



CHAINED

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Foreword

Bangladesh's politics has been experiencing a series of events motivated by political vendetta with Awami League's arrival to the state power in 2009.

One of the first vicious steps taken by Sheikh Hasina-led government against Begum Khaleda Zia was the submitting of a charge sheet by a morally corrupt anti-corruption official on the basis of fabricated documents on 5th August 2009.

The court eventually accepted the charge sheet amid prevalence of contradictory information in the documents. This case later became known as the Zia Orphanage Trust graft case.

Sheikh Hasina herself led many attacks and amongst other is forcefully evicting Begum Khaleda Zia from her residence for 40 years. The residence was provided by a contract in between the President of Bangladesh and Begum Khaleda Zia after the assassination of President Ziaur Rahman as a gesture of the State for his great contribution to the independence of Bangladesh and service as President of the Republic. However, under the instruction of Sheikh Hasina the State authority illegally evicted Begum Khaleda Zia backed in November 13, 2010.

Followed by these incidents, Begum Khaleda Zia and her party leaders are facing charges of corruption, marauding and violence. Begum Khaleda Zia was later accused in another case by the government, the Zia Charitable Trust graft case. Besides, she has been named in another 22 cases including sedition charges.

Each of these cases against Begum Khaleda Zia are examples of Awami League's political vendetta to eliminate Zia family from the politics of Bangladesh with a view to conquering the power of Bangladesh forever.

This paper is being made to examine how the government can victimise a noted politician in false charges.

1. Background

The takeover of power by a military-backed government in January 2007 was a turning point in Bangladesh's politics. From 1990, after the restoration of democracy, no government led by Begum Khaleda Zia and Sheikh Hasina, ever dared to arrest top political figures of the country on baseless charges. It was the military-backed government of 2007-08, that established the culture of defaming politicians by arresting them, harassing them with fabricated charges, and sentencing them forcefully using the court.

Interestingly, Sheikh Hasina, who boasts herself as a champion of democracy, welcomed the takeover of military and termed it as the "outcome" of her movement against Begum Khaleda Zia led BNP government.

After acquiring the state power, the military-backed government rounded up hundreds of politicians, former bureaucrats, and businessman and initiated a series of investigations against them. Some businessman, namely Azam J. Chowdhury of East-Coast Group and Mohd. Noor Ali of Unique Group, revealed that they bribed Sheikh Hasina, her son Sajeeb Wazed Joy and her cousin Sheikh Selim to get the permission to set up power plants in Bangladesh.

According to Brigadier Bari (Chowdhury Fazlul Bari), Noor Ali told investigators he gave Hasina 50 million taka (about USD 830,000) to gain her approval for a power project and one million taka (about USD 75,000), plus real estate, to her son Joy and her detained cousin Sheikh Selim from his commission on the MiG 29 purchase. These revelations let the then army backed government to open fresh inquiry against Sheikh Hasina that led to her arrest.

On the contrary, there were no such allegations against Begum Khaleda Zia. The ambassador of United States in 2007 was found commenting that "*(Begum Khaleda) Zia herself has apparently not been directly linked to corruption*".

In one of the much-talked leaks of US secret cables, one dated June 19, 2007 says, "The two cases against Zia may be designed to suggest political balance for the possible arrest of Hasina."¹ This suggests that these cases against Ms Begum Khaleda Zia had no substantial ground, rather, were filed only to create field to arrest Begum Khaleda Zia, for ensuring a political balance after the arrest of corrupt Sheikh Hasina.

¹ PRESSURE MOUNTS ON THE TWO LADIES, 2007 June 19,
https://wikileaks.org/plusd/cables/07DHAKA1009_a.html

2. Awami League's political vendetta

With Awami League acquiring the state power through negotiation and understanding in 2009, the events of politically motivated vendetta saw a new turn. This has two major aspects:

- i) The withdrawal of cases filed against Awami League leaders, including Sheikh Hasina; and
- ii) Filing new cases, and submitting charge sheet against BNP leaders, including Begum Khaleda Zia

Britain-based weekly, The Economist explained this approach in their December 7, 2017 blog, "*When Sheikh Hasina came to power for the second time, in 2009, she took a more aggressive approach, going after her enemies and settling scores...*"¹

2.1) Withdrawal of Awami League leaders' Cases

The Awami League led 14-party alliance government in 2009 recommended for the withdrawal of a total 7,249 criminal cases including several sensational murder cases filed during the military-backed caretaker government and BNP-led four-party alliance government.²

The committee decided to withdraw 12 pending cases against Prime Minister Sheikh Hasina, and other charges lodged during the past interim government. These 12 cases included, the Bangabandhu Memorial Trust Case and extortion case filed by Azam J. Chowdhury.³

Even though the committee was formed in February 2009, to recommend withdrawal of "politically motivated" cases filed between 2001 and 2008, the committee went out of its way on August 22, 2013 and proposed dropping of at least two murder cases filed in 1988 and 1996 against Chhatra League (student wing of Awami League) activists..

¹ The battle between Bangladesh's two begums is over, December 2017, <https://www.economist.com/news/asia/21732109-under-sheikh-hasina-country-growing-more-authoritarian-battle-between-bangladeshs>

² Withdrawal of political cases: Rule of law stripped away, March 10, 2014, www.thedailystar.net/withdrawal-of-political-cases-rule-of-law-stripped-away-14759

³ Bangla Govt to Withdraw 12 Cases Against Hasina, June 11 2009, <https://www.outlookindia.com/newswire/story/bangla-govt-to-withdraw-12-cases-against-hasina/661153>

The withdrawal recommendations were made at the committee's 31st meeting of the Committee held at the home ministry with the then State Minister for Law Qamrul Islam in the chair on that day (August 22, 2013).

The national committee for recommending withdrawal of “politically motivated” cases on August 22, 2013 proposed dropping 72 cases, including around 10 murder cases against Bangladesh Chhatra League and Awami League activists dating back as far as 1988.

The 72 recommended cases also included cases against two ruling party lawmakers — Amanur Rahman Khan of Tangail and Maj Gen (ret'd) Subid Ali Bhuiyan of Comilla.

2.2) Begum Khaleda Zia and BNP faces new cases

Begum Khaleda Zia has been named in 24 cases so far after Awami League came to power.

So as Senior Vice Chairman of BNP Mr. Tarique Rahman is accused of more than 70 cases during the Sheikh Hasina regime despite Mr. Rahman is living in London since 2008.

The Anti-Corruption Commission filed the Zia Orphanage Trust graft case on July 3, 2008, at the Ramna police station. Initially, there was no mention of Begum Khaleda Zia in the case. But later her name was added only to intimidate her to retire from politics and balance the political field after the arrest of Sheikh Hasina.^{1 2}

On 5th August 2009, Begum Zia's name was mentioned in the charge sheet though the first Inquiry Report submitted by Md. Nur Ahmed of Anti-Corruption Commission on 11th June 2008, opined that Begum Zia was in no way involved in this graft case.

Another graft case, Zia Charitable Trust corruption case, was filed against her on 8th August 2011 by the Sheikh Hasina loyalist anti-graft body.

More to add, this government with Sheikh Hasina as its leader has filed fifty thousand seventy-four cases (50,074) against 1,191,449 BNP leaders. 733 leaders and activists of BNP

¹ **Khaleda Zia still under pressure to leave country**, May 13, 2007,
<https://www.thenews.com.pk/archive/print/55195-the-judgement>

² **Sheikh Hasina jailed, Khaleda too under pressure**, July 2007,
<https://www.outlookindia.com/newswire/story/sheikh-hasina-jailed-khaleda-too-under-pressure/488556/?next>

were killed across the country during the period. At least 528 cases were filed against 24,707 BNP leaders and activists while 1519 were arrested alone in the last one month.¹

The secretary general of the party has been named in eighty-eight cases. The standing committee members are facing three to fifty-two cases. Noted lawyer, human rights defender, a fellow of Harvard University, Barrister Moudud Ahmed has nine cases against him only because he has been serving as a national standing committee member of BNP. He has been evicted from his house as well by Sheikh Hasina government.

Among other standing committee members Dr Khandaker Mosharraf Hossain, former professor of the University of Dhaka is facing trial in three cases, valiant freedom fighter Tariqul Islam and Gayeshwar Chandra Roy is facing trial in 14 and 37 cases respectively.

This government has abducted Salah Uddin Ahmed, a former minister and BNP's standing committee member of BNP and smuggled him to India in 2014.

On the other hand, amid submitting applications, the review committee that proposed the withdrawal of 7,249 criminal cases against Awami League, did not recommend withdrawal of any case filed against opposition leaders and activists including Begum Khaleda Zia.

Very recently, The Law Ministry has shifted 14 cases filed against BNP Chairperson Khaleda Zia to the makeshift court at Bakshibazar in Old Dhaka to harass her. The ministry issued 14 gazette notifications in this regard on January 8, 2018.²

These are only the numbers to show a glimpse of the repression endured by Begum Khaleda Zia and her party members.

¹ **Withdrawal of cases against BNP men demanded**, 26 January, 2018,
www.observerbd.com/details.php?id=118778

² **16 cases against Khaleda Zia shifted to Bakshibazar special court**, January 2018,
www.dhakatribune.com/bangladesh/court/2018/01/08/16-cases-khaleda-bakshibazar/

3. Understanding the Zia Orphanage Trust Case

Zia Orphanage Trust Case, a sensational case due to the name of the accused, has been in the center of many controversies from the very beginning. The case was filed during the military-backed caretaker government of 2007-2008 with a view to creating pressure on Begum Khaleda Zia to quit politics, and leave the country.

The initial reports and the first investigator to investigate the case could not find any link between the case and Begum Khaleda Zia and did not mention her name in the list of convicts in his report, though he included Begum Zia's son Tarique Rahman's name, which proves that he was in no way biased to BNP.

But after his detailed investigation, a renewed effort was launched to implicate Begum Zia.

Before moving to the legal arguments, this chapter will deal with the basis of this case, the proceedings, and will try to understand the events.

3.1) Zia Orphanage Trust receives fund

Lieutenant Colonel ASM Mustafizur Rahman was appointed as the Foreign Minister of the government on March 20, 1991, after Bangladesh Nationalist Party-BNP won the election of February 1991.

After his appointment as the foreign minister, he went to visit Kuwait in June. During the visit, Mr Mustafizur was received a warm welcome from Kuwait government. He was fortunate to meet the His Highness the Amir of Kuwait, Jaber Al-Ahmad Al-Sabah where Mr Mustafizur Rahman informed His Highness the Amir of Kuwait that Begum Khaleda Zia, the wife of war hero President Ziaur Rahman, was elected as the head of new government.

Amir Jaber Al-Ahmad Al-Sabah personally knew Ziaur Rahman and expressed his interest in donating a hefty amount of money to set up an orphanage in Bangladesh in the name of President Ziaur Rahman.

His Highness Amir Jaber Al-Ahmad Al-Sabah during the visit of Mr Mustafizur gave him a cheque of USD One Million Two Hundred Fifty Five Thousand as a donation for Zia Orphanage Trust, a trust Mr Mustafizur promised him to establish.

This entire amount of money for the trust came from Kuwait as a private gift or donation to Begum Khaleda Zia to form Zia orphanage trust.

3.2) Zia Orphanage Trust formed

Since the money was provided to Zia Orphanage Trust by the Amir of Kuwait, the necessity to establish a trust with that name was felt. In this regard, Mr Tarique Rahman, the elder son of President Ziaur Rahman in consultation with foreign minister ASM Mustafizur Rahman, took the initiative to establish Zia Orphanage Trust, along with his younger brother Arafat Rahman and maternal cousin Mominur Rahman. They established the Zia Orphanage Trust in September 1993.

3.3) Disbursement of the donation

Mr ASM Mustafizur Rahman and the principal secretary of Prime Minister's Office Dr Kamal Siddiqui got the money disbursed to two trusts: one in favour of Mr Mustafizur to Zia Memorial Orphanage Trust in Bagherhat, and another in favour of Mr Tarique Rahman to Zia Orphanage Trust of Bogra.

After having received the money, Zia Orphanage Trust bought a piece of land from Mr Sharfuddin in Bogra to build an orphanage in December 1993.

On the other hand, Mustafizur Rahman established the orphanage in Bagherhat by 1996.

3.4) Awami League's movement and difficult time for BNP

Bangladesh's politics was facing a hard time with Awami League in opposition. But the worse things started happening from 1994.

BNP and Mr Tarique Rahman who was then a leader of his party, was busy in running campaign in January 1994 as there were city corporation elections in four city corporations across the country on January 30. The election was largely fair and credible with two mayors from both parties won the poll.

After that election, a new election was on the door, the by-election of Magura, in March. The high-voltage election got national coverage and the opposition parties alleged widespread rigging. Nation-wide violence followed the election.

Awami League declared a series of strikes after the election in protest of the alleged rigging. The party along with two major parties: Jatiya Party and Jamaat-e-Islami, enforced 196 days of strike from April 1994 to February 1996 for an election-time caretaker government.

The strikes crippled the nation, and it was almost impossible to work freely.

Under this circumstance, Mr Tarique Rahman and other members of the Zia Orphanage Trust could not manage to establish the orphanage on time.

Later, in 1996, Awami League took the state power and started hunting BNP leaders.

Interestingly, from 1996 to 2001, in these five years, the extremely hostile Awami League leadership or the government of Awami League never questioned about the trust. They never raised any flag regarding the money. This indicates that, they could not see any sign of misappropriation of this fund, and the fund has no relation to the national exchequer.

3.5) Zia Orphanage Trust revived

In the course of time, Tarique Rahman became the Senior Joint Secretary General of BNP and successfully campaigned in the 2001 national election for BNP that led the party to state power.

After the election, due to his proven capability, he was awarded with greater responsibilities of strengthening the party from the grass-root level. Amid busy schedule in managing the party, Mr Tarique Rahman tried to revive the Zia Orphanage Trust in 2006.

According to a decision taken by the trustee board on March 28 of 2006, the donation that was staying idle in a Sonali Bank Ltd. account was shifted to Prime Bank Ltd. which was offering better interest rate.

The trustee board took the decision in good faith on the rationale that the money, if reserved in the Prime Bank Ltd. instead of Sonali Bank Ltd., will grow larger soon and with that money, a bigger orphanage will be established with better facilities.

Mr Tarique Rahman, in consultation with other members of the trustee, asked prominent businessman Mr Kazi Salimul Haque, who was then the Chairman of Prime Bank Ltd. and also a member of parliament of BNP from a constituency of Magura, to take care of the entire process of transferring the donation that stood 33709757.32 BDT from Sonali Bank Ltd. to Prime Bank Ltd., in good faith.

Kazi Salimul Haque confirmed Mr Tarique Rahman that, the money was duly transferred in different means from Sonali Bank Ltd. to Prime Bank Ltd. by the end of June 2006. Since it was an election year and BNP was preparing for an election, Mr Tarique Rahman could not manage to oversee the entire process.

4. Identifying the “so-called” graft

The motive behind conducting inquiries and filling the Zia Orphanage Trust graft case, as mentioned in chapter 1 of this paper, was to intimidate Begum Khaleda Zia and create pressure on her to quit politics, leave Bangladesh as well.

Because Begum Khaleda Zia was not ready to leave her countrymen in the hand of some cruel military men, and of course there was no evidence against her regarding corruption, with a view to forcing her to accept their plan the government took a new plan.

4.1) Enquiring into the alleged corruption

The Anti-Corruption Commission on 29th April 2008 directed one of its Assistant Director Md. Nur Ahammad to enquire into the allegation of abusing the power of Prime Minister to disburse a government fund to Zia Orphanage Trust and Zia Memorial Orphanage Trust and misappropriating the fund for personal gain.

Md. Nur Ahammad upon her receiving of the order started enquiring into the allegation and submitted a report naming five accused:

- i) Mr Tarique Rahman
- ii) Mr Mominur Rahman
- iii) Mr Kazi Salimul Haque
- iv) Mr Sayed Ahmed
- v) Mr Giasuddin Ahmed

Md. Nur Ahammad, the first official to conduct the enquiry excluded the name of Begum Khaleda Zia and Arafat Rahman as he found no substantial evidence against them.

He particularly cleared the name of Begum Khaleda Zia with a detailed comment that the trust is a private trust, and amid asking for documents regarding the so-called orphanage fund

of the Prime Minister there was no positive response from Prime Minister's Office which was then held by the Chief Advisor Fakhruddin Ahmed who was leading an extremely hostile government to BNP.

The graft official came up with some findings, such as:

- a) None of the accused are public servants,
- b) The trusts are private trusts,
- c) Zia Memorial Orphanage Trust of Bagherhat is running accordingly,
- d) Kazi Salimul Haque opened an FDR in his own name,
- e) No signature of Begum Khaleda Zia was found in any of the documents,
- f) No one from the government, or the trustee board, or any stakeholder, complained to the commission regarding the corruption, he found no informant.

Md. Nur Ahammad submitted this report on June 11, 2008

4.2) Unsatisfied government launch new enquiry with purpose

The military-backed government was unsatisfied with the enquiry report of Nur Ahammad as he did not manage to include the name of Begum Khaleda Zia. The anti-corruption commission appointed a new officer, with less qualification and experience, a deputy assistant director of the commission, Harun-ar-Rashid.

4.2.1 Who is Harun-ar-Rashid?

Harun-ar-Rashid, according to his testimony, joined anti-corruption bureau in 1979 as an ASSISTANT. Later he promoted to an Assistant Inspector of the bureau in 1986. In 1992 he was promoted to an Inspector.

Later, he lost his job due to his incompetence from the commission during the BNP-led government of 2001-2006. He filed a case against the government to retain his job but lost the case in the judicial court.

He was reinstated in his job when the military-backed government took the state power, without following any proper procedure.

4.2.2 The swift bird of ACC

Swift bird of Amazon Forest is the fastest bird in the world. Harun-ar-Rashid seems to be the swift bird of Anti-Corruption Commission who managed to find the involvement of three-

time Prime Minister Begum Khaleda Zia, former principal secretary of PMO and freedom fighter Dr Kamal Uddin Siddiqui, and BNP's Senior Vice-President Mr Tarique Rahman with this graft case, by conducting an enquiry for only ten days from June 15 to June 25, 2008.

He even submitted the first investigation report of the graft case by July 3, 2008, naming Begum Khaleda Zia, Tarique Rahman, Dr Kamal Uddin Siddiqui, BNP's former lawmaker Kazi Salimul Haque and the person from whom the land of Bogra was bought, Mr Sharfuddin Ahmed.

This means, in only 15 days, this Harun-ar-Rashid, a deputy assistant director of the anti-graft body, conducted an enquiry into an allegation, collected all the documents of the case, drafted the enquiry report, prepared the first investigation report (FIR) and eventually submitted the FIR to the court and led the anti-corruption commission to file a case against Begum Khaleda Zia. At the same time the Enquiry officer Harun-ar-Rashid was given the charge of Investigate the case, which is unprecedented as he was Enquiry officer.

4.2.3 Faults in Harun-ar-Rashid's Star

The second enquiry report of Harun-ar-Rashid which is the basis of the FIR and eventually the charge sheet could not manage to distinguish itself much from the initial one by Nur Ahammad. Rather it became evident that Harun-ar-Rashid only added a few sentence with the one of his predecessors only to implicate Begum Khaleda Zia with the case.

For that, Harun-ar-Rashid made some cognizable mistakes.

- a) Harun-ar-Rashid like his predecessor Nur Ahammad, did not identify the source of the donation carefully and submitted the photocopy of a cheque of United Saudi Commercial Bank and claimed that the donation came from Riyadh whereas the donation was from Kuwait's royal family and came from Kuwait,
- b) Harun-ar-Rashid during his deposition confessed that while enquiring he did not find the signature of Begum Khaleda Zia on any of the papers acquired by him regarding the case, yet he named Begum Zia as the prime accused,
- c) Harun-ar-Rashid confessed that he did not submit any documents or CD or recording of Begum Khaleda Zia or Tarique Rahman that can support his findings,
- d) Without following the proper procedure, he copied almost the entire report of Nur Ahammad, including a clearly identifiable correction.

4.3) Filing of the charge sheet

With the arrival of Awami League government in the state power in 2009, this corruption case seems to have gained special status.

Within eight months of Awami League's arrival to the power, the charge sheet of the case was prepared, submitted and got accepted by the judicial court.

While on the other hand, one by one, the twelve cases against Sheikh Hasina was dropped by the court and the review committee for politically motivated cases formed by Sheikh Hasina government in 2009.

The charge sheet was based on some key arguments:

- i) The donation came from Riyadh, of the Kingdom of Saudi Arabia through United Saudi Commercial Bank,
- ii) The account with the name, Prime Minister's Orphanage Fund was opened by Dr Kamal Uddin Siddiqui on June 02 of 1991, according to the direction of Begum Khaleda Zia who was then the Prime Minister,
- iii) Begum Khaleda Zia did not give the money to any other orphanage, but to an orphanage trust run by her son,
- iv) Within thirteen years of the disbursement of the fund, Zia Orphanage Trust did not set up any orphanage,
- v) Tarique Rahman as the settler of the trustee allowed transferring the fund from Sonali Bank Ltd. to Prime Bank Ltd.
- vi) Kazi Salimul Haque, amid Tarique Rahman's direction to open FDR in the name of Zia Orphanage Trust, allegedly opened a personal FDR

The court eventually accepted the charge sheet and indicted all the accused.

The trial started from March 19, 2014 in a special makeshift court in the capital.

ZIA ORPHANAGE TRUST CASE TIMELINE

June 11, 2008

FIRST ENQUIRY REPORT SUBMITTED

Begum Khaleda Zia excluded from the list of accused in the report by Mr. Nur

June 25, 2008

NEW ENQUIRY REPORT IN 10 DAYS

Investigator Harun implicated Begum Zia in the case

August 05, 2009

CHARGE-SHEET SUBMITTED

Harun-ar-Rashid submits the charge-sheet with Begum Khaleda Zia as the prime accused

February 08, 2018

DATE OF THE VERDICT

Court to deliver the verdict against Begum Zia and Tarique Rahman



June 15, 2008

NEW INVESTIGATOR APPOINTED

Harun-ar-Rashid who lost his job during BNP regime for incompetency appointed to re-investigate

July 03, 2008

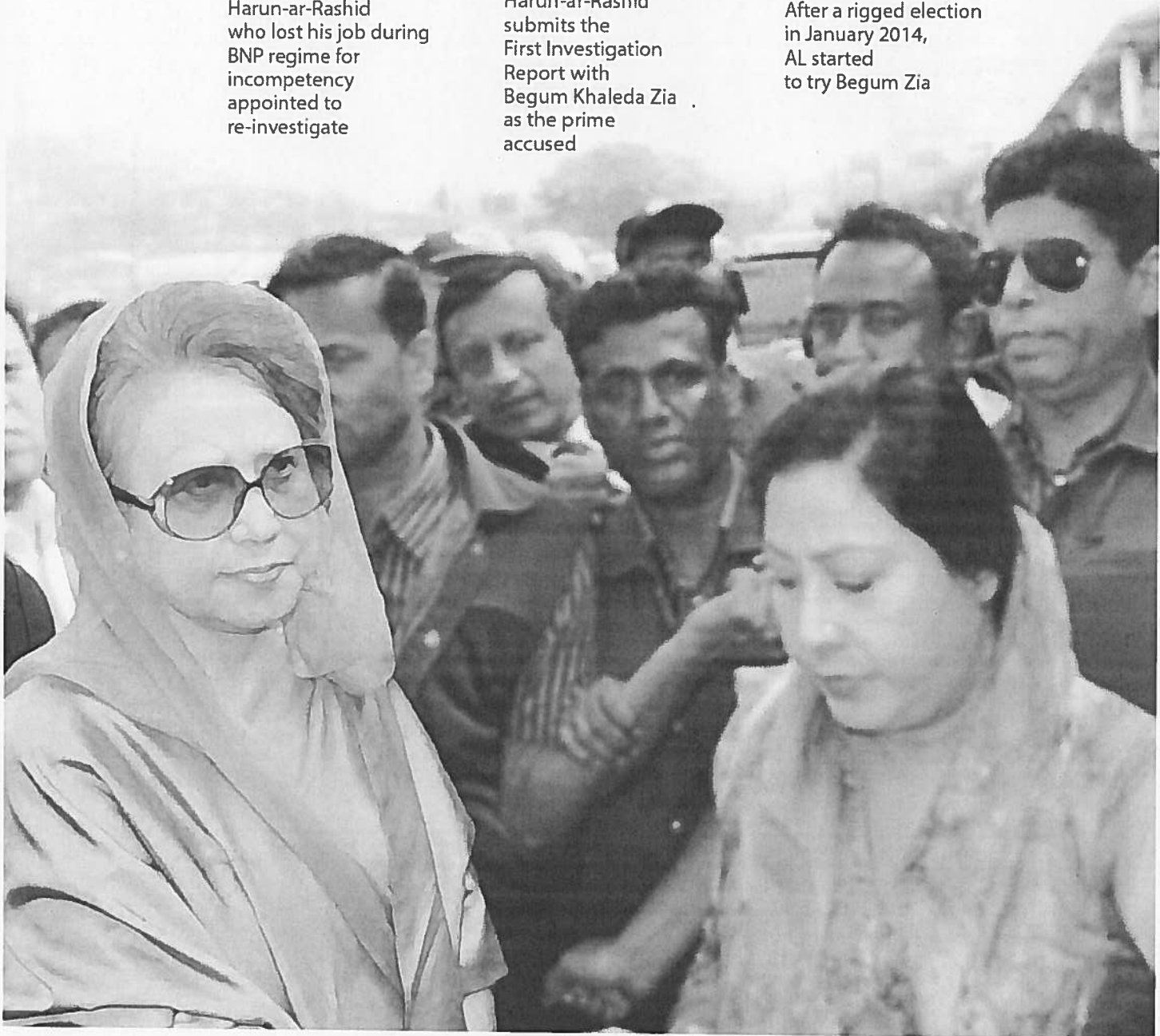
FIR SUBMITTED NAMING BEGUM ZIA

Harun-ar-Rashid submits the First Investigation Report with Begum Khaleda Zia as the prime accused

March 19, 2014

TRIAL BEGINS AGAINST BEGUM ZIA

After a rigged election in January 2014, AL started to try Begum Zia



5. Points to be noted

The Zia Orphanage Trust Graft case is a case that has no strong basis on which it can stand on. Considering the arguments made by the investigation officer Harun-ar-Rashid, this paper can provide the counter-arguments that will prove why the case is a farcical one.

5.1) The donation came from Kuwait

The donation, which is the only source of money in this case, came from Kuwait. But the prosecution submitted a photocopy of a Demand Draft issued from the now defunct United Saudi Commercial Bank, Riyadh, Saudi Arabia. And, the prosecution did not prove who issued this Demand Draft.

According to the letter issued by the Embassy of Kuwait in Bangladesh, the donation of one million two hundred and fifty-five USD was donated to the Zia Orphanage Trust not to any individual or for any other purpose.

The letter issued on 11th August 2015 by the Embassy of the State of Kuwait in response to a letter of Mr AJ Mohammad Ali, who is one of the counsel of Begum Khaleda Zia read:

Dear Mr Ali,

This is to convey to you the clarification issued by the Government of the State of Kuwait on the donation to Zia Orphanage Trust by His Highness The Amir of the State of Kuwait.

As the clarification, the donation was given to Zia Orphanage Trust and not for any individual or any other purpose.

The Embassy would further like to request all concerned not to use this clarification for any political purpose.

5.2) Prime Minister's Office has nothing to do with it

Begum Khaleda Zia, Dr Khamal Uddin Siddiqui, or any other official or the Prime Minister's Office itself has nothing to do with the case as the donation, as mentioned clearly on the letter issued by the State of Kuwait was given to Zia Orphanage Trust which is a private trust, not to the 'so-called' Prime Minister's Orphanage Fund.

Even, on the first enquiry report of Md. Nur Ahammad, concluded that none of the accused according to his report, were a public servant or had any relation with the government.

More to add, the office of the Comptroller General conducts an annual audit to keep a check and balance to the funds disbursed by the PMO. In the last 13 years of time from 1993 to 2007, the office of the comptroller general has never raised any flag regarding this.

5.3) No signature or direction of Begum Zia found

In the Prime Minister's Office rule of business, the direction and orders given by the Prime Minister needs to be in written format and properly signed by the Prime Minister.

The prosecution, investigation officer, and enquiry officer visibly failed to produce any document that indicates that the Prime Minister Begum Khaleda Zia had ever in her lifetime directed Dr Kamal Uddin Siddiqui to open an account in Sonali Bank, on June 2, 1991.

More interestingly Begum Khaleda Zia might not have the authority to do something as the system of the government of Bangladesh then was a presidential one and the Prime Minister did not have the authority to have such funds.

5.4) Prosecution failed to prove any allegation against Begum Khaleda Zia

In this case, 32 prosecution witnesses have been examined, but the prosecution failed to prove specifically that Begum Zia had any involvement in the process of collecting and distributing the fund. She has neither signed any documents nor instructed anyone on this issue. She was also not the settler or trustee of the said trust. The fund in question came from the Kuwait Royal Family to distribute among the orphanage trusts in honour of the late President Ziaur Rahman at the instance of the then Foreign Minister Lt. Col. Mustafizur Rahman. The fund in question came as a private donation and was distributed into two orphanage trusts whereas the prosecution did not raise any question in respect of distributing the half of the fund to Zia Memorial Trust, Bagerhat. Moreover, Lt. Col. Mustafizur Rahman or other trustees of the said Trust were neither implicated nor examined in the present case.

Public witness no-32, who is also the first Enquiry Officer in this case, himself admitted and had given witness that in the investigation report submitted by him after investigation, he did not include Begum Khaleda Zia in the list of accused's. He has mentioned in his investigation report that he did not find any evidence and proof against her.

No witness of the state in their deposition said anything to the effect that Begum Khaleda Zia as Prime Minister has misused her power through associating with receiving a donation to the orphanage fund of the Prime Minister's Office. That she was associated with accepting any donation for Prime Minister's Orphan Fund or its distribution has not been confirmed or said by the witnesses of the state.

5.5) The case was not filed on proper judicial ground

Zia Orphanage Trust is a non-Government trust. This trust is registered legally. Moreover, according to the Trust deed, this is managed in accordance with the Trust Act of Bangladesh. None of the trust members is Government officer or employee. If anybody of the trust indulges in irregularity or violates the law then allegations can be made, or a case can be filed against him under the Trust Act. The Anti-Corruption Commission cannot file case about alleged irregularity or corruption of the trust. It does not fall within their scope and jurisdiction.

In this case charge has been brought against Begum Khaleda Zia under section 409/109 Penal Code and under section 5 (2) of Prevention of Corruption Act 1947. If the accused is considered to be definitely a public servant, then alone he/she can be accused for crimes under these laws. Under Article 55 and 56 of the constitution, a public servant and Begum Khaleda Zia as Prime Minister cannot be accused in a criminal case for any alleged crime under the said Acts.

5.6) The prosecution produced unsupported supplementary documents before the court

The case at first was inquired by the Deputy Director of ACC Mr Nur Ahmed who after proper inquiry submitted report mentioning that he could not find any involvement of the then Prime Minister Begum Khaleda Zia in connection with distributing the fund to Zia Orphanage Trust. Within two weeks, the second inquiry officer Mr Harun Or Rashid submitted another report accusing Begum Zia.

The Anti-corruption Commission filed the instant case relying on an office record which was missing as the alleged and supplementary record was prepared. On this issue, lawyers for Begum Zia argued that there was no such office record at all and the prosecution manufactured a fabricated supplementary record without any authentication or signature of the concerned officers. The said supplementary record was prepared in 2008 in the letterhead

office note showing "President's Relief Fund" whereas the presidential form of government was abolished in November 1991, that is, 17 years back. Self-contradictory information has been given in the fabricated office note.

The prosecution produced another document which shows that an account was opened under the head of "Prime Minister's Orphanage Fund". 12th Amendment of Bangladesh Constitution was passed on 6 August 1991 switching from the Presidential form of government to a Parliamentary form of government and making the Prime Minister Head of the Executive. Begum Khaleda Zia took oath on under the new system on 19 September 1991. So how can Prime Minister's Orphanage Trust account be opened on 9 June 1991?

The prosecution produced a Cash Register before the court with two entries showing payment to Zia Memorial Orphanage Trust; one in January 1993 and another in November 1993. Both entries carry the same cheque number, same amount, and same mistake in the name!

Moreover prosecution witness no- 21, who was in charge of that cash register at that time stated in his deposition, "during my tenure I never saw any original file on Orphan-fund. PM's Private Secretary was dealing with relief Fund, Discretionary fund & Secret fund related subjects. I did never see any original file on Prime Minister's Orphanage Fund."

5.7) No misappropriation of trust fund

This cannot be a case of misappropriation of trust fund since the amount deposited in the account has been kept in bank accounts for last 27 years and the amount has been increased into three times i.e. BDT Tk. 6 crores plus, and the prosecution acknowledged by their witness statements and by way of cross-examination that the trust money has increased and laying with the bank account. The prosecution also acknowledged a single penny was taken out from the bank account other than purchasing a peach of land in Bogra.

6. The judiciary under menace

In Bangladesh, it is widely perceived that any judge or even justice who goes against the will of Awami League government led by Sheikh Hasina meet with dire consequences.

Seeing the scenario of the country, and the way Awami League influence the judiciary, the Chief Justice in an event commented "We could not fully establish the rule of law yet. Not to mention India, Sri Lanka and Nepal that are far ahead."

This example can prove the comment of Chief Justice of Bangladesh. However, subsequently, the Chief Justice Mr Sinha was compelled to leave the country and still he is in exile in Canada as a did not follow the dictation of the present Government in the famous Judgment of 16th amendment of the Constitution case.

6.1) Judge fells in hot water after acquitting Tarique Rahman

Mr Md. Motahar Hossain was a trial judge of a case of Mr Tarique Rahman. His only fault was that he acquitted Mr Tarique Rahman, the son of Begum Khaleda Zia and the Senior Vice-Chairperson of BNP from the so-called money laundering case that was filed by the Awami League government in order to malign him.

In his verdict on Tarique Rahman's involvement in a money laundering case filed by Anti-Corruption Commission on October 26, 2009, after Awami League take over power, the judge after perusing the documents, read:

"As regards co-accused Mr Rahman, the trial court, based on an extensive appraisal of depositions of the Prosecution Witnesses, found Mr Rahman not guilty. The court forwarded the following reasons in acquitting Mr Rahman:

- i. Key Prosecution Witness No. 6 Khadiza Islam in her deposition did not implicate Mr Rahman in this case or link him to any offence. She did not state that Mr Rahman had ever demanded any money from her or had threatened her to pay any money to convict Mamun or ever had promised to get her any work order;
- ii. Khadiza herself was the best and most competent witness on who had demanded money from her for getting her the work order, said the court. Being the best witness, Khadiza did not utter Mr Rahman's name even for once in her depositions or deposed to have received any demand or threat or promise to get her the work order;

- iii. Prosecution Witness No. 1, Mir Alimuzzaman, the investigation officer, in this case, stated in his Investigation Report that convict Mamun had demanded money from Khadiza for getting her the work order. He did not mention Mr Rahman's name in the Investigation Report but stated in his deposition in court that Mr Rahman had demanded bribe from Khadiza, which the court found to be a material self-contradiction; and
- iv. The Investigation Report contained that Mr Rahman had voluntarily disclosed about his possession and use of Supplementary International Gold Visa Card No. 4568-8170-1006-4122 issued against convict Mamun's bank account with City Bank, Singapore in a wealth statement he had submitted on 7 June 2007 to the Anti-Corruption Commission (the Commission) in response to a notice dated 19 May 2007 issued by the Commission calling for a statement on his wealth.
- v. Such disclosure, for the trial court, demonstrated that Mr Rahman had no intention to conceal his possession and use of the supplementary visa card and thus have made no attempt to make any concealment. Thus, absent any mens rea and non-concealment on Mr Rahman's part, the trial court found him not guilty and acquitted him of the charge of money laundering."

Due to the verdict, the judge was compelled to leave the country to save his life and now he is exiled in Malaysia.

After the verdict was delivered, that acquitted Mr Tarique Rahman, on November 17, 2013, from the false charges of money laundering, with the government direction the Anti Corruption Commission (ACC) went after the judge.

An ACC team, after the verdict, launched a preliminary investigation against the so-called "discrepancies" in the wealth statement of the judge. They interrogated two stenographers of two separate Dhaka courts to get information on the judge's wealth. They are- Md Abul Hossain of Speedy Tribunal-4 and Nurul Islam Mollah of Special Judges Court in Dhaka.

The graft watchdog also summoned Judge Md Motahar Hossain's personal security Badal Dewan and driver Sohrab Hossain, but no irregularities were found.

However, this attitude of the government towards the judge set an example for all other judges of the country, and thereby gave a signal that if any judge goes against the will of the government, he or she has to face the same consequences as Mr Md. Motahar Hossain.

6.2) Justice Joynul faces wrath

Justice Joynul Abedin who headed the judicial enquiry into the grenade attack on an Awami League rally at Dhaka's Bangabandhu Avenue on August 21, 2004, was summoned by ACC to submit his wealth statement in 2010.

The ACC initiated a probe into the wealth of Justice Joynul Abedin and a complaint about money laundering against him.

The ACC in July 2010 sent him a notice asking for an account of his wealth on suspicion that he had achieved assets beyond known sources.

Justice Joynul Abedin in his petition said that he had submitted his wealth statements twice to the commission on August 8, 2010, and November 3, 2010, as the commission asked for.

On March 2 of the 2017 year, the ACC said in a letter to the Supreme Court that there is an allegation against Justice Abedin of sending money abroad illegally. The anti-graft agency asked the apex court to provide necessary documents on the matter, saying the matter needed to be investigated.

Even in parliament, Agriculture Minister Matia Chowdhury raised the issue of Justice Abedin when the MPs were expressing their anger over the Supreme Court, a measure to subdue the court and judges.

The allegations brought against justice Joynul is politically motivated for his role as the head of judicial enquiry to the August 21 attack for not naming BNP with the attack as they required.

6.3) Chief Justice comes in the line of fire

“He was appointed by the president who is elected by lawmakers. He should have resigned from his post before making any comment on the election process of the women MPs or after delivering the verdict.”

Sheikh Hasina, Awami League chief and Prime Minister

“The chief justice threatened Prime Minister Sheikh Hasina by citing the reference of a Pakistan court order that disqualified their Prime Minister Nawaz Sharif. By doing this, the chief justice has violated his oath. Therefore, he has to resign from office.”

Barrister Sheikh Fazle Noor Taposh, member secretary of Bangabandhu Awami Ainjibi
Parishad

“The remarks you [chief justice] have made in the 16th constitutional amendment verdict
against the country must be expunged, otherwise people will come forward.”

Amir Hossain Amu, Industrialization Minister

“You don't like anything of Bangladesh; then you can either leave the country or get
treatment in Hemayetpur.”

Matia Chowdhury, Agriculture Minister

All these comments targeting the Chief Justice of Bangladesh of Bangladesh, Justice
Surendra Kumar Sinha came after he along with six other justices, gave a verdict claiming the
Sixteenth Amendment passed in the parliament is illegal and the parliament which is running
Bangladesh, came through a non-participatory election, which devoid of moral rights to pass
such an amendment. The judgment also levelled the Parliament as dysfunctional.

The sixteenth amendment of the parliament was passed to control the court by the parliament
where the right to impeach any Justice was reserved to the parliament. Any judge could have
been impeached if the parliament wanted him to be impeached.

In other words, the entire judiciary was literally taken to hostage where if a verdict goes
against the ruling party, the ruling party had the power to impeach the justice who delivered
the verdict.

The annulment of the amendment made the parliament furious and the leaders of Awami
League started hurling abuse to the Chief Justice, only to prove that the assessment of the
Supreme Court regarding the sixteenth amendment was absolutely correct!

6.4) AL against independent judiciary

According to the famous Masdar Hossain Case verdict, the Judiciary must be separated from
the executive branch of the government. This required the formation of Bangladesh Judicial

Service Commission to recruit judges and independent disciplinary rules for lower-court judges.

On December 2, 1999, the Supreme Court, in the Masdar Hossain case, had issued a seven-point directive, including formulating separate disciplinary rules, for the lower-court judges as per the constitutional provisions.

Though the Bangladesh Judicial Service Commission was established in 2007 after the army-backed caretaker government gave the Masdar Hossain Case verdict, the Awami League that arrived power after the government is yet to formulate disciplinary rules for lower-court judges as it would take away the authority to exert power over the lower-court judges from the government.

On May 7, 2015, the law ministry sent a draft of the rules, similar to the Government Servants (Discipline and Appeal) Rules 1985, to the Supreme Court.

On November 24, 2016, it gave the government one week to publish the gazette notification.

Later on, February 5, the court ordered the authorities concerned to issue the gazette notification by February 12.

On February 27, the court had given the government two weeks to publish the gazette notification, as it had failed to publish it in time.

On March 14, it extended the time by two weeks.

On April 4, the Supreme Court extended the deadline until May 8.

Later, on May 8, it gave one more week.

On May 15, the Supreme Court gave the government two more weeks to issue the gazette notification.

However subsequently on December 11, 2017, the government finally issued the gazette notification, keeping the president's authority over the conduct of lower court judges.

In response to the gazette notification, the leading jurists and members of the civil society and political parties of Bangladesh stated, the independence of the judiciary has been undermined and the separation of power has been violated the rules. They further stated, the lower courts have been made subordinate to the executive.

6.5) Chief Justice forced to leave for his verdict

Mr Justice Surendra Kumar Sinha, The Chief Justice of Bangladesh, for his verdict on Sixteenth Amendment case was forced to seek for a month of leave by the government on October 2, 2017.

After a long vacation of the court, on the very day, the court was set to start, but Surendra Kumar Sinha's letter with fake signature arrived at the office of President and Prime Minister at Dhaka.

Reports from Dhaka confirmed that the DGFI officials brandishing with guns went to the official residence of Chief Justice and gave him with three options, which included one-month sick leave and was asked to comply with their order.

A letter shown by the law minister suggest that the leave application itself was forged as the signature of Chief Justice did not match with the other signatures given by Mr Sinha in different verdicts the copy of those are also available on public domain.

However the day he left Bangladesh he told the journalist that he was not sick as the government claimed. He will be returning back to Bangladesh very soon. But still he is in abroad and the government claimed he has resigned, but no documents yet to be produced to prove that he accentually has resigned.

7. Conclusion

On January 3, 2018, Sheikh Hasina, the self-styled Prime Minister of Bangladesh in a conference said, "*She (Khaleda) has brains in her head, but those are used for making money through embezzlement, stealing orphans' funds.*"

This is not the first time, Sheikh Hasina, amid holding the portfolio of the Prime Minister of Bangladesh around hundred times said in public meeting, official press conference as well as in National Parliament that Begum Khaleda Zia had misappropriated the orphans' fund and she certainly will be convicted. As the prime minister, her statements of such things are the indication of influencing the judiciary.

This is just one scenario of the thousands of cases how the judiciary is influenced in Bangladesh.

Now, understanding the entire scenario of Bangladesh, considering Sheikh Hasina's political vendetta against Begum Khaleda Zia and realizing the fact that the Awami League would not allow Begum Khaleda Zia to campaign in the upcoming national election, we the concerned citizens of Bangladesh are in fear that using the influence over the judiciary, Sheikh Hasina and her Awami League would punish Begum Khaleda Zia in this farcical case.

We would like to count on the friends of the people of Bangladesh to save the situation by creating international pressure on Sheikh Hasina and ensure that she would not influence the judiciary.