

Parliament is Opposition's Place

MOST Opposition MPs face the predicament of losing their parliament membership if they persist in staying out of the JS by another 32 to 40 days. The forthcoming budget session is likely to be of that critical duration, thereby presaging application of Article 67 (1) (b) of the Constitution which stipulates loss of JS membership due to absence for 90 consecutive sitting days.

Since this is a distinct possibility we think the wake up call is ringing for the Opposition to do some self-analysis. They have absented from many more working days of the JS than they could attend contributing hugely to the marginalisation of the most vital institution of democracy, namely the parliament.

Leave aside the concern for the country's interest, or for democracy, has the opposition's strategy served their own interest? This is something they must now ponder deeply over. What are their points of discord with the ruling party that they keep boycotting the parliament? Their five-point demand list for return to parliament submitted way back on the heels of their announcement of a boycott in July last included withdrawal of aspersive remarks the PM made upon the Leader of the Opposition, expression of a regret over those and a commitment not to repeat them, Speaker's commitment to neutrality or equality of treatment in the House and cessation of alleged repression on the opposition.

Rather than putting these demands forward from the outside as preconditions to joining the parliament if the opposition had articulated them on the floor of the House their purpose would certainly have been much better served. They could expose the Speaker and the ruling party on all the points at issue in full public view while giving their constituencies the satisfaction of having elected them to the parliament.

The opposition should review the effectiveness of their strategy and end the JS stand-off in the light of the approaching general elections which call for parliamentary decision on electoral reform and women's seats. Besides, the budget and Zilla Parishad bill are on the cards. Can the opposition be a mute spectator to their passage through the JS? All in all, they should feel impelled to return to parliament.

A Rude Lesson

IT was certainly not what the thousands of spectators inside the Bangabandhu National Stadium and millions of cricket crazy fans across the country had hoped for, especially after reasonably gutsy performance by the local lads in their first two matches in the Pepsi Asian Cup. A 233-run thumping it was, in the hands of the very team whom they had conquered at the cardinal carnival of cricket — the World Cup. Demeaning the defeat was indeed and morale-crushing as well; however, we believe our players and officials would take it in a positive frame of mind. Thrashing defeat such as this is the rude reality the fledglings, which we still are, at the highest level of the game have to live with for some time yet. It was the same with Sri Lanka, the last entrants into the ivy league from South Asia; so it was for Pakistan, our tormentors Friday. There are lessons to be learned from such debacles and losing heart is certainly not among them.

Bangladesh now stands at the threshold of achieving the much-coveted Test status, having toiled over the years to reach the position it now is in. One bad day out on the ground does not, and should not, nullify the potential the country has made so far. While on the field our players do have a lot of improvements to make, so do our cricket bosses off the field. There should be an overall infrastructure development, which essentially doesn't mean having more stadia or sporting complexes. We need to take the game to the grassroots and the talent hunt for our representatives at the international arena must start from the school level. So, what we are suggesting is introduction of regular tournaments for colleges and schools.

At the same time, the players we have now in the national team need more exposure to international cricket. Instead of organising triangular or quadrangular series involving big guns of the game, the organisers should plan events with Kenya, Ireland and such upcoming nations. As cricket is not only a game of skill but also of mind, so is development of the game. If nations like Sri Lanka and Zimbabwe could do it, there is absolutely no reason why we can't.

So Short of Container Vessels?

NON-AVAILABILITY of feeder vessels or container ships at the Mongla port has almost become a chronic problem for the shrimp exporters. Sometime back we wrote in these columns about the same problem of a greater magnitude. Once again we do so to highlight a predicament of the frozen food exporters of the country. A report in The Daily Star on Saturday stated that frozen foods worth Tk 150 crore awaited shipment at Mongla port for the last 17 days due to acute shortage of container vessels. This is disturbing news as the entire lot could be damaged if the shipment is delayed further.

Bangladesh Frozen Food Exporters' Association has sent an SOS to the government to take up urgent measures to bail them out of this crisis. If the shipment does not take place within a specific period of time the LC may be cancelled by the buyer causing huge loss of business and money to the exporters and grave apprehensions of losing out market to other parties. This cannot be allowed to happen in the interest of the country. The ministry concerned, in this case the shipping ministry, must bear the responsibility for delayed shipment of frozen foods. It is a pity that we do not take care of what has been given to us by Nature, rather our wasteful habits go on whittling down what we have. Shrimps and other frozen foods are processed at high percentage of wastage, and if we fail to utilise even the remainders then we can only blame ourselves.

Law and Order: A Neglected Area in Our Budget

by Muzaffer Ahmad

Economics may be a difficult subject and crime may be dubbed a complicated phenomenon but it is important to assert that an economic approach to analysis of impact and incidence of crime and budgetary allocation on the basis of human rights of common man has become a necessity for good governance.

THE budget for the next year has become topical. People in the know of it and people who presume to have wisdom about it are making noise. Interested quarters are also active in making suggestions for consideration of the decision makers, and the donors seem to play an overt or covert overseer's role. The focus so far seem to be narrowly on so-called macro-fundamentals and growth issues. Without claiming any experience of budget making and having had exposures to analytics of fiscal and monetary issues that have been addressed in developed and developing countries on an expert level, I wish to address myself to a matter of serious concern to the common man. The issue is crime in general and economic crime in particular.

One may ask how is it relevant to budgetary exercise. My answer would be that the voluminous literature on law and economics as well as governance and economics under the institutional regime do recognise the importance of a system that guarantees the right to normal life opportunities and the right to lawful ownership of property of all sorts as fundamental to a system and regime that promotes growth and that expands choices and opportunities. In fact the longer is the range of time considered, and assured, the greater is supposed to be the rationality of behaviour of economic actors and thus the deviation of trend from cycle is minimal.

I am certain that none in this country would question the fact that right to normal life and guarantee for natural death has become more and more uncertain in Bangladesh. Any newspaper randomly picked up on any day is good enough testimony to my assertion. A recent opinion poll conducted in metropolitan cities, municipal towns, peri-urban areas and rural areas show that an overwhelming majority believe that insecurity of life and property has increased over time. This randomised poll also indicates that the scenario has deteriorated because of the criminalisation of politics including student and labour politics and politicisation of administration or incapacitation of administration.

During the last three decades, crime has emerged as a significant social and economic issue in many nations as well as on the international scene. The intensity is not only unquestionable but is also increasing while the technology of criminal action has been changing. The expanse of criminal activity has widened and certain criminal activities are transnational in nature. This means even to maintain a given level of 'criminality' which ensures right to normal life, and right to normal death as well as right to enjoy fruits of lawful property that only ensures work-effort, savings, investment, innovation and entrepreneurship at a point of time and over periods of time, increasing resources have to be committed to crime prevention, crime detection and criminal justice. It was recognised in the report submitted by US Presidents Commission in 1967 that fear of crime is eroding the quality of life and affecting the economic endeavours adversely even though the private investment in protection against crime by individuals and the community had sharply in-

creased.

The budgetary expenditure for law and order maintenance machinery and for judiciary has not increased in real per capita terms over the last one decade and a half. If one goes through the revenue and development budgets, despite incremental increase in criminal activity, increasingly more people have been murdered, more women have been tortured, more labour have not been provided facilities guaranteed by law, more banned items have been imported, more adulterated goods have been marketed, more hijacking has taken place, more land has been forcefully occupied by the mighty, more vandalism occurs every day, more corruption comes to light, more smuggling of goods is reported, more trafficking in women and children happens, more incidents of fraud and forgery come to light, so on and so forth.

Students under my supervision had done few interesting analysis, and the findings are revealing. First, the relationship between reported crime and budgetary allocation is negative. The co-efficient is significant. Second, the number of law and order personnel per ten thousand population has decreased over time. Third, the net number of police and related personnel available per reported crime has gone down over time. Fourth, the number of judicial officers and magistrates available per pending as well as overdue (pending for more than a year) cases has diminished over time. Fifth, average time for investigating a reported crime has increased over the years. Sixth, while there has been an increase in the variety of crime, the (specialised) capacity of the law and order machinery, both in police and judiciary, has remained stagnant. Seventh, because of the delay, incapacity, non-prioritisation and lack of required knowledge, cost of getting justice has sky-rocketed and it is already beyond the reach of the majority of population judged by their household income. Eighth, the business community's complaint, big and small, is universal and they assert that cost of doing business because of increased crime and collusion of law enforcers has so increased that a normal mark-up on their goods and services provide them with a low rate of return of seed capital. This seems unbelievable when one sees the growth of supermarkets but this makes sense when one notices high rates of change in small business ownership. Compare the current mark-up with earlier practice and compute their preventive and protective investment for security against crime. There has been a fundamental government failure which has not been adequately noticed in our budget formulations.

In some of the developed countries public expenditure for criminal justice doubled between 1971 and 1975, doubled again between '76 and '82 and such rate has been maintained despite complaint of ineffectiveness of such expenditure, on the one hand, from the conservatives and insufficiency of ex-

penditure, on the other, from the radicals. In the United States about 2.5 per cent of GNP is spent on crime prevention, crime detection, crime prevention, crime education, and criminal justice at local, state and federal level. We do not spend about half per cent of GNP for this purpose and it has not attracted any priority in allocation of resources despite the fact that containment or elimination of heinous crime perpetrated against ordinary men (i.e. Santrashi) was a high priority in electoral commitment.

Crime in Bangladesh imposes a very heavy social and economic burden on the individual, on the community and the country as a whole. It is a shame that no attempt to ascertain full extent of the economic loss has ever been made. We need to know what crime causes how much economic loss, on whom the costs of crime fall and what costs need be committed to prevent it and to protect against recurrence of such crime. Take the case of Ershad Shikhar who committed countless crimes which inflicted not only loss of life and property, forcible occupation of public space, engagement in contraband activities, corrupting politicians and officials, but also diversion of public and private resources and contain-

ment of individual choice and freedom. Reportedly more such Ershad Shikhar are in Khulna and elsewhere. A cursory valuation of his criminal activities put a figure of a billion taka loss for treasury or some individual and gain for him, his protectors and his collaborators. Not Surprisingly the information available is fragmentary and cost information is all the more so. It is surprising that except for boastful verbiage of the authority so little progress has been made in investment for prevention of such awful criminality: all that has been done is reallocation of resources creating void with respect to crime prevention and detection in other areas. A good government owes it to the people in whose name they speak not only to collect and collate such costs but also develop a potential use of such cost data for allocation of budgetary resources. Think of the activities of so called 'five star group' in DCC, forcible occupation of property in Kalabagan, killing of a businessman in Banani, operation of unlicensed syndicate bank, collection of nearly a crore taka every week from shops near Dhaka College area by student leaders of a particular political party and so on. Are these not indicators of vulnerability of the common man in the hands of goons. And such environment is more responsible for stagnating investment by middle class than occasional disruptive harkals

which are also foisted on helpless people by interested political parties misusing and misinterpreting the norms of democracy. Economics may be a difficult subject and crime may be dubbed a complicated phenomenon but it is important to assert that an economic approach to analysis of impact and incidence of crime and budgetary allocation on the basis of human rights of common man has become a necessity for good governance. This is so because rights consideration are of increasing importance for tax-paying public and the burden of public expenditure needs to be related to public benefit, the foundation of which is ensuring the right to normal life and the right to lawful property. The allocations for criminal justice administration in our budgets are much less than defence or public administration, or even upkeep of the ministries and members of parliament taken together. This shows misallocation at the neglect of the right of the populace in whose name the rulers and budget framers take their office.

The demand for various aspects of crime prevention, crime detection and criminal justice is very loud indeed but such public service and public good does not get the appropriate

though difficult to obtain an approximate measure of dynamic equilibrium quantity and the investment needed for keeping criminality at a desired low level. Cosmetic investment in dog squad, horse mounted police, armed police cadre etc has not provided any public service. The investment being a cost to the exchequer and by implication the taxpayer, it must be of such a nature that augments benefits in terms of a crime free society as far as possible. Remember that criminal behaviour is defined as violation of the criminal law as well as violation of civil law with a criminal intent, and such laws were enacted by political authority according to certain norms but laws are arbitrary because the limitations they impose may be arbitrarily defined according to the vested interest and application of laws are more arbitrary. Such arbitrariness cause distortion in the society and economy. I know, as was pointed out by US Presidents Commission, that investment in prevention of crime requires proper understanding of the causes, proper evaluation of risks, proper identification of preventive and remedial action of an enormous variety of acts which make up the criminal problem and no single formula, let alone the component of the costs of crime is adequate. The collective entity of the state has to come to play as the studies of investment in law and order done by Phillips and Volley has established through a cross-section study of nations.

The public cost of protection is needed even in developed countries because market does not provide sufficient protection, adjudication and correction. Further market for protection even in developed countries applies a forceful exclusion principle. So even when citizens do not entirely depend on protection provided by public expenditure, the cost of victimisation and non-protection is distributed in a skewed manner against the majority and the not-so-fortunate.

The issue of distribution of services related to justice must not only be equitable but in reality should be tilted in favour of the disadvantaged. The efficiency of law and justice services includes an equity norm. We must remember three aspects of distribution very aptly defined by Musgrave and Musgrave. First, even where distributional objectives are not the primary policy target, the distributive implications of various policies must be taken into account in setting the overall policy package particularly in respect of merit which law and order is good. Second, if distributional changes are to be made, they should be done so as to be the least costly in terms of efficiency. Inefficient distributional system may indeed mean less access to law and order services. Third, to decide what distributional changes be made and how, a standard of distributive justice and fairness must be applied so that evaluation and choosing among alternatives became possible.

Even though there is no unique and effective method of

determining how much is the optimal investment in law and order, but cost as calculated along age old colonial formula provides some rudimentary idea of directions, even though, no single theory or no single generalisation can explain the vast range of deviant behaviour that comes within the ambit of crime. In fact I was told by a lawyer friend that there are about 5000 activities that can come under the jurisdiction of criminal law and many more if civil violations with criminal intent are included. I also know that criminal justice professionals have confined themselves to 'what is' at the cost of 'what ought to be'. But can we forget the urging of the early framers of the theory of state who said that the state must be proactive to forbid and cause to forbid any activity which can come under the jurisdiction of criminal law and harm or even tends to produce harm to the members of society or in the sphere of the economy or polity and such prohibition must be equitable for all the populace within the jurisdiction of the state?

The prevention or remedy of criminal activities — social, political or economic — is a primary function of the state as protection, survival and development rights are basic covenants of human rights. Economists agree criminal activities or even intent of criminal activity, have opportunity cost in the context of resource use, external cost because many crimes imposes limitations on those who are not directly affected and social costs as is found in the writings of Rottenberg and Clotfelter. A rational society may prefer to experience a certain degree of harm and leave it to individuals to take remedial action involving some investment. This is so when direct cost of crime can be prevented by less or equal investment at the individual level. When the crime has externality and social costs are large, governmental failure in this regard is considered unacceptable not only in present years but also over time.

In 1901, a study by Smith estimated that prisons, police and criminal courts needed a public sector investment of \$200m per year in USA. In 1931 Wickersham Commission found that financial costs of crime is enormous so are the social and external costs which run into billions of dollars. The commission noted that extortion levels upon the community by the criminals is even larger. The US News and World report estimated that between 1970 and 1974 costs of crime including private losses and law enforcement has increased by 14.8 per cent in USA and between '74 and '75 it increased by 9.5 per cent. Recent report indicates that as the variety of crime has increased the costs of crime has continued to rise as a percentage of GNP. The Bangladesh experience over the last three decades show similar trend and in the last decade it seems to have accelerated due to criminalisation of politics and politicisation of administration, particularly police and magistracy. Thus while we need increased resource to guarantee right to normal life and right to lawful property, we also need administrative reforms that will ensure distributive optimality with respect to protection, survival, development and justice.

Fair Elections and Challenges before the New CEC

by Nurul Kabir

The new CEC has his work cut out. He has to make an all-out effort to have the electoral laws reformed before the next general elections. There should be legal provisions to cancel candidature for distribution of money among voters, use of muscle to obstruct opponents' passage to polling stations and influence on administration to manipulate results.

THE tiff between rival political camps over the appointment of chief election commissioner has shed light on the slow but steady emergence of the Election Commission as a crucial factor in the political scene.

There was a time, especially in the days of the dictators — civilian, military or quasi-military, people and, needless to say, political parties hardly took the Election Commission seriously.

People did go to the polling centres although their choice hardly mattered. It was unfavourable the dictators who determined the results. The field-level bureaucracy, especially the Deputy Commissioners (DCs) and Thana Nirbahi Officers (TNOs), playing vital roles of returning officers and assistant returning officers respectively, manipulated electoral results at the dictates of those in power.

The commission's role was to 'legalise' the illegal efforts against issuance of gazette notification. Like a puppet on a chain, it declared winners the men nominated by the dictators. At one stage, such shameless manipulations almost made people apathetic to the electoral process itself.

General Ershad's ouster in 1990 heralded the beginning of a change in the positive direction. The decade-long struggle against extra-constitutional usurpation of power contributed to generating amongst people a stronger sense of citizens' rights. People became increasingly aware of their authority to freely choose representatives in the parliament or, in other words, elect a government.

Besides, the long political struggle polarised the entire population into two major political camps, which made meddling with electoral results a difficult proposition.

This development compelled the power contenders to decentralise, if one may call it, their electoral efforts. They started focusing more on winning hearts of the electorate and, of course, the election commis-

sion. Although having returning and assistant returning officers of choice still tops their agenda, the candidates know very well that bureaucrats alone can no longer win election for them by changing ballots in the dark of the night.

So, whether they like it or not, appeasing the electorate has become important these days. The candidates, however, have improvised on this by injecting such illegal means as bribing people and polling officials and employing armed hoodlums into 'electioneering'.

Chances for winning the polls for a party, therefore, get brighter if the commission just ignores certain corrupt practices by the candidates and the administration before, during and after the polls. Therefore, the need for a subservient commission arises. The ruling party naturally looks for a 'docile' person for the post while the opposition either looks for a 'politically neutral person'.

This became too apparent in the latest tug of war between the Awami League and the BNP. There are ample indications that suggest the letters and phone calls to initiate talks towards consensual nomination of CEC were nothing short of playing to the gallery.

Had the Prime Minister been serious about consulting the Leader of the Opposition on the issue, she would not have unilaterally decided the time for a meeting with the latter. Similarly, if the opposition leader had been sincere about a dialogue between second-layer leaders of the parties, she would not have publicly denounced the possibility of talks with the government. Both of them wanted to give an impression to the people that they wanted to nominate a CEC on the basis of consensus. None of them meant

it. They, of course, had their own political objectives behind the drama. The prime minister wanted her 'own' man as the CEC while the opposition leader wanted to keep alive a contentious issue. Both won, at the cost of social and political stability.

Eventually, M A Syed was made the CEC by the ruling party under controversial circumstances. Nevertheless, now that he is at the helm of electoral affairs, his faces a two-fold task. First, he has to discharge his constitutional obligation to conduct free and fair election; and, second, he has to prove beyond doubt that he is nobody's fool.

Had the choice been consensual, the situation would not have been any different, either. Abu Hena, whose premature exit from the scene sparked off the crisis, was chosen back in 1996 by none other than BNP itself. AL found the nomination 'acceptable'. Ironically, BNP started accusing Hena of AL bias when some of its candidates had failed to win certain parliamentary by-elections. Its grievance eventually snowballed into the demand for Hena's scalp, so to speak. However, there was no substantive evidence at BNP's disposal to back up its allegations (it is so easy for politicians of certain breed to question a person's integrity). The bottom-line is, the CEC's job is perennially painstaking, regardless of how he was appointed.

BNP's unsubstantiated allegations against Hena do not necessarily mean that the by-polls were held in a free and fair atmosphere. Nor Hena neither his colleagues on the EC had ever made such a claim. On the contrary, Hena linked amendment of electoral laws to free and fair polls, thereby suggesting that the polls held had been flawed.

While Hena spent his days in the Commission with the opposition accusing him of political bias towards AL, the government did not spare him either when his decisions had gone against its interest. The government started giving him cold shoulder when he refused to entertain its request to hold Upazila elections regardless of opposition's stand. At one stage, the ruling party stalwart launched scathing criticism against the EC for its reluctance to go for the polls, which, if held without opposition, would have found no democratic rationale for holding the polls. Hena resigned 'on health ground'.

If willing to uphold personal integrity and democratic values, the new CEC is free to learn from Hena's ordeal.

After resigning on May 8 this year, Hena told the media that fair election was impossible under existing electoral laws and rules. The EC, headed by Abu Hena, identified certain loopholes in the electoral system and put forward recommendations for redress.

The recommendations included registration of political parties, effective monitoring of electoral expenses, auditing of returns submitted by the candidates, empowering field-level EC officials to stop polls in case of gross irregularities, effective punishment for candidates violating electoral laws, rules and code of conduct etc. Apparently, the government did not pay any heed to them.

Hena was not the only CEC to discover inadequacies of and flaws in the electoral laws. Justice Abdur Rauf, who quit the office after a scandalous parliamentary by-election in 1995, was also aware of these. Besides, he found administrative manipulation a big impediment to free and fair elections. He, therefore, conceived the notion

of polls supervised by local people. Subsequently, two polls were held — one in the Dapunia Union Parishad polls in Mymensingh district and the other in the Tongi Municipal elections in Gazipur — on this model.

Apart from the former CECs, the left-wing political parties, liberal democrats, civic forums as well as individual experts have also been demanding electoral law reforms for a leak-proof electoral system for quite some time now. To top it off, leaders of Awami League and BNP, main contenders of state power, also admit that electoral law reforms on massive scale have now become imperative.

But the government is yet to take any effective step to plug the loopholes. The opposition, on the other hand, has not been too keen on this.

Unfortunately, but not quite surprising, the loopholes in the law actually serve their purpose by allowing them use, or abuse, of black money, muscle power and administrative manipulations that, as we all know, are major impediments to free and fair elections.

Therefore, the new CEC has his work cut out. He has to make an all-out effort to have the electoral laws reformed before the next general elections. There should be legal provisions to cancel candidature for distribution of money among voters, use of muscle to obstruct opponents' passage to polling stations and influence on administration to manipulate results. There should also be a provision for audit of election expenditure returns by the EC which should have the authority to cancel elections even after announcement of results in case of the elected is found to have exceeded the limit of elec-

tioning expenditure. Besides, there must be provision for termination of government officials found guilty of lending administrative favour to any political party or candidates.

The government has already made some 150 mid-ranking government officials OSD reportedly on political considerations. Moreover, wholesale promotion of about 500 officials of the administrative cadre — who preside over polls at the field level — is almost certain. Besides, the ruling party is reportedly pressuring the new chief election commissioner to hold the Upazila Parishad and, if possible, Zila Parishad polls, opposition participants or not.

There is apparently no harm in holding elections to local governments. In fact, powerful local governments are of vital importance towards institutionalisation of democracy; for, empowerment of people is directly proportionate to the strength of local governments. But it is very difficult to appreciate elections to such important bodies if it is meant for political benefit of a certain political camp and damages for other. This was the reason why the Hena-led commission refused to hold the polls. Mosh-taque Ahmed Chowdhury, who was the acting CEC during Hena's absence, also found it 'meaningless' to hold the Upazila polls without participation of all concerned only the other day.

However, his indifference to electoral law reforms, decision to give promotion to a particular category of civil servants and make certain others OSDs, and reported plan to hold UZ polls could well be construed as the government's intention to having a stage where general elections would be staged to perpetuate its stay in power.

The new chief of the election commission has to decide whether he would help the ruling party implement the political interests at the cost of social stability, or assert his constitutional authority to uphold citizens' democratic right to freely choose their representatives.