

HC's Judicious Observations

THE observations of the High Court on a writ petition challenging demolition of slums and eviction of dwellers thereof go down as a milestone in public interest adjudication at that high level of the country's judicial system. We welcome the verdict which comes in three parts: first, bustee demolition should not be thought of without getting a rehabilitation plan in place and also underway; secondly, to that end, the government should have a master plan ready and implement it in phases; and thirdly, the temporary stay order on eviction has been vacated.

But in light of the aforesaid observations of the HC it can be safely assumed that if the conditions referred to above were met it would not have been a 'demolition exercise' in the first place, which it looked like when the 'cart was put before the horse'. That is the editorial position we have consistently taken from day one; we were not being unique in having taken such a position either; because in point of fact prominent leaders of the civil society said just as much. That was the commonsensical, in fact, a self-evidently rational approach to take. When the question involved the lot of at least 2.5 million people it could not be subjected to a diatribe over the half-full or half-empty glass, rather it needed to be seen in a holistic manner that is at the same time benign and constructive.

The presence of several evicted slum dwellers on the HC premises and the squatting of some others near the residence of Dr Kamal Hossain, an advocate for the writ petitioners, were surely embarrassing incidents of the palpably induced kind, very queer in the essence. Small wonder therefore that the HC took such a serious note of these 'pin-pricks' and issued a directive to the Home Ministry for removing the squatters from those two places within 24 hours of the receipt of the order.

In the overall, it is imperative for the government now to deal with the issue on the premise that if they can rehabilitate some three million slum dwellers successfully then they would get that much closer to alleviating destitution and poverty in the country. They can use the NGO network as suggested by the HC. And when all this will have happened, the government would have to convince the people that not a parcel of the vacated lands will go to wrong hands.

Transport Strike Again

AUTOMOTIVE transportation has again come to a standstill in the northern region of the country. This time a 48-hour shutdown has been clamped in protest against the murder of three transport leaders. The North Bengal Regional Committee of Bangladesh Road Transport Workers' Federation (BRTWF) asked for the arrest and punishment of the killers within 15 days failing which they would go for an indefinite strike as they have now.

The scenario of road transport across the country has been extremely disturbing for the last year or so. We have had so many shutdowns for so many reasons that one loses the count. Only in the last week there was total disruption of transportation in the Chittagong region. The southern part of Bangladesh hardly ever escapes the wrath of transport workers. Only during the last week a transport strike paralysed the whole of greater Rangpur district, demanding punishment to the killers of their leaders.

In spite of all these stoppages and disruptions the transport ministry seems to be enjoying themselves sitting on the fence. We have, through these columns in the past, suggested ways and means to come out of this chronic problem. It is obvious that most of these workers' organisations are headed by ruling party supporters; yet it is interesting to note that when it comes to self-interest they are behaving in a clannish manner.

But, as always, the sufferers are ordinary people, especially the travelling public. In such a situation prices of essentials go up and people face untold miseries. Will the transport ministry officials warm up a bit and solve the problem in the interest of better governance?

Literacy for Working Children

THE government's decision to launch a Special Education Programme from January 2000 for the urban working children through the Primary and Mass Education Division could not have come a day earlier. At a time when earning wages for the family, or for themselves, has become an impelling necessity — never mind this telling upon their health — and therefore taking a precarious toll on our children, this initiative comes as a ray of hope for them. Arrangements have been made to organise a two-year 'simple literacy' course under Non-formal Education Project-3. If the project works the way it has been designed to, then there is a possibility for some change in their lot who are languishing now, both in the formal and informal sectors, as child workers.

Reportedly, the timings of their schooling are to be made flexible to enable them to carry on with their jobs. Outcome of this scheme is expected to be positive. Children would get the opportunity for education, and, at the same time, it would raise the quality of labour and enable them to get higher wages, once they complete schooling.

The literacy course to our mind, would be more meaningful and pragmatic if it is enlarged to include functional literacy and vocational training. The children will then gain immensely from the engagement.

Freedom of Thought, Conscience, Speech and Expression

Rights and Responsibilities of Legislators

by Nurul Kabir

An ideal answer to the problem of desertion by MPs for material benefits is to go for a 'preventive measure'. ... The parties have to project ideological differences, if there is any, with political opponents, on the one hand, and putting an end to selling of party nominations to those having no ideological commitment, on the other.

misdeeds. Khaleda Zia, Sheikh Hasina and others concerned also had their justifications for depriving the legislators of their fundamental rights.

The argument they had put forth was that incorporation of such a provision, preventing any MP from deserting a political party, would ensure political stability. In a bid to philosophically justify the action, they said that voters in a parliamentary polls primarily choose a political party and its programme. So an MP should not be allowed to desert a party on whose ticket s/he has been voted to parliament.

The apprehension of desertion by MPs has realistic bases, especially when there is no major difference, physical or philosophical, between the mainstream parties. Besides, tickets are almost indiscriminately provided to many who have no commitment to any particular ideology. So, when an MP deserts a party for another, s/he only changes a political camp. Under this circumstance, the parliamentary polls virtually appears to many rich people with no political background and ideology as a means of earning social 'prestige' by 'investing' money on certain political party and electorate. The consequence is obvious — a successful candidate with no political ideology would avail of the first opportunity to desert the original party, if that provides the MP a scope for recovering his investment with profit.

Aware of the situation, top politicians had realised that the opportunity for changing party by MPs would create scope for frequent change in the number game of parliamentary politics that would eventually lead to frequent change of government. So they incorporated the 'curative' provision. But in doing so, the politicians concerned have ignored a very important aspect involved with the issue: the MPs' moral responsibilities to their electorates.

It is true that the main responsibility of an MP, as per Article 65 of the Constitution, is to enact, repeal or amend laws. The Article says that the 'legislative powers of the Republic shall be vested in the Parliament'. Besides, the Parliament will enjoy the right to 'delegate to any person or authority, by Act of Parliament, power to make orders, rules, regulations, by-laws or other instruments having legislative effect'.

The country's Jatiya Sangsad, under its Rules of Procedure, holds discussions on various issues of national, international as well as local interests. In many cases, there are rules under which the House is to adopt various resolutions.

sometimes relating to development issues, by votes. These are sometimes very important when the MPs are to look after the development of their respective constituencies, in absence of strong local government bodies with adequate power to chalk out local development plans and right to mobilise money to implement them. Article 70 has snatched the rights of the MPs to speak or vote freely on such issues too.

In the attempt to prevent desertion, the parties have eventually ceded the lawmakers whatever limited rights to freedom of thought and conscience or freedom of speech and expression the Constitution has guaranteed them as ordinary citizens.

Before we put forward arguments as to how the Article 70 has denied the legislators certain rights which ordinary citizens are entitled to, it is necessary to see as to how the framers of the Constitution have squeezed the very concept of freedom of thought and conscience of citizens.

None would perhaps disagree that citizens' freedom of thought and conscience is an essential ingredient of a democratic society. But without an unfettered right to freedom of expression, through speech or voting or any other action, this so-called freedom of thought and conscience is nothing more than political rhetoric.

True, the framers have, in article 39(1), 'guaranteed' the 'freedom of thought and conscience'; however, they have attached to it a proviso that says that 'the right of every citizen to freedom of speech and expression' is 'guaranteed' — 'subject to any reasonable restrictions imposed by law in the interest of the State, friendly relations with foreign states, public order, decency, or morality, or in relation to contempt of court, defamation or incitement to an offence'. By implications, the freedom recognised in the article has apparently been taken away, or, at least, made limited by the proviso.

'Reasonable' is a relative term. The state has inherited a number of laws imposing strictures on such freedom from the British and the Pakistani ruling classes, who had rendered them 'reasonable' from a colonial point of view. And successive governments in the independent Bangladesh have, instead of repealing them, only added more undemocratic laws and rules under the said constitutional provision. Same is the case with freedom of press, which is, however, not the point of discussion in this write-up.

Many, not all, who have spent their youths under British or Pakistani colonial

rules still suffer from 'colonial hangover' and many understandably, would find these 'conditions' for the rights in question 'reasonable'. Such considerations, nonetheless, have a wrong footing. A fundamental provision of the American constitution might provide them with a clear perception about the importance of certain unabridged freedoms including those of speech and expression.

The historic Bill of Rights, incorporated into the American constitution in the 18th century, says: 'Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the government for a redress of grievances'.

US citizens still enjoy the rights. None would perhaps claim that the unabridged rights have in any way affected national interests of the United States. Instead, the provisions have consistently contributed towards keeping pressure on the politicians and the statecraft, thereby making them accountable to the people for centuries.

Until and unless the Article 39 is re-written in a democratic fashion, the governments would continue to find it 'reasonable' to further limit the citizens' rights to freedom of thought and conscience, speech and expression.

However, as we have mentioned earlier, the constitutional provision barring legislators to vote or abstain from voting — against party whipping has eventually taken away whatever limited rights to freedom of speech and expression the Constitution has guaranteed them as ordinary citizens.

Under Article 70, the Treasury Bench members are practically bound to support any government bill, or whatever stand the party leadership takes on various social, political and economic issues. Similarly, Opposition MPs have practically no scope to vote for even a good government proposal if the leadership decides otherwise.

Such compulsion for the parliament members — emanating from Article 70 — is tantamount to violation of Article 39. The proviso of Article 39, as argued earlier, has definitely limited the freedom, but it is very specific about the areas where the right is denied. The denial is there only when the 'interest of the state, friendly relations with foreign states, public order, decency, or morality' is affected; or the question of 'contempt of court, defamation or incitement to an offence' is involved.

Given the provision, why should a ruling party MP be obstructed to express his opinion, in the process of voting in parliament, against, for example, a government bill seeking extension of the deadline for holding elections to a local government? Or, why should an opposition MP be prohibited to vote for, say, a government bill seeking to set up an Employment Bank to help jobless educated youths? But such obstructions have taken place in the present Jatiya Sangsad. True, this sort of obstruction is consistent with Article 70 of the Constitution. But it was definitely a violation of even the controversial proviso of the Article 39 because, the MPs were denied the right to freedom of speech and expression in the cases where there was no chance for the 'interest of state, or friendly relations with foreign states, or public order, decency, or morality' being affected. Besides, no question of 'contempt of court, defamation or incitement to an offence' was involved either.

It is, therefore, clear that incorporation of Article 70 into the Constitution has denied the lawmakers certain rights, which the ordinary citizens still enjoy. The implication is obvious: elected representatives of the people cannot freely/conscientiously represent their electorates in parliament.

Meantime, a Jatiya Party legislator — G M Kader — has moved a private member's bill seeking amendment to the controversial article. The bill has proposed that the Article 70 be re-written in the following manner: 'A person elected as a member of parliament at an election at which he was nominated as a candidate by a political party shall vacate his seat, if— (a) he resigns from that party (b) he joins any other political party which has representation in the parliament (c) he, ignoring the decision or direction of the party, votes or abstains from voting, or abstains himself from sitting of parliament, (i) when a member is asked under article 56 (3), to prove that the member commands the support of the majority of the members of Parliament; (ii) when government faces in parliament a motion of no-confidence.

The proposed amendment, as it appears, is concerned about stability of a government as well as the right to freedom of speech and expression of the lawmakers elected on party tickets. It has suggested restricted exercise of the rights only when a voting in parliament becomes decisive for a party to go to power or oust a party from power.

According to the proposed amendment, an MP would not be allowed to vote against the party decision when the question of electing the Leader of the House, arises, under Article 56(3). Under the Article, the President appoints 'as Prime Minister the member of Parliament who appears to him to command the support of the majority of the members of Parliament'. Again, an MP would not be allowed to vote freely, when a government is exposed to a motion of no confidence — as defeat in such cases is bound to prove fatal for the party in power.

Concern for stability of a government becomes clear once again when it says that an MP will lose his (or her) seat if s/he resigns from the party on whose ticket (s)he has been voted to parliament or/and the MP joins 'another political party which has representation in the parliament'. Because, changing a parliamentary party by an MP changes the number game that makes and unmakes a government in the parliamentary system.

The proposed amendment, however, is silent on the issues of electing the President of the state, and Speaker and Deputy Speaker of Parliament. Because, as has sought to restrict the MPs' right to vote freely specifically, when the voting is necessary under Article 56(3) i.e. during the election of the Leader of the House. It did not say anything about the role of the MPs when they have to elect, under Article 48 and 74(1), the President as well as the Speaker and the Deputy Speaker respectively.

Maybe, the legislator concerned consciously wants that the MPs would exercise an unabridged right to choose the head of state and the custodians of Jatiya Sangsad. Maybe, the issue simply slipped off his mind while preparing the draft. Anyway, the amendment indicates that it aims at a compromise between the unabridged right to freedom of speech and expression of the parliament members and the stability of a government by preventing floor crossing by MPs.

An ideal answer to the problem of desertion by MPs for material benefits is to go for a 'preventive measure', instead of the curative one like Article 70. The parties have to project ideological differences, if there is any, with political opponents, on the one hand, and putting an end to selling of party nominations to those having no ideological commitment, on the other. Even then, we understand, there would be people to change parties — sometimes on ideological grounds, sometimes for material gains. But that would be insignificant.

However, presently, with most of the political parties being ideologically bankrupt, the ideal solution seems to be a far cry. The compromise formula offered by G M Kader, therefore, could be a good medium term solution.

The Abuse of Parliamentary Privilege

Ardeshir Cowasjee writes from Karachi

I asked my legal advisers if any law exists that entitles the privilege committee to summon me at the whim of an individual member and whether the fundamental rights guaranteed to me in our written constitution were being violated by being so summoned. The answer given was that the law protects me but that the present-day judiciary, with the judges functioning as they do, is not likely to do so.

MY friend, senior columnist Chaudhry of Chakwal, Ayaz Amir, despairs. His column on Friday was headed 'What is the point of criticism?' He feels that what he and others write makes no dent on the corrupt, the crafty, the remain crafty, the robbers, rob, the conniving connive, the people remain hungry and thirsty, taxes for those million-odd citizens who pay taxes are crippling, prices are rising, millions remain unemployed, the employed are underpaid and stressed, the fat cats grow fatter, and not one man involved has yet committed harakiri in the aftermath of Kargil.

I tried to cheer him up by reminding him that a mutual friend, a well-read man, constantly reminds us that both India and Pakistan are not populated by Aryans and Anarjans, but by those he dubs subcontinental monkeys devoid of the intelligence or competence usually possessed by that species.

We all get disheartened, I told him. At least twice a month, I am lectured by various people on the futility of writing in the press. Futility it may be in the sense that one cannot shame the shameless leaders, administrators and politicians. But if one can get through to at least one citizen a week and make him aware of what is happening, it is surely worth it. The grumblers and mumbler drone on and on until they run out of grumbles. "Fine," I say, "I will not write

next week". "No, no," respond the moaner-growner, "that you cannot do. You must keep on writing." So much for logic.

Ayaz by profession has been a soldier, a foreign office diplomat, a journalist, a politician, and again a writer, a profession at which he is eminently qualified. He realizes that a columnist should inform, educate and entertain, and he efficiently does all three. Some would say that the Dawn has the privilege of printing his columns, others that he has the privilege of writing for it.

The last time Ayaz and I met was in Islamabad when he was summoned to appear before the Standing Committee on Rules of Procedure and Privileges of the most honourable National Assembly of Pakistan, following the moving of a privilege motion by MNA Khwaja Asif, alleging that I had breached his privilege. Despite the fact that the committee secretary had notified the Director of Public Relations of the Assembly Secretariat to 'attend the meeting, arrange press/TV coverage of the meeting, and also issue a press release after the meeting', no press people were allowed in, including

Ayaz. There are thirty-four standing committees of the Lower House, each with a chairman and ten to fifteen members. Apart from the normal perks and privileges accorded to our honourable, freely and fairly elected representatives, each chairman receives an additional Rs.7,700 per month, club class air fares when called to chair a meeting, a fully equipped office staffed by a private secretary, a personal assistant and a peon (who normally performs as a domestic servant at the chairman's home), a chauffeur-driven car and free telephones. Each member when called to attend a meeting receives Rs.1,100 per day for five days as attendance allowance, plus air travel club class expenses from and to his constituency.

The present National Assembly's Standing Committee on Rules of Procedure and Privileges is chaired by a Nawabzada. For members it has two Mians, one Pir, one Rana, one Khwaja, one Sheikh, one Rai, one Sahibzada, one Chaudhry, one Syed, one Sardar and two plain and simple misers. These men meet at least once a month, often twice. A few

samples of the matters they consider:

'Privilege motion moved by Rana Nazir Ahmad Khan MNA regarding rude behaviour of Director-General, Customs Intelligence, Islamabad.' Summoned to respond to this motion and attend the meeting in person, apart from the DG, were, inter alia, Secretary, Ministry of Finance, Chairman, CBR, Member, Indirect Taxes Settlement Commission, Superintendent, Customs, Quetta.

'Delayed flight on 6.5.98 causing inconvenience to the Speaker of the National Assembly and other parliamentarians due to off-loading of a passenger allegedly travelling on fake passport/documents.' Summoned in person: Secretary, Ministry of Interior, ex-Director-General, FIA, present Director-General, FIA, Deputy Director, Immigration, FIA, Karachi.

'Privilege motion moved by Mian Atta Mohammad Qureshi MNA regarding alleged indecent language and rude behaviour of Mr Hafizullah Lund, Chief Engineer Railways.' Summoned in person: Secretary, Ministry of Railways, General Manager, Pakistan

Railways, Lahore, Chief Engineer, Railways. 'Privilege motion moved by Inamullah Khan Nazki MNA regarding alleged rude behaviour of Superintendent Engineer WAPDA Sargodha.' Summoned in person: Secretary, Ministry of Water and Power, Chairman, WAPDA, Chairman, Area Electricity Board, Faisalabad, Superintendent Engineer, WAPDA, Sargodha, Superintendent, Engineer WAPDA, Jhang.

'Privilege motion moved by Inamullah Khan Nazki MNA regarding alleged rude behaviour of Chief Settlement Commissioner, Lahore.' Summoned in person: Chief Secretary, Government of Punjab, Chief Settlement Commissioner, Lahore. (Mr Nazki obviously has a problem.)

If any one of the persons summoned does not appear on the appointed day, the motion is adjourned until the next meeting, and those who have turned up are sent home. So, one matter can go on and on for years, with, say, five summoned each time and one or two not being able to attend. Merely to satisfy the inflated egos of little men, travelling and other expenses of government servants have to be borne by the government (by the people) and citizens summoned are inconvenienced, and sometimes humiliated.

'Alleged rude behaviour' and 'alleged abusive language' are nowhere defined, they are somewhat on the lines of 'the ideology of Pakistan.' What one man may consider to be normal behaviour and routine language is by the sycophant or the uncomprehending uneducated or by the puffed-up prig taken to be rude or abusive.

A letter from MNA Kunwar Khalid Yunus was printed in the Dawn on August 19. He complained that his efforts to move a motion for breach of his privilege against the IGP, Sindh were being thwarted by the honourable Speaker of the National Assembly. He accused the IGP, Sindh of having made a public statement to the effect that the MQM MNAs would do well to 'serve the people' rather than pursue their 'anti-gov-

ernment and anti-people policies.' How does this breach your privilege? I asked him. He had an explanatory answer to give other than that the IG has no authority to make such statements.

The Privileges Committee of our Lower House relies on procedures followed at Westminster, where democracy prevails and is practised without constitutional safeguards for the citizens of Great Britain — an incomparable system of government. But frivolous privilege motions are not entertained at Westminster. Our parliamentarians should study the chapter on 'The Nature of Parliamentary Privilege' in 'Parliamentary Functions, Practice and Procedures' by J A Griffith and Michael Ryle (1989), from which I quote:

"All actions of members of parliament, in the course of parliamentary proceedings, are protected by parliamentary privilege. . . . On the other hand, the fact that the House, and its individual members, claim certain privileges not available to the ordinary citizen, and may seek to punish those who infringe them, tends to set the House apart from the people it represents and makes it liable to criticism — and even ridicule — if it appears to be asserting privileges which are not obviously essential for its functions. . . . The reconciliation of these two claims — the need to maintain parliamentary privileges and the desirability of not abusing them — has been the hallmark of the House of Commons' treatment of privilege issues in recent years. We will not attempt to describe in detail the somewhat complex (and in certain respects still uncertain) law of parliamentary privilege."

When I was summoned I asked my legal advisers if any law exists that entitles the privilege committee to summon me at the whim of an individual member and whether the fundamental rights guaranteed to me in our written constitution were being violated by being so summoned. The answer given was that the law protects me but that the present-day judiciary, with the judges functioning as they do, is not likely to do so.

One more set of three cheers for Prime Minister Mian Mohammad Nawaz Sharif for his successful subjugation of the independence of the judiciary, our country's most vital pillar of state.

To the Editor...

Transit and trade

Sir, Call it by any name — the tap water, water of the well, refrigerator water, cold water or mineral water — the use of water remains more or less the same. Similarly call it a transit facility, transshipment or corridor its efficacy and purpose stand unchanged and its utility is similar and synonymous.

Not to speak about Bangladesh but undoubtedly India would be a great beneficiary politically, economically and militarily if the ongoing controversial and contentious transit facility is granted to the latter.

We wonder why are some of our ruling party leaders trying to compare and belittle India's colossal benefit of transit facility with that of our petty in-

come out of export to India of only 25 items on zero tariff and getting royalty of Taka 2000 crore annually.

We would request our government to tell us the cost benefit of transit facility for India and Bangladesh's earning of royalty and sale of 25 items on zero tariff.

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Local ball pen industry

Sir, As a user of local-made ball pens, I have some comments after reading the Star Business report of Aug 14

("Pioneer Pen Maker Fighting Odds").

The QC (Quality Control) which is yet to become a state locally — has to be improved to ensure better reliability, and reduce sudden failures (loss of, or irregular, ink flow). The latter is sensitive to temperature, humidity, and storage conditions and period. The ball-gel tolerance limit is very narrow under dynamic conditions, therefore the pen-unit needs very strict QC; as also the quality of the ink used (for constant ink flow under all conditions). The profit comes from the sale of refills.

The price may be cheap (Taka three to five), but the replacement cost is high due to unreliability; but the QC is a bit

high-tech. Also, the tip (ball diameter) is offered in only one choice, namely, 5mm, which is suitable for upright writing (Japanese, Chinese characters; we hold the pen at a slope for writing Bangla and English). Some prefer thicker ink flow, with 0.7mm and 0.9mm tips, available in foreign brands.

Some local brands try to be clever by making the plastic tube for ink opaque so that the ink level cannot be monitored. Another bug is air bubble inside the ink holder/tube, which causes discontinuity in ink flow.

Patronise quality local products.

AZ
Dhaka