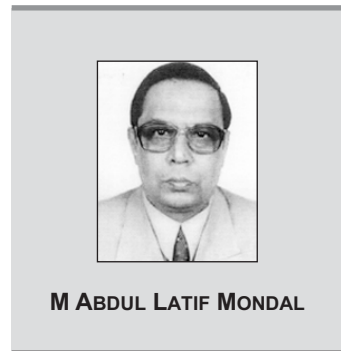


Responsibility without authority

Half a day with Hayami in Japan



M ABDUL LATIF MONDAL

THE rule issued by the full bench of the Appellate Division of the Supreme Court on April 3 against four secretaries to the government, including principal secretary to the prime minister to explain why they should not be prosecuted for contempt of court for not complying with its 12-point direction towards the separation of the judiciary from the executive, hit the headlines the following day.

The court pronounced the order upon a contempt petition from Chowdhury Munir Uddin Mahfuz, a judge on the tribunal for prevention of women and children repression in Kishoreganj and also one of the petitioners of the writ petition that prompted the Appellate Division to issue the 12-point direction on the separation of the judiciary on December 2, 1999. The directions are as follows:

1. Judicial service is a service of the Republic within the meaning of Article 152(1) of the Constitution, but it is functionally and structurally distinct and separate service from the executive and administrative services of the Republic.

2. The word "appointment" in Article 115 means that it is the President who under Article 115 can create and establish a judicial service and a magistracy exercising judicial functions, makes rules etc; Article 115 does not contain any rule-making authority with regard to other terms and conditions of service; Article 133, 136 of the Constitution and Services (Reorganisation and Conditions) Act, 1975 have no application in respect of the judicial functions.

3. Creation of BCS (Judicial) cadre along with other BCS executive and administrative cadres by Bangladesh Civil Service (Reorganisation) Order, 1980 with amendment of 1986 is ultra vires to the Constitution. Bangladesh Civil Service Recruitment Rules, 1981 are inapplicable to the judicial service.

4. (i) Government is directed to take necessary steps forthwith for the President to make Rules under Article 115 to implement its provisions. (ii) Nomenclature of the judicial service shall be designated as the

BARE FACTS

Questions have been raised as to why the ministers concerned, as executives of their ministries, should not be held responsible for non-compliance with the court's directions and made defendants in the case. Mizanur Rahman Khan has written in Prothom Alo (April 4) that in developed countries practicing parliamentary democracy, courts issue rules upon the ministers concerned for non-implementation of policy decisions. There are instances that in Britain, the birthplace of parliamentary democracy, a few ministers had to suffer for contempt charge.

judicial Service of Bangladesh. (iii) Either by legislation or rules or order a Judicial Service Commission is to be established forthwith with the majority of members from the Senior Judiciary of the Supreme Court and the subordinate courts for recruitment to the judicial service.

5. Under Article 133 law or rules relating to posting, promotion, grant of leave, discipline, pay, allowance and other terms and conditions of service consistent with Article 116 and 116A shall be enacted separately for the judicial service.

6. Government is directed to establish a separate Judicial Pay Commission forthwith as part of the Rules to be framed under Article 115.

7. In increasing control and discipline of persons employed in the judicial service and magistrates exercising judicial functions under Article 116 the views and opinion of the Supreme Court shall have primacy over those of the executive.

8. The conditions of judicial independence in Article 116A namely, (i) security of tenure (ii) security of salary and other benefits and pension and (iii) constitutional independence from the parliament and the executive shall be secured in the law or Rules made under Article 113 or in the executive orders having the force of Rules.

9. The executive government shall not require the Supreme to seek their approval to incur any expenditure on any items from the fund allocated to the Supreme Court.

10. The members of the judicial service are within the jurisdiction of the administrative tribunal.

11. A m e n d m e n t o f t h e Constitution for separation of judiciary from the executive may be made by the parliament.

12. Until the Judicial Pay Commission gives its first recommendation the salary of judges in the judicial service will continue to be governed by status quo ante.

It appears that the above 12 points in the operative part of the judgment are not all directions in true sense of the term. Of these 12, points 5 are in the nature of directions and 7 are in the nature of declaration.

Points 4, 5, 6, 8 and 9 are in the nature of directions.

The successive governments had taken 22 time extension for implementation of the court directions.

The Supreme Court took up the contempt petition for hearing in February this year after it was kept pending for about two years and rejected the government's plea for further extension of time for implementing the court's directions.

Having said all these, let us now see what authority the secretaries concerned have to decide implementation of the aforesaid directions of the Supreme Court.

Executive is one of the three basic pillars of the state, the other two being judiciary and legislature. The executive is composed of the President, the Prime Minister and the Cabinet comprising such Ministers as the Prime Minister may from time to time designate. The executive determines the policies of the government and supervises the execution of the policies and the enforcement of the laws. The executive has to act in aid of the Supreme Court. The public officers, including the secretaries to the government aid the executive in the implementation and execution of the decisions and directions of the executive.

Rules of Business (ROB) constitute the procedures of transaction of business of the government and allocation of functions among different ministries/divisions. The ROB, 1996 made by the President pursuant to Article 55(6) of the Constitution replacing the ROB, 1975 have assigned all powers to the minister-in-charge of a ministry/division and deprived the secretary of a ministry/division of the power he enjoyed under the previous ROB. Under the defunct ROB, 1975 the minister-in-charge of a ministry/division was responsible for policy matters concerning his ministry and for implementation thereof. He was also responsible for conducting the business of his ministry/division in parliament. But the existing ROB provides that all business allocated to a ministry/division under Schedule 1 of the

ROB, shall have to be disposed of, or under the general or special directions of the minister-in-charge. The Secretary of a ministry has thus no authority to dispose of any case without the approval of his Minister. It may not be an exaggeration to say that under the ROB, 1996 the secretary of a ministry/division has merely become a staff officer to his Minister.

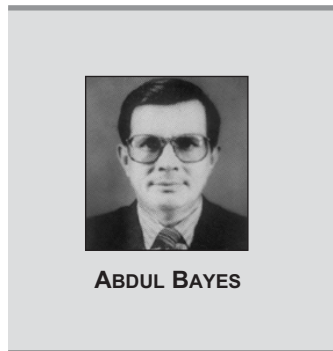
A closer look into the five directions (4, 5, 6, 8 and 9) above shows that decision for their implementation had to be taken at Cabinet headed by the Prime Minister or at the levels of the Prime Minister and the President. The role of the Secretaries concerned was to prepare relevant papers as per guidelines suggested by the political bosses and put up for their consideration and issue Rules, Orders, etc upon their approval.

Questions have been raised as to why the ministers concerned, as executives of their ministries, should not be held responsible for non-compliance with the court's directions and made defendants in the case. Mizanur Rahman Khan has written in Prothom Alo (April 4) that in developed countries practicing parliamentary democracy, courts issue rules upon the ministers concerned for non-implementation of policy decisions. There are instances that in Britain, the birthplace of parliamentary democracy, a few ministers had to suffer for contempt charge.

In its editorial on April 5, The Daily Star wrote: "Those defying or ignoring the directives must be made to face the wrath of law. However, a pertinent question that arises from all these is, did the officials act of their own accord or they were dictated by the political higher-ups."

To conclude, it is our expectation that the highest court of the land will take into consideration all the facts and circumstances and not punish those who have no authority to order implementation of its directions. In other words, those having authority who procrastinated implementation of the directions of the highest court should not escape "the wrath of law."

M. Abdul Latif Mondal is a former Secretary to the



ABDUL BAYES

BEFORE departure, I was warned about the terrible cold in Tokyo. Meantime, Dr Kaliappa Kalirajan gave me some tips as to how to get out of the terminal and take a bus for Tokyo city. Following the text-book type tips, I soon reached Central Bus Terminal to be picked by Mizanurrahman, a Dhaka University teacher now doing Ph.D at the Foundation for Advanced Studies on International Development (FASID). Seeing that I was almost shivering, Mizan put some coins in a machine and brought me a cup of coffee.

From the central bus depot, a taxi drove us to the FASID/GRIPS compound, a 16 storey building standing at the heart of Rupoongi area, one of the busiest parts of Tokyo. "I heard that Tokyo is one of the most populous cities in world, but, to my utter surprise, no sign of that could I notice during my 45 minutes travel by taxi," I told Mizan sitting by my side.

"To see that you will have to go to the subways, Sir. Underground subways are the soul of Tokyo city where most of the people commute by train. Some of the subways are under private sector and some under public sector," Mizan informed me.

I said: "Then, I saw just the tip of the iceberg, is not it?"

"Rightly so, Sir," Mizan replied. I was taken to a room in the dormitory at the ground floor of the 16 storey building where I was supposed to stay for 10 days. Cold could not catch me there as it was well heated. A small bed, a reading table and three chairs with a round table and, of course, a small fridge in the small room. Very soon Yujiro Hayami (73) greeted me with a basket of commodities comprising soup packets, tea-bags and other food items to see that I feel comfortable to start with my business at FASID. He also provided me with a jacket to confront the cold.

My task was to attend classes -- where students from different countries came for a Masters degree -- and summarize to them the lectures on development economics with a reference from our part of the world.

BENEATH THE SURFACE

The memory of my short stay in Japan remains fresh. In Bangladesh, we could learn a lot from Japanese economic history. The government there is still very dominant in selective areas where market might be missing; technology borrowing is a precondition for a quick take off; land reform paves way for prosperous agriculture; financial market is well regulated to infuse blood in the economy. And finally, Japan could be model in terms of institutional development. Culture and institutions (called cultural subsystem) have a bearing on resources and technology (called the economic subsystem).

A dozen of Bangladesh students, mostly government servants, were there and I was told that they were doing fine. I think that our students perform better outside possibly because of the pressures built into the system. Besides, I had to guide some Ph.D students, providing them with suggestions. And finally, I had to present a seminar in the faculty on: "Trade liberalization and poverty reduction in Bangladesh."

Yujiro Hayami wanted that I spend half a day (Saturday) at the Hayami house. And on a Saturday, the 73-year old man came to pick me from the place I was living. "The subway is a bit further," he told me, "would you have problem in walking?"

Back home I walk on average, 5 km every evening and so with confidence I said: "No problem, Professor." Yujiro started walking so fast that soon he left me far behind. Looking back he asked: "Any problem?" Wearing a jacket, shoes with thick socks, and a cap covering my head and ears to bear the chilly wind, I was already losing ground to the respected professor. However, soon we reached subway and after changing three stations or so, we came out from the underground subways.

He took me to see the Meiji Shrine built in honor of the Meijis, the architects of modern Japan. I was thrilled as I read about Japanese economic history (not so deeply though) in my student life. As we were walking a long way to reach the shrine, the professor was describing the shrine and I was recollecting some aspects of Japanese history that I read.

Japan is said to have entered into a modern era with Meiji restoration in 18th century. Before that, in Tokugawa period, spanning from 16th to early 18th century, Japan was isolated from the rest of the world. Anyone leaving the country at that time used to be guillotined if he returned. Modern education system, communication, and a host of other developmental steps were taken up by Meijis. Japan opened its

doors to derive the technological benefits from other countries.

Just before entering into the shrine, Yujiro requested me to purify myself with water. It is the Japanese culture. In Japan, trust matters the most. The world renowned Toyota car company has a host of small and medium suppliers of parts. Toyota's "just-in-time" or "zero-inventory" system has been structured along the lines of community relationships. The internal organizations of Japanese firms incorporating the community relationship has proved to be effective in guiding the complex division of labour within a modern enterprise. The transaction is mostly based on faith in the words of the parties in transaction. Corporatization is strong because of trust and honesty. There is stray evidence of corruption but, by and large, Japan is free from corruption.

A "culture of shame" prevents Japanese from doing anything that people speak ill about. The society stands as solid rock on the pillars of trust, honesty, and a culture of shame. Japan is also sometimes called a "communist-capitalist" country where the social security systems resemble almost communist countries and the mode of production is under capitalism. From the ashes of devastation caused by bombings in Hiroshima and Nagasaki, Japan rose to rule the world economically by virtue of the pillars I just mentioned.

In his house, Mrs Yujiro Hayami welcomed me. The family comprises two daughters and a son. I met his daughter-in-law Kajisa, a good economist at FASID, and his son, working in a company and living with parents. I told them about a story that I read few years back about Japanese young people. They earn a lot but do not want to get married and leave their parents' house. As reported, free food and accommodation allow them to travel worldwide and enjoy life with friends! But economists argued that

the trend is not good for the economy because, in that case, the demand for houses and furniture go down with a multiplier effect on the economy.

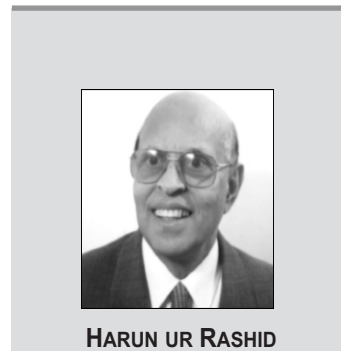
Anyway, I was mentally prepared to eat raw fish at the Hayami house, an item that Japanese relish the most but I liked the least. My professor, an ardent admirer of wine, meantime managed a glass of sake (wine made of Japanese rice) for me. I wanted to know the origin of the word sake as there is also a Persian word "saaki" that I was acquainted with. But we could not go further due to the call for food.

Mrs. Yujiro surprised me when I found that she was kind enough to keep me off the raw fish and, instead, cooked for me chicken with tomatoes and fish kabab. Again, the cooked rice was not Japanese japonica rice but Thai long grain rice. The learned lady could, perhaps, feel that as a Bangladeshi, I might not be so interested in typical Japanese food: glutinous rice, noodles and raw fish eaten by chopsticks. At Hayami's house, I enjoyed the motherly care of Mrs Hayami and the delicious food that she prepared. Having another sip of the glass of sake, I said: arigato gojaimas (thank you) to Hayami family and bade good bye.

The memory of my short stay in Japan remains fresh. In Bangladesh, we could learn a lot from Japanese economic history. The government there is still very dominant in selective areas where market might be missing; technology borrowing is a precondition for a quick take off; land reform paves way for prosperous agriculture; financial market is well regulated to infuse blood in the economy. And finally, Japan could be model in terms of institutional development. Culture and institutions (called cultural sub-system) have a bearing on resources and technology (called the economic subsystem). Half a day with Hayami helped me expand my horizon of knowledge about Japan.

Abdul Bayes is Professor of Economics at Jahangirnagar University.

Nepal's political woes and why



HARUN UR RASHID

IN recent days Nepal has been in political turmoil. Day curfew has been imposed in the capital city. About 120 including many politicians have been arrested on the eve of a four-day general strike. Empirical evidence suggests that such action of arrests and heavy-handedness do not help the situation. Rather it may aggravate.

Nepal is a land-locked nation and a Least Developed country and the territorial size is almost the same as that of Bangladesh with only 28 million people. The country needs desperately peace and unity for economic progress but political instability has endangered its economic progress.

It is a country that has huge potential for hydropower and can sell hydropower to its neighbours including Bangladesh. The people are hardworking, peaceful and

BOTTOM LINE

What lesson do we learn from Nepal's situation? It is poverty and inequality that breed frustration, helplessness and unrest and any revolutionary or orthodox party can exploit the situation to its own advantage. Unless poverty is removed and participatory government is installed, there will always be a threat to country's stability. Security threat may not emanate only from external sources. It may arise from internal situation where equal opportunity is denied for a prolonged period to all segments of people.

liberal minded. Their version of Hindu religion is a mixture of Hinduism and Buddhism as the King worships in both places -- temples and pagoda. Although Raanas (former ruling class) have lost political power, they remain affluent and still hold great influence in the country. (The writer had the privilege to represent Bangladesh as Ambassador to Nepal in the early 80s).

Why did the Maoist rebellion erupt in an otherwise peaceful country? There are many reasons and some of them deserve mention:

First, Maoist rebels received a new lease of life with discredited democracy and an increasingly authoritarian monarchy. The Nepali newspaper columnist C.K. Lal described Maoist rebels as "political entrepreneurs", able to exploit the cracks in the democratic system with an unsympathetic monarchy. He said: "We are living in a time warp. An absolute

monarchy belongs to 14th, 15th century. One anachronism invites another."

King Gyanendra's elder brother late King Birendra opened the door for parliamentary elections, a new constitution and a free press in 1990. What 1990 failed to deliver was the unity of people. The new constitution paid lip service to Nepal's diversity, but Hinduism remained the state religion and calls for local autonomy to reflect the country's true demographic mix were ignored.

Second, upper caste Brahmin and Kshatriyas -- priests and warriors, respectively, in the Hindu pecking order -- continued to run everything. The army remained beholden to the King rather than to the Parliament. Politicians, local and national, indulged in corrupt dealings. There was no meaningful land reform and most enterprising Nepalis gradually continued to leave Nepal. These shortcomings the Maoists were

able to exploit.

Third, in 1994, Nepal communists had splits. One faction, led by guerrilla chief Prachanda, what would become the Communist Party of Nepal (Maoist) was kept out of the election. Many Nepalis regard that as the crucial moment in the political history of communism in Nepal. Many Nepalis believe that had the CPN (Maoist) been allowed to contest for power, it might never have resorted to armed conflict.

Prachanda procured weapons from the border in India. Even when the Communist Party of Nepal engaged the democratic system, (once winning the second largest bloc of seats in Parliament) preparations by CPM (M) for armed confrontation were under way. In February, 1996 the Maoists launched a series of co-ordinated attacks, starting in the midwest. In a village called Holeri, on the road from Nepalganj to Maoist

country, a gutted police post still stands as a monument to that first strike.

Fourth and finally, in 2002, King Gyanendra dissolved Parliament. In February 2005, he imposed emergency rule, jailed some of Nepal's most prominent elected officials and vowed to crush Maoists. But the Maoists have not been crushed. In fact they have become bold. Strategy of Maoists

The Communist rebels in Nepal are called "Maoists" because they follow the guidelines of Mao Zedong in winning popularity among rural people to advance their ideology. They are locally known as "Lal Sena". Their strategy is to systematically take over the countryside using the "carrot (ownership of land to poor people) and 'stick' armed violence. The Maoists are reportedly being helped by Communists in Bihar (India). China has disowned them.

Maoists are shrewd at the political level. At a time when the King is being isolated from mainstream political parties, the Maoists carried out assaults across the countryside, at the same time they started cosy up to politicians they once regarded as "class enemies". They began reaching out to Nepal's most powerful allies too -- India, the US, and Britain.

Maoists' best strategy is to pay respects to the lower caste people -- the Dalits. It has been reported by an old man, a tailor named Irha Bahadur Parryar in Thabang who said: "We Dalits, we were not even considered human beings". Dalits could not fetch water from the upstream village tap, he reportedly stated. They had to go to the downstream, so as not to pollute the water for those higher up the caste ladder.

In their own controlled territory, the Maoists have introduced new laws. Untouchability is banned, in theory and practice. Alcohol and child marriage are prohibited. New polygamous marriages are not tolerated. Migrating to India is not approved. Legal disputes are easily resolved by them. Law and order is carried out by a people's militia. Local people like them because they respect the Dalits and disapprove social injustices. The Maoists are designated even as "Nice People Around".

For Maoists, schools represent a vital source of both revenue and recruits. Teachers can either be roped in as allies or eliminated as enemies. Schools in the rural areas are the best place to assert control and propagate their ideology. They have introduced communist song-and-dance shows to schoolyards. Royal history is being replaced by people's history. Teachers are to impart revolutionary values: patriotism, selflessness and the principles of "scientific communism". Those in grade 5 would learn about the Spartacus (Roman slave) revolt and receive a lesson on making "explosives, grenades and booby traps".

In September last year came the Maoists' biggest surprise: a temporary ceasefire. It was a clever move designed

to isolate further the King at home and abroad. By some measures, it had success. The King cancelled a scheduled appearance at a summit of world leaders in New York. In the August and September, street protests called for the ousting of the King, making it apparent that the King's clampdown last year had begun to turn the nation against monarchy.

The local elections this year were boycotted by most of the country's largest political parties and no one knows what would be the fate of parliamentary polls in 2007. Meanwhile a seven-party alliance called for new talks with the Maoists.

On 3rd April the Maoists adopted the strategy to announce an indefinite ceasefire in the capital and surrounding valley to please political parties in response to their call. They realise that they can achieve some of their goals in cooperation with political parties. This announcement manifests that they do not wish to alienate political parties.

Since the Maoists' armed confrontation, about 12,000 lives are lost and the Maoists have become the most resilient communist insurgency in the world today. Their impact is being felt in West Bengal. In recent times, the CPM (Marxist) government in West Bengal is confronting a serious security and political threat from the Maoists. It is reported the Maoist insurgency has spread mostly in Midnapore and adjoining areas.

Conclusion Many political observers believe that

King's action of taking over absolute power created a two-way power struggle involving monarchy, and a joint opposition to the King's action by Maoist movement and Nepal's political parties.

Furthermore, the political turbulence causes concern among Nepal's neighbours because it is a destabilising factor for South Asia. It is desirable that a delegation of eminent persons from SAARC countries may visit Nepal and attempt to reconcile political differences to stabilise the situation.

What lesson do we learn from Nepal's situation?

It is poverty and inequality that breed frustration, helplessness and unrest and any revolutionary or orthodox party can exploit the situation to its own advantage. Unless poverty is removed and participatory government is installed, there will always be a threat to country's stability. Security threat may not emanate only from external sources. It may arise from internal situation where equal opportunity is denied for a prolonged period to all segments of people. Many sociologists believe that elimination of poverty and establishment of social justice are the pre-conditions of maintaining peace.

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

