

The reforms agenda

Lifting ban on indoor politics will clear the air

AW and Information Adviser Mainul Hosein's assertion that the government is not considering lifting the ban on indoor politics until reforms are brought about in the political scene merits comment. It does so because of the widespread, and growing, feeling in the country that the current state of confusion and doubt as far as politics is concerned needs to be brought to an end. One can surely suggest that at this stage there is quite clearly an atmosphere of suffocation where freedom to express political opinions is concerned. The on-going ban on indoor politics is symptomatic of such a feeling. Rather worryingly, this feeling comes in the knowledge that the ban on indoor politicking is not quite being applied in the case of those who are up and about as far as forming a new political platform is concerned.

Broadly speaking, the nation agrees that reforms across the political spectrum, and that includes essentially some much needed transformation in the way the political parties are operated from within, are an inevitability if democracy is to be made meaningful. Indeed, in the past many weeks the interest generated in the Awami League and the Bangladesh Nationalist Party in favour of reforms is evidence of a changing mindset not only among the top political figures but also their followers. We believe that the train of reforms that has begun to move will, in time and in a clearly natural manner, yield the results the nation expects. However, for anyone to suggest that political activities, even on a limited scale, must be put on hold until such time as the reforms are completed is to impose a conditionality that should not be there. And there are all the reasons why we say this. In the first place, the Election Commission, frustrated though it is by the government's refusal to lift the ban on indoor politics, has already got down to work through pilot voter ID projects in Gazipur. In the second, the Anti-Corruption Commission has been going full steam ahead in its crusade against criminality.

Given these realities, a bit of a leeway for politicians, through relaxing the ban on indoor politics, can only help to carry the party reforms process further ahead. The law adviser's idea of a roadmap to elections will definitely acquire more substance once politicians are permitted to engage in consultations among themselves. The need, eventually, is to create an enabling atmosphere for democracy to resume its journey, this time in a purposeful manner.

Belated repairing of pumps

Well into water logging season, the lapse is unpardonable

THIS year the recent incessant rains caused severe waterlogging around the entire flood protection embankments. So far most of the water could be flushed out into rivers Buriganga and Balu by opening the sluice gates. This has been possible since the rivers were flowing below the danger level.

However, it has been pointed out by WASA that if the water level rises by another two feet, waterlogging may reach catastrophic proportions. Authorities of the Water Development Board have also indicated that they would be forced to shut down the sluice gates in order to prevent river water entering the city. In case of water entering into the city, the pumps will have to run on a 24-hour basis to drain out both rain water combined with waste water as well as river water.

In the meantime, WASA has reportedly placed 23 pumps at Titipara and another 53 at Rampura. But the ones at Rampura are being repaired and readied only now. WASA authorities have also said that even if the number of pumps were doubled it would not be able to free the city of waterlogging.

We thus find it rather absurd that WASA is carrying out repairs of pumps only now in order to make them operative, at a time when we are already well into the monsoon season and living under the looming threat of waterlogging of crisis proportions. It is our expectation that in the monsoon season concerned agencies should be in a state of high alert and preparedness to tackle waterlogging problems.

We also strongly recommend that the WASA and the Water Development Board should be made more effective and through their collaborative efforts be able to deal with this yearly phenomenon in a more efficient way. Government should also come forward in strengthening these agencies with more resources, both technical and otherwise.

In the meantime, we urge the administration that those found guilty of negligence in their duties as evidenced in the case of repairing the pumps at this late hour, whether of the WASA or any other related agencies, should be taken to task.

SAARC and ground reality

S. I. ZAMAN

HERE has always been a reluctance from the regional powers to get Iran on board in any regional cooperation. The post-revolution Iran, in particular, has witnessed a subtle shunning from the regional powers -- as though it's a "hot potato". The erstwhile RCD, formed in 1962, was an exception since this was during the Shah's regime, which was totally pro-US. Of course, the RCD failed to deliver any positive cooperation and was eventually dissolved in 1979, after the fall of Shah ECO was formed in 1985, which only exists in a very shaky foundation. Post 9/11 has changed the geo-political scenario of the region; the US reigns; the supreme in

Thoughts on terrorism legislation



MUHAMMAD NURUL HUDA

THE UN Committee on counter-terrorism that visited Bangladesh recently is reported to have emphasised the enactment of legislation to tackle terrorism. Being aware of the reality that framing of an appropriate legislation is one element of a proper counter-terrorism strategy, this writer would like to put forward his ideas on terrorism-related laws, insofar as it affects the Bangladesh

polity. The agitated citizens, along with harried law enforcement personnel and worried executives, may think that the recent incidents of terrorism are, at least partly, a consequence of weak laws. Or the ineffective implementation of existing laws? So, if laws were strengthened, and, maybe, made more matter-of-fact, is there a possibility that it might result in more contraventions of human rights in our situation?

There is a view gaining currency that ordinary laws and a normal criminal justice system have failed to cope with terrorism. At times, this failure is not attributed to corruption or inefficiency of law enforcing machinery, but to a weakness of law based on principles of liberal jurisprudence and notions of natural justice.

The reference is to principles like the right to equal treatment before law, the right to a fair trial, and right to be deemed innocent until proven guilty beyond reasonable doubt. Therefore, if the legal remedy is to be effective in dealing with terrorists, it can only do so if the aforementioned principles are overturned, and rights are taken away. This may not be an acceptable alternative in a democratic polity.

The issue of terrorism and human rights has been befuddled even the United Nations, and has been a subject of debate wherever militancy, including the so-called religious type, has taken place. In this regard, there have often been

disagreements between the governments and human rights organisations.

The governments of the affected countries have on occasions made it clear that there cannot be an across the board guarantee of human rights to all, irrespective of the means they in turn use to achieve their ends, or whether they respect the human rights of a community.

The terrorists of contemporary Bangladesh, whether they are of the so-called Sarbaraha type or bigoted militants, have to be seen in above light. While one may have profound

political strategy of a political party, the suspected human rights violations will undoubtedly blacken the democratic credentials of our polity.

Coming to specifics, one has to say that the process of identifying a terrorist should be discreet and transparent, and administrative and enforcement efforts should be geared towards that. In this regard, special precaution has to be taken so that our politicians do not remain under a pernicious impression that interpretation of terrorism laws is their personal turf.

One must not be oblivious of the

fact that every criminal is not given a terrorist label only to set in motion the expected stringent provisions of proposed terrorism legislation; because every terrorist may be a criminal, every criminal cannot be a terrorist.

The rationale of a tougher law entailing discrimination between terrorists and ordinary criminals is that bigots in our country have mercilessly killed the poor, public officials, security personnel, and a host of other innocent and defenceless people. No one can deny these stark facts by adopting an ostrich-

In view of our urgent need to fight the so-called religious militancy we may consider if the element of proscription could be a prominent feature of the proposed anti-terrorism legislation. Membership of a proscribed organisation could be a punishable offence, although the power to proscribe has been associated with fears that it infringes on the rights of freedom of association and expression. Therefore, definition of a proscribed organisation should be clear and precise, with the objective of targeting the group instead of becoming just an executive tool.

Our proposed legislation may think of expanding the powers of arrest for the police with a view to enhancing the pre-emptive element in combating terrorism. In other words, the police may have to be given an opportunity to act against suspects under surveillance, instead of waiting for surveillance to reach fruition before actually carrying out the arrest.

In order to minimise misuse of powers of arrest, there should be adequate judicial scrutiny to prevent law-enforcers turning into law-breakers. It is true that anti-terrorism laws are, in a sense, emergency provisions, but that should not warrant an obfuscation of legal process.

It is up to the wisdom and ingenuity of the government to turn proposals into real, enforceable acts. Let us not forget that while the terrorism threat is painfully real, the other reality of our enforcers not experiencing sudden qualitative change with respect to skill and attitude should not be lost sight of. There is no debate now about whether we need an anti-terrorism law. The question and concern relate to the details of what shape such a law should take.

Finally, the Ministry of Home Affairs must not rush through the proposed Act without the benefit of a national debate on the draft law. It should be possible for the government to draft a workable, less controversial and enforceable legislation. We may be in a hurry because of objective conditions, but an intellectual exercise of debating the delicate points of law is definitely desirable.

The government is certainly aware that our proposed terrorism law will be subject to scrutiny by international covenants to which Bangladesh is a signatory. The political adversaries have to get together on the subject and devise ways to deal with terrorism in its current manifestation. Let us remember that polemic will not heal, and a manifestly reactive community cannot start behaving in a phlegmatic manner overnight.

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STRAIGHT LINE

Let us not forget that while the terrorism threat is painfully real, the other reality of our enforcers not experiencing sudden qualitative change with respect to skill and attitude should not be lost sight of. There is no debate now about whether we need an anti-terrorism law. The question and concern relate to the details of what shape such a law should take. It should be possible for the government to draft a workable, less controversial and enforceable legislation.

respect for those who are fighting for protection of human rights, one cannot countenance a situation where all human rights are reserved for perpetrators of terrorism, while the governments dealing with the menace are arraigned regularly on grounds of violation of human rights. What is needed now is to delineate the parameters that harmonise the defence of the values of a democratic polity with the respect for human rights.

While any government's intent should not be doubted, there is always some apprehension about the efficacy and salutary impact of tougher legislations. Past experiences in independent Bangladesh, and even during Pakistani times, lend credence to such premonitions.

There is cause for worry now, when we live in a perilously polarised polity, where even national level politicians are not on talking terms. Added to that is the lamentable deterioration in the operational standards of regulatory outfits. Quite often we hear vociferous complaints of highhandedness and motivated actions of the investigative and preventive units from public figures.

It is in the backdrop of such a scenario that one has to be cautious about probable indiscriminate use of intended draconian laws. This is not unusual because, while the proposed law may serve the so-called

fact that even a very prudently crafted law may have loopholes, and can be used against innocents and political opponents. In respect of tough laws, it is not uncommon in our situation to see a political party in power adopting a hawkish line, and then turning into doubting Thomases while out of power.

Citizens of Bangladesh would be happy if the present acts of terrorism do not get the benefit of being treated as political violence. This is natural because bigoted elements are undermining our pluralistic civil society, thereby having adverse consequences on the economic and social development.

There has to be a dividing line between mindless violence and violence aimed at a larger purpose. Our proposed law should aim at removing the possibility of subversive activity cloaking itself as "conflicting ideology".

Since terrorists in Bangladesh have the objective of spreading fear and alarm, and want to gain concessions, our lawmakers should appreciate the logic of separating an act of violence from its so-called political context, because our intention will be to criminalize a certain mode of political expression.

We must be able to reject the right to legitimate violence as part of a larger socio-religious movement. At the same time, it has to be ensured

like attitude, completely ignoring the endangering.

Some ambiguity stems from the use of ideology to justify acts of terror. The terrorist groups now use a careful mix of ideology and violence to achieve their ends. Clearly, there are instances where use of ideology has been an alibi. Our legislators should be able to ensure that acts of terror are divorced from the context, and we should look at terrorism as any act that tries to disrupt attempts at reconciliation.

First of all, we must be clear about the foreground, background and history relating to the issue of trying to tackle terrorism legally, since existing laws have failed. The UK experience tells us that the main obstacle in dealing with terrorists in ordinary courts was the intimidation of jurors and witnesses by terrorist organisations. Therefore, we may consider:

- All terrorist type offences could be categorised as "scheduled offences".
- Trial of scheduled offences could be carried out by a senior judge, sitting alone in a tribunal.
- Bail in scheduled cases to be given by the High Court only, if stringent precautions were taken.
- The period of detention by police of a suspected terrorist could be extended to 72 hours from the usual 24 hours.

The United States government probably attaches maximum importance to proscription. Their Terrorism Prevention Act empowers the secretary of state to designate a terrorist organisation. The purpose of the power is to sap a terrorist organisation of its material base, stop routes of material replenishment and seize its existing assets. Can we think of incorporating administrative and legal measures along this line in our proposed terrorism legislation?

Interception of communications has been found to be an essential tool for the collection of intelligence about terrorist organisations. The strategy is to collect evidence to charge terrorists who plan and direct terrorist activities, but do not actually execute them. In UK, where lawful interception of communication has been allowed, this apparent invasive provision in 1996 and 1997 played a crucial part in securing ~1200 arrests; seizure of 450 firearms; seizure of nearly three tons of class A drugs and 112 tons of other drugs, worth over \$800 million.

We may, therefore, consider using intercepted material as evidence in those cases only that are terrorism related. The point to note is that intelligent use of information culled through intercepts is essential in building a case against terrorism.

The executive layer of intercep-

Pervez Musharraf's travails continue



MUHAMMAD ZAMIR

PAKISTAN'S top army commanders might have voiced full unstinted support for the embattled Pakistan President Pervez Musharraf, but the crisis continues both in the streets (despite a ban on street demonstrations) and within the judiciary in Pakistan. Musharraf, who seized power in a bloodless coup in 1999, has been facing an increasingly strong opposition movement. Things came to a head recently with violent political clashes in Karachi that left more than 40 people dead.

Musharraf's troubles in his eighth year of office appear to have started with the removal on March 9 of Chief Justice Iftikhar Muhammad Chaudhury, the head of Pakistan's Supreme Court. The President put forward allegations of misconduct forward to support this decision.

The Opposition has however claimed that the suspension of the Chief Justice was linked to his being more 'independent' than acceptable by the President. It has also been underlined by them through several seminars and meetings that the Chief Justice was being increasingly seen as being a potential legal hurdle to Musharraf retaining his dual position as President and Army Chief ahead of the next election as required by the Constitution.

Musharraf, it may be mentioned, believes very strongly that any effort, from any quarter, suggesting

that he take off his uniform (which he claims 'has become part of his skin') is tantamount to sedition. It is this vein of thought which has also led the Pakistan Supreme Court to begin a hearing, since the end of May, of a petition against derogatory remarks made about the government, judiciary and armed forces. In this context, comments made against the President, also the Armed Forces Chief, is being interpreted as having been made against the armed forces itself.

A complex inter-play between the State, its institutions and the individual

reference to the Supreme Judicial Council is also invalid under law as the Chief Justice himself was an integral part and head of this Council. They have resorted to Article 209 of the Pakistan Constitution for this purpose. Citing this as legal authority, the defence team has asked the Supreme Court to 'direct that all constraints, restraints and impediments in the way of the petitioner's performing the functions and exercising the powers of the Office of Chief Justice be removed forthwith'.

It has also been argued by the

prosecution lawyers as to not only whether President Musharraf enjoys absolute immunity under the Constitution, but also whether he is answerable to the Court. This Judge mentioned most interestingly -- 'there is no cavo to the fact that the President enjoys no absolute immunity under Article 248 of the Constitution. What the law says is-he cannot be made responsible by his name.'

This view has questioned the basic premise of the prosecution team opposing the petition on the ground that acts of the President

media as a 'secular pragmatist seeking to restore good governance' is also under attack.

One aspect is very clear from the existing situation: Pakistan is heading into another of its cycles of mass unrest and political instability.

Pakistan, like some other countries in this region, has a patronage-based system. This has created its own matrix vis-a-vis religion and democracy. Juxtaposed together, discontent has surfaced. Till now, this disaffection does not appear to have entered the bastion of the Pakistan army-northern Punjab

lost on the opposition-particularly the two political parties of the ousted Prime Ministers Nawaz Sharif and Benazir Bhutto.

Press reports have indicated that both parties in general and Bhutto in particular, after trying to achieve a deal with Musharraf, is now carefully watching the situation in the streets. The mainstream political leadership is in exile but they also appear to be using every opportunity to fuel the judicial crisis. They believe that unless the present military dominated government is able to broaden its base, it will be presiding over growing disorder that will eventually lead to the generals themselves insisting on a change of government.

Nevertheless, there is also an underlying paradox in such an assumption. The opposition knows that any alternative political process will require the army's full support if they are to govern effectively (and contain extremist violence). Herein lies the crunch. Consequently, there does not appear to be a simple solution to this complex issue. The attempt to browbeat a judge has opened new pressures and fissures within the socio-political fabric of Pakistan. It has also raised uncertainty within the electoral framework.

I conclude in this context with an observation made by Tariq Ali in 'The Guardian' of 17 May. He has mentioned: 'There is an easy solution. The general should discard his uniform, the judge should forgo his wig, and the two should battle it out on the electoral terrain.' I completely agree.

President Musharraf has great will power. He has done many good things in the last few years. However, what he probably requires right now, is self-appraisal and humility. This is the only way towards national reconciliation in his troubled country.

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POST BREAKFAST

This time round, there are very high stakes in Pakistan. On the negative side, Pakistan continues to be menaced by the conflict in Afghanistan, pro-Taliban unrest in its tribal areas bordering Afghanistan and the spread of Islamist extremism elsewhere in the country. It is also under severe pressure from Washington. All these elements have not been lost on the opposition-particularly the two political parties of the ousted Prime Ministers Nawaz Sharif and Benazir Bhutto.

cannot be challenged in the Court. Justice Ramday has subsequently gone one step further. He also tried to present his views in the context of Islam, the foundation of the Islamic Republic of Pakistan. He underlined that Islam attaches special importance to justice, prayer and philanthropy. Consequently, he added, 'where there is an issue of justice, it becomes a matter of public importance and in this backdrop, the Chief Justice's case is also a matter of public importance.'

The ramifications of this opinion are significant. It reveals the deep cleavage that has emerged within Pakistan over absolute governance. It also reiterates that the President is in hot water despite the government's claims of Musharraf having presided over a period of sustained economic growth and relative stability. His reputation in the western

(from where most of the army is recruited). If it does eventually spread into that sensitive territory, it will create division within the army's ranks. Senior generals who are still supporting President Musharraf might then be persuaded to re-examine the evolving deteriorating scenario and decide whether the President was still acceptable or whether there have to be changes for facilitating a fair election and good governance.

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