



LAW letter

Justice corrupted, justice



denied

On the first day of October, a serious graft allegation against an additional judge of High Court Division was made by the president of the Supreme Court Bar Association. It was alleged that the accused judge took bribe from a client for fixing a bail and that he continues sitting at his chamber and communicating with the clients. Moreover, there was allegation against him of misappropriation of the Bar Association fund when he was one of its office-bearers. Then for what quality has he been appointed as an additional judge? It was alleged that when the lawyers launched agitation against the superceding of senior judges and non-confirmation of the additional judges despite the recommendation of the chief justice in March this year, the man in question called a convention to oppose them as a pro-government layer. And in the next month he was awarded with the post of additional judge.

Allegation of corruption against lower court judges are very frequent in our country and the confidence of the common people of getting fair justice in the lower court is become fade day by day. But corruption charge against an additional judge of the High Court Division has shocked the nation and thrown a blot on the sacred image of the higher judiciary. Wholesale politicisation of the judiciary and recruitment of judges on the basis of political consideration are the main reasons behind this kind of corrupt practices and free fall of judge's morality. Inefficient, unskilled and corrupted lawyers, who are very much active on the ongoing pro- and anti-government lawyer's mud-slinging are being appointed as judges in the High Court Division, undermine the sacred image of the judiciary and suffocating the chance of getting fair justice.

But these kind of illegal and immoral practices must be stopped anyway for ensuring justice. At first the recruitment process must be made transparent and the men of efficiency, skill, ingenuity and integrity should be appointed as judges. The judiciary must be made independent without delay. The ongoing naked and disgraceful practice of political toying by the lawyers should be banned. And of course in the present case, the graft allegation must be investigated by the Supreme Judicial Council.

Md. Rezaul Karim,
LL.B (Hons), 3rd year, University of Dhaka.

In every society judiciary and judges plays a vital role in upholding certain values: they represent the establishment and uphold the 'status quo'. Judges are expected to be honest. In discharging his judicial function a judge is subject to nothing but to the law and the command of his conscience. But, on 1st October, Supreme Court Bar Association's president Barrister Rokonuddin Mahmud, brought allegation of corruption against a High Court Division judge. This allegation against the highest judiciary shocked the nation. It's a dent on the image of the higher judiciary. Such allegation also diminishes the public confidence over the impartiality of the judiciary.

Against the backdrop the Chief Justice have to take proper steps to find out the truth. Our Constitution has provisions for Supreme Judicial Council in clause (3) of Article-96. According to sub-clause (b) of clause (4) the council can inquire into the capacity and conduct of a judge. Sub-clause (b) of clause (5) provides "where upon any information received from the council or from any other source, the president has reason to apprehend that a judge -- may have been guilty of gross misconduct, the president may direct the council to inquire into the matter and report its finding. The president can remove a judge if he is found guilty of misconduct. We demand the immediate inquiry of the allegation.

Khan Mohammad Ilias Sadik,
LL.B (Honours), 3rd year, University of Dhaka.

Are police beyond control?

The police are the guarantor of public security throughout the Bangladesh. But most of the times, they are highlighting for their illegal goings-on and criticised in several times. All national dailies including The Daily Star published a photograph of an Awami League woman activist in 28th September 2003. In the snapshot, it is evidently seen that the woman police are dragging the blouse of the female activist. This is awfully disgraceful hearsay for us. The similar outlook was also seen during the prior Awami League regime and the rubber stamp is occurred under the ruling coalition government decree. One government goes out, another government comes but the law enforcing agencies doesn't change. Police are not guilty for all, I think the politician are the solely guilty for this shameful act. If our political culture is not change, then this panorama will be occurred one after another. However, the police should know that they are not the servants of the politician; their foremost duty is to protect the dignity of people.

Md. Zillur Rahaman,
MSS Economics, Bangabandhu Hall, DU.

Change attitude, not dress

According to a report of Transparency International Bangladesh (TIB), Bangladesh is most corrupted country across the globe for the third time. As expected, the government rejected the report and the opposition welcomed it. The report identified Bangladesh Police as one the most corrupted sector. We are not surprised at all to see police in the top of the list. Almost all citizen of the country believes that police is corrupt. Recently I read two new item in the newspaper regarding police i.e. some 300 police personnel has been fired from service for their alleged involvement in criminal activity and

about 30,000 member of the police forcer has been found physically unfit. The other news is on changing the colour dress for the police force. I welcome the first decision of the govt. to dismiss the corrupted officers. But I cannot understand why the action was taken against officer of Inspector level and below. Does it mean that only the lower level officers are corrupted and higher officers and angles? I have read allegation of corruption against officer as high as DIG. So, I urge the government should take drastic action against any officer if he is found guilty of any illegal activity irrespective of his rank and position. The second news was on change of colour of police uniform. I cannot really understand the need to change colour of police uniform. Will it help in any way to improve the performance and effectiveness of police? We all know that police cannot discharge their duty properly for resource constraint. Then why the govt. will expend money for changing dress colour? Cannot they allocate it for improving performance of police by increasing vehicles and other logistics? I think we first need to change the behavior and attitude of the police, not their dress, to make it more effective and people friendly.

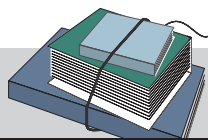
Dilshad farhana,
Advocate, Dhaka Judge Court.

According the newspaper reports, govt. has decided to change the dress of police. If it be true, then I wonder what is the thing that leads the govt. to take such decision. This year also Bangladesh has been the most corrupted country in the world as per the report of Transparency International. And as usual police department has won the top position in the list. In this circumstances what does the govt. desire to achieve by changing their dress? What the members of the police department are doing is diametrically opposite to their duties and functions, to the aspiration of the citizen. Police are called the friends of people, but here public fears the police most. Public have lost their total trust and confidence over police. In the one hand, police have lost their image and on the other hand they are not well equipped to fight terrorists with modern weapons. So what is necessary is to improve their morality and to render modern logistic support. Changing dress will serve no purpose. It is like bottling old wine in new bottle.

Dr. Md. Alauddin,
Tolarbagh, Mirpur, Dhaka.



LAW lexicon



Notary

Also known as "notary public": a legal officer with specific judicial authority to attest to legal documents usually with an official seal. Most countries do not have notaries vesting administrative legal authority in lawyers or court officers.

Nudum pactum

A contract-law term which stands for those agreements which are without consideration, such as a unilateral undertaking, which may bind a person morally, but not under contract law, in those jurisdictions which still require consideration.

Nuisance

Excessive or unlawful use of one's property to the extent of unreasonable annoyance or inconvenience to a neighbor or to the public. Nuisance is a tort.

Nunc pro tunc

Latin: now for then. It refers to the doing of something late (after it should have been done in the first place), with effect as if it had been done on time.

Obiter dictum

Latin: an observation by a judge on a matter not specifically before the court or not necessary in determining the issue before the court; a side opinion which does not form part of the judgment for the purposes of stare decisis May also be referred to as "dicta" or "dictum."

Obligee

The person who is to receive the benefit of someone else's obligation; that "someone else" being the obligor. Also called a "promisee." Some countries refer to the recipient of family support as an "obligee".

Obligor

A person who is contractually or legally, committed or obliged, to providing something to another person; the recipient of the benefit being called the obligee. Also known as the "promisor."

Obscenity

An elusive concept used in the context of criminal law to describe a publication which is illegal because it is morally corruptive. The common law has struggled with this word as society has evolved towards greater tolerance of alternative sexual behavior. Historically, it included any lewd material which had no apparent social value, which was offensive to contemporary community standards of decency, and even material which tended to invoke impure sexual thoughts. As an example of a modern definition, Canada has defined obscene material as any publication a dominant characteristic of which is the undue exploitation of sex, or of sex and crime, horror, cruelty or violence.

Obstructing justice

An act which tends to impede or thwart the administration of justice. Examples include trying to bribe a witness or juror or providing law enforcement officers with information known to be false.

Offense

A crime; any act which contravenes the criminal law of the state in which it occurs. Spelled "offence" in Commonwealth countries.

Offer

A explicit proposal to contract which, if accepted, completes the contract and binds both the person that made the offer and the person accepting the offer to the terms of the contract. See also "acceptance".

LAW week



Corruption alleged against HC Judge

Barrister Rokonuddin Mahmood, president of the Supreme Court Bar Association on 1 October alleged that a High Court judge had recently taken money from an accused in a woman's repression case to help him get bail by persuading a fellow judge. Mr Mahmood claimed that he had not made any allegation. But just revealed the allegation made by a litigant. He claimed that one of the judges, and also some of his colleagues, used their chambers for private consultancy after court hours. It may be mentioned that If the Supreme Judicial Council inquires into the matter, it will be the first such instance. The Council has inquired into no allegations against anybody since 1979, when the provision for the Council was inserted in the Constitution. -Law Desk.

Anti-corruption steps against two NGOs

The government is going to take legal actions against two out of five non-government organisations (NGO) foreign funds of which have been blocked for about two years allegedly for 'misusing funds' and having 'political links'. Shahjahan Majumder, director general (DG) of the NGO Affairs Bureau under the Prime Minister's Office said that their investigation has found out that Bangladesh Nari Pragati Sangha (BNPS) and PRIP Trust were at fault of misappropriating foreign funds. So, they have already directed related police stations to file corruption cases against the organizations. The Proshika, International Voluntary Services (IVS) and Centre for Development Services (CDS) are the three other NGOs that came under government investigation. The NGO bureau has decided to probe Proshika activities further and let CDS off the hook. It is still undecided how the IVS affair will be dealt with. Top executives of the NGOs in question meanwhile said the government was up for harassing them in a bid to ruin their organisations. -Prothom Alo, 11 October.

2 watchdogs planned to protect consumers

The government is soon going to place drafts of two independent market watchdogs for cabinet approval. The proposed Consumer Council will be tasked with market intervention in case prices of essentials go up without any genuine reason or if the traders take recourse to unethical practices. And the Consumer Bureau will do the necessary research like collecting current prices of commodities in the international market and providing the government with market forecast. This was revealed by the Commerce Minister Amir Khosru Mahmud Chowdhury. He also said that the ministry have already finalised the drafts of two proposed regulators to protect the interest of the consumers. - Daily Star, 13 October.

Ex MP faces charge for rape attempt

A court in Dhaka has framed charges against former Awami League lawmaker Kamal Ahmed Majumder and two others in an attempted rape case. Sarker Abul Mansur Ahmad, judge of the Third Special Tribunal for Prevention of Women and Children Repression, Dhaka, framed charges in presence of the accused. The judge also fixed January 17, 2004, for trial of the case. The two other accused are Kamal's brother Anwar Hossain Majumder and one Nazma Hossain. The accused pleaded not guilty and sought justice before the court after the charges were framed against them.

In the case filed with Pallabi Police Station (PS), it was alleged that on December 30, 2001, eight men forcibly took a 35-year-old woman to Kamal's office at Mohana in the city's Pallabi area and Kamal tried to rape her. Later, the victim filed an attempted rape case with Pallabi PS under the 'Women and Children Repression Prevention Act, 2000' accusing Kamal Majumder and two others. The investigation officer submitted the charge sheet against Kamal and the two on April 18 last year. The accused are now on bail. - Daily Star, 07 October.

Tougher law against land grabbers soon

The government has identified land grabbing as a national problem and decided to make tougher laws

against such acts. A meeting of Prime Minister Khaleda Zia with all secretaries at Bangladesh Secretariat took the decision. A high-powered secretarial committee headed by Cabinet Secretary Dr Saadat Husain will make recommendations on the issue on the basis of which a national committee would be formed. The cabinet secretary said the issue of land grabbing by a section of real estate companies and unscrupulous gangsters prominently figured in the discussion as the situation has taken a serious turn. The cabinet secretary told that the Prime Minister has instructed to try the land grabbers, if necessary, in special tribunals. -Daily Star, 5 October.

Income tax cases pending with HC

A total of 1,335 income tax cases involving about Tk 1,000 crore have been pending with the High Court (HC) Division. This was revealed by a recent report of the National Board of Revenue (NBR). The cases were filed between 1977 and August this year and only 44 of them involved more than Tk 422.57 crore, the report said. Of the pending cases, about 90 per cent are reference cases and the rest are writs. According to NBR sources 485 income tax-related reference cases involving about Tk 350 crore and 30 writs involving about Tk 150 crore were filed with the HC from January to August this year but only seven cases were disposed of during the period. -Daily Star, 5 October

32 Bangladeshis killed by BSF

Thirty-two Bangladeshis citizens were killed and 54 others wounded by Border Security Force (BSF) of India and armed Indian criminals in the last nine months, according to a report released by Odhikar, a human rights organisation. The report also said the BSF and criminals from across the border also kidnapped 57 people and raped two women including a physically challenged young woman during the period between January 1 and September 30. Besides, seven people went missing from the border area and 21 others were arrested by the BSF during the same period. Based on newspaper reports and information from its own sources, the Odhikar report said the Indians also trespassed

Bangladesh territory on many occasions, setting fire to houses, looting livestock, and attacking Bangladeshi citizens working near the border or fishing in bordering rivers. -Prothom Alo, 5 October.

Law against hydraulic horns demanded

Bangladesh Paribesh Andolon (Bapa) has demanded to introduce a law against hydraulic horns in motor vehicles. Addressing the rally at Mahakhali, the speakers said noise pollution in the city has passed tolerance level due to hydraulic horns. They Although the level of sound tolerance is 45 decibels, in some city areas the sound level is 106 decibels, they noted. They told that the Motor Vehicle Ordinance, 1983 and Dhaka Metropolitan Police Ordinance, 1976, which deal with noise pollution, are not being enforced properly. Referring to the World Health Organisation (WHO), United Nations International Children's Emergency Fund (UNICEF) and World Bank (WB) reports, the speakers pointed out that noise pollution causes many diseases. The Bapa organisers urged the government to take necessary action against noise pollution, of which the children are the worst sufferers. -Ittefaq, 11 October.

302 cops forced into retirement

A total of 302 policemen ranging from inspectors down below were forced into retirement on completion of 25 years in service. The police headquarters issued letters to the departmental heads where these 302 policemen are now posted to complete formalities of wrapping up their services. The police authorities also identified 30,000 more policemen as physically unfit who may also face the axe. At present, the police force is approximately 1.9 lakh. Of the retired, 30 are inspectors, 112 sub-inspectors, 22 assistant sub-inspectors, 10 sergeants and the rest are havildar, nayek and constables. Four inspectors are from the Criminal Investigation Department (CID) Headquarters. There are also seven sub-inspectors from Dhaka Metropolitan Police. The security cell of police department investigated the allegations and found them guilty. -Prothom Alo, 9 October.

READER'S queries



Your Advocate



This week your advocate is M. Moazzam Husain of the Supreme Court of Bangladesh. His professional interests include civil law, criminal law and constitutional law.

Q: I am a former government employee. During my serving time I worked in some important office of the government and as such I had the opportunity to witness some misdeeds of some high Govt. officials and ministers. Now I am planning to write a book on my experience where I want to make some of the misdeeds and also make some official documents public. Will it be a criminal offense if I do so? Please advice.

H.H,
Dhanmondi, Dhaka.

Your Advocate: I appreciate your inner urge to disclose the misdeeds committed by some high officials of the Govt. and Ministers in the book (seemingly an autobiography) that you are planning to write. You are a former Govt. employee and willing to make public the misdeeds done by and the documents bearing testimony of the misdeeds of those high ups experienced by you during your service-life. The question is whether such publication, if any, will amount to criminal offence. The query is plain and simple but the answer involves a mixed question of laws and facts calling for a bit of reflection on both. Any person making or publishing any imputation concerning any person intending to harm or knowing that such imputation will harm the reputation of such person shall be punishable for defamation. Law, at the same time, says, it is not defamation to impute anything which is true and for the public good the imputation should be made or published. Law goes further to say that it is not defamation to express in good faith any opinion respecting conduct of a public servant in the discharge of his public functions, or respecting his character so far as that relates to such conduct. The main thrust of law is that the writer's efforts need be fair and honest taken for public good and not prompted by malice or personal vendetta and the writer must keep himself within the bounds of things which is substantially true or he reasonably believes to be true as a man of prudence. It is clear that law permits you to put on paper things much beyond you are contemplating to do. Your case is clear as emanates directly from personal experiences and documents. Still, without meaning discouragement I feel like telling you that materialisation of your pious wish will depend more on your commitment and moral courage than on law. You have to be prepared at the same time to face court should litigation arise as this kind of things do not usually go unchallenged and the questions of 'truth or falsehood' 'good faith' and 'public good' remains to be questions of facts to be looked into by court. In the peculiar circumstances possession of the official documents does not attract The Official Secrets Act, 1923, but for its use in a book of the kind it would be advisable for you to take permission from the appropriate authority.

FOR YOUR information



Human Rights Committee

Committee established by the 1966 International Covenant on Civil and Political Rights to hear interstate and individual complaints of violations of the Covenant.

Five Freedoms Agreement

Formally the International Air Transport Agreement. A multilateral treaty adopted at Chicago on December 7, 1944 and in force since February 8, 1945. It grants the privileges in the Two Freedoms Agreement and grants three additional privileges that allow aircraft within the territory of states parties to: (1) put down passengers, mail, and cargo taken on in their flag state, (2) take on passengers, mail, and cargo destined for their flag state, and (3) take on or put down passengers, mail, and cargo destined for or arriving from any state party.

Four Freedoms

The human rights goals established by President Franklin D. Roosevelt prior to the United States' entry into World War II: (1) freedom of speech and expression, (2) freedom of worship, (3) freedom from want, and (4) freedom from fear.

War crime tribunals

Courts established by the United Nations Security Council to try violations of international humanitarian law: International Criminal Tribunal for the Former Yugoslavia International Criminal Tribunal for Rwanda

World Meteorological Organization (WMO)

A specialized agency of the United Nations responsible for coordinating scientific studies of the world's atmosphere and climate.

United Nations Charter

Multilateral treaty signed on June 26, 1945, and in force from October 24, 1945. It is the constitution of the United Nations, an intergovernmental organization. The Charter defines the organization's structure, its authority, and its goals.

World Charter for Nature

United Nations General Assembly Resolution 37/7, adopted October 28, 1982. It states that all states have a duty to respect the essential processes of nature and not to impair them.

World Intellectual Property Organization

A specialized agency of the United Nations responsible for administering the principal international intellectual property conventions.

Corresponding Law Desk

Please send your mails, queries, and opinions to: post - Law Desk, The Daily Star, 19 Karwan Bazar, Dhaka-1215; telephone 8124944, 8124955, 8124966; fax 8125155, 8126154; email dslawdesk@yahoo.co.uk