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Harargoj Reserve Forest being leased out for tea plantation!

Correct the land records, save the forest from destruction

WHILE we have been continuously writing in this newspaper about the urgent need to save our forests from land grabbers—big companies and other local powerful quarters, and environmentalists have been trying to make the government, people and all concerned aware about the disastrous impacts of forest destruction, unfortunately, forest grabbing has been going on unabated. A report in this daily on October 3 has revealed how a part of a reserve forest in Sylhet's Moulvibazar is in the process of being leased out to a private company for tea plantation.

In 1921, 12,019 acres of unsurveyed forestland in Sylhet district of Colonial Assam was declared the "Harargoj Reserve Forest" and the Forest Department has been protecting the forest for almost a century. The 2,174.35 acres of land in the middle of the reserve forest became a disputed land between the local Forest Department and administration after a digital land survey in 2013 recorded the part of the forest as "khas land" and classified as "hillock", meaning that this land can be leased. Although the forest department filed a case with the Land Survey Tribunal against this wrong classification of the land, the case has not been disposed of yet.

In the meantime, several tea companies were vying for getting a lease of the land and one leading tea producer managed to get the green signal from the PMO with the condition of case disposal. According to forest officials and green activists, the local offices concerned have misled the highest office regarding giving the lease to the company. Such a lease would eventually lead to the destruction of the whole reserve forest. Therefore, we think the government should move away from such a decision.

It is the constitutional duty of the government to save this forest. And not only this particular forest, the government should also give priority to saving all our remaining forests. We have only 11.2 percent forest area left in the country (according to an ADB report in 2016) which is much less than what we need for a proper ecological balance. We cannot afford to lose any more.

US President testing positive is another crisis for the US

What will happen to the upcoming elections?

US President Trump and the First Lady testing Covid-19 positive is a crisis that Americans least expected just about a month away from Election Day. After months of practically underplaying the seriousness of the pandemic causing unnecessary confusion among the American public and contributing to a phenomenal 200,000 deaths, the president, who has often refused to wear a mask in public and even mocked his rival Joe Biden for wearing one, has now himself been infected by the virus. This may have significant implications for the upcoming elections and for the US's national security.

At this point it is not clear how serious the president's symptoms are and whether they may become more severe in the coming days. But his sudden illness is having a jittery effect in the already devastated economy and on the public, especially Trump supporters who may now have to rethink their defiance of all the safety guidelines put out by the CDC and the constant rejection of the scientific analysis of the virus. In terms of the elections a great deal of uncertainty looms ahead.

For one thing the president's intense campaigning and visits to various key states will have to come to a halt while the Democratic candidate's campaign may pick up giving Biden an advantage. At the polls Biden has enjoyed a lead over Trump and this may continue as more people become disenchanted with Trump's poor handling of the pandemic that has led to him, his wife and his staffers becoming infected.

But there is also the question of whether the election schedule will have to be changed if the health of the president deteriorates. That would create even more complications as early voting has already begun. Would those votes be counted? If the president recovers quickly which would be a relief to all no matter which side of the political fence, the other issue would be the acceptance of election results by Trump and his supporters if Biden wins. President Trump has continuously implied the possibility of voter fraud, discrediting mail-in-voting which have always been an acceptable method and also more popular with Democrats especially at this time. Now, even his own supporters may opt for this method seeing that the president has contracted the infection after disregarding basic safety guidelines of wearing a mask and social distancing. So if that happens, will Trump and his supporters continue to cast doubt on mail-in-votes and ultimately the legitimacy of the results?

Democrats themselves will be in a dilemma regarding the tone of their campaign now which would have originally included harsher criticism of Trump. Now that public sympathy will tilt towards Trump, Democrats may have to restrain themselves from being overly aggressive in their attacks.

Future debates between the presidential candidates has also become quite uncertain. At this point the fate of the elections seem to rely on the health of the American President. In a country plagued by intense polarisation, deteriorating race relations and the devastating health and economic effects of the pandemic, having its president ill just before elections will push it further into uncertainty. For the sake of the US democracy, of which free and fair elections is a vital component, President Trump's quick recovery is necessary.

How to rein in "wilful defaulters" and eradicate the curse of non-performing loans

AN OPEN DIALOGUE

ABDULLAH SHIBLI

MY readers must have by now become sick of hearing about the big loan defaulters in Bangladesh and the scandals involving the Farmer's Bank (now Padma Bank), BASIC Bank, Sonali/Hallmark, Janata, Prime, and a motley of other shady characters including some leading industrialists of the country.

However, the wounds created by the non-performing loans (NPL) fester—they not only affect the health of the economy but also have a crippling effect on legitimate loan-seekers. It is now high time for all stakeholders to get on the case of the loan defaulters in a serious manner and stop extending a lifeline to them for the umpteenth time and neuter the spread of this cancer on our body economic.

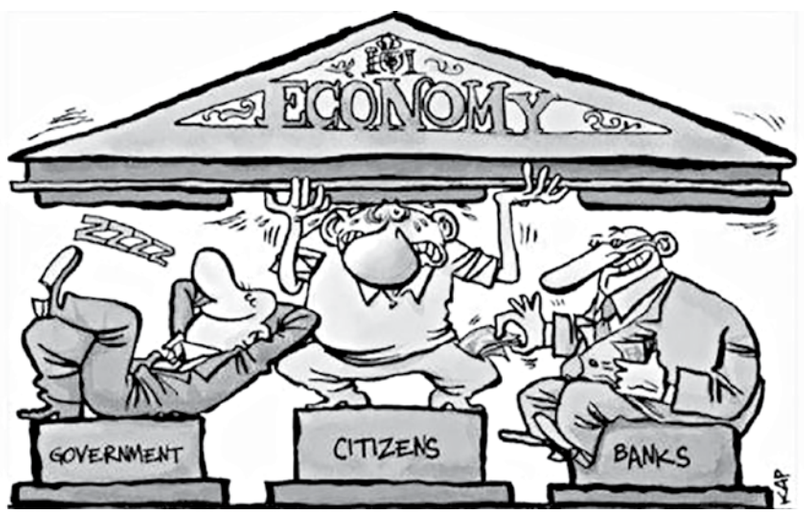
Bangladesh Bank (BB) has over time flip-flopped on NPLs and recently announced a moratorium on loan payments until September 30, 2020 which implied that such borrowers will not be in default. Now that it's October it is believed that this moratorium will be extended.

"It is a temporary relief—the negative situation will come back in a very dreadful way," said Ahsan H Mansur, executive director of the Policy Research Institute. As a long-term solution, a number of policy measures is in order. First of all, corporate governance should be strengthened and careful due diligence followed in lending decisions by banks. Secondly, in line with the Chapter 11 protocol followed in the USA, the existing Bankruptcy Act, 1997 of Bangladesh, a legal framework for dealing with NPLs should be enforced. Thirdly, there has to be rigorous enforcement of the present banking rules and regulations including the stipulation of secured collaterals to mitigate the risks associated with loans. Finally, authorities could also consider establishing a national asset management corporation (AMC) like the Republic of Korea's KAMCO or Malaysia's Danaharta to take over NPLs from ailing banks.

Study after study conducted around the globe with multi-country data show that NPL administration is a policy gone awry and creates and fosters a situation known as "moral hazards". In economics, moral hazard occurs when an entity has an incentive to increase its exposure to risk because it does not bear the full costs of that risk. For example, when a business is aware that its loans will be written off or its default will not result in any consequences, it may take on higher risk or decide not to repay loans if it knows that the government or others will pay the associated costs. In the language of economics, the cost-benefit ratio of complying (i.e. paying back the loan) is higher than the cost-benefit ratio of non-compliance.

Every business owner and policymaker I have spoken with on this matter is unanimous about the environment that "forgiveness of loans" has created. Let it be said that the problem of "wilful defaulters" is not limited to Bangladesh but is a phenomenon that is prevalent in many countries. Unfortunately, in Bangladesh there is no specific law for legal action against wilful defaulters.

I looked up the protocols followed in other countries to characterise or classify defaulters. Since India is coming to terms with a high NPL ratio comparable to Bangladesh, I looked up the approach taken by the Reserve Bank of India (RBI) to flag "wilful defaulters". These are: ability to pay, misallocation, diversion of funds, and sale of collaterals.



Interestingly all the four yardsticks apply to the defaulters in Bangladesh. In many other countries including the USA, some of the above actions by a borrower would be considered "money laundering", which is a criminal offence. In the case of Bangladesh, borrowers are known to transfer the borrowed money to accounts overseas.

For purposes of comparison, in the USA, during the last two decades, the average value of NPL as a percentage of all bank loans was 2.56 percent with a minimum of 0.91 percent in 2018 and a maximum of 4.96 percent in 2009. The latest value from 2018 is 0.91 percent.

In Bangladesh, on the other hand, from 2011 to 2019, there has been a steady rise in the volume of NPL and, according to the latest estimate, classified loans had crossed the one trillion mark by March 2019 and has been hovering near 10 percent.

We have witnessed some positive developments recently. As of December 2019, loans disbursed by the banks stood at over Tk 10.11 trillion, and the amount of default loan was Tk 943.31 billion, or 9.32 percent of the total credit, down from 10.30 from the previous year. However, the 41 private banks together had defaulted loans amounting to Tk 44,174 crore, up 16 percent from a year earlier.

The World Bank tracks country level governance using scales for corruption, regulator quality, government effectiveness and rule of law. Newly collected data on non-performing loan (NPL) in more than 190 countries over 27 years clearly supports the proposition that growing wilful defaults are significantly impacted by the low quality of country-level governance.

Wilful defaulters are a unique breed who borrow and forget to return the item. Economists are increasingly zeroing in on the defaulters to identify their characteristics using sophisticated tools, including econometric modelling and publicly available data. Studies done in the USA, Italy, and India reveal that that wilful default is a borrower's deliberate exploitation of weak governance structure prevailing in the country.

Given the generous policy support afforded to delinquent borrowers in the past, many good borrowers are tempted to default, said Khondkar Ibrahim Khaled, a former deputy governor of the central bank. He urged the BB to crack down on habitual defaulters with fervour, and added, "If these businesses are allowed to get rescheduling facility again, it will be 'illegal'."

In an innovative study in Italy, researchers analysed the empirical frequency with which borrowers delay repayment to their lenders. It reveals that firms choose to delay payment to some banks depending on the latter's health. This selective delay occurs more where legal enforcement of collateral recovery is slow. "Poor enforcement encourages borrowers not to pay when the value of their bank relationship comes into doubt. Selective delays occur even by firms able to pay all lenders. Credit losses in Italy have thus been worsened by the combination of weak banks and weak legal enforcement."

Japan faced a situation very similar to Bangladesh and an investigation on the widespread practice of banks that lent to otherwise insolvent firms documents the prevalence of "forbearance lending and show its distorting effects on healthy firms that were competing with the impaired firms."

The impact of the culture of default, rescheduling, and forbearance is crippling to the growth of the economy and healthy practices. According to an earlier World Bank study, bribes collected by bank officials in case of project loans were sometimes linked with local-level project officers. In case of commercial loans, the bankers not only collected bribes amounting to "1.0 percent to 5.0 per cent" of the loan amount but also received occasional gifts, hospitality, or entertainment from clients which is still quite rampant in the state-controlled banks. Working capital loans involved a payment of 1.0 percent to 5.0 percent of the credit to bank managers, employees and trade union leaders. A Transparency International, Bangladesh study points out that 73.5 percent of the respondent households agreed that it was almost impossible to get credit from banks without bribe or influence.

What are the options for Bangladesh? One does not have to look far, but to consider the recommendations made by a six-member committee formed in early 2019 comprising of the Ministry of Finance and BB, which include the formation of an AMC in the private sector, creation of a secondary market for NPLs, setting up a separate data warehouse for NPLs under the existing facilities of the Credit Information Bureau of BB, and a tax rebate facility for traders of the default loans that remain under consideration.

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RTI requests and the reality on the ground

BIPLOB KARMAKAR *and* SREEDHAM KARMAKAR

AS activists, we have filed RTI request to almost all kinds of offices, from union parishad, the lowest level of administration, to the Prime Minister's Office (PMO), the highest level of administration. Here are some examples of how the various government offices responded to these applications.

Let's start with the PMO. Any Indian can know the details of their PM's foreign trips online. But there is no such mechanism in Bangladesh. In 2017 we filed an RTI request to know how many people travelled with the PM during her annual visits to the UN office in New York, during 2010-2015, how many of them had office order to serve the duty, how many of them had no office order, those who had no office orders, their short bios and expenses incurred in each tour. The response was documents containing unnecessary information with nothing on the office orders, expenses, and the identities of companions who were not on duty (See decision 03/2017).

Some applicants sought information from Bipulasar Union Parishad. They didn't receive information and that's why they filed complaints repeatedly. But the information commission asked for the applicants' police verification and after receiving police verification, issued a decision where they declared that the applicant had received the information sought (See decision 254/2017 and 132/2018).

We had sought monthly meeting minutes of the information commission (IC) from the year 2018 till date. IC wrote that some decisions had been given saying that the applicants had received information although they hadn't. We filed an RTI application to IC to know on what basis they wrote the decision that the applicant got the information and asked for a copy. The IC could not respond to these queries.

Article 9(4) says, "Notwithstanding anything contained in sub-section (1) and (2), if a request made under sub-section (1) of section 8 is relating to the life and death, arrest and release from jail of any person, the officer-in-charge shall provide preliminary information thereof within 24 (twenty-four) hours." On many occasions and TV talk shows, commissioners were asked by journalists and others in how many cases they helped to retrieve information for the victim's family within 24 hours. They completely denied that anyone had filed such complaint to them. But we had filed this complaint and didn't get information in time under this section (See decision 91/2018).

We asked a question to a commissioner if any authority doesn't provide any information within 24 hours, what can a citizen do. They replied that they had to wait for 20 days, then file an appeal and wait for another 10 days, then complain to the IC. On the contrary, CIC of Nepal had informed us that they have called both parties immediately after 24 hours of receiving such complaints.

There are other problems to filing RTI complaints. The first is that the name and designation of the designated officer (DOs) is not available. If DOs name is not written properly, the IC rejects the application. Although IC's website contains name and designation of DOs, in 95 percent cases the officer named in the website is not in the stated position. After 10 years of the RTI Act there are still some organisations that do not have a DO, but according to the Act, a DO has to be recruited within 60 days. Our highest judicial authority, the Supreme Court of Bangladesh, has no DO. No citizen or practitioner can file RTI to get information from there. When someone approached the IC to know the name of the DO of Supreme Court, they gave the name of a person who had already retired.

Another hurdle is knowing when a hearing is to take place. Previously, an applicant would get a call from the IC the day before the hearing. This call would help the person filing the request in case a summons letter was somehow missed. But that is no longer the case (See decision 45/2019). If the applicant is absent, the IC dismisses the case. In 2018, half the cases were dismissed on the ground that the applicant was absent. On the day of the hearing, defaulted DOs are entertained as guests, whereas commissioners reprimand applicants and ask unnecessary and irrelevant questions.

So far,only 15-20 decisions have been written with proper reasoning as per compliance with RTI Act 2009. From 2018, not a single decision has been found which has been written and explained as per legal terms of the RTI Act 2009. In certain cases, commissioners have directed DO to supply information within 10-15 days but wrote in their decisions that the applicant has already received information. They have also written in the decision that the applicant has said that they have received the information.

There are problems with the recruitment of commissioners also. All commissioners are supposed to be recruited as prescribed by a committee which was formed under article 14(1) of the Act. But the selection process is not transparent. Article 15(5) says, "Subject to the provisions of this section, the Chief Information Commissioner and the Information Commissioners shall be appointed from amongst the persons with broad knowledge and experience in law, justice, journalism, education, science, technology, information, social service, management, or public administration." To ensure the quality of each candidate as per the act, we don't know what type of steps the selection committee had taken to appoint candidates.

According to complaint no 93/2013, IC had imposed punishment on the applicant instead of DO. According to complaint no 132/2018, the commission had issued police inquiry against the applicant. According to complaint no 60/2016, the commission had asked the applicant the reason for seeking information.Although there is no such provision in RTI Act to conduct hearing in presence of only one party—the applicant, IC did this for a couple of years. After filing a writ petition (WP), single party hearing was challenged in high court and has now stopped.

The legal term "sub judice" is wrongly explained. The Farooq commission termed a lawyer's letter as sub-judice. According to 7(k) "any matter pending before any court of law and which has been expressly forbidden to be published by any court of law or tribunal or the disclosure of which may constitute contempt of court". The words "forbidden to be published by any court" are very important. According to WP 9380/2014, high court had directed stay order on some information on the 29th BCS. But now if any BCS examinee seek any information for other BCS exams, PSC refer to this WP and the information is denied. When an examinee approaches IC, they reject it on "sub-judice" ground.

A few years back, IBA of Dhaka University took an exam of already recruited upazila election commission officers. Single digit officers proved themselves fit for their position out of more than 100. Only those who passed survived, others had to quit. An open book written exam may be taken before recruiting commissioners.

An idle CIC and activist

Shailesh Gandhi was an Indian former CIC who had taken a salary of one rupee. He had recruited some students from various fields as interns and they sat in the hearing room with laptops. Thus he spent his remaining salary as remuneration to interns. At the time of hearing, students wrote decisions simultaneously. When the hearing ended, Mr Gandhi had requested both parties to wait for 20 mins in the waiting room. During this time, he scrutinised the decision, signed it and handed it over to both parties.

After retirement, he filed RTI requests, attended training sessions for interested citizens and writes on loopholes regularly in social and mainstream media. We had asked for information to IC whether any former commissioners file any RTI, and if so, to provide us a copy. They replied negatively.

Unfortunately, we have neither found such a CIC nor active activist in Bangladesh.

In Bangladesh, IC is unable to retrieve information from organisations like PSC, Buet, UGC, Bar council, Thana, NHRC, railways and many more. Although the commission has enough power to take action both by compensating DOs, by giving reparation to deprived complainants, and recommending punishments for errant DOs, they do nothing. IC approves time petition for DOs multiple times, but rejects the same for applicants. IC is impartial to fine fourth class DOs, they don't take action against DOs whose designation is higher.

In Sri lanka, There is no provision to fine a DO. But when a DO cannot supply information on a citizen's request, it must be published in the mainstream media and that DO is termed as a "corrupt" officer. In India and Sri Lanka, mainstream media publish the news on RTI with great importance. In 2018, on the eve of RTI day, editors organisation "Sampadak Parishad" in a meeting, had promised to allocate a page and publish the news on RTI regularly. So far that has not materialised either.

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