



LAW news



Star LAW analysis



Bush sees Asian as next to fill top UN post

President Bush said the next United Nations secretary-general is expected to come from Asia. U.N. Security Council members will soon start the process of considering candidates to succeed Kofi Annan, whose 10-year term as leader of the world body expires at the end of the year. Annan is from Ghana. "As I understand it, traditionally ... regions rotate, and we're really looking in the Far East right now to be the secretary-general," Bush said in an interview with print reporters with Russia, Japan, Italy and Germany.

"Asia, yes," he said when asked to clarify his answer, though he refused to be more specific or name names. "You'll find that we will work closely with friends and allies to come up with the best candidate, but we won't be committing publicly," Bush added. Asked whether he would be against a Muslim in the post, he said: "Not at all, would not be against a Muslim." "The criterion I'm for is somebody who wants to spread liberty and enhance the peace, do difficult things like confront tyranny, worry about the human condition, blow the whistle on human rights violations," he said.

U.S. Ambassador John Bolton has said the best possible candidate should fill the post, regardless of region. To date, there are four names in the running for the job. Three have been officially nominated: Deputy Thai Prime Minister Surakiart Sathirathai; Sri Lankan disarmament specialist and government adviser Jayantha Dhanapala; and Indian novelist Shashi Tharoor, the undersecretary-general for the U.N. Department of Public Information. Seoul has also announced that South Korea's foreign minister, Ban Ki-moon, would run for the post though his name has not been formally submitted. Security Council members could start conducting informal polls later this month to get an idea of how much support the individual candidates have, said French Ambassador Jean-Marc de la Sabliere, who presides over the council in July.

Source: Reuters

HUMAN RIGHTS advocacy



UNHCR chief unveils action plan to protect rights in migratory movements

U.N. refugee agency chief António Guterres urged European and African nations grappling with the difficult challenges of migration and development to work together to uphold the rights of refugees and others in so-called mixed migratory movements. Unveiling a 10-point action plan at the Euro-African Ministerial Conference on Migration and Development in the Moroccan capital of Rabat, Guterres called for "special attention" on the phenomenon of mixed movements in which migrants and refugees move alongside each other, often in an irregular manner, using similar routes and modes of transport.

Such movements are termed "irregular" because they often take place without the requisite documentation and frequently involve human smugglers. The people who move in this manner often place their lives at risk, are obliged to travel in inhumane conditions and may be exposed to exploi-



tation and abuse. States regard such movements as a threat to their sovereignty and security.

"While recognizing the difficulties that such movements can pose for states in terms of national and local security, we must ensure that the measures taken to curb irregular migration do not prevent refugees from gaining the international protection which they need and to which they are entitled," Guterres said. The High Commissioner noted that the irregular nature of the current movement of people from Africa towards Europe presented a number of challenges to European and African states. He said the Rabat meeting, which brings together some 60 European and African countries, provided a timely forum to explore two important and related issues: migration and development. Quoting a UN Declaration, he noted that the right to development is "an inalienable right, by virtue of which ... all peoples are entitled to participate in, contribute to and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized."

"It is precisely because they are unable to exercise their right to development that so many people including migrants who are looking for a better standard of living, and refugees who are looking for safety and security feel obliged to leave their own country and move elsewhere," Guterres said. "While we must maintain this fundamental distinction between refugees and migrants, we must also recognize that both forms of mobility are often rooted in the broader problem of under-development. I hope that this conference will enable the states of Africa and Europe to formulate cooperative approaches to the challenge of development approaches which can help us to create the conditions that enable people to migrate out of choice, rather than necessity."

Guterres stressed that UNHCR is not and does not intend to become a migration agency. "But if my office is to exercise its mandate for the protection of refugees, then it must also become involved in the broader issue of international migration," he said. The 10-point plan put forward by Guterres sets out key areas in which comprehensive action is required to address the issues of mixed and irregular migratory movements in a coherent and practical way in countries of origin, transit and destination. While recognising that border controls are essential for combating international crime, including smuggling and trafficking, and to avert security threats, the plan stresses the need for practical protection safeguards to ensure that such measures are not applied in an indiscriminate or disproportionate manner and do not lead to refugees being returned to countries where their life or liberty would be at risk.

"Refugees, asylum seekers and migrants will continue to enter Europe," he said. "Indeed, the logic of globalisation and demographic change is such that their numbers seem certain to increase in the years to come. I encourage our European partners to respond to this situation in a positive manner, by contributing to responsibility-sharing arrangements, by providing protection to those people who need it, and by ensuring that the public debate on asylum and migration issues is conducted in a calm and rational manner."

Guterres underlined the importance for countries to promote social inclusion and tolerance, noting that refugees and migrants are often confronted by xenophobia in many parts of the world.

Source: UNHCR

Law on contempt of court : An overview

AN independent or impartial Judiciary is the *sine qua non* of a healthy society. It is the last resort for the common people of a country, as they repose their ultimate faith in it to get justice. Therefore, it is essential for the Judiciary to be protected from all sorts of evil likely to affect the administration of justice. For better protection and preservation of prestige and dignity of the courts, the law on contempt of court has evolved. So, broadly speaking, this law helps the courts in discharging justice keeping its stand supreme in the eye of society. Actually this law aims at ensuring the administration of justice by courts in the society.

The Contempt of Court Act 1926

The Contempt of Court Act 1926 (CCA) with only three sections is still effective in Bangladesh, even though a new Bill on this matter is under process to be enacted. However, CCA does not define as to what is or amounts to be a contempt of court. Actually the matter has been left on the discretion of the courts. So, any act which a judge thinks to be disgraceful for the court is contempt of court. This power is endowed with court so that justice is not hampered by the disrespect and contumacy of people. It does not protect the judge as a person rather safeguards the seat of justice.

No court of lower judiciary can punish the contemner. Section 2 of this Act provides that if a court subordinate to the High Court Division (HCD) finds any act of any person to be contemptuous, it shall refer the same to the High Court Division for punishing the contemner. However, the general trend is that before sending the matter to HCD, the contemner is asked to show cause.

Again section 3 of this Act provides that a contemner may be punished with simple imprisonment for a term which may extend to six months or with fine which may extend to two thousand taka or with both.

Classification of Contempt of Court

Under the common law system contempt of court has been categorised as criminal contempt and civil contempt. Criminal contempt includes the contempt in front of a court (civil or criminal) obstructing the administration of justice. For example, shouting in the court room, threatening a witness, direct criticism of judges, scandalising the court etc. are criminal contempt. On the other hand, civil contempt encompasses wilful disobedience to orders or processes of the court so as to cause private injury. It is erroneous to think that criminal contempt arises in the criminal court or civil contempt arises in the



civil court.

Relevant existing laws relating to Contempt of Court in Bangladesh

Apart from the Contempt of Court Act 1926, the following laws are relevant to contempt of court:

- Section 480 of the Code of Criminal Procedure: Under this section the court can take action against the offender in various steps.
- Section 224 of the Penal Code: This is the only section under the Penal Code which deals directly with contempt of court.
- Sections 175, 178, 179, and 180, of the Penal Code also deal with contempt of court, when a public servant works as a judge.

The Contempt of Court Bill 2006

A lot of controversies have arisen regarding the Contempt of Court Bill 2006 (CCB), which inserts 21 sections with some sub-sections. Apparently the Bill is a fair one as it comprises many pragmatic provisions in the light of the current social needs. However, some provisions may tremendously affect the dignity and power of courts. Any way, CCB defines contempt of court with utmost sincerity.

Definition of Contempt of Court

Section 2 of CCB Provides that "any wilful act, statement or expres-

sion by words or visible sign that may be considered as a violation of any verdict, decree, order, writ or warrant issued by a court, or undermine any court, or may obstruct the process of justice, will constitute an offence of contempt of court; the slander or libel of a court and personal criticism of a judge while performing judicial functions will also constitute an offence of contempt".

Actually the definition covers all the possible activities that may obstruct the administration of justice directly or indirectly. In the absence of this definition, confusion was existing among the concerned sections of the people over the past years. Uncertainty would arise as to what would or would not be the contempt of court. This very definition will resolve the existing problems, though some activities have been kept beyond the scope of this definition.

Section 3 of CCB includes some situations or activities that will not constitute offences of contempt of court covered under Section 2. These are:

- a) Any innocent and fair comment and publication of information on normal proceedings and functioning of the court in good faith and in public interest.
- b) Any statement made by a person in good faith and decent language in his application to the government or any court seeking

disciplinary proceedings against any judge.

c) A factual statement or news regarding the conduct of a judge or any act or statement by a person regarding a judge in a matter not connected with the discharge of his judicial functions.

d) Any constructive criticism of a judgment against which appeal is pending.

e) Any restrained and constructive criticism of the final judgment in a case.

f) Comments made or news published on any matter remaining unformed about the proceedings of the court on the matter.

g) Authentic news or comments published on any matter of public interest.

The above exceptions will not hamper the administration of justice in any way. Rather these will contribute a lot to get fair justice from the Courts. For example, freedom of press is very essential to get the real picture about the court administration, procedure and all other influential factors. So freedom of press has been recognised as one of the fundamental rights in the Bangladesh Constitution. For this very cause of public interest, a court is to sustain constructive criticism made against it. Moreover, the above exceptions will lead to ensuring accountability of the judiciary to some extent.

Potential conflict between the Judiciary and Executive: Generally Judiciary enforces the

rights of the citizens and imposes penalty to the offenders. In doing so, it pronounces necessary directions or orders, which are mostly implemented by various sections of the executive body. But if any officer or authority of executive body disrespects a court any way, penalty and punishment can be imposed and consequently sometimes the offender may have to lose his job under the Public Servants (Dismissal on Conviction) Act 1985. But this very Act is going to be amended finally confirming that a public servant will lose his job only when he is imposed with a fine of more than ten thousand taka. On the other hand, under the proposed CCB, in the extraneous situation the court has power to impose the maximum penalty which is less than ten thousand taka. If CCB is passed ultimately, no public servant will lose his job, even though he commits the worst kind of contempt. He will at most suffer from paying a particular sum of money. But under the Act of 1926, the public servants would not disrespect the courts for fear of losing their job. Therefore, after the passing of CCB, the ingrained conflict between the judiciary and executive will be more complex. And mutual respect between them may decrease gradually.

Law on contempt of court in India and Pakistan

Actually the definition of contempt of court in CCB is mostly similar to

that of contempt of court in Indian and Pakistani laws. The definitions of these three laws are identical in content and spirit. The main reason behind this legal similarity is that the socio-economic and politico-cultural aspects of Bangladesh, India and Pakistan are same to a larger extent.

Like CCB the Contempt of Courts Act 1971 of India includes some activities that will be beyond the meaning of contempt of court. Roughly these are:

- Bonafide publication of any matter;
- Bonafide distribution of any publication;
- Publication of a fair and accurate report of judicial proceeding;
- Publication of any fair comment on the merits of a case;
- Bonafide statement concerning any officer or court;
- Any act not harmful to the administration of justice.

Similarly, the Contempt of Court Ordinance 1998 of Pakistan inserts some exceptions to the definition of contempt of court. Roughly these are:

- Publication of accurate account of legal proceeding;
- Fair and healthy comments on a judgment for public interest;
- Bonafide publication of any matter;
- Official remarks on any inquiry, inspection note, confidential report etc.
- A true statement without intent to scandalise a Judge.
- Any act not substantially detrimental to the administration of justice.

Bangladesh, India and Pakistan admit some exceptions to the definition of contempt of court in certain situations. Most of these are related to the freedom of press, which is a fundamental right in their constitutions.

Concluding remarks

The Contempt of Court Bill 2006 may be termed as a dynamic and pragmatic Bill, since it is repealing the century-old Act of 1926 with an excellent definition of contempt of court. It comprises some exceptions, which will ensure the public interest as well. However, the penalty provision may drastically turn the entire Bill into a black law. The main reason is that the government is amending the Public Servants (Dismissal on Conviction) Act 1985 likely to relieve some convicted high ranked bureaucrats. Achieving this narrow political end may ultimately destroy the towering image of the Judiciary. Therefore, before the passing of this Bill, it should be reviewed and reformed with a view to ensuring a just society.

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LAW week

Legal flaws, hidden costs in PDB's draft deal

The draft contract for 150 megawatt Chandpur Power Project that Power Development Board (PDB) is set to sign next week with Chinese company Harbin contains hundreds of legal loopholes and hidden costs of \$15.56 million, sources said. As in the case of Tongi power plant built by Harbin, the contract documents this time dropped 4,448 spare parts of 476 categories from Harbin's original offer. The documents resemble those of Tk 360 crore 80 MW Tongi power plant, which tripped over 75 times in one year setting a record of bad performance. "In other words, PDB is all set to sign and procure a junk like Tongi power plant," said one source. Experts who have scrutinised the draft contract said the documents hid a cost of \$15.56 million in Harbin's bid. This means the company's original bid of \$41 million will actually impose a cost of over \$56 million on the PDB during the implementation period. The PDB had selected Harbin's bid as the lowest through an arbitrary process, triggering another Chinese bidder --CMEC -- to lodge formal complaints with the Implementation, Monitoring, Evaluation Department (IMED) of the government. The IMED dismissed Harbin's bid as it found gross violation of rules in it and asked the PDB to negotiate with the CMEC. --The Daily Star, July 16.

31,000 criminal cases pile up a year

Slow-paced investigations, lengthy disposals of cases and undersized judiciary result in a backlog of 31,000 criminal cases on average every year. While the number of cases awaiting disposal at the courts was 1,17,295 in 2000, it shot up to 2,66,172 at the end of 2004, according to the statistics prepared by the Criminal Investigation Department (CID). Concerned over the growing backlog, the home and law ministries have decided to sit down and work out a mechanism to address the problem immediately. "We need to work towards a solution to this problem as the number of backlog cases is growing every year," State Minister for Home Affairs Lutfuzzaman Babar said. In 2004, 1,18,921 cases were filed across the country while charge sheets in 85,685 cases were submitted. But the courts in that year disposed of only 44,157 cases. About 31,000 cases build up every year, the

minister said, coming out of a meeting of the home ministry's monitoring cell on sensational cases. "The number of charge sheets submitted does not agree with the number of cases filed every year and the cases are not disposed of at the rate charge sheets are submitted," Babar said. --The Daily Star, July 17.

Draft law proposes to make national ID card mandatory

The home ministry is seeking approval of the cabinet purchase committee for a Tk 1,561 crore programme on machine-readable passport (MRP), visa and national identity card (NID) along with a draft law on registration and NID. Sources said the draft law, first of its kind, seeks to make NID mandatory for every citizen when they apply for a passport, open a bank account, obtain Tax Identification Number (TIN) or while dealing with similar issues. However, this draft was hurriedly made as a supporting draft legal document for the massive MRP and NID programme. "The draft law borrows the concept of social security card used in the western countries. But this law was not based on any independent social and demographic survey as was required. It has been framed so that the purchase committee gets the idea about the legal premise on which the MRP-NID programme is based on," said a competent source. The MRP-NID programme demands a legal framework making national ID cards mandatory for every citizen. --The Daily Star, July 17.

Allegation of stealing seized money against Rab men

Controversy emerged after Rapid Action Battalion (Rab) arrested two youths carrying more than Tk 18 lakh tied to their bodies at Savar. The arrestees alleged the Rab men embezzled Tk 2.5 lakh before handing them over to police. Police believe the youths, arrested from a Dhaka-bound bus at Baipail intersection of Ashulia, might be involved with hundi business, said our Jahangirnagar University correspondent. Meanwhile, the youths claimed the money they were carrying belonged to a Dinajpur district Jatityabadi Jubo Dal leader Anisur Rahman and Union Parishad Chairman Badsha who have been absconding after the Dinajpur BNP committee was dissolved on June 12. Detectives had caught two of his associates with more Tk 20 lakh this June but they were released later,

said our Dinajpur correspondent. The arrestees are Belal, son of Mamtaj Uddin of Kamalpur in Dinajpur, and Emran Hossain, son of Atalul Hossain of Khanpur in Dinajpur. --Prothom Alo, July 17.

Citizens' body wants CEC, commissioners to quit now

The Citizens' Committee 2006, a platform of civil society members, said immediate resignation of the chief election commissioner (CEC) and other commissioners can help remove uncertainty over the next general election. So, they should stand down in the interest of the nation, it observed. "Election Commission (EC) is a constitutional body and the CEC should be a person respected by all. But activities of the present commission have rather been suspicious. So, it'd be better for them to go and help remove uncertainty and restore public confidence in the commission," M Mujibul Huq, former cabinet secretary and a member of the committee, told a press briefing at the Jatiya Press Club. It has to be ensured that the EC can work independently, transparently, reliably and with neutrality, the committee said adding that the EC should have a secretariat of its own, which would be independent of the Prime Minister's Office. Speaking at the briefing, ASM Shahjahan, former adviser to the caretaker government, said there had been widespread public concern over some moves by the EC, which in some cases had to make a U-turn. "There exists a complete lack of confidence in the Election Commission and it needs to be changed," he noted. --Prothom Alo, July 18.

Kibria Killing

SC stays case proceedings

The Supreme Court (SC) stayed for three months all proceedings of former minister Shah AMS Kibria killing case now pending in the Sylhet Divisional Speedy Trial Tribunal. Full bench of the Appellate Division of the SC headed by the chief justice passed the order and also granted government's leave-to-appeal petition against the High Court's May 14 order following a petition of complainant of the case seeking further investigation. Earlier on May 4, the tribunal judge adjourned the trial for 10 days as the complainant prayed for four weeks' time to appeal after

his prayer for further investigation was rejected. Complainant of the case, Habiganj Awami League (AL) leader Abdul Majid Khan, then filed a petition in the HC challenging the Sylhet Divisional Speedy Trial Tribunal's rejection of his prayer for further investigation into the case. The HC bench on May 14 ordered the government to explain within two weeks as to why the ruling of the Speedy Trial Tribunal should not be declared illegal and without lawful authority. The bench also stayed all proceedings of the case until disposal of the rule. --The Daily Star, July 18.

Shazneen Case

The Supreme Court (SC) stayed the High Court's (HC) verdict on sensational Shazneen murder case for three months. Chamber Judge of the Appellate Division Amirul Kabir Chowdhury passed the order after hearing a leave to appeal petition filed by Badal, Minu and Parvin, three of the convicts awarded death sentence.

Earlier on Monday, the same judge stayed the verdict on hearing a leave to appeal petition filed by Syed Sajjad Mainuddin Hasan alias Azad, another convict sentenced to death. The HC death reference bench comprising Justice Ali Asgar Khan and Justice Emdadul Haque in its judgment on July 10 upheld the death penalty of five convicts, including Hasan, and acquitted one in the sensational case.

The five convicts are Shahidul Islam alias Shahid, a domestic help at the Gulshan residence of Shazneen's family, Hasan, a contractor for renovation of their house, Badal, his assistant, and two maids, Estema Khatun Minu and Parvin.

The HC acquitted mason Shaniram Mandal of the charge. Fifteen-year-old Shazneen, the youngest daughter of leading businessman Latifur Rahman, was raped and killed at their Gulshan residence sometime between 8:00pm and 10:15pm on April 23, 1998. --The Daily Star.

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