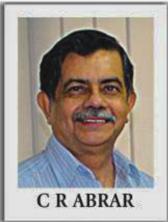


# Upholding the dignity of higher judiciary



**C R ABRAR**

OVER the last year or so the executive and the legislative arms of the State appear to have geared up their disparagement of the higher judiciary. On several occasions the Chief Justice (CJ) has shared his anguish, among other issues, over separation of powers and independence of judiciary, the laxity of lawmakers in framing laws that hinder dispensation of justice and lack of cooperation of the executive branch in administering the lower judiciary. His remarks solicited uncharitable responses from certain quarters. The sculpture saga in the Supreme Court premises further complicated the relationship.

It all began in early May 2016 when the High Court (HC) in a landmark judgment, struck down the 16th Amendment to the Constitution, on grounds of being "unconstitutional". Since then the strain between judiciary and the other two branches of the State became evident.

The amendment in question was related to the provision of removal of judges on grounds of incapacity or misconduct. The Court declared the amendment illegal and against the principles of the separation of state powers and the independence of judiciary and observed, "(t)he power of judging is, no doubt, a judicial power. This judicial power should not be given to the Parliament, a separate organ of the State". It noted that such a move would constitute "an intrusion upon the independence of the Judiciary from the legislative organ of the State", and would undermine the security of tenure of the judges. The Court further stated

"undermined and humiliated parliament". They termed the verdict as "a conspiracy against democracy and sovereign parliament" and warned that the lawmakers "would not tolerate any such plots". An influential MP suspected "conspiracy" behind the HC verdict and exhorted the government "to investigate if the judges concerned joined hands with any evil forces to destroy the country's democracy and to make parliament nonfunctional". Taking advantage of the parliamentary privilege the MP went on to advise the judges "not to do

legislative organs of the State are yet to overcome the trauma of the termination of the 16th Amendment. In November 2016 the supervision of lower judiciary became yet another bone of contention between the executive and the judiciary. The issue flared up when the CJ pointed out that despite unequivocal stipulation of Article 109 of the Constitution empowering the HC to supervise and control all the subordinate courts, Article 116 "is one of the main reasons behind the sluggishness of the judiciary". The CJ unreservedly stated that the dual role postulated in the

In the 1972 Constitution the power of posting, promotion and grant of leave and discipline of persons employed in judicial service and magistrates exercising judicial functions was vested with the Supreme Court. However, under amended Article 116 those authorities shall "vest in the President and shall be exercised by him in consultation with the Supreme Court". The CJ's plea for restoring unencumbered Supreme Court's authority over lower judiciary drew sharp response from the law minister who found "no need" to bring about

with the advice of the Prime Minister". Thus, in effect, under current dispensation it would be the executive that has the final say in administering the lower judiciary. Weeks ago, the CJ lamented, "Government was acting like a step mother to the judiciary". The law minister disagreed. Terming the CJ's statement "unfortunate" he advised the CJ "to communicate (his) concerns directly to executive rather than making them in public". The minister observed, "chief justices in other countries do not talk much in public". The CJ clarified, "it is the Supreme Court that can uphold independence of judges" and "since that is not maintained in Bangladesh, the chief justice has to speak out".



SOURCE: MURADJASEMARTINS-ADV.BR

*It appears that the executive and the legislative organs of the State are yet to overcome the trauma of the termination of the 16th Amendment.*

the judges by members of Parliament would be like "(h)anging (the) Sword of Damocles over the heads of judges threatening their independence in discharging of judicial functions". The HC ruling triggered massive discontent among the MPs. The law minister observed, "(t)he judgment is against the Constitution", claiming that the HC does not have the jurisdiction to deliver the verdict". Several MPs felt that the ruling

excesses" and expressed the hope that they (the judges) would "correct themselves". He cautioned them against undermining "the sovereignty of parliament". The vilest attack came from an influential minister. Pointing to a section of judges, he said, "(t)hey could become judges because we are in power." Was the minister hinting that the time had come for the concerned judges to pay back the Piper? It appears that the executive and the

existing Article 116 has been an impediment for the Supreme Court to effectively supervise promotions, transfers and disciplinary activities of the subordinate court judges and also in appointing judges in vacant posts in many districts. "It disrupts trials, leading to sufferings for people seeking justice" he noted. The top judge called for bringing back Section 116 as it was in the 1972 Constitution. It is a "demand of the time", he observed.

such change. Reinforcing his position the minister argued that the President is "the number 1 person of the State" and this "noble duty has been assigned to him". It may be worthwhile to note that as per Article 48 of the Constitution, except for appointing the Prime Minister and the Chief Justice (albeit as per relevant provisions of the Constitution on such appointments) the President, "shall act in accordance

The ruling Awami League's all out effort to placate and bring on board obscurantist Hefazat-e-Islam has also taken its toll on the executive-judiciary relationship. Pressure has been exerted on the Supreme Court to address "public concerns" about the sculpture. The law minister concedes, "the CJ is the sole authority to decide on the matter". If that were the case, why is the executive at all concerned about the sculpture's fate? The CJ's expression of concern about absence of rule of law has also drawn ire from the ruling quarters. As the guardian of judiciary, isn't the CJ spot-on in a situation where a magistrate is transferred within twenty four hours after she had passed an order of investigation against a powerful agency, hundreds of posts of magistrates and judges remain vacant, thousands remain incarcerated for years without being charged and tens of thousands of cases remain pending in the lower judiciary?

The writer is Professor of International Relations at the University of Dhaka. He writes and researches on migration and rights issues.

## From wannabe to president How Emmanuel Macron beat Marine Le Pen to win the French election



**PAUL SMITH**

*Now France has a president whose priorities are to tackle chronic unemployment by relaxing labour legislation and introducing a raft of measures to help young people into work, to reduce primary school class sizes to 12 pupils per teacher...*

AFTER a tense and often antagonistic election campaign, Emmanuel Macron is to become the next president of France. The result is, of course, in all sorts of ways extraordinary. In a little over a year, the 39-year-old former finance minister has gone from being a wannabe to the future tenant of the Elysée Palace. He struck out alone to form his own political movement, and while much of the froth surrounding the election has focused on his opponent, the enormity of his achievement needs to be acknowledged and cannot be underestimated.

Even before the first round, all the polls had Macron pegged to win the second round 60/40. But then, between the rounds, Le Pen seemed to be nibbling away at Macron's lead – not by much, but by enough to cause some butterflies among her opponents. Macron appeared lacklustre at a crucial time. Fears of a low turnout and Jean-Luc Mélenchon's refusal to formally endorse Macron also threw a number of unknowns into the mix.

A high abstention rate would play in Le Pen's favour, went the reasoning. Her electors, as far as anyone could tell, were more committed. In the end, turnout was indeed lower than expected (and there were four million spoilt ballots), but it did not hinder Macron. Quite the reverse. With an estimated 65.1 percent of the vote to Le Pen's 34.9 percent, Macron has come



Independent centrist Emmanuel Macron won a resounding victory over far-right nationalist Marine Le Pen to become the Fifth Republic's eighth president.

away with the second highest second round score in the history of the Fifth Republic.

So, now France has a president whose priorities are to tackle chronic unemployment by relaxing labour legislation and introducing a raft of measures to help young people into work, to reduce primary school class sizes to 12 pupils per teacher, to relaunch the European project in collaboration with France's partners

and to simplify the mind-bogglingly complex tax and pension set-up for French citizens.

**What happened, Marine?**  
Deep down, Le Pen knew she didn't have the tail wind to take her to victory after a disappointing first-round result. She had hoped to go through in first place but finished second behind Macron and only 650,000 votes ahead of François Fillon.

This goes some way to explaining her extraordinary performance in the presidential debate on May 3, where she cast aside the opportunity to present her programme in favour of a non-stop attack on Macron. He might not have looked presidential all the way through the debate, but she certainly looked like she was making a bid to be the leader of the opposition rather than the tenant of the Elysée. In any case, it looks like the debate cost her 5 percent

of the vote. It certainly caused consternation among her supporters. And yet her score is historic. Throughout the campaign she was the one candidate we all assumed would get through to the second round. Her total of 11 million votes is twice what her father managed in 2002 – and 5 million more than she herself scored in 2012.

On Sunday evening, about ten minutes after the result was announced, Le Pen made a two-minute speech to a small group of party activists, accepting her defeat, but also launching herself as the head of the "première force d'opposition" and promising a transformation of the Front National for the general election in June. She neglected to explain what that means, but she will almost certainly seek to destabilise Les Républicains by appealing to the right of the party.

Meanwhile, after a celebration at the Louvre on Sunday night, Macron will await his formal investiture as the eighth president of the Fifth Republic at the beginning of next week. By tradition, the incoming president announces the name of the prime minister only on the following day. Macron may break with this and make the announcement a little earlier, but there are still calculations to be made.

The electoral process isn't quite over for the French. Can they survive the risks of electoral burn-out? For now, at least we can all savour what has been an extraordinary campaign and reflect on where France goes now.

*This article was originally published in The Conversation on May 8, 2017. The writer is Associate Professor in French and Francophone Studies, University of Nottingham. Copyright: The Conversation*

### A WORD A DAY

**BUCOLIC**  
adjective

*Relating to the pleasant aspects of the countryside and country life.*

### CROSSWORD BY THOMAS JOSEPH

**ACROSS**

- 1 Bridge feat
- 5 Super serves
- 9 TV trout
- 11 -- out (used to the limit)
- 13 Permit
- 14 Let out, perhaps
- 15 Coarse
- 16 Coarse
- 18 Plots
- 20 Convoy member
- 21 Family car
- 22 Landers and Lee
- 23 German article
- 24 CEO's deg.
- 25 Brewer's need
- 27 Matters of opinion?
- 29 Peculiar
- 30 Noisy
- 32 Omen
- 34 Old auto
- 35 Confederacy foe
- 36 Martini gamish
- 38 Turning point
- 39 Cut off
- 40 Match parts
- 41 Dick Tracy's love
- 7 PC add-on
- 8 Escorted by a butler, perhaps
- 10 Like some bobsleds
- 12 Basest portion
- 17 Golfer Hogan
- 19 Fix text
- 22 With skill
- 24 Guiding maxims
- 25 Concluding work
- 26 Beautiful boy
- 27 Bad review
- 28 Colanders' kin
- 30 Superman's adoptive family
- 31 Active folks
- 33 Bender
- 37 Rent out

**DOWN**

- 1 Ship poles
- 2 Fragrant flowers
- 3 Feature of some SUVs
- 4 Cattle call
- 5 Run up
- 6 Trig's cousin

### BEETLE BAILEY

BY MORT WALKER

**YESTERDAY'S ANSWER**

SOME LIVES  
I MEAN AVANT  
DELTA RANTO  
EGO MEANDER  
DANDER ARE  
UTAH TED  
BABA APED  
MIL GAZE  
APB GANDER  
SLANDER ADO  
HANOI DINGO  
UNION SATES  
PEAKS NEST

### BABY BLUES

BY KIRKMAN & SCOTT