

## The Constitution is neither Bible nor play-thing

**So let every citizen ask himself, what is more important, the legal interpretation of a minor Constitutional sub-clause, or an end to the crisis facing the nation. Let politicians reflect on their past. Did you not argue that people's interest comes before everything else? Time is fast running out. The differences are now very minor. The advisors are ten honourable persons who are working without self-interest. Let us raise ourselves to their level. Let us also put self-interest behind us. Let us now agree to hold a fair and just election.**

### NAZIM KAMRAN CHOUDHURY

*"In a situation where politics takes to the streets, the niceties and literal meanings of the Constitution lose their significance and the Constitution becomes less important than the demands of the people."*

**Moudud Ahmed**, "Democracy and the Challenge of Development."

I have just been reading General Pervez Musharraf's book, "In The Line Of Fire." When I reached the chapters where he discusses different palace intrigues in Pakistan, I had a flashback to my days as a student when we would read all about the scheming of people like Ghulam Muhammad, Iskandar Mirza, Ayub Khan, and other Pakistani politicians of the time. Later I would see how Yahya Khan, Bhutto and the Pakistani military and civil bureaucracy would destroy their own country just to try and retain their own power.

From General Musharraf's book it appears that Pakistan has not learnt its lessons. He writes how in 1998: "President Farooq Leghari tried to get the chief justice to claim that the constitutional amendment was unconstitutional. If the chief justice had done this, the president would have dissolved the National Assembly and dismissed the government of the errant Prime Minister Sharif. The prime minister convinced certain judges to take his side, and they passed a resolution against their own chief justice. Then the prime minister got his party goons to storm the Supreme Court building while the court was in session. Their lordships had to hide in their chambers to avoid a thrashing, or worse." It seems that Pakistan had learnt nothing from its past political mistakes.

About his own takeover, General

Musharraf claims that Prime Minister Sharif attempted a coup through an illegal order, and that his army commanders merely carried out a counter-coup. He says that martial law was not declared and the Constitution was kept operational, excepting a few clauses. He also cites the May 2000 Supreme Court judgement where his assumption of power was upheld, but two conditions were applied. First he was required to hold elections in three years, and second, that he could not introduce any "structural" changes in the constitution that would change the "salient features." General Musharraf says: "This meant that correcting a dysfunctional democracy would have limitations." He goes on to say: "On closer analysis, however, I realised that my basic idea of introducing sustainable democracy in Pakistan could be achieved within these constraints. Our new system of local government, the bedrock of any democratic system, was provided for in our constitution but had never been implemented by politicians, who, selfishly, did not wish to devolve power to the grass roots." What, in fact, he is trying to say is that the need of the people has to take priority over the written word. He quotes a letter written in 1864 by Abraham Lincoln:

*"My oath to preserve the Constitution imposed on me the duty of preserving by every indispensable means that government, that nation, or which the Constitution was the organic law. Was it possible to lose the nation and yet preserve the Constitution? By general law life and limb must be protected, yet often a limb must be amputated to save a life, but a life is never wisely given to save a limb. I felt that measures, otherwise unconstitutional, might become lawful by becoming indispensable to*

*the preservation of the Constitution through the preservation of the nation."*

About his own government, General Musharraf says: "I preserved both the limb and the body. But if there ever had to be a choice, the body would outweigh the limb." Pakistan's history of constitutionalism is at best sketchy. There is a cosy arrangement between the army, the politicians and civil society to freeze or suspend it from time to time. It is usually condoned by their superior courts. That they have learned nothing from their past mistakes is their problem. I had thought we were beginning to learn from our past. Alas, this is not to be.

### Constitutional process in Pakistan

We suddenly have a profusion of people defending our Constitution. It cannot be touched, they say. Nothing will be tolerated outside the Constitution. We will live and die by the book, they seem to be shouting. But who are these people and why this sudden love for constitutionalism? The same people have spent the better part of their lives fighting against some constitution or the other. Starting from the birth of Pakistan, we did not have a constitution for the first decade. The Constituent Assembly passed a resolution in 1949, known as the Objectives Resolution. The principle of this resolution was opposed in East Pakistan, and it is this opposition that led to the birth of the Awami League on June 23, 1949, with Moulana Bhasani as its president and Sheikh Mujib Rahman as one of the two joint secretaries.

The political leaders of East Pakistan continued to fight for a constitution that would give the province the autonomy it desired.

They won the elections of 1954 on this and other programmes. However, when finally the first Constitution was framed in 1956, it did not reflect the wishes of many in East Pakistan. Consequently, Moulana Bhasani walked out of the Awami League, (which was in government, both in the province and the centre), in July 1957, to form the National Awami Party (NAP). In a year the Constitution was abrogated and Martial Law imposed in October 1958. The first Constitution was not accepted by the people.

The second Constitution of Pakistan was framed by Ayub Khan in 1962. From the start it was opposed by large sections of the people of East Pakistan. After the elections of 1965, it was apparent that the constitution did not address the needs of the Bengali people. With the declaration of the Six-Point Programme, the movement against the constitution began. When Sheikh Mujib demanded "one man, one vote," it was virtually a rejection of the 1962 Constitution which was finally buried when, in March 1969, Ayub Khan illegally and unconstitutionally handed over power to the army chief, General Yahya Khan. After that the fight was for the people's right to be governed by the representatives they had elected. The result was the birth of Bangladesh. So we see, from 1949 to 1971, people fought against the constitutions of the time, because the needs of the people were far greater than what the constitutions provided.

### Constitutional process in Bangladesh

Bangladesh's Constitution was adopted on December 16, 1972. Since then, it has had 14 amendments. In the process, the Constitution has been overhauled, changed beyond recognition, buried, revived and more. The 4th Amendment in 1975 changed the Constitution from a parliamentary system to one party rule. Subsequently, Martial Law was imposed and the Constitution suspended. The 5th Amendment in 1979 legalised all martial law actions, proclamations and regulations during the interim period. That did not deter then opposition, which included Begum Zia and many members of her last

electoral election, Acting-President Abdus Sattar, as Vice-President, was holding an office of profit in the Republic. The amendment was carried out so that a section of the then BNP could push for a candidate opposed by another section of the party.

Martial Law was declared in March 1982, and the Constitution was again suspended. The 7th Amendment in 1986 ratified all actions of the intervening Martial Law period of General Ershad. The 8th Amendment made Islam the state religion, and created six permanent benches of the High Court Division outside Dhaka. Subsequently, the Appellate Division of the Supreme Court struck down the provisions relating to the High Court Benches outside Dhaka on the grounds that the Amendment changed the fundamental character and structure of the Constitution, and it was not tenable in law. The 9th Amendment restricted the tenure of the president to two terms and provided for an elected Vice President. The 10th Amendment created thirty reserved seats for women in Parliament.

### Anti-autocrat movement

The anti-autocrat movement of 1989/90 was participated by all political parties opposed to President Ershad. As the movement gained momentum and raced to a climax, a constitutional problem rose. How was Ershad to transfer power? The agreed formula was that President Ershad would dissolve Parliament and his cabinet, the vice-president would resign, an agreed person (Chief Justice Shahabuddin Ahmed) would be appointed vice-president, the president would then resign and the new vice-president would become acting-president. But this formula was outside the scope of the Constitution. The office of the vice-president, after the 8th Amendment, was an elected position and he could not be removed by the president. Even if he resigned voluntarily, the appointment of the new vice-president would have to be ratified by the parliament. Since the Parliament was to be dissolved, the appointment of a new vice-president would be unconstitutional. That did not deter then opposition, which included Begum Zia and many members of her last

cabinet, to insist that Ershad carries out their demands.

The happenings are best described by then Vice President Moudud Ahmed: "When it was pointed out to him (Ershad) that there were constitutional implications if the parliament was dissolved before the vice president was elected by parliament, the president replied that they i.e. the opposition would have this and other legal lacunae rectified and ratified with retrospective effect by the newly elected parliament. The vice president (Moudud) agreed with this opinion."

### 90 days is not sacrosanct

Most constitutional amendments and changes are done less with the future in mind, and more to correct omissions and fears of the past. This is self-evident from almost all the amendments we have seen. If we look at the 12th Amendment, we will see that our fears of an autocratic president made us strip the office of president of all powers. As a result presidents under the present system have no knowledge of statecraft or governance, and can do nothing except blindly sign what the prime minister sends to them.

Unfortunately, our present incumbent does not realise that circumstances have changed, and he continues to do the job he has been taught to do in the last three years.

Part VII of the Constitution deals with elections. This was a part of the original Constitution as amended from time to time. Art 123 (3) says a general election of members of Parliament will be held within ninety days after Parliament is dissolved. It is the same case with bye-elections to a vacant seat, when an election is to be held within ninety days of the vacancy (Art 123 (4)). The 12th Amendment had foreseen the possibility that an election may not be held in 90 days, and it added a proviso to Art 123 (4) where it says "Provided that in a case where, in the opinion of the chief election commissioner, it is not possible, for reasons of an act of God, to hold such election within the period specified in this clause, such elections shall be held within ninety days following next after the last day of such period."

What is an act of God? Some will say is natural disasters. Others will argue everything is an act of God as we are all his creation.

tutes and we are beholden to him for everything.

Some will argue that this clause relates only to causal vacancies and not general elections. Can it be that twenty years after Article 123 was adopted, the 12th Amendment only made this proviso for a causal vacancy, and not for a greater purpose? Now that general elections are before us, what happens if, God forbid, Bangladesh is hit with a natural disaster around the middle of January. Remember 1970. Can elections be held in time? If elections are held in February, will Bangladesh cease to exist? Then again, the 13th Amendment does not impose a specific time limit on the caretaker government. Perhaps the framers envisaged that it could take anywhere between 90 to 120 days to level the playing field and hold a credible election. Then why are we all fixated with this 90 day period? A senior friend told me the other day that only an insane person would think that the 90 day period is more important than the welfare of this nation.

So let every citizen ask himself, what is more important, the legal interpretation of a minor Constitutional sub-clause, or an end to the crisis facing the nation. Let politicians reflect on their past. Did they not argue that people's interest comes before everything else? Time is fast running out. The differences are now very minor. The advisors are ten honourable persons who are working without self-interest. Let us raise ourselves to their level. Let us also put self-interest behind us. Let us now agree to hold a fair and just election.

I am a person who firmly believes in the Constitution and rule of law. What I have tried to put forward is examples where people's needs have been put above the Constitution. However, I am firmly convinced that any action we take to level the playing field towards holding a free and fair election will not in any way go against, or be a violation of, the Constitution. We should not have any fear. Allah will be with us.

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## SM Ali: A life in dedication

### SYED BADRUL HAQUE

BIRTH anniversary is high on the list of life's most exalting and emotionally charged experiences, -- both in personal and social terms. The once-yearly ritual, - which is always rich in public meaning -- refreshes the social perspectives with a sense of belonging to its legacy.

SM Ali, a distinguished journalist of our country was born seventy seven years ago this day, December 5, in a well-known literary family of Sylhet. His is a candid portrait of a journalist who decided early in life to devote his intellectual and writing gift to serving the nation. In reminiscing his professional career, here are some snapshot glimpses along with personal memories. He made his debut in the early fifties as a reporter of the erstwhile premier English daily, The Pakistan Observer, he was conspicuous before long for his feature-reportage, *The City We Live In*. Later, on his return to Pakistan from England, he served in senior positions in the reputed dailies like *The Dawn* in Karachi and *The Pakistan Times* in Lahore where he also used to teach journalism as a part-time of the Punjab University. In 1962 he moved to Hongkong with an assignment with *The Asia Magazine* which was followed by senior editorial positions with the Bangkok Post,

The New Nation (Singapore) and The Hongkong Standard. SM Ali was though away from newspaper world for more than a decade since 1975 serving the Press Foundation of Asia in Hongkong and Manila and UNESCO as its Regional Adviser for Asia in Kuala Lumpur as its regional adviser, his romance with journalism however remained passionately singular. In the late eighties, after his stint as editor of *The Bangladesh Observer* and as advisory editor of the UNB, a news agency, he launched *The Daily Star* as its founding editor in 1991. And that was the finest hour, -- the grand finale -- of his stellar career in journalism spanning more than forty-four years. Under his able stewardship, the paper caught the eye of discerning readers in no time, its readership continued to soar along with its innovative accomplishments. Not the straitjacket of party-leaning newspaper, *The Daily Star* remained steadfast to professional ethics of objectivity. In the backdrop of high temperature of our polarised politics and its attendant adverse effect on the society, it certainly was not a mean feat to keep up such a stance, as one would agree. The paper is now virtually the flagship of our country's English journalism as a liberal, progressive daily. The Daily Star shines luminously, not twinkles.

The esteem in which he was held as a journalist-writer was evident when the Philippine President Ferdinand Marcos address him as Dr Ali when the latter called on him at his presidential palace in Manila.

Taken aback, he informed the President that he was not conferred such degree anytime before. In his reply the President said if your writings are any measure, you earned the degree much earlier than now.

SM Ali was always keen to share his professional expertise with the young aspirants who would like to make a career in journalism. In the mid-fifties when I was bracing for a career in journalism, I received a two-page typed letter from SM Ali. The letter, I would say, was quite a booster to my morale in charting out my future career at a vital cross-road of my life. In his letter he, inter-alia, counselled me to cultivate the habit of writing vigorously, -- vital ingredient for a career in journalism. He, however, cautioned me not to nurse any illusion about journalism. 'Life in journalism is too hard for most of us. Often it may seem almost unbearable,' he wrote. His was indeed a realistic appraisal of the situation prevailing then in our nascent newspaper industry world when the profession obviously did not belong to faint hearts. Yet there were young aspirants who took courage to face the challenge. To many, its thrill apart, the moving urge to join the profession was its unique role to serve the society from a 'vantage point'. Today after

a long and arduous journey over the decades, journalism has come of age in our part of the world. It now commands pretty good rating in terms of money and respectability. The newspapers despite television onslaught, survive gloriously and their number continues to proliferate. The average reader likes to have the stories in front of him in black and white and not moving, even if he has seen them before, flickering across the television screen. As long as he cannot leaf through the television news, newspaper will flourish.

Regrettably, if it is to be mentioned, SM Ali, a nationally honoured journalist hardly gets mention in the profession by way of remembrance or gratitude even at a distance of thirteen years since his demise. This apathy is noticeable not only in the realm of journalism but in other segments of the society as well. Evidently, we have moved so quickly to the sordidness of the present moment because the traditional deference the pioneering elders once received had almost entirely disappeared. To note, SM Ali, beholden to their legacies, wrote excellent pieces on Altaf Hossain and Abdus Salam, the two outstanding editors of his time recalling their memorable contribution to journalism, nay to the nation.

SM Ali was an essentially kindly

and good humoured man who never lost his disarming wit. In his popular column *My World* in The Daily Star, SM Ali wished that the books he received from writers were put on sale after he was gone. Contrarily, one may fervently hope that those books, if not already sold away, were preserved with care as an epitaph to the hallowed memory

of the late-lamented editor. Our tribute in spades.

Syed Badrul Haque, former Public Relation Officer to the President, is a contributor to The Daily Star.

## Bangladesh from a foreign volunteer's perspective

### GINA DIZON

I found Bangladesh hot and full of diggings along the sidewalk when I arrived in this country last March. As weeks rolled by, Bangladesh could really be that hot. Politically.

Many times, a Bangladeshi would ask me, "How do you find Bangladesh?". I would always say, "Bhalo". "Do you like Bangladesh?" and other similar questions of asking my impression of how I find the country and its people.

If there is something that impresses me about this country and its people, I could say their intense passion to political concerns amazes me.

Calls for the reconstitution of the Election Commission (EC), resignation of the President and Chief Adviser (CA) to the caretaker Government, blocking road exit and entrance points has gripped the nation over the past few weeks. And now the proposal of Nobel laureate Dr Muhammad Yunus for a coalition government between Bangladesh

Nationalist Party and Awami League hangs in mid air as to whether the strongly opposing parties will forget their differences that easy and tie the knot.

At this very moment where political crisis is felt all over the nation, people -- from the street vendor to the lawmaker in Parliament -- express their involvement on how they see the country should be run. I find this positive as it manifests a politically active people who are concerned on what kind of government they want.

While it appears that the people are oppressed from a repressive government, vivid indications show that the people are not taking it sitting down. And this is healthy. What is unhealthy is when people accept whatever the government is doing and not do anything because of fear or apathy.

Events the past few weeks if not months had been notoriously yet momentously bloody though which led to loss of many lives. The sacrifice is too high which warrants a high regard for those who lost their lives

and shattered their families' hearts as well. It calls for government look at these incidents and place the reforms where it is necessary for the sake of what both political parties are fighting for: the public good.

Call for reforms over the past months to cite demands of garment workers, Phulbari residents against the Asia energy coal mine, and now issues surrounding the caretaker government and the Election Commission had been a violent and sacrificial way to show the government that the people are serious in what they want government to do. Seemingly, the government could only notice what is wrong when the way how it is shown is violent and bloody. This, definitely is not healthy.

In the same manner, what is not healthy is when differences are settled over violence and bloodshed and opposing parties are not able to talk on the negotiation table.

Once a Bangladeshi friend told me, "Bangladeshis are easily influenced". If this is true, then leaders, political leaders most especially,

have to exercise their most rational, pro-people and objective decision in influencing the majority.

**Friendly** Another thing I consider "bhalo" is the friendliness and hospitality of the people, especially in the countryside. I first visited the field office in Kokonhat where I serve as Volunteer Service Overseas (VSO) volunteer for Adivasi Unnayan Songstha. From the bus, I got down to look for a Grameen card to phone a friend to fetch me as I don't know where the office is. I found no card in the first shop I entered. A guy who must have heard me looking for a phone card accompanied me to another shop. The shop ran out of Grameen cards so I ended up in a garments shop where the shopkeeper offered me his cellphone so I could call. Isn't that cute? Of course, the cell was not for free. Thing is, somebody I don't know offered me his cellphone and I was able to call.

**Simple** Life here is simple with nothing much to spend on unless you are a clothes freak, you could spend your money that fast on futwa, kameez and urma. Food is cheap and you don't have to eat fried chicken every meal in the first place. Alcohol is socially restricted which makes

drinking and the night life impossible unless you sneak off rice wine of Adivasis who use this for their cultural rites. I could live comfortably enough and buy what I basically need with a Volunteer's allowance.

From this amount, I could still save some take for a vacation in the Sundarbans.

While I talk of having a vacation, life is not simple among majority of the 140 million population of this country. Life is sheer poverty, devoid of access to resources and alternative employment. From the slum dwellers in the cities of Dhaka who beg for food in the streets, to the Adivasis in the countryside who receive at least 50 taka a day for farm work, majority of the population fall below the poverty level.

Among the Adivasi families in the northwest, almost 90 percent are landless and serve as farm labourers to rich land owners who live in the city. Most of them have lived their lives this way, have not earned education due to sheer poverty and life gets stuck this way until reforms in the economic and political system

will haul them