

No presidential clemency for war crimes convicts

MOZAMMEL H. KHAN

CAPITAL punishment is a debated issue worldwide, and the arguments on both sides are equally strong. The proponents argue that the utter and deliberate denial of life and opportunity to others forfeits one's own claim to continued membership in the community. The preciousness of life in a community must be so highly honoured that those who do not honour the life of others make null and void their own right to membership in the community.

On the other hand, even in societies where the judiciary can rightfully boast of being the finest organ of the state and the members of the community possess unflinching trust in its deliberations, the opponents of capital punishment argue that the denial of right of life is irrevocable, and the errors of justice cannot be rectified. If an innocent person is hanged, the judge and the whole legal machinery involved are thereby made privy to the very crime they seek to punish. Their opposition to capital punishment in no way reflects any leniency towards the perpetrators of the crimes.

In addition to the above assertions, both in favour of and against capital punishment, one has to perceive the socio-political aspect of the society to make an absolute standing on the issue. In EU, only Latvia still maintains capital punishment for crimes during war. In most countries in the Western hemisphere, with US being the notable exception, capital punishment has been abolished.

In the recent Supreme Court judgment on Delawar Hossain Sayeede, the death sentence was commuted to imprisonment until

death. In addition to millions, the verdict left the law minister and the attorney general unhappy. It did not satisfy the defence or the convict's family either. Law Minister Anisul Huq, although utterly unhappy, said he was respectful of all apex court verdicts. Asked whether Sayeede could be released if a political changeover took place, he said that if people remained vigilant about the war criminals trial, no government would be able to set him free.

The defence, however, view the judgment differently. Senior defence lawyer Khandaker Mahbub Hossain claimed that justice had not been done to Sayeede. In case of life imprisonment, a convict has to serve 20 years in jail, but according to the SC judgment Sayeede will have to serve in jail until death, said Khandaker Mahbub. "We are aggrieved," he said, adding that the defence would seek a review of the judgment after receiving its full text.

War crimes trial campaigners were angry and frustrated after the Supreme Court commuted the death sentence of Sayeede. They said the verdict had failed to live up to people's expectations. War crimes researcher M.A. Hasan said: "We have to show respect to the judgment of the Supreme Court. But people have their own perception about issues and accordingly they expected a certain verdict," he said, adding that the verdict would create anger and sadness. In fact, this frustration has been echoed in unison by the trial campaigners from Cape Town to Canada. They are even angry to the point of going overboard with the hypothesis of collusion between the executive and judicial branches of the state, without the realising that

although they have every right to accuse the executive branch, for right or wrong, they must not cast aspersions on the sanctity of the apex division of our judiciary. We must not forget that this is the same appellate division that overturned the verdict of life imprisonment awarded by the special tribunal to Kader Mollah in favour of death penalty.

In fact, in societies run by rule of law, imprisonment until death would be an extreme punishment awarded to any criminal. However, one has to take into cognizance the fact that it is only possible in Bangladesh that a convicted cold-blooded murderer of seven students at Dhaka University campus was freed from life imprisonment by the first military ruler of Bangladesh when he was running for president to obtain his (convict's) father's support in the election. Over the years, convicted killers got presidential clemency and their death sentences were commuted to acquittal, not even to life imprisonment. Does this type of socio-political scenario exist in any country? And that's what is worrying the people about the Sayeede verdict.

In fact, no amount of 'vigilance by the people,' as indicated by the law minister, would be able to prevent the president of the Republic from exercising his constitutional power under Article 49 of the constitution that stipulates: "The President shall have power to grant pardons, reprieves and respite and to remit, suspend or commute any sentence passed by any court, tribunal or other authority." In pursuant to article 48(3) where, "In the exercise of all his functions, save only that of appointing the Prime Minister pursuant to Clause (3) of Article 56

and the Chief Justice pursuant to Clause (1) of Article 95, the President shall act in accordance with the advice of the Prime Minister." The presidential clemency ultimately rests with the executive authority of the government of the day. And that's what is worrying and frustrating the war crimes trials campaigners. To close that avenue, it would be only incumbent on the current government to bring forward a simple but categorical amendment to Article 49 by providing an exceptional clause that could add, "excepting the sentence passed by the International Crimes Tribunal as amended or approved by the Appellate Division of the Supreme Court."

Expressing her disappointment over the Supreme Court verdict against Sayeede, the prime minister said none had expected such a judgment. "People might have been happy if Sayeede's death sentence was upheld. The judgment was not expected as this person had committed so many crimes," she said, adding that as the judiciary was independent, she had nothing more to say about the judgment. As the PM who exhibited enormous courage and determination to bring the perpetrators of crimes committed against humanity in 1971 to book, she can prove if she really meant what she said in the Parliament by making the above mentioned amendment. This will only help to reassure the millions that she is still steadfast in her commitment and determination to complete the much-desired process, which she started after a lapse of four decades, to an honourable end.

The writer is the Convenor of the Canadian Committee for Human Rights and Democracy in Bangladesh.

16th Amendment of the constitution: Another view

ANISUR RAHMAN

To understand the recently passed 16th Amendment we need to ask a simple question: To whom is judiciary to be accountable? Do we not want judiciary accountable to the people as other institutions are? We usually talk about independence of judges but we seldom talk about their accountability. At times it's due to our limited understanding of the judicial course of actions that prevents us from questioning exactly how accountable a judge should be.

A court, including the Supreme Court, has been considered by many of us as a symbol of the sovereign (Justice) as it was during the colonial time. Therefore, a practice of bowing while entering a court, which was rather a colonial practice to show loyalty to the sovereign -- the King or the Queen -- has remained. We, perhaps, have not noticed that a major change has taken place by this time. We have established an independent state and have adopted a Constitution for ourselves. We, the people of Bangladesh, are no longer subject; rather we have become sovereign.

In a democracy, judiciary is therefore an organisation created by the members of that political society to assist, as Hart (1961) suggests, in implementing the primary rules (constitutional safeguards) adopted by that society. In that sense a court can be considered as an umpire between the state (government) and the citizen. The role of a court is to look at whether the state (government) is crossing/misusing its power given by the people. A simple example may make it easier to understand. Let us suppose part one (preamble), part two (basic principles) and part three (fundamental rights) of our Constitution as primary rules which are inviolable. The rest of the Constitution can be considered secondary rules (to ensure better implementation of the primary rules). The role of the court, which is created by secondary rule, is therefore to ensure that the primary rules are properly implemented or maintained (to ensure observance of the primary rules, to interpret law and so on).

In a democracy judiciary is, therefore, like other institutions of the state, engaging with a special task. It is between citizen and state. A question may pertinently arise whether the judiciary is accountable to anyone. One may consider the judiciary like any other organs of the state. Since all organs of the state are accountable to the people, i.e., the sovereign so is the judiciary.

I had the privilege of going through the report of the Parliamentary Standing Committee regarding the Bill for amendment, which upholds what I have discussed above.

Therefore, removal of a judge for misbehaviour (I think the proper word should be misconduct) and incapacity on the recommendation of the Parliament will be more democratic. A misconception has arisen that the amendment enables the parliament to remove a judge. Actually, Parliament will recommend to the president; actual authority to remove a judge remains in the hands of the president as it was before. Only the process of investigation and recommendation has been placed in the hands of the Parliament.

In the earlier system, investigation was started upon the order of the president and was conducted by a committee called "Supreme Judicial Council." This council consisted of the Chief Justice and two other senior judges of the Supreme Court. One may recall that with many other changes to the Constitution this idea was introduced by Ziaur Rahman, who was Chief Martial Law Administrator then, by the Proclamations (Amendment) Order 1977. He did so perhaps to establish authority of the president as there was no parliament then; and we all know that right after he became the president.

It is well known that in the present form of government the president can exercise his authority freely only on two occasions: in appointing the prime minister and the chief justice of the Supreme Court. In all other cases he has to act according to the 'advice' of the prime minister. Consequently, the formation of the Supreme Judicial Council actually was determined under authority of the prime minister, the chief executive. Here lies the paradox. Therefore, placing it in the parliament will be more democratic than it was before. It is also close to the idea of separating judiciary from executive.

We may recall that the Constitution has defined the three organs of the state as well as determined their powers. However, parliament enjoys more authority than its counterparts since it represents the people. Parliament is basically to make other institutions accountable to the people. This is the beauty of constitutional democracy. The present amendment to the constitution is nothing but to go back to the un-amended constitution, which was an excellent treatise of democracy.

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Cooling water requirement for Rooppur nuclear power plant

K.M. MAHBUBUR RAHMAN

A nuclear power plant is an unavoidable option for Bangladesh to meet the ever increasing demand for electricity and to diminish the reliance on waning reserve of natural gas for power generation. The dream of a nuclear power plant with a capacity of only 70 MW on the roaring river Padma at Rooppur started in 1961. Now it seems to be coming true with an increased capacity of 2,000 MW, but on the dying river Padma.

Almost all the nuclear power plants in the world are built next to big water bodies like lakes and seas to ensure availability of the immensely vast amounts of cooling water needed. Plants on river banks number only 14%, and track records of a few are also not satisfactory. The effect of Rooppur Nuclear Power Plant (RNPP) on the GK project, through which water is withdrawn from Padma for surface irrigation, has also to be investigated. Cooling water is the life of a nuclear plant, and the scarcity of water may cause a major disaster.

Cooling circuit of Pressurised Water Reactor PWR

The reactor that will be used in Rooppur plant has three cooling circuits -- primary, secondary, and tertiary.

A nuclear power plant is about 33% efficient. That means that out of three parts of thermal output of the reactor one part will go to the grid as electricity and two parts will go into the environment as waste heat.

Thus, for a 1,000 MWe VVER nuclear power plant, 2,000 MW of thermal energy from the reactor will be dissipated into the atmosphere. With cooling towers of range 30°F, the cooling water requirement in re-circulatory condenser water system will be approximately 455,000 gpm.

Once the condenser water system is topped up, fresh water has to be continuously added to the system to make up the losses due to evaporation, drift and blow down. Makeup water for 2,000 MWe will be 50,650 gpm, or 115 cusec approx.

The concentration of dissolved salts in the circulating condenser water should be maintained within allowable limit by blow down and refill by fresh water. Otherwise, the formation of scale inside the condenser tubes will resist heat transfer and reduce

plant output. This will enforce plant shutdown to clean the scales.

Water for service equipment

There are many service equipments that need to be continuously cooled. The service water system will draw cold water from the river and circulate through service equipments and finally deliver the warm water back to the river. For 2,000 MWe, the service cooling water flow rate will be around 104,000 gpm. 230 cusec.

Water for emergency cooling of reactor When the plant is manually stopped for an emergency or shut down for maintenance work, the radioactive decay will continue generation of heat, which has to be removed by the emergency cooling system. The decay heat is about 7% of thermal output of the reactor. The estimated flow rate of the condenser water circuit for decay heat removal is estimated to be 63,000 gpm per reactor and the total makeup water for the re-circulatory systems is 5,700 gpm. 12.7 cusec.

Failure of the emergency cooling system for want of water or power may cause reactor meltdown, leading to catastrophes similar to Chernobyl and Fukushima nuclear disasters. Apart from the flowing water of river Padma, RNPP has to store enough water for emergency purpose in reservoir tanks at the site.

Emergency service water system

The emergency service water system (ESWS) is an independent network to meet the makeup water for reactor cooling system and the cooling water for the associated emergency service equipment. The service equipment related to generation of electricity will be excluded. The cooling water requirement will be around 230 cusec. On the other hand, decay heat is produced in spent fuel rods (SFR). Water is required for continuous cooling of these spent nuclear fuels.

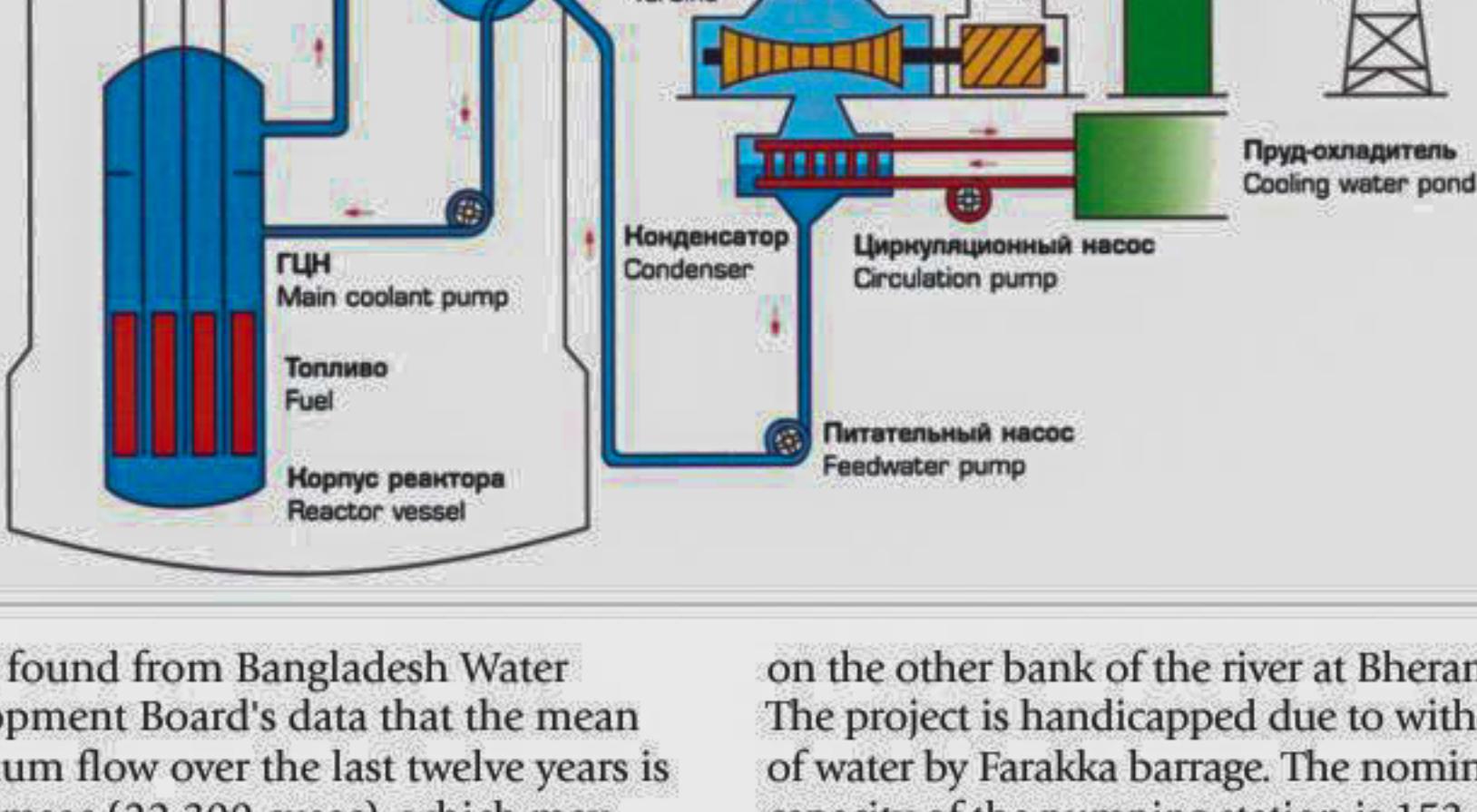
Availability of water in river Padma The Padma is no more a turbulent river as it used to be. In the dry season, the river is full of chars. The main course is split into two streams at places, with char in between. Both the flow and the level of water go down drastically.

Changing its course and eroding the banks is the nature of the Padma. RNPP will require intake canals leading to a permanent intake structure near the plant for pumping of water. The dredging in intake canals may warrant shutdown of the plant.

Experience of GK irrigation project The GK (Ganga-Kabotakh) project is situated

Реактор ВВЭР – отпуск электроэнергии потребителю

Reactor VVER – Electricity to the consumer



It is found from Bangladesh Water Development Board's data that the mean minimum flow over the last twelve years is 632 cumsec (22,300 cusec), which may allow withdrawal of around 345 cusec of makeup water needed for operation of the plant. But an abrupt reduction of flow to only 3,100 cusec, as in May 2011, will pose a threat to safety of the plant. There is no reason to believe that such an abnormal reduction of flow will not occur in future, and if it does then RNPP will be compelled to shut down because of scarcity of water.

Water management will be the major challenge, especially in dry season. The intake structure for pumping of water has to be carefully designed and built to be workable at high water level in monsoon as well as much lower water level in dry season.

Quality of river water

During monsoon the river Padma carries huge amount of silt and sand and the water is muddy with suspended solids. This alluvial dirty water is not suitable for direct introduction to condenser cooling water system because the suspended solids will settle in the condenser tubes and impede heat transfer. The remedy will require large decantation ponds to allow the suspended solids to settle down and give clear water for the cooling system.

Experience of GK irrigation project The GK (Ganga-Kabotakh) project is situated

on the other bank of the river at Bheramara. The project is handicapped due to withdrawal of water by Farakka barrage. The nominal capacity of the pumping station is 153 cumsec (5,400 cusec) but only 70% of designed capacity can be achieved. The problems faced by the project are given below:

- 1) The project totally failed to supply water during 1992-1996 for non-availability of water.
- 2) The pump-house is shut down in dry season (mid-Nov to mid-March).
- 3) The pumps cannot operate if water level in intake station is less than 4.5 m.
- 4) 186,000 cubic meters of silt needs to be dredged annually from the 850 m intake channel.

The planners of RNPP can consider the above as cautionary signals to take appropriate measures.

Conclusion

A nuclear power plant is a thirsty creature with insatiable need for cooling water. The river Padma has to be able to satisfy the thirst under any circumstances. How a project can be made sustainable when it depends on river water whose flow is regulated by a barrage in another country is the question.

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Note: The interested reader may contact the writer for supporting calculations.

CROSSWORD by Thomas Joseph

DOWN

- 1 Singer Lou
- 6 Jeans material
- 11 Knock for --
- 12 Bitter humor
- 13 Act of betrayal
- 15 TV's Curry
- 16 Gorilla, for one
- 17 Stomach
- 18 Overnight flights
- 20 Fuming feeling
- 21 Petite
- 22 Tavern order
- 23 Run, as color
- 26 Impudent
- 27 Camera part
- 28 Toothpaste type
- 29 Play division
- 30 Wallet fill
- 34 Shop tool
- 35 Low digit
- 36 Sturgeon eggs
- 37 Racing feat
- 40 Bert's buddy
- 41 Domesticates
- 42 Ocean trenches
- 43 Rude look

ACROSS

- 1 Air traffic aid
- 2 Unaccompanied
- 3 Battle injury
- 4 High hit
- 5 Spread apart
- 6 Chops into cubes
- 7 Miscalculate
- 8 Playful knuckle-rubs
- 9 Covers, in a way
- 10 Whodunit
- 14 Fencing sword
- 19 Flock females
- 22 Ump's call
- 23 Criticized strongly
- 24 "Smiley's People" author
- 25 Become twisted
- 26 Chooses
- 28 Departed
- 30 Parcels out
- 31 Bakery output
- 32 Crew member
- 33 Good judgment
- 34 Card spot
- 39 Scoundrel

Yesterday's answer

S	P	A	R	S		B	I	L	L
T	O	N	W			D	O	I	O
A	L	I	B			A	M	U	P
R	A	M	N			I	D		I
T	R	E	N	D		R	E		D
S	C	A	L	E		E	N		T
P	A	G	E	U		S	U		E
I	R	I	S	H		D	U		T
C	A	T	Y	E		O	L		R
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