The Daily Star

FOUNDER EDITOR
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DHAKA SATURDAY JUNE 4, 2016

Meeting the revenue target

Tough times ahead

THE government's focus on mega projects, skills development and job creation are commendable. However meeting the revenue target will be difficult according to experts, especially since the national board of revenue (NBR) now has the uphill task of collecting taxes to meet a budget that is more than a third larger than last year's. Although new taxation levied on tobacco products is a welcome move, we are not so sure how the new levy on mobile phone users that will help matters as we believe it will work contrary to creating a digital Bangladesh.

Although the wealthy may be taxed more under the new regime, it all boils down to collection. The new VAT Act has not been accepted by the business community and its implementation has been deferred till January 2017 and there is no guarantee it will be popular then too. With half the year gone, precisely how the targeted budget will be met from VAT is suspect.

It is good that budgetary allocations have increased on education and technology (+ 34.55%), social safety net programmes, etc., However, with increases in allocation, we keep coming back to revenue collection and NBR is to generate 35.8% from VAT, which will be implemented in the remaining six months of the fiscal year. An almost equal chunk is slated to come from taxation. We conclude raising the same question that revenue collection is seemingly unrealistic since NBR managed to achieve 15% revenue collection in the first nine months of the last fiscal (up to March) against a target of 30% growth. This year the body has been tasked with collecting Tk53,000 crore (a rise of 35% over last year) and precisely how that will be achieved remains a big question.

Illegal sand lifting

Put an end to the menace

IN a welcome move, the mobile court jailed and fined 14 people for illegally lifting sand near the Bangabandhu Bridge in Bhuapur upazila of Tangail. We hope this will act as a deterrent to the unlawful practice of sand lifting from under bridges, which has become a very lucrative business across the country, according to reports. Organised syndicates of influential people with political clout had been extracting sand from the Jamuna River near the bridge violating government order.

Construction of bridges is one of the most expensive and time consuming public projects. It makes absolutely no sense to spend taxpayer's money to build them and then turning a blind eye to criminal activities that contribute to their premature destruction. How can these unscrupulous groups operate under the nose of the local administration? Are we to assume that there is a nexus between the two? And under what circumstances do the law enforcement agencies fail to arrest people involved in this crime?

There must be a limit to lawlessness. Illegal sand lifting is something that mocks the vision of the government to provide the country with adequate infrastructure. It is good that the mobile court in Tangail has risen to the occasion but it's not enough. The Ministry of Road Transport and Bridges and district administrations around the country should exercise constant vigilance over spots where sand is lifted illegally causing damage to bridges, defying the Sand Fields and Soil Management Act, 2010.

LETTERS TO THE EDITOR

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Will America Survive a Trump Administration?

I would like to hazard, however, a controversial claim. If Trump wins the general election, it will be because there is something Americans love more than competent leadership, more than safety and security, more than even making a buck – and that's entertainment.

The thing about reducing politics to mass entertainment is that it turns all the rules upside down: to be presidential is to be boring; to be concerned with evidence, rational arguments, and objective reality is to be stuffy, over-intellectual, and boring; to be respectful of difference and caring towards the less fortunate is to be self-hating, soft-hearted… and did I mention boring?

This poses a distinct problem for Clinton, because the very things which are generally regarded as her strengths – knowledge, experience, a cool temperament – could, in this topsy-turvy world, be turned against her to her opponent's advantage.

So let us turn finally to the question we posed above: will America survive a Trump administration? Yes. This country had had awful presidents in the past, but the United States is bigger than any one chief executive, regardless of how bloated, egomaniacal and hate-mongering. The question is, can we survive the complete absorption of politics into the culture of mass entertainment? That I'm not so sure about.

Alon Ben-Meir

The curious contents of the Citizenship Law

C R ABRAR

IN early February, the Cabinet had given its final approval to the draft of the Citizenship Act, 2016. At a press briefing following the Cabinet decision, the concerned secretary stated that the proposed law consolidated the existing Citizenship Act 1951 and the Bangladesh Citizenship Temporary Provisions Order 1972, as those were "backdated" and "incomplete".

Surely, the government has the mandate to review existing laws and propose to the Parliament the enactment of new ones. However, at this time and age in a democratic dispensation, citizens have every right to expect that such a law making process is transparent and participatory, so that they get an opportunity to provide inputs in its framing. Unlike the Anti-trafficking Act, 2012 and the Migration Act of 2013, which were enacted by this government following a rigorous consultative process and public scrutiny, the Citizenship Law was a major disappointment. No civic consultation was organised, neither was the law made available in the public domain (such as by posting on the ministry website).

Although mainstream media highlighted the expanded ambit of the law for Bangladeshis to enjoy dual nationality, a close scrutiny finds that it has serious adverse implications for various categories of people. Ostensibly, it also breaches some fundamental principles of lawmaking.

The Universal Declaration of Human Rights unequivocally states that "Everyone has the right to a nationality" and "No one shall be arbitrarily deprived of his nationality…" (Article15/2). In 2000, Bangladesh ratified the International Covenant on Civil and Political Rights. Article 24 (3) of the treaty stipulates, "Every child has the right to acquire a nationality". The right to nationality has also been reiterated under Article 7 in the most affirmed human rights document, the Convention on the Rights of the Child that Bangladesh ratified in 1991.

After analysing various provisions of the citizenship law, jurists and rights activists are in agreement that ample scope will be created for increased statelessness for several categories of people. Included among them are children of Bangladeshi nationals living overseas who may not be registered within a stipulated time, children born abroad to parents who are born after the commencement of the Act, foundlings in Bangladesh territory, children born to migrant women workers who have been sexually exploited, children born out of wedlock, those who may be deemed as 'enemy aliens' and their children, the naturalised citizens who *"express disobedience towards the sovereignty or the Constitution … through any action or behaviours"*, the unregistered dwellers of the recently exchanged enclaves and intriguingly, existing citizens whose both parents died before 1971.

To elaborate, Prominence of the Law Article 3 states, "Notwithstanding anything contained in any other Act, legal instrument, *judgment*, decree etc. the provisions of this Act will prevail". This apparently innocuous provision has far-reaching consequences. Generally, a new law contains a provision that affirms its pre-eminence over existing legislations. However, superseding the judgments of courts has major ramifications. It will set a dangerous precedence of undermining the authority of the High Court. One would never be sure if a judgment of the court would be overridden by subsequent framing of laws. This provision portends ill for the much-celebrated notion of separation of power and independence of judiciary.

PHOTO: SHERLYN GOH

Article 28/2/a of the Act states "Notwithstanding such repeal … citizenship of the persons who obtained citizenship under the repealed Acts shall prevail, *subject to consistency with the provisions of this Act*. All activities done under the Act shall be considered as legal". If the legislation is passed as proposed, it has the likelihood to override the 2008 judgment that re-affirmed Bangladeshi citizenship of the Urdu-speaking community. One wonders if one can find any parallel jurisprudential evidence anywhere else, where a community's citizenship status is made uncertain by a new law when the apex court of the land had already upheld their status once and for all. The retrospective element incorporated in the proposed law also has severe consequences for children born of one Bangladeshi parent, and nationals of SAARC countries and Myanmar who gained Bangladesh's citizenship by virtue of one of their parents being Bangladeshi.

Under Article 5(3) a person will be denied citizenship by descent "if s/he or his/her father or mother joins any military or quasi-military or any special force and engages or engaged in war against Bangladesh or *denied the existence of Bangladesh or is engaged in any activity against Bangladesh*". This raises several issues of concern.

Firstly, penalising people by providing retrospective effect to law is prohibited under the national and international laws. Article 35(1) of Bangladesh Constitution reads: "No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence… ". Likewise, Article 15 of ICCPR states, "No one shall be held guilty of any criminal offence on account of any omission which did not constitute a criminal offence, under national and international law, at the time when the criminal offence was committed".

Secondly, this Article provides for punishment of children for offences committed by their parents. This is in gross contravention of the principle of natural justice.

And thirdly, lack of definitive categorisation of what constitutes the 'denial of existence of Bangladesh' and 'anti-Bangladesh activity' would expose the law to subjective interpretation by those who hold the reins of power. Such broad sweep of offences is an open invitation to gross abuse.

Thus, the Citizenship Law falls short of being a good law. Some of its provisions are not only contrary to the Constitution, international treaties that Bangladesh has ratified and the principle of natural justice, they are also discriminatory, unreasonable and non-enforceable. It's time the government takes a fresh look at the text before placing it before the National Parliament.

The writer teaches International Relations at the University of Dhaka. He writes and researches on migration and rights issues.

Is legal education in private universities truly substandard?

MD. RIZWANUL ISLAM

THE Honourable Chief Justice of Bangladesh has, in a recent speech, in very unequivocal terms deplored the quality of legal education in private universities in Bangladesh. For quite some time, private universities (including, but not limited to, law departments) and academics working in private universities have far too often been the subject of concern and criticism by many informed and sometimes not-so-informed quarters in this country. The comments of the honourable Chief Justice is valuable because, through his comments, he has shown his concern for and awareness about the quality of legal education in Bangladesh and has thus, also given us an opportunity to reflect on some of the misgivings about the quality of education offered by private universities.

Because of the structure and modus operandi, the law departments (and other departments too) of private universities are naturally market-driven. Whether or not all of the market-driven developments are forces for good is open to debate, but probably few would argue that an inevitable outcome is a culture of strong accountability. Private universities are bound to be more responsive to the needs of the students and other stakeholders. Indeed, arguably it is not totally improbable that such a culture of accountability has had some positive spill-over impact on the public universities of this country too.

A common allegation hurled against law departments of private universities is that their curriculum is too diverse or even borderline whimsical. However, the diversity in the curriculum is not just an inevitable outcome of the self-governing nature of universities; it is perhaps also an inseparable part of the legal education. For sure, a very significant percentage of the law students would choose to pursue the career of a lawyer or judge but there are many other professions that law graduates may choose to pursue. Rather than it being a flaw or weakness, I would argue that diversity in the curriculum is a blessing and an indication of the strength of the law departments of private universities and the teaching and research interest of their academics and students. As the professional regulatory body, Bangladesh Bar Council would inevitably have its say in fixing the core courses required for being eligible to sit for the bar entrance examination.

The Judicial Service Commission would also naturally fix the syllabus for its entrance examination. However, any intrusion by these regulatory bodies, with well-defined regulatory functions, beyond their respective competence, is not only an encroachment on academic freedom, but would also make law education much more vapid. And perhaps even worse, it would fail to cater to the needs of various other professions in which law graduates can have their role. Diplomacy, corporate sector, journalism and research organisations are just many of those other professions where law graduates may play a significant role. And there can be students who may be keen to pursue legal education for various other reasons, and therefore, solely focusing on the needs of the bar and the bench, would result in losing sight of their needs too. Even apparently esoteric subjects such as aviation law or world trade law can play their role, in a country like ours, where the role and force of these legal regimes are not commonly perceived. And in no case can the law departments of private universities be reduced to the role of coaching centres for entrance examination for the bar and judicial service.

> *A broad-brush branding of the quality of legal education in private universities may please many and may perpetuate some myths, but probably would make little contribution to the improvement of the real quality of education. It would also fail to respond to the irregularities or lackings. Rather, any perception-based, dismissive attitude would accentuate a futile categorisation which would not be conducive for any meaningful, rigorous assessment.*

An integral part of higher education is research. Indeed, it has been established for centuries that good teachers at tertiary level would be committed researchers and through their research, would contribute to the existing body of knowledge. In terms of research, despite the challenge of resource-constraints, the accomplishments of law schools of private universities probably would not look meagre if it is compared with many of the law departments of public universities in this country. While specific information relating to law departments of different universities is apparently unavailable, some international ranking of universities (e.g. Webometric Ranking) have placed a number of private universities well above most of the public universities, which would belie the perception of poor quality of education of private universities (this should apply to law departments as well).

Without being oblivious to my unavoidable self-interest (because of my professional affiliation), this writing would be incomplete if some of the successes of the 'poor legal education' imparted by private universities are not mentioned here. At least on one occasion, a private university student has stood first in the entrance examination of the Bangladesh Judicial Service Commission, many students of private universities are pursuing higher education in world's best universities with fully funded scholarship, and there are many who are in the bar and the bench, and also in other professions. The students of these universities have done well in national and international mooting competitions. And all of these have happened within a span of around two decades.

Some recurrent and serious irregularities and limitations regarding admission, grading, and library resources etc. in certain law departments of some private universities are not being denied. However, such issues are not just issues of law departments of private universities and not all of the private universities are affected by them. A broad-brush branding of the quality of legal education in private universities may please many and may perpetuate some myths, but probably would make little contribution to the improvement of the real quality of education. It would also fail to respond to the irregularities or lackings. Rather, any perception-based, dismissive attitude would accentuate a futile categorisation which would not be conducive for any meaningful, rigorous assessment. Like all other institutions and their products and services, law schools of private universities and the services that they offer would be subject to constant scrutiny, but the scrutiny should be objective, fair, and rigorous.

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