

Can This be Called a Law?

THIS can easily find a place in the Guinness Book of Records as the most misused law in the world. It can also be termed as the most ineffective and definitely wasteful. And yet successive governments - both military and democratically elected - have clung to it simply because it gave them the power to oppress its opponents, though they all vowed to repeal it before coming to power. Yes, we are talking about the infamous Special Powers Act (SPA).

In a 31-page report submitted to the parliament on Thursday, a three-member sub-committee revealed the following incredible facts. In the last 24 years a total of 69,010 persons were detained under SPA, of which 68,195 were later released by the High Court because of vague, indefinite and weak grounds of detention. In other words, in more than 99 per cent of cases the government was found by the High Court to have misused this law to detain people who were not guilty as charged. What better proof can there be of a law being totally against public interest? How many more innocent people will have to suffer the indignity and pain - not to mention the psychological and physical torture - of prison term before this despicable law is removed from our law books? Who will answer and compensate for the time that these innocent people were made to spend in prison?

We commend the three-member parliamentary sub-committee for presenting us with what can easily be termed as the most comprehensive report on this hated law. But we cannot but express our deep regret and severe reservation for the justification it gave for its continuation. The sub-committee viewed that the 'special law or provision was required as deterrent for criminals. It however recommended that enforcers should be more careful in the application of the law. Who are the enforcers? The police that arrest the victims or the government that orders the arrests? These cautionary words are of little value to a government bent on using the SPA to victimise its opponents.

The sub-committee made a sample study of 100 cases and identified 16 reasons why the High Court found the government wrong in its use of the SPA. In 22 instances out of 100 the High Court concluded that the government acted without 'lawful authority'. If we extrapolate from this we come to the stunning conclusion that in 15,000 instances (22 %) out of the total of 69,010 detained, the government of the day acted without 'lawful authority'. What does it mean when the government acts without 'lawful authority' in 15,000 instances in implementing one single law? It simply means that this is a law that gives too much arbitrary power to the government to harass and victimise ordinary citizens. An examination of all the 16 reasons identified by the sub-committee clearly shows that the governments used the SPA to detain people who did not commit any crime in the eyes of the law. It further shows that the SPA was used whimsically, carelessly and without any sense of accountability to the people.

And yet our lawmakers recommend that this law should remain in our statute books. Why? Because at the end of the day most of our politicians and political parties love the taste of arbitrary power and the lack of accountability in detaining their opponents. There can be no doubt that the SPA is an anti-people, anti-human rights and anti-democratic law. We are not so hurt and sad when military and quasi-military governments uphold it. Our regrets know no bounds when successive elected governments cling to it as if our law and order situation will fall apart without it. When will we learn that oppression does not work?

Crimes under the Nose

POLICE hierarchy has expressed concern over the plummeting law and order situation in the capital city and the 17 districts of Dhaka division. The alarm was sounded at a quarterly review meeting of law enforcers held in Dhaka recently, according to a report in the Prothom Alo. Comparative statistics of crimes ranging from murder to rape and abduction and child abuse between the first two quarters show a higher trend during the second quarter. Around five thousand six hundred cases were registered during the first three months which increased to more than six thousand during the second quarter of the year. Around twenty-eight thousand arrest warrants were not executed leading to an increase in the crime rate.

If this can be the situation in the capital and the surrounding districts which get more attention of the administration then the picture in the far-flung areas can easily be visualised. Senior police officers have expressed concern over the deteriorating crime situation and cited a number of cogent reasons for the same. They have accused politicians of interfering in police activities and underlined existing political chaos and also indifference of police officers as the causes behind proliferation of crimes. They feel that due to politicisation many good officers have been sidelined while inefficient ones who are not even fit to run a police station are on the ascent. Delay in promotions and postings are also said to have created poor work environment. Professionalism has fallen victim to politicisation. We have in the past warned the government against politicising of administration saying it could backfire. But no amount of good counseling has prevailed upon the policy matters of the ruling party. The situation must be observed carefully and corrective measures taken immediately, so that professionalism gets encouraged and rewarded in the administration.

Power Game Opens Pandora's Box

According to Advani, the criterion for a new state is a unanimous resolution by the assembly of the present states. In fact, the parties have their eyes fixed on power. The BJP will get Uttarhand and Jharkhand while the Congress, Chhattisgarh. Whether Advani likes it or not, a Pandora's box has been opened. Pressures for the formation of some more states have begun.

THE idea for better governance is not new. The Montagu-Chelmsford report prepared some 82 years ago, said: "The business of government would be simplified if administrative units were both smaller and more homogeneous. The British constituted and reconstituted the states. But it largely depended on the military, political or administrative exigencies.

India's real map was drawn only after independence. The States Reorganisation Commission (SRC) was appointed in December 1953 to regroup the states. The report was received in June 1955. But when the government accepted it in 1956, it was under great pressure and bungled on some points. The government accepted the principle to group together the people speaking one language. But it made exception in the case of Punjab. Still, the then ruling Congress Party declared that it had made a good the pre-independence promise to carve out new states on the basis of language. It was justified in saying so. Indeed, the Nehru Committee of All Parties Conference in 1928 had lent its powerful support to the linguistic principle.

Pakistan did not have to change the boundaries for 25 years because the states in the western part, more or less, conformed to the linguistic compulsions. At one juncture, Islamabad amalgamated all the states in West Pakistan into one unit to be at par with East Pakistan. But the arrangement did not last long. In fact, the step-motherly treatment meted out to Bengali language or, more so the imposition of Urdu on East Pakistan, gave birth to the movement of Bangladesh.

Ultimately, the struggle for a Bengali identity triumphed and East Pakistan seceded from West Pakistan to become Bangladesh.

Being a unitary government, Bangladesh has not experienced linguistic chauvinism. Nor has Nepal, again a unitary state. The unitary government of Sri Lanka is in the midst of turmoil, primarily because of language - the Tamils feeling discrimination at the hands of dominant Sinhalese. President Chandrika Kumaratunga's efforts to devolve power to the Tamil-speaking population are still to be tested at the polls.

Coming back to India, it may have stalled convulsions in the country by constituting linguistic units. But most states have taken the desire to work in another tongue to a ridiculous extent and linguistic minorities have suffered in the process. New Delhi's diffidence on the one hand, and the states' assertiveness on regional languages on the other, has created a climate of intolerance for linguistic minorities. They have become victims of onslaught by the locals.

Take the fear of attack on the Tamils in Bangalore following the kidnapping of film star Raj Kumar. The Kaniadigas in Tamil Nadu have suffered in the same way over the Cauvery water. Mumbai has seen how the Shiv Sena has tormented the non-Marathi speaking population. This has told upon the country's homogeneity. The states have become linguistic

islands, the centres of local chauvinism. So much so, many states have made tests in regional language compulsory for employment. This goes counter to New Delhi's assurance that the state language can be learnt after recruitment.

Some states have even laid down that persons seeking a job must be 'sons of the soil'. New Delhi has done little to discipline the erling governments. The ruling National Democratic Alliance (NDA), which is a conglomeration of regional parties, has connived

stitution provides that any section of citizens having a distinct language script or culture will have the right to converse in them. This is on paper alone. New Delhi has appointed a Commissioner for Linguistic Minorities to look after their interests. Poor man has no real say both at the centre and in the states. His reports accumulate dust and his ranking in official hierarchy is so low that he cannot meet even a joint secretary let less a minister. The centre's attitude can be judged from the fact that it

are, they have converted the wilderness into fertile fields. But they are afraid of the unknown. Jharkhand is already talking about revenge from Bihar for having appropriated its natural resources. Home Minister L.K. Advani has a point when he says that the appointment of another SRC would have opened Pandora's box. But the present arrangement, whereby the BJP and the Congress came together to carve out new states, is not way to go about it. According to Advani, the criterion for a new state is a unanimous resolution by the assembly of the present states.

In fact, the parties have their eyes fixed on power. The BJP will get Uttarhand and Jharkhand while the Congress, Chhattisgarh. But both parties have not studied the immense burden of governance on the comparatively inexperienced shoulders of new states. The Home Ministry has also not paid enough attention to the knotty-gritty of administration. There has been no serious study of economic viability either. The only consideration seems to be political.

Whether Advani likes it or not, a Pandora's box has been opened. Pressures for the formation of some more states have begun. The SRC had recommended the creation of Vidharba. The movement goes back to 1905 when there was a demand for the creation of Maha Vidharba. It will be difficult to resist the pressure as and when it builds up. The

assembly members from the area have already declared that they will sit separately in the Maharashtra legislature. The old agitation for the creation of Telengana, separating from Andhra Pradesh, is bound to gain momentum. The Telugu domination is felt by the area, which is primarily Urdu-speaking.

The dissenting note on UP by K.M. Panicker, member of the SRC, has now been revived by Ajit Singh, a Parliament member and the son of Charan Singh. The latter too wanted to split UP into three states. But the Janta government did not agree to his suggestion. Panicker's argument for the split of UP 'for a successful working of the federal system' in the country holds good even today. Perhaps the Agra division can be integrated with Haryana, which can then make Agra the State capital. Chandigarh can become solely Punjab's.

The centre probably did not realise that creation of new states would give a fresh edge to agitation in the bilingual areas. Practically, all states have a population speaking the language of neighbouring states. Orissa has already put in its claim to Seraikell and Kharsawan because Oriya is the largest single language group.

At present, the creation of three new states appears to have gone through peacefully. But the states are yet to be carved and financial and administrative matters are still to be sorted out. After appointing the SRC, Jawaharlal Nehru said that it was done to soon after independence. He admitted there were 'other priorities' the country should have pursued. The NDA may also come to the same conclusion sooner that later.

BETWEEN THE LINES

Kuldip Nayar writes from New Delhi

at the violation of constitutional guarantees. It is afraid lest any dissension should pose a threat to its power at the centre.

The result is that safeguards provided to linguistic minorities have remained on paper. The states have simply ignored their implementation. Take for example, the teaching facilities in mother tongue in primary schools. They are compulsory under the constitution, but the states generally make no arrangement. This is particularly true about instruction in Urdu. Uttar Pradesh is the biggest culprit. Article 29 of the con-

combined for years the posts of Commissioners of Scheduled Castes and Linguistic Minorities.

Fortunately, the three new states, Uttarhand, Chhattisgarh and Jharkhand - parliament has given its approval - do not create any linguistic problem because all the three are Hindi-speaking states. But the linguistic minorities in the proposed states are already nervous. The Punjab-speaking Sikhs have expressed fears over the inclusion of their district Udhamsingh Nagar in Uttarhand. Hardy cultivators as they

Supplementary Report of Hamoodur Rahman Commission: Some Relevant Extracts

Fifteenth instalment

(Continued from yesterday)

Recommendations

(ii) That the Officers mentioned in No. (i) above should also be tried for criminal neglect of duty in the conduct of war both in East Pakistan and West Pakistan. The details of this neglect would be found in the Chapters dealing with the military aspect of the war (iii) That Lt. Gen. Irshad Ahmad Khan, former Commander I Corps, be tried for criminal and wilful neglect of duty in conducting the operations of his Corps in such a manner that nearly 500 villages of the Shakargarh tehsil of Sialkot district in West Pakistan were surrendered to the enemy without a light and as a consequence the Army offensive in the south was seriously jeopardised.

(iv) That Maj Gen Abid Zaid, former GOC Dacca, be tried for wilful neglect of duty and shameful surrender of a large area comprising nearly 98 villages in the Phuklian salient in the Sialkot district of West Pakistan, which surrender also posed a standing threat to the safety of Marala Headworks by bringing the Indian forces within nearly 1500 yards thereof. He also kept the GHQ in the dark about Indian occupation of the Phuklian salient

until the loss was discovered after the war.

(v) That Maj Gen B.M. Mustafa, former GOC 18 Division, be tried for wilful neglect of duty in that his offensive plan aimed at the capture of the Indian position of Ranghar in the Rajasthan area (Western Front) was militarily unsound and haphazardly planned, and its execution resulted in severe loss of vehicles and equipment in the desert.

(vi) That Lt. Gen. A.A.K. Niazi, former Commander, Eastern Command, be court-martialled on 15 charges as set out in Chapter III of part V of the Supplementary Report regarding his wilful neglect in the performance of his professional and military duties connected with the defence of East Pakistan and the shameful surrender of his forces to the Indians at a juncture when he still had the capability and resources to offer resistance.

(vii) That Maj Gen Mohammad Jamshed, former GOC 36 (ad-hoc) Division, Dacca, be

tried by court martial on five charges listed against him, in the aforementioned part of the Supplementary Report, for wilful neglect of his duty in the preparation of plans for the defence of Dacca and showing complete lack of courage and will to fight in acquiescing to the decision of the Commander, Eastern Command, to surrender to the Indian forces when it was still possible to put up resistance for a period of two weeks or so, and also for wilfully neglecting to inform the authorities concerned, on repatriation to Pakistan, about the fact of distribution of Rs.50,000 by him out of Pakistani currency notes and to her funds at his disposal or under his control in East Pakistan.

(viii) That Maj Gen M. Rahim Khan, former GOC 39 (ad-hoc) Division, Chandpur, in East Pakistan, be tried by court martial on five charges listed against him in this Report for showing undue regard for his personal safety in abandoning his Division, his Divisional troops and area of responsibility and vacating his Divisional Headquarters from Chandpur on the 8th of December, 1971, for his wilful insistence on moving by day owing to fear of Mukti Bahini and thus causing the death of fourteen Naval ratings and four Officers of his own HQ, besides injuries to himself and several others, due to strafing by Indian aircraft; for his abandoning valuable signal equipment at Chandpur, and alarm by certain conversation on the 12th of December, 1971, at Dacca; and for wilfully avoiding submitting a debriefing report to GHQ on being specially evacuated to West Pakistan in early 1971 so as to conceal the circumstances of his desertion from him Divisional Headquarters at Chandpur.

(ix) That Brig. G.M. Baquir Siddiqui, former GOS, Eastern Command, Dacca, be tried by court martial on nine charges as formulated in this Report, for his wilful neglect of duty in advising the Commander, East-

ern Command, as regards the concept and formulation of defence plans and appreciation of the Indian threat, execution of denial plans, abrupt changes in command, friendliness with the Indian during captivity and attempts to influence formation Commanders by threats and inducements to present a co-ordinated story before the GHQ and the Commission of Inquiry in regard to the events leading to surrender in East Pakistan.

(x) That Brig Mohammad Hayat, former Commander 107 Brigade, 9 Division, East Pakistan, be tried by court martial on four charges for displaying wilful neglect in not formulating a sound plan for the defence of the fortress of Jessore; for failing to properly plan and command the brigade counter-attack at Garibpur, for shamefully abandoning the fortress of Jessore and delivering intact to the enemy all supplies and ammunition dumps; and disobeying the orders of the GOC 9 Division, to withdraw to Magura in the event of a forced withdrawal from Jessore;

(xi) That Brig Mohammad Aslam Niazi, former commander 53 Brigade, 39 (ad-hoc) Division, East Pakistan, be tried by court martial on six charges for displaying culpable lack of initiative, determination and planning ability in that he failed to occupy and prepare defences at Mudafarganj as ordered by his GOC on the 4th of December, 1971; for failing to eject the enemy from Mudafarganj as ordered on the 6th of December, 1971; for shamefully abandoning the fortress of Laksham on or about the 9th of December, 1971; for wilful neglect in failing to properly organise infiltration of his troops from the fortress of Laksham to Comilla on the 9th of December, 1971, thus resulting in heavy casualties and capture of several elements of his troops on the way; for showing callous disregard of military ethics in abandoning at Laksham 124 sick and wounded with two Medical Officers without informing them about the proposed vacation of the fortress; and for abandoning intact at Laksham all heavy weapons, stocks of ammunition and supplies for the use of the enemy

The sixteenth instalment appears tomorrow

Ensuing National Election : Problems Shroud Prospects

by A B M S Zahur

It has by now become abundantly clear that without a reasonably amicable settlement or understanding between Awami League and Bangladesh Nationalist Party a fair, free and peaceful election may not be possible. As things are, future of democracy or strengthening the base of democracy in this country depends on the understanding of these two parties. Both are democratic in spirit. Only they should decide to learn how to compromise and adjust in politics.

WITHIN a few months we are expecting the next national election. We already feel the heat of election fever. The opposition alliance is working hard to enable it to win the election to dislodge the present government. The party in position, on the other hand, is taking all necessary preparations to retain its power. The question now arises whether we see a reasonably fair, free and peaceful election or a stormy election resulting in loss of life and property. People like us (ordinary citizens) sense some dangerous situations in the offing (after what we heard about the attempt on the life of the prime minister). As we see, whoever may be the conspirators it was a deep and well-planned conspiracy and certainly heinous. We want not simple condemnation. We want well thought out strong action to debilitate the conspirators who have, it appears, gained enough strength in the country.

It is a common knowledge that attempts to kill the present prime minister were taken in the past. But those attempts pale into insignificance if compared with the episode of Kotalipara. It may be interpreted as not only an attempt to kill the PM, it seemingly aimed at wiping out the majority of the top-ranking Awami Leaguers also. Only a thorough and neutral inquiry report will reveal the truth. Such incident certainly is a great blow to a slowly (but steadily) developing democracy like Bangladesh. It is unfortunate and not understandable

clearly as to why the opposition parties during the last four years was attractive enough to draw any sympathy. Instead, he/she is confused by the silly claims such as 'flow of water of the Ganges will not increase despite the treaty. CHT agreement means parting away a part of territory to India'. We did not see anything like this. In fact the political stunts of Pakistani days (anti-Indian propaganda) are no longer appropriate in Bangladesh situation. Even if the present government fails to achieve the desired result the situations are certainly not worse than 1996. The success of Hasina government in facing

one of the longest and worst floods of the country in 1998 cannot be seen as a mean achievement. Awami League's strength has amply been shown in the present government's decisions about export of natural gas from Bangladesh or even withholding of extending transit facility to India. In the field of sport, in cricket, Bangladesh has attained the status of a Test playing country, in football, it became champion in SAARC for the first time. The young players also are showing some promise in hockey and handball because of patronage of PM. It would be sheer meanness if we ignore the fact that timely supply of sufficient agricultural input resulted in the spectacular increase in production of our foodgrain. Certainly favourable weather condition was not the only reason.

In the international field Bangladesh has earned credit due to its successful microcredit programmes. Rate of growth of literacy has gone up. The achievement in the energy sector has so far remained below the expected level. It has, however, to be admitted that the growth in energy sector is time-consuming. The progress made

in health and sanitation has been satisfactory. In the communication sector also there has been an appreciable improvement such as completion of Jamuna Bridge, undertaking construction of a number of fairly big bridges, raising the height and quality of Dhaka-Chittagong highway.

It may be true that administrative efficiency has weakened during the present regime. Awami League, however, cannot be blamed solely for this. No government in Bangladesh can be regarded as efficient ever since the birth of Bangladesh. The top echelon of bureaucracy was mishandled during the regimes of Ershad and Khaleda who used it only to serve their objectives. In fact both of them are responsible for destroying the discipline of service. Their regimes were too dependent on bureaucracy. One of the main reasons was political instability and the absence of democratic order. Bangabandhu Sheikh Mujibur Rahman's administrative Services Reorganisation Committee's recommendations could not be made public, not to speak of its implementation. Only some of its concepts were included in the recommenda-

tions of the Pay and Services Commission's Report prepared during 1976-77. During the regime of Ziaur Rahman (1977-80) a part of the Pay and Services Commission's recommendations was implemented.

Without a strong commitment to raise the level of efficiency of administration by a stable and strong democratic government the task cannot be accomplished. Bureaucracy is extremely powerful in Bangladesh. It is hardly feasible for the elite to undertake any action which may really hurt the interest of bureaucracy. If the present government action could be faster in taking action it could have done better even with this inefficient administration. After all we cannot ignore the truth that even the most efficient administration will falter in the absence of clear direction or decision. Procrastination not only steals time it can make the whole administrative machinery immobile.

In the political arena we see that during the last few months BNP desired to give strong challenge to the ruling party to win the election. It has formed an alliance with some opposition parties such as Jatiya Party

(Ershad), Jamaat-e-Islami and Islami Oikya Jote. From the start its aim appeared to be based on one point, i.e. how to capture power. One of its serious weaknesses was lack of commitment to sacrifice for each other. Another weak point may be misreading of the election strategy of Awami League.

Whatever may be the errors and omissions of BNP it is almost clear to any politically conscious citizen that the grand alliance of the opposition could not attain its desired objective. Election is a feature of democratic polity. It acts as a safeguard of democratic freedom. The electoral response of the people of Bangladesh has always been ardent and positive. However, democracy has remained a fugitive plant in this country. This has impeded the evolution of a genuine and sound democratic process. It has by now become abundantly clear that without a reasonably amicable settlement or understanding between Awami League and Bangladesh Nationalist Party a fair, free and peaceful election may not be possible. As things are, future of democracy or strengthening the base of democracy in this country depends on the understanding of these two parties. Both are democratic in spirit. Only they should decide to learn how to compromise and adjust in politics. We have lost too many years in negative politics. With political stability and tranquillity our progress will not only be rapid but also spectacular.

When I visited the T&T office last time, I talked to the supervisor and I was assured of action, but nothing has happened. Can anyone suggest what else remains to be done from my side?

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To the Editor ...

Garbage menace

Sir, I am a resident of Mohammaddpur, Iqbal Road and a victim of garbage menace. Our house is located in front of Mohammaddpur Park which should provide us with fresh and clean air but unfortunately the doors and windows have to be always religiously shut due to the intolerable smell and filthy environment. Previously there used to be four dustbins around the park, but now the municipality thought of putting only one dustbin and that too in front of the house we live. As a result, the garbage of whole Iqbal Road

area has nowhere to be thrown but in front of our house. Even the restaurants from the main road come here to empty their bins. This matter has been taken to the high officials in the municipal corporation but there hasn't been any difference as yet. Even the cleaning trucks do not come to clean up regularly and the heap of garbage is getting huge and bigger every day. There are four children living in our house who get sick every other day due to the filthy and unhealthy environment. This is my earnest request

Arjumand Wolra  
Mohammaddpur, Dhaka

Anti-smoking campaign

Sir, Everybody know that smoking is injurious to health. Still people get into this bad habit in many sort of ways. The

organisations involved in anti-tobacco movement put maximum emphasis on bad effects of smoking. However, they do not stress on how to get rid of this habit. No doubt, they play an effective role in raising awareness among people against smoking but they should focus on the issue of getting rid of this habit as well.

We know that will power is enough to give up smoking. But it may be applicable to a moderate smoker. What about a chain smoker? There are many smokers who try to give up smoking but fail to do so. According to them, they face

physical and mental troubles when they try to free themselves from the fatal habit. Would the anti-smoking organisations, under their campaign, underscore the ways to quit smoking?

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Is there anyone to listen to?

Sir, My analogue telephone (323263) has been in 'deep