

# For a Law Commission in Bangladesh

by M. A. Mutaleb

## Healing the Wounds

We are pleased that Bangladesh Radio and Television network has set the stage for holding a panel discussion on Bangabandhu Sheikh Mujibur Rahman on Thursday, the 16th death anniversary of the leader. We commend the move in the belief that far from being prompted by political expediency, the gesture reflects a genuine desire on the part of the government to show due respect to a leader whose contribution to our national emergence remains an integral part of our history for all time to come.

The timing of the radio/TV programme, the first of its kind held on the Bangabandhu since his death in 1975, adds a new dimension to the move. It comes against the backdrop of a growing national consensus between the two major political parties — the ruling Bangladesh Nationalist Party (BNP) and the opposition Awami League (AL) — which paved the way for the passage of all-important constitutional amendment bills and the return of the country to a parliamentary form of government. The consensus has also led to the unanimous decision of the Jatiya Sangsad (JS) to send the Indemnity (Repeal) Bill to a Select Committee which, appropriately enough, is headed by the Minister for Law and Parliamentary Affairs, Mirza Gulam Hafiz.

It is our hope that this national consensus, still fragile, will slowly work its way through other vital issues facing the country, ranging from campus violence to rehabilitation of sick industries, and thus strengthen the framework of co-operation among the major political groupings inside and outside the parliament.

There is yet another, indeed an extremely vital, objective that can be promoted by this growing consensus among political parties. It is national reconciliation. No matter how one defines it, it should surely be based on shared commitments by all political parties and their leaders to the best interests of our country, placed above, far above, partisan viewpoints.

The tribute that we will pay to Bangabandhu Sheikh Mujibur Rahman on Thursday, the kind of tribute we pay — or ought to pay — to our other national leaders, such as A K Fazlul Huq, Moulana Bhasani, H S Suhrawardy and Shaheed Ziaur Rahman, provides a historical perspective to our much-needed national reconciliation. If it strengthens our common sense of history, it should also go a long way in healing the wounds in our national consciousness. Paying our due respects to each of our national leaders, not simply by our people in general but also by our leaders, regardless of their political affiliations — here, we are thinking particularly of Begum Khaleda Zia and Sheikh Hasina — would indeed be a major step in this direction. We must all accept the fact that all these national leaders, each in his own way, have played their historical roles in the process that eventually led to the liberation of Bangladesh.

Once the wounds are healed and we take the road to national reconciliation, the country's attention will be well-focused on the implementation of our development projects, without any undue distraction caused by partisan wranglings over divisive issues. We have no doubt that this is precisely what two of our post-liberation leaders, Sheikh Mujibur Rahman and Ziaur Rahman, would have wanted from their people — and, indeed, from their distinguished successors, Sheikh Hasina and Khaleda Zia.

## Mujahideen's Turn to Give

The current visit of Soviet envoy Nikolai Kozzyrev to Pakistan has given rise to some optimism about prospects for a peaceful resolution of Afghanistan's 13-year-old civil war. While Kozzyrev pursues his efforts to free the estimated 300 Soviet prisoners of war being held by various Afghan Mujahideen groups, he is also expected to discuss ways and means to break the impasse with both Pakistani officials and Mujahideen guerrilla leaders. All sides in the conflict are keeping their expectations low, since, quite naturally, after 13 years of continuous, bloody combat, the ability or willingness to compromise has become a rare commodity. Yet, compromise, with all the give-and-take that entails, is now the only way forward for Afghanistan.

Since the withdrawal of Soviet troops on February 15, 1988, the Kabul government of Najibullah has shown itself capable of not only surviving militarily against all predictions and expectations, but also of mixing idealism with pragmatism. As a result, the People's Democratic Party of Afghanistan (PDPA), while shedding a great deal of its previous communist dogma, particularly relating to religion, has also retained a lot of the social reformist traits that characterised its policies in the immediate aftermath of the April revolution of 1978 which brought it to power. Najibullah has given up party control over a number of areas, allowing traditional power structures to operate again, thus gaining a degree of acceptability with the general Afghan public that eluded his predecessor Barak Karmal. In other words, Najibullah is playing politics the Afghan way, without needing any Soviet military prop to sustain him in power. The Mujahideen guerrillas, whose battle against the mighty Soviet army earned it world-wide respect and sympathy, should now recognise this reality.

In order to embark on the road to national reconciliation, Mujahideen leaders need to overcome their own rigid position over social policy, and animosity of Najibullah. The PDPA has gone more than half-way by agreeing to talk to the guerrillas about a possible political solution to the crisis; the guerrillas themselves should now do the same and agree to talk to Najibullah's government without preconditions. The Mujahideen's principal backers, the United States and Pakistan, should impress upon their clients the futility of war in the changed circumstances, and persuade them to drop their objection to Najibullah, as well as any plans to reverse the social reforms carried out by Kabul in the past 13 years. Peace and reconciliation after such a long and bitter civil war can only come about if both sides are prepared to make concessions. It's the Mujahideen's turn to give.

HERE is a rich quantity of laws including bad and black laws with innumerable amendments in this poor country. Our supreme law, the Constitution, has been amended many times. However, speaking in his personal capacity, as someone who has devoted more than quarter of a century to the practice of law and research on legal topics, the writer likes to make a frank declaration of his inability to keep pace with multiplicity of laws including plethora of amendments coming in a pell-mell.

There are many outdated laws. For example, the limit of pauperism: According to provisions of the Civil Procedure Code 1908, the limit of pauperism is Taka one hundred though money was devalued many times. In India, the limit has been raised to Rupees one thousand by the Civil Procedure Code (amendment) Act, 1976. Laws are enacted and repealed in this country without any reason whatsoever. One of the great lawyers of this country recently said: "It may be presumed that the lawmakers found troubles in many families and, therefore, Family Court Ordinance was promulgated. I think, Family Court Ordinance with all its complexities is making family life more complex. There is no valid reason for bringing more misery into the living conditions, already unhappy enough, of our common people..."

Revisional Powers under section 115 of the C.P. Code were given to District Judges in 1978 and the powers were withdrawn in 1984. Age limit for the superior court Judges was brought down sometimes to retire some Judges. The Executive became supreme, so powerful that it could do what it wanted with the Constitution, changing it at its whims and fancies.

As Martial Law Proclamations are also part of our Constitution, posterity would see that sometimes 'men on horseback' came and did what they liked. The Lower Judiciary has been decentralized and 'taken to the doorsteps of the people'. Quality of justice was sacrificed (a remedy may be worse than

the disease is one's feeling). The High Judiciary was emasculated during the Martial Law. Convictions and dismissals from service under the Martial Law and P.O. 9 respectively are still beyond judicial scrutiny. The random applications of the Special Powers Act transformed a highly repressive law into a monstrosity. But repressive laws are the mothers of danger and destruction. In nature, there are neither rewards, nor punishments, but there are consequences. If our destiny is not ultra-fortunate, there will be apt pupils to follow the activities of the present generation. The cumulative damage to our laws and institutions being inflicted will leave for posterity no opportunity to enjoy a good and decent government.

Bengal has been made court language. Works of the Appellate Division, High Court Division and District Judges' court are done in English, partly because all the laws, both statute and case-laws together with commentaries/treatises are in English as they are found in billions of pages of legal literature extending over hundreds of years. As if paradoxically, law students study the law in Bengali! This writer speaks Arabic to God, English to Judges and Bengali to Bangladeshis women! The objective of government in any civilized country is not the glory of the rulers but happiness of common man.

### Power of the Executive

The power of the Executive under different laws is so broad, without any particularization or delineation, that it is quite easy to bring almost anything not to the Executive's liking under them. An Executive might be annoyed for no better reason than the Scotsman who, going home drunk took the line: "If the wife is in bed it will be a fault, if she is not in bed it will be a fault, if the fire is out it will be a fault, if the fire is in it will be a fault" and with many other like pairs of faults, winding up with "If there is no fault, I will make a fault." Powers of the Magistrates have been increased. The Magistracy is not

predominantly lawyers, there are vigorous discussions on social and other issues underlying law reform.

**Law Committee**

A three-member Law Committee was set up by the government of Bangladesh in 1976 with Mr Justice (as he then was) Kemaluddin Hossain as the Chairman. The other members were Mr A Q Ansari, a retired member of the Board of Revenue, and Mr M S Haider, a retired Inspector General of Police. The obvious step which the Supreme Court Bar took in the matter was to demand inclusion of eminent lawyers in the Law Committee. But no lawyer was included in the said Committee and the Supreme Court Bar took it, perhaps, as a cold insult. The said Law Committee submitted its recommendations to the government on 1 November 1976 and the government promulgated the Law Reform Ordinance 1978 on 2 December 1978. The present writer expressed reaction of the community of lawyers by writing an article titled "A Face and a Sham: Law Reform Ordinance" in the Dhaka Law Reports, concluding "A learned wag said the other day that the Law Reform Committee is known as such only on account of misprint; it is really the Law Deform Committee. There appears, indeed, to be quite a concerted effort to hit our Supreme Court badly. And in this attack the vanguard consists of people like retired Inspector General of Police and Retired member of Board of Revenue, who have little, if any, direct knowledge of the working of the Supreme Court or district courts and who are blissfully ignorant of the views of the litigant public. On behalf of the profession we call upon authority not to meddle lightly and with preconceived notions in matters of which they know little. Let our courts remain prohibited areas as far as the interfering agencies of ill-informed authority are concerned. We think there is hardly any justification for giving effect to any of the Provisions (except of course, abolition of assessors' trial) of

now under the control of the Supreme Court, but under the Executive. The lawyers have been advocating for separation of the Judiciary and the Executive including vesting the control of entire judiciary in the Supreme Court. There is no reason to increase the power of the Magistracy. If we cannot afford a cow which will yield milk, that is no good reason that we should go to milk the 'available bull'! Codes have been amended in recent years in unwarranted ways to make justice speedy. But we are to see how justice can be accelerated without deteriorating its quality. We should always bear in mind the memorable words of Chief Justice Westropp that 'ardly justice is infinitely better than speedy injustice'. Doors of the courts remain closed to the poorest of the poor owing to increase in court fees and many other reasons including absence of legal aid.

### Dynamic Society

Laws must create a dynamic society travelling from strength to strength. Laws are made in the backdrop of social conditions, but laws are also used to mould the social conditions. According to Roscoe Pound, one of the great jurists, sociological jurisprudence requires the law, in all stages, from the making of it to its application, should be based on social facts. Roscoe Pound used the expression "social engineering" and said that jurists, lawyers and judges must use law to build up society, as an engineer does to his material, sparingly but producing the best results. According to Dialectical Materialism, economic considerations determine the evolution of laws. Savigny in his "On the Vocation of Our Age for Legislation and Jurisprudence" said: "Law grows with the growth and strengthens with the strength

of the people and finally dies as the nation loses its nationality." It is well known that without justice, law and order nothing in society could thrive. To meet this it is essential that individual inclination should be subordinated to the Rule of Law.

Lord Scarman, the first Chairman of the English Law Reform Commission, said in 1977 that our age would be seen as the age of law reform. If the time poses a challenge to the standing of the law, a necessary response is a consideration of the needs which the law should satisfy, and that involves a willingness to come to grips with law reform. There is, in various parts of the globe, an acceptance of the need for law reform, in substance and in machinery. Legal issues are now seen from new standpoints: the environment, the consumer, the problems of poverty and inequality.

Formation of a permanent Law Commission in our country is both reasonable and prudent. Law Commissions are functioning with profit in many countries of the world. The government should appoint a Law Commission with terms of reference whereby such Commission is enabled to go the root for examining all the laws in order to recommend reorientation of laws in the present social context. It will make recommendations from time to time as to the most effective, economical and desirable means of satisfying the need. For example, most Australian States have Law Reform Commissions, some for many years, all of which are active with respect to the reform of state law. In the law reform bodies in Australia, legal practitioners comprise 32 per cent of their membership, judges 23 per cent, and academic lawyers/jurists 20 per cent. Within Commissions, among their own members who are

the Law Reforms Ordinance and they should be expeditiously relegated to archives where they will find well-deserved repose." A Law Commission or Committee without lawyers sounds like a paradox. The first Indian Law Commission was constituted in 1837. Its President was Lord Macaulay and Messrs Macleod, Anderson and Miller were other members. The Indian Law Commission 1923-24 consisted of Couts Trotter, Chief Justice of the Madras High Court, Mr S R Das, then Advocate General of Bengal and Mr M M Chatterjee, an eminent lawyer. The High Court Arrears Committee 1950 was set up by the government of India under the chairmanship of Mr Justice S R Das, the other members were Mr M C Setalvad, Mr Alladi Krishnaswami Ayyer and Mr S K Dar. Lawyers were included in the Royal Bench Commission 1936, Civil Justice Committee 1925, and Barman Committee 1948. There can be a child without a legal father and there can be citizens without fundamental rights, but there cannot be a Law Commission or Committee without a lawyer. While this writer was in the National Bar Association of Bangladesh and the Bangladesh Bar Council, he along with Ahmad Sobhan (late), Syed Istiaq Ahmed, Khondkar Mahbubuddin Ahmed, Aminul Haque (now Attorney General) and Khondakar Mahbub Hossain tried without success to impress upon the government to form a broad-based Law Commission. The present government should set up a permanent Law Commission without any delay. The real difficulty, of course, is to get the right sort of impartial and honourable men for this purpose, but if you really seek them, you will not fail to find. The Law Commission so formed should visit district headquarters also to meet the lawyers, judicial officers and other persons interested in the problems of law and law courts.

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# Chalker: Be Idealist in Thought, Realist in Action

*Lynda Chalker is Britain's overseas aid minister. She is also the minister responsible for Commonwealth and African affairs and in this triple role has become a familiar figure in the developing world. In these days of market forces, aid programmes are motivated by new philosophies. In a wide-ranging interview with Gemini News Service's Editor Derek Ingram Chalker looks at Britain's aid programme and problems of human rights and good government — implementing what she calls "sensible policies."*



had these things for a long time, but you could encourage them in the right direction.

We should be providing carrots for governments to follow respect for the rule of law and human rights. Only when they blatantly and persistently refused — Sri Lanka was a case in point — did Britain take a negative stick.

Chalker believes in being a realist: "As a student one sought some pretty idealistic ambitions. You can still be idealistic in thought, but you have to be realistic in action."

So every country, she says, has in varying degrees people who will ignore respect for human rights. All countries had security forces that were not disciplined enough.

Sometimes we would be in a position where we had to say "enough is enough." One of the first actions in that respect had been in Somalia and, obviously, Sudan.

In other countries — she sighs and lowers her voice — when there were abuses she would take up the matter on visits. She tried to do as much as she could through diplomacy — "because mainly if I stop an aid programme it is their actual people I end up hurting. Not so much the government, not directly."

When Thatcher became prime minister in 1979 she scrapped the programme of development education started in Britain by Dame Judith Hart, Chalker's Labour predecessor. Britain had always been low in the table of industrialised countries on money spent educating its people about development. Thatcher decided it was not the government's business.

In later years that view has been modified. Gradually

money has gone to non-governmental organisations helping to promote development needs.

Chalker remains cautious — "You can't force development education down the throats of the great British public." Now, however, there was a way round it. Environmental education could be taken alongside. Chalker said: "I think we have a new chance and we're grasping it."

Then there was the third arm of her job: the Commonwealth — again not a subject exactly at the top of Britain's priorities in the last 12 Conservative years.

Chalker now serves a Prime Minister, John Major, who holds positive views similar to her own. Nevertheless, she echoes the tough Tory view. If the Commonwealth was not being talked about in Britain much then the member countries had themselves to blame.

It they were going to pursue — that phrase again — sensible policies, as they now were, they would get more credence than they did when they seemed to the developed parts of the Commonwealth to be pursuing negative economic patterns.

What did Chalker see as her successes since she took over development? First, better managed projects, particularly in Africa. Aid was better targeted, better delivered than it had been three years ago.

Environmental programmes — and projects worth £160 million in forestry, bio-diversity, benefits of tropical forestry for the people of the forest.

And she was glad to say that she had changed a number of minds about the importance of good population policies as an

integral part of environmental and development policy. The best project of all had been in Bangladesh, a rural action programme that worked at village level through NGOs — "simply first class."

She was going to Bangladesh in September to look at flood control plans. The last cyclone had thrown up the problem of people living on marginal land around Chittagong — really they were mudflats not land at all.

Then there were the basic, but so important tasks like the covering of drains in the slums of India and Pakistan, wildlife programme in Kenya that would help the tourism — 37 per cent of the country's foreign earnings — as well as the animals. And something quite new: community work in the black townships of South Africa. Just after she spoke Britain had announced £1 million help for returning exiles.

Chalker leads an exhausting life. She had taught herself, she said, to sleep on planes, trains, buses and cars, but travel played havoc with the diet.

She had to have non-fat milk — "mine's in that silver jug," she says; as the tea is handed round — "as long as I get vegetables I'm all right and that, thank God, is plentiful in many places — except for Ethiopia."

The future? Politically for her, it is hardly stable. Any swing against the Tories may see her out of Parliament. Her majority in her Wallasey (Lancashire) constituency is only 279.

She had decided what she wanted to do eventually. She would do all she could to help rationalise development work and the way in which the European Community treated the developing world. But that was for 10-20 years' time.

As she puts it: "Its something I shall work on in my old age — to bring everything up to date. When I return from this hectic life I'll be just as busy."

Plainly, she still intends to be a doer.

— GEMINI NEWS

## To the Editor

### BCCI and L/Cs

Sir, All BCCI clients having no lien on their accounts have been allowed to withdraw Tk 50,000 each. The non-resident foreign currency deposit (NFCD) account holders have been allowed to withdraw all their money. The latter will help the foreign missions in Dhaka who maintained account with BCCI. But the government has neglected a case that has important impact for the economy of the country.

who opened L/Cs through BCCI long before its closure. In most cases the money was transferred in favour of the foreign supplier. Their case is thus similar to NFCD account holders. In many cases the goods and machinery have either been shipped or arrived in Chittagong. But the original Bill of Lading has not been received by BCCI/Agri Bank as the BCCI closed before the documents could be negotiated abroad.

I have imported valuable machinery which are lying in Chittagong for which I had opened an L/C through BCCI in May 1991 (the BCCI closed in mid-July) and paid the full amount (i.e. 100% margin). But I cannot release the machinery as BCCI/Agri Bank say they have not received the original Bill of Lading. Neither would they endorse the non-negotiable Bill of Lading that I have received directly from the shipper although BCCI has received the full value and more of the L/C amount and had remitted the money to their correspondent the American Express Bank in New York sometime in May last.

I have tried in vain to talk to Agri Bank people who say they cannot do anything in the matter unless BCCI refers it to them. BCCI says it can only refer document it has received to Agri Bank. It is not possible to meet BCCI officials to discuss the matter and find a solution as they are locked inside their office. The only channel of communication with them is by telephone which is tenuous and erratic.

This is my sad experience in trying to set up an industry in the country for which successive governments declared themselves to be very keen. It has already taken me five years to open an L/C. I have not taken any loan on which I may safely default like my peers.

### Weekly holiday

I am sure this will be an incentive for all in the government as well as in the private sectors.

Manzoor Chaudhury, Dhaka.

J. Taher Dhaka.