

Mayor's Demand

We have launched a front page photographic campaign on the deplorable state of utility services in the city calling attention of the Mayor of Dhaka to do something for the liveability's sake. The mayor must rest assured that our aim is not to unnecessarily embarrass him nor do we really think that he is the pointsman in every sphere of our concern; but he being the elected city father will have to face the initial brunts of criticism anyhow, so that he can push the agencies to deliver. So far we turned to him for appropriate remedies but now after four years of his mayorship we would like to see him as a man in a hurry pulling off a reasonable success by the end of his tenure.

That is as far as our imploring the mayor to act decisively goes. Now our attention turns to the mayor's difficulties — his lack of power beyond garbage collection and disposal and city-lighting and the like. And in the major areas of concern encompassing the whole range of utilities including transportation and traffic, coordination is grossly lacking. That's why the mayor has put up an appeal to the government for an inter-agency coordination body to be set up with powers to oversee development and maintenance works in a synchronised manner.

The proposal is currently lying with the LGRD ministry. If standard procedures are followed it could circulate through a long-winded course with all the relevant ministries coming into picture by turn. That, frankly, is a disgusting prospect. For, much as this move for a catalytic structural change is being flagged 'urgent' it is in fact a long-pending one. The mayor's proposal echoes a Daily Star suggestion aired quite a few months ago.

Therefore, we would like to urge the Prime Minister to handle the matter personally and give her early approval to the proposed formation of a coordination body to end the dichotomy in the administration of the utility organisations: between the ministries and the agencies, and as between agencies which share only the loose ends of their responsibilities. Since the Prime Minister had earlier indicated her acceptance of the proposal in principle before a ward commissioners' meeting all she needs to do now is deliver it to the mayor.

BNP's Allegations

The Bangladesh Nationalist Party (BNP) has been consistently complaining that its workers are being repressed and harassed ever since the changeover in the government. Now it claims that 38 of its party workers have so far been killed and alleges repression on workers of other opposition parties as an addition to the earlier allegations. In support of the claim it has even produced a list of those purportedly killed. We would like to take the allegations very seriously.

That the BNP has produced a list is a job well done but unfortunately not enough for drawing a conclusion. When the issue in question relates to killing, details must be made available of each individual case to arrive at a conclusion. To go by the BNP's claim, there were even instances — note, not in all cases — where the police did not accept cases or the relatives of the murdered were not allowed to go to thanas for filing cases. Now the question is, have cases been instituted where there was no such constraints? We ask the BNP to make them public and the press will certainly give co-operation on the basis of their factual merit.

On the other hand, if the BNP has no such basis, it must not make sweeping allegations with potential for vitiating the political environment.

How does the BNP speak for other opposition parties when no one else from them are complaining of repression? That the largest opposition party has demanded a judicial inquiry committee looks quite appropriate. According to the BNP's demand, it should immediately constitute a committee to look into the matter and help the people get to know the truth. Unattended complaints can be very dangerous because over time even rumours and propaganda surrounding them acquire a credibility of sorts. So the government must not dismiss the allegations as a propaganda campaign by the opposition but take all legal and administrative measures to stamp out confusion from people's mind, if any.

Regulating Medical Practice

The government is considering the formulation of new regulations for private clinics, private medical practice and pathological laboratories. The 1982 ordinance in this regard takes into account offences and violations of medical codes but hardly provides for penalties. This legal inadequacy has stood in the way of taking appropriate action against erring clinics, private medical practitioners and pathological laboratories. With the incorporation of both cognizable and non-cognizable penal provisions the legal lacunae will get removed.

However, legal provisions turn ineffective — as has happened in so many areas of the administration — without a proper plan for their implementation. We are not told of any such plan. We think that without an effective monitoring system, the sub-standard clinics and diagnostic centres along with malpractices as resorted to by doctors in the form of commissions will not get detected. The question of penalising them hardly arises in that case.

So we suggest that an effective monitoring and implementation system be put in place. Without this, quality medical service, which is the objective here, will remain elusive.

Indemnity Ordinance: A National Shame

by Sultana Nahar

WHAT is Indemnity Ordinance? The dictionary meaning of the word 'Indemnity' is — guarantee, protection, security, compensation or remuneration. The law lexicon describes the same word as exemption, immunity or privilege. As to the exact meaning of the word 'Ordinance' and the precise distinction between an Ordinance and an Act of Parliament, there is a long-standing controversy among the learned authors. However, Indemnity Ordinance in the context of Bangladesh means an ordinance promulgated by a president of the country under Article 93(1) of the Constitution in 1975 to protect and exempt a group of cold blooded murderers from the prosecution under the existing laws of the land.

Its historical background: In the midnight of August 15, 1975, a group of disgruntled and disloyal army officers most cowardly killed the President of Bangladesh, Bangabandhu Sheikh Mujibur Rahman along with the members of his family including his ten-year old son and some other close relatives. This barbaric act which surpassed all episodes of medieval human savagery was condoned by Khandker Moshtaq Ahmed, the self-proclaimed President through an ordinance promulgated under Article 93(1) of the Constitution (Ordinance No 50). The same ordinance also provided legal protection to the killers of the founder of the state from facing trial in the court of law. The Bill also protects the killers of the four leaders in the Central Jail in November of the same year.

General Ziaur Rahman who later on took over the reign of the state ratified the Indemnity Ordinance through Fifth Amendment of the

Constitution on April 6, 1979. Since then the Indemnity Ordinance has continued to exist as a national shame and constitutional tragedy. It is very painful to note that Khandker Moshtaq blatantly used his presidential power to order the jailor to open the gate of the Central Jail for the four national leaders, Tajuddin Ahmed, Sayed Nazrul Islam, Captain Mansur Ali and Mohammad Kamruzzaman in the dark of the night at a place where they were kept by the very same government for their protection. It is an unheard-of act in any civilised society of the world.

Khandker Moshtaq was lawfully declared President of

Martial Law Administrator. General Zia wielded the real power and did not relish being a deputy to his picked-up puppet. In no time he assumed out the Justice and pushed power of both President and CMLA. He ratified the Indemnity Ordinance through Fifth Amendment of the Constitution in 1979 and incorporated the same as Clause 3(A) of the Fourth Schedule of the Constitution.

Indemnity Ordinance — its position as a piece of law: Rule of law, democracy and human rights are interrelated and interdependent. One cannot function in absence of other. Human civilisation has been

very much in vogue. Article 93(1) of the Constitution does not permit a president to promulgate an ordinance in violation of the proviso given under the same Article.

Article 93(1): 'At any time when Parliament stands dissolved or is not in session if the President is satisfied that circumstances exist which render immediate action necessary, he may make and promulgate such ordinance as the circumstances appear to him to require, and any ordinance so made shall, as from its promulgation have the like force of law as an Act of Parliament.'

and any law so made shall to the extent of such inconsistency be void."

Article 27: 'All citizens are equal before law and are entitled to equal protection of law.'

Article 32: 'No person shall be deprived of life or personal liberty save in accordance with law.'

above quoted Articles of the Constitution are examined closely, it will be revealed that the Indemnity Ordinance is a black law per se and is void for obvious reasons and unfortunately such a defective law has been allowed to exist for narrow political gains. This ordinance has taken away the constitutional rights of sons

state privileges. However, after the successful movement of '90 the united front of three political parties (Tri Daliyo Oikya Jote) pledged before the people and the media to repeal the ordinance whichever party would go to power. It is sad that BNP after coming to power conveniently forgot the pledge. On August 6, 1991, Mohammad Nasim, Chief Whip of the then opposition party brought a Bill in the Parliament to repeal the ordinance. It is a travesty of parliamentary practice and courtesy that the said Bill was not even allowed to be discussed — the question of passing it was a distant dream.

Indemnity Ordinance is an insult to our democracy and an impediment for the establishment of rule of law. During a visit of a friend of mine to Geneva a couple of years ago, a high official of the United Nations in Geneva innocently inquired from my friend if the people of Bangladesh were really savage even in twentieth century. On being pressed for such weird notion, the official confided that he could not believe that a President of a country along with his members of his extended family and host of other relatives could be killed in such a ghastly way. No civil government is civil and no democratic government is democratic if it fails to repeal such wanton piece of legislation. I appeal to all the political parties which have elected representatives in the Parliament to sink their narrow political differences and unite to form two-thirds majority to repeal the ordinance. Please spare us of the ignominy of facing another O'Connor abroad in future.

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Bangladesh on August 20, 1975. But the effect of his presidential power was given retrospectively from August 15, 1975. By using this legal machinery he brought the country under Martial Law from August 15, 1975 and with the declaration of Martial Law he promptly postponed the election of the Republic as stipulated under Article 48 of the Constitution. At the same time he modified the provision of Article 145 and Form I of the Third Schedule of the Constitution through a proclamation. He himself never exercised the power of Martial Law administrator. It was Justice Sayem who took over as President and Chief Martial Law Administrator of the country on November 8, 1975 after another bloody coup in which Khandker lost power. Justice Sayem immediately appointed General Zia as Deputy Chief

enriched by rule of law, democracy and human rights. Any Ordinance or Act promulgated by a president or by any authority and/or passed in any parliament that runs counter to the principles of rule of law, human rights and fundamental rights is definitely a bad law. Special Powers Act, Government Servants (Retirement) Act 1974, Enemy (Vested) Property Act and Indemnity Ordinance are all black laws, and the Indemnity Ordinance is the blackest of all. The minimum legal formalities which are generally maintained to give a semblance of legality to any proclamation of any president or martial law administrator was not followed in case of the Indemnity Ordinance. The infamous ordinance was promulgated after about a month of the national tragedy of August 15, 1975 when the Constitution of 1972

Provided that no ordinance under this clause shall make any provision —

(i) which could not lawfully be made under this Constitution by Act of Parliament; (ii) for altering or repealing any provision of this Constitution; or (iii) continuing in force any provision of an ordinance previously made."

Even if Khandker Moshtaq Ahmed is considered to be President of a constitutionally constituted government, the Indemnity Ordinance promulgated by him under the above Article of the Constitution on September 26, 1975 is void inasmuch as it is violative of the provision of fundamental rights guaranteed under Articles 26, 27 and 32 of the Constitution which are as follows:

Article 26: 'The state shall not make any law inconsistent with any provision of this part,

and daughters of Bangabandhu Sheikh Mujibur Rahman, Tajuddin Ahmed, Sayed Nazrul Islam, Captain Mansur Ali, Mohammad Kamruzzaman and of others whose parents were killed in August 15, 1975. At the same time this ordinance has given unequal right and protection to a group of killers as distinct from that of other murderers who are tried and convicted in courts of law. By any yardstick or standard of legal practice convention or decency Indemnity Ordinance is a wicked law and exists as an ugly scar on the conscience of the nation.

Steps taken to repeal it: All governments from 1975 to 1996, whether autocratic or democratic, took no initiative to repeal the ordinance. To the contrary these governments pampered the killers and bestowed upon them many

used for personal attacks on the judiciary, various indignities are being visited on the person of the honoured judges. Without respect for the apex Court where is the future for the rule of law in this country? God forbid if this moral authority should break down at its core, we will disintegrate as a society into a Somalia or a Rwanda in double quick-time as everyone (and his/her uncle) takes law into their own hands.

While most people seem to view the present economic and political turmoil as a sign of dark clouds clouding over the future days of Pakistan, the 'Gathering Storm' that the campaign against the present regime portends is far more dangerous. Perhaps the greatest irony in the matter is that a government that claims it has risen to power through the democratic process by constitutional means and thus demands recognition by all the forces in the country as a constitutional entity, has such disrespect for the one constitutional authority that is the civilised arbiter in society of all constitutional matters. This is a civilised way of the educated that demands respect for the rule of law, and then there is the way of the illiterate that has no respect for anything but the rule of the gun to enforce their concept of law. This government seems to want problems to be settled by resorting to confrontation and violence, by the overwhelming use of force at its disposal.

This gathering storm could sweep us away both as a civilised society and the last vestiges of the nation we once were. Let those who still have the capacity to uphold the law ensure due respect for the judiciary by speaking up now despite their penchant to hang onto their own seats of power as a cost of the country they profess to serve.

The Gathering Storm

Political and economic troubles have beset Pakistan in the past, the country has survived in the core of its existence. Whether it will be able to survive spiritually the criminal assault on the judiciary is another story.

PAKISTAN is today in a state of deep economic and political crisis, almost everybody who is anybody seems to accept this as a fact, except the so-called 'ruling troika'. Obviously they know something the rest of us do not. The demeanour and response of the President and the COAS to media questions displays either a blissful ignorance of realities on the ground or a deliberate effort to play down the issues motivated out of their own individual interests. What is worse is that they tend to first give bland answers to the media that are ambiguous in nature and then subsequently proceed to deny the perception that is taken by the public as to the real meaning behind their pronouncements. Putting it bluntly, they have been playing such with public emotions that a stage is coming where the veneer of character and integrity of these gentlemen is going to wear off sooner than later. After all there is a limit to giving them the benefit of doubt. As far as the Constitution is concerned, the indignities that the Chief Justice of the Supreme Court is being presently subjected to speaks volumes for the dubious respect that the present regime has for the dignity of this august office as enshrined in the Constitution.

The greatest asset that this government has is the poor quality of the Opposition that it has had to contend with. If the PPP regime are their own worst enemies, the Opposition do not lag behind in being even worse enemies of themselves. Pakistan has had many crises through the half-century of its existence but one cannot remember any other period of time where we may have had mass public apprehension of so many issues at any one given time. While the political parties seem to have woken up to the fact that politics aside

there is a real danger to the Federation, public apprehension has been registered by groups affected by economic woes by individual protests rather than any organised raising of voices. The prevailing disunity and disorganisation among the politics notwithstanding, a semblance of common purpose of ousting the government at all costs by any means seems to be emerging. On the surface at least it does not seem to be causing the PM any sleepless nights, serenely confident she is busy symbolically thumbing her nose at all comers, friend and foe alike. I almost kept a bet (and would have lost it) with a confident and more worldly-wise Mr. Ardeshr Cowasjee that the Gen. Babar I knew (and respect) would rather resign than sit alongside Hajj Nawaz Khokhar in the Federal Cabinet.

Nothing symbolises this thumbing of the nose more than the swearing in of the PM's spouse Asif Zardari as the Minister of Investments. As everyone knows AZ (as he is known by friend and foe alike) runs a very efficient parallel government that has effectively emasculated and/or circumvented the constitutional process. Only the selection of the present COAS upset well-laid plans to take over regal possession of this entire country lock, stock and barrel in a creeping, deliberate manner. The scenario was breathtaking in its concept and would have been admirable if it was not balanced on a thin fault-line that divides good from evil. Given AZ's known powers of governance as an unofficial super-PM, the only reason for legitimising him as Minister seems to signal a scornful response to very strong, evidenced accusa-

tions of nepotism and corruption. As Barrister Bachaa has stated, 'What has poor Zardari done to deserve downgrading to the rank of Minister?' This one-liner could be humorous if it were not so true. The Bhutto-Zardari combine were presented with tough choices with respect to the real estate they own in Surrey, to accept ownership thereof and be damned or to brazen it out and rely on the usual public amnesia to soon forget it as an issue (any one remember the 'Sikh list' believed to have been given over to Rajiv Gandhi in 1989 that was solely responsible for the cessation of logistics to the beleaguered

as those being attributed to poor AZ?

The week marking our entry into the year of 50th independence started with a strike called individually by a host of protest groups, not the least being the newly galvanised Opposition parties. Most commercial and industrial entities kept their doors and shutters shut, public transport was intermittent for the most part. Normal routine was badly hit as the number of absentees from work was fairly large. While the government controlled media understandably called it a failure, the fact remains that united or not, the opposition to the government

AS I SEE IT

Ikram Sehgal writes from Karachi

Kashmiri independence fighters?

Joining the government formally gives AZ the perception of a certificate of pardon that has to be acknowledged by all (including the President and the COAS, who of course must not think of AZ as corrupt or they would have said so at least in the interest of national security). For cynics who tend to imply that Zardari is the 'Minister for Investments Abroad', the official ministerial position now authorises him the salutes of all uniformed functionaries. Before the COAS tosses off his smartest salute, he should perhaps ask himself with what conscience he could send home early persons of three star and two star rank, surely their supposed misdeeds were nowhere as bad

is growing, not so much because of political initiatives than for the government's mishandling of the economy. Since ultimately economic problems come home to roost politically, the government of Ms Benazir seems to be presently in a no-win position. On the one hand is the IMF that feels that the present regime has not gone far enough in undertaking basic structural changes in the economy, on the other groaning under spiralling consumer price escalation the public is not ready to take on any further burden.

The Surrey Estate affair being aired at this particular moment is like waving a red flag before the public mood. Sensitive to the public mood, the government has been car-

rying out a creeping political and administrative retreat on the tax front, giving in to individual protest groups one by one. The downside is that even those who have no reason to protest have taken up cudgels to somehow escape the tax net. The government is absolutely correct in trying to document those who constantly stay away from attention, they will now take refuge in the shadows of the greater public protest and will thus escape due retribution for another year.

Political and economic troubles have beset Pakistan in the past, the country has survived in the core of its existence. Whether it will be able to survive spiritually the criminal assault on the judiciary is another story. Discipline is basically an abstract quality that is enforced both by motivation and/or fear. Since nationhood is basically an assemblage of willing like-minded people, self-discipline and self-control is the major factor that keeps equilibrium in society. In civilised society judges and courts at every level have a pedestal of honour and respect that is kept aloft by invisible authority. How many divisions does the word 'command' mean? asked Stalin, the answer being 'none' does not diminish his authority which is derived from the moral force of belief. If this modicum of respect is violated it amounts to contempt which is a criminal offence under the Constitution. What is happening today in Pakistan has wider ramifications for the future. In utter contempt of the Supreme Court, the government has been refusing to implement its ruling for over 150 days now. The media and government machinery is being blatantly

To the Editor...

Politicians and government servants

Sir, It appears that most of the opposition find it difficult to do the activities, performance of works and public services rendered by some government servants. But as soon as some of the politicians start sitting in the treasury bench they abruptly change their stance and they start praising and pleasing the government servants.

Time and again we have observed that when a new government is formed in our country it on the one hand always accuses the former government of committing inefficiency, corruption and irregularities and on the other hand it covets support and cooperation of the government servants by offering new incentives, pay-scale, postings, transfers and promotions. Thus the trend of 'old wine in a new bottle' continues unabated. But unfortunately no government cares or dares taking any pragmatic and effective step with a view to doing away with the inefficiency, negligence of duty, irregularities and corruption of some government servants and improving and raising the standard of services in government offices and public sector corporations.

We wonder and ponder whether our politicians are afraid of or subservient to government servants or more clever and tactful than the politicians. Why have we failed to introduce a people's welfare-ori-

ented reform in the government service of Bangladesh consistent with the requirements of a free and independent state for the last 25 years?

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Democracy

Sir, The death of Thomas Kuhn will focus our minds on scientific paradigms, but one political paradigm should come in for close scrutiny — the dynasty-based democracy.

If the substance of democracy exhausts itself in the mantra 'one man, one vote', then Bangladesh has seized on the real thing. If not, then we have grasped the shadow. Considering the fact that the two leaders who nearly devastated the country in the first quarter of this year are ensconced in the Parliament, one in power, the other in opposition, raises the suspicion that the definition of democracy in terms of a man and his vote is too tolerant of political permissiveness to be trusted as a safe doctrine of government.

To this demand for a redefinition, it will be objected that our neighbour boasts as the world's largest democracy despite having mostly known democracy of the shadowy type. Let us, then, review certain events which occurred across the border to see if the system justifies itself as the source of our inspiration.

Not even the most ardent apologist can exonerate Jawaharlal Nehru of the charge of surrendering the honour of his

country to China during the border-war — which, but for the forbearance of the invading force, would have devastated India, if not reduced it to subservience. But our wonder merely begins at this point, and soars to the acme of incredulity when we find that, in the world's largest democratic state, the man who virtually ceded its independence, not only does not have to resign, is not disgraced, but goes down in the history of that nation which nearly ceased due to him as a great leader, whose sceptre passes on to his daughter.

And if her father tossed away the sovereignty of the largest democracy, Indira Gandhi tussled with the democracy itself. The forced sterilisation of our people symbolised the barrenness of the system that not only executed them, but exonerated the executive, going on ultimately to reward the family with the sceptre that can do no wrong.

If such instances of democratic felony in our role-model hold any lessons it is that dynasty-based democracy, a contradiction, must always offer an incentive to further evil, since the perpetrator cannot be forever removed from office. The withdrawal from the entire political system till the removal of the two dynasties can be the only logical step for a thinking citizen.

However, Thomas Kuhn tells us that not even in the realm of science do men give up an idea that no longer suits the facts, but persist in error until somebody offers the safety of a new paradigm. For,

unately, an alternative paradigm to the democracy that I'm talking about — a coalition government of atomic parties, ephemeral, yes, but tyrannical, no. The families can do no wrong, but without the families, we can't go wrong.

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Indian detergents in northern markets

Sir, Different types of Indian detergents and soaps are found in plenty in all the markets of the northern districts of our country. Fallen as the victim of free market economy, our detergent factories are on the verge of extinction.

Moreover the dominance of black marketers contribute a lot to the overall deterioration of the situation. If deserves mentioning that these exported or black marketed soaps or detergents are of dubious quality. Surely they make clothes bright, they also spread skin diseases and destroys the longevity of the garments.

But the manufacturers try to cover up the lacking of their products through fascinating and arresting advertisements and thereby are continuing to deceive people. We should be vigilant about these products for our greater interest.

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OPINION

Stranded Pakistanis

Over the years the stranded Pakistanis in Bangladesh have staged many processions, demonstrations, hunger strikes, long marches etc. to achieve their general repatriation to Pakistan. But to no avail as yet.

Of late it has been learnt from Mirpur, SPGR chairman Mr. Israil Khan that for 14th August (Independence Day of Pakistan) they have taken violent action programme which includes self-immolation. About 15 people have listed their names for this. By covering their bodies with Pakistani flag they will burn themselves in front of the Pakistan High Commission, Dhaka. This is unfortunate and undesirable when the world talks for human rights and human development.

My suggestions to break this impasse are:
1) Immediate intervention by Bangladesh and Pakistan government to ensure quick repatriation to Pakistan.
2) Registration of all those stranded Pakistanis or Biharis again who feel they cannot integrate in Bangladesh society, in order to assess the actual size of the problem.
3) If general repatriation takes time then arrangements of immediate repatriation of divided families, hardship cases, people already holding ICRC clearance, widows and none to help cases be considered on priority.

4) The UN and the international development agencies should advise Government of Pakistan of their willingness in supporting relief and rehabili-

tation programmes for Biharis in Pakistan (for example, land reclamation programme for Biharis in Pakistan).

5) Agreement with the Indian Government for overland (railway) transit of Biharis to Pakistan in order to reduce transport charges, may be arrived at.

6) Issuance of statelessness certificate by the Government of Bangladesh may be thought of in order to let the Biharis go to any middle Eastern and West Asian countries for their livelihood and resettlement for many of the Biharis have skills needed in those countries.

7) Issuance of Pakistani passport/I.D. card/visa to those Biharis who can afford air ticket to go to Pakistan (reference SPGR(E) statement) may be solicited.

8) UNHCR (an impartial guardian for solving refugees problem) should play an immediate active role. There can be no doubt to the fact that the Urdu speaking Biharis stranded in Bangladesh are historically, culturally, politically, socially, and linguistically integral part of the nation called Pakistan. Hence responsibilities lies with the Pakistan government to immediately solve the problems of the stranded Pakistanis who dilly dallying then? Is not Pakistan a signatory of human rights declaration of the United Nations?

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