

CONSTITUTIONAL ANALYSIS



Presidential impeachment: Problems in anticipation



charge to be investigated (Article 52(4) of Bangladesh Constitution and Article 47(6) of the Pakistani Constitution). The Second House of the Indian Parliament investigating or causing the charge investigated may pass a resolution of impeachment by two-thirds majority only when the resolution is moved 'as a result of the investigation' (Article 61(4) of the Indian Constitution). The Bangladeshi and Pakistani Parliament may pass the impeachment resolution by two-thirds majority, after considering the charge itself or considering the investigation report, if there is any at all (Article 52(4) of Bangladesh Constitution and Article 47(5) of the Pakistani Constitution). Therefore, the President of India may not be impeached without a factual and legal probe into the alleged violation of the Constitution. The Bangladeshi or Pakistani President, on the other hand, may be impeached solely on political determination of the politicians, even without attempting any factual or legal investigation of the issues involved.

Yet on another account the Bangladeshi procedure differs from the Indian and Pakistani procedures. The Indian parliament compulsorily investigates the charge, either by itself or by some other body designate, but there is no specification of the other body or authority that is supposed to be burdened with the job. The Pakistani Constitution does not consider the investigation a compulsory one but provides an option for investigation either by the Parliament or by some other body designate, again without any specification regarding that other body. The Constitution of Bangladesh, however, suggests that any court or tribunal may be charged with the task of investigation (Article 52(2) of the Constitution of Bangladesh).

This I think has made the Bangladeshi procedure clumsier. Perhaps the framers of the Constitution were quite hesitant in drawing a line between political and legal complexion of an impeachment. And they tried to invite a sort of judicial participation there. What is the utility of involving a court or tribunal in a process which the constitution demonstrably considers to be a political one? Were the framers inspired by the US Procedure? Given the fundamental dissimilarity of scheme and spirit between the

US and Bangladeshi process, I don't think so. Lets have a look:

The Judiciary Committee of the US House of Representative decides whether or not to proceed with impeachment. If they do, the Chairman of the Committee proposes a Resolution calling the Committee to begin a formal inquiry into the issue of impeachment. Based on their inquiry, the Committee sends another Resolution to the full House stating that impeachment is warranted and why (the Articles of Impeachment), or that impeachment is not called for. The Full House debates and votes on each Article of Impeachment. Should any one of the Articles of Impeachment be approved by a simple majority vote, the President will be "impeached." However, being impeached is sort of like being indicted of a crime. There still has to be a trial, which is where the US Senate comes in. The US Senate receives the Articles of Impeachment from the House. The Senate formulates rules and procedures for holding a trial. A trial will be held. The President will be represented by his lawyers. A select group of House members serve as "prosecutors." The Chief Justice of the Supreme Court presides with all 100 Senators acting as the jury. The Senate meets in private session to debate a verdict. The Senate, in open session, votes on a verdict. A two-thirds vote of the Senate results in a conviction. The Senate votes to remove the President from office.

Therefore, the US method is an elaborate, compact and detailed one comprising - fact finding investigation by a committee, political decision to indict, a sort of judicial trial involving the Chief Justice to convict and ultimately another political decision to impeach. While recognizing the ultimate supremacy of the political will, the factual and legal implications of presidential impeachment are also clearly recognized. Hence, historically and logically the US Supreme Court declined to entertain any further judicial challenge on the impeachment process. The US Supreme Court sounded such a note in its 1993 case *Nixon v. United States*, 'The meaning of the word 'try' in the Constitution's Impeachment Trial Clause is a non-justiciable political question, there being a textually demonstra-

ble constitutional commitment of the issue to a coordinate political department and a lack of judicially discoverable and manageable standards for resolving it' (Youngjae Lee, Law, Politics and Impeachment: The Impeachment of Roh Moo-hyun from a Comparative Constitutional Perspective, *The American Journal of Comparative Law*, Volume 53, 2005, pp 403-432 at p 405).

But what may happen in Bangladesh? Consider an impeachment investigation referred to a Court or Tribunal. Would the propriety of that investigation remain outside the purview of judicial review, specially when we all know that there may not be any Court or Tribunal which is not subordinate to the Supreme Court of Bangladesh (*Shahar Ali v. A.R. Chowdhury* 32 DLR (1980) 147, Para 3; *Bangladesh v. Shahjahan Siraj* 32 DLR (1980) (AD) 1, Para 26)? Would the judiciary then be unnecessarily engaging in an issue pre-dominantly within the purview of the legislature? Again, what happens if that Court or Tribunal finds the charges not substantiated but the Parliament, not being made bound by the report of the investigation, proceeds with the resolution of impeachment? Then the politicians judging a political offence and imposing a political sanction would substitute a concrete legal justice with a conceptually undiscoverable political justice.

Since taking the US route would require a substantial overhaul of our legislative set up, I think the logical path for Bangladesh would be to make the parliament the master of both the investigation and trial of impeachment and then to provide for a sort of judicial review to see whether 'violation of constitution' or 'gross misconduct' has taken place in the legal sense of the terms. Such type of judiciary dominant model is followed in Latin American countries like Venezuela, Bolivia, Costa Rica, El Salvador, Nicaragua and Venezuela, Asian country like Korea and European countries like Germany, Hungary, Czech Republic etc. This would fit nicely with our contemporary constitutional environment encouraging judicial review of almost all legislative businesses.

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THE presidential impeachment procedure prescribed in the Constitution of Bangladesh seems to be thematically confused. Perhaps the framers of the Constitution were trying to take a route slightly different from our sub-continental counterparts - India and Pakistan. It is also not clear whether they have shown a US leaning in this regard. While lecturing on the Presidency of Bangladesh, one of my students made me a little startled by posing a troublesome question regarding the impeachment procedure.

A simple majority of the members of Parliament prefers a motion to the Speaker expressing the intention of and reason for the proposed impeachment (Article 52(1) of Bangladesh Constitution). In India, such motion is preferred by one-fourth of the total membership of either House of the bicameral Parliament (Article 61(2) of the Indian Constitution). In Pakistan, 'not less than one-half' members of either House of the Parliament would sign the motion (Article 47(2) of the Pakistani Constitution). 'Violation of Constitution' invariably constitutes the ground warranting an impeachment, while the Bangladeshi and Pakistani constitutions add 'Gross Misconduct' to the list. The motion is thereafter discussed in

Parliamentary Session (Article 52(4) of the Constitution of Bangladesh). The Pakistani Parliament sits in joint sitting to discuss the motion (Article 47(5) of the Pakistani Constitution). Thereafter if a resolution is passed by two-thirds majority of the members of Parliament, the President stands impeached immediately. In India, however, the particular House of Parliament calling for the motion has to discuss it and pass a resolution by two-thirds majority of its members (Article 61(2) of the Constitution of India). The resolution results in the indictment only, while the 'investigation' of the charge has been left with the other House of the Parliament. This is the point putting the Indian approach in contrast with the Bangladeshi and Pakistani ones. The Indian constitution has drawn a clear and logical line of distinction between the discussion of the motion and investigation of the charge. Two reside with two separate Houses of the Indian Parliament. Bangladesh, having a unicameral legislature, and Pakistan, calling for a joint sitting of the bicameral legislature, have no choice but to assign both the task to the same forum.

Again, whereas the Second House of the Indian Parliament 'shall' investigate the charge or cause the charge to be investigated (Article 61(3) of the Indian constitution), the Bangladeshi and Pakistani Parliament 'may' investigate or cause the

HUMAN RIGHTS MONITOR



Rights and empowerment of South Asian Youth: Reflections from a regional conference

KAZI NURMOHAMMAD HOSSAINUL HAQUE

This is the concluding part of the story.

Youth and their Right to Education

Youth education scenario is not much auspicious across South Asian countries. There is lack of access to both basic and higher education manifesting the gulf between demand and supply. The gap widens further along gender and socio-economic class. The governments of this region have to fulfill certain commitments about education as part of meeting MDG goal. But many of them may not be able to live up to that. While there is no dearth of policies and laws addressing right to education, their effective enforcement is yet to materialize in most cases.

Sri Lanka boasts almost 100 percent literacy and hence often held as a model for other South Asian countries. But according to Professor Siri Hettige of Colombo University, the country's education situation particularly the higher education system suffers some serious limitations that may even undermine the literacy gains in the long run. Availability and quality of English language teaching is very poor in public schools as evident from general low quality of English language skills. Science education is available in limited number of schools only. Gender pattern of education is distributive enough. More and more young people qualify for university education but much less can be admitted. Only 10 percent of those who finish high school can enter undergraduate education as opposed to over 50 percent who want to attain a basic degree. Moreover, education is often not paying off due to lack of employment opportunities for educated youth. Private sector employment opportunities are still not sufficient and concentrated in western provinces. So, there is undue pressure for public sector employment.

Dr. Elvira Graner and Fatema Samina Yasmin of IGS presented their findings on right to education scenario of Bangladesh mainly based on BYS dataset. They said that the country boasts many programs under its education policy like education for all, free primary education and free education for girls up to eighth grade. But education for all achievements is lesser than expected. There is high admission of boys and girls alike in primary education but then drop out starts after certain times. Lack of qualified teachers in sufficient numbers is as critical as weak education governance.

Professor Vinod Chandra of Lucknow University discussed about development of right to education in India. He informed that Indian Supreme Court declared right to education as a fundamental right and directed Mid Day Meal Scheme (MDMS) to prevent drop out, increase education access, address inequality and social values of sitting together to have common meal. A child is entitled to basic education up to eighth grade. All private schools have to admit 25 percent students from weaker sections of society. Parents are to be included in school administration. But the total cost of properly implementing right to education all over India is hugely expensive. It will require 150,000 Crore Indian Rupees that the Indian government cannot provide itself. It is planning to generate about 60,000 Crore Indian Rupees worth of fund from outside government. So, Public Private Partnership (PPP) is being taken up to execute right to education.

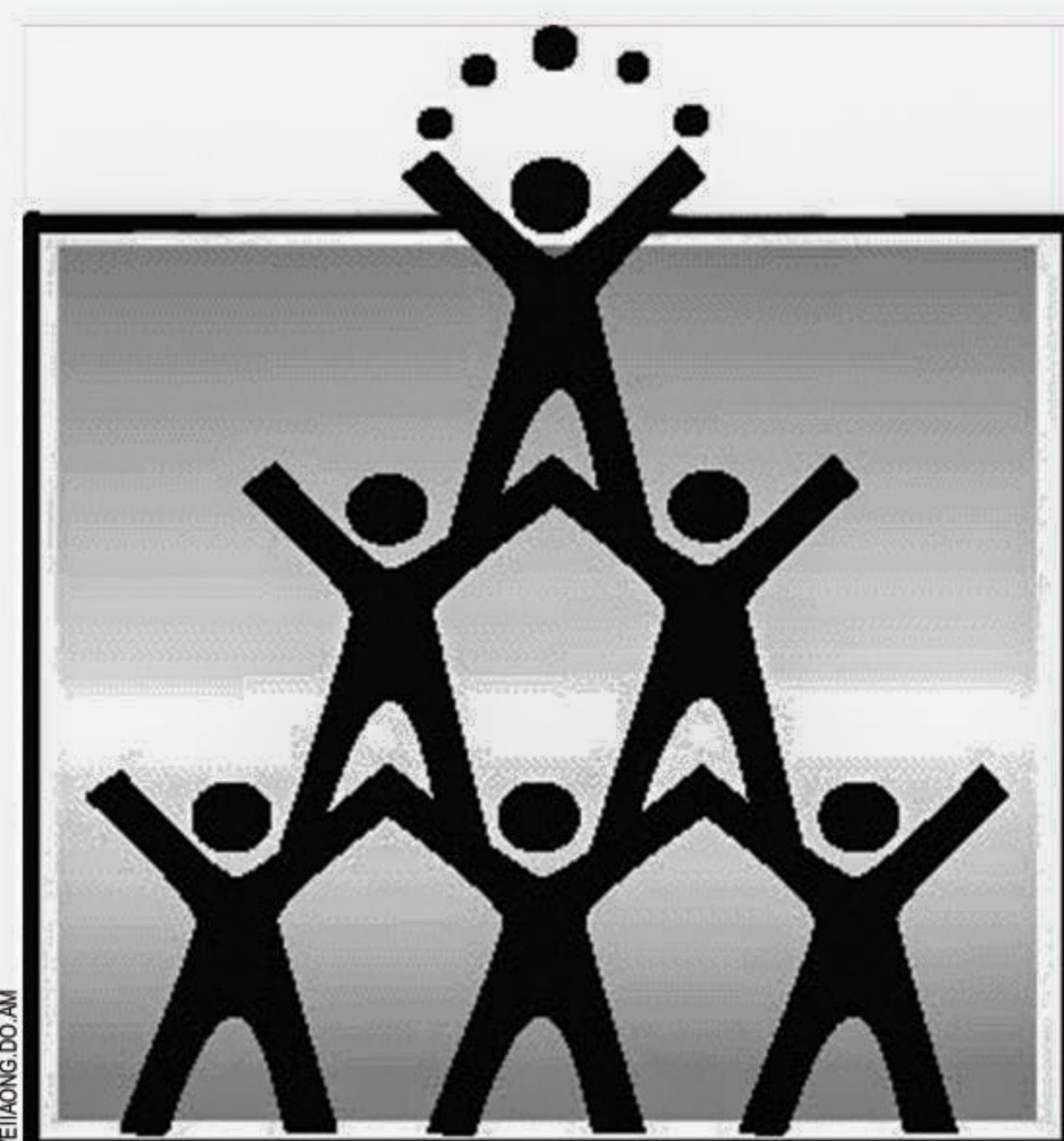
Youth and their Search for Decent Employment

Much of the growing concerns about youth are centered on higher rates of youth unemployment. Youth are not getting enough employment opportunities and less so decent employment. According to ILO

decent work has the following characteristics: productive, fair income, secure workplace, social protection for families, personal development, social integration, freedoms to express concerns, organize and participate in decisions affecting own life, and, equality of opportunity and treatment for all women and men. Being one of the poorest regions in the world, youth unemployment in South Asia is one of the highest.

Education is usually viewed as a way out of unemployment. But Sohini Mookherjee from CSDS, New Delhi told otherwise in her paper on youth unemployment in India. Indian youth's education aspirations are rising but so is educated unemployment. In 2007-08 for example, one-third of Indian youth between 15 to 24 years were enrolled in education institutions. But there is more supply of educated youth than there is demand for in the Indian labour market. This is happening because private rates of return are favorable compared to alternative rates of return in the backdrop of generally subsidized higher education and relatively low tax regime for educated employees. Higher social prestige is attached to people with higher education irrespective of job prospects. Some of the measures to address this situation might be expansion of vocational training opportunities according to labour market demand and stringent entry standards for higher education.

Mahbulul Kabir and Dr. Shahe Alam discussed education-employment linkages in Bangladesh by focusing on transition from secondary education to higher education and employment. They argued that access to both higher education and employment



opportunities are heavily influenced by the quality of education received by the youth in secondary level. The density of young graduates in various occupation varied by their educational institutions at secondary level. Among young graduates in salaried employment, 25 percent went to urban government and private schools, 37 percent to rural schools and 45 percent went to urban madrassas. Better educated youth are less likely to accept ill paid jobs.

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