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FOUNDER EDITOR: **LATE S. M. ALI**

No excuse for ACC's bias for top govt officials

What is the point of having an anti-graft watchdog, if not to investigate graft?

WE are appalled to learn about the "soft stance" of the Anti-Corruption Commission towards top government officials, particularly those in the admin cadre. According to a report published in this daily, the ACC top brass is reluctant to pursue graft cases against the admin cadre officials; instead, they ask the ACC investigators to go after petty employees. Our report has cited at least three instances where corruption allegations against some of the top bureaucrats were swept under the rug by the top tier of ACC. Rather than take action against those systematically swindling taxpayers' money, the ACC seems more keen on reprimanding those investigators who dared try to expose the corruption.

Reportedly, in 2017, an ACC commissioner (investigation) ordered an assistant director of the commission to probe a graft allegation raised against the government's social safety net programme in Narail's Lohagara upazila—about Tk 2 crore was allegedly misappropriated through fake projects to pocket funds from the government scheme. As the commission filed two cases against the government officials and others involved, and were preparing to file two more cases, the assistant director investigating the matter was served a show-cause notice by the commission. The ACC then appointed a new investigation officer who recommended submitting a final report, instead of a charge sheet, before the court. Eventually, the two cases that were filed in this connection were also closed.

The ACC's apparent bias towards the country's top bureaucrats was exposed recently when the commission sacked Sharif Uddin, a deputy assistant director of the commission. According to ACC insiders, he was "punished" for bringing corruption charges against some top government officials.

This begs the question: What is the point of the anti-graft watchdog, if not to look into graft charges and take appropriate actions? ACC was formed as an independent body to investigate and curb corruption. Sadly, it is gradually losing its independent character and seems to be giving in to the pressure from the corrupt quarters, as exposed by the incidents mentioned above. It has also been reported that ACC investigations are dominated by former bureaucrats sent to the commission on deputation. Naturally, they have little knowledge about ACC's investigation method, which also comes in the way of an impartial investigation.

We urge the ACC to play its designated role and not give a clean chit to the corrupt government officials. They must take action against those who are corrupt, no matter how powerful they are. If the ACC fails to do so, they will not only lose their reputation, but also public trust.

Why spend crores if you won't finish the projects?

Inefficient river excavation work too frequent to be forgiven

WE are puzzled by Bangladesh Water Development Board's (BWDB) excavation strategy for the country's rivers and canals. According to a report by this daily, over Tk 23 crore was spent last year to excavate a 65km stretch of rivers and canals in five upazilas of Lalmonirhat. But the excavated earth, piled up on the banks, made their way back into the water bodies, rendering the project redundant.

Moreover, the project was not even completed as per the original plan. Initially, a work order of over Tk 35 crore was given to contractors for the re-excavation of a 98.1km stretch of small rivers and canals in the five upazilas. However, only 66 percent of the work had been done by the project's deadline, which was June last year. Though the Lalmonirhat Water Development Board refunded around Tk 16 crore to the government, the fact remains that this was a most poorly done job, through and through.

While excavating rivers and canals to improve navigability is done routinely in Bangladesh, it is rarely ever successful. Either the work is done inefficiently by the relevant board and contractors, or the project is left unfinished. Unfortunately, both of these have happened for the case in point.

As to why the excavation work was unsuccessful on their end, the executive engineer of Lalmonirhat Water Development Board said the contractor could not work fully due to obstruction by the land owners along the rivers and canals. Are we to believe that an organisation under the government lacks the tact and resources to work around such issues? We are beginning to doubt how important these organisations deemed the excavation project to be, given how they let their work—and crores of public money—be lost for nothing. Unfortunately, this is not an outlying event and is proof that the BWDB is perhaps not learning from its past failures in terms of river excavation. In 2020, it had reportedly excavated an 80km stretch of the Charalkantha River in Nilphamari, only for the dug-up earth to flow back in and re-obstruct the river's flow, even narrowing it down to a mere channel in places.

Not only do such poorly done projects waste public money, but they also exacerbate the suffering of citizens. The BWDB and its district offices must be held to account for their inefficiency. It's not acceptable that funds and time should be wasted in this way while officials move on to the next large-scale, government-funded project—only to presumably do that ineffectively, too.

The impossible quest for an ideal CEC

Abu Sayem
is a barrister and a human rights defender.

ABU SAYEM

THE formation or the journey of an Election Commission has rarely been a welcoming event in Bangladesh. It is always the chief election commissioners (CECs) who are blamed for all electoral evils. Their image starts to tarnish as soon as they are sworn in. But the simple truth is that, irrespective of whether they are impartial or want to hold credible elections, there is little space for them to act independently. We may not like it, but a CEC has no choice but to follow the sitting government's—more precisely, the ruling party's—arrangements in Bangladesh.

Ironically, however, a failed Election Commission is negatively branded with its CEC's name. I have little doubt that the defamed CECs would have performed differently under a neutral government, whereas they surrendered their conscience to the government—either because they were weak or because their appointment demanded unconditional loyalty. Even with this knowledge, people want to see a CEC having the courage to disregard the establishment. To me, they want a TN Seshan taking the role of their CEC—an impossibility at the present moment.

Many would ask: Why couldn't we find a TN Seshan—i.e. the man who cleaned up the Indian electoral system in the 1990s—in Bangladesh? I can cite at least two reasons. To begin with, Indian politicians, even in their quest for power, did not intend to completely destroy their constitutional institutions. On the other hand, I am sure Indian pressure groups or intellectuals would not have accepted any such move. As a result, TN Seshan had a fertile land in which to work independently, without fear.

In Bangladesh, we are still looking for an ideal CEC. Will one be born? If yes, will they be able to work independently? Mahbub Talukdar, a member of the Nurul Huda commission, showed some courage. Yet, he was not the decision-maker. KM Nurul Huda, probably the most incompetent and shameless CEC in Bangladesh's history, sidelined Mahbub and upheld the government's agenda. As a matter of fact, what determines an answer to my question is the mindset of our politicians and intellectuals.

▲ **Is it possible to hold a free and fair election under a partisan government?**

FILE PHOTO: STAR

If they all agree today, a courageous CEC will emerge tomorrow. But will they be able to conduct free, fair and impartial elections here? Again, the answer rests on the mindset of our politicians and intellectuals.

If we analyse the elections held in recent times during the Awami League's regime, what can we conclude? The party's mindset is completely focused on winning elections, by whatever means possible—*not* on credible elections. They are not bothered about the gradual disappearance of the institution of democracy. The parliamentary elections of 2014 and 2018 were nothing if not farcical; yet, it wasn't just the ruling party activists but also many of the country's top intellectuals who extended their unequivocal support for the regime. The common objective of this coterie comprising both political and non-political elements have left no scope for acceptable elections in Bangladesh under a partisan government.

Unsurprisingly, a few people are always excited about new laws. For those having common sense, this enthusiasm is misplaced. We all know that neither the enactment of legislations nor even the sacred provisions of the constitution can protect the people's rights—unless their enforcers are willing to do so. Who can deny the long saga of abuses of our constitution and our laws for the last 50 years? The newly passed legislation in order to form an Election Commission has also proven to be unhelpful. The Awami League's intention behind enacting the law is not clear. Was it in good faith?

The appointment of the current Election Commission under the Chief Election Commissioner and Other Election Commissioners' Appointment Act, 2022 has brought no significant changes to the existing situation. Whoever becomes a CEC through the given process is unlikely to serve impartially. The apparatuses of the state are fully controlled by the sitting government and will not act against the leader's wish.

Habibul Awal's action will prove whether he will act as TN Seshan. Only time will tell whether the ruling party will start to engineer the upcoming general elections in the way they did before to ensure their return to power. If they do, Bangladesh is certain to experience another controversial election in late 2023 or early 2024. No legislation, including the newest one, can prevent that from happening.

In Bangladesh, the legal framework for holding a free and fair election existed under the applicable laws, even before the enactment of the new law. The difficulty lies in the lack of will of those running the government and those who follow them. The ruling party and their ideological intellectuals or pressure groups are adamant to hold on to power. Unless this attitude changes, an entire generation will be deprived of the chance to cast their first vote.

For Bangladesh, the sole mechanism to ensure trustworthy elections is returning to the interim government who will exercise constitutional powers to impartially conduct general elections. Despite the Supreme Court's verdict against the non-party caretaker government, which in my opinion is a judgment of misconceived jurisprudence, our politicians must act for an ultimate consensus—that of restoration of the interim government for free, fair and impartial elections.

A legislation or a Kazi Habibul Awal will not be able to rescue us.

ASSANGE EXTRADITION

On to the next hurdle

Craig Murray
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CRAIG MURRAY

WITH Julian Assange still, for no rational reason, held in maximum security, the legal process around his extradition continues to meander its way through the overgrown bridleways of the UK's legal system. On March 14, 2022, the Supreme Court refused to hear Julian's appeal, which was based on the grounds of his health and the effect upon it of incarceration in the conditions of the US prison service. It stated that his appeal had "no arguable legal grounds."

This is a setback that's most likely going to keep Assange in jail for at least another year.

The legal grounds, which the High Court had previously ruled to be arguable, were that the US government should not have been permitted to give at appeal new (and highly conditional) diplomatic assurances about Julian's treatment, which had not been offered at the court of first instance to be considered in the initial decision. One important argument is that, if given to the original court, the defence could argue about the value and conditionality of such assurances; evidence could be called and the matter weighed by the court.

By introducing the assurances only at the appeal stage, the US avoided any scrutiny of their validity. The Home Office has always argued that diplomatic assurances must simply be accepted without question. The Home Office is keen on this stance, because it makes extradition to countries with appalling human rights records much easier.

In saying there is no arguable point of law, the Supreme Court is accepting that diplomatic assurances are not tested and are to be taken at face value—which has been a major point of controversy in recent jurisprudence. It is now settled that we will send someone back to Saudi Arabia if the Saudis give us a piece of paper promising not to chop their head off.

It seems a remarkably strange procedure that, having been through the appeals process once, the whole thing starts again after Priti Patel has made her decision, but that is the crazy game of snake and ladders the law puts us through.

It interested me in particular that the Supreme Court refused to hear Julian's appeal on the basis that there was "no arguable point of law." When the Supreme Court refused to hear my own appeal against imprisonment, they rather stated their alternative formulation; there was "no arguable point of law of general public interest." Meaning there was an arguable point of law, but it was merely an individual injustice that did not matter to anyone except Craig Murray.

My own view is that, with the Tory government very open about their desire to clip the wings of judges and reduce the reach of the Supreme Court in particular, the court is simply avoiding hot potatoes at present.

So the case now goes to Home Secretary Priti Patel to decide whether to extradite Assange or not. The defence has four weeks to make representations to Patel, which she must hear. There are those on the libertarian right of the Tory party, who oppose the extradition on freedom of speech grounds, but Patel does not have a libertarian thought in her head and appears to revel in deportation, so personally I hold out no particular hope for this stage.

Assuming Patel does authorise extradition, the matter returns to the original magistrate's court and to Judge Baraitser for execution. That is where this process takes a remarkable twist.

The appeals process that has just concluded was the appeal initiated by the US government, against Baraitser's original ruling that the combination of Julian's health and the conditions he would face in US jails meant that he could not be extradited. The US government succeeded in this appeal at the High Court. Julian then tried to appeal against that High Court verdict to the Supreme Court, and was refused permission.

But Julian himself has not yet appealed to the High Court, and he can do so once the matter has been sent back to Baraitser by Patel. His appeal will be against the grounds which Baraitser initially found in favour of the US. These are principally: i) Misuse of the extradition treaty which specifically prohibits political extradition; ii) Breach of the right of freedom of speech; iii) Misuse of the US Espionage Act; iv) Use of tainted, paid evidence from a convicted fraudster who has since publicly admitted his evidence was false; and v) Lack of foundation to the hacking charge.

None of these points have yet been considered by the High Court. It seems a remarkably strange procedure that, having been through the appeals process once, the whole thing starts again after Priti Patel has made her decision, but that is the crazy game of snake and ladders the law puts us through. It is fine for the political establishment, of course, because it enables them to keep Julian locked up under maximum security in Belmarsh.

The defence asked the High Court to consider what are called the "cross-appeal" points at the same time as hearing the US appeal, but the High Court refused.

So the ray of light that was Baraitser's ruling on health and prison conditions is now definitively snuffed out. That means that rather than the possibility of release by the Supreme Court this summer, Julian faces at least another year in Belmarsh, which must be a huge blow to him just before his wedding.

On the brighter side, it means that finally, in a senior court, the arguments that will really matter will be heard. I have always felt ambivalent about arguments based on Julian's health, when there is so much more at stake, and I have never personally reported the health issues out of respect for his privacy. But now the High Court will have to consider whether it really wishes to extradite a journalist for publishing evidence of systematic war crimes by the state requesting his extradition.

Now that will be worth reporting.