

Faizee's resignation should have come earlier

His conduct needs to be fully gone into

F AISAL Mahmud Faizee's decision to quit the position of a judge of the High Court may be greeted by some with a sense of relief. That, however, does not obscure the fact that the resignation has come rather too late in the day to merit our or anyone else's sympathy. The reason is plain and simple: Justice Faizee ought to have left office earlier without allowing so much controversy to well up around the issue of whether or not he was morally entitled to hold such a responsible position as a judge of the High Court once the Syndicate of Chittagong University cancelled his LL.B certificate. Indeed, Faizee in his resignation appears to have accused others of spreading propaganda against him instead of acknowledging his own role in the making of the crisis. Indeed question has already arisen as to whether he resigned just a couple of days before the sitting of the Supreme Judicial Council to avoid facing them.

The controversial judge's resignation cannot be seen as a conclusive end to all the necessary, uncomfortable questions that have been raised about his legal antecedents in recent weeks. His resignation should not preclude a full and comprehensive inquiry into his judicial conduct by the Supreme Judicial Council. With the uproar caused by allegations of a tampering with his LL.B marksheets, it was expected that swift remedial action would be taken on the matter. That expectation is still there; and we understand that investigations into the LL.B certificate scandal are going to be taken up at the Anti-Corruption Commission. The sanctity of the judiciary demands that all the details of the Faizee story be made public.

It pains us to recount yet once more the old story of the politicisation of institutions resorted to by the now-departed BNP-led alliance government. Indeed, one of the more disturbing acts of that government was the appointment of some judges allegedly on political considerations. Faizee's happened to be one of those appointments. We recall in this context the remarks of the then law minister Moudud Ahmed, who reportedly stated that he did not know many of the judges that were appointed. That as also the fact that the Chief Justice of the Supreme Court was reportedly ignored when some appointments were made certainly amounted to a break with the time-honoured tradition of consulting the Chief Justice on such issues.

Today, the judiciary needs to highlight a very positive image of itself. In circumstances where a separation of the judiciary from the executive has become a significant question, it is the Chief Justice of the Supreme Court who is eminently equipped to lead the judiciary to the peaks where it is supposed to be. Can't the Chief Justice initiate a cleansing process? Let that journey be undertaken now that we are talking of reforms in every field.

US House vote for Iraq withdrawal

Bush must see the writing on the wall

O NE couldn't agree more with the US Senate Majority Leader Harry Reid that it was time for the US president to listen to the American people's view on the war in Iraq. And the American people have, one presumes, through the House of Representative in its latest legislation on Iraq, called upon the Bush administration to begin withdrawing combat troops within four months. It is the third time this year the House has voted in favour of legislation to end US military involvement in Iraq.

It is heartening to see that the US lawmakers have come round to acknowledging that Iraq has been a disaster for America. We welcome not only the courage but also the long term vision of the legislators in setting a timeframe for US disengagement from Iraq. It is an acknowledgment too that the failed policy demanded very urgently crafting of a new way forward from a very hopeless position. But we fear that this, as like the previous legislation calling for pulling out of Iraq, will be vetoed by the US president who still believes that the war in Iraq could be won.

To most dispassionate observers Iraq war was destined to failure the day it was launched, for many reasons, but mainly because of the weak moral ground on which the country was invaded and illegally occupied. And five years after the 'mission accomplished' picture of Bush was spread all over the international media, one is not quite certain what really the Iraq objective of the Bush administration was, to start with. Whatever it is, it is certainly not what the world has come to hear ad nauseam from the protagonists of US aggression. US continued presence in Iraq has nothing to do with establishing democracy there, far from it.

Meanwhile in five years President Bush has succeeded in breaking up the country into sectarian lines, has managed to kill more innocent civilians than what Saddam did in his more than two decades in power; worse still, his policy has helped al-Qaida gain a foothold in Iraq while the region has been made more volatile than ever before.

There is much to be lost from postponing the inevitable. What Bush must ensure is that the situation does not become another Vietnam and that a well planned exit strategy is put in place to avoid a rout. But in all this one fears that the highly divided nation that Iraq is now may never be able to coagulate as one.

Exceptional illegality theory and Bangladesh



KAZI ANWARUL MASUD

GOING DEEPER

Perhaps the people of Bangladesh may pause to think whether it would be prudent to rush for an early election before the institutions supportive of democracy are in place and able to bear the responsibility that democracy, as is generally understood, devolves upon them. One hopes it is clearly understood that the practice of democracy does not end, but begins, with the casting of votes once every five years, and that the people elected are at all times accountable to the electorate.

Michael Byers of Duke University advocates the principle of exceptional illegality: "In a truly exceptional situation where a serious threat exists, no invitation can be obtained, and the UN Security Council is not prepared to act, states should simply violate international law without advancing strained and potentially destabilising legal justifications. States then could allow their actions to be assessed subsequently, not in terms of the law, but in terms of its political and moral legitimacy, with a view towards mitigating their responsibility rather than exculpating themselves."

This theory calls for redesigning of the international framework and the concept of state sovereignty in order to face the threats of the 21st century. Undoubtedly, some would find Byers' theory close to their hearts because it would sanction wars like the one waged in Iraq and the Nato intervention in Kosovo.

Opponents would argue that the Westphalian concept of sovereignty that was later further sanctified by the Treaty of Utrecht would face a serious threat, and that it

would give major powers the liberty for intrusive action in other countries. But then, the traditional concept of sovereignty has undergone considerable change over the years.

Shared sovereignty in the European union, and particularly the anxiety of the new entrants from the former Eastern Europe to become members of the EU, is an example of voluntary acceptance of abridged sovereignty.

Gareth Evans, co-chair of the International Commission on Intervention and Sovereignty, argued that the commission had made fundamental conceptual contribution to the idea of Westphalian sovereignty in that sovereignty should not be seen as "control" in the Westphalian tradition but as "responsibility" of the state to protect its citizens within its territory.

Should the state fail to perform its responsibility, either due to inability or unwillingness, then "a secondary responsibility to protect falls on the wider international community."

Gareth Evans continues to argue that the framers of the UN Charter were guided by their

desire that the horror of the Second World War should not revisit the world, hence the charter included the provision that "nothing should authorise intervention in matters essentially within the jurisdiction of any state."

But then, during drafting of the charter at the Nuremberg trials in 1945 recognition was given in international law to the concept of "crimes against humanity" which could be committed by a government against its own people even during peace time, and the 1948 Genocide Convention explicitly overrode the non-intervention principle for the most extreme forms of crimes against humanity.

The world, however, merrily continued to ignore its responsibility, as was seen in the killing fields stretching from Cambodia to Rwanda to Srebrenica to Darfur.

During the Cold War, the two superpowers paid scant attention to sovereignty of states when the then Soviet Union invaded Hungary and Czechoslovakia and the US intervened in Granada and Panama. If one were to remind oneself of the Monroe Doctrine directed at the colonial powers of

that time one could argue about the source of President Monroe's power to issue the edict.

It is not contested that the Monroe Doctrine had the good effect of dissuading the colonial powers from encroaching into America's backyard, and gave assurance to the Latin American countries of security from the avarice laden invasion of the colonialists. But the fact remains that James Monroe, and later President Eisenhower, could not have warned the British, French and Israelis of consequences if they did not withdraw their invading troops from Egyptian territory during the Suez crisis, but for the power the US could wield to force its decision.

This was amply demonstrated during the invasion of Iraq in the face of opposition of the UNSC and the opinion of the most of the countries of the world. If force is the ultimate arbiter in the settlement of conflicts, then one would find it difficult to disagree with Robert Kagan's view that Europeans are nearly unanimous in their conviction that Americans and Europeans no longer share a

common "strategic culture," and that while confronting adversaries Americans prefer coercion over the Europeans' preference for persuasion.

Kagan further elucidates that while the US is less inclined to submit to international institutions like the UN and the International Criminal Court, the Europeans would prefer conformity to laws and rules governing international behaviour.

The point of this discussion is not the necessity of international intervention, it is to establish the principle of "exceptional illegality" in domestic affairs on the ground that when the welfare of the people is threatened by those in authority, who might have been elected but failed to protect the interest of the people, then forces within the country have a responsibility to protect the people from these predators.

And

should it ever be necessary, these forces could explain their actions not in legal terms but on grounds of political and moral legitimacy. It is generally accepted that the formation of the Bangladesh government in exile under conditions of oppression in 1971 in the then East Pakistan, and the one formed recently following the resignation of the caretaker government of President Iajuddin Ahmed, the question of "legitimacy" of the people running the interim government has become a matter of semantics.

The people have accepted the fact that the present interim government is both constitutional and legitimate. In view of the popularity this government enjoys it is doubtful that its legitimacy can be ques-

tioned by the commonly accepted Max Weberian standard-traditional and legal-traditional formulas.

This strand of thought is further complemented by the Pakistan Supreme Court's verdict (State vs. Dossos) (1958) in which the Court held that "if a revolution is victorious in the sense that persons assuming powers can successfully require the inhabitants of the country to conform to the new regime, the revolution itself becomes a law creating fact."

The series of convictions of kleptocrats, hopefully more will follow, and of the people who thought themselves to be above the law till recently, have revealed the magnitude of their crimes to the astounded people. The woeful events have raised questions among the politically conscious people about the pathological mental disorder of the kleptocrats' abysmal greed.

Perhaps the people of Bangladesh may pause to think whether it would be prudent to rush for an early election before the institutions supportive of democracy are in place and able to bear the responsibility that democracy, as is generally understood, devolves upon them. One hopes it is clearly understood that the practice of democracy does not end, but begins, with the casting of votes once every five years, and that the people elected are at all times accountable to the electorate.

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Chasing a dream of robust remittance



A.N.M. NURUL HAQUE

BY THE NUMBERS

The migrant workers of Bangladesh are not laggard any way. They have remitted nearly six billion dollars in a year. It indeed makes a sad commentary on the state of affairs of the concerned authorities, who have failed to ensure protection of minimum rights to our foreign currency earners, who are otherwise the 'ambassador of hope' to the nation. Migrant workers often face a lot of trouble and harassment in the host countries and government policies

\$3.17 billion in 2003, \$3.56 billion in 2004, \$4.24 billion in 2005 and \$4.92 billion in 2006.

About 4.8 million Bangladeshis are currently working in more than 100 countries around the world, prominently in Malaysia, South Korea, Singapore, Jordan, Libya, Lebanon, Germany, Australia, Iran, Japan, Italy and Spain. According to a latest statistics supplied by the Bureau of Manpower Employment and Training (BMET), a total number of 3,54,710 people left the country to join global job market, in the nine month of the fiscal 2006-07, that ended on June 30.

Money earned by the expatriate Bangladeshis is a prominent source of foreign currency for Bangladesh. Their earnings have not only brought prosperity to their families but also contributed immensely to boost the country's economy.

In order to afford just two meals for their families, they opt for any sort of jobs abroad by selling off their last plot of land to meet the high demand of the manpower agents. But even in that heart-rending deal many of these people did not get any job. Such fraudulent

activities by the unscrupulous manpower agents are still going on unheeded, as they are not adequately taken to task by the government.

The recent nine million pound sterling scam of First Solution Money Transfer Limited has shaken the overseas money remitting system. It was an act of fraudulence by the private remittance of house, owned by some corrupt people close to the immediate former political regime.

Sonali Exchange, a subsidiary organisation of Sonali Bank dealing with remitting money from UK, was closed down in order to facilitate growth of such remittance houses.

The measures taken by the Bangladesh Bank and other commercial banks to encourage the migrant workers to remit their earnings back home through official channels, has suffered a big jolt.

First Solution scam has the potential of reversing the trend of using official channels by the migrant workers, as it has made them suspicious about the genuineness of such remittance houses.

Bangladeshi workers working in the Middle East had always found

the services of hundi operators handy in sending their earnings back home. Obviously, they will again be inclined to the hundi operators for safe remittance of their hard earned money, as the First Solution scam had stroke them badly.

Some 86 institutions including the overseas branches of Bangladeshi banks are involved in the money-transfer to Bangladesh. Of those, First Solution remitted money from UK through eight Bangladeshi banks namely -- Islami Bank, Uttara Bank, Eastern Bank, Brac Bank, Prime Bank, National Credit and Commerce Bank, South East Bank and Mutual Trust Bank.

First Solution reportedly closed down all of its branches immediately after misappropriating 9 million pound sterling, remitted by the expatriate Bangladeshis.

Bangladesh Bank, the monetary watchdog, being wise after the big fraud made, engaged a team of consultant to draft a law that aims at protecting the migrant workers and their beneficiaries at home, from any possible exploitation by the remittance houses or their agents, which should have been done

much earlier. Proposed laws should have provisions for making counterpart banks responsible for any act of fraudulence by the remittance houses abroad.

A big misery of our migrant workers is that they get lower salaries than the same category of workers of other countries. An unskilled Bangladeshi worker in the Middle East countries gets 300 to 500 riyals per month on an average, while the workers from Sri Lanka, Philippines and Pakistan get 700 to 800 riyals. Malpractices by the manpower recruiting agencies and lack of strong monitoring by the government are said to be responsible for it.

The speakers at a policy dialogue on safe migration and remittance jointly organised by The Daily Star and Refugee and Migratory Movements Research Unit, held on June 10, urged the government to immediately ratify the 1990 UN Convention on the protection of the rights of all migrant workers and their families. This is the first international document that provides assurance to the rights of the migrant workers.

Signed the convention in October 1998, Bangladesh is yet to ratify it.

A recent study on 'Policy and Public Benefit Interventions to help Bangladesh achieve an annual migrant remittance of \$ 30 billion per annum by 2015' by Bangladesh Enterprise Institute, suggested that the government should priorities skilled workers to command higher wages than the unskilled workers to remit more money back home.

Bangladesh can cut its foreign aid dependence, reaching to the dream of earning \$ 30 billion remittance per annum by 2015. To achieve this goal Bangladesh needs to develop a more diverse set of skills for its workers to tap potential job markets and also to make migration and remittance trouble free.

According to the UN High Commission for Refugees, the

number of migratory people across the world has exceeded two billion by the end of 2006 and the amount they remit back home every year is more than \$300 billion. This money is three-folds of the total amount of aids given annually to the poor and least developed countries of the world.

The migrant workers of Bangladesh are not laggard any way. They have remitted nearly six billion dollars in a year. It indeed makes a sad commentary on the state of affairs of the concerned authorities, who have failed to ensure protection of minimum rights to our foreign currency earners, who are otherwise the 'ambassador of hope' to the nation.

Migrant workers often face a lot of trouble and harassment in the host countries and government policies are seldom directed to their needs.

One-third of the country's foreign currency earnings come from remittance. The Global Economic Perspective Report-2006 by the World Bank revealed that home-back remittance by the migrant workers has helped Bangladesh to cut its poverty by six per cent. Remittance has also accounted for nearly 35 per cent of our export earnings.

Bangladesh can cut its foreign aid dependence, reaching to the dream of earning \$ 30 billion remittance per annum by 2015. To achieve this goal Bangladesh needs to develop a more diverse set of skills for its workers to tap potential job markets and also to make migration and remittance trouble free.

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Balancing act



The challenge therefore lies in strengthening the foundations of institutions that need to be in place to achieve such control as and when the opportunity arises to do so. Democratic culture flourishes from entrenched democratic structures and is not contingent on charismatic leadership alone.

TAZREENA SAJJAD

WITH a roadmap to elections to be announced by the caretaker government on July 15, the country is ripe with conjecture on the form of this handing over. This also opens up a space to contemplate on the existing and future possibilities of civil-military relations in Bangladesh.

What is critical to remember in these speculations is that 2007 is not a new phenomenon and neither will the prospective handing over necessarily break new grounds. In the history of regime transitions,

Bangladesh is another nation attempting to reach a balance between the will of the people and a dire need for stability through other means when political leadership has proved to be anything but satisfactory.

Transitions from military-backed unelected regimes to democratically elected governments are nothing new. Such transitions have taken several forms in other countries throughout history. In Brazil, Peru and Turkey, authoritarian elites in power made (albeit half-hearted) attempts to "restore" democracy.

If the much anticipated roadmap is indeed institutionalised, what Bangladesh is looking at is a form of democratic transformation as was experienced in Turkey. In the absence of elected democratic officials who could

work alongside the caretaker government to ensure a healthy transition, this is perhaps the most contentious relationship where the military looks at the civilian regime with a certain amount of disdain and the latter evaluates the former from a position of fear and suspicion.

What measures will the new civilian democratic government take to control the military? What prerogatives will the military retain as the transition is made? If there is disagreement between civilian and military authorities over these questions, the path to democracy can be highly contested.

In general, the route to a new government is dependent on the degree of acquiescence demonstrated by any civilian regime to military demands for fear of provoking the military to re-enter the political arena and can set the precedent and parameters for

future civil-military relations. In Bangladesh, it may continue a contentious relationship where the military looks at the civilian regime with a certain amount of disdain and the latter evaluates the former from a position of fear and suspicion.

When there is a return to the democratic process, at least in theory, there are certain provisions that will have to be met both by the military and the civilian government. The following are considered the true tests of a credible and strong democratic system of governance:

- Military subordination where military autonomy is limited and where civilian leaders are responsible for articulating the missions of armed forces.
- The military budget is under the control of democratic leadership.

Consequently, suspension of political rights that may have been accepted for a brief period of time becomes a norm. Under such circumstances, civilian supremacy may be unlikely to assert itself overnight especially if torn apart by internal conflicts. Conversely