The Paily Star

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16th amendment to the constitution

Will it be the last nail in the independent judiciary's coffin?

THE Jatiya Sangsad (JS) on Wednesday passed the 16th amendment to the constitution empowering parliament to impeach apex court judges for their misdemeanour or incapacity. It may be recalled that we had earlier critiqued in this column the cabinet's approving of the proposal on August 18 for this constitutional amendment.

It's indeed a fateful moment in the nation's history since the bedrock of principles of separation of powers and the checks and balances between the three organs of the state on which the entire democratic system of governance stands have thus been negated in one fell swoop. And with this enactment, the government has effectively shackled the judiciary by leaving it to the mercy of the ruling party that can exercise its brute majority in parliament to unseat a judge.

One is surprised by the manner in which some lawmakers from what passes for the opposition bench in JS as well as others from the ruling alliance and independent camps reversed their previous postures to jump on the ruling party bandwagon to vote in favour of the bill. Significantly, these lawmakers had earlier proposed motions in parliament suggesting changes in the bill as well as soliciting public opinion on it.

It is worthwhile to note that the present ruling party was once vocal about the independence of the judiciary and instituted some steps in that direction. And when the separation of the judiciary from the executive was finally effected, they took pride in it as a success story. What an irony that it is the same party that has done, what may turn out to be the last nail in the independent judiciary's coffin.

Hartal uncalled for and condemnable

Why subject the people to suffering?

THE two-day of hartal called by the Jamaat-e-Islami and that too 24-hour long ones are totally unacceptable. The court has given a verdict against accused Delwar Hossain Sayedee and it must be respected by all, including the party he belongs to. Hartals called and enforced by Jamaat during the last quarter of 2013 caused immeasurable suffering to both the people and the economy. The party's agitation programme is linked to organised terrorism and it cost the lives of 65 or so people last year. On the day of the verdict Jamaat activists proved once again that they care little for the rule of law creating havoc in the capital city.

Though the verdict has been deemed by some quarters as soft, it must nonetheless be respected. We are perplexed as to why the Jamaat is making life miserable by giving a two-day hartal. As a paper, we stand squarely against hartal. We are still recouping from the economic loss suffered during the last year right up to January 5, 2014 and finally seeing the first signs of recovery. This sudden declaration of hartal is a psychological tremor which we think is not just unnecessary but outrageous too. The fear in the public mind is that the party will try to cause panic by terrorising people and commit arson and other such activities in the name of defending their leaders. Authorities will be well within their rights to ensure security to people especially since they care so little for it.

The distrust continues

EDITORIAL, DAWN

TIOLENCE on both sides of the Pak-Afghan border continues. It is a dangerous trend that has evolved in recent years with no end in sight. As the foreign ministries of the two countries sparred over the implications of Punjabi Taliban leader Asmatullah Muawiya's announcement that his group will no longer commit violence inside Pakistan, but continues to believe in jihad elsewhere, Pakistani security personnel came under attack from Afghan-based anti-Pakistan militants.

While a further escalation in tensions seems unlikely barring some kind of unexpected and brazen attack on either side of the border — neither is a de-escalation apparent. That is in part because of the domestic political dynamics at work in both Afghanistan and Pakistan. In Afghanistan, a contested presidential election result has cast a dark shadow over the muchhyped hopes for the poll being a major part of a peaceful and stable country emerging in the post-2014 phase.

In Pakistan, meanwhile, the ongoing political crisis has further put on the defensive a government that had very limited input on the Afghan policy anyway. Yet, immediate political situations in both countries aside, there is a bigger problem here: joined at the hip as they may be, neither Pakistan nor Afghanistan has figured out quite how to address the other's legitimate security interests in a mutually beneficial manner. Instead, fear dominates.

Pakistan worries about an Afghanistan where regional rivals gain ground and about a porous border from which trouble can be exported to Pakistan. Afghanistan worries about Pakistan using the Pakhtun-Islamist nexus to keep the country in a state of semi-disarray and, in many ways, as a vassal state. Even developments, good and bad, over the past decade inside both countries have not greatly changed those fundamentals.

Pakistan, suffering from a home-grown insurgency, has tried to distance itself from a policy of using nonstate actors, but not decisively broken away from it as yet. Afghanistan has seen many economic and social changes - including the configuration of power in Kabul — over the last decade that while strengthening the non-Pakhtun segments of the population, has only papered over ethnic divisions rather than worked to genuinely alleviate them.

Ultimately though, both Afghanistan and Pakistan have a straightforward choice: cooperate and deny space to militancy in the region or suffer even more from policies rooted in fear. If the latter occurs by default, it would be a mistake to believe that eventually - once Afghanistan and Pakistan realise the folly of their ways — the effects will be reversible. Militancy changes the social fabric, it impacts societies in ways deep and pervasive.

It is not like a war fought by armies that return to the barracks. Overcoming fear is never easy, but Afghanistan and Pakistan must find a way to do it.

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An embarrassment between the covers

EDITORIAL



City

MOHAMMAD BADRUL AHSAN

HE Great Western Schism in the Middle Ages had lasted 39 years but ours has lasted longer already, that also to get incrementally worse. In 43 years that schism created a chasm, which has been debased into memory disorder. As a nation we can't remember anything either at the same time or together. The most recent book written by AK Khandker embodied that

tragedy in the controversy surrounding it. Like a knife, it as if severed our collective memory into two mutually exclusive contentions.

In one contention, some of us go blank on what others remember. In another, others go blank on what some of us remember. It's this dichotomy that erupted in boisterous reactions to the book, invoking for us the dilemma of the House of Bourbon. French diplomat Talleyrand defined it when he said the French royal house had learned nothing and forgotten nothing.

For us that dilemma comes with a twist. We remember everything and forget nothing, not so much under inner impulse as external compulsion. We don't know what compulsion Khandker had for writing this book. It could be just the inner urge in his late years that prompted him to clear his conscience.

But he made one mistake in his calculation. When he decided to write about the historic March 7 speech, he should have been more prepared. He should have attached some proof in the appendix, which he did for other less important things. The author also had another chance to address this issue when he penned the preface for the second edition. One of the two corrections he made involved the speech. He wrote that the last words were "Joy Bangla, Joy Pakistan" instead of "Joy Pakistan" mentioned in the first edition.

That tells us that the author consciously decided to stick to his guns despite the harsh criticism he faced for the controversial slogan in the first edition. But he provides no evidence for his conviction, which would have been a more logical response from someone of his reputation. Between lack of proof and primacy of passion, his book has got history slipping through a portentous crack.

According to someone close to him, the author had heard the speech with his own ears on Pakistan Radio. He may also have been influenced by others. Several of our illuminated minds mentioned in their writings that the speech had ended with the same fateful words, many of whom later retracted their claim or cited hearsay as their source. This is where the matter gets murky, pitting facts against figments of imagination.

Because it's hard to ignore when many times more enlightened minds don't have any recollection of those particular words. Many of them must have heard that historic oration on radio, but nobody has so far come forward to confirm that was what they had heard. No documentary evidence, video or audio, has been presented so far that can be thrown in their face to shut them up.

As the saying goes, the burden of proof always lies upon him who affirms not he who denies. But the author isn't showing any sign of so much as lifting a finger. It's not enough to go by one's ears alone when it comes to such a matter of huge national importance. If anything, this ineptitude alone fails to distinguish Khandker's eyewitness account from a work of fiction.

That underscores our national affliction, which, in psychological term, is known as the False Memory Syndrome. It describes a condition in which a person's identity and relationships are affected by memories that they strongly believe although factually incorrect. Our inability to accommodate history within a single frame of mind has led to dithering and division.

As a nation we can't remember anything either at the same time or together. The most recent book written by AK Khandker embodied that tragedy in the controversy surrounding it. Like a knife, it as if severed our collective memory into two mutually exclusive contentions.

In that sense, the book is a catalyst of controversy, which will be remembered for the contention it ignited but not for its contents. It has made significant observations about the failure of civilian leadership during the run up to the liberation war. The lens on Tajuddin Ahmed has been adjusted so that the readers will know he deserved more credit than he got. It has rejigged the camera rig on late president Ziaur Rahman, giving reasonably fair account of where he stands in the scheme of things. The book also gives valuable insights into how the various forces came into existence to fight for the liberation of Bangladesh.

But those two iffy words are giving it away. It's a pity that the author didn't see that in advance. It's a pity nobody warned him he was heading for a minefield. His hand in history has been its own nemesis as one act of indiscretion now threatens to erase his hard work. If he fails to prove or withdraw the disputed words, his book will be just one big embarrassment between the covers.

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* COMMENTARY

"No head above king"

The shackling of the judiciary?

(CONTINUED FROM PAGE 1)

MAHFUZ ANAM

As a system ours is supposed to be a cabinet form of government in which all its members are "equals" with the prime minister being the "first among equals". To be fair to Sheikh Hasina, it has never been so. Since the restoration of our parliamentary democracy in 1991 we have kept only the "first" and done away with "among equals" in defining the power of our PMs. So the cabinet has never or remotely been an independent body, and always acted as a "rubber stamp" whose raison d'être is only to "endorse" (don't even think of using the word "approve") the leader's wishes and never to debate, discuss, suggest alternative policy direction, and "unthinkably" challenge so that the best of a "collective mind" emerges as a policy. A "collective mind" as opposed to the leader's mind? How dare!

However flawed (and it was fatally flawed in terms of continuous boycott), we did have a robust parliament not, regrettably, in terms of lively constructive debates and much needed pro-people legislations but as a vociferous critic of the government through speeches, walkouts, press conferences and street activism. Even boycott, within a limit, had some impact of alerting the public on issues. (Continuous boycott ruined everything).

In the present parliament all that is gone. With an opposition sharing cabinet berths (making it the only such parliament in the world), the lines between the "Treasury and the Opposition" benches are totally blurred, making a mockery of the parliamentary system and also of the spirit of our constitution.

So the only possible "head" above the "King" could have been an independent judiciary which has now to genuflect itself before the mighty executive.

The question naturally arises as to why the 16th Amendment and why the parliament needs power to impeach our Supreme Court judges. What has happened to the higher judiciary that the parliament needs such drastic power to intervene? Has our apex judiciary proved to be so immature, so mired in self interest, so devoid of principles, so untrustworthy and so utterly incapable of mending itself that it cannot protect its own dignity by exorcising itself of "rotten apples", and that an "outside' body like the parliament needs to come into the scene to keep the judiciary 'pristine'?

The real reason for Wednesday's amendment, we suspect, is to keep the judiciary under political control. What happens when the judiciary is under political control? It becomes a "politicised" judiciary instead of an independent one. What happens when the judiciary becomes politicised? You do not have courts and instead you have "kangaroo courts"? And what happens when you have "kangaroo courts" dispensing justice? You have the "rule of the jungle" replacing that of the civilised world, of which till now we are a legitimate claimant to be a part.

Once again our constitution has been changed in a fundamental way without much ado. Even the sham of public discussion for the 15th Amendment did not take place this time. The 16th Amendment is a fundamental change because it deals with making a vital "organ of the State", like the judiciary, subservient to another, the legislative which is now under total control of the executive branch. So in the name of bringing the judiciary under the control of the parliament, it is being brought under the control of the executive. The manner of "passage" of the 16th Amendment itself is the biggest proof of this reality.

One of the arguments given so far is that such an amendment will restore the 1972 Constitution. How can that be an argument by itself? Bangladesh is now 43 years

old. This near half-century of independent existence has given us enormous experience to learn from. Everything about the '72 Constitution cannot, by definition, be sacrosanct. For example, the new provision that any martial law imposition will be considered a treasonable act and can be punished at any time in the future. This was not in the 1972 Constitution and has been added in 2011, we think very correctly, in light of the experiences of military takeovers in the intervening years. Would it be wise to do away with this very important and relevant change in the name of restoring the 1972 Constitution?

Another example is the nearly 50 articles including the preamble that have been made "un-amendable". Meaning it is beyond the power of all future parliaments to change these provisions.

This is in total contradiction to all democratic principles. If "People are the repository of all power", which we believe they are, then how can one parliament (the immediate past, the 9th Parliament adopted this) deny the "right" of all future voters and the parliaments that they will elect, to enact laws as they see fit?

The very idea of "un-amendable" articles implies "superiority" of the 9th Parliament over all future voters and parliaments. We are in fact "dictating" to the future generation, which we do not have any legal and moral right to do. This is absurd and a fundamental "deviation" from the 1972 Constitution.

So the "love" for the 1972 Constitution is a farce and being used to cut the only head left that could be above that of the "King".

The other argument that such provisions also exist in other democratic constitutions is just as lame as the one before. In which way, other than those of our MPs being elected (leaving aside the 153 "elected" without a vote being cast) is our parliament similar to the rest of the world's? Have their parliaments been crippled by mindless boycotts? Are the opposition as vilified and their leaders called derogatory names as have been done by both sides and both leaders in our parliament? In other parliaments the "whip" is confined to only money bills and not to every vote. Does Article 70, preventing "vote against political parties", exist in other parliaments? In which other parliament do we see only vilification of the other side in the name of "point of order" or "budget discussion"? Every other parliament can be said to have developed its own parliamentary practices. What practice can we claim to have developed except that of mutual abuse? Which parliament ever had more than 50 percent of its members "elected" without a single vote being cast?

The most significant fact is that our parliament does not permit voting outside party lines. So when the majority party will decide to impeach a judge it will be a partisan decision and it will always be carried out. And since we know how a party decides we can easily guess how and when to impeach a judge will be decided upon.

So the 16th Amendment will do nothing but bring the higher judiciary under political party control. This will be suicidal for an independent judiciary and for democracy. The only chance still left to save us from such an eventuality is the framing of a separate law which will make this amendment operational. That law must be prepared after a thorough and genuine discussion with the legal community to ensure fair and transparent investigation of allegations against judges which can be done by involving the higher judiciary as is the case in India, Canada, South Africa and other countries.

This elaborate piece is to impress upon the executive branch and the parliament that utmost care should be taken in framing the relevant law.

The wrtier is Editor and Publisher, The Daily Star.

TO THE EDITOR

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Food adulterators must be punished

Contamination and adulteration of foods are now very common in Bangladesh. To extend the shelf life of food, unscrupulous traders are adding toxic chemicals in our foods. Fruits and vegetables contain high nutritional value but contaminated and adulterated foods are endangering human health.

We want strict action from government against those who are poisoning us. Otherwise, days are not far when we will become a sick nation by losing our productivity.

Murad Hossain Karwan Bazar, Dhaka

Crossing rail tracks dangerously



Your front page photos published on September 17 show us that it is not only the government that is responsible for the rail track accidents, but also the people themselves are to blame. In the photos it is seen that pedestrians dangerously walk or run across the rail track even when a train is approaching and vehicles look desperate to drive through, ignoring the bar and warnings.

The recent accident near the Karwan Bazar kitchen market has claimed four lives and injured five people. After the accident, we came to know from different media reports that some members of law enforcement agencies and ruling party cadres are illegally involved in setting up markets on rail tracks. We blame the government for not being able to control this illegal practice. But at the same time, people and vehicles that desperately and carelessly cross the rail tracks should also be blamed equally for these types of accidents.

Maya Ahmed On e-mail

Scotland's referendum for independence

This is with reference to the report, "UK leaders pledge support to Scots" (Sept.17). Not many know that Scotland was an independent nation till the beginning of the 17th century but it became a part of the Great Britain (now known as the United Kingdom), including Northern Ireland. The moot question is will the kingdom stay united, as it has remained so for more than three centuries? A section of the UK media is biased against an independent Scotland. The UK is making a last-ditch effort to keep Scotland in its fold.

Scotland is rich in oil resources. More autonomy for Scotland is being dangled as a carrot to keep it in the UK fold. On the other hand, those favouring an independent Scotland say that the promise of more autonomy is vague, as nothing is specified. The subject of Scotland breaking away from the UK has naturally generated a keen interest in India. The erstwhile Great Britain is held responsible for the partition of India and now the UK itself maybe broken into two nations - an independent Scotland and the rest of the UK. Shall we call it natural justice -God's justice?

If Scotland eventually breaks away from the UK, the moot question is parking of Trident class nuclear submarines which are currently based in Scotland. Where will these submarines be parked? The other question is if Scotland becomes an independent nation, will it join the European Union and the NATO? Will Scotland continue to use the currency of the UK's pound sterling - it remains to be seen.

Deendayal M. Lulla On e-mail

Comments on news report, "Cold chain can save food supply chain," published on September 16, 2014

Tripura

People of this country want to earn money in an easy way. If the government had the will, it wouldn't be hard to solve this problem. But the government was indifferent to it and now this has gone out of control.

Hafizur Rahman

The government is surrounded by unscrupulous businessmen who control the business from its top to the root level.

Nasirullah Mridha Salim

It is imperative to take stern measures against the unscrupulous traders who are hell-bent on contaminating food.