

Juvenile offenders

Court order must be complied with

IT is a disconcerting news that though there is a High Court order that explicitly tells the authorities to keep the juvenile accused in correction centres instead of normal jails with adult criminals, the authorities concerned are showing total disregard to the law. In a recent report published in this daily it has been mentioned that at least 511 growing children have been kept in 57 jails across the country ignoring the Children's Act, 1974. On the other hand, though the capacity of three particular correction centres is 700, there are only 237 children in those centres at the moment. This one example tells of the magnitude of mismanagement and some form of apathy embedded in the people concerned.

According to the existing law, which was further reinforced through a High Court order in 2003, all juvenile accused are to be kept in correction centres or similar approved homes under special care until their cases are resolved in a court of law. These measures are taken so that in no case these growing children are kept in the same premises with hardened adult criminals who have the tendency to exploit them physically, mentally, economically and worst of all, sexually. Thus, the rationale behind separating them from the adult criminals is to ensure their normal growth in an environment free from any such traumatic encounters. It needs no emphasising that the environment inside the prisons in this country, or for that matter in any country, is devoid of any humane characteristics.

The number of juvenile accused is increasing quite alarmingly in this country for various psycho-social and economic reasons and these need to be addressed on a priority basis. Only in 2006 a total of 1,810 children were kept behind bars and that this year the number is increasing, more so in Dhaka, Chittagong, Sylhet and Rajshahi districts. We are sure a country-wide survey to look into the factors contributing to pushing the juveniles to breaking laws would reveal the answers as to how the problems can be solved.

We hope the authorities concerned would move the juvenile accused immediately to the correction centres and arrange for their trials without further delay.

Why take it out on patients?

The behaviour pattern must change

DHAKA Medical College Hospital was brought to a standstill for at least two hours on Thursday because of clashes between doctors and fourth class employees originating in what appeared to be a trivial matter. This centred around attempted entry of a doctor with some visitors to the Medical College where the gatekeeper stopped them saying that the director of DMCH being on a routine visit such admittance to the hospital was restricted. Altercation and manhandling followed leading to clashes in which three doctors and an employee were injured.

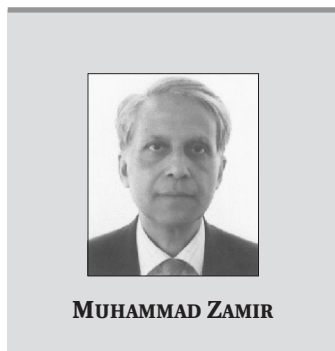
What is more to the point is that in the backlash as the on-duty doctors went on a wildcat strike, indoor patients, some of them critically ill, were denied medical attention. More disappointingly, most of those who had been waiting at the emergency ward for immediate attention had to be moved to other hospitals by their relatives.

Thanks to the director's intervention, formation of an inquiry committee to go into the incident and assurances for remedial action, the strike came to a halt but the doctors might resume the programme 'if the culprits are not punished'.

We would say let the inquiry committee find out the offenders; but in the meanwhile, we have several questions to find appropriate answers to. Our first question is to the doctors themselves: Why take it out on the patients? Dhaka Medical College Hospital, as the premier hospital in the government sector, is looked up to for setting right standards of medical service. Most of the common people who cannot afford high cost medical treatment knock at the doors of DMCH for medical attention they direly need. Doctors and other employees of the hospital must be conscious of their responsibility to the poor patients rather than hold them ransom to their changing temperaments.

We wonder why the matter was not brought up to the administration at the right time to nip it in the bud and prevent the initial tension from snowballing. There must be an auto-reactive mechanism for trouble-shooting in such a big institution.

Politics, development, security and democracy



MUHAMMAD ZAMIR

WITH advancements in science and technology, and in the principles of administration and management, new words and phrases have been added to the English language. Some of them have been interesting and others have provided food for thought. A classical addition has been 'sociometric overlay'. These two words in public administration sound very technical. In simple terms however, it means informal access to the decision-making process (the indirect linkage based on friendship or family relationship). Administrators consider such overlay to be mostly harmful in the context of good governance. British Prime Minister Churchill thought that it contributed towards corruption. We have seen evidence of this in Bangladesh for the last few years.

Over the last few months since 11 January of this year, enlightened citizens, commentators, political scientists, economists, professionals and officials associated with civil administration and also the armed forces in Bangladesh have discussed at length about the connotations of some significant words -- politics, development, security and democracy. Some have even spoken at length about the principles involved in political developments in the recent past and how they have impacted on our governance. Others have indicated that failure to strike a balance had led to erosion of moral values and subsequently corrupt practices. Articles in the media have also highlighted how deterioration within the political scene has affected democratic institutions.

The whole nation is currently going through a phase of re-thinking and self-

inspection. In fact, one may state that we, collectively and individually, are involved not only in the re-examination of the principles associated with maintenance of law, good and effective governance, transparency and accountability, but also their relationship with the nation's security and the survival of sustainable democracy. We are faced today with some important challenges.

The question is no longer confined to just the holding of a general election so that we can convene the Ninth Jatiyo

achieving of such a brand of democracy will require time, sincerity and vision. I agree with this assumption.

Most of us know of the failures that caused the total breakdown of administration in the recent past. Dispassionate and careful scrutiny will reveal that factors like election engineering, greed, dynastic ambitions, abuse of authority and access to power, all juxtaposed to create this unfortunate situation. Common people had to shed blood once again to bail the country out of a potential catastrophe.

posed of businessmen set their sights not on national interests but on how members of the ruling Alliance could add to their personal wealth. It was not the fault of the concept. It was the misuse of its ethos.

Bipartisanship, the very essence of parliamentary democracy was sacrificed and thrown into the lake adjacent to the Jatiyo Sangshad.

The Judiciary, for narrow political ends, was tampered with and its neutral character maligned. Inexperienced and controversial persons were appointed

have a newly constituted Election Commission and a more effective Anti Corruption Commission. We have successfully ensured the independence of the Judiciary from the Executive. Several measures and corrective step have also been taken to plug the legal loopholes that permitted the corrupt to escape through the backdoor. Certain other emotive issues pertaining to giving of due respect to our national leaders are also being addressed. We, in this regard, also hope to see the completion of the process of justice pertaining to the brutal

In the meantime, the relevant Agencies of the government should start in right earnest to complete their tasks -- correction of the national voters list and the creation of the required database for issuing of voters ID cards. The elections can only take place after the completion of this exercise. At the same time, new reference points need to be drawn up so that necessary reforms can be brought into the electoral exercise and we can have a meaningful and functional democratic governance 'for the people, by the people and of the people' instead of 'far the people, buy the people and off the people'.

This could include compulsory registration of political parties, transparency in their financial dealings, regular auditing of revenue and expenditure and the growth of democratic principles within the parties themselves. For example, as in other parliamentary democracies elsewhere, all members of the political parties could also create their leadership structures from their lowest tiers through elections (rather than selection), held every two years, and gradually work their way upwards to the national level. This would immediately contain the prospects of dynastic ambitions that fundamentally contradict the spirit of democracy. It would also enable the political parties to select better electoral candidates for the Parliament on the basis of merit and not black money and muscle power. All these elements could come up for discussion in indoor meeting of political parties and also in their parleys with the Election Commission.

Basic reforms within an 'affordable' time frame will permit these imperatives to be reflected within the process of governance and politics. If we can build on our latent positives, we might be able to meet our Millennium Development Goals. We must all work together to ensure that our people can enjoy their freedom in a peaceful manner, with dignity and that everyone can seek justice and obtain it.

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POST BREAKFAST

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Sangshad. We have a bigger picture that is seeking our attention. Restoration of fundamental values is now taking priority. This aspect of public life is assuming special importance because of its direct impact on the development of political and social institutions, on economic development and national security associated with the good of the people.

All of us believe that we fought for an independent country to achieve prosperity based on self-reliance. We also sought a status where socio-economic opportunities would be available to all on an equitable basis. Thirty-six years after our freedom struggle, we are taking stock as to whether politics is for political parties or for the people. We are also trying to analyse whether the genius of our people demands the creation of a new matrix within our political arena. We are also examining the scope and kind of fundamental reforms that are required to establish an accountable and transparent process of governance.

It is in this regard that some have suggested the need for the evolution of a 'meaningful and functional' democracy. It has also been underlined that

One speaker in a recent seminar remarked that the last 'fifteen years of democratic rule created stalemate, decisional handicaps, susceptibility to rhetoric and vested interests'. Strong words indeed! We need to however analyse why this happened and whether such a course could have been averted.

Any consideration of the essence of this statement has to be undertaken against certain basic postulates associated with parliamentary democracy. We need to find out whether democratic rule had failed or whether important pillars on which the edifice of democracy rests had been whittled away. We also need to objectively analyse whether narrow partisan greed had been the real cause of the failure. We also need to examine whether an alternative format of governance could have consolidated democratic trends and negated the emergence of such negative factors.

The malaise might have been caused not by 'democratic rule' but because of its absence.

The Parliament failed to perform its desired function as the true sentinel of democracy. A lopsided majority com-

to this highest seat on the basis of perceived political affiliations. The abuse of this institution, so necessary for proper democracy, was undertaken by the past alliance government to ensure that future chiefs of caretaker governments would continue to be from their side. What a shame, we cannot however blame 'democratic rule' for this perversion of justice.

Similarly, the Executive machinery, particularly, the law enforcement authority, became a tool for repression. This was done to improperly assure continuity of dynastic and personal ambitions.

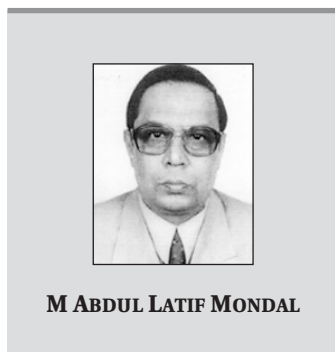
It was the coalescence of all these above factors that negated the construct of governance and destroyed facts associated with democratic traditions. It was the manner in which democracy was practiced that gave 'democratic rule' a bad name.

From that point of view I welcome an inter-active engagement whereby we can again have a meaningful and functional democratic process. This will mean changes and reforms and greater adherence to the rules and spirit of the game. This Interim Administration has already taken some significant steps. We

assassination of national leaders that took place on 15 August and in early November 1975.

References have been made by some among us to identify whether we can have a better or different blend and balance in the sharing of powers as envisaged in the Presidential and Parliamentary forms of government. Instead of discarding such a suggestion as impractical, let us examine it carefully. Let a National Commission be appointed for this purpose composed of important stakeholders -- jurists, political scientists and representatives from the civil society, the armed forces ('the silent partner') and also from important political parties. Let the pros and cons be discussed and common denominators established. Subsequently, such a Commission could prepare a white paper that could be published in the media. Later, a referendum could be held on the basis of the corrected voters list, to ascertain if the people want incorporation of such changes in our Constitution. These recommendations could then be debated within the Parliament after elections, and necessary amendments made to the Constitution.

Why irregularities in the appointment of judges?



M ABDUL LATIF MONDAL

WHILE speaking as chief guest at a reception accorded to senior lawyers at the Noakhali bar on April 29, Chief Justice (CJ) M Ruhul Amin said that it would take at least 20 years to correct the irregularities in the appointment of judges in the past.

Former judges, lawyers, law experts and politicians, including a former judge of the Supreme Court Justice Naimuddin Ahmed, chairman of the Bar Council Rokonuddin Mahmud, former presidents of the Supreme Court Bar Association (SCBA) T H Khan and Shafiq Ahmed, former attorney general AF Hassan Arif, and AL presidium member Surajjit Sengupta, thanked CJ Ruhul Amin for his candid remarks, and called for immediate steps to redress the wrongs done to the higher judiciary.

Former CJ and chairman of the Law Commission, Justice Mustafa Kamal, has suggested formation of a council of elders, with former CJs and retired judges

of the Supreme Court, to look into the allegations against, and conduct of, the judges. Others have laid emphasis on development of an effective mechanism to appoint judges to the higher judiciary.

Article 152 of the constitution says that "judge" means a judge of a division -- High Court Division or Appellate Division -- of the Supreme Court. The judiciary is one of the three basic pillars of the state, the other two being executive and legislature.

Pakistan regarding appointment of judges to the Supreme Court and High Court. But the provision was omitted by the Constitution (Fourth Amendment) Act, 1975, by the then AL government.

During the past three decades or so, successive governments have found the deletion of that provision to their advantage and, therefore, did not take any initiative for its revival. Consequently, in the past thirty plus years, there have been continuous allegations of politicization

consulting the JSC and the leaders of parties represented in National Assembly, appoints the CJ and DCJ of the constitutional courts, and after consulting the JSC, appoints the president and deputy president of the Supreme Court of Appeal, and appoints judges of all other courts on the advice of the JSC or for obtaining the CJ's recommendation and acting on it. This has given a walkover to the executive in the appointment of judges.

Out of the 68 confirmed judges in the High Court Division, the appointments of 41 were confirmed during the regime of the immediate past BNP-led alliance government. They had also appointed 45 additional judges in the High Court Division.

Fourth, Article 95 of the Constitution empowers the president to appoint the CJ and other judges. But, according to Article 48 (3), the president in the exercise of all his functions, save only that of

judge as an appellate judge on political consideration.

Under these circumstances, it is high time for enacting a law for appointing competent, experienced and non-partisan persons as judges in the higher judiciary. Several quarters have already made suggestions on the issue, and these, inter alia, include:

Constitution of an independent Appointment Board to help the CJ to recommend persons to be appointed additional judges;

Constitution of the Judicial Council with the CJ as ex-officio chairman, the law minister, two senior-most judges of the Appellate Division as ex-officio members, and one distinguished jurist appointed by the president;

Reintroduction of the constitutional provision requiring the president to consult the CJ for appointment of judges, as well as for acting upon the recommendation of the CJ.

In view of the remarks recently made by the CJ regarding irregularities in the appointment of judges in the higher judiciary in the past, the caretaker government owes a responsibility towards correcting the anomaly and framing a law for recruitment of competent and non-partisan persons in the higher judiciary. A presidential ordinance may do the needful.

M. Abdul Latif Mondal is a former Secretary to the Government.

BARE FACTS

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The CJs remarks speak of the dismal state of affairs in the appointment of judges to the higher judiciary. Now the question that may arise is: What led to the irregularities in the appointment of judges?

First, the framers of the constitution that was adopted on November 4, 1972, and came into force on December 16 of the same year, incorporated a provision in the constitution requiring the president to consult the CJ in appointing judges.

This was in consonance with the constitutional provisions in India and

of appointments to the higher judiciary. Not that the allegations are totally baseless. The recent remarks made by the CJ bear testimony to this.

Second, for appointment of judges to the higher judiciary, the Constitution of Bangladesh does not contain any provision for seeking advice and consent of parliament. President of the United States appoints the justices of the Supreme Court with the advice and consent of the senate or for obtaining recommendation of the Judicial Service Commission (JSC).

The president of South Africa, after

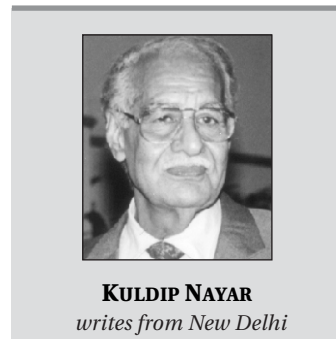
Third, appointment as an additional judge is, in fact, the entry level in the higher judiciary. In the absence of constitutional obligation for receiving consent of parliament, or for obtaining recommendation of the JSC and/or Judicial Council, or for consulting the CJ for recommendation, appointment of additional judges to the High Court Division has been highly politicized.

Available sources, however, seem to suggest that politicization of appointment of additional judges reached a new height during the term of the immediate past BNP-led alliance government.

appointing the prime minister and the CJ, shall act in accordance with the advice of the prime minister. The president, therefore, cannot exercise his authority in the matter of appointment of judges. He has to depend on the advice of the law ministry in the appointment of the CJ.

Last but not the least, in our neighbouring countries India and Pakistan, a High Court judge cannot be appointed a judge in the Supreme Court unless he has served for at least five years as a judge in one or more High Courts. The absence of such a provision in our constitution has given room for appointing a high court

Benazir's dilemma



KULDIP NAYAR
writes from New Delhi

I am not surprised at Benazir Bhutto's wanting to have an understanding with President General Pervez Musharraf. She has never rejected a working arrangement with him or, for that matter, with the military unequivocally. Even when she told me in London some months ago that she would have no truck with the military, she was not as emphatic as Nawaz Sharif when I met him later.

Still, the Charter of Democracy the two have signed leaves no room for doing business with Musharraf. The charter says: "Drawing history's lesson that the military dictatorship and the nation cannot co-exist," the country requires "a new direction different from

the militaristic and regimental approach of the Bonapartist regimes, as the current one."

To argue that her main concern is to have cases of corruption against her and her husband dropped is not fair. This may be one of her considerations, and it is yet to be decided whether she can retain all the mansions and villas she has acquired if the cases are withdrawn in Pakistan or compounded in Switzerland and Spain. What is probably nearer the truth is the observation she made in one of her interviews: "If democracy does not return to Pakistan, the Taliban would take over the country." Her inference may be correct, but no other reasoning.

Since the days of General Zia-ul-Haq, fundamentalism has been encouraged by the government. Mullah has been injected into the military discipline to counter national awakening. Musharraf, till the other day, was plugging the same line. He changed -- I do not know how far -- when the Frankenstein of terrorism tried to eliminate him. The jihadis are indeed a real danger in Pakistan.

Assuming that Musharraf promises to have a joint front with Benazir against the Taliban, will he (by then there-

BETWEEN THE LINES

Still the main reason for the Pakistan society caving in, I think, is that the country has not gone through the movement which India had during the freedom struggle. People's assertion to rule themselves is an integral part of democracy, for its health. This is happening in Pakistan, even though belatedly. At this time any short cut, or an attempt to collect whatever benefits are available, will snuff out that effort. What looks like the beginning of the end may turn out to be the end of the beginning.

elected president following the understanding allow her (by then the prime minister) to eliminate the nearly 35 percent of military personnel which is jihadi? The situation may demand action against religious elements throughout the country. Will she take action when the military looks partly contaminated, and when Musharraf may feel that it is the best time for him to sit back and get the support of religious elements on the rebound?

Politically, she will have the MMA (Mutahida Majlis-e-Amal) against her, apart from Nawaz Sharif's Muslim League and her own party dissidents who are not happy over the prospect of working with Musharraf, even without

uniform. True, Benazir will have America on her side and, maybe, the State Department is burning midnight oil to make the understanding possible. But this is precisely the reason why Benazir will be all the more suspect. A touch of America, however remote, can spoil things in Pakistan.

I do not doubt her sincerity to serve Pakistan at a time when the country is besieged by all types of problems. But the way she is seeking to solve them may not be the correct one. The military in Pakistan is unpopular, and any tie-up or an equation with it will be a great liability for her. At times it seems as if she does not realize that Pakistan has changed after the lawyers' agitation over the "separa-

tion" of Chief Justice Iftikhar Khan from the Supreme Court.

The protest has ignited the spark to set fire to the haystack of grievances. I feel that the civil society, always keeping itself distant from political or other movements, is so worked up and determined to face the police, or any other force, that it would have the dignity of the Pakistan Supreme Court or, for that matter, of the country restored.

Benazir also does not seem to learn from the past. She had an agreement with the military in 1988. True, President Farooq Lagari, a civilian head, dismissed her. But behind the dismissal was the army chief. What is the guarantee that the military will not dislodge her again

once it settles down to better conditions?

When Zulfikar Ali Bhutto was at the helm after the free and fair election in 1971, I asked him how would he ensure that the military would not return. He dismissed the question lightly with the observation that "my men would confront the tanks on the streets." This did not happen when Zia ousted, and even hanged, him. Fear stalked the land.

The military has come to be an integral part of Pakistan's matrix. Maybe Benazir has realized this. After all, Turkey, the most liberal Islamic nation, has an arrangement whereby a Supreme Council, with the three military chiefs as

members, supervises the country. The military takes over when it feels that the nation has gone off the tracks of the constitution.

Yet, this is not democracy, which means the rule by the people. Nawaz Sharif is correct in saying that the military has to be apolitical and must stay in the barracks, as is the case in India. But this requires strong institutions and long traditions which Pakistan does not have. When political rulers have had one foot in the military boat and the other in the civil apparatus, no institution could have been consecrated, not even the constitution.

Pakistan's former foreign minister Asif Ali and cricketer-turned-politician Imran Khan were in Delhi a few days ago. One question posed to them was: Why, even after the restoration of democracy, the military took over when it wanted to do so? Both blamed India, arguing that its hostility towards Pakistan made the people of the country dependent on the armed forces for their safety and identity.

Probably, there is something in what they said. After all, Mahatma Gandhi had to fast unto death to make Jawaharlal Nehru and Sardar Patel, the top leaders

of the then central government, release Rs 64 crore. This was Pakistan's due from the division of assets at the time of partition. New Delhi was determined not to return it because the two countries were fighting over Kashmir at that time.

Still the main reason for the Pakistan society caving in, I think, is that the country has not gone through the movement which India had during the freedom struggle. The NWFP, and to some extent Sindh and Baluchistan, suffered the atrocities that London committed. I do not have to emphasise that they are the ones which have borne the burnt of excesses in Pakistan. Punjab's participation in a movement is a recent phenomenon.

People's assertion to rule themselves is an integral part of democracy, for its health. This is happening in Pakistan, even though belatedly. At this time any short cut, or an attempt to collect whatever benefits are available, will snuff out that effort. What looks like the beginning of the end may turn out to be the end of the beginning.

Kuldeep Nayar is an eminent Indian columnist.