

The Revived Super 301

The action taken by the United States in reviving a defunct piece of legislation for retaliatory measures against countries said to be indulging in unfair trade practices, has been greeted with dismay world wide.

In essence, Super 301 is one of United States' array of potent weapons for acting unilaterally in the case of trade disputes. Under the provisions of its trade laws, the United States publishes each year by March 31, list of the countries who are allegedly putting up barriers to its exports.

Super 301 has unilateral action writ large all over it. It sends a signal to the country whom the US administration views as the offending trading partner, to come to terms. Usually the threat of sanction would induce the other side to conform.

The failure of the latest round of US-Japan trade talks may have triggered the reactivation of Super 301. It may be recalled that the specific terms of the so-called framework agreement on trade reached between the two sides in July last in Tokyo, still remain largely undefined.

It's also being said that domestic compulsions too had spurred the US administration to reinstate Super 301. Some even view it as a preemptive move to forestall renewed pressure for more aggressive action from the protectionist lobby at home.

After years of debate, often acrimonious, the world community reached at long last a global trade accord only in December last. The Uruguay Round world trade agreement, as it has come to be known, is still to be signed formally in April.

Threat to Mango

The mango belt in the north of the country is sending both encouraging and distressing signals. Encouraging in that blossoms are plenty on the mango trees and distressing because pests have already attacked the trees in some parts of the belt.

However things could indeed brighten up if only we had taken note of the rapidly aggravating situation. For years there have been complaints of all types but little so far has been done in practical terms apart from raising controversies over the selection of a site for a mango research centre.

The risk factor weighing heavily, the mango cultivation is becoming less and less profitable. But normally, cultivation of this fruit should be more profitable than that of other crops. Exposed to natural elements and pest attacks, the mango trees are not expected to give yields as much as they are supposed to do.

The problem can be taken care of if sufficient insecticide is available and at reasonable prices besides the spraying machine. Clearly the farmers have a genuine problem here and the concerned authority should make arrangement for supplying both the items in sufficient quantity and numbers.

Today Indian mangoes — both seasonal and off-season — come into our market. There is no reason to think that India starves its local consumers to feed those of Bangladesh. There is also no reason to think that such exports fetch that country a hefty profit.

ONE recognizes that there is no multi-party democracy of Westminster model without complete independence of the Judiciary. If there is no democracy there can be no institutionalised mechanism for promotion and protection of fundamental human rights.

Background of the Subversion of People's Sovereignty

One may thus find oneself in a paradox of being a citizen of a sovereign state and yet be, in effect, subjugated and be subject, as we in Bangladesh were de jure until 14 August, 1947 and de facto until 26 March, 1971.

All these three are well documented dark periods in our national life and need not be elaborated here except stating one of the characteristics of internal colonialism. It is the negation, in effect and substance, though not necessarily in form, of the fundamental rights of the people to give, renew or revoke, without fear or favour, a mandate to the contesting Political Parties to form a Government with accountability.

These three are well documented dark periods in our national life and need not be elaborated here except stating one of the characteristics of internal colonialism. It is the negation, in effect and substance, though not necessarily in form, of the fundamental rights of the people to give, renew or revoke, without fear or favour, a mandate to the contesting Political Parties to form a Government with accountability.

A nation's constitution embodies this sovereign authority of the people. A well thought out constitution is as vital to a nation as the healthy heart to a person's meaningful existence. A nation's judiciary becomes the custodian of the constitution and, therefore, sovereignty of the people.

But, as records will show the vital Article 95 was amended to subvert the sovereignty of the people by the infamous Act No. 2 of 1975 (4th Amendment of the Constitution, 1972), which, in effect, for the first time introduced internal colonialism in Bangladesh.

Dangerous Precedents Bangladesh recently witnessed the sad spectacle of

A Plea for Restoration of Sovereignty of the People in Bangladesh

by Oli Ahad

Veteran politician Oli Ahad builds up his case for an independent judiciary placing it in a historical perspective and drawing upon the latest controversy over 'consultation' with the Chief Justice in making judicial appointments to the Supreme Court.

He questions the validity of the honourable Chief Justice's declining to give oath to the nine additional judges originally appointed by the Government and is critical of the 'reactions' of the Bar Council to the appointments.

His article is being published in two parts beginning today.

gnty resigned in protest. Instead those of the Bar, besides others, joined the new National Party, which was officially formed after dissolving all the existing parties and thus by implication legally burying the concepts of people's sovereignty and of multi-party parliamentary democracy.

This internal colonialism was perpetuated in the subsequent two periods. Internal colonialism and independence of judiciary are mutually exclusive. So, what we had in these two periods was subservience of all the three organs of the state, viz. Executive, Legislative and Judiciary to the Martial Law Governments.

Thus, the other name of this subservience is a nation caged. To give an analogy: A bird, once caged, is a captive. In its captivity, it can not exercise its wish or discretion, without risking its life to fly away and be free. Similarly, once a nation is caged it is effectively put behind the iron bars and chained. It loses its inherent right to express itself without fear or favour. In such a situation, the 'masters' may go through various motions of consultation with the learned Chief Justice of the Bangladesh Supreme Court, besides others.

This is evident from the observations of the learned High Court Bench of the Supreme Court in their judgement, which read, inter alia, "..... the existence of the High Court was at stake because the Chief Martial Administration by that time by Martial Law order divided this High Court into six and all the writ petitions in this country had abated and because of the MLO all fundamental rights had been suspended and even during that time judge of the Supreme Court had been dismissed and retired without assigning any show cause or any apparent reason as the reasons were supposed to be in the pocket of the Chief Martial Law Administrator....." (Writ Petition NO. 484 of 1993 of MA Zaman VS Bangladesh).

It appears three learned Judges of the Supreme Court heard about their dismissal on radio while on their way to Court. A learned Chief Justice of the same Court read his dismissal report in a newspaper during a meeting with fellow Judges (The Financial Express, Dhaka, 10 February, 1994). One needs to stretch one's imagination far too much and too naively to consider any consultation by courtesy or for the sake of public relations by the Executive with the Judiciary in such state of job insecurity could be free and meaningful.

Dangerous Precedents Bangladesh recently witnessed the sad spectacle of

technocrats, including doctors, on the pay roll of the Nation, going on strike in total violation of the relevant Govt Services Conduct Rules. The Nation was held as hostage. About 100 patients died due to the strike since they did not get the medical care. It was a crime against suffering humanity. No case of Tort was filed. Instead a policy of appeasement was adopted to satisfy those, who went on an unethical strike. This was followed by threat of strike by some of the members of the BCS (Admn) Cadre. They even encircled, "Gheroed" the Secretary, Ministry of Establishment. Lesson out of these two illustrations is that unhealthy steps/reactions/actions, like a monster, feed on themselves and become self perpetuating.

As if these two unhealthy precedents were not enough, the NATION had to suffer, with grave suspense, another case of non-compliance of Government's lawful decision. The President, being the Constitutional Head of the State, on the advice of Prime Minister and her Cabinet, appointed nine Addl. Judges to the High

Court Division of the Supreme Court on 4 February 1994. Six of them were from the Bar and three from the Judicial Service. In the normal course, they were expected to have been administered oath of office by the Chief Justice on the following day.

On the contrary, he expressed reservation in public over the existing system of appointing Judges of the Supreme Court where the Chief Justice has no role at all and he is mere a "Mr Nobody" (Bangladesh Observer, Dhaka, 5 February 1994, P.1). The Bar Association of the Supreme Court also expressed reservation on the same day. An impasse developed. In the end, nine Addl. Judges had to be appointed afresh — this time retaining six from the Bar and substituting the two Judicial Officers by another two on 10 February 1994. On 11 February, 1994 the Chief Justice ministered oath to them. But, the Bar Association resolved to deny them the convention of being congratulated and in the process, the lawyers got divided what appears to be on partisan line. Some issued press statement congratulating them.

Now, the Bar Association had no locus standi whatsoever in this case. They were not required to be consulted either by constitution or convention, so, their role from 5 to 11 February 1994 was thoroughly injudicious and uncalled for. In addition, they themselves broke a time honoured convention of calling on the newly appointed Addl. Judges and formally congratulating them. This could have boomerang effect in due time. It has already partially lost its goodwill. An honourable member of the Parliament commented, "It is not a question of rule of law save us from the rule of lawyers" (The Financial Express, Dhaka, 10 February 1994).

The Bar Council might not have reacted in the manner it did if the learned Chief Justice did not make the emotional statement of Friday, 04 February 1994 referred to earlier while inaugurating the sixth conference of advocates, which was organized by Bangladesh Bar Council at the Supreme Court Premises.

If he dreamt throughout his life to establish a reliable, neutral and independent judiciary, then he had an opportunity per excellence to realise it. He could have promulgated an ordinance atleast restoring the original provision of consultation in Article 95 of the 1972 constitution in his capacity as the Acting President of Bangladesh from 06 December 1990. Bangladesh had no Parliament during this period. The country very much had an enabling climate. If it is argued that his only major mandate was to hold free and fair election (which he did and for which he is widely and deservedly admired), then he could ensure that the requirement of consultation was incorporated in the Act No. 28 of 1991 (i.e. the 12th Amendment), which marked the transition from the autocratic rule to multi-party parliamentary democracy.

In this instant case the learned Chief Justice could discreetly and judiciously make his displeasure known to the President or adopt the honourable course to resign in protest. Instead, he made his reaction public and refrained from carrying out lawful Government decisions for full six days thus establishing a dangerous precedent.

The ultimate and eternal fountain of all legitimate power and that they may delegate this sovereign Power to their duly elected representatives at various levels of Government, i.e. county council to national parliament.

It is the latter, which adopts, amends and elaborates Nation's Constitution, elects the Speaker, the leader of the Treasury Bench, i.e. the Prime Minister and the President, besides others. This trinity derives, to repeat, their authority from power, delegated by the people. President is the constitutional head of the state and the Prime Minister head of the Government of Bangladesh, which is a People's Republic. The former acts on the advice of the latter. Thus in the instant case, the learned Chief Justice, who is after all an appointee, however exalted his status is, by refraining from carrying out the lawful orders of the elected President has not only undermined the chain of command, state institutions, but what is still worse, committed an act of contempt of sovereignty of people the sovereignty, which was revived on 27 February, 1991.

To-morrow, following it the members of the essential services, and of the armed and of law and order enforcing forces may refrain from carrying out the lawful orders of the President or of their senior officers. In such an eventuality the rule of law will simply collapse.

No one is above law. One's celebrity status, popularity, affluence and/or influence or reputation in one's chosen field of speciality or interest does not give any immunity from the rule of law. By extension of the same principle no Government servant — irrespective of his/her rank and status — can be on the Nation's payroll and yet defy its lawful orders. To do so is to be liable to disciplinary action as per relevant service rules/Article of the Constitution. We seem to be rather unconcerned about the implications in future. We seem to be unwarrantedly generous. We have a convict, who has been given very lavish facilities in the jail while others, convicted of criminal offence, are treated as per the Jail code. This discriminatory policy, to take an example, i) violates the basic principle of law that no body is above it, ii) erodes people's confidence in the rule of law, iii) encourage others of status, influence and/or affluence, to subvert the sovereignty of the people to satisfy their lust and greed for public offices and for material gains.

Having said this, one needs to add in the interest of better perspective that ours is a land of rain, tears and rivers. Its soil is soft and alluvial. Nature provides a fertile ground for us to react instantly and emotionally beyond the boundary of reason and reality. We tend to be more emotional than rational.

In this instant case the learned Chief Justice could discreetly and judiciously make his displeasure known to the President or adopt the honourable course to resign in protest. Instead, he made his reaction public and refrained from carrying out lawful Government decisions for full six days thus establishing a dangerous precedent.

The appointments of the Additional Judges of the Supreme Court, as per latest edition of the Constitution, (1991-edition) does not require prior Consultation by the President with the learned Chief Justice (Article 95 (1)). This was a healthy requirement in the original Constitution of 1972. It has been deleted by the 4th Amendment of 1974. Even if it were not, consultation would not necessarily mean concurrence by the learned Chief Justice. The Head of the state could consult the honourable Chief Justice, conceivably disagree with him/her and make his/her decision. After all, as per Constitution he/she is the elected President of the Republic. In the USA the President takes the initiative to appoint the Judges of the Federal Supreme Court. He nominates them. The Senate either confirms or rejects them. In terms of frequency distribution, the cases of such confirmation are by far more than of rejection even if the composition of the membership of the senate is not particularly favourable to the President. Consultation with, let alone concurrence of the Chief Justice of the Federal Supreme Court, is a requirement neither by convention nor constitution of USA.

India faced a situation in 1973, which has fair comparability with the one created by our learned Chief Justice, the Supreme Court Bar Association and the Bar Council. The President of India decided to appoint Mr Justice AN Roy as the Chief Justice of the Supreme Court. He was not the senior most amongst Judges to take over from the retiring Chief Justice. This was point number one. The second point was that the retiring Chief Justice was not consulted by the Government as such consultation was not required by the Indian Constitution.

The appointment was opposed on these grounds. But, Government firmly stood by its decision. Infact, late Mr Pandit Jawaharlal Nehru maintained that "No Supreme Court can stand in judgment over the sovereign will of parliament representing the will of the entire community..... it is obvious that no Court no system of judiciary can function in the nature of a Third House, as a kind of Third House of correction. So, it is important that with this limitation the judiciary should function" (SM Kumaramangalam, Judicial Appointments, Oxford and I B H Publishing Co New Delhi, 1973). The author even argued that appointments to the higher Judiciary could be made from the Bar, even if they were known for their political views or had active political affiliation. This being so, the reactions of the learned Chief Justice of the Bangladesh Supreme Court and the Bar Association are regrettably untenable constitutionally.

(First part ends here. Second part will follow.) The writer has been associated closely with four decades of Bangladesh politics in its many-hued evolution. A fire-brand leftist in his earlier days, he broke away from Khondaker Mustaque's Democratic League and formed a party of his own.

Nature seems to have destined us to be re-active rather than proactive and in the process become party to acts of omission or commission to our regret in saner moments.

No Provisions for Consultation

The appointments of the Additional Judges of the Supreme Court, as per latest edition of the Constitution, (1991-edition) does not require prior Consultation by the President with the learned Chief Justice (Article 95 (1)). This was a healthy requirement in the original Constitution of 1972. It has been deleted by the 4th Amendment of 1974. Even if it were not, consultation would not necessarily mean concurrence by the learned Chief Justice. The Head of the state could consult the honourable Chief Justice, conceivably disagree with him/her and make his/her decision. After all, as per Constitution he/she is the elected President of the Republic. In the USA the President takes the initiative to appoint the Judges of the Federal Supreme Court. He nominates them. The Senate either confirms or rejects them. In terms of frequency distribution, the cases of such confirmation are by far more than of rejection even if the composition of the membership of the senate is not particularly favourable to the President. Consultation with, let alone concurrence of the Chief Justice of the Federal Supreme Court, is a requirement neither by convention nor constitution of USA.

India faced a situation in 1973, which has fair comparability with the one created by our learned Chief Justice, the Supreme Court Bar Association and the Bar Council. The President of India decided to appoint Mr Justice AN Roy as the Chief Justice of the Supreme Court. He was not the senior most amongst Judges to take over from the retiring Chief Justice. This was point number one. The second point was that the retiring Chief Justice was not consulted by the Government as such consultation was not required by the Indian Constitution.

The appointment was opposed on these grounds. But, Government firmly stood by its decision. Infact, late Mr Pandit Jawaharlal Nehru maintained that "No Supreme Court can stand in judgment over the sovereign will of parliament representing the will of the entire community..... it is obvious that no Court no system of judiciary can function in the nature of a Third House, as a kind of Third House of correction. So, it is important that with this limitation the judiciary should function" (SM Kumaramangalam, Judicial Appointments, Oxford and I B H Publishing Co New Delhi, 1973). The author even argued that appointments to the higher Judiciary could be made from the Bar, even if they were known for their political views or had active political affiliation. This being so, the reactions of the learned Chief Justice of the Bangladesh Supreme Court and the Bar Association are regrettably untenable constitutionally.

(First part ends here. Second part will follow.)

The writer has been associated closely with four decades of Bangladesh politics in its many-hued evolution. A fire-brand leftist in his earlier days, he broke away from Khondaker Mustaque's Democratic League and formed a party of his own.

To the Editor

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.

Politics and institutions

Sir, I have recently read an article in your paper which touched on the issue of politicisation of universities. I am much touched by the content of the article which clearly showed the inside story of how the universities are run in our country.

My personal experience only adds to the incomplete story which the writer has bravely exposed.

Now-a-days appointment and promotion of teachers are weighed more by non-academic considerations and points to the larger issue of politicisation of university — nothing can be more true than this statement. It's disheartening to say that the picture appears almost the same even for an institution like the BUET.

My experience of an interview which was held on 14th February for the post of a lecturer in the Architecture Faculty of BUET left me puzzled and confused about the whole process of selection. The interview board seemed to me and many others an incomplete set-up. Many of us hardly faced any significant question; I for myself had to listen to a rather slow and

Even if the rumour is true that such and such call let it go to some one who much less deserved it than some one who lost it. I profoundly feel that teachers should be teachers with a strong say above all political and 'influential' infiltration. If there is a consensus on silence on face of such infiltration, should not we all think that the obvious picture represents a cracked mirror reflecting whole a loophole in the whole institutional process of selection?

Unless some definite terms and criteria are laid down properly for appointing teachers, no one knows which brilliant student will be the next innocent victim of the subtle and intricate pattern of 'institutional politics' or so.

Let education be free of politics. Otherwise we'll always be demoralized even after having our names associated with BUET.

Dilshad Rahat Ara M. Arch Student, BUET.

A rejoinder

Sir, The Daily Star carried a report on 8 March 1994 on one of the respected personalities of our time, Abdullah Abu Sayeed, the founder of Biswa Shahitya Kendra. I am terribly shocked by the news. Factually the report appears to be correct in that the popular TV presenter has been sued and subsequently granted bail but the content of the news on which he was purportedly served notice to appear before

the court is what actually counts. The reputation of a man of Abdullah Abu Sayeed's stature seemed to be compromised.

His relentless effort to educate students and impart values in young minds in an unconventional but most effective way through classical literature and very many other means is considered to be a most innovative step. His devotion and commitment to society is also beyond question. He has been doing a job formal education has never succeeded to do. Against mastani and social degradation, his is a role of a social reformer and a great teacher.

An in-depth look may give a different picture other than such a report does. Someone can implicate such personalities but there is no guarantee that the case will stand. The reporter would do well if he talked to Abdullah Abu Sayeed and came up with a story behind this story.

Khondaker Awlad Hossain Advocate 26/A Cantonment Residential Area, Dhaka

Crisis management — CPA

Sir, I got totally carried away by the Shipping Minister's taking on the Ctg. Port Authorities (CPA) on 12 Oct 93. It seemed once again the gamut of 'lip-service' was revived. I had written an article on the subject which you printed. The article was an honest appreciation of Mr M K

Anwar's statements and suggested that some sectors needed immediate and comprehensive action. After four months one can only conclude that the Shipping Minister's strong warnings fell on deaf ears.

For example, what is happening about the dredging front? What is happening about introducing modern weapons, equipment and training of security personnel to stop pilferage? What about handling over the ICD Dhaka to the private sector, and the shifting of the Hiring/Piring and payment of Dock workers from the 'Dock Workers Managements' to the representatives of actual port users?

How come CPA is still to utilise the Tk 4 crore (which they can do without Govt approval upto Tk 10 crore)? Through your columns, I hope, the Port Authority will answer these questions as soon as possible. The Honourable Minister would do well for the nation to follow-up his directive and not let it die a 'natural death' — a recurring feature in our 'state of affairs'.

Syed Taseem Hossain Uttara, Dhaka.

Reader's Digest price

Sir, In the fifties and sixties when I was a student, I used to regularly subscribe the Reader's Digest and other magazines. The Reader's

Digest used to offer special gifts and subscriber's price. It is, however, observed that for the Bangladeshi readers this offer has been discontinued. Not only that we find that the price of a copy of RD was Tk 50/- in 1989, it was raised to Taka 70/- in 1991, then raised to Tk 85/- in 1993 and now it is Tk 90/- in 1994.

For the readers in India and Nepal price per copy of RD is Rs 26.50. There is also special subscriber's price for the readers in India and Nepal which was Rs. 23.50 per copy in Dec '93. Then there are special offers such as Happy New Year and RD Gift Subscription offers. Free Desk Diary and so on. Such offers are also given by the Time, Newsweek, World Executive Business Digest. None exists for Bangladesh.

Have Bangladeshi intellectuals become solvent overnight so that they can buy these journals at such high price? I don't think so. There may be some reasons somewhere. Whatever the reasons, the Bangladeshi readers cannot be made the only scapegoats. If no publishing house is available in Dhaka then why not the publishing house which is publishing for India and Nepal or Pakistan is being allowed to publish for Bangladesh? Now, may I request the Reader's Digest Association, Inc. (USA) to cut the price and introduce special offers as are given to readers in other countries.

Aimuzzaman A M Elephant Road, Dhaka-1000