

# Politics of convenience and Supreme Judicial Council

SHAKHAWAT LITON

THE Awami League-led government has made a sudden move to abolish the Supreme Judicial Council (SJC) which currently exists in the constitution to impeach a Supreme Court judge on ground of misconduct. The law ministry has drafted a proposal to bring necessary amendments to the constitution to this effect. The law minister has vetted the proposal. He has given the consent to complete the preparation for placing it before the cabinet. By abolishing the SJC, the government wants to restore the parliament's power to impeach judges.

In the synopsis prepared for the cabinet, the law ministry explained the reasons for abolishing the SCJ. In its view, the current constitutional provision for the SJC undermines the power of the parliament and the people. The ministry also says this provision is also against Article 7 of the constitution, which says all powers of the State belong to the people. Therefore, according to the law ministry, there is a constitutional obligation that the Supreme Court judges will be accountable to the parliament that represents the people.

The situation, however, was different three years ago when the AL-led government had found nothing wrong with the SJC-led by the chief justice impeaching a Supreme Court judge. So, it had supported the system through the 15th Amendment to the Constitution in 2011. How? This is pretty interesting. The SJC was introduced by military ruler Ziaur Rahman in 1978 by amending the constitution through martial law proclamation. And it was believed that the military ruler had done it expecting some favour from the higher judiciary so that he could run his illegal regime undisturbed.

Gen. Zia had amended the constitution frequently through martial law proclamations. In absence of the parliament, he personally had exercised the state's legislative powers. People had nothing to say regarding the constitutional amendments. Finally, the parliament was formed following a stage-

managed election in 1979. But the power of the parliament was abused by the military regime. The parliament was made to pass the 5th Amendment to the constitution, which ratified and validated all wrongdoings, including destroying of the constitution in the name of amendments.

Thanks to the 5th Amendment, the SJC provision was consolidated and existed until the Supreme Court conclusively declared the 5th Amendment illegal and void in February 2010. The apex court, however, had condoned the introduction of the SJC. So, after February 2010, it existed for more than one and half a years. And it was the AL-led government that decided to retain the SJC provision and replaced an almost similar provision for the SJC in the constitution by the 15th Amendment in 2011.

The law ministry claims that the current provision for the SJC undermines the power of the parliament and the people. According to the law ministry's synopsis, the restoration of the parliament's power to impeach SC judges will uphold the basic structure of the constitution. If the current SJC provision undermines the power of the parliament and the people, then the AL-led government will have done it twice. First, the AL-led government had done it in 1975 when it abolished the parliament's power to impeach SC judges through the nefarious 4th Amendment. At that time, the AL-led government had empowered the president to remove an SC judge. And this provision continued until the SJC was introduced in 1978 by the military ruler. The AL undermined the power of the parliament and the people by retaining the SJC in the constitution's 15th Amendment in 2011.

Going through the law ministry's draft proposal, the reader may think that the AL-led government is really worried about the dignity of the parliament and it wants pre-eminence of the Jatiya Sangsad over other institutions. But the truth is different. Three years ago, the AL-led government severely curtailed the parliament's power through the 15th Amendment to the constitution by making around 50 articles of the constitution unamendable; meaning no future parliament will be able to amend any

of those articles.

And while the law ministry is speaking for the power of the parliament and the people, the reality looks bleak. People's voting rights were bulldozed in the January 5 parliamentary election. They were not allowed to determine through ballots who will exercise the State powers on their behalf. They were made powerless. Now, does the government want to make the people powerful by empowering the parliament to impeach judges? Or is there any other political purpose?

In defence of restoration of parliament's authority, the law ministry argued that parliaments of India, Australia, Canada, South Africa and Sri Lanka enjoy the authority to impeach apex court's judges. The ministry's information is true. But the democratic practice in those countries, excepting Sri Lanka, makes it impossible for the government to abuse the parliament's authority to undermine the independence of the judiciary. There is a vibrant democracy in those countries and they do not have a parliament like the one we have now.

Sri Lanka is exceptional. In January last year, the Sri Lankan parliament voted overwhelmingly to impeach the then chief justice, allowing President Mahindra Rajapaksa to dismiss him. Impeachment of Shirani Bandaranayake is widely seen by jurists and rights activists as an attempt by the government to ensure a pliable judiciary. The government moved to impeach her in November 2012 after a spate of Supreme Court decisions went against the government. Among others, she stalled a bill which sought to grant greater political and financial power to the president's youngest brother Basil, who was the economic development minister.

What will happen if our parliament is re-empowered with the authority to impeach judges? Will it appear as a threat to the independence of the judiciary? Will the government abuse the power against judges if their judgements cause embarrassment for the regime?

The writer is Senior Reporter, The Daily Star.

# Who shot down the plane and why?

SHAHRIAR FEROZE

MALAYSIAN Airlines is probably going through the most difficult period of its existence. Within about four month's time -- after the mysterious disappearance of MH370 enroute from Malaysia to China -- a second disaster struck the airline, claiming 298 lives. The two accidents together claimed over 500 lives. The point relating to the disaster is that it is more than just an accident and in any case will significantly intensify the ongoing Ukraine crisis. The Russians, Ukrainian authorities or the separatists' wing may not have admitted to have shot down the plane, but it's not too difficult to assume who could have shot down and with whose help.

What is likely to happen is that the growing concern among the Western countries that Russian zeal to support the separatists in eastern Ukraine with military equipment will now become more believable. If this concern is proved to be true then not only has a strong military backed separatist group emerged in Ukraine but there is also the presence of a terrorist organisation equipped with advanced military system such as the Buk anti-aircraft system. We know that Ukraine has been accusing the Russian army of supplying the rebels with advanced missiles but, thinking deeply, even if Russia did supply arms, was it necessary to provide the separatists



with such advanced weaponry? The Ukraine air force, being at least 30 times weaker and smaller than the Russian air force, is not a threat under any circumstances.

If we take the shooting down of the plane as an accident then a cache of deadly arms has not only fallen into the hands of rebels but killers who may be whimsical and erratic without knowledge about the dire consequences of such misadventure.

The Russian president is reported to have reacted after the airplane crash by saying: "The country in whose airspace this accident took place bears responsibility for it" -- but it isn't as easy as it sounds as the territory falls under the conflict zone between Ukraine and Russia. One outcome of the Malaysian air disaster is that if Russia, in any way, was responsible for this tragedy then the pressure -- especially by the US and the Europeans -- for much tougher sanctions on Russia will only follow. As far as an independent investigation is concerned, it will be a difficult task as investigators will have limited access for implementing their techniques inside a restricted conflict zone. By now the Ukrainian government has accused pro-Russian rebels of removing at least 38 bodies from the scene while destroying debris relating to evidence, which the rebels denied.

What's distressing is that, in order to bring down an airplane from an altitude of 10,000 metres, long range lethal anti-aircraft weapons are needed, and the party that's responsible for carrying out the operation is still roaming scot-free. The Ukrainian airspace, in general, is a very strategic air-route which is used by scores of airliners as a connecting route for entering or exiting Asia and Europe. Except the British Airways no passenger airline is reported to have avoided the Ukrainian air space as a route to or from Asia. The million dollar question is that while the international air-trafficking authorities declared that an altitude over 32,000 feet of any Ukrainian airspace was safe, is it so any longer? Air traffic routes should be altered and substitute routes introduced during times of armed conflict as merely distance cannot be a benchmark for measuring safety any longer. Foremost, who knows who is in possession of what weapon after this heinous act?

Shooting down of the Malaysian plane followed the blaming by Ukrainian officials of the Russian air force for shooting down an Ukrainian ground attack jet on Wednesday, and also a transport plane on Monday. So the back-to-back air disasters should have alarmed the international flag carriers. Ukraine, on the other hand, cannot be spared either as it had admitted sometime around 2001 that its military may have been responsible for shooting down a Russian airliner that crashed into the Black Sea, killing all 78 people on board.

If we assume that it was the Ukrainian rebels who hit the plane -- presumably by mistake -- then they should be held responsible and penalised accordingly. The crash of Flight MH 17 is likely to have profound political and military implications around the region. Since the 'deed is done' now, it will be worthwhile to observe how sincerely and willingly Ukraine and Russia help the investigators to carry out their search for unearthing who shot the plane down and why.

# Why we cannot abandon Afghanistan

ISHFAQ ILAHI CHOUDHURY

THE recent spate of suicide bombings across Afghanistan remind us that the Taliban-al-Qaeda forces are alive and well, and are becoming increasingly active as the time for the Nato withdrawal nears. The suicide car bomb attacks on July 15 in a market place and a mosque in Paktika province claimed 89 lives, mostly women and children. The attacks are aimed at creating panic and despondency among the Afghans who had, despite Taliban threat, held the third presidential election on schedule.

There is an apprehension that amidst all the brutality that is going on across Middle East and also the looming danger of an armed conflict between Russia and Ukraine, Afghanistan issue may well be forgotten, as happened after the Soviet withdrawal in 1989. At that time, the Soviet withdrawal in the face of a CIA-funded and orchestrated Mujahedin onslaught was seen as a victory for the "Free World" and a defeat of the Evil Empire (Soviet Union). What turned out eventually was a far greater evil -- the rise of the Taliban and a sanctuary for the al-Qaeda.

Between 1990 till the ouster of Taliban forces in 2001, Afghanistan saw a period of utter destruction, first by the Mujahedin forces fighting among themselves (1990-95) and then the ISI-sponsored Taliban regime (1996-2001) imposing their own version of Islamic Sharia that effectively pushed the nation to the middle ages.

This period saw destruction of all physical and administrative infrastructures. Taliban closed down all schools and institutions of higher learning, banned female education, stopped women from working, imposed harsh physical punishment including publicly stoning women to death. Trade and commerce came to a standstill and the agriculture output dwindled. People suffered under a draconian rule not seen by the world for many centuries. However, since 2001, when the Taliban were driven out of Kabul, there has been a democratically elected government in Afghanistan that ushered in a steady all-round growth and development.

For the first time, Afghanistan had a written democratic constitution that ensured peaceful and orderly transfer of power, recognised ethnic diversity, and ensured the rights of women, children and the disadvantaged. The country had three presidential and

two parliamentary elections that saw good turnout despite threats from Taliban forces of attacking and disrupting the polling process. The latest presidential poll has given rise to the allegation of vote rigging and result-tempering by the losing candidate, but these are not unexpected in a country that is just emerging from centuries of autocratic rules. In fact, until a decade ago, Afghanistan had not seen the exercise of democracy and rarely, if ever, had there been a peaceful transfer of power.

Economically, the country has come a long way showing steady growth over the decade. A country that had virtually no currency, is now hosting dozens of foreign banks with both the domestic consumption and international business rising. Shopping malls, high-rise apartments and modern business districts now dot all large cities. Education has shown a dramatic comeback with thousands of schools repaired, new schools established, universities and medical and engineering colleges opening up in every province. More Afghan boys and girls are going to school than ever before.

There has been huge investment in rebuilding war damaged communication infrastructures. Roads and highways now connect all parts of the country. Modern health facilities are now expanding. Ariana Afghan Airlines is flying again, so are nearly a dozen private airlines in domestic and international routes. The country that had no police or security forces in 2001, has since then built up forces from scratch, and the responsibility of providing security to most of the country rests with the Afghan forces. They have shown their mettle in a number of encounters with the Taliban and proved their worth. On May 23, Afghan forces thwarted a coordinated attack by the Taliban on the Indian consulate in Herat, killing all the attackers. While the Taliban have been able to launch suicide attacks, they have failed to penetrate the defensive barrier put up by the Afghan forces.

Whereas women could not come out of their residences under the Taliban rule, they are now joining the police and army. Afghan women pilots are flying combat missions, an opportunity still denied to women in many Muslim countries. The empowerment of women in Afghanistan has been most dramatic since the fall of the Taliban -- they are increasingly visible in public life and influence the decision making process at all levels.

In the field of sports, Afghanistan has already

made its mark. A country that was not allowed to play football during Taliban era is now the Saarc champion. In cricket, with a history of only five years, they have beaten countries like Bangladesh and Kenya and are now set to play in the World Cup 2015. Their women cricket team is rapidly catching up too, something unthinkable in Taliban era. In every Olympic Games since 2001, Afghanistan won medals, including gold, something that other Saarc countries could not. Should a country that displays such dynamism be allowed to sink into medieval darkness just because the world does not care?

The Taliban-al-Qaeda remnants enjoyed a sanctuary in FATA region of Pakistan where they could organise, plan, arm, recuperate and regroup with impunity. Had the Pakistani establishment, especially the ISI, not nurtured the Taliban forces, and the Pakistani military had cooperated and coordinated with Afghan and Nato forces, the Taliban threat would have been eliminated years ago. Pakistan had been helping the Afghan Taliban all these years with the hope that these forces would eventually establish a client government in Kabul. After suffering devastating attacks for years, Pakistan has now come to realise that the Taliban that they created in mid-1990 to take control of Kabul is now poised to take control of Islamabad. However, the anti-Taliban operation that Pakistan is now waging in North Waziristan is unlikely to give decisive result because it is not coordinated with the Nato-Afghan forces in the west. It is feared that the key Taliban elements have crossed over to Afghanistan.

It is important that Pakistan, Afghanistan and other stake holders such as US, Iran, India and China recognise the Taliban-al-Qaeda as a threat to the peace and stability of the region and draw out a common strategy to combat the threat. We, in South Asia, are increasingly vulnerable to the rising extremism in Afghanistan and the Middle-East. If Afghanistan falls to the Taliban, the next will be Pakistan, a nuclear-armed state. That will have immediate repercussion in India, Iran, and China. It is, therefore, important that the stake-holders get together to plan a long-term strategy on how to help Afghanistan tide over its security crisis and ensure its continued journey towards a peaceful, progressive, democratic order. Indeed, Bangladesh too has an important role to play in this process.

The writer, a Retd. Air Commodore, is Registrar, East West University.



No great artist ever sees things as they really are. If he did, he would cease to be an artist.

Oscar Wilde

