

Nature's Gift

Amidst gloomy news all around Petrobranga brings good tidings for the nation from the Bay of Bengal off Kutubdia. An Anglo-Dutch joint exploration team has struck a large reserve of natural gas — between two to three million cubic feet — in the very first well it tried. Although the formal announcement of the gas find is still awaited, the International Stock Market in London has duly been informed of the discovery. The new find is definitely going to prove a much-needed impetus to the country's economy.

Bangladesh has been one of the most fortunate countries to have had a generous gift of gas from nature. With the highest density of population in the world this country might have denuded its forests and tree covers within a short period had we not enjoyed the benefit of natural gas in reasonable abundance. Now the Bay of Bengal find gives us a further option to replenish our stock. The use of gas should constitute a dominant part of our energy policy. That we have a good reserve of gas is no excuse for neglecting the proper use of this natural gift both at the macro and micro levels.

It is good to know that the memoranda of understanding signed with the foreign private companies in the energy sector mostly seek to set up gas based power plants. Similarly, a wide-ranging use of gas in industries and factories can be studied. If the cost of running machines using gas is less than that of the imported petroleum driven ones, we surely know our option.

At the same time all types of wastage and leakage — including the domestic one — will have to be brought to the minimum. The advantages of this precious natural commodity must be fully explored to add to the benefits in environmental terms. The country's fragile environment can be made sound and sustainable if we are able to contain deforestation by means of a wider use of gas in place of wood as fuel.

Not Enough

The ISPR press release has been evidently quite detailed about the purpose and background incidents relating to the Char Syedpur raid. In fact, the elaborate description of the hot chase given to the named terrorists leaves nothing to be desired.

What we find missing in the press release, however, is an adequate response to the requirement of public information generated by the misgivings expressed by the local inhabitants about what happened in the ill-fated Narayanjanj village.

There have been accounts of witness, narratives by some victims and photographic illustrations as well of the fall-out which could not be brushed aside without raising an eyebrow or two. In fact, one would have thought that these provided some grounds for an inquiry to be made departmentally into the episode and appropriate corrective steps taken against omissions and commissions, if any, to avert any recurrence in the future.

To be very frank, we had expected the press release to shed some light along those lines. For what is involved here is not just the right to public information — when something has been evidently at variance with the normal course of events — but also the principle of the credibility of the Army as an institution which must be preserved at any cost. And there is no reason to regard these two principles as mutually exclusive. So, more thought should have gone into the making of the press release.

It goes some distance in clarifying the position insofar as phrases like 'a squad of the joint force' conducting the drive, local people giving out names of terrorists or even the expression of regrets to the villagers 'for their inconvenience' are concerned. Yet in the essence it has skirted round the real point at issue — redressal of a public grievance over excesses committed.

Honesty Personified

It is one of those stories that strengthens our belief in the goodness of man.

A rickshawpuller finds a lady's hand-bag near the Shishu Park, opens it, discovers a gold-bar weighing about two ounces in it, and decides then and there to return it to its legitimate owner. His honesty has been unwavering from the very outset otherwise he would not have risked a public exposure with the precious thing in his possession looking and perhaps, yelling around for someone to come forward and claim it. None would present oneself. So, without losing his wits, he goes straight to the Ramna Police station and deposits the gold bar there.

A moral is thus powerfully transmitted to the whole society: One can pass the test of honesty even under severe pressures of poverty and hardship.

This is not the first time that a person on a very low rung of the socio-economic ladder has set a rare example of rising above the easy lure of mammon. The rickshawpuller is the latest among a few who have made it to that hall of honour and have yet gone into oblivion. Only if the habitually corrupt among the well-placed and the affluent learnt a bit of moderation from the people of low means who show the way.

The rickshawpuller's spontaneous honesty stands out all the more because of the high incidence of extortion, snatching and fleeing one has got accustomed to the civil life. Such people should not return from the doors of a police station or any other governmental authority without a suitable reward tucked into his hands and his story arranged to be carried through the media.

The March of Folly: Can it be Averted?

by Rehman Sobhan

THE Nature of Folly: Barbara Tuchman, one of the leading historians of recent years, captured the perverse behaviour of political leaders through the course of history in her famous work, *The March of Folly*. In this work she argued that: 'to qualify as folly, the policy must meet three criteria: it must have been perceived as counter productive in its own time, not merely by hindsight. Secondly a feasible cause of action must have been available... third criteria must be that the policy must be that of a group not an individual ruler.'

Tuchman goes on to talk of perverseness of political action as: 'Wooden-headedness, the source of self deception plays a remarkably large role in government. It consists in assessing a situation in terms of preconceived fixed notions, whilst ignoring or rejecting any contrary signs. It is acting according to wish while not allowing oneself to be deflected by facts. All misgovernment is contrary to self interest in the long run but actually strengthen a regime temporarily. It qualifies as folly when it is a perverse persistence in a policy demonstrably unworkable or counter productive.'

Give or take the emphasis one puts on one or the other phrase in the above assessment I cannot improve on the words of Barbara Tuchman to describe the folly of the ruling party in perverting committing itself to a course of action which is manifestly contrary to its own interests.

A Strategy Gone Wrong

Many people believed that at the last minute a settlement would be worked out which would bring the opposition into the elections on terms acceptable to them. This view derived from the assumption that the ruling party which came to power through a contested election would not compromise its political legitimacy by attempting to stay in office through an uncontested election. Those of a more cynical mind believed that the ruling party would seek maximum political advantage from keeping the Opposition on the streets for a year.

This assumption about the behaviour of the ruling party depended on the rationality of the ruling party in pursuing its self-interest by emphasizing its legitimacy as an elected government whilst keeping the Opposition in a state of uncertainty right upto the last moment. This strategy was thus, by its nature, time bound. It held good upto the time of an election where all parties participated. This strategy becomes perverse and hence contrary to the self-interest of the ruling party if it failed to bring the Opposition into the election. To be caught in such a situation would thus appear as an act of folly for a party which has so far played its cards quite carefully. It now appears that the ruling party has managed to throw away much of its political advantages derived from its legitimacy. How could Begum Khaleda Zia permit herself to be trapped in a political blind alley where she is sacrificing her party's representative status in an election contest with a bunch of nobodies assembled for the occasion, whilst the country is in turmoil around her?

Constitutionalism versus Legitimacy

It is argued here that the perverse behaviour of the ruling party originates in their inability to recognise the distinction between a commitment to uphold the constitution and the spirit of the democratic process which is designed to be upheld by the constitution. Whilst the letter of the constitution must, as far as possible, be safeguarded, and not treated lightly, it must be recognised that it is not a holy book which must be treated as sacrosanct. It is a document written by human beings to

empower and sustain representative institutions operating under the rule of law. A democratic process based on representative government depends upon providing our citizens with the opportunity to freely choose between contending political parties through the medium of the ballot box. It is this right to choose which distinguishes democratic governance from an authoritarian system where this right to choose is compromised either by constitutional provision or electoral manipulation. To uphold the democratic process it is thus essential that citizens be able to choose between a multiplicity of credible contenders for state power in order to decide who represent them in Parliament. Unless the government of the day can ensure that these contenders actually contest the election, thereby giving voters a genuine choice, the electoral process cannot fulfil the preconditions of democracy as it is understood in contemporary times. A failure to make the democratic system work through a process of contested elections thus frustrates the paramount purpose of a constitution which is designed to serve the democratic process.

There is no lack of contemporary historical examples of elections, governed by constitutional law, being held to endorse the right of one party, usually the ruling party, to stay in power. In such states, voters, sometimes a very large proportion of them, tend to cast their vote, perhaps even without coercion or fraud, to endorse

the candidacy of the ruling party. However, the constitutional validity of an electoral process, the fact of casting the vote, its size or even the freedom to cast a vote, is not enough to provide democratic legitimacy to the electoral process. In fact, voters have not been able to effectively choose between more than one party through the polling process. Thus, the contemporary trend of democratic evolution in post-Socialist Europe, Latin America, Africa, South and East Asia has been built around the establishment of the principle of the multiplicity of choice for voters. A government which is elected to office, through a freely given choice to vote between competing parties is recognised to be representative of the electorate and to have thus earned the mandate to rule for the period provided under its constitution. If such a leader and/or party does not

derive its right to rule from a freely given vote in a contested election, then, under the now almost universally accepted rules of the democratic process, such a regime forfeits its political legitimacy, even though it may, within the letter of its constitution, be legally entitled to hold office.

Khaleda Zia's ascent to the position of Prime Minister of Bangladesh in March 1991 and the BNP's assumption of power was in many ways unique. Having spent nine years in opposition, the BNP contested its political rivals through, what was deemed by all, to be our most free and fair election, since the emergence of Bangladesh and emerged as the party with the largest number of seats in the Jatiya Sangsad. It was thus the process of its coming to power through credible elections which gave the ruling party the legitimacy to exercise state power for the last five years and to indeed face up to the political challenges to which it was exposed over the last two years. This legitimacy, earned by the ruling party, made many people, even amongst those sympathetic to the Opposi-

tion, uncomfortable with the decision of the Opposition to resign from Parliament on 28 December 1994. In contrast, most Bangladeshis greeted the resignation of the Opposition from the Sangsad in 1987 with jubilation. This contrasting public response to the resignations of 1987 and 1994 owed in no small measure to the fact that Khaleda Zia's mandate in the Sangsad was deemed legitimate whilst that of the Jatiya Party in the 1988 Sangsad was deemed to be illegitimate because it was secured by force and fraud in the general election of 1986.

The Delegation of a Legitimate Regime Begum Khaleda Zia must realise that whatever sympathy she commanded amongst not just her own party but also with non-partisan people, due to her political legitimacy, will stand compromised the moment the first ballot is cast on the 15th of February, 1996. From the 15th of this month the BNP regime may be a government legally entitled to hold office under the constitution, but it will have transformed itself into an unrepresentative government devoid of political legitimacy since it will remain in office without the mandate given by voters exercising their free choice between contending political parties of consequence. The ruling party had at one stage entertained the hope that one or another of the major parties or at least some faction thereof, could be persuaded to join the election

regime may now be seen as a legitimate act by many. All laws and orders enacted by such a regime or agreements entered into by such a regime may be deemed to lack a democratic mandate and hence remain open to challenge. Such a government, in the absence of an adequate mandate, may therefore be compelled to become more dictatorial in its modes of governance. In such a situation, acts of civil disobedience may command immeasurably stronger moral authority and political legitimacy than when it was directed against a regime deriving its authority from a democratic mandate.

A politically delegitimised regime in office after 15 February 1996 may therefore have to be prepared for continuous political resistance whence the country may not expect to enjoy a single day free of tension. The notion that a regime without a credible electoral mandate can in these circumstances, effectively carry through economic reforms, tighten up administration or improve law and order, remains something of a delusion. Our prospective Finance Minister, our aid donors, as well as our business community may ponder on the implications of such a situation for the future of economy. The government may attempt to suppress challenges to its authority by the increasing resort to force by the state machinery of law and order. But such acts will also weaken the authority these institutions and further compromise their credibility

with the public. The recent barbarous behaviour of our law enforcing agencies in Jagannath Hall and in Char Syedpur in Narayanjanj, which have served to discredit these institutions in the eyes of the people by resurrecting images of 1971, may today be covered by some fig leaf of democratic authority. After 15 February such acts will be classifiable as illegitimate and any successor regime will feel free to take action against those responsible for such assaults on the civil rights of our citizens.

Can the March of Folly be Averted? The hazards attendant on the present regime's persistence with the self-defeating folly of going ahead with the 15 February election, in the name of upholding the constitution, are thus clear enough. That a regime which came to office five years ago with an extraordinary degree of legitimacy should today expose not just itself, but the democratic process, to such a grave threat appears perverse, because, according to the definition of Barbara Tuchman, a feasible alternative course of action is available to them. I spell out below such a feasible course for the ruling party which may serve their self interest rather better than their present march of folly.

Begum Khaleda Zia can today invite the opposition to participation in the election by making a fractional shift in her party's latest political position. The ruling party has now accepted what it once denied that the constitution can be breached by vesting executive powers in the President of the republic, following the resignation of the Prime Minister and her cabinet. The ruling party has agreed that the President can rule through an advisory Council made up of members nominated in equal proportion by each side. This latest proposal offered to the Opposition by the BNP negotiators during the negotiations, held at the residence of the US ambassador, represents a funda-

mental shift in the position of the ruling party by its acceptance of a solution outside the letter of the constitution. This shift of position by the ruling party brings it close to the Opposition which always argued that a solution outside the constitution could be realised through political agreement. The principal point of difference between the ruling and Opposition parties remain over the issue of who exercises executive powers. The opposition has demanded that the powers should be vested in the Advisory Council, which should be headed by a non-partisan person acceptable to both sides. This non-partisan Chief Executive has, so far, remained unacceptable to the ruling party, who insisted on the BNP nominated President exercising this role. In this respect the ruling party has been consistent throughout all the negotiations, from Ninian's time onward, that the Chief Executive must be from their party. The opposition has been equally consistent in its demand for having a non party person as prime minister or Chief Advisor.

A suggested Compromise My own compromise suggestion for both parties would be that they agree that the President be designated as the Chief Executive and chairman of the Advisory Council. However at the first meeting of the Advisory Council the President should delegate all his executive powers to one member of the Council who will chair all meetings of the Council in the name of the President.

The suggestions indicated above would have to be acted upon instantly, since each day upto the 15th precipitates new events on the ground which further vitiates the environment for any agreement between both sides. Right now the ball is with the ruling party. They have to make the critical decision which can bring the Opposition into the election since it is the ruling party, more than any other, who will face a transformation in their political fortunes once they delegitimise themselves. Indeed after the 15th of February, even if the ruling party offers to negotiate a constitutional compromise with its opponents, its political authority now derived from a non-participative election, in such a negotiation will be immensely weaker than it was when it commanded its legitimacy from a democratic mandate earned through a contested election.

The rising costs of this unresolved crisis and its attendant risks to her party's political fortunes should by now have been brought to the attention of Begum Khaleda Zia by her own party members, since it is also to their advantage to deflect her from the march of folly to which her party is steadfastly committed. Some people in the Opposition may, in the absence of any noticeable effort by her own side to alert the Prime Minister, deem my gratuitous advice to her as a demonstration of naive folly. They would be quite happy to let the ruling party continue its march of folly upto 15 February after which the incumbent regime would expose itself to all the predictable and some of the unpredictable consequences of their delegitimised status. At this critical juncture in our nation's history it may be argued that some statesmanship is also required of the Opposition. At the end of the day, the consequences of this march of folly will not limit itself to the ruling party but could impose no less severe costs on the opposition.

However it is the ordinary citizens who will face the consequences of the spread of anarchy which follows in the wake of the deposed authority of a government which has compromised its legitimacy. Such a development could raise serious problems for the sustainability of our increasingly depreciated democratic institutions. This is not a prospect which any Bangladeshi, imbued with the spirit of the liberation struggle, could contemplate with any sense of indifference. In this our twenty-fifth-year of independence.

Today's regular column On the Record by SAMS Kibria will appear tomorrow.

The constitutional validity of an electoral process, the fact of casting the vote, its size or even the freedom to cast a vote, is not enough to provide democratic legitimacy to the electoral process, if in fact, voters have not been able to effectively choose between more than one party through the polling process.

Thoughts on Constitution of Bangladesh — IV Office of Ombudsman, PSC and Accountability of Public Servants

by Mustafizur Rahman

THE article 77 of the constitution that reads '77 (1) Parliament may, by law, provide for establishment of the Office of Ombudsman' provides for establishment of the office of ombudsman, but no such office has yet been established. I think the word 'may' should be replaced by 'shall' so that it is binding on the parliament.

Had it been established properly, the corruptions the people have been accusing the governments of could have been minimised or removed. For making the provisions clear the article may be reworded and rewritten as— (1) The parliament shall by 1997 (or specific date to be decided), provide for establishment of independent office of the ombudsman composed of the Ombudsman and at least one overall Deputy and at least one Deputy each for Dhaka, Chittagong, Khulna, Rajshahi and Sylhet. A separate Deputy for the military establishment may likewise be appointed. (2) The Ombudsman and his deputies shall be determined by the parliament

from among those qualified for being appointed as Judge of the Supreme Court and recommended by the Head of the Government (in Parliamentary system, the Prime Minister) or the Head of the State for a term of four/five years, with provision for reappointment for a second term. They can be removed from office the same way as a judge of the supreme court. (3) The officials and employees of the office of the Ombudsman other than the deputies shall be appointed by the Ombudsman according to Civil-Service Law.

(4) The Ombudsman and his Deputies shall not be qualified to run for any office in the election within 3 years after cessation from office. (5) The Ombudsman can resign by writing under his hand addressed to the President. (6) Any vacancy of the Ombudsman shall be filled within three months. (7) The office of the Ombudsman shall have the following powers, functions, and duties:

- (a) Investigate on its own, or on complaint by any person, any act or omission of any public official, employee, office or agency, when such act or omission appears to be illegal, unjust, improper, or inefficient.
- (b) Direct, upon complaint or at its own instance, any public official or employee of the Government, or any subdivision, agency or instrumentalities thereof, as well as of any government-owned or controlled corporation with original charter, to perform and expedite any act or duty required by law, or to stop, prevent, and correct any abuse or impropriety in the performance of duties.
- (c) Direct the officer concerned to take appropriate action against a public official or employee at fault, and recommend his removal, suspension, demotion, fine, censure, or prosecution, and ensure compliance therewith.
- (d) Direct the officer concerned, in any appropriate case, and subject to such limitations as may be provided by law, to furnish it

- (e) Request any government agency for assistance and information necessary in the discharge of its responsibilities, and to examine, if necessary, pertinent records and documents.
- (f) Publicize matters covered by its investigation when circumstances so warrant and with due prudence.
- (g) Determine the causes of inefficiency, red tape, mismanagement, fraud, and corruption in the Government and make recommendations for their elimination and the observance of high standards of ethics and efficiency.
- (h) Promulgate its rules of procedure and exercise such other powers or perform such functions or duties as may be provided by law.

- (8) The Ombudsman and his Deputies, as protectors of the people shall act promptly on complaints filed in any form or manner against public officials or employees of the government, or an subdivision, agency or instrumentality thereof, including government-owned or controlled corporations, and shall, in appropriate cases, notify the complainants of the action taken and the result thereof.
- (9) The Office of the Ombudsman shall enjoy fiscal autonomy. Its approved annual appropriations shall be automatically and regularly released.
- (10) The Ombudsman shall prepare and annual report concerning the discharge of his function and such report shall be laid before Parliament.

The following paragraph shall be replaced with a paragraph that will read 'provided that at least one member of a commission shall be a person who is considered to have expertise in human resource development, technological development and economic management.'

Accountability of Public Servants

There may be incorporated an article as Public Office is a public trust. Public servants and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty and efficiency, act with patriotism and justice and lead modest lives.

Tomorrow: Local Self-Government

PSC (Part IX Chapter II, article 138 section (1)) After the Word President the colon shall be removed and the words on the recommendation of the Prime Minister shall be inserted