

Time is ripe to heal the wounds in the judiciary

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MD. MOSFAQUR RAHMAN SABUJ

OUR attention has been drawn to an article, written by Mr. Khandakar Mahub Hossain, senior advocate and president of the Supreme Court Bar Association, which was published on October 19 in the Point-Counterpoint page of *The Daily Star* under the title "The Bar and the independence of the judiciary."

The article mentioned the appointment of judges of the Appellate Division wherein Mr. Hossain has given an interpretation of Article 95 of the Constitution and stated that the Hon'ble president is obliged to give appointment of the judges of the Appellate Division from amongst the senior-most judges of the High Court Division.

He further stated that "the president is obliged under Article 95 to appoint judges of the Appellate Division on the basis of seniority of judges of the High Court Division. To give a contrary interpretation of Article 95 would be to sanction supersession of the senior-most judges of the High Court Division by allowing the president to appoint a judge of the Appellate Division at his sole discretion."

But the interpretation given Mr. Hossain that the president is obliged to

give appointment from amongst the senior most judges is not a proper/correct interpretation of Article 95.

Article 95 states:

- The chief justice and other judges shall be appointed by the president.
- A person shall not be qualified for appointment as a judge unless he is a citizen of Bangladesh and (a) has, for not less than ten years, been an advocate of the Supreme Court; or (b) has, for not less than ten years, held judicial office in the territory of Bangladesh; or (c) has such other qualifications as may be prescribed by law for appointment as a judge of the Supreme Court.
- In this article, "Supreme Court" includes a court which at any time before the commencement of the Second Proclamation (Tenth Amendment) Order, 1977, exercised jurisdiction as a High Court or Supreme Court in the territory now forming part of Bangladesh.

On close reading of Article 95 of the Constitution, it appears that it postulates that the president is not bound to give appointment of the judges of the Appellate Division from amongst the senior-most judges of the High Court Division. The above Article enables the Hon'ble president to give appointment



of the Appellate Division judges from amongst the practicing advocates of the Supreme Court if the Hon'ble president is satisfied.

Mr. Hossain has forgotten that Mr.

Syed Amir-ul Islam, senior-most judge of the High Court Division, was not appointed as judge of the Appellate Division but was superseded 4 times.

Mr. Hossain now has come with the

above plea with a partisan view. The 10 judges were appointed under Article 95 of the Constitution, having regard to the judgment of the Appellate Division of the Supreme Court, as 16 judges were dropped by the then government most illegally as they adhered strictly to the Constitution and rule of law and did not want to be subservient to the will of the then government.

It may be mentioned here some of the above 10 judges are freedom fighters. In the aforesaid process they were made juniors but, in fact, admittedly, the 10 judges who joined after judgment of the Appellate Division of the Supreme Court were senior.

In this connection, relevant paragraphs from the judgment passed in the case of Idrisur Rahman and others vs. The Secretary, Ministry of Law Justice and Parliamentary Affairs, Government of the People's Republic of Bangladesh, Bangladesh Secretariat, Ramna, Dhaka-1000 are reproduced below:

"Meanwhile, on 29.07.2002, the alliance government appointed 11 additional judges and confirmed ten of them after two years and gave extension to one, who was subsequently dropped on the recommendation of the chief justice. On 24.04.03, they appointed 10 additional judges. One of them was removed by the president and the rest were confirmed as judges of the High Court Division. On 24.08.03, the alliance government appointed 5 additional judges and after two years, confirmed all of them. On 23.08.2004, the alliance government appointed 19 additional judges.

"Against such appointment, the

national media, the Supreme Court Bar Association and the Bangladesh Bar Council raised serious objections. In spite of national outcry against such appointments, the alliance government confirmed 17 additional judges as judges of the High Court Division. The alliance government appointed in total 45 additional judges and confirmed 42 of them, and one was removed by the president on the basis of a report of the Supreme Judicial Council, one resigned and one was not confirmed for want of recommendation of the chief justice.

"The pattern of appointment and non-appointment is so naked that after change of the government the petitioners were dropped for no allegation from any quarter regarding suitability and/or performance but for political consideration."

Because the said judges were not appointed they suffered untold pain and pangs for about 7 years and their life was made miserable by the 4 party alliance government. Mr. Hossain is the member of the political party that headed the government. From the trend of the interpretation, it appears Mr. Hossain has given interpretation of convenience, forgetting the statement of the then Hon'ble chief justice who expressed his concern by saying: "The disaster happened because of unfair appointment of the judges." The 10 judges are victims of political vengeance, and time has come to heal the wounds they suffered.

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Generous in criticism, miserly in praise

Scathingly critical of the leaders, they used superlatives to make their points. They used words like "inept" and "corrupt," and ended by saying, "we are run by the Sarah Palins." For me, the last remark was particularly hurtful. Some criticisms -- minus the hyperbole -- were fair, others were plainly not.

HABIBUL HAQUE KHONDKER

THE title may be seen as a short-hand (some might say, standard) description of the overseas Bangladeshi's preferred mode of evaluation, especially in matters of politics, economy, and life in general of their homeland. This is almost a default position; anything else is just an exception.

In a recent tour of North America, I engaged overseas Bangladeshis to find out their thoughts on the developments of their motherland. I must confess my samples were non-representative. I talked to whoever wanted to share his or her opinions.

The first reaction was collapse, "things are falling apart," "breakdown of the rule of law," "inflation," "incredibly slow services" at the airport, "uncontrolled power of the political cadres," and yes, "impossible traffic in Dhaka."

Scathingly critical of the leaders, they used superlatives to make their points. They used words like "inept" and "corrupt," and ended by saying, "we are run by the Sarah Palins" (Ms. Sarah Palin, the former governor of Alaska and the unsuccessful vice-presidential candidate of the 2008 elections became a butt of political jokes and earned notoriety for her often uninformed and thoughtless

comments. Needless to say, these are not always negative qualities in US politics). For me, the last remark was particularly hurtful.

Some criticisms -- minus the hyperbole -- were fair, others were plainly not.

The critics I engaged in Pittsburgh, Pennsylvania were highly qualified and successful professionals, ranging from university teachers, bankers, software company vice-presidents, doctors, researchers and so forth. Their points were well-made. One of them -- an economics professor -- singled out irresponsible opposition political parties as the main problem of the region. His examples included both West Bengal and Bangladesh. In order to ensure economic progress you need a responsible opposition.

I asked them what advice they might offer to the government of Bangladesh. I asked them what lessons they could bring from their own experiences of serving in big and successful corporations.

Two points were made repeatedly.

One, improve services and stop talking about huge and costly projects. Set realistic goals. And make sure you achieve those goals. One of them said that it used to take six hours by express train from Dhaka to Chittagong several years ago, now it takes eight hours. (I have not fact checked, but it seems believable.) One would expect that if it took six hours fifteen years ago, it should take much less now -- not more.

Progress is increasing speed, not slowing down. Progress also means adding new services, not curtailing them. There used to be air-conditioned bus services between Uttara and Motijheel commercial area. Progress would mean expansion of such services connecting other parts of the city, not a decline.

My well-meaning friend, vice president of a software company, singled out his experience of adding Bangladesh to his itinerary during one of his recent trips to Bangalore where the French software company he manages has a large office. He had

to wait for over an hour and a half for his luggage at Dhaka airport and it cost him another couple of hours to reach his residence braving Dhaka traffic.

Are services at the airport that bad? It took me exactly half hour to get my luggage in September and over forty-five minutes in June this year. In my book that's improvement. As I walked out of the plane to the immigration, I counted nearly a dozen counters operational. It took me less than half an hour to get through.

In New York's JFK airport I had to stand in line for nearly two hours for immigration control and missed my appointed limo service. The officers at JFK were highly efficient but the load of the passengers was overwhelming. I am spoilt by services where my luggage always waits for me by the time I come to the luggage carousel (yes, it happens in Singapore and Abu Dhabi).

Now, what about long-term goals for Bangladesh? Their point was "invest big money in science in a targeted

way." One such area now is synthetic biology. Both China and India have joined the bandwagon of research on synthetic biology. Here you need a marriage of sophisticated software technology and biological sciences; you need to imitate the genetic codes to create new life forms.

I was given a lecture (along with helpful websites and internet resources) on synthetic biology and its enormous potential. I learned a lot in a short span of time on J. Craig Venter and his research. Can Bangladesh handle such high tech research? Why not? My friends have full confidence in the talents of Bangladeshi students and all they want is to see that more money is spent on research and more opportunities are created. Would they come to invest? Yes, replied my friend, "I want to help build a strong and prosperous Bangladesh."

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Anti-liberation statements

Some front-ranking leaders of BNP are also trying to gain prominence through making attempts to belittle our war of liberation and the freedom fighters. Barrister Rafiqul Islam Mia is one of them.

A.B.M.S. ZAHUR

IT is beyond any doubt that the recent observation by Begum Zia about the need for trial of war criminals has shocked the common people in general and the muktijoddhas and their families in particular.

In her speech she stated that (a) trial of war criminals might result in division of the people, (b) four decades is a long time for opening the trial, (c) real war criminals were released after the liberation war, and (d) freedom fighters are being used for "political business."

Not only Begum Zia, even some front-ranking leaders of BNP are also trying to gain prominence through making attempts to belittle our war of liberation and the freedom fighters.

Barrister Rafiqul Islam Mia is one of them.

On October 1 he stated that he could not find anything about the surrender of Pakistani forces to the freedom fighters in the surrender documents of the liberation war. Such statement from a veteran lawyer appears unfortunate.

In is clearly written in the surrender document that "The Pakistan Eastern Command agrees to surrender all Pakistan Armed Forces in Bangladesh to Lieutenant General Jagjit Singh Aurora, General Officer Commanding of the Indian and Bangladesh Forces in the Eastern Theatre." However, Barrister Rafique withdrew his comments later on.

It seems that, to Begum Zia, Bangladesh freedom fighters are those who went to India in 1971 to spend

their time there, and are trying to claim themselves as the champions of war of liberation.

She does not seem to realise how effective the speech of the then Indian premier, late Indira Gandhi, was in the General Assembly of the United Nations. She fails to appreciate that one of the cogent reasons for the support we got from the freedom-loving people of the world was that ten million Bangalee took refuge in India.

Three million people were killed in the war of independence. Almost four lakh women were dishonoured by Pakistani forces and their associates. About ten million people had to leave the country for shelter in India. Except Razakars and Al-Badrs, all the people of Bangladesh suffered and incurred loss directly or indirectly. Did you ever see how the Bangalee refugees lived in the camps of Salt Lake and border areas of West Bengal? Does it not seem that you have insulted our whole nation by your statement on October 5?

On the concluding day of the sixth session of parliament our prime minister made an appeal to the BNP chairperson not to make the lives of com-

mon people miserable by attempting to save the terrorists and the war criminals. She further added that the trial of war criminals was demanded by the entire nation and it would continue even after the end of the present generation.

Begum Zia's statement against the trial of war criminals is not only shocking, it has also created a sense of deprivation and frustration among the muktijoddhas and their families. When we look back, we see that within one year of setting up of Pakistan on August 14, 1947, the people of this province started political agitation.

There was the language movement in 1952, death of Muslim League in the election of 1954, education movement in 1962, declaration of six-point by Bangabandhu in 1966, the movement for implementation of six-point programme in 1969, and the election of 1970.

If she does not pay any heed to the demand of the people for the trial, her party may gradually lose the respect of the people.

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