

## Two important issues trifled with

These merited fulsome parliamentary debate

It was momentarily electrifying to see prime minister Khaleda Zia and opposition leader Sheikh Hasina in a face-to-face encounter for the first time in many years on the floor of the House. This was edifying as well, because they talked at each other rather than talking to one another on a topic that deserved to be treated more seriously than with pointless tongue-lashing.

People yearn for the two top leaders of the country to have engaging discussions on the floor of the House to allay their concerns about issues that have been agitating their minds for a while.

The Jatiya Sangsad on Sunday pushed two items of business through a war of words between Begum Zia and Sheikh Hasina and three opposition walk-outs. At issue were: placing of the indemnity ordinance on the table of the House and foreign minister Morshed Khan's speech following his US visit undertaken to persuade Washington to drop Bangladesh from the terror-risk list of countries.

Those represented burning topics awaiting parliamentary debate; one touching on Bangladesh's interest and the second involving a more fundamental question of the right to justice. Both of them merited intense discussion in the parliament. The FM's speech was made by invoking rule 300 of the Rules of the Procedure of the Parliament pertaining to matters of public importance. Why must such a broad rubric be used to make a public statement when it admitted of little room for debating it threadbare? And, the least said about the FM's speech the better; the statement had more to do with grilling the opposition than elaborating on the international environment and explaining the full implications of the US action.

Then, at one stage, when the opposition leader was on her feet speaking (the Speaker apparently requesting her to shorten her speech) the PM stood up to say something to this effect: there was no scope for further discussion under rule 300. She also focused on the role of the opposition. Thereupon, the opposition leader's mike was muted. A suggestion was made that the question could be taken up during the discussion on the President's speech. One would have thought the issue deserved an exclusive, rather than a cursory, treatment.

As for the indemnity ordinance we demand a thorough discussion on the subject. For, it touches on the fundamental principles of the Constitution. Right to equality before the eye of law and remedy for injustice form the core spirit of the constitution. Besides, there are international implications of a laid-back attitude to a human rights issue of this dimension we can ill-afford to trifle with.

## Petrol crisis still lingering?

Trouble-shooting should be effective

Let us try to sequence the events as they have unfolded over the last few weeks. Immediately after the January 5 upward fuel-price revision, there was a surge of demand for kerosene, exempted from the hike. Dealers started drawing more kerosene from the Bangladesh Petroleum Corporation (BPC) depots than ever before. At around the same time, there was widespread allegation that the refuelling stations were mixing kerosene with diesel, octane and petrol to make a windfall. So, the BPC fixed a ceiling on the volume of kerosene the dealers could buy at one go. The reaction to the move was double-barrelled. On the one hand, kerosene price shot up at the retailers' market and on the other, the dealers boycotted the depots.

The BPC eventually withdrew the restriction and decided to send inspection teams out to more than 1,000 filling stations across the country to examine the quality of fuel and calibration of the fuel-dispensers. Meanwhile, the dealers threatened to go on indefinite strike if they were not compensated for evaporation cost and operational losses. Their talks with the government failed. They began a strike and the government declared petroleum products essential, meaning that should the gas stations refuse to sell fuel, the owners could face legal action. On January 22, the dealers called off the strike on an assurance from the government that their grievances would be redressed.

Now, less than two weeks later, the dealers are threatening 'to wrap up their business' if the government were to fail to address the compensation issue by February 22. As the tussle goes on, the consumers are stuck in a state of uncertainty.

The people have accepted the fuel price-hike and its fallout on their day-to-day lives without much fuss, curious though the government's decision was. Yet, they look set to suffer more. Why must they? The government must keep the channel for communication with the dealers open and resolve the issue as soon as possible through negotiation. The public have the right to know the outcome of the work of the committee formed to examine the dealers' demands earlier on. They deserve an immediate end to the uncertainty facing the fuel market.

# Life made harder with 'terror-risk' stigma: Any way forward?



M ABDUL HAFIZ

THE latest misfortune that has befallen Bangladesh is its inclusion in the US' list of terror-risk countries on 17 January last. The reaction of the nation bewildered at the news has been overly depressing and, in some measure, schizophrenic. While the public is haunted by a spectre of looming uncertainty of the future, our political leaders continue to be locked in their bitter antagonism and have resorted to their crass game of blaming each other for the disaster that underlies the black-listing. The leader of the opposition in the parliament has so far drawn the maximum fire but the ruling alliance also is not spared of severe criticism for its 'failure' in averting the calamity that the new label for Bangladesh entails. What is worse is an unprecedented gloom of despair that has descended on the nation. Even if some of our leaders both from the ruling alliance and the opposition made supplication to the US government to spare Bangladesh of the stigma it lacked both unity of voices and synchronisation. Obviously, it produced no positive results.

Several explanations have so far been advanced for the US' State Department's decision to black list Bangladesh by various quarters most of which point their accusing fingers to the leader of the opposition who, it is alleged, distorted the

image of Bangladesh as a moderate, Muslim, democratic country and thus contributed towards bringing about the ignominy for the country. Sheikh Hasina, the leader of the opposition, is known for her irresponsible utterances and controversial remarks whenever she gets a forum. Yet it would be naive and oversimplification of international relations to believe that US State Department decision was, in any way, influenced or even motivated by what Sheikh Hasina now discredited by her election debacle, talked or did not talk. Sheikh Hasina's standing with the US administration, it may be remem-

bered, was laid bare during President Clinton's visit in early 2000. It is still fresh in memory how an AL's over-enthusiasm to capitalise on the visit was dampened by the US authority by imposing its own preferences on the visit programme. What Clinton's perfunctory visit to Bangladesh – without an overnight stay or a customary visit to the National Mausoleum – resulted in was seen by most observers as merely an extension of the US President's India visit. It is only known to the detractors of Sheikh Hasina if the latter's credibility with the US government has gone up so suddenly and so much that she can influence the policy decision of the world's sole superpower!

## PERSPECTIVES

Can't we pool the genius of 120 million people, invest it on 54,000 square miles of exclusively our land and live and die for it? Let us introspect like many nations did in their hour of crisis and chart out course for our wayforward. The nation-state is the longest surviving entity in history. It cannot be destroyed unless it itself decides to be destroyed. But the key to survival -- and with a measure of dignity -- is the nation-building and not a narcotic dependence on the US' unpredictable favour.

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Equally exaggerated, if not totally untrue, is the opposition's oft-repeated omnibus allegations against the ruling alliance of turning Bangladesh into a fundamentalist state. Though the government has indeed alienated the international press with its high handedness of foreign journalists and reporters and paint an image of being a repressive regime there is really nothing in its agenda to suggest that it promotes terrorism – let alone the question of harbouring terrorists of Taliban or al-Qaeda variety. Neither is there its linkage with any terrorist activity either at home or abroad. Except for an anti-US sentiment with regard to US war on terrorism by some of its

electronic media hardly has any space for the foreign policy issues in its trashy programme. There is no issue-oriented panel discussion in our television channels. Late President Ziaur Rahman showed far-sightedness in establishing the country's premier think tank – the BISS – which is seldom utilised to provide inputs for framing policies on the vital issues of international relations. There is no brain-storming to arrive at important decision on issues confronting the nation. As a result our policies are deprived of the nation's 'collective wisdom,' and they are obviously reactive, routine and bereft of innovation.

It is pitiable that in one of the severest of the national crises we cynically resort to a blame game

nowhere to advance or retreat. After a period of remorse for the loss the Britons accepted the reality and woke up to a new realisation that their salvation and survival perhaps lay in the sea itself. Henceforth they started reorienting their outlook on security and power projection. They embarked on an ambitious project for developing themselves as a sea power. Thus the nation was salvaged from one of the worst jolts of its history. Not only that they became recognised maritime power of the world they also smashed formidable Spanish Armada, only within a period of thirty years in 1588 thus becoming the unrivalled sea power. Then onward Britannia ruled the waves of the sea. At the peak of

and rush to the source from where the threat has emanated, for getting that no self-respecting nation can ever be destroyed. The history is replete with instances of the nations rising from their ashes like a Phoenix. When Calais, the last British foot-hold in European continent was lost to the French in 1558 the Britons were shocked and demoralised at the disaster. It ensued a national mourning for the Britons and Queen Mary of England died broken hearted. The nation suddenly found itself isolated and vulnerable like the sitting duck in the sea to its powerful continental neighbours. Its back was against the walls of the sea with

their power the Union Jack used to flutter over a quarter of the world.

True, the terror-risk stigma smeared on us would put us in tremendous disadvantage. The hard life we already face will be made harder. The remittances to our national coffers will shrink. Our 'illegal' immigrants will be confronted with uncertain future and a bulk of our export market will perhaps be lost. Even if the US authority relents at our supplication, that will not be the end of our chronic suffering as a nation. To survive in a hypercompetitive world we cannot indefinitely depend on the US' favour to be doled out to the poor nations like us. Where do we then go from here? We like it or not our salvage still lies with ourselves. We have to go back to our basics: good governance with its moral dimension, corruption and terror-free society, a stable internal order congenial to growth and investment a rock-solid national unity, Human Resources Development and so on.

When the partition took place in 1947 we had a spate of industrialisation in the then East Pakistan. Even after the emergence of Bangladesh we muttered about its urgency for our unemployed. Now the issue is almost dead and Bangladesh has become a 'rural slum'. Can't we make a fresh start? Can't we pool the genius of 120 million people, invest it on 54,000 square miles of exclusively our land and live and die for it? Let us introspect like many nations did in their hour of crisis and chart out course for our wayforward. The nation-state is the longest surviving entity in history. It cannot be destroyed unless it itself decides to be destroyed. But the key to survival -- and with a measure of dignity -- is the nation-building and not a narcotic dependence on the US' unpredictable favour.

Brig (ret'd) Hafiz is former DG of BISS.

# The Indemnity Ordinance 2003: Is it constitutionally valid ?



HARUN UR RASHID

OF late the Indemnity Ordinance of 2003 has become a subject of intense debate in the country. Critics view the Ordinance as an unjustified interference in the rule of law for several reasons. It is seen as discriminatory treatment between a civilian and a military person. The Ordinance erodes public accountability for alleged wrongs done to civilians by members in the service of the Republic of Bangladesh. Critics argue that the status of military personnel is seen in a different light, as if they do not constitute a part of society. Furthermore the promulgation of the Ordinance is perceived as a departure of normal process of governance in a democratic country.

On the other hand, the government claims the Ordinance is a valid law within the ambit of the Bangladesh Constitution of 1972. They claim that it is an action within the purview of Article 46 of the Constitution and the government is fully within its rights to invoke a provision of the Constitution that aims at taking care of the situation that arose during the execution of "Operation Clean Heart". They argue that the incorporation of Article 46 must have a purpose as envisioned by the founding fathers of the Constitution. It implies that the provision in the Constitution exists for use by the government of the day, otherwise the provision in the Constitution will be meaningless.

Everyone knows that army personnel were called in by the government to maintain or restore law and order in the country. One can endlessly debate as to whether the decision to call the army on

October 16 last year was right or wrong. But the fact is that government in its judgment thought it appropriate and that is the end of the matter. No one can judge the facts and circumstances under which the decision was made. It is an exercise of the core power of the administration. If they did not do it, they will be damned and if they do it they are damned. For the government it is a choice between a hard place and a rock.

The army carried out their duties

and regulations applicable to them. In fact military personnel are subject to harsh discipline within their own organisation and the Adjutant General is responsible for maintaining, among others, strict discipline and correctness in their conduct. By and large they are respectful to civilians and conduct themselves well.

One fact that merits attention is that the democratically elected government of Bangladesh with a large popular mandate decided to

the context of its purpose and objective. It is to be interpreted and applied as far as its language permits. The words used must be read in its natural meaning which, while not doing violence on the words used, are in conformity with the general tenor of the Constitution. The method of interpretation will be to ascertain what the framers of the Constitution really meant when they used those words. An interpretation that would go against the core characteristics or underlying princi-

During that period many administrative actions were taken with regard to maintenance or restoration of order in any area in the country and judicial or quasi-judicial decisions were meted out to people concerned.

In the light of the above paragraphs, the scope and purpose of Indemnity Ordinance need to be scrutinised. There are several arguments that can be advanced that the Ordinance does not fall within the ambit of Article 46 of the

relation to acts of "any other person".

Fourth, the fact that Article 46 speaks of validation of certain acts such as "sentence passed, punishment inflicted, forfeiture ordered or other act done in such area" lends support to the view that the scope of Article 46 is limited to actions during the liberation struggle.

Fifth, it is contended that the Ordinance goes against other provisions of the Constitution, namely, Article 27 affirms equality before law, Article 32 guarantees right to life and personal liberty and Article 33 provides safeguards as to arrest and detention.

Finally, Article 21 (2) of the Constitution provides that "Every person in the service of the Republic has a duty to strive at all times to serve the people". This provision is incorporated in Part II of the Constitution and not in Part III to which Article 46 belongs. Therefore it is argued that the phrase employed in Article 46 "Notwithstanding anything in the foregoing provisions of this Part" is not applicable to Part II of the Constitution and by extension to Article 21(2).

Conclusion: The Ordinance was promulgated with a view to indemnifying military personnel for alleged wrongs committed during the "Operation Clean Heart." Although the government makes a strong case that the Ordinance is legal and within the explicit purview of the Constitution, it can be argued that the interpretation sought to be made by the government is misconceived. Given the limited scope of Article 46 the Indemnity Ordinance falls outside of the purview of the Article as it purports to cover the situation arising out of "Operation Clean Heart". Therefore the legality of the Ordinance can be challenged and pursuant to Article 26 of the Constitution the Ordinance becomes void.

Barrister Harun ur Rashid is a former Bangladesh Ambassador to the UN, Geneva.

## BOTTOM LINE

Although the government makes a strong case that the Ordinance is legal and within the explicit purview of the Constitution, it can be argued that the interpretation sought to be made by the government is misconceived. Given the limited scope of Article 46 the Indemnity Ordinance falls outside of the purview of the Article as it purports to cover the situation arising out of "Operation Clean Heart". Therefore the legality of the Ordinance can be challenged...

for 87 days (from October 16 to 9 January) and the success of operation was evidenced by the statistics released with regard to large number of arrest of alleged criminals and extortionists and recovery of considerable amount of illegal firearms and ammunitions. No one can deny that law and order situation in the country had greatly improved. Almost every one sighed with relief that the government did not sit idle and took firm action to halt the situation from deteriorating further.

However, during the operation, regrettably there were deaths in custody. The figure in the media runs from 44 to 53 deaths. It was argued by some that deaths occurred as "collateral damage" of the operation across the country. The military personnel are not geared or trained for such tasks. They undertake tough training to equip themselves to defend the country, if necessary with supreme sacrifice. During their training, their objective is to confront and defeat the enemy with lethal weapons.

It is assumed that when military personnel are called in to undertake non-military job, no one can expect that they will behave 'softly' with a given target. However that does not mean that they can act outside rules

call the army to restore law and order. It is not the case of military governments where military force is often used to control people's protests and is permitted to commit gross violation of human rights. For instance when General Pinochet staged a violent military coup in Chile in 1973, armed forces personnel were used to contain the post-coup situation and torture or extrajudicial killings or disappearances became a routine practice to deal with political opponents in Chile.

Given the background, let me come to the main theme, that is, to what extent the Indemnity Ordinance is valid in terms of the Constitution. First I quote Article 46 of the Constitution for ready reference:

"Notwithstanding anything in the foregoing provisions of this Part, Parliament may by law make provision for indemnifying any person in the service of the Republic or any other person in respect of any act done by him in connection with the national liberation struggle or the maintenance or restoration of order in any area in Bangladesh or validate any sentence passed, punishment inflicted, forfeiture ordered or other act done in any such area."

A provision of the Constitution must be interpreted in good faith in

Constitution and they are as follows:

First, it could be argued that the Article is very limited in scope and refers to situations during the liberation struggle in 1971 and Article 46 has been incorporated to cover these actions. It means that indemnification can only be applicable to persons for their actions during the liberation struggle. It is noted that indemnification is not only applicable to public servants but also to any other person, given the context of national liberation struggle.

Second, the Constitution of Bangladesh was adopted on 4 November, 1972. It was natural that at the time of framing the Constitution, activities during the national liberation struggle were fresh and foremost in the minds of the framers of the Constitution and they provided a legal cover through Article 46 of the Constitution.

Third, it is argued that the issue is whether indemnification of acts of public servants can be made in connection with "the maintenance or restoration of order in any area in Bangladesh". The phrase "maintenance or restoration of order" does not arguably relate to public servants as the phrase has been employed disjunctively with respect to public servants. In fact it occurs in

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**CORRIGENDUM**  
We regret the inadvertent misprint of names of Atiur Raman, Major Gen. (Retd.) Syed M. Ibrahim and Feroz M. Hassan in our 12th anniversary supplement published on February 3, 2003.

# TO THE EDITOR TO THE EDITOR TO THE EDITOR TO THE EDITOR TO THE EDITOR

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.

## Push-in by BSF

I have seen lots of letters written in regards to the push in of the so-called Bangladeshis by the BSF in the last few days.

I come from the province of Assam in India. Due to the porous borders, thousands of Bangladeshis have come over to Assam during the last 50 years. I personally know hundreds of them - both Hindu and Muslim Bangladeshis. Assam had and has a small ethnic Assamese population, now our culture is swamped by these people. Their population multiplies fast and we are in big trouble.

I would request those Bangladeshis who do not believe me to visit Assam and verify it for

themselves. Do not try to give a religious colour to it please.

R. Kalita, Vancouver, Canada

The recent success of smear campaign against Bangladesh was due mostly to the unprofessional and lacklustre attitude shown by our Foreign Ministry and missions abroad. The recent "push-in bid" by India cannot be left alone and we must employ our resources and work on strategies to counter through international media and diplomatic channels.

Our Foreign Ministry must formulate a flexible team with proper funds and visionary people who are capable and flexible enough to deter and create an international campaign against India's atrocities

on our border areas.

Also, we must send media crew to document the atrocities as it unfolds on the border areas, and show the world the misery of the people being uprooted from their homes just because they are of different religion, even though they speak one of India's state languages!

I earnestly request our government to work as fast as possible and order all our missions in the West to work in cohesion to inform the world of this "Ethnic Cleansing" perpetrated by the current Indian Administration.

Nafees K, USA

This is in response to Masud Karim's letter (January 29). I would

like to thank him for his timely letter. Like him, I was also wondering why we do not hear anything from the so-called human rights watchdog regarding the repeated inhuman attempts to push-in Bengali-speaking Indian nationals into Bangladesh by Indian BSF.

Sayem Dhaka University

## Inclusion on terror-risk list

This is in response to the recent news item published in your daily under the heading "Inclusion of Bangladesh on US terror-risk list". This was inevitable, people with a little understanding of US foreign policy and its war on terror, knew

this was coming. It was only a matter of time. In recent news items the Opposition Leader demanded that the government should explain or resign. She as usual is trying to blame the government but for American Foreign policy? The US by including Bangladesh and some other Muslim countries including Indonesia and Egypt has fulfilled its list of including most of the countries with having Muslim population as majority.

If Sheikh Hasina thinks it was the policy of the government that led to the inclusion of Bangladesh in the list then I believe she is the one whose irresponsible remarks about Bangladesh harbouring terrorist and having Taliban and Al-Qaeda elements in the country is to be held

responsible first. A remark made by a person such as an Opposition Leader carries more weight and makes it more credible than any website, foreign media etc.

Afroz Talukder, Gulshan, Dhaka

## History repeats itself

Yes, history does repeat itself and it did so shamefully again in Bangladesh. "Joint Forces Indemnity Act, 2003" is no surprise at all to the people of Bangladesh. The killers of Sheikh Mujib escaped justice for a long time by a similar type of indemnity.

Though BNP has promulgated this indemnity, but my intention is not to blame it per se. To me, both Awami League and BNP are to blame for the state of our country's present condition.

Going back to the original topic, what I want to say is that as a society it seems we're losing our sense of purpose. We need to ask ourselves, how can we accept that killers would be protected by our own very constitution, second time around? Why should we care about law and order? If some people can get away with killing, why not all of us?

Our law minister said "Indemnifying the army-led joint forces and others concerned is needed for 'greater national interest'." Isn't he essentially saying that killing, if it suits the ruling party (whoever that party may be), can be a dignified cause?

I don't have anything against the army. There is no point to that. They did what the government told them

to do. But the essence of what is happening in Bangladesh is truly shameful. After this, nothing is left of a country and its society. No wonder, there's hardly any true justice left in Bangladesh anyway.

Nayeem Mano Normal, Illinois, USA

## Of condensed milk

I have read a number of letters regarding condensed milk and have become totally confused. Is vegetable fat good for health or the contrary? Have we been really consuming condensed milk, which doesn't have any milk in it? Then why is it called condensed milk?

Shahriar Chowdhury Jigatola, Dhaka