

# Withdrawal of criminal cases in perspective

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.

MUHAMMAD NURUL HUDA

DISCUSSIONS relating to the withdrawal of criminal cases registered before the present government assumed charges have been bitter and acrimonious. A committee headed by none other than the state minister for law, himself a practicing lawyer in the recent past, has reportedly been scrutinising the cases that merit withdrawal from prosecution. Such a step has been taken in view of the persistent allegation that a large number of criminal cases were instituted with a view to harassing the politicians.

The general secretary of the major opposition political party continues to complain that the above-mentioned committee has been extra energetic in recommending withdrawal of those cases that affect the persons associated with the present political government, and that the cases lodged against the opposition politicians, including the former prime minister, have not come under review. He further alleges that this has happened because the present political establishment intends to harass and size up their adversaries and lower their image in the eyes of the general public.

It may be premature, at this stage, to guess the actual number of cases that may be withdrawn from prosecution with the consent from the court as stipulated in the concerned section of the Criminal Procedure Code; it may not be appropriate to pronounce on the propriety of such withdrawal. However, the phenomenon of registering politically motivated cases and subsequent ventures for withdrawal, thereby giving rise to a controversy, is an unfortunate politico-administrative reality of Bangladesh.

As the above matter involves both the executive and the judiciary, in respect of a serious subject of public importance, it is perhaps proper to look into the transaction in its entirety. There is a view that the initiative for withdrawal is that of the public prosecutor and that the court has only to give its consent and not determine any matter judicially. Still others hold the view that the withdrawal is an executive and not a judicial act.

It may be said that the public prosecutor is entrusted with the discretion to withdraw from the prosecution, with the consent of the court, and his withdrawal puts an end to the case. The law gives him a real discretion in the matter. In the eye of the law and of the court, the discretion is

his alone, subject to the consent of the court. The public prosecutor holds a very honourable and responsible office.

One needs to note that, as the legislature has not defined the circumstances under which a withdrawal is permissible, no hard and fast rule can be laid down circumscribing the limits within which a withdrawal may be made. The relevant section of the law for withdrawal (Sec. 494 of the Criminal Procedure Code) contemplated action to be taken upon circumstances extraneous to the record of the case; for example, inexpediency of prosecution for reasons of state, necessity to drop the case on grounds of public policy, credible information having reached the government as to the falsity of the evidence etc.

It should be noted that it is the court which takes the responsibility of deciding whether a charge should be allowed to be withdrawn or not. Similarly, the reason of public policy, however learned and however high-sounding, is often an improper reason for the withdrawal of any case. In the same vein, the phrase "in the interest of administration" and "public policy," are at times equally high-sounding and irrelevant in so far as the withdrawal of cases is concerned.

The function of the court in granting its consent may well be taken to be a judicial function, which must be exercised with judicial discretion. However, it does not follow that the discretion is to be exercised only with reference to materials gathered by the judicial method. The consent, referred to above, means a consent freely given by a free and independent judge. The reasons for withdrawal must satisfy the judicial conscience of the court, and that it

is not enough that the government has been 'pleased to sanction' withdrawal.

The court, in coming to a decision as to whether it would give consent, should not take into consideration any extraneous circumstance; it is entitled to ask from the public prosecutor the reasons for his withdrawal to enable it to give its consent after judicial consideration of the circumstances. The fact that the district magistrate has instructed the public prosecutor to apply for withdrawal is not reason enough for a magistrate giving his consent to such withdrawal.

There is a considered opinion that the magistrate must not surrender his authority to the district magistrate, but must act judicially and come to his own independent conclusion as to whether withdrawal ought to be permitted or not, upon consideration of all relevant circumstances. When a court gives its consent to a withdrawal from the prosecution, the order passed is a judicial order, and the court should record its reasons in order that the High Court may be in a position to say whether the discretion vested in the court has been properly exercised.

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 the claim by responsible quarters that the criminalisation of our politics is of an 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 a criminal nature, which were, at times, committed with

political motives by persons of supposedly political identity.

The socio-political 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 favorable political scene unfolded. Such realities do have a substantial impact on the enforcement and adjudication temperament and culture. Between 1976 and 1979, many heinous criminal cases involving murder, abduction, grievous hurt, among 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 northwestern part of the country.

One can thus see, from the above process, that many criminals acquired respectability as political elements that the hapless police had been 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 a 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 the passage of each political regime. Newspaper reports

indicate that the volume of such withdrawals have registered a sharp increase in recent years. Whether such increase is directly co-related to the heightened criminalisation of our politics may be examined by those interested to see a cleaner polity.

It needs to be reminded that the functionality, 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.

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 the 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 the gradual decriminalisation of the political process and ensure its sanitisation.

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# Permissive standard of administration stalls development

An elected government, unlike an authoritarian ruler, has only five years to cleanse, relocate and adjust structural reforms. Once it resorts to dilly-dallying, or conducts the affairs of the state with a narrow vision or ethical flexibility, the damage done to the party and the country at large will be of monumental proportions.

MD. ASADULLAH KHAN

JUDGED from the permissive standard of politics and administration in the country, it appears that something truly bizarre is happening. If what is happening is an indication, governance at all levels of administration seems to be flawed. With the political parties hurling abuses at each other and mostly preoccupied with just digging up the past, the country's administration is weathering a crisis of confidence. By now, the rule of reason, ethical responsibility, proper surveillance and supervisory activities have become comforting illusions.

With AL-led alliance in power, the electorate was yearning for stable governance -- a factor missing for long. Speaking about corruption in Rajuk on the concluding day of the Rehab fair, H.T. Imam, advisor to the prime minister, spoke about pervasive corruption again making inroads into the corridors of Rajuk after a break for two years during the caretaker government. The advisor, it appears, made this observation while narrating his experience of the suffering the people are undergoing in doing their business with Rajuk, possibly on the basis of complaints

reaching him.

The advisor's complaint came as a shock, not because we didn't know that Rajuk's corridors were redolent with the stench of corruption but because of the ignorance, inaction and helplessness of the people now controlling Rajuk, including the advisor himself, who happens to be an important functionary in the present AL-led government.

With corruption invading all sectors of public offices and development work coming to a grinding halt because of bureaucratic tangles and procrastination, people wonder if this government that came to power with such a massive mandate of the people can accomplish its task during the next four years. Stability requires a degree of rectitude, coherence, policy pattern, determination, courage, capacity to make intelligent guesses and the attitude to stand firm in the face of all odds. One cannot help wondering how many honest and committed officials there are in the government these days, especially in the police, customs, IT and utility organisations of the government.

The recent incidence of tender manipulation in the water treatment plant in Barisal, at an estimated cost of Tk.37 crore

as reported in the Jugantor on January 12, at the best of some ruling party members suggests that transparency and fair deals in government offices are still a far cry. If some bids did not have the requisite pre-qualifications, those could be rejected at the time of scrutiny and, in any case, none should have stood in the way of participating bidders submitting tenders.

The ruling AL-led alliance must have realised that growing corruption is the worst problem facing the government. Of course, corruption and crime have always existed in the society, but the rot that invaded the body politic of the nation in the BNP-led alliance government continues to cripple government departments till now.

The majority of the politicians in the earlier days were men of austerity known for their charisma, sacrifice and fighting spirit. But now, the majority of them flaunt their wealth, no matter that they owe banks crores of taka as overdue loans -- with little intention of paying even the interest due. True, we are ruled not by people who fought for our freedom but by those who have the most money. And it does not matter where the money came from.

Shockingly, the weakening moral standard, politicisation of administration, and ego of the politicians in total disregard of the people's welfare and need only increase arbitrary power of officials at different tiers of administration. The ongoing tussle amongst minister, advisor, state minister and secretary in respect of exercise of power, posting and transfer of officials, and implementation of projects as reported in the Prothom Alo on January 10, have thwarted development activities in the country.

Undeniably true, all these discords and

conflicting issues have not escaped the attention of the prime minister. Most assuring, the prime minister has alerted the ministers and secretaries with a note: "Time for learning is over, now is the time to get into action." It has been further learnt that because of the conflict in the exercise of power and dilly-dallying and dithering in decision making and appointment of officials, UNDP-assisted projects in the ministry of disaster management relating to awareness building, and financial assistance to the disaster affected people involving Tk.350 crore taka remain stalled, and another Tk.500 crore taka grant made available by the World Bank for food diet of the patients in the hospital has been withdrawn.

Unhappily, the ongoing tussle in the allocation of funds and responsibilities in the implementation of projects in the LGRD ministry among upazila chairmen and parliament members have greatly affected development momentum in the countryside. So the politics of cynicism and dithering should have become least desirable at the very least. The people feel that all these unhappy developments have led to a situation where bureaucrats are indifferent and shy away from their administrative responsibilities. On the other hand, the flawed system has resulted in such regulations as has made life miserable.

True, as H.T Imam said recently in the Rehab fair, public employees demand pay offs for each work required to be done, even for moving a file from one table to the other. Water, gas, electricity, income tax assessment, city corporation tax assessment, land registration, train and bus ticket during Eid rush can all be had but for a small price that one otherwise calls kick-back

Prime Minister Sheikh Hasina is fully aware that her party came to power with a massive mandate for change. She knows that the BNP-Jamaat alliance government got the boot because the voter was sick to death of the corruption that confronted him every time he dealt with the government. She knows that everyone was sick of the old system of governance in which nothing moved without the greasing of the right palms.

The people want fulfilment of the promises made to them in the party's election manifesto; freedom from hunger and poverty, job for the able bodied persons, education for all and healthcare for the vast multitude of suffering humanity. People are tired of the slogans and rhetoric. They are sick of the leaders mouthing ideologies but never practicing them, and by now are convinced that unscrupulous, dishonest and inefficient persons occupying the driver's seat in public offices cannot be booked -- because they enjoy patronage from power blocks and politically motivated persons.

A report published in The Daily Star on December 19 indicated that local hoodlums, sometimes in the name of ruling party men or under the banner of fake unions of transport workers' and owners' association, extort Tk. 250 to 300 for a bus each day from different bus counters in the city, and there were incidences of attacks in the Azimpur bus counter on their refusal to meet the gangsters' demands. Compounding the crisis and disenchantment of the people is the extortion business and tender snatching incidences launched by a section of derailed BCL cadres, a student wing of the ruling party.

Unhappily, in absence of deterrent measures, the clean image of the party has

been tarnished. If such a series of events can't jolt the government into action, when and what else will cause them to? In the course of inaction, problems fester and reach overwhelming proportions when possibly there will be no remedy available. Echoing the EC guidelines, conscious citizenry have asked political parties to delink students' fronts from their politics but, as it seems, this has not been listened to.

People are appalled to see student activists in university and college campuses flaunt pistols or machetes instead of books. It is far more shocking to see innocent boys falling victim to gun battles that have raged through the campuses again. These are crises which are consequences of blunders we have been making day in and day out through our rash and innately selfish actions, without ever taking into consideration the disastrous future the nation is heading towards.

An elected government, unlike an authoritarian ruler, has only five years to cleanse, relocate and adjust structural reforms. Once it resorts to dilly-dallying, or conducts the affairs of the state with a narrow vision or ethical flexibility, the damage done to the party and the country at large will be of monumental proportions. The overriding fear is that political feud and administrative paralysis that have started surfacing again may take the country back to the dark days and the economy could bleed again. Fully aware of the pitfalls that lie ahead, Prime Minister Sheikh Hasina, people believe, would change her style of governance with a vision for progress and welfare of the suffering masses.

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# Water resources in Bangladesh: 50 years of development

The National Water Management Plan has an analytical finding that only 2 percent incremental food production per annum is enough to meet the future demand of 40 percent absolute increased population over the next 20 years. This is achievable simply by ensuring the improved and adequate maintenance of the water resources projects.

MD. SAEEDUR RAHMAN

HOW much water is there in Bangladesh? It is unknown by volume but the known principal sources of water resources of Bangladesh are annual average rainfall of 2300 mm and daily average delta discharge of 3000 million cum seasonally partially parked in the habitats of water criss-crossed by a network of about 230 rivers.

East Pakistan Water and Power Development Authority more widely known as EPWAPDA was created in January, 1959 (EP Ordinance No. 1 of 59) for unified and coordinated development and utilisation of water and power resources in the country. After the independence of Bangladesh, the Authority was restructured into two organisations dealing with water and power separately on the 31st May, 1972 as Bangladesh Water and Power Development Boards. Taking into considerations further the rapidly changing dimensions of water resources development, the government thereafter constituted Bangladesh Water Development Board on the 11th July, 2000 as a fully autonomous organization with fresh mandate.

The BWDB's achievement during pre-independence since 1959 is 87 projects.

Until now it completed roughly 700 projects. Skimpily 14,000 Km of embankment, 13,000 appurtenant structures and 3,500 km of snaking drainage channels including huge irrigation canals have been built across the country at a cost of about \$3 billion over a period of more than 50 years. Besides, BWDB has reclaimed about 1000 sq km. of land from the sea in the Meghna estuary through construction of cross-dams.

Water development projects provided increased flood-free secured land for agriculture, enhanced degree of safety to human lives, livestock, settlement, industry and infrastructure, wider accessibility, multiplicity of cropping intensity, higher crop yields, improved drainage, culture fisheries, and reduced hazards from floods and surges. Through various components under these projects, it made a total of 5.12 million Hectares of agricultural land free from flood and drainage congestion thereby facilitating production of additional food grain amounting about 5.1 million tons. Through a number of large surface water irrigation projects, it has created the necessary infrastructures for providing irrigation facilities to 1.44 million hectares thereby producing an additional food grain of about 2.5 million tons. The total additional food grain production

from the completed FCD and FCDI projects is 7.6 million tons annually. This additional production is about one-third of the total food grain production in the country.

However, the benefits in terms of economic returns of most of the water development projects are shown close to zero because such assessment singly based on the agricultural output, the known objective. The other positive impacts i.e. embankment serving as roads providing micro-trading facilities, bringing qualitative changes in ecology, supporting community mobilisation, linking with national level programmes and accelerating infrastructural growth of all other sectors such as health, education, and food are not taken into account. But the population ambient to embankment and their livelihood dependent on hydrological characteristics of the region and the hydraulic behaviours of its water fronts, to the contrary, count different from what the experts say. Water development projects are never however accused by those people protected.

On the contrary, impeded drainage, reduced soil moisture, degradation of soil-water quality, loss of flooded habitats, changes in hydrological regimes, increased agrochemical runoff, restricted navigation, increased siltation, severity of flooding, land erosion, enhanced incidence of water-borne diseases are few of the listed negative impacts. Undeniably true that inadequate consideration has been given by the water professionals to the sustainability of rivers or canals and their water quality in designing a water development project for consumptive or non-consumptive use of water culminating in fatal disruption of stream's hydraulic equilibrium.

A section of experts argue that embank-

ment obstructing the flood pass is the main cause of flood related disasters and drainage hazards in the country and therefore stand in advocating for open channel flow; thereby managing floods by coping with floods. Observations also register that the embanking does not perform because of its failure during extreme hydraulic events, the time of its real need. Some experts, however, admit that yet the country has little option other than embankments to protect the backshores with mitigation plan drawn on environmental and social impact assessments.

Unfortunately though, during the flood every year a few water experts bring in issues making these water development projects a debatable structural intervention and then quickly disappear with the recession of floods leaving engraved the suspicion and the basic question in the minds of the politicians and the common people on the justifiability of the water development projects in totality.

It is necessary to mention that more than 20 percent of Bangladesh is annually flooded. Severe flooding may inundate 36 percent and in case of extreme hydraulic event the flooding exceeds to 68 percent. In addition to regular astronomical high tides of 2 to 6 meter, there are cyclones and cyclone generated storm surges. The already experienced climate change induced impacts within next 20 years are foreseen to permanently inundate 18 percent of the country's land mass affecting health, education and economy. The climate change induced impacts deeply relates to water issues and, therefore has come in the forefront.

The present national food requirement based on 2200 Kcal/capita/day is 28.8 million ton/year, while projected to 2030 it will be 41.9 million ton/year. Perspiring with impacts of floods on nation's econ-



omy almost every year the future challenges for the BWDB include water for food security, increased agricultural access to food, building healthy institution around the water sources, preservation of water for future generation, strong socio-political commitment to and community participation in integrated water resources management and global agreement on partnership to offer the partners an "opportunity map".

The National Water Management Plan has an analytical finding that only 2 percent incremental food production per annum is enough to meet the future demand of 40 percent absolute increased population over the next 20 years. This is achievable simply by ensuring the improved and adequate maintenance of the water resources projects. But the question now is even goes beyond: protecting life and other sector infrastructures. BWDB on completion of its 50 years of service to the nation once again needs to be restructured and re-mandated for fulfilment of government's commitment to the people of this country to have its stake-role duly played in building the "Digital Bangladesh".

The strategy for achieving the needs of the hour should now be directed towards strictly restricting BWDB within development of water resources. WARPO should be placed under the administrative control of the Planning Commission. As there is neither any need nor any feasible scope for further FCD/FCDI development, BWDB may be renamed as Coastal Development Board with fresh mandate. The management of existing all water infrastructures irrespective of their sizes and locations, initially except operation and maintenance of a few highly technical installations, should be transferred to, and placed under the administrative control of LGED for optimal benefits.

Dredging Organisation, Mechanical Equipment Organisation, River Research Institute along with some others should emerge as River Development Authority. Haor Development Board should be allowed to function independently with revised mandate on its own. Project level planning, designing, modeling etc should be further consolidated to enhance the efficiency of the support services.

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