

A Welcome Action

The Prime Minister yesterday announced a seven-member task force to report on ways for strengthening the support services of the parliament. We heartily welcome it.

Is it enough for a government to be adequately responsive to articulated needs of the society or sections thereof? Most governments fail to address many issues that have long been a matter of anxieties and demands and sacrifices. But there can be needs of society and of governance — very urgent and important ones — that the masses at large do not know of much or care about. And most governments ignore such unfelt and undemanded necessities of governance. The present governmental leadership, it seems, is proving that they are not of that ilk. We are happy to notice that the Chief Whip and other senior members of the opposition have joined this Task Force. It is a very encouraging example of constructive cooperation in the midst of several examples to the contrary. The magnitude of the supportive mechanism for Parliament can be more ponderous than the massive and immortal creation of Louis Kahn itself.

To get a correct picture of the logistics that the parliament must be supported with and of how to muster that, the task force was a decision of a most enlightened kind.

To say it off the cuff, the Parliament must have a modern printing plant, a specialised as well as a general library of the first order, a modern communications centre, batteries upon batteries of computers with trained programmers and other required operators and mechanics and a full complement of secretarial staff catering to all the needs of the MPs.

We again congratulate the action with an anticipation of many more of such to come as also of an early report of the task force as well as its expeditious implementation.

Bedeavouring BTB

Authorities' recent removal of Shykh Seraj, an outstanding compere of a weekly TV programme on agriculture has once again underlined the murky, and motivated mode of operation of the state-owned electronic media. Even after taking into consideration the limitations and restrictions all government agencies are plagued with, one finds it abominably difficult to accept the extent of todayism Bangladesh Television indulges into any party or individual in the nave of state power.

There are very strong reasons to believe that this vital government agency brought its character of characterlessness into play by removing a popular presenter on very flimsy pretexts and in the most unacceptable manner.

The ultimate test of a TV compere is his ability and success in making a programme popular to the viewers and no one would deny the claim that Shykh Seraj who must still be wondering what hit him after this 'reward' from the authorities, had few peers on that count. He was solely instrumental for popularising a programme that has got more to do with country's economy with agriculture as its basis than the instinct for popular entertainment. Millions of TV viewers would readily vouchsafe that it was through his untiring efforts including the soft, simple and inspiring presentation that Seraj did a world of good to the prospect of an otherwise dull and drab programme. BTB officials' mindless and irrelevant comment tinged with a touch of Aeschylean wisdom that no one is indispensable made an unconvincing and unsavoury attempt at the denial of what Seraj has achieved over the years for and through the programme.

The excuse that agriculturists have been complaining against Seraj's running of the programme Mati O Manush does not quite hold water. If those unattributed agriculturists are so convinced about Seraj's alleged mishandling why did they remain silent for so long? Certainly, Mati O Manush was not born yesterday. And why the BTB officials have become so attentive to these overnight invisible grumblers?

Something is rotten at the core of the decision to remove Seraj as it has been in the case of almost every previous move within the four walls of BTB in all likelihood, it is the nasty influence of partisan politics which has led to Shykh Seraj's fall from grace. Let politics not play the role of a judge in performance. We have backpedalled long enough as a nation on account of petty partisanship. BTB, the worst centre for all shows of unscrupulous partisanship and government propaganda must immediately be shaken up for a semblance of transparency in its operation.

Arduous Assignment

Uncertainty at the administrative acme of Dhaka University caused by the resignation of the former VC Emajuddin Ahmed has been resolved with Azad Chowdhury assuming the rather dicey mantle of the Vice Chancellor. While felicitating him for getting elected to a post most university teachers dream of as a highlight in a rather static career of an academician, we would like to stress on the necessity of his remaining focused unfailingly to a particular aspect throughout his tenure. That feature of his operation as the chief executive of the university which calls for relentless vigilance is his neutrality. From the present atmosphere of Dhaka University prevailing for quite some time now, it can be observed without reservation that pursuing his professed goals with neutrality behaving the head of a university will be an extremely tough job. More so, because his political identity is probably more publicised than any of his successors.

The state of affairs in the educational arena across the country is not at all conducive to optimism. Yet we hope. We hope because quite a few developments, hitherto unwitnessed have taken place with a view to restoring normalcy in the fouled atmosphere of Dhaka University. We believe, the appointment of the new VC will be an abolic additive to that process of normalisation and amelioration.

Great People, Great Tasks

Mr Biswas' role during the 1971 independence war has been a major itch during his tenure. The President has made his point on the issue and it is only for the posterity to judge those.

HERE are people from different backgrounds, who perform 'great tasks'. Some never make to the newspaper headlines, some do. This write-up is to focus some of them.

Good luck President-elect Justice Shahabuddin Ahmed

President-elect Justice Shahabuddin Ahmed, a name that carries lot of respect, faces a daunting task ahead as he brings back honour and the spirit of the independence war to the seat of the head of state in about a week's time. He will succeed controversial President Abdur Rahman Biswas.

The nomination and election, unopposed, of Justice Shahabuddin was welcomed both at home and abroad. It is because of the man in the Prime Minister Sheikh Hasina deserves praise for the choice and our gratefulness to the president-elect for accepting the offer.

Mr Biswas' role during the 1971 independence war has been a major itch during his tenure. The President has made his point on the issue and it is only for the posterity to judge those. Just days before firing two senior army officers, both freedom fighters, and at a time when all politicians had accepted him as a 'neutral' person, he told a meeting of Rotary Club in May that he would sue those who had accused him of collaborating with the Pakistani army as such charges were false.

Let us leave that episode behind and begin anew with Justice Shahabuddin as our new president. I am sure there is none who would not cooperate with him as the main opposition Bangladesh Nationalist Party (BNP) won the elections that he organised in 1991.

My respected colleague Mr Haroon Habib was one of the two reporters from the official Bangladesh Sangbad Sangstha (BSS) news agency who were posted with Justice Shahabuddin during his tenure as the country's acting president. His book entitled 'Democratic Transition and Justice Shahabuddin' gives one a close view of the man president-elect is.

"Today I am happy, extremely happy," the press-shy president-elect told his colleagues when he finally returned to his post of

Bangladesh's Chief Justice after delays that irritated him.

That was an expression of a man who guided the nation out of autocracy in good faith, but was not spared of criticism by both the major political parties.

Besides restoring democracy, Justice Shahabuddin spiked the controversial Health Policy and Educational Institutional Ordinance of the Jatiya Party regime. Above all he repealed the press section of the hated (but loved by all politicians) Special Powers Act of 1974.

Haroon Bhai writes Justice Shahabuddin did not intervene in the running of the government by Begum Khaleda Zia despite being the head of state and government until the Constitution was amended for a return to the parliamentary system of government from a presidential one in August, 1991.

He remained patient when at one point the BNP and right-wing groups like the Freedom Party questioned his neutrality. He appealed in his speech to the Fifth Parliament's maiden session to quickly ensure his return to his old post. The value of national commitment is no less than that of Constitution as it is an expression of people's wishes," he said in desperation.

After remaining out of the limelight for a long time he met the press on July 23 after he was elected Bangladesh's new president at his modest Dhanmandi house in his usual carefree way. Justice Shahabuddin offered sweets to us and to his friends who came to congratulate him.

Of course, he was alert to the fact that there would be attempts to make him controversial or to strain relations with the Awami League government. He was repeatedly asked on Sheikh Hasina's 'government of national consensus.' Justice Shahabuddin carefully worded his reply: "It is not in the Constitution. There can be consensus on broad national issues, but I do not yet know what the government means by this concept."

His most striking remark made it clear that the man had no lust for power: "I accepted the job without any condition and

if there is a conflict between my conscience and (government) policies, then I will walk out," he said. "I gave my consent to become president as there is a parliamentary system of government, where my role will be titular and (also) to help continuation of the democratic process."

Justice Shahabuddin continued, "I have great faith in the people of Bangladesh. If they can be correctly led they can help build a strong and effective democratic system" which could flourish with the 'sincerity, tolerance and cooperation' of all political parties.

The nation looks forward to his 'coronation day' with the hope that he will be able to unite Bangladesh by bringing together all political parties and a very divided press, who will use the might of their pen

bered the horrible scene of two trains colliding there in January this year and rushed to his home, some 200 yards away, in Toragar village.

He picked up his paternal aunt's red petticoat and started waving it after returning to the track to alert the driver. He was successful. Many lives were saved. "I am very happy that my son could save so many lives. I do not want anything, just prayers that Allah help him earn more knowledge," said the hero's proud mother Rokeya Begum.

His father Abdul Matin works in a local saw mill and times have not been easy. His son's deed has also helped change his fortune after the Railway and many individuals or organisations presented him money. "Allah sent an angel to change our fate. Now we will

IN FOOL'S PARADISE?

by Nadeem Qadir

for national, not party interest. May Allah be with Justice Shahabuddin, a 'great man' in the eyes of Bangladeshis, as he embarks on this difficult task.

Abul Khair — the Boy Who Helped Save Thousand Lives

Several weeks back I had said that I will write about someone who was largely ignored by the press here and of course our leadership. He is nine-year-old Abul Khair who made to world newspapers, the Time and the Reader's Digest magazines.

It was his humane nature and instinct that helped save the lives of some 1,000 passengers travelling on a Bangladesh Railway express train on July 13 this year in Chandpur district's Hajiganj area. He repeatedly explained that he did what anyone else would have done "otherwise so many people would have been killed."

The young boy was responding to call of nature near railway bridge No. 33 that morning. As he collected snails for his ducks, he noticed a part of the rail track missing with the express train coming. He remem-

bered enough of everything," an overjoyed elder brother Rafiqul Islam said about the change of fortune.

Abul Khair was awarded and honoured by the Railway authorities describing his action as "sharp-witted" and a "matchless courage" and promised him a job with the state-run enterprise once he finished his school. Congratulations for that decision to the Railway.

The young boy was naturally very happy with all that and has been travelling across Bangladesh since then to participate in ceremonies to honour his 'heroic deed.' But our prime minister, communications minister or the home minister, who is from Chandpur, could not manage time to meet Abul Khair to tell him he also saved the new government from a major embarrassment and the country from a tragedy.

Rescuers by Human Instinct

We journalists normally reach the scene of an accident to write about its aftermath. But on September 14, I saw two things at the same time — the tragic derailment of an express

train near Dhaka's Uttara Model Town and human instinct to help people facing imminent death. Of course, there were deafening screams for help by the train passengers.

My mother slowly murmured in a puzzled voice, "Did the train go off the tracks? What has happened to the carriages at the back? I looked and found to my horror that five carriages were off the tracks and into a canal."

I informed my office of the tragedy. But in the meantime I was moved to see hundreds of people from nearby areas had converged there and doing their best to rescue those trapped in the derailed carriages. Some came with boats. "Please telephone the fire service as some are trapped under water that has entered the carriages," said one volunteer rescue worker.

I looked on wondering what has happened as men, women and children, some bleeding, made their way out of the carriages. Several pairs of hands stretched out from one window with screams for help. I am sure without the help of these volunteers, rescuers the death toll would have exceeded eight.

The usual messages of sympathy from national leaders for the families of the dead poured in, but we always fail to acknowledge the role of these volunteers. Let us pray the Railway authorities would be alert in avoiding such a tragedy in the future, but God forbid if there is one let everyone remember the volunteers who help save more lives than the government agencies.

A Few Words about a Traffic Constable

Traffic Constable Mohammad Mujibur Rahman (Co. No. 4465) is a well-known face to all those who pass through Uttara Model Town's Azampur crossing, not because he is a heavy-built mustached man, but because of his sense of responsibility. He stands out among many of his colleagues.

In the force since 1974, Mujibur is always strict in ensuring proper vehicle crossing and is often seen helping children, women and old people to cross the busy highway that leads to Tongi.

My joy is when I succeed in

keeping the traffic in control with rickshaws properly parked," he told this writer as he arrived to take over from his colleague at the start of his duty recently. The constable with five children also thinks about increasing road safety.

He blamed rash driving, untrained drivers and narrow roads, compared to increasing traffic on the streets, as the major causes for road accidents. He said rickshaws should be slowly withdrawn — not suddenly — to ease the situation. "They (rickshaw pullers) are poor people and so unless they have an alternative way to earn their living, they should be spared," Mujibur added.

I spoke with several other traffic constables and they all wanted more manpower, six-hour work time instead of eight and adequate health backup from the government for their arduous job. They suffer from weakness and dizziness because of smoke inhalation, jaundice, gastric ulcer and gout.

"I have nothing to ask for because residents of the area are very kind to me, how many people get that... but maybe it will be good to get support for my children's education," Mujibur said.

Communications Minister Anwar Hossain told a seminar on road safety September 23 that road fatality rate in Bangladesh is 58 people per 10,000 vehicles, which is 25 times higher than other developing countries. At least 3,000 people die annually in road accidents in Bangladesh.

Maybe, awarding men like Constable Mujibur and taking their opinion in such seminars would be more meaningful than steps taken from research works only.

We have to live despite frustrations and sorrows, but some people by their action are called 'great,' and they give us reasons to be proud as Bangladeshis as well as to live on.

Justice Shahabuddin, Abul Khair, Constable Mujibur and the volunteer rescuers are 'great people' in their own right. They are the people who have accomplished great tasks and some have more to do for Bangladesh in the coming days. Let us unite in one thought today: 'honour those who deserve it, whoever they are and whatever their background may be.'

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Independence of Judiciary from Executive — a Constitutional Obligation

by Advocate Asad Hossain Choudhury

It is quite reassuring to note here that the present Government, as we see, is proceeding to introduce the bill of independence and separation of the judiciary from the executive in fulfilment of one of the planks of the programmes as avowed in its policy-principles the other day and published in the mass media.

magistrate may enact tyrannical laws and execute them in a tyrannical manner since he is vested with all the power which he as legislator thinks proper to give himself... Were it (the judicial power) joined with the legislator, the life, liberty and property of the subject would be in the hands of arbitrary judges whose decisions would be regulated only by their own opinions and not by any fundamental principles of law from which though legislators may depart from, yet which the judges are bound to observe. Were it joined with the executive, this union might be an over balance of the legislature."

Now switching over to the context of Bangladesh, we find that the independence and separation of the judiciary was secured through Art 115 which originally reads: (1) Appointments of persons to offices in the judicial service or as magistrates exercising judicial functions shall be made by the President (a) in the case of district judges, on the recommendation of the Supreme Court; and (b) in the case of any other person, in accordance with the rules made by the President in that behalf after consulting the appropriate Public Service Commission and the Supreme Court; and further by Art 116 which originally reads: The control (including the power of posting, promotion and grant of leave) and discipline of persons employed in the judicial service and magistrates exercising judicial functions shall vest in the Supreme Court. The original context and the content of the provisions of the Constitution of Bangladesh as it stood in 1972 were at bottom good, congenial and acceptable and as such delivered the goods to the people of Bangladesh. But later developments of those provisions have been far from satisfactory consequent upon the surgery done on them being prompted by the fear for the limits to the power of the executive government.

In passing reference, it is to

be mentioned here that the age-old question and demand for the independence and separation of judiciary has in fact been for the independence of what is called 'subordinate judiciary' from the executive organ of the state. From the Government of India Act, 1935 to the Bangladesh Constitution of 1972 we travelled through many vicissitudes to eventually provide in the Constitution of Bangladesh of 1972, as it was originally enacted, a real and effective guarantee for the independence and separation of the subordinate judiciary. But, unfortunately standing at the threshold of a new century their existing position has become a matter of grave national concern. The term 'subordinate court' is part of the colonial heritage which has intended to mean and signify that these courts were subordinate to the High Court exercising appellate, revisional and inherent jurisdiction as well as the power of superintendence and control over all these courts. Our Constitution has retained the terminology 'Subordinate Court' in Part VI, Chapter II of the Constitution as well as in some other substantive provisions.

It has already been mentioned that the Constitution of 1972, as it stood originally, provided for a more real, effective and comprehensive guarantee of the independence and separation of the subordinate judiciary. Comparatively speaking, these guarantees were greater than have hitherto existed or at present provided in any of the Constitutions in the sub-continent. The first and foremost consideration of judicial independence is that a judge should be able to decide without fear or favour, on purely objective and just considerations. By definition, judicial function cannot be compromised without independence.

As far back as in 1934 the Joint Select Committee of the British Parliament on Indian Constitutional Reform had this

to say: "We have been greatly impressed by the mischief which have resulted elsewhere from a system under which the promotion from grade to grade in a judicial hierarchy is in the hands of a Minister exposed to pressure from members of a popularly elected Legislature. Nothing is more likely to sap the independence of a magistrate than the knowledge that his career depends upon the favour of a Minister, and recent examples... have shown very clearly the pressure which may be exerted upon a magistracy thus situated by men who are known, or believed, to have the means of bringing influence to bear upon a Minister. It is the Subordinate Judiciary in India who are brought most closely into contact with the people, and it is no less important, perhaps indeed even more important, that their independence should be placed beyond question than in the case of the superior Judges (Report, para 337). As a result, when the Government of India Act, 1935 was passed, certain safeguards were enacted in respect of the District Judges and certain other persons in the judicial service."

As has been noted above, through the years we ultimately took a giant step in 1972 in providing full and effective independence and separation. But by now, the retrograde steps have been such that, ironically, even the little guarantees and separation provided under the Government of India Act, 1935 were more than what the present provisions of Articles 115 and 116 of the Constitution of Bangladesh provide. It is in place to mention here that earlier provisions in this context were in conformity with Art 22 which incorporated the fundamental principle of state policy of separation of the judiciary from the executive. Art 22 simply provides that there shall be separate judicial service free from the executive control (Chandra Mohan v UP AIR 1966 Sc 1987, 1993). But the Fourth

Amendment of the Constitution in 1975 pushed the matter in the opposite direction by providing further control of the subordinate judiciary by the executive. As a result of the amendment of Art 115, appointments of persons to offices in the judicial service or as magistrates exercising judicial functions shall be made by the president in accordance with rules made by him in that behalf. Then again Art 116 reads: The control (including the power of posting, promotion and grant of leave) and discipline of persons employed in the judicial service and magistrates exercising judicial functions shall vest in the president and shall be exercised by him in consultation with the Supreme Court.

Art 116 was also amended to vest the control of subordinate judiciary officers and magistrates with the President in place of the Supreme Court. After placing the subordinate judiciary under much greater control of the executive, the Fourth Amendment added a new Art. 116A. By the indication of the amendments, the consultation with the Supreme Court is mandatory. Therefore any posting and promotion of, and disciplinary action against judicial officers and magistrates exercising judicial functions without consultation with the Supreme Court will be void (Chandra Mohan v UP AIR 1966 Sc 1987, 1993). A comparison between Art 107 and Art 116 shows that the Supreme Court as referred to in Art 116 means all the judges of both divisions of the Supreme Court. The consultation under Art 116 does not relate to regulation of the practice and procedure of the Supreme Court and as such the function of consultation cannot be delegated to a smaller body of the judges of the Supreme Court by making rule under Art 107 or otherwise. The consultation with the Supreme Court must be a real and effective one and the opinion of the Supreme Court must be given full weight. It is not sufficient that the Supreme Court has given its views in the matter and the government is posted with all the facts. Consultation is not complete or effective before the parties there to make their respective views known to the other and discuss and examine the relative merits of their views. If one party makes a proposal to the other who has a counter proposal in his mind which is not communicated to the proposer, the direction to give effect to the proposal without anything more, cannot be said to have been done after consultation.

In the situation as obtaining now, the subordinate judiciary suffers from the sense of insecurity. So far as the control and discipline of the persons in judicial service and of magistrates exercising judicial functions are concerned, the power vests in the President who exer-

cises it in consultation with the Supreme Court and of course with advice from the Prime Minister, which for all practical purposes in turn means the advice of the Law Ministry. The resultant effect of our constitutional amendment can be guessed and assessed from the words of D Conard (supra): "The consequences of the removal of such guarantees have been disastrous. The subordinate judiciary has become or is at least widely believed to have become subservient to the executive and amenable to pressures and inducements from politically influential people. There have been complaints from the Bar that judges were even instructed on decisions in particular cases, sometimes verbally, sometimes by circulars or by briefings in the Law Ministry. Telephones were supposedly installed in order to receive ominous calls from influential quarters. Some reports are of older date and it is hard to assess to what extent they reflect current practice. But the existence of the executive control in itself is a standing invitation to abuse. Equally consequential, it is commonly assumed that abuse is rampant. Judges on their part complain of insecurity and exposure to pressures from powerful interests, even in specific cases pending."

Once the integrity of the judiciary and their self-respect is injured by political pressures, there is bound to be less resilience against temptation of material gain. Furthermore, in a society with large-scale state intervention in the economy, these two kinds of illicit influences are bound to overlap. It would be naive, indeed, to assume that political influences would be limited to strictly politically sensitive matters, and would not also operate in commercial and business cases often involving substantial values. This brings out the relevance of the issue for private economic enterprise: "a citizen calculating the economic risks including the risks of eventual court litigation cannot reasonably be expected to place reliance on a judiciary so overtly vulnerable to official influences and to official displeasure and likewise habitually open to unofficial inducements." As a matter of fact, the executives see in it a limitation on their authority and the politicians a limitation on their political authority. This pernicious mental attitude has become the undoing for the nation. That is the reason why the bill did not see the light of the day till date. It is quite reassuring to note here that the present Government, as we see, is proceeding to introduce the bill of independence and separation of the judiciary from the executive in fulfilment of one of the planks of the programmes as avowed in its policy-principles the other day and published in the mass media. Implementation of this policy principle means delivering the goods to the people through fulfilment of the provision of the Fundamental Principles of State Policy as contained in Art 22.

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To the Editor

Brig. Jamiluddin Ahmed

Sir, I want to pay tribute to the memory of Brig. Jamiluddin Ahmed, Chief of Security to the President whose sacrifice should be remembered by all patriotic people. In the morning of 15 August, 1975 he came out of his home to honour the oath he took as an officer.

His friends having held responsible positions denied their solemn oath that they took when assuming office, when heinous acts were hatched by the forces of mass feathery. Oath to be remembered: I will go whenever may be ordered by land, air or sea and obey all commands of any offi-

cer set over me even to the peril of my life.

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Rainy days

Sir, It has been raining persistently for the past few days. Causing much difficulties to school-going children and office-goers, particularly to those without the service of cars. Rain has its good and bad effects but that is not the point I am stressing here. Sadly, persistent rainy days seriously cause inconvenience to the school-going children. School kids somehow

or the other have to reach school on time even on such days!

Well, I guess, life has to go on but schools must make some arrangements for the kids on persistent rainy days. Attendance on such days should be relaxed or made optional. Students failing to come for class tests during such days should be allowed to sit some time later.

Schools should take into consideration the enormous inconvenience, for instance, timely availability of transports, water-logging and many other difficulties before giving a cross-mark on the attendance.

K Vigar Motiuddin Dhaka

"Enchiridion"

Sir, If you read the Enchiridion column of Mr Waliur Rahman, you will surely understand what is meant by the term partisanship. Mr Rahman does never see any fault or flaw in the role of the party he supports but he always blames the other party for which he has reservations, god knows why, for all the evils. We think the learned columnists should enlighten us with their knowledge and views in an impartial manner.

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