

City of Hope

Over the last several decades even after being beaten up, crushed and taken advantage of, we Bangladeshis have not given up hope. So, let us now turn this hope into action. Let us say: "We will think big, we will build this country and we will all do it together." I do hope, for my country's sake, in next few months our City of Gloom turns into the City of Hope, and we measure up to any of our neighbouring cities. Whatever they can do, we can do it better -- I know we can. We now need our leaders to believe in us and guide us to that success.

DURREEN SHAHNAZ

ONE of the perks of my job is that I get to attend fancy dinner parties in various cities in Asia. At one such recent "who's who" event in Singapore, I ran into a friend who happens to be a prominent corporate lawyer in Asia. Upon seeing me, the first thing my friend said to me was: "I just came back from your city of gloom." The city of gloom he was referring to was none other than my birthplace, Dhaka.

My friend went on to relate how the curfew last week had made his and his colleagues' lives miserable while he was in Dhaka for a "due diligence" trip (to evaluate a company on behalf of a foreign investor who was interested in making an investment). Over the course of the evening, several other lawyers and bankers at the gathering informed me that, given the current situation, they know potential investors are now thinking about holding back from investing in Bangladesh.

After hearing one negative point after another, the final insult was the comparison with Calcutta (a number of them had recently returned from business trips in Calcutta). "You both are Bengalis, why is that Calcutta is booming and filled with prospects while Dhaka is so gloomy and morbid ...what is happening, when will you guys get your act together?"

Sitting miles from Bangladesh, I try to distance myself from the country's

internal politics. I rationalise it by saying: I don't live there so I can't comment on the situation. However, this hands-off attitude does not work well given the profession I am in and the fact that I am seen in many situations as a "representative" of my country. So, whether I like it or not, I am forced to look at the situation and judge the merits of it.

In this case, when I was asked what was happening, sadly, I had no answer.

We had hope

I have had the chance to visit Bangladesh several times since the beginning of the year. The sense of euphoria that was in the country in January now seems like a distance past. In the past 8 months I have witnessed the country go from the peaks of excitement and expectation to the valleys of despair, in a cycle that has been repeated every time a new regime has come to power in Bangladesh.

This feeling did not contain itself in the country alone. The rest of the world has been waiting to see if the current government will be able to validate Goldman Sachs's prediction that Bangladesh will be in the next group of economic tigers. Everybody was ready to cheer from the sidelines, but unfortunately, the parade never got started -- at least not yet.

In the name of corruption

This government was going to root out corruption, and we all were ecstatic about it. (Trust me, it is no joy to hear

over and over again that Bangladesh has had the misfortune of getting the top position in Transparency International's list of most corrupt governments several times).

However, we all knew that rooting out a disease which has become a part of our system would not be easy. In the last few months, it seems as though the fight against corruption has taken over everything.

The time we are supposed to spend in building back the country became a time to pull each other down. All I heard from people and read in the paper was who was corrupt, who should be arrested, who is having a hearing, which building will be torn down, etc etc.

I did not hear my countrymen, women, or leaders say: We will fight corruption but we will also build the nation. We will make every Bangladeshi, here and overseas, play a role in building the nation.

When I watched on television the Rangs building being torn down piece by piece, all I could think about was that they could have taken the windows out, the air conditioners out, all the fixtures out first, and sold them and used the money to rebuild some schools.

Instead, the whole scene was one of raw passion and raw anger taken out on people and infrastructure. I thought we learned from history that such raw anger needs to be directed to more positive endeavours.

I full heartedly agree that the fight



AMRUL RAJIV

against corruption is extremely important, and the government should be applauded for its courage in this battle. I hope the government will prove its cases against the worst offenders with clear evidence in an open process that will leave no doubt that justice was done. But, while cutting out the disease of corruption, the government must also look forward to building a prosperous, hopeful society.

Running a country is tough but ...

Running a country is tough, and I do not envy anyone who has to do it. However, I cannot help myself from drawing some over-arching paral-

els between running a country and running a company. In my humble opinion (albeit biased by years of running companies), to run either (company or country) one needs to: keep the customer (the citizens) happy, make money (promote economic growth), and keep the employees (the business community and citizens) motivated.

Keeping this three-pronged approach in mind, one can and needs to move forward. Now what is the plan?

Keeping customers (citizens)

happy: Remember, the customer is king, which means the citizen is king (we Bengalis of course know this well). This means you have to

listen to the customer. She may have issues, concerns, and passionate views about your product (policies) -- which you may or may not agree with, but you have to listen to her. Make her feel important and make her opinion count (give the citizen a voice, let her vote, encourage a free and independent media).

Make money (economic growth): You have to put the right sales strategies (economic policies) in place to make money. Have a sales culture (promote entrepreneurship). Let your sales people have a say in the company (bring the business community into decision making -- not in the way of

the past where politicians granted favours in return for bribes, but by listening to legitimate concerns of businessmen) and make them the most important part of your company's organizational structure.

Keep employees (business community and citizens) motivated: This means encouraging your employees (citizens/business people) to take risks for the company (country) and not be reprimanded for it. You may not like some things they do, but that does not mean you take away their office desk (stop nationwide mobile phone operations) or stop their salary (impose curfews). Difficult and annoying as it

may be, talk to them. Get them to see your way, the company's (country's) way. Give them a sense of ownership.

City of Hope

The key is communication. We need to listen to each other, we need to believe in each other, we need to trust each other and we need to tell the international community the great things we have to offer to the world and back that up with actions.

So, let us stop burning buses and cars, stop shooting at each other, stop mid night arrests, stop curfews and stop the interrogations. Let us start building up businesses, schools, creating job opportunities, encourage community building and celebrate our achievements.

Over the last several decades even after being beaten up, crushed and taken advantage of, we Bangladeshis have not given up hope. So, let us now turn this hope into action. Let us say: "We will think big, we will build this country and we will all do it together."

I do hope, for my country's sake, in next few months our City of Gloom turns into the City of Hope, and we measure up to any of our neighbouring cities. Whatever they can do, we can do it better -- I know we can. We now need our leaders to believe in us and guide us to that success.

End Note: I wrote this piece last week. In the intervening days, I was delighted to hear Chief Adviser Fakhruddin Ahmed address many of these issues in his speech on September 9. I applaud this as a move in the right direction for the country and a first step in putting citizens' concerns at ease. We need to see more such communication as well as tangible action towards rebuilding a strong, prosperous, democratic nation.

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Making democracy work: Defining the parliamentary constituencies

Dhaka and Chittagong will loom much larger in the political world. Members of Parliament will find that they have a different world in which to campaign. This will be the most revolutionary change in Bangladesh politics that the caretaker government achieves.

FORREST COOKSON

WITHOUT going into complicated details of political philosophy it seems obvious to most persons that in a "first past the post" election system such as Bangladesh has, the number of persons in each constituency should be the same. Perhaps it cannot be perfect but it should be close.

Let me give an extreme example. If in Bangladesh there were 151 constituencies with one voter each and the remaining tens of millions of voters were assigned to the other 149 constituencies, then the 151

persons in the one vote constituencies would control the country. Each of those 151 citizens would have much greater power than the voters in the remaining constituencies. This is an extreme case presented to make the point that if constituencies have unequal numbers of voters then those voters in constituencies with fewer voters have more power in choosing the government. What is the situation in Bangladesh?

I calculated with the 1991 census, since I thought that this would have been adjusted. Was I wrong! It is enough to present the 1991 population estimates, which I give in the

following table. This data indicates how far off the definition of the constituencies has become. The table shows the number of constituencies within plus/minus some percent of what it should be. The table shows, for example, that only 53 of the 300 are within plus/minus 5% of the correct size of the constituency. [Correct size is population divided by 300].

The table indicates how far off everything is. The 2001 data is even worse. The largest constituency has more than five times the population as the smallest!

The election commission has on

Constituency Size Deviations: 1991 Census

Within plus/minus percent	Number of Constituencies
5	53
10	110
20	204
30	253
50	287
200	300

its agenda a program to redraw the boundaries of the constituencies. From the above estimates, this is really urgent. I would guess that an acceptable accuracy should be plus/minus 10%; thus, on the 1991 census, 190 constituencies are either too large or too small.

I am surprised that there has not been public interest litigation on this issue. The Constitution of Bangladesh is not precise on the point, and ultimately it is the courts that should define how accurate the constituencies

should be. But whatever might have been the difficulties with the voter list, to allow the constituencies to become so uneven in size was an act of great irresponsibility of the last Election Commission. This is not an issue for the 2001 census; apparently no proper adjustments were made for the 1991 census.

What are the effects of this? The main distortion is that the urban areas are under-represented. Of the 23 constituencies that had 30% more people than they should

[remember 1991; the results for 2001 will be much worse], seven were from Dhaka and two from Chittagong. The Parliament has far fewer representatives from major urban areas than there should be.

The importance of defining constituencies and voters is central to a democratic system. I will make two points from American history. The United States has been struggling with these problems for 220 years and the results are illuminating, and focus on some of the most dramatic events in American history.

In a famous case, the U.S. Supreme Court took up the case of a state where the constituency boundaries of the state legislature had not been adjusted for seventy years! The rural population controlled the legislature, and they did not want to lose power by redrawing constituency boundaries. The US Supreme Court declared this unconstitutional,

and re-drew the boundaries so each constituency had the same population.

In American history, the boundaries of the constituencies often have been manipulated to try to get as many constituencies that support your party as possible. We call this gerrymandering. There was a wonderful recent example in Texas. The Texas legislature was in the hands of the Republicans, and they re-drew the boundaries of the congressional districts [constituencies] to favor the Republicans. The Democratic members of the state legislature fled out of Texas so that they would not have to vote, and hence prevent this measure from passing. The Republicans had arrest warrants out to bring the Democrats back to vote. Eventually, this re-drawing passed, increasing the number of Republican congressmen from Texas by three or four.

When the balance in the House of Representatives is so close, this is a tremendous factor.

When the EC sets out to redraw the boundaries of the constituencies it will result in a major political storm. It is really important for this EC to do this under the caretaker government, since any political government will be accused of fixing the boundaries in its own interests.

The adjustments to be made are very large, and the political map of Bangladesh will look very different. Dhaka and Chittagong will loom much larger in the political world. Members of Parliament will find that they have a different world in which to campaign. This will be the most revolutionary change in Bangladesh politics that the caretaker government achieves.

Forrest Cookson is a freelance contributor to The Daily Star.

The judiciary: Reform from within

The point that I want to make is that substantial improvement in our judicial system can be brought about through instant administrative initiatives taken by the higher court itself. Now that the judiciary is completely separated from the executive arm of the state, the onus is entirely on the Supreme Court to bring about visible administrative improvement in the system. Provisions that even give a hint of discriminatory treatment to litigants should be firmly and decisively dealt with.

A. K. M. SHAMSUDDIN

VERY often we hear the familiar phrase "Justice delayed is justice denied," but seldom can we understand the fact that our judicial system is inherently beset by conceivable and inconceivable wasteful delays. Behind most instances of such delays works an unholy nexus of lawyers and court officials.

Although these delays are given the seal of approval by the appropriate authority, they do so in good faith after recommendation of court officials. Most of these inbuilt delays in the system are within the control of the administration of the courts. Let us look at some hypothetical situations (no real case, any seeming similarity is purely coincidental).

A garment exporter cannot get his export proceeds because the shipping line carrying the

goods released the cargo without following the normal authorisation procedure. The exporter sues the shipping line, claiming damages, and wins the case in the lower court. The shipping line appeals, but loses again. This time the shipping line comes to the higher corridors of justice and engages a politically influential lawyer.

The appellant repeatedly pleads for time and gets it, despite the objections and dismay of the suffering exporter who took bank loan against the export proceeds. After 8-9 long years of waiting the case finally gets its berth for hearing, but the benches are reconstituted in the middle of the hearing, affecting the hearing of the case. After much effort the case is heard anew by a reconstituted bench and a date for judgment is set. But before the judgment is written and pronounced, the courts are reconstituted one more time.

What will happen to the judgment now? The suffering litigant will run from post to pillar looking for a remedy, and the shipping line will try all kinds of delaying tactics. Probably the court administration will have to put up a note explaining the situation, and seek approval of the appropriate authority to reconvene the old bench solely for the purpose of delivering the judgment.

Why will the court administration take such an initiative? Who will bring the problem to the notice of the concerned official and how? There is no clear answer.

Was this situation necessary, to begin with? Would not one think that while reconstituting benches, there would be an inbuilt system that judgment of heard cases will be delivered before the reconstituted benches take effect? Or even if the new benches take effect, the old bench will automatically recon-

vene on a priority basis to finish the unfinished task!

Why should the age-old dysfunctional system of raising administrative notes be continued? This does not require any change of law, only an administrative order would suffice, and that too should be part and parcel of the bench reconstitution order. It only needs the addition of a new sentence at the bottom, "for heard cases awaiting judgment, the old bench will automatically reconvene to dispose of the case by delivering judgment within one week of this bench reconstitution order." That's all there is to it.

Imagine the plight of the poor exporter! On one hand he is deprived of his dues, and on the other he becomes a bank loan defaulter. Imagine further that the litigant is a poor man from a remote village! By this time he could be reduced to a street beggar, if he survived that long, that is.

This example is to stress the phrase, "no one is under-law." We do not hear of this much, but we do repeatedly hear the other part, "no one is above law," because this one is to the advantage of the well-to-do. A

poor litigant coming from remote Lalmonirhat, after much effort, brings up his case to serial number one for hearing in the day's cause list of the particular bench.

An influential person has been sued in the lower court for a palpable criminal offence. He has money and influence and engages a team of costly lawyers, and files a suit in the higher court for quashment of the lower court proceedings. It comes before the same court of the poor man from Lalmonirhat.

The poor man's number one serial is no more there, and the quashment hearing takes so long that the court rises for the day with no time to hear any other case. The next day the poor man's case does not even make the cause list.

Would you and I like to face the plight of this villager and be "under-law?" The remedy to this situation also, to a layman like me, does not require a new law. The quashment hearing was unnecessary. The same pleading could be done in the lower court also and if, only if, no remedy was found in the original court then an appeal could be filed. Why the quashment, and where is the compulsion

for priority hearing of such trivia, making others suffer?

This example is about the famous and widely known election tribunal cases. A brilliant and able legislator is unduly declared defeated by the returning officer. He goes to the election tribunal and wins his election case, but the loser appeals to the higher court where the case does not make the cause list in 5 long years.

The person who manipulated the election results remains in office for the full term, enjoys all the perks, enacts laws for the nation and goes around lecturing and influence peddling while the person whom the people voted for remains in the wilderness.

While the seemingly trivial quashment case can be brought overnight to the number one position in the day's cause list, what is there in the election case that it remains unheard for long 5 years? Why is it that the court administration system does not have safeguards against such kinds of gross lapses? Why should the system allow a nationally important matter to become time-barred, that too to the advantage of criminals?

The higher court has a system of preparing a daily cause list for each bench. Today's cause list has no seeming relationship with yesterday's. The case, which was in number 2 position yesterday for a particular bench and could not be heard, may not appear in today's cause list for the same bench. It may not appear even in a week. Cases pending since the late 80's do not make the list, whereas fresh cases do, proving the adage that it's a matter of "managing" he court officials.

Does this sound logical? Strange for a place where logic is the rule of the game, isn't it?

The court is due to start the day's proceedings at 10 am. Can a litigant expect that the court will be in session at 10:30 am or 11:00 am? The lunch break is between 1 and 2 pm. Does a plaintiff see the court in session at 12:30 pm or 2:30 pm? One, however, observes that the court rises for the day sharp at 4 pm. Then there are the legendary court holidays. (Timing examples are imaginary).

A bench has to hear and dispose off motions first, and then it takes up cases from the cause

list of the day. With breaks and procedural delays caused by lawyers one can easily imagine how many cases can be heard in a day by a particular bench.

Universities and pedagogical institutions prepare roadmaps to minimise session jams. Can other institutions take a cue from this?

More examples can be cited, but it would be unnecessary. The point that I want to make is that substantial improvement in our judicial system can be brought about through instant administrative initiatives taken by the higher court itself.

Now that the judiciary is completely separated from the executive arm of the state, the onus is entirely on the Supreme Court to bring about visible administrative improvement in the system. Provisions that even give a hint of discriminatory treatment to litigants should be firmly and decisively dealt with.

The nation is looking for bold, proactive and exemplary leadership from all branches of the republic, and also from the private sector. Let the judiciary be the bearer of the beacon light at this critical juncture of our national life!

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