

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 dialectic 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.

NATIONAL consensus among mainstream political parties is a rare thing in the country's politics although the 'civil society' has intermittently been demanding for it on certain matters of 'national interest'. But at times, the parties concerned themselves reach consensus on issues that eventually degrades the nation in the eyes of a civilised world.

Incorporation of Article 70 into the Constitution is such an example. It was done unanimously by Bangladesh Nationalist Party, Awami League, Jatiya Party, Jamaat-e-Islami and others concerned in 1991.

The Article has drastically curtailed the right of the Jatiya Sangsad members — people's elected representatives in the parliament — to speak their minds, let alone vote, in the House at the dictates of their conscience. On the contrary, it has made mandatory for the legislators to act at the dictates of the party. It is very difficult to believe that such a provision could be made by political parties claiming to champion the cause of democracy.

The provision as enshrined in the Article 70 (1) says: "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 he resigns from that party or votes in parliament against that party."

The provision has left no room for an MP to escape the punishment even if s/he keeps away from party decision which s/he might find unjust.

An 'Explanation' of the Article, included in the Constitution, says: "If a member of parliament —

(a) being present in parliament abstains from voting, or

(b) absents himself from any sitting of parliament ignoring the direction of the party which nominated him at the election as a candidate not to do so, he shall deemed to have voted against that party."

Clearly, an MP will lose his/her seat if s/he votes against the party decision, or even abstains from voting ignoring the party instruction.

This constitutional provision has made the lawmakers prisoners of their respective parties. It will not be an understatement to call it parliamentary autocracy. Because, practically the legislators have been made captives of the bosses of the political parties. This is so because the party chiefs here singularly enjoy the authority of making final decision on any issue in their respective organisations. And thus, the constitutional provision, made on the basis of consensus among the mainstream political parties has degraded the parliament to a body of political hostages, denied of the Constitutional rights to freedom of thoughts, conscience, speech and expression.

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.

Some politicians never suffer from scarcity of justifications even for their gravest

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 basis, 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 'cavative' provision. But in doing so, the politicians concerned have ignored a very important aspect involved with the issue: the MP's moral responsibilities to their electorates.

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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 denied 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.

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 restriction 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'.

'Reasonable' is a relative term. The state has inherited a number of laws imposing restrictions 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

rule 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 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 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.

IV

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 stands 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/consciously 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 rewritten 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 of the party, votes or abstains from voting, or absents 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 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 and/or 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, it 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 the state. Maybe, the issues simply slipped off his mind while preparing the draft. Anyway, the spirit of the proposed 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.

V

An ideal answer to the problem of desertion by MPs for material benefits is to go for a 'preventive measure', instead of the creative 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.

eren and anti-people policies." How does this breach your privilege? I asked him. He had no 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 'Parliament — 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.

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.

next week". "No, no," respond the moaner-groaners, "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, and again a writer, a profession at which he is evidently 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 motored up from Chakwal when I 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.7,70