

Prosecution Drawback

THE logjam of cases in the courts is not all because of a limited number of courts we have nor is it because there are fewer judges in the country than required in view of the mounting load of cases.

Along with cluttered procedures that are associated with the application of some of our laws which form a subject-matter of future legal reform anyway, the dearth of courts and judges has often been cited as the prime reason for a slow-down in the disposal of cases. Whilst the oft-repeated lamentation over the truism that 'justice delayed is justice denied' can be attributed to the factors underlined above, there is something else that has come to light by virtue of a report frontpaged in The Daily Star on Monday under the headline "Government lawyers overburdened with cases in lower courts". In other words, the prosecuting lawyers themselves are creaking under a workload at the basic level which obviously tends to predispose the rate at which cases get disposed of at the courts. Minister for Law, Justice and Parliamentary Affairs Abdul Matin Khasru has put the number of criminal cases pending with the courts at eight hundred thousand, to say nothing of the number of backlog civil cases.

Under the circumstances, not unsurprisingly, notorious criminals are slipping through the law's fingers even after they have been hauled up. This is not to say though that the load of cases should be used as a pretext to consign the sensational or outrageous criminal cases into hibernation.

Now, public prosecutors and government pleaders chasing too many cases evidently would not be able to do justice to their given responsibilities — the quality of prosecution being a likely casualty there. Little wonder, so many accused persons get bail from the court owing to what one might term as loopholes in the prosecution or case-preparation. The quality of prosecution, however, would be dependent on the quality of papers, witness material or evidence the police sent to the prosecutor's office.

We suggest two specific steps to ensure both quality and speed in matters of prosecution: one, the investigation capacity of the police should be upgraded and modernised; and two, public prosecutors should cease to be political appointees rather they ought to be Public Service Commission recruits.

Time for Consumer Resistance

EVERY time the government decides to raise the fuel price, it is invariably the consumers who are hurt. As has been the case previously, this time too the owners of the passenger bus services are vying with each other to cash in on the fuel price hike. The fare on almost every intra-city route has gone up by 30 to 50 per cent, whereas the price hike of diesel, octane and petrol has been in the vicinity of nine to 20 per cent. Needless to say, the bus owners haven't even bothered to issue any prior notification for the raise to the passengers. What's even more infuriating is the fact that on the Dhaka-Narayanganj route they have hired goons to 'take care' of commuters who dare ask for any justification. Protesting passengers have reportedly been dragged down from the bus and roughed up by the 'hired' hands. 'Anarchic' would be an understatement to describe the situation.

Basically, the fact that consumers inevitably end up getting a raw deal whenever and wherever there is a price hike boils down to absence of an effective body to protect and promote their rights. There is the Consumers Association of Bangladesh (CAB) all right; but, in the truest sense of the term, it is a 'toothless tiger.' Such a silently suffering consumer group is invariably taken for granted, both by the government and private-sector service providers. Ideally, shouldn't the consumers have been consulted before the government decided to raise the fuel price? At the other end, shouldn't have there been a prior notification of the bus owners' decision to raise the fair alongside a dialogue held with the CAB? We should take a lesson from the consumer bodies in neighbouring India. So strong an association they have got that in case of price hike of any essential commodities or services they can secure protection of consumer rights.

It is highly likely that as a ploy to basically hold on to the disproportionate increase in the fare the bus operators would nominally decrease the fare as if doing a favour to the public. They did it in the past and might do it again unless, of course, the consumers backed by an adequate law expose the game and resist it.

Diarrhoea Cases

ACCORDING to a report in this paper on Tuesday incidence of diarrhoea has been reported from Dhaka city and its suburbs during the last two weeks. Only on Monday more than 300 patients, mostly children, were admitted to the specialised hospital ICDDR, Bangladesh. Experts feel that high humidity and drying up of water bodies might have caused the spread of the water-borne disease. Most of the patients at the hospital are from low lying areas around the city and some from places like Narayanganj, Tongi and Keraniganj. The number of cases started increasing about two weeks ago. But there has not been any report of death from this 'seasonal disease' according to doctors at the hospital.

Diarrhoea being an water-borne disease normally strikes during the rainy season as low-lying areas go under water and people hardly can get safe drinking water. The city has been experiencing water scarcity for the last few days. The short supply of WASA drinking water is further aggravated by power shortages resulting in irregular and inadequate supply of potable water to ten million people of the city. We hope much of the problem will be solved on completion of WASA's fourth water supply project work on which has already started. Meanwhile we would like to caution city dwellers to collect safe drinking water, boil them or purify them with chlorine or water purifying tablets before allowing the children to drink such water. They are more prone to the disease than adults.

The 'Kursk' Submarine Disaster

Stop the Nuclear Madness!

Praful Bidwai writes from New Delhi

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IT is hard to get over the sheer horror of the cruel, merciless, undignified and sordid death of the 118 sailors aboard the *Kursk* submarine. The accident was all the more horrifying because it was only waiting to happen—in line with the 120-plus "incidents" involving Russian nuclear submarines so far.

The submarine catastrophe has not ended. Indeed, the radiation danger is only beginning. The *Kursk*'s nuclear reactors contain 1,200 kg of highly enriched uranium, mostly uranium-235. This isotope has a half-life of 710 million years.

This means that even with decay, 600 kg of the material will still be present a mind-boggling 710 million years later, threatening to poison the environment and human life for millions of generations.

The short-term hazard too is grave. The reactors may have been damaged in the explosions that sank the *Kursk*. But even if they aren't, removing them is an enormously complex and costly task, entailing huge radioactive exposures.

Abandoning the submarine would be even more dangerous. Its body will decay, releasing huge cocktails of toxins: uranium, hundreds of fission products including deadly plutonium, and high chemical explosives to boot.

Besides the *Kursk*, there are 110 submarines in Russia's Northern Fleet whose reactors are still to be dismantled. (About 180 have been decommissioned.) The Fleet operates in a patently unsafe fashion.

One or more of its 200-plus rotting nuclear reactor cores could easily undergo a catastrophe. More accidents are a *real* and high probability.

Since 1994, Alexander Nikitin, an ex-submarine captain, has been warning of disasters. For this, Nikitin was arrested and charged with treason and spying, which carry a death sentence. He was systematically harassed. Last year, he was totally acquitted by the courts, but now faces a fresh trial.

I interviewed Nikitin two months ago in Stockholm. He said that "safety standards are falling precipitously" in the Russian armed forces. Today, Russia's military runs on a measly \$5 billion (compared to the US' \$300 billion). Many soldiers even don't get paid. "Vast numbers of soldiers moonlight, paying little attention to their job," Nikitin said. "Their skills have eroded. A quarter of them are homeless, and most are demoralised and depressed." Two years ago, a sailor went berserk and held eight nuclear-submariners hostage at gunpoint.

Between 1956 and 1991, there were 121 "incidents" on Russian nuclear submarines. At least 10 such accidents seriously damaged nuclear reactors. Meltdowns—the worst reactor

accident—occurred in 1979 and 1989.

However, Russia's troubles should not obscure the generic problem with nuclear submarines everywhere. Nuclear technology is inherently hazardous. Submarine reactors are worse because they pack large amounts of energy in small volumes (as do nuclear weapons). Today, the wrecks of American and British as well as Russian nuclear subs lie on the earth's ocean floor.

The Russian authorities handled the *Kursk* crisis shod-

dily and irresponsibly. First, they denied the accident posed serious danger. For fully four days, they refused external help, boastfully claiming Russian resources were sufficient. President Vladimir Putin refused to cut short his holiday. The British and Norwegians too delayed sending in assistance.

The Russian nucleocracy, like nucleocrats everywhere, refused to disclose relevant information, including the names of the sailors, the sub's location, and facts about the accident. According to independent

sources, there were two internal explosions, not an external collision, as claimed. Their treatment of the victims' relatives was appalling.

This behaviour is typical of nuclear establishments everywhere, marked by paranoid secrecy, and dominated by "experts" who cynically exploit their privileged access to information. In India, the obnoxious Atomic Energy Act of 1962 allows the Department of Atomic Energy to withhold any information. (Eminent jurists like V.R. Krishna Iyer term this unconstitutional).

India also has a Nikitin analogue: Capt B.K. Subba Rao, a critic of the Advanced Technology Vessel (ATV) nuclear submarine project which has soaked up Rs. 2,000 crores but produced little. For questioning it, he too was charged with espionage and jailed for years—until honourably acquitted by the Bombay High Court.

India's nuclear and defence establishments work at sub-Russian safety levels. Of the world's 10 worst performing reactors, six are Indian. The Tarapur reactors are the world's most contaminated. The Defence Research and Development Organisation

fares no better. Its three biggest projects—the ATV, main battle tank and light combat aircraft—are embarrassing failures.

Take the defence services. Since 1991, the Air Force has lost 202 aircraft and 85 pilots. The economic loss exceeds the IAF's annual budget. Over forty percent of IAF accidents are attributable to substandard spares. The army has its share of catastrophic ordnance explosions and other safety lapses.

Some of these problems are rooted in disaster-prone India's poor safety culture, with its high rates of mishaps and meagre precautionary and relief-provision procedures. Industrial accidents occur here four times more frequently than in the US. Road accident fatalities are ten times higher.

If Indian engineers can't reliably control mishaps in uncomplicated road traffic, they can't be trusted to safely handle highly complex systems such as nuclear weapons or submarines. The conclusion is stark. The chances of a disastrous accident in India's nuclear facilities are extremely high. The Pakistan story is worse. This makes South Asia uniquely dangerous.

Nuclear weapons are unacceptably destructive even in their manufacture, transportation and deployment. Each stage in fission production poses grave hazards. It would be suicidal for India to further pursue the nuclear trajectory.

India must abandon the nuclear submarine project and declare a nuclear freeze: no manufacture of nuclear weapons.

criminal negligence in not ensuring beforehand satisfactory arrangements for transport, ferries, etc., with the result that even his last minute desperate efforts to withdraw troops from forward positions for the defence of Dacca were unsuccessful, and whatever troops did manage to reach Dacca did so minus their heavy equipment, besides suffering unnecessary casualties en route.

(ix) That he wilfully failed to defend Dacca, and agreed to a shameful and premature surrender inspite of his own assertion that Indians would have required at least a period of seven days to mount the offensive although that deployment had become entirely unsuited for defence against open Indian aggression:

(ii) That he displayed utter lack of professional competence, initiative and foresight, expected of an Army Commander of his rank; seniority and experience, in not realising that the parts of his mission concerning anti-insurgency operations and ensuring that "no chunk of territory" was to be allowed to be taken over by the rebels for establishing Bangladesh, had become irrelevant in the context of the imminence of all-out attack by India on or about the 21st of November, 1971, and that the most important part of his mission from that juncture onwards was to "defend East Pakistan against external aggression" and "keep the Corps in being and ensure the entity of East Pakistan" with the result that he failed to concentrate his forces in time, which failure later led to fatal results;

(iii) That he displayed culpable negligence in adopting the concept of fortresses and strong points without fully understanding its technical implications as regards their ability to lend mutual support, availability of the necessary reserves to strike at the enemy in the event of his passing any of the fortresses or overwhelming them with superior numbers, and the existence of a non-hostile population, with the disastrous consequence that was forced to surrender even though several of the fortresses and strong points were still intact on the 16th of December, 1971;

(iv) That he was guilty of criminal negligence in not issuing his operational instruction No. 4 of 1971, issued on the 15th of July, 1971, any clear directive for a planned withdrawal of forces behind?

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(vi) That he was guilty of criminal negligence in not issuing his operational instruction No. 4 of 1971, issued on the 15th of July, 1971, any clear directive for a planned withdrawal of forces behind?

(vii) That he was guilty of culpable negligence and wilful disregarde of established principles of warfare by denuding Dacca of all regular troops by moving out 53 Brigade, which had been previously held as Corps reserve,

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(ix) That during the period of his captivity as a prisoner of war in Jabbalpur (India) and on repatriation to the Pakistan he made efforts to subvert the truth by trying to exercise undue influence on his Divisional and Brigade Commanders by inflicting them threats and inducements, so as to persuade them to present before the GHQ Briefing Committee and the Commission of Inquiry, a coordinated and coloured version of the events in East Pakistan for the purpose of mitigating his own responsibility for the defeat; and (x) That, on repatriation to Pakistan, he deliberately adopted a false and dishonest stand to the effect that he was willing and able to fight but was ordered to surrender by General Yahya Khan, and that as a dutiful soldier he had no option but to obey the said order against his best judgement.

The sixth instalment appears tomorrow

Supplementary Report of Hamoodur Rahman Commission: Some Relevant Extracts

Fifth instalment

This part of the Report deals with the professional performances of Pakistan Army Commanders and recommends trial by court martial of some senior officers who have been specifically named.

commanders who have brought disgrace and defeat to Pakistan by their professional incompetence, culpable negligence and wilful neglect in the performance of their duties, and physical and moral cowardice in abandoning the fight when they had the capability and resources to resist the enemy. WE are also of the view that proper and firm disciplinary action, and not merely retirement from service, is necessary to ensure against any future recurrence of the kind of shameful conduct displayed during the 1971 war. WE believe that such action would not only satisfy the nations demand for punishment where it is deserved, but would also serve to emphasise the concept of professional accountability which appears to have been forgotten by senior army officers since their involvement in politics, civil administration and Martial Law duties.

Cases Requiring Action by Way of Court Martial

In Part III of the present report, we have discussed and analysed at some length the concept of defence of East Pakistan adopted by Lt. Gen Niazi, and the manner in which he and his Divisional and Brigade Commanders formulated their plans to implement that concept within the resources available to them in East Pakistan. We have then narrated the important events involving the surrender of well-defended strong points and fortresses without a fight, desertion of his area of responsibility by a Divisional Commander, disintegration of brigades and battalions in frantic and foolish efforts to withdraw from certain posts, and abandoning of the wounded ad the sick in callous disregard of all human and military values. We have also seen how the Eastern Command had failed to plan for a no-lot war with India

and particularly to provide for the defence of Dacca which had been described as the political and military lynch-pin of East Pakistan. We have also described the painful events leading to the ultimate surrender of such a large body of men and materials to the Indian Army at juncture when, by all accounts, the Pakistan Army was still able to put up resistance for anything upto two weeks or more. In this context we have also taken note of the

Judged in the light of this analysis of the events leading to the surrender of our Army in East Pakistan, and the relevant provisions of the Pakistan Army Act and the considerations thereto, in the preceding paragraphs, we are of the considered opinion that the following senior officers ought to be tried by court martial on the charges listed against them, and we recommend accordingly:



Photo: Dhaka 148-1971

(i) Lt Gen A.A.K. Niazi, Commander, Eastern Command

(ii) That he wilfully failed to appreciate the imminence of all-out war with India, inspite of all indications to the contrary, namely the declarations of the Indian Prime Minister and other important Government leaders, the signing of the Indo-Soviet treaty in August, 1971, the amassing of eight divisions of the Indian Army, eleven squadrons of the Indian Air Force, and a large task force of the Indian Navy in and

around East Pakistan, and the clear warning given to him by the GHQ on the basis of reliable intelligence regarding Indian plans of invasion of East Pakistan, with the consequence that he continued to deploy his troops in a forward posture although that deployment had become entirely unsuited for defence against open Indian aggression;

(iii) That he displayed utter lack of professional competence, initiative and foresight, expected of an Army Commander of his rank; seniority and experience, in not realising that the parts of his mission concerning anti-insurgency operations and ensuring that "no chunk of territory" was to be allowed to be taken over by the rebels for establishing Bangladesh, had become irrelevant in the context of the imminence of all-out attack by India on or about the 21st of November, 1971, and that the most important part of his mission from that juncture onwards was to "defend East Pakistan against external aggression" and "keep the Corps in being and ensure the entity of East Pakistan" with the result that he failed to concentrate his forces in time, which failure later led to fatal results;

(iv) That he displayed culpable negligence in adopting the concept of fortresses and strong points without fully understanding its technical implications as regards their ability to lend mutual support, availability of the necessary reserves to strike at the enemy in the event of his passing any of the fortresses or overwhelming them with superior numbers, and the existence of a non-hostile population, with the disastrous consequence that was forced to surrender even though several of the fortresses and strong points were still intact on the 16th of December, 1971;

(v) That he was guilty of culpable negligence and wilful neglect and dishonest stand to the effect that he was willing and able to fight but was ordered to surrender by General Yahya Khan, and that as a dutiful soldier he had no option but to obey the said order against his best judgement;

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