

## JSC formed

## Falls short of expectation

THE government has formed the Judicial Service Commission which will be assigned the job of recruiting judges for the lower judiciary. Constitution of a separate body for recruitment to the judiciary is certainly a step forward.

A judge of the Appellate Division has been appointed chairman of the commission, and three secretaries to the government have also been included in the seven-member JSC. The compositional features of the commission have drawn attention of the jurists, since it was supposed to have more representatives from the senior judiciary than any other branch of the government. A former chief justice has said that the government has already violated the rules by following a principle of composition that does not give due importance to the judiciary.

The creation of the JSC is a fulfillment of one of the 12 directives of the Supreme Court issued on December 2, 1999. The court had asked the government to immediately form the commission. Its formation, however, has taken more than four years. But the decision to include more people from the executive branch in the JSC might just be deemed to have negated the spirit of separation of the judiciary, which would give it complete freedom from administrative control.

It follows that the decisions that were taken to constitute commissions for bringing about positive changes are being implemented, but the question of the government trying to retain control over them has not been resolved to the satisfaction of all. For example, the composition of the anti-graft-body had also caused uproar at the initial stage.

The point that must not be missed here is that a commission in itself cannot attain its objectives, unless it is given the needed structure and powers to function smoothly. In this instance, a judicial commission dominated by the bureaucrats cannot ensure its functional freedom. The need for breaking with the tradition of recruiting judges through the PSC was felt because it was not compatible with the ultimate objective of separating the judiciary. The government would be well-advised to restructure the JSC accordingly.

## Boro farming faces hurdles

## Inter-ministerial approach imperative

THE seasonal Irrigation cultivation is hitting all sorts of snag in the northern region of the country. As is common knowledge the basic inputs for Boro farming are: irrigated water and fertilisers like urea, potash, TSP etc. Eighty-five per cent of 4.5 lakh irrigation pumps are diesel-run. This crucial fuel is in short supply. Its availability fell to 9.35 lakh litres per day between February 15 and 23 from the level of about 35 lakh litres as previously recorded. The supply failure is largely man-made. First, 'irregularities in the bidding process', delayed import of the fuel. The accusative finger is pointed to the ministerial oil procurement committee. Then a diesel consignment awaits unloading at Mongla. As that was not enough, petrol pumps are allegedly hoarding diesel to jack up its price taking advantage of the scarcity situation. If the supply side was strong enough through timely importation and unloading of cargo, the petrol pumps couldn't have played foul through stockpiling and speculative trading.

Just as the diesel sold dearer so have the fertiliser prices shot up - well beyond the capacity of the farmers to lay their hands on the basic inputs. In the drier northern swathe of the country boro being the potential principal supplementation to their agricultural income, the sense of loss can be enormous. It is highly imperative that the ministries of agriculture, petroleum and power get their act together in order to revamp the supply side of inputs. If necessary, short term loans may be given to farmers. This is the thick of irri season and the time is running out for a turn-around in the cultivation situation. Could we draw the attention of the highest authority to the need for a timely intervention?

## World Court and the legality of Israel's fencing wall



HARUN UR RASHID

to the Court. The US opposes World Court's intervention because it is a political issue and argues that opinion by the Court will complicate peaceful solution of the conflict. Although the European Union voted in favour of the General Assembly resolution, it argues against this question being referred to the World Court for an opinion. On the other hand, many Islamic countries and the Organisation of Islamic Conference have sent written opinions reportedly challenging the legality of the wall.

Of the 15 judges, ordinarily four belong to the members of the Security Council, four from Asia, three from Europe, two each from Africa

means that the Security Council may impose sanctions on the defaulting party until the judgment is complied with.

## Advisory opinions

In terms of Article 96 of the UN Charter, the General Assembly or the Security Council "may request the International Court of Justice to give an advisory opinion on any legal question."

Although Advisory Opinions of the Court are non-binding in character, they have a moral force in inter-

per se is not illegal if it sticks to the pre-1967 border between Israel and the West Bank (known as Green Line). But a wall encroaching upon the West Bank (from 3 to 22 kilometers inside the West Bank) is illegal. Furthermore they argue that all the land captured by Israel in the 1967 war is "occupied territory" under the 1949 Geneva Conventions on Armed Conflicts and therefore cannot be annexed or appropriated in any manner. They also argue that the withdrawal of a claim to the West Bank by Jordan is not relevant and

status of territory is undetermined. Furthermore they argue that the 1967 border was not an international boundary but merely a ceasefire line. The 242 Resolution does not mention withdrawal of "the territories". The omission of word "the" before the phrase "territories" is deliberate and it means that before Israeli withdrawal, there has to be a negotiated international boundary so that Israel can "live in peace within secure and recognised boundaries free from threats or acts of force."

As for the wall itself, it says that it is a fence to ward off suicide bombers from Palestinian territory. It is a self-defence device and can be dismantled in the event of a political settlement. Israel's right-wing Prime Minister reportedly stated that "no better example of cynicism of the world than the decision to hold political discussions in the international court in The Hague, discussions against the fence that will protect human lives."

## Conclusion

The case is shaping up to be very contentious and Israel has flown a destroyed bus by a suicide bomber to The Hague to prove its point. Meanwhile only a day earlier before the hearing, Israel dismantled a small portion of the wall to prove its bona fide intention...

## BOTTOM LINE

The case is shaping up to be very contentious and Israel has flown a destroyed bus by a suicide bomber to The Hague to prove its point. Meanwhile only a day earlier before the hearing, Israel dismantled a small portion of the wall to prove its bona fide intention... A UN report said that the wall would carve off 14 percent of the West Bank, would trap 274,000 Palestinians in tiny enclaves and block another 400,000 from their fields, jobs, schools and hospitals... The opinion of the Court is expected to take quite some time...

It may be recalled that last December the UN General Assembly asked the World Court to give its Advisory Opinion on the legality of the wall that Israel is constructing in the West Bank. It took Israel off the guard because they did not expect that Palestinian Authority would seek an advisory opinion on the legality of the wall from the World Court through the UN General Assembly.

The precise legal issue referred to the World Court by the General Assembly is as follows:

*"What are the legal consequences arising from the construction of the wall being built by Israel, the occupying power, in the occupied Palestinian territory, including in and around East Jerusalem, as described in the report of the Secretary General, considering the rules and principles of international law, including the Fourth Geneva Convention of 1949 and relevant Security Council and General Assembly resolutions?"*

The advisory opinion was sought in a resolution by the General Assembly that was opposed by only 8 out of 191 member-states of the UN. Australia, Ethiopia, Israel, Marshall Islands, Micronesia, Nauru, Palau and United States opposed the resolution.

Forty-four governments have reportedly sent written submissions

Israel has boycotted the Court because it does not accept jurisdiction of the World Court to decide the question of the legality of the barrier, a common phenomenon for a country that is put publicly on the dock. In 1984, the US also walked out of a case brought by the Sandinista government of Nicaragua for interference in its internal affairs by the activities of the US-supported Contra rebels during the Reagan administration.

**Status and composition of the World Court**  
Under Article 92 of the UN Charter, the World Court is the principal judicial organ of the UN. It means that it is an integral part of the UN, unlike its predecessor the Permanent Court of Justice under the League of Nations. The Court has two jurisdictions: (a) it makes rulings in international disputes, although its jurisdiction depends on countries accepting it (which is not that often) and (b) it gives non-binding advisory opinions on legal questions when asked to do by relevant UN organisations.

The Court consists of 15 judges who are elected separately by the General Assembly and the Security Council. Their tenure is for nine years and they may be re-elected. The decisions of the Court on inter-state disputes are final and have no binding force except between the parties in a particular case. Article 94(2) of the UN Charter provides that if a party fails to carry out a judgment, the other party may have recourse to the Security Council which may make recommendations or decide upon measures to give effect to the judgment. This

and Latin America. No Bangladeshi has yet occupied a position in the Court, although in the past Sri Lanka, India and Pakistan had their nationals on the bench. At present there are three judges from Asia. They are from China, Japan and Jordan. Out of 15 judges, it is believed that there are two Muslim and two Jewish judges.

The Court applies laws in terms of Article 38 of the Statute of the World Court. They include: (a) international conventions, establishing rules expressly recognised by the contesting states, (b) international custom, as evidence of a general practice accepted as law, (c) the general principles of law recognized by civilised nations, and (d) judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.

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national community and the UN may impose sanctions on defaulting states for non-compliance. In 1971, the World Court in its advisory opinion considered South Africa's presence in Namibia (former South-West Africa) to be illegal and that it should withdraw from the mandated territory immediately. Later the UN imposed sanctions on South Africa for non-compliance of the opinion.

The last Advisory opinion was rendered in 1996 about the legality of the threat or use of nuclear weapons under the UN Charter. The Court then was equally divided on its opinion and with the casting vote of the President (a judge from Algeria), the Court held that it cannot conclude definitively whether the threat or use of nuclear weapons would be lawful or unlawful in an extreme circumstance of self-defence, in which the very survival of a state would be at stake.

## Israel's wall and its legality

The Court may at its discretion decline to render Advisory opinion.

Before it goes to the merits of the case, it has to decide first whether the issue presented is a "legal question" or not.

## Palestinian case

The Palestinians argue that the wall

the Palestinians should be considered as rightful owners of the land.

Accordingly, to build a wall anywhere inside this territory, especially around East Jerusalem which Palestinians want as their capital, constitutes annexation by Israel and also violates day-to-day rights of movement of 400,000 Palestinian population whose lives are adversely affected. The Wall would grab about 900 square kilometers of the West Bank or about 15 percent of the occupied territory.

They cite the UN Security Council Resolution 242 of 1967 that called for "withdrawal of Israeli armed forces from territories occupied in the recent conflict" and accordingly Israel should comply with the implementation of the resolution.

Prime Minister of Palestinian Authority Quera described the wall as "apartheid wall" that would put the Palestinians in cantons. He said that the wall endangered the "two-state solution" and the creation of an independent state as envisaged by the US sponsored "road-map" to peace to end the Israeli-Palestinian conflict.

## Israel's case

Israel rejects the claim that the land it captured in 1967 is "occupied territory". It argues that in 1967 Jordan controlled the West Bank and since Jordan gave it up the

tion the integrity of the would-be members of the Commission. But how will they resist political pressure, to name the least, if everybody else has caved in so far? Besides, they are going to be handicapped, based on political allegiance, and who will wrestle with the hand that feeds him?

So, give me one good reason why the Commission will work, if others have failed? I mean realistically, why should I believe that one elite group would suddenly achieve what eluded the entire police force, court system, army, bureaucrats, politicians, teachers, doctors, lawyers and every other profession and institution in this country?

That doesn't mean we must never try, because it never worked. History has its moments of truth, and it works like a pinball. You have to keep hitting the balls until they fall in the slots. It also follows the law of large numbers, which means the number of success increases as the number of experiment increases.

If anything, the Anti-Corruption Bill 2004 is just another experiment in the success of corruption. It is yet another layer of law, which will chip away the transparency we desperately need, by concentrating power in a cabal of people attached to political strings. To borrow from the lyrics of the famous Pink Floyd song, the Bill is just another brick in the wall. It will hide corruption and provide it the shady damp corner where it grows.

Just one thought for the road. Corruption is like charity, which begins at home.

Mohammad Badrul Ahsan is a banker.

## Another brick in the wall



MOHAMMAD BADRUL AHSAN

LAST week, the Anti-Corruption Commission Bill 2004 was passed in the parliament, and it didn't get everybody excited. Well, some people didn't think the bill was going to work, and I didn't blame them. How can you tell if something will work until it has worked? Others opposed it for common sense. They opposed it because they were against the government. I would like to come somewhere in the middle. We have been holding the world title for corruption three years in a row. I am excited we are doing something to give it up. At the same time, I am not convinced the bill will make a difference.

Why? Because legislation is all about character and where do you see it? People who make laws and people who enforce them must have the moral authority over those who are being asked to embrace those laws. Plain and simple. Character is all about ruling by example. The other option is to rule by fear, and for that we don't need governments. Gangsters are bloody good for that. I am not suggesting that the Anti-

Corruption Commission Bill is a futile exercise altogether. It might help us brush our image in the world, at least by showing that we are trying to change it. But will it help us fight corruption? This is one question, which bugs me. I am not sure I know how that is going to happen.

All right. There will be the Commission comprising of a Supreme Court Judge, Comptroller General, Chairman of the Public Service

supply! The king appointed one of his courtiers to keep watch on the milkman. Soon the watchman joined the milkman and started to steal from the king's supply. The king appointed another person to keep watch on the watchman. Thus as the king kept appointing watchman to watch watchman to watch the milkman, the shortage in supply of milk got increasingly worse.

Corruption, as a matter of fact, is like a downward spiral, which feeds

conscience and every other moral teaching and lesson. This is where the person comes to terms with corruption for the first time. This is where he hears the first verdict on whether what he does is right or wrong.

That brings us to the hopeless challenge of a horror movie. Every time the devil is killed, the evil spirit flees the scene and takes on a new body. But the challenge of corruption is even worse. Every time a

him. It sounds bloody good to me, and that's exactly what is needed.

But what will happen in reality? It will be used to harass the wrong man like other special powers and administrative pockets. It will breed more corruption by creating new scope for favouritism, appeasement and bribery. It will turn into just another watchman to watch the milkman.

Let us recognise that corruption is a mindset, which will not go away

## CROSS TALK

Let us recognise that corruption is a mindset, which will not go away because of a cosmetic touch. It is just as absurd as reforms in the police by changing their uniform. It reminds of General Potemkin of Russia, who had ordered cardboard villages to be propped up on both sides of the road, hiding poverty and squalor during a visit by Catherine the Great. The Anti-Corruption Commission Bill is a Potemkin Village, an eye wash in yet another bid to create the illusion that corruption was defeated because we fought it.

Commission and a retired Secretary of the Cabinet Division. Okay, the President of the country will appoint the Chairman of the Commission. Even better, loan defaulters, people guilty of moral delinquency or corruption, people who are physically or mentally disabled, will not qualify to serve on the Commission. All these are very comforting. At least we know some sensible people will be in charge. There will be some sanity in the whole thing.

But every time another law is made, it reminds of the king's milkman. Remember how a fabled king was suddenly in doubt that the milkman was stealing from his

on itself. You have God, you have conscience, moral teachings, family influence, laws of the society and your own instincts. And all of these boil down to three ultimate considerations. What will happen to you in the life after death? Can you escape punishment by the laws of this world? Are you comfortable with your own reputation?

Now if you think hard, corruption thrives because life after death is a distant thunder, and laws of this world have lost their thunder. Yet the third consideration is the most important one. Are you comfortable with your reputation as a corrupt person? It has a lot to do with your

zombie touches someone, he turns into a zombie. The stronghold of corruption is in the soul, which radiates into another soul that comes in contact with it. Corruption is contagious, and it spreads like a plague.

That is where the Bill comes into question. How can you eradicate a contamination without eradicating its source? The Bill is nice to have, like the constitution, like the police force, like the legal system. But how will it work?

If anyone is found in possession of wealth, which is not consistent with his income, the Commission will have the power to prosecute

because of a cosmetic touch. It is just as absurd as reforms in the police by changing their uniform. It reminds of General Potemkin of Russia, who had ordered cardboard villages to be propped up on both sides of the road, hiding poverty and squalor during a visit by Catherine the Great. The Anti-Corruption Commission Bill is a Potemkin Village, an eye wash in yet another bid to create the illusion that corruption was defeated because we fought it.

In fact, what are the chances of an honest committee, when dishonesty is so common? Pardon my errant tongue, I don't mean to ques-

## OPINION

## The attack on Dr. Kamal's motorcade is an attack on all of us

MASUD RANA SARKER  
writes from Ottawa, Canada

D R. Kamal Hossain is a renowned international lawyer and framer of our constitution. The whole nation owes him a lot. The very same person today has come under an attack which threatened his life as well as the lives of others. The constitution he wrote about three decades ago gives every citizen the right to live and right to move freely in the country we liberated. This very constitution also allocates the duty and responsibility of the government to rule the state in the name of the people. I don't think any person of good common sense will support the attack. It hurts when attack on anybody is politicised.

Pankaj Bhattacharya of Gano Forum, Dr Mesbah Kamal, convenor of the Tribal Rights Movement, Khagesh Kiron Talukder of the Communist Party of Bangladesh, Akther Sobhan Masrur of the Workers Party of Bangladesh and

Professor Gobinda Chakravarty of Dhaka University were accompanying Dr Kamal on the Rangamati trip. Parbatya Samo Adhikar Andolan is an anti-CHT accord organisation, allegedly supported by BNP MP Wadud Bhuiyan. If this is the case, BNP should expel him from the party because the people have voted the BNP into government in order to protect their lives and to uphold the law of the country. If Mr Bhuiyan is part of the agitation movement with the anti-CHT accord, he is basically trying to obstruct the BNP government's legal method of governance. Mr Bhuiyan and his party, along with many other Bangladeshis, may disagree with the Awami League's CHT peace accord, however, BNP and its MPs and Ministers are bound to implement or annul the accord as part of the government. If BNP annuls the accord, it will detract from its image. No minority group within the country or foreign governments will keep faith in the state because they will likely think that the state machinery may change any pledge any time. So it will be prudent for BNP not to annul the accord and I don't think BNP will do this. While I certainly believe that BNP, as a party, has every right to criticise or support the peace accord (likewise Awami League has every right to do the same),