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Roads in disrepair and citizens in misery

Who ensures the interests of the community?

IT is the same old story all over again. It is the monsoon season and just when citizens are in need of life being kept normal, they see that the roads they must use are in pitiable conditions once more. Six months have gone by since roads in the city's Hazaribagh and Rayerbazar area were dug up by the Dhaka Water and Sewerage Authority (WASA) to install storm sewers. In any civilised society, this kind of work would have begun and ended in a few weeks. But in the particularly sordid conditions in which we live, it really matters little to the authorities whether or not the amenities we are entitled to as citizens are there. Now an engineer of the Dhaka City Corporation tries to explain away the problem by suggesting that after installing the storm sewers, Wasa covered the dug-up roads with earth rather than sand. Our question is simple: where was the DCC when Wasa was committing this manifest wrong?

The DCC itself is not exactly the kind of do-gooder it pretends to be. Where there is the stipulation, formulated by the DCC itself in 2003, that such work as the one Wasa has been doing in Hazaribagh and Rayerbazar must be finished in 28 days, what profound reason is there for the work to go on for months together? And does it ever occur to our city planners (and what do they plan anyway?) that their inefficiency is causing citizens no end of misery? Organisations like Wasa and DCC only emerge from slumber, or call it their ostrich-like position, when the media point out the irresponsible manner of their working or not working at all. Only a couple of days ago, a local television channel focused on the shame of a road which has actually been a large drain, with all its attendant germs, dirt, et cetera, in Meradia under Khilgaon for the past many years. A mere two-kilometre stretch of road going unrepaired for years? There are other such roads, all falling to pieces or simply caving in, in areas like Dhanmondi, Mohammadpur and Shyamoli. Even in Gulshan and Banani the cracks on some roads are getting ever wider.

Such a situation simply cannot go on. Where are the various ward commissioners to look to the interests of the community, the job they were elected to do? And why must Wasa, DCC and other bodies always undertake road repair and other works only when the rains arrive? One does not need much intelligence to understand that repair works during the monsoon only worsen what is already a tortuous struggle for normal life. And yet it is something the organisations responsible for the provision of utilities do not comprehend. The absence of planning and coordination is appalling.

Will the authorities wake up to these nightmarish realities and convince citizens that they are indeed competent enough to give them a minimum of welfare?

Introduction of waterbus

Good addition, keep it afloat

THE introduction of waterbus on the Sadarghat-Gabtali waterway is good news for the city commuters who are finding it increasingly difficult to travel by bus, or any other mode of transport, for that matter, as traffic congestion is now threatening to paralyse everything in the metropolis.

The idea is to lessen the pressure on vehicular traffic by connecting two important points of the city. The waterbus is locally designed and manufactured with imported diesel engines. However, the planners should not miss certain constraints and limitations that made the circular waterway rather unattractive to the private river vessel operators after it was opened in 2005. The service had to be stopped due to poor navigability of the river at several places and lack of efficient river traffic management.

Nevertheless, it is commendable that the BIWTA has decided to restart the service. There is no doubt that the presence of a circular waterway around the city is an advantage that can be turned into a useful channel of communication. But certain conditions need to be fulfilled before the waterbus gains popularity. It must be regular and dependable. A high degree of punctuality has to be ensured to make it acceptable to the commuters willing to switch to the waterbus.

The plan was poorly executed in 2005. The decision makers did not pay due attention to the navigability of the waterway and there were some hazards like bridges not high enough to allow smooth movement of river vessels. Clearly, they did not take the necessary preparations before introducing the service. The result was an early closure of it, which only meant wastage of time, money and energy. We believe the decision makers have carefully weighed the pros and cons this time around and are ready to provide the necessary logistical and technical support for smooth plying of the waterbus.

The circular waterway can play a significant role in improving the existing traffic situation in the city. It has the potential to transport a huge number of people from one end of the city to another. If the water bus can operate successfully there will be scope for introducing bigger vessels. But before anything else, the authorities have to address the problem of poor navigability. Failure in this respect will only cause colossal loss to the government, as it did in 2005.

Contempt of court: Relic from our colonial past?

While the summary power of the courts in cases of contempt constitutes a real public necessity, it is a weapon to be used sparingly and with reference to the interests of the administration of justice. It should not be resorted to wherever a less arbitrary remedy is available.

VISIONS OF AMERICA/ JOE SOHM

RASHNA IMAM

CRITICS argue that the law of contempt of court is archaic and should be abolished. They say it's merely a relic from our colonial past. The whole idea of contempt originates from the notion of a deified and infallible Sovereign. Courts derive their authority from the Sovereign; judges are simply his nominees and their utterances and rulings stem from the King.

Following in that vein critics persist that times have changed, and the law of contempt no longer serves any useful purpose other than providing a cloak for judicial authorities to cover up their inefficiencies, or to gag bonafide criticism against them.

These same critics completely overlook the practical and vital function served by the law of contempt of court. Our courts are the guardians of civil liberty; as such their dignity and majesty must be upheld at all cost, to ensure public confidence in them (without which it would be impossible to administer justice).

Oswald, an authority on the matter, defined contempt of court to be any conduct that tends to bring the authority and administration of law into disrepute or prejudice the parties involved or their witnesses during litigation. There are three broad categories of acts constituting contempt:

- Scandalisation of the court;
- Disobedience of the orders of the court and breach of undertakings given to the court; and
- Interference with the due course of justice.

The law of contempt protects a judge hearing a case from being exposed to fears or apprehensions, protects parties against the possibility that their case will be influenced by matters extraneous to the litigation in which they are engaged, and the accused against attempts to arouse public opinion against him.

The recent uproar regarding the law of contempt begs for a discussion of certain controversial aspects of the substantive law and legal procedure in cases of contempt (substantive law essentially refers to law that creates rights and obligations while procedural law deals with the procedure for enforcing those rights).

I am speaking of the two notable libels on the impartiality, integrity and competence of the judges of the Supreme Court, one made by the editor of Amar Desh and the other by a high profile and veteran civil servant. The former was dealt with severely, ending in conviction and fine. The latter narrowly escaped a similar fate.

From a substantive law point of view, the critical question remains; where does freedom of speech and expression end and contempt of court begin? From a legal procedural standpoint, the summary power that courts enjoy in contempt cases has attracted a lot of criticism. In particular, the power to be a judge in one's own cause is in direct contravention of a principle of natural justice, which is otherwise of absolute application.

Freedom of speech and expression, the hallmark of a functioning democracy, is essentially our right to express freely our conviction and opinion on any matter, and is guaranteed by Article 39(2)(a) of our Constitution. The framers of the Constitution have imposed restrictions on its exercise to curb the risk of abuse that goes hand in hand with a freedom of this magnitude. The law on contempt of court is one such restriction.

If an exercise of this freedom involves interference with the administration of justice and an attack on the dignity and authority of the courts then the law on contempt of court provides for appropriate punishment. However, our constitution provides that any restriction on the exercise of freedom of speech has to pass the test of reasonableness.

Therefore, the law on contempt of court must be reasonable and must not stifle freedom of speech and expression. In the words of Lord Atkin: "Justice is not a cloistered virtue: she must be allowed to suffer the scrutiny and respectful, even though outspoken, comments of ordinary men."

But where exactly does freedom of speech end and contempt of court begin? When does one exceed the limits of bonafide criticism?

In the absence of a clear test to determine the cut off point, it will be very difficult to do decide borderline cases. In any case, the judiciary must bear in mind that the power to commit for contempt must be used in exceptional cases where malafide comments have been made and ulterior motives have been attributed to judges.

Our courts had shown regard for motive when in 1998 the prime minister made astringent comments about the large number of interim bail that were being granted in criminal cases by the High Court Division in an interview with the BBC. The High Court Division disposed of the matter by merely expressing the wish that the prime minister be more careful and respectful in making any statement or comment with regard to the judiciary or the judges.

With regard to the controversial summary power enjoyed by the courts in contempt cases, the usual criminal process to punish contempt would be too cumbersome and slow. A summary and quick mode of meting out punishment to the contemnor, if he is guilty, is very effective in boosting public confidence in the courts. Without such protection the courts would fall in public regard and the maintenance of law and order would be in jeopardy.

The critics of the summary power argue that it is archaic and not in consonance with judicial principles, one such principle being that no one ought to be a judge of his own cause. However, the consequence of taking away the summary power of the courts in contempt matters would be to reduce the court to the position of a private prosecutor, ask the court to be a prosecution witness in another court and subject it to cross-examination on facts. This would destroy public confidence in the dignity, efficiency and uprightness of the courts, causing the whole system of administration of justice to crumble.

Therefore, while the summary power of the courts in cases of contempt constitutes a real public necessity, it is a weapon to be used sparingly and with reference to the interests of the administration of justice. It should not be resorted to wherever a less arbitrary remedy is available.

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Time to sort out the long overdue Doha Round

Abandoning the Doha Round would weaken the WTO system. Protectionist trends would increase and, in due course, the proliferation of preferential trade agreements would accelerate -- meaning more discrimination, a subtler form of protectionism.

HUGH CORBET

AS American joblessness and recession remain grim, Barack Obama looks to exports for recovery. The US president has called for a doubling of exports in the next five years. No doubt other leaders have similar hopes for their countries' exports. Recovery from the global recession, however, depends on restoring the momentum of trade liberalisation, which first of all means completing the Doha Round of multilateral trade negotiations.

At the last G-20 summit, held in Toronto, trade was the dog that didn't bark. World leaders dwelled then, as in previous summits, on stimulus, debts and deficits. The G-20 summit in Seoul this November could be more effective -- promising to address the difficult issues that have held up negotiations in the World Trade Organization for nine long years of fits and starts.

To break the impasse in the Doha Round negotiations, the United States must reconsider its position, said Ernesto Zedillo, the former president of Mexico, in a chairman's statement issued after an international meeting of trade experts at Yale in May.

By offering to reduce agricultural subsidies further, the Obama administration could induce Brazil, China, India and other developing countries to improve their market-access offers, a major goal of US trade negotiators.

More specifically, the US could offer to reform its trade-distorting programs for sugar, cotton and certain grains, to abandon its "zeroing" practice in calculating anti-dumping duties and to reduce its immigration barriers to "mode 4" business in the services sector, enabling employees of foreign providers of services to enter the country temporarily.

From day one the Doha Round negotiations have been in trouble. Neither the US nor the European Union have made the substantial concessions on farm subsidies and tariffs expected of them after the Uruguay Round negotiations of 1986-94. They are still temporising over the liberalisation of agricultural protection, and have been doing so for 40 years!

In the Uruguay Round negotiations and since, the Cairns Group of smaller agricultural-exporting countries -- 19 nations ranging from Argentina and Canada to Thailand, lacking financial resources to subsidize farmers -- have pressed for liberalisation of trade in farm commodities. The resistance has mainly come from the EU, but also from subsidised farm interests in the US, as well as smaller industrial countries.

At first the Cairns Group, led by Australia, held up progress in liberalising trade in industrial products until progress was evident on the agricultural front. In the Doha Round negotiations its obduracy was overtaken by the WTO's Group of Twenty developing countries led by Brazil. These countries have been more obdurate than the Cairns Group in fighting EU and US agricultural protectionism.

The Doha Round has not only suffered from lack of leadership in the EU, the US and smaller industrial countries. It has also suffered from the dissipation of political support for trade liberalisation.

Indeed, the negotiations have been driven by defensive interests in both industrial and developing countries. In the latter, defensive interests have included fear of "preference erosion" implicit in the reduction of tariffs, although World Bank studies have shown that only a few very small economies would be significantly affected.

If the US made worthwhile concessions on farm-support policies, which incidentally would get underway the liberalisation of agricultural trade, it could expect the developing countries to open their markets to farm produce. The potential growth of export markets for agricultural products is almost entirely in developing countries.

Secondly, the developing countries could also be expected to open their markets to services from the US and other industrial countries. Opening the economies of developing countries to the competition of firms engaged in mobilising financial resources would benefit them enormously.

Whether, thirdly, the developing countries would significantly improve access to their markets for industrial products might be something else. At present developing countries are not as fearful of US or EU imports as they are of Chinese imports, which they believe would flood markets, killing infant industries.

Prior to the Uruguay Round negotiations the multilateral trading system was dominated by industrial countries. Since then, with the entry into force of the WTO, which embraces the revised General Agreement of Tariffs and Trade and other Uruguay Round agreements, the system is now dominated numerically by developing countries, including economies "in transition" from being centrally planned.

Today the "free riders" among them account for most of the WTO membership. These consist of the least-developed countries, "recently acceded members" such as China and the ACP countries -- the small ex-colonies of the EU in Africa, the Caribbean and the Pacific.

With sluggish progress in the Doha Round, many negotiators have said, in private surveys of opinion, "a new approach" is required. Since World War II all nine rounds have been based on unconditional most-favoured-nation (MFN) treatment. The effect has been to slow the pace of negotiations to that acceptable to the least willing participants -- to the slowest ships in the convoy.

An alternative could be a conditional MFN approach under GATT article XXIV -- which provides for free trade areas and customs unions -- covering substantially all trade, including agriculture. The pace of negotiations would then be set by the most willing participants.

Other options could be a critical-mass approach, as in the Information Technology Agreement of 1998, or a "club of clubs" approach with each club embracing a particular trade or group of trades.

Abandoning the Doha Round would weaken the WTO system. Protectionist trends would increase and, in due course, the proliferation of preferential trade agreements would accelerate -- meaning more discrimination, a subtler form of protectionism.

And in the longer run? Lorenz Schomerus, a former state secretary of the German ministry of economics, expresses the problem thus: "Multilateral institutions and rules cannot be left on a standby basis. They have to be used, supported and developed day by day. Failure to do so," he adds, "will destroy the WTO system and its rules."

It isn't good enough for the G-20 leaders to say, as they did in their Toronto communiqué, "we renew for a further three years, until the end of 2013, our commitment to refrain from using barriers, or imposing new barriers, to investment or trade in goods and services, imposing new export restrictions or implementing WTO-inconsistent measures to stimulate exports, and commit to rectify such measures as they rise."

The leaders went on to say that in Seoul they would discuss reports on "the benefits of trade liberalisation."

In the face of such studied complacency, it is not too soon for the smaller G-20 powers to press others, especially the emerging-market economies, to rethink the WTO system and give priority to liberalising international trade. The "middle powers" have a strong stake in the multilateral trading system and cannot continue to rely on the economic superpowers -- too big to see beyond their rivalry -- to take the lead in promoting an open world economy.

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