"Democracy Needs Election, but Election Does Not Ensure Democracy"

Continued from page 8

followed Parnell's suggested code of conduct and effectively ostracised a British estate manager, Charles Cunnighum Boycott.

The boycott is used most frequently by labour organisations as a tactics to win improved wages and working conditions from management. US law distinguishes between primary and secondary labour boycotts: a primary boycott is the refusal of employees to purchase the goods or services of their employers, and a secondary boycott involves an attempt to induce third parties to refuse to patronise the employer. In most US States, primary boycotts are legal if they involve no physical violence, coercion, or intimidation. Secondary boycotts, however, are illegal in most states.

Boycotts were also used during the US Civil Rights Movement of the 1950's and 60's as a social and political tool. Stores and businesses that discriminated against blacks were boycotted, in the expectation that falling revenues would influence a company to change its policy.

The term 'boycott' may also signify a refusal to participate in given proceedings. Representative of a nation may boycott international conferences or convocations, for example as a means of indicating disapproval of another nation's political policy of conduct.

Boycotts have also been employed by a nation or a group of nations or by an international organisation to influence or protest the policies or actions of another country. The United States, for example, called for a boycott of the Summer Olympics of 1980 in Moscow in protest over the Soviet invasion of Afghanistan the previous year. In an instance of a boycott called by an international organisation, the United Nations in 1965 asked all member states to break off economic relations with Rhodesia, which had illegally declared its independence from Great Britain earlier that year, the boycott remained in effect until 1979.

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BOYCOTT — A planned and concerted action to isolate its object — such as a person, company, or product — socially or economically. The boycott's purpose is to force its object — or, in some instances, someone the object is in a position to influence — to accede to the wishes of the boycotters. The boycott, or varieties of it, is practiced in all parts of the world. Although the most common use of the word is in labour disputes, "boycott" is also employed in social, consumer, and international affair and innumerable other areas. For example, in personal relation, a boycott occurs when a person is snubbed deliberately.

The action gets its name from Capt. Charles Boycott, a land agent in Ireland whose enforcement of rent collection in early 1880's so enraged the tenants that they refused to have anything to do with him either as labourers or as provisioners of food. Thus a boycott is a refusal to have contact with a person or a deliberate breaking of a relationship to apply pressure to force the settlement of a dispute. A boycott may also be an attempt to discourage others from having personal contact with the primary object of the action. Or a boycott may be an attempt to discourage others from handling a product on which a dispute centers.

The development of boycott preceded its naming. In the 19th Century, American farmers frequently refused to use certain rail roads unless they lowered their rate, and in 1885 alone there were 196 recognised boycotts by American labour groups.

WORD ORIGINS AND THEIR ROMANTIC STORIES BY WILFRED FUNK (EDITION 1988, 32-33)

BOYCOTT — Perhaps the first victim of this practice, at least in an organised way, was a Captain Charles Cunninghum Boycott. The Captain was landowner and had steps of the Earl of Erne in County Mayor, Ireland. When the Captain raised the rents around the autumn of 1880 the tenant sturned on him, under a sponsorship of the Irish Land League. Local shops would sell him nothing, organised marauders destroyed his property and blocked his mail and food supplies, and in the end the Captain was glad to flee to England with his life. The occasion was front page news, and the word 'boycott' immediately became a part of our language.

ABSENT

THE SHORTER OXFORD ENGLISH DICTIONARY

ABSENCE — The state of being absent or away: Also the time of duration of such state.

ABSENT - Away, not present, to stay away.

Chamber's 20th Century Dictionary

Absence — The state of being away or not present, non-existence.

BBC English Dictionary

Absence — Someone's absence from a place is the fact that they are not there.

Mitra's Legal & Commercial Dictionary (Fifth Edition)

Absence — In the Oxford Dictionary it has been defined as "keeping oneself away." In the Webster's it has been defined as not present or not attending. The words absent or does not appear come into play when the the complainant is in a position to take some decision and either willfully or due to negligence does not exercise his volition in favour of attending the court. A person dead cannot exercise his volition, his not attending is not absence. Nor he can come within the expression "does not appear".

Absent — Absent etymologically means not present. Present means being in the place in question. In re, Laurence Claude Levack, AIR 1954 (Mad) 898. "Absent" does not connote that the person referred to was ever previously present, its ordinary sense is, to describe a person or persons as not being in a particular place at the time referred to.

If a member of Parliament or of State legislature is without permission of the House absent for 60 days from all meetings thereof, the House may declare his seat vacant. Article 101 (4) and 190 (4) of the Constitution of India.

Webster's Third New International Dictionary

Absence — State of being absent or missing from a place or from companionship; failure to be present — opposed to presence. (2) Failure to be present (as in an accustomed place) or where one is needed, wanted or normally expected.

Absence is used to indicate the fact that a thing is not present. Collins Cobuild English Language Dictionary

Absence — Someone's absence from a particular place or situation is the fact or state of them not being there. (2) The absence of something, from a particular place, thing, or situation is the fact that it is not there or is missing from it.

All the learned Counsel are unanimous that a 'walkout' is an abstention with an element of protest against or disapproval of any action or measure or happening and 'boycott' is also the same thing with a further element of coercion and intimidation indulged in generally by a group of persons for achieving some purpose. All the learned Counsel further agree that call it by whatever name, result invariably is absence which means, not present, to stay away.

The Madras decision (FB) referred to above in the definition says, "Absent" literally, that is, etymologically, means "not present". "Present" means "being in the place in question". There is no implication in the word "absent" that the person should have been at any time present, or the person is only temporarily not present.

Kh. Mahbubuddin Ahmed and Mr Rafiqul Huq are forthright in their submission that walkout and boycott both entail absence and therefore directly attract the word 'absent' occurring in Article 67 (1) (b) of the Constitution. They suggest that the answers to questions No 1 and 2 should be 'yes'.

Mr T H Khan agrees that the result is absence, but, according to him, walkout and boycott as indulged in by the opposition members in a body and as a protest for an indefinite period being against the letter and spirit of the Constitution which provides for a democratic process which is the will of the people, they cannot come within the meaning of 'absent' as in Article 67 (1) (b). His argument is that the absence of the opposition members was a negative attitude to frustrate the democratic working of the Parliament and the Constitution and as such the said 'absence' could not have been in the contemplation of the Constitution makers. Mr Khan in order to lend substance to his apparently artificial submission that in the present context 'absent' should be construed as 'present' read out copiously from the different Articles of the Constitution beginning from the Preamble. He argued that in interpreting the word 'absent' in the context of the particular facts of the Reference, the intention of the framers of the Constitution and the consequence of the interpretation have to be kept in view. He particularly referred to Article 123 (4) which provides for by-election for filling in a seat falling vacant otherwise than by reason of the dissolution of Parliament. He also referred to Article 70 which, inter alia, provides for vacation of seat by a member if he votes in Parliament against the party which gave him nomination at the election. Mr Khan argued that the framers of the Constitution provided for a possible but unusual abstention by one or more members individually [as in 67 (1) (b)] and for by-election in those cases but it was never contemplated that almost half of the members of the House would remain absent on party basis being intolerant of the ruling party, making protest and rendering the democratic working of the House impossible and such kind of absence, which is qualitatively different, should also be put in the same basket as in Article 67 (1) (b).

For the principles relevant for interpretation of Article 67 (1) (b) in the facts of the case, Mr Khan referred to 1989 BLD (Spl) 1 (Anwar Hossain Vs. Bangladesh) where S Ahmed, J. as his lordship then was, observed, in Para 355, "that intention of the makers of a statute is of fundamental importance in construing it and that this intention is to be gathered from a consideration of the whole enactment and that in respect of a constitutional provision every word must be given effect, no word as general rule should be rendered meaningless or inoperative. In the case of Vacher & Sons, Lord Atkinson observed that "it is legitimate to consider the consequences which would result from particular construction, for, as there are many things which the legislature is presumed not to have intended to bring about, a construction which would not lead to any one of these things should be preferred to one which would lead to one or more of them." He also referred to the principles quoted in para 524 of the said judgment particularly that the intention is to be gathered from a consideration of the whole enactment.

He suggest that answers to questions No. 1 and 2 should be 'no'. Therefore, there is no reason to answer questions No. 3 and 4 .

According to Mr. S R Pal, since the members of the opposition staged a walkout and later on started boycotting the House as a protest and for realization of their demand, there was no question of their seeking any leave of the Parliament for remaining absent and to insist on it would be to invite a contradiction in terms. Therefore, he agrees with the answers of Mr T H Khan although for different reasons. Mr Pal submitted that a political question may be avoided but a question of law relating to political matter cannot be avoided for an answer in a Reference. He is of the view that matters relating to absence etc. should be decided by Parliament.

Mr Asrarul Hossain appearing for the Government seemed to agree with the views of Mr T H Khan but he had been fair enough to submit that his personal view is that the word 'absent' is genus and 'walkout' 'boycott' etc. are species and as such they would attract Article 67(1) (b) in any case. Mr Hossain, however, made a rather startling submission on saying that even if a member remained absent without leave of the House for ninety consecutive sitting days he may not vacate his seat because the sitting days are never consecutive in the sense of being continuous. He referred to the Bengali version of Article 67 (1) (b) which says "..... একাদিক্রমে নব্বই বৈঠক-দিবস অনুপস্থিত থাকেন । We shall examine the meaning of "consecutive" when we take up question No 3 for consideration. But for the present it is enough to say that to uphold the contention of Mr Asrarul Hossain would be to render Article 67 (1) (b) a dead letter which, as a rule, the Court will never accept.

We are plainly at a loss to appreciate the argument, particularly of Mr T H Khan, why the physical absence of the members of the opposition should not be construed as absence within the meaning of Article 67 (1) (b) and be regarded as 'presence'? For what good reason and for whose benefit such a distorted meaning should be put on the word 'absent' so as to exclude walkout and boycott by them ? Does it enhance the cause of constitutionalism or the cause of an effective Parliament by construing their absence as presence ? We are confident that it does not. Rather it subverts both. The scheme of the Constitution is that if a member or members of Parliament remain absent without the leave of the Parliament for ninety consecutive sitting days he or they do it on pain of vacating his or their seats. The philosophy behind this is that his or their constituencies cannot be left unrepresented in the Parliament for an indefinite period. There must be by-election in those seats for electing new members in their places to represent the people. This is the democratic and constitutional process. But to uphold Mr. T H Khan's contention would be to defeat this process and to perpetuate the carrying on of an unrepresentative Parliament which is a negation of the democratic norm and against the Constitution itself. And why should those members who, for whatever reason, do not attend the Parliament be deemed to continue as members present by resorting to a fiction as to the meaning of 'absent'?

Kaul in his practice and procedure of Parliament (p. 321) states that each constituency expects that the member it elects will take his seat in Lok Sabha and attend its proceedings except when it is necessary for him to remain absent on-account of unavoidable reasons . . . The duty of members to the House is paramount and they are expected to remain absent from the sittings thereof only when there are compelling reasons for doing so.

The foundation of the system of Parliamentary democracy is that the constituents are at all times represented in the House by their representatives. In the case of a member or members who remain absent for ninety consecutive sitting days without the leave of the Parliament have to pay the penalty by vacating his or their seats because he or they are not performing his or their paramount duty of representing his or their constituents. If that be the true intent of the Constitution-makers and we can find no other intent, then why should the same result not follow when a group of members (may be party wise) abstain from attending Parliament as above ? If not representing the constitutents by one member bears a penalty why should there be a reward if, it is done by a group of members belonging to a party or parties ? That it will be onerous for holding by-election if such a large number of seats fall vacant at a time is no ground for giving a twisted and laboured meaning to the word 'absent', because in that case the Court will permit a whole body of people to remain unrepresented in the Parliament which instead of upstaging a nascent democracy (which Mr Khan wants us to do by deeming the absent members as present by a process of construction) will end in the burial of its first principle. To act according to democratic norms is a trust which has been reposed upon all sections of the Parliament and what is called 'democratic culture' is required to be practised by all those who are in the business of politics. The Court cannot resolve political difficulties by putting an artificial meaning to a particular word or provision in the Constitution. Mr Khan in essence says that the walkout and boycott en masse have put the Parliament and the democratic process to a difficult situation which cannot be the intention of the Constitution or its authors. Therefore what he has not articulated but left nobody in doubt to understand is that the court should come to the rescue of the unforeseen difficulties created by the en masse walkout and boycott of the opposition members to the democratic functioning of the constitutional process by putting a gloss over the word 'absent' in Article 67(1) (b). It is not for the Court to save the high principles of democratic functioning and very little can be done by it unless they vibrate in the society itself. What Learned Hand J said about fundamental principles of equity and fair play is true also about principles of democratic functioning. He said (quoted in 1989 Bld(Spl) 1, 205):

"You may ask what then will become of the fundamental principles of equity and fair play which our constitutions enshrine; and whether I seriously believe that unsupported they will serve merely as counsels of moderation. I do not think that anyone can say what will be left of those principles; I do not know whether they will serve only as counsels; but this much I think I do know — that a society so riven that the spirit of moderation is gone, no court can save; that a society where that spirit flourishes, no court need save; that in a society which evades its responsibility by thrusting upon the courts the nurture of that spirit, that spirit in the end will perish."

We feel no hesitation therefore to reject the contention of both Mr T H Khan and Mr S R Pal.

The submission of Dr Zahir, Mr S S Halder and Mr A B M Nurul Islam has been more or less the same in that all of them contended that the Reference as made is misconceived because the opposition members of the Parliament are absent not within the meaning of Article 67(1) (b) but because they are no longer members of Parliament having vacated their seats by resignation on 28.12.1994. They are of the view that there is no question of law involved in this Reference and, if at all, there may have been some other question as to the competence of the Speaker in dealing with matters of resignation/abstention etc. for which no opinion has been asked for. Mr Halder is of the view that the counting of boycott days as in Paragraph (R) of the Reference was misconceived as the President has no authority to interfere with the proceeding of the Parliament which resulted in finality by the decision of the Speaker on 22.3.1995. Mr Moksudur Rahman has adopted the line of submission taken by Kh Mahbubuddin Ahmed and Mr Rafiqul Huq. According to him there is no reason to decline to answer the Reference and the answers to questions No. 1 and 2 should be given in the affirmative. As to the questions No. 3 and 4 his view is similar to that of Mr Mahbubuddin Ahmed and Mr Rafiqul Huq. Mr Yar Ahmed expressed his skepticism about the utility of the Reference and wanted us to give some practical advice for holding a free and fair national election. Mr Rowshan Ali was in favour of answering the Reference in line with the majority view. But he himself tendered some political advice as to what should be done by the Government and other political parties for resolving the political crisis.

In our view, walkout, consequent period of non-return and boycott, call it by whatever epithet, mean the same thing, i.e. 'absent' as provided in Article 67(1) (b) and would result in vacation of seat in the Parliament if the other conditions are present, namely, being without the leave of Parliament, for ninety consecutive sitting days. From the facts found from the Reference that the members of the opposition had walked out on 1st March, 1994 and never returned to the House again, it may be presumed that the said members had remain absent without the leave of the Parliament.

As regards question No. 3, nobody had any doubt except Mr Ashraful Hossain that in computing ninety consecutive sitting days the period between two sessions intervened by prorogation of the Parliament should be excluded within the meaning of Article 67(1) (b) read with definition of 'Session' and 'sitting' as under Article 152(1) of the Constitution. Even Mr Ishtiaq Ahmed who was in favour of returning the Reference said that the answer to question No. 3 was the simplest one. According to Mr Asrarul Hossain, however, that period should be included because the member who is remaining absent between sessions remains absent on the day when the House is prorogued and also on the day when the House is next summoned and further because the word "consecutive" means "continuous". This argument is wholly untenable because it ignores the most vital fact that what is to be counted is ninety 'sitting days' and nobody would dispute that between two sessions when the House remains prorogued there are no sittings, not to speak of sitting days, of the Parliament.

'Session' and 'sitting' have been defined thus in Article 152(1) of the Constitution.

"Session", in relation to Parliament, means the sittings of Parliament commencing when it first meets after the commencement of this Constitution or after a prorogation or dissolution of Parliament and terminating when Parliament is prorogued or dissolved;

"sitting", in relation to Parliament, means a period during which Parliament is sitting continuously without adjournment;

'Consecutive', according to the Shorter Oxford English Dictionary means, 'following continuously: Following each its predecessor in uninterrupted succession.' According to Webster's Third New International Dictionary it means:

CONSECUTIVE — following especially in a series: one right after the other often with small intervening intervals (2) proceeding by successive inter-related stages of thought: marked by logical sequence.

Samsad Bengali to English Dictionary has given the Bengali word as — একাদিক্রমে but the Bangla Academy Parivasha has rendered the word 'consecutive' as পরপর, পরম্পর, ক্রমিক।

Mr Asrarul Hossain seems to think that when the word 'consecutive' is used it means 'continuous' and therefore the 'sitting days' in order to be consecutive, there must not be any break or gap in between. He means to say that the days mentioned in the last column in the chart in para (R) of the Reference are not consecutive sitting days because there have been breaks in between. That this interpretation is wholly misconceived will be apparent because when it is said that you will lose your seat if you do not attend four consecutive Sundays, it obviously means four consecutive Sundays in a month. The Sundays are not to be counted and cannot be counted continuously for four days but continuously in the sense as they occur at regular intervals. We have, therefore, no doubt in our mind that in computing the period of ninety consecutive sitting days the period between two sessions as above and even adjournments in a particular session between sitting days should be excluded.

As regards question No. 4 there seems to be complete unanimity among the learned Counsel that the Speaker is the authority to compute and determine the period of absence. There is no specific provision, however, in the Constitution in that behalf. All that is said is that a Member of Parliament shall vacate his seat if he is absent from Parliament, without the leave of Parliament, for ninety consecutive sitting days. No role has been assigned to the Speaker or to anybody in the matter. It takes effect of its own at the happening of the contingency. But the Rules of Procedure of Parliament made under Article 75 (1)(a) are relevant in this connection. Rules 180 (Ch. XXIV) and 178 (3) (4) (Ch. XXIII) are material which are as follows:

180. The Secretary shall cause a register to be maintained showing the attendance of each member at each sitting and shall make the register available for inspection of the members.

178(1) ....

(2) ....

(3) if a member resigns his seat, or is absent, without leave of the House, for ninety consecutive sitting days of the Parliament, or fails to make and subscribe his oath of office within the time mentioned in Clause (1)(a) of Article 67 of the Constitution, or otherwise ceases to be a member, the Speaker shall bring the fact to the notice of the House, if it is in session:

Provided that when the Parliament is not in session, the Speaker shall inform the House immediately after the House reassembles that a member has resigned or ceased to be a member, as the case may be, during the inter-session period.

(4) If the seat of a member becomes vacant, the Secretary shall cause a notification to that effect to be published in the Gazette and forward a copy of the notification to the member concerned and also to the Election Commission for taking steps to fill the vacancy thus caused.

The Rules are silent about computation and determination of the period of absence which in the nature of things are ministerial acts. But as the Speaker is vested with the function of bringing the fact of absence to the notice of the House if it is in session or informing the House, if not in session, immediately after the House reassembles under Rule 178 (3) it is reasonable to hold that the Speaker got the responsibility to get the computation and determination done with the help of his secretariat. We, therefore, think that the learned Counsel are correct in their views.

Before recording our opinion, we would like to observe that the young Juniors of all the learned Counsel have work hard and as a token of our appreciation, we would like to see that they are paid some remuneration by way of encouragement. We, therefore, direct the Government to pay a cost of Tk. 2,000/- (Taka two thousand only) to each of the learned Counsel named above except Mr. Asrarul Hossain who is already on Government account, late Mr Aminul Huq and the interveners.

Having regard to the discussion as above, we are of the opinion that the answers to questions Nos. 1 and 2 are in the affirmative subject to computation of ninety consecutive sitting days. As to question No. 3, our opinion is that the period between two sessions intervened by prorogation of the Parliament should be excluded in computing ninety consecutive sitting days. As to question No. 4 our opinion is that it is the Speaker who will compute and determine the period of absence. Let this report be communicated to the President immediately.

Sd/ A T M Afzal C. J.

MUSTAFA KAMAL J: Keenly conscious that a history is in the making, I venture to put in a few observations of mine inspite of the haste with which we are despatching our opinion back to the President with the humble desire of being a fractional part of this history, having been in full agreement with the exhaustive opinion and answers given by the learned Chief Justice.

It has been urged by both Dr Kamal Hossain and Syed Ishtiaq Ahmed that the questions forwarded to us by the President are those which fall within the primary and exclusive competence of Parliament and its Speaker. It would be in their submission inappropriate for this Court to answer the Reference as it will pre-empt and usurp that jurisdiction. Syed Ishtiaq Ahmed submits that unless the process in Parliament under Rule 178 is exhausted this Court is not competent to answer the Reference — a theory which in constitutional jurisprudence is called judicial self-restraint. Dr Kamal Hossain went further and submitted that in answering the Reference this Court would derogate from its obligation to protect and uphold the Constitution. Both of them submit that by this Reference this Court is being required to encroach upon the exclusive field of a coordinate organ of the Republic, namely, Parliament, in violation, as Dr Kamal Hossain puts it, of the principle of separation of powers which is one of the basic features of the Constitution (vide 8th Amendment case, 1989 BLD, Special Issue, 87, referring to A T Mridha vs. The State, 25 DLR (AD) 335). Syed Ishtiaq Ahmed is however of opinion that there is no rigid separation of powers in our Constitution, but only that which is ordained by the Constitution. But that is all the more important, he says, to observe judicial self-restrain, under our Constitution, because some of these restraints are invented by the supreme judiciary itself, some are ordained by the Constitution, some conceded by this Court to the Executive like recognition of foreign states, existence or cessation of hostility between countries, including our own etc. Dr Kamal Hossain argued that an answer to the Reference may prejudicially affect some pending certificated appeals before this Court and future litigations in specific cases as well and further, since and advisory opinion under Article 106 is not binding and a different view may be taken by other coordinate organs, an answer to the Reference may lead to embarrassment and would derogate from the honour and dignity of this Court.

Separation of powers is no doubt one of the basic structures of our Constitution, but it is not the Montesquieuan model adopted by the USA. Our Executive, the President, is only the Head of State (Article 48 (2), not elected directly by the people but by Members of Parliament in accordance with law (Article 48 (1)). The President in the USA is the Executive Head of Government, but in our Constitution the President in exercise of his functions, save only that of appointing the Prime Minister and the Chief Justice, shall act in accordance with the advise of the Prime Minister (Article 48 (3)). The executive power of the Republic is exercised by or on the authority of the Prime Minister (Article 55 (2)). The Prime Minister is a Member of Parliament who commands the support of the majority of the Members of Parliament (Article 56(3)). The Prime Minister forms a Cabinet of Ministers etc. (Article 56 (1)), nine-tents of whom shall be appointed from among members of Parliament (Proviso 2 to Article 56 (2)). The Cabinet shall be collectively responsible to parliament (Article 55 (3)). Unlike the US House of Representatives and the Senate, there is a fusion of the Executive and the Legislature in our Parliament. Inherent in Article 22 of our Constitution ("The State shall ensure the separation of the judiciary from the executive organs of the State") is the acknowledgement that the separation of the judiciary from the executive has not been fully enshrined in our Constitution. Separation of powers in our Constitution is not as rigid as it is in the Constitution of the USA.

The abhorrence of the US Supreme Court of any advisory role or the doctrine of political questions evolved in the USA in the context of a rigid separation of powers or the formula for interference enunciated in Baker V Carr, 369 US 186, or "the sixteen great maxims of Judicial self-restraint" presented by Henry J. Abraham in his book The Judicial Process, 3rd Edition have no application on all fours in the Bangladesh Constitution. The makers of our Constitution, with their eyes and ears open, fully knowing (a) the hostile viewpoint of the US Supreme Court; (b) some adverse observations of the House of Lords and (c) the scathing criticism of advisory role by Sir Zafarullah Khan in the minority judgement in Special Reference No 1 of 1944, AIR 1994 FC 73, not only decided to retain the advisory role of the Appellate Division. But also clothed it with an "Advisory jurisdiction" in the marginal note, unlike the Government of India Act, 1935, the marginal note to Section 213 of which reads, "Power of Governor-General to consult Federation Court" and also unlike the Constitution of India, the marginal note to Article 143 of which reads, "Power of President to consult Supreme Court." It is a "jurisdiction" which this Court has been conferred with and "refusal" to exercise a jurisdiction vested in this Court will derogate from the obligation to defend, protect and uphold the Constitution. " Returning" the reference without answering the questions is a different matter, and even though Article 106 says that this Court "may" report its opinion, the returning of a Reference must not only be for good reasons, as held by the Federal Court in AIR 1943 (FC) 13 and the Indian Supreme Court in AIR 1974 (SC) 1682, but also for such weighty reasons that this Court has no option but to return the Reference, having regard to the jurisdictional dimension added to the advisory role in our Constitution.

Instead of looking towards USA, Australia, Canada or India we will do better to concentrate our attention to what is contained in our own Constitution in Article 106. I find in Article 106 the following elements, namely, that it will appear to the President that a question of law has arisen or is likely to arise and this may appear to the President "at any time", that the question of law must be of such a nature and of such public importance that it is expedient to obtain the opinion of the Supreme Court upon it, that upon such appearance the President may refer the question to the Appellate Division for consideration and that the Division may, after such hearing as it things fit, report its opinion thereon to the President. Of all the decisions that have been cited at the Bar the most pertinent one in this respect is that the

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