

## The Bar members' concerns

*Independence of judiciary brooks no delay*

**T**HAT statistics can speak more convincingly than words is amply illustrated by some data provided by Supreme Court Bar Association president Barrister Rokanuddin Mahmud at a requisition meeting of the council held Wednesday. According to him, 99 percent of cases are refused bail in the magistrate's court, while 90 percent do not get bail in the sessions judge's court. As a result, 90 percent of the defendants in criminal cases turn to the High Court's motion benches with their bail petitions.

The three criminal benches there in the High Court do not have any even distribution of workload among them. One of these benches purportedly passed one motion in the last two years. By a steep contrast, 700 to 800 cases hang fire in another bench, while the third one is wrestling with 700 cases. This could be evocative of certain reservations about the quality and efficiency of the judges. The practising Supreme Court lawyers have not minced words to say so.

Whilst, the constitution of criminal benches has been called into question, the Bar leaders despaired of frequent dissolution and reconstitution of benches on 'unknown grounds'. Dr Kamal Hossain thought these bred questions in the public mind about the process.

The huge number of bail petitions moving up to the high judiciary has two implications: one, the failure of the magistrates and sessions judges' courts to dispose of bail prayers at their levels; and two, the High Court benches are thus left to shoulder a huge number of appeals for bail. One need not labour the point too much that other cases awaiting adjudication by the High Court perse get pushed down the attention scale.

In spite of the glut of petitions before the HC's motion benches, it is at this level, anyway, that bails are granted, more often than not in high-profile cases. This lends itself to one interpretation, which is that the lower courts are susceptible to executive or political pressures. Why is the interpretation of law by the higher judiciary so radically different from that by lower courts in matters of granting bail? Obviously, the High Court is freer than the sub-ordinate courts which remain under executive control.

It is worthwhile to note though, that the Chief Justice reportedly called 11 senior judges to his office and told them not to grant wholesale bail and stay. The Bar president went so far as to suggest: that the CJ is not being able to constitute benches independently, because of instructions from outside'. Does it mean that even the highest judiciary is impervious to political influence-peddling?

What all this leads us to conclude is that separation of the judiciary from the executive is the crying need now, if we are to resurrect the dwindling public confidence in the rule of law.

## Butler report

*Another indictment on war against Iraq*

**W**HETHER Mr. Blair accepts it or not, the Butler report is a severe indictment of his government for involving Brit-ish troops in a war based on unreliable and flawed intelligence.

The report, however, concludes that mistakes were made but nobody to blame -- a 'very British' conclusion, as someone commented soon after it was released.

The Butler report comes on the heels of the US Senate Intelligence Committee report on the same issue. A common strand that runs through the two reports is the velvet-glove approach taken to the conduct of the re-spective governments, while putting the blame for the failure squarely on the intelligence agencies. Blair has even been given a clean chit. While the Bush administration has 'given the dog a dirty name and hanged him', the British are promoting the man responsible for the 'dossier', John Scarlett, to head the MI-6.

Perhaps in the US election year, when the ratings of both Mr. Blair and President Bush have declined, a re-demption, through the pronouncements of these committees, limited in scope though it might be, could help these two gentlemen to retrieve some lost ground.

Although Mr. Blair has taken personal responsibility for any mistakes made in good faith in the run-up to war, he has justified using British troops against Sad-dam Hussein in the same breath. Surely Mr. Blair can-not have missed the facts his actions 'on good faith' have cost the lives of at least ten thousand Iraqis, according to official reports, which numbers many more by unof-ficial accounts.

We fail to see Mr. Blair's logic in his continued defiant assertion and insistence that going to war against Iraq was right. We find his logic rather convoluted. If one accepts that the intelligence based on which the war was resorted to, to be flawed, how can the action that stems from that very flawed assessment be right?

Inquiry committees should be used to get at the bottom of the truth, not to salvage governments from their mistakes, whether deliberate or in 'good faith.' Failing to do this will result in loss of credibility of governments.

## Public bureaucracy and judiciary



AMM SHAWKAT ALI

**P**ROFESSOR Braibanti, a reputed scholar of public administration, has dealt with the relationship between the public bureaucracy and the judiciary in the context of Pakistan during the 1960's. One of his articles titled "Public Bureaucracy and Judiciary in Pakistan" has dealt with the historic image of the judiciary and the writ jurisdiction of the High Court.

### What is writ jurisdiction?

The exercise of writ jurisdiction reduced to its simplest term involves judicial review of executive actions. The basic requirement is that a person must be brought to grief by executive actions that are violative of fundamental rights guaranteed by the Constitution. However, more recently the requirements of any person being aggrieved by executive actions or inactions have been further extended to include the concept of public interest litigation.

The concept of public interest litigation is said to be recognised under the Indian Constitution. However, in recent times, the Supreme Court has recognised this concept to extend to matters involving public interest. In such cases, High Court gives directions to the government and the major examples include cases relating to protection of environment, public health and protection against eviction of slum dwellers.

More recently the case of mass arrests in course of much talked of

April 30 deadline also had attracted the writ jurisdiction. The High Court is understood to have called upon the government to account for the actions relating to mass arrests through the application of a specific provision of the law relating to Dhaka Metropolitan Police (DMP). DMP first applied the much controversial section 54 CrPC. Later, it opted for the relevant provision of DMP law. It is not known if the government had shown cause. What is material, however, is the fact that in such cases the relevant members of the public bureaucracy are called to

the perils of contempt of court to which civil servants are exposed. Such cases arise out of violation of court orders. There are instances in which secretaries to the government had to face the charges on account of contempt of court. Many such cases relate to release of abandoned houses.

The rules relating to the contempt of court are very severe. Prior to the mid-seventies, in such cases the government could provide for the cost of legal defence of a civil servant. During the mid-seventies it was ruled by the Supreme Court that

has to be seen in the changed context as embodied in the rules of business. Prior to 1989, the secretary to the government used to be designated as the official head of a ministry or a division. He could dispose of files without reference to the minister in case of urgency but was required to keep the minister informed of decisions so taken in the absence of the minister. Since then the rules have changed.

The rules of business (1996) designates the secretary as the administrative and not the official head. Further, in matters relating to

appear in person in the High Court and sought a stay on their personal appearance order. The unfortunate four are: principal secretary to the prime minister, home secretary, defence secretary and acting principal staff officer of the armed forces division.

In seeking the stay order, the counsel on behalf of the four officials contended that (a) they needed to be in their offices as they deal with important public matters, (b) public interest would suffer if the officials appeared before the court leaving their offices, (c) the entire case

Supreme Court Bar Association told the journalists that 'the four officials have violated court orders by not deploying army as directed and now they are going to do the same by trying to obtain a stay on the HC rule'. He further said: 'It is a shameful precedent'.

### What is the precedent?

As far as is known, in all previous cases, secretaries to the government whose personal appearance was demanded by the court, willingly complied with the directives. The violation of a precedent, hallowed and tested by time, seems to be an ominous sign that affects the operation of the rule of law. More than any other person or institution, the executive organ of the state is expected to be supportive of actions that strengthens the hands of the courts of law. That is the step towards good governance.

The lawyer for the opposite party argued that if the four did not appear before the court, it would reflect their disregard for the court. It was further argued that in the South Asian countries, prime ministers and ministers, not to speak of secretaries appeared before court in person leaving aside their important business. It was further argued that there was no VIP in the eyes of law.

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A M M Shawkat Ali is a former Agriculture Secretary.

## WORTH A LOOK

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account. Political functionaries at whose behest actions are taken remain immune from accountability for such actions.

### Protection to civil service

Available evidence indicates that civil servants have themselves sought the protection of the High Court through writ petitions. Such petitions arise out of arbitrary manner of executive decisions taken that affect civil servants mainly in matters relating to promotion, transfer, disciplinary proceedings and/or premature retirement. Viewed in this context, the higher judiciary acts as a shield that prevents arbitrary actions against civil servants. There is also the other side of the coin.

**The perils of contempt of court**

The other side of the coin relates to

in cases involving civil servants charged with contempt of court, they would have to arrange their own defence at their own cost. The ruling relating to legal defence, however, provides that in the event a civil servant is exonerated from the charge, the cost incurred by him would be reimbursed by the government.

The above cases clearly indicate that a line must be drawn in terms of the accountability of a minister and a civil servant in such and other similar cases. The cases also indicate either a general lack of respect on the part of ministry for the judiciary or the ministers' inability to realise the implications of not implementing court's order.

**The rules of business**

The question of accountability of the members of public bureaucracy

transaction of business in a ministry or a division, the secretary is required to dispose of case or under the general or special directions of the minister-in-charge. It is not known in how many contempt cases a permanent functionary of the government, after 1996, had to face contempt charges even though he was not in fact responsible for violating a court order but had to wait for ministerial approval by which the deadline set by the High Court had expired.

### Fallout of Dhaka-10 by-poll

An English daily published a news item titled 'Civil servants not willing to appear in court' (The Daily Star, July 14, 2004). It was reported that the four top government officials, facing contempt of court charges for violating court orders to deploy army for Dhaka-10 by-poll were unwilling to

needed to be looked into as to whether the officials violated the court order deliberately or whether this was done to degrade the judges and (b) the court could summon the officials after the report, already sought for by the court, was received from the Election Commission.

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the Jews who exploited other racial and ethnic stereotypes. In the early 1990s, Brando once again shocked America, when he went on the Cable News Network to criticize the beating of two Mexican immigrants by the California police.

Marlon Brando was a man who was not comfortable with the world. He admitted he did not like people, and he lived most of his life in a private island 50km north of Tahiti, where he tried to build a sanctuary for the wild birds. He could forever identify himself with the underdogs, those who needed support, shelter and strength and he resented.

Brando once said on television that fame gave nothing but false image and that money, fame and success could bring nothing but miseries to a man. There was some kind of a poltergeist about Marlon Brando, which never let him settle

life with both hands, as if to make up also for the shares his distressed parents never had. He ate, drank and made merry with as many women as he could lay his hands on. He married three times starting with Mexican Movita to Anglo-Indian Anna Kashfi to Tahitian beauty Tarita Teripapa. He had at least 11 children, five from his three wives, three from his Guatemalan housekeeper and three from other affairs. There are other reports hinting at other children from many other affairs. When his son Christian stood for trial for the

murder of his sister's boyfriend, Marlon Brando confessed in the court that he was not a good father to his children. How the heck was he supposed to know? He never had a good father when he was a child.

Somewhere in the subconscious mind, Brando was a rebellious and defiant man. He had a subliminal contempt for authorities and established norms, the strains of which lasted in him till the end. He believed that Hollywood was a movie business mainly run by

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is likely to serve as a milestone on the road leading to the adoption of a common Asian market and currency regime. It was the announcement by Japan at the Kobe conference of its decision to establish a research centre, to be known as Kobe Research Project with the task of linking 'think tanks' in Asia and Europe in their studies of what sort of common currency regime would be best suited to and most acceptable by the Asian nations for their economic growth. So in one sense, a good and constructive ground work is already in progress. In other words, the 'seeds' had already been sown.

However, the ultimate success of the ADB programme for establishing a common Asian market and currency would largely depend on the political will of the Asian leaders who are now at the helm of affairs of their countries. It is they who can make it or mar it, if they like. As they say, where there is a will, there is a way. And where there is a political will, there must be a political way too.

AMM Shahabuddin is a retired UN official.

## A tribute to Marlon Brando



MOHAMMAD BADRUL AHSEN

**I** feel I owe it to them one by one, Fletcher Christian of Mutiny on the Bounty, Don Vito Corleone in The Godfather, Colonel Kurtz in Apocalypse Now, Stanley Kowalski in A Streetcar Named Desire, Terry Malloy in On the Waterfront and the middle-aged debauch named Paul in Last Tango in Paris. Not that I owe it to them in that order, but I owe it to one man for all of them. This man was a talented actor, who featured a lot like diamond, showing different glint under different light at each turning in front of the camera. He was many forms in a single shape, compelling those who admired him to admire him even more. Marlon Brando needs no introduction, because he has been both famous and notorious in his own right.

The great actor passed away on a Thursday two weeks ago at the age of 80, closing a circle that went end to end in gloom. Born to pathological parents who were poor, cruel and drunk, luck came to the rescue of young Brando at the age of 23. Then he quickly soared to fame before he was even 30, money, women and luxuries showered upon him like torrential rain in the monsoon. The young man was not

him except for occasional pictures of his here and there, fleeting like a bloated apparition.

But then Marlon Brando, an entire human race unto himself. Even as a young actor of fame, he was often sighted driving down the Hollywood Boulevard wearing a headgear that looked as if an arrow had gone through his head. He was increasingly becoming withdrawn from the world as I was increasingly learning to admire him. I wished he had made more movies, but there was no sight of

down in life. He fell in love with women, yet he could not remain faithful to them. One of his many loves was an actress named Leone, who refused to finish the film with Marlon Brando once she found out that he was cheating on her. She is said to have given birth to a Brando child, but spent her last years stringing frangipani flowers into leis and selling those to tourists in Tahiti. Brando tried to woo her back with a briefcase full of money, but she threw the money into the wind to be blown all over the neighbourhood.

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## CROSS TALK

**M**arlon Brando was a man who was not comfortable with the world. He admitted he did not like people, and he lived most of his life in a private island 50km north of Tahiti, where he tried to build a sanctuary for the wild birds. He could forever identify himself with the underdogs, those who needed support, shelter and strength and he resented.

However, some people made windfall gains by timely fishing in the troubled Asian waters and that well-known US 'financial wizard' George Ross, Chairman of the Soros Fund Management was one of such lucky fellows who siphoned off billions of US dollar from the Asian financial markets, hastening the 1997 economic crash. Hence the Asian countries, while making their move towards evolving a common market and common currency, should tread the way very cautiously. That is why the ASEM conference had also advised that the Asian economies 'should tread carefully' in adopting a common currency regime to replace the existing dollar-dominated one. "No single arrangement is necessarily right for all countries all the time," the ASEM meeting warned.

**EU example**

But there is nothing to lose heart of before a confident and positive beginning is made at the up-coming ADB meeting in Manila to be attended by all Asian countries. "Art is long but time is short," as the poet says. But once the journey begins therefore, before the Asian nations now: what kind of currency system or what shape of the future common currency should be most suitable for them? Undoubtedly, this would be a controversial issue and would naturally take a good deal of time to thrash out one that would be acceptable to all Asian countries. It may be mentioned, in this context, that France and Japan had suggested at the Kobe conference that both the EU currency 'euro' and Japanese 'yen' should be included in the new future common Asian currency. However, the idea was opposed by Indonesia and Malaysia as they wanted to keep their currencies independent from "a basket of trading units dominated by yen." So that's a big signal for those who want to be guided by it.

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