Legitimate demands for war crimes trials do not justify turning a blind eye on standards

DAVID BERGMAN

AHFUZ Anam, the editor of The Daily Star, in his column titled, 'War crimes trial and failure of our politics' is absolutely right. He is also completely wrong. This is how.

He is right when he says that 'without the Awami League in power, and without Sheikh Hasina's determined leadership' there would not be war crimes trials now.

He is also, of course, right to say that terrible atrocities

were committed in 1971, with hundreds of thousands dying at the hands of the Pakistan military and their collaborators. And yet again he is right to say 'We need to remember the

atrocities of 1971 and the brutality perpetrated on our people, in order to fully understand the relevance of the war crimes trials.' There is also nothing wrong with keeping hold of the

memory of 1971. Few would argue against him when he says, 'There is no way we, as a self-respecting people, can and should forget what happened in 1971.' These reasons -- and the emotion with which they are

attached -- are why so many people, including myself, supported the establishment of war crimes tribunal, a process that appeared genuinely popular throughout Bangladesh. However, Mahfuz is wrong when he tries to hitch these

reasons and the emotions to an argument about providing unwavering support to the actual process of the trials. Supporting the demand for tribunals should not result in

turning a blind eye to significant unfairness (and this is not a criticism of the judges) in the way in which the process has been conducted. In the article Mahfuz minimises the concerns about the trial -- wishing only that the tribunal was a bit 'more effi-

cient,' 'more tech-savvy' and 'more up to the international These are however totally inadequate descriptions of the

problems with the tribunal process. It is very difficult to write accurately about these trials.

Apart from the social stigma of being portrayed as pro-

Jamaat or pro-war criminal (which is the inevitable knee jerk reaction of many towards those who raise issues about the tribunal), there is the real risk that the tribunal will issue contempt of court proceedings.

But let me have a go by setting out some issues which have already been written about.

The first two scandals concerned the Sayedee case.

In May 2013, it emerged that the investigation and prosecution authorities had misled the tribunal about seven witnesses whose written statements they wished to be admitted as evidence.

Although the prosecution claimed that these witnesses could not be found, it in fact emerged, through copies of the safe house register, that the prosecution had brought them to Dhaka but decided not bring them to testify before the

Then five months later, in November 2012, the state authorities abducted from outside the court a witness, who was about to testify on behalf of Delwar Hossain Sayedee. When it happened, many chose to disbelieve it pointing out that the main eye-witnesses to the abduction were Jamaat lawyers, but the abduction has now been confirmed by Bali himself both in a statement provided to New Age newspaper, and more recently to an Indian court in his claim for

There was a good reason why state authorities would have wanted to prevent Bali from giving testimony in court; his evidence would have severely weakened a key case against Sayedee, one of two which finally resulted in him

14 "Quite

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By THOMAS JOSEPH

(preened) 41 Rafting

43 Gushes

1 Morning

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13 Rihanna

15 Diarist

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35 Museum

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BEETLE BAILY

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Anaïs

"Harold &

receiving the death penalty.

Then a month later there was the Skype scandal.

There were many things said in these conversations which raised concerns about the whole trial process -- but perhaps the most shocking aspect of it was the collusion between a judge and a number of prosecutors.

The judge concerned resigned. But the prosecutors involved in this 'collusion' continued in their role before the tribunal Arguably, in no other case in Bangladesh would there

have been such an outcome; the High Court would have simply quashed the case. But here the accused has no right to seek such a remedy.

And then there are the witnesses.

One of the very basic tenets of a fair trial is to provide the defence opportunity to present their case. This is most obviously represented by a court allowing the defence lawyers to bring witnesses to court.

However, the tribunal has restricted, severely in some cases, the number of defence witnesses.

In the case of Abdul Alim, the prosecution brought 35 witnesses, but the defence were restricted to only 3. In the Salauddin Quader Chowdhury trial the prosecution had 41 witnesses, but the defence were allowed only 5.

And then there is the actual assessment of evidence by the court.

The one case that can be discussed with a greater level of openness is the Quader Molla case where issues of subjudice no longer prevail.

Abdul Quader Molla has received a death penalty for an offence where the reliability of the evidence of the sole witness has to be in real question. Prior to her testimony in court in which she said Molla

was present at the scene of her family's massacre, the witness had given two statements (one of which was in to an investigation officer), neither of which mentioned that Molla was present at the scene of death. In fact one said that she was not even in Mirpur when her family was massacred. Can it be appropriate for Molla to be put to death when

the sole witness on which the court is reliant, had given prior contradictory statements -- and had never in all the intervening years apparently ever mentioned Molla's presence at the scene? Using patriotic emotion to turn a blind eye to these sub-

stantial matters involving the country's most significant trials in its history is the wrong approach. Mahfuz, in his personal columns, and The Daily Star as a

paper, boldly take on the Bangladesh state on many issues.

Why are these trials exempt from that scrutiny and searing analysis? Yes, the establishment of the trials was a great achievement in Bangladesh. Yes, it was right for the particular indi-

viduals detained by the tribunal to be subject to investigative and prosecution scrutiny. However, the acclaim for the trial's establishment should not then preclude a proper assessment of the subsequent

fairness of the proceedings -- in which people are likely to be

put to death. It is also very short-sighted.

Unless one protests now, these same unfortunate practices will simply be repeated and used against a different set of political opponents. And this time it will be people whose politics Bangladesh's civil society establishment

The writer is a journalist based in Bangladesh. See bangladeshwarcrimesblogspot.com

Quotes

"The fundamental cause of trouble in the world is that the stupid are cocksure while the intelligent are full of doubt?"

> **Bertrand** Russell

A XYDLBAAXR is LONGFELLOW

On letter stands for another. In this sample, A is used for the three L's, X for the two O's etc. Single letters, apostrophes, the length and formation of the words are all hints. Each day the code letters are different.

CRYPTOQUOTE

FTHGSWAGK HIT QZS HVCTQSGITM

DT OZ SZ MTTU. —

IZFTIS KZGWM MSTCTQMZQ Yesterday's Cryptoquote:

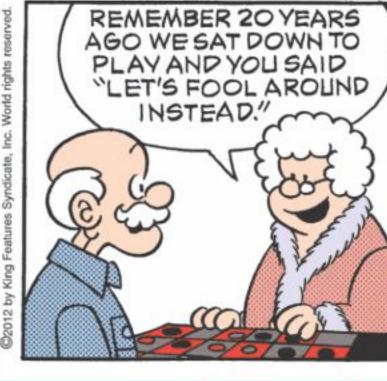
ALL HUMAN BEINGS ARE ALSO DREAM BEINGS. DREAMING TIES ALL MANKIND TOGETHER.

- JACK KEROUAC

by Mort Walker

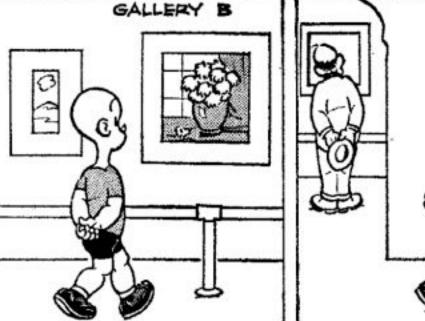


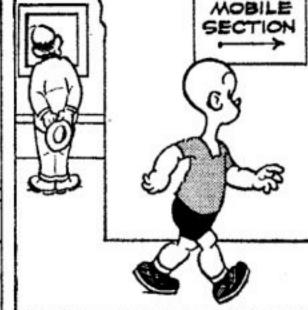
DON'T YOU REMEMBER ANYTHING NO. I'VE NEVER PLAYED ABOUT THIS GAMES

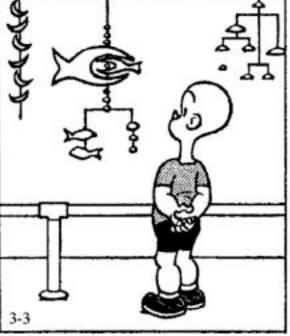


HENRY

by Don Tranchte









Running out of time

ZIAUR RAHMAN KHAN

THE PM made a provocative and somewhat inflammatory speech on her visit to Sylhet recently. She claimed that neither Khaleda Zia nor the BNP had the capacity to resist the holding of the next elections which would be held under the constitution. It will only incite the BNP to redouble its efforts to do just that, prevent the holding of onesided elections. Perhaps the BNP can or cannot prevent the holding of the

elections. That is not the issue. The AL could not prevent the holding of the February, 1996 elections which were held strictly in accordance with the constitution. But at least Khaleda Zia had good and compelling reasons for that inasmuch as she was not in possession of a 2/3 majority to effect a major amendment to the Constitution in line with the demands that the AL had made for a caretaker government. That demand, at that time was unlawful as being beyond the constitutional provisions, and impractical as being beyond BNP's powers as they did not have the required majority. Yet it was Sheikh Hasina who unleashed havoc upon the

country with 172 days of hartal to enforce her demand, which was clearly unconstitutional and hence unlawful. Why should the BNP's demand to re-instate the caretaker government be so illogical now? Indeed, an overwhelming majority of the countrymen want some form of caretaker government for the next parliamentary elections. This is evident from several recent newspaper surveys. It was in fact at Sheikh Hasina's insistence that the care-

taker government provision was removed from the constitution. It was not the desire of the members of the committee set up to look into constitutional amendments following the Supreme Court judgment which had also suggested two further terms under that system. It is essentially a mischievous attempt to unsettle a settled issue -- four elections having taken place under it. It also certainly has a lot to do with the Awami League and Sheikh Hasina's plan to win the next election by any means.

The rationale behind the caretaker government was, and remains, the lack of confidence, the trust deficit between the two major parties. The differences have widened over the years. Neither party would countenance elections under the other. The BNP has already made it abundantly clear that they would not participate in any parliamentary elections held under the Awami League. So why push the country towards a confrontation which benefits no one, least of all the people of the country in whose name both major parties act.

It is unethical for the AL government to do away with the caretaker government by amendment, and then say that its absence from the Constitution prevents them from holding the next general election under that system. This is an unedifying example of what abuses an absolute majority can lead to.

The current AL government, again possessed of a calamitous majority, seems headed in the same direction -- banning of newspapers, closure of TV channels, relentless harassment and arrests of opposition politicians, murders and unexplained disappearances of several opposition activists, hounding of Prof. Yunus and tinkering with the Grameen Bank, mass withdrawal of cases (even murder cases) of people subscribing to the AL by careless use of the presidential prerogative; and all this accompanied by sky high corruption by Hall-Mark, Destiny, stock-market scam, and the loss of funding for the Padma Bridge due to corruption. The Awami League boat is indeed too heavy to sail this time.

The PM is acutely aware of all this, and therein lies her apprehension. If the PM, in accordance with her lofty claims of having done wonders for the country in the past four and half years, actually believed in this myth, then she should have no trouble in going into any election under a caretaker government, and leaving the judgment to the people whom she claims to have served with such distinction over these years. The facts say otherwise, and she is afraid of what results the 'awful majesty' of the people might turn up. In the ultimate analysis, it is the Parliament with the gov-

ernment in it that runs the country, not the judiciary. The

constitution is not Holy Writ. It can and has been amended

15 times in 40 years. Even if the judiciary pronounces the caretaker government as illegal, if the people overwhelmingly desire some form of caretaker government then that confers legality upon it, and a modified system of caretaker government can be put in place. Indeed, in their original short order the Court had suggested that the system could be used for two more elections. It is patently obvious that you cannot hold an election to parliament by keeping the parliament in place. Any election in such a situation would be a farce inasmuch as there would be no vacancy to contest for. This is in addition to depriving

the opposition from a level playing field, which is at the core of a neutral, non-partisan caretaker government. The frequent references made by the PM to the Westminster model can only be treated as laughable. The first thing a British PM does when he wishes to call an election is to visit the Queen and advise her to dissolve the Parliament. This is the prevalent practice in all parliamentary systems. The PM appears to have launched her election campaign,

and at every turn she insists upon holding the elections under the constitution as it stands. In fact, she has been investing the constitution with a new brand of sanctity to the point when she might actually claim that the constitution is inviolable. This is not an attack of amnesia. This is carefully crafted policy. This stubbornness can bring catastrophic consequences. The PM must engage the opposition in meaningful talks. To

dare the opposition and then treat them with disdain is not the best way of solving the issue. It will unleash chaos and violence to an extent whose contours are unclear. The BNP and 18 parties have made their stand clear, that they will not participate in this election without a caretaker government, by whatever name it is called. Additionally, the PM has probably shot herself in the foot

by announcing that the last date from when election period commences will be October 25. This has been assumed by many confused people around the country to be the government's last day in office. That, being a faulty understanding, has let loose a simmering panic in the AL rank and file across the country.

The recent attempts at damage control by some AL bigwigs hectoring the government servants to carry on after October 25 on pain of penalties has actually confused the situation further. The whole nation is apprehensive of what is in store after October 25, from the smallest traders to the big businessmen, professionals in various fields, rickshaw pullers and street vendors are all filled with a sense of foreboding. Was this necessary? And yet the PM appears to be absolutely nonchalant as the country hurtles towards the precipice.

The PM is running out of time. If any changes are to be effected in the constitution, providing for a neutral, nonpartisan caretaker government, it must be done immediately. Or maybe the PM is not running out of time. Maybe she believes that even if this stand of hers results in violence and chaos, murder and mayhem and extensive and even irreparable damage to the economy leading perhaps to a takeover by the army, that would be far more preferable to having an election under a system where Khaleda Zia might win.

The writer is a Barrister-at-Law and a former Member of Parliament from BNP.



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