

The Concept of Ombudsman: Some Reflections

by Sultan-uz Zaman Khan

The concept of Ombudsman is not new in Bangladesh. On this subject, Article 77(1) of our Constitution states as follows: "Parliament may, by law, provide for the establishment of the office of Ombudsman." Article 77(2) further states that: "The Ombudsman shall exercise such powers and perform such functions as Parliament may, by law, determine, including the power to investigate any action taken by a Ministry, a public officer or a statutory public body."

Taliban Shows Teeth

The fall of Kabul at the hands of the Taliban militia has virtually diminished any prospect of Afghanistan turning around. When the Mujahideens fought Soviet-backed government forces, the country started falling behind while the rest of the world untroubled by any large-scale war was forging ahead. Today Afghanistan has no prospect of making peace with itself. If the Taliban's actions immediately after capturing Kabul are any guide, the country must be ready for its worst nightmares. Dr Najibullah, former communist president, was dragged out of his shelter in the United Nations office before being hanged in public. Reportedly, Kabul's hospitals are proving too inadequate to look after the injured and the dead.

So there unfolds widespread violence, death and destruction which the city can no longer afford. Any possibility of reconciliation between the feuding parties looks dim because the Taliban's record of honouring truce or agreements of any kind is very poor. Now that it has captured power and has the backing of Pakistan, any chance of a concession on its part is even further remote. Indications are clear that Pakistan will hardly lose any time to recognise the six-member interim government. But what about rest of the world?

Already the United Nations and a few other world powers have expressed their dismay at and disapproval of the manner in which the militia is conducting itself. Which means Afghanistan will have to depend on the support of Pakistan. That is perhaps not a good prospect for any government inheriting nothing but ruins and rubble all around. The worst sufferers will once again be the common Afghans. They have been at the receiving end since the Soviet invasion and the incapacity of the country's political leadership to rule it will simply lead the nation to a dead end. In a situation like this the Taliban leaders, like their predecessors the Mujahideens, are more likely than not to engage in an internecine feud where the country will fall apart with the possibility of destabilising the region. A national reconciliation looks unlikely in the near future, but international pressure might bring the rival parties to the negotiating table to accept one. So the pressure should be on to go for a negotiated settlement between the contending parties.

VC Appointment

It is any day now that the Chancellor will announce his choice as to who will be the next VC of our premier University. The process that has been followed is democratic, and according to the law. However we are not certain if it is best suited to our needs. Frankly we would have preferred if the choice was less partisan than it is. From what we have seen, it is no longer enough to be an eminent scholar, one has also to be popular to adorn the chair of the VC. That by itself would not have been bad, but for the fact that one has to join one or the other political groups to gain that popularity.

The point we are trying to make is that VC's post today has become as much subject to political 'wind that blows on the day' as any other elective post, and as such does not enjoy the pre-eminence of scholarship that it once did. And that is sad.

We noticed with regret how, as in the case of DUTA election, the choice for the next VC also became a contest between the different so-called 'panels' which are little more than front bodies of different political parties. Like in general elections, to be VC you have to get the 'nomination' of panels. The fact that on previous occasions also the 'panel' candidates were the ones who became Vice Chancellors does not justify that it should continue. In fact the campus politicisation can be directly linked to the politicisation of the election of the Vice Chancellor.

This brings us to the question of another VC, that of the Open University (OU). The current VC, Dr. Shamsher Ali has been both the dreamer (he prepared the original proposal as far back as 1976) and the implementor of the idea of an Open University. As the Vice Chancellor and the Project Director (the University continues to be a project of the Asian Development Bank) since '92 he has been the very heart and soul of the Open University. His term ends next month, and moves are afoot to replace him with one who belongs to the right panel. One of Dr. Ali's achievement has been that he kept politics and 'panels' out of OU. May be for that very reason, the 'penalists' are trying to remove him.

There has been enough of student politics and politicisation of our Universities. Time has come to put a stop to all this. This we could not do at the Dhaka University. The government would be well advised to start this process at the Open University.

Tackling Highway Robbery

The death of a supervisor and injury to about 100 passengers in 52 incidents of dacoity on different routes of the country's south-western zone in just two-and-a-half months are enough to highlight the level of risk and insecurity of travelling by bus. The 200 or so night-coaches and loaded trucks that ply at night on the 18 routes have been identified as dangerous.

Reportedly the dacoits adopt two methods for their unlawful operation: either they board a night-coach pretending to be general passengers and force the vehicle to stop at a point they have planned for; or they lay barricade roads with logs or similar other things and swoop on the buses that come to a halt.

There is no reason why the challenge thrown by the dacoits cannot be taken up by the administration. The government is learnt to have issued an order for the police to patrol the highway. If each thana en route takes responsibility of patrolling its portion of the road, the problem of laying barricade should not be there. Why not make the police station responsible for negligence of vigil, if any? And for ensuring that no fire-arms or lethal weapons can be carried on board a bus, a system of thorough body and baggage search should be introduced before the passengers board a bus. Together that will minimise the insecurity of travelling at night.

OME weeks ago, the State Minister for Law and Parliamentary Affairs had reportedly told a foreign envoy that the present government was seriously considering the question of establishing the office of Ombudsman in Bangladesh. This appears to be a move in line with the avowed purpose of ensuring a transparent and accountable public administration in the country.

The concept of Ombudsman is not new in Bangladesh. On this subject, Article 77(1) of our Constitution states as follows: "Parliament may, by law, provide for the establishment of the office of Ombudsman." Article 77(2) further states that: "The Ombudsman shall exercise such powers and perform such functions as Parliament may, by law, determine, including the power to investigate any action taken by a Ministry, a public officer or a statutory public body."

followed later by other Scandinavian countries. Subsequently, many other countries across the world have set up similar offices, though with different nomenclatures. However, the basic object of this institution is the same everywhere, that is, to take remedial measures against bureaucratic abuses adversely affecting the human rights of citizens.

In the Scandinavian and other countries such as Bangladesh, the Ombudsman is an independent, and presumably impartial arbiter between government and the individual.

No-one may interfere in his substantive functions as those relate to handling of individual grievances. The scope of his authority usually covers all types of government agencies, though in some countries municipal and local authorities are excluded from this jurisdiction.

It is over one-and-a-half decades ago that the Parliament of this country had passed the Ombudsman Act, 1980 (Act No. XV of 1980). The said Act has laid down the composition, functions and powers as well as other provisions related to the Ombudsman's office. Section 1(2) of the Act provides that the law shall come into force on such date as the Government may, by notification in the official gazette, appoint. However, it is not clear why the office was not created even though a long time has elapsed since the enactment of the law.

This article briefly discusses the evolution of the concept of Ombudsman system in modern states, the need for it in terms of protecting citizens from bureaucratic excesses as well as the object and functioning of the Ombudsman's office. To gain a clearer understanding of these issues, the system as conceived in the relevant Bangladeshi law has been broadly compared with the one in Sri Lanka because the two countries share some common administrative traditions.

Role of public administration: During the modern times, especially the 20th century, the state has assumed a growing number of functions which touch nearly all aspects of life and property of citizens. This phenomenon has been noticed in almost all countries irrespective of their political sys-

tem — be it democratic or totalitarian. With each addition to the state functions, extra powers have been conferred on the various administrative organs of the government. These powers are appropriately located at the central, provincial or local levels, together with their numerous departmental arms and special agencies created to discharge specific functions or deliver particular services to the citizens.

It should be noted in this context that in the field of commerce and business, the current trend is to reduce to the minimum or altogether do away with governmental role and involvement. The government is gradually divesting themselves of commercial activities leaving them to be more efficiently performed by the private sector. Even in the changed scenario of fast expanding role of the private sector and privatisation of public sector business enterprises, the governments are still required to perform numerous essential functions which have no counterpart in private activity.

While the most basic responsibility of the government lies in the maintenance of public order and social stability, and this cannot obviously be relegated to the private sector, there are many other functions which the state must perform. Provision of municipal services, ensuring preventive and primary healthcare, environmental protection, land-use planning, fire services, socio-economic development of backward communities, eradication of widespread illiteracy, traffic management, etc. are some of the random examples which may be cited to illustrate this point.

Purpose and powers of bureaucracy: In carrying out the essential administrative functions of the state, its executive

arm and the many organs controlled by it are assumed to represent the collective will of the community and to be acting for their common good. These agencies are conferred with such powers as are not normally given to private persons. Such powers may authorise public servants to require citizens to submit their property rights and restrict their freedom of action in many different ways.

To govern the conduct and functions of civil bureaucracy under executive arm of the state, various rules and regulations have been framed over many years. As a body these are referred to as "Administrative Law," which is quite different from private law governing the actions, interests and obligations of private individuals or their organisations. The civil bureaucracy and its members do not normally serve on a contractual or "hire and fire" basis. They are permanent officials who enjoy a special status distinct from those appointed by private activity.

It should be noted that there are two different aspects of "Administrative Law," viz. "internal" and "external." The former comprises such matters as the relationship between the government and its officials or between the central government and the local authorities and so on. It is indeed the "external" aspect of "Administrative Law" which guided the relations between the civil administration on the one side, and the rights of private citizens, on the other.

The executive organs of the state are empowered under various laws and regulations to perform specific duties for the citizens' benefit. Conditions are laid down for public servants to act in a particular situation, but many laws give them scope for exercising discretion. Safeguards are therefore re-

quired that discretionary powers are not misused and the genuine interests of citizens are properly served.

Any system of public administration which impedes or frustrates public good is clearly undesirable and so, too, would be one that results in injustice to citizens. All states, irrespective of their political or economic philosophy or their stages of development, have been preaching the intention to reach high rates of economic growth and eradication of poverty. The level of popular expectations are steadily rising in every society, particularly the developing ones. Given the commitment of governments on these issues, it is an efficient, clean and accountable public administration that can help attain these goals within acceptable timeframes.

Obstacles to good administration: It is quite evident that with expanding roles of the government in public affairs, there has been a proliferation of the administrative machinery. The civil bureaucracy has spread its tentacles everywhere in as much as the number of officials of all ranks has greatly increased which has not necessarily conferred corresponding benefit to the public.

In this matter, Bangladesh is no exception. In the course of its quarter-century existence, a bloated bureaucracy has grown, exerting a demoralising influence on public governance. The purpose of this discussion is not to deal with this particular issue, although it heavily impinges on the provision of an efficient and just administration to the people. A recent World Bank report has focused pointed attention to this dismal state of affairs and suggested many practical actions, including the setting up of the Ombudsman system.

It has been experienced that

even in those countries which have relatively clean and efficient public administration systems are also dogged by maladies which adversely affect the rights and interest of ordinary citizens. Bureaucracy everywhere tends to show overdevotion to precedents and procedures, remoteness from the rest of the community, accessibility, excessive sense of self-importance, inflexibility in decision-making, misuse of power and reluctance to admit mistakes. It has been observed that a strict application of the "Administrative Law" can be valuable in terms of providing an instrument to control or redress bureaucratic injustices.

Judicial review as a remedy: A judicial review of administrative law is the centrepiece of administrative law. Such a process brings alleged bureaucratic abuses and administrative decisions under judicial scrutiny and those can be invalidated on grounds of unfairness and inappropriate use of legal or discretionary powers.

The nature and extent of judicial review of administration as well as the institutional arrangement for such review vary widely in different countries. In this country, the courts of law have virtually been the only avenue for redress of citizens' grievances arising from breaches of law, including administrative injustice. The experience in this regard, however, is not at all satisfactory. Our judicial system suffers from many inadequacies, including, among others, numerous outdated laws, lack of easy accessibility of the common man to judicial recourse, and high expenses and inordinate delay involved in the judicial process. Our law courts are by and large used to dealing with complaints under the civil, criminal or the land laws. Only a handful cases are lodged by citizens against bureaucratic excesses.

To be concluded tomorrow
The author is a former secretary. He has worked as the Director of the Agricultural Department of ESCAP for many years.

NGOs : A Case of Fortune or Misfortune?

by Shafi A. Khaled

The NGOs silently bring competitive pressure to bear upon the government and political parties. However, it is not clear whether the party in power, the opposition parties, the bureaucracy and the military are going to respond positively to this form of pressure. That is, they are not going to change their ways.

By the mid-1970s international agencies and donor nations had acknowledged that, in developing nations, the bureaucracies relative to other sources of authority had grown vast, inefficient and corrupt. So, they sought to decentralise power by diverting funds to non-governmental organisations (NGOs). The governments had grown disproportionately big because they were the sole recipients of foreign funds. This was possible because there was an absence of other private, domestic organisations in newly independent nations to handle large sums of money and there was the idea that centralised and planned governance would pull developing nations quickly forward in the path of progress. Occasional military coups made these governments even worse. And not a few of those coups were foreign instigated. Now, efforts are being made to repair the effects of those failed policies by establishing foreign funded NGOs. Although, in some immediate ways, this is a positive step, it has its demerits.

However, good NGOs may be, with a vast number of foreign funded NGOs, it is collecting

privately possible for them to undermine the sovereignty of a nation — an economic, instead of a military coup. In many instances, the NGOs supply services substituting the government.

Thus, they become more than shadow government, they become a parallel government, causing tremendous and unpredictable shift in alliances in a traditional society. There is nothing wrong in substituting government services so long as it is privately funded with domestic capital or the proportion of foreign funding is limited.

True, the NGOs silently bring competitive pressure to bear upon the government and political parties. However, it is not clear whether the party in power, the opposition parties, the bureaucracy and the military are going to respond positively to this form of pressure. That is, they are not going to change their ways. Also, there is no reason to believe that some form of accountability

will be established in business practices owing to the presence of NGOs. Although it is not their professed agenda, it is difficult to foresee and NGO movement that will be equivalent to a movement of courageous intellectuals who will fundamentally alter governmental practices. Today's NGOs, with their proliferation, are an extraordinary development in the lives of contemporary developing countries. They mean well, and there are many decent and capable citizens involved in them.

However, there is no reason to believe that, gradually and in general, they will not be coopted by the same forces running and ruining the countries outside of the NGO framework.

Furthermore, in many ways, the NGOs potentially bind the ordinary citizens closer to foreign funds and values than government agencies were bound in the past. This is because it is

easier to influence individuals and small groups. Today's foreign patronage is as value-laden as it was in past. Now, the values of the foreign benefactors are no longer simply economically, militarily and politically defined, they are also life-style dictated. This is certainly unfamiliar territory for the recipient nations. Even in the foreign nations, the new life-style's merits are under intense scrutiny and their general population are very much shell-shocked by it.

In summary, the NGOs are a fact of life today. A large number of them were set up out of a perceived failure of existing governmental forms, indistributing foreign resources. Because the governments have been unaccountable for their actions for so long, the strategy was to circumvent governments and not alter them. By creating NGOs, international economic forces have added micro-man-

agement of developing economies to their existing tool of macro-management. If the political forces do not recognize why the NGOs came about, then there may come a time that national values and goals will become so diluted and compromised that there will no longer be a single entity or nation to serve. Like the East India Company in Jahanpur's time, the NGOs may be political bombs waiting to explode. This statement may be too strong for a Christian, South American or African nation, but it is not such a strong statement for an impoverished, predominantly Muslim nation. For Bangladesh, perhaps the now defunct decentralised administrative structure could have proven to be the correct vehicle for micro-level response by the government and its increased accountability. These two factors have been missing for more than five decades. They truly concern international donor organizations as they should. That is why we observe the proliferation of foreign funded NGOs.

Moral : All that glitters is not gold.

To the Editor

Cellular saga

Sir, the past BNP government claims that they have done enough towards development, market economy etc. The effect of development can be felt by the deterioration of civic amenities, law and order, unemployment, terrorism on the campus, and breakdown of electricity production and consumption balance. In the field of market economy one basic factor is competitiveness and not monopolistic policy.

During the last 5 years one company was allowed to play with monopolistic business to amass huge amount of money. In both India and Pakistan there are four companies who have been given the licence to operate the cellular telephones. These are really cellular phones as several transmitters are operating to provide multiple cells of coverage. In Bangladesh, it is called cellular phone but in fact has provided only one transmitter thereby making it a UNICEL system.

Moreover, in India the charges he is paying Rs 1.70 to BTTB irrespective of the duration but charging Rs 8 per minute from the customers. For incoming calls he is paying nothing to BTTB but charging the customers Tk 5 per minute.

I am glad that the new government has decided to break this unfair monopoly by giving the permission to 3 more companies to do business. My suggestion to the new licence holders is to analyse the regional rates of similar services and then fix their rates so that foreign investors who will come to Bangladesh will use these services may not say that the operators are swindlers. They should also make the service really cellular and not a UNICEL system.

Amjad Hossain
70 Elephant Road
Dhaka 1205

Interview of Mr. Arefin Siddique

Sir, At first I thank Mr. Arefin Siddique for his write-up titled "An Appeal to Begum Zia, and then I want to add something more. I am a student, so I limit my horizon within the educational institutions. All of us are aware of the JCD-called indefinite strike from August 20 and I am affected by that strike, because my exams were again deferred which was scheduled on September 12. This exam according to the academic calendar of DU should have started in April 20.

The Daily Star (14th Sept) published an interview of Mr. Arefin Siddique. I want to highlight: "According to Dhaka University Ordinance and regulations (as amended up to June 1986) no student of university within the educational institutions of DU shall declare a strike, nor shall a student prevent another student of university from attending the classes, laboratories or libraries. A student found guilty of violation of any provision of

this section will be liable to punishment up to expulsion from university. (The proctorial system: See-6: page 25).

In the light of this regulation: "should not the university authority expect them instead of patronising them into signing an agreement?"

In reply Mr. Arefin Siddique did not give any clear answer rather he called for a legal expert. Thank you Mr. Siddique.

When we were admitted to Dhaka University no one gave us the "light" of the Ordinance, but as a human being I have some questions:

Where was Mr. F. I. Chowdhury (who conducted the interview when BCL had called the strike)? May be the whole nation then went to hibernation. Why the "light" does not illuminate every conscientious person every time when any individual or collected person deprives us from our right to study.

In Bangladeshi democratic culture, the opposition and its wings call hartals, strikes, non-cooperation and so on, and what not in this soil. But BCL broke the record calling indefinite strike at CU. May be in CU Ordinance "no one will be liable to punishment up to expulsion from university for calling strike."

We read the story of Adu Bhai and all of us know about today's Adu Bhai in DUCSU. But who made them Adu Bhai. As far as I can remember whenever the DU authority declared a date for the submission of nomination papers for DUCSU election, we treated the day as holiday, because we were sure that BCL was going to call students' strikes on that days.

Mr. F. I. Chowdhury and Mr. A. Siddique did not present and interview in The Daily Star in 1986

VAT under Dhaka Commissionarate. The leaders of this association and their supporters throughout the year enjoy "good posting".