

Question of Governance

On the 13th day of non-cooperation movement of the opposition parties the question that naturally comes to the suffering people's minds is when will all this end, and they will be able to go back to their normal life. Question arises whether there is a government in the country. While a new parliament sits, a cabinet is sworn in and the BNP is about to proceed with a constitutional amendment, the country remains in the lurch. The truth is that there is not the slightest sign of governance anywhere in the country. Bus service or, for that matter, any other communication within the cities and between the capital and the rest of the country is virtually non-existent, industrial and commercial activities have been brought to a grinding halt and the ports cannot operate. The list of government's failures is indeed long. Here we would also like to raise some questions about the opposition. In the latter's relentless attack on the ruling party, it has made no attempt to differentiate between the government and the people, especially in implementing its hartal and non-cooperation programmes, leading to disastrous consequences for the economy.

Even without questioning the legitimacy of the government one can easily see that the factual basis or the obtaining reality weighs too heavily against the government to give it any sort of credibility. A government has to take the responsibility of ensuring some basic functions in a society under varying circumstances. Economic ruin, a total lack of law and order et al point to the fact that the government has virtually abandoned its responsibilities.

This is hardly the way to run the country. Without a political settlement — and that too immediately — there is little hope for the country returning to normalcy. The apprehension is that the country is heading for far worse times.

How will the government go about its normal business in the coming days? As of yesterday army has been deployed to ensure road and rail link between Dhaka and Chittagong. But what about the rest of the country? Let the people know how they will be governed, their economy will be operated, and their welfare taken care of, when there is at best a semblance of governance on the ground. All this should weigh heavily on the government to find a quick solution to the present impasse.

Intimidation Must Stop

The other day Syed Shamsul Huq was returning home in Gulshan by rickshaw from a meeting of intellectuals at the Shahid Minar. At Mahakhali he was assaulted by a group of young people not fancying the writers recent speeches. He was dragged down from the rickshaw and beaten and the situation could turn worse if some students from the nearby Titumir College hadn't come to his rescue. Muntasir Mamun, the historian and writer, has written yesterday in a national daily that a host of intellectuals of national standing are being regularly threatened over telephone ceaselessly. The language used in the threats does by itself constitute criminal assault. Professor Mamun writes to say that over the last two decades of volatile times and of his patriotic activism for social and political fairness, he had never come across any such experience. Other intellectuals have said even in 1971 such threats were not held out against them.

Now in a statement 62 leading writers and intellectuals have denounced the assaults and intimidations. It is indeed a national shame that the accusations by these responsible people are true. And it is true that things haven't gone this far — ever. What has made the difference and this departure? Who were afraid of the writers and intellectuals? Nazis and Al-Badar and Al-Shams. Why is this desperation on the ruling side and its fringes? Will these acts endear to the people the now-acceptedly-beleaguered party and the controversial government? We wholly share in the denunciation of this new crime by the intellectuals.

And so saying let us enter into a covenant that we would all stand up similarly against a backlash of paying back in the same coins. Insanity must be overcome through a recourse to sanity, as Lord Buddha had taught us 2500 years ago.

Vindicating Hahnemann

An Indian homeopathic physician's name has been proposed for the Nobel. The credentials of the nominating body make the news worthy of serious notice. The Colombo-based and WHO-sponsored Open International University for Complementary Medicine has proposed that Dr Rati Ram Sharma of the Punjab be awarded the prize for his thesis on molecular homeopathy.

No, this wouldn't grip the world of Western medicine with surprise and disbelief. That had been treated with another such serious shock years ago when a French researcher's works suggested that minuscule dilutions of the homeopathic dosage could indeed be effective because of some strange mnemonic power of the water molecule.

No one is right now going to sit in judgement over Dr Sharma's paper and give an approving pat on the back of this much derided practice of medicine. But the news alone would cause hundreds of millions in the Third World to take heart — the millions that have been consigned to this system by facts of a choiceless poverty. It was not science that made our government to accept homeopathy to be as good a way-with medicine as the so-called allopathic. It was circumstances, the realities of an impoverished nation.

To face the truth, official Western medicine, minus surgery, was hardly science either till the end of World War II or the maturity of the sciences of biochemistry and microbiology. It was not for nothing that the great Lewis Thomas has called Western medicine as the youngest science although it has been practised since Imhotep — the first historical doctor four thousand years back.

What is a President's Reference

by Nazim Kamran Choudhury

When we speak of President's reference, what do we mean? The Constitution under Article 106 empowers the President to refer a question of law to the Supreme Court, for their opinion. The Supreme Court may only look into the point of law and nothing else.

Court being the apex court has been given the power of judicial review to see that the Parliament does not overstep the limits set up by the Constitution.

The Judiciary as an organ of the State is another co-ordinate and co-equal organ with the executive and the legislature to see that the other two organs of the Government do not transgress the limits of Constitutional bounds. Constitution being the supreme law of the land, every organ under the Constitution must act within the limits and bounds of the Constitution.

The Supreme Court is a creature of the Constitution and we the judges have taken the solemn oath under the Constitution and the laws of Bangladesh. It is our solemn duty to see that the other two organs of the State do not act in violation of the Constitution. The Parliament being vested with the legislative power of the Republic can only make laws which are not inconsistent with the fundamental rights as guaranteed under the Constitution and any law made in violation of the Constitution shall be declared as void to the extent of the inconsistency. Thus, the Parliament in the name of making legislation cannot infringe the Constitution at all.

Similar is the case of the executive, who is to act within the four corners of the Constitution and the laws. The actions of these two organs of the Government, namely, the Parliament and the executive are to be watched by the Supreme Court as the guardian of the Constitution. In performing this function, this court must also restrain itself and cannot do anything not permitted by the Constitution and laws, as if every organ is in chains. So each organ of

state is governed by the Constitution and the limits it imposes. When we speak of President's reference, what do we mean? The Constitution under Article 106 empowers the President to refer a question of law to the Supreme Court, for their opinion. The Supreme Court may only look into the point of law and nothing else. This point itself was fully established during the hearing of the Special Reference No 1 of 1995 in Kamal Hossain Ahmed and Dr Kamal Hossain raised the question of maintainability and inappropriateness of the Special Reference No 1 of 1995 on the ground that it raised a political question rather than legal which the Court generally eschews. Barrister Istiaq Ahmed argued that the questions in the Special Reference No 1 of 1995, 'are whether the walkout and the boycott resulted in the vacation of the members' seats under Article 67(1). The questions are thus question of law and fact. This Court has no jurisdiction to render any opinion on questions of fact. In this respect Article 106 is different from Article 143 of the Indian Constitution. Under the Indian Constitution question of law and fact can both be entertained by the Court.'

Therefore, if the Court can only entertain a question of law, then what is the law point that the President is being asked to take an opinion on? Is it whether the President has any executive power? The Constitution is clear. He has none. Is it whether the President can form an advisory council? He cannot. Is it whether the elections of 15 February were legal? No one has challenged the elections in a court of law and thus the question of legality has not arisen. My request to legal experts who advocate the President sending a referendum to the Court is please frame the question you want asked. If it is correctly framed, the answer will be self evident. To say vaguely that the President should refer the matter to the Supreme Court only misinforms and confuses the public. That the people are confused is evident from the above headlines. It is as if the Supreme Court were some advisory board that would be able to instruct the President on the course of action he should undertake or that it were some super approving authority that could sanctify extra Constitutional steps that the political personalities whimsically demand. Certainly, if it were a mere interpretation of law, then this Supreme Court is supreme. In the words of Justice Mustafa Kamal in the Special Reference No 1 of 1995 'in so far as the interpretation of any word or words in the Constitution is concerned the Supreme Court is the final arbiter.' But to give advice on matters of a political nature and not contained in the Constitution itself, would be stretching the limits of the Supreme Court's remit. Indeed, one of the principles governing the Court's discretion to decline to answer a reference is, 'Speculative opinion on hypothetical question cannot be given.' (Hamilton Street Ry (1903) A. C. 529).

Now on the question of ordinances. The President does not have any power to issue an ordinance. Only the Cabinet can do so as every action of the President has to be on the advice of the Cabinet. Article 93 (1) (ii) further restricts promulgation of ordinances by stating that no Ordinance shall make any provision 'for altering or repealing any provision of this Constitution.' How can you have an ordinance that changes the very structure of the executive? The only way to do that is through a constitutional amendment.

The question before the nation is not a legal one, but a political one. Is the 15th February election politically acceptable? No, it is not. Should be government resign? Yes, it should. Should there be a caretaker government to hold fresh elections to a new parliament? Yes, there should be. The opposition demands it, and the government agrees to it. Then why the problem? It's the obvious solution for a complex and extra constitutional one. A ship may sail from Britain, travel through the Suez Canal and arrive at Chittagong in three weeks. Or it may sail across the Atlantic, around the Cape of Good Hope, through the vast Pacific, and if it is not lost on the way, it finally arrives at Chittagong after three months. Can we wait that long for a solution?

The 15th February elections is not acceptable. All are agreed, but this does not erase the fact that the election has taken place, no matter how corrupt and immoral it has been. The 6th Parliament is in session, again no matter how unacceptable it is. The redeeming feature is that it can pave the way for a solution on which everyone is agreed. I do not underestimate the necessity of street agitation, for that is what has made the BNP agree to the people's demand. But now the opposition parties must allow the BNP to deliver the instrument of acceptance, which is, a constitutional amendment allowing for the formation of a caretaker government and the resignation of

the government. There are many today who speculate about army takeovers. This in itself is not unnatural given our short history. But to them I say please forget it. Our armed forces today are a disciplined institution, loyal to the Constitution and sworn to uphold it. To them, the Government is legal until the Courts say otherwise. They are bound to obey every legal order passed on them. Do not put them on a spot. Over the last few years we have destroyed many aspects of our society. We have demoralized our law enforcing authorities and replaced them with armed thugs. Let us not destroy our two last institutions, the armed forces and the Supreme Court. At the end of the day, the issues are that a society once homogeneous has been divided over issues that were of minor importance. A nation is being wrecked in the name of attaining democracy. We should remember the words of Justice Frankfurter of the Supreme Court of the United States of America, quoted by Chief Justice A T M Afzal in his opinion on Special Reference No 1 of 1995. 'It must be remembered that advisory opinions are not merely advisory opinions. They are ghosts that slay.' Chief Justice Afzal goes on to say 'To act according to democratic norms is a trust which has been reposed upon all sections of the Parliament and what is called 'democratic culture' is required to be practiced by all those who are in the business of politics.' He quotes from Justice Hand's memorable address on the Spirit of Liberty, 'a society so riven, that the spirit of moderation is gone, no court can save; that a society where that spirit flourishes, no court need save, that is a society which evades its responsibility by thrusting upon the courts the nurture of that spirit, that spirit in the end will perish.'

Downsizing

Downsizing is a fact of life and while we have to accept this bitter pill, it has to be in measured doses, not taken as a wholesale panacea for all commercial ills.

AS I SEE IT

Ikram Sehgal writes from Karachi

It can be done as Husain Lawal has shown in MCB. Nevertheless we have to accept that generally the services of a substantial number of employees would have to be terminated.

While the Privatization Commission (PC) is quite insistent about 'Golden Handshake' for the retiring employees so that they have financial cushion to fall back upon, those who are being let go (especially at the bottom of the rung where they are more in number) seldom have skills that will give them alternate jobs.

As such they are forced to rapidly eat into their savings, which in this world of inflation, can seldom last for long. In effect this amounts of putting them out in the street with a beggar's bowl in an increasingly competitive job market at an age where it is already difficult to land a job. With exceptions in few cases, the ratio of skills to possible job openings becomes more acute.

Reduction of manpower is not a phenomenon confined to the third world. In countries such as USA it has become a major problem as giant corporate entities such as AT & T, General Electric, IBM, etc. shed off thousands of workers as high tech replaces them in order to show a healthy balance sheet causing a growing public furor in the States.

One of the reasons that one of the contenders for the Republican nomination, Pat Buchanan, is still able to get the support of a significant part among the Republican voters is because of his campaign against immigrant workers, foreign trade, Corporate insensitivity, etc.

While he is certainly not getting enough support to make the definite Republican nominee, Bob Dole, uncomfortable, his win may be reflected to an extent in the eventual Republican Platform for the US Presidential race. Because a significant minority of the voting populace is aggrieved because of downsizing and loss of jobs because of foreign trade, it has become a hot election issue for debate and may be adopted also by the Democratic Party. Whether in the public sector or the private,

and for whatever reason, downsizing is a major social problem which in a third world country like Pakistan is a ticking atomic time-bomb set at Grand Zero of the economy. As such we must immediately take some practical steps to cope with the problems that can occur, at the same time we must on courage, mainly with tax incentives, the private sector to be less insensitive to the genuine needs of their workforce.

The first thing to do before downsizing is to provide new skills (of his/her choice and aptitude) to the affected employee. This can be done by arranging vocational training prior to the employees release in the year or so before his/her actual lay off, within the company/organization or outside as the case may be, at the company's cost.

It may be basis and/or advanced computer training, technical skills in areas such as electronics, hardware, medical care, vocational skills such as plumbing, electrician, etc. Training should culminate with no-job-training (OJT) with outside firms, which would give the employees and outside chance of being absorbed into new employment. Pre-release training as well as practical OJT is a must for all employees, worth much more than the 'golden handshake' being offered. In fact the slogan should be 'Work For Work' and must be enforced by act of Parliament.

In addition, we need to strengthen the security cover by re-invigorating the concept of Employees Social Security Institution (ESSI) and Employees Old Age Benefits Institution (EOBI). These must be amalgamated under one head and must be instilled with private sector innovation. A Pension Fund and a Combined Workers Insurance must be offered by various approved insurance companies in lieu of the ESS and FORT entities, which should be all-encompassing for loss of life, retirement, medical cover, children's education etc. A minimum sum of 10-12% of basic salaries matched equally by the workers must be deducted at source with an upper limit of voluntary contribution of upto 25%. At the moment ESSI and EOBI hospitals do function but not on the quality and scale that is the minimum requirement, therefore private hospitals/clinics must be in the panels given by the insurance companies. Part of the Workers Pension Funds must be invested with government securities giving a basic safe return, part can be in the stock market through known Mutual funds with an established reputation as far as the fund managers are concerned.

Downsizing is a fact of life and while we have to accept this bitter pill, it has to be in measured doses, not taken as a wholesale panacea for all commercial ills. Above all we have to create a social security net that cushions the employees post-release so that the trauma of losing a 'safe' job is lessened and he (or she) has the necessary skills as well as the money to face a future not less comfortable than what he (or she) is used to. Only the State can ensure that the worker can look forward to a safe future, the State can only ensure this in combination with private sector innovation and their active participation.

OPINION

Resolving Political Deadlock

M Hasan-uz-Zaman

It appears that the current political deadlock of Bangladesh will continue for some time as there seems to be no immediate prospect of any understanding or compromise between the ruling party and the main opposition. Both are not indicating any sides flexibility in their present stand, although the ruling party recently accepted major demand of the opposition, i.e. formation of a neutral caretaker government and holding an all-party election in May 1996. In this connection The Daily Star published a timely commentary in their paper on 10-03-96 under the caption Khaleda Zia climbs down, will Sh. Hasina?

Taken by the President to resolve the political crisis and are also thankful to the Prime Minister for requesting the President to take initiative in the matter. Unfortunately, the sincere efforts made by the President seem to have been misunderstood in many quarters. At first, the opposition parties alleged that BNP is trying to foil the Presidential move to resolve the crisis and their view was prominently covered in the news items in most of the daily newspapers on 15.3.96. Here, opposition parties appreciated the role of the President to resolve the crisis. Awami League accused the President saying that he is trying to protect BNP's interest when he came out with a statement (published in the daily newspapers on 16.3.96) that the Constitution has to be amended for the formation of a neutral caretaker government and a reference may be made on this issue to Supreme Court if there is a consensus. The President also appealed to all political parties to show restraint and mutual accommo-

the modality of amending the Constitution and correct way of getting rid of 15th February polls either by canceling the same by direct Presidential order at that stage or by the usual way of summoning the same and then dissolving it on the Prime Minister's advice. We felt that we should have all tried to arrive at a consensus of these complex issues and then allow the President to take appropriate steps quickly so that their was no further delay and more complications and problems facing the country.

An important news item again appeared in the daily paper on 17.3.96 indicating that President has summoned the Jatiya Sangsad on 19.3.96 and a Bill for the formation of a neutral caretaker government will be introduced in the Sangsad and possibly passed if such a Bill is really passed and if there is merit in it, the opposition should not summarily reject it on their argument that the new Parliament (6th Parliament) is not legitimate. They may take it a Draft Bill on the basis of which neutral caretaker may be formed and election may take place in May '96 as agreed to by all.

We further feel that we should leave the question of legitimacy of Parliament to be decided by the Supreme Court and none of us should play the role of Supreme Court. If we prefer to give more importance to the question of legitimacy of 6th Parliament then the caretaker government itself and want to settle the question of legitimacy, first, we shall render all institutions like government, political parties, chambers of commerce, NGOs as so many debating societies and their leaders as good debaters of schools and colleges. This may deter the polls beyond May '96 which is not at all desirable.

We were doubtful if the President can directly cancel the February, 15 poll after publication of results by Election Commissioner and taking of oaths by MP's declared elected by the Election Commissioner. The President could however summon the Parliament in the usual way and then dissolve the same on the same day or as quickly as possible on the advice of Prime Minister. It appears that only quick, safe and acceptable solution of the present crisis is to have a consensus to make a reference to Supreme Court about

To the Editor...

SSC on Easter Day

Sir, We are surprised and shocked by the announcement of Secondary School Certificate final examination dates because the Controller of Examinations, Secondary & Higher Secondary Education Board, Dhaka is determined to hold examinations on Easter Day which falls on April 7, Christmas and Easter are worldwide holidays. In Bangladesh, Christmas is a national holiday but Easter is an optional one.

We expected that the Controller of Examinations would consult the government-pub-

lished calendar prior to setting date of examinations. This is not the first time that the Board is making this mistake. In the past, they did and promised that this mistake will not be repeated again. Last year all our educational and health institutions were forced to keep open on Easter Day to observe the Polio Vaccination Day though this was drawn to the authority's attention.

Is it not a deliberate and cool-mind decision to create problems to perform religious rites of the Christian community? As a man of letters we

would expect that the Controller of Examinations will reschedule the dates and announce it in the media.

The Controller of Examinations should also think that his action is a gross violation of human rights and religious liberties clearly described in our Constitution Articles 28 and 41.

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