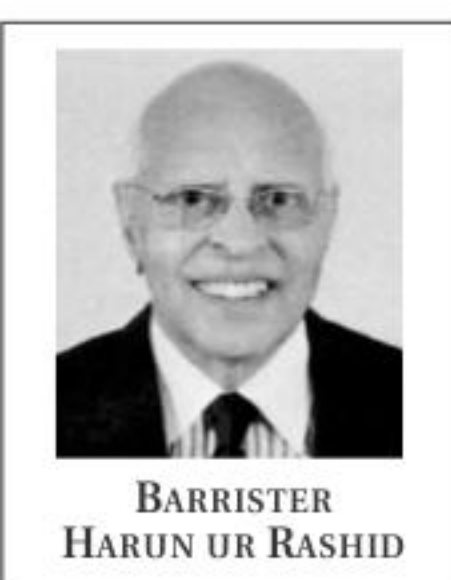


BOTTOM LINE

Padma Bridge and the UN Convention Against Corruption



BARRISTER
HARUN UR RASHID

ON June 29, the World Bank cancelled its \$1.2 billion credit in support of the Padma Multipurpose Bridge project, saying that it had found evidence of high-level corruption among government public officials and others. The government dismissed the allegation saying that since World Bank did not release "a single penny" for the bridge how could corruption take place. It seems that divergence of views between the government and the World Bank centres on what constitutes corruption.

Corruption is defined as use or abuse of power by a public official for personal benefit that accrues to that official directly or indirectly. Corruption takes place in secrecy or, as they say, "under the table" and is very difficult to prove unless there is documentary and/or circumstantial evidence to substantiate it.

Let us examine the issue from the perspective of the United Nations Convention against Corruption (UNCAC), which is the first legally binding international anti-corruption multi-lateral agreement.

The Convention came into force in 2005 and 160 state are parties to it, including Bangladesh which ratified it on February 27, 2007. Accordingly, Bangladesh is bound by the provisions of the UN Convention.

The UNCAC obliges its state parties, including Bangladesh, to implement a wide and detailed range of anti-corruption measures affecting their laws, institutions and practices. These measures aim among others:

- To promote the prevention of corruption;
- To criminalise most prevalent forms of corruption; and
- To seek international cooperation to prevent and detect corruption.

Article 1 (c) states that the purpose of the Convention is "to promote integrity, accountability, and proper management of public affairs and public property."

Under Article 2(a), "public official" has been defined as "any person holding a legislative, executive, administrative or judicial office of a state party, whether appointed or elected, whether permanent or temporary, whether paid or unpaid, irrespective of that person's seniority, and (ii) any other person who performs a public function ...or provides a public service as defined in the domestic law of the state party."

This means that a minister of the government falls under the definition of "a public official" under this Article of the UN Convention and under Article 152 of the Bangladesh Constitution, a person holding or acting in any office of emolument in the service of the Republic is a public/government servant.

For prevention of corruption, Article

It can be argued that the allegation of the World Bank falls within the ambit of the provisions of the UN Convention. To prove the allegation baseless, many in the country have suggested to the government to start a high-level judicial investigation against corruption.



5(2) states that each state party "shall endeavour to establish and promote effective practices aimed at the prevention of corruption." Article 6(1) stipulates that each state party "shall in accordance with the fundamental principles of its legal system ensure the existence of a body or bodies as appropriate to prevent corruption."

This means a state party shall establish an anti-corruption state institution like Bangladesh's Anti-Corruption Commission. The constituted anti-corruption body should be granted by the

state party "the necessary independence.... to enable the body to carry out its functions effectively and free from any undue influence." (Article 6.2)

In this connection, it is reported that Bangladesh ACC chairman said that the two main political parties in the country are "not sincere" in fulfilling their electoral pledges to tackle corruption. He further said in a media briefing that "the amendment to the Anti-Corruption Act has remained pending for the last one and a half years. I hope it will be amended during the current parliament session."

The above statement can hardly be a compliment for the government to fight corruption through the ACC as envisaged by Article 6(2) of the UN Convention.

Although corruption has not been defined in the UN Convention, under the heading of

"Bribery of national public officials" Article 15(b) describes it as "the solicitation or acceptance by a public official directly or indirectly of an undue advantage for himself or herself or another person or entity, in order that the official acts or refrains from acting in the exercise of his or her official duties."

Under this Article "solicitation" or asking or seeking of an undue advantage by "public official" constitutes corruption.

Another difference of opinion between the government and the World Bank is on the use of the phrase "credible evidence" by the World Bank. Opinion varies because the evidence which may be credible to one may not be credible to another, and it depends totally on the context in which evidence of corruption is looked at.

Given the World Bank's press release stating "evidence corroborated by a variety of sources, which points to of a high-level corruption conspiracy among Bangladeshi government officials, SNC Lavalin executives and private individuals," it can be argued that the allegation of the World Bank falls within the ambit of the provisions of the UN Convention. To prove the allegation baseless, many in the country have suggested to the government to start a high-level judicial investigation.

Furthermore, there are numerous examples in Asian and European countries when ministers stood aside while investigation proceeded when allegation of corruption or wrong doing was leveled against them, and when it was found they were innocent they came back to their positions.

Corruption is an evil phenomenon that exists in all countries, but it is in the developing world that its effects are most destructive because it hurts the poor disproportionately. During the meeting of G-20 in Mexico in June, corruption came up for discussion and the leaders urged all stakeholders to play an active role against it.

The writer is a former Bangladesh Ambassador to the UN, Geneva.

The bell tolls for India's Congress Party

JAGDISH BHAGWATI and ARVIND PANAGARIYA

POLITICS in Asia's two giants, India and China, has suddenly turned very uncertain. China remains in authoritarian mode, of course. But egregious human-rights violations and suppression of dissent are raising the specter of growing internal disruptions, particularly in the wake of purges within the top leadership.

By contrast, India, with its firmly rooted liberal democracy, smells to some like roses. But many believe that India, too, faces uncertain political prospects.

In particular, there is widespread belief in India today that one of the country's two main political parties, the Indian National Congress, essentially run by Sonia Gandhi and her son, Rahul Gandhi, has now run its course and will sink into oblivion. According to *The Economist*: "The Congress

Party...is in a funk" and "in danger of...long-term decline."

But the Congress has been written off before: the article from *The Economist* was published in January 2003. Indeed, the uniform prediction prior to the 2004 election was that, after having lost three elections in a row, the Congress was heading for its fourth defeat and eventual dissolution. Yet it won that election, and then won a second parliamentary election in 2009.

Politics is, of course, full of reversals of fortune. But, unlike in 2004, it is unlikely, for several reasons, that the Congress can survive the dire predicament that it now faces today.

For starters, in 2004, the Congress was challenging an incumbent government that had served for six years. This time, the Congress has formed the incumbent government for two consecutive terms, and its tenure has recently been marked by scandals that have made it look ineffectual, rudderless, and corrupt. To make matters worse, India is experiencing a sharp economic slowdown, further undermining the Congress's prospects in elections that must be held no later than June 2014.

Second, and more important, voter attitudes have shifted significantly during the past decade. Average annual economic growth of 8.5% over the eight-year period from 2003 to 2011 has led to a revolution of perceived possibilities. As the economists Poonam Gupta and Arvind Panagariya have demonstrated, voters in most Indian states now support leaders and parties that deliver good economic outcomes, and turn out those who do not. This marks a major shift from the fatalistic attitudes of the past, which generally helped

incumbents, who benefited from voters' belief that there was no real alternative to existing arrangements.

This voting behaviour has been reinforced by recent examples of political failure and success. Brazenly corrupt leaders such as Kumari Mayawati of Uttar Pradesh and Digambar Kamat of Goa were each bundled out after one term. Meanwhile, positive role models like Nitish Kumar of Bihar, Narendra Modi of Gujarat, and Navin Patnaik of Orissa have all been returned to power as chief ministers at least once; all have delivered remarkable results while maintaining an unblemished record of personal integrity. The Congress will inevitably be under acute pressure to perform, as the electorate now knows that better performance is not beyond its grasp.

Prime Minister Rajiv Gandhi's assassination over two decades ago created a wave of sympathy for his widow, Sonia, on whose sari-tails the Congress won in 2004. Today, no such tragedy is likely to help the Congress. Sonia Gandhi is rumoured to have cancer, but, rather than capitalising on it, she has kept the details within the walls of the Gandhi family compound in New Delhi.

But the real problem is that brand-name politics is increasingly at a discount in India, much as it is in the United States. Like the Kennedy and Bush brands, the

Nehru-Gandhi label has lost its luster in India.

That is partly a function of rapidly changing demographics. Individuals born after 1975 now account for a very large proportion of the electorate. For these voters, Jawaharlal Nehru and Indira Gandhi are merely historical figures, and are a distant memory even for many voters born before 1975. It is not surprising that Rahul Gandhi proved unable to bring the Congress a victory in a recent election in a constituency that historically had been a bastion of support for his family.

Indeed, the Nehru-Gandhi condominium that has dominated Indian politics has itself undermined the party's survival prospects by making it immensely difficult for it to recruit and develop new leaders. It is common knowledge that, for the last eight years, Sonia Gandhi has exercised virtually total control within the party. As a result, no rival to Rahul Gandhi has emerged.

With Sonia Gandhi in ill health, Rahul unable to connect to the electorate even in his historically "safe" constituency, and the Nehru-Gandhi brand name having lost its appeal, the prospects for the Congress in 2014 look bleak. Only the outcome will tell whether it can survive.

Project Syndicate

INSTANT COMMENT

'WB loan will be better than spending from our own funds'

M Abdul Majid, Former Chairman, National Board of Revenue (NBR), Bangladesh, talks to The Daily Star on government's plan to build the Padma Bridge at its own cost.

BASICALLY, if the loan that we were supposed to get no longer holds, then of course there are going to be difficulties. The money that ADB or WB would have lent us would have very nominal charge, with repayment period of 30 years and an interest rate of only 1%. You can almost call it a grant. The ownership of the bridge would also have stayed with us. If we go ahead with the partnership with Malaysia, we will have to give them a significant amount because they have to operate, raise the money and then repay. It may take up to 36 years. For 36 years, we will not get anything out of it.

If the loan deal had worked out, then we would be the owner of the bridge from the first day. For example, even after paying the interest of the annual loan of the Jamuna Bridge, we still have an FDR of Tk.1,000 crore. This is a huge amount. We could have reached a break even point within a year. There can be guidelines for not charging exorbitant toll but it also needs to be taken into consideration that the money that has been spent needs to be recovered. Then what may happen is the company might ask for 60 more years to repay that money. So it will be very costly whichever way we choose to do it.

If it was with the WB, we would have the ownership and would continue to repay our own loan. We would also be able to charge a reasonable rate from the common people. To pass the Jamuna Bridge, one spends Tk.100 if one is travelling by car. The Padma Bridge is going to be costlier. Now, if we are to charge around say, Tk.1,200 for a car, then one will naturally thinks of the money spent on a half an hour ride, and will eventually prefer a ferry over the bridge.

In the end, we can admit that if we had the loan and the economic viability it would

always be better than spending from our own funds. It is definitely possible to seek help from the whole nation. The whole nation has to sacrifice in order to pull this off. For example, if we were to import, we would have subsidised the tax and VAT if the WB was still there. Since it is going to be our own money now, we do not have to do that, but it is going to bring down our revenue.

The revenue that we already have cannot cover the whole budget, for instance there is a deficit of Tk.92,000 crore. If I cannot bring down the deficit, then my bank borrowing goes up. There is a gap between the revenue that the government earns and the pace of the revenue expenditure, and we are reeling under the pressure.

Changing the mindset is also important. Until the revenue system has been made user-friendly and until the common people have their faith in the system, the revenue will not come, and there lies the real challenge. If we want to increase the revenue, then we have to spend more too. Spending needs money. So what do you do first? Spend or earn the revenue? Or do you wait for the revenue to spend more? If the loan was there, our revenues would have been generated and investments would be easier too.

Take the example of the Jamuna Bridge. We have been owners of it since the beginning, which is why we could have a reasonable rate for it. When we had passed the project in 2001, we had Tk.500-700 crore saved. Now it is nearly Tk.1,000 crore. This money is in FDR, which means it is generating more money. Since it is the same department that is working, we can use the money from Jamuna Bridge in building the Padma Bridge. If I had owned one Padma Bridge, then the money earned will have contributed to the making of the second one. The ownership is very important.