

Doctors Deserve Protection

THE DMCH doctors deserve our thanks for calling off their indefinite strike which they went on Wednesday morning protesting an attack by some ruling party activists on the preceding night. This paper has always been definitive in its opposition to the very notion of doctors going on strike, for we believe that their deontological dedication should take precedence over their professional grievances, no matter what. Only the other day, in one of our editorial comments (*Why Punish the Patients? October 28, 1999*), we denounced the 24-hour 'taken' work stoppage enforced by the DMCH doctors in reaction to a shameful vandalism unleashed on their premises by a few hundred Dhaka University students. Also, we reminded them of their ethical obligation to the patients while questioning the moral justification of their threat for an indefinite period. However, the heinous assault on the on-duty doctors Tuesday night perpetrated allegedly by some ruling party activists following the death of their leader, Selim, has certainly put things in a different perspective. The AL exponent, according to reports, was shot several times and stabbed indiscriminately. By the time he was admitted to the DMCH, he had already died, so says the emergency admission slip or NOD ticket. Why then the doctors were roughed up, nurses chased around and properties damaged? Certainly, the doctors are justified in their demand for "security and proper working atmosphere at the hospital."

Having said this, we would like to draw the ruling party's attention to the deplorable hooliganism displayed by its activists. What sort of good governance are we talking about when the AL goons go on murderous rampage whenever and wherever they want? It's not the first time that the ruling party activists have unleashed a reign of terror on innocent public and it doesn't seem it would be the last time. Does the AL leadership not realise that the unbridled rowdism of the party activists is actually denting its credibility? Unless it puts a tight leash on these anti-social elements, someday the government would find the rug swept away from beneath its feet. Also, we cannot help decry the silent role the police have played, both Tuesday night and the day before. What good can we expect from a law enforcement agency that often opts for the role of the by-stander when the public desperately needs its intervention?

This time around our sympathy goes for the DMCH doctors. They definitely deserve security and working environment and the culprits, severe punishment. And we thank them for not continuing their strike. Surely, the patients must not suffer for something that they have no control over.

Row over Symbol

THE returning officer for by-election to Tangail-8 constituency, who is also DC, Tangail, has denied non-party candidate Kader Siddiqui his chosen election symbol 'gamchha' (a rather flaccid cotton towel). Siddiqui is running the race on vacation of his own seat by resignation from AL. The symbol 'gamchha' was not on the original list of the Election Commission. It was added to the list only on the insistence of Kader Siddiqui. Still he did not get the symbol in the end. Siddiqui has rejected the symbol allotted to him calling it a 'pre-planned government conspiracy.' The Tangail by-election will be an acid test for the ruling party because Kader Siddiqui has thrown an open challenge to it after having resigned from the AL. That was all the more reason why the returning officer should have given no cause for a hiccup at all. By refusing 'gamchha' to Siddiqui on the ground that 21 other candidates wanted the same symbol(?) the returning officer has not proved himself fair and impartial.

There is more. The Electoral Enquiry Committee on Wednesday found that 'some ministers had violated the electoral code of conduct in Tangail-8 constituency and recommended to the Election Commission that warnings be issued against them,' reported The Daily Star on Thursday. In a written petition to the EC, Kader Siddiqui alleged that 'two ministers had visited certain areas of Tangail-8 constituency on 8 October with policemen and government officials.' The home minister himself was accused of 'visiting the constituency with a contingent of police and making specific pledges to the electorate four days after the election schedule was announced.' This was a clear violation of code of conduct and an attempt on the part of the government to intimidate as well as entice the electorate to vote for the ruling party candidate. How this important by-election is conducted and what results it produces will have a bearing on national politics in a marked way.

Waning Wildlife

PERILS of economic growth fall mostly on the environment. Cox's Bazar is a case in point. Poachers, farmers, industrialists and dwellers are causing an extreme form of environmental degradation as the numbers of tigers, elephants, deer, gharials, even monkeys dwindle fast.

The cause behind such extinction is deforestation. Deforestation causes disruption of the food chain with the result that the ecosystem breaks down. Over the years there have been many measures announced to protect the environment. But the crime on nature keeps repeating itself as the laws are never implemented. We urge the Forest and Environment Ministry to take the matter seriously. Law must be enforced, at whatever cost, and enforced now, before we lose whatever is left of our natural endowment.

The Tourism Ministry should also be involved given that it can only market what it has been able to preserve. Cox's Bazar, being one of the longest running beaches of the world, does not attract as many tourists as it should and this is mainly because of the inaction of the Tourism Ministry. We urge them to take proper steps in conjunction with other ministries to develop Cox's Bazar to its full potential. The revenues from brick-fields, saw-mills and suchlike can be outstripped by earnings from tourism.

I have read with concern a news item in our media that at a seminar in Dhaka on 23 October organised by Bangladesh Law Association, the senior judges and members of the legal profession raised the question of erosion of values in the lower tier of the judiciary. A distinguished member of the Law Commission was reported to have said in the same gathering that there were complaints of motivated judgments in 30 per cent of cases at that level of judiciary and that these judgments were made by non-judicial influences. These are very serious observations.

A question begs: how to make the bottom tier of judiciary fully independent and safe from such influences? In my view, the judiciary even at its lowest tier should be kept separate from the executive's control. The administration of the judicial system including the control and discipline of the judicial officers should vest in the Supreme Court. This means that the judicial officers should enjoy a fixed tenure and should not be dismissed or sacked or transferred arbitrarily by the executive. If disciplinary actions are to be taken against a member of a judicial body, the responsibility will fall on the highest judiciary in the country.

Secondly, the salary of the lowest judicial officer may be fixed at a level which keeps other unethical influences at bay. If the salary is pegged at the living expenses level in accordance with consumer prices index, there would be less vulnerability to human weaknesses. Of the influences affecting life in our country, one which causes dismay and demoralisation appears to be the grotesque disparity of salary received by the judicial officers at the lower levels and the amount of money necessary for them to enjoy a life with a family without economic hardships and anxiety.

Thirdly, serious consideration must be given to incorporate legal ethics and professional responsibility as a

compulsory subject for law students and judicial officers at their entry point. This subject may include the role and functions of lawyers in our society, the duties owed by the lawyers to the Court and the clients, the organisation and regulation of Bangladesh legal profession and the ethical regimes regulating professional conduct. In overseas legal systems this is being made compulsory for all law students.

Fourthly, I would argue that no judicial officer, serving or retired, would be eligible in the executive or semi-executive position. The magistrates who are entrusted with judicial functions would not discharge executive duties and in such cases they should come under the control of the Supreme Court. The serving or retired judicial officers may hold positions in the judicial commissions to inquire or investigate any matter.

Fifthly, another factor that appears to diminish the strength of the judiciary is that the cost of justice is being priced out of the reach of the ordinary. In our country, it is estimated that over 90 per cent of our people remains outside the judicial system because of poverty. I would argue that the members of the legal profession and the government of the day bear responsibility to ensure that affordable access to the court should be provided to the poor people for timely and effective remedy with non-prohibitive costs.

Finally, in my view, the lawyers have to share the responsibility of this negative image of lower judiciary. For some years people within and outside the profession have been asking whether the legal profession is becoming a business. Practitioners of law who claim to value their profes-

sional status, cannot simply wring their hands and make allegations against the lower tier of judiciary. They are also a part of the problem in many cases. The lawyer is an officer of the court and the underlying idea is that a lawyer will assist the court to ensure that justice is not only done but seen to be done fairly and squarely. Some of the members are engaged in activities which are leading to the decline of the erosion of values in the lower judiciary.

Lawyers are engineers who operate the legal machinery that maintains integrity. The lawyer who disregards the professional ethics fails to appreciate the social impact of his unethical conduct. The practice of law should not be carried out as a business. One distinguishing feature of the legal profession is that membership entails an ethical obligation to temper one's selfish pursuit of "winning a case by hook or crook" by adhering to the standards of conduct expected of the noble profession. The professional ideal is not simply to win a case but public service. In my view unless the Bar dedicates itself to the ideal of public service, it forfeits its claim to treatment as a profession.

One of the pillars of democracy is the independence of judiciary, the other two being the elected government and the parliament. The three organs in a state must work in such a way so as to provide the people the rule of law, accountability of the actions of the government and necessary legislation in keeping with the times of the day. Our Constitution provides the doctrine of separation of powers among the three state institutions. This means that each institution functions independently ac-

ording to the provisions of the constitution. No amount of pressure should be exercised by one on the other.

The judiciary establishes and strengthens the rule of law. It ensures equal opportunity for all people and neither class nor race nor gender nor background should be a factor in every citizen being given an opportunity to enjoy lawful rights fully without fear or favour. All the three institutions of the state have the responsibility to ensure that rule of law is enforced. This is not of ideological cant or overblown rhetoric. This belief strikes at the very heart of how we have viewed and continue to view ourselves and our country.

The independence of judiciary is the hallmark of our constitution. It is independence that makes the judiciary essential to the administration of justice according to the law; independence that cannot be bought in a market; independence that will not be bartered for money or for privilege, status or favour. This is one of the essential characteristics that more than the other stamps the judiciary apart from other institutions. Public confidence is built by its independence and every citizen is assured that nothing unlawful will affect the citizen. Often the other stakeholders are rattled by its independence and a tension develops to the detriment of the image of the judiciary.

Our Supreme Court has gained reputation both at home and abroad for its judicial independence and integrity. In my view, our judges of the Supreme Court (both High Court and Appellate Divisions) bear a heavy burden in protecting and preserving the lawful rights of the individuals of the country. The Court is re-

quired to apply the law within the dynamics of the contemporary society. In other words, they have been able to instill in their pronouncements "judicial activism" to meet the necessities of time.

A case of 'judicial activism' of the Supreme Court, in my view, is the case of *Dr. Mohiuddin Farooque vs Bangladesh: DLR:1997* where the Court took a liberal view of the term "any person aggrieved" used in Article 102 of our constitution. The Court departed from the traditional view and held that in the case of violation of rights guaranteed under the constitution affecting weak and disadvantaged section of the community or if there is a public cause involving public injury or wrong, any member of the public or an organisation whether being a sufferer or not, is entitled to come to the court for redress. This case was fought to protect the environment from its degradation.

In my view, the Supreme Court has not been afraid to venture beyond the current precedents and practices so long it is consistent with the democratic theme of our constitution. Precedents have come under more searching examination of the Court to see whether they fulfil social needs and the notion of "purpose" has come to have a central place in the interpretation of both powers and restriction of powers. Our Constitution is a living force and is not a static document constrained by its 'dead hands' of its framers. The Supreme Court appears to support this proposition through its various decisions.

Article 32 of our constitution states that "no person shall be deprived of life or personal liberty save in accordance with law. The Supreme Court strongly continues to defend the citizen's rights as stipulated in this Article which is one of the fundamental rights incorporated in the constitution. Why is such a right considered fundamental? Generally speaking a government of the day can amend or repeal any law in the Parliament. But this right is known as 'fundamental' because a government cannot change this right without amending the constitution. An amendment of the constitution will require the votes of not less than two-thirds of the total members of Parliament (not members present in Parliament).

The system of judiciary and the legal profession cannot be divorced from the society. The decline of moral standards in the community may have an impact on them as well. Unfortunately there appears to be no magic solution to the erosion of values of the lower judiciary. This could be the result of an interlocking web of factors. Among them are, the rampant corruption in almost all levels of the society, the decline in legal professional ethical standards, the unbridled pursuit of personal gains through unscrupulous means, the perception of lack of integrity of police and the apparent breakdown of the law and order in general in the society.

In my view, the highest judicial body is robustly independent and has been able to uphold the best traditions of its predecessors. Dhaka High Court and Calcutta High Court. I would argue separation of judiciary coupled with increased salary for all the members of the lower judiciary and the development and policing of ethical standards in the legal profession. This may go a long way to restore the values in the lower tier of judiciary in the interest of the public.

The author, a barrister, is former Bangladesh Ambassador to the UN, Geneva.

Judiciary in Bangladesh

by Harun ur Rashid

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Reasons for Coup in Pakistan: Can Musharraf Succeed?

by ABMS Zahur

Despite the 26 years of so-called efficient governance (during army rules) the country is politically and economically underdeveloped. We see absolutely no reason as to why it would be otherwise this time... Apparently, the success of Musharraf depends on the honesty, objectivity, sincerity of purpose and professional competence of the people associated in formulating and implementing the policies...

process of *ehsas*:

- * Meddling in the affairs of the armed forces and removal of naval and army chiefs.
- * Virtually transforming the federal structure of government into a unitary form by usurpation of provincial autonomy.
- * Introduction of *shariat* bill (could not, however, be passed due to lack of obtaining two-thirds majority vote in the senate).

He messed up the economy of Pakistan. His economic packages for revival of the economy were neither well conceived nor properly executed. There was enormous increase in tax evasion, and reduction in tax collection. Defaulted loans increased significantly. The loss of public sector enterprises rose to over Rs 150 billion a year. Mismanagement of foreign investors, freezing foreign currency accounts and arbitrary changes in economic policies led to continual erosion in investors' confidence. In short, Pakistan is practically insolvent and heavily dependent on the international donor agencies such as the IMF, World Bank and Asian Development Bank and the grace and sympathy of G-7 countries. Her foreign exchange reserve is less than up \$1.5 billion, foreign debt burden is \$33 billion, foreign debt service is \$3.92 billion (according to some estimate US\$ 5 billion) her risk rating is so low that she cannot borrow from commercial banks. Her rescheduling arrangement has not yet been successful because of IMF's postponement of ESAP programme.

Pakistan has started losing its comparative advantage even in its traditionally strong sectors. Agriculture has also lost its buoyancy because of continuous rise in the prices of inputs, falling yield and falling prices of agricultural products.

Now to save this sad and sick nation Gen. Musharraf has mainly the following aims and objectives:

- * Rebuilding national confidence and morale;
- * Strengthening the federation;
- * Reviving the economy and restoring investors' confidence; and
- * Ensuring law and order.

So far he has appointed four provincial governors. Three of them are retired army officers and the fourth is a retired provincial high court judge. In a meeting held on 21 October 1999 (chaired by him) he told that he would take strict measures against loan defaulters, tax evaders and all others

responsible for the prevailing economic crisis. Making such promises may not be difficult but their fulfilment depends on full cooperation of the people. It may be possible to straighten up the problems of tax evasion, collection of revenues and loan default within a couple of years but a long term risky exercise will be necessary for return of ill-gotten wealth locally and from abroad because this exercise will affect the politicians, bureaucrats and even some uniformed personnel (serving and retired), businessmen and industrialists who are very powerful because of their wealth and connections. After all, life's way is king's way and money rules there. Even if laws are enacted for the recovery of ill-gotten wealth their execution may not be at all easy.

Without gearing up of economic performance no sustainable development is possible. For development, human ingenuity and release of human potential are needed. This is not possible in a military rule. The history of Pakistan itself proves that sustainable development is difficult under military rule.

Despite the 26 years of so-called efficient governance (during army rules) the country is politically and economically

underdeveloped. We see absolutely no reason as to why it would be otherwise this time. Furthermore, this time Pakistan is facing the threats of economic sanctions from the United States, European Community and Japan. Her membership of Commonwealth has been suspended. The SAARC nations are worried as to what is to be done to Pakistan. US has already cut off economic and military aid. However, US is not 'walking away' from Pakistan. 'Walking away' made it clear that long term military control is not acceptable and democracy must be restored.

Under the circumstances the only option appears to be open to Gen. Musharraf is to con-

tinue his rule for not more than six months. He may give a framework of governance acceptable to the Supreme Court of Pakistan and the donor agencies and G-7 nations. A strategic economic programme with clear objective may be prepared. He may start its implementation leaving its continuity to the elected governments.

Apparently, the success of Musharraf depends on the honesty, objectivity, sincerity of purpose and professional competence of the people associated in formulating and implementing the policies, mere sincere and competent leadership with foresight and acumen may not be enough. He needs an excellent team to accomplish the defined objectives. It all depends on how far he will be able to form such a team. And while time is running out he will have to move fast. Any delay may make the whole exercise as the tantrum of a dismissed general.

The writer is a retired Joint Secretary.

OPINION We Want Political Stability

A Husnain

AFTER eight years of democratic governance (through two general elections), there are no signs of political stability either at the base or in the branches. The main trunk is having a stunted growth. The garden is overgrown with weeds, the branches are diverging in different directions in three dimensions. Here also, our law makers are floundering; beyond the comprehension of the majority of the voters.

Changes of democratic regimes are not pushing the country forward. A tug-of-war has no resultant at right angles (forward).

How long this political tugging will continue? Remove the rope for this national sport? The key term is sporting spirit. Play the game according to the rules. Question: how to play when some of the rules are still in the draft-for-approval stage (DFA)? The latter exercise is well known to the bureaucrats in the secretariat. How the politicians process the DFAs? In the JS, what is the JS doing? No comment.

Another general election is near. How high or low is the Hope Factor? The politicians are still finding it difficult to bestow the benefit of the doubt to the untouchable Election Commission, in spite of the induction of an extraordinary provision in the form of neutral caretaker government during the election period. Is there any colour whiter than white?

In the political arena, there are too many rider clauses and foot-notes. The small print is taking the attention away from the limelight. People are depending more and more on hope than on the political machinery. Pessimism is peeping round the corner. The political systems loss high. This is consistent with the national average of our society. The politicians are a part of the same society; they have not been super-imposed, nor imported.

Therefore the beguiling question is: what is the malady of this nation? Once the diagnosis is agreed upon, the treatment will not be controversial, otherwise something worse might happen to the patient. Long live the ailing and chronic patient — hale and hearty, chaste and cheery, full of tolerance and benevolence.

To the Editor...

Letters for publication in these columns should be addressed to the Editor and legibly written or typed with double space. For reasons of space, short letters are preferred, and all are subject to editing and cuts. Pseudonyms are accepted. However, all communications must bear the writer's real name, signature and address.

Price of petroleum products

Sir, The news published in the front page of the DS immediately followed by an appropriate editorial on the intended increase in the price of petroleum products by the government, which is holding a monopoly in import and marketing of this essential item of consumer goods, eloquently speak of the concern for and commitment to the welfare of the common people and a right cause.

But the question is whether the government will pay heed to the voice of sanity and standard of propriety in behaviour. Will the government choose to stop incurring reported loss in business of petroleum by letting the private sector step in?

Let the market forces have a free play and price fluctuate accordingly. The nation has been suffering for too long — and too much.

S H Karim
Uttara, Dhaka.

Practising democracy

Sir, Developed Western nations prescribe and try to impose corrective doses of democratic principles for the developing nations. Those apparently do not seem to work. Laying a foundation stone is quite a different discipline and exercise than developing the democratic structure (building

up the institutions). An observer sitting over such a structure has a wider horizon, but the foundation is invisible, and lies right beneath the very feet. All these developed nations had passed earlier, many generations ago, through the turbulent teething period. Naturally the current generation of these advisors cannot recall the tremors of the gestations. The observer is at a point different from the field site, and is not a part of the operation, that is, a direct participant.

The same shortcoming in the prescriptions of the donor agencies are revealed; but fortunately these criticisms are now being taken at face value. One example is the 'bottomless basket' cases, which obstinately remain bottomless for decades. It cannot be assumed that the donors have no weaknesses (on the application side).

Another autocratic trend is the domination, erosion, manipulation, and marginalisation of the UN system by the group led by the only super power in the globe, super-imposing the UN prescriptions with penalty clauses; of which the WTO is a glaring example. Now even the role of the NATO has been subtly changed, making it seamless across the borders.

It appears that there are two types of democracy: the other one is for the Third World.

A Husnain
Dhaka

Enhancement of CPA management

Sir, The Chittagong Port Authority chief is reported to have hinted that it is handicapped due to inadequate financial and administrative powers to take quick decisions on urgent day to day situations in regard to this congested port. The work load has increased many times compared to the facilities available (the pace of BMRE is too slow for any visible effect).

The problem is classically bureaucratic: the shuttle service with the ministries. The stronghold of the bureaucracy will not go away with ad hoc measures from time to time. And the Administration Reforms Commission is kept in limbo by the vested groups. Deep core issues cannot be reformed without consensus at various levels, which are more than political.

The elected regimes can hardly give time for administrative work outside political engagements, as reflected in the analysis of the types of news covered daily in the mass media. The government in a developing country finds it difficult to settle down to working at routine level, with multifarious diversions cropping up every now and then.

Additionally, the efficiency of the port will not increase for another reason, the militant CBAs obstinately displaying closed-mind attitude. These basic issues of the part are addressed rather sporadically, as gathered from press reports. Nothing moves until the PM issues clear direct orders. Policies do not seem to have the trickle-down effect. Chasing has become a part of our culture. Due to indifference to duties clearly marked for each post. Over and above, political interference is rampant at all levels. Not only CPA is suffer-

ing, but all the government departments and the semi-autonomous agencies. And the ministers and the policy makers are not talking about it.

Abul M Ahmad
Dhaka.

Self-check exercise

Sir, In public interest, our political leaders may start doing some self-check on how to provide better political service to the electorate; the sharp contrast to what the two political elected regimes have been dishing up in the decade of the 1990s.

It is rather naive to blame the military to invade their political fortress. It sounds silly to propose the theme why the civilians never take over the defence services! It boils down to the question of professional competency. If politics is a profession, the politicians have to have an acceptable working code, and abide by it, to avoid displacement, and thereafter start whining that they have been unceremoniously thrown out!

Petulance is not a political armour, and there is a limit to public tolerance. Thundering at the crowds has not developed the country or taken it forward or out of the vicious circle. The politicians are always blaming others, and never point out their own weaknesses, and at the slightest pretext reach for the SPAs. There is a limit to public indulgence. Its other name is revolution; which is not a temporary ad hoc affairs of the mood of the moment. It is facetious to call for a rise on empty stomachs. Politician, face thyself (addressing a public meeting of one)!

AZ
Dhaka.