

Separating the myths from the facts about Phulbari

The coal in Phulbari has been under the ground for 250 million years. Asia Energy can bring this valuable resource of 572 million tonnes to the surface and help Bangladesh start a new and exciting and profitable coal mining industry -- or else, in all probability, the coal will remain there forever. It's a sovereign choice, it's a business choice and it's about the future of the country.

BRIAN MOONEY

HERE is a heap of coal in Bangladesh -- and by most counts it is worth mining. It will kick-start a new mining industry, produce a new source of power, create thousands of new jobs, upgrade rail and port infrastructure, provide royalty, tax and other payments to the state, and bring on stream a valuable new export commodity to help the balance of payments. Overall it will contribute significantly to national growth, and to poverty alleviation and sustainable development.

Asia Energy Corporation (Bangladesh) Pty Ltd is in the vanguard of this new industry. It is, perhaps as a consequence, frequently misunderstood or even deliberately misrepresented, and this is therefore a welcome opportunity to shed some of the myths and share some of the facts about the company's Phulbari Coal Project in Dinajpur.

Asia Energy is working in Bangladesh under terms of an openly tendered contract which dates back to 1994, the first term of office of Prime Minister Begum Khaleda Zia. It was originally signed with Australian company BHP and formally assigned to Asia Energy in 1998 under the government of Prime Minister Sheikh Hasina. The contract was based largely on the Mines and Minerals Rules and the current Foreign Investment Incentives. There are no secret clauses in the contract and it is annexed to Asia Energy's

Scheme of Development for the Phulbari Project, which is a publicly available document.

There are several issues in the contract which have stirred debate. The first is the royalty level, set, in accordance with the then and current Mines and Minerals Rules, at 6 percent for open pit mining. This has led to misunderstanding; it does not mean that Asia Energy walks away with the other 94 percent, as some have misleadingly suggested. In fact, far from it. Mining in Bangladesh is expensive; the coal is not on the surface, and it will be costly and a huge undertaking to extract it at Phulbari. Over the 30-year plus life of the mine, Asia Energy will have to invest more than \$2 billion in capital and a further \$12 billion in operating costs.

That \$2 billion of capital costs needs to be put into context. It would be a major challenge for any company in Bangladesh to raise that amount of money. It's a demanding target even for a mining company with a good track record and an experienced top management team. It is therefore fanciful to argue that foreign mining companies should not be involved, and it is perhaps also fanciful to argue that the coal should remain in the ground until Bangladesh can afford to mine it. By then -- say 50 to 100 years on -- carbon fuels may have been superseded by new technology, and a generation of industrial growth for Bangladesh will have been lost for ever.

So if Bangladesh wants to mine, use and enjoy the benefits of its coal, foreign investors have to be involved. Why therefore treat foreign investors as irresponsible aliens? Asia Energy is working in Bangladesh as a partner, and the company is operating here pretty much on the same basis as any foreign mining company would anywhere in today's environmentally conscious world. The 6 percent royalty is much in line with most other countries. Only Indonesia charges considerably more -- up to 13 percent. But in Indonesia the coal is close to the surface and therefore far cheaper to extract, and it is also much closer to ports, and therefore likewise cheaper to transport and export. The percentage of royalty also masks the other benefits to the host state -- high corporate taxes, payroll taxes, import duties, rail freight charges and port dues, to say nothing of the spin-off benefits from support industries and the beneficial effects of more base-load power from coal fired generated electricity. Overall, Asia Energy will be paying directly and indirectly some \$7 billion to the state of Bangladesh during the life of the mine and contributing some \$600 million annually to the balance of payments.

Because of the high start-up and on-going costs of mining in Bangladesh, a lot of the initial production at Phulbari will have to be exported. Why? Simply because there is not sufficient domestic demand. Asia Energy would love to be able to sell all of its coal locally --

that would eliminate a stroke the major logistical transport challenges, which include upgrading the rail link to Khulna and dredging the outer bar at the entrance to Mongla Port in the Bay of Bengal. But in the early years of the Phulbari mine there will just not be sufficient demand to cope with the level of production that Asia Energy requires to make the mine viable. In order to pay back its investment, the mine will need to ramp up to an annual production of 15 million tonnes by 2013. At current forecasts, some 4-5 million tonnes will be consumed locally, and the rest exported. If the balance shifts because of market forces, then so much the better. Asia Energy would welcome the opportunity to sell its entire output to local customers at a fairly and freely negotiated margin. But no company will come to mine in Bangladesh without being able to sell freely sufficient quantities of coal -- either to the local or export markets -- to make a fair return for their investors. That is an immutable law of free-market economics.

The economic levels of mining also weigh heavily on the method of production. A lot has been written about the choice between open pit and underground -- much of it by people who have never set foot in a mine. The choice of mining method is not some arbitrary decision reached in a board room in London or Sydney; it is determined on the ground solely by the natural conditions, especially the geology. Mining the thick, near

surface coal seams in Northwestern Bangladesh by underground methods is neither safe nor economical. Unfortunately, the case of Barapukuria Coal Mine, which abuts Phulbari, has proved just that point. Underground extraction from Barapukuria will leave more than 80 percent of the deposit in the ground and the operation will, meanwhile, have to manage the risk to the lives of the men who will mine it. It is worth remembering that more than 6,000 miners lost their lives in underground coal mines in China last year. Because of the high risk of flooding and accidents and the low percentage of extraction, no responsible international mining company would ever consider extracting coal from Phulbari other than by the open pit method.

For that, of course, there is a price. Open pit extraction at Phulbari will involve digging a hole in the surface of a most beautiful -- one could even say majestically beautiful -- landscape of rice fields. But the pit will advance in stages and will be progressively back filled as the mine develops, and ultimately all but a small fresh water lake will be restored to its natural state. This amounts to a temporary loss of rich, fertile land in exchange for coal. That is a sovereign decision for Bangladesh -- rice worth just millions of dollars or billions of dollars worth of coal.

But what must not get in the way of that decision is rhetoric. One university professor, whose findings have been published in The Daily Star, has argued that the economic losses in the area would total \$8.3 billion over the 30-year plus life of the mine. This figure equates to each of the 10,000 families in the 5,933 hectare area that will be mined earning an implausibly high \$27,700 per annum. Sadly,

the average income of a family living off the rice fields in Phulbari ranges from subsistence to a few hundred dollars a year. The total lost rice production over the mined area amounts to an estimated \$240 million gross or \$60 million net over the life of the mine -- and for that lost production farmers will be paid full commercial rates for their land and compensated in addition with a crop loss cash dividend for 10 years.

Asia Energy has commissioned more than 120 separate reports on every element of the Phulbari Project -- on resettlement, indigenous peoples, water, noise, dust, livelihood restoration and land rehabilitation. Asia Energy knows for a fact that the numbers of people who will need to be resettled are about 40,000. Why? Because the company has surveyed every household in the area. Asia Energy knows for a fact how many indigenous people will be affected. Why? Because the company has surveyed them and talked to them and drafted a comprehensive plan for their resettlement and the restoration of their livelihoods. Asia Energy knows none of the environmentally sensitive heels and natural wetlands will be affected. Why? Because the company has a plan to protect them and to ensure continuing and abundant water supplies to all surrounding farms and villages. Asia Energy knows that there will be neither an environmental "disaster" nor local "desertification." Why? Because the company has assessed the environmental impacts and has prepared an appropriate environmental management plan with enough resources to make sure it is implemented. All of Asia Energy's plans have been reviewed by independent experts appointed by the international banking community. It is also not true to say that this

sort of mining has not been carried out in a safe and environmentally friendly fashion in similar conditions elsewhere. RWE has been extracting brown coal from open pit mines near Cologne in Germany for more than 50 years. Its operations involve de-watering at four times the rate required at Phulbari, and over the years it has resettled some 50,000 people. Rehabilitated fields near the RWE mines are green and fertile, and rivers close-by run with clear, unpolluted water.

Resettlement is a fact of life in Bangladesh. In such a crowded country, it is simply not possible to build a bridge or extend a highway without moving people. That happened with the Jamuna Bridge, the GK Project and the Teesta Project, and it will happen again with the Padma Bridge. Asia Energy is determined to handle resettlement in the fairest and most caring way -- ensuring that everyone is fully compensated and given a wide choice of opportunities and assistance to restart their lives. The best guarantee the company can give that this will happen is that it will be living and working side by side with the community for 30 plus years and that many of the local community will also be employed directly or indirectly by the mine.

Asia Energy has invested \$20 million in exploring the resource and in preparing for all the environmental and social challenges of the mine -- to mitigate or minimize them in accordance with the highest national and international standards. Without that responsible and caring approach, Asia Energy would not get international financing for the project. The company is committed to making the mine work for all concerned and to ensuring above all that everyone in the affected area benefits -- along with the rest of

Bangladesh. Asia Energy is also committed to being an open company and a willing partner; you can read more about what the company is trying to achieve both for its investors and for the people of Bangladesh on www.asia-energy.com. Visitors who wish to learn about the project are always welcomed at the company's offices in Dhaka and Phulbari.

Asia Energy appreciates that there is some vocal opposition to the proposed mine. There is obviously some deeply felt local concern -- all change engenders a degree of uncertainty and fear. Some opponents of the mine, however, appear to have their own agendas and they also appear, in certain instances, to be irresponsibly exploiting the genuine concerns of people. Asia Energy has been working with the communities there for many years and knows them well. A large majority of the local people welcome the opportunities that the project will bring them and their children. The company knows this from surveys conducted in accordance with internationally accepted methods and from the fact that four out of every five visitors to Asia Energy's Information Centre in Phulbari who sign the Visitors' Book express their support.

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Mass arrest and law enforcement



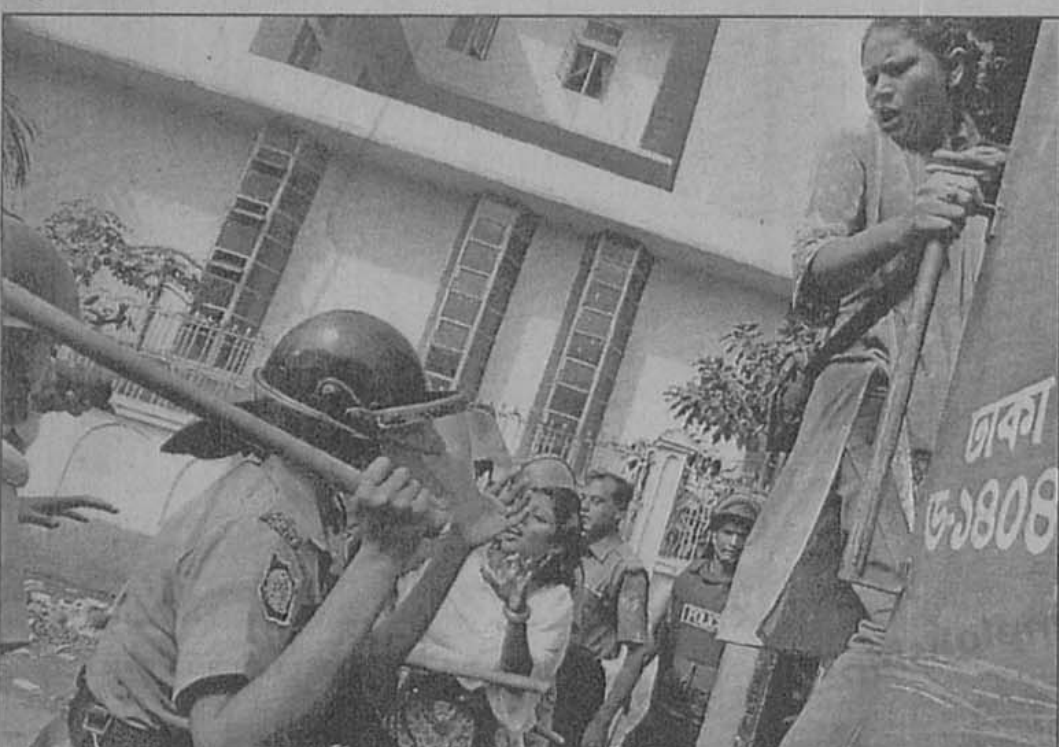
MUHAMMAD NURUL HUDA

THE undeniably irregular and unbearably pathetic mass arrest of hapless people in a blatantly indiscriminate manner in the wake of the Long March program of the major opposition party is a definite manifestation of misgovernance that may spell disaster for our polity if not effectively checked from now. It is not for nothing that The Daily Star had to record its concern on the subject in two consecutive editorials of February 7 and 8.

From the horrendous accounts of the harrowing experiences of the arrestees, one cannot fail to be struck by the insensitiveness of our enforcement culture and the ruling coterie that works from behind. One may wonder if we are still living in a country where the paramount interests of the colonial and imperial power have to be protected by the sentinels of order, come what may.

Concerned citizens may want to know how further low shall we stoop to dehumanise our law enforcement apparatus, specifically the police. Such feelings become poignantly relevant and administratively imperative when one sees that the government of Bangladesh, with the active support of donors, has embarked upon a project of reform of Bangladesh police.

Legal rationale of arrest



The concept of legal aid to the poor in criminal cases should be enhanced on a war footing. This step will reduce the possibility of wrongful confinement and false incrimination in offences. NGO activism should be encouraged to keep a close watch on police indiscretions, specially the arrest on suspicion. Simultaneously, investigative journalism should expose gross misuse of arresting power. Last but not least, the political governments must stop politicising the police as this compromises the impartial and efficient service to the citizens. The politicians have to realise that the right to live is not merely confined to physical existence but includes within its ambit, the right to live with dignity.

The Criminal Procedure Code, 1898 has conferred very wide powers on police in making arrest but the limiting factor is the necessary requirement of reasonability and credibility of information to prevent the misuse of powers. We all know that to arrest persons and that too in such huge numbers as has happened recently without an apparent justification is one of the most serious encroachments upon the liberty of the citizen. The reasonable suspicion must be founded on some definite fact or some tangible proof which should be sufficient to establish in the mind of a reasonable police officer the credibility of the information or suspicion. This reasonable suspicion must relate to definite averments which the arresting officer must consider before he acts. Let us remember that the authority that the law confers in this regard is personal and the responsibility is personal also.

The expression "credible and reasonable" in Section 54 of the Criminal Procedure Code must refer to the mind of the person by whom the information is received and mere assertion can not form the material for the exercise of judgement by such person. The arresting police officer has to exercise his own judgement and his own opinion as to whether he

should or should not act and to enable him to do so he must have the necessary facts before him. Reasonable suspicion is understood to mean a bona fide belief that an offence had been committed or is about to be committed necessitating the arrest of the person concerned.

There is nothing in Section 54 to suggest that the arresting police officer is to be the final judge of what is reasonable or credible. The spirit of the legislation makes it clear that the police officer should have grounds for determining the reasonableness of complaint and that of the credibility of information and the foundation of suspicion upon some definite fact.

Preventive action of police

What is required under Section 151 of the Criminal Procedure Code is that the police officer concerned must know that the person to be arrested is designing to commit a cognizable offence. An "apprehension" that he may commit an offence is not sufficient under the provision. Apprehension is not the same thing as knowledge. The former is mere feeling. Latter is a definite conclusion. If arrest is effected under this section without an emergency being there, the arrest will fall under the category of being illegal.

One may reasonably suspect that the above legal provisions, procedural directions and precautions as envisaged in the code have not been applied while effecting the staggering number of ten thousand arrests within two to three days as reported in the newspapers.

Law and government directives

A democratic polity may, therefore, reasonably ask as to why our law-enforcement organisation is plunging headlong into a legally indefensible course and with such disconcerting gusto? Are they acting at the behest of ill-advised political masters? Are our police doing things they ought not to do or refraining from doing things they ought to do, to favour politicians in power? Are they asking politicians in power to use their influence to obtain choice postings, to avoid being transferred, to mitigate disciplinary sentences or to earn a promotion? Though unfortunate, there is a belief that a necessary basis has been provided for a mutually advantageous barter between police and politicians. People think that the give-and-take between the police and the politicians is thriving.

By resorting to practicing such lawless law enforcement, which obviously is a contradiction in terms, as suspected above, the police inevitable further tarnish their adverse image. Paradoxically, such lawless police officers are in high demand in our perilously polarised polity. Believers in the rule of law and followers of strict legal methods are considered to be "cows" and "sissies." The government is always more concerned with the so-called order than the observance of law. Therefore, the remedy largely lies in the attitudinal change in the police whereby our police culture will get a riddance from several scourges including false implication of innocent persons in criminal cases. That would be some relief as substantial remedy would follow from the change in the attitude of the political government, the real wielders of power. Their colonial mindsets has to change.

Antidote to rash action

In a democratic set-up, the members of the police must be made to realise that they are not above the

law but subject to it like all other citizens and all their actions have to be supported on ground of legality when challenged before a court of law. The question is how do we do that? One way of ensuring that would be to question police indiscretions and excesses, specially the major ones, in court.

As has been mentioned hereinbefore, the legal authority and responsibility to arrest on suspicion is personal, so each individual officer must be made to account for rash and indiscriminate arrest, if so proved. To be more specific, a wrongful arrest of graver type should make the arresting officer liable to a charge of wrongful confinement under the penal law of the country. Therefore, if the authority arranges to commence criminal proceedings for wrongful arrest, the wrongdoers in enforcement outfit would get the message and hopefully, rash and illegal actions will be on the decrease. All segments of the judiciary have to assert themselves.

Our apex court has already given a number of procedural and administrative guidelines in respect of arrest under Section 54 of the Criminal Procedure Code. This has to be followed up in right earnest by issuing strictures and where appropriate by arranging to institute criminal proceedings against delinquent officers. One or two criminal convictions of wayward police officers would have a salutary effect. The fear of authority needs to be instilled.

For their part, the senior police officers should be able to prove that law observance by the police is the best form of law enforcement in a democratic country under the rule of law. They should be ready to carry out the behest of law at any cost.

The concept of legal aid to the poor in criminal cases should be enhanced on a war footing. This step will reduce the possibility of wrongful confinement and false incrimination in offences. NGO activism should be encouraged to keep a close watch on police indiscretions, specially the arrest on suspicion. Simultaneously, investigative journalism should expose gross misuse of arresting power.

Claims for damages caused by wrongful arrest should be instituted by activating the law in this regard. There should be no bar in fixing the civil liability caused by wrongful arrest. That would be a damper to highhandedness.

Last but not least, the political governments must stop politicising the police as this compromises the impartial and efficient service to the citizens. The politicians have to realise that the right to live is not merely confined to physical existence but includes within its ambit, the right to live with dignity.

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On Sheikh Hasina's proposals

KAZI SM KHASRUL ALAM QUDDUSI

LEADER of Bangladesh Awami League Sheikh Hasina has made it known anew -- though it is not anything new -- what was in the hearts of millions in Bangladesh. Even then, it is significant for the fact that it has come more like a manifesto and has been placed in our house of pride and hope -- the parliament, thus giving it sort of institutional shape that is supposed to remain as a historic document in our parliamentary history.

To me, it will remain significant more for the proposed functional reforms indicating a qualitative change in our decadent political culture than for the proposed structural reforms in the caretaker system as well as the election commission.

In Bangladesh, politics and electoral systems have got polluted to the greatest possible extent. Black money holders, loan defaulters, and musclemen have taken full control of our politics and electoral systems. For the honest and good people, it has become next to impossible to even contest the elections, let alone come out successful. Civil society has long been trying to press home the demand for liberating the country's politics from the claws of unabated criminalisation. Now that the leader of the opposition has formally made the proposals, the people have every reason to be heartened and cross their fingers for a better and cleaner democratic environment.

Joining and leaving parties is a common practise in our country at the times of national elections. Many loan defaulters and black money holders offer themselves at those times. They present wonderful and expensive gifts to party chiefs and leaders. Crores of Taka are also deposited to leaders' and parties' accounts. Parliamentary nominations remain up for grabs for the capable -- in terms of money no matter how the money has come -- ones at the time of nominations. Black money holders become our leaders in no time.

Many dedicated political leaders are deprived of nominations and are hardly preferred to the black money holders. Even the top party leaders mock at them for their desire because they do not have enough money to run the race. Top party leaders often regret to the deprived ones saying that they are being deprived only to ensure the party candidate's victory in the elections and that in this age of fierce and unethical competition, candidates without hordes of money are unlikely to win the seats.

Money begets not only money, it perhaps makes the holders brain unbelievably fertile as well. In fact, the currencies are mere pieces of paper to the black money holders and loan defaulters because they have "earned" those less by their own efforts and hard work and more by fraud and forgery. Moreover, they don't have to account for those to anybody, nor are they required to give them back to any authority. Yes, things are so heavenly for such people in Bangladesh. Who says that earning money is not an easy undertaking?

Perhaps, money making is the easiest thing in the world for the black money holders, corrupt officials, loan defaulters and, of course, political leaders of Bangladesh.

That's why ill-begotten money holders find it really easy and enjoyable to waste money lavishly. By means of their ill-begotten money, they engage in buying not only votes but also the purified spirit of the destitute people. Necessity knows no law and thus commitment of such



people is purchased, or rather, plundered in exchange for some money, though insignificant at the macro level. However, there is no point in having the mistaken belief that such people want to become people's representatives for mere honour. Money, money and more money is always at the back of their heads. They are at times overwhelmed by happiness and surprise at finding myriads of sources of money in such positions.

To be precise and concise, our political culture is stinking now. Sheikh Hasina's proposals must have brought new opportunities to stem the rot and save the country from going down the drain further. The ball is now in the ruling coalition's court. All walks of people of Bangladesh are now craving to hear from the Prime Minister of the country similar or stronger words in terms of black money and loan defaulting. It's our firm conviction that Begum Khaleda Zia will make her position clear in unequivocal terms. In fact she is capable of doing it. It's not to be forgotten that she along with Sheikh Hasina and others forced the autocratic regime to step down and restored democracy in Bangladesh.

If our Prime Minister sets loan defaulters, black money holders and musclemen aside as well, the dream of having a cleaner political environment will attain its fullness only to whet our appetite for more. In fact, that "more" is not at all a lot. Rather, just implementation of their words into actions. The steps are quite easy to implement: bidding farewell to the ill-begotten money holders or making them stay at bay. We are no more ready to be consoled with the adage easier said than done. It can and must be done.

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