

The withdrawal-revival syndrome

MUHAMMAD NURUL HUDA

The Daily Star in a report on February 10 informs us on the authority of the Home Minister that around 6000 cases were withdrawn during the tenure of the immediate past BNP-Jammat led government. It was also reported that a five-member committee headed by the law Minister would review these cases. Such criminal cases were reportedly withdrawn on the directives of Home Ministry and names of more than 3000 accused persons were withdrawn from 945 other cases.

There are apprehensions to suppose that many cases cited above were withdrawn on political grounds and as such ends of justice have not been met. Additionally, many cases were allegedly lodged to settle political score or simply as an act of retribution against a political opponent. Either way, the whole scenario appears deplorable and points to the harmful political polarisation of our society.

It may be pertinent to point out that regarding withdrawal from criminal prosecution, section 494 of The Code of Criminal Procedure says "Any public prosecutor may, with the consent of the Court, before the judgment is pronounced, withdraw from prosecution of any person (either generally or in respect

of any one or more of the offences for which he is tried); and upon such withdrawal, if it is made before a charge has been framed, the accused shall be discharged (in respect of such offence or offences). If it is made after a charge has been framed, or when under this code no charge is required, he shall be acquitted (in respect of such offence or offences).

The above two legal positions have been mentioned to inform that the government retains authority to exempt accused persons from criminal prosecution at different stages of trial and also show mercy to the convicted following the conclusion of trial. The number of cases that have been withdrawn do cause concern. This writer does not have the benefit of officially published statistics in this regard. One has to primarily depend on the newspaper reports.

In the not-too-distant past the main opposition political party alleged that 70,000 criminals were let off by the government as a matter of political expediency while the then ruling party stalwarts said that a large number of their party workers were falsely implicated in criminal cases due to political vengeance and that the authority has taken remedial action after proper examination and

The politicians have to decide whether they need rogue and criminal elements in furthering their so-called political objective even at the expense of their public image and social acceptability. The citizens should know whether political opponents should continue to be harassed by institution of palpably false cases and whether purely criminal elements should be allowed to masquerade as party operatives.

scrutiny. Readers would surely appreciate the complexity and sensitivity of the matter in the background of our political and bureaucratic culture. This is more so in the light of claim by responsible quarters that criminalisation of our politics is of unhealthy proportion rendering it extremely difficult to differentiate a purely political act from a criminal act. If one ventures into the history of our socio-political progression since 1972 down to contemporary times one would come across many incidents of criminal nature which were at times committed with political motives by persons of supposedly political identity.

In the period immediately following liberation, quite a number of sensational criminal cases were withdrawn on alleged political grounds. Many deaths caused by the then special forces were not even investigated and murderous actions by politically blessed vigilante groups were not taken note of. Those were uncertain and less than stable times and one could appreciate

the mitigating circumstances.

The situation turned for the worse with the tragic murder of the father of the nation and four national leaders. For many years these offences were not legally and appropriately treated by the establishment till a favourable political scene unfolded. Such realities do have substantial impact on the enforcement and adjudication temperament and culture. Between 1976 - 1979 many heinous criminal cases involving murder, abduction, grievous hurt, amongst others, were allegedly withdrawn as part of a deal struck with some political parties by the then establishment. The so-called cadres of these parties created havoc in the south-western and north-western part of the country.

One can see from the above process that many criminals acquired respectability as political elements that the hapless police were unsuccessfully chasing for a long time. Matters like this send very confusing signals to the enforcement units primarily

and also significantly affect the judicial authorities.

Without doubt they have demoralising effect on the conscientious officials who fail to understand the propriety of the so-called dynamics of electoral adjustment and understanding.

Withdrawal from criminal prosecutions during the period from 1991 to present times on not very cogent grounds have taken place despite the democratic credentials of the relevant political regimes. The cases of withdrawal from criminal prosecution on political grounds are getting quite large with passage of each political regime.

Newspaper reports indicate that the volume of such withdrawals have registered sharp increase in recent years. Those interested to see a cleaner polity may examine whether such increase is directly co-related to the heightened criminalization of our politics.

It needs to be reminded that the functionary clothed by the criminal procedure

code with the power to withdraw from the prosecution is the public prosecutor. It is for him to apply an independent mind and exercise his discretion. In doing so he acts as a limb of the judicative process and not as an extension of the Executive.

Although the withdrawal from prosecution is an executive function of the Public Prosecutor it has to be remembered that under the Criminal Procedure Code the prosecution of an offender for a serious offence is primarily the responsibility of the Executive. The Public Prosecutor's discretion cannot be surrendered to anyone and he should ensure that the broad ends of justice, public order and peace are served.

In respect of the above, it is for the court to consider whether the Public Prosecutor applied his mind as a free agent, uninfluenced by irrelevant and extraneous considerations. The court has a special duty in this regard as it is the ultimate repository of legislative confidence in granting or withholding its consent to

withdrawal from the prosecution.

It shall be the duty of both public prosecutor and court to protect the administration of justice against possible abuse or misuse by the Executive by resort to provisions of section 494. In sum, the sole consideration for the Public Prosecutor when he decides to withdraw from a prosecution is the larger factor of the administration of justice -- not political favours nor party pressures nor similar concerns.

In view of the observations in the paragraphs hereinbefore, one has to judge if our Public Prosecutors and concerned courts are doing their due in so far as it relates to the withdrawal from criminal prosecution. One needs to know if the executive organ of state is rendering desired assistance in furthering administration of justice and more specifically whether it is making serious efforts to prosecute the major offenders.

It also needs to be examined by competent authority whether in consenting to withdrawal from criminal prosecution the courts have taken sufficient precaution to prevent executive abuse and misuse and undesirable political favours from taking place.

Under section 492 of the code of Criminal Procedure, "The Government may appoint generally, or in any

case or for any specified class of cases, in any local area, one or more officers to be called Public Prosecutors." Knowledgeable quarters are of the opinion that a large part of such appointments by the government are predominantly politically motivated and that party faithful are mostly blessed with such appointments with merit, ability and integrity taking a back seat.

Under such circumstances, the protection of interest of the administration of justice, free from political pressures becomes a very difficult and embarrassing job.

The crux of the subject is primarily rooted in our political culture. The politicians have to decide whether they need rogue and criminal elements in furthering their so-called political objective even at the expense of their public image and social acceptability. The citizens should know whether political opponents should continue to be harassed by institution of palpably false cases and whether purely criminal elements should be allowed to masquerade as party operatives. The politicians should take the lead in gradual decriminalisation of the political process and ensure its sanitisation.

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Grim battle for a decent life

MD. ASADULLAH KHAN

LIFE for women in the country seems to be really tough. Overworked and under-appreciated, most of them fight an uphill battle to survive. Those who work outside their homes get little sympathy from the boss and virtually no help from their husbands.

All governments promised political and social equality for the sexes, but women are still victimised. Despite the societal improvements that have come about, incidences of sexual harassment and assault on women are taking place. Economic compulsion and fear for their reputation and social stigma drive most women to silence.

Shockingly, every year scores of women are falling victim to acid violence. Reports indicate that there were 1428 cases from 2002 to 2007, and 300 in 10 months up to November 2008. Often the perpetrators are spurned suitors who feel that, if they cannot have the woman they desire, they must mangle her

so badly that she has no takers. Others do it as punishment in property feuds or because a bride did not bring enough dowry.

"This is possibly a new form of violence that is spreading fast," says a woman activist and reputed lawyer handling cases of repression against women. Perpetrators have chosen this safe way, which leaves hardly any evidence. Driven by vengeance and using this new weapon as a threat so that the victim's family dare not proceed with the court case, the perpetrators are now targeting the parents as well.

Reports in newspapers revealed that Nasima filed a rape case against one Aziz and his associates, who raped her 11 year-old physically handicapped daughter. On her refusal to withdraw the case, the alleged rapists threw acid on Nasima. Sensible citizens agree with Dr. Samantlal Senhe, who said: "What could be more brutal for a mother than to receive acid burns instead of justice?"

Mental and physical abuse,

While officials claim that females have equal opportunities, women have no such illusion. True, fields that were male preserves in the West are now open to equal employment. But in Bangladesh that prospect is still a far cry. Women working in NGOs, garment factories, business houses and private schools receive less pay and meet more discrimination than their male colleagues.

humiliation, discrimination in pay and status, and barriers in taking loan and other facilities from either banks or other government agencies, are still hurdles to be cleared by women.

The social prejudice and double standards of the male dominated society stigmatise a woman, and she is more sinned against than she has sinned. Because of the increased opportunity of employment abroad and freedom of travel that women these days enjoy, some manpower racketeers are taking advantage of them. All rhetoric of liberating women will ring hollow unless we stop women being used in the flesh trade.

While women today are better educated and better

represented in various professions they still remain second-class citizens. They are confined to low paying positions and are noticeably absent from management posts. Women have rarely challenged the status quo, which entitles men to be waited on, first by their mothers, then by their wives and female employees.

Nor did women ever challenge the concept that they should assume responsibility for child related matters, whether that involves family planning, child rearing or, if a marriage breaks up, child support. Shopping has almost become women's job.

Small wonder that, in such a situation typical Bangladeshi women are far less interested in redefining



their role than in redefining their life. Working women want greater control over their time, longer maternity leaves, and flexible work schedules. In rural areas, the wish is far more fundamental: gas cylinders for cooking in place of firewood.

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now open to equal employment. But in Bangladesh that prospect is still a far cry. Women working in NGOs, garment factories, business houses and private schools receive less pay and meet more discrimination than their male colleagues.

A report in the Daily Star (February 8) says that the management of a garments factory forced female workers to walk barefoot during lunch hour in a bid to compel them to return early smacks of gender discrimination of the worst kind. Speaking about lower pay for the same work, one agitated female teacher grumbled: "It's not written in any law that women's salaries for the same work will be lower than what her male counterpart gets, but that's what happens."

In government offices, the situation is more appalling. The higher the posts, the more they are male dominated. We have too few women at the decision making level, other than a handful of ladies in the ruling party and the main opposition party. They include

the country's prime minister and the leader of the opposition in Parliament. And many women even seem resigned to the situation that women are not suited for administrative positions overseeing men. Says a highly educated and enlightened female employee, almost in frustration: "Somehow I feel that for a woman to be the boss is against the natural order."

People, especially the women folk, feel happy that Sheikh Hasina has affirmed her personal and her party's commitment to an ideal environment where both men and women can realise their potentials in full. Only fulfilling the constitutional obligations incumbent upon the head of the government, and the provisions of international covenants -- such as the convention on elimination of all forms of discrimination against women -- to which Bangladesh is a signatory -- will go along way in reducing the gender disparity.

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Is a mighty crash near?

M.B. NAQVI

Some simple souls and some with not so simple souls have begun wailing that the hard won and fragile democracy in Pakistan is in trouble. It may collapse as a result of the President declaring an Emergency or the Army imposing another Martial Law. Why?

Because the two biggest parties are clashing head on over the emotive issues of the second reinstatement of the deposed Chief Justice of Pakistan and secondly to undo undemocratic measures that various dictators have introduced into the Constitution. The lawyers' community -- much of the country's intelligentsia -- and the second largest party in the country, i.e. Mian Nawaz Sharif's PML (N), along with one of the most well-organized and rich parties, Jamaate Islami, many smaller ethnic nationalist parties and the wild card: the followers of the supposedly ever more popular Imran Khan, the former cricketer are opposed by the main ruling party PPP, now run by President Asif Ali Zardari.

The PPP government is actually controlled by Zardari who captured his own party, the government and is running the whole show in a few months. Although he is inf-

factually being challenged by his PM, everyone knows who is the boss. Zardari is being supported to the hilt by the so-called Army-led "establishment" and various other parties already in the coalition with the PPP government.

He also enjoys support from the US and UK and it is known that the US and NATO do not like the deposed Chief Justice Iftikhar Muhammad Chaudhry. His record in their eyes is troublesome: he is apt to go on asking where are the so many 'disappeared' Pakistanis and other troublesome questions. They would not welcome his second return to head the apex court.

The clash arises from the lawyers' programme of Long March on March 12 from Karachi and other places to Islamabad which will be followed by a dharna of indefinite length on March 16 -- until the Chief Justice is restored. The PML (N), JI and other parties have indicated they will not only make the Long March successful by letting their own workers to participate but would also join in the dharna.

That sounded ominous to Asif Ali Zardari and also his PPP-led government. High intrigue -- no secret anymore -- is being deployed: On one side, PML (N) is wooing Pervez

If Zardari can make a swift surgical strike lasting a day or two, he might succeed. But if he succeeds then the reaction of the parties that are supporting the lawyer community and the cause of the CJP would need watching. A mighty clash between the political forces would ensue. This is something to be concerned about.



Musharraf's PML(Q) to merge with it and if these two parties unite, PPP's prospects to rule will totally disappear. PML (N) was the mother party and some in PML (Q) will want to join it for struggling against PPP.

But the PML (Q) leaders are not willing to show their hand. Zardari is offering a concrete share in power -- an attractive prospect. Joining the PML (N) means a long shot of current popularity but the near prospect also includes lathis and court cases by the police. They are not willing to risk that but

are trying to get a win-win bargain. If they join Asif Zardari, he will be able to either dismiss the Punjab government run by PML (N) through a no-confidence vote or even the Army takeover can happen. The PML (Q) will again be in clover. But this prospect makes many people squirm. Why?

They see their country being universally called a 'most dangerous country' where law and order has broken down over large parts. Diplomats of different backgrounds, including UN, are

being abducted in broad daylight and the government finds no clue. Taliban have just beheaded a Polish engineer. The NATO's two supply lines pass through Pakistan: One is Karachi-Chaman-Kandhar and rest of Afghanistan; the second route is from Karachi to Peshawar, Torkhum-Kabul and Bagram. That supply line through Peshawar has been interdicted repeatedly by Taliban and now by blowing up one of the bridges they temporarily stopped all supplies for sometime. These interdictions are frightening the Americans.

What the US and NATO will do keeps Pakistanis uneasy and troubled. The new Obama government is expected to take a tough line with Pakistan. It has bracketed Pakistan with Afghanistan with a clear understanding to go on fighting in Afghanistan until whatever victory they can achieve. This bracketing of Afghanistan includes the possibility of Afghan militants -- Taliban and others -- may succeed in seriously destabilising Pakistan.

Pakistan is commonly seen as a vulnerable state where its nuclear arsenal are said to be at risk. Nobody spells out how vulnerable they really are. But the Pakistanis see themselves as being vulnerable in various ways. The Bush administration has made the idea familiar: America will not tolerate militants' sanctuaries in NWFP's tribal or settled areas. It is intervening and fighting inside Pakistan against al-Qaeda, Taliban and other Islamic militants. Obama will do the same some more. Obama will wind up US war in Iraq soon enough but would fight on in Afghanistan single-mindedly, no matter how long it takes. The potential steps involved in it can be fearsome. Pakistan can become a major target, if things go on worsening.

Aware citizens are perturbed. The problem is insistent that it will not do to lightly treat the lawyers' community, supported as it is by most of the intelligentsia plus the many political parties including the second largest one and also the most well-organized

religious party, Jamaate Islami: March 16 is being seen by the government as the D-day when it can be toppled one way or another.

To survive, it intends to make Nawaz Sharif pay for his line when he makes a show of strength of opposition parties and groups. Nawaz is already facing a case in the apex court, seems to have decided his future role: He will oppose PPP no matter what the cost. There are other tricks in Zardari's bag: he is stitching up an alliance with Musharraf's PML(Q). That will make the PPP government survive while probably dismissing or voting out the PML (N)'s provincial government in Lahore with the help of PML(Q).

Zardari is likely to make a strike before March 16. It can begin with the apex court disqualifying Nawaz Sharif from holding any elective office; this court is likely to act in line with Zardari's wishes. Then the ouster of PML (N) provincial government in Lahore will be easy. That would, in Zardari's view, puncture the strong support that PML (N) government could have given to the Long March as well as the dharna.

As for the dharna itself, it would seem that he would employ some trickery or other and falling which he would crack down on the lawyers

physically and send them home by force. But the political battles that will ensue can conceivably make the Army-led establishment take strong action.

If Zardari can make a swift surgical strike lasting a day or two, he might succeed. But if he succeeds then the reaction of the parties that are supporting the lawyer community and the cause of the CJP would need watching. A mighty clash between the political forces would ensue. This is something to be concerned about.

It seems that Musharraf has been succeeded by another Musharraf because Asif Zardari is doing exactly as Musharraf would do in his place -- i.e. implement the ukase from Washington. America has great many stakes in Pakistan. Its war on Afghanistan turns on Pakistan government remaining a willing tool to do all that the Americans and the NATO planners want it to do. Apart from other matters like the difficulties in Pakistan remaining with the safe supply route for western forces in Afghanistan, the various insurgencies in Pakistan will have to be ended. Who will do that and how is the question.

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