



LAW opinion

## Republic, political parties and local government

JUSTICE MOHAMMAD GHOLAM RABBANI

THE dictionary meaning of the term 'republic' is 'a country wherein the people elect their government'. Thus republic and democracy are synonyms. Democracy is a system of government for the people through representatives whom they elect within the atmosphere of freedom of speech, religion and political opinion. Second paragraph of the Declaration of Independence of the United States of America dated July 4, 1776, runs as follows: "We hold these Truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable rights, that among these are life, liberty, and the pursuit of happiness. That to secure these rights, governments are instituted among men, deriving the just powers from the consent of the governed. That whenever any form of government becomes destructive of these ends, it is the right of the people to alter or to abolish it, and to institute new government, laying its foundation on

such principles and organizing its powers in such form, as to them shall seem most likely to effect their safety and happiness."

Thomas Jefferson was president of the USA from 1801 to 1809. He died broke. He sold his books to the Library of Congress and his friends organised a lottery to sell part of his lands, but that was not enough. He died a widower on July 4, which was the 50th anniversary day of the Declaration of Independence. Jefferson's last words were, "Is it the Fourth? I resign my spirit to God, my daughter and my country." His epitaph reads: "Here was buried Thomas Jefferson, author of the Declaration of Independence, of the Statute of Virginia for Religious Freedom, and the father of the University of Virginia." The epitaph, however, did not include "President of the United States" obviously because he was the president by the choice of the people and it was not considered at all his achievement. This is one among numerous instances for which democracy in USA did not face any obstacle so long.

Yet, a question crops up due to recent scenario in

USA whether presidential system in USA has reached the end point. Then comes the similar question due to recent scenario in Bangladesh whether parliamentary system has reached the end point. The answer will be yes if we do not accept the statement that though in a democratic State every citizen would participate in public administration, but nowadays the States are so much larger territorially and so numerous in population that the practice is impossible. This problem of people's participation was somehow solved until now with the device of the representative government. It is based on doctrine of delegation of power. Sovereignty belongs to the people so they can surrender it to their single representative or a group of representatives. Then he or they rule on the authority of the metaphysical general will, which however in practice supercedes all individual wills. Representative government, being conditional on the delegation of power, is a negation of democracy. At best it can be said that it is a government for the people, but government of the people and by the people is only possible in direct democracy.

With the system of representative government political parties formed by self-selected leaders rise to usurp individual sovereignty and thus the party system eclipses the former. Under representative system, government is theoretically controlled by the people, at least indirectly through the parliament. But under the party system government is controlled by the party in power and responsible only to it. To get the control of government parties must have a parliamentary majority and for that all means are adopted. A committee of only a few members of a party selects the candidates in the election for the members of parliament. Political practice under party system discards morality and its sole purpose becomes lust for power, sectional selfishness and class hatred. Even nominal democracy in this process disappears justifying dictatorship of one form or another.

Is direct democracy, then, at all possible or, in other words, is people's republic, then, at all possible? The answer, a very simple one, is this: Direct democracy is possible if there are local republics at the base constituting the foundation of the Republic. Through the medium of local republics every citizen will actively participate in the political administration of the entire country which will decentralise power; the function of the central government will be to co-ordinate the activities of a plurality of social,

economic, educational and cultural institutions. The declaration in article 7 of the Constitution of Bangladesh, "All powers in the Republic belong to the people", will be then a reality and cease to be an abstract idea; it will be felt and enjoyed in the daily life of individual men and women who will be, thus, restored to their position of sovereignty. A movement spreads from one local republic to another thereby every citizen interacts with the stories of "how to do it", "the right way to do it" and "this is the way they do it."

That was the aspiration of the people of Bangladesh who through a historical struggle for national liberation established independent, sovereign People's Republic of Bangladesh and consequently there are provisions for the local republics in the Constitution. These are to be found in article 59 and 60 of the Constitution as quoted below:

"59(1) Local government in every administrative unit of the Republic shall be entrusted to bodies, composed of persons elected in accordance with law.

(2) Everybody such as referred to in clause (1) shall, subject to this Constitution and any other law, perform within the appropriate administrative unit such functions as shall be prescribed by Act of Parliament, which may include functions relating to - (a) administration and the work of public officers; (b) the maintenance of public order; (c) the preparation and implementation of plans relating to public services and economic development.

"60. For the purpose of giving full effect to the provisions of article 59 Parliament shall, by law, confer powers on the local government bodies referred to in that article, including power to impose taxes for local purposes, to prepare their budgets and to maintain funds."

Article 152 says 'Administrative unit' means a district or other area designated by law for the purposes of article 59.

Therefore, there is no logic why one would not agree that partyocracy and its follow-up, the dictatorship, have engulfed the parliamentary system and consequently we have a non-party caretaker government which is not within the normal framework as in the Constitution, but as the people wished. Consequently this government is required to transfer first the administrative power to the people through Articles 59 and 60 and only then to the Parliament.

The writers is retired Judge, Appellate Division, Bangladesh Supreme Court.

HUMAN RIGHTS analysis

## Culture of impunity risks Nepal's peace process, UN senior official warns

United Nations Deputy High Commissioner for Human Rights Kyung-wha Kang, who recently visited to different troubled spots of Nepal, has expressed her concern on the need to end impunity on 3 February. She said, "The consolidation of the peace process will continue to be at risk without political will on the part of the authorities to end this culture of impunity".

Referring to the visit by High Commissioner for Human Rights last year, she said that impunity remains unchecked in Nepal and not one perpetrator of the past or on-going human rights violations has been convicted. The High Commissioner had made a similar statement also after her visit.

An estimated 13,000 people were killed during the civil conflict that formally ended when the government of Nepal and the Communist Party of Nepal (Maoists) signed a peace accord in 2006. The agreements between the parties include the establishment of a commission on disappearances and a commission on truth and reconciliation.

These are important measures "to bring out the truth, address the past, and also the underlying causes of the conflict with a view to ensuring that the violations of the past are not repeated", she stressed. She stressed that the Truth and Reconciliation Commission (TRC) has to be established and put into operation in accordance with international standards to end the culture of impunity in Nepal.

Kang also said that the security vacuum in the Terai plains had led to



sectarian violence. "Perpetrators can be identified but the victims have no confidence in the justice system after having experienced violence and displacement on multiple occasions", she said.

She pointed out that the law enforcement agencies need to represent the population and need to enforce the law firmly and impartially respecting human rights in order to gain the trust of the affected communities in Terai.

Pointing out that ongoing impunity as well as a security vacuum due to weak law enforcement and criminal justice had led to an increase in violent actions, including killings and abductions by armed groups, Kang said, "These acts of violence only serve the interests of those seeking to disrupt the peace process and will make more difficult the holding of free and fair elections".

The elections for the Assembly, which was supposed to draft a new constitution for Nepal, were originally scheduled to be held in June last year. However they were postponed because of continuing mistrust between the government and the Maoists.

In addition, the Deputy High Commissioner noted that discrimination based on caste, gender or ethnicity remains "entrenched" in Nepali society. She stressed the need to address the problem "or it will continue to place the peace process at risk".

She, however, expressed satisfaction over some of the developments including in addressing the situation of marginalised groups and appointment of commissioners to the National Human Rights Commission (NHRC).

Source: Asian Forum for Human Rights and Development.

## US seeks death penalty for Guantánamo detainees

The Pentagon announced on Monday that it has charged six "high-value" detainees at Guantánamo Bay. The US government is seeking the death penalty against the six men.

A spokesperson for Amnesty International condemned the move, saying the charges raise yet more questions about the USA's conduct in the "war on terror".

"A matter of weeks after the United Nations General Assembly voted for an end to executions, the USA is raising the spectre of death sentences after fundamentally flawed trials in Guantánamo. The international community must challenge the USA to drop these military commissions and conduct trials in front of independent and impartial courts, without resort to the death penalty," said Rob Freer, Amnesty International's researcher on USA.

Five of the six men charged were held for more than three years in secret CIA custody at unknown locations before being transferred to Guantánamo in September 2006. The CIA has also confirmed that at least one of the men charged, Khalid Sheikh Mohammed, was subjected to "waterboarding" simulated drowning. "Waterboarding is torture, and torture is an international crime. No one has been held accountable for such crimes. Impunity in relation to the CIA program remains a hallmark of the USA's conduct in the 'war on terror'," said Rob Freer. "Ever since the crime against humanity that was committed on 11 September 2001, Amnesty International has called on the USA to pursue justice and security within a framework of respect for human rights and the rule of law. The US government's systematic failure to do this is illustrated not only by the treatment of these six detainees over the past five years or more, but also by the military commissions before which they are set to appear."

The sixth man charged is Mohamed al-Qahtani, who was subjected to torture and other ill-treatment in Guantánamo in late 2002. Despite suffering sexual and other humiliation, sleep deprivation, hooding, stripping, loud music, white noise, and extremes of heat and cold, the Pentagon concluded that his treatment did not amount to inhuman treatment.

"The Pentagon, along with the President, has overreaching influence over the operation of the military commissions," said Rob Freer. "In other words, these sub-standard tribunals lack independence from the same executive branch that has authorized and condoned systematic human rights violations committed against these detainees."

Source: Amnesty International Press release.

LAW views

## Language of law

MUFASSIL M M ISLAM

WE have a universal language which everybody can use to communicate. The language of claiming our rights and the responses for despair, sadness and happiness are cradled in our smiles, tears and actions. Mothers do feed their babies when they cry and we, parents go over the moon when we see our babies smile. The plight of refugees and the frustration of queuing hungry millions in Darfur region of Sudan tell many stories indescribable in words.

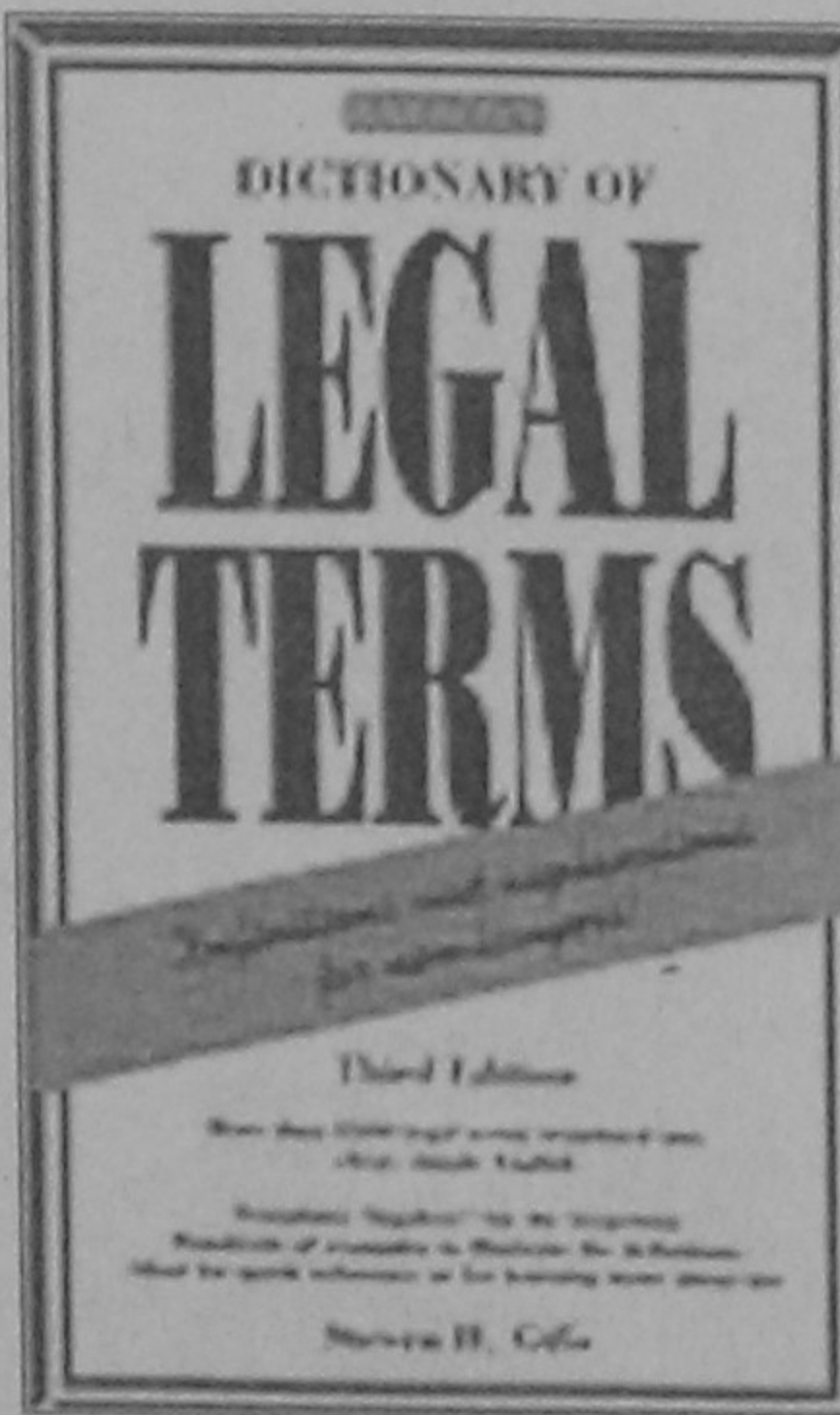
Nature has paved our ways to make us a civilized society. We have learnt to use tools to make our lives easier. We boast about our linguistic genius. We draw political borders to celebrate and nourish individual entities as nations, races and cultures.

Time has progressed to create a homogenous relationship with our tools. We long for our homes and our birthlands as we are unable to express our inner feelings, thoughts and emotions in strange lands. To talk in our mother tongue is our basic human right and we Bengalis have poured our souls and blood to uphold that in 1952. We have showed the world that our mother-tongue and our national entity are inseparably connected.

A nation cannot rise if they are not able to uphold their own honour and dignity by showing their unique abilities. USA and Australia have been practising and demanding a different style of English that they are demanding to be different from the English of England and Ireland has woke up to finding their own Irish language by writing Irish lingua above English on top of every road signs and official notes. Needless to say, now after many years of British rule, most of the Irish people are unable to speak Irish. The Soviet Union barred Latvia, Lithuania and other conquered states in many ways to force from speaking other than the Russian language and thus crippling their very entity. It is officially not acceptable

for the Kurds to use their language in Turkey which gave them cause of frustration which is now universally known.

The question of sovereignty is very much rooted to linguistic proliferations. With the advent of the Satellite Channels, our youths are subjected to unrestricted onslaught of foreign culture, language and ideas. Without strong parental guidance, we are prone to breeding a foreign cultured society within our society which we will find self-contradictory within



decades. Our parents already pride in sending their children to English medium schools where the educational standards in many cases are very praiseworthy and the excellent results from those institutions pave ways for easy migration to foreign lands. But it is questionable how many of these brilliant children of the soil know their own language well or even know for which writing Tagore became

Nobel laureate and why we revere Sher-e-Bangla.

Many years have passed, we are yet to have a National Education Policy and the unrestricted multifarious foreign academic systems embrace our society with a harder polar bear hug. If we be realistic, our grandfathers who were educated before 1950 and spoke comparatively better English were all equally devoted to Bengali. So, what went wrong? For knowing the world, knowing wisdom, it is always praiseworthy and required to master foreign languages as well. Without the knowledge of Urdu, it is really difficult to know Iqbal's verses and without the knowledge of Farsi, Rumi remains unknown in his thoughts. But we, as Bengalis need to master our own language to know how to express ourselves with the use of the tool of the tongue that we named Bengali language.

Our rights, our demands and our thoughts can be best expressed with our own Bengali language and to do that we need to agree with our rights unitedly and to enforce that right we need to establish our Judiciary in a Bengali respecting system.

There are many problems in reaching our goal of a completely Bengali oriented Judiciary. A few are as follows:

1. Our present legal system has been fashioned in accordance with the English legal system and our legal researchers are immensely dominated by the collection of lexicons, archives of English based research works, decisions and records;
2. Modern world follows English as the lingua franca and to keep pace with the modern legal development around the world, we are required to engage in constant research in English language;
3. Most of our senior lawyers and legal researchers hailed from a time when the thought of introducing Bengali in our Judicial system did not get momentum and therefore we lack wisdom in an already existing trend;
4. Many lawyers had their academic life in English medium and therefore there is a tendency to push the issue of a

Bengali oriented Judicial system under the table;

5. Lack of government attention in the relevant areas of required work keeps the matter under-funded;

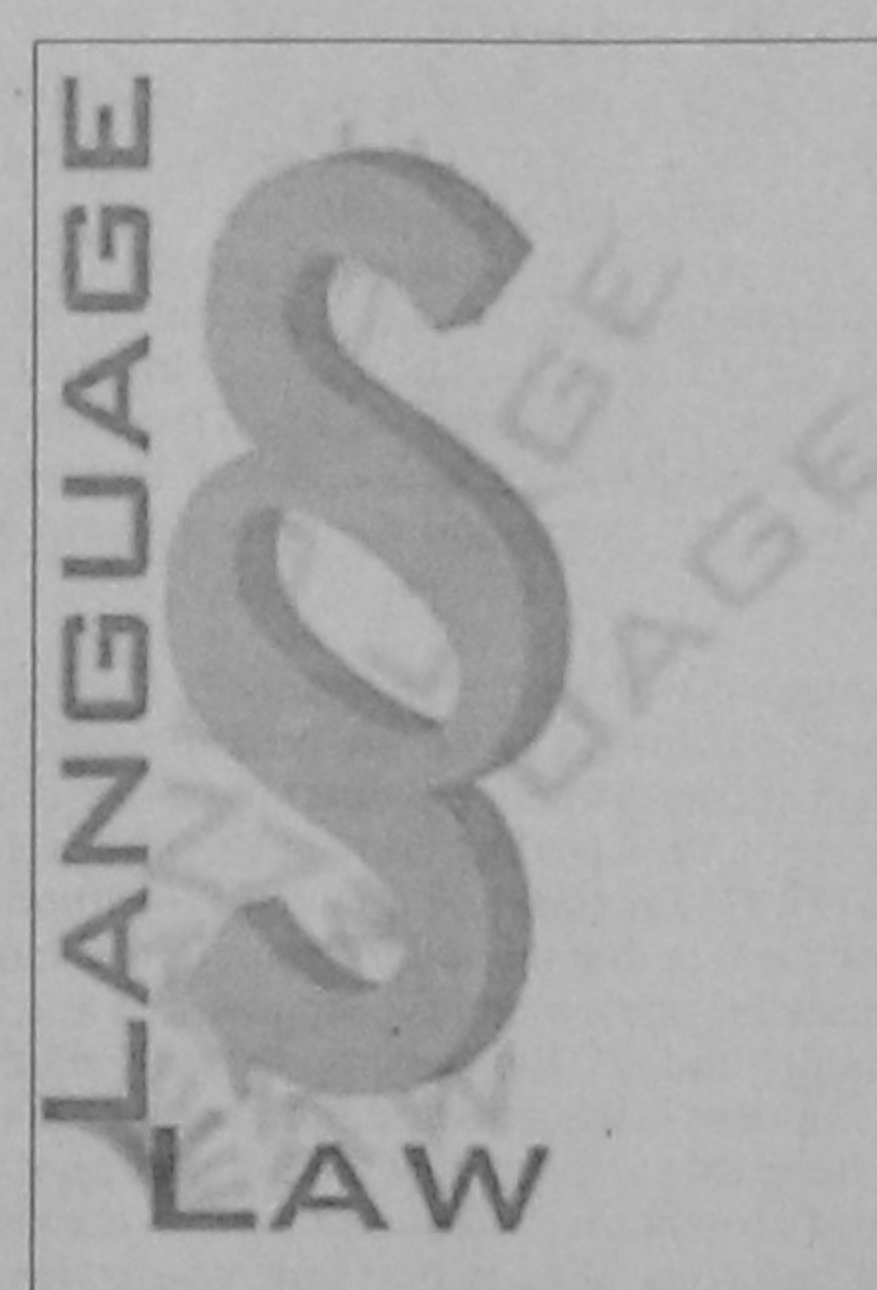
6. Influx of lawyers without any basic legal degrees from Bangladesh, rather Barristers with completely foreign degrees are usually completely against the lobbying for a Bengali oriented legal system as that will make their practise difficult to keep in line.

We, lawyers, judges and students of law must understand that, in time, we will be able to become used to translating our researches in Bengali and transferring our English skills to Bengali skills. Lawyers who are expert in both Bengali and English and in many cases in other languages, with their foreign degrees (in certain cases) and foreign trainings will be better and finer lawyers as their research world will become broader. A lawyer who does not know English will definitely have to struggle in the practice of law as s/he will have to rely on other English knowing staff to assist her/him in researches.

My visit to South Korea and Japan surprised me at their lack of the use of English language but I was equally surprised when I met lawyers in those countries. Most of the lawyers in South Korea and Japan speak commendable English and the reasons we probably have agreed by now. We can do further research in this area by going to Language, Culture, and Pedagogy: An Overview of English in South Korea and the web link is <http://www.chass.utoronto.ca/~cpercyc/courses/eng6365-flattery.htm>.

Our government may follow the example of Estonian Government in developing a national educational policy keeping in mind our own entity and the requirement of adopting foreign and timely tenets. It is worth following this link <http://www.legaltext.ee/text/en/X0121.htm>.

There are several legal translating services around the world which can help any lawyer, law student and even researchers in their translation works with the click of a button. An example of such a



service is <http://www.legallanguage.com/llstranlation.htm>.

Many lawyers and other educated people can endeavour to set up such services which should bring businesses for them as well.

We, should endeavour to teach our children and our students the use of articulated English and excellent Bengali. It is not impossible to know both the languages but in the present world, we are required to know our own mother tongue and English hand in hand as we cannot know ourselves completely if we do not know our own language and we cannot express ourselves to foreigners if we do not know English and if we progress with this end in view, time may not be far when we, like the Japanese academic institutions, will demand knowledge of Bengali to become students in our celebrated academic institutions of the future.

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