

Indemnity Ordinance

A 'law' that legalises violation of the law

THE 'Joint Drive Indemnity Ordinance, 2003' promulgated by the government, apparently to consign some questions raised by the anti-crime drive to oblivion, has not been endorsed by jurists and lawyers for obvious reasons. We, for our part, believe that it was eminently avoidable. For, in this paper, we have said for the umpteenth time that the government needed to spell not a *priori* the provisions of law under which the army had been called out for the anti-crime drive. As far as we can remember even section 132 of the CrPC concerning 'aid to civil power' was not formally cited as the basis for it.

Instead the government decided to push through the ordinance, thus setting a dangerous precedent. It amounts to *post-facto* justification of the actions through indemnification of the individuals deployed on a special mission. It would perhaps not be an exaggeration to say what we have now is a law that seeks to legalise violation of law itself.

The volley of questions and queries that sound like a logical sequel to the promulgation of the ordinance, could also be avoided if the issue was placed before the Parliament during its sessions in November last year. Article 46 of the Constitution says that the Parliament may make provisions for indemnifying any person engaged in maintenance or restoration of order in any area in the country. The spirit of the Constitution is that the interpretation of the circumstances prevailing in the country is a matter of collective responsibility to be performed by lawmakers in the Parliament. But a sidestepping of the supreme legislative body took place for some inexplicable reasons.

What is indeed a matter of greater worry is that the fundamental rights of citizens, as guaranteed by the Constitution, are at stake when retrospective effect is being given to indemnity actions of a questionable nature. The government should not have been oblivious of the fact that the constitutional rights of the citizens must always take precedence.

Finally, the government, which showed great sensitivity to the issues concerning the country's image abroad in the past, has to now make a careful assessment of how the international community might view the ordinance and its implications, let alone the flak it has drawn on account of the custodial deaths. Let's not forget, Bangladesh is a signatory to a wide range of international covenants on human rights like the convention against torture and that which has brought about the International Criminal Court. So, the country can ill-afford to enact laws or promulgate ordinances that are inconsistent with its international obligations.

Lynching incident after a lull

Stop it from being a pattern

CATCHING an alleged mugger and setting him on fire by pouring kerosene all over his body at Mirpur last Monday night raked up a nightmarish memory. We can't forget that not so long ago lynching became a regular occurrence just about anywhere in the country. But mostly alleged muggers would either be beaten to death or set on fire by angry crowds in broad daylight in the capital city. At that time, the violent mob action against suspected snatchers was put down to public frustrations over a general deterioration in the law and order situation. But the latest incident took place at a time when petty crimes like mugging had come down to a considerable extent, especially since the operation by the joint forces began in October.

But the fact is the potential for such incidents lurks and that's where we need to be on guard. Police said that there was no case against him, though the local people alleged that he was involved in criminal activities. Therefore, it is only natural for us to wonder whether he was a victim of enmity. It is not impossible for anyone to frame someone and instigate the onlookers against that person. We have seen how ugly mob temper can get in such situations. But we are yet to know for sure whether those who had been lynched earlier on were all real criminals or several of them were just victims of circumstances.

We think the police could have played an effective role in preventing this happening. There should have been proper investigations into the unnatural deaths that had occurred in the past. If only those cases were seriously gone into, people would have thought twice before taking law into their own hands. At the same time, we would also urge the citizens to be respectful of rule of law; they should realise that beating someone to death or setting him on fire amounts to murder. They must hand over such people to the police in all circumstances.

Free Saleem Samad

AFSAN CHOWDHURY

SALEEM Samad is in jail and there is less and less interest every day in the fate of this journalist. As if he is being slowly erased from the blackboard of concerns of our mind. Amongst the lot arrested, he was the lesser known barrister Pricilla Raj who has mercifully been released. Saleem doesn't qualify for headlines but only for jails it seems.

Having gone through a remand where he was reportedly physically abused, the authorities will surely know all there is to know regarding what he may have done. And I would like to ask what crime he has committed worth even the time he has already spent inside. The conspiracy charges made against him are vague and in fact in his role he had no scope to do anything. Yes, he was against the Islamic fundamentalist forces but that is not a crime no matter how far the legal boundaries are stretched. Are people taking advantage of a man who stands fairly alone in his own land?

With the release of the Channel 4 team, the moral foundations of keeping Saleem Samad inside has evaporated. Bail was in fact granted to Saleem Samad but before he was released, a detention order was given and he remains within the walls. Apparently this is preventive detention. But in 30 years of professional life, what has he done that can threaten the State?

Saleem has broken stories on the



unionism but know that they are split along political lines and the present pro-BNP strand has remained silent on his release. The pro-AL group has made some efforts but nothing sustained. The reasons are obvious, he is not their man. The irony of it all is that Saleem Samad has never been pro-Awami League. If anything his friends are with the radical sections of JSD of whom many are with the government today. His friends of many years are also with the authorities but they have chosen to remain silent. The only ones active on his behalf are friends who have no clout and can only plead without applying pres-

and the establishment.

I have been told that Saleem's computer has shown that he had advised the Channel 4 team to seek visa as tourists. It could well be true but he should be charged and tried rather than kept inside for some unknown crime he may have committed. And he could hardly do much now that the Channel 4 team has gone home as a beneficiary of official munificence.

That leaves the role of Saleem Samad as a representative of Reporters Sans Frontiers in which capacity he had kept watch on the fate of beleaguered and journalists in stress or danger as a cause for

social, political and economic entitlements, a caste system drawn not by religious or mythical dogma but that of power and control. We don't seek as much leeway as the powerful, the weaponed or the rich or the privileged or any such higher castes can command as a matter of entitlement. We seek much less freedom from internment without cause- in the land for which Saleem Samad and others fought to free.

All we want is some space, outside the jail, to contemplate our possible innocence or potential crime before we are termed guilty by some unknown configuration.

Saleem has not been found

The government has suffered enormously in terms of prestige by locking Saleem and others up. Activists can't be bullied beyond a point anymore in today's globalised world. His media colleagues may be caught in political cross-worlds but internationally, his case has gained a lot of attention and all this is going to be uncomfortable news for any government. If not today but in the future. Is it worth it?

CHT insurgency for the New Nation and even after visiting Shanti Bahini camps and describing their everyday life he was not touched. Had he been dangerous he would have been taken in.

That Saleem was harmless is known to all. He may be irritating to some, insufferable to a few but harmful to none. Let anyone in the profession come forward and say otherwise and with proof.

I am not part of media trade

sure.

The journalists who are close to the decision-makers and know Saleem well should speak for him if only because many of them claim to have once supported Moula Bhashani. Surely the great Moula would have not asked his followers to accept the jail of an innocent just to be safe and comfortable. I say that this applies to all those who are now Editors and big guns in media

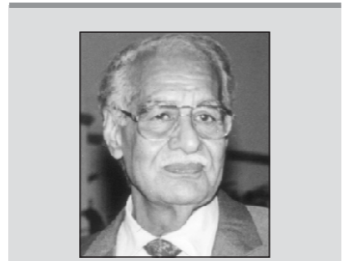
internment. But by keeping him inside the government is exposing itself to the very charges it wishes to deny.

The reason we have a right to speak on this subject is because this is in the end our country as well, no matter how more privileged other sectors or institutions are. In the last thirty years we have learnt that our society has become a strangely caste driven land with iron cast

guilty. But Saleem may not be supported by political parties or powerful sections of society who matter in this cause. Yet without being proven guilty he is made to suffer and we suffer with him in that. In the world without Moula Bhashani, we are having to be more scared than before. Some have already lost the power to demand and only appeal in weak voices.

But Bangladesh's unique history is full of strange turnarounds, of

In Phizo's footsteps



KULDIP NAYAR
writes from New Delhi

THE Nagas, living in the northeast of India, have seldom captured the country's attention. Whenever they have, it is either a clash between the underground among them and the armed forces or sporadic incidents of violence. For an ordinary Indian, it is disturbed, unfamiliar area which is far away. Like Kashmir, which has article 370 for a special status, Nagaland has it under Article 371 (a), the Nagaland assembly is supreme and no parliament act can apply in matters of religious practices, customary laws and ownership or transfer of land and its resources. The difference between the two states is that Kashmir acceded to India after the paramountcy of Britain lapsed while Nagaland was carved out from the loosely administered area under the British.

Both have the central election commission conducting the polls. Both have their state assemblies and the elected governments. People of both states are Indian citizens and carry its passport when they travel abroad. Strategically, both states are important, Nagaland having border with three countries China, Bangladesh and Myanmar. Even after five decades, New Delhi has not been able to establish peace either in Kashmir or

Nagaland. The problem at both places is political but the government has employed the army to solve it. Its commanders themselves admit that it is not possible to establish peace without political inputs.

While Kashmir awaits the talks which the centre has promised chief minister Mohammad Mufti gives three months as the deadline Nagaland is engaged in a parley of sorts at the highest level.

Naga Senior Citizens (CNSC) and HOHO, an apex body, have supported the statement. They have dug out Prime Minister Jawaharlal Nehru's letter to the then Assam chief minister Medhi: "One of their (Nagas') grievances is that under our constitution we split them up in different political areas. Whether it is possible or desirable to bring them together again is for us to consider. Also what measure of autonomy we should give them so that they can

part of their territory and get a resolution to that effect passed in their respective assemblies. Then parliament has to endorse it by a two-thirds majority in both the houses. It is difficult to envisage such a resolution going through either in assemblies or in parliament.

The second demand is that of independence, which means secession. The Nagas argue that they were never part of India and, therefore, the question of secession did

not arise in their case. Still the fact remains that Nagaland is a state in the Indian Union and it is listed in the schedule of the constitution. It needs no argument that such a proposition will never be acceptable to the country. Something like autonomy may be readily acceptable. To use the words of former Prime Minister Narasimha Rao, "The sky is the limit." True, he said so in the context of Kashmir. But it can well apply to the Nagas. They should try to have it as soon as possible. For the Hidutva elements may give the whole thing a religious colouring since more than the 90 per cent of the population in Nagaland is

Christian. The possibility cannot be ruled out.

I believe even the views of Nagas's Gandhi, AZ Phizo, had undergone a change some time before he died in London in 1990 -- I was then India's High Commissioner to the UK. Phizo told his old comrade-in-arms, Khodao-Yanthan, who was working with him in London, that he wanted to advise his old friends to give up violence and seek a solution within the

sudden emergence of situations as befitting an unconstructed political world. In this ad-hoc world of legal mercies, we too wish that Saleem Samad be allowed to leave because he can commit no crime given the world he lives in, given the constraints within which we operate, given the liberties others enjoy.

The government has suffered enormously in terms of prestige by locking Saleem and others up. Activists can't be bullied beyond a point anymore in today's globalised world. His media colleagues may be caught in political cross-worlds but internationally, his case has gained a lot of attention and all this is going to be uncomfortable news for any government. If not today but in the future. Is it worth it?

I have tried to be as humble as possible because this is the humble season and in the spirit of things make a humble appeal for Saleem's freedom.

Moula Bhashani may have mystified his supporters every now and then with his actions but looking back, he seemed to have read history better than all. And he never advised locking up people in jails especially from the media. There are many supporters of that man inside this government. Perhaps they will ponder and link that position of Bhashani with the need to free Saleem Samad.

Afsan Chowdhury is the Senior Assistant Editor of The Daily Star

BETWEEN THE LINES

I believe even the views of Nagas's Gandhi, AZ Phizo, had undergone a change some time before he died in London in 1990 -- I was then India's High Commissioner to the UK. Phizo told his old comrade-in-arms, Khodao-Yanthan, who was working with him in London, that he wanted to advise his old friends to give up violence and seek a solution within the framework of a united India...I proposed that the government leaders should meet Khodao-Yanthan, who was going on his own to Kohima, via Delhi. But the day he reached Delhi, the VP Singh government fell. It was one of those unfortunate quirks of fate. His successor showed no interest in the matter.

The real problem is not whether anything would come out of the talks but whether New Delhi is willing to go to the extent where the intractable become malleable. Is the government willing to modify its stand that a strong centre is the answer to local or regional aspirations for identity?

The Nagas, with whom New Delhi is having talks, the Nationalist Socialist Council of Nagaland (NSCN) -- Isak Swu and Muivah are the negotiators satisfied that the Government of India has recognised "the unique history and situation of the Nagas." Now they want it to be spelled out. The Concerned

lead their own lives without any sensation of interference." This is interpreted differently by some other Naga groups, which have not accepted the two-year-old ceasefire. Their strength and that of Congress party Nagas in power in Kohima, is far less than the NSCN (IM)'s. The church is largely behind the latter.

All groups, however, support the two demands: one, the greater Nagaland that incorporates the Nagas living in Manipur, Meghalaya and Assam and, two, sovereignty. The first one, as the Nagas know, does not depend on New Delhi. The three states have to agree to give

freedom of speech can not be considered as an acceptable nation. International politics had always been there in many different forms throughout time and is practised in various levels by every nation in the world affecting the lives of people in many ways.

As the things changes appreciation of historical events goes through certain scrutiny. What was a perfect choice for Americans during Cold War might seem unthinkable now. So, it is totally unacceptable to blatantly point fingers at USA for the gross failures, inhumanity and stupidity of any other nation. It seems to me while the centre of evil definitely is located no where near USA, the 'centre of blabber' may be very near his one-way mind that is continually looking for a scapegoat to present a simple solution to a very complex picture.

Shuja

Canada

Human cloning

The scientific progress and religious issue notwithstanding, we have to consider the cloning issue more thoroughly. The ethical and moral questions raised by the issue has to be dealt with.

What would be the legal status of such a human being? Are we going

to make a showcase out of his life by media scrutiny? Is there a possibility of on-clone apartheid in the world? Ideas regarding racial purity can be channelled into these thoughts.

Can we truly rise above ourselves and consider them as human beings, not just a source of organs for transplantation?

Yahya

USA

We should have an open mind while looking at the achievements made by Dr. Brigitte Boisselier. Human cloning will be considered as a benchmark in the future. We might have differences of opinion regarding the applications of Human Cloning activities in the future, but we should salute her for her deeds.

From the website of CLONAIID it is learned that this invention could lead us to produce damaged human organs artificially in the laboratory. We have to wait till this really happens. Only five years ago first cloned mammal (Dolly) was born. After several extensive efforts this baby Eve was born.

Scientist will have to monitor carefully the growth of this cloned baby. For everybody to remember, the first Test Tube baby is now 24 years old lawyer. Even in Bangladesh, couples are getting benefit

from test-tube baby these days. At present to order for a cloned baby costs US\$ 200,000. Any infertile couples could have their own offspring, if they can afford. CLONAIID claims anybody could chose from the catalogue how their baby will look like!

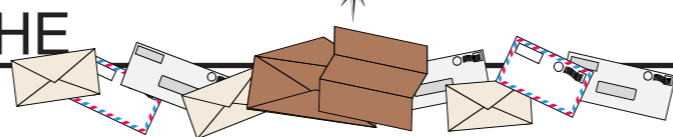
One thing we should remember that this is not a photocopy of human being. If any one intends to produce 1000 Osama-Bin-Laden, it might be possible to copy Osamas genetic identities, but all the new born Osamas will have to go through the same education, and surrounding environments to replicate multiple Osama-Bin-Laden. It is more like Osama's twin brother born 60 years later!

From Islamic point of view, it is perfectly alright. I do not believe that a life is created or can be created in the laboratory. It is Allah who is creating life, where as the scientists are creating the perfect environment. If any Bangladeshi infertile couple is interested to know more about their interesting products or services, they should visit their website at www.clonaid.com or e-mail at clonaid@rae.org.

Mushtaq Ahmed

Dhaka

TO THE EDITOR TO THE EDITOR TO THE



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Letters will only be considered if they carry the writer's full name, address and telephone number (if any). The identity of the writers will be protected. Letters must be limited to 300 words. All letters will be subject to editing.

Joint Drive Indemnity Ordinance 2003

Indemnity ordinance has been promulgated in order to put the army above law. No sooner some murder cases have been filed against the army, the government indemnified the joint force. It is for the second time that such black law has been passed in our country. It certainly proves that those who died in custody are unworthy in the eyes of the government. Even though our Constitution guarantees a citizen's right to take shelter of law, now the relatives of those who died in custody would be deprived of this right.

In order to curb terrorism, the government deployed the army. Not only the government welcomed them, the majority people also hailed them. Though a good number of casualties have taken place, have our hearts been cleaned? We only have to wait a few days more to get the answer.

Oli Md. Abdullah Chowdhury
Sylhet

When do you think a government requires "indemnity laws" to protect its actions especially in 'special cabinet'?

When it knows that it has committed a blunder for which it has to pay badly.

The govt. just made it clear to all of us that they know that "Operation

Clean Heart" is as black as it can be.
Talat Islam
Los Angeles, USA

This is with reference to your news item "Joint forces put above the law" (January 10). Your reporter has described the Joint Drive Indemnity Ordinance 2003 as "the second indemnity in the country's history after the infamous ordinance of 1975 involved in the killing of Bangabandhu Sheikh Mujibur Rahman, his family members and others on August 15, 1975."

However, the first such promulgated law is the Bangladesh National Struggle (Indemnity) Order 1973 (President's Order No 16 of 1973). This law has provided indemnity to the people for the acts they committed in connection with the (i) national liberation struggle and (ii) restoration of law and order. According to this law, the liberation struggle continued during the period from 1 March 1971 to 16 December 1971. This was followed by a disturbed period up to 28 February 1972.

Mi Farooqui
Dhaka

From a concerned Dhakaite

Being a citizen of this country I would like to share some thoughts with my fellow citizens regarding a

growing problem that needs immediate attention. Road rage! Driving around Dhaka city in a car is becoming more and more difficult even though our traffic police are doing their best to control this situation. The only way we can make it easier is if we ourselves drive maintaining certain road rules. In a car we not only have an accelerator brake and horn, we also have indicators and mirrors which were installed for a purpose. I myself have learned to drive here and have been on the roads since 1988, but everyday the situation is deteriorating even though we now have new and latest models on the road. Pollution!

One of the reasons the Government has reduced tax on import of new vehicles and increased the tax on re-conditioned ones was the pollution. But the condition seems to persist as the old busses, trucks and even some personal sedans still ply the roads reducing your vision to ZERO if you happen to be driving behind one. Somehow these polluters seem to get through and drive around the city without being penalised for their actions. Is there something that we are not doing right or is it the system?

Salgado
Gulshan, Dhaka
This is a reply to Azad Miah's letter (January 7).

War is not the answer



No, neither is USA the centre of evil nor blaming Afghanistan, Iraq and North Korea is a deceit. Apparently, Azad Miah is in a mission to confuse readers with his anger and undue hatred towards a great nation (not without its share of errors,

mistakes and lapses).

This has been told several times here but evidently not enough to make an impression in his mind - any country that do not practice the basics of democracy, do not provide its inhabitants with basic needs and