

Freedom of press and contempt of court



Sanctity of the court must be upheld.

In a move termed unprecedented by eminent lawyers, the Appellate Division of the court convicted Mahmudur for publishing a report on April 21 under the headline "chamber manei sarkar pakkhe stay" (chamber bench means stay order in favour of the government). The verdict has aroused mixed reactions from both home and abroad.

MOZAMMEL H. KHAN

THE Supreme Court of Bangladesh on August 19 passed a verdict relating to protecting the image of the judiciary, and sentenced Mahmudur Rahman, acting editor of daily *Amar Desh*, to six months in prison for gross contempt of court.

In a move termed unprecedented by eminent lawyers, the Appellate Division of the court convicted Mahmudur for publishing a report on April 21 under the headline "chamber manei sarkar pakkhe stay" (chamber bench means stay order in favour of the government). The verdict has aroused mixed reactions from both home and abroad, apprehending that it was a sign of curbing of the freedom of the press.

The *Daily Star* in its editorial wrote: "If

judiciary is the fountainhead of justice, free press is the vehicle of freedom of expression of all citizens and as such an essential pillar of democracy. A fine balance needs to be struck between the sanctity of the judiciary exalted in its own right, and a flourishing free press upholding the people's right to free expression and information." Emphasising that "independent press has its moorings in journalistic ethics" the editorial further said "the question does arise as to whether punishing editors and journalists under contempt law protects and enhances the dignity of the judiciary."

The Committee to Protect Journalists (CPJ), a New York-based rights body, requested the Supreme Court (SC) to review its judgment on journalists in Bangladesh. "We call on the Supreme Court to overturn the convictions of

Amar Desh staff, which has set a chilling precedent for Bangladesh," said CPJ Deputy Director Robert Mahoney. "Journalists should be able to report on the legal system without fear of criminal charges."

In the words of the legendary former Canadian chief justice Brian Dickson: "Any act of writing calculated to bring a court or a judge of the court into contempt, or to lower his authority, is a contempt of court. However, the court must be satisfied beyond reasonable doubt that the publication of the alleged contemptuous material constituted a real and substantial risk of prejudice to the integrity of the administration of justice."

In my limited research involving democracies with independent and impartial judiciaries I have not come across any instance where an accused of contempt of court involving publication of contemptuous materials did not offer an unconditional apology to the court. In Ontario superior court a repeat offender was sentenced (September 7, 2001) for publishing materials in his website that tarnished the image of the court although he offered unconditional apologies in both occasions.

Incidentally, the day following the conviction of Mahmudur Rahman, two editors of a Marathi newspaper were hauled up by the Bombay High Court for publishing a series of baseless, offensive articles that accused the judiciary of corruption in its handling of a case. However, while they almost landed in jail for the contemptuous articles, the HC let them off with a penalty of Rs.1,000 and a warning after taking their age, health complications and repeated apologies into consideration.

The editors of the newspaper tendered unconditional apologies for publishing the scandalous articles and even published the same in their newspaper. In fact, they even denounced their own newspaper as having "very little circulation and falling under grade D," thereby having little impact on the readers' minds.

In their judgment on contempt of court against Arundhati Roy, the famous Indian writer, two justices of the Indian Supreme Court said that they had no option but to convict her because she had committed the offence of criminal contempt of the Court by "scandalising its authority with mala fide intentions" and, further, had not shown "any repentance or remorse." Instead, they said, she had persistently and consistently tried to justify her action which, prima facie, was contemptuous of the Court.

The Bangladesh Constitution in Article 108 states: "The Supreme Court shall be a court of record and shall have all the powers of such a court including the power, subject to law, to

make an order for the investigation of or punishment for any contempt of itself." The constitution guaranteed the freedom of press in article 39(2) subject to any reasonable restrictions that includes, among others, "contempt of court."

As The Daily Star editorial pointed out, the independent press has its mooring in "journalistic ethics" and the onus lies primarily on the editor, publisher and contributor of the press to self-validate if that is being maintained. Contributing a column in one or more print or electronic media or owning a newspaper does not make one a journalist; there is much more to it to earn that distinction.

According to CPJ, "journalists should be able to report on the legal system without fear of criminal charges." Reports on the legal system and sweeping remark on the nation's highest court are not identical matters. One has to remember that the justices, on one hand, enjoy immense power while on the other they are bound by severe restrictions. They cannot call press conferences or send rejoinders to the news media to explain their side of the story.

Moreover, it was not a suo motu case and the convicted "journalist" did not show any repentance or remorse while himself presenting his case to the highest court. His arrogance did not let him address the justices of the Supreme Court appropriately, which itself is a case of prima facie. In his submission to the court he even came up with more acrimony, notwithstanding the fact that it was the very court that ordered the lifting of the government ban on the publication of his newspaper.

In a contempt ruling against Edmonton Sun, Justice M.A. Binder of Alberta Court of Queen's Bench in 2000 observed: "Freedom of expression and of the press will yield to safeguard the integrity of the course of justice." In the case in question, one has very little reason to disagree with the opinion of the Bangladesh Attorney General when he said: "The trend of making negative comments about courts would reduce following the Supreme Court verdict against Mahmudur."

Or else the hawkish politicians in journalists' guise will be encouraged to write, in the name freedom of press, whatever it takes to damage the institution of the judiciary and thereby weaken the faith of the public. If such an attempt is not prevented, disastrous consequences are likely to follow, resulting in a break in the nation's arduous journey towards establishing rule of law, the expected norm of any civilised society.

Dr. Mozammel H Khan is the convener of the Canadian Committee for Human Rights and Democracy in Bangladesh.

Orientation of accountability in Islam

Accountability in the broad sense is central to Islam. In the Holy Qur'an the word *hesab* (account) is repeated more than eight times in different verses. The references appear in generic sense, relating to one's obligation to account to Allah (God) on all matters for which every Muslim is accountable.

M. EMDADUL HAQ

THE UN body Escap identified accountability as one of the core attributes of good governance. Accountability in the present context has been featured by the politico-administrative and religious institutions that have evolved over centuries across the globe. This article addresses the role of Islam in maintaining accountability both for worldly and for eternal purposes.

Accountability in the broad sense is central to Islam. In the Holy Qur'an the word *hesab* (account) is repeated more than eight times in different verses. The references appear in generic sense, relating to one's obligation to account to Allah (God) on all matters for which every Muslim is accountable.

Every Muslim has an account with Allah whereby all good and bad actions are recorded, and it will continue until death. Two angels -- Keramun-Katebin -- take notes of everyone's behaviour.

Allah has warned human beings to be ready for the test of the Hereafter. The testing is started by the Angels Munkir-Nakir immediately after a dead body is buried. Finally, the graves will be opened and Allah will resurrect everyone and show all the people their accounts on the Day of Judgment.

People will be divided into two groups: (i) Those who receive the account of their deeds through their right hands are the people who will go to paradise; (ii) The second group will receive their book through their left hands and will be destined to hell.

Accountability to Allah for all activities is vital to a Muslim's faith. Shari'a specifies how business should be conducted, organised and governed. Under Islam, the paramount rule in business is honesty, just measurement and fair dealing with the customers. Such obligations impose a responsibility on the business community to adhere to moral accountability under Islam.

Islam regulates and influences every sphere of life. It requires every individual to work and to produce; as Prophet Muhammad (SWA) taught: "Never be lazy and helpless."

A moderate and balanced pattern of consumption is recommended in Islam. Under the belief system, every Muslim is required to take halal food. They are under obligation to share food with the servants at home, poor relatives and distressed people in the neighbourhood.

Liquor and every form of harmful drugs are prohibited for the Muslims. The paying of interest is also prohibited under the probation of riba. Allah decrees that no Muslim should mix licit income with unlawful (haram) ones.

All resources made available to individuals are made in the form of a trust, and they are trustees for what they have been given by God in the form of family members, goods, property and assets. Ownership of property is a trust (amanah) to be enjoyed conditionally so long as man follows the Shari'a and remains worthy of the trust.

The general principle of the Islamic law of contract is contained in the Quranic verse: "O you who believe! Fulfil all obligations." This is also a true in the case of family members.

In Islam, followers are required to keep records of their indebtedness: "Believers, when you contract a debt for a fixed period, put it in writing." Nineteen verses in the Holy Qur'an emphasised the reliability of information that must also be presented correctly and fully, including details of all the transactions undertaken.

Paying 2.5% zakat after calculation of assets and liabilities is the religious obligation of the rich Muslims to assist the poor.

Anyone who has faith, even as small as a seed of mustard, will eventually will get through the period of punishment and go to heaven. The highest pleasure in heaven is to see Allah.

Allah is aware of what man does and thinks. "Allah wants man to know his work (acts and deeds), which might be good or evil" and if it is permissible or prohibited. Man has to study his work and think about what he has prepared for the Hereafter. Has he done what pleases his Allah and prepare himself to enter Heaven? Or has he done what would anger Allah and lets him enter Hellfire!

We usually hold others accountable even for our own faults. Self-accountability and ownership of responsibility are important in Islam. "The wise person is one who holds himself accountable -- he is well-aware if his deeds, thoughts and relations follow the straight or the deviated path (Prophet SWA)."

Although man is not responsible for others he is responsible for himself, thus he has to hold himself accountable before he turns to others. Hadith says: "Hold yourself accountable for your deeds and supply yourself with provisions and be prepared before you are brought back to life."

Unfortunately, there is a gap between the ideals and orientations of Islamic accountability and the lives of most Muslims. This gap has mostly stemmed from the deviation from self-accountability because of the yearning for material prosperity and for competing in the world of economic expansionism.

Dr. M. Emdadul Haq is Professor of GCE, North South University. E-mail: mehaq57@yahoo.com

Nepal's search for a prime minister



Nepal: The search goes on.

Unfortunately, all the three parties are at loggerheads with each other for the prime minister's berth. Two candidates are in the running for the PM's post -- Maoist party Chairman Prachanda and vice-president of the Nepali Congress Ram Chandra Poudel. Neither of these two candidates could garner 301 votes.

MAHMOOD HASAN

NEPAL has been desperately searching for a new prime minister for two months now. Since 2008, the Himalayan nation has been facing constitutional deadlocks one after another in its transition to a democratic process.

Prime Minister Madhav Kumar Nepal (Communist Party of Nepal -- Unified Marxist Leninist) resigned under tremendous pressure from Unified Communist Party of Nepal (UCPN-Maoist) on June 30 after 13 turbulent months in office.

Since then, the Constituent Assembly has met five times to elect a new prime minister. But each of these rounds of election -- July 1, July 23, August 2, August 6 and August 23 -- failed to produce a government leader. Outgoing PM Madhav Kumar Nepal is now running a defunct caretaker government. Earlier the Constituent Assembly (CA)

nearly ceased to exist when its mandated tenure of two years ran out on May 28. It was at the last minute that a compromise was struck and the tenure of the CA extended for another year. The primary task of the CA is to draft a new constitution for Nepal. The Maoists supported the extension of the CA on condition that Prime Minister Madhav Kumar Nepal stepped down.

More than two months of the extended time have passed but the members of the Constituent Assembly, instead of engaging themselves in the task of drafting the new constitution, are now engaged in a bitter wrangling over who should be the next prime minister.

Nepali politics is split into three sharp divisions. The ultra-leftists UCPN-Maoist led by Pushpa Kumar Dahal (Prachanda), having 231 seats in CA; the centrist Nepali Congress, the oldest political party of Nepal, having 115 seats; and the center-left CPN-UML with 108

seats in the Assembly. To win the election in the 601-seat Constituent Assembly a candidate has to muster a simple majority of 301 votes.

Unfortunately, all the three parties are at loggerheads with each other for the prime minister's berth. Two candidates are in the running for the PM's post -- Maoist party Chairman Prachanda and vice-president of the Nepali Congress Ram Chandra Poudel. Neither of these two candidates could garner 301 votes.

The reason for their inability to get the required numbers is that CPN (UML) and two smaller parties -- Madhesi Jana Adhikar Forum (MJF with 54 seats) and the Tarai Madhesi Loktantrik Party (TML with 21 seats) -- abstained from voting.

These three parties, with 183 seats among them, want the Maoists to return the land confiscated by them during the insurgency to the original farmers and disband the Maoist paramilitary youth wing "Young Communist League." They also want a consensus in the Constituent Assembly to elect a prime minister who will lead a national-unity government. Clearly, these three parties have emerged as the final arbiters on who will be the next prime minister.

Prachanda argues that, as the largest party in the CA, UCPN (Maoist) should lead the government. But the non-Maoist parties fear that if Prachanda becomes prime minister again he will manipulate the drafting of the constitution.

The shadow of India looms large over the political horizon of Nepal. It was India which brokered the Comprehensive Peace Agreement (CPA) that ended the ten-year insurgency in November 2006. When Prachanda first became prime minister (Aug 2008-May 2009), Delhi was irked by his strong anti-Indian stance. India now clearly distrusts Prachanda because of his ultra-leftist ideology and his ability to plunge the nation into chaos.

India probably would reluctantly agree to support India-educated Baburam Bhattarai, vice-chairman of UCPN (Maoist) as the next prime minister. But then Prachanda and Baburam are strong rivals and are engaged in intra-party struggle for leadership.

Though Nepal is totally dependent on India for food and energy supplies, the Maoists have repeatedly expressed their resentment over India's interference in Nepal. Relations between the Maoists and the Indian Embassy in Kathmandu are hostile.

It is against this background that India's

Special Envoy Shyam Sharan (former foreign secretary and former ambassador to Nepal) visited Kathmandu during August 5-9. During his stay in the Nepali capital he had hectic parleys with all the leaders of the three main political parties. He also held a separate meeting with Baburam Bhattarai, which triggered a verbal duel between Maoist supremo Prachanda and Baburam.

The fifth round of elections was held on August 23 -- which again failed to produce a prime minister. Prachanda obtained 246 votes, while Poudel secured 124. The CPN (UML) and the two Madhesi parties sat on the fence. The voting pattern reflects the respective party strength in the Constituent Assembly. Prachanda blamed national and international forces for the division in the Constituent Assembly. The sixth round of voting will be held on September 5.

It appears that India is in no hurry to resolve the ongoing political impasse in Nepal. India would like to see the Maoists withdraw their candidature and allow the Nepali Congress get the prime minister's berth. To achieve its goal India has to steer the Nepali political parties towards building a consensus on major issues facing the nation. Shyam Sharan said that India would like to see a stable Nepal with "due progress in the ongoing peace process and the constitution making drafting task."

China, the powerful Nepal neighbour on the north, has so far not intervened in Nepal's politics but has urged Nepali leaders to resolve their differences quickly. Evidently, China does not want an unstable Nepal in its backyard.

It is a pity that these same political parties, which rose above personal interests and agreed to sign the Comprehensive Peace Agreement (CPA) in 2006 for greater national cause, are now locked in a naked power struggle -- which has caused increasing public distrust.

Lack of an effective government has stalled the passing of the budget and other government business. If the political parties continue with their bickering over power sharing this poor nation of 30 million may once again plunge into chaos. All the blood shed for a multi-party democratic system would go in vain. The peace process will be jeopardized and drafting of the constitution will remain incomplete.

Mahmood Hasan, a former Ambassador and Secretary, is Policy Adviser, Center for Foreign Affairs Studies.