

"Those who don't want to talk about things like impeachment bill are the ones killing democracy"

Dr. Kamal Hossain, noted politician and internationally acclaimed jurist, is one of the principal authors of the Constitution of Bangladesh. He served as the minister for law, foreign affairs, and petroleum and mineral resources in the government of Bangabandhu Sheikh Mujibur Rahman between 1972 and 1975. He was a member of the Awami League until the early 1990s, when he formed his own political party, Gano Forum (People's Forum). He talked recently to Shakhawat Liton and Rashidul Hasan of The Daily Star on different issues.

TDS: How do you evaluate the latest constitutional amendment that empowered parliament to impeach Supreme Court judges?

KH: The latest amendment, the 16th Amendment to the Constitution, was suddenly made to empower parliament to impeach Supreme Court (SC) judges without having passed any law about the appointment of apex court judges. The government suddenly said they were going to pass a law on removal of a SC judge at a time when parliament's own position was not beyond political controversy.

Unopposed elections of 153 MPs in the January 5 polls may be technically correct as the High Court in a judgement has said so. But everyone is saying that something that is technically correct may not also be politically acceptable.

Why is it not politically acceptable? Because the people of 153 constituencies are told that we have an elected representative. But I cannot feel that I have an elected representative. I have not voted for anybody. No one came to me and asked for my vote saying who he is and what he wants to do. So how can I say that I am represented in parliament? And I honestly say that, given the nine months that have passed, no representative has at all tried to tell us in any form what he is, who he is, and what he is doing?

Parliament is, by definition of the constitution and by ordinary good sense, a representative body because if you have parliament of 153 unopposed MPs then what will happen if the parliament is formed with all 300 MPs unopposed?

Technically it might be correct. But my point is -- is parliament's composition something that is a technical matter or there also has to be reflection of the basic principle of democracy?

Democracy is government of the people by the people and for the people, not of the technically unopposed persons who have been declared elected by an election commission which, for that reason, has also lost respect of the people.

TDS: What could have the EC done?

KH: They could have said that we will not declare the election results because people perceive this not to be a representative parliament. Their mandate is not just to ensure technical application of the laws but their obligation is to see that the constitutional assurances to the people are respected, not technically but substantially. There is a huge difference between technical compliance and substantial compliance. Any lawyer will tell you this. So we have seen technical compliance, but not substantial compliance.

The Election Commission has the mandate under the constitution to see the substantial compliance in the requirement of a free and fair election.

This is why formation of a strong election commission is very important. The constitution directs to enact a law to pick people with integrity and efficiency to constitute the election commission. But the law is yet to be made.

TDS: What are your comments on the government's claim that it has been working to restore the constitution of 1972?

KH: The government is saying after 42 years have passed that it wants to go back to the 1972 Constitution. But things have happened in the meantime in the country which you must know. What has been the effect of Article 70? When we passed Article 70 in 1972, we had questioned even then about its impact. But it was told that this would not be used in such a way that MPs would feel powerless. We, some of us, addressed this question.

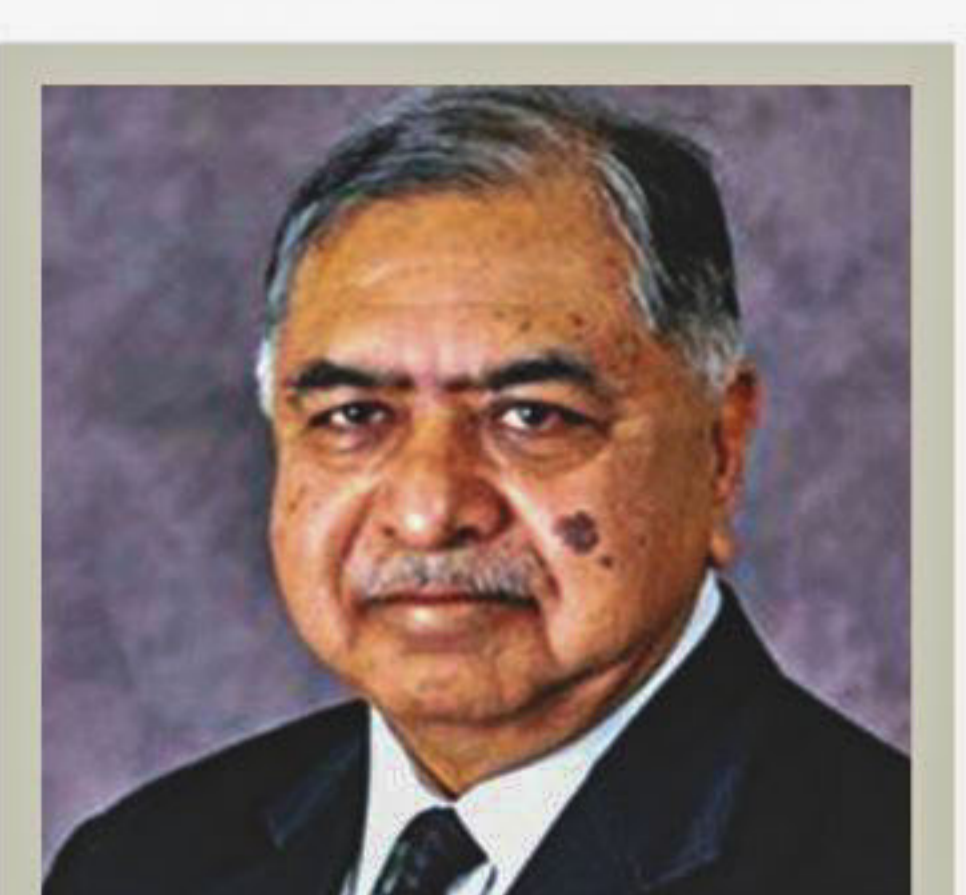
The question is what does 42 years of experience tell us? Don't we need to ask that question? It would have been wonderful if it did not have the effect of making MPs powerless and making them totally subject to full and absolute control of the party in the name of party discipline. I am for party discipline. But in a matter like this you have to be judges of the misconduct or alleged misconduct of the judges. Can anyone do justice, impartial justice, by party diktat?

This is impossible, conceptually impossible even for those angels who are the head of that party; conceptually this is not possible by diktat. Because judgment means that as the judge I have to exercise my own conscience and say I find this charge proved or not proved. So these are matters of basic principles.

India has the same provision. But there has been a lot of discussion. They passed a law in 1968 on Judges' Enquiry Act where they set up a committee of three judges -- one of them a judge of the Supreme Court of India, one chief justice of one of the State courts, and an eminent lawyer. The three members hold a kind of enquiry into any allegation of misconduct and only if that committee finds proof, then the matter goes to the parliament. It is not left to the discussion of parliament.

Here we are told that the government will pass that law. I have said if you pass the law what was the hurry of passing the amendment bill?

The 15th Amendment of 2011 had another surprise for us. Despite the revival of Article 12, we saw that Islam was given the status of state religion violating the spirit and principle of 1972 Constitution for which hundreds of peo-



We have a voice, we have the capacity to reach out to each other, so let us stand together, not be blinded by party loyalty -- big or small, our children's future is involved, we owe our duty to our children, we owe our duty to our country, we are not going to be slaves of any party. This is not democracy.

ple had sacrificed their lives. It was clearly mentioned in Article 12 that state shall not give special status to any religion. But what did we see? Islam was given the status of state religion.

This is a principle which was not there even in the Islamic Republic of Pakistan. This was brought in by General Ziaul Huq in 1977 in Pakistan and which was brought in here by Gen Ershad when he was sinking.

So this was not an issue about Islam versus secular state. This is a matter of this Islam being used in the crudest possible way by those people who were identified as being against people, both in Pakistan and here.

I still think that there are many things in the constitution which are still there which have not been touched. Some may not be touched but lots of others are being disregarded. It's not that the constitutional provisions have been changed but they are not respected. For example, the constitution has said that you should make laws to provide for appointment of judges to the SC and members of the election commission. The laws have not been enacted.

TDS: Do you see any possibility of dialogue on national issues?

KH: Again this is unnecessarily taking us into an area of controversy. Because again, if our memories don't totally fail us, do you not remember that before the election the government and its leaders had said that we are holding this election in this way because there is a compulsion that if we don't hold the election within 90 days there would be constitutional discontinuity. So immediately after this election we will start a process through which we can arrive at a basis for holding an election which can have general participation. They had said this. I would really suggest those who have any questions on that just go to the internet and see what they said.

From the highest level of the government to the lowest level -- everyone said this election is just for a temporary purpose, for continuity of constitution.

Today I am absolutely amazed to see that now they are saying -- no, we will have no dialogue and the other side is talking about holding dialogue.

I am again amazed not only in the context of January 5th election but about the constitution amendment for impeachment [of judges.] When this issue [constitution amendment] was announced, senior lawyers like M Amrul Islam, Rokon Uddin Mahmud, former attorney general Mahmudul Islam and I myself unanimously said that at least let us have a dialogue on the constitutional amendment regarding judges' impeachment.

We were also very much shocked when we found that the so called 15th Amendment to the Constitution suddenly appeared in 2011 scrapping the election time non-partisan caretaker government (CTG) system. All of our views for retaining the CTG system were disregarded. Even the recommendation of the 15-member parliamentary body for the constitutional amendment for retaining the CTG system was ignored.

TDS: The government had cited a court verdict in defence of its abolition of the CTG

KH: Don't blame the court. The court has not said that, given the prevailing situation, you should not try to hold an election in which everyone can't participate. The court had clearly said that two more parliamentary elections may be held under the CTG.

TDS: How dialogue is possible if the government does not admit existence of any crisis in the country?

The government wants us to keep our eyes totally closed, shut our ears, and to make ourselves lose any capacity to learn from our own experience or that of other countries. This is not

democracy, this is totally irresponsible exercise of power, and this is violation of basic principles of democracy. This is very very sad. There are lots of sad news in the 42 years of our independence. But I never thought I would see this day where the constitution would be cited, but in a way not respected totally. It is being said -- 1972 Constitution and people are the source of power, without any real respect for the constitution.

I am also very much disturbed by the way the national broadcast policy was formulated. Because again it suddenly came out of the blue. The government claims to be an elected one which I say is not a claim which is not being questioned. Do the people think they have their representatives in parliament? I don't think I have a representative in parliament.

Does the government think they represent this parliament? Is this parliament conducting itself like an elected parliament, passing the law that has been passed -- the impeachment bill in spite of what all of us have said? Let us discuss the issue in the parliamentary committee. I heard something like -- we will not talk with the killers. But those who want to talk in the parliamentary committee are not killers, in no sense. Those who do not want to talk about things like impeachment bill are the ones who are killing democracy. They may not be killing people but they are killing democracy and killing the independence of judiciary. We want to talk to them. But they are arrogantly saying that they will not talk with us.

Today we have a feeling that we don't know whose rights are important. Is it the rights of the people or the absolute power of the government? We see no limits to its power which completely contradicts democracy and the constitution? The very definition of the constitution is that it sets limits on power, power of parliament, power of executive, power of judiciary, and this is separation of power.

TDS: What are the ways, in your views, to get rid of the present situation?

KH: People's unity is very important to get rid of the present situation. If we look back, we see that people's unity has always been the source of people protecting their rights when rights are denied to people. We have a voice, we have the capacity to reach out to each other, so let us stand together, not be blinded by party loyalty -- big or small, our children's future is involved, we owe our duty to our children, we owe our duty to our society, we owe our duty to country, we are not going to be slaves of any party. This is not democracy.

TDS: Thank you



QUOTABLE Quote

Get your facts first, then you can distort them as you please.

Mark Twain

The case for mitigation



SALEEMUL HUQ

POLITICS OF CLIMATE CHANGE

In my previous column I had argued that while adaptation to the adverse impacts of climate change should be the priority of Bangladesh when it comes to shorter term action domestically, mitigation mattered much more in the longer term at the global level as a 4 degree Centigrade global temperature rise (which is where we are headed) will be beyond our ability to adapt. I will elaborate below further on what the main elements of such a mitigation focused strategy should be at both international as well as domestic levels.

International level: At the global level the negotiations under the United Nations Framework Convention on Climate Change (UNFCCC) are entering an extremely critical period over the next year leading up to the 21st Conference of Parties (COP21) which is going to be held in December 2015 in Paris, France where it is hoped that a new protocol will be agreed to replace the Kyoto Protocol and take the world on a safe trajectory from heading to 4 degrees (where we are now headed) to going down to well below 2 degrees.

The first step in that negotiation process will happen in Lima, Peru next month at COP20 where it is expected that countries will make pledges of how much mitigation they will be willing to do and also how much money they are willing to contribute to the Green Climate Fund (GCF) which will be the vehicle for funding both mitigation as well as adaptation in developing countries. Bangladesh has always had a very strong technical as well as political negotiating team and has played an important role as part of the Least Developed Countries (LDC) Group to which it belongs. The LDC Group has, over the years played an important role on the issue of adaptation but also now needs to step up its negotiating game as we enter the final round towards Paris.

The recent joint declaration by President Obama of the United States of America and President Xi of China at their summit in Beijing of both countries taking significant actions to reduce their respective emissions of greenhouse gases (GHGs) over time is an extremely powerful political move as it ties together the two biggest polluters towards collective mitigation actions. This negates the failure of the last attempt to reach a global agreement a few years ago at COP15 in Copenhagen, Denmark where these two polluting countries failed to reach agreement and them blamed each other for the failure. However, the pledges

that the US and China made about the scale of mitigation they would undertake still falls far short of what is needed to bring temperatures below 2 degrees. So the trick will be to use the momentum generated by their pledges to raise the level of ambition of all countries to mitigate even more in order to bend the curve of emissions from 4 to 2 degrees by the end of the century.

Domestic Actions: At the domestic level, while it is true that Bangladesh being highly vulnerable to the adverse impacts of climate change, should focus mainly on adaptation. It is also true that our emissions of GHGs are not very high and hence taking mitigation actions would not make much difference globally. Nevertheless, I would argue that even at the domestic level it makes sense for us to consider mitigation (as well as adaptation). The first reason is that a ton of GHG emitted into the atmosphere will have the same effect in increasing global warming whether it is emitted from America, China or Bangladesh. Hence, if we can avoid emitting even one ton of GHG we should do so.

The second reason is that it actually makes sense for Bangladesh to develop a climate resilient and low Carbon development pathway which will make the country much more resilient in the longer term. Finally, it is actually possible to deliver clean, non-polluting energy to the masses of people in the

country through innovations in both technology and public private partnerships. Indeed the recent passing of the three million households mark for Solar Home Systems (SHS) in Bangladesh shows that it is happening already and can be scaled up considerably. Bangladesh can invest in clean energy such as solar, wind and hydro and meet its future energy needs while reducing its dependence on polluting fossil fuels such as coal, petroleum and natural gas. Doing so will not only be better for the environment (both our own and the planet's) but will also save a lot of money required to import fossil fuels.

Conclusion: To conclude, by taking a low carbon clean development pathway towards the phasing out of fossil fuels and becoming Carbon Neutral (as countries such as Costa Rica, Maldives, Ethiopia and others have pledged to do), Bangladesh will retain the moral high ground when advocating that other countries should do the same. We can then say that even though we are a highly vulnerable country and our emissions of GHGs are low, we are able and willing to take mitigation actions not because we are being forced to do so, but because it is the right thing to do. And if we can do it, every country can do it.

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CROSSWORD

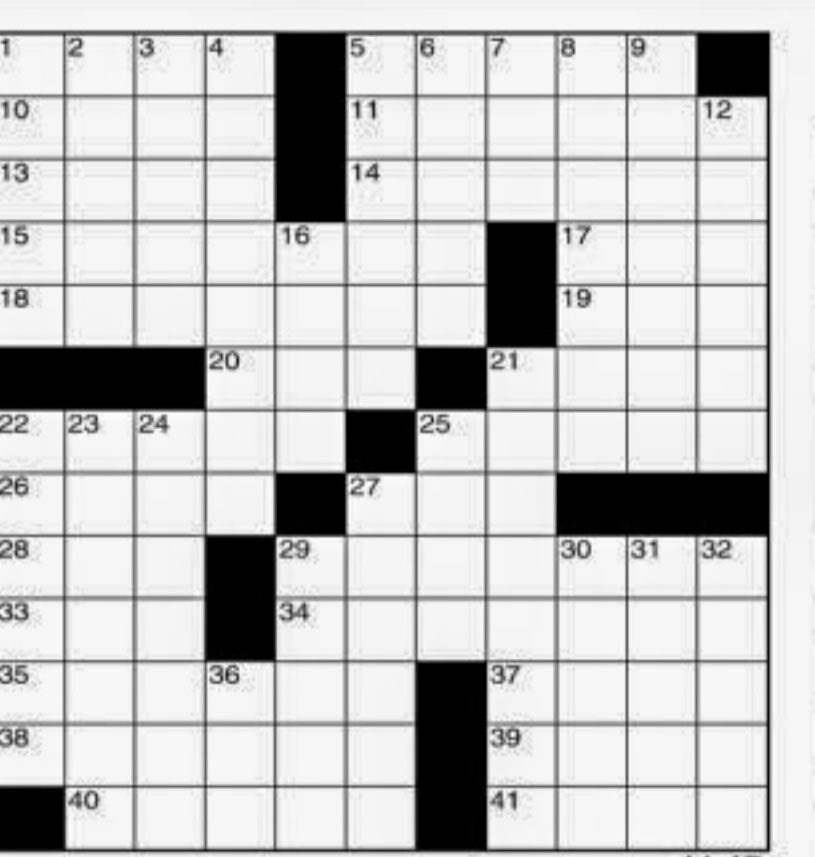
BY THOMAS JOSEPH

ACROSS

- 1 "Pygmalion" playwright
- 5 Game with rooks and pawns
- 10 Spending money
- 11 Coffee bar orders
- 13 Not fooled by
- 14 Pinball palace
- 15 Develops
- 17 Wee bit
- 18 Female in a pride
- 19 Hagen of acting
- 20 Have debts
- 21 Small songbird
- 22 Loses speed
- 25 Storage sites
- 26 Great weights
- 27 Early auto
- 28 Cobbler's tool
- 29 Motorist
- 33 "My word!"
- 34 Love story
- 35 Made blank
- 37 Pro - (proportionate)
- 38 Dream up
- 39 At any time
- 40 Cars' scars
- 41 Filming sites

DOWN

- 1 Unhappy look
- 2 Vietnam's capital
- 3 Texas player
- 4 "It's anybody's guess"
- 5 Sentence piece
- 6 Plucked instruments
- 7 List-ending abbr.
- 8 Height
- 9 Drugged
- 12 Some cars
- 16 Uses a needle
- 21 "So what?"
- 22 Put on, as a play
- 23 Brought down
- 24 Off base, in a way
- 25 Appear
- 27 Aegean island
- 29 Wave peak
- 30 Rascal
- 31 Quarter doubled
- 32 Approaches
- 36 Immoral act



Yesterday's answer

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

CRYPTOQUOTE

TS TE LBSC ZQG HACK LBAV ZQG KQV'S BCMA SQ SBSC KASAHJTVAE LBSC ZQG LTPP DA LBAV ZQG NCV'S BAPO TS.

--QENCH LTPKA

Yesterday's CRYPTOQUOTE:
TO BE OVERCOME BY THE FRAGRANCE OF FLOWERS IS A DELECTABLE FORM OF DEFEAT.

--BEVERLEY NICHOLS

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.