

Doubts about Election?

ANWAR Hossain Manju has made us sit up with the talk he gave on *State of Politics in Bangladesh* in Meet-the-Reporters programme organised by Dhaka Reporters Unity (DRU) on Saturday. It is highly noteworthy that a man who has scrupulously distanced himself from any biggish controversy staying quietly focused on his ministerial job for the last four years has chosen to speak out. The sudden unburdening of his mind has yielded some disquieting thoughts as well as sparkling insights.

Let's first compliment him for the refreshing candour with which he has shared his inner thoughts with the mediamen. When these days a government minister or insider goes the whole hog supporting every action of his ilk Anwar Hossain Manju has beaten a different path. He has minced no word to say what needed to be said and that too not with any customary design to curry favour with the opposition. He has spoken of a stifling situation lamenting that the head of the government and the principal leader of the opposition are not on talking terms and refuse to face each other even in social programmes. He regrets that many leaders have created suffocating situations in their respective areas by 'backing terrorists'.

We could not agree more with his diagnosis of the political ailment but for a government leader of his standing to cast doubts on the staging of the next general election is something we cannot take with any amount of mental equanimity. It is a highly disturbing thought. We express our concern over it. Why must Anwar Hossain Manju see an 'apprehension' like that persisting because of what he sweepingly regards as our failure to establish constitutional politics in the last 50 years? For is it not after the derailment of constitutional politics under military or semi-military rule for a long spell that we bounced back with the fall of autocracy and restored democracy in 1991? Then on we have had two general elections on time under caretaker governments working well as a constitutional safety-valve that remains intact to facilitate the holding of the next elections. Doesn't it?

Manju's doubts about polls calls for an immediate assertion from the government that we are firmly on the election path and there cannot be any wavering from it. As citizens we believe election is a constitutional mandate that cannot be trifled with under any circumstances whatsoever. It should be held, it must be held and anybody tinkering with it should have no place in the politics of Bangladesh.

Are the Jets Necessary?

WE understand that the matter relating to the procurement of a couple of executive jets, for use by the President and the Prime Minister of the country is still at a very preliminary stage, but we would like to see the idea nipped in the bud in the greater interest of the state and the people of the country. Very few Third World government leaders have the luxury of having executive jets for their exclusive use. They normally travel by their national carriers.

Why do we need it? Don't we have anything better and pressing to spend our money on? The thought of an executive jet sounds nothing more than an ego trip and a fancy for empty and despicable grandeur far out of proportion with economic and political imperatives of the day. The whole idea is not in sync with the country's development priorities. It neither makes political or any economic sense. The President hardly travels and the future incumbent is likely to have similarly limited itinerary for foreign trips. It is only the Prime Minister who does most of the travelling as the head of government. But to maintain a fleet for both the Prime Minister and the President, however limited in size it may be, cannot make any economic sense; simply because of the fact that its maintenance and upgradation requirements will call for a sizable diversion of resources at the expense of pressing social priorities. The government should know that discretion is the better part of valour.

Bring the Bangladeshis Back

THE story of six thousand Bangladeshi nationals, mostly workers, languishing in foreign jails, makes sad reading. In less than three years' time the number of such people has doubled. According to a detailed report in Bangla daily *Prothom Alo* on Thursday these people remain in captivity in 33 countries of Asia and Europe. There may be many others who are not accounted for. Among the imprisoned are those who had entered the foreign lands without valid documents or have stayed in those countries beyond the period mentioned in their work permits. But bulk of this number is likely to be genuine people who landed in trouble because of the machinations of recruiting agents at home. There are manpower businessmen who trade on human misery under the nose of the authorities but hardly any action is taken against them. Even the recruiting agents' association (BAIRA) has demanded punishment against such fake agents who are responsible for the misery of so many poor, innocent people who sought employment abroad and got thoroughly cheated in the end. Thousands of job-seekers have been made into paupers by these villains.

The process continues unabated and the culprits do it without any fear of law or punishment. There are instances where three, even four times more than the normal fees were charged from the job seekers as has been admitted by the general secretary of BAIRA. There is a lot of movement of job seekers across the world, especially from the underdeveloped countries to the developed and developing ones. It is no crime for people to seek employment outside their own countries. Lack of employment opportunities at home is the primary reason for such labour migration. We should feel obliged to keep the fake recruiters at bay, if necessary in consultation with host governments.

The government has responsibilities towards its citizens wherever they are. Our missions abroad could do well with a little more motivation to look after the interest of their fellow citizens overseas. The fact that many of them had gone there illegally does not dilute our basic responsibility towards them. The foreign ministry must get a move on to secure the release of the imprisoned Bangladeshi abroad. Let us bring them back on humanitarian grounds and at the same time take punitive measures against those agencies which were responsible for their misfortune.

Who is Misleading the Prime Minister?

by An Observer

It is not fair to suggest that the Judges are releasing criminals, while the police department is doing a bad job. This sort of utterance has misled not only the Prime Minister but also the people of this country. After hearing a complaint from the people of Magbazar, the Home Minister should have initiated an investigation to find whether the police are doing their job properly.

THE Daily Star reported that 11 eminent lawyers accused the Prime Minister of contempt of court because of her derogatory remarks about the role of judiciary in granting bail to alleged criminals. She contended by saying, "I have spoken of the hard reality. I say what I believe and my position reflects the people's sentiment. I made no derogatory remarks about the judiciary, nor did I violate the constitution." She further reiterated that, "Like two other branches of the state - the Legislature and the Executive - the judiciary should also be accountable." This is indeed a stateperson-like remark. She is speaking of something that she believes. There is nothing wrong in it. But, we wonder why does she believe that way. Some institution or someone must be providing her information on the issue creating an impression that judges and lawyers are siding with the criminals and that is why the country has become ungovernable.

Which is that institution and who could be that someone? The straightforward and logical conclusion will be the Home Ministry, and the person likely to be the minister himself. He must be the one who is telling the Prime Minister that it is because of the role of judiciary the law and order situation has become ungovernable. Such a bunch is supported by Home Minister's previous statement in the Parliament. His statement in the Parliament was published in many newspapers including *The Daily Star* and *The Independent* on 7 September 1999. The gist of his statement (as reported in 52 DLR 16) was that the terrorists were arrested in the city and then they were freed under the High Court order. One day some local people from Magbazar area came to him and informed that notorious terrorist Shubhra was released from jail as the High Court granted him bail. They said, it would be really difficult for them to live in peace in the

area if Shubhra is allowed to move freely. Convinced by what they said, the Home Minister immediately asked the Inspector General of Police to arrest Shubhra again. But the Inspector General of Police informed him in five minutes that the High Court had not only granted him bail but also issued a directive not to arrest him again. The Court also warned that if Shubhra was arrested again, it would take action against the Home Ministry. The Home Minister further referred to an accused in a murder case named Nurunnabi, who was granted advance bail by the Court. He felt sorry when he saw that one Nurunnabi involved in the bomb attack that killed several people at Udichi Conference in Jessore, got advance bail from the Court.

The finding of a court during a contempt hearing on Home Minister's statement in the Parliament, mentioned that although, (as reported in 52 DLR 16) "two instances have been given by the Home Minister in the Parliament, one with regard to granting of bail to a terrorist named Shubhra of Magbazar and another Nurunnabi, as accused in a bomb case, yet those instances are not correct inasmuch as that Nurunnabi of Jessore is still in custody and the Shubhra of Magbazar was not granted bail by the High Court Division in any case." From the judgment of the writ petition no 1607 of 1999, "it appears that Shubhra was first detained under Special Powers Act and the order of detention was challenged in the High Court Division in a writ petition."

After hearing the High Court Division made the Rule absolute, declared the detention illegal and directed the respondent to release him. Thrice detention

order was passed and on three occasions the High Court division declared the detention of Shubhra illegal and directed the respondents to release the detenu. But it appears from the judgment that as soon as the detenu came out from jail gate, every time he was served with the fresh detention order and kept him in custody on the selfsame grounds and reasons. Similarly, for the fourth time a similar detention order was served upon Shubhra at the jail gate and under that order he was kept in custody and this fourth detention order was challenged in the above-mentioned Writ petition.

After hearing the Petitioner and the Government, the Court delivered the judgment making a (reported in 52 DLR 16) "detailed discussion about the arrest of the detenu Shubhra for the fourth time one after another on similar grounds. In disposing of the detention case the High Court Division held that only for frustrating the judgment of the High Court Division successive orders of detention were given which is nothing but interference with the course of justice. Further, the High Court Division directed the detaining authority not to repeat such illegal detention order in order to frustrate the judgment" of the Court. "A copy of the judgment was sent to the Secretary, Ministry of Home Affairs for information and for taking necessary actions for such repeated illegal detention orders on the selfsame grounds to a citizen of this country."

It is clear from the above facts that the Home Minister's statement in the Parliament was totally wrong. In fact, he misled the Parliament, the Prime Minister and the people

of this country. He proudly claimed that on hearing the local people of Magbazar he immediately asked the Inspector General of Police to arrest Shubhra. Is this the task of a Home Minister to ask the Inspector General of Police to arrest someone? Under what authority he did so? He is a public representative and that means he is the representative of the people who lodged the complaint against Shubhra as well as the representative of those who are being accused. People of Magbazar went to him, if at all true, not to get an immediate arrest order from him but to seek his intervention in making the police department more effective in terms of providing social protection.

The police evidently failed to bring any formal allegation or criminal charge against Shubhra during the period of his detention or prior to that. It could be because Shubhra is innocent or police are not doing their duty. The Special Power Act can be abused by the Executive Branch to detain an innocent person, but it will be difficult for the Judiciary to join them. For argument's sake let us consider that Shubhra is not innocent. Then, the question arises as to why the police did not act to bring charge against him. Considering Shubhra as a big terrorist, one may argue that as long as he is free no one would dare to testify against him. What do we find here? A witness cannot be provided protection by the government. We find the state's failure to provide adequate protection to the people.

What is a state function? Is it just the Executive function? I believe not. It is a combined function of the Legislature, Executive and Judiciary. Legisla-

ture makes law and policy. Executive applies it and the Judiciary monitors whether the law and policy made by the legislature is implemented properly. It is not possible for the Judiciary to drift away from the law created by the legislature to accommodate failure or irregularities of the Executive. If it is Executive's responsibility to maintain law and order and provide protection to the society without infringing upon anybody else's right. The Judiciary maintains neutrality and independence in safeguarding everybody's right. Indeed, the accused are included among the everybody. The rights of the accused, as formulated by the legislature and judicial precedent, refer to various aspects of criminal procedure designed to safeguard the innocent from harassment and conviction.

Basically, these rights are nine in number, starting from the original arrest to the final appeal. They are as follows in the order in which they usually occur: (A) Rights prior to first court appearance: (1) Arrest or search only where there is substantial likelihood of guilt, (2) No involuntary confessions or self-incrimination; (B) Rights from first court appearances to trial: (3) Release pending speedy trial, (4) Right to a lawyer at trial or before, (5) Formal notice of charges; (C) The trial stage: (6) Impartial trial, (7) Right to cross-examine and summon witness; (D) Post-trial: (8) No excessive fines or punishment, (9) No double jeopardy and right to appeal. By granting bail the Judiciary is dealing with only one right. It is a right to which the accused is entitled and not a mere favour. To deprive a person of his liberty is something very serious. A Judge just cannot put someone behind

the bar because the Home Minister wants it. In order not to grant bail the court must be satisfied on materials placed before it that prima facie the offence of that grave character is shown to have been committed by the accused under arrest.

It is not fair to suggest that the Judges are releasing criminals, while the police department is doing a bad job. This sort of utterance has misled not only the Prime Minister but also the people of this country. After hearing a complaint from the people of Magbazar, the Home Minister should have initiated an investigation to find whether the police are doing their job properly.

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Coming back again to misleading the Prime Minister in terms of the Judiciary's role, we believe someone with little knowledge of law is involved. The Prime Minister is now, on and off, referring to the Section 514 of his Criminal Procedure Code. We know she is not a lawyer, but she has advisers who know law very well. The Section 514 talks about the procedure on forfeiture of bail bond and we wonder why is she referring to this section while talking about role of judiciary. Did the government ever approach any court, which refused to implement this section on any person bound by a bond? We are not aware of any such incident. Someone must be misleading the Prime Minister. Who that someone be?

Kashmir: Back to Square One?

It appears that the short truce has given birth to bigger source of animosity. The faltering of talks without giving a meaningful chance to make at least some progress is a blunder by both sides. We in South Asia deplore that a chance -- no matter how delicate and difficult -- is lost as both sides conducted the whole exercise in haste and also without much sincerity. It may be difficult to revive such an opportunity.

Since 1989 it claimed at least 25,000 lives in the valley.

During the interregnum of the announcement of the ceasefire and beginning of the talks, there occurred the tragic killings of more than 100 civilian people. The government in New Delhi blamed the hard-line groups opposed to the ceasefire and peace process for the massacre to derail the dialogue while India's arch enemy Pakistan said the killings might have been a ploy by New Delhi itself to create hatred against those opposing the peace talks. Whatever was the real situation, two sides went ahead with talks and this was quite significant in the sense that positive intentions had prevailed over the negative occurrences. The dialogue has started but floundered only after the first round and the process of peace collapsed as the Hizb called off the talks blaming India for not including Pakistan in the tripartite talks by a certain deadline. The organisation had asked their men to stop fighting for three months and New Delhi had also suspended all military operations against the militants who abide by the ceasefire. Two sides had also begun discussions in Srinagar, first time since the militancy became the order of the day.

It goes without saying that the news of ceasefire and positive response from India had come as a big development surrounding a major international crisis which is belying any settlement for many years. After the resolution of many an international crisis, the Kashmir

tangle certainly remains possibly the major problem that continues to act as intractable afflicting the relations not only between two neighbours - India and Pakistan - but also battering the political atmosphere in the region. The two countries fought two of their three wars over Kashmir and were on the brink of another war about a year ago centering Kargil.

Kashmir is divided between

Kashmiri organisations are carrying out violent activities in the Indian Kashmir which they call their struggle for independence but New Delhi describes as "terrorism" fomented by Islamabad which denies the charge, saying it only provides political and moral support to the Kashmiris. Independent observers are less inclined to buy the contentions of either side. This is a common belief that Is-

It appeared that both sides moved rather too hurriedly in holding the discussions and making comments that have queered the pitch of peace efforts which must have been assiduously built up in backstage efforts. The insistence of the Hizb to include Pakistan, and remarks of the Indian government that talks have to be within the parameter of the Indian constitution might be the main factors that led to the ending of the dialogue. It may seem to many that both sides engaged in the dialogue for face-value kind of exercise instead of making serious bid for peace. The Hizb should not have cancelled the truce so early when it was meant for three months and should not have also insisted inclusion of Pakistan within so short time knowing full well that it was difficult for New Delhi to accept this at this stage. At the same time, Indian government would have done well if it had not mentioned firmly about the possible solution only within the constitution after the talks had begun although it is a common knowledge that New Delhi cannot easily budge from this position. It was understood and as such there was no need to assert on this point and this contributed to the failure of the talks.

Arguably, both sides have compulsions and they are under pressure from different quarters which are difficult to avoid. This situation notwithstanding, the spirit of accommodation is must in settlement of thorny issues where parties concerned adopt diametrically opposite positions. Otherwise, things cannot move. Only some kind of flexibility can help reach somewhere. After all, sticking to own positions blindly would lead nowhere. India despite its vast military power is definitely suffering because of Kashmir problem since it is losing both men and material. Likewise, the militants are losing their men everyday. Islamabad, as a party in the whole scene, should have allowed the Hizb to carry forward discussions at least for some more time than fixing a short deadline for its involvement in tripartite discussions.

As it happens in such cases, the attitude of the parties concerned hardens. The Indian military has resumed its operations in full intensity and the Hizb has carried out car explosions in Srinagar. It appears that the short truce in a way has given birth to bigger source of animosity. The faltering of talks without giving a meaningful chance to make at least some progress is a blunder by both sides.

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