

Clear violation

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Let alone the chairmanship, the constitution in no way allows him to be involved in the management or conduct of the proposed bank.

Under pressure from government high-ups, the central bank on April 8 gave approval to nine new banks, including the Farmers' Bank. At the time of its approval, Alamgir, also chairman of the parliamentary standing committee on public accounts, was one of the 13 directors of the bank.

When the necessary documents were submitted to the central bank on October 16 for purposes of acquiring a licence, the name of Alamgir was proposed as its chairman. The proposal placed the central bank officials scrutinising the documents in a complicated situation as they could not find ways to handle it.

Article 147 (3) of the constitution strictly imposed a bar on the president, the prime minister, ministers and some other constitutional officials from holding any office, post or position of profit or emolument or taking any part whatsoever in the management or conduct of any company, association or body having profit or gain as its object.

Therefore, through this article, Alamgir, who took the oath of office as a minister on September 13, automatically stood disqualified from being chairman of the bank.

Naturally, his move to become chairman of the proposed bank has surprised many. Questions were raised as to how he took such a step, ignoring the constitutional provi-

sion. As per the oath taken by him as a minister, it is Alamgir's responsibility to preserve, protect and defend the constitution.

Eminent jurist Shahdeen Malik analysing the constitutional provision says Alamgir has definitely taken steps towards violation of the constitution.

Agreeing with Malik, financial rules expert M Hafizuddin Khan, who is also a former comptroller and auditor general, says there is no scope for the home minister to remain involved in the running of the proposed bank. "There is no need to look for any other financial rules and regulations as the constitutional provision is crystal clear."

In the past, Awami League leader Abdul Jalil and BNP leader Mirza Abbas had to resign from the chairmanship of two banks, Mercantile Bank Ltd and Dhaka Bank Ltd, when they were appointed ministers during the previous Awami League- and BNP-led governments.

Now Alamgir would have to decide whether he wants to become the chairman of the proposed bank, a profit-making venture, by resigning from the cabinet or turn his back on the bank and continue being a minister.

Or, more ominously, will the central bank allow him to become the chairman of the proposed bank ignoring the relevant constitutional provision and let him retain his ministerial berth?

WHAT THE CONSTITUTION SAYS
147. (1) The remuneration, privileges and other terms and conditions of service of a person holding or acting

in any office to which this article applies shall be determined by or under Act of Parliament, but until they are so determined -

(a) they shall be those (if any) appertaining to the person holding or, as the case may be, acting in the office in question immediately before the commencement of this Constitution; or

(b) if the preceding sub clause is not applicable, they shall be determined by order made by the President.

(2) The remuneration, privileges and other terms and conditions of service of a person holding or acting in any office to which this article applies shall not be varied to the disadvantage of any such person during his term of office.

(3) No person appointed to or acting in any office to which this article applies shall hold any office, post or position of profit or emolument or take any part whatsoever in the management or conduct of any company, association or body having profit or gain as its object.

Provided that such person shall not for the purposes of this clause be deemed to hold any such office, post or position by reason only that he holds or is acting in the office first above mentioned.

(4) This article applies to the offices of - (a) President; (b) Prime Minister; (c) Speaker or Deputy Speaker; (d) Minister, Minister of State or Deputy Minister; (e) Judge of the Supreme Court; (f) Comptroller and Auditor General; (g) Election Commissioner; (h) Member of a public service commission.

Stay alert

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The premier made the remarks while addressing the graduation ceremony of National Defence Course and Armed Forces War Course 2012 at Mirpur Cantonment in the capital.

Hasina recalled that Bangabandhu Sheikh Mujibur Rahman had dreamt of building a strong armed force in 1966.

"He [Bangabandhu] also demanded to establish a military academy, provincial naval headquarters and ordnance factory on this land [at that time]," she added.

The premier said her government had always focused on well-trained and professional armed forces, and kept on increasing the defence budget for the last four years.

She also said her government, during its previous tenure, had established the National Defence College (NDC) as there was no institution for higher training of armed forces officials before 1966.

"This institution has turned into an internationally reputed training organisation. It's indeed a matter of pride for the nation," she added.

Hasina mentioned that new battleships had been procured while the runways were being expanded with the high-tech modern equipment.

Besides, the government was lobbying in interna-

tional forums aiming to increase the participation of Bangladesh army personnel in peacekeeping forces.

She also said the present government had introduced new medical facilities, and upgraded educational institutions and ration scale for the welfare of armed forces officials and their families apart from strengthening the force.

Food security, energy security, social security, international relationship, control of cyber world, environmental security -- all these are the challenges of the 21st century.

"If any of these securities becomes vulnerable, the national security will be in danger," she added.

The premier suggested the participants of courses to apply their knowledge and experiences while discharging their duties.

Highlighting various successes of her government, Hasina sought support from people again to turn Bangladesh into a middle-income country by 2021.

A total of 63 senior army and civil officials, including those from China, Malaysia, India, Pakistan attended the NDC course while 24 local defence officials participated in the Armed Forces War Course this year.

Commandant of the college Lt Gen Molla Fazle Akbar gave the welcome address at the function.

Martial law

FROM PAGE 1
any excuse. Its violation, if any, is the gravest of all offences and shall remain illegitimate for all time to come."

The SC upheld a verdict given by the High Court in 2010 that had declared illegal the country's second military takeover by Lt Gen Hussain Muhammad Ershad and the seventh amendment to the constitution.

The seventh amendment ratified the proclamation of martial law and all regulations, orders and instructions by Ershad between March 24, 1982 and November 10, 1986.

The SC judgment says the proclamation of martial law, every other proclamation, Chief Martial Law Administrator's (CMLA) orders, regulations, instructions and ordinances made by Ershad and takeover of the powers of the government as the CMLA and all his subsequent acts, actions and functions till November 10, 1986 are totally unlawful.

"All were made not only in clear violation but in destruction of the Constitution, as such, are absolutely illegal and void ab initio [invalid from onset]," reads the judgment.

In the context of declaring the martial law regime illegal, the apex court has, however, made some exceptions regarding international treaties, contracts and transactions.

Apart from these exceptions, all orders, acts, actions, proceedings and trial taken place between March 24, 1982 and November 10, 1986, which are past and closed, are provisionally condoned on the age-old maxim "salus populi est suprema lex" [safety of the people is the supreme law].

The country's highest court has also issued warnings, saying: "However, even this kind of indulgence of condonation may not be available in future. There shall be no condonation in respect of Martial Law Proclamations, Proclamation Orders, Chief Martial Law Administrator's Orders, Martial Law Regulations, Martial Law

Orders, Martial Law Instructions, Ordinances, etc."

The SC said the supreme law for the safety of the people is not for the usurpers and violators of the constitution.

"The Constitution covenants a democratic People's Republic of Bangladesh to be governed by the sovereign people through their elected representatives," the judgement says.

Earlier, the HC announced the judgment on the seventh amendment following a petition that was filed by Siddique Ahmed from Chittagong in January 2010 challenging the legality of the amendment.

Barrister Hassan MS Azim, counsel for the petitioner, told The Daily Star yesterday that the government has already dropped the provisions that had been included in the constitution through the seventh amendment.

Since the Supreme Court has published its full verdict, the government should go through the full judgment to see whether any void provision is still there in the constitution, and delete it if there is any. The government should then reprint the constitution, said Azim.

He said the government should also compensate those who were affected due to the proclamation of martial law.

The verdict that upheld the HC judgment was delivered by the Appellate Division bench of Justice ABM Khairul Haque, Justice Md Muzammel Hossain, Justice S K Sinha, Justice Nazmun Ara Sultana, Justice Syed Mahmud Hossain and Justice Muhammad Imman Ali. Of them, Khairul Haque was the chief justice when the verdict was delivered and has been succeeded by Justice Md Muzammel Hossain.

The judges have also made a 14-point declaration in their verdict.

In some points, the judges said that people rule through the constitution, which has created three organs of the state -- the legislature, the executive and the judiciary. The con-

stitution also creates all functionaries and services of the state and those owe their existence to it.

"Any law, any act, any conduct, which is inconsistent with the Constitution is void," observed the apex court.

The SC judgment says paragraph 19 of the fourth schedule to the constitution was included illegally for ratification and confirmation of the proclamation of martial law of March 24, 1982.

Cancelling this paragraph, the judgment says it ceases to exist in the constitution.

The SC said under article 150 of the constitution, the transitional and temporary provisions only for the period from the date of declaration of Bangladesh's independence on March 26, 1971 to the date of commencement of the constitution on December 16, 1972 are set out in the fourth schedule to the constitution.

"No other provision made after December 16, 1972 can be included in the Fourth Schedule," said the apex court.

In the verdict, the SC discussed various decisions of the supreme courts of Bangladesh, England, India, Pakistan and the USA.

Khandaker Mushtaque Ahmed, self-declared president after the assassination of Bangabandhu Sheikh Mujibur Rahman, proclaimed the first martial law on August 20, 1975 with retrospective effect from August 15, 1975.

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

Following their path, Ershad also became the CMLA and then president in the 1980s.

In February 2010, the SC revoked the fifth amendment to the constitution that had legitimised all the governments, including that of Ziaur Rahman, which had been in power till April 9, 1979 after the coup of August 15, 1975.

Railway official Enamul sued

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scandal, has been sued for concealing his wealth information.

Anti-Corruption Commission Deputy Assistant Director Monirul Islam yesterday filed a case against him with Ramna Model Police Station.

In a statement submitted to the ACC on June 3, said Monirul in his complaint, Enamul provided false information about his wealth and concealed information about over Tk 56 lakh's worth of property.

The anti-graft body on May 5 served a notice on Enamul to submit a statement of his wealth.

Enamul in the statement said he made a profit of Tk 86 lakh by selling a piece of land. But an ACC enquiry found that his profit was only Tk 6 lakh.

By hiding the real amount of the profit, Enamul tried to show a legal source of income, the case statement said.

Azam Khan, driver of former railways minister Suranjit Sengupta's ex-

assistant personal secretary Omar Faruq Talukder, drove Faruq's microbus into the Pilkhana BGB headquarters on the night of April 9 and shouted that there was illegal money in the vehicle, taken from railway jobseekers.

Yusuf Ali Mridha, suspended general manager of railway (east), Faruq and Enamul were the other three on the vehicle.

The Border Guard Bangladesh detained the four that night and freed them the following morning.

Human cloning

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British scientist who won this year's Nobel prize for medicine has predicted.

Sir John Gurdon, whose work cloning frogs in the 1950s and 60s led to the later creation of Dolly the sheep by Edinburgh scientists in 1996, said that progression to human cloning could happen within half a century.

Although any attempt to clone an entire human would raise a host of complex ethical issues, the biologist claimed people would soon overcome their concerns if the technique became medically useful.

In-vitro fertilisation was regarded with extreme suspicion when it was first developed but became widely accepted after the birth of Louise Brown, the first "test tube baby", in 1978, he explained.

Speaking on BBC Radio Four's The Life Scientific, Sir John said he had predicted at the time of his frog experiments that the successful cloning of a mammal would happen within 50 years.

He said: "When my first frog experiments were done, an eminent American reporter came down and said 'How long will it be before these things can be done in mammals or humans?'"

"I said: 'Well, it could be anywhere between 10 years and 100 years - how about 50 years? It turned out that wasn't far off the mark as far as Dolly was concerned. Maybe the same answer is appropriate.'"

Sir John added that cloning a human being effectively means making an identical twin, and doctors would therefore simply be "copying what nature has already produced".

During public lectures, the Cambridge University scientist said he regularly asks his audience if they

would be in favour of allowing parents of deceased children, who are no longer fertile, to create another using the mother's eggs and skin cells from the first child, assuming the technique was safe and effective.

"The average vote on that is 60 per cent in favour," he said, adding "The reasons for 'no' are usually that the new child would feel they were some sort of a replacement for something and not valid in their own right."

"But if the mother and father, if relevant, want to follow that route, why should you or I stop them?"

Call for Expression of Interest (EOI)

Selection of partner NGOs for the implementation of Max Value For WASH in Narail Sadar Upazila in Bangladesh.

Max Foundation (The Netherlands) was established in 2004 with the goal to prevent child mortality and continually seeks the most effective, and most cost-efficient way to do so. The foundation focuses on rural Bangladesh only and developed Max-WASH approach, which we believe is the most effective and efficient form of reducing - or actually preventing - child mortality in Bangladesh. Max-WASH combines the provision of water options and latrines (which are primarily purchased by the local population) with education about hygiene and training of TBAs. Furthermore elements of sexual reproductive health and rights (which focus on child mortality) and mal nutrition are included in the programs. Max Foundation is convinced that a sustainable solution can only be achieved through this type of integrated approach. Currently, Max Foundation is working with 9 partners in Bangladesh and looking for new partners in Narail Sadar Upazila who are able to carry out Max-WASH projects.

The **terms of reference** for the submission of expression of interest can be found on www.maxfoundation.org/en/home and download the application template.

If your organisation is able and willing to carry out Max-WASH projects, please send the application template with relevant documents for the Expression of Interest (EOI) only via email to maxwash@maxfoundation.org before **4 January 2013**.

Max Foundation
Gyroscoopweg 142 1hg, 1042 AZ Amsterdam, The Netherlands
Bangladesh Country Office
Flat B1, House no 23/16, Khilji Road, Mohammadpur, Dhaka



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