

HE CRIED AND MADE PEOPLE CRY



She is in no way related to the man. Yet, Mohammad Sher Ali, a constable of the Detective Branch of Chittagong Metropolitan Police, cried for Umme Habiba, victim in a road accident, as he carried her away. The girl was trapped under a bus that flipped over on Cox's Bazar-Chittagong highway at Panirchhara in Ramu. She was rescued after three hours of efforts by the army, police and locals. The picture of Sher Ali overcome with emotion, running with the girl has sparked an outpouring of admiration and love for him on the social media. The girl is out of danger now.

PHOTO: COLLECTED

Does president exercise powers

FROM PAGE 1

Saturday, he also said the present article 116 of the constitution that provides the president with the powers is "un-constitutional".

He hoped the parliament would scrap the provision and restore the original article of the constitution in this regard.

The chief justice's remarks merit serious considerations. Those who have taken oaths under the constitution to preserve, protect and defend the constitution and are also involved with the exercise of the powers to control the lower judiciary would do well to pause and ponder the chief justice's remarks.

At present, President Abdul Hamid, Prime Minister Sheikh Hasina, Chief Justice SK Sinha, Law Justice and Parliamentary Affairs Minister Anisul Huq, and judges of the Supreme are among others who exercise such powers.

Article 116 of the constitution states, "The control (including the power of posting, promotion and grant of leave) and discipline of persons employed in the judicial service and magistrates exercising judicial functions shall vest in the President and shall be exercised by him in consultation with the Supreme Court."

A simple reading of the above article suggests that the president exercises the powers only in consultation with the Supreme Court. And this may mean the prime minister, head of the government, has nothing to do with this as there is no reference to the premier in the above article.

But the reality is different. Article 116 cannot be read in isolation from the article 48 (3) that clearly says: "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."

Even in these two cases, the presi-

dent's discretionary power is very nominal because he has no option but to appoint the leader of the majority party in parliament as the prime minister.

And in case of the appointment of chief justice, the president is expected to appoint the senior most judge of the Appellate Division.

The president therefore needs advice from the prime minister under article 48 (3) to exercise the powers of article 116.

Independence of judiciary is one of the basic structures of the constitution. This has been resolved in a number of judgements delivered by the SC in past and there is no dispute over it.

The original article 116 of 1972 constitution had empowered the SC to have full control over the lower tier of judiciary.

It was aimed at establishing an independent judiciary by keeping it free from interference by the government. And it was in line with the fundamental principle of the state policy in article 22 which speaks for separation of judiciary from the executive branch of the State.

But the fourth amendment in 1975 brought drastic changes to the constitutional provisions flipping the process in the opposite direction, by allowing the executive branch to control the lower tier of the judiciary.

The Supreme Court was denied the power to have control over the lower courts' judges including promotion, postings and disciplinary actions.

Instead, the president, who was all-powerful head of the government after the country adopted the presidential form of government through the fourth amendment, was given all these powers.

The martial law regime led by Gen Ziaur Rahman brought some changes to the constitution. His regime amended article 116 introducing a provision which said in exercise of his powers to control and discipline of persons employed in the subordinate courts, the president will consult with the SC.

These things remained unchanged even after restoration of parliamentary democracy in 1991.

Successive political governments since 1991 have done nothing to ensure separation of judiciary from the executive branch of the government.

Meanwhile, the Supreme Court delivered a landmark judgment in 1999 putting down a set of guidelines for the separation of judiciary from the executive.

Both AL and BNP-led governments in the past prayed for extension around two dozen times to implement a Supreme Court verdict to separate the judiciary form executive. This allowed admin officials to hold trials by exercising the judicial powers.

During the past caretaker government, the lower judiciary was officially separated from the executive branch on November 1, 2007 following the SC's directives in the case known as "Masdar Hossain's Case".

Laws were amended and new rules were framed for that purpose as well. However, the constitution was not amended to ensure effective separation.

The SC on several occasions urged the government to restore the original article 116 for effective separation of the judiciary from the executive.

But when the constitution was amended in 2011, nothing much was done to ensure effective separation of the judiciary.

The AL-led government preferred to retain control over the lower judiciary by incorporating afresh in the constitution the provision introduced by the martial law regime-led by Gen Zia.

This provision, which was made through martial law proclamation and validated in the Fifth Amendment, ceased to effect as the Supreme Court scrapped the constitution's Fifth Amendment in 2010.

Nothing changed in the end. The president retains the authority. In the presidential form of government, the president could have exercised the

powers on his own. After restoration of the parliamentary form of government, he needs advice of the prime minister to exercise the authority to control posting, promotion and discipline of lower court judges. He also consults with the Supreme Court.

What does the present situation mean? Do the people, who have taken the oath to preserve, protect and defend the constitution, now exercise the powers of article 116 against the basic spirit of the constitution? If so, isn't the amendment to the article 116 of the constitution flawed?

It seems there is another loophole. The current constitutional provisions provide the SC with conflicting authority to have control over the lower judiciary.

Article 109 of the constitution says the High Court, a division of the SC, will have superintendence and control over all courts and tribunals subordinate to it. But the SC is consulted by the president when the head of the state exercises his powers of article 116. This gave birth to, according to the chief justice, the so called "dual rule". This system, as the CJ said on October 30, is hampering the judicial work and increasing litigants' sufferings.

The government policymakers, without delay, should give a careful thought to the matter to remove the anomalies in article 116 as expected by the chief justice to remedy the present situation.

It has been settled globally a few hundred years ago that a country can not have a healthy democracy without ensuring effective independence of the judiciary. If we want a vibrant democracy, we have no alternative to a fully independent judiciary. An independent judiciary plays a significant role in fighting corruption, ensuring good governance and upholding human rights. The sooner the government policymakers realise this, the better it is for the nation.

Secret operation of a young surgeon

FROM PAGE 1

along with local collaborators had orchestrated a plan to destroy the future of the soon-to-be born country by wiping out the Bangalee intelligentsia.

Azhar and Humayun are thought to be the first victims of that evil design.

Eminent war crimes researcher Shahriar Kabir said soon after its formation, Al-Badr Bahini killed many intellectuals and professionals in random attacks.

In August 1971, leaders of Jamaat-e-Islami sitting with Maj Gen Rao Farman Ali, military adviser to the governor of East Pakistan, devised the plan to kill Bangalee intellectuals, said Shahriar.

"As per the plan, killings of the intellectuals following a certain list designed in mid-November, and according to our research, Dr Azharul and Dr Humayun were the first victims of the planned intellectual killings," he told The Daily Star on December 9.

The two were abducted for secretly treating freedom fighters, said Shahriar, acting president of Ekattorer Ghatok Dalal Nirmul Committee, which has been campaigning for war crimes trial since 1992.

Al-Badr, mostly comprising the members of Jamaat's student wing Islami Chhatra Sangha, intensified its atrocities in December. It systematically rounded up teachers, writers, doctors, lawyers, journalists and other professionals from their houses in Dhaka, tortured and killed them en masse and dumped the bodies at different killing grounds.

Ahead of the Martyred Intellectuals' Day tomorrow, when the nation will pay deepest tribute to the luminaries martyred during the Liberation War, Syeda Salma Haque shared the memories of her husband and those turbulent days of 1971 with The Daily Star at her Elephant Road house in the capital recently.

"I really did not get enough time to know much about him," said Salma, now 68. "He was a very simple man and had all the qualities of an ideal doctor."

Azhar and Salma got married on February 15, 1970 following a short acquaintance in 1969, the year Azhar joined the DMCH as an assistant surgeon. He took part in the 1969 mass uprising and the non-cooperation movement called by Bangabandhu Sheikh Mujibur Rahman in March 1971.

The couple began their new life at Hakim House on 22 Free School Street in Hatirpool area.

"That was the house I entered attired in a red saree and left as a widow within one year and nine months," she said.

Salma got admitted to the DMCH on March 23, 1971 after a miscarriage. Her mother-in-law, Fatema Khatoon, and one of their relatives were also admitted to the hospital.

She was moved to a cabin on the second floor on the evening of March 25. An unnerving situation was prevailing in the city. After dinner, she

fell asleep around 10:00pm taking a dose of sedative.

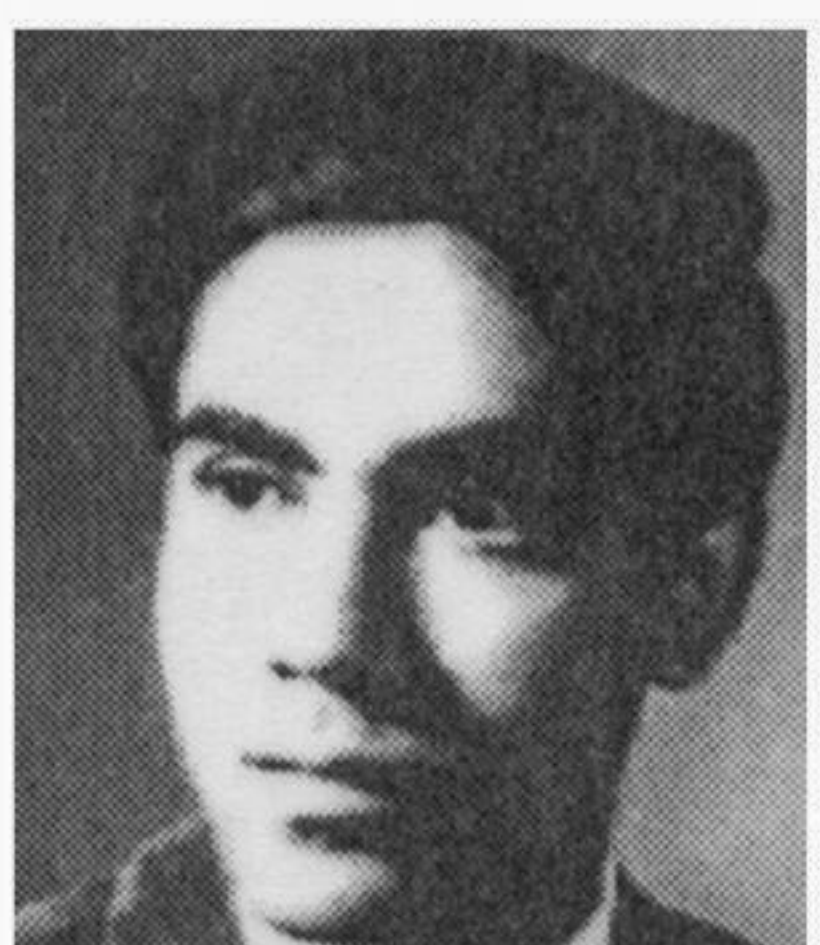
She woke up to the hellish sounds of machine guns and cannons. Azhar was with her and the night seemed to them longer than any other.

Those sounds were, however, gone at dawn.

Around 5:30am, she said, Azhar went downstairs putting on the apron. As he was not returning, Salma got angry and frightened at the same time. "Is he in trouble?" she thought to herself.

Her husband finally came around 9:30am. He looked exhausted and bewildered.

After spending some time with his wife, Azhar wanted to get back to work. But Salma grabbed him by his



Dr Humayun Kabir

apron's pocket, asking him to stay.

"Do you know the situation in Dhaka? Many wounded people have come here," he said and went away.

The next two days, Azhar was busy treating the injured. His mother and the relative left the hospital on March 27 and his wife the next day.

The couple moved to the house of Salma's brother in Paribagh. Azhar's chamber was then on Kazi Alaaddin Road near the DMCH.

"He used to come home late almost every day. It frightened me," she said.

Azhar did not say what made him come late, but after the war she came to know from his colleagues and pro-liberation people about his secret activity-- treating freedom fighters.

After two months in Paribagh, they went back to their Hatirpool house in May. Azhar used to see patients at nearby Saiyida Pharmacy in Hatirpool after his hospital duties.

He still would often come home late. Salma, who was expecting for the second time, sometimes would send their male domestic help to his chamber only to find it closed.

"I used to feel worried," said Salma.

Azhar's activity came to the notice of the authorities.

According to Banglapedia, Azhar was summoned to the police headquarters sometime in July and warned for his activities in favour of freedom fighters.

One day in early October, he returned to their house with rice, lentil, potato and water pots and asked his wife to preserve those for a rainy day.

"He told me there might be an air attack tonight." Taking a pause, he said there might be a roundup of intellectuals after October 14.

As Salma asked whether he would fall in the category of "intellectuals", Azhar said, "Maybe."

Then came the fateful day.

On the morning of November 15, Azhar asked their domestic help to bring his apron from the laundry as he was to go to the hospital shortly.

But the servant returned empty-handed and said he could not go to the laundry because there were some Pakistani soldiers and armed Bangalees on the nearby streets.

Azhar decided to go to work in an ambulance. He went to his landlord's house to make a phone call to the hospital to ask for an ambulance.

Along with Dr Humayun Kabir, who lived next door, he stood in front of his house waiting for the ambulance.

After a while, the armed Bangalee collaborators approached him and said something with their guns pointed at him.

They hit Azhar with the gun and forced both the doctors to board a jeep.

Right after the incident, a group of five people entered the house and asked about Azhar, and made a few other questions in Bangla. Four of them had arms and the man who led them had no gun. They searched the house and left saying: "Don't mind".

The armed Bangalees and Pakistani soldiers then withdrew their cordon in the area.

Salma's family members, including her brother, a government official, went to different places looking for Azhar.

At Ramna Police Station, they came to know that it was Al-Badr Bahini which picked up the two physicians.

Salma said they came to know that the man who led the group to the house was another doctor from the DMCH.

In her testimony before International Crimes Tribunal-1 on September 16, 2013, Salma said her husband was abducted on the instruction of Motiur Rahman Nizami, the chief of Al-Badr Bahini.

The bodies of Azhar and Humayun were found under the culvert near Notre Dame College. Their hands were tied behind their back with marks of severe injuries in the bodies.

She said soon after the war ended, four to five freedom fighters came to the house and told her that they were treated by her husband.

"Prof Shamsuddin, who was Azhar's immediate supervisor, told me that the officials of the hospital usually left by 2:00pm during the Liberation War, but Azhar used to treat wounded freedom fighters secretly," she added.

Azhar saw neither the independence nor his son.

Salma gave birth to a baby in January 1972 and Azhar's mother named him Nishan, saying, "He is the Nishan [memento] of my son, the Nishan of our country."



Carrying their traditional weapons, bows and arrows, Santals of Gaibandha's Gobindaganj march at Madarpur in the upazila yesterday demanding return of their properties.

PHOTO: STAR

VAT on tuition fees

FROM PAGE 1

Such discrimination is a violation of Article-17 of the constitution.

"I expect the government not to further victimize the children of English medium schools by filing an appeal with the Appellate Division," the lawyer said.

Attorney General Mahbubey Alam, however, said the government must appeal against the HC verdict. Guardians and teachers of English medium schools welcomed the HC ruling on the long overdue issue and expressed the hope that the government would not move an appeal against it.

The government in 2010 imposed 4.5 percent VAT on fees and services of English medium schools. In the budget for fiscal 2014-15, the VAT was raised to 7.5 percent.

The value-added tax, also known as consumption tax, is the biggest source of revenue followed by income tax. It accounted for 36 percent of the revenue collection in fiscal 2015-16, according to the NBR.

The new VAT law, expected to be effective from July 1 next year, eliminates VAT on education.

Under the existing law, there is no VAT on Bangla medium schools and government-approved English version schools that follow English textbooks published by the National Curriculum and Textbook Board.

In the budget for fiscal 2015-16, the government decided to impose 7.5 percent VAT on private universities and medical colleges' tuition fees but it had to backtrack on the decision following mass protests by students and guardians in September last year.

The two guardians at the time filed the writ seeking cancellation of VAT on English medium schools too.

Following the writ petition, the HC on September 17 last year stayed for six months the collection of VAT from English medium students and issued a rule asking the government as to why such VAT should not be declared illegal.

During the hearing on the petition, Shahdeen Malik told the court that the VAT imposed on private English-medium students was discriminatory since other students were not required to pay VAT.

The government is responsible for ensuring education for all under Article-17 of the constitution and equal opportunity for all under Article-19, he explained.

REACTIONS

"Education is not a commodity," said Safwana K Chowdhury, mother of a student in the capital's Dhanmondi. VAT should not be imposed on English medium school fees on the same ground for which it is not imposed on Bangla medium schools.

Following days of rowdy protests by students, the government finally gave in and withdrew VAT on higher education in private universities. However, the authority failed to understand that VAT should not be imposed on English medium school students as well.

Yasmeen Habib, vice principal of Sunnydale School in Dhanmondi, said the government had created a discrepancy between students of English medium schools and institutions under national boards, and the HC ruling put an end to it.

"All these students are Bangladeshi."

GM Nizam Uddin, secretary general of the Bangladesh English Medium Schools Association, said they had discussed the matter with the finance minister, education minister and chairman of the NBR but to no avail.

"Our long movement has seen success finally."

Money

FROM PAGE 16

others have around us.

So overall happiness is not boosted by raising incomes. If one person's income rises, someone else's income suffers a fall in relative terms.

The report said this finding helps to explain why in Australia, Britain, Germany and the United States, average happiness has failed to rise since records began, despite massive increases in living standards.

The report was presented yesterday at a two-day conference at LSE held with the Organisation for Economic Co-operation and Development.

While income inequality explained only one percent of the happiness in a community, the report said that mental health accounts for around four-to-five percent.

And in the most unhappy 10 percent of the population - Lord Layard terms 'Les Miserables' - a comparison to the poverty stricken slum dwellers of the time of the French Revolution, Lord Layard said that mental illness is the biggest factor.

Santals have right to save their property

Says NHRC boss

OUR CORRESPONDENT, Gaibandha

The Santal community has every right to save their property, but attacks on them are not acceptable and the matter should not be taken easily, said Kazi Reazul Hoque, chairman of National Human Rights Commission Bangladesh.

He was addressing a Santal gathering on Madarpur Church premises yesterday after visiting two Santal villages of Joypurpara and Madarpur in Gobindaganj upazila.

A ten-member probe team led by Reazul Hoque visited the Santal villages and talked to the villagers. The team went there to probe the Santal eviction incident from Sahebganj cane farm.

Earlier, hundreds of Santal people staged a protest demonstration equipped with bows, arrows and lethal weapons and demanded their ancestors' property back. Later they gathered in front of the Madarpur Church.

The authorities of Rangpur Sugar Mill leased out the government-acquired land breaching the terms of contract agreement, the NHRC chairman said, asking why the Santal community would not get their ancestral land back as per the agreement.

The probe committee would submit its report to the government and the parliamentary committee on Adivasi affairs, he added.

"You have been evicted from your ancestral land and suffering from insecurity of life and property. You are now protecting yourselves with bows and arrows, but you should not take the law in your hand," he told the Santal community.

Those who have evicted the Santal community did something beyond their jurisdiction and would be brought under the rules of law, the chairman said, urging the government to ensure security and rehabilitation of the affected Santal families.

The human rights chairman also alerted the local administration to protect the Santal community.

The probe body recorded witnesses of 10 Santal victims of eviction, arson and looting.

The rights chairman was accompanied by Director (Investigation and Complaint) Sharif Uddin, lawmaker Fazley Hossain Badsha, convener, parliamentary committee on Adivasi affairs, lawmaker Tipu Sultan and Prof Mesbah Kamal of Dhaka University.

On November 6, a clash between the Santals and sugar mill labourers as well as police took place at Sahebganj cane farm of Rangpur Sugar Mills that left two Santal men dead and 30 people, including eight policemen, injured. Six Santal men have also been missing since then.

The police evicted 1,500 Santal families from the cane farm, while houses of Santal community were looted and came under arson attack.

Earlier on July 1, demanding their ancestral land, the Santal community occupied more than 100 acres of land at Sahebganj cane farm and erected makeshift sheds there. They also cultivated aman paddy on the land.

The Santal community still demands rehabilitation on the land, from which they have been evicted.