

Legalising ordinances: Confounding paradox

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THE prevailing situation is really puzzling, though its underlying meaning is significant. In an unprecedented move, the law minister placed two bills in Parliament on February 19 seeking to legitimise and keep continuation of the operations of at least 546 now void ordinances promulgated by the two martial law regimes now void too! The ordinances was promulgated by the military rulers misusing the state's legislative powers. But when the bills were placed in Parliament in absence of opposition MPs, none of ruling Awami League-led alliance MPs questioned the principle of the bills.

The two bills were sent to the parliamentary standing committee on the law ministry, giving it only two days to scrutinise them and place a report in Parliament. The committee held an urgent meeting the next day at the Jatiya Sangsad Bhaban and spent less than two hours to clear the way for passage of the bills. Moreover, the committee came up with an interesting recommendation to be included in the bills. The recommendation said that although giving legitimacy, it would not be considered as giving confirmation and ratification to any action done by the illegal and unconstitutional regimes.

How paradoxical the recommendation is! The legislative measures/ordinances issued by the two martial law regimes are being legalised, but it cannot be considered as giving ratification to any action taken by the illegal regimes! It is clear that the committee members feared criticism for legalising the ordinances in this way and made the recommendation to avert it.

None of the committee members questioned whether the parliament can make provision by passing a bill to continue operation of an ordinance as per Article 93 (2) of the Constitution. As per this article, an ordinance, after it is placed in parliament, has a life span of maximum 30 days. After expiry of 30 days, it automatically becomes void. The parliament, if it wants, can kill the ordinance before expiry of 30 days by passing a resolution disapproving the ordinance. There is no scope to keep continuation of the operation of ordinances by passing a bill. For the continuation of the actions and legal provision made by an ordinance, the government needs to place a bill in parliament and enact a new law in this regard.

Then how could the huge number of ordinances promulgated during the martial law regimes remain effective for so long?

The constitution gives the parliament the state's

legislative power. To meet any urgency, it empowers the president to make law through promulgation of ordinance when the parliament is not in session or stands dissolved.

But the situation was different during the first martial law regime declared on August 15, 1975, after overthrowing of the Bangabandhu-led government. The office of the president was grabbed by the usurpers -- Khandaker Mustaque Ahmed, Justice Sayem and General Zia by turn.

Justice Sayem took over the presidency on November 6, 1975, overthrowing Khandaker Mustaque Ahmed. He issued a proclamation on November 8 dissolving the then parliament with effect from November 6. The proclamation had the provision that the ordinance promulgated by the president shall not be subject to the limitation as to its duration prescribed in the constitution, which was already subservient to the martial law proclamation.

As there was no parliament, the usurpers made new laws and changed existing laws through pro-

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mulgation of ordinances. The regime had promulgated at least 151 ordinances during its tenure from August 15, 1975 to April 9, 1979. The regime knew well that what it did was not done lawfully. Therefore, it misused the 2nd Parliament and amended the constitution, ratifying and validating all of its actions including promulgation of ordinances.

The second martial law ruler, H.M. Ershad, who grabbed state power on March 24, 1982, was different from his predecessors regarding making laws through promulgation of ordinances. By issuing the martial law proclamation Ershad, the chief martial law administrator, suspended the operation of the constitution on the day he grabbed power. He amended the martial law proclamation on April 11, 1982, and vested the country's executive and legislative powers in the chief martial law administrator. So, this time it was the chief martial law administrator who made laws through promulgating ordinances and issued martial law regulations and orders.

Ershad promulgated at least 310 ordinances,

making new laws and amending laws that existed then. Like his predecessor Zia, Ershad too knew well that what he did was not covered by the constitution. So, he needed constitutional coverage. He used the 3rd Parliament in 1986 to pass the 7th Amendment act to ratify and validate the regime's actions, including promulgation of ordinances.

More than two decades after the martial law regimes, the Supreme Court declared the two constitutional amendments illegal and void. Following the apex court's landmark verdicts, the parliament in June 2011 passed the 15th Amendment deleting the provisions incorporated in the constitution through the 5th and 7th Amendments.

The AL-led government did not decide the fate of the huge number of ordinances which were declared illegal and void. The law ministry was asleep over the last 19 months since passage of the 15th Amendment. In this time, the ministry could have examined the contents of the ordinances and identified some important laws made by the ordinances which need to be continued for the sake of continuation of governance. And separate bills could have been placed in parliament to enact new laws in this regard. But this did not happen.

Suddenly, the law ministry woke up and realised that operation of some of the ordinances needed to be continued. The cabinet has approved the law ministry's proposals to make two laws through ordinances to continue effectiveness of "some ordinances." On January 21 this year, the president promulgated two ordinances to continue the operations of the 546 ordinances. The two ordinances were placed in parliament on January 27, the day the House went into the new-year session, and the bills were placed later.

To some extent, the prevailing situation is almost similar to what it was during passage of the 5th and 7th Amendments. At that time the parliament did not know exactly what actions it had indemnified by passing the two constitutional amendments. This time, the parliament is set to pass the two bills before February 26 without knowing the exact number and contents of the ordinances. The two bills placed in parliament had a list of 166 ordinances. But according to a report prepared by the law ministry, the bills sought to make special provisions for continuation of as many as 546 ordinances.

In so doing, isn't the democratically elected government abusing the parliament like the previous martial law regimes? Isn't the failure to take necessary actions in time forcing the government to misuse the parliament?

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SHIFTING IMAGES

The anatomy of Shahbagh



MILIA ALI

EACH mass movement is usually triggered by a cause célèbre. The Arab Spring can be attributed to the protracted tyranny of totalitarian rule and dim economic prospects for the masses. Anna Hazare's protest movement in India was aimed at ending the chronic corruption in the country. In

Pakistan, Tahir-ul-Qadri's Long March railed against continued elitist exploitation and growing religious extremism.

In contrast, the recent people's movement at Projonmo Chottor (aka the Shahbagh Roundabout) escapes a precise definition. It started out as a protest against the leniency of the court ruling for War Criminal and Jamaat-e-Islami Leader Abdul Quader Mollah (who was sentenced to life imprisonment instead of the death penalty), but gradually mutated into abroad-based mass uprising espousing multiple objectives.

What is interesting is that the protesters at Shahbagh represent not only a diverse socio-economic strata, but also different age groups and a gender and ethnic mix. One thus wonders: What is it that is holding together a movement of this scale and intensity? Is it civil society's deep frustrations at the growing forces of obscurantism resulting in an erosion of trust in the prevalent system? Or is it people's anger against religious intolerance and bigotry as propagated by the Jamaat-e-Islami? Or simply a desperate demand for death sentence for Quader Mollah? It appears that all these factors are at play at the Chottor.

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The events at Shahbagh seem to have created a seismic shift in the lives of all Bangladeshis; wherever they may be, they have connected to the movement. For many of us who were part of the country's freedom struggle, Shahbagh represents a rejuvenation of our hopes and aspirations. Many of the forgotten post-liberation secular and democratic ideals that were put on the back-burner are being revisited.

The most encouraging aspect is that the mass protest has been spearheaded by the post-1971 generation -- the youth of Bangladesh. Similar and divergent forces have converged to make it a people's movement untarnished by partisan politics or selfish personal motives. Whether all this will bring a real change in course remains to be seen. Despite the doubts and questions there is much to celebrate in what is happening at Shahbagh!

The most contentious issue, at the moment, seems to be the demand that war crime offender Quader Mollah be handed the severest penalty -- capital punishment. At a personal level, I am against the death penalty and the hate slogans echoing in Shahbagh make me somewhat uncomfortable. However, I must concede that war unleashes strong emotions and the resulting wounds take considerable time to heal.

It is also not unusual to express rage in issues related to war crimes. When the Nuremberg trials were proposed after World War II much of the world was outraged. Even leaders like Churchill and Stalin were of the opinion that the Nazis did not deserve a trial. It was one man alone, US Supreme Court Justice Robert Jackson, who fought against the "irrational voices" and called for a fair trial to uphold justice.

In Bangladesh, too, the War Crimes Trials have unleashed strong emotions -- emotions that need to be channeled into constructive resistance. It serves no purpose to brand the activists as "hate mongers" and those opposing capital punishment as "collaborators." The fact is everyone supporting Shahbagh is on the same side -- that of a free, secular, democratic Bangladesh. Fortunately, so far the protesters have exercised great restraint. Despite the brutal murder of one of the proponents (purportedly by Jamaat supporters), the movement has remained calm and focused. The forces guiding the protest must be applying the right checks and balances!

As I noted at the onset, mass movements spring out of deep, underlying turbulence building up over years. In Bangladesh the sharp split between the religious right and secular liberals has created a dichotomy over national identity and the system of governance (sharia versus secular democracy). Unfortunately, this polarisation of the religious and secular forces has unleashed subterranean tensions. The current unrest seems to be part of this phenomenon.

Amidst the din of controversy and attempts at derailing the Shahbagh uprising, the challenge is to stay focused on the primary objective, which is to seek justice for the victims who were raped and killed during the trying days of the Liberation War. There can be no closure to 1971 unless justice (not revenge), even delayed, is served. As Robert Jackson said in his opening statement at Nuremberg: "The wrongs which we seek to condemn and punish have been so calculated, so malignant, and so devastating that civilisation cannot tolerate their being ignored, because it cannot survive their being repeated."

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Is Islamic finance and banking for Muslims only?

MD. MIZANUR RAHMAN

ISLAMIC finance is no longer a dream, rather it is a success story across the world, including some non-Muslim majority countries like, USA, UK, Philippines, Thailand, Hong Kong and Singapore. There are about 430 Islamic finance institutions and 191 conventional institutions having Islamic banking and finance windows in 70 countries. Their total assets size is around \$1.6 trillion while the potential size is around \$5 trillion.

This sector is growing fast in Bangladesh also, and has already covered about 20% of the total banking assets. It may be mentioned here that Muslims in non-Muslim majority countries practice Islamic banking and finance and some non-Muslims also follow this system, though the percentage is very small.

Although popular belief is that Islamic finance is only for Muslims, it is not so. The idea of Islamic finance came from the Quran and Hadith, and it is not mentioned anywhere that Islamic finance is for Muslims only, rather it is for all human beings. It aims to lay the foundations of an ethical and fair financial system, which consequently affects the socio-economic conditions of the market it is implemented in. Islamic financing, hence, can aptly serve everyone irrespective of religious beliefs, wealth, ethnicity, caste or creed.

Yet, this fact is not as clear as it should be in our country; much less in the outside world where centuries old financing methods are firmly embedded within the economic system.

One of the reasons for this lack of awareness is that the concept of Islamic banking has been commercialised fairly recently. Banks and asset management companies in Bangladesh are still struggling with how better to portray Islamic products for consumers' understanding in minimal ad spaces. There is also a communication gap between the Shariah councils issuing the fatwas pursuant to Islamic finance, and the managers drafting the advertisements.

Different studies stated the fact that most people do not know the difference between conventional

and Islamic banking; and that most people thinks that the vary advertisement of "Islamic Funds" are only a marketing gimmick.

Being an Islamic banker, I personally have experienced that some financial advisors lack awareness of the concepts behind Islamic finance, which is really a big issue about popularising Islamic finance amongst all people. The understanding of some financial experts about the merits of Islamic funds and the difference between conventional funds and Islamic funds is very disappointing.

So, if any customer is not keen on making any interest-related income because he knows the difference between Islamic and conventional banking, the organisation will just lose such customers.

Islamic finance lays its foundation on real, non-liquid assets; the exchange and sales of which result in fair profits. There is hardly any scope to create assets bubble and little chance to inflate or deflate money. So, not only Muslims but also non-Muslims also can benefit from the Islamic financial system.

Basic difference between Islamic and conventional finance

The idea of most people about the difference between Islamic and conventional banking is only that "Islamic products do not offer interest (riba), while conventional banking is based on interest." The statement is without a doubt true, but this is not the sum total of Islamic finance.

Yes, interest (riba) is indeed deemed haram in Islam, for the reason that it is "unfairly" exploitive in nature. It is "unfair" because riba requires the borrower to return the borrowed money, plus an extra amount. This requires the borrower to work harder to return not just the principal, but also the interest or mark-up levied on the amount.

More importantly, interest is set arbitrarily. That is, the concept treats money as a tradable

entity which fluctuates in the markets. There is no set ceiling; meaning that borrowing money may become cripplingly expensive for the borrower.

Working procedure of Islamic finance

Islamic financing is asset-backed and believes that only assets with an intrinsic value may be sold for a profit, instead of exchanging money as exchanging money is considered to have no intrinsic value for interest. Each unit of money has the same value as the other of the same denomination, which is simply why there cannot be a profit on its exchange. Hence, Islamic finance lays its foundation on real, non-liquid assets; the exchange and sales of which result in fair profits.

The financial industry in different countries of the world today offers various Islamic products; in wealth management, asset management and banking, spread over short-medium and long-term funds. All these investments in such schemes have to be strictly Shariah-compliant and will be working under the close supervision of a Shariah Advisory Board, which will consist of renowned Islamic scholars.

Stakeholders in the industry must now step forth and give a clear picture of Islamic finance: one which presents it as a way of rethinking economics and finance, instead of just as a cosmetic solution tailor-made for religious investors finicky about where their money is going.

From the above discussion it is seen that the prohibition of riba in Islamic finance is a religious edict. Besides the religious belief, this system has inherent financial value as well, which is that Islamic financing is asset-backed. That is, Islamic finance lays its foundation on real, non-liquid assets; the exchange and sales of which result in fair profits. There is hardly any scope to create assets bubble and little chance to inflate or deflate money. So, not only Muslims but also non-Muslims also can benefit from the Islamic financial system.

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