

Refugee Homecoming

The return of the refugees from the Indian state of Tripura has been in an animated abeyance since last July. The animation is made up of intermittent efforts our side has made with the Indian government and the tribal community leaders to revive the repatriation process.

There couldn't be quite the flurry of political and diplomatic initiatives on the subject we would have liked to see take place during the last five months. The political impasse proved to be distracting on that score. Even so, we have observed a degree of active concern on the question of extending the ceasefire on the ground which is regarded to be of primary importance for carrying on with repatriation. Only 5195 refugees have officially returned to the CHT to date, and a few times that number still languish at the refugee camps in India.

The stoppage in the flow of their homecoming has been rather regrettable. For, we can quite see that the tripartite agreement among the governments of India and Bangladesh and the Refugees' Welfare Association which heralded the repatriation process remains in place and in force. The agreement was the end-product of painstaking and protracted negotiations that broke the ice on the once-intractable problem. Thus it is inherently far from fragile.

The resumption of the return of refugees to Bangladesh has operatively become a question of ensuring a continuation of the ceasefire for the entire period of repatriation. Normally, this should have been a guaranteed element in the tripartite agreement itself.

Since that is not the case, we are now having to negotiate extensions of ceasefire by the piecemeal. Let this be done in one go with a sufficient leeway provided for the completion of repatriation. The prospect for this to happen soon enough may seem somewhat bleak at the moment: the fate of the All-Party Parliamentary Committee on the CHT affair hanging in the balance after the wholesale resignation of the opposition members from the parliament. At any rate, an agreement is an agreement for all the parties concerned to pursue it to the full. A successful repatriation on the basis of mutual trust will pave the way for addressing in earnest any political or ethnic concerns some tribal leaders may still have.

Price Worry

The Consumers' Association of Bangladesh has got itself a solid basis to articulate and advance the buying public's interests on. The report released by it on prices and cost of living in 1994 reads somewhat tolerable in the aggregate figures but when it comes to item-wise price increases one unquestionably feels the pinch. Compared to 1993, the cost of living went up by 4.5 per cent and the price of essentials by 9.55 per cent in the year just gone by.

The major source of protein, fish, and the staple food item, rice, have become dearer by 40.98 and 26.32 per cent respectively followed by edible oil at 17.98 per cent and meat at 15.46 per cent. Noticeably, the price upswing takes the cumulative increases over the years to a still higher notch. That's where the crunch is.

The government increased the gas price and the traders the other prices during the last six months since the national budget was presented in June. The budget was widely proclaimed and, even acclaimed, as a pro-consumer one, allow as it did, a wide variety of customs duty rebates on essential imports. The fiscal measures were supportive of farm productivity as well. These budgetary expectations seem belied. Let's see some fiscal adherence on the market-place in the remaining six months of the financial year. The gas price rise caught us unawares in the utility area. Why? We urge the relevant bodies of the importers and wholesalers also to come out with a public statement of justifications for any price hike before they go for it.

On Perpetual Holiday

All right-thinking people are agitated by the suffering caused to individual citizens and loss inflicted on the nation by too many hartals. There is, however, no shortage of people who quite enjoy the unscheduled freedom from work offered by the hartals. And the more worldly-wise among those bitter about such forced work-stoppage do take these in their stride and put the windfall of a leisure to good use.

If hartals were the only work-stopper stilling the wheels and denuding the office blocks and the shopping arcades of the service people, it could still be a problem. But Bangladesh is a land of closed working days, as it is, without needing any helping from the hartals. A vernacular national daily, exasperated by this fact, has on Monday enumerated the days an office-goer need not go to work or, if reporting for duty, can get out quick. According to this catalogue every third day of the year is some *dhobsh* offering a no-work working day. Adding to it the 52 weekly holidays there are about half of the 365-day yearly cycle becomes off-days.

The situation turns truly dangerous when hartal days join those and throw every working adult into a no-work perpetual-holiday mental frame. The few days that escape the *dhobsh* and holiday net can always be managed by that national habit of the Bengalees — malingering.

Then there is that agreeably most humanitarian abstinence at both ends of the larger-sized holidays. The twice-a-year Eid holidays start and end with the days of journeying to and from the place of work included — extending the holiday by two or three days for each. A very understanding government has then enlarged the Eid holidays to accommodate the extra days. The process continues. Whatever the latest size of the Eid holiday — "the serviceman would take two or three days more to join work."

The whole month of Ramadan is a goodly occasion to shirk work. A summertime Ramadan is much too oppressive for one to work. The bosses understand that. A wintertime Ramadan doesn't allow one to report for duty in time. And the jobholders must leave early to join the family at iftar.

Then there are the statutory holidays allowed to all: earned leave, recreation leave, medical leave — above all, the malingering's manna, the causal leave.

A nation on perpetual holiday is it? No, a wee bit short of that really. But the mind is free. Free to feel all of 365 days as an unending day off and act to materialise. God save us.

THE opposition members of the Parliament have resigned. Battle lines are clearly drawn and words are unsharpened.

The Prime Minister (PM), the opposition now demands, must also resign and dissolve the Parliament. The outline of opposition demand also includes a proposal for a caretaker government with a sitting or retired Judge of the Appellate Division of the Supreme Court as the head and neutral persons as members, to conduct the next general election. The demands of the opposition parties concerning the future of the PM and the Parliament and the immediate steps to be undertaken seem thus, clear enough.

An important issue, however, which does not seem to have been considered in detail during the last few weeks of protracted negotiations is the fate of the Constitution. Can the demands of the opposition parties be realised within the framework of the Constitution? My reading of the Constitution leads me to answer in the negative, but not in the sense that, as I understand it, the PM or the BNP is suggesting. There is nothing unconstitutional about the demand for an amendment to the Constitution to incorporate provisions for a caretaker government.

However, given the fact that almost all the members of the opposition have now resigned, the Constitution can no longer be amended to incorporate provisions for a caretaker government, at least not until elections are held for the vacant seats or a general election. The Constitution provides, in Article 142 (1) (a) (ii), that a Bill to amend the Constitution has to be, as the first step in the amendment procedure, passed by the votes of not less than two-thirds of the total number of members of Parliament. Our Parliament, we all know, consists of 330 members and as such a constitutional amendment would need the support of at least 221 members of the Parliament. After the resignations, there aren't that many members in the Parliament now.

The PM can, as the opposition is demanding, resign at any time, by placing his resignation in the hands of the President [Art 57 (1) (a)]. And he (in the language of Constitution, he also includes or implies she) can advise the President in writing to dissolve Parliament [Art 57 (2)]. In terms of the opposition's demands for the resignation of the PM and dissolution of the

Resignation, Dissolution and Caretaker Government: What about the Constitution?

by Shahdeen Malik

Parliament, there are no constitutional difficulties.

But after the resignation and dissolution, can the President do the things which the opposition parties are demanding of him? According to the Constitution as we have it now, the President cannot.

The President can only perform two functions independently, i.e., without the advice of the PM. These two 'independent' functions of the President are: appointments of the Prime Minister and the Chief Justice [Art 48 (3)]. The President, however, cannot appoint any person he wishes/chooses as the PM, as Art 56 (3) explicitly provides that he shall appoint as Prime Minister the member of Parliament who appears to him to command the support of the majority of the members of Parliament. The President could not, to belabour the point, for example, appoint Sheikh Hasina Wazed as the PM as she did not command the support of the majority of the members of the Fifth Parliament.

There is no denial of the fact that the issue of the caretaker government is a most pressing one and needs to be resolved. Equally important is whether we ought to resolve it within the framework of our Constitution or should we totally ignore the Constitution again, as we have done often in the past, and press on with the demand.

Now, what would happen if the Parliament is dissolved? Ostensibly, if there is no Parliament, the issue of commanding the support of the majority of the members of the Parliament would not or could not arise. If so, does it mean that the President is not constrained by art 56 (3) in terms of appointment of the PM when there is no Parliament, i.e., when the Parliament is dissolved? No, the President is still limited by the Constitution regarding his choice of Prime Minister, even if the Parliament is dissolved. Art 56 (4) clearly stipulates, and this needs to be quoted in full to clarify the constitutional position, that:

If occasion arises for making any appointment under clause (2) or clause (3) between a dissolution of Parliament and the next following general election of members of Parliament, the persons who were such members immediately before the dissolution shall be regarded for the purpose of this clause as continuing to be such members.

As we have already pointed out, Clause (3) refers to the

appointment of a PM, the person who appears to the President to command the support of the majority. Clause (2) of Art 56 stipulates that appointment of all the ministers, ministers of state and deputy ministers has to be determined by the PM but no less than nine-tenth of their number (i.e. number of ministers, minister of state and deputy minister) shall be appointed from among members of Parliament. In other words, the PM can determine who would be the members of the Cabinet, but at least nine-tenth of the Cabinet must be from amongst the members of Parliament.

From Art 56 (4), it is absolutely clear that the President, even when the Parliament is dissolved, can only appoint as PM that person who was a member of the dissolved Parliament and the same restriction applies for the appointment of ministers, minister of state and deputy minis-

ters of the Parliament "immediately before the dissolution."

The Constitution, in clear and unambiguous terms, defines the person who can be members of the Cabinet, even when the Parliament is dissolved. Had we not had Art 56 (4) in the Constitution, arrangements for a caretaker government could have been perhaps different. It is precisely because of clause (4) of Art 56 that the Constitution has to be amended for a caretaker government to take over the responsibilities of running the government after the dissolution of the Parliament.

Unfortunately, Art 56 has not yet been amended and there is no way to amend it unless at least 221 members of the Parliament vote in favour.

Moreover, Art 142 (1A) stipulates that any amendment of Art 56 requires not only the support of the two-thirds of the total members of the Parliament but also a referen-

derendum. Unlike other provisions of the Constitution, any amendment to the Preamble and Articles 8, 48 and 56 also requires a referendum after a Bill for amendment has been passed with the support of at least two-thirds of the total members of the Parliament.

To reiterate, an amendment of the Constitution to incorporate provisions for a caretaker government to conduct a free and fair election is not unconstitutional. But without such amendment already in place I do not see how a caretaker government consisting of neutral persons who were not members of the dissolved Parliament immediately before the dissolution can be formed without violating the Constitution. The Constitution, in Art 55, provides for a Cabinet for Bangladesh having the Prime Minister as its head, and it is the President who appoints the PM and other ministers. But the President is, to reiterate, limited by Art 56 in terms of persons whom he can appoint as PM and ministers, even when the Parliament stands dissolved.

Can anything be done to, as

either partly or wholly suspended and governments were formed for the good of the people, for ensuring people's rights and for better governance and so forth. It did not matter that the Constitution in Art 7 provided that all exercise of power in the Republic (I take the word 'Republic' to mean my country, Bangladesh) shall be effected only under and by the authority of the Constitution. If the Constitution does not provide for a mechanism for a caretaker government, irrespective of any rationale or justification or sterile pleas of 'for the good of the people', it cannot be done unless the Constitution is amended first. Let us forget, the ultimate rationale and justification for our Proclamation of Independence on 10th April 1971 was that the election of 1970 was held to elect representative for the purpose of framing a Constitution and

Whereas the Pakistan Government by levying an unjust war and committing genocide and by other repressive measures made it impossible for elected representatives of the people of Bangladesh to meet and

from a Constitution... that formally Bangladesh was constituted to be sovereign People's Republic. No less importantly, it was the Constituent Assembly which formally and officially declared the Proclamation of Independence on 10th April 1971. Moreover, the Preamble of the Constitution affirms that "It is our sacred duty to safeguard, protect and defend this Constitution and maintain its supremacy as the embodiment of the will of the people..."

It has been suggested that after the resignation and dissolution of Parliament the President can promulgate an Ordinance to provide the legal foundation of a caretaker government. But such a suggestion ignores another fundamental proposition of the Constitution: that any law which is inconsistent with the Constitution "shall, to the extent of inconsistency, be void." [Art 7 (2)]

It needs to be mentioned that the election in 1991, after the resignation of the then President, could be constitutionally conducted by a caretaker government as our system of governance then was presidential. The Acting President was not constrained or limited by the current Art 56. Articles 48 to 56 were put in place, in lieu of the previous provisions, by the 12th Amendment to the Constitution, with effect from 18th September, 1991.

There is no denial of the fact that the issue of the caretaker government is a most pressing one and needs to be resolved. Equally important is whether we ought to resolve it within the framework of our Constitution or should we totally ignore the Constitution again, as we have done often in the past, and press on with the demand for an immediate caretaker government, whatever the relevant constitutional provisions are.

To me, Art 56 is clear and unambiguous. The Supreme Court has not interpreted Art 56, as occasion for its interpretation did not arise in the past. The President, however, under Art 106, can, when a question of law has arisen, or is likely to arise, which is of such a nature and of such public importance that it is expedient to obtain the opinion of the Supreme Court, ask for and obtain the opinion of the Supreme Court. Could that be a way out of the constitutional impasse? Hardly, but may be.

The author is a teacher of law. The article is an outcome of his in-depth study of the Constitution.

The Trade Policy Debate

Why Trade Barriers Continue to Prevail: Explaining Protectionism

by Dr Zahid Hussain

RESERVING that during the eighties non-tariff barriers and adminis-

tered protection increased significantly. Bhagwati (1989) suggests the possibility that there may be a 'Law of Constant Protection: If you reduce one kind of protection, another variety simply pops up elsewhere.'

This is an anomalous fact for the mainstream paradigm. It must explain why protectionism is so pervasive and why governments so rarely seem to take the welfare-increasing step of abolishing protection. Such a step is likely to be popular either because a majority of electorate would directly benefit or because the government could redistribute the gains so that a majority of the electorate would be better off than under protection. This anomaly cannot be resolved without taking a closer look at the actors and the rules of the political decision-making process.

Interest Groups

In a representative democracy actual political outcomes may fail to reflect the views of the majority because of imperfect knowledge as well as costs of income redistribution and political action. Thus, even though the majority favour free trade, industries benefiting from protection can organise political pressure groups to obtain protection from competitive imports.

Voluntary formation of pressure groups requires that

The bureaucracy of course faces constraints imposed by parliament and government. But both of these actors have little incentive to control public administration more tightly, because of incompetence and/or dependence on the bureaucracy to attain their own goals.

the group be small in size and the benefits unevenly distributed so that the individual members or at least a group of members has more to lose if they fail to organise. This means that pressure groups in favour of free trade will be much more difficult to organise than pressure groups for protection because free trade generally benefits people in their role as consumers while protection benefits particular industries who are much more concentrated in their geographic distribution.

Of course there are many different industries each of which would prefer protection for itself and not so much for the others. How can protection of all emerge in such a situation? The answer is *logrolling* or *vote trading* which provides a mechanism through which protection can come into existence and be sustained. It makes it possible for two measures, each of which would increase the country's welfare, to be both defeated by majority.

Even though the buying and selling of votes by individual citizens or in parliamentary bodies is illegal, the more informal process 'you vote for my pet issue and I will vote for yours' can nevertheless happen be-

cause it is difficult to police. The interest group view can explain why all industries do not receive protection and why, those that do, receive it in varying degrees. It predicts that protection generally will favour industries over consumers, and industries with concentrated market structures and geographically concentrated production patterns are likely to be more successful in obtaining protection.

Information Costs and Asymmetry of Interests

Consumers do not actively oppose protection because of a purposive lack of knowledge and the high costs of individual political activity relative to benefits. It is costly to obtain information about protection. Those benefiting from protection have an incentive to make the costs of information high to the voting public and their representatives by seeking protectionist measures that are highly opaque.

Prospective losers due to protection have less incentive than prospective gainers to participate in the vote, to inform themselves, and to organise and support a pressure group because, while the total gains from free trade may be large, they are so widely

shared that benefits to individual consumer is small.

The Iron Triangle

A different approach is to view protection as being determined in a political market where import-competing producers are the demanders and the government is the supplier.

An important force on the 'supply side' of protection is the bureaucracy which prepares, formulates, and implements trade bills once government and parliament have made a decision. In most cases the clientele of the bureaucrats are located in a specific economic sector. For example, the clientele of the bureaucrats in the Ministry of Industry are groups with industrial interests. Public bureaucrats have an incentive to fight for 'their' economic sector, and work for tariffs and other import restrictions in order to protect it from outside competition. However, they prefer to use instruments under their own control (e.g. quotas) than to follow general rules imposed by formal laws. They thus prefer various kinds of non-tariff protection and support to general tariff.

The bureaucracy of course faces constraints imposed by parliament and government.

But both of these actors have little incentive to control public administration more tightly, because of incompetence and/or dependence on the bureaucracy to attain their own goals. The political actors have less information available to them than the public bureaucracy, particularly with respect to the sometimes very complex issues of protection. The limited incentive of politicians to control the public administration gives bureaucrats considerable discretionary power, which they use to their own advantage.

The bureaucracy, the politicians and their constituencies form what has been dubbed as the 'iron triangle'. The constituents depend on politicians to represent their special interests. The politicians have to accommodate to increase their chances of re-election. They need to be able to provide favours which are more readily apparent to their constituents if they are given through the bureaucratic process. The politicians therefore are inclined to support legislation that permit the bureaucracy to provide the favours. So empowered, the bureaucracy attains its own power base and becomes a separate element in the political game. They accommodate the politicians' re-

quest for special favours for their constituents. In exchange, the politicians support the powers and budgets requested by the bureaucrats.

The Jobs Loss Fallacy

It is unlikely that the above factors alone can explain the broad support often seen for protectionist policies. Such support does not come only from those who have a vested interest in such policies. There seems to exist a widespread and deep-seated feeling that opportunities for employing domestic resources to meet domestic needs should somehow be protected from foreign competition.

The common perception clearly is that protecting specific jobs is the same thing as protecting jobs in the aggregate. As Mussa (1993) observes: 'People see the specific jobs that may be eliminated if protection is not granted to some domestic industry, but they fail to perceive that the individuals holding these jobs (or that might hold these jobs) will generally find employment elsewhere..... It is not natural for most people to believe that the economic system will, more or less, automatically create new jobs for those who may be displaced by import competition.'

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Next in the series: The Modern Case for Free Trade.

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.

Good better best

Sir, Recently, it came in the national newspapers that MCCI study report had established that there had been rise in our per capita income in 1993-94 — to be USD 225. In 1992-93 it was USD 219. It is a welcome news and it goes to prove conclusively that our economy is on a sound path. But I may add that there is no room for complacency. It promotes me to remember the poem —

"Good, better, best
Never let it rest,
Till your good is better
and your better, best."
Let our fiscal matters take a progressively pitched path to ensure continued prosperity.

Regarding fiscal matters, however, I have certain observations to make. From newspaper reports it was learnt that we have a record accumulation of foreign currency reserve. In our banks, there are plenty of funds and the indus-

trialists and businessmen were advised to make the best use of the fund by borrowing from the banks. It is only natural that businessmen will approach banks with their project profiles and if the bank is satisfied, it will grant loan. It may not require any advice or recommendations from any source.

If businessmen do not come forward to borrow money from banks, the reason for such shyness has to be searched into.

The present bank rates are at such a high altitude that money-lending agencies have to waive 100 per cent penal interest and 50 per cent normal interest to allow the projects to survive. It passes all comprehension as to why the authorities should fix such a

rate that they will require waiving substantially?

The rates and duties of almost all utility services viz. electricity gas, WASA, telephone, fax, tele etc. are so high that after making payments it becomes well nigh difficult for the project-owners to pay instalments of loan and interest therefore. This might be, if not major, at least one reason for thousands of industries being rendered sick and unproductive.

The want of proper supervision at all levels seems to be another valid cause as to why different units could not maintain the path of profit-making.

It is for the authorities to consider whether there is any substance in the above observations and whether those merit worthy of looked into and in-

vestigated for the sake of well-being of our economy.

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Hartal festival!

Sir, Winter, really, is a season of festivals in Bangladesh. Now a three day hartal festival has begun yesterday (Monday) in the capital under the patronage of three mainstream political parties — Awami League, Jatiya Party and Jamaat-e-Islami. The festival will remain open to public from 6 am to 2 pm noon on all the three days. This timing will not be applicable to shopkeepers, rickshaw-pullers, vendors, private and public transports, day labourers and irregular wage-earners. The festival has been organised with a view to giving

people some respite from the tremendous work they have put in during 1994 to take the country to the threshold of what is popularly known as economic prosperity. One of the leaders of the organisers told this correspondent that one of the objective of this festival is to make people use their feet more to avoid incidence of heart disease. In recent times coronary problems have increased manifold due to lack of physical exercise.

But, one ponders, even a couple of years ago, the Jatiya Party was 'autocratic' and until early last year universally the Jamaat-e-Islami was branded as Raskars, to be hated, and hanged, if possible. How true is the axiom that politics has strange bedfellows!

A citizen