

Blowing Hot and Cold in Vietnam

Struck by Vietnam's enormous geo-strategic clouts Clinton wanted to explore the potential for greater US-Vietnamese security co-operation...The present Vietnamese security perspective reflects in a significant way what General Vo Nguyen Giap, the legendary military genius told Robert McNamara, the US Secretary of State during the war that 'the US and Vietnam can contribute to the stability of South East Asia and that the US would one day realise the importance of Vietnamese geo-political position'.



PERSPECTIVES

by Brig (Rtd) M Abdul Hafiz

The Jan 2 Blackout: Scrap Enron, Reform Power Boards

Praful Bidwai writes from New Delhi

Today's challenge is daunting because the Supreme Court manifestly failed in 1997 to respond to a serious writ petition. It is time the apex Court rectified its historic blunder. It should now annul the Enron contract...The Enron case shows that gold-plated private generation is no solution to India's power crisis, itself symbolised by "Black Tuesday", among other things.

IS there a connection between India's January 2 Northern grid collapse and America's messy Presidential election? Strangely, there is an indirect link and some commonality. Both highlight sleaze in public life, and have implications for India's power sector.

One of the seamiest features of American politics is election financing by Big Business, especially energy corporations. Take the links between one Kenneth Lay of Houston (Texas), and Texas governor and President-elect George Bush. Mr Lay has donated over \$100,000 to the Bush campaign *more than any other individual*. He is also a "Pioneer" a Bush supporter with at least \$100,000 in other contributions of \$1,000 or less.

In 1995, Mr Lay donated \$100,000 to the Democrats too. This was four days before New Delhi approved the super-controversial Enron project. According to *Time*, this donation triggered off a Presidential memo and close monitoring of the project by U.S. Ambassador Frank Wisner in India.

Washington's involvement with Enron-promoted Dabhol Power Company (DPC) was blatant. In June 1995, the U.S. Energy Secretary publicly warned: "Failure to honour the agreements ... will jeopardise not only ... Dabhol ... but also most ... other private power projects ..."

Mr Lay is none other than Enron's chief executive! And the first thing Mr Wisner does after his ambassadorship is become an Enron director. It is not inconceivable that Mr Lay will influence, even lay down, President Bush's energy agenda.

This is happening just when Enron is bankrupting the Maharashtra State Electricity Board (MSEB) with a tariff of Rs. 7-plus per unit (3½ times the average rate MSEB pays).

MSEB is losing Rs 4,000 crores a year. A horrible future stares it in the face. In 2000, it spent Rs. 1,200 crores buying Enron's gold-plated power. By 2002, with Phase-II on stream, it will spend Rs. 8,000 crores 80 percent of its revenue!

Enron is bullying MSEB to buy Phase-II power. It has already proved a millstone around MSEB's neck. It gives this writer little comfort that he repeatedly warned of this disaster in his column. Tragically, the destruction will not stop with MSEB. The Centre too will pay for Enron's depredations through "sovereign counter-

guarantees".

Numerous proposals are being floated to renegotiate the DPC deal. Embarrassed, Enron is offering to lower tariffs with falling world naphtha prices. But if the present contract is scrapped, MSEB will have to pay a mind-boggling Rs. 30,000 crores penalty. It can't even raise any dispute in an Indian court. It must accept arbitration under English law, the most despicable abandonment of India's sovereignty and sabotage of accountability in any Indian contract.

Dabhol poses a cruel dilemma. The way out does **not** lie in feeding DPC power into the national grid, or in cutting interest rates on loans for Phase-II construction. That will only transfer MSEB's burden to other public agencies.

The real solution lies in having the entire project annulled by the Supreme Court on public interest grounds related to fundamental rights.

The overwhelmingly offending aspect of the DPC contract is not just that it inflates costs and bankrupts MSEB, but that it is

irredeemably irrational, bad in law, violative of transparency, and *mala fide* in procedure.

Enron's power will lead to Maharashtra's virtual de-industrialisation and violate the public's right to basic services at affordable prices.

Enron's contract was signed without competitive bidding and in unseemly secrecy.

Dabhol Phase-I was never granted clearance by the Central Electricity Authority mandatory under the Electricity Supply Act. DPC didn't even bother to apply for Phase-II clearance.

Annual payments to Enron will absorb almost one-half of Maharashtra's budget.

Enron's promoters will enjoy a *31 percent-plus rate of return*, peaking at an incredible 52 percent against the 16 percent norm. Each percentage point means Rs. 30 crores-plus super-profits.

Enron's guaranteed 90 percent load factor means that cheaper hydroelectric stations cut their output, unbearably raising MSEB's costs.

The contract negotiations

were so based on cost-padding and anti-market practices that the World Bank washed its hands of the project early on.

DPC's dollar-denominated tariff robs all Indian agencies of control over costs. Historically, the rupee always depreciates against the dollar. The Maharashtra government mounted a formidable challenge to Dabhol. The Shiv Sena-BJP threatened to dump it "in the Arabian Sea". They questioned it on commercial grounds and made a solemn legal plea for scrapping it. But following Ms Rebecca Mark's infamous meeting with Mr Bal Thackarey, they made a *volte face*.

This smacks of foul play. As does Enron's self-confessed \$20 million spending for "educating" policy-makers.

Simply put, the Enron contract is against public policy and interest. Under it, the government must favour and privilege one company over other power generators while discriminating against the public in breach of Article 14 of the Constitution.

The deal also violates the right-to-life Article 21 which includes access to public services at a reasonable cost. Under Section 23 of the Indian Contracts Act 1872, all deals that violate morality and public policy are void. Besides, national laws always override all commercial contracts.

Opening up the Enron deal poses a major legal challenge. We must not duck it like the Bhopal case. Today's challenge is daunting because the Supreme Court manifestly failed in 1997 to respond to a serious writ petition.

It is time the apex Court rectified its historic blunder. It should now annul the Enron contract. Or else, Enron's enormous clout in Washington, coupled with the Vajpayee government's servile pro-globalisation policies, will prevail.

The Enron case shows that gold-plated private generation is no solution to India's power crisis, itself symbolised by "Black Tuesday", among other things. This crisis derives from mismanagement and the *political* failure to price the power consumed by vested interests.

This situation must be reformed. But for reform to succeed, Enron must go.

OPINION

Secularism as Viewed by Columnist Kuldeep Nayar and Justice Durga Das Basu

Kuldeep Nayar (in his article captioned "Secularism under Pressure" in The Daily Star of 30.11.2000) appears to have given a different impression about secularism in India than what the Indian politicians and jurists think. Besides, his date-line does not coincide with the actual. He says, "If after 53 years of independence, some of Muslim intellectuals consider it necessary to hold seminar in Delhi on the future of Muslims in India, it is a sad commentary on the community as well as the republic of India". He further says, "But when such feelings persist or take a firmer shape, even after 53 years, the belief in secularism comes into question".

First of all the date-line be set right. Indian Constitution of November 6, 1949 did not include the word 'secularism' in the Preamble. It was inserted by 42nd Amendment Act 1976 and applied w.e.f. January 3, 1977. As a matter of fact it became a SOCIALIST SECULAR republic after this amendment. Therefore, age of the SOCIALIST SECULAR India is 23 years, not 53. However, the question is, why the politicians had to bring in the amendment? One of the eminent jurists of India, former High Court Judge, member of Union Law Commission,

National Research Professor of India, Tagore Law Professor, Asutosh Memorial Lecturer, Manava Ratna, Acharya Dr. Durga Das Basu, in his 1400 page book SHORTER CONSTITUTION OF INDIA (12th edition) writes, "the insertion of this word in the Preamble by the Constitution 42nd Amendment Act 1976 has been productive of more mischief than benefit" p-3. Basu clarifies, "Since the Hindu community is torn asunder into numerous political parties, and the Muslims constitute a single block, united on the foundation of religion, it is the Muslim vote which is decisive for attaining majority. This prompted almost all political parties to vie with each other to promise what favour and concessions they would offer to this community if returned to power with their vote", ibid p-4. It implies political use of religion inspite of calling it a secular State. By inserting such word as 'Secular' in the Preamble of Indian Constitution it gave such vague meaning that it was felt necessary to settle the issue once and for all. Basu says, "It is striking that 45th Amendment Bill 1978, which was brought by the Janata Government to explain the meaning of the word 'Secular' in the Preamble was rejected by Mrs. Gandhi's party which at that time

commanded the majority in the Rajya Sabha", ibid p-5. The said amendment involved several Articles of the Constitution. Janata Party brought the Bill because "a comprehensive amendment of the Constitution would be needed to finally settle all questions arising out of insertion of the word 'Secular' in the Preamble" ibid p-5

Regarding socialism and secularism, Durga Das Basu said, "These two institutions have been subjected to stress and strain, and vested interests have been trying to promote their selfish ends to the great detriment of public good". Since insertion of the word 'secular' in the Preamble does not add anything which were not already in the 'enacting provision' (Articles) of the Constitution, the amended Constitution caused more problems than before. Indeed, no constitutional device or amendment can solve any substantive problem of governance if letters of the Constitution are out of harmony with the spirit of vote seekers and state executives.

Kuldeep Nayar has suggested to the Indian Muslims "to put all their weight behind secular forces and they have to work for a society which keeps religion

separate from politics". He has not, however, clarified as to which are those forces. Besides, such ideas are contrary to the democratic concept manifested by the Constitution of India, spelt out under FUNDAMENTAL RIGHTS which include Article 15: "Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth"; Art. 25: Freedom of conscience and free profession, practice and propagation of religion"; Art. 26: "Freedom to manage religious affairs"; Art.27: "Freedom as to payment of taxes for promotion of any particular religion"; and Art. 28: "Freedom as to attendance at religious worship in certain educational institutions". Indeed the constitution speaks for peaceful co-existence of all religions with democratic spirit as spelt out by M.K.Gandhi. He said, "The rule of majority has a narrow application: one should yield to majority in matters of detail. But it is slavery to be amenable to the majority, no matter what the decisions are. Democracy is not a state in which people act like sheep. Under democracy individual liberty of opinion and action is zealously guarded". He also said, "An armed government

bending a minority to its will by a clatter of arms is a negation of democratic spirit and progress". In this context it may be said that Kuldeep Nayar seems to be disagreeing with many a great men of Hindu society i.e. Mahatma Gandhi, Rabindranath Thakur, Ram Mohan Roy, Vivekananda, Aurobinda Ghose, Dr. S. Radhakrishnan and many others who contributed to stimulating Indian Renaissance.

"I claim that human mind or human society is not divided into water tight compartments called social, political and religious. All act and react upon one another", said Gandhi. Rabindranath Thakur said, "It is most certain truth that religion pervades into human being just like his health speaks of the whole physique": (translated from Bengali by the writer). According to Aurobinda Ghose himself, his philosophy stems from Rig-Veda, the earlier Upanishads, the Gita and other Hindu literature.

Some of the ideas brought from the West to Hinduism during the 19th century in the concepts of nationalism, nation-state and secularism. These 'isms' were transused into the societies, but caused violent convulsions and started to destabilize those societies. The poet-philosopher, Rabindranath Thakur recognized the symp-

toms and said, "Nationalism is a great menace. It is the particular thing which for years has been at the bottom of India's troubles". A secular mind like Bertrand Russell says, while comparing with Buddhism, "Islam on the other hand was from the very beginning a political religion" (Education and Social Order, p-13). Now Kuldeep Nayar wants to amputate Islam in India to fit into secularism, as conceived by him instead of helping all religions to follow the concept of co-existence, which is the pillar on which the Constitution of a billion people stands.

The Daily Star of 14-12-2000 published a news report captioned "Indian Govt. survives censure motion of Mosque furore". The Lower House score board showing a ratio of 291 to 179 indicates that the vote seekers are divided in that ratio by using religion for politics in their own interest; and that interest was to take action against three Ministers who were alleged to have had their own interest in the demolition of Babri Mosque.

How true was Justice Basu when he said, ".....vested interests have been trying to promote their selfish ends to the great detriment of public good", by using religion for politics.

dares to sell dog meat instead of mutton, for instance?

We would like to see all the faces those were involved with criminal acts. We would categorically like to know the state of duties and responsibilities of those who were supposed to check the whole process. What is the role of local police station and what role they played? What is the role of local people's representatives (i.e. the local UP Member/Commissioner, Chairman and also the MP of the constituency)? What is the role of UNO/TNO and what role she/he played?

We still do not know the status of those businessmen and the officials who were involved in import of animal food and sold it in open market as lentils for human consumption.

We wish to put an end to this short of dishonesty. Persons involved in adulteration of food should be treated seriously. We hope that all the machinery concerned of the state will take up the issue very seriously.

To the Editor ...

The stranded deportees

Sir, I would like to draw the attention of the government to the news item (with photograph) published on January 3 in the front page of your daily in respect of the fourteen people forced back by India into Bangladesh. There are several points to be considered with utmost seriousness. How these people landed at ZIA without valid documents? How Bangladesh Biman took them to New Delhi without any valid documents? If the journey of these people originated from Bangkok by Thai Airways, why the latter refused to take them back? Is it surprisingly observed that failing to persuade the Thai Airways to take these people back, the Indian authority forced Bangladesh Biman by threatening it not to allow to take off without those people. Is it

because they (Indian Authority) considered Bangladesh to be a weak nation which could be a browbeaten and forced to take any illegal action they wished to impose upon?

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Mini/micro-hydel projects

Sir, It is encouraging to learn (DS front-page, Dec 23 2000) that the RIP (River Identification Project) scheme is going to be revived by the government for initiating mini/macro hydel projects in remote and inaccessible areas of the country. Simultaneously, an integrated approach may be examined to develop simultaneously indigenous solar cell domestic/community projects through local assembly.

The government is well aware that big global multinational

companies in the power sector press the UN agencies and their governments to push for huge projects in business interest, which need heavy capital investment, and maintenance is a problem in the LDCs; with the additional risk of unfriendly long-term effect on the local ecosystem, as pointed out by international monitoring bodies.

The expansion of the energy and power projects in Bangladesh is going through jerks and starts, and the negotiations take a number of years, with graft playing a prominent background and hidden role. Mega projects look impressive on paper, but the existing infrastructure in the developing countries hardly provide scope for speedy execution of these huge projects.

Now the government is coming back to the concept of small-scale localised electric power generation in local zones, to be hooked up to the national grid, as and when needed. The gas pipelines network in the country

is needed more urgently than the BMRE of the existing electric power high-voltage transmission network, although the former is not expanding fast enough, and the latter need more maintenance.

With so many sources of expertise and consultancy reports for evaluation, it is not difficult for the government to approve a viable master plan which should not be tinkered with by each and every regime. There is something wrong with the speedy execution of political will.

Power projects are wobbly undertakings, whether in the energy or political sector; therefore such exercises should be more objective than subjective. With a dozen mini hydel projects and 500 solar installations, a new picture may begin to emerge at the completion of these pilot projects.

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