was restricted - and justifi-

preamble to the constitution,

that declares India a sovereign democratic repub-

lic" which seeks to secure to

all citizens justice, liberty.

equality and fraternity.

Parliament could not use its

amending power to transform

India into a totalitarian state or

into a new state which is nei-

ther sovereign nor democratic

nor republican. Were it to do

so, it would amount to under-

mining the basic structure of

For instance, take the

Chaka, Saturday, October 17, 1992

Congratulations and Cautions

The Energy Minister, with an unsuppressed sense of elation, informed the Jatiya Sangsad last week of the fall over the year in what has been called 'systems loss' of power. Before that he had also talked at length on the same achievement to the press. We share in his feeling of satisfaction as we believe that the performance amounts to turning a tricky corner. One cannot but feel relieved when one remembers power-systemwise what a critical year it has been — the situation threatening to go out of hand at the very outset when union people balked at the launching of DESA and other related organisational changes in the administration of the power sector. The Energy Minister gave a grateful pat to the PDB and more so to the DESA for the fall in power 'systems loss'. One would simply love to join him in this recognition of a job well-done.

Having said our part of congratulations let us also search in our minds if this is not too early to gloat over something that is besieged all around by bleak and treacherous forces of a reality handtooled by ineptitude and corruption, inefficiency and endless greed. There is not a sign of hope from anywhere for our power outlook - neither can this fall rate in systems loss can be maintained till it reaches the golden shore of 20 per cent nor, in the absence of such steady improvement, can the power sector grow in response to the demands of the new millennium.

The minister has identified pursuit of a policy of 'rewards and punishments' as a secret to the success of the cut in systems loss. Some 25 crore Taka has been given in rewards to some 6000 PDB people. We have serious doubt if this has worked the miracle. Close to a thousand crore Taka is lost by way of the 'systems loss' drain. If you raise your rewards money four-fold to a 100 crore, no one is a fool, specially in these days, to fall for a 1-taka carrot and forego the 10-taka honey that comes so much easier. No sir, look for some other clue and you will be saved from setting a very very dangerous precedent of bribing government functionaries into doing what they are there to do. Instead of quenching the thirst, you will only whet it.

The original sin in the matter was a failure to call the spade a spade. In the transmission of generated energy there is some physical loss of around 10 per cent, which in case of Bangladesh's badly maintained transmission situation could go up to as high as 15 per cent or a notch or two more. The rest of the fantastic 42 per cent loss of a year back was simply and wholly theft and should have been called as such from the day next to the toppling of autocracy. As we have said, the task is now to reach the golden shores of 20 per cent systems loss - which works out to bidding farewell to a 1000-crore machine of graft and all-pervasive network of corruption. Only a fool can expect that this machine by which lakhs of people benefit could be got rid of simply by bonuses and incentives to a minuscule part of those involved. The whole of PDB's commercial operation is rotten to the centimetre - if not all of its technical aspects too, which however was so impressively the case with the T&T. How could we stop this national-scale process of unrelenting theft if we feel so shy of calling it by its true name?

The well-oiled and well-proliferated machine of corruption has taken firm and deep roots in PDB not without involving those who profess the good of the employees of the board. The unions in the PDB as well as many other industrial undertakings have not been famous for upholding and polishing professional norms and ethics, practices and efficiency. A politicised CBA can be a dangerous block to the way of rationalization, modernisation and other devices used to contribute to the cost-effectiveness of an enterprise. Political expediency can stand in the way of implementing sure-fire measures that can heal PDB's present ailment. The government cannot heal it all by itself either. The CBA and other unions must join in the job sincerely. Why would they? Here a piece of enlightened self-interest will be quite in order. The unions must cooperate otherwise the whole energy sector will be privatised and the employees given over to ownership concerns - one thing that the unions have come to fear in the world.

Bush Goes Spying

For several weeks, campaign mongers of President George Bush's re-election bid have been focusing on Democrat candidate Bill Clinton's anti-war record during the Vietnam era. Evidently, Clinton had disagreed with his country's involvement in the war, refused to sign-up for the army and demonstrated against his government while a student at Oxford University. None of that appears to be terribly un-patriotic, since most Americans probably view the United State's involvement in Vietnam in a negative way, and Clinton seems to have escaped the draft in a legal way. As for the demonstration, was it not the Arkansas Governor's legitimate right to disagree with his government and express his sentiments?

It now appears that the Bush administration, perhaps out of desperation, instructed the State Department, supposedly a permanent, non-party state organ, to dig further into Clinton's past, to see if it can come up with something more damaging. The revelation has already led vice-presidential candidate Al Gore to say that such tactics might be OK in a police state, but "America is not a police state, it is a democracy". Strong stuff indeed. Clinton has already compared Bush with Joe McCarthy, the senator who carried out an infamous witch-hunt across the country, to nail alleged communist sympathisers for "un-American behaviour". We can be sure that the moment Clinton became a candidate, US intelligence agencies had carried out a thorough security check on the man to establish his acceptability as a potential president. What Bush seems to have done is that he has used national security criterion as a means to achieve a personal political aim. By using state organs to pry into his opponent's past, he can be accused of using state facilities for political purpose, and for the purpose of doing damage to a political rival. At the very best, Bush appears to be delegating himself the authority to decide what sort of behaviour is patriotic or not, the same kind of muck-raking that McCarthy got up to in the '50s. This sort of thing is not only undemocratic, it can also be construed as an abuse of state power, and could, if left unresolved, create a dangerous precedent.

UDGES have their own Morality or Judicial Compromise: notion of morality. It does not have to tally with others'. The criterion is that it should stand the scrutiny of A Question of Credibility cold law. That may be the reason why the Indian chief justices at their annual conference in New Delhi the other day avoided facing the

The downward process began when Mrs Indira Gandhi, then prime minister, talked about a committed judiciary. She superseded in 1973 the three Supreme Court judges, JM Shelat, KS Hegde and AN Grover, to appoint their junior, Ajit Nath Ray, the Chief Justice of India.

against high court judges

She superseded in 1973 the

Mrs Gandhi administered

another blow to the judiciary

when she transferred as many

as 17 high court judges, during

the emergency (1975-77), to

far-off states to punish them

for their independence.

Justice PN Bhagwati made

things worse when his bench

upheld the executive preroga-

tive to transfer judges from

one high court to another. The

bench said that the constitu-

tional obligation was only to

Service investigates an enigma.

find the answer. Some 20 per cent of judges Strange as it, may sound, in the 25 odd high courts in nobody bothered whether a India have either their son, lawyer was related to a judge son-in-law, daughter or or not some years ago. Judges nephew practising in the same never behaved in a manner court. By convention, the relawhich would in any way cast tives do not appear before doubt about their impartiality. them. But there are numerous The standards were so high instances where a brother that no petty thought ever judge has accommodated the crossed the minds of the peorelation of the other brother judge so as to get a reciprocal The downward process befavour for his own relation. gan when Mrs Indira Gandhi This is so well known that a then prime minister, talked about a committed judiciary client is impressed - or made

to a lawyer's kinship with three Supreme Court judges, JM Shelat, KS Hegde and AN those at the bench. Grover, to appoint their junior, One proposal was to transfer such judges. But the oppo-Ajit Nath Ray, the Chief Justice sition was so strong the matter of India. She and her alter ego, had to be deferred. Several S Mohan Kumaramangalam, chief justices contended that then minister for Steel, dethe transfer would affect the fended the step on the ground reputation of the judges con-"that social philosophy and the cerned. There is a point in the scale of values of judges particargument that the transfer of a ipating in the decision should judge does raise eyebrows. play an important part." The How far this will lessen the supersession broke the hesitamenace of relations is a matter tion that tradition had conseof conjecture.

conscious of it - in proportion

question: Whether it was fair

for a relative of a judge to

practice in the same high

court. Morally it may be wrong,

but is it legally so? A sub-

committee was appointed to

Moved from high courts, the relations may play havoc with lower courts, which are supervised by high court judges. Yet another argument advanced is why should relatives of high court judges be singled out when the children of Supreme Court judges are left alone? And when there is no bar to be entry of relations of the top brass in the armed forces or the all-India services, how justified is the move

HE Milan Panic smile

bravado. It was so sad many

countries supported the

German idea of holding a war

crimes tribunal, the Premier of

Yugoslavia said sneeringly.

Peace was the most important

peace. Many would argue that

teeing it for everyone and

stopping the atrocities is to

bring to trial those who have

committed crimes against hu-

out of step. Even the wily

Serbian President Slobodan

Milosevic, the man widely re-

bloody end to Yugoslavia,

seemed in a television inter-

view to accept the idea of a

man of principles? A man of

peace? "Anyone who gets in

the way of peace in Yugoslavia

will have to answer to me," he

told journalists at the London

Milosevic's resignation if the

President did not back his

peace proposals. And anyone

else. Even as the conference

was sitting he dismissed

Mihailj Kartes, his deputy inte-

rior minister and a top man in

grade a power struggle with

On Panic's return to Bel-

Milosevic's secret police.

He would demand

Who is this Milan Panic? A

garded as having provoked the

On that Milan Panic seemed

one of the best ways of guaran-

Most people agree with

matter.

tribunal.

conference.

faded suddenly. Gone

was the jocularity and

consult the Chief Justice of India on appointments and transfers of judges, not to have his concurrence.

The Law Commission tried to retrieve the situation when it said in its 14th report that such a power with the government "would affect the independence" of the judiciary and that the state executive "may make efforts to obtain the transfer of a judge who, for one reason or the other, had not found favour with it." This or

understandable why they did not take a stand against the law ministry's suggestion for a code of ethics. This is a challenge to the judges' integrity. If they have to be guided by a code of ethics, they were not the right timber for the position to which they were ap-

The rulers themselves do not adhere to any norms; nor MPs or assembly members have any code. Why pressurise the judges? The very suggesjudgments in criminal cases remain pending for years.

One expected the conference to take notice of strictures against judges. The Supreme Court recently reprimanded a Delhi high court judge for having quashed the FIR on the Bofors gun scandal case. True, the judge has retired but the chief justices should have found some way for accountability. And what about the judges whose judgments are hawked about days before their pronouncement?

A recent example is that of the Delhi high court on the Bofors gun scandal, trying to stall the disclosure of the names of recipients who allegedly had received the kickbacks.

Instead of attending to such problems, which tell upon the country's democratic structure, the judiciary seems to be spoiling for a fight with parliament. In a recent judgment, the Supreme Court has held that the Speaker's ruling on whether a member has violated the anti-defection law will be subject to judicial re-

That parliament or the state legislature is supreme was settled long ago. The power to amend the constitution was conceded to parliament except in the case of fundamental rights. The Keshavanand Bharti case laid down that the basic structure of the constitution could not be altered. To that extent parliament's purview

Much water has, however.

the constitution.

flowed down the Ganga stnce the Keshavanand Bharti case. It is quite possible that if the present Supreme Court had been consulted under article 143 (power of the President to consult the Supreme Court on matters of public importance) on the implication of the judgment in the Keshavanand Bharti case, it might have given the opinion that parliament has the power to amend

The principle that Nehru followed was that "the executive and the judiciary have to pull together, even though they function separately and independently." He said: "While our courts have the right to interpret the constitution and we must respect and honour their decision, the fact remains that the wider social policy of the country must be determined by parliament or the state assembly."

any part of the constitution.

That policy should hold good. It will be a bad day for the judiciary if it created an atmosphere of confrontation with parliament. It is comical that judges should be bending backward to placate the executive for personal gains and at the same time join issue with the elected representatives. Probably, it is a dilemma of touching morality and judicial compromise at the same

pointed.

Premier Panic-Clown, Bit Player or Peacemaker?

by Petar Hadji-Ristic

the other criticisms have not

Perhaps the chief justices felt powerless to do anything government for the appointlimited to the number of va-

When the chief justices showed their independence on limiting the panel, it is not

told the Socialists to draw

back. The ebullient Premier

the world? The answer is diffi-

to make of him. One of the

most experienced Balkan

commentators says: "I do not

think he is genuine." A journal-

ist from Borba, the only inde-

pendent daily newspaper in

Serbia, believes most of what

Panic says is too good to be

have been warning Panic not to

overstep the mark, but a no-

confidence motion in the

rump parliament might also

have just been designed to in-

crease Panic's credibility. He

was, after all, brought in to get

peeved by the public threats to

sack him and really wanted

him out of the way, says a min-

ister in Belgrade, Panic's life-

time in politics would have

lasted a maximum of three

days. Such is Milosevic's

If Milosevic was really

the UN sanctions lifted.

The Milosevic camp may

Was all this play-acting for

No one seems to know what

lived to fight another day.

cult. Panic is an enigma.

tion for a code of ethics strengthens the impression that the judges are wanting in their behaviour. The chief justices entrusted the matter to a sub-committee. This reaction was in sharp contrast to that of their predecessors, who had rejected even a vague hint out-

These conferences have, however, become a yearly ritual. They do not discuss what is relevant to the society. Take the arrear of cases. Nearly two lakh of them are pending in the Supreme Court and the number in high and lower courts runs into nearly 50 lakh. Things have come to such a pass that the first posting of a case takes normally 20

time abroad. he has no power base. It is Milosevic who controls the police and the power The most intriguing figure in the Yugoslav imbroglio is the Premier of the rump country, to sack almost an entire genmillionaire Milan Panic. Is he a clown on a monstrous ego trip, a bit player or a harbinger eration of army generals in a day as he did some months

> But Panic, also Defence Minister, is said to be firm friends with his namesake and Chief of the General Staff of the Yugoslav army, Lieutenabnt-General Zivota Panic. This would provide protection, And with Cocic apparently

now backing him, the general and the writer could be positioning themselves with Panic to pull away from the extreme Milosevic and save the regime. "I think he is a clown, an

invention," is the judgment of Gordana Knezevic, a journalist on the Sarajevo newspaper Oslobodjene. "We still have to wait for his first acts."

And Dragan Moskovic, of the Bosnia News Agency, also based in Sarajevo, is no less critical: "He is merely one of the players of the same politi-

Panie is the liberal. Dobrica Cocic is in the centre. Milosevic is the hard man. And Radovan Karadzic, the Bosnian

Milan Panic career in the Balkans has yet to come to an

PETAR HADJI-RISTIC, a freelance journalist based in London, has written extensively on Balkan affairs.

BETWEEN THE LINES

Kuldip Nayar writes from New Delhi

made any difference to the government, which continues to use the power to transfer judges to have the uncomfortable ones out of the way.

because of the Bhagwati bench judgment. But, mercifully, they decided to do away with a panel of names which the Chief Justice submitted to the ment of judges. Now the names recommended will be cancles available, not allowing the government change the order given in the panel.

months after it is filed. The

of peace? His cabinet is stormy and he had just re-made it. But he stays in power and seems to be trying to erode the position of his friend, President Slobodan Milosevic. Gemini News

> Even now panic's career in Balkan politics is less than three months old. He asked for 100 days to bring peace to the Before coming to power he was virtually unknown. He fled

Yugoslavia in the 1950s and made a fortune in pharmaceuticals in the United States. Belgrade newspapers put his personal wealth at \$200 million, making him probably the richest Serbian in the world. Before becoming Premier he took a controlling interest

power. Others disagree: a gen

uine showdown had begun and

was put off until another day.

in Galenika, the Belgrade drugs company, and he appointed a former US ambassador as its head.

His relations with the US administration are a mystery. Acting Secretary of State Laurence Eagleburger must have been flattered to hear Panic lift a phrase or two from his speeches for his own.

Panic is a master of flattery, repeatedly recalling his American links. Even the press

statements with which he bombards news organisations around the world come complete with American spellings. Just why a fabulously

wealthy 63-year-old should want to forsake California and step foot in Balkan politics is an mysterious as everything else about him. It is said Milosevic, his friend asked him to become premier, but how close the two are now is not clear.

It is baffling that they could ever have been friends. They are as different as chalk and cheese - Milosevic the taciturn, ruthless communist, rabid nationalist, master of Balkan intrigue, and Panic, the boisterous, boastful, passionate anti-communist and believer in the free market system.

Panic obviously enjoys hugely the press attention and jetting around the world meeting politicians. Perhaps recognition and patriotism were his motives in talking the job. It could hardly be power. He is a newcomer to Belgrade after living half a lifecal game."

Serb leader, the executor. This may all be true. The

Letters for publication in these columns should be addressed to the Editor and legibly written or typed with double space. For reasons of space, short letters are preferred, and all are subject to editing and cuts. Pseudonyms are accepted. However, all communications must bear the writer's real name, signature and address.

MILAN PANIC

parliament.

Relations with the US a mystery

Milosevic was reported. Some

deputies from Milosevic's

Socialist Party were backing a

no-confidence motion against

Panic in the rump Yugoslav

President Dobrica Cocic,

revered man of letters and

spiritual father of Milosevic.

At the last moment Yugoslav

Policy of isolation

of isolation and aggressive domestic efforts to become prospective are called for.

The first implies such policy which impels a nation to be dissociated from the external world to the minimum possible extent. This is to facilitate the people to make domestic efforts for development. Therefore, a nation has to prioritize the needs.

overall policy has been the policy of association which implies maintenance of involvement with all external actors to the maximum possible degree. This aims at attaining certain national interests, for

the case of Bangladesh, say, achieving more foreign aid. But external aid involves conditionalities which very often lead to the development of 'underdevelopment.' Whereas, if a country possesses any sort of significance, the donor countries and agencies extend aid with less conditionalities. It has been a norm in inter-actor relations that other actors flock to help a prospective ac-

To benefit from external relations, a state has to show its prospects. If the state is not prospective, maintenance of external relations aiming at doing benefit to the nation becomes a preposterous idea.

To relate the above idea in the context of Bangladesh, hardly find anything that deserve international significance. Therefore, Bangladesh is not a prospective actor in international relations.

To become prospective, a nation needs aggressive domestic efforts. With the passage of time, policy needs to be changed suiting the new realities. The above description shows that Bangladesh is not yet in a position to desire. maintenance of external relations to its benefit. Therefore, the maintenance of nearly fifty

accruing benefit to the nation.

Md Abdur Rouf Relations, DU

The authorities, as we mark in this constitutional provision, may impose restrictions on the pursuit of profession or occupation but that must be reasonable in entirety and in total conformity with fundamental rights such as, Equality of Opportunity (Article 19), Work as a Right and Duty (Article

20), Equality before Law (Article 27) and Right to Protection of Law (Article 31).

The state must ensure equality of opportunity to all citizens. It must remove social and economic inequality between man and men. It must ensure equitable distribution of wealth among citizens. It must create opportunities in order to attain a uniform level of economic development. The Profession of law is a means of livelihood. Can persons above certain age limit be shut out of legal profession to deprive them of their lawful livelihood

The Bangladesh Legal Petitioners and Bar Council Order and Rules, 1972 does not provide for any situation for which this kind of age restriction can be imposed. The problem of unemployment is acute in our country, there are many people who, doing different odd jobs and studying at night, might find themselves ready for an independent legal profession at an age after forty. But in case the restriction comes, this will further multiply the member of the unemployed in the country.

There is no country in the world where this kind of age restriction is imposed in the profession of law. This step will narrow down the canvas of law and legality and will darken the glory of the noble profession.

Work in Bangladesh is a right, a duty and a matter of honour for every citizen who is capable of working, and everyone shall be paid for his work on principle. There is no age restriction on one's right to

work. A person may obtain LLB degree at the age of say, 25, but he may like to join the profession at the age of say, 57; if he is physically and mentally fit to work, there is no earthly reason as to why he should not be allowed to join the profession.

A lawyer is to enlighten the

court and assist the judge in

his search for truth and justice. Maturity starts after forty. For a judge the age of a lawyer is not at all relevant. What is wanted is what the lawyer, irrespective of his personal age, lays down in the court, and how he explains the provisions of law in arriving at the truth and justice. If, due to burden of age, a lawyer fails to rise to the needs of the court and legality, he will automatically be banished from the profession. In the US, UK and Australia the judges do not retire as long as they are not incapacitated. In the Supreme Court Bar Mr M H Khandaker, for example, in 85 plus and yet he is found fit as lawyer and has been contributing to the arena of legal interpretation most effectively. Mr SR Pal, a senior advocate is another case is point.

The law graduates above forty, at the moment otherwise engaged, seek protection of law from those who are about to cause disservice to this noble profession by planning to impose age restriction on enrollment as an advocate. Experience has no substitute except experience itself. It is gathered, the move is ostensibly to prevent the retired government officers to enter the profession. Many bright students of the university entered

government service in this country for honour ad security: the retire at the age of 57 and thus come out with a rich fund of experience simply because of the fact that government functions through a series of laws and rules in every sphere. The officers of the magistracy, the judiciary, taxation and customs services render judicial or quasi-judicial services and therefore, they are likely to become very knowledgeable lawyers in their respective fields of activity. If the function of an advocate is to interact law and assist the court, retired government officers are bound to do the job well, should they want to do it. We cannot let this noble

and learned profession slide down to a pool of a few privileged persons, simply because they are young in age. This is no way to control quality. If an ex-service personnel turned advocate does not behave properly, he should be proceeded against as per rule 32, 33, 34, 35 of the Bangladesh Legal Practitioners and Bar Council Order 1972 The Bar Council Tribunal

should be alert and agile to take care of any misconduct on the part of a lawyer, who by virtue of his learning and behaviour alone shall command respect of all in the society. The conscious people of

this country believe the Ministry of Law and Justice would be the last person to agree to the view of age restriction on enrollment as ad-

Al-Beruni Eskaton Gardens, Dhaka.

Sir, It is a norm in inter-actor relations that external relations benefit the prospective actors. Bangladesh has not yet been a prospective actor in international scene, so not the maintenance of pernicious external relations but the policy

In the present international system, the nation-states are the major actors. Every state has some objectives and to achieve that, a state formulates some policies which can be broadly divided into two categories: the policy of isolation and the policy of association.

The other strand of the

mission abroad at a huge cost has been a big jump to utopia from reality. People in the helm of state affairs are earnestly requested to follow a policy of isolation with regard to the relations of Bangladesh with external world. Tremendous domestic efforts are called for to become prospective leading to the resumption of external relations

Department of International

Age of advocate Sir, It is learnt that the

Bangladesh Bar Council has taken a resolution to the effect that law graduates above forty years of age will be barred for enrollment as advocates. This resolution flagrantly contravenes a number of fundamental rights. Article 40 (forty) of our Constitution states "Subject to any restrictions imposed by law every citizen possessing such qualifications, if any, as may be prescribed by in relation to profession, occupation, trade or business shall have the right to enter upon any lawful profession or occupation, and to conduct any lawful trade or business."