

# Vesting power of impeachment of judges in the Parliament: A perilous venture

MD. RIZWANUL ISLAM

ACCORDING to newspaper reports, the Ministry of Law and Parliamentary Affairs has floated a draft proposal for divesting the Supreme Judicial Council of the power to impeach judges of the Supreme Court and vest that power in the Parliament. The ministry believes that the power vested in the Supreme Judicial Council by the martial law regime of General Ziaur Rahman through a Martial Law Proclamation (and then ratified by the 5th Amendment to the Constitution) undermines the authority of the Parliament. According to this proposal, restoring the power of the Parliament as provided for in the original Constitution of 1972 would ensure the accountability of judges to the Parliament and restore its authority. The current government's professed respect for constitutional provisions, keenness to uphold the dignity of the Parliament, and the desire to restore the provisions of 1972 Constitution are well canvassed. However, apart from the supporters of the government, there will be few who would believe in the bona fide of this proposed amendment to the Constitution. Indeed, more damagingly for the government, the attempt of the Ministry of Law is clearly incompatible with the observation of the Appellate Division in *Khondker Delwar Hossain, Secretary BNP and Another v Bangladesh Italian Marble Works and Others* (2010) 62

DLR (AD) 298. In this judgment, General Ziaur Rahman has been very rightly termed as a usurper possessing no legal authority to amend the Constitution and, thus, the 5th Amendment to the Constitution has been declared as unconstitutional. Nonetheless, the changes made by General Rahman's regime regarding the power of impeachment of judges of the Supreme Court have been endorsed by the Appellate Division in the following terms: "It also appears that the provision of Article 96 as existed in the Constitution on August 15, 1975 provided that a Judge of the Supreme Court may be removed from the office by the President on the ground of 'misbehaviour or incapacity.' However Clauses (2), (3), (4), (5), (6) and 7 of Article 96 were substituted by the Second Proclamation (Tenth Amendment) Order, 1977 providing the procedure for removal of a Judge of the Supreme Court of Bangladesh by the Supreme Judicial Council in the manner provided therein instead of earlier method of removal. This [sic] substituted provisions being more transparent procedure than that of the earlier ones and also safeguarding independence of judiciary, are to be condoned." (Para 232) Mr. Suranjit Sengupta, the chairperson of Parliamentary Standing Committee on Law, Justice, and Parliamentary Affairs is quoted saying: "The Parliament cannot be sovereign if it cannot hold all branches [of the State] to account. We must amend Article 96 to ensure the sovereignty of

Parliament," (*Bdnews24.com*, July 17). It is not certain whether Mr. Sengupta has used the words "sovereignty of Parliament" or some other synonymous words with a different legal connotation. But if he has been quoted properly, it must be said that his position is conceptually flawed. It is difficult to believe that this veteran politician, one of the members of the Constituent Assembly of Bangladesh and drafters of the Constitution, has forgotten that the Parliament of Bangladesh is not sovereign. It was never so and it is not so now. Article 7 of the Constitution, by guaranteeing constitutional supremacy, makes the power of the Parliament subservient to the Constitution. Some legal experts such as Khairul Haque, a former chief justice, has contended that vesting the power of removing judges in the hands of the Parliament is a practice followed in some other democracies such as Australia, India, Canada, South Africa, and the United Kingdom, and is not creating any issues in those countries. The observation is true but it ignores the difference in socio-political culture between those countries and Bangladesh. We must not forget that the laws do not operate in a vacuum and law's effectiveness depends not just on its mechanical form but also in the culture of the society in which it operates. In view of the political realities of Bangladesh and because of the fragile nature of our democratic culture and insti-

tutions, this decision of the Ministry of Law, if implemented, would hang over the heads of judges like a sword of Damocles. In many cases, the government itself is a party in legal proceedings and a judge rendering a judgment unpalatable to the government in any sensitive matter may be harassed or even removed by the government. As there has been significant controversy about the appointment and confirmation of judges of the Supreme Court, it is quite likely that judges appointed during the reign of a particular political party would feel some sort of insecurity about their tenures during another political party's regime. The Supreme Judicial Council has, on occasions, been criticised by many apologists as being non-transparent and dysfunctional. If accountability of judges of the Supreme Court is a real issue to be taken care of by the government, then the structure and operation of the Supreme Judicial Council may be thoroughly re-examined and revised. But in the prevalent sharply divisive and abrasive political culture of Bangladesh, vesting the power of impeachment of judges of the Supreme Court in the Parliament is bound to stir unwarranted controversy. At best, even if this decision is well intentioned, it is utterly unnecessary and would surely raise eyebrows about its motives and at worst, it may bring about undesirable consequences. The writer is an Assistant Professor of Law, BRAC University, E-mail: rizwanull@alumini.nus.edu.sg

# Operation Protective Edge: Myths and realities

FARHANA SYEAD

THE ongoing violence on civilians in Gaza under "Operation Protective Edge" is raising several questions among the people around the world. The traumatised Palestinian children, their dead bodies, as well as the destruction, shown in the media sadden us immensely. War is nothing new for Palestinians. Children who are six years old in Gaza are facing war for the third time. This time, Operation Protective Edge is killing more civilians than ever. In much of the North American and western European media reporting on the current Israeli attack, a common issue is that Hamas has also shot some rockets towards Israel. But none of these rockets hit any targets, and how come no Israeli has lost his/her life because of them? According to the UN Security Council, some 400 Palestinians, a majority of them civilians, including women and children, have been killed and more than 1,600 injured since July 8 as a result of some 1,900 Israeli strikes on Gaza from land, air and sea. Additionally, more than 1,800 Palestinian homes have been destroyed or damaged. Against this backdrop, it is easily understood that it is a myth that Palestinian fighters alone are to blame for the ongoing military offensive in Gaza. It is also a myth that the war between Hamas and Israel was triggered by the murder of several children, Israeli and Palestinian, in recent weeks. It should also be noted that Israel's offensive against Gaza is taking place at a time when international diplomacy is distracted by the escalation of conflicts in other regions (e.g. Ukraine and Iraq). Besides, since the last war in 2012 when Cairo had a government sympathetic to the Palestinian cause, a great deal has changed. Hamas has since lost that support like the Muslim Brotherhood. Thus, Israel knew it was high time to strike. The death toll in the current round of hostilities can be regarded as a reflection of the asymmetry of power between the fourth strongest army in the world and a virtually defenseless civilian population. In the name of destroying Hamas, Israel actually wants to justify its atrocities on Palestinian civilians. The poster "Where do Gaza Terrorists Hide Their Weapons?" is a paradigmatic example in this regard, where houses, mosques, schools, and hospitals are legitimate targets because they are presumed to be weapon depositories. During every attack on Palestine, Israel tried to legitimise it by blaming Hamas and justifying its attack against terrorists. If we look into the past, we can see that the operations aimed at the Palestinian Islamist militant group Hamas caused huge loss of lives and property of Palestinian civilians. Take the example of "Operation Cast Lead" in 2008. During this operation, 300 civilians including men, women and children died. In addition, hospitals, schools and even mosques were destroyed. Amnesty International termed Israel's atrocity as war crime. The goal of this all-out aggression was to take revenge on Hamas which, according to Israel, was able to shoot rockets into the Jewish state. In this scenario, it should be noted that the rocket named "Qasas," which is alleged to be used against Israel, is nothing in front of Israeli rockets. In this way, Israel always seeks to take extreme kind of revenge against Palestine. The unresolved Middle East problem shows that Israeli Prime Minister Benjamin Netanyahu and his right-wing coalition have never believed in -- or sought to establish -- a viable two-state solution. Their sole interest continues to be consolidation of Israeli occupation of the West Bank and East Jerusalem while maintaining the siege on Gaza. For Netanyahu, it is far easier to attack Gaza -- in the name of fighting Hamas -- than it is to sign a peace agreement with moderates such as Palestinian Authority President Mahmoud Abbas. It is pertinent to say that the aforementioned issues along with support of the US for Israel in all its atrocities indicate the mismatch between the declaratory posture of Israel in bombarding Gaza and the reality. It is also ironic that the United Nations has failed to stop the atrocities. The Security Council, once again, failed to uphold its Charter duties and implement its resolutions regarding the Palestinian-Israeli conflict. The Council's failure to adopt a resolution condemning Israeli military aggression in Gaza and the protection of the Palestinian people is clear. It is very unfortunate that the civilised nations of the world are reluctant to take a firm stance against the brutality committed by Israel. There are many ways to face Hamas. But the way Israel has adopted clearly shows that destroying Hamas is not its only intention. Israel's action is definitely a violation of human rights and a war crime. Thus, it is the duty of the international community, which always raises its voice against human rights violations around the world, to stop the world's worst crimes. The writer is MSS student at the Department of International Relations, University of Dhaka. E-mail: farhana.du63@gmail.com

# GIRL SUMMIT 2014: End child marriage within a generation

SARAH COOKE and PASCAL VILLENEUVE

CHILDHOOD should be a time of play and learning, within a safe environment, so that children can reach their full potential. But the prospects are not the same for boys and girls. Girls are less likely to finish school, get a higher education or enter the workforce. They are less likely to have a voice or control over their lives. Girls and women have the right to live a life free from violence and discrimination, and reach their full potential. But harmful social norms such as child and forced marriage are preventing this for many. Unicef estimates that, globally, around one in three young women aged 20 to 24 years (70 million approx.) were married before the age of 18. Around 11% (23 million approx.) were married before their 15th birthday. In London, the British Prime Minister and the Unicef Executive Director will co-host the 'Girl Summit 2014' to mobilise domestic and international efforts to end child and forced marriage within a generation -- everywhere. Child and forced marriage is a serious violation of girls' and women's rights. Forcing a girl or woman into marriage robs her of the right to choose her own future; prevents her from going to school and puts her at greater risk of dying during early childbirth. With figures at 65%, Bangladesh is among the countries with the highest

rates of child marriage -- Niger, 75%; Chad and Central African Republic, 68%; Guinea, 63%; Mali, 55%; Burkina Faso and South Sudan, 52%; and Malawi, 50%. The impact of child marriage is devastating for society. Child brides usually have a high burden of domestic responsibilities and have little or no say in household and personal decisions. They are at an increased risk of violence and abuse. An early pregnancy poses higher risks as the mother is still a child herself. Teenage pregnancy undermines a girl's development because it affects her growth and negatively affects her nutritional status. Infants born to adolescent mothers have a higher risk of being stillborn or dying soon after birth. They are also more likely to have a low birth weight, having a long term impact on their health and their physical and cognitive development thus perpetuating intergenerational poverty. A lack of education, poverty and harmful social norms are among the root causes of child marriage. In insecure situations, families are more likely to marry off their young daughters, thinking that this will keep them safe. Encouragingly, in Bangladesh, advancing the rights of women and girls is a priority for the government. There has been good progress towards improving girls' and women's lives over last two decades. For example, primary enrolment of girls has been increasing with over 95% now starting primary school with more

girls than boys completing primary education. Also, the number of women dying in childbirth between 1990 and 2013 fell by 70, with an opportunity to achieve the MDG target. Recent evidence shows that child marriage in Bangladesh is declining (DHS, 2011). The proportion of girls marrying before the age of 15 years has decreased from 52% to 17% in the last 30 years. The proportion of girls marrying by the age of 18 years old is also declining, but not fast enough. Projections show that at the current rate of decline, child marriage will only be eliminated in Bangladesh by 2055 -- can we accept that girls here will continue to suffer this harmful practice for another 40 years? The Government of Bangladesh is planning to accelerate the pace of change. The decision to revise the 'Child Marriage Restraint Act' to increase penalties for child marriage is appreciated, as is the work of the Ministry of Women & Children's Affairs to develop a national plan of action to eliminate child marriage in consultation with development partners and civil society organisations. We hope that the Honourable Prime Minister's attendance at the Girl Summit in London will lead to an ambitious and enforceable action plan, to eliminate child marriage within a generation. We also hope that the Government of Bangladesh will sign up to the Summit Charter where signatories will commit to work together

to end child, early and forced marriage everywhere, forever. The Girl Summit is committed to a common future free from child and forced marriage. More and more people are saying "No" to these harmful practices. Many governments in developing countries are already working to end these practices and have passed laws and developed plans. Our role is to support and accelerate efforts to end them. At the Summit, the UK Prime Minister and Unicef Executive Director will be joined by ministers from the UK and around the world, heads of development agencies, experts, survivors, charities and community groups. The Summit will aim to secure new commitments from the private sector, faith leaders, civil society organisations and governments -- an agreed agenda for change. Girls themselves must be at the centre of action to end child marriage. It is their rights, bodies and lives that are at stake. But we know that girls alone are not responsible for creating change. We are all responsible for doing our bit to alter the social expectations of girls and to value their role in society. Duty bearers must be called upon to fulfil the aspirations of all girls. Men and boys also have an important role to play in creating a world where all children will live free of harmful social norms. The authors of this joint op-ed are DFID-Bangladesh Country Representative and Unicef Bangladesh Representative, respectively.

**BEETLE BAILEY**  
by Mort Walker

HOORAY! IT'S SATURDAY! I'VE BEEN ON K.P. EVERY DAY THIS WEEK

IS THAT ALL?

**HENRY**  
by Don Trachte

ME AND MY BIG MOUTH!

GREG+ MORTY WALKER

**CROSSWORD** by Thomas Joseph

**ACROSS**

- Rural spread
- Bird's gullet
- Mother of Tiberius
- Felt unwell
- Hollywood deal maker
- Juliet's love
- Romantic time of day
- Music's Yoko
- Factual
- Army affirmative
- Glimpse
- Pixie
- Watchful
- Ski downhill
- Game official
- Desert sight
- Designer Wang
- Start of a count
- China collection
- Dwelling
- Wonderland visitor
- Eagle's claw
- Shows disuse
- Title paper
- "Sure, why not!"

**DOWN**

- Diagram
- Broad street
- Washer cycle
- Spouse
- Sedan or SUV
- Carnival city
- Nearly
- Hot dog
- Survives
- Elevator part
- Prepare copy for print
- Blunders
- Use a chair
- Wallop
- Cry of insight
- Fabled sailor
- Bayou cooking style
- Stand up to
- Puts up
- Trio of myth
- Protective ditch
- Worth
- Rank above
- viscount
- Fawn's mother
- Last part

**Yesterday's answer**

**CRYPTOQUOTE** 6-11

T XCLLNQX IQBSQWXDTL BA NFQ ATVQ VQBFA VCXIQX; ECA ANSBZ TA VQBFX PQAATFP BINFP UTAD LQNLQI. - VBDBAVB PBFSDT

**Yesterday's CRYPTOQUOTE: EVERY ACTION IN OUR LIVES TOUCHES ON SOME CHORD THAT WILL VIBRATE IN ETERNITY.** - EDWIN HUBBEL CHAPIN

**People who think they know everything are a great annoyance to those of us who do.**

**Isaac Asimov**

**A XYDLBAAXR is LONGFELLOW**

One 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.

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