

## Let's Get the Details

Prime Minister Sheikh Hasina's pronouncement to continue with the Special Powers Act has surprised us. We are disappointed, too. The reason cited by her for this stunning decision reads like this: since all the governments following the enactment of the SPA in 1975 by an Awami League government deemed it as an essential law to run the state let it continue.

Most people who pin hopes on her government to further liberalise the national polity and governance with a principled plank she has basically won the election on, fail to understand why she should appear to be placing expediency above a democratic tenet, something which the preceding governments did and were discredited for. Her party, it must be remembered, won the last February election on the crest of a healthy and determined public craving for a change. And, in partial fulfilment of this popular urge she has already set in motion the framing of a bill to make the judiciary independent from the executive as a cornerstone for institutional democratisation of the system.

The decision to keep the Special Powers Act in the statutes book sounds like an anathema particularly when the government's professed intention and some initial action seem directed manifestly towards establishment of the rule of law in the country. Rule of law, needless to say, is central to democratic governance. This is a reasonably performing government that is believed to have begun well and need not be unduly apprehensive of circumstances as grave perhaps as calling for application of such an exigency-oriented law.

Enough legal instruments are in the hands of the government to checkmate any serious threats to public or civic order and to the economic life of our people. There is no need for SPA as such.

Since, however, the Prime Minister has decided in favour of its continuity we urge her now to make sure that: (a) it will remain in force for a limited period; (b) its application will be constantly monitored; and (c) her government must guard against its abuse in any form, even unwittingly, especially so far as the opposition goes.

Given the seriousness of the matter, may we implore her to publicly explain in a greater detail why she had to decide to continue with the Special Powers Act.

## Fair Deal to Examinees

Leakage of question papers during various examinations has almost become a rule rather than an exception. Copying and adoption of other unfair means in examinations — involving students, guardians and even teachers — further emphasise the rot in the entire system. Today it is a challenge before our society and our educational system how not to succumb to the temptation of illegal means for easy success in exams and every other areas of life. Given the chance for such short-cut success, it can be said without any fear of being contested, that few will resist the temptation. Leakage of question papers is part of a general pattern of things. This, however, does, in no way, makes the offence any lighter.

This time the leakage of English questions — of both first and second papers — will have a greater fall-out because it is for the first time that the SSC exams are being held with the same sets of question papers. Although the board authorities have already postponed the English second paper examination, that of the first paper was held amidst reports of the question paper having changed hands for Tk 200 to Tk 300 in different parts of the country before the exam took place. Now the point is why didn't the authorities promptly act when newspapers reported leakage of the first paper questions. Will they now cancel the first paper exam? We hope they do.

Now the big question is: are we ready to tackle the problem once and for all? A three-member probe committee formed to find out where things went wrong might point their accusing finger at the right place. But can we also expect that the culprits will be given exemplary punishment? Leakage of question paper cannot be possible without the involvement of employees of the boards, printing press or even perhaps some teachers who receive question papers or have set them. Is it rather difficult to identify and plug these few holes. At all such points confidentiality is a virtue as well as a condition of the job. There should be a provision for severe punishment for any breach of this. Whatever may be the cost, we must put in place a foolproof system for our public examinations.

## Mobile Salesmanship

While the eviction of hawkers from pavements and bazar-fronts has given rise to a sensitive socio-economic issue about their rehabilitative relocation, dividends have started coming off it in both expected and unexpected forms. In the first category are, of course, the easement to shop around and the avoidance of arc-like intrusion on thoroughfares mainly by three wheelers, both manual and mechanical. But what really comes as a windfall is the mobile and ingenious salesmanship being displayed by the evicted pavement squatters.

That vending merchandise does not have to be stereo-typical has been illustrated in a photograph flashed across our front-page yesterday. A moveable book-sale outlet seemed to be doing brisk business with its stack of books at a street-corner without the defective fear of a scowling eye of any policeman nearby. This kind of salesmanship is a welcome change because it has to do with reaching books to the nooks and crannies of the city. People's reading habit will grow thereby almost the same way that mobile libraries have been instrumental in popularising books in other countries but not so much, as yet, in ours regrettably.

On a general plane, we wouldn't be surprised to see a quantum leap in door-to-door sales in the aftermath of hawker evictions from way-sides.

## GANGES WATER-SHARING TREATY

# How Much is the Scope for Criticism or Opposition?

by Prof M Shah Alam

*During the 30 years duration, need for water on both the sides will definitely increase. Art. VIII of the Treaty only emphasises 'the need to cooperate with each other in finding solution to the long-term problem of augmenting the flows of the Ganga/Ganges during the dry season.'*

**M**ERITS of the December 1996 Ganges water sharing Treaty signed between Bangladesh and India are self-evident. Yet, the provisions of the Treaty have not been free from adverse criticism. Some of the criticism may not be without merit, to treat the Treaty as 'a very raw deal', detrimental to national interests, would require attempts other than those explained by universally accepted principles of treaty interpretation. Only such attempts, notably by Professor M Maniruzzaman Miah (Bhorer Kagoj of January 8, 1997 and The Daily Star of February 7, 1997), have necessitated the present write-up to analyse the provisions of the Treaty.

### 1977 Treaty and the 1996 Treaty

As for methodology, it would be appropriate to study the provisions of the present Treaty in comparison with the provisions of the 1977 water sharing Treaty which were extended, with minor variations and adjustments, under the Memorandum of Understanding in 1982 and again in 1985. It should be made clear that the terms and principles of the two Treaties are more or less the same. The apparent differences which exist in them do not have serious impact on sharing of the waters, which is the main issue in both the Treaties. Common features of the two Treaties are: (i) the quantum of waters agreed to be released by India to Bangladesh will be at Farakka (Art. I) i.e. waters available at Farakka would be shared by the two countries; (ii) period between January 1 and May 31 has been taken as general dry season, low availability of water during which time necessitates the sharing; (iii) sharing has been calculated on several 10-day periods within the above five month long dry season, in order to facilitate better quantification of waters and better monitoring of the sharing and, above all, to take into account the needs of the two sides in particular periods and (iv) the quantum of waters available at Farakka for sharing in any 10-day period have been calculated on the observations and records of the water flow of the past years (1948/1973 in case of 1977 Treaty and 1949-1996 Treaty), which may be subject to some variations depending on natural and other factors. Other factors may include artificial withdrawal of water for irrigation in the upstream of Farakka. As safeguards against these negative factors, there are saving clauses in both Treaties in the form of minimum guaranteed share for Bangladesh in case waters fall too short of fulfilling the treaty provisions.

One notable exception in the common basic features and principles of the two Treaties is that while the 1977 Treaty made calculations on 75% of the average availability of water at Farakka (for 25 years), 1996 Treaty has made the calculation on 'average availability of water (for 40 years). Calculating the availability as low as 75%, the 1977 Treaty has lawfully taken into account the factors of uncertainty and allowed the upper riparian more freedom to interfere with the flows of waters in the upstream of Farakka. On the other hand, average water supposed to be available under 1996 Treaty may not be sustainable for the reasons of the factors of uncertainty. Anyway, full average availability criteria has given more water for sharing than there actually may be available. Availability will to some extent depend on bonafide implementation of the 1977 Treaty as

It must be admitted that Bangladesh's water sharing position under the 1977 Treaty was slightly better than that under 1996 Treaty. But the 1977 Treaty could be signed only for five years. India was not prepared to extend the term of the Treaty, although it contained provisions for such extension on the basis of mutual consent of the parties. Instead, two Memorandums of Understanding, one in 1982 and the other in 1985, were signed which, subject to minor adjustments, provided for the same share of water as under the 1977 Treaty. Five more dry seasons were covered by these instruments.

Under the 1982 Memorandum, Bangladesh was obliged to concede that 1977 Treaty has not been proved appropriate for permanent and satisfactory resolution of the problem and that both the parties have to make sacrifices due to insufficient flow of water at Farakka. Moreover, a provision under 1977 Treaty stated that in case of lower availability of water at Farakka, Bangladesh must get a minimum 80% of her share as indicated in the schedule of 10-day periods was no more mentioned in the Memorandum of Understanding. In other words, the so called guarantee clause for Bangladesh was dropped. Exchange of letters which accompanied the 1977 Treaty as

supplements which specifically mentioned that the proposal of Bangladesh to construct water reservoirs in the upper reaches of the Ganges in Nepal was included in the proposals of both parties for a long-term augmentation of the Ganges flow, was no more remembered. However, provisions of the 1977 Treaty, first as treaty provisions and then as Memorandums, served Bangladesh's interests. Although, with the passage of time, India's position hardened, and it was not without adverse impact on the implementation of the water sharing provisions, Bangladesh was at least spared the worst consequences of India's arbitrariness in releasing water. After 1988, there was no treaty, no memorandum of understanding, India enjoyed full freedom (of course, not approved by norms of moral and customary international law) in releasing water at Farakka at her own will.

### Guarantee Clause

There was definitely a guarantee clause in the 1977 Treaty (Art. II/2), if we would like to call it a guarantee clause. As mentioned above, Bangladesh was assured of minimum 80% of her share in any 10-day period. It was a good provision. But we must remember that water was calculated on 75% of the average availability of water. From that lowly calculated quantity, 80% was guaranteed. We have reasons to believe (to be confirmed by relevant data), water flow at Farakka during the period of the Treaty never fell so low as to make the guarantee clause operational. Of course, it does not undermine the presence of the guarantee clause. On the contrary, the guaranteed clause must have alerted India about the consequences of withdrawal of water in the upper reaches of the Ganges in Northern India, so that such withdrawals do not pose problem for the implementation of the Treaty.

There is also a Guarantee clause in the 1996 Treaty. Let us quote the entire Art. XI. 'For the period of this Treaty, in the absence of mutual agreement on adjustments following reviews as mentioned in Article X, India shall release downstream of Farakka Barrage, water at a rate not less than 90% (ninety percent) of Bangladesh's share according to the formula referred to in Article II, until such time as mutually agreed flows are decided upon.' Provisions are clear enough to dispel contention that the 1996 Treaty does not contain any guarantee clause. The difference of this provision from that of the 1977 Treaty is that under 1977 Treaty, it is a part of Art. II which directly deals with sharing of water on the basis of a 10-day schedule. Under the 1996 Treaty, the guarantee provision figures in a separate Article and under a stipulation that 90% share will continue to be guaranteed until mutually agreed flows are decided upon.

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## Scourge of Modern Living

by Anindita Sarkar



Imagine yourself at the computer. You have a deadline to meet and you have just about completed working on a series of figures on your spreadsheet but there are some niggling doubts about certain numbers and would want to cross check. The well-known idiom about a job done well is playing in your mind, when suddenly the lights go off. You sit there stunned. You pull out your hair, curse your luck, you curse the authorities — do everything just short of committing suicide but that's about it. You are a helpless victim of a phenomenon called load-shedding.

Load-shedding has assumed alarming proportions these days. And judging from all the information that is being circulated, the problem won't be solved before June. The worst suspicion however is that it's there to stay. The greatest confirmation of this comes from nowhere other than the recent announcement of tax-free import of generators into the country.

One of the virtues of the 1996 Treaty is that its duration is 30 years. We have mentioned above, so far as Bangladesh's share of water is concerned, the 1977 Treaty provided certain advantage. But India was not ready to sign such a treaty for a long duration. Taking advantage of weaker norms of international river law and thinner voices raised by the then Pakistan Government against Farakka project, India constructed the barrage and made it a fait accompli, and now enjoys the benefit of stronger negotiating position. Under the circumstances, Bangladesh was hard put to achieve more than what she has achieved under the 1996 Treaty. But the Treaty has reasonably well protected Bangladesh's short-term and long-term interests. Bangladesh's share of water and the duration of the Treaty are positive constants. This gives Bangladesh a long-term perspective enabling her to devise a definite water policy, to plan water resource development and to invite donor agencies to finance long-term water development projects.

During the 30 years duration, need for water on both the sides will definitely increase. Art. VIII of the Treaty only emphasises 'the need to cooperate with each other in finding solution to the long-term problem of augmenting the flows of the Ganga/Ganges during the dry season.'

## OPINION

### Medical Test of Seema Rape Case

It is rare to see the medical report of any rape case such as Seema's. Thanks to the media that began to take trouble to collect the postmortem reports and bring them to the public.

Newspapers on 20 February published the report which said, 'the Chittagong CID report was submitted to the court on Jan 30, eight days before the mysterious death of Seema in "safe custody" of Chittagong jail.' It also stated that the CID report identified the garment worker Seema as a "floating prostitute" in the chargesheet. Two questions disturbed my mind while I was going through the whole report. First, Seema was a garment worker who worked in a particular garment factory. The question is, did the CID investigator team go to that factory to check her duty record to find out, how long and how many years she worked there? Whether the factory abides by the factory law of the country, where it is stated that no woman can work after dusk and whether Seema and the other workers got any appointment letter or transport facility especially at night? How did the CID police identify her as "prostitute"? By what evidence? Had it been 20 years ago, I could be accepted, when the whole conception of garment workers in the minds of the rural illiterate people was that all those who went to work in the garment industry were "women". But how can today the CID call a garment worker prostitute? Is this just because they/she travels at night? Is it their/her fault?

Secondly, if Seema was a "floating prostitute", why did the police rape her in the police safe custody and why were not the rapist policemen identified in the chargesheet as such? (actually there is no gender specified for the word "prostitute" but this word is being used only for women because it is the man who makes a woman "prostitute"). What can a man be called when he uses many women besides his wife (if he is married)? Who authorised the CID investigation team to call Seema a "prostitute"?

It is expected from the police (any department may be) that they should deal with people with due respect for everyone and not dishonour the persons whoever it may be, living or dead, man or woman.

Here I would like to request the respective authorities to hand over any such cases (women, children, etc) to women's or legal aid or any other non-governmental organisation whenever there is in the locality instead of keeping them in the hands of the police (in recent years many police rape cases are being published in the newspapers which has destroyed the confidence of the people in them). But it would be preferable if the victim is asked with whom she would feel safe to stay, would be the best: especially the parents would be the most safe for the underaged girls as custodians. Hope the government will give special attention in this matter especially the Home Ministry and the IGP.

Regarding Seema, the CID report further stated that as per medical report she was raped sometime between 7th and 13th October and those four accused policemen could also be accused for rape case. I dare to ask the CID investigation team why they did not identify those policemen as "prostitute" but her so-called husband Hafiz. The question here is, did the investigators investigate the organs of those suspected men who raped Seema? What kind of proof did the investigators expect? The chargesheet also mentioned that Seema was found lying unconscious in the room of the OC and she told the attending doctor of the CMCH and later the OC that she had been raped by the policemen. After getting so proof and after Seema gave such statement what kind of proof did the CID wait for?

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Regarding Costa Hotline Bangladesh GPO Box 5, Dhaka-1000

does it mean? What are the implications?

Before me is a book, the Penguin Book of Lies, ed. P. Kerr. I am re-reading an article by G. Orwell. 'The party is always right: the prevention of literature.'

Orwell said politicians use 'imaginary facts' as same refer to 'real facts' or 'real truth'.

The point at issue is the new virginial sensitivity after 21 years of renunciation. Honey moon period of righteousness — naturally, mother says 'my child can do no wrong.' AL: 'AL can do no wrong.' Hasina is economical with her promise.

I must go back to Orwell.

AZ Dhaka

### Sorry, it should be "Srikant"

Sir, Kindly refer to my opinion 'Prospects of Bangladesh Cricket' published on 13-03-1997 wherein in the first column after the words Zahir Abbas and Srikant has been written