

Solution lies in a combination of current system and the abolished 16th amendment

In an interview with *The Daily Star*, Asif Nazrul, professor of law at the University of Dhaka, researcher, columnist, and an elected bureau member, South Asians for Human Rights, talks about the Supreme Court's verdict on the 16th Amendment, the observations it made, the Executive-Judiciary impasse, and possible ways forward.

What is the significance of the Supreme Court verdict and the observations on the 16th Amendment?

The 16th Amendment verdict has saved one important pillar of independence of Higher Judiciary, although much will also depend on activating the Supreme Judicial Council (SJC) for dealing with allegations against the Judges.

The 16th Amendment and the draft Act formulated under it aimed at rendering all the powers to the Parliament in investigating the complaints and terminating the Supreme Court Judges. This fundamentally flawed system in which Parliament is the complainant as well as the adjudicator is prevalent in only two Commonwealth countries (Nauru and Samoa). In all other Commonwealth countries, in order to save the Judiciary from the undue influence of the government, the investigation of allegation (and in many cases the adjudication as well) against Higher Judiciary Judges is conducted by bodies dominated by Judges and legal experts.

For example, among 48 of the commonwealth countries studied by the Bingham Center for Rule of Law in 2015, the question of removal of Higher Judiciary Judges is decided either by Ad Hoc Tribunal or by Permanent Disciplinary Councils (Like the Supreme Judicial Council) in 28 countries. Even among the 16 countries where the President has the power to remove a Higher Judiciary Judge on the resolution of the Parliament, all but 2 have given the

authority of investigation to judicial bodies. For example: In India, according to the Judges Enquiry Act, the investigation in conducted by a committee of three member comprising two Higher Judiciary Judge and one legal expert.

In short, at present only in Nauru and Samoa, no one from the Judiciary is involved either in the investigation or adjudication of allegation against the Higher Judiciary Judges. The 16th amendment judgment has rescued us from joining this iniquitous club of countries.

The verdict has created a debate whether it is in contradiction with the Constitution of 1972. It has been stated that it is a deviation from it, while others have tried to show that the verdict only solidifies the spirit of the original constitution. What are your thoughts on this matter?

As established in many recent cases in the subcontinent, the basic structure of a constitution is not provision-specific; it is rather principle-specific. As reaffirmed in the 8th Amendment case, one basic principle of Bangladesh constitution is independence of Judiciary. In between the provision of investigation by parliament members (16th amendment) and investigation by the SJC comprising the most senior three judges of the apex court (current system), the latter definitely provides better safeguards to the independence of judiciary.

We have to keep in mind that every original constitution in the world gets amended. The question is

whether the amendment is for strengthening or weakening the original constitution. The 1972 Constitution provision on removal of Judges was actually weakened by the 4th amendment of 1974. The Supreme Judicial Council system, first introduced by the 5th amendment of 1977, had rather strengthened independence of Higher Judiciary. It is in the post-SJC period when we got



Asif Nazrul

the historic judgments in some constitutional cases in which the Judiciary demonstrated itself as an independent entity.

After the verdict, there has been criticism of the Judiciary and the Chief Justice from different individuals from the Executive—what is your legal opinion on the matter?

The bottom-line is that you can

always criticise the judgment, but not the judges. The ministers and the political leaders of the ruling government have failed to put forward any rational or legal argument against the judgment. Some of them are misquoting or misinterpreting the observation of the Chief Justice or are making comments which are clearly in contempt of court. Just

explain the issues it raised?

Making observations in a judgement, which technically is called obiter dictum, is a common norm in most judicial systems. The length or volume may vary—for example judgements in the US are generally much shorter than in most of the common law countries, while judgments in South Asian countries, in particular India, Pakistan and Bangladesh, are generally very long with many observations, narrations and contextualisation. The question is whether those are relevant to the contentious issues or are connected with the arguments put forward during the adjudication.

In my view, the observations of the Chief Justice made in the 16th amendment judgment are relevant to the basic premise of the case. For example: the CJ has made a critical observation on the state of parliamentary democracy and the election procedure to opine that unless the nominations of candidates are properly done, unless the election is fair, and unless parliamentarians enjoy voting freedom, the Parliament cannot be entrusted with the responsibility of dealing with the removal of judges.

We may recall that in previous judgements on the 5th, 7th and 13th amendment cases as well, detailed observations were made on political issues, the state of democracy and constitutional history. Some of those observations in these cases were rather irrelevant and subjective. If someone is comfortable with those

observations, what is the problem with 16th Amendment judgement?

What are the implications of this current row between the Judiciary and the Executive and what is the way out of this apparent impasse that we are witnessing?

Implications are bad, and it could be worse in the days to come. The row has already exposed the weakness of all the three organs of the Government: intolerance of the Executive to the constitutional authority of the Apex Court if exercised against their vital interests, inability of the Judiciary in punishing contempt offences orchestrated by political will of the ruling party and the immaturity of the Parliament in reacting to the Apex Court judgment. When you look at the distortion, misinterpretation and misquotation of the judgment of the CJ, it raises questions about the intellectual integrity of some of our leaders!

The solution lies in bringing the 17th amendment, which would give the parliament the authority to propose removal of a Higher Judiciary Judge on the basis of specific allegations and which would give the Supreme Judicial Council the authority to investigate the allegation, basing on which the President would decide whether to remove a Judge. This proposed amendment would be a combination of the current system and the abolished 16th Amendment and might please both the Parliament and the Judiciary.

Preparing for the next disaster

Distributing aid after a disaster strikes is admirable, but a few thoughtful measures beforehand can save immense suffering and losses



KAZI AMDADUL HOQUE

FLOODS, cyclones, tidal surges, landslides and other natural disasters have always happened in Bangladesh

during predictable times of the year, and in regions we already know are vulnerable. The intensity and frequency of disasters might vary, but we know for a fact that they will happen.

Given this certainty, disasters need not result in enormous suffering and loss of life every year if only we prepare to face them in advance.

Despite the work of many government and non-governmental institutions all over the country, we have not been able to strengthen our preparedness. We need to develop a mechanism whereby these institutions and the community themselves can prepare better for disasters.

The first need during a flood is to rescue people from their submerged habitats. Some communities live in extremely remote places such as chars in the middle of the river, and it is hard to locate them during a disaster. It is crucial to survey and map these areas beforehand and to identify potential shelters, such as embankments, schools and plinths (raised, flood-resistant areas). In order to know where children, the

pregnant and elderly are in any village, we must be in contact with people from within the community who have this information.

To rescue people and their property, you need boats. It is not plausible to suddenly find a huge number of boats during a disaster. So the local administration may want to ensure that a boat is assigned to evacuate each village or char during a crisis. During normal times, these same boats can go about their regular work. Additionally, having predetermined shelters in raised areas in or near each community will prevent confusion during crises.

Every year, floods are accompanied with catastrophic and unnecessary suffering due to the outbreak of diseases. Within minutes of arriving at shelters, people need safe drinking water. Usually, there are no tube wells, so people are forced to drink whatever water they can find—which may be contaminated, particularly because there are often no latrines either.

It would be wrong to think that just about anyone can suddenly jump in and start rescuing people. Volunteers could be trained with first aid and rescue techniques such as assisting or moving the injured and elderly people. Another useful skill is tube well maintenance. After a flood recedes, tube wells that had been inundated can be used again after basic maintenance and sanitisation.

During disasters, basic services become unavailable. Whereas a boat



People walk through the flooded waters of Telephone Road in Houston on Aug. 27.

PHOTO: AFP/THOMAS B. SHEA

might normally cost Tk 5-10 per person, boatmen demand as much as Tk 100-200 per person during floods and Tk 500 per cow which would otherwise cost Tk 30-50.

Without mobility, people cannot access markets, or return to see the condition of their homes or, in case of erosion, find an alternative place to move them. If we give people mobility, that enables them to get back on their feet. Free shuttle boats are a kind of relief.

Moreover, markets collapse and necessary supplies become unavailable during crises. The government and NGOs should consider encouraging and facilitating mobile markets so that supplies and commerce can be maintained.

Clinics and hospitals are often inundated, closed or otherwise inaccessible during floods. One possible solution to this is the mobile clinic—a team of doctors or paramedics and nurses along with

medical supplies and basic equipment moving around on a boat.

Many people lose their sources of income during floods because their crop fields are destroyed or eroded, or because their livestock are washed away. Interest free loans could help people recover their livelihoods so that they can get back on their feet. It would also be useful to try to connect people to government services that they are entitled to, but might not know how to access, such

as social safety net and special programmes.

Homes and property lost during a flood can eventually be recovered. But lost education cannot. Most schools in the chars have been closed during floods and many have been washed away. Children have lost their books in the water. We need to make sure that damaged books are replaced and schools rebuilt immediately after the flood to minimise the time children spend away from schools. An emergency contingency fund may help speed up this process.

People affected by disaster at times suffer from severe trauma and we need to help them bring back their confidence.

The attitude and behaviour of community workers affect people psychologically. Aid workers should inspire and comfort people. Moreover, we should be respectful to peoples' dignity, dreams and aspirations.

Certain NGOs have been working hard to provide relief to flood affected people in their areas of operation, however, if the government and other agencies come forward and build on these ideas together, that would surely be our best chance of mitigating the next crisis.

Kazi Amdadul Hoque is the Director for Strategic Planning and Head of Disaster Management at Friendship NGO, and has over 22 years of experience in public health and community development.

QUOTABLE Quote



MONTESQUIEU
FRENCH LAWYER AND
POLITICAL PHILOSOPHER

There is as yet no liberty if the power of judging be not separated from legislative power and the executive power.

CROSSWORD BY THOMAS JOSEPH

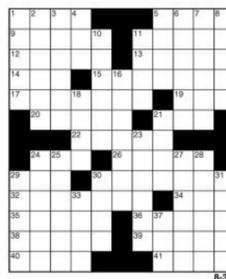
ACROSS

- 1 Airport line
- 5 Jot down
- 9 Ohio city
- 11 Asian peninsula
- 12 Michelangelo work
- 13 Manicure targets
- 14 H look-alike
- 15 Mouth, in slang
- 17 Seedy dwelling
- 19 Went first
- 20 Nut part
- 21 Individually
- 22 Deceive
- 24 El—(Spanish hero)
- 26 Basic ideas

- 29 Abel, to Adam
- 30 Sewer entry
- 32 Driving hazard
- 34 Dance tape
- 35 One way to read
- 36 Clearly stunned
- 38 Burn a bit
- 39 Copter part
- 40 "The Simpsons" bar
- 41 Parent's warning

DOWN

- 1 Crime outing
- 2 Japanese dogs
- 3 Slight wind
- 4 Toper
- 5 Word man Webster
- 6 Red-and-black bird
- 7 Bank worker
- 8 Moved carefully
- 10 Port of Italia
- 11 Leg bend
- 16 Outlawed
- 18 Occupied
- 21 Swanky
- 23 Lack of musical skill
- 24 "Gangsta's Paradise" rapper
- 25 Chant
- 27 Popular soup
- 28 Like loafers
- 29 Tic
- 30 Manner
- 31 Put forth
- 33 Embraces
- 37 Mercury or Mars

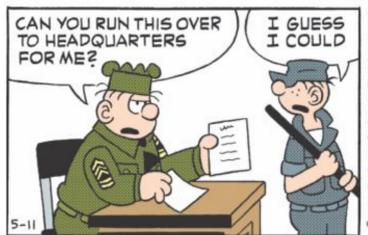


YESTERDAY'S ANSWER

PITONS DEAL
I ROBOT ERIE
CAPE BUFFALO
RENEE
POOL MASK
CORN FUTONS
ALA SIR LIE
PATRON FIFE
REAL RODE
NADIR
MARK RUFFALO
AXEL ELUDED
CEDE TENDED

BEETLE BAILEY

BY MORT WALKER



BABY BLUES

BY KIRKMAN & SCOTT

