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MP oversteps jurisdiction

Canal recovery drive foiled

Moves to free canals of illegal occupants have stumbled once again. This time it was the local MP, an elected representative of the people, who personally prevented a team of WASA and the district administration from conducting its cleaning work that was planned to free the 2.5 km long Kalyanpur canal from illegal occupation.

The action of the MP has been most imperious, not to say that it was totally unwarranted, coming from one that not only represents the local people but one who is also supposed to set examples of respect for law.

This is perhaps the first instance where a government programme undertaken specifically at the order of the PM has been sought to be foiled by a member of her own party. How more preposterous can things get? Needless to say, this has set a very bad example where a public representative has stood in the way of implementation of a government policy intended to deliver public good. It has also clearly shown the lack of coordination between the ruling party policymakers and its MPs.

May we ask under what authority the MP prevented government officials from performing their duty? He cannot be unaware of the fact that interfering with the functioning of public officials is an offence under the law of the land. The honourable member of the parliament cannot be also unaware of the fact that the clearing drive is a part of the programme undertaken after deliberate consideration at a meeting headed by a minister. Why then this unwarranted demonstration of clout which amounts to abuse of power of the worst kind.

If the parliament member had any reservation about the matter he could have registered those at the right forum and with the appropriate person and at the appropriate time. The manner of his remonstration has certainly diminished the credibility of the government and the party, if anything. What it has demonstrated too is that the government directive has come in direct conflict with the interest of the local MP and where, regrettably, his interest has prevailed.

Apparently, role of the MPs is getting blurred by the day and more and more are public representatives behaving like satraps not law makers. And the government must take the blame for it too, for giving the MPs the impression that they are the all in all in their constituency, and also by making the local government bodies weak and dysfunctional.

It is time for the government to make it clear to the parliament members that it is not their job to meddle in administrative or executive affairs but to concentrate seriously on their primary task of legislation and helping the government implement development policies.

Brutal treatment to domestic aid

Abominable beyond measure

It is again in the news -- that debased form of inhuman treatment meted out to a helpless child working as domestic help. It came to light only as neighbours who couldn't bear up with it anymore decided to report to law enforcers. What then was revealed through the statement of Shohagi Akhter was a disturbing tale of torture, brutalisation and laceration of her tender body. Just imagine the plight the child was forced into. She was a destitute with nowhere to turn to for food, shelter and little affection in exchange for a daily grind of chores other than the brutes of a couple into whose hands she had strayed.

In this case the neighbours spoke out and a rescue operation followed, both doing their conscionable parts, for which they deserve thanks, of course. But we suspect that at many homes in the city maltreatment of domestic aid in various degrees and forms have been taking place wrapped in silence as the victims go on suffering. The neighbours have a duty there but essentially the employers themselves must have an introspection as to whether they are treating their domestic workers with kindness and compassion they deserve as poor children performing back-breaking tasks.

Occasionally we have come across news items of housemaid brutalisation, even in homes where normally this is not expected, given their economic and social status. This is very unfortunate; yet, as it is, domestic violence is a pervasive vice cutting across social strata and will have to be dealt with accordingly. It has to be addressed at the individual, family and community levels.

Laws are not in short supply: for, in addition to the Woman and Child Repression Act we now have a law against domestic violence. Existence of laws itself is no guarantee against torture and brutalisation of domestic workers. What can bring a difference is a manifest application of the law. Nobody should escape punitive action having committed such offence and been brought to law through exercise of any clout. In how many cases of child repression have the offenders been actually punished? We need to give deterrent punishment to the offenders to stamp out the evil.

STAR

Why a law for appointing superior judges?

We earnestly believe that comprehensive legislation is needed, which will adequately address all issues relating to temporary appointment of additional judges and their subsequent confirmations elevation to the Appellate Division and even the selection process for appointment of the CJB.

MIZANUR RAHMAN KHAN

THE role of the Chief Justice (CJ) in appointing judges in the superior judiciary is being marginalised in South Asia and in the world as well. Great Britain, from whom South Asia inherited the concept of "consultation with the CJ," formed a fifteen member-Judicial Appointments Commission (JAC) in 2006 as an independent Commission for selecting candidates for judicial office. The JAC took over the role of the Lord Chancellor in appointing judges.

We may recall the promulgation of the 2008 Supreme Judicial Commission Ordinance (SJCO) that was not validated by the Parliament. The composition of the SJC orchestrated the "participatory consultative processes" as desired, even though it had some flaws. A three member High Court Division (HCD) Bench approved the SJCO though they gave a split verdict over its technical aspects.

We should look forward to the revival of the said SJC with some modifications. The revival of Article 95, which empowers the CJ as the sole consultative person in recommending this process is not really having any effect.

Before going into details, may I refer to the article titled "Transparency in higher judicial appointments" written by former secretary Mr. Abdul Latif Mandal and published on October 24 in *The Daily Star*. The article, I am afraid, has missed the point. It was the judges' case, not the Fifth Amendment case, that gave a legal sanction to the role of the Chief Justice of Bangladesh (CJB) in appointing judges. No verdict was delivered by the highest court that revived Article 95, as the author claimed.

The said article says: "The Appellate Division, in its verdict on the Fifth Amendment to the Constitution, has declared Article 95, as amended by the Second Proclamation Order No. IV of 1976, valid and retained it in the Constitution." The real fact is the opposite.

Justice A.B.M. Khairul Haque, in the Fifth Amendment case, retained Article 95 as Justice Sayem revived it in 1976. But the Appellate Division (AD), in its 2009 verdict, simply invalidated it. It has been argued that when the judgment was pronounced the changes made in the above-mentioned second proclamation order were not in force.

The Court has no jurisdiction to validate what is not the law of the land. However, the author's spirit in "congratulating the apex court for its verdict" is appreciable. The CJ is expected to ensure "unbiased and just recommendations" in appointing judges in both the divisions of the apex court.

We got the first comprehensive and specific guideline about the appointment of judges from a three-member HCD Bench led by Justice Abdur Rashid in the Judges' Case. The 2008 HCD guideline introduced a consultative process. It says that the CJ shall consult with the four senior judges, besides senior members of the SC Bar Association and the attorney general (AG), in case of appointment to the HCD. In the case of appointment of judges to the AD, the CJ shall consult only with three senior-most judges of the AD to form his opinion.

The AD overruled the scheme. Indeed, it was the line with the judgments, which are considered landmarks in appointing judges in South Asia. The apex courts in India and Pakistan agreed to call attention to collective responsibility rather than anyone's individual role in selecting the superior judges.

M.M. Ruhul Amin, CJ, opined in Judges' Case: "Despite the fact that we disagreed with the learned judges of the HCD that the CJ should consult with a collegium of judges, there is no bar for the CJ to discuss with his colleagues."

In 1998, a full-court resolution vested absolute power in the CJ regarding posting of the judges of the lower judiciary. In 2008, the resolution was reversed unanimously and the power was entrusted to a four-judge committee headed by the CJ.

Notwithstanding the same provision as we had in the Article 95 in the 1972 Constitution, the Indian executive sent an exemplary presidential reference to the apex court to work out a process of selecting judges. Indeed, it was a rare instance of sharing responsibility if not power with the apex court, which is known as the "least dangerous" organ of the state.

The moot question was whether "consultation with CJ of India (CJI) requires consultation with a plurality of judges in the formation of the opinion of the CJI or does the sole opinion of the CJI constitute consultation within the meaning of said Articles." The apex court unanimously concluded that the opinion of the CJI means the opinion of a collegium consisting of him and four senior-most judges.

It works well, though recent debates show that the legal luminaries are more critical about alleged bias and lack of openness of the collegiums. Former Attorney General of India, Mr. Soli Sorabjee, opted in favour of the Judicial Commission instead of collegiums.

The Indian Constitution Review Commission in 2000 proposed the composition of a collegium, which gives due importance to both the executive and the judicial wings of the state, as an integrated scheme for appointment of judges.

Meanwhile, Pakistan took the lead in this subcontinent in adopting a system that is similar to the US model, which favours collective responsibility. The past colonial provision of consultation was buried in Pakistan in 2010 through the eighteenth constitutional amendment.

The Judicial Commission (similar to our defunct 2008 SJC) headed by the CJ of Pakistan (CJP) shall nominate by majority one person for each vacancy of a judge to the parliamentary committee. The eight-member committee, with equal representation from the treasury and the opposition, has to confirm the nominee by majority within fourteen days on receipt of nomination, failing which the nomination shall be deemed to have been confirmed.

In Bangladesh, we should have an effective participating consultative mechanism that could be drawn in the light of the Judges' Case and the 2008 SJCO, and the HCD judgment on it.

The absolute dependence on "consultation with the CJ" in the 2009 AD verdict does not seem to reflect the reality in a modern judiciary. It is settled that consultation does not mean concurrence. Moreover, the AD said: "Except on the ground of want of consultation with the CJ or lack of any condition of eligibility, the cases of appointment of judges shall not be justifiable on any other grounds, including bias and malafide."

The apex court has ensured the "primacy" of the opinion of the CJ. But how was the opinion formulated? The court ruled that: "In the matter of selection of the judges the opinion of the CJ should be dominant in the area of legal acumen and suitability for the appointment, and in the area of antecedents the opinion of the executive should be dominant. Together, the two should function to ideally find out the most suitable candidates available for appointment through a transparent process of consultation."

We earnestly believe that comprehensive legislation is needed, which will adequately address all issues relating to temporary appointment of additional judges (entry level), and their subsequent confirmations (six are due next month), elevation to the Appellate Division (six posts are lying vacant) and even the selection process for appointment of the CJB.

In Bangladesh, we must ensure due accountability and real transparency. We must find a durable and equitable system, derived from the best practices of all our relevant country experiences.

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Between scam India and slum India

The voter does not live in Adarsh. 62% of Mumbai lives in slums. The distance between scam India and slum India is measured each day in the newspapers, but discomfort prevents us from noticing. Even media seems reluctant to shorten this distance.

M.J. AKBAR

IT is entirely appropriate that a nation whose motto is Satyameva Jayate should discover a metaphor for ravenous loot in a Mumbai building society called Adarsh. Greed is the new religion and all are welcome to feed at her trough. Nothing else is sacrosanct; not the highest offices in public service: Chief minister, army chief, navy admiral, or top bureaucrat through whom the file must pass.

If there is a flat to be stolen in a housing society sanctioned for the welfare of war widows, then every single one of these crooks is ready to cheat the blood of Kargil martyrs. Thomas Friedman did not know how many puns danced on the head of a simile when he called the world as flat and began his journey in India.

There is no shame left. It is tempting to ask whether there is an India left when most of its ruling class has abandoned every principle in its composite, vulgar commitment to theft, but hopefully India is larger than its ruling class.

Which came first, hypocrisy or greed? Tough question. I would give primacy of place to hypocrisy, since that is the cloak behind which greed flourishes. Hypocrisy is always a great temptation in a democracy, since compromise always begins in the name of either realism or service.

The gap between true expenditure in an election and officially sanctioned levels is the principal propeller of corruption since it becomes the justification for taking illegitimate "donations," which of course is the polite word for bribes.

The stink of hypocrisy now permeates through all levels of authority, and institutions -- like our defence forces -- which cannot co-exist with corruption. They will be corrupt or a force; they cannot be both. The list of officials who stole from the Kargil dead is almost embarrassing: politicians, senior IAS officers, top defence officers. It was a rigged lottery handout.

It was robbery from the graveyard of Kargil martyrs. Those back-scratching cronies who distributed Adarsh flats between themselves should not be tried for corruption. They should be punished for treason.

But, of course, that is asking for too much from rulers who have become venal beyond belief. The system believes it can satiate any level of public anger with the meat of a scapegoat. Suresh Kalmadi was the officially nominated sacrifice for the putrid rape of public money during the Commonwealth Games.

Ashok Chavan, Chief Minister of Maharashtra, will possibly have to resign because of Adarsh, unless he can, quietly, blackmail his superiors in Delhi by threatening to reveal how much cash he has been passing on to them.

We are being fooled by a clever set of manipulators in Delhi. Ashok Chavan did not become corrupt on the day media discovered that he had not only changed the terms of reference to cheat the "heroes of Kargil operation who bravely fought to protect our motherland" and then calmly stolen at least four of their flats for his family. He was corrupt the day he was made a minister in the Maharashtra government.

He was promoted to chief minister not because he was competent but because he knew the formula for upward mobility in the Congress, the happy combination of loyalty and corruption. When Delhi now puts on a mask of high outrage, it is only because it thinks this is the only way in which it can postpone retribution from the voter.

The voter does not live in Adarsh. 62% of Mumbai lives in slums. The distance between scam India and slum India is measured each day in the newspapers, but discomfort prevents us from noticing. Even media seems reluctant to shorten this distance.

While the front page of Saturday's newspapers in Delhi were full, justifiably, of the Ashok Chavan-led pillage, a small story on page 3 told of an unknown mother who left her two children, a boy, Pukar, and his sister Dakshina, outside a *mazaar* (a saint's shrine) just outside the office of the Election Commission in Delhi, the home of the guardians of democracy.

She gave her children all that was left with her, a bag with milk and some clothes, and told them she would return in an hour. She never returned. Her last trust was faith in the shrine. The children, said the temporary caretaker of the *mazaar*, Wazir Shah, cried the whole night. The children are now in a shelter.

They will learn to deal with the hungry, homeless, loveless reality that is the destiny of half of India while a thin skim ravages national wealth, and those in-between are trapped between dreams and insecurity. But will Pukar and Dakshina accept their "fate" and ignore Ashok Chavan and his fellow gangsters in the way that their helpless, nameless mother did? I hope not.

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