

Gulshan Lake grabbers

Sustain the drive until goal is achieved

THIS is for the umpteenth time perhaps that we have seen Rajuk bulldozers demolishing some boundary walls or parts of a house of some residents built illegally on public property. But, we have also seen in the past how the on-duty magistrate(s) and the policemen along with the Rajuk officials had to retreat leaving the work half done, as powerful people started calling up more powerful people to stop such activity. Some of the residents have always come up with a court stay order to thwart the attempt.

The fresh drive by Rajuk to evict grabbers of land on the two sides of the Gulshan-Banani-Baridhara Lake has seen some action on day one (Thursday), but we have yet to see how the drive looks like on day two and three. We have reasons to understand that already forces are active to shoo away the Rajuk demolishers from attaining the goal. There are reports that at more than one point the grabbers tried their best to stop the action resorting to various ploys, including threats and force.

We solemnly believe that all land in the hands of illegal occupiers must be recovered and given back to the state, the rightful owner. Illegal occupation of state property is a felony and the perpetrators must be punished according to the law of the land. If there are no sufficiently stringent laws, then new laws have to be created for the purpose. And while evicting the illegal occupiers, no person(s) or group should be considered above law nor given a discriminatory treatment in such cases.

Understandably, a section of Rajuk officials are involved in the racket of providing official documents against occupation of land surrounding the lake that were originally earmarked for other purposes, like construction of a walkway. These officials also need to be identified and brought before the law to break the nexus of land grabbers.

En masse recruitment at RU

Tainted with 'political consideration'

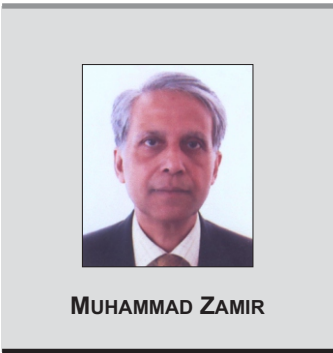
AS many as 200 fourth class staff have allegedly been recruited by the Rajshahi University within a span of last three days. Not only that, the motive and the process that have led to their recruitment have been, to say the least, opaque. To top it all, the authorities are set to be planning to recruit yet another 800 within a short period of time. Senior teachers of the university have expressed their concern over the fact that as many as 1500 job seekers thronging the university's administration building on a daily basis is affecting the overall academic atmosphere of the university.

We also note with deep concern, as voiced by a Syndicate member of the university, that the appointments are certain to overshoot the budgetary allocations of the current fiscal year. The University Grants Commission only recently warned the RU authorities of stopping allocation of funds. Even no less than the Treasurer of the University in a letter to the Vice Chancellor expressed his concern saying that already Tk 18 crore has been spent during the first quarter of this fiscal as against the total allocation of Tk 52.04 crore for this fiscal year.

We cannot help being concerned about the developments in the recruitment process at the Rajshahi University. Besides the budgetary factor, also of serious concern is the allegation that the appointments were being mostly made on 'political considerations' of candidates belonging to the student bodies of former ruling coalition. While politicisation of the overall management and administration of our public universities has become a rather regular feature, it must be said that the situation at the Rajshahi University is perhaps one of the worst.

Corruption, material or otherwise, has already infiltrated into every sphere of the society. However, its prevalence in educational institutions is the least desirable.

Turning a new leaf



THE state of governance has passed through a period of turmoil over the last few days. The concept of caretaker government, most fortunately for all of us, has been re-assessed and steps taken to raise it over the threshold of controversy. The people of this country have all shared in a critical exercise that reaffirmed that the provisions of the Constitution are meant to help the people and the democratic process and not be a source of restrictions.

One also needs to put on record our appreciation for the efforts of our development partners in this regard. Contrary to views expressed by some xenophobic politicians their expressions of concern about a disagreeable election, participated by a few, helped to underline the need for meeting recognised international standards consistent with international values.

The latest steps will enable the President to use his influence and to monitor more effectively the forthcoming electoral process. There will now be a check and balance within the system as was envisaged originally within the caretaker format of governance.

We have stepped back from the abyss and have an opportunity for a new beginning. We have been able to stop the staging of a sham shadow-play on our political stage.

Election engineering had opened the portals for an immense electoral fraud. Not content with

corrupting the voters' list, the situation had been fine tuned by certain politicians to create a superficial impression that many political parties, with different political persuasions, were participating in this questionable election. This was reflected in the composition of the residual electoral aspirants after the withdrawal of representatives of the Grand Alliance headed by the Awami League.

A total of 1578 candidates were

this carefully worked out situation permitted a former senior BNP Minister to remark in the electronic media that it was irrelevant if the Grand Alliance did not participate in the elections. He also claimed that it was going to be a multi-party election despite the absence of Awami League and its allies. Another one of his former colleagues remarked that he was confident that a majority of the voting population would participate in the polls and that this

with correct measures, rid ourselves of the unfortunate tag of a Least Developed Country and move into the bracket of a Middle Income Country. We are a resilient people who are capable of overcoming natural disasters and forging ahead. We are homogeneous and do not suffer from communal or sectarian divides. We have a hard-working population who can find solutions to intractable problems despite resource con-

Muslim States. Over the last fifteen years we have successfully met one of the two criteria for a working democracy – the peaceful transfer of power from a government to the opposition after reasonably credible elections. We have however not always been able to meet the second test – that of effective governance in an atmosphere of constructive parliamentary debate. The existing format of parliamentary committees has more often than not

only hope that all stakeholders, including major political parties and the civil society, will now extend their cooperation to the Election Commission and the Caretaker Government so that the necessary environment can be created for an early acceptable election. We must all remember that we have been able to emerge out of a serious political impasse that had implications not only for Bangladesh but also for the South Asian region.

One political Alliance that refrained from participating in the swearing-in ceremony of Dr Fakhruddin Ahmed, the new Head of the Caretaker Administration, has already stated that they will carefully monitor the activities of the new caretaker government. There have also been hints that, if necessary, this particular Alliance might take to the streets to press their demands. I believe that such a state of political dynamics will affect the future political process. It is no use keeping the sword of Damocles hanging over the head of the new caretaker administration.

Everyone concerned must understand that we have been given another chance. Let us, for a change, rise above acrimony and participate in a constructive engagement.

The new Caretaker Administration will also have to engage itself in discussion with the relevant key parties and reach a common ground of consensus so that objections do not arise in the future over its neutral character. This will be the only way for the strengthening of our democratic institutions.

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going to participate in this carefully organised polls – 727 or 46 per cent of them from different political parties. Of these 236 would be from the BNP, 37 from Jamat-e-Islami, Bangladesh and 13 from Islami Oikya Jote. In addition, there were candidates from political parties who had rarely been seen or heard of in the national stage. They included 137 candidates from the Islamic Shasontantra Andolon, 56 candidates from the Krishak Sramik Janata League, 29 candidates from the Khelafat Andolon, 23 candidates from the Hindu League and 14 candidates each from the Bangladesh Tarikat Foundation and the Jamiya Ulamaya Islam.

The scenario assumed greater controversy given the fact that this effort was aimed at resurrecting an 'Islamic minded' loyal domestic opposition with a combined candidacy of 244 – which was more than that fielded by the BNP.

The confidence generated from

would lend credibility to this charade. They probably forgot the old maxim that 'you can fool some of the people some of the time but not all the people all the time.'

Nevertheless, time has now come to put differences aside and for all political parties to work together towards a free and fair election that will have credibility and will be acceptable both at home and abroad. Future stability, good governance, economic development and the removal of the curse of corruption depend on this.

We must not forget that Bangladesh today is in the news, more so because it has been graced with the Nobel Prize for peace. We have given the world a philosophy that is not only helping to reduce poverty but also providing empowerment to women. We have also been able to set examples in the arena of informal education and family planning. We have, in us, the potential to move forward. We can,

strains. We also have a large, functioning, expatriate population that is assisting us to raise our economic standards through their growing remittances. We have many positives in our favour and all of these factors can help us to cross the divide.

All that is required is the necessary political will. In this context, it would be correct to point out that political parties need to understand that greed for power without principles will affect their potential for governance in the long run. They have to appreciate that democracy and democratic behaviour need to be supplemented and reinforced through the maintenance of rule of law and bipartisanship. They also have to realise that the art of politics should not mean politicisation of state institutions as that can only spell administrative disaster.

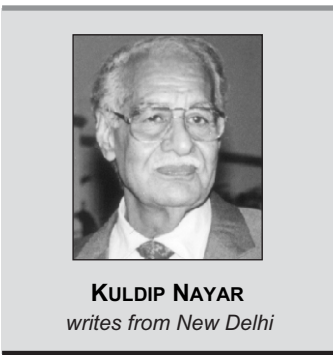
It is commonly agreed that Bangladesh has been at the forefront of democratic growth among

failed to live up to expectations. Neutrality has been sacrificed at the altar of partisan politics.

The newly constituted Caretaker Government under a new Chief has many tasks ahead. The first and foremost responsibility is the comprehensive correction and preparation of the voters' list. Similarly, the electoral process has to be redrawn so that omissions can be rectified. There is also the question of putting in place voters' ID cards. This will be most difficult given the resource constraint and the time required for a proper completion of the task. There is also the challenge of procuring transparent ballot boxes, if possible, ahead of the polls.

A state of emergency has had to be declared to facilitate a fair electoral process and the creation of a 'level playing field.' This measure was obviously taken in public interest and in the absence of any other suitable alternative. One can

Fundamental rights restored



KULDIP NAYAR
writes from New Delhi

IN the very first year or so of the Indian constitution, some state High Courts went to the extent of holding that the guarantee of freedom of speech and expression protected not only liberty to speak out but also instigation to commit murder and offences involving violence. Obviously, the courts had misunderstood the concept of liberty. Parliament had to intervene with a constitutional amendment to remedy the situation. It inserted in the chapter on the fundamental rights expressions, like "public safety" and "incitement to offence," with which the courts were more familiar.

Around the same time, the provisions relating to the right to equality and the right to property were so interpreted by the courts that urgent social reforms, like the abolition of zamindari, became unconstitutional or impossible. Parliament had to step in once again with legislation to bring about a transformation in the conditions of those who lived in the villages and worked on the land.

It was an amendment to the constitution – the Ninth Schedule – to make social justice measures

beyond the court's jurisdiction. However, the government misused the provision, and converted the Ninth Schedule into a kind of bag into which it threw laws of dubious character to avoid judicial scrutiny. For example, a provision to split the Audit and Accounts Service was put in the bag to escape legal examination.

The Supreme Court of India has looked into the basket where as many as 216 acts have been

legislation will probably be required to avoid this.

Yet another question that has been thrown up is of parliament's supremacy. If the two houses representing the people cannot have a law for their own welfare, without getting an endorsement of the court, then how does the nation fight against the vested interests and the anti-poor laws? The judiciary, lessening in standards and credibility, may not be the ideal



I only hope that the Supreme Court would stand up if and when the occasion arose again. It has already shown its pro-establishment tilt when it said in a judgment that a Rajya Sabha member need not be a resident of the state which returns him or her. The court rejected the requirement of the basic structure of the constitution, federalism. The argument given was that parliament had passed a law to do away with the domicile requirement. How could a law, not even a constitutional amendment, violating the basic structure of the constitution be upheld by the Supreme Court?

stacked. In a judgment, the court has said that it has the right to scrutinise every law in the Ninth Schedule to ensure that there is no violation of the fundamental rights like freedom of speech, and that of the basic structure of the constitution like secularism. Social justice measures will have to stand the same test.

I wish the government had utilised the Ninth Schedule for agrarian reforms, its original purpose. The mistake of the administration has probably irritated the Supreme Court. It has gone to the other extreme and thrown the baby with the bathtub. Future agrarian reforms would come to be snarled in unending legal suits. A new

authority to override measures relating to welfare of the people. While settling this question, the risk of confrontation between parliament and the judiciary has to be avoided.

Some laws in the Ninth Schedule are relevant to the nation's welfare. What will be their fate after the sanctity of the Schedule is gone?

The chaff has to be separated from the rice. Another thing which may have irritated the Supreme Court is the government's inclusion of creamy layer in the list of scheduled castes and other backward classes. The court had advised the government not to do so. Still it went ahead to have a law to include the creamy layer in reservations for

Ram Vilas Paswan, a dalit, and the other, Lalu Prasad Yadav, from the backward classes. The legislation, if and when thrown out by the Supreme Court, may create a problem.

I wonder if there is still any purpose of having the Ninth Schedule, when all laws are subject to judicial scrutiny. After the Supreme Court's judgment, no legislation is special, or superior to the other. Rulers or, for that matter the majority in parliament, may have to come to terms with the reality: they cannot go beyond the *Lakshman rekha* which has been drawn by the fundamental rights, and basic structure, of the constitution.

The Supreme Court has given

another historic judgment. It has upheld parliament's prerogative to expel members. Thus, the 11 MPs thrown out of the Lok Sabha last year because of corruption have lost their seats. The supremacy of parliament, more so of the Speaker, has been established beyond doubt. This can, however, create political uncertainty in the states, particularly where the ruling party has a thin majority of three or four members. The Speaker has now

untrammeled powers, which he can misuse. He can be tempted to play politics.

The Supreme Court has done well to lay down that ousting of members will have to stand the test of judicial scrutiny. Still, the best course would have been to ask the members concerned to go back to their constituencies and seek a fresh verdict. The voters elect a member. They are the masters, not parliament or the state assembly. One thing the two judgments underline is India's democratic environ – neither the supremacy of the judiciary nor the pre-eminence of parliament.

When the atmosphere was different during the emergency

(1975-77), both the institutions cringed before the authoritarian Mrs Indira Gandhi and her son, Sanjay Gandhi, who enjoyed extra-constitutional authority. The Supreme Court held, at that time, that the government had powers to suspend the fundamental rights. Only one judge, H.R. Khanna, dissented at that time, and he was superseded. Parliament, on the other hand, endorsed the emergency, and most members sang praises of Mrs Gandhi.

I only hope that the Supreme Court would stand up if and when the occasion arose again. It has already shown its pro-establishment tilt when it said in a judgment that a Rajya Sabha member need not be a resident of the state which returns him or her. The court rejected the requirement of the basic structure of the constitution, federalism. The argument given was that parliament had passed a law to do away with the domicile requirement. How could a law, not even a constitutional amendment, violating the basic structure of the constitution be upheld by the Supreme Court?

The court seems to have double standards. Without the awareness of what is right, and a desire to act according to what is right, there may be no realisation of what is wrong. For many, the dividing line between right and wrong, moral and immoral, has ceased to exist. The judiciary has to be above reproach. This is the key institution which protects democracy in a country.

Kuldip Nayar is an eminent Indian columnist.

OPINION

Reviewing the retreat and retrieval

KAZI ALAUDDIN AHMED

AT long last the loud, deafening cry intermixed often with the usual stale, repetitive rhetorics of the so-called defenders of the constitution, has died down. It was indeed a pitiable episode persistently enacted by the protagonists who had been utterly forgetful of the occasions when they themselves changed the provisions of the constitution as would suit their own need. To cite an example we may allude to the uncalled for raising of the retiring age limits of the Judges of High Court. Though apparently it behovee a generalised conjecture benefiting all the sitting judges the main focus had been a single individual who would retire as the last chief justice prior to the general election of January 2007. However, the prospective head of the care-

taker government, being obvious a very sensible person with tremendous self respect at last declined to accept the position.

At such a critical point of time all eyes were naturally focused on the deciding factor, that is, the incumbent President of Bangladesh. The experts of constitution gave their opinion with a number of options which would have been very much in conformity with the provisions in the constitution on the composition of the caretaker government vis-a-vis appointment of the Chief Adviser. To everyone's surprise and much to the pleasure and satisfaction of the self-styled 'defenders' of constitution the alternatives suggested by the experts conforming to the constitutional provisions were not heeded to. The story thereafter does not need to be recounted here.

Things continued to be in total

disarray at every level of administration. The caretaker government installed during the intervening period commenced its role playing in a hectic but awfully lackadaisical manner. Some of the agile advisers were seen in desperate bid to bring the two conflicting alliances to a reasonable consensus. At such a transition they moved back and forth to persuade the two factions to help an agreement. Some of them, at one stage, was so very enthusiastic and optimistic that he saw a light of hope at the end of the tunnel. This was all around a package deal that, once accepted, would have removed all the hurdles to a fair and free election. There had been personal lobbies as well to obtain a green signal primarily from the 14-party alliance. When things were seen moving fast and rays of hope were brighter, the Chief Adviser of the Caretaker

Government was seen very cold to the prospect of a tangible solution. He fell ultimately under tremendous national and international pressure besides stingy remarks of the leaders of the 14-party alliance.

Four of the advisers who were observed to have been playing a very active and almost catalytic role suddenly abandoned all their earnest endeavours. Seemingly, these four, including a lady, could no longer bear with the awfully umbrageous dispensation and mysterious dealings of the person they reported to. They resigned and went back home. As things went on such relinquishing of positions appeared to have no impact on the man provoking such action. They were readily replaced by four others.

On January 03, the 14-party alliance chief addressed a public meeting at Paltan Maidan and announced the decision of her

alliance to boycott the election set for January 22, 2007. Before such announcement all the nominees of the alliance withdrew their nomination papers. In this meeting the Awami League chief and leader of the 14-party alliance reiterated the demands made earlier, for immediate fulfilment which included, inter alia, immediate resignation of the President from the dual position of Chief of the Caretaker Government.

Following such announcement the situation in the political arena started changing rapidly. Concurrently the diplomats of the United States of America, Great Britain, EC countries, Australia and Japan were seen in frantic efforts at forging a solution to the problem as would acceptable to all. Even the new Secretary General of the United Nations sent his special emissary to Dhaka to convey his

concern to Bangladesh government with request to refrain from holding such one-party election. It insisted upon holding the election with all the political parties in a fair and transparent manner to make it credible nationally as well as internationally.

The NDI of the United States regretted its inability to monitor the one-party election leaving the majority political parties outside. Observers from the EC countries and other international agencies which earlier evinced keen interest also retracted in utter disappointment. Several donor agencies too followed suit.

All these things happened so rapidly that there could not be any other choice for the incumbent Chief Adviser of the caretaker government but to give in to the international as well as national pressure. He resigned and also

announced that a new caretaker government with a completely different set-up would soon take over. Almost immediately thereafter the President of Bangladesh declared national emergency on Friday January 12, 2007. Concurrently curfew was clamped from 11pm to 5am for the first right. Dr Fakhruddin Ahmed, former governor of Bangladesh Bank was sworn in as the new Chief Adviser. Curiously enough the entire political arena at home was stuck to sullen silence. The prohibitive clauses of the emergency proclamation could have done the forbidding of the political activities. Ten supporting advisers to the caretaker government were selected in two phases. We have by now heard the programme outline of the new body which included reshuffle and re-organisation of the Election Commission, credible updating of

the voter list, issue of voters' identity card, etc. We are to wait for some more time to hear about the new and revised election schedule.

Having thus recounted in brief the fleeting unwholesome scenario of the preceding days since October 29, 2006 one might now ask why then the 'bogey' of constitution, its absolute inalienability and compulsion etc etc were up by the 4-party alliance? What could be the earthly reasons to keep the real authority inactive on the issues raised by the 14-party alliance? How then the present course of action could be pursued now but not earlier? And, who will take the responsibility of making reparation for the colossal loss in terms of time and tax-payers' money?

The people have a right to know, I suppose.

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