

Political Shadow over FBCCI Poll

One has noticed with a degree of unease how the FBCCI elections over some years in a row have been marked by politicisation on two levels: externally, government seemed pro-actively keen to have it led by people of their liking and choice; and internally, a section of the business community courted government's blessings to clamber on to position on a crutch of instant or promised favouritism. And if it happened to be close to a national election year, the mutual cultivation spree would intensify even more as circumstances would be considered too pressing to be left to the professional dynamics within the business and industry community of the country. However, by past standards, whatever we have come to see at this stage of announcing candidature for this year's FBCCI elections surpasses previous records of politicisation in such matters.

The interference this time looks more blatant than before with the Commerce Minister apparently taking the cue from the policy making caucus to ensure that others stood down for the chosen one, to be eventually elected 'uncontested' or 'least contested'.

Two factors have come to cast a shadow on the electoral environment: first, the voters' list is not being based on any uniform principle. Those who fail to become voters from their own professional association or chamber go on to association or chamber of another group to enlist themselves as voters. This may not be illegal, but creates a distortion in terms of professional cohesion and loyalty. Furthermore, a loan defaulter has been accepted as a candidate for the vice-presidency. Where would the honest businessmen go then, if norms and ethics should be trampled underfoot like this?

What is basically at stake here is the credibility of the electoral process which is predisposed negatively by the principle of selection being placed virtually above that of a free contest. If such is the stranglehold of politics around the highest professional body of the industry and business communities which put together represent the captains of the private sector then certainly a major bastion of professionalism is lost to the caprice of politicisation - not just now, maybe in the future as well. It cannot bode too well for the national economy which is best managed when kept above the vagaries of politics.

UN's Millennium Vision

"WE are determined to establish a just and lasting peace all over the world in accordance with the objectives of the (UN) Charter," vowed some 150 kings, presidents and government leaders after three days of "set speeches, roundtables and closed-door diplomacy" at the unique UN Millennium Summit on Wednesday. The Millennium Declaration pledges "renewed drive in pursuit of peace, security, disarmament and the eradication of poverty, especially in Africa." A tall order indeed, given the rude reality. The White House-driven Middle East peace talks have crashed into the obduracy of the Israeli and the Palestinian leaders. Indo-Pak hostility has assumed an ominous dimension with both in possession of nuclear weaponry. Twenty-four nations have ratified the comprehensive test ban treaty (CTBT) all right; but US, China and UK are not amongst the signatories. On the economic front, globalisation has been the monopoly of rich nations and only widened the gap between the affluent and the poor. Twenty-two per cent of the world's population still subsists on less than one US dollar a day. Even in healthcare, there is this disparity. Currently, the global pharmaceutical "industry's sales to Africa, home to more than 70 per cent of the world's 34.3 million HIV-sufferers, represent only 1.3 per cent of its income."

Nevertheless, this Summit has evidenced a pronounced paradigmatic shift in the UN outlook. Its approach has been focused and decisions definitive. Call for "a radical overhaul of chronically under-funded and overstrained UN peacekeeping operations to provide better trained and equipped troops faster to defuse conflicts and prevent massacres" is a case in point. Recently, in the cases of Somalia, East Timor, Kosovo and Sierra Leone, we have seen thousands of people mimed and murdered as a result of slow UN reflexes. Authoritative intervention backed up by potent peacekeepers does hold promise for very many conflict-ridden nations. In target setting as well, the UN has been pragmatic, not over-ambitious as we have seen it to be on many occasions. The point we are trying to make here is just a UN Declaration doesn't hold the answer to the multifarious problems the world is beset with. Greater determination and utmost sincerity on the part of the member-countries to implement the measures adopted do.

Modernise Settlement Documentation Process

THE incident of dacoity into and ransacking of Land Record Directorate at Telgaon has been alarming. It is sad that such an important storehouse of documents has been allowed to remain unprotected for such a long time. Now that twenty-one office rooms were ransacked, the somnolent authorities have woken up but dazed and might soon go back to slumber again for lack of guidance and direction. Measures to safeguard the strongroom are apparently afoot but we hope that they are not ad hocish. Due to fragmentation of land holdings documents have piled up and been dumped, and also decimated by bugs over time. That way we risk loss of valuable land settlement records.

We heard about governments' determination to tide it over by modern means of documentation and preservation of records, but when it came to delivering on their words, invariably they relapsed into a familiar state of limbo. The responsibility of restoring the documents that have already been moth-eaten rests on the government. It has to do away with the outdated ways of storing documents once and for all and introduce the process of microfilming instead. Land settlement problems centred around disputes arising out of forged documents have been recurrent in Bangladesh, especially since land is scarce here. Mismanagement, oversight and negligence would provoke anger from the people. The whole process of land settlement has to be computerised. At a time when we are fast becoming an IT-loving nation, our government officials should not lag behind in embracing the new technological process.

RECENTLY the Prime Minister while making senior lawyers acknowledged the need for accountability of not only the judiciary but the legislature and the executive as well. The meeting was an attempt to reach an amicable settlement over the PM's critical observations on the role of the judges in giving bail, during an interview with BBC. The lawyers expected the PM would perhaps retrieve her statement or come to some sort of understanding that might help resolve the issue. The PM refused to retract her earlier statement; at least that is what was reported in the papers. The hitch could not be resolved. The contention has been dragged to the courts and contested vigorously by both sides of the political divide. The debate is out in the open for the people to participate. It is a positive development.

There is no hard and fast rule that every sensitive issue must be resolved within four walls of the PM's office. Rather if people are involved in matters of public interest, the debate might become more lively and relevant, which will help find appropriate solutions. Refusing to face critical issues and opting for the easy way out by putting them under the carpet in order to maintain the status quo is sure to prove counterproductive in the long run. There is nothing hush-hush or sacrosanct about the judiciary and it is certainly not the exclusive realm of the judges, lawyers and the court officials alone. We the people also have a stake. So, let the debate proceed. It may strengthen the judiciary and the process of democratisation.

When the Prime Minister acknowledges the need for accountability in judiciary it tacitly implies that it is either absent or inadequate. Result, of both is chaos and weak or non-governance at best and total lawlessness and anarchy at worst. It is indeed a remarkable development that our chief executive has finally realised accountability of all the three organs of government is a prerequisite in any democracy. It is never too late. The point is, does she mean it? Or is it another gimmick of a typical third world political leader who in general, while enjoying all the benefits of space age, seem to be trapped in a pre-modern, feudal frame of mind. That is perhaps because of the societies in most part of the developing world including Bangladesh are still by and large in a feudal frame of mind. Hence, the need for political dynasties. Transition towards a capitalist order is not proving smooth despite in some cases more than half a century's struggle. But attempts of bypassing capitalist phase by jumping straight from feudal to socialist reconstruction have failed. Only road ahead for the developing world is to graduate into an industrial society with corresponding political, legal and social institutions that can above all provide minimum stability.

Like the rest of the developing world most of our institutions of governance are either imposed or imitated on the western model. While our society is still anchored in the past, we take pride in these institutions which are geared to serve a developed democratic society. They are certainly not the result of organic development of a society struggling within to emerge from a feudal social order to a bourgeois democratic one. True, we have made great strides on the road to democracy but it seems they are not enough to provide us stability. Constant tension in the political arena and enduring economic stagnation over the past 30 years are the outcome of constant friction between a sea of some genuine yet many wild expectations and acute limitations of the state institutions to deliver.

What do we do? Abandon the struggle to make these institutions more apt, functional and effective as well as widen our vision or surrender ourselves to the mercy of the warrior and the mafiosi? While most of our institutions along

with rest of the society resemble Dickens's England, we find ourselves jettisoned in the 21st century. England too at this point in history had its share of defaulters, crooks and robber barons-turned politicians and an equally corrupt officialdom. The difference is, they strengthened their institutions, above all the judiciary repeatedly through reforms at regular intervals that helped restrain further erosion. It strengthened the process of democracy and above all ensured justice and stability. Constant pressure by popular associations brought about Gladstone's Judicature Act of 1873 that reformed the legal system as much as the courts. We in Bangladesh today instead of pretending everything is fine with our judiciary can take lessons from this as well as from other such experiences and adopt appropriate measures that will ensure inexpensive, speedy and fair trial, which very unfortunately are absent.

What did the Prime Minister actually say? From what was reported in the papers it appears she put the onus on the trial court judges for letting well-known criminals go out on bail and commit further crimes. If there is no substance in what she has said then she has clearly intruded into a territory beyond the realm of her power and decorum of her high office. But suppose there is even an iota of truth in what she said - what then? Well, even in that

case she is not supposed to fire trades aimed at the judges because apart from all other considerations it is morally unjust, when the judges are legally restrained from responding back in public. If they chose to do so it is frightening to even imagine the nightmare. Rather as the chief executive, the PM is supposed to take appropriate measures to redress such irregularities and not talk about it in public. Since she has chosen to do so the people have every right to look into pros and cons of her statement and judge for themselves. I wish to believe that despite her bad taste of accusing the judges publicly the Prime Minister is earnest in her quest to make the institutions of governance more accountable and transparent. To start with the judiciary, which is the last resort of people without money or influence, to determine the actual state of affairs in our courts it might be helpful to take a look at ourselves even if a cursory one. Facing the problem on its face through genuine debate with critical prognosis might help us find durable solutions.

Most disputes in Bangladesh since permanent settlement of

Judiciary on Trial!

by Ali Ahmed Ziauddin

1793 have centered around land. As it is both Muslim and Hindu family laws that determine inheritance are a booby trap in themselves. This coupled with the procedures of civil courts can drag cases for years together. A verdict in the assistant judge's court (first tier of civil court) cannot be availed before at least 6/7 years. A generation goes by before it has gone through all the appellate courts. By then, perhaps the original litigants have reached their happy hunting grounds and the heirs of both the contending parties have long since perished. Moreover, our lawyers have excelled in the art of prolonging a case allegedly in collusion with court officials. In addition, there is an acute shortage of competent judges in relation to population growth and increase of civil disputes. While rest of the society is looking for a quick buck, the paltry remuneration of the lower court judges is not lucrative enough to attract best and the brightest in the profession. No wonder we have hundreds and thousands of cases pending in all the different courts of the

country. All these together can easily make some litigants lose patience and take law into their own hands. Each civil suit languishing in courts for years give rise to several criminal cases. And there starts a totally different ball game. Criminal trial courts and the magistracy more or less depend on the evidence produced by the prosecution while conducting a trial. The prosecution, in their turn, depends entirely on the police for investigation where, it is well known, manipulation is the name of the game. During investigation, the police who are empowered with draconian laws - some written some unwritten - abide by the rule of money making business. So observe the victims. Of course the nexus between police, gangsters and some of the political leadership also play a vital role in the whole process. Consequently, in most cases, the real culprits who can afford often go scot-free leaving a detrimental affect on the whole procedure of case. At this point rest of the case is virtually manufactured with half or twisted truths and often with total falsehood. Therefore, framing of the charge is faulty and the chance of a fair trial is nipped in the bud. It becomes impossible for the prosecution and the presiding judge to proceed for a fair trial depending on loose or contradictory evidence. On top of it prospects of the trial courts and the prosecution being influenced is not

Next step is the magistracy and the trial courts. While the magistracy is part and parcel of the executive district and sessions courts are not entirely free from the executive either. This, in however a thin veil, plays some role in the court setting influenced. Moreover, corrupt practice while giving bail is something not unheard of. Back in June 1998 Transparency International in their newsletter published a startling report that 90 per cent of the people thought that courts are both corrupt and inefficient to conduct fair trials. Obviously the presiding judges of the lower courts reacted very sharply but failed to bring any contempt charges against TI. Recently the CMM of Dhaka made the same accusation against his junior colleagues. Any further indictment is unnecessary in order to understand the existing state of affairs in our trial courts. General assumption is, instead of finding justice in the courts - one gets fleeced. There is a widely known Bengali curse - contending parties hope the opponent gets entangled in a legal suit that would drag for years and certainly ruin him finan-

cially and harass perhaps the whole family physically. Nevertheless, there is also a history of fair trials and upright judges who can withstand all temptations, but they are exceptions. The High Court still commands a good amount of respect among people but is so far removed from ordinary walks of life in the sense that very few people can afford to seek justice there. Even there one would find thousands of cases pending for generations. Later, some of the appointments in the High Court benches are not above controversy. If our learned lawyers pretend they are not aware of such state of affairs in the judicial system, they will be doing greatest disservice to their noble profession and the country as well. If the Prime Minister in her recent remarks sounded critical of the flaws mentioned above then she is justified in her observation. She has rightly expressed the sentiment of the people. However, as the chief executive, instead of blaming the judges for all the ills in our courts she is expected to review each and every aspect of the judiciary and take necessary steps that will address the grievances after consulting competent legal minds.

For speedy settlement of disputes, the following measures can be considered:

1. Without delay, the assistant judge and the magistrate court in the Upazila should be reintroduced.
2. Union councils should be empowered with arbitration authority up to a permissible level.
3. Constitute temporary arbitration courts wherever necessary with lawyers and government officials to settle all pending legal suits.
4. A three-member committee will investigate any criminal offence. The members will be a police official, a government college/school teacher and a lawyer.
5. Some sort of arrangement will have to be worked out so that at no level justice is either delayed or hurried through.

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Supplementary Report of Hamoodur Rahman

Commission: Some Relevant Extracts

Sixteenth and the concluding instalment

As we finish publishing Hamoodur Rahman Commission's Supplementary report let's share the feeling with our readers that we don't want to see it wilted as a mere footnote to history. Nor is it to be regarded as a fly in the face or a flash in the pan. In fact, it is much more than those things. First of all, its authenticity has not been questioned officially in Pakistan itself despite the fact that it saw daylight through 'a leak', and that too after a lapse of 26 years since its submission before the Bhutto government in July, 1974. On the contrary, there have been some corroborating remarks from Pakistanis as to its veracity. Since the supplementary report sounds 'genuine' it creates a strong ground for the publication of the Main Report. On the other hand, should there be any doubts expressed in Pakistan about its authenticity then that is all the more reason why the Main Report should be made public by her.

The supplementary report itself is an important document whichever way one looks at it - both from the point of view of what it has revealed as well as what it has failed to. The diabolic and perfidious political factor behind the genocide stands ignored in the report for the obvious reason that the commission itself was Bhutto's brain-child and as such had limited mandate. Even so, the commission took up all kinds of allegations against the then ruling junta of Pakistan, even termed the military action in 1971 'as excessive use of force', and went to concede that in the then East Pakistan atrocities took place but grossly underestimated its extent.

Nevertheless, the analysis of the culpable excesses which we get on no less an authority than a Pakistani commission of inquiry makes available to us some material evidence to seek a trial by a UN War Crimes Commission of those perpetrating genocide on our people in 1971. Let us have it listed with the UN as a crime against humanity and get a move on for the trial, which by definition, is never time-barred like in the case of the trial of Nazi extermination.

Dacca, and indulgence in the smuggling of Pan from East to West Pakistan made against Lt. Gen. Niazi should also be inquired into and, if necessary, made the subject matter of additional charges at the trial earlier recommended in respect of the performance of his professional duties in East Pakistan. The details of these allegations and the evidence relating thereto will be found in Chapter I of Part V of the Main Report and in Chapter I of Part V of this supplementary Report.

(iii) That an inquiry is also indicated into the disposal of Rs.50,000 said to have been distributed by Maj. Gen. Mohammad Jamshed, former GOC 39 (ad-hoc) Division and Director General, East Pakistan Civil Armed Forces immediately before the surrender on the 16th of December 1971. Details of this matter including the General's explanation would be

found in Paras 21 to 23 of Chapter I of Part V of the Supplementary Report. We have already recommended that this Officer be tried by a court martial on several charges including his willful failure to disclose any facts at all about his sum Rs.50,000. That charge does not necessarily imply any dishonest practice on his part. The inquiry now suggested can form a part of the charges already recommended.

(iv) That allegations of indulging in large-scale looting of property in East Pakistan including theft of Rs.1,35,00,000 from the National Bank Treasury at Siraj Ganj persistently made against Brig. Jehanzeb Arbab, former Commander 57 Brigade, Lt. Col. (now Brig) Muzaffar Ali Zahid, former CO 31 Field Regiment, Lt. Col. Basharat Ahmad, former CO 18 Punjab, Lt. Col. Mohammad Taj, former CO 32 Punjab, Lt.

Col. Mohammad Tufail, former CO 55 Field Regiment and Major Mubad Hussain Shah of 18 Punjab, as set out in Paras 24 and 25 of Chapter I of Part V of the Supplementary Report, should be thoroughly inquired into and suitable action taken in the light of the proved facts.

(v) That an inquiry be held into the allegation, noticed by us in Para 36 of Chapter I of Part V of the Main Report, that while serving in the Martial Law Administration at Multan, Maj. Gen. Jahanzeb, presumably a Brigadier at that time, demanded a bribe of Rs. one lac from a PCS Officer posted as Chairman of the Municipal Committee of Multan, on pain of proceeding against him for corruption under martial law, as a consequence of which he said to have committed suicide leaving behind a letter saying that although he had made only

Rs.15,000 he was being required to pay Rs. one lac to the Martial Law officers. The allegation was made before the Commission by Brig. Mohammad Abbas Beg (Witness No.9)

(vi) That in inquiry is also necessary into the allegation made against Brig. Hayatullah that he entertained some women in his bunker in the Magbulpur sector (West Pakistan) on the night of the 11th or 12th of December, 1971, when Indian shells were falling on his troops. The allegation was contained in an anonymous letter addressed to the Commission and supported in evidence before us by the Brigadier Hayatullah's brigade, Major, namely, Major Munawar Khan (Witness No.42).

(vii) That it is necessary to investigate into the allegations, as set out in Paragraphs 9 to 14 of Chapter I of Part V of the

Main Report, to the effect that senior Army Commanders grossly abused their official position and powers under the Martial Law to acquire large allotments of land, and obtained substantial house buildings loans on extremely generous terms from certain banking institutions with which they deposited large amounts from departmental funds entrusted to their care. Those found guilty of corrupt practices should receive the punishment they deserve under the military law or the ordinary criminal law of the land as the case may be. (viii) That a thorough investigation be conducted into the suspicion created in the mind of the Commission, during the recording of additional evidence of Officers repatriated from India, that they may be some complicity or collusion between the Commander, Eastern Command (Lt. Gen. A.A.K. Niazi) and his Chief of Staff (Brig G.M. Baqir Siddiqui) on the one hand and the Indian authorities on the other in the matter of the failure of the Pakistan Armed Forces to carry out execution of denial plans immediately before the surrender in spite of instructions issued in this behalf by GHQ on the 10th of December, 1971. We have already included relevant charges in this behalf against these two Officers, but we consider that it would be in the public interest to depute a specialized agency to probe into the matter further. On the material available to us we cannot put the matter higher than suspicion, but we have not been able to find any reasonable, or even plausible explanation for the orders issued by the Eastern Command to stop the execution of denial plans, particularly in Dacca and Chittagong thus ensuring the delivery intact to the Indians of large amounts of war materials and other equipment. Details of these deliveries will be found in our Chapter VII of Part IV dealing with the aftermath of surrender. (ix) That an inquiry be held into the circumstances under which Commander Gul Zareen of the Pakistan Navy was carried from Khulna to Singapore on the 7th of December, 1971, by a French ship called M.V. Fortescue, thus abandoning his duties at PNS Titimur Naval Base, Khulna. The case of this Officer was dealt with by us in Paras 12 and 13 of Chapter III of Part V of the Main Report.

Concluded