

DHAKA SUNDAY MARCH 16, 2003

Jail reform agenda

Casualty of empty words

OST of the prisons in the country are notorious for the sub-human living conditions they are plagued with. They lack the basic amenities and are becoming increasingly inhabitable. Nevertheless, jail reform is still a matter of academic discussion or bureaucratic tampering with no practical improvement in sight.

Apart from the structural limitations and unhygienic conditions, it must be noted that more and more undertrial prisoners have been crowding into jail houses, and many of them will languish there year after year like the old inmates. There is reason to believe that some of them would have been acquitted by court. So jails, which are seen as penitentiaries in the modern world, have become veritable torture centres in our context.

The basic issue that jurists and legal experts have resolved in favour of prisoners is that they do not shed their human rights at the jail-gate. Hence, they are entitled to be treated as all other humans. But the interpretation appears to be different in our case.

A report published in this newspaper last Friday gave a dismal account of how prisoners are suffering, beyond being jailed. The dilapidated buildings, mostly built towards the end of the 19th century, accommodate people at least thrice their capacity. No wonder, health and hygiene are alien terms in our jails. Those detained usually lose weight and contract various diseases. All this is punishment inflicted upon assumed wrongdoers, which is grossly unfair; for, nobody is to be treated as guilty unless proven as such in a court of law.

The typical governmental approach to the poor jail conditions has been confined to formation of reform commissions and committees at intervals usually marked by a changing of the guard. Back in 1978, a jail reform commission was constituted. The commission duly put forward its recommendations, but none of them has been implemented thus far. Afterwards, several committees were formed to look into the matter, but the situation in the jails remains unchanged.

Clearly, the plethora of commissions and committees have not helped matters improve at all. It is another example of theoretical sensitivity to an essentially humanitarian-cum-legalistic problem achieving very little in prac-tice. The government has to cull out the best recommendations made so far and implement them without wasting any more time. It should attach more importance to implementation of a reform plan rather than waste its breath on empty promises. In the ultimate analysis, it is a matter of recognising the fact that the conditions in jail houses are basically a reflection on our justice system.

Deferred UN resolution on Iraq

World public opinion making itself felt

E notice with some relief that the much-vaunted second resolution supposed to have been placed at the UN Security Council by the US and its allies for an attack against Iraq has been put away. In fact, it became clear with the comment made by British Prime Minister Tony Blair that the resolution was 'now less likely than at any other time.' Such comments could be explained in more ways than one. Undoubtedly it is an indirect recognition of widespread opposition to their mission against Iraq, especially with the threats of vetoes by France and Russia dangling over their heads. Moreover, all the arm-twisting resorted to in securing the support of the others, i.e. the non-permanent UNSC mempers, does not seem to have worked in their lavour Diplomacy of all kinds was exercised during the whole week. In fact, many would describe it as the most hectic phase of world diplomacy in recent memory. Whether it followed any basic principle or not could be debated. For, they even went to the extent of offering financial assistance to win the much-needed support. Sadly for them and fortunately for the cause of peace, the possibility of getting the votes became remoter with each passing day. We look at it as a positive sign of relenting to the pressure from around the world and accepting the global view that a war against Iraq could never be the only solution to the crisis. In the wake of all these developments, the US, Britain and Spain have decided to hold a 'crisis summit' to have a face-to-face discussion on future policies. It is nothing but a clear diversion from the road to adopting a resolution inside the UN. In a related development, President Bush has announced that the US would unveil the long-delayed roadmap for peace in the Middle East as soon as the new Palestinian PM is appointed 'with a clear-cut mandate.' This sounds more like a PR exercise, if not an outright political ruse. Such roadmaps, the Palestinians have seen aplenty. Whether a new plan is unveiled or not, what is of foremost import is that Israeli leader Ariel Sharon is reined in by the US. He should be shackled; his forces have to be vacated from the occupied zones; and there has to be an end to the Jewish invasion and atrocities in the Palestinian areas. Only then the US would be able to restore the faith and trust they have lost over the years -- thanks to their one-eyed policy towards Israel.

Honour Chief Justice's recommendation

Eight eminent jurists speak out

(Following is the position paper by Syed Ishtiaq Ahmed; Mr. Kazi Golam Mahbub; Dr. Kamal Hossain; Dr. M. Zahir; Mr. Moinul Hossain; Mr. Mahmudul Islam; Mr. (Justice) Abdul Malek and Mr. Ajmalul Hossain, Q.C.) assessment of the performance of the additional judge and thus provided an objective basis for the appointment.

A question had arisen in 1994 as to the role of the Chief Justice and T is beyond controversy that as as to the requirement of consultaa nation we all cherish the tion with him at the time of the independence of the judiciary. initial appointment, since the The Supreme Court of Bangladesh words providing for consultation is vested with the judicial power of with the Chief Justice had been the Republic and the Constitution deleted by the Fourth Amendment. makes express provisions to safe-guard its independence. The inde-

had unitedly taken up this matter and having explained the above position to the Prime Minister, Begum Khaleda Zia, in 1994, she had cancelled the appointments earlier made without consultation with the Chief Justice and, thereafter, fresh appointments were made after consultation with the Chief Justice. A constitutional convention of the highest importance with regard to upholding the independ-

extensive and effective consultations with members of the Bar and the Bench. We believe that every effort should be made to resolve and rectify the present situation through further consultations with the Chief Justice

It is in the same spirit that today we are unitedly expressing our grave concern that in recent months, the recommendation of the Chief Justice for confirming the

her decisive action had confirmed the constitutional convention, which provided for making appointments on the basis of the consultation with and upon the recommendation of the Chief lustice

The successive departure from the constitutional requirement of consulting the Chief Justice effectively, that is, seeking his recommendation and giving due respect

sons should be communicated to the Chief Justice, and the matter should resolved through further consultations, giving due respect to the views of the Chief Justice and the principle of independence of the judiciary.

In our view, a judge should be appointed or confirmed on the basis of performance and this performance should be judged by his judgements, legal acumen and impartiality. It would be a rare case indeed that a judge might have had some political inclinations in the past would still cling to it after becoming a judge for the Bench has its own way of moulding the judicial conscience.

We would, therefore, appeal for a solution to the situation that has arisen as a result of nonconfirmation of a significant number of additional Judges on completion of their period in that office, having been recommended by the Chief Justice for confirmation/appointment. It was the legitimate expectation of the Judges, not only those affected, but of the entire judiciary, of the legal profession, and, indeed those, who are committed to uphold the supremacy of the Constitution, the independence of judiciary, and the rule of law, that appointments/confirmations should have been made on the basis of due respect for the recommendation of

the Chief Justice. Action should be

taken to rectify the situation by

making appointments on the basis

of the recommendation of the

Chief Justice.

... we are unitedly expressing our grave concern that in recent months, the recommendation of the Chief Justice for confirming the Judges of the High Court Division after completion of their initial period of appointment, has been disregarded in successive instances...

tance in ensuring the independ-This question had come up for ence of the judiciary as embodied consideration in depth when in 1994 Judges had been appointed Article 95 provides for the without consultation with the then appointment of Judges of the Chief Justice, Mr Justice Supreme Court by the President. Shahabuddin Ahmed. The exami-Article 98 provides for the Presination of past practice showed that dent to appoint additional Judges this matter had been considered for a period not exceeding two during the period of President years. It has been the continued Ziaur Rahman, who had accepted and consistent practice going back the advice recorded by Mr Justice to the pre-1947 and the pre-1971 Sattar, who was in-charge of the period that while some judges were Law Ministry, to the effect that the appointed to the High Court as consistent practice of many permanent judges directly, most decades of appointment of judges were initially appointed as addiafter consultation with and on the tional Judges for two years, and basis of the recommendation of the thereafter on completion of that Chief Justice, was a constitutional period, and upon the recommenconvention which should be foldation of the Chief Justice, were lowed. President Ziaur Rahman invariably confirmed as permahad without exception followed this convention in the appointnent Judges of the Court. The underlying rationale was clearly ment of Judges of the Supreme that the Chief Justice's recommen-Court. dation reflected a fair and honest

The representatives of the Bar

ence of the judiciary was thus confirmed and acted upon in 1994 by the then Prime Minister, who is our present Prime Minister.

We, as senior members of the Supreme Court Bar re-affirm that we have consistently striven unitedly to uphold the supremacy of the Constitution, the independence of the judiciary and the rule of law, and that this makes it imperative for us to uphold the unity of the Bar and to guard against all actions taken on the basis of partisan politics. Our success was evident in 1994 and again when the recommendations of the Chief Justice and seniority had been disregarded in making appointments to the Appellate Division but was rectified later. We deprecate the introduction of party politics in the matter of appointing Judges and law officers and believe that these should be made on merit based on

instances, so that a significant

number of additional Judges (a majority of the cases proposed) have not been appointed permanent Judges. The recommendation of the Chief Justice appears, therefore, to have been disregarded and the constitutional convention with regard to the appointment of Judges of the Supreme Court confirmed in 1994 is being departed from. The explanation offered that the requirement of consultation with the Chief Justice for appointment is no longer constitutionally mandated after the Fourth Amendment cannot credibly be put forward as a pretext as this was demonstrably laid to rest by the clear action of Prime Minister Begum Khaleda Zia in 1994, who by

Judges of the High Court Division to it by not disregarding it without after completion of their initial any reasons being given threatens period of appointment, has been a fundamental pillar or the Constidisregarded in successive tution namely, the independence of the judiciary, in particular, the independence of the Supreme Court which stands at its apex.

It should be borne in mind that when Additional Judges were appointed, and they accepted their appointments, it was on the premise that at the end of the initial period, if the Chief Justice recommended their confirmation as permanent judges, reflecting his assessment of their satisfactory performance as additional judges, they would be confirmed as permanent judges in the ordinary course. The constitutional jurisprudence on the subject of judicial ppointments, clearly indicates that if there is any reason why the Chief Justice's recommendations are not accepted then those rea-

Travails of war

KAZI ANWARUL MASUD

in the last century, wrote " Pro-

found changes have been taking

place in American foreign policy,

reversing consistent bipartisan

commitments that for more than

two centuries have earned our

nation greatness. These commit-

ments have been predicated on

basic religious principles, respect

for international law, and alliance

that resulted in wise decisions and

mutual restraint. Our apparent

determination to launch a war

against Iraq, without international

support, is a violation of these

premises". President Carter

pendence of the judiciary is recog-

nised as a fundamental pillar and

an integral part of the basic struc-

The appointment of Judges of

the Supreme Court and the process

by which such appointments are

made are thus of critical impor

ture of the Constitution.

in the Constitution.

any such action would be severely T is not usual in the US politics impaired". He clearly stated that if for a sitting President to be the US and others were to go outside the Council and take military indicted by a former President action it would not be in conforon an issue unrelated to partisan mity with the Charter. politics. But this is what precisely has happened. In a recent issue of Crisis is not over Iraq, it is global. the New York Times President UNSC is clearly divided as are the Jimmy Carter, perhaps the greatest moralist among the US Presidents

domestic constituents of the possible partners of the "coalition of the willing". Kofi Annan has rightly echoed the widespread concerns about the long term consequences of Iraq war for the fight against terrorism; for the Middle East peace process; and for the world's

cil the legitimacy and support for since the Vietnam War? Clearly the great majority of the people of the world are not convinced. Arab League, OIC and NAM have pronounced themselves against the war. British ODA Minister Claire

> nuity of an orderly world according to international law. These are

and proposed that the power of veto be severely restricted in favour of more authority and power to UNGA which would bring about a more democratic UN, less dependent on the whims of a selected few super powers".

The Danish proposal was aimed at not only at expanding the UNSC but also at veto. If one were to consider UNSC veto in terms of constitutional government where veto power of the sovereign has been substantially curtailed, then one could find merit in such proposals. In Britain Royal veto has not been exercised in over three hun-

members are Europeans (this concept includes the US); four fifths of humanity has only one permanent member -- China; permanent membership implies comparison with undemocratic concepts like "President for Life"; elected members are often neglected by the permanent members in the decision making process and also use "closet veto" meaning threat to use veto to get their way; selective enforcement e.g. why intervene in Haiti(to prevent flood of impoverished immigrants) and not in Rwanda etc. Princeton Professor Richard

nism, Ernest Bevin of the UK in a letter to George Marshall suggested that a treaty based on article 51 of the UN Charter be concluded by creating a federation of western Europe and north America to defend western civilization. So NATO was created in compliance of article 51 of the UN Charter to preserve the "inherent right of individual and collective self defence" without subverting the authority of the UNSC.

Anglo-American intransigence has now divided NATO (the French Foreign Minister is now visiting elected African UNSC members not to go along with the US) which has been compounded by the refusal of Turkish Parliament to allow sixty thousand US troops on its soil for an attack on Iraq despite American offer of billions of dollars worth of aid and Russian warning of a veto on the Anglo-US resolution. Franco-German anger at the East European prospective members of the EU for their support of the US proposal could be reflected in the EU decision making process already encumbered by unanimity principle established by the Treaty of Rome, Luxembourg compromise of 1966, 1983 Solemn Declaration of EU confirming the compromise and qualified majority voting etc. British and US governments must realise that repeated threats to wage war does not add to its legality or morality or justness of the cause. Caution signaled by the world is not viscerally communal or curiously incoherent. World would like to see a humanistic version and not naked triumphalism. Anglo-US adventurism with "coalition of the willing" without blessing of the United Nations could be a precursor of a chaotic world where unchecked power could give birth to convoluted forms. The possible interventionists would be well advised to listen to the oraculous voice of President Carter and of millions around the world who have no love lost for Saddam Hussein.

British and US governments must realise that repeated threats to wage war does not add to its legality or morality or justness of the cause. Caution signaled by the world is not viscerally communal or curiously incoherent. World would like to see a humanistic version and not naked triumphalism. Anglo-US adventurism with "coalition of the willing" without blessing of the United Nations could be a precursor of a chaotic world where unchecked power could give birth to convoluted forms.

- Aller

Short has threatened to resign if Tony Blair decides to go to war without UN backing. More than one hundred Labour members of Parliament have voted against the government in the House of Comnons on British Iraq policy. These revolts are not support for Saddam Hussein but for the conti-

defined certain criteria for a war to be just. He wrote (a) war can be waged only as a last resort; (b) the war's weapons must discriminate between combatants and noncombatants; (c) its violence must be proportional to the injury suffered by the country waging the war; (d) the attackers must have legitimate authority sanctioned by the society they profess to represent; and (e) the peace it establishes must be a clear improvement over what exists. President Carter concluded his piece by regretting the dissipation of heartfelt sympathy and friendship, "even from formerly antagonistic regimes" offered to America after the events of Nine-Eleven and the lowest level of international trust now in the US today caused by its increasingly unilateral and domineering policies. "American stature" he writes 'will surely decline further if we launch a war in defiance of the United Nations".

Similar sentiment has been echoed by Kofi Annan (The Hague-10th March 2003) that war must always be a last resort arrived at only if and when every reasonable avenue of reaching Iraqi disarmament by peaceful means has been exhausted. He warned that if UNSC failed to arrive at a common position and "action is taken without the authority of the Security Coun-

accusations against any institution

of the country, particularly those

institutions that are dedicated to

serving the needy people. Your

reputation as well as ours-

This is in response to Erin

Hanson's recent letter. I would like

to point out the following few facts

(a) The Bangladeshis got rid of the dictator you are referring to

themselves. I do not think we

would have liked foreign interven-

(b) In trying to achieve democ-

racy we did not bomb and kill

Simon Deb Sarkar, Director

pends on it.

Christian Mission

Hospital, Rajshahi

opinion"

Mr Hanson:

"An American

ability to address common concerns in the future if deep divisions are sowed between nations and between peoples of different religions. Arabs and Muslims have long been critical of Saddam Hussein's regime and have indeed in a fashion supported the concept of "regime change" by floating the idea of exile for Saddam Hussein. Why is it then that majority of Muslims have expressed themselves against the war? It is mainly due to the public perception of American unfairness in dealing with the Palestinian issue though the Arab-Israeli conflict has never been characterised as a war of religion but one of justice vis-a-vis injustice .Why, people keep on asking, Anglo-US powers are so cavalier towards Israeli refusal to implement more than thirty UNSC resolutions but would only give ten days grace period to Saddam Hussein to come into compliance with resolution 1441? Collin Powell and Jack Straw and their respective bosses keep on reminding the world that Saddam Hussein has been flouting the UN for twelve years. Then how is it that London and many other cities in the West (as in the East) are witnessing largest anti-war demonstrations

votes against Bush National Security Strategy of unilateralism and expanded concept of preemptive military action; against a strategy "based on distinctly American internationalism that reflects the union of our values and our national interests". With the demise of the bipolar world and in the absence of a truly multipolar power system, the world could have in time accepted a hegemonic power structure on a consensual basis replacing the Westphalian system. But the American haste has forewarned the medium and smaller nations of their own vulnerability. The global assemblies (and NAM most recently) are holding on to the UNSC as security blanket of Schulz's comic strip Peanuts despite ad nauseam efforts to reform the Security Council since it found its way to the UNGA agenda in 1979. Many countries were worried by the acts of the post-cold war newly active UNSC as evidenced by the troubled mission in Somalia; post-war sanctions and exclusion zones in Iraq; and sanctions against Libya. In January 1979 Denmark expressed her view that " it is time to drastically reconsider whether a modern UN still needs this outdated body

dred years with the rise of responsible government in which sovereign must listen to the advice of the Prime Minister in all political matters. Though early US Presidents used veto sparingly and only on grounds of constitutionality, Congress enacted legislation to override Presidential veto. Even in the UN system resolutions can be passed by two-thirds votes of the General Assembly; by a majority in the Economic and Social Council and Trusteeship Council; and by 9 out of 15 in the UNSC (provided there is no veto).

The point made here is that veto i.e. unilateralism is no longer an acceptable proposition. It has also been argued (Bardo Fassebender: UN Security and the Right of Veto) that veto can no longer be legitimised by the great power status of its permanent members because they do not hold the same amount of power as they did in 1945 with the exception of the US. Veto power has been criticised on many other grounds: that it is undemocratic; it is used as a geo-political instrument of a few major powers; its decisions stand largely unchallenged by the World Court and the UNGA; four out of five permanent

Falk argued that the council should be answerable to the World Court (James Paul: Security Council Reform).

The above discourse is to emphasise the need of the centrality of the UN in the global system despite its imperfections. The crisis in the UN is further compounded by the crisis in NATO and differences in the EU both being on the verge of expansion. The chasm in NATO was clearly evident when France refused to consider the US request of advance defence arrangement for Turkey. Such veto in the North Atlantic Council had never happened before. The crisis was averted through taking decision in the NATO military committee in which France is not a member. It may be recalled that NATO was established in the first place due to then prevalent perception of the western powers about the inadequacy of the UN security system to meet their needs and the Soviet abuse of the veto power. While views by John Foster Dulles, George Marshall and others were being aired publicly about ways to defend freedom, religious faith, political and economic system of the west as a counter to commu-

Kazi Anwarul Masud is retired secretary to the Bangladesh government and former amba

TO THE EDITOR TO THE EDITOR TO THE

Letters will only be considered if they carry the writer's full name, address and telephone number (if any). The identity of the writers will be protected. Letters must be limited to 300 words. All letters will be subject to editing.

Christian Mission Hospital clarifies

On Thursday, March 6, 2003 The Daily Star published a report on the Christian Mission Hospital in Rajshahi. The report contains unsubstantiated claims and inaccurate accusations. We believe this report actually highlights the problems that the non-profit organisations face as they try to serve the needy people in Bangladesh.

The report is based on a state ment that the hospital Management Council "took a resolution of non-stop 17 hours' working period for physicians from 4:30 pm to 9 am." This is not correct. On the contrary, the resolution was for the management to meet with the doctors and develop a suitable system for insuring that there is always a doctor available for patients at night. The goal of the hospital is to provide quality service, not to pressure its employees:

and this was made clear in the resolution of the hospital's Management Council

The report also states that Dr MA Latif was "intentionally sent on forcible retirement." Since Dr Latif has reached the retirement age, he was asked to retire according to hospital policy. The hospital no more forced Dr Latif to retire than forced him to become 61 years old. Why is retirement according to institutional policy an issue to report in a national newspaper?

The goal of Christian Mission Hospital is to help the patients and employees alike. Unfortunately, by making the above false accusa tions, the doctors here appear to have the intention of damaging the hospital, not helping it.

The report published by The Daily Star demonstrates that any institution in Bangladesh can be attacked by any disgruntled person who has the power to influence the press. Our advice to the press: Think hard before you published innocent civilians. unsubstantiated claims and false

(c) Why did America support the same Saddam Hussein when he was gassing his own people?

(d) Why does the American administration not help in ending the brutal repression of the ordinary Palestinians by the Israelis?

I am OK with the removal of Saddam Hussein, however, let's leave that to the Iragis

MI

Texas, USA

I am glad to see the letter from Erin Hanson (March 13) somewhat disjointedly arguing the American case for war. But he can't possibly be a regular reader because the Letter's Page at least has seen quite a lot of letters arguing for war and with far more coherent arguments that Erin's emotional plea.

* * *

I would however maintain that The Daily Star is biased against the American and British position on

the war. Not only has The Daily *Star* made up its mind, it prints only those editorials that criticise the war. It gives no room to all those commentators who are making excellent arguments for this war

If it weren't for the Letter's Page anyone reading this paper would think the entire country is against the war. Joyonto Dhaka

Forgotten facts

The article 'WMD: The forgotten chapters' by M. Shafiullah states that on 6 August 1945 millions were roasted alive instantaneously

and the immediate survivors in their thousands slowly reduced to ashes through radiumcontamination in the most degrading condition ever known to mankind. Implying the United States as mass murderers with no justification. There were just over

275,000 killed not millions. And the acts brought an end to the war that had claimed literally millions of lives

Joe Minx Houston, TX, USA

Sellinggas

The BNP Government seems hell bent upon selling gas to India. How strange is our country and stranger are its leader

Not too long ago, when the Awami League was in power, it was branded as Indian agent for the same crime. Now BNP joins the club.

No matter what the arguments are in favour of selling gas, we have to ensure that enough gas is reserved for our domestic use. We cannot deprive our people and sell gas to another country

Selling gas and earning billions of dollar will not solve our problem and common people will not be

benefited unless we get rid of our corrupt politicians. The example is Nigeria Anondo

* * *

More than 80 per cent of our popu

lation is deprived of gas consump

tion for domestic and other uses.

Therefore, we need gas for our-

selves. If we start exporting it

without meeting our need it may

cause colossal deforestation thus

bringing environmental disaster.

On the other hand our power

sector will collapse leaving us

dependent on foreign oil compa-

nies. Thus our country may face

The government should con-

sider these issues seriously before

Mohammadpur, Dhaka, on e-mail

Regarding Bangla-

economic catastrophe.

they decide to export gas.

Md Fardin Sarker

desh Cricket

Dhaka

EDITOR TO THE EDITOR TO THE EDITOR

This is in response to Gullive's letter (March12). The writer has said that we need more time to develop the standard of our cricket. He also mentioned that teams like Sri Lanka and New Zealand had to struggle a lot to get

their first Test win. Well, we are not really telling our boys to win matches but at least they can put up a good fight. Our bowlers make the same mistake all the time, the batsmen make the same mistake all the time, the fielders make the same mistake all the time and more importantly the selectors make the same mistake all the time.

Whatever it is. I am sorry to say that our cricket board officials and as well as the players are hopeless. Look at the Kenyan team. We have a lot learn from them.

Minhaj Ahmed Uttara, Dhaka