

Not all judges ruled

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hours in the evening. Earlier on May 10 last year, the SC bench -- headed by the then chief justice Khairul Haque -- passed a short order declaring illegal the 13th amendment to the constitution. The amendment mandated an elected government to transfer power to an unelected non-partisan caretaker administration to oversee national elections on the completion of its term.

In the abridged verdict, the court said that two more general elections might be held under the system. Khairul Haque at the end of March completed drafting the full verdict and submitted it to the Appellate Division for the comments of other judges who were on the bench.

In the full text, the former chief justice observed that the caretaker government system, though illegal, might be employed to oversee two more parliamentary elections, provided the Jatiya Sangsad decided to that end. However, Justice Haque said, parliament may legislate to drop retired chief justices or Appellate Division judges from the caretaker government, as their involvement was not desirable for the sake of the independence of the judiciary.

Rather, he added, the caretaker government may be comprised of lawmakers. In defence of adjudging illegal the provision for the caretaker government system, Justice Haque said the 13th amendment was against the basic structure of the constitution.

Against

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amendment that introduced the caretaker provision.

Citing the ages-old Latin maxims -- "That which otherwise is not lawful, necessity makes lawful", "Safety of the people is the supreme law" and "Safety of the state is the supreme law", -- the former CJ said the decision whether the next two general elections would be held under the caretaker system shall be taken only by parliament.

"Although the 13th amendment to the constitution is illegal, parliament may take measures to constitute the caretaker government in new form to hold the tenth and eleventh national polls."

The House might enact a law scrapping the provision for making a retired chief justice or an Appellate Division judge chief adviser of the caretaker government, he said. For the sake of the independence of the judiciary,

For

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Unless a free and fair election is ensured, democracy cannot survive," Justice Wahhab observed.

Justice Nazmun Ara Sultana supported his observations.

Justice Wahhab said, "Without a credible election, democracy becomes a mockery and in the process of establishing democratic polity as a whole 'exercise of the governmental powers for the interregnum [90 days period of caretaker government] cannot be destructive of the democratic values enshrined in the constitution'..."

He said, "...as a matter of fact, this interregnum reassures and reaffirms the democratic continuity and succession of power through democratic process by ensuring free and fair election."

Echoing the arguments placed by some senior legal experts as amicus curiae (friends of court) during the hearing of an appeal, the judge said for various reasons, democracy was a twilight affair in Bangladesh.

He explained how the amendment had undermined the people's sovereignty and the republican and democratic character of the state.

He also said the advisers of the caretaker government were unelected and bore no link with people who were the recognised owner of the state.

Justice MA Wahhab Miah argued that the 13th amendment was introduced to institutionalise democracy through conduct of credible elections.

He said free and fair elections were a prerequisite for a functional democracy. Without them, democracy could not survive.

Justice Nazmun Ara Sultana supported his observations.

Justice Wahhab said that for various reasons, democracy is a twilight affair in Bangladesh. "The democratic process was thwarted many times and with the exception of the 1954 elections, all elections in this country under a party government were not free and fair."

Justice Imman Ali said the non-party caretaker government system had become unworkable due to the improper exercise of constitutional powers by the president, which led to the unnatural and unconstitutional state of affairs in 2007.

He also said that a new system of interim government, by whatever name it may be called, should be put in place to avert a repeat of a situation like that of 2007.

Justice Imman also noted that whatever new system is introduced, it will have to be

judges should not be involved in this process.

Rather, such a government should be formed with only elected lawmakers, said Justice Haque, who led the Appellate Division in pronouncing the historic verdict on May 10 last year.

The full text of the judgment was released last night.

Justice Haque said parliament may be dissolved 42 days before the polls, and a small cabinet can perform routine works of the state until the new cabinet takes over.

He also stressed the need for strengthening the Election Commission, saying all the officials involved with the polls should be controlled by the EC.

In defence of declaring illegal the provision for a caretaker system, the former chief justice said the 13th amendment was against the basic structure of the constitution.

was thwarted many times and with the exception of the 1954 elections, all elections in this country under a party government were not free and fair," he said.

"There were widespread allegations of vote rigging and manipulation of the elections by the party in power in the parliament election held in 1973, 1979, 1986, 1988 and February, 1996."

He said elections held under the political government were tainted with manipulation, rigging and hijacking. The only philosophy was to win the election by whatever means and it reached rock bottom in the by-election of Magura (1994).

The Magura by-election did not bring about or threaten any constitutional chaos, as alleged, but the rigging of the by-election resulted in a complete loss of credibility in the electoral process.

He said the 13th amendment was passed to preserve and ensure democracy and effective participation of the people in the affairs of the republic.

"And it is incorrect to say

acceptable to the people for it to have durability. The people make their will known by exercising their democratic right through their elected representatives in parliament.

In May last year, the apex court's verdict triggered widespread controversy, as many jurists and politicians dubbed it self-contradictory. Many had feared the verdict would deepen the political crisis over the holding of the next parliamentary polls.

Amid growing public concern, the parliamentary special committee on constitutional amendment had opted to keep the provision by bringing in a few changes.

But Prime Minister Sheikh Hasina did not agree with the special committee.

And before the SC released the copy of the full verdict, her government abolished the caretaker government system by amending the constitution on June 30 last year.

Uncertainty now looms over the fate of the next parliamentary polls.

The BNP-led 18 party opposition combine maintain they will not join the next polls if held under the incumbent government without a non-party caretaker system.

In this situation, political analysts predict the release of the full verdict may again generate debate in favour and against the caretaker system.

Some analysts, however, hope the full verdict may open a window for a political consensus to be arrived at on the installation of a non-partisan government system during the next polls.

In the full text of the verdict, he explained how the 13th amendment undermined the people's sovereignty and the republican and democratic character of the state.

He said the advisers of the caretaker government were unelected and had no link with the people, the owner of the state.

"Since they [the advisers] have no link with the people, the constitution does not give them any right to rule the country. Governance by consent is the precondition of democracy. Advisers don't have people's consent," he said.

Of those who were in the seven-member Appellate Division bench that gave the verdict, Chief Justice Md Muzammel Hossain -- the successor of Haque -- and Justice SK Sinha and Justice Syed Mahmud Hossain were in favour of declaring the caretaker provision unconstitutional.

that the exercise of government powers for the interregnum period as envisaged by the impugned act is destructive of democratic values," he said.

Justice Wahhab said there was no illegality in holding the last general election (2008) under the caretaker government system.

The judge said the 13th amendment did not destroy any basic structures of the constitution.

He disagreed with Justice Imman Ali's finding that the non-party caretaker government system had become unworkable owing to the improper exercise of constitutional powers by the then president, which led to the unnatural and unconstitutional state of affairs in 2007.

Justice Wahhab also disagreed with Justice Imman who said, "In order to avoid recurrence of such a situation, the mode of setting up of the interim government, by whatever name it may be called, is to be replaced by another system."

Biman flight

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Moreover, an Airbus which was supposed to join the fleet on September 15 after overhauling in Singapore did not arrive, Biman sources said.

Biman sources said they had planned their flight schedule and sold tickets taking into account the two aircraft, which were not there.

Biman's own four and a leased aircraft will mostly remain engaged in carrying hajj pilgrims from today.

On Saturday, some passengers, angered by a flight delay and lack of food and accommodation during the delays, vandalised Biman's Chittagong office.

The national carrier cancelled its flight to Nepal too for which the Bangladesh national football team's tour of Nepal was postponed by a day.

After around 24 hours delay, the flight to Kuwait left Shahjalal International Airport yesterday.

Passengers stuck at Dhaka and Chittagong airports yesterday said had Biman informed them of delays beforehand, they would not have suffered and waited at the airport.

They alleged that Biman authorities did not provide them with required assistance while they rescheduled or cancelled flights.

"I came to the airport around 8:00am for the Abu Dhabi flight. Biman officials delayed the flight several times and finally informed me about the cancellation," Mohammad Nazrul told The Daily Star from Chittagong airport.

Overseas job seeker Nazrul in the afternoon said he did not have any lunch or ate anything since morning as he did not have enough money on him.

RMG workers

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Officer-in-Charge Kamrul Alam Mollah of Siddhirganj Police Station for, what they claimed, his failure to take proper action against muggers.

Witnesses and police said several hundred workers of Epic Garments in Adamjee EPZ area refused to join work in the morning when a rumour spread that one of their fellow workers was knifed to death by muggers on Saturday night in Siddhirganj.

To press home their demand, the workers asked their fellows at other factories in the EPZ area and blocked Narayanganj-Adamjee-Demra road around 10:00am.

They held a procession around 11:45am and marched towards Shimrail intersection on Dhaka-Chittagong highway suspending traffic movement.

The demonstrators broke in Sinha Garments gate, brought the workers outside and blocked Dhaka-Sylhet highway by burning tyres.

Police went to the spot around 1:30pm and tried to clear the highways which sparked sporadic clashes. The agitating workers set fire to a police pick-up van and four of their motorcycles at Shimrail.

During the clashes, police fired rubber bullets and tear gas shells.

Nearly 50 people were injured during that time. The injured journalists are cameraman of private television channel ETV Robiul Islam and Prothom Alo photojournalist Pappu Bhattacharya. The injured were admitted to different local clinics and hospitals.

Traffic movements on the two highways resumed around 2:30pm.

The agitators claimed that a worker was stabbed to death by muggers in Mijmiji area of Siddhirganj, an allegation refuted by the local police.

Several workers alleged that mugging incidents were increasing day by day in Mijmiji, Notun Moholla, CI Kholra and Mojib Bagh areas around the EPZ. In the last few days, 8-10 RMG workers fell victim to muggers.

They claimed that police had relation with the muggers; and so, no stern action was taken against the muggers.

Director of Adamjee Nagar Industrial Police-4 Mahub Alam said the workers took to the streets over a death rumour. "No such incident took place," he claimed.

No share in govt failures

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wanted to induct Rashed Khan Menon, chief of the Workers Party, a component of the Awami-League-led 14-party ruling alliance, into her cabinet but he declined to accept the offer.

Talking to The Daily Star at his party central office in the capital on Saturday, Menon explained why he refused to be in the Hasina cabinet.

"You see, our September 15, 2011 resolution was no secret. The media published our stance. And more importantly, we also conveyed our position to the major partner in our ruling coalition -- the Awami League," said Menon.

Referring to his latest meeting with Hasina, also president of the AL, in the third week of last month, Menon recalled, "I reiterated the Workers Party position that the 14-party alliance must be made functional first. And there were no hints of our participation in the cabinet."

He made it clear again that induction of someone from a coalition partner into the cabinet must be preceded by a "political process" and it just can't be a surprise phone call from a cabinet secretary.

Menon and AL stalwart Tofail Ahmed declined to accept berth in the cabinet that Hasina reshuffled for the fourth time on Thursday by taking in seven ministers and state ministers.

Recollecting the back-

ground and circumstances in which the Workers Party took the September 15 resolution, Menon said, "We found out the promises the AL-led alliance had made before the public. But with time passing out, it drifted away gradually from rising up to those promises. There was no respite in extrajudicial killings and enforced disappearances, and we saw government leniency towards politicisation, partisanship, illegal grabbing and financial and tender-related scams."

He went on, "There is no denying that it's the prime minister's prerogative to form cabinet. But when a government comes into being through a joint movement by a political coalition, cabinet reshuffles need to follow some sort of political process."

The Workers Party chief recalled that even when GM Kader and Dilip Barua (from two components of the ruling alliance) were made ministers "We (coalition partners) were not consulted."

Inviting him (Menon) to take a cabinet post without having any political consultation, Menon said, "embarrassed both of us, both me and the prime minister. This could have been avoided."

He mentioned that the 14-party alliance was formed with the goals of waging movement together, participating in elections together and running the

government together. "While the first two jobs we accomplished together, we failed to do the same in running the government together."

The Workers Party president said he just couldn't recall when the 14-party had its last meeting. "It was a decision that the coalition would sit once a month and discuss the affairs of the government, among other things. But it was never followed."

He blamed the AL for "not being serious" about holding meetings of the alliance and expanding its base among the grassroots.

That's why, said Menon, they (the smaller components of the alliance) shrugged off the responsibilities of all the wrongdoings, scams, bad governance and failures of the government. He also insisted that without following any political consultation process, just reshuffling the cabinet would do no good to the government that has got a little over one year of its tenure.

Asked why they are still in such a ruling coalition, Menon said, "We strongly feel the need for this alliance (14-party) to prevent the BNP-Jamaat alliance from making a comeback to power. We're still pressing the top leadership of our alliance to make the combine functional. Otherwise, unity of non-communal democratic forces will come under threat."

Turn in bank details

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Rahman and Mainul Haque (now officers on special duty) and general managers Nony Gopal Nath and Mir Mahidur Rahman are among the officials who will have to turn in their wealth statements.

These officials were blamed in a functional audit report prepared by Syful Shamsul Alam and Co, a chartered accountant and consultancy firm, for their roles in the swindling of public money from the Ruposhi Bangla branch in the name of loans against forged documents.

Meanwhile, ANM Mashrurul Huda Siraji, who was the general manager of the bank's head office when the scam was underway, said he was transferred outside Dhaka as soon as he moved to investigate the fraud.

Elderly witness

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"After one or two hours I heard everyone in Jagotmollopara had been shot and killed," he said, adding, a few hours later he went to his village to witness the incident on his own.

"On my way home, I found my bhai [brother's wife] Jyotsnabala Chowdhury was shot," said Arunangshu as he broke into tears.

By that time looting began in Binajuri, said the witness, adding, he did not know who had committed this as he was not there.

Arunangshu left Bangladesh for India later. The witness said he could not remember whether the investigation officer of the case had interrogated him.

Defence counsel Ahsanul Huq Heena on completion of the testimony declined to cross-examine the witness since he did not say a word against his client.

BNP leader Salahuddin Quader Chowdhury, MP, was present at the dock. The tribunal adjourned the proceedings of the case until September 23.

WITNESS TESTIFIED FOR SAYEDEE
A defence witness in the war crimes case against Jamaat-e-Islami leader Delwar Hossain Sayedee yesterday told the tribunal no one had mentioned Sayedee as a Razakar (collaborator of the Pakistan occupation force) to Capt Ziauddin, who led freedom fighters in Pirojpur

and adjacent areas during the War.
The witness -- Khshrul Alam who was a freedom fighter -- said during a visit by Capt Ziauddin locals mentioned the names of several notorious Razakars, including Sekandar Sikdar, Danesh Molla and Moslem Moulana.
Khshrul added he knew Sayedee and also met him after independence.
Following the deposition, the prosecutor cross-examined him.
Sayedee, facing trial on 20 charges of crimes against humanity committed in 1971, was present at the tribunal.
WITNESS AGAINST GHULAMAZAM
Azab Uddin Mia, an assistant librarian of Bangla Academy, yesterday gave deposition as a seizure list witness of another war crimes accused, former Jamaat ameer GhulamAzam.
He told the tribunal he had supplied different issues of newspapers of 1971 as per the demand of Motiur Rahman, investigation officer of the case.
Azab said the investigation officer scanned different reports and had them attested by the acting chief librarian Mobarak Hossain.
Ghulam Azam, facing five charges based on 60 incidents of crimes against humanity, was hauled before the tribunal.
MOBARAK HOSSAIN BAIL EXTENDED
The tribunal yesterday extended bail by two months to war crimes sus-

"I sensed it in mid-January and formed a team to probe it. But the managing director [Humayun Kabir] transferred me just a day before the probe was to start," he told reporters yesterday.

He added he could serve only three months at the head office. He was first transferred to Comilla and then to Sylhet and then again to Rangpur by Kabir.

Siraji, now serving as general manager at the Rangpur branch of the bank, was interrogated by the ACC over the scam.

Five other Sonali Bank officials were also quizzed by the anti-graft body in connection with the swindle.

They are general managers Nousher Ali and Mahbubul Haque and deputy general managers Mohammad Musa, Altaf Hossain and Shafi Uddin.

The five were involved in the scam, an ACC official said, citing Bangladesh Bank and Sonali Bank investigations.

However, all of them dismissed the accusation, said ACC sources involved in the interrogation.

Including the six yesterday, the ACC has so far quizzed 23 Sonali Bank officials. The anti-graft body has also interrogated Hall-Mark Managing Director Tanvir Mahmud and his wife and group chairperson Jasmine Islam.

Despite several attempts, Kabir, who was MD from May 2010 to May 2012 when the scam took place, could not be reached for comment over the phone.

ACC sources said they would quiz five officials today in connection with the scam.

ARMS CASE

Date of charge framing against Limon deferred

OUR CORRESPONDENT, Barisal

A Jhalakathi court yesterday deferred for the fifth time the charge framing against Limon Hossain, a college student maimed in a shooting of the Rapid Action Battalion last year, in a case filed by the elite force.

Manzurul Imam, acting judge of the court, delayed the date of the charge framing until January 28 as the post of the permanent judge was vacant, said Limon's lawyer Manik Acharya.

Rab filed the case under the Arms Act on March 23 last year, the day Limon was shot.

On April 24 the same year, Sub-Inspector Ariful Islam of Rajapur Police Station submitted a charge sheet in the case against Limon and seven others -- Morshed Zamaddar, Zamal, Hatu Mizan, Jahangir, Halim Zamaddar, Labu Zamaddar and Sumon, members of alleged "Mizan-Morshed gang".

Meanwhile, Limon's mother Henoara Begum filed an attempted murder case against six Rab men with Rajapur Police Station on April 10 last year.

Later, police quietly submitted a report to the Jhalakathi court, saying they had found no evidence and witnesses in favour of the case.

Limon's mother then submitted a no-confidence petition against the report. Her petition was accepted.

Google refuses

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The protests, which started in Africa and moved into the Middle East, have now spread into China, Great Britain, Germany, and Australia.

Google, which owns YouTube, said it was censoring the video in India and Indonesia, and has already blocked it in Egypt and Libya, where US Ambassador Chris Stevens and three other Americans were killed inside the US embassy in Benghazi.

Google stopped short of taking down the video entirely, though, saying it would rather work with local law enforcement than respond to political pressure, according to Reuters.

"We've restricted access to it in countries where it is illegal such as India and Indonesia, as well as in Libya and Egypt, given the very sensitive situations in these two countries," the company said. "This approach is entirely consistent with principles we first laid out in 2007."

White House officials asked Google on Friday whether the video had violated YouTube's terms of service. Google maintains the video is within its guidelines.

The White House also asked YouTube directly to scrap the video. According to The Washington Post, the White House "reached out to YouTube to call the video to their attention and ask them to review whether it violates their terms of use."

YouTube released a statement through the Associated Press on its decision not to block content:

"We work hard to create a community everyone can enjoy and which also enables people to express different opinions. This can be a challenge because what's OK in one country can be offensive elsewhere. This video which is widely available on the Web is clearly within our guidelines and so will stay on YouTube."

Correction

In our yesterday's report headlined "Get law, stop JS boycott, demands TIB", the present parliament was inadvertently mentioned as the 13th parliament. The correct wording should have been "the 13th session of the 9th (present) parliament." We regret the error.