

Chief Justice lays out his vision

Selected extracts of the Reply Address by Mr. Justice S. K. Sinha, Chief Justice of Bangladesh on his Felicitation by the Bar, January 18, 2015

A mutual respect and trust between members of the Bench and the Bar is essential at this juncture of the judiciary. Existence of the rule of law is a condition precedent in a democratic polity and it demands a high sense of respect for the judiciary in which the nation reposed its trust and confidence for upholding the rights of the people. It is often said "Where the rule of law ends, the tyranny begins". As per the Constitution, the responsibility of establishing the rule of law is vested in the Supreme Court and the Bar plays an important role for ensuring the principles of the same. A strong but a courteous Bar is certainly the best friend of the Bench, and it is the Bar which can school-up a judge, who will be a priest in the temple of justice.

We may deserve a place in the history, only if the efforts of both lawyers and Judges are put together for the cause of justice and service to the public. The legal profession always carries with it a great sense of responsibility. The public look at us to provide them the "elusive justice" and lawyers and Judges are the instruments to do so. Like a temple cannot remain closed, a temple of justice should not remain closed for the teeming millions of the country.

Lawyers and Judges have to take effective steps towards the vision of better work-culture organizing a transparent system, where the litigant public does not find access to justice as a burdensome adventure. In this age of technology, we cannot expect the public to wait indefinitely for us to find an ideal solution. There has to be prompt justice. So, I would like to express my mind stating the following five-pronged strategies:

i) Pendency of old cases must get priority as litigant has waited enough and one must make sure that the current institution does not result in a similar long pendency.

This is easier to say than done. But nothing is impossible if we make joint efforts in that direction.

ii) A good number of Judges of the District Courts, as reported do not perform any judicial work after the recess hour and they have recently developed a habit of leaving their stations without prior permission just to enjoy the weekends in Dhaka or elsewhere. In the Supreme Court, if we can perform judicial works at least 210 days in a calendar year, I believe, it would yield a good result reducing the case backlogs by 20%. And if all administrative business of the Supreme Court including different Committees' Meetings could be held before or after ordinary working-hours or on the non-working days, it would certainly cause a reduction of backlogs by an extra 10%. In the Supreme Court it will not be hard to reduce case backlogs by 15% to 20% if we the Judges can sincerely and strictly maintain the court hours and fully utilize the time allotted for the hearing of cases and judicial works. Similarly in the district Courts, the full utilization of normal Court-hours would easily reduce the existing backlogs by 25% more.

So, may I urge upon all Judges to become a bit more attentive for proper utilization and time management of the court-hours. We the Judges are not supposed to proceed on leave unless it becomes unavoidable for us and should abstain from participating in any functions which may expose us to any public criticism.

iii) The Judges of all strata and court staff need continuous training in case management and court administration. So we must undertake initiatives immediately to prepare a Judicial Policy containing guidelines for combating increasing backlogs and bringing excellence at all level of the judiciary.

iv) At present there are 94 Judges in the Supreme Court and 1500 Judges in the District Courts. Against such meagre workforce in the Supreme Court around 3,65,059 cases and in the district Courts around 24,95,944 cases

have been kept waiting for hearing and disposal. In order to address those problems, we have no alternative but to increase the number of Judges and that should be at least double of the existing number.

v) Use of optimal computer technology coupled with modern Court management system can go a long way to yield a better output. Each suit or case should be able to be tracked from its cradle to grave i.e. when a suit is instituted; right through different tiers of scrutiny; efforts have to be made for early hearing and disposal of the cases. We have to use technology to deal with high volume of pending cases causing backlog in the system.

So, the above predicaments need to be addressed taking both legislative and administrative measures. May I request the members of both Bar and Bench to

als. Broadcasting of such information of the law enforcing agency in most of the cases hampers even the trial of a case. On principle none can be branded as a criminal or offender, unless it is decided by a competent Court on conclusion of a fair trial. I would thus request all members of law enforcing agency to bring an attitudinal change in their duties avoiding publicities and become more professional than focusing on media.

We know the media and the Courts work obviously in quite different ways. The Courts proceed carefully through a fair process of law examining the evidence and materials on record produced by the prosecution. On the other hand the media generally operates hastily to cover news which may not in some cases be in line with the real fact

We know, those laws were enacted when we had been under the then British colonial regime. That is why, in the existing laws of this land there is no reflection of democratic values. As a democratic nation we have by this time spent around 43 years, but unfortunately we cannot legislate essential laws making them suitable for a democratic nation. So, may I urge upon the Government to take immediate steps in that direction.

It is noticed that the Criminal Courts do not maintain any uniformity in awarding sentences to the convicts for want of a sentencing policy. In our neighbouring countries, as we know, they have already made the Sentencing Rules. I take this opportunity and request the concerned authority for taking immediate steps to formulate the Sentencing Rules containing guidelines



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find a way out on those matters and improve the situation.

We know due to insane terrorist activities most of the time innocent people have to face tragic consequences. So I urge upon you all to work together in curbing all forms or manifestations of terrorism.

Terrorism cannot be curbed without a mechanism which would work effectively and ensure punishment of the actual offenders and perpetrators at minimum time and cost. Now-a-days our investigating agencies are not found sufficiently skilled and committed in collecting evidence and materials in support of the charge made against an accused.

I have noticed a propensity among the officers entrusted with the criminal investigations having more interest in publishing the news and information regarding arrest and actions taken against an accused through electronic or print media rather than giving time for and attention to their duty of collecting evidence and supporting materi-

or occurrence. I think the judiciary and media are two powerful public institutions and if they could maintain harmony and good understanding with each other, that would reinforce the public confidence in the judiciary and enhance its credibility. The judiciary and law serve justice and the media helps to bring law and justice to the people at large. In true sense, their responsibilities are complementary not contradictory. On this occasion I would request esteemed persons involved in media to cooperate with the judiciary playing a constructive role, so that this institution can run without any hindrance enjoying full public confidence and credibility of all.

In my view the law should assume a new dimension to suit the need of our IT based modern society and it should play a dynamic role like a living organ.

The law is not like an antique to be taken down, admired and put back on the shelf but it is rather like a big tree having its root in the history and puts out new sprouts and occasionally drops dead leaves and wood. In the days of digital era we cannot improve institutional management capacity of the judiciary without integration of a sustainable and cost effective IT technology.

As per the present laws, our formal Court system does not admit any digital document or electronic communication as evidence. I think the time has now come to develop an affordable ICT infrastructure suitable to our legal system and integrate customize software for automation of judicial and administrative functions of the courts. To achieve those objectives, we have to scrap of all existing obsolete laws and rules including Civil Procedure Code, Criminal Procedure Code, Evidence Act, Penal Code, Arms Act, and they are to be enacted by complete overhauling.

in awarding sentences by Criminal Courts of the country.

Besides, some other laws namely Durniti Daman Commission Ain, 2004 including its rules is to be updated and made more effective bringing necessary changes in it, so that the actual perpetrators cannot get off taking advantages of the existing loopholes and flaws in them.

On this occasion I feel tempted to quote Sir Winston Churchill a former Prime Minister of England.

He said: "The service rendered by a Judge, demands the highest qualities of learning, training and character. These qualities are not to be measured in terms of pounds, shillings and pence according to the quantity of work done. A form of life and conduct far more severe and restricted than that of ordinary people, is required from Judges and, though unwritten, has been most strictly observed. They are at once privileged and restricted. They have to present a continuous aspect of dignity and conduct."

Now-a-days Bar and Bench are subjected to widespread criticism mainly for two reasons - one is that justice is very expensive and other is delay in disposal of the cases. Expenses of litigation may be minimized if learned lawyers take the profession as a social service and charge fees according to the capacity of their clients. To help the poor litigants on going Legal Aid programs should be strengthened both institutionally and functionally.

I believe, a proper administration of justice rests on public confidence and my colleague Judges including myself should function not individually but institutionally. So I require full co-operation from my esteemed colleagues of both the Divisions in discharging my onerous responsibility as the Chief Justice of Bangladesh.

Public servants making political statements

STRANGER THAN FICTION



TAJ HASHMI

I write this to draw the prime minister's attention to three of her senior public servants' recent politically charged public statements, which came out in all leading newspapers in Bangladesh. I wouldn't have bothered to comment on this gross violation of the Constitution and established principles of democracy, had the Prime Minister taken some immediate disciplinary action against them.

The two chiefs of law enforcing agencies, the Inspector General of Police, and the Director General of the Rapid Action Battalion (RAB), and the chief of the Border Guards of Bangladesh (BGB) - who is an army general on deputation - are constitutionally barred from making any political statements or taking sides for or against any political party, group or individual.

Unfortunately, the newly appointed BGB, RAB and Police chiefs have failed to maintain the required neutrality the nation expects from them. It is undesirable that the BGB chief threatens that, if required, his troops would shoot down people (the BGB is not even allowed to shoot down un-armed illegal intruders into Bangladesh); the police chief makes crude comments about TV talk show guests and gives his unwarranted opinion on the 5th January Elections; and the RAB chief surpasses them all with his "prediction" that the next Elections would be held not before 2019.

We know none but the Prime Minister is entitled to say when the next round of parliamentary elections would take place in a parliamentary democracy. Even cabinet ministers and ruling party MPs do not have the privilege of stating publicly when the next round of parliamentary elections would take place. But we hear from the RAB chief that no elections will take place before 2019. This has never happened before in Bangladesh, not even under military rule. We have reasons to believe that the RAB chief has not only violated the Constitution by publicly exposing his political bias, but has also grossly transgressed and defiled the power and prerogatives of the Prime Minister.

The public servants' unflinching loyalty to the state machinery and the constitution, and their absolute neutrality in dispensing their duty without any political bias for any party, group or individual is a constitutional requirement in a democratic set up. Bangladesh is no exception in this regard. So, it's evident that these public servants' bizarrely grotesque and politically charged public statements do not belong to democracies, but to medieval autocracies and their modern counterparts.

In democracies, the impartiality of the executive, judiciary, and legislature is only ensured by the absolute and unconditional neutrality of all the members of the armed forces, law enforcing agencies and the bureaucracy as a whole; any aberration in this regard signals the death of democracy. A country not only needs regular, free and fair elections to ensure democracy, but it also needs absolute transparency of the administration, complete accountability of the government to the people, and last but not least, unconditional neutrality of the civil and military bureaucracy in this regard.

Above all, in a democracy, there is no room for confusing the state machinery with political parties, and politicians with government servants. The moment the two different entities, the politician and the public servant - who should be as distinguishable as oil and water - become indistinguishable in a country, it ceases to be a democracy. We have examples of such totalitarian states in the Middle East, Asia-Pacific and Sub-Saharan Africa.

As the overwhelming majority of Bangladeshis have never legitimized one-party rule under civilian or military setup as legitimate alternatives to democracy during the last 44 years, nobody should take the people for a ride again. Since Bengalis defied armed intervention and brutal mass killing of unarmed civilians by Pakistani troops in 1971, there is no reason to believe that the same people today would behave differently to the trappings of "authoritarian democracy".

I write this piece to draw the Prime Minister's attention to the public statements by three public servants, who have grossly violated the Constitution, hurt some cardinal principles of democracy, and undermined the power and prerogatives of the Prime Minister's office. I make it absolutely clear that I have no support or sympathy for political agitators, who in the name of restoring democracy have been killing and hurting innocent civilians and law-enforcers in the most brutal and anarchic manner. Whoever is engaged in extra-constitutional, violent and terrorist methods should be punished.

This, however, does not mean that anybody - not even cabinet ministers - have the right to compare the BNP with the Islamic State and al Qaeda, or state publicly that the opposition party be "eliminated" as a terrorist organisation. By undermining the largest opposition party as a terrorist outfit - which people elected to power several times in the past - Awami League leaders indirectly ridicule millions of BNP supporters (more than 30% Bangladeshi voters) as promoters of terrorism.

Last but not least, before restraining the over-balanced and over-charged leaders and workers of the ruling party, the government should take politically charged public servants to task for the sake of democracy and the rule of law. The history of Bangladesh is full of tragic events. People here have never bartered democracy for one-party rule. What we learn from world history is that when the ruling class in a country mainly relies on law enforcers for sustenance, either the country gets a new set of rulers, or ceases to be a democracy.

The writer teaches security studies at Austin Peay State University. Sage has recently published his latest book, Global Jihad and America: The Hundred-Year War Beyond Iraq and Afghanistan.

QUOTABLE Quote

What difference does it make to the dead, the orphans and the homeless, whether the mad destruction is wrought under the name of totalitarianism or in the holy name of liberty or democracy?

Mahatma Gandhi

CROSSWORD by Thomas Joseph

ACROSS

- Breakfast choice
- School course
- Verdi opera
- Notion
- Cutter or cruiser
- Cake layers
- Ready for business
- Egg setting
- Lacking locks
- Goes angling
- Mex. neighbor
- Regret
- Chopping tool
- Fire-starting stuff
- Thin board
- Dance unit
- Goes bad
- Praline nut
- Citrus fruit
- Arkin of "Argo"
- Sky streaker
- Flex
- Stump figure

DOWN

- Swindle
- Seventh Greek letter
- Gun, as a motor
- On cloud nine
- Bold poker bet
- Cherish
- Shoots wide
- TV spots
- Golf support
- "2001" computer
- Bert's buddy
- Caravan stop
- Garden item
- Ten commandments verb
- Alamo setting
- Except
- Stole stuff
- Filming site
- Drive off
- Rely
- Bach work
- Less common
- Crooner Perry
- Arrest
- Saloon quaff
- Mover's truck
- Tennis court divider
- Sticky stuff
- Mess up

Yesterday's answer

T	I	N	G	E	C	O	R	A	L		
A	C	O	R	N	O	L	I	V	E		
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CRYPTOQUOTE 12-08

Q MP NKMGVVRVU XEY OMX Q MP; QB Q NMOJ'G, GKJ NX NEYWF XEY OMX Q MP.

- VPQJVP

Yesterday's CRYPTOQUOTE:

WE HAVE TWO EARS AND ONE TONGUE SO THAT WE WOULD LISTEN MORE AND TALK LESS.

- DIOGENES

BEETLE BAILEY by Mort Walker

HENRY by Don Trachte

A XYDLBAXR is LONGFELLOW

One letter stands for another. In this sample, A is used for the three L's, X for the two O's, etc. Single letters, apostrophes, the length and formation of the words are all hints. Each day the code letters are different.