

## No one is above the law

*It should be a matter of principle not expediency*

**T**HE statement of the Chief Advisor (CA) that no one is above the law is an affirmation of the incontrovertible truth. And by the same token we would like to suggest that neither is anyone below it. The concept is honorable but there is much more to it than what the CA seems to convey. Regrettably, this hallowed concept has been defiled from time to time by its discriminatory application.

Thus not infrequently we hear questions being raised as to what actually is the law. We hear the phrase being bandied, whenever someone is arrested, in a way that cannot help but convey to the public that it is being uttered more out of convenience than conviction, used more as a cliché rather than a profound expression of honest intent. Law is not anybody's handmaiden to be applied in a manner that suits the power that be.

We fully support the assertion that law is supreme, but there is the inherent danger in its selective use since that will eventually and inevitably lead to justice not only being hampered but also resulting in the impairment of the system. Law is as much to punish the guilty as it is to protect the innocent, and ensuring everybody's equal right under it entails application of the due process of the system. We have seen the arrests of many since last January but except a few cases which have ended in conviction and a few charge-sheets being given, most are still waiting for specific charges to be brought against them. This hardly speaks well for the system.

And on this matter it may be relevant to repeat our suggestion that all the charges and allegations against the two leaders of the AL and BNP be brought to the fore and the cases proceeded with in accordance with the law of the land without necessarily needing them to be incarcerated. In this context a lot of questions have been raised about the comment of the law advisor that arrest is a necessary action once the charge-sheet is framed. Not only we but others too aver that is clearly not what is stipulated by law.

That the idea of law being supreme is an irrefutable reality but its application need not be the cause of infraction of human liberty. In that case, as sages have contended, every law becomes an evil.

## Killings in Pakistan

*Musharraf needs to engage with politicians*

**T**HE spate of suicide killings that took place in Pakistan over the weekend shows the vulnerable position President Pervez Musharraf finds himself in today. The recent showdown over the Red Mosque have made it clear that the regime is under intense pressure and not even the fact that it has violently brought the crisis to an end reassures people that everything is back under control. Indeed, the government's tough response, which resulted in the death of scores of men and women holed up inside the mosque either as diehard extremists or hostages, has now further fanned the flames of religious extremism in the country. The weekend killings are but proof of the grave turn Pakistan may already have taken.

There is the other danger that the Musharraf regime faces today. It is danger which comes from the political arena. A senior leader of the rightwing Muttahida Majlis-e-Amal has already made known his decision to quit the national assembly at its next session. Such a move, while brought about in reaction to the action over the Red Mosque, comes at a time when pressure on General Musharraf to doff his army chief's uniform has been increasing. With the president clearly in the mood to continue in office, possibly through holding on to his position as chief of army staff, it is not yet clear how he will manage to attain that goal given the widespread opposition to his policies. On top of everything, the mess the president has made through trying to sack the country's chief justice has done him few favours. Justice Iftikhar Muhammad Chaudhry has been barnstorming the country, politician-like, and collecting public support for his cause while Musharraf has increasingly been forced into a corner. Not even the old thought that the president is indispensable for Pakistan's stability and that his departure will only make things more difficult than they are draws much sympathy these days.

It is, realistically speaking, time for President Musharraf to engage in dialogue with Pakistan's politicians. After eight years as military ruler, with little to show for democracy despite the presence of a national assembly, his authority has become frayed badly at the edges. He needs to know where he has stumbled. He cannot go on making new enemies.

## Where the mind is without fear . . .



SYED BADRUL AHSAN

### GROUND REALITIES

There are all the tales of fearlessness, some of them of epic proportions, you will come across in politics. The long suffering of Aung San Suu Kyi promises to lengthen even more, and yet she breaks not at all. In Bangladesh, Sheikh Hasina demonstrates, through days and nights of admirably endless struggle, the reality that for men and women of commitment to a cause and belief in a goal, the mind is always without fear and the head is necessarily held high.

**F**EAR is a most depressing part of life. It lays people low. It turns them cautious, to the point of making them look and sound absurd. Sometimes, as in the case of the Awami League's general secretary Abdul Jalil, it causes them much worry about death. Speaking of Jalil, a couple of days ago, when asked if he had grown fearful, he answered with a question of his own: "Who is not afraid?" He then added, "of death." He conveniently ignored the fact that the question about his being captive to fear had little to do with death and everything to do with his present hold, or the lack of it, on politics. That surely did not enhance his popular standing, for if any confirmation was needed about Jalil's sudden transformation from a brave, if somewhat naive, political crusader to a supplicant for mercy, it was there in his brief response to that query on fear.

And yet fear has hardly ever been part of a politician's life. There are plenty of instances of courage that political leaders and workers have demonstrated in this country for future politicians to build on. Back in the

Tajuddin Ahmed, Syed Nazrul Islam, M. Mansur Ali and A.H.M. Quamruzzaman to hold their heads high even as the bullets were sprayed into them in Dhaka central jail.

A frightened politician is a dead politician, or one in deep coma. Which is when you recall the immense bravery, for all his failings of character, in Zulfikar Ali Bhutto. Perhaps he would have lived if he had so much as petitioned General Ziaul Haq for mercy. In those final days of his tempestuous life, Bhutto conveyed to the world outside his prison cell the thought that politicians would lose their bearings, as indeed their hold on the future, if they caved in to fear. He went to the gallows, and the manner of it was enough to convince even his detractors that in the twilight of his life, Bhutto had turned his back on charlatanism, on drama and intrigue, and had actually lifted himself to a higher plane of being through embracing death rather than living but by the leave of the soldier who had once served under him.

And then there is the story of Saddam Hussein. No one will argue over the fact that he was a ruthless

dictator, that a mere snap of his fingers sent hundreds to their doom. There was this other side to his character, though. While he could dispatch people to their graves with impunity, he could also hold out before the world an image of a secular, modern Iraq. With him gone, Iraq is now a carcass over which carrion fight and claw at one another. Saddam went to his death with courage undiminished. He showed no fear, expressed no regrets. He knew, as do the rest of us, that it was foreign occupation that was squeezing the life out of him. When, therefore, Iraq's leader fell to his death through a pulling of the lever on the gallows, it was the politician in him that triumphed. No politician plunges to his end in abject supplication. And politicians committed to a cause survive decades in jail, eventually to send their tormentors scattering all around. Read here the story of Nelson Mandela. No Verwoerd, no Botha and no De Klerk was ever able to intimidate him.

Fear was never part of the vocabulary that G.M. Syed employed in politics. Regarded as a traitor to the state by successive governments in Pakistan, Syed remained undaunted,

and not once told his captors that he wished to say farewell to politics. Much the same was true of Khan Abdul Ghaffar Khan, whose undying devotion to the cause of Pashtunistan certainly did not endear him to the military regimes that governed Pakistan. Follower of and friend to Gandhi, Badshah Khan, as he was known, lived to a grand old age without having known fear. It was a trait he had already passed on to his son Khan Abdul Wali Khan, the tormented politician who did not let obstacles come in his way. If his National Awami Party had to be outlawed by the Bhutto government, he quickly found a way out of the jam. He simply reinvented the party as the Awami National Party.

In Pakistan, where the state has traditionally been symbolic of fear, brave men have often lighted the path to hope for ordinary mortals. Ghans Bux Bijnor and Abdus Samad Achakzai are names that continue to evoke reverence in their country, and outside it. In his ageing years, in India, Jayaprakash Narayan saw little reason not to rise in protest against Indira Gandhi and the political deprivations of her son Sanjay. He went to jail in the way a Gandhian ought to have, with no fear and without complaint.

Fear in a politician may not affect the overall course of a nation's history. But it surely damages the politician to a rather irreparable degree. As part of the Bangladesh Nationalist Party hierarchy, Moudud Ahmed was a pivotal force in the Zia-Sattar regimes before being carted off to prison in the early days of General Hussein Muhammad Ershad. He re-emerged into sunlight and made his way straight

to the new military ruler's door. Did he have to do that? Or were there other compulsions preying on his thoughts of the future?

In Pakistan, Mushahid Hussain, the influential journalist and confidante of Nawaz Sharif, was taken into custody soon after Pervez Musharraf stormed his way to power in October 1999. He returned to the limelight to tell Pakistanis, in so many words, that he had ditched Sharif and was now firmly in the camp of the country's newest dictator. If Mushahid had been led to his new position through fear, there was the memory of the man without fear, he who had never seen reason to genuflect before the men who wielded power. Faiz Ahmed Faiz, convicted in the Rawalpindi conspiracy case of 1951, did not bow before temporal political authority. His politics and his poetry came shorn of fear.

There are all the tales of fearlessness, some of them of epic proportions, you will come across in politics. The long suffering of Aung San Suu Kyi promises to lengthen even more, and yet she breaks not at all. In Bangladesh, Sheikh Hasina demonstrates, through days and nights of admirably endless struggle, the reality that for men and women of commitment to a cause and belief in a goal, the mind is always without fear and the head is necessarily held high.

And that is all you need to know. That is the principle you ought to live for, and die defending.

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## Constitutional Review Commission



HARUN UR RASHID

### BOTTOM LINE

The setting up of a Constitutional Review Commission had been reportedly raised in a recent speech by Army Chief General Moeen Ahmed. This is not only an important issue but it also goes to the heart of the present political malaise in the country. Many political leaders of major parties have also realised that intra-party political reforms are not enough for genuine democracy, and have also suggested some constitutional reforms with a view to running an accountable government and parliament.

First, many suggest the constitution of 1972 is too idealistic for politicians in Bangladesh. Many of the framers were "Jeffersonian" in outlook and attitude with high moral grounds. The model of the constitution seems to be based on a mix of the American constitution and the Bill of Rights of Britain, coupled with the 1948 UN Universal Declaration of Human Rights.

The constitution of a country is something that must be suited to the historical, political, social and cultural ethos of people the country. The constitution is not a "one size fits all" phenomenon, which can be translated from one country to another.

Second, at that time Bangladesh's heroic victory in December 1971 had caught the attention of the world, and it appears that the framers wanted to show to the world how quickly and perfectly they could frame a constitution for Bangladesh. It is creditable that the constitution was prepared and promulgated within nine months. However, the framers appeared not to have considered the geographical, political, social, and cultural conditions of the country.

Third, the then framers of the constitution, out of emotional exuberance, thought there would never be any war, or threat to security or economic life, or political crises, or internal disturbance in the country. That was why they failed to incorporate even emergency provisions.

Soon, they realised that such an ideal constitution did not fit in with realities on the ground and, between 1972 and 1975, four amendments to the constitution were adopted, including the emergency provision.

Fourth, the current form of parliamentary democracy has regrettably turned into "Prime Ministerial" author-

itarian democracy because there have been no checks and balances on the powers of the prime minister and the president. Furthermore, whatever powers the president had were totally marginalised by the 1991 Twelfth Amendment Act. It is believed that the untrammelled powers of the prime minister as the executive head of the government have been the source of the political ills characterised by gross abuse or inaction.

Fifth, the constitution can be interpreted in two ways: (a) strict textual or literal interpretation, and (b) originalism or constructivism. A literal interpretation of a provision of the constitution cannot be made without taking into account the spirit and letter of the constitution as a whole.

The interpretation of a provision of the constitution cannot be made in isolation, because the constitution is a book in which each chapter is related to the other. In a sense, the text is organic in character. If there is any diminution of powers in one chapter, other chapters are affected adversely. Such interpretation is called constructivism.

For example, the 1972 constitution is a parliamentary one, not presidential, wherein executive power rests on the prime minister, not on the president. The 1975 constitutional change from parliamentary to presidential form, and the making of a one-party-state, destroyed the fundamentals of the 1972 constitution.

The fourth amendment ought to have been challenged in the Supreme Court as being unconstitutional because the fabric of the original constitution (parliamentary democracy) was the "embodiment of the will of the people of Bangladesh."

Without the expressed will of the people through a referendum, such a fundamental change of the basic

framework of the constitution was arguably unconstitutional. It is noted that India's Supreme Court had a ruling on this issue.

Sixth, under successive military regimes in the country the rulers had amended constitutional provisions as they wished, through presidential orders or proclamations. The question is, who gave them the authority to change the basic fabric of the constitution? It is argued that they could not do it without the people's consent.

Arguably these amendments were unconstitutional. All these undue interferences and abuse of the constitutional provisions lead to one conclusion, that the constitution of 1972 did not suit the politicians or the rulers of the country.

Seventh and finally, the constitution is based on certain expected assumptions and conduct from office holders. Those expectations have totally been ignored in practice. The ruling party leaders did not interpret or use the provisions of the constitution in good faith.

For example, Article 70 with its three sub-clauses is arguably unconstitutional because it denies the basic right of an MP in a representative democracy to voice his/her opinion in the parliament on a subject of his/her concern, and is not permitted to abstain from voting.

If an MP does, then he has to resign from the party. At the same time, it allows an independent elected member to switch and join the ruling party. Should the independent member not resign as well? Is the Article not contradictory in its terms?

Issues that need to be considered in the revised constitution

What is imperative is that provisions of the constitution must be made explicitly clear. If they are vague, they are likely to be abused or

manipulated.

The Constitution Commission may consider a democratic political system that is based on accountability, justice and fairplay, with adequate checks and balances of powers distributed in the various organs of the state. It is suggested that the Commission consider the following list of issues that are only indicative:

- Should the parliament have two houses? Should the lower house have more than 300 members in a country with 140 million people?
- Should the duration of the parliament be for three years?
- Should the tenure of the prime minister be limited to two terms, since the tenure of the president has been limited to two terms under Article 50(2)?
- Should the number of ministers, state ministers, deputy ministers and advisers, or persons having status of minister/state minister/deputy minister be limited to only 10% of the elected members of parliament?
- Should the speaker, after being elected, cease to have any affiliation to any political party, for neutrality?
- Should there be certain number of women candidates for MPs from each party in parliament?
- Should the functions of MPs be clearly spelt-out, including the do's and don'ts? Should they be limited only to law-making functions?
- Should there be any time-frame in which local governments are to be constituted through elections?
- Should any amendment of the constitution or any important national issue be put on referendum? A provision for referendum exists in the constitution in respect of certain matters, including that of the prime minister.
- Should all constitutional and other important posts are to be recommended/nominated for appointments by a Committee representing politicians from all major parties and individuals from civil society including professionals and experts in their fields?
- Should the speaker, after being elected, cease to have any affiliation to any political party, for neutrality?
- Should the powers of the President and the Prime Minister operate as checks and balances on each other?
- Should all state institutions, including the Election

Commission, Anti-Corruption Commission, Ombudsman, Auditor General and Public Service Commission be separated, strengthened and made independent of the government?

If drastic amendments to the constitution (14 amendments until this date) were made during the last 36 years, why can't we revise the constitution for a new political and economic order that contains checks and balances on the powers of the MPs. Many suggest that this CTG may consider setting up of a Constitutional Review Commission to consider the above gamut of constitutional issues. Meanwhile, a robust and dispassionate national debate needs to be initiated by all political parties and all sections of society to provide inputs to the Commission. Let there be a new beginning of Bangladesh.

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## One hundred and eighty days of the CTG



The caretaker government (CTG) appears to be moving slowly but steadily toward its target, i.e. holding a free, fair and credible election. With only eleven advisers, not adequately or fully supported by bureaucracy and political parties, the CTG has done

fairly well, though errors have been made at times because of lack of proper experience of the advisers. However, even its worst critics should concede that its governance is much better than those of the elected regimes during the last 15 years. In its attempt to level the playing field for the election it has involved itself in, perhaps, too many jobs,

though these jobs should have been undertaken long ago. Among the major jobs undertaken by it, the most difficult and time-consuming are, (a) curbing of corruption, (b) reform of political parties, and (c) establishment of good governance. However, for whatever success it has been able to achieve, due credit should be given to the people and the armed

forces for their whole-hearted cooperation. So far so good. More difficult time lies ahead for the CTG. With no progress made in controlling prices of essential items, unsatisfactory progress made in remedying the crisis in the power sector, and growing impatience of political parties due to uncertainty in lifting the ban on political activities may result in loss of public support for the CTG. Though the government is fully aware of the above situation it appears that it is somewhat puzzled as to what is to be done to find some way to avert the impending danger.

In an import-based economy it is extremely difficult to check price-hiking effectively. However, some measures taken by CTG may bring

good results. Curbing corruption is a continuous process. It appears that only this govt. is capable of punishing the powerful in the society. With more knowledgeable and trained manpower in ACC, and setting up of more special courts, we may see better performance of ACC.

With regard to reforming of political parties, the present division between reform and anti-reform groups may ultimately result in formation of new parties out of splitting-up of major parties. This may prove better for democracy. There may be more participation of people, and an atmosphere for really healthy contest may develop. There has been a remarkable improvement in governance after the establishment of CTG. With more progress in

administrative reform under CTG truly good governance may be achieved. Though the common people appear to be happy with the CTG for the time being, they are becoming restless because of two important points which may be analyzed carefully. (1) The Jamaat-e-Islami have remained untouched in the anti-graft drive (with a few exceptions here and there). It is difficult to accept that JI did not indulge in corruption during the most rapacious period of our history. JI, being a cadre-based party, should disclose where it gets the money to pay its cadres. Most of the MPs of JI were elected from the border areas, and credible reports have been received about their complicity in smuggling.

(2) Khaleda's involvement with Islami militants and corruption is becoming clearer. She should not be allowed to engage in her old black art again. By residing in cantonment she is also tarnishing the image of our patriotic armed forces.

On one occasion our law adviser stated that even weak leadership may be acceptable if strong leadership is not readily available. We are not going to compromise so easily on the question of leadership. Because of the retaliatory policy of AL and BNP the people of the country are divided. Thus strong leadership is essential. We may also remember the observation of Socrates and Plato that in a bad or perverted state rulers do not seek the good of those whom they rule. When our joint forces find relief

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