

The Daily Star

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Judicial Independence

Of the three organs of state — executive, legislature and judiciary — the first two are structurally and functionally autonomous enjoying a clear-cut separation of powers between them. But ironically it is the third pillar of state, namely, the judiciary which remains to be delinked from the executive despite being the arbiter of justice and protector of public interest in the ultimate analysis. Apart from the constitutional requirement that we have a judiciary free from executive fetters and the reaffirmation of the same principle through a resurgent popular movement against autocracy in 1990, people's expectation from the judiciary has grown manifold in recent years. Independence of the judiciary is no longer a subject-matter of armchair discussion in academic circles, it is in fact a crying need of the time and a potential popular demand that is about to be irrepressible regardless of the politicians' obsessions with other agenda.

Why is it that people's appetite for judicial activism and intervention is on the increase needing to be whetted? The answer is not far to seek. Their basic rights and fundamental interests have been under threat from different directions. There are torture and death under police custody and the society is assurred by a whole range of terrorist activities. Extortionism, abduction, rape, murder, repression of women and children have become the order of the day as the confrontational state of politics, in-fights and local slanging matches send law enforcement or the rule of law whirring into a black hole of retreat.

In circumstances like these people automatically turn to judiciary for relief, justice and fairplay. It is heartening to note that public interest litigation is coming into vogue slowly but steadily. We are looking forward to an acceleration of this positive trend. The highest judiciary of the country in several cases brought before them have delivered rulings that amply reflected their robust concern for civic rights and public interest. Political and administrative actions have come under scrutiny, including matters relating to the application of SPA.

As a matter of fact, the Supreme Court can be credited with having upheld the highest values of justice and fairplay in test-case situations. But to ensure a well-rounded positive performance by the entire judicial system of the country, the lower judiciary, which handles most of the litigations, must necessarily be brought under the administrative control of the Supreme Court. At the same time the Supreme Court has to be spared the predicament of knocking the doors of three ministries just to buy a type-writer or appoint a peon as the honourable Chief Justice had mentioned at a reception accorded to him by the Bar members sometime ago.

Politicalisation has left no institution unscratched in Bangladesh. There is a question in the public mind that this may have led to miscarriage of justice in the subordinate courts at times. We expect the judiciary to be wholly seen as completely free from corruption in all forms. All these can be effectively ensured when the subordinate judiciary will be placed under the direct control of the Supreme Court.

The lawyers' community has not been quite as enthusiastic a votary of independent judiciary as we had expected them to be. They can wield their influence in vanguard the cause better than they are doing now. We can assure them that there will be no dearth of support from the media and the civil society at large behind them if they did so. For the government's part, it cannot dither on its political commitment anymore to separate the judiciary from the executive. This one act will have a dramatic impact on the quality of democracy in the country.

Friday Mailbox

Telephone : How it operates!

Sir, I have been subscribing Telephone No. 9112139 since 1957 when I paid the demand note money. I keep my telephone locked but it gets unlocked frequently and automatically the telephone goes dead and becomes alive after few hours.

On 22nd June I changed the code from "1111" to "4321" around 8pm but I couldn't unlock it from the morning of 23rd June 1999. I had been to T&T building with a letter. The receptionist at the main gate at first refused to receive the letter saying that I had to give the demand note and receipts of payment. After much persuasion he kept the letter of complaint.

I tried to contact the Divisional Engineer (Digital), Sher-e-Bangla Nagar over phone four times but he was not available. On 24th June 1999 I wrote another letter requesting him to let me know how my telephone goes dead and becomes automatically alive and how it frequently gets unlocked and why I cannot unlock it after changing the code number — but received no reply.

On 26th June I got him over phone at his residence and requested him to unlock my telephone but he could not on the plea of holiday.

The contract was signed by me and the Divisional Engineer in 1957 and naturally the demand note issued by his office and the contract document are available in his office.

My house was looted with all my possessions including the demand note and was damaged during the War of Liberation. Besides it is unnecessary for the purpose of unlocking my telephone. This is a *modus operandi* to harass subscribers to extort money as some employees suggested.

My man was told to give an affidavit about the loss of my demand note. There cannot be any rule asking a man to produce a document while, genuine copies of which are available in the office concerned.

In the circumstances I request the authority concerned to investigate into the matter and punish the officers concerned for harassing me.

Yar Ahmed
Advocate, Supreme Court
9/14, Iqbal Road, Dhaka-1207

"Lead-free fuel...."

Sir, The DS carried a news "Lead-free fuel not before Aug" on June 27, 1999. The delay in arrival of lead-free fuel is not so much of a concern for us who had, for decades, been using fuel with high lead content. The more interesting aspect in the news is the reference to the way bids had changed hand. The report does not mention of any penalty imposed on the firm who was offered the contract initially and failed to honour the contract. And, this raises questions in the readers' mind as to whether the rules of the game are prone to unfair practices. Let me elaborate my concerns, so that the appropriate authority may respond (if they do so) in the specific context of import contract awarded by the BPC.

The lowest bidder had offered 132.75 million dollars earlier, and information on all offers were possibly known to all parties when the tenders were opened. In the absence of any penalty on account of failure to honour the initial offer, there will be scope for two firms to collude, and gain at the cost of the agency inviting bids (in this case, the Bangladesh Petroleum Corporation). For example, the second lowest bidder, with an offer of 136.583 million dollars, may find it lucrative to share a part of the margin (which is the difference between the two offers — 3.833 million dollars) with the lowest bidder in return of the latter's

Towards a Solution of Indo-Pakistan Conflict!

The principal interested party, the Kashmiris have not demonstrated any desire to alter their fate one way or another. It is in the acceptance of this ground reality that there lies a solution to the long standing Indo-Pakistan conflict.



The Horizon This Week

Arshad-uz Zaman

by Pakistan into Kashmir and India, without hesitation, struck back all across Pakistan. This general Indo-Pakistan war resulted in a stalemate and ended in a ceasefire brokered by the Soviet Union in Tashkent.

In the Indo-Pakistan war of 1971, which saw the birth of Bangladesh, Kashmir did not figure as a bone of contention. The war ended in a humiliating defeat of Pakistan and surrender of 93,000 Pakistani troops to the joint command of Bangladesh and India at the Suhrawardy Uddayan in Dhaka. An agreement was signed between India and Pakistan at Simla in India, which effectively removed Kashmir as an international question and established the Indian contention that it was a bilateral matter to be resolved by them without outside interference. Most importantly India refused to acknowledge any UN role, which was the case following the war in 1947.

The ongoing conflict between India and Pakistan has resemblance with the events prior to the war in 1965. Indian Prime Minister Jawaharlal Nehru had died in 1964 and Pakistani President Field Marshal Ayub Khan had extended an olive branch to India. I write this from personal memory as I was the Public Relations Officer of President Ayub Khan at that

time. As President Ayub Khan was attempting to build bridges with India his intelligence operators with the tacit blessing of his ambitious Foreign Minister Zulfiquar Ali Bhutto, were plotting to drag him into war with India. In 1965 that war broke out and except for the heavy loss in life and property, no side gained anything.

The war of 1971 was the most serious reverse for Pakistan. She lost East Pakistan, had a humiliating surrender of 93,000 troops to the Indo-Bangladesh forces and in order to recover the forces which included generals and officers of all ranks, she signed on the dotted line in Simla. Through that agreement she accepted to remove Kashmir from international agenda.

The latest outburst in Kargil, in the inhospitable mountains of Kashmir, is an attempt to put back Kashmir on the international agenda. Interestingly like in 1965, Kargil is preceded by joyous bus rides between the leaders of

India and Pakistan to their respective countries. It is further cemented by the signing of Lahore declaration and the release of forces of amity and concord.

Fortunately the conflict so far has remained along the Line of Control between India and Pakistan in Kashmir. Thus the conflict has remained strictly localised and has not assumed the proportion of an all out Indo-Pakistan conflict. Such an eventuality is frightening to conceive for both who are the newest members of the nuclear club.

The Indian contention is that the Pakistani regular army has entrenched itself in some parts of the high Himalayan mountains in Kashmir and has been trying to snap communication between Srinagar, the capital of Kashmir, and the difficult mountain passes. India has launched an all out war with artillery and aerial bombardment to dislodge the Pakistani intruders. Pakistan has not disputed that the

operation is going on inside the Indian side of Kashmir but has characterized it as an indigenous uprising against Indian occupation. The world opinion appears to support the view of India and has called upon Pakistan to withdraw the guerrillas from the Indian side of the Line of Control.

Since the Simla agreement of 1972, India has adamantly refused any third party mediation in her bilateral dispute with Pakistan over Kashmir. By these recent developments the sole superpower US has been sufficiently alarmed to despatch Gen. Zinni, a very high ranking US general along with a high ranking State Department official to Pakistan, who have held talks with Prime Minister Nawaz Sharif. They have also held talks with Indian Prime Minister Atal Behari Vajpeyi in New Delhi. The US appears to attempt to defuse tension by arranging the withdrawal of Pakistan-assisted forces from the Indian side of the Line of Control, that is return to status quo ante.

It is evident that for India to sit in negotiations with Pakistan a return to the situation before the outbreak of the Kargil crisis is a must. Pakistan Prime Minister Nawaz Sharif has been invited to visit Washington. He is currently visiting China in

order to bolster his position with Pakistan's only reliable friend on the international stage.

The role of China in this entire Kashmir conflict is worthy of serious analysis. China, the emerging big power, is continuously flexing its muscles on the world stage. We have seen this in Kosovo in the recent past. Although she does not throw her weight about, she makes her presence felt. The visits of Nawaz Sharif and an earlier visit by the Indian Foreign Minister to Beijing must be viewed in that light. In other words China wants to have her say on Kashmir, a territory next door.

As we have noted, mercifully the leaders of the two South Asian countries have demonstrated sufficient restraint in order not to escalate the conflict beyond the inhospitable mountains of the Himalayas into the plains of the Punjab. The truth of the matter is that after half a century of bickering and conflict, including two wars, it would be clear to all that it is not possible to alter the reality on the ground.

The principal interested party, the Kashmiris have not demonstrated any desire to alter their fate one way or another. It is in the acceptance of this ground reality that there lies a solution to the long standing Indo-Pakistan conflict.

The bus ride had opened a route of hope and promise and this is the road to amity and concord away from sterile bitterness and conflict.

be merely electoral. It must be comprehensive. The Left must, of course, contribute to it electorally, but not uncritically.

Defeating the BJP is crucial in the short run. But that cannot be the Left's long-term agenda. Short-termism, and suppression of long-term goals, will prove counter-productive.

The Left's appeal and importance lies not just in principled secularism. It is our only political force that is committed in an abiding, honest way to the underprivileged. The Left has struggled to humanise this society, empower the marginalised, and enrich our democracy, while fighting our retrograde capitalism.

It must not dilute this agenda. Nor can it allow the now-visible cracks in Left unity to persist. The Left's greatest asset is its cadres. For them, its greatest attraction lies in its vision, integrity, idealism and sincerity.

The Indian Left's role is irreplaceable, invaluable. Even as a pressure group on Centrist parties, it has much to contribute. It is best placed to infuse clean, non-cynical inputs into politics. Even non-Leftists should welcome it.

The Left must enrich its vision and its programmatic perspectives by adapting to the realities of contemporary capitalism. It must uphold the holistic agenda of justice against today's social order based on class oppression, caste hierarchy and male supremacy.

If it drifts into short-termism and narrow alliance politics, the Left will have an uncertain future. If it broadens its vision and energises itself and its cadres, it has a world to win. It must choose soon.

Beyond Short-termism: The Left's Deep Dilemmas

Praful Bidwai writes from New Delhi

Defeating the BJP is the top priority. But an anti-communal mobilisation should not be merely electoral. It must be comprehensive. The Left must, of course, contribute to it electorally, but not uncritically. Defeating the BJP is crucial in the short run. But that cannot be the Left's long-term agenda. Short-termism, and suppression of long-term goals, will prove counter-productive.

stake in fomenting trouble. They believe India-Pakistan hostility is "systemic".

Chauvinists are driving both governments towards extended confrontation — with potentially disastrous nuclear consequences.

So when the Left warns against conflict escalation, it speaks sensibly. Regrettably, the same cannot be said of the Left's stance on electoral alliances.

Unlike the CPM, the CPI is ambivalent about Mr Sharad Pawar, and refuses to rule out an understanding with him in Maharashtra.

The CPM's Andhra unit favours an understanding with the rebel TDP of NTR's son Harikrishna. The CPI is reluctant to go along. In Bihar, the CPI is more inclined than the CPM to accommodate the CPI (ML-Liberation).

Equally important are the recent differences between the CPI and CPM, on the one hand, and the Forward Bloc and Revolutionary Socialist Party, on the other, over "equidistance" from the BJP and Congress, which threaten their common front.

The CPI's analysis raises many questions. Just how secular is Ms Jayalalitha? She aligned with the BJP in 1998 and

facilitated that party's entry into Tamil Nadu. In 1992, she endorsed the BJP-VHP's Ayodhya campaign and welcomed the *kar seva* at the National Integration Council.

Secondly, can these "secular" allies always be trusted to be categorically anti-communal? Are they opposed to the BJP to the point of subordinating their other interests?

Their record is ambivalent. Take Mr Chandrababu Naidu. At the crunch in March last year, he helped the BJP win the confidence vote.

Mr Mulayam Singh Yadav had actively fought the BJP in U.P. But last April, he sabotaged the formation of a non-BJP government. More significantly, Mr M. Karunamandhi is now allied with the BJP.

The short point is, though Centrist parties are not communal, they allow other calculations to overpower their secular drives. Third, should integrity and clean image be totally sacrificed to build a broad anti-BJP front? Defeat-

ing the BJP is supremely important. But shouldn't exceptions be made in glaring cases such as Ms Jayalalitha's, with her ugly record of corruption?

What is the likely impact of allying with her on the Left's image as our most incorruptible and principled force? and on its own cadres' morale?

If an AIADMK-Congress front emerges, the Left can support it — critically, conditionally — with the limited purpose of defeating the BJP. But it shouldn't take the initiative to forge it. Finally, how mutually compatible are such alliances?

In Tamil Nadu, the TMC opposes any front that includes Ms Jayalalitha.

That might put paid to a "straight fight" against the BJP-DMK. Similar problems are likely to arise in U.P. unless there is an alliance between the Congress and Bahujan Samaj Party — something the Left cannot bring about.

Defeating the BJP is the top priority. But an anti-communal mobilisation should not

The Perils of Enthusiasm

by A M M Abad

round glow of a candle is better than the beam of a flashlight, as the other view points are not ignored, and get equal consideration for considered decision in public interest. The general public thrives on diversity, and the multi-approach attitude invites openness. Go out and reach out, for public service; and not hanker for the VIP approach (very important personalised approach). Isms and styles are for internal adjustment and fine tuning, for providing better service to others.

These general tentative principles also apply in politics. The politics in our country appears to be styled on subjective and party-centred enthusiasm, stifling the flowering of other angles of approach and a disdain for others' point of view. Meditation is for self-improvement, not for creating a caste system (our system is better than yours).

In public service, the all-

quietly, on the basis of minimum use of energy, ignoring the drum. The craze for publicity is a modern fad — it is a materialistic trait for exploitation, personal gain and satisfaction.

The enthusiasm obtained through self-motivation is different from the one sought to be imposed, because the motivation factor is not addressed. Obscurity and indifference by others do not diminish the quality of an endeavour. The message can go out, but not dressed in designer outfit.

Enthusiasm tends to create a defensive mechanism and attitude, which is more belligerent than benevolent. Belief is not contagious, and cannot be imposed upon others. The divine discontent resides within all of us, and it is to be respected, even when it cannot be detected in a quiet and personalities in re-

treat.

The greatest backing from others comes from the voluntary support of an idea by others, and its consequent acceptance. The temptation is to place the ball in the others' courts, where credit is not due. It is a form of narcissism. The inward look may be developed, but the outer observation must not be dimmed. Public empathy cannot be diminished by others.

Public empathy cannot be commissionned, it has to click simultaneously from all sides.

Understanding and tolerance need additional tools for observation and analysis. Man is the noblest creature in the supreme creation, hence hatred and animosity have no place under the umbrella of universal brotherhood, whether confined within the border, or projected outside (reminds us of Mandela?). All are linked to the sole universal spirit, whether in na-

ture's jungle or in the concrete jungle.

The chair does not matter — it is the personality occupying the chair. Committees will resolve within vicious circles unless lifted through leadership of the right calibre, overcoming fissiparous dissipation. Leaders show how to remove the garbage, and to reduce the system loss. It is easier to work in a good system than to create one.

Confrontations do occur in life, as it does in developing politics. In the latter sphere it may be based on charisma, cultural traits, national policies, party objectives (or aberrations), or global strategies (compare US policies with that of a political party at the national level in another country). Variety is the spice of life, but the chilly content in the spices has to be controlled, to warm up the get-together.

OPINION

Mig 29 — a Fighting Teeth of the BAF

by Mumtaz Uddin Ahmed

An interesting editorial of The Daily Star of the 30th June 1999 indicating procedural flaw in the purchase agreement of the Mig 29 aircraft for the BAF. It is surprising that a prestigious English daily of our country should have come out with such an editorial, which only add to misgivings in the public mind.

The initial paragraph of the editorial appear to be in consonance with the fact that even for a small country there exists a need for a strong and modern defence capability subject to socio-economic priorities of that country. The bi-polar defence doctrine in the by-gone days was perhaps more suited to the need of the super-powers who possessed innumerable arsenals of mass destruction to contain their opposite numbers.