

Cheer from Gazipur

Seldom has the first day of a workshop made for such starry-eyed optimism as the Gazipur one on project finance being co-hosted by the Board of Investment and the World Bank.

The first day's proceedings delivered a ruthless verdict on the barriers to private investment in infrastructure-building that we excel over other countries in presenting to the outside world.

At issue are both domestic and foreign private investments. A patent third dimension to the picture comes from the investible surpluses held by the expatriate Bangladeshis who are raring to become a partner in our march for progress.

Domestic private investment is confined to road and riverine transportation sectors with a minuscule participation in civil aviation. Energy and telecommunications sectors, and utility services and port facilities need a massive transfusion of foreign capital for a radical upgradation.

Nothing short of a bipartisanship will help frame an effective set of laws for curbing the trade union pressure. The habitual bureaucratic interventions are tapering off. An overhauling of the services structure will do the rest.

Deadly Air

From the pattern we have witnessed so far, it is clear that we are a nation with a pronounced proclivity to glorify the universal truth 'health is wealth' more in utterance than in practice.

Monday's lead report of The Daily Star on Dhaka's yet another fearful distinction as the city with the highest lead pollution in the world has made it quite imperative for us to do some soul-searching for leaving behind an unlivable capital city to the posterity.

Scientists at the Bangladesh Atomic Energy Commission (BAEC) have revealed that quantity of lead in Dhaka's air is 463 nanogram per cubic meter during the low rain period, a frightening figure that beats that of all other cities on the planet.

This fearful concentration of lead in the air caused by years of unscrupulous use of leaded fuel by the automobiles will not only affect those born with various physical problems owing to plumbism, but also give rise to generation of mentally deficient children, said the analysis report.

To stop this slow and sure process of health and generational devastations, the government should act immediately. Eastern Refinery which happens to be the fountainhead of this poisoning cycle as the only place for refining the imported crude oil in Bangladesh should be given a serious consideration because the chemicals used there actually churn out the leaded fuel.

We have heard that World Bank has offered assistance to a few developing countries to enable their conversion to unleaded petrol. It remains a mystery what governmental bashfulness could be there in seeking external help when the health of a people and generations is at stake.

Mobile Ministers

It is also time for the mobility of the ministers of the government of Bangladesh. Objective? Boosting country's international trade prospects and diplomatic ties.

Six of the twenty-five members of Sheikh Hasina's government are now out in different directions of the world on specific missions. The flurry of foreign trips does suggest the great urgency felt at the highest executive level to give a real push to national interest in the international context.

Commerce and Industries Minister Tofael Ahmed's aired objective to visit Vietnam is to generate interest among the prospective investors there in Bangladesh.

Vietnam itself is busy drawing foreign investors from the developed countries and it has already stolen a march on developing countries like Bangladesh in this respect, its cheap labour and political stability serving as great facilitatory factors.

In a world thriving commercially on constant contacts, it is only natural that emissaries empowered with executive authority will be on global errands for the cause of national development but discretion in selecting the places will not only mean less pressure on the national exchequer but also a world of good to the cause of good governance and credibility.

The Government's Policy Dilemma: New Signals?

by Kabir U Ahmad

Doling out tax-payers' money to keep some inefficient managers and workers in the jobs of losing concerns serves neither the criterion of efficient resource allocation nor social justice which the new government has been talking about.

THE new government seems to be facing a dilemma in the implementation of some of its most fundamental economic policies especially in respect of privatisation of state owned enterprises (SOEs).

Declared Position in the Budget

The first major policy statement covering all areas of the economy was made by the Finance Minister in his Budget Speech in which he clearly stated: 'The management in the nationalised sector will be reorganised or closed down if reorganised management does not succeed in reducing losses in any state owned enterprise it will be privatised.'

These statements make abundantly clear that the government will first try to improve the management of SOEs and then privatise them only if these attempts did not succeed. This is the new government's anchored position on the question of privatisation.

After the Paris Meeting

On his return from the Paris Aid Consortium meeting, the Finance Minister held a press conference on September 13th at Zia International Airport and briefed the pressmen on the outcome of the meeting. During the course of this briefing he said that the donors were satisfied with the new government's reform programme in the areas of administration, judiciary, agriculture, investment, local government institutions and other sectors.

government taking effective steps to curb the losses of state owned enterprises and the related wastage of public resources. They viewed that this objective could only be achieved by either privatisation or closing unprofitable enterprises, and the move would require prompt and determined actions by the government.

Finance Minister's Clarification

However, by way of clarification, as it were, the Finance Minister came back again with a statement on Monday, September 16, 1996, stressing that no conditions were attached to the aid commitment by the donors this year.

The Donors' View

But on the same day another report came out in the same paper, quoting from the written press briefing of the World Bank's Vice President Mr J Wood who chaired the Consortium meeting, under the headline 'Donors Warn', stating that aid would decline if government fails to implement reform agenda.

ons in an interview with The Daily Star that was published on September 18, 1996.

The Main Dilemma

From the statements in the above paragraph, it becomes clear that the Finance Minister has accepted the problem of 'wastage of resources in the SOEs which put intolerable strain on our economy' but not the urgency of its solution suggested by the donors and other observers (including this writer). Here is the main dilemma: on the one hand, there is the ideological position of the government to improve the management efficiency of these SOEs by investing additional resources so that the existing workers are not laid off and, on the other hand, there is the need for stopping the bleeding of scarce national resources by privatising and closing down these SOEs.

However, there are some other SOEs which can be made efficient after investing substantial amount of capital resources but bringing them to a profitable state will take a long time. With the existing management culture in the public sector, there is no guarantee that such efficiency will last very long.

efficient managers and workers in the jobs of losing concerns serves neither the criterion of efficient resource allocation nor social justice which the new government has been talking about.

Mr Tofael Ahmed Signals a Shift

Has there been any resolution of the dilemma? Reading the Finance Minister's speeches carefully, one doesn't see any movement in any direction. But in some recent speeches made by the Commerce and Industries Minister Mr Tofael Ahmed one notices some positive developments. The Minister has recently said that Hafiz Textile Mills, which is a unit of Bangladesh Jute Mills Corporation (BJMC), 'will be divested quickly as an urgent step to reactivate the stalled privatisation process.'

Of Pre-emptive and Provocative Statements

by Kazi Alauddin Ahmed

They were bristly jubilant over Ershad's alleged corrupt practices and on their ultimate success in putting the general behind the bars for over five years now. They were oblivious that similar acts of corruption on their part as well would face the same consequence.

REACTION to a news item in some of the local dailies and concurrent revelations by the party in power in the Jatiya Sangsad and to public speeches that the government shall have instituted thorough investigations into the alleged acts of corruption by the former prime minister, a number of cabinet ministers of her time and party MPs, the flamboyant DUCSU VP and neo-tycoon Amanullah Aman, MP has publicly threatened that the whole country would be ablaze if his leader Begum Zia was implicated in the bungle. He also foresaw that once such conflagration took place none would be able to put it down.

Such an outrageous statement from an elected representative to Jatiya Sangsad and consequently a law maker belies all the norms of discipline. It can also be taken as a direct instigation to those activists who are already branded as notorious gangsters thriving on terrorism and violence. Naturally therefore, it can be construed to have been a sordid infringement of the people's right to live in peace.

This has been the height of insolence that the opposition BNP law makers and other party leaders have been playing with since the first day of the induction of the new government led by Awami League Chief Sheikh Hasina. Her government's whole-hearted urge to the opposition for cooperation to curb terrorists, extortionists and social outlaws remains, till now, unresponded.

There are abounding instances in the political scene of the country which bear eloquent testimony of the ominous determination of BNP leadership to keep the government unstable by any means. As the first, the opposition leaders, particularly the new secretary general of BNP has been harping on the self-same repression, killing, implicating in false and fabricated cases his party-men all over the country.

As I was saying, the leaders of BNP and its youth and student fronts have been all out to

They were making pre-emptive statements on the recently held by-elections to the 15 vacated seats. They were threatening in advance that if the by-election was not conducted in a free and fair manner, they would not accept it and would go to the streets to raise protest. They could not, however, be that much uncharitable to say the word which was apparently tormenting their minds and generating a sense of uncertainty about the results. Their inner message was, however, on the surface though not audibly told. It was yet very much palpable that they continue to be haunted by the harrowing tale of their own mis-deeds in the by-elections to at least two seats at Magura and Mirpur following the general election of 1991. Their obsession was instantly readable. In any case, the recently held by-election went through more or less peacefully and without any infringement of the election rules and principles.

Nevertheless, there shall not be any room for complacency that the arrangements made to hold a transparent, free and fair by-election were enough. There must be a contingent plan to take the trouble-mongers to task ruthlessly. At least from the wreckless statements of the adversaries of the present government there was intriguing apprehension that they were covertly bent upon creating any law and order situation when they would sense inevitable defeat in the by-election. Without mincing matters I would say that such a hypothesis would be applicable to anyone who would fail to get the result to his favour.

From the overall political scenario obtaining in the country as of now, it appears to have been taking a vicious turn in a rapid stride. The BNP has already announced its vow to bring about the fall of the present government in a month's time. Incidentally, such a move tallies with the already unearthed plot to overthrow the government with the active connivance of the now defunct armed cadres of the Freedom Party and their leaders. The blue print on which they were to allegedly act contained numer-

ous strategies including killing of the Prime Minister and top ranking ministers besides creating a terrible law and order situation all over the country simultaneously. Thanks to the timely intervention of the different intelligence organs of the government that such a dastardly plan was foiled before it could be implemented. The process of investigation is now on and it is likely to bring to surface the positive linkage of a big political party at whose instigation such plan was initiated.

The three self-proclaimed murderers of August 15 and November 3, 1975 are now in police custody. They were handed up on August 13, 1996 — two days before the whole nation was to observe the national mourning day on August 15, 1996. Their first target was reportedly to wage a blood-bath on that day and eventually to set a total chaos and confusion throughout the country.

So far, the people of the country had a faint notion that the inhumane Indemnity Act in the 5th amendment of the constitution had the blessing of General Ziaur Rahman even though, ostensibly, the architect was Khondkar Mushtaque Ahmed. Of late, a lot of discussion is taking place in the capital and elsewhere in the country which has already unveiled the true picture.

It can be reasonably deduced, therefore, that the current chain of events shall be enough to ensnare BNP in its own trap even though it was so cunningly contrived by its founder. That's how they are behaving in the sacred precinct of the Jatiya Sangsad. On some pretext or the other the BNP parliamentarians have been staging frequent walk out, tearing out their working papers, thumping their respective desks with the paper folder and shouting at the treasury bench at the top of their voice creating veritable inferno. And giving vent to their feelings the leader of the opposition and her party colleagues have been also caught off-foot while nurturing freely from filthy vocabularies.

As I was saying, the leaders of BNP and its youth and student fronts have been all out to

decrey any attempt on the part of their counterparts in the party in power to instil a congenial atmosphere in the country, vis-a-vis, in the Jatiya Sangsad. They are doing all these with a sub-conscious state of mind that instantly neglect the fear of being exposed. All their statements and articulate manoeuvres fringe on pre-emptive stands, their ultimate goal being chaos and confusion to camouflage their past misdeeds.

It seems that BNP has quickly forgotten their own undemocratic stances and misdoings when they were in power. It appears to that they have assured themselves of the 'frail memories' of the people of the country as to their own past. But they are pitifully mistaken so much so that they have been firmly rejected in the last general election on June 12, 1996. The gaping wounds of defeat have been the reward of their own crooked manoeuvre with the lot of the people. They were bristly jubilant over Ershad's alleged corrupt practices and on their ultimate success in putting the general behind

the bars for over five years now. They were oblivious that similar acts of corruption on their part as well would face the same consequence.

The opposition bench in the 5th Parliament gave the erstwhile leader of the house positive signal before the situation had assumed an unmanageable proportion. Some of the cabinet members during her period of governance were justifiably imputed with corruption, nepotism and favouritism with documentary evidences. But instead of taking corrective measures, the committee set for investigating into the allegations was purposefully made ineffective. Thus, Begum Zia lost a golden opportunity to mend her fences and gave way to an escalated financial vandalism.

Now, it is her turn to face the court of law in order to defend the charges of corruption against herself and a number of her Cabinet colleagues besides some of her family members. The recent disclosures on these issues in some dailies seem to have unnerved her and hence her only alternative has been to

Further, in course of an inauguration speech of a new cotton mill, Amber Cotton Mills Ltd, Tofael Ahmed also said that 'the present government is seriously thinking about the matter and trying to privatise all losing concerns after consultations with the workers' (The Daily Star, September 16, 1996, page-12).

These are the most hopeful and positive signals that one can see coming out from the new government in respect of cutting the colossal wastes in the public sector. These signals seem to indicate a shift of the government's age-old position, which is certainly for the better. It looks like some members of the new government are beginning to think hard and seeing the wisdom of cutting wasteful expenditures which will be a major step forward for the economy. Given the good intention and seriousness of effort, one hopes that the government will succeed in resolving this issue of getting rid of the unsustainable SOEs and relieve the government of a major financial burden.

If they succeed, it will create a momentum for further cutting off fat in the entire government sector which is unjustifiably over-stuffed. If such cuts can be implemented, not only the performance efficiency of the government and the public sector will go up but also over a billion dollar can be saved every year. Then the country's need for foreign aid can be cut into half of its present commitment level. Further, if such an efficiency drive in the government sector can be pursued rigorously, then in a matter of a decade there will be no need for any foreign aid at all. That would be the best gift that the government can give to its long-distressed people. The country will then no longer have the image of a beggar country with a basket on its own feet. One wishes the ministers concerned best of luck in this difficult undertaking.

create a confusing law and order situation that would forestall the current proceedings of the Bureau of Anti-corruption. Aided to the present course of investigation her eyes are also on the process of interrogation of three arrested ex-Army officers allegedly involved in the killing of Bangabandhu Sheikh Mujibur Rahman, almost all his family members and of the four veteran leaders of Awami League in Dhaka Central Jail on August 15 and November 3, 1975 respectively.

Notwithstanding the alleged excesses of police in Bogra, there are intriguing evidences that Begum Zia and her party members have had substantial contribution to the deteriorating situation there. The incidents in the Dhaka University campus are also reportedly the outcome of similar overtures. The government, on the other hand, have categorically and unambiguously declared to punish all who are found responsible in Bogra and Dhaka irrespective of their party affiliations including members of the law enforcing agencies. Specific order has been given to the police to nab BCL leader Shamim Ahmed and his accomplices and to bring them to book. Hopefully such a non-partisan stand will neutralize all the vicious attempts to undermine the good intention of the present government.

OPINION

Indemnity Ordinance: Possibility of Being Declared Void

Ridwanul Hoque

Much has been talked about the Indemnity Ordinance 1975 and more are still going on. In my heart, I believe that the said Ordinance, the darkest law the country has ever seen, has to be done away with. But how? Today it has become a proven truth that the Indemnity Ordinance is anti-constitutional and has vitiated the principle of 'rule of law', a basic structure of the Constitution and hence it is not a law proper. Notwithstanding this truth, the said Ordinance still has the force of law — and this is the reality.

Some towering law experts are of opinion that this Ordinance can be repealed by a simple parliamentary majority. I disagree with them for the Ordinance has been given constitutional recognition through the 5th Amendment to the Constitution which by itself is like some other amendments in question. Nevertheless, the annulment of the Ordinance must also be constitutional.

Therefore, the easiest way, I think, to repeal this law is to go to the Supreme Court, the guardian of the Constitution. Our Judiciary has the judicial review to determine the constitutional basis of any law, including the amendments to the Constitution. Though nowhere in the Constitution the term 'Judicial Review' appears, the said power is to be understood from and to be found in Articles 7(2), 26(2), 44 and 102(2). Judicial review is another important basic feature of our Constitution.

To Justice Mustafa Kamal, 'Judicial Review is the soul of the Judiciary in a written Constitution.' But, regrettably enough, the 5th Amendment has precluded the judicial review respecting all acts done and laws (including the Indem-

nity Ordinance) made 'by any person or authority' during the period between 15 Aug '75 and 9 April '79. This amendment provided that these 'shall not be called in question in or before any court' on any ground.

Notwithstanding such ouster clause the SC has the power to scrutinise the validity of Indemnity Ordinance for, the above going ouster clause is void ab initio — the judicial review being precluded. It was held in the 8th amendment case that judicial review power of the Judiciary, a basic structure of the Constitution, cannot be taken away even by constitutional amendment. In this regard let us be referred to an Indian case: Minerva Mills Ltd vs Union of India: (1980) 3 SCC 625.

In this case the 42nd Amendment to Indian Constitution was challenged. This amendment to the Constitution inserted clause (5) in Article 368 (corresponding to Art 142 of our own) giving the Parliament an unbridled power to amend the Constitution even the basic structures thereof. This clause said: '... there shall be no limitation whatever on the constituent power of Parliament to amend by way of addition, variation or repeal the provisions of this Constitution under this Article.' This newly inserted clause was kept outside the ambit of judicial review by virtue of Art 368(4) which is also newly inserted by 42nd Amendment. Clause (4), Article 368 reads: 'No amendment of this Constitution... made or purporting to have been made under this Article... shall be called in question in any court on any ground.'

the judicial review power from the Supreme Court. Notwithstanding this ouster clause, the 42nd Amendment was challenged and the court held that above amendments to Article 368 by 42nd Amendment were void since it destroyed the basic structure of that Constitution.

From what has gone above, one might become optimistic about the Indemnity Ordinance being declared void by our sacred Judiciary. There is not even a scintilla of doubt that the President had no power to make such a law which the very Parliament could not make under Constitution and that the Parliament, by giving constitutional protection to Indemnity Ordinance through the 5th Amendment, had transgressed its law-making power. In this respect, it would be worthwhile to quote the celebrated Justice Justice Shahabuddin Ahmed. To him: 'Amendment is subject to the retention of basic structure. The court therefore has power to undo an amendment if it transgresses its limit and alters a basic structure of the Constitution.' (In Anwar Hossain Chy vs Bangladesh, 1989).

We should, therefore, call upon the persons or authority concerned to place the Indemnity Ordinance under the powerful weapon of judicial review. By exercising this power, the Court shall, let us hope, annul the said black law. According to KC Wheare, the author of Modern Constitutions, 'The success of judicial review depends as much upon a well drafted consolidation as upon the calibre of the judges themselves.'

Happily enough, our judges are of high calibre and they will prove it by being given opportunity of so doing. The writer is a 4th-yr law student at the University of Chittagong.

To the Editor...

"JS Proceedings"

Sir, I fully agree with the views expressed in the above captioned letter of Mrs Nur Jahan which appeared on 16 September in your esteemed daily. Here I would like to add that the said TV telecast also involves public time and money. Thus, our leaders, those got the opportunity — through us — to become legislators, should try to watch their words. As it, they are required to pay for the length of time they are going to use, as they get the floor of the House of the nation.

For that, a log of time may be kept in the JS. At the end of any legislator's speech, the Speaker should report to the minister/MP the value of his/her speech against nation costs. I think, only in this way, we will hear any sensible deliberation of JS. Otherwise, no matter which way the BTV tries to project, either to please the tax

payers/viewers, or to please the legislators, we will not get a decent view of JS proceedings through this electronic media.

A R Choudhury Uttara, Dhaka

Smoky metro

Sir, A vehicle survey has recently been carried out jointly by the Department of Environment (DoE) and Traffic Police from January 25 to August 24, 1996 covering four metropolitan cities — Dhaka, Chittagong, Khulna and Rajshahi. The survey result shows that 36 per cent vehicles exhaust black smoke, 297 out of 814 vehicles were found faulty. On the basis of this survey, the DoE has recommended the following measures:

i) Strict enforcement of the relevant laws, ii) setting up of air quality monitoring stations, iii) procurement of mo-

bile lab, iv) road safety check, v) introduction of proper and modern fitness tests of vehicles, and vi) limiting Sulphur content in petrol and diesel.

While joining the campaign — 'Clean Air, Clean Fuel and Clean Car', we urge upon the authorities concerned to take immediate steps for implementing the above mentioned measures with a view to protecting public health and environment against pollution.

M Zamild Haque Press and Publicity Secretary, Bangladesh Society for Conservation of Environment and Associate Professor, Maji Md Denesh Agri College, Dinajpur.