

There are many kings and emperors of swindle up and about

Firm up instruments to prevent capital flight

Money laundering continues to be one of the core issues plaguing Bangladesh. There have been several reports on money laundering in recent times, which confirms that Bangladesh is one of the top 30 countries in terms of illicit financial flows. According to Global Financial Index, more than 61 billion dollars were siphoned out of Bangladesh between 2005 and 2014 which amounts to 25 percent of our 2016-17 GDP.

An ACC probe has revealed another case of huge sums of money siphoned out of the country by an individual who has most single-mindedly set himself about to cheat the country of a large amount of depositors' money. This he did over a period of time, taking loans from as many as four non-banking financial institutions. And that raises a lot of questions.

We ask where the checks and supervisions were when loans were given to PK Halder against companies that did not exist at all. Isn't there something fishy here? Where are the collaterals against the loans? The said Sultan of Swindle, as this paper has so aptly described him, has transferred all his ill-gotten wealth to Canada and has happily settled there. And there is very little possibility of repatriating either him or the money ever. And there are more such "sultans" in the country.

Regrettably, despite the seriousness of the issue, all we have heard are repetitive homilies and commitments to stem the plague, which have not been converted into effective actions. In a more recent report, GFI revealed that USD 5.9 billion was siphoned out of Bangladesh through trade misinvoicing in 2015 which reconfirms the fact that illegal money transfers are mostly related to trade ventures. But that has also been helped by the unholy collusion between some bankers and traders. And thousands of dollars are transferred illegally by many foreigners working in Bangladesh.

The issue reflects most of all on the supervisory mechanisms, capacity and due diligence of the central bank. Although the Bangladesh Bank has been able to foil a few laundering attempts, many more are escaping the net through newer innovative means. We believe that all the relevant factors must be addressed, including transparency in all monetary transactions and loans, strict oversight by the Bangladesh Bank over recruiting agencies and, most importantly political commitment, if the illegal outflow of our money is to be checked.

File cases against the elephant killers and poachers

Officials should be held responsible for manipulating the autopsy reports

It is most unfortunate that forest ministry officials of Chattogram region have been manipulating the autopsy reports of the dead wild elephants in the area, apparently to avoid animosity with locals responsible for the deaths. They tamper with the reports by attributing the deaths to natural causes and rarely file cases against the elephant killers.

In the last two months, three Asian elephants, classified as "critically endangered" in Bangladesh, died at the Kalipur range office of Banskhali upazila, which falls under the jurisdiction of Chattogram Divisional Forest Office (South). The autopsy reports said that all of them died of natural causes while evidence found by locals suggest that they could have died by electrocution as electric metal wires were found near the scenes. When a livestock official tried to reveal the real cause of their deaths in the autopsy reports, he was intimidated by the forest ministry officials.

According to forest department data, a total of 106 elephants died in the Chattogram Forest Circle—in Cox's Bazar, parts of Bandarban, Chattogram city, and Rangamati—in the last 19 years. But surprisingly, only two cases and 74 general diaries were filed by the forest department in relation to these deaths during this whole period.

What we do not understand is why would the forest department not file cases against those who killed these endangered species? Isn't it the forest department's duty to save the wildlife and biodiversity of the forests they are in charge of? Another question that naturally arises is, are the forest officials concerned connected with the poachers in any way? We would like to know the answers to these questions from the officials concerned.

Although we have Wildlife (Conservation and Security) Act 2012, through which forest officials can file a case if any wildlife is killed within their jurisdiction, the law remains mostly unused due to either reluctance or a lack of awareness of the officials. What's the point of having this law if it is not used against the poachers and killers of wild animals? If they are not brought under the purview of law and given exemplary punishment, crimes against wild animals will not stop.

LETTERS TO THE EDITOR

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No precaution on public transport

A few days ago, I got out from my house and could not find any CNG-run auto rickshaw, so I simply hopped on a bus as it was relatively empty. I felt relatively relaxed to see that they did not pack the bus with people which is a common sight during rush hours.

Within a few minutes I noticed how quickly passengers were getting into the bus and before I knew it, every single empty seat was filled up. Not only that the driver decided to pick up more passengers even when there were no more empty seats. Such blatant disregard for essential safety precautions cannot be tolerated. This will further worsen the infection rate. I urge the authorities to look into the matter so that commuters, passengers and bus drivers alike pay heed to the safety of the people.

Abu Afaf, Dhaka

EDITORIAL

How do we solve the image crisis for police?

STRAIGHT LINE



MUHAMMAD NURUL HUDA

Reports in the print and electronic media indicate that the image of police in public eyes has been worryingly tainted following the death of Major Sinha under circumstances pointing to the criminal collusive actions

of some errant policemen, in addition to other serious infractions of policemen elsewhere in the country. This is distressing and frustrating in view of the fact that during the ongoing Covid-19 pandemic, the performance of our police, particularly their public-spiritedness and proactive stance, earned the organisation well-deserved plaudits. Sadly, public appreciation has been overtaken by public anger.

As the image of the police reflected by the mirror of public opinion conforms to what the police and the police culture are, both the image and culture are in danger of substantial damage. This is disappointing because there is no dearth of right-thinking, right-doing, courageous and conscientious policemen. Citations of police medals highlight the glowing performances of such personnel; and for every one recorded, many other instances of courage pass unnoticed. The point to note is that timely and just action taken

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by upright policemen on many occasions cannot wash out one of those image-shattering misdeeds.

On ground, the good work done by police over the years pales into insignificance in the face of their illegal action and unbecoming conduct which really hurts the susceptibilities of the people. There are indeed few jobs as demanding as that of a policeman. This perhaps explains why misconduct of the police severely pinches, irks, annoys and angers the people and has a lasting

one of defending the misdeeds of deviant policemen.

For any discerning observer, it would only be logical to infer that the image crisis has not happened all of a sudden. Broadly speaking, it needs to be ascertained if organisational goals and operational imperatives have facilitated and encouraged deviant policing. Are policemen indulging in doing things which they ought not to do or refraining from doing things they ought to do to favour people in powerful positions?



PHOTO: REUTERS

tarnishing effect on the public image of the police. When members of other profession fall from the pedestal of public respect, citizens may dismiss this fall as one of the frailties of human nature. In the case of policemen it usually makes the headline even if it is the most routine of human frailties.

A poignant saying in criminal law enforcement parlance states that no two days are similar for lawmen and that the sweet taste of appreciation is comparatively rare to them than the bitterness of the complaint. One has to agree that policing is an unpleasant coercive job where experience shows that retaining a good image is indeed a difficult achievement. Such an observation should not be construed as

Do the policemen need such powerful people to obtain choice postings, to avoid being transferred, to mitigate disciplinary measures or to earn an advancement in rank? Is there a necessary basis providing for a mutually advantageous barter?

The above apprehension surfaces because the superintendence and control over the police rests in the executive branch of the government. To ask a specific question, did law and order and crime situation including drug trafficking in Teknaf Police Station assume serious proportion warranting deployment of lawless officials? Scores of the so-called encounter deaths reported in the media pertaining to this area point to such a premonition. Are our guardians desperate for short-term, spectacular results even

though they may be illusory?

To state the obvious, police officers are sworn to uphold the law. They are presumed to have no other duty and to have no right to enforce laws selectively. The policemen who fail to do his duty or misuses his position is guilty of violating the trust of those who employ him—the public. The enforcers of law must not be allowed to violate the law, even to catch criminals. If they are allowed to resort to dirty methods they make the law dirty.

If a government becomes lawbreaker, it breeds contempt for law. To declare that the government may commit crimes to secure convictions of criminals would bring terrible retribution. For the interest of the government is not that it should win cases but that justice shall be done. Law is the means and justice is the end. A democratic society should be constrained to sacrifice police effectiveness at the altar of civil liberty as that is the desirable mode.

It would not be fair to put all the blame on the political class because there are allegations that at times police officers have implicitly proclaimed political expediency to justify extra legal actions. Are the public and the police caught in an increasingly norm-free, unpredictable and unjust environment? A fear is that a kind of Gresham's Law may have started to work wherein intrusion of extraneous interest in matters of police management has led to solicitation of further political influence. In such an eventuality, the inevitable result would be pervasive disillusionment, loss of pride and collegiality. Furthermore, in such a state, policing would be transformed from the professional imposition of a coherent moral consensus on society into myopic group activity.

The issue of image crisis cannot be appreciated in isolation. The basic features of our republican constitution, parliamentary democracy and development administration are in conflict with the inherited political organisational characteristics of the administrative structure. Therefore, without organisational renewal and revitalisation and the nurturing of professional skills, the police image would more often than not run the risk of being smeared.

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ISDS enables making more money from losses



JOMO KWAME SUNDARAM

With the Covid-19 contagion from late 2019 spreading internationally this year, governments have responded, often in desperation. Meanwhile, predatory international law firms are encouraging multimillion-dollar investor-state dispute settlement (ISDS) lawsuits citing Covid-19 containment, relief and recovery measures.

Sharing the pain

Most governments failed to introduce sufficient precautionary measures early enough to prevent Covid-19 contagions from spreading. And when they did act, they often believed they had little choice but to impose nationwide "stay in shelter" lockdowns to enforce preventive physical distancing.

To enable businesses and households to survive the adverse effects of such lockdowns, governments have provided relief measures, for at least some of those believed to have been adversely affected, especially for businesses better able to lobby effectively.

Meanwhile, there are already thousands of mainly bilateral investment treaties as well as bilateral and plurilateral trade agreements worldwide, enabling foreign investors to sue governments before private arbitration tribunals to profit from their wide-ranging treaty rights.

Transnational corporations (TNCs) can claim staggering sums in damages for alleged investment losses, for either alleged expropriation, or more typically, indirect "damage" caused by regulatory changes, in this case, Covid-19 government response measures.

As some such measures try to share the burden of the crisis, e.g., with asset owners and other contracting parties, the international law firm Shearman & Sterling advises financial firms, "While helping debtors, these measures would inevitably impact creditors by causing loss of income", referring to debt relief and restructuring efforts among others.

Foreign registered real estate or property companies can also sue governments that protect lessees or tenants who cannot make their lease or rent payments as contractually scheduled after their operations are shut down or disrupted by emergency regulations

imposed.

Pharmaceutical and medical supplies companies can also appeal to such arbitration tribunals to claim losses due to price controls and "violated" intellectual property rights for Covid-19 tests, treatments, medical and protective equipment as well as vaccines.

Lucrative ISDS lawsuits

In recent months, international law firms have been encouraging ISDS lawsuits citing government measures to check contagion and mitigate their economic consequences, urging clients to invoke investment and trade agreements to claim for allegedly lost income or additional losses or costs due to new government policy measures.

Sharing the pain

Such law firms remind their clientele that many of the more than thousand ISDS lawsuits filed worldwide have arisen during political or economic crises.

Covid-19 pandemic response measures are now being widely studied as possible pretexts for another round of lawsuits.

These corporate lawsuits can impose massive fiscal burdens on governments.



Another firm Ropes & Gray advises: "Governments have responded to COVID-19 with a panoply of measures, including...limitations on business operations, and tax benefits. Notwithstanding their legitimacy, these measures can negatively impact businesses by reducing profitability, delaying operations or being excluded from government benefits...For companies with foreign investments, investment agreements could be a powerful tool to recover or prevent loss resulting from COVID-19 related government actions."

Shearman & Sterling advises, "Some interventions will be protectionist—they will seek to support or benefit domestic enterprises (strategic or otherwise) but not foreign investors", without mentioning their generally far lower tax contributions and generous investment incentives enjoyed.

There is considerable scope for such cases given the still growing, broad range of government Covid-19 measures, e.g., foreign-owned water supply companies can sue governments for insisting that more public water supply sources be provided, or household water supplies remain uninterrupted, even if water bills are not settled, to enable more regular hand washing.

As Pia Eberhardt shows, legal costs average well over USD 6 million per party, but can be much higher. Hence, such suits can drain government fiscal resources.

Although it becomes much more expensive if governments lose, they still have to cover their own legal expenses even if they do not lose. As of 2018, governments had been ordered to pay USD 88 billion for settlements made public.

ISDS undemocratic, illegitimate International investment law is generally

independent of national legislatures and biased toward TNC interests. Investment agreements prescribe foreign investor rights and privileges very broadly, but their duties and obligations, usually rather minimally.

Sovereign national societies, parliaments and governments have considerable scope for discretion in addressing complex political issues involving diverse social and economic interests. Also, national courts generally do not award damages for lost future profits as these are considered completely conjectural.

But ISDS provides much more favourable treatment to powerful TNCs. Also, international arbitration tribunals ignore and undermine the legitimate scope for national courts, law-making and democratic government decision-making.

The typically transnational arbitration tribunals that interpret such law generally ignore recent legal developments, which take more account of the rights and responsibilities of various other stakeholders in national societies. Thus, arbitration awards tend to be much more lucrative, for both TNCs and their lawyers, than ordinary national court decisions.

A South Centre Southview urges considering various measures in response to the threat such as terminating or suspending investment treaties, withdrawing consent to arbitration, statutorily prohibiting recourse to arbitration and appealing to TNCs' corporate moral responsibility.

Already, there are growing appeals for an immediate moratorium on ISDS lawsuits and to end ISDS proceedings involving Covid-19 emergency measures, while some countries, e.g., India, South Africa and Indonesia, had scrapped some of their bilateral investment treaties even before the crisis.

The Southview opinion also chides the United Nations Commission on International Trade Law (UNCITRAL) for trifling with marginal reforms, instead of radically reconsidering the very illegitimacy of international investment arbitration itself.

As the world struggles to cope with an unprecedented "black swan" public health threat, the prospect of a world recession taking the planet into depression is greater than ever in the last eight decades. The need to end ISDS provisions and lawsuits is more urgent than ever.

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