

## The robbing of Islami Bank

How could two state institutions participate in this process?

For the first time, we have directly heard from the former managing director of Islami Bank that he was forced to resign from his position at the Shariah-based bank after being taken hostage by members of a security force. Although speculations about such incidents had been circulating previously, this account now confirms those suspicions. Given that even the appointment of a bank MD requires Bangladesh Bank's approval, how could such an event occur? It has now been alleged that S Alam Group—a private conglomerate—used two state machineries: a security agency to hold the former MD at gunpoint to force him to resign, and the Bangladesh Bank to legitimise the takeover of the bank, which is akin to robbery.

According to the former MD, many top officials of Bangladesh Bank stayed in their offices late into the night to accept his resignation. Why did none of them protest this irregularity using our regulatory body? Does the central bank lack an internal evaluation or inquiry mechanism that could have prevented this? How could all our banking laws be ignored, allowing a private individual to effectively rob a bank under the direct supervision of Bangladesh Bank? The same questions should be asked about the relevant security agency. Why didn't it protect itself from such inappropriate and unethical use? The security agency is responsible for national security, so why was it utilised as if it were an agency for hire?

After taking over Islami Bank, the S Alam Group acquired several other banks in the country. Why were none of these takeovers prevented, and were the same or different state mechanisms involved in these acquisitions? These are questions that we need answers to. Moreover, the interim government must create provisions so that this cannot repeat again.

Now is the opportunity for our security agencies to ensure they are never used in this manner again. For the sake of our national interests, we hope they will make the most of it. Provisions must be established to prevent partisan politics from turning our security agencies into instruments of the ruling establishment, and to ensure that their primary function remains the protection of national security.

Systems also need to be in place to ensure that the Bangladesh Bank is not merely used to rubber-stamp such abuses but is instead able to perform its regulatory task of protecting depositors' interests and maintaining the overall health of the financial sector. Therefore, the upcoming banking sector reforms must address the existing loopholes that allowed for partisan politics and cronyism to ruin all central bank independence, rob banks at the barrel of a gun simply at the whim of powerful interest groups, which ultimately has led to tremendous financial irregularities and harm to our overall economy and national interests.

## A refreshing change at Dhaka airport

All operations must be upgraded and made efficient

We are delighted to note that within just a few weeks of the new interim government's swearing in, things are changing for the better at Dhaka airport. A report by *The Daily Star* quotes passengers who have expressed their satisfaction with the speedy retrieval of luggage from the carousels upon arrival. This is music to our ears, as we have all too often witnessed and experienced the immense suffering caused by the inefficiency and lackadaisical attitude of the staff responsible for handling luggage.

In the past, passengers had to endure delays of two to three hours for their luggage to reach the carousels, with no explanation provided by the airport authorities for such tardiness. It is quite a novelty, therefore, to see passengers moving through immigration quickly and then having to wait only 18 to 20 minutes to receive their luggage. This improvement is clearly due to good leadership at the top level of airport authorities, that is ensuring proper coordination among the ground handling staff. This is how all international airports are supposed to operate, but sadly, until now, Dhaka airport has rarely achieved such efficiency.

As numerous media reports have highlighted, corruption and inefficiency have plagued our Dhaka airport, causing immense suffering to passengers. Apart from the general apathy towards passenger comfort, there have been issues with other facilities, such as the cleanliness and maintenance of the washrooms and waiting areas. These matters must also be addressed immediately to ensure that passengers are treated with respect and care.

The interim government has promised to take necessary measures to guarantee proper treatment for Hajj flight passengers as well as migrant workers, ensuring a smooth and hassle-free journey for them. Once the third terminal is operational, we expect all services at the Dhaka airport to improve drastically. The significant improvement in luggage handling is a promising sign and gives us hope that the overall management and general attitude of the staff towards regular passengers will see a noticeable change.

## THIS DAY IN HISTORY



### Germany invades Poland

On this day in 1939, German forces, under the control of Adolf Hitler, bombarded Poland on land and from the air, beginning World War II.

# EDITORIAL

## A disturbing legal provision

The Penal Code needs to be changed



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There is a provision of law in Bangladesh's Penal Code which could have a considerable impact upon the criminal prosecution of hundreds of students, protesters and onlookers killed by Awami League government law enforcement officials on July 16 and after.

Yet, very few people are talking about it.

It is section 76 of the Penal Code which is titled, "Act done by a person bound, or by mistake of fact believing himself bound, by law."

It states: "Nothing is an offence which is done by a person who is, or who by reason of a mistake of fact and not by reason of a mistake of law in good faith believes himself to be, bound by law to do it."

The wording is rather convoluted, and its meaning is not clear. The Penal Code however provides some "illustrations" to help with its application, and the first one reads:

"A, a soldier, fires on a mob by the order of his superior officer, in conformity with the commands of the law. A has committed no offence."

Law enforcement officers will inevitably seek to argue that they were ordered to fire on the protesters—ironically, a particular claim that prosecutors would also support—and so must be acquitted from the offence of murder.

The prosecution may argue that this illustration given in the Penal Code only refers to a "soldier," and so does not refer to a "police officer." However, when you had Border Guards of Bangladesh (which includes some military officers), police and in some situations, the army, all involved in shooting after July 16, can the law treat soldiers and police officers differently?

Prosecutors may also assert that the police did not act "in good faith" when they did the shooting, or that the firing was not "in conformity with the commands of the law."

It may also be possible to challenge the constitutionality of this provision which was drafted in colonial times,



PHOTO: AMRAN HOSSAIN

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and no doubt was included with an intention to protect the British colonial police and army from being prosecuted. It could be argued, for example, that section 76 of the Penal Code violates the constitutional principle of the "right to life" though if the court gave such a ruling it is not clear whether it should retrospectively apply to the student protest killings particularly as the reason for the challenge was to remove a defence that the accused would otherwise have been able to use.

Such a ruling may also face resistance from the current Bangladesh Army as it would remove a protection provided to its soldiers and officers.

Nonetheless the provision, to the

extent it remains unchallenged, will certainly be an obstacle for conviction, and prosecutors will need some clever legal minds to find a way of working around it so that it does not have a significant impact upon any trials that take place.

However, it should be noted, that those members of the Awami League's student or youth wings seen shooting

itself.

One possible way round this is to prosecute police officers and others in the country's International Crimes Tribunal for the offence of Crimes Against Humanity. This is because the offence of murder, as part of a Crime Against Humanity, is not defined in the International Crimes (Tribunal) Act 1973, and so this defence set out in

Section 76 of the Penal Code does not apply.

However, there are many problems with the International Crimes Tribunal—as were very evident during the trials of those accused of crimes committed during the 1971 war—and any attempt to prosecute people in that court for international crimes would not only require considerable amendment of the procedures, but also a change in the offence of Crimes Against Humanity in order to ensure that it matched the offence set out internationally.

The ICT, as a forum of prosecution, however very much requires its own separate consideration. That is a matter for another day.

## The alterations we need in our Election Commission



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The 1970 Pakistan election was considered the "fairest and cleanest" election in Pakistan's history, which paved the way for Bangladesh's independence from Pakistan. However, Bangladesh has failed to institutionalise a sound electoral process in the 53 years since independence. Even though all elections held under caretaker governments (CG) were termed as mostly free and fair, elections held under political governments lacked credibility; some were even considered farcical. The key reason is political interference into the workings of election administration by successive political governments since 1972. To stay in power, the ruling class in most cases conducts purely decorative and ritualistic elections denying independence to the Bangladesh Election Commission (BEC) and politicising other institutions with electoral responsibilities such as law enforcement agencies, local administration, judiciary, etc. aiming to manipulate election results.

The democracy-loving people of Bangladesh, where elections are festivals, are waiting to exercise their franchise in the 13th parliamentary elections. However, to ensure requisite institutional conditions for holding the next elections, the interim government needs ample time to rebuild Bangladesh's electoral institutions. The interim government and the new election commission, which is expected to be formed soon, must address the following key immediate

Political neutrality of electoral institutions is paramount. However, due to blatant politicisation of state institutions, some police personnel in particular played a blatant role in ensuring victory of ruling party candidates, including widespread ballot stuffing in multiple elections held under a political government. In order to neutralise temporary poll officials, including police, the IG should amend the Election Officers (Special Regulations) Act, 1991 so that no temporary poll officials, including returning officers and police, can play a biased role in any future elections.

Third, the EC should become a citizens' organisation. In genuine democratic elections, citizens are "the ultimate controlling power." Therefore, EC decision making must be based on citizens' voices to make the EC "of the people, by the people and for the people." The new EC should conduct its work transparently, including adopting a transparency guideline so that Bangladesh can benefit from an EC that is fully accountable to citizens.

Fourth, an election cannot be termed as credible if opposition parties do not participate and if there is a lack of qualified candidates running for office. The UN declared that "political contestants (parties, candidates and supporters of positions on referenda) have vested interests in the electoral process through their rights to be elected and to participate directly in government." In Bangladesh, there are allegations that some qualified political parties were denied registration with the EC, while parties that did not meet the registration criteria were enlisted. Lack of participation of all qualified political parties raises questions about the credibility of elections. Therefore, both the IG and the EC, before the next election should create equal opportunity for all political parties to participate in elections.

Fifth, election observation in Bangladesh has never been

professionalised due to official and unofficial political intervention of the ruling party and EC restrictions. While election observers are a key electoral stakeholder, the EC never established professional relationships with observer organisations. Instead, many credible observers were labelled as "politically biased" when they published credible election observation reports.

There are many examples of political, election-time governments thwarting effective election monitoring by pressuring election observers in multiple ways. Practices that negatively impacted past observations efforts include NGO Affairs Bureau cancelling previously approved funds for observing organisations to prevent them from carrying out their mandates; intelligence agencies subjecting election observers to intense scrutiny, which discouraged observers from conducting election monitoring; BEC issuing credentials during the night preceding election day, preventing observers from traveling to their desired constituency, and restricting observers' movement.

Due to such barriers, most credible organisations stopped observing elections in Bangladesh. The IG and the BEC should develop a strategy not only to professionalise election observation but also to build a culture of accrediting credible election observation organisations as an integral part of elections.

Elections are of paramount importance to a country's quality of democratic governance. They are the means through which people voice their preferences and choose their representatives. I strongly believe the presence of an interim government creates an opportunity to bring elections back to the citizens of Bangladesh, including establishing a sustainable electoral mechanism, which no longer changes the rules of the game to engineer electoral outcomes.

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