

What to Do with Defence?

by Mohiuddin Ahmed

The sacking of senior commanders by the President without the knowledge of the CAS has virtually left the command structure of the army shattered. The author calls for caution and transparency in any further action because of its constitutional, political, social and international ramifications.

THE recent actions of the President in his capacity as Supreme Commander and questionably as Adviser for Defence have created endless controversy. We had written earlier on the anomalous constitutional and administrative position created by amendment of Article 61 of the Constitution by the Thirteenth Amendment (Where Does Defence Belong? The Daily Star, 7th May, 1996). We felt then that the amendment needed careful interpretation and application in order to avoid controversy we had little premonition then that the hydro-headed monster would surface so soon. It is time that we revisited the issue in the context of the events of May 18-20, 1996 and the public debate that President's action has generated.

Interpretation of Ambiguity: The amendment of Article 61 of the Constitution by the 13th amendment is expressed in ambiguous language and exclusion of defence from the jurisdiction of the non-party caretaker government is inconsistent with the basic structure and character of the Constitution as well as the 13th Amendment. Article 61 of the Constitution vests the supreme command of the defence services of Bangladesh in the President and stipulates that exercise of this power shall be regulated by law. The 13th Amendment added that during the period a non-party caretaker government is in office such law shall be administered by the President (13th Amendment, Clause 4). "Administration of the law by the President" is interpreted to mean that the President will exercise this power directly and the caretaker government shall have nothing to do with defence. The present administrative arrangement which places Defence Ministry and the Supreme Command Headquarters Division under the President is based on this interpretation.

The restrictive interpretation is in conflict with the specific provision of the 13th Amendment which provides the constitutional basis for the non-party caretaker government and defines its power. While in office "The executive power of the Republic shall... be exercised... in accordance with this Constitution, by or on the authority of the Chief Adviser and shall be exercised by him in accordance with the advice of the non-party caretaker government." The exercise of the executive authority by the caretaker government is subjected to two specific limitations. First, it shall carry on the routine functions as an interim government and shall not take any policy decision except as required in discharge of those routine functions. Second, it cannot declare any emergency and suspend fundamental rights — a cognate limitation — as granted by the Constitution during the period of emergency (13th Amendment, 58B (1 & 3), 58 E). The provision of the 13th Amendment which further circumscribes the power of the caretaker government is inconsistent with this basic structure and spirit.

The actions of the President in removing certain defence service persons as well as the Chief of the Army Staff are beyond doubt exercise of the executive authority of the government. According to the 13th Amendment, all such executive powers are to be exercised by or on the authority of the Chief Adviser. The moot point is: Can the President exercise executive authority in relation to the defence services except on the authority of the Chief Adviser? And if it is done — as in this case — will it be legally valid? Any further proceeding in this case has to resolve these questions. The question extends also to appointment of defence force officers such as CAS or Acting CAS.

The President makes a number of appointments — such as the Chief Justice and other Judges of the Supreme Court, the Chairman and Members of the Public Service Commission etc (Articles 94, 95, 127, 128, 132, 138 & 141). In all these cases, the President follows well established procedures and acts on the advice of the government. An interpretation on this line can remove the inconsistencies in the 13th Amendment. In exercising the powers vested in the President with respect to the armed services, he will act on the advice of the caretaker government; this preserves the integrity of the executive authority which the 13th Amendment confers on the Caretaker Government and at the same time enables the President to exercise his prerogative as the Head of the State.

Meaning of Supreme Command: The functions and powers of the supreme command are different from those of the internal organisation and command of the defence services. The government — and in the context of the present discussion the President holding the defence portfolio — exercise the powers given by Article 62 of the Constitution. Briefly, these are: raising and maintaining defence services together with reserves; grant of commission; appointment of the chiefs of staff of the services and their remuneration; and discipline of those services. While the government or the President acting as Defence Minister or Adviser may exercise all these powers, deployment and internal control of the defence services are left to the defence forces themselves. The supreme commander cannot get involved in those functions nor does he have the technical or professional expertise to do so. It is ridiculous to think a Defence Minister or the President-Adviser issuing specific commands to the troops in removing officers subordinate to the CAS, apparently the President-Adviser was transgressing into the domain of the internal control and command of the armed services.

The speech of the President and the subsequent statement by ISPR clearly indicate that the President had reports about political complicity of some senior army officers and the President issued

orders for their dismissal. There was no evidence against the CAS at this stage or later. The President had not consulted the CAS before taking action against those officers. Leaving aside the veracity of the reports against those officers, there is no doubt that the CAS should have been consulted before the President took action against them. The President could disagree with CAS, over-rule him and could still take the same action; it would be the duty of CAS to carry out the orders of the government. The omission by the President has serious implications. When subordinate officers are punished without advice and knowledge of the CAS, he can no longer maintain command and control over the forces. The action by the President will in all likelihood weaken the position of any CAS for the foreseeable future. There are a number of related questions. The President received intelligence reports from some source and acted on those reports. His action is based on assessment of the weight of these reports. Did

institutional advice by the President? "Administration of the law by himself" may be interpreted to mean that President does not consult any one in exercising his powers with respect to defence. We pointed out above the inconsistency in such an interpretation. Besides, the President is not a "person" in the ordinary sense; it is an "office" — i.e. the powers of the President are exercised through an institutional system. The events have proved the validity of this view. The Chief Adviser had to go on air explaining the action of the President and appealing to the people to remain calm. Incontrovertibly this points to the need for consultation with the caretaker government; it will be obstinacy to insist now that the President can act all by himself.

Issue for Election Commission: The action by the President will put the Election Commission in a difficult situation. Recovery of arms and prevention of its use as well as control of violence during polls is a minimum neces-

sary precondition for ensuring a free and fair election. While the police reinforced by BDR, Ansar and VDP was to take the main responsibility, the army would be there to provide support whenever necessary. The neutrality of the armed forces were taken for granted until the recent interventions by the President. It is now apparent that there is division within the armed services. The senior officers against whom action has been taken were Mukti Joddhas. The division may not coincide with the political divisions; the troops may not be organised to support one political party or another; but it is difficult now to assert that they are free from political influences and views which may in-

fluence their conduct as servants of the Republic. The Election Commission would be on very difficult terrain now deciding whether the armed services be deployed at all. The stigma which the action of the President has attached to the defence services will stick for quite some time. If there is any truth in the intelligence reports on which the President based his action, it will not be before sometime that the defence services can put their houses in order. Until then, the armed services are unlikely to become any help to the conduct of election.

In Public Domain: The case against the officers and the CAS has created so much of public controversy that it cannot be disposed of within the cantonment and in secrecy. There is a deep mistrust that the President's motive was above board. A recent opinion poll showed that 58 percent of the sample did not endorse the action. The impression needs to be dispelled failing which further controversy and mistrust among the people will

exercise executive authority except on behalf of the Chief Adviser. The present government may adopt a workable interpretation or — preferably — seek advice of the Supreme Court.

* Place in the public domain trial and all other proceedings in relation to the alleged political links and rebellion — like conduct of the CAS. This is crucial to rehabilitate the morale of the defence forces as well as to remove the deep social mistrust which surrounds the action of the President.

* Make transparent all related proceedings except what may threaten external security. This is absolutely necessary to remove the international concern regarding breach of human rights. Confidence of the international community that the rule of law and democratic practices prevail in the country is the best assurance for expansion of economic cooperation.

* Defeat all actions against the officers and the troops until the constitutional-legal is-

ssues are settled and the elected government takes office. Since the actions of the President himself have generated the issues and the caretaker government has disowned any part in the decision, it will be proper to wait until the darchy is over. More importantly, the action is taken by the President who, under the present constitutional arrangements, is not accountable at all.

Precipitated action in these matters will be the least helpful to the country, the government and the defence force itself. A defence force which is seemingly divided internally and is not sure of which part of the government should control it needs time to pull itself together. The Government ought to move carefully so that the divisiveness, if any, within the armed services can be healed, confidence of the people in the government restored, and the international image of the country enhanced. The stake is pretty high, indeed.



The President reach his judgement on his own or was he assisted by anyone else? The Defence Secretary is an official who was responsible to advise the President. If he did not advise on the need for consultation with the CAS, he failed in discharging his responsibility as a civil servant. It is not clear, however, if the Defence Secretary at all played any part in this series of actions. The President could not legitimately act on advice received informally or from persons subordinate or junior to the CAS. If the President did that, the whole course of action taken by him would be vitiated.

The 13th Amendment itself could have been an imped-

be created. It is in the interest of the society that trial of all these officers be held publicly. Meanwhile, there have been appeals from several international agencies and foreign countries that the trial of these officers might entail breach of human rights. Nothing can safeguard the reputation of the country and the honour of the armed service except an open trial. The authorities may be tempted to conduct the trial in secrecy which, however, will be contrary to the need for rehabilitation of trust within the society and internationally. We must admit that the issue is no longer a matter of discipline of the armed services; it has come into the public domain with some international

Army leadership must think twice before allowing itself to be used politically

By Mahfuz Anam

Continued from page 1

Former Chief of Army Staff Lt. Gen. Md. Nasim, who is a valiant freedom fighter and whose appointment came following significant personal support of Prime Minister Khaleda Zia stands accused of complicity of a political nature which goes against the BNP. The President himself, who is a BNP man, and occupies his present position as its nominee, (did he ever officially resign from party membership after taking oath as President? Normally this question would not be so pertinent. But after the 13th Amendment it acquires a whole new relevance), and whose son is contesting in the elections as a candidate of BNP stands as the initiator of some actions whose propriety, wisdom and even legality stands questioned in the public eye. The fact that two very senior army officials, both freedom fighters, were retired from their life long profession without even a chance to defend themselves as permitted by army law, has naturally raised a whole set of questions that cloud the public mind.

However hard we all try, there is no escaping the political fallout of the work of the Court of Inquiry. ISPR press release, which was issued in the name of the government, prompting the Chief Adviser to sharply retort that "None but the government has any right to issue statements on its behalf", has given us a clear idea of the political content of the work of the Court of Inquiry. So the question is why should the army, especially through the process of this inquiry, make itself a party to influencing the election process?

Why do we think the workings of the Court of Inquiry will have political implications? Because the

President's address to the nation, his interview with the BBC and the ISPR release of 26 May were full of it. Another cause of our suspicion is the widespread availability of tape recordings of alleged telephonic conversations between the accused army officials showing their links with a political party. The availability of these tapes have again raised questions as to whether the army was being used for a political purpose of a different kind.

Argument can be made that if a political party was involved in using the army for political purposes then such activities of that political party should be exposed to the public before the elections so that people can use that as a factor in choosing whom to vote for. Therefore, the findings of the Court of Inquiry should not only be completed, but also published before the elections. This should be considered public's right to know.

It is a very forceful argument only, and only, if it is allowed its full play — meaning that if the findings of the Court of Inquiry is to be made public then the process of the whole inquiry has, also, to be made public. To give the public the findings without any transparency whatsoever about how it was arrived at, is to indulge in half truths. Like all half truths, it is worse than a lie. We are not advocating that something should be kept away from public view. We suggest the very opposite. Nothing should be kept away from the public view — meaning that the whole inquiry process should be made transparent and public. As voters we want the truth — the whole truth. Definitely not the half truths.

We want the army to remain, as it has so successfully

been until now, above politics. We are proud of the fact that this newspaper was perhaps the only one to editorially congratulate the armed forces for playing the role that it did, during the tumultuous days of January to March '96. We seriously think that given the political background and the implications of the events that triggered the initial report of 18-20 May, there is no way that the army can keep itself away from getting embroiled in political debate if the findings of the Court of Inquiry is published before the elections.

There is another question we would like to raise. Is a period of 10 days, few of which may have been spent in forming the Court and getting all the logistics organised, enough to delve deep into events that involve a Lt. Gen., a Maj. Gen. and so many other high ranking military officials? According to published news, after receiving the initial report the President himself mulled over it for more than two weeks before deciding to act. If he could wait two weeks, why are we in such hurry now? We think for the sake of justice and also for the sake of public confidence in its work, the Court of Inquiry needs more time to finish the work. Credibility is of prime importance both for the army and also for us, the people. Thus, from the point of doing a far more thorough job, and also for avoiding any undue influence on the elections, the Court of Inquiry should continue its work for at least till after the elections. This we suggest, with the interest of justice, free and fair elections and with the credibility and neutrality of our armed forces in mind. Would the President and the Chief Adviser give our views a moment of their time?

The Daily Star Entertainment Guide

Tuesday 4th June
(All programmes are in local time. We recommend programmes printed in bold. There may be changes in the programme)

BTV
3:00 Opening Announcement
Al-Duran Programme Summary 3:10
Recitation From the Gesta 3:15
Documentary Film: Cinema Europe
4:00 News in Bangla 4:15
Esho Para Shikhi: "Mass Education 4:45
Cartoon Ser.: The animals of Parkwood 5:00
News in Bangla 5:20
Sangeta: Modern Songs 6:00pm
News in Bangla 6:05pm
National Television Debate Competition 7:00
The News 7:05
Open University 7:25
Comedy Series: "Sainfield 8:00
News in Bangla 8:45
Drama Serial: Akali 10:00
News in English 10:30
Ghara Bairo 10:55
Mini Series: Return to Eden 11:30
News in Bangla 11:35
Wednesday's programme 11:40
Close down

BBC
6:00am BBC Newsroom Inc. World Business Report/ Asia Today/24 Hours 9:00
BBC World Headlines 9:05
Panorama 10:00
BBC Newsday 1:00
BBC World News 1:15
Panorama 2:00
BBC World News 2:20
Time Out: Nature 3:00
BBC World News 3:30
Time Out: Tomorrow's World 4:00
BBC Newsdesk 6:00pm
BBC World News 6:15
The Money Programme 7:00
BBC World News 7:15
World Business Report 8:00
BBC Newsday Asia & Pacific 8:30
Time Out: The Andrew Neil Show 9:00
BBC World News 9:15
Panorama 10:00
BBC World News 10:30
Time Out: Film '96 11:00
The World Today 1:00
BBC World Headlines 1:05
Panorama 2:00
BBC World News 2:30
Time Out: The International Festival Of The Sea 3:00
BBC World Report Inc. World Business Report 5:00
BBC World News 5:10
Newsnight

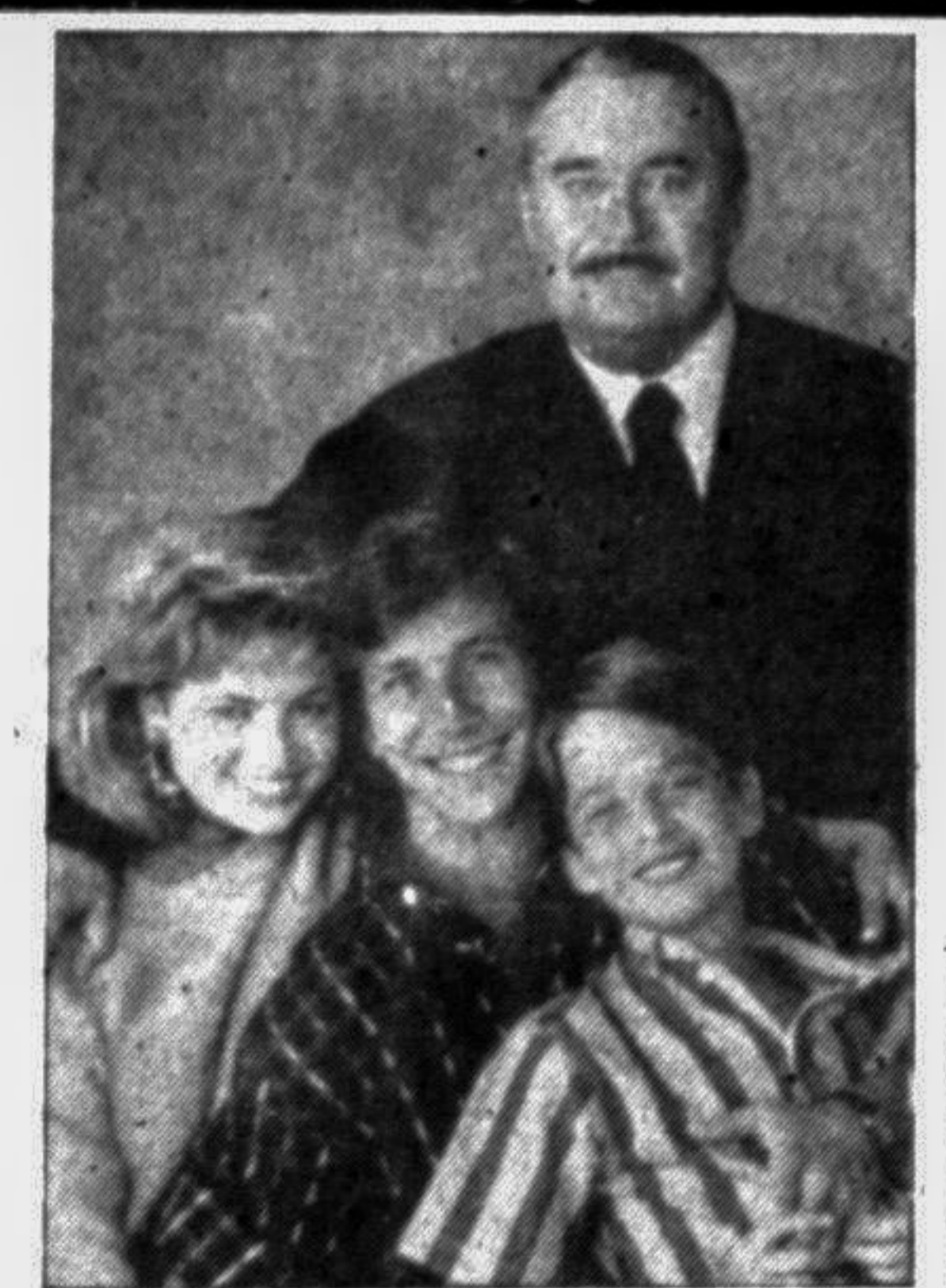
CHANNEL V
7:00am Revind VJ Sophiya 8:00
Jump Start VJ Trey 10:00
Frame By Frame 12:00pm
The Vibe VJ Lulu 1:00
By Demand VJ Trey

STAR Sports
6:30am 4 Nations Tournament Australia v N Zealand Fm Brisbane, Aus 7:30
World Wrestling Federation Mania 8:30
1996 NCAA Women's Gymnastics Fm Alabama, USA 9:30
Spanish Football League Hits 10:00
Formula One World Championships 1996 Spanish Grand Prix Cut to 2 hours 12:00
Marlboro League '96 Chinese National Football League Beijing vs Sichuan @ Beijing 2:00
Volvo China Open Day 1 Highlights 4:00
WLAH Highlights 4:30
Trans World Sport 5:30
Belgrade Marathon 6:00pm
The European Tour Deutsche Bank Open HIL 7:00
Fubal Mundial 7:30
1996 Wld MFCycle Champ-Italian GP HIL 8:00
Prime Boxing Fight TBC 10:00
4 Nations Tournament Final Fm Brisbane, Aus 1:00
World Wrestling Federation Mania 2:00
Inside PGA Tour 2:30
Volvo China Open Day 2 Highlights 4:30
4 Nations Tournament 3/4 Playoff Game Fm Brisbane, Aus

STAR PLUS
6:30am Voltair 7:00
Teenage Mutant Ninja Turtles 7:30
GI Joe 8:00
The Donky-Di's 8:30
Wind In The Willows 9:00
Aerobics Or Style 9:30
Nanny and the Professor 10:00
Mr Belvedere 10:30
Yan Can Cook 11:00
El TV 11:30
Gabriella 12:30
Santa Barbara 1:30
The Bold & The Beautiful 2:00
The Oprah Winfrey Show 3:00
Remington Steele 4:00
Yan Can Cook 4:30
E TV 5:00
Teenage Mutant Ninja Turtles 5:30
The New Lassie 6:00pm
Lost in Space 7:00
Home and Away 7:30
Entertainment Tonight 8:00
MASH 8:30
The Flying Doctors 8:30
The Extraordinary 10:30
The Bold & The Beautiful 11:00
Santa Barbara 12:00pm
Hard Copy 12:30
Saywatch 1:30
Andros Targets 2:30
Entertainment Tonight 3:00
The Oprah Winfrey Show 4:00
Hard Copy 4:30
Home and Away 5:00
The Sullivans 5:30
Galinde

STAR MOVIES
7:30am Film Club: Jipi Bart: The Director's Cut (Arabic Subtitles) 9:30
Classic: White Feather 12 (Hindi Sub) (es) 11:30
Western: Against A Crooked Sky 15 (Hindi Subtitles) 1:15
Western: Frontier Marshall (Hindi Subtitles) 3:30
Comedy: Follow That Camel (Hindi Subtitles) 5:30
Classic: The Mark Of Zorro (English Subtitles) 7:30
Comedy: Doctor At Large PG (Hindi Subtitles) 9:00
Hollywood 1 on 1 9:30
Action: Article 99 (Hindi Subtitles) 11:30
The Bulletin 12:00
Forces: Heroes: Red Flag: The Ultimate Game (Arabic Subtitles) 1:30
After Dark: Perfect Alb (Arabic Subtitles) 3:30
Action: Aliens (The Directors Cut) (Arabic Subtitles) 5:30
Documentary: 100 Years Of Cinema-Japan (English Subtitles)

ZEE TV
5:30am Infotainment (TMM) 6:00
News 6:30
Jagran 7:00
ZED: Naya A to Z 7:30
ZED: Networking 8:00
ZED: Naya A To Z 8:30
Hum Hunge Kaanyab 9:00
Insight 9:30
Gaane Anqano 10:00
Lujat Khana Khazana 10:30
Celeste 11:00
Close Up Antakshri 11:30
Noma Aaha 12:00
Mr Minto 12:30
TMKB 1:00
ZED: Chota Byte 1:30
Asian Sky Shop 2:30
Tara 3:00
Film Chalkar 3:30
Manasi 4:00
Norok: Aashiyana 4:30
Rasna Spread Ek Minute 5:00
ZED: Chota Byte



Mr Belvedere on Star Plus, Today at 10:00 am

PTV
8:00am Tiltast Aur Tarjamat Hand/Nast 8:20
Cartoon 8:30
Khabran 8:45
Beauty Care 8:50
Fun Kadi 9:10
Dhaval & Health Tips 10:05
Hartaah 1:0
Deepak 10:30
English Film: Home Improvement 10:55
Mili Nagma 11:00
Khabran 11:10
Anifa (Serial) 12:00pm
Sports Hour 12:55
Duran-e-Hakrom 1:02
Diamlah 1:15
The Science Show 2:00
Yeh Jahan 2:25
Animated Classics 3:15
Geography & Sammar School 4:20
Mitti Sona 5:00
Alah Hama Lallah 5:25
Gabb Mein Sauch? Hoon 6:25

SONY ET
8:30am Gaane Jaane Maane 9:00
The Three Stooges 9:30
Dennis The Menace 10:00
I Dream Of Jeannie 10:30
Public Keys Bolo 11:00
Penchan 11:30
Cine Matinee-Hindi Feature Film 2:30pm
Kismet 3:00
Zann Asman 3:30
More Message Meri Geet 4:00
Surf Wheel Of Fortune 4:30
Jai Sri Hanuman 5:00
10 Civil Lines 5:30
The Three Stooges 6:00
Dennis The Menace 6:30
I Dream Of

Garfield®
by Jim Davis
DID YOU KNOW THAT SPIDERS AREN'T INSECTS?
WHAM!
FUNNY, THEY SQUISH LIKE INSECTS!

James Bond
BY IAN FLEMING
DRAWING BY MORAC
YOU'RE MAKING A BIG MISTAKE GURBY, PASSING UP A NICE TRX-LOSS... SURE YOU WANT RECONSIDER?
WELL, THAT MAKES ONE THING WE AGREE ON AS THEY SAY IN CUBA -
RAPIDO! SEGURO! ECONOMICO!
NO... AND THAT'S MY LAST WORD!

DD 7
8:05 Janmadin 8:20
Binodan 8:30
Ogo Nilanjan 9:00
Janani 9:30
TBA 10:00
Adhumk Gaan 10:15
Instrumental Music 12:30
Prachir 1:00
Janani (Serial) 1:30
Bengali Movie Club Film Show 5:05
Science Prog 5:30
News 5:35
Tale Play 6:00
Palki Katha 6:30
Chitrangali 6:55
Amake Dekhun 7:30
Bangla Sambad 7:55
Dirandan 8:30
Naari 9:00
Policer Dairy Theke (Drama Serial) 9:30
Nabi Ganer Daitya (Serial) 10:00
Bengali Movie Club Film Show

EL TV
00:30am Lata Mangeshkar Special

01:30 Love Love Love 02:30
Tarane Aur Fasane 03:30
Jeetendra Special 04:30
Hanste Hanste 05:30
Lata Mangeshkar Special 06:30
Love Love Love 08:30
Jeetendra Special 08:30
Hanste Hanste 10:30
Awaz Naye Andaz Wahi 11:30
Scandal 12:00
Music Time 1:00pm
Ajeb Dastaan Hai Yeh 2:00
Kishore Kumar Special 3:00
Shuddi Detergent Karz 3:30
Sorry Meri Lorry 4:00
Jawab Do 4:30
Namaskar 5:00
Frooti Its My Choice 5:30
Jazbaat 6:30
Chad Chaud 7:30
Sargam 8:00
Godrej Storewell Film Chart 8:30
Teen De Paanch 9:00
Ortem Hit Th Hit Hai 9:30
Instant Parush Khetra 10:30
Newline 11:00
Geet Behar 12:00
Tarannum