

Begum Zia's 'No' to Hartal

BEGUM Khaleda Zia's emphatic 'no' to a proposal for hartal on May 4 or 7 which the central liaison committee of the four-party alliance tossed up to her last Thursday has gladdened most hearts. Not only has she been reading the public disenchantment well on the question of hartals — the decline in its frequency being a proof of it — she also has been assertive with her understanding of why 'impulsive' countrywide strikes should be avoided to spare any fresh disruption of civic life.

This is definitely reflective of a healthy sign that Begum Zia is taking things firmly into her grip insofar as determining the opposition's agitational strategy goes. It falls in line with the fact that for some time past aversion to hartal has been growing within the rank and file of the BNP.

The Daily Star being a paper consistently opposed to hartal is heartened everytime that Begum Zia veers away from it. We congratulate her on her eschewing the liaison committee's proposal for a standstill on May 4 or 7. She has endeared herself to the people by saying 'no' to it. She must do it again and again till hartal is consigned back to the status of rarity to claim its original value.

Even though, in the recent past, hartals have been few and far between there are still some traces of negativity as a hang-up of the past. It is either the SSC or HSC examinations that seem to keep a hartal on the hold. Actually hartals must be forsaken out of conviction. Moreover, 'ouster of the government' is still on the demand list of the opposition when the general elections are only a year away to try that constitutionally.

All the thinking must now get focused on the next general elections. And the opposition's list of preoccupations sounds more demanding than ever before with adjustments to be made between alliance partners. Let them get on with the task of preparedness rightaway or be left to regret a late start.

Hands off HSC Exams, Please

IN recent years, cheating at the SSC and HSC examinations has assumed such proportions that one wonders whether there is any justification of these tests at all. On Thursday last, the first day of this year's HSC examinations, it was once again the same tale retold. A huge number of expulsions aside, there were incidents of violence where expelled examinees and their associates went on a rampage to give vent to their anger and frustration.

But, in our view, what is the more worrying is increasing involvement of political elements in the whole process. In some areas, local leaders and their followers virtually spearheaded the 'mass cheating operations'. With their blessings, 'examinees' and their 'well-wishers' simply made a mockery of the examinations system, flouting the rules, both in and outside the centres, with disdainful ease. That is not the end of it, however. Top notches at the country's four education boards have, on more occasions than one, identified political pressure as a major impediment to their efforts to ensure fair and trouble-free examinations.

It is unfortunate that whereas the politicians, irrespective of party affiliations, are expected to facilitate the examinations process, with maximum help extended to the education boards, they are doing just the opposite. The central leadership of the mainstream parties, especially the big ones, should issue a declaration condemning involvement of political elements in the examination process. Also, they should work out a provision to initiate investigation into such involvement upon allegations and dish out expulsion from the party ranks to anyone found guilty.

Deaths on the Highway

TWO overloaded passenger buses collided head-on Friday afternoon on the western side of the Jamuna Bridge resulting in the death of fifty persons with injuries being inflicted on at least another hundred people.

As the road network has improved tremendously over the last few decades so have the numbers of passengers and vehicles gone up. The incidents of fatal accidents have also increased. Among the causes of accidents are a couple of cogent ones namely, unfit vehicles and irresponsible and untrained drivers. To these we can add overloading and slack supervision by the law enforcing agencies.

Much is being said and done about the problems of traffic movement and congestion in Dhaka city but hardly anything has been done to tame the unruly traffic on the highways of Bangladesh. Apart from the loss of precious human lives these tend to affect the lives of the surviving family members. Hundreds of families are ruined as many of their heads or earning members die in these tragedies. Many lose their limbs and survive as a burden on their families for the rest of their lives.

To stave off such accidents, vigilance on the highways has to be geared up and highway police have to be properly equipped to deal with delinquent and untrained drivers and greedy owners. Strict licensing procedures have to be applied while fitness and roadworthiness of transports are enforced. We strongly feel these are some of the areas that need to be streamlined if we are to minimise loss of life and property on the highways.

DEMOCRACY essentially entails rule of law which an independent judiciary can alone guarantee. The main function of judiciary in a democracy is to strike a harmonious balance of power between the executive and parliament as well as to ensure that individual rights as enshrined in the country's constitution are not infringed upon in any way and that he or she can seek redress to, and shelter of, law as the last resort. It also ensures that law is equally enforced and applied in case of all citizens — high or low — the executive, which initiates the framing of laws as well as ordinary citizens on which such laws are applied. The basic principle of rule of law is that all are to be treated equal and at par before the eyes of the judges, who, as in the United States, also see to it that rights guaranteed by the Constitution are strictly enforced.

Judiciary, to be precise, is to examine, analyse and even monitor the functioning of the executive and parliament, whether these bodies are transgressing individual rights or acting in violation and contravention of fundamental human rights as enshrined in the country's constitution. Rodney Parker of the London School of Economics has rightly said that judiciary must be free and should have inherent strength to overcome possible impediments on its way and external pressures to exercise its authority freely and independently as per law of the land with the book of statutes as its guide.

In a vibrant democracy judiciary and the executive do not always see eye to eye with each other on different issues. It is because judiciary has the right to point out to the executive whether the enforcement or application of any particular law is tantamount to violation of the constitution or not. If in so doing a judge is dismissed or the executive is apt to ignore the judgments of the courts, the judiciary can neither be termed as independent nor strong enough to withstand outside pressure or interference. This is why judiciary is called the third option or alternative for monitoring and enforcing checks and balances on the executive, the third eye of the citizens along with the full play of the civil society and the media.

Judiciary under Attack
by Mansoor Mamoon
The Chief Justice has made a clarion call for keeping judiciary above politics. But the ruling party by its haughtiness and impatience has opened floodgates of controversy. The BNP-led four party alliance is reported to be planning to enforce a shutdown in protest against ruling party's attack on the judiciary (albeit the fact that when the BNP was in power it did not go for the complete independence of judiciary). Thus judiciary has been brought into the vortex of party politics which will not augur well for the independence of judiciary.

Against this general description of the role of judiciary in a democratic dispensation, the present row between judiciary and the ruling Awami League leadership needs to be dispassionately analysed and examined. It all began with the 'embarrassment' of a judge of the High Court division of the Supreme Court when the death verdict of Sheikh Mujib murder case came before his bench for review. Subsequently, two more High Court judges felt equally embarrassed to take up the review reference. Earlier, on two occasions this year two separate benches of the High Court refused to take up the review of the case directing for referring the case to the criminal bench.

At this the irate ruling party leadership started whipping up mass hysteria in the street against the 'embarrassed judges' spitting venom on the judiciary accusing it of 'wilfully delaying the execution of those condemned to death for the killing of Sheikh Mujib'. Responsible senior ministers even directed the court to complete the process of execution and implementation of the verdict by the end of the current year. Some of them asked for the removal of those judges who will feel 'embarrassed' to hear the case. Over-enthusiasts among them threatened the embarrassed judges that they would, in their turn, be tried in the court of the masses (Janatar Adalat). Before the lathi (bamboo stick) brandishing activists of the ruling party one responsible senior minister even warned that supporters of his party would not hesitate next time to use it where needed meaning on the Judiciary?!

On her return from the United States the Prime Minister instead of admonishing her over-jealous party leaders and cabinet members for intimidating and confronting the judiciary in a most unconstitutional manner is alleged to have even given a pat on their shoulder. This is unprecedented in a civilised democratic society. The entire nation, so to say, was awe-struck at the way the higher judiciary was harangued and defamed in public in most abusive languages and that too by those holding executive authority.

This is not the first time that the ruling party resorted to lashing of the judiciary. It was on record that the Prime Minister herself drew attention of the highest judiciary for her false accusations against it. The higher court was again subjected to wild criticism during the ruling party's inhuman slum demolition drive when the judiciary termed it as violation of basic human rights. It also went a step further and embarrassed the entire judiciary when it brought in squatters and kept the precincts of the highest court occupied by them in flagrant violation of their sanctity. For the umpteenth time, responsible ruling party law makers slated the judiciary inside the Jatiya Sangsad (Parliament) which has since been relegated into a one party-affair. This too is unprecedented in a democracy.

The judges can neither appear before parliament to answer the charges labeled against them nor can they hold similar public meetings to explain their positions before the public. The way the ruling party stalwarts are behaving against the judiciary is not only in contravention of what is clearly laid down in the constitution but is also against what they vociferously vouchsafed in their election manifesto. In the very first point of the 21-point AL manifesto of June 1996 general elections it was clearly stated "The Awami League will establish rule of law. In point 8 under the heading 'judiciary' the

AL manifesto pledged "The judiciary will be separated from administration. Independence of judiciary will be ensured as per the basic principles of the Constitution of the People's Republic of Bangladesh." The Awami League is on record not to have done anything to fulfil its above two election pledges during nearly last four years of its rule.

The country's constitution clearly stipulated for the independence and separation of judiciary from the administration (vide Article 22). But no government since the promulgation of the constitution has taken any tangible measure to translate into reality this constitutional obligation before the nation. The first Awami League government headed by Sheikh Mujibur Rahman curbed the semblances and modicum of independence the judiciary enjoyed, by the amendment of articles 115 and 116.

The subsequent military and quasi-military regimes took advantage of the subordination of judiciary. Notwithstanding the restoration of parliamentary democracy, neither the past BNP government of Begum Khaleda Zia nor the AL administration headed by Sheikh Hasina proved to be serious and earnest enough to separate the judiciary from the executive and ensure its independence in the light of constitutional provision, though both had made the promises in an equal vein. But once in power they retracted from their election pledges.

Now about the volley of criticism of the ruling party against the judiciary. The judges have the right to be embarrassed which cannot be misconstrued as designed to delay the process of the hearing of the death references petition of Sheikh Mujib murder case. There are ample instances of such embarrassment by judges both inside it as in the case of Gholam Azam's citizenship case, habeas corpus petition filed on behalf of Motia Chowdhury (now a minister) and former President H M Ershad's case) and outside the country. The concerned judge is also not duty bound to explain the reason for his embarrassment as is being demanded by the Law Minister and other functionaries of the ruling party. A judge has reasons to feel 'embarrassed' when he thinks he will not be in a position to do right to all manner of people according to law, without fear or favour, affection or ill-will. The Constitution does not in any way mean that there will not be fair trial rather the opposite. It is for the sake of fair trial that a judge might refer a particular case to the Chief Justice for its re-allocation to a different bench.

There are set provisions in the constitution for the removal of judges. A judge cannot, therefore, be dismissed at the whims and caprices of a particular party or individual. Calling for the trial of any judge in the 'court of the masses' and threatening the judiciary by organising the gathering of lathi-wielding activists or setting a deadline for the completion of the execution of the verdict of the lower court are highly irresponsible acts and tantamount to dictat, intimidation and direct interference in the independence of judiciary. When a judiciary is dictated by the executive as to what it should do and how to behave, it no longer remains independent. If the judiciary is made subservient, it cannot deliver fair judgement.

According to various reports by independent national and international bodies as well as by self-criticism, lower courts in Bangladesh are already tainted due to allegation of corrupt practices and logjam of

cases (according to one estimate as many as eight lac cases are pending with six hundred cases in an average per judge. In the Supreme Court alone a staggering number of one hundred thousand cases are waiting to be disposed off). Higher Courts still enjoy high and exalted reputation both at home and abroad which is a pride and proof of the existence of democracy in the country. If higher courts come under attack, consequently rule of law, the very first pre-condition of democratic polity, is endangered. Law cannot discriminate against any one and must be allowed to exercise freely without any let or hindrances. This is the essence of democracy. If attempts are made to erode public faith and trust in the country's higher judiciary, it will eventually spell disaster for the very future of the ongoing democratic process. Creating controversy centering the modus operandi and modus vivendi of the higher courts is unacceptable.

The Chief Justice has made a clarion call for keeping judiciary above politics. But the ruling party by its haughtiness and impatience has opened floodgates of controversy. The BNP-led four party alliance is reported to be planning to enforce a shutdown in protest against ruling party's attack on the judiciary (albeit the fact that when the BNP was in power it did not go for the complete independence of judiciary).

Thus judiciary has been brought into the vortex of party politics which will not augur well for the independence of judiciary. Previously the ruling party tried to make the presidency controversial. The speaker has been made to lose his neutrality. The Election Commission has lost its acceptability to the opposition. The parliament is now without opposition. Administration has been largely politicised. Accountability and transparency has already been demanded from the press. The country's education and public examination system is being callously destroyed with overt and covert encouragement to adopt large-scale unfair means. And now judiciary has come under attack. The civil society has a right to ask where the ruling party wants the country to be pushed to?

Peace Efforts Suffer Setback in Sri Lanka

President Chandrika wants to continue the Norwegian peace efforts. Prabhakaran on the other hand seems uninterested. In the process, the island-state is bleeding and no one knows how long will this continue. Despite the successes by the rebels, it will be height of folly to think that the war is nearing an end. The standoff exists and will continue to remain so much to the misfortune of the people of that country.

THE United Nations is withdrawing its demining team from Jaffna, President Chandrika Kumaratunga has rushed home after treatment from an undisclosed foreign destination and Tamil militants have claimed to have captured another vital position following spectacular capture of the strategic Elephant Pass. These are some of the major developments in Sri Lanka in the last few days.

The situation has given rise to new speculations about the shape of things to come in the island-state which is experiencing a bloody civil war for the last 17 years. The whole episode has so far been a see-saw game, as both the government and the Tamil militants have been periodically claiming successes in battle fronts. If it is a story of glory for the government forces by seizing the Tamil stronghold - Jaffna - in late 1995, then certainly the bravery in recapturing it by the militants is another saga of remarkable achievement. The separatists have been fighting for a separate identity as nation. But questions that strike one's mind are: Is the long civil war approaching towards a decisive end? Is a military solution to the problem possible after the successes by the militants in recent days? What are the chances for peace through negotiations, and particularly the mediation efforts by Norway? Does the number of deaths every day indicate that the beautiful and most potentially prosperous in South Asia is bleeding till white?

I had the occasion of being in Colombo for an international seminar in January this year. At that time, I found a glimmer of hope about a peaceful settlement of the civil war despite the fact that there was no sign of relaxation in the battlefield. The reason for hope, at that time, was the realisation in both sides that a military decision favouring either side was out of question and the colossal loss of lives, weapons and materials puts neither the government nor the rebels in a position to continue the fratricidal war for years.

The mediation bid by the Norwegian government and support to such initiative by different groups in Sri Lanka may make it possible that peace endeavours would bear some fruits. There was also an olive branch from the government in the form of 'a new constitution' or 'vital amendments' to the existing constitution mainly for granting enough autonomy for some Tamil-inhabited regions. Opposition leader Ranil Wickremasinghe extended his broad support to the government on the peace moves, and President Chandrika was also softening her stance towards the militants. Tamil separatists supreme - Vellupillai Prabhakaran was not that enthusiastic about the peace moves but was also not totally averse to it. All these combined to present a flicker of optimism.

Then again, there was another side of the picture. The issue is too complex. The positions of two sides are divergently opposite. One side is determined to maintain the territorial integrity of the country and the other is hell-bent on attaining the Eelam. If one's setback in the battlefield encourages the other side for escalating the war, then a reversal puts the opponents in a position of strength. This sequence of changes in the war hardly helps to create a climate for negotiations. The government-opposition relationship on the issue of peace moves is also viewed with a large degree of scepticism by both sides.

Mr. Wickramasinghe is known to be relatively soft to Tamil militants compared to President Chandrika. When both Chandrika and Wickramasinghe fought in the December elections, the incumbent president scrapped through with about 52 per cent votes - a little more than what was required. This has put pressure on the president to find ways for settlement with the Tamils because Mr. Wickramasinghe also



poised to take all of the area after recapturing the Elephant Pass. But the army, notwithstanding the setback, cannot afford further retreat. And it is only obvious that the army will make all-out efforts to prevent further loss of area and may also make serious bid to recover the lost ground. True, the militants too will spare no efforts to consolidate the gains and advance further. Lankan army is estimated to be one lakh, while the number of the militants is around 8,000. About 15,000 troops were reportedly based when Elephant Pass was lost to much smaller number of militants. The Tamils caught them somewhat off-guard with their both guerrilla and conventional tactics of war.

However, this may not last when the government troops come back with greater strength

However, they are not in a mood to negotiate. While President Chandrika favours the continuing of the Norwegian peace efforts, Prabhakaran seems turning a blind eye to her moves. In the process, the island-state is bleeding and no one knows how long will this continue. Despite the successes by the rebels, it will be height of folly to think that the war is nearing an end. The standoff exists and will continue to remain so much to the misfortune of the people of that country. A military solution is a remote possibility.

To the Editor ...

Uncertainty and aftermath

Sir, All the newspapers of 27 April, published the photograph of some cheering faces showing the victory sign. Yes, I am implying the much talked about 132 girl students of Motijheel Model College. Though they have at last been allowed to sit for the H.S.C examination, their result, however would not be published until the disposal of the HC rule.

These students collected their admit cards just before 2/3 hours of the beginning of their examination. And I could not check myself from asking them through this letter that what they have studied for the last couple of months, from the time they have started to protest the injustice done against them. As I myself is an examinee, I do realise how disturbing it might have been and how it hampered their preparation when they were all the time busy in hunger strike or holding press conference and so on. And they did all these because they did not want to wait one long year to appear for the examination. But how successful will they be in their exam when they hardly had any time to study. Let alone revise?

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Penal Code and Criminal Procedure Code

Sir, On 14 April, in the front page of The Daily Star a news appeared referring the Inspector General of Police (IGP) AYBI Siddiqui about country wide transport strike. In the news the IGP was shown to have stated a provision of law regarding cases against any killer driver under section 302 of Cr.P.C. It was also published that police used to file cases against killer driver under section 304 (khal) of Cr.P.C. which provides a maximum punishment for three years imprisonment as the highest punishment.

But there is no such provision of law in criminal procedure code (CrP). Section 302 and sec. 304 (B) of the Cr.P.C do not deal with such matters. Culpable homicide, murder, or causing death by rash driving on riding on a public way is offense under the penal code 1860, which includes sec. 299, 302 and 304 (B) of the penal code respectively.

Penal code and criminal procedure code are two distinct Acts where the former one deals with crime and punishment mainly, and the latter one with procedure of criminal cases including the activities of courts

and public servants of the field concerned.

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By the way...

Sir, MIG-29s and Radars have recently been added to our air force arsenal at a cost of hundreds of thousands of dollars from our hard earned and alarmingly low forex (ever depleting) reserve. According to the DS report published on 23rd April 2000 "Bangladesh is expanding its defense radar surveillance coverage to step up its vigilance against surprise intrusion by enemy aircraft". (From which direction the enemy aircraft will intrude?). At the end the same report tells us, "These aircraft (MIG-29) are packed with both speed and punch and possess superior avionics which make them capable of engaging intruding aircraft within seconds..."

We congratulate the government of Sheikh Hasina for its bold steps in beefing up its defense capabilities. Money was and still is not a problem. While she is receiving scores of prizes, awards and certificates for her peace efforts from around the world she did not forget the dictum, "If you want peace prepare for war." The na-

tion is indebted to her for this crucial policy of her government, and people must sacrifice and give up whatever they have, (if any?) for defending our motherland from the yet unknown enemy. This sacrifice of the people must not effect the Honourable Speaker's hiring of a private helicopter or even a plane to make non-official trips for the Gouri Sen is there to foot the bill. The same policy is equally applied to and superbly practiced by the honourable members of the government under the stewardship of our globe trotting Prime Minister. Why exclude bureaucrats? In order to subdue the opponents of MIG-29, Radar and other defense related purchases the government can create a war hysteria through the efficient electronic media under the supreme command of Mr.(Professor) Abu Saeed. If ministers and their party cadets could create a war like hysteria on the streets of Dhaka on April 18, 2000 against Higher Judiciary of Bangladesh, the government can also create the war hysteria all over the country against the yet unknown (at least to the citizens) enemy of the country.

By the way, who is our enemy, may we ask?

Syed Waliullah
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Art Buchwald's COLUMN
Let's Make a Deal

THIS is the Golden Age for college graduates. Company recruiters are filling up university gymnasiums to interview candidates for \$100,000-a-year jobs. In the past, students were on their knees begging for positions. Now the recruiters are on their knees pleading with graduates to accept a position. I was in the gym of a top Ivy League business school on the East Coast. Several of the recruiters were giving out free ice cream; others were handing out Nintendo games. One recruiter said to a young man, "How would you like to work for the Ozone Investment Bank?" The young man asked, "What are you offering?" The recruiter said, "Take a peek in this crate." Inside was a Harley Davidson. "My parents bought me one for graduation." "Would you like a hunting lodge in Jackson Hole?" "That would be nice. How many bedrooms?" "Two. Look, my firm means serious business. You sign up with us, and we give you a credit card for all meals at Le Cirque." "I'd like to think it over. Pedro & Pedro are talking about leasing me a yacht in Miami." "Are you going to get married soon?" "I was thinking about it." "Ok, we'll pay for the wedding and throw in a home in Westchester and a diamond ring from Tiffany's." "If I join you, can I get as much as a baseball player?" "I wouldn't be talking to you if you didn't have what it takes to become a member of the firm." "This is just a question, but do you supply chauffeur sedans to work?" "Of course, we can't. Do you work in the basement there isn't anything you can't ask for." "We'll double whatever JP Morgan is offering you." I wandered through the gymnasium. The recruiters were treating women graduates with the same respect they were giving the men. I heard one say, "We have a hairdresser open 24 hours a day, and you don't have to make coffee for any of your fellow workers." The student was taking the offer seriously when another recruiter came up. "How would you like to be vice president and have the company helicopter on weekends?" No one was fooling around in the gym. They couldn't afford to when there was so much merger money at stake.

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