Democracy dealt havoc

murder conviction in 1986 by a martial law court and sought an order for retrial. Though the HC declared the martial law court illegal, it did not pass any order regarding the criminal case against him and rather

FROM PAGE 1

said "he must surrender to his Justice AHM Shamsuddin Chowdhury Manik and Justice Sheikh Md Zakir Hossain yesterday signed the text of the judgment. Earlier, the judges declared illegal the country's second military takeover by Lt Gen Hussein Muhammad

Amendment. The Seventh Amendment ratified the proclamation of martial law and other regulations, orders and instructions by Ershad between March 24, 1982, and November 10, 1986.

Ershad and the Seventh

Narrating the black part of the country's political history, the court said Khandaker Mushtaque Ahmed, selfdeclared president after the assassination of Bangabandhu Sheikh Mujibur Rahman, proclaimed the first martial law on August 20, 1975 with retrospective effect from August 15,

The then chief justice Abu Sadat Md Sayem became the president also the chief martial law administrator (CMLA) in the end of 1975, and after a year Ziaur Rahman became the CMLA and then the president.

Ershad also first became the CMLA and then the president in the 1980s.

Vehemently denouncing military rule and suspension of he Constitution through martial law, the HC said, "It is about time that the relics left behind by martial law perpetrators be completely swept away for good."

The judgment narrated how the martial laws devastated the democratic fabric as well as the patriotic aspiration of the country.

It said, "During Ziaur Rahman's martial law, the slogan of the Liberation War, Joy Bangla' was hacked to death. Many other Bengali words such as Bangladesh Betar, Bangladesh Biman were also erased from our vocabulary. Suhrawardi Udyan, which stands as a relic of Pakistani troops' surrender, was converted into a children's park."

"Top Pakistani collaborator Shah Azizur Rahman was given the second highest political post of the Republic, while other condemned collaboraors like Col Mustafiz, Suleiman, etc were installed in

Zia's cabinet.' "Many collaborators, who fled the country towards the end of the Liberation War, were allowed, not only to return to Bangladesh, but were also blessed with safe haven, were deployed in important national positions.'

"Self-confessed killers of Bangabandhu were given immunity from indictment through a notorious piece of purported legislation. They were also assigned with important diplomatic jobs abroad."

"The original constitution of the Republic of 1972 was mercilessly ravaged by General Ziaur Rahman who erased from it, one of the basic features, 'Secularism' and allowed communal politics, proscribed by Bangabandhu, to stage a comeback."

The judges termed the military rulers "disgruntled people" and have found the concept of martial law as alien to the Constitution as it is to the English system. The judges also saw the military takeover as a

seditious offence. The legal system of Bangladesh is inherently based

upon the English legal system. The summary of the judgment said, "Martial law is otally alien a concept to our Constitution and hence, what Dicey commented about it, is squarely applicable to us as

Albert Venn Dicey was a British jurist and constitutional theorist, who wrote "An Introduction to the Study of the Law of the Constitution" in

When they discussed elabo-The judgment said, "It was rately in the section of the udgment titled "Does martial law have a place in our Constitution the judges observed, "We have noted Dicey's irrefutable statement that martial law, by which and other official documents,

assumption of state power by home and abroad." usurping the constitutional "There is no doubt, and government by use of the barrel of guns is referred to, is not known to English law." Earlier this year, the nevertheless gradually, pro-Appellate Division of the Supreme Court gave another

historic verdict declaring illegal the country's first martial law and the subsequent Fifth Amendment to the Constitution. Citing the SC judgment on the Fifth Amendment case, the HC judgment on the Seventh

Amendment said, "The

Appellate Division, in the Fifth

discernibly expressed that the government and the parliament should come up with infallible legislation to ensure appropriate punishment for such disgruntled people, and we are in no doubt, in order to protect the Constitution from future vultures, which must be the prime obligation of the government as well as of the representatives of the people, such move shall be forthcom-

"The government may also explore whether there are sufficient evidence to indict the perpetrator(s) under any existing provision of the Penal Code, particularly section 121A and section 124 and section 124 (A), or under any provision of any other special law," said the judgment.

These three sections of the Penal Code describe the provisions of punishing people who committed seditious offences.

The judgment added, "Our memory must not betray us in reminiscing that usurpers like Suharto, Pinochet, Gortiary, Idi Amin had to face the harsh music of law, whereas destiny steered Ayub, Yahya, Ziaul Haque and Pervez Musharraf to dire eventualities. There exists no reason why those who dared to play with the fate and the destiny of our people should not face same obnoxious consequences -- no crime should go unpunished."

Discussing the measures taken in Argentina and Mexico in order to insulate their constitution, the HC judgment said, "This would definitely be a commendable action on the part of our legislators to follow such move. "Pakistan has also taken

similar steps. After all, nobody wants to see anymore martial law. This outlaw and abhorrent must find a perpetual exit from

In a section of the judgment titled "How to Take Ershad and other Perpetrator(s) to Task?" the court emphasised on ensuring punishment of military rulers differently.

"... it should be left with the government as to how they will take the perpetrators to task. We subscribe to the overriding view that booking the perpetrators will act as a deterrent for future adventurers," the judgment observed.

It added, "Now, how about the perpetrator, General Ershad, who dared to brandish illegal and outrageous encroachment on our Sacrosanct entity, our hard earned Constitution? Can he be allowed to go scot-free, after committing the most heinous felony of putting the Constitution at abeyance for a few years, to the grave predicament of the people? History will impeach us should we come out with a negative reply.

The judgment continued, "A fortiori, usurpation of power by General Muhammad Ershad, flexing his arms, was void ab-initio, as was the autocratic rule by Mushtague-Zia duo, before Ershad, and shall remain so through eternity. All martial law instruments were void ab-initio.

"As a corollary, action purportedly shedding validity through the Constitution (Seventh Amendment) Act, 1986 was a stale, moribund attempt, having no effect through the vision of law, and must be cremated without delay," the court said in the

It added, "During General Ershad's martial law also democracy suffered devastating havoc. The Constitution was kept in abeyance. Doors of communal politics, wide opened by General Zia, were remained so during his period. Substitution of Bengali Nationalism by communally oriented concept of Bangladeshi Nationalism was also allowed longevity during Ershad's martial law."

However, citing the Supreme Court's observation in the Fifth Amendment case about the question of restoring Bangalee nationalism, the HC judges have given their views.

viewed by the Appellate Division that return to 'Bangalee Nationalism', now, would involve huge expenditure and changes have to be recorded in all the passports

keeping in mind the question of expenses as viewed by the Appellate Division, we can ceed to eventually bring back 'Bangalee Nationalism' in our Constitution, which was the commitment of the historic War of Liberation and the cherished desire of the people

and Bangabandhu himself." By the judgment in the Fifth Amendment case, all the misdeeds perpetrated by Mushtaque-Zia duo have been eradicated and the Amendment case, has quite Constitution has been restored

to its original position as it was, when promulgated in 1972.

The HC judgment also said, "During the autocratic rule of Khandaker Mushtaque and General Ziaur Rahman, every effort was made to erase the memory of the Liberation War against Pakistan."

"The killing of the Father of the Nation, which was followed by successive military rules, with a few years of intermission, was not an spontaneous act -- it resulted from a well intrigued plot, harboured over a long period of time which was aimed not only to kill the Father of the Nation and his family, but also to wipe out the principles on which the Liberation War was fought," the judgment

The HC judgment also said the paragraph 19 of the fourth schedule to the constitution, which was included for ratification and confirmation of the proclamation of martial law of the 24th March 1982, must be wiped out immediately.

The HC directed the law ministry to reflect this judgment by re-printing the Constitution.

The HC in its judgment issued certificate which means regular appeal will be filed with the Appellate Division automatically, and the SC will give the final judgment over petitioner Siddique's case.

BNP fears

Member of the main opposition BNP, yesterday.

The committee called upon the Election Commission (EC) to take measures against manipulating polls and urged people to resist holding such "absurd" elections.

"We believe that people of this country will deliver their verdict against the government, which has failed to materialise their election pledges, in the upcoming polls," Mosharraf said at press conference in the party's central office at the capital's Naya Paltan.

The press conference was held to announce the party's decision taken at the meeting held on Tuesday night.

BNP will participate in parliamentary by-elections in Brahmanbaria and Habiganj which are set to be held on January 27, said Mosharraf. He also said the country-

men are wary about their future after observing the survey report of Transparency International Bangladesh.

"Partisan approach of the government is the main reason for this situation," he said.

The party also denounced the government for filing corruption cases against party Secretary General Khandaker Delwar Hossain, former speaker Jamiruddin Sircar and his deputy Akhter Hamid Siddiqui.

When asked about the allegation regarding Delwar taking furniture from the parliament when he was the chief whip, Mosharra declined to make any comments.

"The matter is sub judice,"

The standing committee also condemned the arrest and torture of Salauddin Quader Chowdhury and demanded his unconditional release.

Nazrul Islam Khan Goyeshwar Chandra Roy and Mirza Fakhrul Islam Avenue, among others, were present.

Ship's agent

FROM PAGE 20 The DoE in Chittagong has another option of apprehending and punishing the offender, said a source in

"The DoE can ask the Dhaka office's enforcement department to take action, said the source, adding, "The enforcement department can hand spot penalty to the offender.'

Port authority sources suspect the entire stock of the ship's 400 tonnes of furnace oil and diesel was dumped into the sea.

DoE officials, however, are unsure about this. They said it

happened during repair work. The Ocean Pearl had arrived at the Chittagong port over two months ago carrying fertiliser but remained grounded in the outer anchorage for most of the period for

Air passengers and pilots flying in and out of the Chittagong Shah Amanat International Airport first spotted the nearly threekilometre slick in the Bay off Sitakunda on December 20

and 21. Following a The Daily Star report on December 22, the DoE investigated the matter and found Ocean Pearl responsible for the spill.



Star's new initiative on leadership

FROM PAGE 1

global experts, particularly non-resident Bangladeshis in high-tech companies worldwide, local experts and industrialists.

The first annual "The Daily Star Leadership Colloquium" will take place on January 7, 2011 with the theme "New Technology and Alternative Energy". Four experts will deliver speeches on issues

including fuel cell technology, biomass, wind and solar energy and conventional energy developments. They are Dr Ahmed Badruzzaman, energy scientist from Chevron with expertise in petroleum, nuclear

industries and conventional sources of energy; Prof Saifur Rahman, director of the Advanced Research Institute at Virginia Tech and expert in renewable energy; Dr Md Farooque, senior vice-president at Fuel Cell Energy and expert in power generation and utilisation; Dr Mehdi Anwar, professor of Electrical and Computer Engineering at the University of Connecticut and expert in Electrochemical Energy Conversion and Storage.

Dr Avni Argun, research fellow in Massachusetts Institute of Technology (MIT) and expert in Highly Conductive Nanoassemblies for Clean and Sustainable Energy, will participate in the colloquium through a videoconference supported by Logitech.

Dr Debapriya Bhattacharya, distinguished fellow of the Centre for Policy Dialogue (CPD), will moderate the programme.

On wrong trail

December 16, 1971.

As part of the plot, the most heinous crime in human history was done through the killing of Bangabandhu along with most of his family members and relatives on August 15, 1975.

"It was clearly aimed to wipe out the spirit of the liberation war," the judgment reads.

The conspirators achieved primary success when Khandaker Mushtaque, who evidently led the plot, declared himself president after seizing state power unconstitutionally.

The legacy of martial law in independent Bangladesh began through Mushtaque, who with the help of some disgruntled army officers proclaimed the first martial law on August 20, 1975, with effect from August 15, 1975.

The constitution was neither abrogated nor suspended. But it was made subservient to martial law instruments when General Ziaur Rahman replaced General KM Shafiullah as the army chief.

Mushtaque was deposed and the then chief justice Abu Sadat Md Sayem was made president on November 6,

Justice Sayem handed over the posts of chief martial law administrator and president to Zia on November 29, 1976 and April 7, 1977.

The first parliament was dissolved with effect from November 6, 1975.

The HC judgment observes that the period of despotic rule by Mushtaque and Zia saw the most polymorphous events of

destruction. Zia substituted "Urdu" slogan "Jindabad" for the historic Bangla slogan "Joy

Bangla", the court observes. He employed many antiliberation figures in important posts and paved the way for the return of other enemy collaborators, who fled the

country on the eve of

TIB explains

FROM PAGE 1

one in Comilla -- were filed. The TIB survey on "service sector corruption: national households survey, 2010" was conducted on 6,000 households. The households shared their experience with 13 service sectors from government and non-government institutions between June 2009 and May this year.

A staggering 88 percent of the households who sought service at the court said they became victims of corruption and harassment at the judi-About 11 percent of the

households who received services from the judiciary paid on average Tk 7,918 in bribe each. Households that sought service from the High Court

paid on average Tk 12,761 each for services. They paid on average Tk 6,598 and Tk 6,178 each at the magistrates' and the judges' courts. The report also said lawyers, court employees, court

clerks and brokers take money to hasten or postpone hearings, to withdraw and destroy case documents and influence ments and also fined Tk 100 the judgment. each.

Bangladesh's victory, the

verdict says. allowed communalism-oriented politics, discarded by Bangabandhu, to make a come back, the court observes. A democratic government,

restored through the 1979 general election, was shortlived as it faced the same foray of attacks from another mili tary adventurer, Hussain Muhammad Ershad. After Zia's assassination vice president Justice Abdus

dent constitutionally, but he could not hold the post for Ershad seized state power on March 24, 1982, by bending constitutional order like his

predecessors, says the judg-

Sattar succeeded Zia as presi-

Ershad blatantly interfered with the judiciary. He not only purportedly deprived people of the freedom to enforce fundamental rights through judicial review, but also unlawfully interfered with the performance of the subordinate judiciary, observes the

"He, like his previous peers in usurpation, set up a number of martial law tribunals, where apparent, rather than real, justices were delivered with scant regard to the rules of evidence and procedure, reflective of kangaroo trial,' says the verdict.

39 BDR men

FROM PAGE 20 Rahman and Habibui

Rahman were present.

Trial of the case started on 19 October while charges were framed against all the 44 accused on 25 November. Among them, 39 pleaded guilty and prayed for mercy while 5 claimed themselves

innocent Argument was held on 25 November while the Prosecutor Lt Colonel Khairul Quadir, also commanding officer of the 21 Battalion, pleaded for justice for the incidents in the battalion on 26 February of 2009 as sequel to the Pilkhana mutiny.

During the argument, he said the 44 jawans took control of the 21 Battalion located at the city's Akhalia on Sylhet-Sunamganj Highway on 26 February of 2009 morning.

They also burnt some vehicles including three private vehicles of the BDR officials. They put barricade on the

road in front of the 21

17 May last year.

hajat.

Battalion Headquarters' main gate and stopped traffic. The then Officer-in-Charge of Sylhet Kotwali Police Station Inspector Syeduzzaman filed three separate cases with the chief the draft. judicial magistrate's court on

is in the final stage now. They were immediately arrested and were produced before the chief judicial magistrate who sent them to jail

Judgment in the Sylhet region's first case for BDR mutiny was given on 2 August. The BDR Special Court-3 throughout the year. sentenced 14 BDR men of 8 price card to check price hike of Rifles Battalion to different the food item. terms of rigorous imprison-

But all went futile, as the

Rab arrest

FROM PAGE 20 Hamid, an engineer and a

resident of Dakkhin Khan in the capital, was shot dead by the accused on January 29, 2005. The gang also shot his

U-turn

and looted about Tk 25,000, around 15 tolas of gold ornaments and other valuables from the house. Victim's wife Syeda Hamid filed a case accusing five people, including gang leader Joynul Abedin Mollah, the same day. Five others--Ashraf

alias Dipu, Mohammad Firoz

daughter Farah Hamid, 14,

Miah, Niranjan Chandra Pal, Nawsher Rahman and Zakir Hossain--were included in the charge sheet by the investigation officer of the case. State Minister for Law Qamrul Islam termed the withdrawal recommendation of the case an unintentional

mistake.

"There may be one or two mistakes since we are dealing with thousands of cases," he told The Daily Star, claiming that the committee itself changed its decisions in about 50 cases after finding that the decisions it made were wrong.

He said that the committee changed its previous decisions whenever it found any such mistakes.

"I thank the journalist

community for finding out the mistakes, thus helping us amend the mistake," he added. The decision to recom-

mend the withdrawal came less than a month after the home ministry revived the businessman Afatabuddin murder case that cleared 19 accused of murder charges, including two top-listed gang-

The Awami League after assuming office in January 2009 moved to withdraw cases, which were filed during the rule of BNP-led four-party alliance and the last caretaker governments, allegedly just to harass people.

Textile mill

FROM PAGE 1

Hundreds of local people gathered at the site when drive was conducted. They alleged that the factory polluted their farm lands for long.

The factory involving an investment of over Tk 100 crore started operation nearly two years ago. Pakistani national Maksud Ahmed managing director of factory, was present during the drive.

Licence must

FROM PAGE 20

ordinance through an order. Earlier, traders had to take licence and could hoard limited amount of rice, wheat, onion, lentil, edible oil, sugar, baby food and powdered milk only for a certain period.

The ministry will also bring some amendments to the ordinance to make it applicable and effective in checking price hike of commodities.

"We're going to issue a statutory regulatory order (SRO) soon to restore the ordinance to make licence mandatory and limit hoarding," Food and Disaster Management Minister Md Abdur Razzaque told reporters after a meeting at his secretariat office yesterday.

He said a proposal seeking amendment to the ordinance will be placed before the cabinet for approval. "The price of rice continues

rising in the market and the

traders blame each other for the hike," he said. "But I don't want to say a syndicate is behind this, as traders always try to make profit in their own way," Razzaque

said, adding, there will be pen-

alty if anyone is found violating the law. According to a draft prepared by the ministry, an importer can hoard highest 20,000 tonnes of rice/paddy for 30 days, a wholesaler can hoard 1,000 tonnes for 30 days, and a retailer can hoard 20 tonnes for

15 days. The traders will be able to hoard highest 200 tonnes of onion for 30 days during import stage, 20 tonnes for 15 days during wholesale stage and 5 tonnes for 10 days during retail stage. They can hoard 10,000 tonnes of lentil for 30 days, 200 tonnes for 30 days and 10 tonnes for 20 days during the three stages respectively, says The minister said everything

The government, as part of its move to keep rice market

stable, asked millers to supply sufficient amount of rice in the market, imported huge quantity of food grains and ran open market sale (OMS) of rice It also sold rice through fare

a copy of it. price of rice is shooting up.

FROM PAGE 1

Detained Korban, who was produced at the media briefing, said the gang abducted many children. A hand of one such child named Sharif was chopped off, and then he was used for begging. Sharif, who is only 15 years old, came from Khulna to the city in 2004.

In another incident, the gang kept an eight-year old child from Jessore stuffed in a large aluminium pot for six months, to cripple the boy, and then used him for beg-

The gang also abducted a number of girls, who they used for forced sex trade, said Korban.

Rab Intelligence Wing Director Lt Col Ziaul Ahsan, who led the arrest, told The Daily Star last night that they arrested Korban following a news report aired by a private television channel in association with two human rights organisations -- Bangladesh Human Rights Foundation, and Black Truth Productions Centre. Ziaul Ahsan said gang

leader Faruk, and members Korban, Ramjan, Russel, and Saddam chopped off the penis of seven-year old boy Neyamul, son of a rickshawpuller Umed Ali of Ashrafabad i n Kamrangirchar. Rab is trying to arrest the other members of the gang as well, he added saying, Korban, Ramjan, and Russel are brothers.

Bangladesh Human Rights Foundation Chairman Elina Khan told The Daily Star yesterday that when Neyamul's father tried to file a case with Kamrangirchar Police Station after his son's maiming, police watered down the case by recording that the incident had been a result of a feud among peers,

JSC results

FROM PAGE 1

handed over to Prime Minister Sheikh Hasina at 10:00am, said sources.

The results of JSC and JDC

exams would be published in grading system. Students can obtain their results by sending text messages via mobile phones. The results will also be published on the following website:

after 3pm. "Since December 31 is a holiday, the results will be published on Thursday," the minister told The Daily Star

educationboardresults.gov.bd

yesterday. Besides, the government will hold a textbook festival on January 1 to distribute textbooks, he added. The premier will inaugurate the formal distribution of textbooks

Cabinet

today, sources said.

in 1974 considers individuals under the age of 14 to be children but the international standard is 18 years. United Nations Convention

on the Rights of the Child, which

the Bangladesh government ratified in 1990, also considers individuals under 18 as children, said a senior official of the social welfare ministry. According to the child (pro-

tection) law 1974, the age of children is below 14 while labour and vagrant laws say individuals aged between 12 and 16 are children. The last child policy, in 1994, said individuals under the age of 14 are children but the new draft policy extends this up to 18 years in line with the UN stan-

Aminul Islam, child protec-

tion specialist of Unicef, told

The Daily Star yesterday that the

age of a child should be defined

as per the UNCRC and all the

laws, acts and policies of the

country should consider those

under 18 years as children.

his bail prayer.

crimes committed by Sayedee.

The investigators on

Ershad mum

FROM PAGE 1

the judgement which was delivered on August 26.

military regime illegal.

declined to make any comment on the release of the full text of the verdict yesterday afternoon when The Daily Star contacted him.

judgement. On August 26, Ershad in

his reaction to reporters said, "Today the High Court has delivered a historic verdict and I am respectful to the judgement," He had also said that he will come up with farther reaction on the judgement after getting "As police were helping

all of whom are neighbours.

the criminals instead of the victim's family, we filed a separate case with a court, and following the second case, Rab arrested a gang member," Elina said. Kamrangirchar Police

Station Officer-in-charge (OC) Md Shafiqul Islam however rebutted Elina's allegations, and also differed with the statement of Rab officials. "According to our investigation, two other children --

Imran and Russel -- had cut the penis of Neyamul," the OC said adding, "All three children are neighbours, and the incident took place following a feud among them." Asked about Korban's

involvement in the gang of child abductors, the OC said, "We are not aware of such allegation against Korban and his peers. Rab would be able to give you more authentic information as they arrested Korban. If he is handed over to us, we will

Anxious wait

verify the allegation."

FROM PAGE 1

was no contact, said Farida. "He [Jafar] phoned again around 3.00pm yesterday [Tuesday] and gave me the good

Mehedi Kausar Himel,

younger brother of Jafar, said his brother told them on the phone that the ship was heading towards the Salalah Port of It might take a few more days to reach Oman since the ship is

in the engine, he said quoting his brother. Giasuddin's mother and wife were also happy at their CDA Colony residence at Mehedibagh yesterday after-

moving slowly because of a fault

Giasuddin who got married two years ago left the country on January 14 and went to Mumbai to join the crew, they said.

Their days of torment began

on May 11 when Giasuddin secretly phoned his wife and informed her about the pirates After over seven months, Giasuddin phoned them on

Tuesday and said he was released with the other crew-His mother Shirin Akhter said she forgot all those moments she had passed in

anguish just after she got the

good news.

Sayedee FROM PAGE 1

Four other top leaders of Jamaat -- Motiur Rahman Nizami, Ali Ahsan Mohammad Mojahid, Mohammad Kamaruzzaman and Abdul Quader Molla are also accused of committing

similar crimes in 1971. Meanwhile, BNP leader Salauddin Quader Chowdhury, who is also accused of war crimes and killings during the Liberation

War, will be produced before the tribunal today. The tribunal yesterday heard the prosecution's allegations against Sayedee that he committed war crimes, genocide and crimes against humanity and peace in 1971. The prosecution sought further detention of the Jamaat leader in the interest of proper

investigation into the charges against him. The tribunal then rejected

Chief Prosecutor Golam Arif Tipu and prosecutor Syed Haider Ali also sought extension of the time limit for completing the investigation into

December 23 submitted a petition before the tribunal seeking more time to complete their task.

dict, Ershad met Prime

Minister Sheikh Hasina to

"discuss his fate" following

the judgement on the sev-

one from the prime minis-

ter's press wing at that time

talked to reporters about the

judgement suggested that he

be prosecuted and punished,

it left the matter to the dis-

Even though the HC in its

Neither Ershad nor any-

enth amendment.

one-on-one meeting.

It had declared Ershad's

Ershad yesterday

He however said he is likely to give his reaction through his lawyer once he gets the copy of the full

cretion of the parliament and the government.

Party insiders said the former military autocrat is afraid of going back to jail following the verdict, as the

stigma attached to his name will return to haunt him, which he had successfully kept purged for years through political manoeuv-Three days after the ver- ring.