

SC observations on 16th Amendment

The legislative and judiciary should work in harmony

THE full text of the ruling on the scrapping of the 16th Amendment by the Supreme Court (SC) has been made public. The SC's comments come in the backdrop of the amendment that accorded the Parliament the authority to dismiss judges of the SC which would have undermined the very essence of separation of power by putting the legislative above the judiciary. We do not believe that restoring the Supreme Judicial Council, with its power to dismiss SC judges, represents a tussle between the judiciary and the legislative, but rather reinstates the balance between the two organs of the state.

We must stress on the fact that the two vital state organs supplement rather than supplant each other. While the lawmakers are elected by the people, the Judiciary is a statutory body. And their harmonious functioning, each with its well defined responsibilities and within its prescribed limits, ensures good governance and the rule of law. We reiterate our belief that democracy is best served when the three branches of the state, i.e. the judiciary, the executive and the legislative, work together, and the balance, albeit a delicate one, is preserved at all costs.

The verdict handed out, and remarks made therein about accountability, should not be viewed by the legislative as an affront to it. And it will also do well for the parliament to take into cognisance the remarks made by the SC, like the absence of watchdog bodies to check deterioration of human rights, corruption being on the rise and the mismanagement in administration. These are some of the issues that plague public institutions which merit attention, and, if addressed in earnest, will go a long way in ensuring good governance.

40,000 hajj pilgrims' fate uncertain

This is deplorable

HASSLES for hajj pilgrims are a regular phenomenon. Previously, it was botched flight schedules. And now it has come to light that additional fees on repeat pilgrims have been imposed! This has left around 40,000 pilgrims in the lurch.

Reportedly, until now the civil aviation ministry had no clue about the extra fees—an additional Tk 40,000 for issuing visa to all those who had performed hajj in 2015 or 2016—demanded by Saudi hajj authorities. The Hajj Agencies Association of Bangladesh (HAAB) claimed that they had no idea about this new development either. And the religious affairs ministry said that they were yet to be "formally informed" of the additional fees by the Saudi government.

These reasons were completely unheard of in the past. And we are baffled as to how it is possible that all the concerned authorities were left in the dark this whole time. Also, we cannot help but wonder what the role of the government is in all this, and what the justifications are for the fee levy on repeat pilgrims. Are we to understand that the Saudi government has done this without prior notice? And we wonder what the Bangladesh government has done so far to resolve the impasse.

Given that hajj is an annual affair, one would have expected better coordination and communication between all the parties, particularly the Ministry of Religious Affairs and its Saudi counterpart. Mismanagement on their part has resulted in hajj pilgrims—many of whom have been saving up hard-earned money in preparation for this time of the year—facing complications not of their own doing. We sincerely hope that the concerned ministries and agencies will solve this issue at the earliest keeping in mind the best interests of the pilgrims.

USE OF FORCE ON CIVIC PROTEST Compromising freedom of assembly



C R ABRAR

THE state of Bangladesh appears to be clamping down on its active citizens. Almost every month, we are coming across reports of police excesses against protesting students, civil society members, rights activists and opposition leaders. Most involve policemen wielding batons, lobbing tear gas shells, or using water cannons and armoured vehicles to disperse the demonstrators, which prompts one to ask if freedom of assembly has been obliterated from the charter of freedoms that the Bangladesh Constitution guarantees to its citizens.

On January 26 this year, hundreds of environmental activists participated in a demonstration organised by the National Committee to Protect Oil, Gas, Mineral Resources, Power and Ports, in the capital's Shahbag area, demanding relocation of the coal-fired Rampal power station near the Sundarbans. The protest quickly escalated when security forces confronted the activists, leading to clashes and use of teargas, rubber bullets and water cannons. Eyewitnesses claimed several dozen rounds of tear gas shells were fired to quell the situation. Five activists of the pro-left civil society group were detained from the scene.

There were also instances of police taking action to prevent protests from taking place at all. On February 25, 2017 environmental activists were prohibited from organising a sit-in protest in the port city of Chittagong. In response, the activists gathered in front of Chittagong Press Club and held a rally instead. According to media reports, five of them were injured when police officials charged at them with batons. Later, in July, an indoor meeting of the National Committee in Khulna was also thwarted.

The frequent use of excessive force by security officials has become a serious impediment to the exercise of the right to peaceful assembly. On February 28, a citizens' protest against increased petrol prices in Dhaka was met with tear gas shells and water cannons injuring 20 people. On May 28, police came down heavily on protesters opposing the relocation of a statue on the Supreme Court premises in Dhaka.

Two separate events in Dhaka last month further show the heavy-handed approach adopted by the current administration. On July 14, police intervened in an informal meeting held

at the private residence of a political leader in Uttara. Among the participants was a former president of the country, as well as lawyers, prominent political and civil society leaders. The host was advised by the security personnel not to hold any meeting at his place. The duty officer of the local police station, however, denied knowledge of the incident although media reports mentioned the presence of police vans outside the venue of the meeting.

On July 21, police charged batons and lobbed tear gas canisters to disperse a demonstration of students who gathered to demand the announcement of their exam schedules. Four students were injured, including one who sustained serious eye injuries. While video footage clearly establishes the fact that Siddiqur Rahman fell victim to direct hurling of a

leadership to assess whether such actions are in conformity with the country's international obligations and with the laws of the land. Article 20(1) of the Universal Declaration of Human Rights stipulates that "everyone has the right to freedom of peaceful assembly and association". Likewise, Article 21 of the International Covenant on Civil and Political Rights notes that "The right to peaceful assembly shall be recognised".

Article 37 of Bangladesh Constitution stipulates that "every citizen shall have the right to assemble and to participate in public meetings and processions peacefully and without arms..." The article protects the rights of Bangladeshis to protest by holding meetings and demonstrations with other people.

This right to assembly is closely tied up with the right to freedom of

and no more than necessary to address the issue concerned". Thus, a close reading of the law reinforces the argument that by preventing a demonstration from going ahead, taking steps in advance of a demonstration to disrupt it, halting a demonstration, and by storing personal information on people because of their involvement in a demonstration, the state authorities unduly interfere with citizens' right to protest.

In a democratic polity, the right to peaceful assembly cannot be impeded simply because the protesters may hold a view contrary to those who are in control of the state or it is likely to be inconvenient or there might be heated exchange between opposing groups. There is little scope to dispute that "(t)here is a positive obligation on the State to take reasonable steps to



Although the students took to the streets to put pressure on the authorities to resolve the issue, the government, rather than quell the concerns of the student body, decided to retaliate with violence—firing tear gas shells and charging batons. PHOTO: PRABIR DAS

tear gas canister by police personnel, Dhaka Metropolitan Police chief claimed that he might have been hurt by a heavy object thrown by his fellow protesters. Later, police filed a case against around 1,200 unnamed students of seven government colleges on charges of "attempting to kill policemen, rioting with lethal weapons and damaging property". The charge of attempted murder in such a case appears to be far-fetched and in all likelihood constitutes "abuse of procedure" by the members of the security force.

Police actions in the scenarios elaborated above are justified on grounds of "national security" and "maintaining public order". Perhaps the time has come for the political

expression. Public meetings, demonstrations, protest marches, sit-ins, motionless protests and press conferences are means of public expression and constitute one of the foundations of a democratic society. Quite justifiably, the right applies to peaceful gatherings and does not protect "intentionally violent protest".

One may argue, while the right to assembly is not an absolute right as it is "subject to any reasonable restrictions imposed by law in the interests of public order and public health" (Article 37 of the Bangladesh Constitution), it also imposes strict conditions on the state authorities to demonstrate that their action is lawful, necessary and proportionate. An action is "proportionate" as long as "it is appropriate

facilitate the right to freedom of assembly, and to protect participants in peaceful demonstrations from disruption by others".

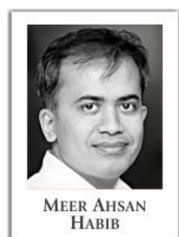
One of the aggrieved guests at the Uttara dinner fiasco, Gono Forum leader and senior advocate Subrata Chowdhury, raised a pertinent question: "You [government] are not letting us sit at home or on the field, and march or rally on the street on the issues of people's sufferings. You are snatching away our banners and charging batons. What kind of politics is this?"

Would someone from the administration please care to respond?

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Rape, impunity and power —then and now

18 years after the anti-rape movement at JU



MEER AHSAN HABIB

TODAY, as we mark 18 years of an incident that took place at Jahangirnagar University (JU), the nation is shocked at the media reports of the rape of a teenage girl by Tufan Sarkar, the convener of Bogra District Samik League.

His crimes went beyond the rape: he humiliated both the victim and her mother with the assistance of his followers and family members. All of them are believed to be closely connected to the ruling party. Citizens from all quarters of society either took to the streets or penned protests against this dreadful act and demanded speedy justice.

The incident took me back 18 years, when we were left with no choice but to secure our beloved campus by storming, barehanded, into the dormitories which were then occupied by the armed cadres of the student group of then ruling party, known in the campus as the "Rapist Group". It was led by the Jashim Uddin Manik general secretary of the students' wing of the ruling party. One can blame us for taking the law into our hands. But what would you do if you heard that fellow students had been raped and the authority had refused to heed the allegations? What would you do if some so called intellectuals either remained silent or worse, penned against the student movement? What would you do if you were thrown out of your dormitory for demanding justice?

You were left with two choices: either you remained silent or spoke out. We chose the second and the major credit for that goes to our female colleagues who risked their lives and raised their voices for justice. The movement started in August 1998 and lasted until October 2001. In October 1998 some culprits including Jashim Uddin Manik were expelled permanently from JU, while others got off with expulsions ranging from several months to a few years. But, the university authorities did not file any criminal case and none of the culprits was tried under the existing laws. Immediately after the verdict of the university authority, their rivals from the same party, stormed into the campus and took control of the university. As the alleged rapists were not tried and convicted under the law, they too were looking for every available opportunity to regain their lost

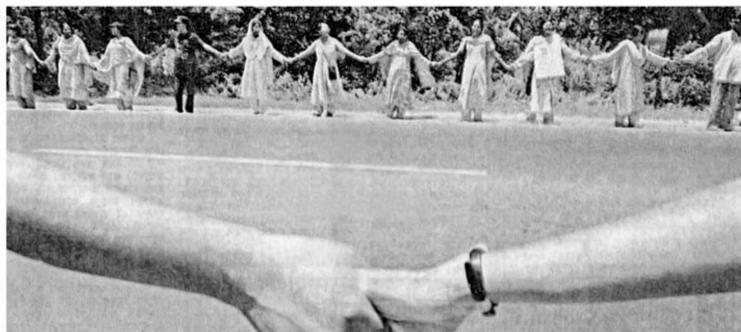
control. Heavily armed, they entered into the campus and ousted their rivals in July 1999.

Thousands of students were left with no choice but to leave their dormitories fearing for their safety. Parents rushed to the campus to take their sons and daughters back home. Those of us who refused to leave, became a part of, what was to us, a 'revolution'. On August 2, 1999, several processions comprising thousands of students (mostly females) stormed the student dormitories in a bid to oust the rapists. Ultimately, they were successful.

But this was not the end of the story. In October 2001, seven students from Bangladesh Students Union, Socialist Students Front and Bangladesh Students Federation were expelled and 52 others were served with show cause (why they should not be expelled) when they organised a movement against the university authorities' attempt to allow a rapist to sit for a

Let us go back to JU once again. In April 2016 a canteen girl was raped. Left leaning student organisations demanded justice, but the university authority refused to take any measure since she was not a student. The state too did nothing since she was poor and helpless. Under pressure from the students, the canteen owner filed an abduction case. Police accepted the case, but there was no proper investigation. Her father rather felt it would be safer to take her back home. But irony was still awaiting her: she had no choice but to return to her workplace to earn her living and support her family. To cut it short, she never saw justice—thanks to a system that tends to serve the powerful and influential.

The Banani rape case that took place in March this year is yet another example of how our faulty system tends to work in



Students of Jahangirnagar University form a human chain on the Dhaka-Aricha Highway demand ing punishment of the rapists under the established laws of the country on August 5, 1999.

departmental exam. Finally, it took a High Court decision to nullify the authority's unjust action.

The above is neither an opinion nor an analysis. It is a chronology of certain events that took place during those four years at JU. The idea of penning this is to highlight how the combination of power, crime and impunity can turn an individual wealthy and powerful within years. The odds that we faced in Jahangirnagar more than a decade ago are very much the same with today's Bogra rape case. Things have not changed much over time. Tufan Sarkar is the latest example of how an individual can become powerful with the blessings of party men, and dare to commit crimes with the confidence of being above the net of law enforcing agencies.

favour of the criminal. The media's exposure of these crimes helped the protesters gain some ground. But one wonders why things have to move this way. The JU rape case became a major propaganda tool for the then opposition in the national election of 2001. But, sadly when they came to power, they did nothing to bring the culprits to book. Such is politics. It is time to look back into the political process so that we do not give birth to such monsters anymore. The justice system too needs to be carefully examined so that criminals do not continue to go unpunished.

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COURTESY: PROTHOM ALO

LETTERS TO THE EDITOR

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Is civil society fulfilling its duties?

Our civil society members nowadays appear to be suffering from confusion and hesitancy. They are slow to react to situations involving serious social issues and the government's inactive role to address them. Whereas in the past the civil society used to take vigorous stance on many issues, they are not as pro-active these days.

We have to fight relentlessly for our democratic rights. They will not be served to us on a silver platter. Therefore, the civil society cannot abdicate its responsibilities, no matter how difficult the reality on the ground is. If the civil society fails to discharge its duties properly, it will be judged as such in the ensuing days.

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Veterinarians should be appointed in cattle markets

During every Eid-ul-Adha, one of the two most important Islamic festivals, some dishonest businessmen use hormonal steroids to fatten their cattle to earn some extra money. Such practices are proven to be harmful for both the cattle and those who eat their meat, and therefore need to be stopped. In order to do so the concerned authorities should appoint registered veterinary doctors at every authorised cattle market to examine whether the animals contain such harmful hormonal steroids.

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