



FOR YOUR information



Ban Ki-moon takes over as UN Secretary-General



Passing an honour guard and welcomed with applause from staff, former Republic of Korea Foreign Minister Ban Ki-moon took over formally as United Nations Secretary-General today with a call for collective action to address a host of international crises from Sudan's Darfur conflict to the nuclear programmes of Iran and North Korea.

Mr. Ban, who succeeded Kofi Annan to become the eighth UN Secretary-General as the New Year came in on 1 January, smiled broadly as he entered the towering landmark building housing UN Headquarters on New York's East River, where he paid tribute at the memorial for UN personnel who have fallen in the line of duty.

"I am very much overwhelmed by all this warm welcome," he told a crowd of reporters. "Your presence this morning is a vivid proof that the United Nations is much alive in the front line addressing all the challenges and issues and trying to give hope to all the people around the world," he said.

"I start my day as Secretary-General of the United Nations with much expectations and hope and promise and I need your strong support. I start my duty at a daunting time in international affairs starting from Darfur to Middle East, Lebanon, Iran, Iraq, North Korea, many other crises that trouble our world," he added, stressing that these issues need to be addressed collectively.

Answering questions, Mr. Ban said he would immediately turn his attention to the issue of Darfur more than three years of fighting between Sudanese Government forces, allied militias and rebel groups seeking greater autonomy have left more than 200,000 people dead and driven more than 2.5 million from their homes.

Asked about North Korea's nuclear weapons programme, he said that in his former position he had been deeply involved personally and as Secretary-General he will first try to facilitate the smooth progress of the six-party talks between the two Koreas, China, Japan, Russia and the United States seeking a solution.

Asked about the hanging of former Iraqi President Saddam Hussein, Mr. Ban said the issue of the death penalty was a question for each country to decide.

"Saddam Hussein was responsible for committing heinous crimes and unspeakable atrocities against the Iraqi people," he noted. "We should never forget the victims of his crimes. The issue of capital punishment is for each and every Member State to decide."

"As a Secretary-General, at the same time, while I am firmly against impunity, I also hope that the members of the international community should pay due regard to all aspects of international humanitarian laws. During my entire tenure, I will try my best to help Member States, the international community, to strengthen the rule of law."

Source: UN News Service.

COURT corridor

Public notice to CJ

BARRISTER MOKSADUL ISLAM

BEFORE we walk through the court corridor on the 30th November, 2006 let us examine what a Rule Nisi is. General people of this country is not expected to understand all the everyday legal words or terms (i.e. Rule Nisi, Bench or Division Bench) we normally use in the Court.

The principle of natural justice demands that the other side should have the opportunity to reply or state his side of the story before anything is decided regarding or against him. A Rule Nisi simply satisfies that demand of natural justice. It is actually one kind of show cause notice. The term Rule Nisi is used or issued in a Writ Petition by the Special Original Jurisdiction of the High Court Division once an application under Article 102 of the Constitution is admitted. Alternatively it may be said that a Rule issued means the court has admitted the Writ Application. A typical Rule Nisi is issued "calling upon the respondent to show cause as to why (some action) should not be declared to have been made without any lawful authority and is of no legal effect". Sometimes an interim order is also passed staying operation of the said impugned action for a particular period or till disposal of the Rule.

During the last week of November, 2006 almost the entire nation was following the incidents inside the Court No. 12 of the Annex Building. Three Writ Petitions which were filed by the different political parties would examine, amongst others, the legality of Non-Party Caretaker Government headed by the President and election schedule pending publication of the up-to-date voter list. After a couple of days' extensive hearing it was fixed for an "Order" after the launch break, i.e. at 2 pm. It was virtually impossible for anyone to tell exactly what would be the Order the Court. It can go either way. The Court may issue a Rule, may reject the application summarily or alternatively may give appropriate directions for the constitution of a larger bench.

At 2 pm everyone in the jam packed court room was waiting anxiously. There was hardly any space in the court room. Most of the officials of the Attorney General Office along with all the ex-Ministers of the immediate past government were present inside the Court. The front bench which is reserved for the officials of the Attorney General's Office was completely occupied by the high profile lawyers of the past government. At one stage the Attorney General could not find any room for himself. Everyone was waiting breathlessly. The Honourable Judges entered into the room a little after 2 pm and abruptly the Attorney General handed over an order of the CJ (Chief Justice) staying the proceedings of all the three writs including the one which was not even taken up for hearing. We are not here to discuss whether he can or can't. However, we would try to narrate how it was perceived on that day.

On that day the entire nation was shocked to see the disorder in the court building. However not many understood what actually happened on that day to this poor nation. The following day



national dailies published different news item about numerous incidents when the present CJ apparently interfered with the justice delivery system on political ground.

The incidents that happened on that day in the apex court have two aspects, one is visible and the other is invisible to general people. The one which was visible to the nation is also disgusting. However the other aspect which was not understood by many has created dangerous precedent in our judiciary. Many who understood actually what happened on that day till date do not want to talk about it or even think about it.

The nation was left with no other alternative for justice against tyranny of government (elected or caretaker). As a lawyer we fight for our clients' rights and at times, if there is a good case, we create legal pressure on the court for justice. Our job is to interpret law in line with the facts before us. We expect nothing but a complete victory of our clients whenever the situation demands. However, on the 30th November, 2006 we felt that we would not be able to do that anymore. We also feel that not only our profession is in jeopardy but the entire justice delivery system is in great danger. From now on anyone can be stopped from coming before the court and seeking justice. Many are openly criticising the CJ.

May we dare to issue a Public Notice in the form of a Rule Nisi calling upon the present CJ to show cause (1) what on earth would have happened if his Lordship kindly waited only a day and allow the High Court Division to function normally? (2) What exactly would have happened if a Rule Nisi was issued on that day? and (3) Does he know hundreds of much talked about, well publicised and high profile Rules are rotting inside the court file without there being any prospect of showing them light in the near future? I don't think we can. Similarly, does anyone care that purportedly last year the Hon'ble Supreme Court was closed for about 230 days? Moreover in most of the cases Rule means simply nothing unless it is hard on time. Even if we issue a Rule to the CJ there is no possibility he would respond to that. On many occasions Rules are becoming outdated and lawyers are withdrawing their application for non prosecution.

We are not in a position to judge the Honourable CJ of Bangladesh. However we certainly can pray for him. God bless him.

This is a fortnightly column and the columnist is an advocate of the Supreme Court, Bangladesh, who can be reached at mail@legalsteps.net

LAW opinion



Law and language

BARRISTER M. OMAR BIN HARUN KHAN

THE whole legal process is inherently tied up with language. The popular image of law is one that emphasises the oral element of legal tradition, that is, the process of argumentation before a court of law. Even the reality, which for most practising lawyers is rather more non-poetic than the way envisaged in the television or cinema, is still a world in which legal documents fill up much of the day. 'Words' thus dominate in the legal landscape.

It is widely recognised that there is a substantial gap between 'legal' and 'everyday' language. In some respects, that gap is narrowing as lawyers are coming to use more naturalistic everyday language, but the continued relevance of old status and precedents means that what are really archaic forms of language are still very much in use in the legal arena, though it is to be said that lawyers are not wholly innocent in the perpetuation of this gap. The law has always tended to be a conservative institution, and the traditional usage of legal jargons has often been presented by some as part of the attraction or mystique of law.

This existence of a 'distinct legal language' has wide social effects. The extent to which law relies upon its own language is a very basic indication of the closed nature of legal argument. The need to develop the 'specialist' skills of a lawyer has effect of excluding lay persons, that is, non-lawyers from entering into the legal discourses. This consequently puts a limit upon the ability of citizens to gain access to the justice system, which is actually very much needed. Unless and until we use the simple everyday language in drafting statutes, drafting the petitions, formulating the laws, delivering the judgments etc, the aim to achieve 'access to justice' for all can in no way be achieved. The special use of certain forms of language also serves to disguise rather than enhance our understanding of the legal system. This reflects what Grossfeld described as 'law as camouflage' (1990: 47).

The facet of language not only creates difficulties for lay persons, but also for lawyers outside that very legal system. Hence, legal language is both an important symbol of the power of law itself to define, deliberately or otherwise, who may exercise legal rights, and to disguise the uses of law by those within the system from those outside.

Turning to a different aspect, which has nothing to do with the type of language used in the legal matters, whether 'specialised' or 'everyday', we should focus on the important aspect of the use of language in describing the facts. Facts in a case

need to be described -- which of course, requires language. Linguistic differences can be said to affect what had happened in the reality. In the legal environment, the ability of a witness to communicate his/her testimony will be of great importance, because it is the act of communication which creates the facts of the case. Variations in the presentations made by the witnesses can have a dramatic effect on the court's perception of the witness's credibility and more importantly on the court's structuring of the facts.

In the similar vein, the ability of a lawyer to describe the facts and laws also plays a vital role in the Court's understanding of the facts of the case and thereby has a very close and direct connection with the judgement to be delivered in the case. The linguistic art of a lawyer is considered to be one of the most important factors behind the success or failure of a lawyer along with the depth of his/her legal knowledge. The variation in the presentations of law and facts by the equally wise lawyers render them unequally successful.

Language plays the predominant role in interpreting the statutes. The Parliament finishes its job merely by the enactment of statutes and then it is the courts and the lawyers who take the lead. In most of the cases, the meanings of various words and terminology are defined in the very statutes themselves. Furthermore, the General Clauses Act 1897 comes into rescuing the court, when the statute contains no definition of a particular word used therein. Despite all these, the law is not always what the Parliament wanted it to be, but very often how it has been interpreted by the courts with the helps of the lawyers' charismatic use of language. If the legal system of a country is based on common law, then the statutory interpretation becomes more important. The courts mostly through their judgments offer the interpretations, as it is not always a common scenario that the statute is defining most of the words used therein. The interpretation so given by the courts then become binding upon the future courts following the doctrine of binding precedents.

It is not an over-statement to say that law is nothing but the linguistic interpretation of some provisions. Laws can be given different shapes based on the language used to describe it. The law means 'the law', how it is interpreted in the courts by using the art of interoperation. The relationship between law and language is indivisible and hence the need to use the proper language is undeniable.

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LAW letter



Cyber pornography and our law

DELARA HOSSAIN

IN any society when a victim suffers physical harm, we can at least see his/her discomfort physically. However, when a person is victimised by the 'abuse of technology', then he/she suffers mentally which is not apparent but at times more distressful than physical pain and sufferings. In our country, the most recent technological crime involves 'cyber pornography'. Women are always the obvious victims of such crime. It is also true that in most cases, women are not victim by desire and as such, decide to commit suicide to avoid personal and family dishonour and social stigma.

Bangladesh is a poor country and technology is perceived to be an essential factor for the country's development. In our every day life we are using cellular phone, computer, internet, i-pod etc. These technologies are affecting our society in various ways, especially in case of communication network building at national and international levels. Nevertheless, we need to have proper safeguard against the possible abuse of such technology.

We are now in the 21st century and by the help of technology, we have reached from mud to moon. Technology can immensely benefit the society but one needs to be aware of its possible abuse. In many developed countries the society is protected under law against such abuse of technology. However, in our country we do not yet have necessary laws to deal with 'cyber crime' in

general and 'cyber pornography' in particular.

There are various reasons for which cyber offences can take place in any society. The major reasons are:

(1) Cheap availability of technology: Due to increasing advancement in scientific invention, technology is made easily and cheaply available to all. For example, in our country any person can buy a cell phone at minimum taka 3000 or can use internet for only taka 20 per hour. So, this cost-effective use of technology is very often ventured by the cyber offenders to further their ill motives.

(2) No qualitative limit on technology uses: There is no quality control over technology uses. Anyone can buy a cell phone or can use internet at any time anywhere and more importantly, for any purpose. Also, there is no age restriction for using technology. As a result any person, even below the age of majority, can visit porno websites. Also, there being no quantitative and qualitative limitation on technology uses, cyber crimes, such as, hacking, cyber pornography, cyber assault etc. are becoming frequent phenomenon in our daily lives.

(3) Absence of legal control: Law is essential to regulate any society. No one can deny that law plays a crucial role in maintaining peace and order in the real world. This is also true for the cyber world. Like the real world, effective legal provisions should be created to control the virtual peace and order. However, in the absence of an effective legal control regime in the cyber world, cyber offences are increasing in number.

Cyber pornography also gives rise to the issue of privacy for the non-consenting victims. Privacy is the expectation that confidential personal 'information' disclosed in a private place will not be disclosed to third parties, when that disclosure would cause 'either embarrassment or emotional distress to a person of reasonable sensitivities.' For this purpose, information is interpreted broadly to include facts, images (e.g., photographs, videotapes) and disparaging opinions. Therefore, a victim of cyber pornography can always complain against encroachment on her privacy. Unfortunately, in our country we do not have any privacy law as yet.

In conclusion, Bangladesh needs to have necessary privacy laws to protect the victims of cyber pornography. The right to privacy in the internet is an emerging human rights which is getting recognised in many developed countries of the world. In this regard, a well-formulated 'Cyber Privacy Law' for Bangladesh is very much a necessity of the time.



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LAW week



Probe on to know how defaulters escaped list

The Bangladesh Bank (BB) formed an investigation committee to find out why the Credit Information Bureau (CIB) report on known loan defaulters, who are also aspiring candidates for the next upcoming parliamentary election, was not sent to the returning officers. The committee will identify the current weaknesses of the bureau for avoiding similar mistakes in the future. The CIB report containing detailed identities of loan defaulters did not identify Mossaddeq Ali Falu as a loan defaulter although he had been listed as one by Oriental Bank. Falu is an aspirant candidate for the Dhaka-10 constituency in the upcoming election with a BNP ticket, who had not been disqualified by the returning officer concerned despite being a much talked about loan defaulter. -- *The Daily Star, December 31.*

6 constituencies have 14.7pc excess voters

A survey by a non-governmental organisation (NGO), Brottee, in six constituencies of the country found 2,02,763 or 14.7 percent excess voters on the current voter lists of those constituencies. The survey conducted through door-to-door visits revealed that the new actual number of voters in the six constituencies should be 14,86,589 while the Election Commission's (EC) voter list shows 16,89,352 persons as voters in those constituencies. On the 2001 voter list the number of voters in the six constituencies -- Bagerhat-1, Gopalganj-1, Jhenidah-4, Kushtia-1, Narayanganj-3 and Satkhira-2 -- was 13,78,851. "Mistakes must have been made during inclusion and deletion of names while Election Commission officials updated the voter list, leading to such an excess of voters," Brottee Chief Executive Officer (CEO) Sharmin Murshid said at the survey result dissemination programme in Cirdap auditorium. Brottee conducted the survey in association with three other NGOs Peoples' Participation and Research Centre (PPRC), Unnayan Shamannay, and The Hunger Project -- in which more than 10,000 grassroots level NGO workers collected and verified data. -- *The Daily Star, December 31.*

Grand alliance boycotts Jan 22 election

Awami League (AL)-led grand electoral alliance announced it will boycott and resist the parliamentary election set for January 22, alleging that all the electoral preparations by the government so far have been for 'stage-managing the next election in favour of BNP-Jamaat-led four-party alliance'. In defence of its latest decision, AL President Sheikh Hasina at a crowded news briefing alleged that an atmosphere conducive to a fair election has yet to come to existence although only 19 days are left for it; instead of a neutral caretaker government President Iajuddin Ahmed established a shadow government of BNP-Jamaat; a flawless voter list safeguarding the people's right to universal franchise has not been prepared yet; and the administration still remains politicised. "Assuming the office of chief adviser to the caretaker government illegally, Iajuddin Ahmed wants to hold an election without a valid voter list. A free and fair election is not possible with the current voter list...it was prepared only to hold an election designed in line with the blueprint provided by BNP-Jamaat alliance. We can't give legitimacy to such an election, and for this, we have decided not to participate in a stage-managed election," the AL president announced in the briefing organised by the grand alliance at Hotel Sheraton in the capital. -- *The Daily Star, January 04.*

Court courts new attention

The country's court has been the centre of some important verdicts that had significant repercussion in the political arena in the last few months. A number of politically important new cases came up at the court during the last few months, but none was resolved but only "stayed". At the same time only a couple of cases related to former autocrat Ershad were revived after more than a decade. One of them was resolved by the High Court (HC), and is now pending with the Supreme Court (SC). While such developments at the court made the BNP-led four party alliance very happy but these left the Awami League (AL)-led grand alliance extremely disturbed. The Attorney General's Office (AGO), which is allegedly run by officials openly inclined towards the four-party alliance, has become a centre of controversy. -- *The Daily Star, January 04.*

Army to control streets before blockade

The armed forces along with law enforcing agencies will take control of the streets ahead of the countrywide blockade called by Awami League (AL)-led grand alliance on Jan 7 and 8, a top official of the home ministry said. "No blockade will be allowed," the official told UNB after a meeting of the advisory committee on law and order, chaired by President and Chief Adviser Iajuddin Ahmed in Bangabhaban. The official said the caretaker government decided to take tough actions against the blockade called by the grand alliance. "The role of the law enforcement agencies will be to protect the interest of those who will take part in the election, not of those who will try to defy the constitution," the official said on condition of anonymity. He said the law enforcement agencies and the armed forces were called out to take control of the streets ahead of the blockade to maintain order in aide of the civil administration. -- *The Daily Star, January 04.*

Writ petition filed against takeover as acting CEC

A public interest litigation (PIL) writ petition challenging the legitimacy of Justice Mahfuzur Rahman as acting chief election commissioner (CEC) is likely to come up for hearing after the High Court reopens on January 10. Mahbub Minhaj, a businessman, filed the petition during the current vacation of the court. Election Commissioner Justice Mahfuz took over as acting CEC on November 23 after CEC Justice MA Aziz agreed to go on leave for three months. The petitioner submitted that there is no provision of acting CEC in the constitution. He also sought for appointment of a new CEC and declaration of Justice Mahfuz's actions relating to election process as illegal. *Unb, Dhaka, January 05.*

Ershad asked to surrender by Jan 17

A Dhaka court asked former president and Jatiya Party Chairman HM Ershad to surrender within January 17 in connection with a Japanese boat purchase case. Judge Mohammad Amirul Islam of the First Additional District and Sessions Judge's Court passed the order and set the date after scrutinising the copy of the High Court (HC) judgement delivered on December 14 last year and other relevant documents of the case. Justice Faisal Mahmud Faizee of the single-member HC bench handed Ershad two years' imprisonment rejecting his appeal against the trial court's verdict. Faizee in his verdict asked Ershad to surrender before the trial court without specifying any time or date. Judge Jinnatah of the trial court sentenced Ershad to three years' imprisonment on July 6, 1995. The court also fined him Tk 10,000 and in default, he will have to serve four more months in jail. The same year Ershad filed an appeal with the HC against the lower court verdict. HM Ershad, who usurped power through a bloodless coup in March 1982 and was deposed in December 1990, was found guilty of misappropriating Tk 33 crore in a shady deal for purchasing 520 Japanese boats and 10 water-purifying machines for relief operation in 1989. *The Daily Star, January 05.*

Oriental Bank Scam

ACC sues ex-MD, 13 others for graft

The Anti-Corruption Commission (ACC) has filed 29 graft cases against 14 former and current officials of Oriental Bank Ltd, including its former managing director CM Koyes Shami, for embezzling Tk 33.3 crore. The cases were filed with Motijheel and Kotwali police stations on December 28 and 29 for misappropriating the money in fake names and organisations, said an ACC press release. Following news items published in different dailies on the scam, the ACC made partial enquiry into the matter and filed the cases, said the release adding that several cases are in process to be filed. The other accused bankers are -- Imamul Huq, former deputy managing director, Fazlur Rahman, assistant vice president (AVP), Kamrul Islam, executive vice president (EVP), Shah Mohammad Harun, senior VP, Abul Kashem Mahmud Ullah, senior assistant VP (SAVP), Mohiuddin Ahmed, AVP, Mahmud Hossain, senior executive VP (SEVP), Touhid Uddin Khandakar, senior officer of Bangshal Branch, Syed Mahmud Hassan, AVP of the same branch, Tarikul Alam and Jahir Hossain, executive officers of principal branch, ANM Asifur Rahman, SAVP and former manager of the Bangshal branch and Arif Kadri, former SEVP, now working at One Bank. *The Daily Star, January 05.*

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