

Upazila Parishad ordinance MPs' influence removed, but bureaucratic stranglehold remains

THE upazila ordinance repealing the Upazila Parishad Act (UPA) 1998 awaits promulgation by the President. This will clear the course for holding upazila polls by the EC which will declare the schedules for election instead of the LGRD, or for that matter, the government, as used to be the case before.

The upazila ordinance has some forward-looking features. Significantly, one of the two posts of vice-chairmen to the Upazila Parishad will be reserved for woman. Individuals 'legally proven to be war criminals', loan defaulters, full-time and part-time government employees, convicted felons and fugitives from law will be debarred from participating in the election. Pending legal processes against accused war criminals which would be time-consuming, could we perhaps have names of such people put on a blacklist for election purposes drawn on the basis of their known track records?

What we find a radical improvement upon the past dispensation is the disempowering of the members of parliament (MPs). Under the previous law, MPs were given an advisory role over the upazila chairmen which was binding upon them. The fact that the MPs will no longer interfere in the decision-making on lucrative infrastructure contracts would stave off their partisan influence on the system.

That is one vital aspect of upholding the status and power of an elected body but for the fulfilment of its mandate over administrative and establishment matters, social welfare, planning, designing and implementation of local economic and social policies it must work autonomously without any interference from the executive. Our understanding is that the upazila nirbahi officer and the chairman, Upazila Parishad will work much the same way that the secretary and the minister do in a ministry.

That is on a day to day basis but our experience in a broader context has shown that there can be arbitrary exercise of authority from the central government over the Upazila Parishad. For instance, government could exercise arbitrary powers in dissolving a parishad or putting their members and chairmen under suspension or removing them from office, usually under political considerations. We understand one safeguard against such possibilities is built in to the disempowering of the MPs who were apt to play a partisan role. The other ought to be a hands-off policy of the government. But, of course, the local bodies' accountability should be to the relevant parliamentary committee.

Reclaiming and restoring a canal

It is a model for correcting conditions elsewhere

THE re-opening of the Shuhadaya canal in Keraniganj to navigation is a sign of how corrective measures can be taken in certain crucial areas. The canal, in a state of disuse for the last six years because of the depredations of a section of unscrupulous people, will now once again serve the people in the area. It is to be especially noted that the canal will once again benefit traders who operate in the four markets situated along the banks of the canal. Moreover, the reopening of the canal to boats, steamboats and similar means of transport now means that unfettered access to movement has been restored.

The efforts made by the local administration as well as the joint forces, especially the army, in reclaiming the canal from those who had occupied it for long are surely to be commended. In the six years in which the canal was rendered unusable, illegal occupation of the lake along with unauthorised constructions around it was the norm. It was obviously a case of lake grabbing. And quite clearly such commandeerings of the lake could not have occurred without patronisation from powerful quarters. That is the shameful aspect of the story, one that is also to be found in other parts of the country. While the lake went under the sway of the bad elements of society, it also turned into a health hazard with waste of all kinds being dumped near it and into it. As local residents have been quick to point out, it was a huge problem being near what effectively had become a dead, putrid lake. But all that is now in the past and citizens are now free to make use of the lake and at the same time look forward to a pollution-free atmosphere in the area. Care must, however, be taken that the elements which had the lake in their grip for long do not come back to create problems again. And that can be done through tackling them for their misdeeds under the law of the land.

The reclamation of the Shuhadaya canal can serve as a model for the recovery of similar water bodies elsewhere in the country. We are aware of plans for the restoration of eleven derelict canals. Those plans can now be implemented by drawing on the experience of those who have given the Shuhadaya canal back to the people.

America loves a winner!

LETTER FROM AMERICA

Of course, America loves a winner. Everybody now loves Barack Obama, the presumptive Democratic nominee. Hillary Clinton is fading from America's consciousness fast. On June 16, former vice-president Al Gore, the last remaining uncommitted stalwart, endorsed Obama.

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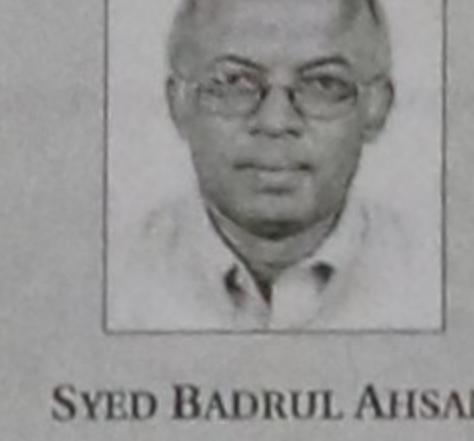
AMERICANS do not quite subscribe to the British saying, "is not whether you win or lose, but how you play the game." In America, it is not about simply playing the game, it is all about winning.

Many a talented sportsmen in the British Commonwealth have fallen prey to the fallacy that one must

Agartala Conspiracy Case forty years on

GROUND REALITIES

Forty years after June 1968, the Agartala Conspiracy Case instituted by the government of Pakistan against Bangabandhu Sheikh Mujibur Rahman and thirty-four other Bengalis remains a point of reference for students of Bangladesh's history. In these forty years, much debate has ensued about the way the case changed the course of Bengali history and transformed the nature of politics and geography in South Asia, especially in the context of Pakistan and Bangladesh.



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pointed step forward in what was yet an evolutionary nationalism. But nothing was as substantive or as motivational as the Agartala Conspiracy Case in directing Bengalis across the board towards new political dimensions altogether.

The Pakistanis, true to form, sought to involve their arch enemies, the Indians, in the sordid tale as they tried to forge an argument in their own defence. Hence the appendage "Agartala" to the case. Early in January 1968, in its attempt to prove that Delhi was indeed engaged in the conspiracy to have East Pakistan secede from the rest of Pakistan and turn itself into an independent state, it expelled an Indian diplomat, PN. Ojha, from Dhaka. That did not much help the Ayub Khan regime, for the Indian government stayed studiously clear of everything Pakistan was doing to build a case for itself.

The first hint of something going on in the Pakistani establishment came in December 1967, with reports of junior level Bengali officers of the Pakistan army, air force and navy being taken into custody by the government. It was not until January 6, 1968, that an official statement about the arrests would come from the ruling circles in Rawalpindi. Altogether, about fifteen hundred Bengalis were placed under arrest by the authorities on charges of conspiracy to bring about the dismemberment of Pakistan. But, as yet, no formal charges were filed against any individuals, for the good reason that

Pakistani military intelligence was frantically going around trying to convince a large number of those detained to turn approver and testify in court against those who would be formally charged with the crime.

On January 18, matters became somewhat clearer. The Pakistan government informed the country that thirty-five individuals had been charged with conspiracy to break up Pakistan and turn East Pakistan into an independent state with assistance from the Indian government. At the top of the list was Sheikh Mujibur Rahman, president of the East Pakistan Awami League and in detention since May 1966 under the Defence of Pakistan Rules. The implication was clear: Mujib had spearheaded the conspiracy. In stark terms, one of the more prominent of Bengali politicians had engaged in subterfuge and conspiracy to destroy the unity of the state of Pakistan!

But, at that point, one needed to go back to 1966. In that year of hope for Bengalis and growing apprehension for West Pakistan, Ayub Khan had warned that those who were propagating the Six Point program of regional autonomy would be handled through the language of weapons. In early January 1968, subtle hints were being dropped about the imminent employment of such language. The Pakistan government went full-scale into a campaign to discredit those it had taken into custody. And a particular aspect of the campaign was an obvious move

to finish off Sheikh Mujibur Rahman or bring his career to an end through convicting him as a traitor to the state of Pakistan.

To what extent the Agartala case was a misconceived one is a truth that was later to come from an Ayub loyalist. As the campaign for the 1970 general elections progressed, Khan Abdul Sabur, a Bengali and minister for communications in the Ayub government, told the media that he had advised his leader back in 1967 against preparing and proceeding with the case against Sheikh Mujibur Rahman.

The trial of the Agartala case accused began in the Dhaka cantonment on June 19, 1968, before a special tribunal comprising Justice S.A. Rahman, Justice Mujibur Rahman Khan and Justice Maksumul Hakeem. The last two were Bengalis and Hakeem was later to be independent Bangladesh's ambassador abroad. A galaxy of lawyers was on hand to defend the accused. Sheikh Mujibur Rahman's legal team was headed by the respected lawyer Abdus Salam Khan.

On hand was Sir Thomas Williams, QC, from the United Kingdom. Sir Thomas was, however, compelled to go back because of his constant tailing by Pakistani intelligence. Ataur Rahman Khan, a former chief minister of East Pakistan, was defence counsel to his brother, the CSP officer Khan Shamsur Rahman. Among other lawyers for the defence was Khan Bahadur Mohammad

Ismail. The one prominent legal presence for the prosecution was Manzur Quader, who had once served as foreign minister in Ayub Khan's government.

The proceedings of the trial were presented in detail through the print media, which perhaps was one particular reason why the Bengalis of East Pakistan began to develop the notion that the whole show was aimed at humiliating not just Mujib but also an entire people. Such feelings gained ground when quite a few government witnesses turned hostile and told the tribunal that they had been physically and psychologically tortured into becoming approvers in the case. And then came the death in custody of one accused, Sergeant Zahurul Haq, on February 15, 1969.

With the country already seething in anger, and with demands for Sheikh Mujibur Rahman's unconditional release rising in crescendo for him to take part in a round table conference called by President Ayub Khan, the Agartala case looked doomed.

For a while, the idea of Mujib going to the Rawalpindi talks on parole was bandied about, until Mujib decided to ask for a withdrawal of the case and the unconditional release of all detainees. But all this was in early 1969, when Ayub Khan faced problems on the West Pakistan front as well. Having imprisoned Khan Abdul Wali Khan and Zulfikar Ali Bhutto in November 1968, he was now on the back foot trying to have them freed without any loss to his dignity.

The Agartala case marked the rise, in meteoric manner, of Sheikh Mujibur Rahman as the spokesman of the Bengalis. His courage of conviction where his principles were concerned and an abundance of self-confidence were made clear in the early stages of the trial. When a western journalist asked him what he expected his fate to be, Mujib replied with characteristic unconcern: "You

know, they can't keep me here for more than six months." In the event, he was to be a free man in seven months time.

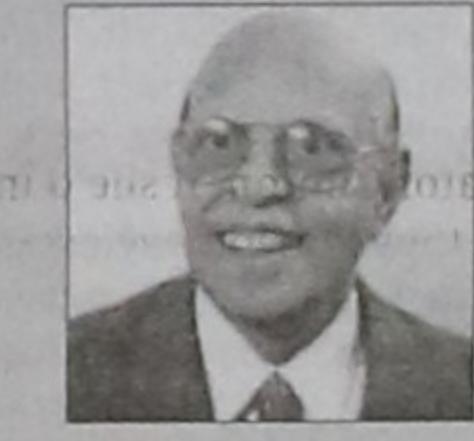
On the opening day of the trial, Mujib spotted before him, a few feet away, a journalist he knew well. He called out his name, only to find the journalist not responding, obviously out of fear of all those intelligence agents present in the room. Mujib persisted. Eventually compelled to respond, the journalist whispered, "Mujib Bhai, we can't talk here . . ." And it was at that point that the future Bangabandhu drew everyone's attention to himself. He said, loud enough for everyone to hear: "Any one who wishes to stay in Bangladesh will have to talk to Sheikh Mujibur Rahman."

Everyone eventually did. Bangabandhu threatened to lead a crowd of Bengalis into Dhaka cantonment if Mujib was not freed. An angry mob pounced on the residential quarters of Justice S.A. Rahman, who quickly flew off to West Pakistan. Events moved at unprecedented speed after that. On February 22, 1969, Vice Admiral A.R. Khan, Pakistan's defence minister, announced the unconditional withdrawal of the Agartala Conspiracy Case and the release of all accused. The next day, a million-strong crowd roared its approval when Tofail Ahmed, then a leading student leader, proposed honouring Mujib as Bangabandhu, friend of Bengal. On February 24, he flew off to Rawalpindi to argue the case for the Six Points.

On December 5 of that year, at a meeting to remember Huseyn Shaheed Suhrawardy, Bangabandhu would inform Bengalis that henceforth East Pakistan would be known as Bangladesh. It was light unto the future. A nation was coming of age. A leader had arrived.

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Review of the Constitution



HARUN UR RASHID

THE review of the Constitution of 1972 is not only an important issue but also goes to the heart of the political malaise in the country as manifested before January 11, 2007.

The setting up of a Constitutional Review Commission has been reportedly raised by the non-party caretaker government that was constituted by the president on January 12, 2007 under the provisions of the Constitution under Chapter II A.

Chapter II A, that envisages a non-party caretaker government between the elected outgoing and the incoming governments, was incorporated in the Constitution in 1996 because the political parties could not trust the ruling party to hold parliamentary elections.

The tenure of the caretaker government will continue until a new prime minister enters upon the office after the constitution of Parliament (Article 58B.1 of the Constitution).

Is the caretaker government empowered to set up the commission?

Some political parties and others have raised a question of legality regarding the setting up of the Constitution Review Commission by the caretaker government, and argue that the function of the caretaker government is merely initiating the process of the review of the

BOTTOM LINE

Everyone agrees that the present Constitution needs drastic revision in the light of our past experience, and should take into account the political, social and cultural environment of the country. A Constitution is not a "one size fits all" phenomenon, which can be transplanted in the country from another country. In this context, the setting up of a Constitution Review Commission calls for urgent attention for national interest.

elections, nothing less and nothing more. It has been further argued that only the elected government is empowered to undertake such an exercise.

To many legal experts, the above position seems to be misconceived for the following reasons:

First, the functions of the caretaker government are enumerated in Article 58D where, in case of necessity, the government can make policy decisions. Furthermore, since this caretaker government was installed under unusual circumstances during political turmoil, chaos and lawlessness, it has to fight against what the government has recently described as the 3 Ms -- Money, Muscle and Misuse of power.

Second, almost all political parties acknowledge the policy-making powers of the caretaker government when they and others demand that it set up a tribunal for the trial of the war criminals under the 1973 International Crimes (Tribunal) Act.

Therefore, it seems illogical that they find it inappropriate for the government to set up the review commission. Their position, it is argued, seems to be contradictory.

Third, the recommendations of the commission would be scrutinised and adopted by the next elected parliament, and the caretaker government is merely initiating the process of the review of the

Constitution and is not dealing with the final product.

Fourth, it may be argued that the next elected parliament could act as the Constituent Assembly, just as the Nepalese Parliament elected last April acted as a Constituent Assembly, abolished the monarchy on May 29, and turned the country into a secular Republic.

Finally, leaders of all political 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.

The then BNP Secretary General on July 12, 2007 reportedly proposed bringing changes in the Constitution and has welcomed the idea that if the caretaker government constituted a constitution-related committee, its suggestions could be adopted in the next parliament.

Earlier, many AL leaders also came out with the suggestion that the Constitution needed changes for restoring proper democracy in the country.

Basic character of the 1972 Constitution

The 1972 Bangladesh Constitution provides for representative democracy, in which the ability of the elected representatives to exercise

decision-making power is subject to rule of law (not merely rule by law) that places constraints on the government leaders on the extent to which the will of majority can be exercised against the rights of minorities.

The Constitution provides a parliamentary system of government and not presidential, wherein executive power rests on the prime minister, not on the president.

It is argued that the basic fabric of the constitution cannot be changed without the expressed will of the people through a referendum, and such fundamental change of the constitution was arguably unconstitutional. It is noted that India's Supreme Court had a ruling on this issue.

Past amendments of the Constitution

The Constitution had undergone 14 amendments as of today, and these amendments have changed the Constitution of 1972 so much that it has lost the substance, spirit and character of the Constitution of the founding fathers.

The first severe knocking-blow to the Constitution came in 1975 when the system of government was turned into presidential from parliamentary. This constitutional change from parliamentary to presidential, and making a one party-state,

destroyed the fundamentals of the 1972 Constitution.

Successive military regimes under martial law had also amended constitutional provisions as they wished through Presidential Orders or Proclamations.

Why is a review necessary?

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

The interpretation of the Constitution can be in two ways: (a) strict textualism or literal interpretation and (b) originalism or constructivism. 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 constitutional document is a text 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 entire amended Article 70 with its three sub-clauses is arguably unconstitutional because it denies the basic right of a MP in a representative democracy to voice his/her opinion in the Parliament on a subject of his/her concern, and also because the member is not permitted to abstain from voting.

If an MP acts against Article 70, 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 it not contradictory in its terms?

The current form of parliamentary democracy has regrettably turned into "prime ministerial" authoritarian democracy because there has been no checks and balances on the powers of the prime minister.

Furthermore, whatever powers the president had were totally marginalised by the 1991 Twelfth Amendment Act. It is believed that untrammelled powers of the prime minister as an executive head of the government have been the source of political ills characterised by gross abuse or misuse of power.

The 37 years of governance has demonstrated the pitfalls and deficits of the provisions of the Constitution. Some of the amended provisions are totally against the democratic norms of the Constitution and need to be deleted.

What is imperative is that provisions of the Constitution must be made explicitly clear, with checks and balances on the separation of powers among the organs of the state executive, legislative and judiciary.

Simply said, the government runs the administration, parliament enacts laws and judiciary interprets the laws. Each organ has its own limits of power enumerated under the constitution, and that is the essence of constitutional democracy in a Republic.

Everyone agrees that the present Constitution needs drastic revision in the light of our past experience, and should take into account the political, social and cultural environment of the country. A Constitution is not a "one size fits all" phenomenon, which can be transplanted in the country from another country. In this context, the setting up of a Constitution Review Commission calls for urgent attention for national interest.

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played any tournament in between. He took on the best players in the world on one good knee, was extended to a fifth day, and still won! While this added more mystique to Woods' already growing legend, he may have done irreparable harm to his knee, putting his future as a golfer at risk. But, winners are known to do things mere mortals cannot comprehend.

Barack Obama has been compared to Tiger Woods. Both Woods and Obama have multiracial heritage. They are blacks with a tremendous crossover appeal to the whites. Both have won in arenas, which had hitherto been the exclusive domain of white males. Woods and Obama have proven themselves to be winners.

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