for the people and the President to do about him? How to get rid of him? Question of people apart, we must find out a constitutional means to meet such an awkward and strange situation.

Lying on oath and misconduct

Article 96(6) of the constitution says, amongst others, that if the Supreme Judicial Council reports to the President that in its opinion the judge (here the CEC) has been guilty of gross misconduct the President shall by order remove the judge from office. 'Misconduct' is defined in law as 'any act unbecoming of a gentleman' or for the purpose of public servant, unbecoming for him. The question of misconduct attached to the chair of the CEC must be much more sensitive as that affects the intention of the constitution for that matter the public interest more directly.

The CEC is found to deny the fact that the Military Secretary of the President and an Adviser of the Caretaker government met him and communicated to him the desire of the government that he should resign his office. The flat denial by the CEC was telecast and

published in many newspapers. Adviser Hasan Mashhud Chowdhury, emphatically said that he and the Military Secretary of the President met the CEC and communicated to him the desire of the government as above. The CEC was confronted with the same question the following day by reference to the statement of Mr. Chowdhury. This time he said he would not say anything about it. In view of the peculiar circumstances and meeting in the government level on this behalf people have every reason to believe that the CEC did not tell the truth. This being a public statement from a person holding a constitutional post it may safely be construed as deceiving the people in violation of his oath of office and thus amounted to gross misconduct on his part. Loosely, it may be seen as 'lying on oath' contributing the misconduct.

The second and the most significant tire of the misconduct of the CEC seems to me to attributable to his marked tendency to stick to his office knowing it well that in view of the political situation of the country, no election under him is going to achieve minimum of national or international credibility much less the credibility of a free, fair, impartial and peaceful election as contemplated by the constitution. A fact which by itself should be enough to hold a person of the kind of the CEC guilty of gross misconduct.

Concluding remarks

Situation is tense. The whole nation is sliding back into uncertainty. Much more than the chair of the CEC is at stake. I have no reasons to believe that a man no less than Justice MA Aziz will find any constitutional sense whatsoever to continue with his post. But with the changing trend of values it is more likely than not that the nation may face such constitutional impasse in future. This is time for serious reflections. We cannot afford to sit idle. There must of necessity be a constitutional device to resolve such a breathless situation for our own interest.

The author is senior advocate of Supreme Court, Bangladesh.

LAW watch

Amnesty International deplors death sentences in Saddam Hussein trial

"Every accused has a right to a fair trial, whatever the magnitude of the charge against them. This plain fact was routinely ignored through the decades of Saddam Hussein's tyranny." - Malcolm Smart, Director of Amnesty International's Middle East and North Africa Programme.

The Supreme Iraqi Criminal Tribunal (SICT) imposed the death sentence on Saddam Hussein and two of his seven co-accused on 6 November, after a trial that was deeply flawed and unfair. The former Iraqi dictator was sentenced in connection with the killing of 148 people from al-Dujail village after an attempt to assassinate him there in 1982.

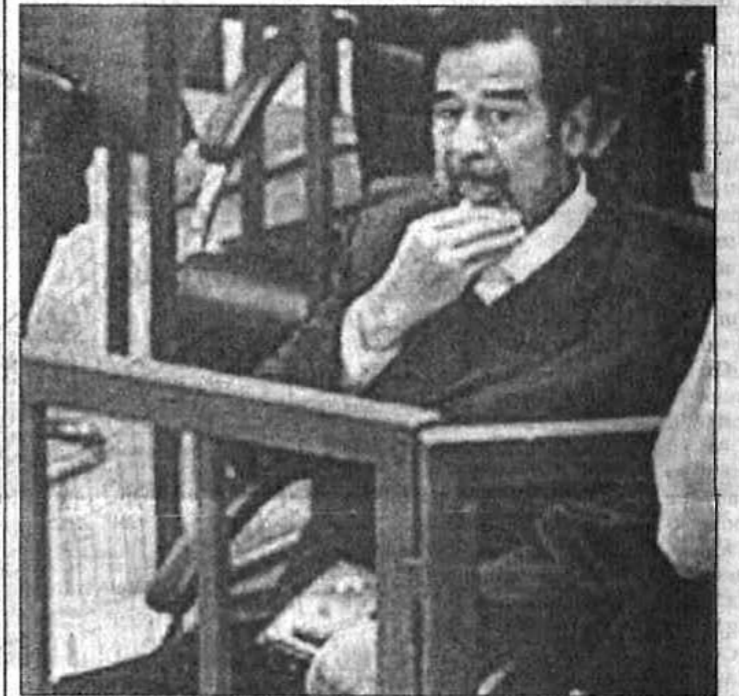
The trial began in October 2005, almost two years after Saddam Hussein was captured by US forces, and ended last July. The verdict was originally due to be announced on 16 October, but was delayed because the court said it needed more time to review testimony.

"This trial should have been a major contribution towards establishing justice and the rule of law in Iraq and in ensuring truth and accountability for the massive human rights violations perpetrated by Saddam Hussein's rule," said Malcolm Smart.

"In practice, it has been a shabby affair, marred by serious flaws that call into question the capacity of the tribunal, as currently established, to administer justice fairly, in conformity with international standards.

"[Saddam Hussein's] overthrow opened the opportunity to restore the basic right [to a fair trial] and, at the same time, to ensure, fairly, accountability for the crimes of the past. It is an opportunity missed and made worse by the imposition of the death penalty."

Amnesty International (AI) has been monitoring the trial and finds that political interference undermined the independence



and impartiality of the court, prompting the first presiding judge to resign and blocking the appointment of another. The court failed to take adequate measures to ensure the protection of witnesses and defence lawyers, three of whom were assassinated during the course of the trial.

Saddam Hussein was also denied access to legal counsel for the first year after his arrest, and complaints by his lawyers throughout the trial relating to the proceedings do not appear to have been adequately answered by the tribunal.

The case is now expected to go for appeal before the SICT's Cassation Panel following which, if the verdict were to be upheld, those sentenced to death are to be executed within 30 days. AI will now follow closely the appeal stage, where the evidence, as well as the application of the law can be reviewed, and the SICT has an opportunity to redress the flaws of the previous proceedings.

However, given the grave nature of the flaws in the process and the fact that many of them continue to afflict the current trial before the SICT, where Saddam Hussein is accused of genocide and other crimes during the Anfal campaign against Iraqi Kurds, AI urges the Iraqi government to seriously consider other options. These could include adding international judges to the tribunal, or referring the case to an international tribunal -- an option suggested by the UN Working Group on Arbitrary Detention last September.

Source: Amnesty International.

RIGHTS corner

Status of child labour

In Bangladesh around 55 million people are considered to be below the poverty line. As it is with most child labor, the primary cause for it in Bangladesh is poverty. For many, forcing their children to work is the only way to survive. Education is also hard to get to. Even if a family can afford to feed their children, they may not be able to afford education, which, though free until 5th grade, has the cost of transportation and uniforms.

In recent years child labour in Bangladesh has increased alarmingly. Traditionally, many children have always worked in village agriculture, but the numbers employed in urban industrial, commercial sectors and household has risen sharply. Working children are a neglected group in Bangladeshi society. They are seen as part of the floating population and are not included in the national census.

Laws in Bangladesh do not restrict the employment of children in all kinds of industry except where the nature of work is very strenuous. In Bangladesh, urban working children either live on the street or in overcrowded slum and squatter settlements. According to a survey there are 400,000 children under the age of 15 working in urban areas, which is 12 percent of the total urban labour force. They work in industry, transport, commerce, domestic service, metal & leather factories and construction and in garment factories. In spite of domestic and international laws and Conventions in favour of children, they can be found working in garment factories, hotels, brickmaking, biri factories, mechanical workshops, match factories, agricultural work, domestic work, and as garbage collectors and touts on buses and tamps. Children also work in small shops, tea stalls, handloom and bin factories and the fishing industry. Most working children do not have the opportunity to attend school.

Laws relating to child labour

In practice, child labour laws in Bangladesh do not protect working children. Employers prefer children, as they are cheap, productive and obedient. Children working in the industrial sector have no contract of employment and so find it difficult to stand up for them and fight for their rights. The demand by factories for child labourers is increasing all the time.

Working children are used and exploited for the benefit of the better-off sector of society. This is not really deliberate exploitation of children by the wealthy, but rather reflects the attitude of society, of children as a source of cheap labour. Child workers are always faced with bad work-

of Children Act, 1938; The Children (Pledging of Labour) Act, 1933; The Factories Act, 1965; The Plantations Labour Ordinance, 1962 and The Shops and Establishment Act, 1965. All these laws prohibit the employment of children below 14 years of age.

In Bangladesh, children work because they and their families are poor and so there is no immediate prospect of eliminating child labour. But that does not mean that nothing can be done. The priority must be to ensure that children are excluded from dangerous and physically demanding work. Children are the future leaders of our nation. By neglecting their basic rights and hampering their process of growth, we are restrict-



ing conditions, unfix wages, health hazards, lack of recreation and are exposed to mental, physical and sexual harassment.

Child labour is prohibited in Bangladesh under the Employment

ing the development of our country. However, progress is being made to eliminate child labor in Bangladesh.

Source: Shishuupakash, an initiative of Mass Line Media Centre and UNICEF.

LAW week

Khaleda accuses CG advisers of conspiracy

Former prime minister and BNP Chairperson Khaleda Zia blasted the council of advisers to the caretaker government for meeting without the chief adviser and accused them of conspiracy. In a warning to the interim government, she said, "Just cooperate with the Election Commission in holding the upcoming polls. You are not here to implement anyone's political agenda." "The advisers had a meeting without the chief adviser and it was very much unconstitutional. We don't know what they have discussed," she told a huge rally in front of the BNP central office at city's Nayapalton. Pointing to the advisers' November 6 meeting at a state guesthouse in absence of President and Chief Adviser Iajuddin Ahmed, Khaleda asked, "What sort of plots they [advisers] have hatched at the meeting without the chief adviser?" Describing the present Election Commission (EC) as fully independent and neutral, she cautioned the caretaker government not to meddle with the commission's affairs. The top leader of the four-party alliance then asked the chief election commissioner (CEC) and the other election commissioners to arrange for the elections in consultation with the president. --The Daily Star, November 8.

Armed forces to cooperate in election

President, also Chief Adviser to the Caretaker Government, Iajuddin Ahmed said he firmly believes that the armed forces will provide all out cooperation, on demand, to his government and the Election Commission (EC) in holding the upcoming general election maintaining the same level of professional skill, devotion and neutrality demonstrated by them in past elections. "As members of law enforcing agencies, neutral role of the armed forces is very important in the national election," Iajuddin said while addressing senior military officers at Senakunja in Dhaka Cantonment. He said the devotion, professional skill and neutrality of the members of the armed forces in providing all out cooperation to the EC in holding successful, fair and neutral elections in the past, have earned confidence of the people as well as of different foreign agencies. "The armed forces must be ready for the sake of the state and the people... I hope you'll jointly demonstrate your professionalism for maintaining democratic process and discharge your responsibilities by rising above all controversies," he said, according to a UNB report. About the unrest on the eve of transfer of power late last month, the president, who is also the commander-in-chief, said the armed forces were kept on alert for a while during the period to control the evolving situation if the necessity would arise and to prevent any kind of unwarranted chaos in the country. --The Daily Star, November 9.

CEC's claim untrue Adviser Mashhud spill the beans

The denial of chief election commissioner (CEC) about an adviser's visit to his residence apparently proved false as caretaker government Adviser Lt Gen (ret'd)

Hasan Mashhud Chowdhury emphatically said he visited the CEC's residence. On behalf of the council of advisers, Hasan Mashhud and the military secretary to the president met with the CEC, seeking his opinion whether he will resign if requested by the caretaker government to pave the way for reconstituting the Election Commission (EC). The adviser did not make the visit public. He, however, informed a meeting of the advisers' council of the CEC's negative response. But, talking to reporters, CEC MA Aziz denied that the council of advisers or any adviser requested or called him to resign. "How do you know that they [advisory council] made any requests to me for my resignation? If they did, I should know first," Aziz told reporters. "There were no discussions with the advisers about my resignation. Didn't you hear what the president said? He said there was no discussion regarding my resignation. "What Akbar Ali Khan adviser to the caretaker government said about me was his personal opinion. Everyone has their own opinion as you and I also have," the CEC said. Two days after the CEC's denial, Hasan Mashhud said, "Both of us cannot be telling the truth." Asked who is telling the truth, Mashhud told reporters, "I am telling you, I visited his residence. I visited his residence along with the military secretary to the president to ask him whether he would be willing to step down. To which he said a definite 'no'. I had gone there after a consensus decision of advisers and being asked by the president and chief adviser." --The Daily Star, November 9.

Govt goes back to 'presidential form' Observes CA Prof Iajuddin

President and Chief Adviser to the Caretaker Government Prof Iajuddin Ahmed reminded everyone that the present form of government has become a "presidential form of government". "I would like to remind everyone that the present form of government has become a presidential form of government after reposing the responsibility of caretaker government on the president," Iajuddin said at a meeting with secretaries to different ministries at the secretariat. "Everything is being conducted as per the Rules of Business and Allocation of Business. I appointed officials at the president's office according to my choice and they are discharging their duties with sincerity," the president said, adding, "The highest constitutional institution has to be kept above all debates." Iajuddin asked all top bureaucrats to extend cooperation to the Election Commission (EC) as per government instructions for holding a peaceful, free, fair and neutral election. "You have to discharge your duties by maintaining absolute neutrality and objectivity and staying above all fears, apprehensions and influence," he told the secretaries in the first meeting at the secretariat after taking office as the chief adviser. The secretaries demanded that the president cancel all contractual appointments and fill the posts with regular officers for holding the next election in a free and fair manner. --The Daily Star, November 10.

STATE scan



56 persons killed due to politically motivated violence in the last 13 days, from 27 October - 8 November 2006 - Odhikar

Corresponding with the Law Desk

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