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IMPORTANCE OF AN INDEPENDENT JUDICIARY IN A DEMOCRATIC STATE

by

DR. M. Ershadul Bari

I. Introduction

The Judiciary is an important organ of the government which primarily administers the law by expounding and defining its true meaning. It applies the law to resolve disputes between private individuals, between large private organizations (i.e., companies), between public bodies (i.e. government departments, local authorities, nationalized industries etc.), or between a private individual and a government department. The judges apply facts to legal rules and interpret those as best as they can. In a free society, the necessity of the judiciary is keenly felt to ascertain and decide both public and private rights, to administer justice, to punish crimes and to protect the innocent from injury and usurpation. The judges, by their rulings and dicta, powerfully and usefully contribute to adapt the law to the needs of a rapidly changing society. In countries where there is a written constitution, which can not be overridden by ordinary legislation, the judges are guardians of the constitution and may declare a statute to be unconstitutional and invalid and thereby ensure the observance of the rule of the law. "When questions arise" says James Bryce, "as to the limits of the powers of the Executive or of the Legislature, or-in a Federation-as to the limits of the respective powers of the Central or National and those of the State Government, it is by a Court of Law that the true meaning of the Constitution, as the fundamental and supreme law, ought to be determined, because it is the rightful and authorized interpreter of what the people intended to declare when they were enacting a fundamental instrument."[1] Thus the judiciary plays a vital role to shape the life of the community and to secure the observance of the rule of law. The judiciary can perform its function properly only when it is completely independent and impartial. A democratic government is, therefore, a prerequisite for the existence of an independent and courageous judiciary as in a

1. Bryce, James, II Modern Democracies 384-85 (1929)

totalitarian state the judiciary is expected to act in accordance with the policies of the central authority and, as such, political absolutism is obviously to have free rein. [2]

At modern times, it is contended that the independence of the judiciary is principally a result of the application of the doctrine of separation of powers, the doctrine which means the distribution of powers among different organs of the government. Although the doctrine in its earlier history had nothing to do with the independence of judges, it may now be said to have received its application in democratic countries by securing the independence of the courts from the control of the executive.[3]

The most central and traditional meaning of the independence of the judiciary is that the judges are in a position to arrive at their decisions free from interference of the political branches, especially the executive, and apprehension for suffering personally as a result of exercising their judicial powers. But the concept of judicial independence has broadened over the years. It has now many facets. Recent international efforts have particularly led to four meanings of judicial independence :

(a) substantive independence;[4] (b) personal independence[5] (both these two comprise of the independence of the individual judge); (c)

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2. For example, in the Nazi era in Germany, there was no independent judiciary as the judges were expected to follow the wishes and orders of the Fuehrer. In the Third Reich (the Federation) Judges were under a duty to consider" the will of the Fuehrer" as their supreme role.
3. Phillips, O. Hood (& Jackson, Paul) Constitutional & Administrative Law, 15 (1978);
4. Substantive independence,which is also described as functional or decisional independence, means the independence of judges to arrive at their decisions in accordance with their oath of office without submitting to any kind of pressures- outside or inside- (from government and from other centers of power, public and private; and, on the other hand, the inside pressurs from the parties themselves) but only to their own sense of justice.
5. Personal independence means that judges are not dependent on Governments in any ways which might influence them in coming to decisions in individual cases. Griffith, J.A.G., The Politics of the Judiciary 29 (1977).

collective independence [6]; and (d) internal independence[7]. It should be stressed here that the concept of personal and substantive independence of the individual judges is universally recognized by law and by legal writers. But the concept of collective and internal independence of the judiciary as a body was recognized first by the International Bar Association's Minimum Standards of Judicial Independence, 1982 and following them by the Montreal Universal Declaration on the Independence of Justice, 1983. This recognition is considered as one of the significant contributions of the international standards to judicial independence.

However, the object of this paper is to examine the importance of an independent, courageous and enlightened judiciary in a democratic state.

II. Importance of an Independent Judiciary

Judicial independence is a sine qua non in a democratic society proclaiming the rule of law. For, the judiciary is charged with the ultimate decision over life, liberty, freedom, rights, duties and property of citizens. Therefore, in "all countries cases, sometimes civil, but more frequently criminal, arise which involve political issues and excite party feeling. It is then that the courage and uprightness of the judges become supremely valuable to the nation commanding respect for the exposition of the law which they have to deliver"[7a]. In a parliamentary system of government where the cabinet is comprised of the leaders of the ruling party who command majority in parliament, the problem of judicial independence from the executive is very significant. "The importance of an independent judiciary" says Lord Hailsham, "is not less but all the greater when judges have to serve under an all-powerful parliament dominated by a party cabinet,

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6. Collective independence means the institutional, administrative and financial independence of the judiciary as a whole vis-a-vis other branches of the government namely the executive and the legislative.
7. Internal independence of the judiciary means the independence of a judge from his judicial superiors and colleagues. That is the independence of a judge or a judicial officer from any kind of order, indication or pressure from his judicial superiors and colleagues in deciding disputes.

7a. Bryce, James, op.cit.384.

and concentrating all the powers, and more than all powers, of the executive and legislature combined in one coherent complex."[8] However, without a free and independent judiciary, ready to adjudicate between individuals and between the state and individual in an impartial manner, justice is a meaningless word. "There is no better test of the excellence of a government", rightly says James Bryce," than the efficiency of its judicial system, for nothing more nearly touches the welfare and security of the average citizen than his sense that he can rely on the certain and prompt administration of justice.... if the Law be dishonestly administered, the salt has lost its savour; if it be weakly or fitfully enforced, the guarantees or order fail, for it is more by the certainty than by the severity of punishment that offences are repressed. If the lamp of justice goes out in darkness, how great is that darkness!"[9] Referring to the importance of the independence of the judiciary, an eminent authority, namely, Henry Sidgwick, has gone so far as to say that "in determining a nation's rank in political civilization, no test is more decisive than the degree in which justice as defined by the law is actually realized in its judicial administration; both as between one private citizen and another, and as between private citizens and members of the Government."[10]

Hence in the Charter of the United Nations, the peoples of the world affirm, inter alia, their determination to establish conditions under which justice can be maintained to achieve international cooperation in promoting and encouraging respect for humen rights and fundamental freedoms without any discrimination. Since its modern beginnings, international human rights law has incorporated the principle of judicial independence within its jurisprudence. The 1948 Universal Declaration of Human Rights, with which began the real history of human rights at the level of international law, enshrines the principle of the independence of the judiciary in the following terms :

> "Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the

8. Hailsham, Lord, The Door Wherein I went, 245 (1975)
9. James, Bryce op.cit.384.
10. Sidgwick, Henry, The Elements of Politics, 481 (1897)

determination of his rights and obligations and of any criminal charge against him."[11]

Similarly, the European Convention for the Protection of Human Rights and Fundamental Freedoms, 1950 provides that "In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law."[12]

Later both the International Covenant on Civil and Political Rights, 1966 and the American Convention on Human Rights, 1969 impose upon governments the duty to preserve judicial independence in the administration of criminal justice, by guranteeing each person facing criminal charges a hearing by an "independent and impartial tribunal."[13]

However, in a free society professing the rule of law, the necessity of an independent judiciary is keenly felt in order to enforce fundamental rights, to secure the people against the usurpations of the executive and legislative departments and to earn public confidence in judicial impartiality.

A. Enforcement of Fundamental Rights

A mere declaration and insertion of fundamental rights in the constitution is meaningless unless their enjoyment is effectively guaranteed by an effective, easy and inddependent judiciary. The precise meaning and application of constitutionally guaranteed rights to particular situations is left to the judiciary. The enforcement of

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11. Art. 10, of the Universal Declaration of Human Rights
12. Art. 6(1) of the European Convention for the Protection of Human Rights and Fundamental Freedom.
13. Art, 14 of the International Covenant ("All persons... shall be entitled to a... hearing by a (n) independent and impartial tribunal established by law."); Art, 8 of the American Convention ("Every person has the right to a hearing by a (n) independent, and impartial tribunal, previously established by law.")

rights is assured only by an independent and impartial judiciary. In Madison's view :

> "Independent tribunals of justice will consider themselves in a peculiar manner the guardians of those (constitutionally protected) rights. They will be naturally led to resist every encroachment upon rights expressly stipulated in that Constitution by the declaration of rights."[14]

Therefore, "Every one has the right to an effective remedy by the competent national tribunal for acts violating the Fundamental Rights granted to him by Constitution or by law."[15] Without an independent judiciary to interpret and enforce them, such constitutional guarantees are of little worth. One of the Conclusions of the International Conference of Jurists, held in Bangkok in 1965, emphasized the importance of judicial independence to enforce rights thus :

> "The ultimate protection of the individual in a society governed by the Rule of Law depends upon the existence of an enlightened, independent and courageous judiciary and upon adequate provision for the speedy and effective administration of justice."

Thus a bill of rights will only be as effective as the judiciary is independent. Unless and until the common man finds that the judiciary upholds the constitutional guarantees independently and earnestly, the roots of the rule of law cannot go deep into the society. The judiciary must be watchdog and formidable protector of the rights of the individuals entrenched in the constitution.

Sice the adoption of the Universal Declaration of Human Rights in December 1948, the international community has made considerable progress towards the promotion and development of transnational jurisprudecce of substantive human rights embodied in a good number of international conventions, global and regional, general

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14. Quoted in Agresto, J, The Supreme Court and Constitutional Democracy, 25 (1984).
15. Art, 8 of the Universal Declaration of Human Rights.

and specialized. Effective mechanisms for the enforcement of human rights in the national, regional and international systems of justics are a fundamental requisite as without such mechanisms human rights will remain unfulfilled injunctions in the constitutions or in the regional and international conventions. "An impartial judiciary composed of competent judges is the best guarantee of proper administration of justice, and in the final analysis, of defense of human rights."[16] The increasing attention of the United Nations (the first U.N. standards in the field is the Basic Principles on the Independence of the Judiciary adopted in 1985), and other international organizations to formulate universal principles and safeguards of judicial independence demonstrates the realization that the independence and impartiality of courts is essential to the effective implementation of human rights instruments and perhaps, even more, important than providing for human rights.

B. Protection of People Against the Usurpations of the Executive and Legislative Departments

The independence of the judiciary is indispensable to secure the people against the intentional as well as unintentional usurpations of the executive and legislative departments. As Madison says :

> "Independent tribunals of justice will consider themselves.... an impenetrable bulwark against every assumption of power in the Legislature or Executive."[17]

Modern governments necessarily pose a greater threat to individual liberties as they intervene in areas previously little regulated. The citizen must look primarily to an independent judiciary for redress if there is a denial of benefits to which a citizen is entitled or of unlawful interferene with his freedom of action according to law. An independent and impartial judiciary can only determine whether the executive actions challenged were exercised outside the provisions

16. Annual Report of the Inter-American Commission of Human Rights, 182 (1985)
17. Quoted in Agresto, J, op.cit., 25

of the constitution and other laws of the country. In addition to reviewing executive actions, such a judiciary can also determine, by reference to the constitution, the validity of challenged legislation remaining unaffected either by the policy or the wishes of the government of the day. With regard to the practice as well as wide scope of judicial review of executive action and of statutes in America (the Supreme Court of the United States assumed the power of judicial review in the case of Marbury v.. Madison in 1803), Erwin N. Griswold once commented," in the United States there is scarcely any sort of governmental action, or threatened government action, which is not subject to judicial review.

America has indeed moved a long way in the direction of government by the judiciary."[18] Thus the role of judges should be strikingly broad as in America.

C. Public Confidence in Judicial Impartiality

The Judiciary, which is the last hope of the citizen, contributes vitally to the preservation of the social peace and order by settling legal disputes and thus promotes a harmonious and intergrated society. The quantum of its contribution, however, largely depends upon the willingness of the people to present their problems before it and to submit to its judgments. What matters most, therefore, is the extent to which people have confidence in judicial impartiality. According to Justice Frankfurter "the confidence of the people is the ultimate reliance of the Court as an institution."[19] This point has eloquently been expressed by a distinguished Justice of the U.S. Supreme Court :

> "The strength of the judiciary is in the command it has over the hearts and minds of men. That respect and prestige are the product of innumerable judgments and decrees, a mosaic built from the multitude of cases decided. Respect and prestige do not grow suddenly; they are the products of

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18. Griswold, Erwin N. "The Judiciary and the Government", a paper presented at the 2nd International Conference of Appellate Judges, Australia 28 (1980).
19. Frankfurter, "The Supreme Court in the Mirror of Justices" (1957) 105, University of Pennsylvania Law Review 781,796.

> time and experience. But they flourish when judges are independent and courageous."[20]

Thus the "independence of the judiciary lends prestige to the office of a judge and inspires confidence in the general public."[21] In fact, the independence of the juduciary is essential for maintaining purity of justice in the social system and enabling it to earn public confidence in the adinistration of justice. "Nothing does" says James Bryce, "more for the welfare of the private citizen, and nothing more conduces to the smooth working of free government than a general confidence in the pure and efficient adinistration of justice between the individual and the State as well as between man and man."[22]

The public perception of the independence of the judiciary is also to assure public confidence in the courts. As chief Justice Howland of the Ontario Supreme Court puts it in the case of R.V. Valente[23] thus :

> "It is most important that the judiciary be independent and be so perceived by the public. The judges must not have cause to fear that they will be prejudiced by their decisions or that the public would reasonably apprehend this to be the case."[24]

Similarly, the importance of public perception was stressed by the Ontario White Paper on Court Administration :

> "The value of the courts as an inportant impartial forum for the resolution of disputes depends upon the public perception of the independence of the courts from the parties and particularly their independence from the government."[25]

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20. Douglas, William O, From Marshal to Mukharjee : Studies in American and Indian Constitutional Law, 345 (1956-Tagore Law Lectures)
21. Robson, W.A. Justice and Administrative Law, 47 (1951)
22. Bryce, James op.cit.389.
23. 2.C.C.C. (3d) 417 (1983)
24. Id. at 423.
25. Ontario Ministry of Attorney General, White Paper on Courts Administration, 13 (1976).

In fact, the significance of public perception in the judiciary is well reflected in the oft quoted maxim that "Justice must not only be done, but must also be seen to be done." It is also reflected in the two basic rules of natural justice-impartiality and fairness of the proceedings-applied for self disqualification for bias. The rule does not require that bias has actually influenced the judge, but rather that it is likeky that it will influence the juges. Thus public perception is one the fundamental values of the administration of justicc.

III. Conclusion

The foregoing discussion reveals that the central principle underlying the administration of justice is the independence of the judiciary. An enlightened, independent and courageous judiciary is a fundamental requisite, a basic element for the very existence of any society that respects the rule of law as a subservient judiciary cannot be relied upon to accomplish the task of protecting human rights and rule of law. If judicial independence exists in a demorcratic society, absolutism in government cannot establish there; and where it is absent, absolutism is likely to have free rein. For it is the independent judiciary which "stands between the subject and any attempted encroachments of his liberty by the executive, alert to see that any coercive action is justified in law."[26] Independent courts constitute the last bulwark of the citizen against the arbitray encroachments of the state. It should be kept in mind that judicial independence is something which must never be taken for granted, and like freedom, exacts the price of eternal vigilance. "Justice", says Henry Cecil, "is such a precious commodity that everything reasonable should be done to attain the higest standard." He also added a rider that" if the public does not want to pay for the more expensive articles, it can have the cheaper."[27] An impartial administration of justice" is like

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26. Lord Atkin in his memorable war-time dissent in Liversidge v. Anderson (1942) A.C.206, 244.
27. Cecil, Henry, The English Judge, 113

oxygen in the air, they (the people) know and care nothing about it unitl it is withdrawn." (Lord Atkin). In the long run, the manner in which judges perform their duties can build up public opinion for the courts and public opinion is a better safeguard for the independence of judges than laws and constitutional guarantees. The public will support the courts if they are seen as an effective impartial forum for resolving disputes. Hence the independence of the judiciary should be protected with zealous care.

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THE CONCEPT OF BREACH OF THE PEACE AND PUBLIC ORDER IN ENGLISH LAW

by

Azizur Rahman Chowdhury

The concept of breach of the peace originated from lay concepts and commonsense, which was identical with common Law concepts. The recent dimensions of this offence of breach of the peace embrace within their fold trespass, riot, etc. Apart from this, there are several offences in modern law which have resulted from the idea of wrong. doing, are traceable in common assault, affray, riot, rout, sedition and unlawful assembly. These are treated as manifestations of the public order offence. The feudal tradition of the Council, Star Chamber and the King's Bench had witnessed considerable changes and transitions and the common law principles lying at the root of modern concept of breach of the peace are mostly incompatible and fluid in relation to the modern views. Although the concept of breach of the peace could be established[2] the Public Order Act, 1936 appeared with greater sophistcacy and precision. The definition of a breach of the peace suffered considerable dilution as it could not be traced out in a writ of breach of the peace. Professor Glanville Williams remarked on the "Surprising lack of authoritative definition of what one would suppose to be a fundamental concept in criminal law."[3] Nevertheless, the offences specified in section 5 of the Public Order

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2. See Brownlie and D. G. T. Williams 42 Can. B. R. 561-605. (1964).

   See Sayles (ed). Select cases in the court of King's Bench under Edward 11. Vol. IV (1955); 74 Selden Society. Roll No. 2 at p.6; Cf. The generic offences of conspiracy to corrupt public morals and public mischief.

3. (1962) Crim. L. R. 578. Cf. the same authors' Criminal Law, the General Part (2nd Edn). pp. 714-715. See also Lagarde, Droit Penal Canadien (1962) paras, 3049 and 82.

Act[4] and by-laws testify to the precise meanings of unlawful assembly and the law relating to binding over in a situation occasioning a breach of the peace. The English law of arrest provides that when any one gives a threat of criminal force he is said to have committed a breach of the peace. [5] Therefore, the concept has multi-dimensional relations with many other acts which arouse public violence, for example, the offence of affray which is indentical with the meaning and scope of breach of the peace.[6]In *Furguson* v. *Carnochan*[7] it was held that an alarm is sufficient to be construed as breach of the peace if it causes others to believe that the act will create disturbance and thereby break peace of the neighborhood.

Although in many cases English Courts have carried this concept to the extent of any disturbance in a large gathering,[8] it was also viewed that a superficial or self-contained disorder does not reflect real danger to others[9] and as such signalizes no breach of the peace. Section 5 of the Public Order Act. 1936 as substituted by Section 7 of the Race Relations Act. 1965 pin–pointed the scope of a breach of the peace. This provides that any person at any public meeting using threat, abusive words or distributing or displaying any writing with intent to provoke breach of the peace shall be guilty of an offence.[10] The maximum penalty for such an offence under the Public Order Act, 1936 is three months imprisonment or fine and

4. See the Burgh Police (Scotland) Act. 1892, S. 380 (12). Indian Criminal Code S 504. See Ratanlal Ranchhoddas and D.K. Thakore's Law of Crimes (20th Edn. 1957, S. 28 (ceylone Police Ordinance (1956, Edn), 579 (2); Victoria Police Offences Act, 1958, S. 26(b).
5. Glanville Williams, op. Cit. pp 578,579. See Foster V. R. (1961) E.A.1.
6. R v. *Hunt* (1845) 1 Cox. C. C. 177.
7. (1889), 2 White 278, per Lord Justice Clerk Macdonald, p. 281. See also Lord Mc. Laren p. 282.
8. *Campbell* v *Adair*, 1945, S. C. (j) 29 29; Encyclopaedia of the Laws of Scotland, Vol. V, p. 84.
9. *Wooding* v *Oxleye* (1839), I. C. & P. 1.
10. The Burgh Police (Scotland) Act, 1892. S, 380 (12).

twelve months imprisonment or fine and twelve months imprisonment or fine of £ 500 on indictment.[11]

The Actus reus of a breach of the peace mentions the place of offence as S.9 of the Act of 1936 has laid emphasis on any open space having public access and it also embraces public meeting within its purview.[12]

The scope of this offence extends further to using of words on private premises being audible like public place which is also attracted with the Act.[13]

In Wilson V Shock, Lord Goddard opined that because of the political source of the dispute and not being aimed between neighbours the Act could not apply. In explaining the type of the disorder to describe it within the meaning of breach of the peace in another case it was contended in a Divisional Court that the intention of the Parliament could be well interpreted from the Preamble of the Act, that the idea behind the whole Act was to deep public order and obviously so, the question of controlling private disputes in a public place does not appear to be logical in context.[14]

However, Section 5 of the Public Order Act, 1936 has emphasised words or behaviour intended to cause or likely to occasion a breach of the peace. In explaining the character of behavior it was a criteria that it must be threatening and the words being abusive or insulting so that a person of ordinary maturity could apprehend physical harm to his person or property.[15]

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11. Brownlie, The Law relating to Public Order, 1968, London, Butter worths, p. 6.
12. Wilson. V. Sheock (1949), 113 J. P. 294.
13. Cf. Smith V. Hughes (1960); 2 All E. R. 859.
14. *Ward* V. *Holman* (1964)2. B. 580 Cf. *Thurley* V. *Hayes* (1920), 27 C. L. R. 548, H. C. Aust; *Ferguson* V. *Carnochan* (1889) 16R. (ct. of Sess), 933 *Purveys* V. *Inglis* (1915), 34 NZLR 1051 S. C. N. Z.
15. *R.* V. *Button and Swain,* (1966) A. C. 591, p. 598; (1965) 1All E. R. 964 at p. 967 and in the speech of Lord GARDINER, L. C. in the House of Lords on the appeal from the C. C. A. (1966 A. C. atp. 512 (1965), 3 All E. R. 587.

Intention of the accused or his recklessness is also considered to be an ingredient to provoke a breach of the peace. It is further provided in the second arm of the section that the word or behaviour should be such as would likely to occasion a breach of the peace and in such a case the accused is guilty of an offence.[16]

The breach of the peace is also enumerated in Race Relation Act, 1965. Section 6 of the Act has mentioned a new offence of racial incitement which could result in a breach of the peace without being "threatening, abusive or insulting". The Race Relations Act, 1965 makes a person guilty if he intends to stir up hatred against section of public in Great Britain distinguished by colour, race, or ethnic or national origins by publishing or distributing written matter which is threatening, abusive or insulting.[17]

In this Act greater emphasis has been given on grounds of colour, race or ethnic or national origins and the words or behaviour likely to stir up hatred are sufficient to prove the offence. The expression, "public meeting" and "public place" are also attributed with some meanings as in the Public Order Act, 1936 and 1986. Metropolitan Police Act, 1939 provides in Section 54(13)[18] that a person using any threatening, abusive or insulting words or behaviour with intent to provide a breach of the peace, or whereby a breach of the peace may be occasioned, shall be liable to pay a penalty not exceeding 40 shillings.[19]

There are several local Acts provided by by-laws, for example, Liver Pool Corporation Act, 1921, which provides for offences similar to those provided for in the provision of the Metropolitan Police Act.

The Public Meeting Act 1980 has made provision for penalty on an attempt to break up public meeting as it provides that any person

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16. *Jordan* V. *Burgoyne* (1963) 2. Q. B. 744; (1963) 2All E. R. 225, D. C.

17. Op. cit.

18. 24 Halsbury's Statutes, p. 817. New maximum penalty, £20.

19. Criminal Justice Act, 1967.

who, at a lawful public meeting, acts in a disorderly manner for the purpose of preventing the transaction of the business for which the meeting was called together shall be guilty of an offence[20] and on summary conviction shall be liable to a fine not exceeding five pounds, or to imprisonment not exceeding one month.

The concept of Public Order is also strictly adhered to when it is found that disturbances are created in election meetings. When any constable suspects any person committing any offence under sub-Section 1 of Section 84 of the Act, may require him to declare his name and address and in case, gives a false the name, the constable may arrest him without warrant.

The English law has given a considerable weightage on the consequences of threatening, abusive or insulting words or behaviour towards the position of various offences, specially in occasioning a breach of the peace, behaviour becomes threatening.

It was held that when two groups of people became equally provoked and threw out threats, their behaviour became threatening to each other and both the groups were found guilty of the offence.[21] In case of political demonstrations same ingredient can be attributed and the element of threat can be identified when the demonstrators plan to interfere with lawful activities of others by physical intimidations. The threat becomes more poignant and intensified when the demonstrators take recourse to the threats of force to make any obstruction effective and it turns into an unlawful assembly or riotous mob. It was further held that even a hectic form of practical joking may constitute threatening behaviour.[22]

The ingredients of "Abusive" words can be traced even in any verbal hostility. The conduct of a person may become abusive provided it provokes others but if the ordinary man is not expected to be

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20. The words omitted were repealed by the Representation of the People Act 1949, S. 175 Sched. 9.

21. (1965) Crim. L. R. D. C.

22. Southend Magistrates Court, Times, 30 August 19[illegible]

provoked by, what was said, the conduct is not said to have involved any offence or abusive words or behaviour.[23]

In explaining insulting word or behaviour Lord Parker, C.J., in Jordan V. Burgoyne gave a definition of "insult" to the extent that it was used in the public Order Act in the sense of "Hit by words" and it has a nature quite distinct from a strong expression of one's views and criticism of his opponent.[24] A clear example of insulting word has been provided in *Jordan* V. *Burgoyne* stating that nothing can be more offensive than to assert to an audience including Jews that Nazi policies of murdering Jews were correct. The definition of insult may be viewed from two standpoints. The narrow approach gives an emphasis on the possibilities of causing a breach of the peace as a real not a hypothetical contingency and that insulting words must be directed to person within hearing. The Supreme court of New South Wales had put reliance on the condition of using insulting words directly to concerned persons within hearing. [25]

There is, however, a broader approach to the definition of insult in as much as the wider aspect of the meaning does not require evidence of hostile reaction from any other person. It also views insult synonymously with "abuse" or "contemptuous" speech or action.[26] Nevertheless, since variations are rampant on the nature of a demonstration prosecution policy also varies according to the nature of the insult, for example, when a group of people holding American

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23. See R. v. Jwisker (1938), I DLR 461; Cf. Banks v. M. Lernan (1876), 4R (Cf. of Sess) 8; County Court in Nova Scotia) where profanity to a police officer did not amount to "Provoke a breach of the peace" in as much as a police officer is expected to be tolerant and forbearing; R. v. Carroll (1959), 23 DLR (2edn.) 271. Ontario CA.

24. Op. cit. 4 Note 16.

25. Gumley v. Breen (1918), 24 C. L. R. 453, See Egan v Townley (1872) 2 Q. S. C. R. 204.

26. See Thurley v. Hayes (1920), 27 C. L. R. 548 H. C. Aust. Annett V. Brickell, (1940) V.L.R. 312; Gebert V. Innocenzi, (1946) S. A. S. R. 172, of. Marlborough Street Magistratesllt Court. Times 30, May 1967; ibid. Times, 4 July 1967.

flag outside the United States embassy were convicted of insulting behaviour as the Magistrate apprehended that this might provoke the Americans to intervene, although this was a symbolic protest against American policy in Vietnam.[27]

The Public Order Act, 1986 has provided many offences by replacing the four common law offences of riot, rout, unlawful assembly and affray with three statutory offences of riot, violent disorder and affray. The 1986 Act also makes extensive provisions relating to threatening, abusive, insulting or disorderly conduct, to public processions and meetings, to incitement to racial hatred and to aggravated trespass.[28]

Section 1(1) of the Public Order Act deals with riot. Riot is said to have taken place when 12 or more persons present together use or threaten unlawful violence causing a person of reasonable firmness to fear for his personal security. The offence triable on indictment provides for ten years imprisonment.[29]

Violence has been defined by section 8 of the 1986 Act meaning any 'violent conduct' and such conduct has multifarious dimensions. The Act goes on to say that the one or more of the assembly of 12 or more persons notwithstanding their lacking of criminal responsibility or mental state can, nevertheless, be connoted in determining whether there were 12 or more persons in the assembly, although they may not be convicted as accomplices. The principles of self-defense are also aptly applied in controverting charge of riot under this Act. In case of self-induced intoxication at the time of committing the prohibited conduct, a person cannot avoid the scope of the Act if he did not intend to use the violence.[30] Self-intoxication has, therefore, been discarded as an irrelevant defence and, intoxication

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27. Marlborough Street Magistrates Court, 27 Times, 26 July 1966.

28. See Richard Card, Introduction to Criminal Law, London, Butter Worth, 440 (1988).

29. Public Order Act, 1986, S. 1(6).

30. D. P. P. V. Majesewski (1977) A. C. 443 (1976)2 All E. R. 142 H. L.; Para 9-50.

under provisions of the Act means any intoxication whether caused by drink, drugs or other means, or by a combination of means.[31] Defences are available when he proves that the intoxication was not self-induced or that it was due to taking of a substance in course of medical treatment.

Section 2(1) of the Public Order Act has provided the definition and ingredients of violent disorder. This section provides that when three or more people present together use or threaten unlawful violence and their conduct is such as would cause a person of reasonable firmness present at the scene to fear for his personal safety, each of such persons using or threatening unlawful violence is guilty of violent disorder. The maximum punishment on conviction on indictment is five years imprisonment.[32]

The offence of affray has been defined by Section 3(1) of the Act where it provided that a person is guilty of affray if he uses or threatens unlawful violence towards another and his conduct is such that would cause a person of reasonable firmness present at the scene to fear for his personal safety, maximum punishment on conviction on indictment being three years imprisonment.[33]

Section 4 and 5 of the Public Order Act, 1986 have replaced some of the statutory offences like threatening, abusive words under section 5 of the Public Order Act, 1936. Section 4 (1) of the Public Order Act, 1986 provides that a person who uses threatening, abusive or insulting words or behaviour or distributes or displays to another person any writing, sign, or other visible representation which is threatening, abusive or insulting, is guilty of an offence, the maximum punishment being imprisonment for six months or a fine not exceeding level five on the standard scale or both.[34]

The graver offences of violent disorder, sedition or affray are also sometimes constituted as offence under section 4 of the Act. It did

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31. Public Order Act 1986. S. 6(6).

32. Public Order Act, 1986, S. 2(5).

33. Public Order Act, S. 3(7).

34. Public Order Act, 1986, section 4(4).

not, however, prevent a charge under section 5 of the Public Order Act 1936[35] and the same must be true in relation to Section 4.

As regards 'harassment, alarm or distress' these are some what vague terms and incapable of wide interpretation by Magistrates' Courts as they involve question of fact.[36] An offence under section 5 may be committed in a public or a private place. The provisions in section 6(5) concerning intoxication apply equally under Section 5 of the Act.

There is a mention of six offences relating to racial hatred in Part III (ss17-29) of the Public Order Act, 1986 which replaces and extends provisions dating back to 1965. All offences under Part III of the 1986 Act require that the material, words or behaviour are, 'threatening, abusive or insulting: Section 18(1) of the 1986 Act also provides that the act of threatening, abusive or insulting words of behaviour with intention to stir up racial hatred are also punishable offences. Part II of the Public Order Act, 1986 (ss 11-16) provides various controls over the holding and conduct of public processions and public assemblies.

As regards public processions, section 11 of the Act requires a notice in advance and failure thereof makes each of the organisers guilty of a summary offence. Persons taking part in public processions and inciting others to commit the offence are also guilty of summary offence.[37]

The 1986 Act provides in section 14 (1) certain conditions on a 'public assembly' defining it as an assembly of twenty or more in a public place. It is also provided that if a senior police officer has reasons to believe that the assembly may result in serious public disorder, damage to property or serious dis ruption to the life of the community or intimidation of others, he may impose conditions. Disorderly conduct at a public or private meeting may result in criminal liability causing serious offences against public order. This may be in the form of riot or obstructing a constable. Moreover, there are

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35. Oakwell (1978) 1 All E. R. 1223, (1978) 1W. L. R. 32. C. A.

36. A. T. H. Smith, Public Law 537-538 (1985)

37. S. 12 (6) & (10) of the Public Order Act 1986.

provisions for disorderly behaviour at public meetings in the Public Meeting Act, 1908. Section 1(1) of this Act makes a person guilty of summary offence if he acts in a disorderly manner to prevent the transaction of the business of the meeting. Although the act applies to lawful meetings only, yet a meeting held on a highway does not render it unlawful merely because it is so held.[38]

There are a few more legislations such as the Police Act, 1982, Prevention of Crime Act 1953, Criminal Law Act 1977 where there are adequate provisions and powers given to the Police to combat situations which may result in a breach of the peace and public order.

38. Burden V. Rigler (1911)1 K. B. 337. D. C.

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THE FORMER SOVIET REPUBLICS : CONSTITUTIONALISM AND THE NATIONALITY POLICIES

by

Dr. M. M. Ahsan Khan

Introduction

The Soviet Union occupied one-sixth of the land surface of the globe and its territories were inhabited by more than 100 nationalities and ethnic groups. The nationality problem in the Soviet Union had always been of high gravities and complexities. By adopting Socialism as the state ideology the founders of the Soviet Union and the Communist Party of the Soviet Union (CPSU) wanted to unify all nationalities and ethnic groups of the state, and to rise above and gloss over religious, national, ethnic and other differences. The Communist Party was used as a militant vanguard of the Soviet State and people irrespective of their national, cultural and religious origin.[1] Apart from the rule of the Russian communists, the Stalinist rule and the extreme totalitarian regimented system had played a major role in suppressing all national uprisings, and their rights of self determination were ignored. The socialist ideals and communism were given all the credit in keeping "unprecedented" harmony among the Soviet nationalities. For an outsider it was really a fantasy

1. It should be remembered that the number of the Soviet Communists were considerably less than one per cent of the total population during the early years of the Soviet rule and the overwhelming majority of the communists belonged to the Russian Nationality. See, Donald D. Barry, Caral Darner Barry, *Contemporary Soviet politics : An Introduction, London, p.102* (1978). The latest. statistics show that 58 percent of the Soviet Communists were from the Russian Federation and 60 per cent of the four thousand seven hundred delegates of the 28th party congress held in July 1990 came from Russia alone. A good number of Russian Communists resided in all other fourteen non-Russian Republics. Thus the proportion of the Russian Communists in the CPSU were welll above 70 per cent, while the Russian proportion in the total Soviet population constituted about 50 per cent.

to observe that the national feelings had been replaced by the proletariat internationalism or feelings of novy Sovetsky chelavek (new Soviet people).

Gorbachev era came out with a great surprise telling the entire world that the nationality problem were not solved but suppressed. When Gorbachev himself admitted the graveness of nationality problems, then probably no one could try anymore to see the hands of Western or Muslim anti-communist propaganda in them.[2] Ethnic and nationality conflicts and violence sweeping across the different Soviet republics were of great concern for many quarters. This violence had been taken as a part of Gorbachev phenomenon by many observers. Many analysts and observers are greatly perturbed and seriously concerned about the state of nationality conflicts in the former Soviet Union causing the deaths of thousands of innocent people including old, women and children. At present though the western states are mainly concerned with the deep economic crisis and territorial integrity of some of the former Soviet Republics, yet nationality issues are still a bewildering phenomenon for many quarters.

The failure to resolve the nationality problems will not only portend disintegration of some of the former Soviet republics including the Russian Federation, but also may appear as a difficult obstacle to overcome mounting economic crisis. Abandoning the obsolete communist ideals and the monopoly of the CPSU on power, the Gorbachev era was suppose to create new binding forces among the former Soviet republics, as the previous mechanism and dynamics of the relationship among the different nationalities were destroyed completely. The total failure of the Gorbachev era in handling the nationality problems quickly gave birth to fifteen sovereign states in the territories of the former Soviet Union. In this context some pertinent questions need to be answered. How Moscow would maintain the territorial integrity of the Russian Federation and the

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2. In the past, discussions on nationality problems of the Soviet Union were being taken as the anti -Communist propaganda. See for details : V. Zaglagina, Ye Pankova, O. Reingolda (eds), *Krizic Strategee Sovieremennoye Antikommunizma*, Moscow : P. 33,34, 176 (1984).

ascendancy of the Russians over other fourteen newly independent states? Is any new demarcation needed or possible among these fifteen sovereign states? What would be the ultimate reaction of the millions of Russians living outside the Russian Federation? What would be the fate of secessionist or nationalist movements led by the non-Russian nationalities in different parts of the Russian Federation? Does dismantlement of the Soviet Union have any serious longlasting impact on nationalist movements striving for independent states? Is it merely a crisis of socialist ideology or a crisis of federalism experiencing similar tendencies in all other big federal states? This paper is an attempt to address some of these questions.

Nationality problem in Russia : Historical Perspective

In the second half of the 19th century the Russian colonial expansion was so quick and dramatic that all the neighbouring non-Russian nationalities both inside and outside the Empire had to succumb to the irresistible ascendancy of the Russians. The Russian Empire turned into the third largest Empire after the British and Mughal Empires in the entire human civilization. [3] But the expansion of the Russian Empire was not always driven by economic causes; it was first and foremost a military occupation by the Russians of the territories inhabited by the other nationalities to fulfill the hegemonic ambitions of the Russian Nationalism.

The russian occupation over many regions did not prove to be justified economically, rather it tended to appear an economic burden for the Empire. In the absence of modern technology, a shortage of capital for investment and because of inadequate infrastructure the Russians failed to derive economic benefit from her colonies. Maintenance of big colonial apparatus and army itself appeared to be a heavy burden for the Tsarist regime. [4] During the late years of the 19th century and the early years of the 20th century the Empire was

3. See for details : Michael Rywrin (ed) *Russian Colonial Expansion to 1917*, London, P.1-7, 235-256-. (1988).

4. James Bryce, *Transcaucasia and Ararat:* London, p 116, 117 (1977).

heading towards a deep economic and political crisis. The Russian revolution of 1905-07 was the outcome of socio-political and economic crisis of the Empire. [5] Though the status quo of the Empire was seriously endangered by that revolution, the Tsarist regime, however, prevailed with some liberalized policies. Along with the Russians, the non-Russian nationalities were also benefited by the post revolutionary relaxation of its earliar regimentation . [6]

In the wake of the world war I many nationalities, previously suppressed by the Tsarist regime, began to voice their distinct national identities. [7] After the October Revaluation one after another nationality expressed their firm determination to achieve their sovereign states. [8] For Lenin this nationality problem was not a novelity. Even before the October Revolution Lenin himself had been trying hard to unite proletariats of different European countries on various issues and found Marxist stances on nationalism and internationaism utterly ineffective. [9] In a bid to seek an accommodation for all nationalities, previously ruled by the Tsars, Lenin initially expressed the idea of a close alliance of all peoples of the Empire and advised the Russians that "they should make it possible for all other nations without exception freely to decide whether they wish to live as separate state, or in Union with whomsoever they please." [10] But he insisted that it would be better for the Russians and non-Russians alike to form a new Russia as a

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5. I. A. Fedosovalev, *Istoria SSSR, XIX-Nachalo XXB.* London, P. 4-16, 299-304, (1981).
6. See, Vladimir Molchanov, Consuelo Sequral, *I am Free to Believe* , Moscow, p. 34-37, (1983).
7. See, S. Alexeyev, V. Kartsov, A. Troiesky, *A Short History of the USSR : A Popular Outline*, Moscow, p. 75-87 (1981).
8. See, Shirin Akiner, *Islamic Peoples of the Soviet Union*, London, p. 59, 71, 79, 329. (1986).
9. See, Mizanur Raman Khan, *Changing Faces of Socialism,* BIISS papers No. 9. Dhaka, p. 13 (1989)
10. V. I. Lenin, Mandate to Deputies of the Soviet Ellected at Factories and Regiments, *Collected Works,* Vol. 24 Moscow, : p. 355. (1974).

union of free republics. [11] Lenin argued that if the major nationalities were allowed to have their own republics with all distinct territorial and constitutional identities within a Socialist Federation, they would see enough reasons to remain under the Bolshevik state. [12] Lenin expressed his readiness to recognize the right of secession of non-Russian nationalities at any time in the case of their genuine will. His arguments found expression in the decree on Nationality adopted in the very early days of the Bolshevik regime. [13]

A federal system or any such on arrangement was completely foreign to the Marxist doctrine. But the Russians justified it the ground that : "we work solely from the fact that during and after the October Revolution federation was accepted as an exception from the general rule, owing to the specific circumstances in which Russia found itself and which were marked by an intensification of national strife and political fragmentation."[14]

The Soviets, however, tried to put a Marxist facade on these affairs. They admitted the presence of fierce struggle by the different nationalities against the Bolshevbik regime, but only blamed the Bourgeois sections of those nationalities.[15] Similarly the Bolsheviks claimed that their government maintained the territorial integrity of the Soviet Union with the help of the fraternal aid and support of different nationalities and according to them such cooperation was possible because of their ideological commitments and affiliation. [16] Thus they tried to highlight the efficacy of marxism and downplay the role of the

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11. V. I. Lenin, First All-Russian Congress of Soviets of Workers and Soldiers Deputies, June 3-14, June 16-July 7, 1917 *Collected Works,* Vol. 25-37, Moscow, pp. (1974).
12. See for details: B. N. Ponomarev (ed) *A Short History of the Communist Party of the Soviet Union,* Moscow : p. 205-208 : (1974); Victor Shevtsov, *The State and Nations in the USSR,* Moscow, p. 46-52. (1982).
13. *Obrazovanie i Razbitie Souza Sovetskikh Sotsialisticheskikh Respublik V Dokumentakh,* Moscow: p. 89-91 (1973).
14. Victor Shevtsov, op. cit. p. 47.
15. Ibid, p. 45.
16. Ibid, p. 79-83, B.N. Ponomarev (ed), op. cit. p. 208.

Red Army and the dominating position of the Russians and communists.

Despite pragmatic policy showed by Moscow towards the nationality problem, different nationalities maintained their stubborn refusal to accommodate themselves in the Bolshevik state. Lenin showed further political realism when he accorded independence to Finland and Turkish Armenia.Though Lenin hesitated for about two years, finally in 1920 he recognized the independence of Lithuania, Latvia and Estonia. However, the generosity to the nationality problem showed by Lenin must not be overemphasized. Lenin was indulgent to those nationalities where there were threat from external powers being involved in the secession movement. [17] Many nationalities continued their struggle for their right of self determination and Lenin expressed his exasperation at the late years of his life. [18] However, he tried to salvage the problem by preaching peaceful co-existence of different nationalities in a proletariat state. At the time of the 1st All-Union Congress of the Soviets in December 1922 Lenin reiterated his plan for the voluntary unification of equal

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17. Formally the Council of people's Commissars of the RSFSR issued a decree recognising the independence of Estonia on December 7, 1918 and similar acts were adopted on Decemvber 22, 1918 with respect to Latvia and Lithuania. But in reality such decrees or acts meant very little until Lenin was compelled to recognise their sovereignty in 1920 because of the fear of direct involvement of other Europian forces in the Baltic affairs. On January 31, 1919 the Presidium of the Central Executive Committee of the Bolshevik party adopted a decision recognising the independence of Byelorussia. But the decision was not materialised as there were no fear from outside intervention.The Bolshevik government also granted independence to the Emirate of Bukhara and the Khiva khanate. But as soon as the Bolsheviks succeded to neutralize Iran and Afganistan, these territories were also incorporated with the Soviet Union. See for detais : M. M. Ahsan Khan, Soviet -Afghan relation : Security and Religious dimensions, In : *BIISS Journal*, Vol. 11 No. 2, Dhaka, p. 245-246 (1990).

18. Lenin warned his fellow communists and party leaders by saying. "I think that our colleagues did not give sufficient attention to the very important principal question." Here by "important principal" Lenin meant the nationality problem. In V. I. Lenin, *Poslednie Pisma i statiu.* Moscow, p. 17 (1981).

Soviet republics in the Soviet Union. [19] As a result officially the USSR was formed and Lenin stressed that along with Russian Federation, the largest republic, non -Russian republics should enjoy equal status and rights within the Soviet Socialist Federation. Thus he visualized that if the smaller nationalities were given status at par with the Russian Republic, tension would be minimized among the nations. This principle was incorporated in the Soviet constitution of 1924 as the basis of the Soviet Federation. [20]

Stalin opposed to such a federation recognizing such overt national identity; he wanted a strong unitary form of socialist government transcending all national peculiarities.[21] However, when he came to the helm of the Soviet affairs he did not challenge Leninist arrangements, but accepted the federation more from administrative convenience than from nationality identity perspective. For that purpose Stalin spilled some non-Russian republics into pieces and also created more Autonomous republics. For example, in 1929 the territory of the then Uzbekistan was divided into Uzbek and Tajik Republics. In 1939 the Kazakh ASSR and Kirghiz ASSR were given the status of union republics. By 1936 the number of Soviet republics reached eleven. Under Stalin aspiration of the smaller nationalities tended to be frustrated to the extent of endangering their nominal existence. Main beneficiary from such arrangement was the Russian nation, already they had the prepondering interests in the federation. Stalinism further reinforced their privileged position.

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19. A.K. Vonrosu, O. Natsionalnostyaka ili ob "avtonomizatsi" In : V. I. Lenin, *Izbrannys Proizvedenia V. Trekh Tomakh.* Vol. 3, Moscow : p. 700-705. (1980).

20. See for details : P. N. Fedoseeva (ed), *The Fundamental Law of the USSR,* Moscow : p.10-11 (1980).

21. In fact any sort of liberal federal system was not acceptable to the very of the authoratarian leadership of Stalin. Lenin was very much aware of the dictatorial -------- attitude of Stlin and wrote, "Stalin is too rude and this defect, although guite tolerable in our midst and in dealings among us Commu nists become intolerable in a Secreetary-General. That is why I suggest that the comrades think about a way of removing Stalin from that post" In : V. I. Lenin, *Problems of Building Socialism: Communism in the USSR,* Moscow : p. 68. (1984)

Stalin soon resorted to a policy of ruthless extermination of nationalists trying to be recalcitrant. However, he slackened his grips over them in his bid to seek support to the war effort during the world war II. [22] But that was short lived, so he reverted to his well known "blood and Iron policy". During world war II Stalin incorporated the Baltic Republics, soviet western Ukraine .and a part of Rumanian territory neighbuoring with the then Autonomous Republic of Moldavia. Together with the occupied Rumanian territory Moldavia was given the status of a Union Republic. Thus number of the Union Republics reached to fifteen. All nationalities living under Soviet rule by then have resigned to the Russian domination and socialist regimentation as their final destiny. After the death of Stalin a soft critical attitude of the CPSU to the Stalin era did not change the character of nationality policy. But gradually different non-Russian nationalities, sub-nationalities and ethnic groups began to be assertive in their respective republics, autonomous-repulics and regions. The nationalists took care not to be overt, rather they tried to make their condition better through the proclaimed socialist ideals of equality and fraternity.

Brezhnev probably being conscious of the damage done to the different nationalities tried to compensate them encouraging equal participation of all nationalities in the Communist Party and the state apparatus.[23] All the non-Russsian nationalities took it as an advantage to challenge the Russian supremacy in the party and state organs at least in the Union Republic levels. In some republics non-Russians succeeded in captureing many key posts, replacing the Russians.

Being communists and capturing important party and state posts the non-Russian Soviet citizens, not necessarily, helped socialism. By using their power and consolidating their position in the party and

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22. See Alexandre Bennigsen ; S. Enders Wimbush, *Muslims of the Soviet Empire : A Guide*. London : p.14-15. (1986) Lean Emin, *Muslims in the USSR*, Moscow, p. 21-23. (1984).

23. Brezhnev's work "Tselina" shows how closely he was familirar with the people and society of Kazakhstan. See for details : L. I. *Brezhnev. Malaya Zemlya, Vozroshdenie, Tselina,* Tash kent (1981)

state organs they rather helped nationalism to revive. It was a sort of secret war of nationalism against socialism.

Thus it is apparent that more than seventy years' of socialist rule could not make the Soviets a unified nation transcending nationality susceptibility. The different non-Russian nationalities not only took entire period of Soviet history negatively, they firmly tended to view Soviet rule as an episod of colonialism and Marxsim, as a ploy to exploit them. [24] Article 72 of 1977 constitution stipulated that "Each Union Republic shall retain the right freely to secede from the USSR." But in reality such provision was not meant for implementation and, therefore, the Soviet nationalities had very little confidence in such written constitutional provisions. [25]

Declaration of Sovereignty by Soviet Republics : Causes and Consequences.

Gorbachev by initiating his *perestroika* and *glasnost* programmes wanted to bring about radical changes in the "Soviet Society". He described his programmes as "a revolution without bullets".[26] His new policies primarily meant for economic and political reorganisation for the entire soviet system. But Gorbachev's programmes had its wide ramification in all East European Socialist countries. Socialist system in all East European countries were at bay, giving rise to democratic atmosphere.

Developments in East Europe was a by-product of Gorbachev's era. However he himself made it clear that Moscow was no more interested to keep any satellite Socialist state and criticized

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24. "Despite the best efforts of communists over 70-odd year's the Soviet Union is not one glorious socialist; it is a collection of 15 dissimillar republics, whose inhabitants use different scripts, worship different gods and owe greater allegiance to local heroes then to Lenin, Stalin or Mikhail Sergeevich Gorbachev", In : *The Economist* June p. 9. (1990).
25. See *Constitution (Fundamental Law) of the Union of the Soviet Socialist Republics*, Adopted at the Seventh (Special) Session of the Supreme Soviet of the USSR. Ninth Convocation, on October 7, 1977, Moscow : 29-47 (1982)
26. *Strategic Survey 1989-1990*, London : The International Institute of Strategic Studies. p. 15. (1990).

his predecessors for their expansionist policies. In fact, Gorbachev wanted to get rid of all proclaimed international proletariat responsibilities across the globe, especially through out the Socialist world. Gorbachev felt that the Soviet Economy could no more could bear the liabilities of other countries. Releasing the Socialist countries, Gorbachev thought he would get a freer hand with his internal restructuring programmes.

Leadership in Kremlin was almost ready to allow all the republics to enjoy western type of freedom and democracy and hoped that it would help implement new economic policies successfully and would make peoples enthusiastic in new programmes. Instead of using new opportunities for liberalization of their economic and political system, some of the republics expressed their willingness to have their own independent sovereign states. Three Baltic republics, Georgia and Maldavia were in the forefront of the demand for complete separation from Moscow. But it is pertinent to ask why these republics so hurriedly went for the programmes intending to achieve their complete independence from Moscow?

The Baltic republics were quick in arguing that historically they belong to Western Europe and the capitalist world. Such a prompt reaction on the part of Baltic republics may find several different explanations. But all sorts of explanations have some grounds in common. These three republics were finally incorporated within the Soviet Union immediately after world war II. It means between the years of I and II world wars they enjoyed full freedom recognized by the Bolshevik regime and the Russians.[27] Even After world war II Lithuanians waged armed struggle against Moscow for their independence, while fate of the majority of the Soviet Republics had been sealed in 1920s. The very fact that the Baltic Republics were incorporated lately proves their less deeper socialist character and their greater hostility towards Soviet integration.

But the nationalist leaders of the Baltic republics miscalculated several things. Despite their overall loose integration with the

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27. The Soviet sources claim that as a result of agreements with Estonia, Latvia and Lithuania signed on September 28, October 5 and October 10 of the year 1939 respectively Moscow received legitimate rights to hold those territories and protect them. See for details : A. A. Gromyko, B. N. Ponomarieva (ed), *Istoria Vneshneli Politiki SSSR 1917-1945 V Dvukh Tomakh.* Vol 1 Moscow, p. 392. (1980).

mainstream of the Soviet Society, they were economically dependent on Moscow. As such there exists no easy way to go back to western economic fold. These three republics are very small and their economic might is very negligible. They occupy an area of 174,000 sq. km. with a population of 8 million. The presence of a large number of Russians in those republics was often ignored. For example, the proportions of the Russian population in Estonia and Latvia are 28 and 33 per cent respectively. Lithuania, of course, is in a far better situation in this respect, where the Russians constitute only 9 per cent of the total population of the republic. This numerical strength of the Lithuanians perhaps led to an early declaration of independence on 11 March, 1990. Great ethusiansm and courage of the Lithuanians quickly encouraged the Latvians and Estonians to follow the same path, without giving much thought of the consequences of their declarations.

Moscow initially tried to accommodate the nationalist movements through negotiations, discussions and public gatherings organized in the capital cities of Baltic republics. Gorbachev himself visited the Baltic republics and tried to convince the Baltic nationalist leaders not to go for secessionist programmes. Failing in all its negotiation attempts to stop the Balitc republics in the process of final declaration of sovereignty, Moscow adopted a policy of total economic blockade.

In the face of economic blockade of Moscow, Lithuania proved to be helpless though initially the Lithuanian leader Vytautas Landsbergis claimed that "until 1944, Lithuania lived on its wn products and had a stable economy. "[28] That might be a matter of pleasure for remembrance, but present reality was completely different. Lithuania was completely dependent on Moscow for its many supplies including oil and gas, and Moscow used to supply them at 25% of their real price. [29] Most of the 200 largest industries in Lithuania were controlled by Moscow. [30] Over looking the graveness of the problem Landsbergis declared that his intended sovereign

28. *Newsweek*, April 30, 22. (1990).
29. See : *Time*, January 22. (1990).
30. See, *The Economist*, 17-23 March 50. (1990).

republic can "hold out for 100 Years without gas and oil", [31] But that was simply a rhetoric and Deputy prime Minister of Lithuania Algirdas Brazauskas told the republic's parliament that it would be impossible to survive a blockade for long, warning that unemployment would quickly reach intolerable levels[32] and within a short time it was really so.

On June 28, 1990 Lithuanian parliament went for a compromise, suspending its proclamation of sovereignty for 100 days. Though Moscow was not so happy with that temporary moratorium on independence, yet Moscow looked at it favoarably and relaxed the blockade and resumed supply of some raw materials to run the factories producing finished products for other Soviet republics. In this tactical compromise both the conflicting parties intended to save their faces at least to their own peoples. On July 19,1990 Lithuania established its own armed unit and declared a military policy. Such a ploy was done to prove that the Lithuanians did not give up entirely their struggle for complete independence. Strength of independence movements of other two Baltic republics was weaker than Lithuania. These three republics thought that unitedly they might face successfully economic blockade of Moscow. But united efforts failed to bring any favourable result to their side, rather it exposed their helpless condition. On the other hand, since the bloody army crackdown in Baku on January 20, 1990, Gorbachev waited almost a year to use army in Baltic republic. Just before the US attack on Iraq, on January 12 1991. Gorbachev ordered for a similar kind of army crackdown in Lithuania. But bloodshed and casualties were much less than that of Baku. Still this time even the Russsian themselves did not endorse such frequent use of force against the non-Russian peoples and many Russians demanded the resignation of Gorbachev.

In general the Russians were in support of peaceful methods for keeping the territorial integraty of the Soviet Union. Declaration of sovereignty by the Russian federation in fact was the greatest deterrent and challenge to all other republics.The Russian Federation occupies three fourth of the former Soviet Union and it is

31. *Newsweek*, April 30, 22. (1990).

32. Ibid, p. 23.

inhabited by a little more than half of the total Soviet population and it abundant has valuable natural resources.[33] Previously inter-republic trade and business were governed by the socialist principles and the Russian Federation had to sacrifice both in terms of price and volume in its transactions with smaller and poorer republics. The Russians thought that in the case of their sovereignty over fall natural and human resources of the Russian Federation, their country would not only be greatly benefited in its inter-republic trade, it may also can claim billions of dollars from some of the republics for its subsidies previously provided to them.[34]

The quest for sovereignty by the Baltic republics would have been greatly accelerated if the western world had come with substantial moral and financial support. But the west appeared to act more as an observer of the Baltic scenario than an active champion of the right of self-determination of the subjugated people.The West European countries were busy with the task of accommodating the liberated East European Socialist countries into their orbit, while the Americans were seriously concerned about their influence on European and Middle Eastern affairs in the future.[35] Thus no external force was interested to involved in the Soviet Baltic affairs. The Baltic republics achieved their independence depending upon themselves

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33. The Russian Federation accounts for 90 per cent of oil output, 70 per cent of gas output, 70 per cent of hard-coal production, 58 per cent of steel, 81 per cent of timber, 60 per cent of cement of total Soviet output. See for details: USSR Yearbook 1988 (Moscow, p. 116-117 (1988). *Newsweek* June11, p.28. (1990).

34. Gorbachev himself demanding hundreds of billions rubles says : "In the case of a divorce, it is not important whether the marriage was contracted legally or not, the property must be divided nonetheless." Cited in : *Time*, April 2, p. 16. (1990) It can be maintioned here that Gorbachev admitted that Nazi-Soviet pact of 1939 was unjust.

35. After the end of cold war and the reunification of two Germans the Soviet Union is no more a potential threat to the West European countries and in this context in the near future American military presence in the West European countries would be undesirable for Europeans as a whole. In the absence of American military power, US' influance on the European politics would be insignificent.

Ukrainian republic declared its sovereignty on July 16, 1990. Among all the fourteen non-Russian Soviet republics this republic can form a stable and viable independent state and in the USSR it was the second largest state after the Russian Federation with a population of 52 million and a strong industrial and agricultural base. Despite all political and economic difficulties, along with three Baltic republics, Maldavia and Georgia immediately followed their footsteps. Since the death of Stalin Georgian nationalists from time to time wanted to challenge the authority of Moscow over their republic. Maldavia anticipated active help from Romania because of its historical and cultural links and its parliament declared independence on June 24,1990.

Declaration of sovereignty by Azerbaijan on 23 September, 1989 in fact remained unnoticed and was not taken seriously by the outsiders. But encouraged by the situation of other republics, some of the so called five Central Asian Muslim republics had been trying to drift from the grip of Moscow. Uzbekistan also declared its sovereignty on June 20, 1990. The at that time declaration of independence by any Soviet republic was a tactical step to increase its bargaining capacity with Moscow. However, Uzbekistan and the Uzbeks had some advantages in their favour in achieving independence. The Uzbeks formed the largest Muslim nationality with a size of population of 15 million, about a fourth of the total Muslim population of the then Soviet Union. It achieved its membership of the UNO on March 2, 1992.

Among the Soviet Central Asian republics Uzbekistan is in a better situation both in industrial and agricultural terms.[36] These advantages would not be enough to achieve immediately the status of a prosperous sovereign country for several reasons. Firstly, prolonged Russian and Socialist rule over Uzbekistan has deepen their economic dependence on the Russian Federation for many essential supplies and Uzbek nationalist leaders are poignantly aware

36. See, USSR Yearbook 1988 op. cit. p.122123.

of this. Adilov Miralam, leader of Uzbek nationalist party, Birlik,[37] says: "Moscow treats us like slaves. We are the poorest republic in the Soviet Union but rich in resources, which Moscow takes from us." [38] Moreover, extensive cotton cultivation directed by Moscow over last several decades has created a devastating situation in the entire republic. [39] Apart from the adverse affect on the fertility of the cultivated land, water resources of Uzbekistan in many places were either remarkably shirnked or dangerously polluted. Secondly, the Uzbeks believed that Moscow by establishing various settlements of Russian, Tatars, Meshketians and many other in their republic in fact greatly weakeend their national solidarity. Ethnic problems in the Muslim republics is not an unexpected phenomenon. Moscow encouraged settlements of Russian people in non-Russian republics in order to defuse their national militancy.[40]

It is not certain yet whether creation of independent states for different nationalities is a viable answer to the nationality problems. In the present circumstances, establishments of complete separate states of major former Soviet nationalities in fact added only another new fifteen states to the group of LDC-s. For example, condition of Tajikistan might be similar to that of Afghanistan from tribal, ethnic and economic perspective. Economic situation in Azerbaijan and Maldavia also might be worse than the Iranian Azerbaijan and Romania respectively. Likewise the three Baltic states may quickly turn into the poorest countries of Europe. Proably condition of Turkmenia would be no better than others, which declared its independence on 24 August, 1990 and become member of the

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37. *Birlik* (unity), a strong Muslim nationalist party, consisting of more than one milion members. Along with other nationalist parties Birlik played an important role in achieving political independence of Uzbekistan. It has been struggling for economic independence and for a confedaration of Central Asian Muslim republics, See to details : Far Eastern Economic Review, July 12, p. 24-25. (1990).

38. Ibid. P. 24.

39. Ibid, also see *Soviet Muslim Brief*, Vol. 6 no. 2, July-August (1990).

40. See for details : M. M. Ahsan Khan "Demographic changes in the Muslim population of Soviet Russia : facts and fiction" In : Journal, *Institute of Muslim Minority Affairs*, vol. 9, no. 1 London, p. 134-154. (1988).

UNO on 31 July, 1992. A third of this republic's 3.5 million inhabitants lived on 75 roubles a month which is well below the then was Soviet poverty line.[41] Twenty per cent of the Turkmenian, population are already unemployed and the number of unemployed workers is still mounting. In fact in every Muslim republic within the next couple of years one third of the adult population would be unemployed.[42] Moreover, conditions of millions of Russians living in non-Russian Republics would also adversely affect the situation because of their neighbourhood and centuries-long interaction.

Kazakhstan stands as a stark testimony of the painful and difficult nationality scenario-if the principle of complete self determination is conceded. The Kazak republic covers a territory of 2, 717,000 sq. km. and inhabited by about 18 million people. The proportion of the Muslim and non-Muslim population of the Republic is almost equal and the history of annexation of Kazakh territories by the Russians goes back to seventeen century. Any attempt to make the republic purely Russian or Kazakh would surely lead to civil war and bloodshed. For the sake of the establishment of socialism in Kazakhstan, Stalin took the lives of more than a million Kazakhs.[43] The Kazakhs would definitely try to take revenge on the Russions in retaliation of the massacre perpetrated on their forefathers. So rights of self-determination or establishment of sovereignty by any former Soviet republic can not be viewed in isolation from the interests of one nation from another. The dislocation created by the seventy years' of socialist rule and the world war II in many places are of historical reality and the entire history can not be reversed.

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41. *Soviet Muslim Brief* Vol. 6. No. 1, May - June (1990) op. cit.
42. You D.Mashyakov, the Chairman of the Central planning Commission (Gosplan) estimates that the country-wide introduction of market economy would make 40 million Soviets unemployed (See: Newseek June, 4 P.16 (1990). But the Muslim Republics would be the worst effected because of their less skilled laboures.
43. See for details: M. A. Kettani. *Muslim Minorities in the world Today* (London, p. 6 1986) : Alexander Bennigsen S. Enders Wimbush, *Muslims of the Soviet Empire*, London, p.70. (1985).

The Russians tended to view the demand of the Muslim nationalists for self-determination with more apprehension vis-a-vis stirrings of other nationalities. Islamic element in the Russian Empire and Soviet Union was a traditional factor and it had become more and more marked since the Afghan crisis and the Islamic Revolution in Iran. Therefore, the Russians were circumspect about the Muslim nationalities and still it is not unlikely that they would try to play one Muslim nation against the other against the backdrop of sharp divisiveness among the Muslim nationalities.

Violences and riots between the Uzbeks and the kirgizes in the city of osh in kargizia in June and July 1990 probably suggested a newly devised Russian strategy to challenge Muslim nations .[44] Some observers think that "the Kremlin appears to be intent on trying to buy time by putting Muslim against Muslim." [45] Though Osh is situated in Kirgizia, it is inhabited by a sizable Uzbek Muslims who traditionally cultivated lands in the region. In the name of privatization, attempts had been made deliberately to take the lands from the Uzbeks and to give them to the Kirgizs, an unprecedented policy in privatization process followed in other republics. If, however, such principle of privatization of land was followed in other republics then the Russains would be disadvantaged in procuring ownership of land. Privatization of land and introduction of free market economy have been creating chaos and confusion in all Muslim republics and as a result ethnic violences are becoming increasingly endemic in all Muslim republics. State authorities can easily use them as a pretext of reviving Stalinist method of suppressing the situation. Gorbachev's heavy handed dealing with the Azari and Tajik nationalities in January 1990 was the glaring example of that. Despite almost the similar character of nationalist movement in Baltic republics and Muslim republics, one could easily discern the sharp contrast in Gorbachev's approaches towards Muslim nationalist movements compared to other non-Muslim nationalist movements.

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44. *Soviet Muslim Brief* Vol. 6. No. 2 op. cit. p. 4.

45 Ibid.

The cases of Tajikistan, Daghistan, Checheno Ingushetia, Tataria, Bashkeriah and Nagorno Karabakh crises bear testimony of Russian double standard towards the Muslim nationalists. Even the Gorbachev era meant very little for the liberalization of the Muslim republics. "The beginning of perestroika or as it was called the process of democratization, was viewed as progressive in many parts of the country. But in Central Asia it was viewed as reactionary when an attempt was made to introduce anti-Islamic and anti-nationalist measures."[46] During the Gorbacher era a renewed anti-Islamic policy was adopted in Central Asian Republics and attempts had been made to replace local Muslim leaders by the Russians. With the help of local communists the Russians indirectly are still holding power in Tajikistan and thousands of Tajik Muslims had to take refuge in Afghanistan. This policy can be regarded as a continuation of Communist vision on central Asian Republics.[47]

GORBACHEV'S LEGACY AND CIS

It was apparent that during Gorbachev era endemic nationality problems and ethnic violence endangered the very basis of the Soviet Federal system. Gorbachev shifted the entire responsibility on the past. He asserted that there was "distortion of the nationality policy. There was even imperial oppression of various nationalities as well as attempts to Russify other peoples"[48] He had been trying to salvage two integral aspects of Russian life–Russian nationalism and

46. Diloram Ibrahim, *The Islamization of Central Asia. case study of Uzbekistan, U. K.* p. 20. (1993).

47. At the initial stage, Gorobachev adopted a policy of expelling leading Musim-communists from the CPSU and state organs, and replace them with Russian-communists. However, expulsion of the Muslim-communists from the party and their removel from the highest state organs of the Muslim republics provoked the Muslims to forecefully protest the Kremlin decisions. In this comtext Gorbachev, retorted Islamic Fundamentalism has bared its teeth. See to details M. M. Ahsan Khan, "Muslims in Central Asia : A Recap", In: Journal institute of Muslim Minority Affairs. Vol. 13, No. 1. London, p. 180-181. (1992).

48. *Time*, June 4, (1990)

the communist ideology. Among the Soviet nationalities the Russians spearheaded the Bolshevik Revolution and they were the vanguards in establishing Soviet Socialist Federal system.

Gorbachev tried to keep the Russians in good humour and at the initial stage of his rule he was required to pay at least lip-service to the communist ideals. Gorbachev knew very well that those ideals were instrumental in sustaining the federal system accommodating so many diverse nationalities and ethnic groups. Moreover, to the Russians, the communist ideals were not merely economic principles, they were rather a way of life and integral part of Russian culture. Loss of Christian heritage and wide dislocations of many Russian settlements caused by the world war II made the Russians obliged to accept communism as their way of life. That is way Gorvbachev did not want to undermine neither Russian nationalism nor the highest ideals of communism. His main concern was how to protect the territorial integrity of the Soviet Union. Admitting the fact that the Soviets lagged much behind the west in all parameters of life, he did not see the salvation in the dismantlement of the Soviet Union. Rather he wanted to put to an end of "splendid isolation" for the Soviet Union from the capitalist courtries. He was enthusiastic in carving a niche in the Western World and hoped that the west would provide a bonanza for the crumbling Soviet economy.

This was not entirely a Gorbachev phenomen on. Since the death of Brezhnev, Kremlin tried not to be a rival to the West, but "an important and integral part of new global economy."[49] But a weaker Soviet economy did not allow the Russians to be the real business partner of the developed industrialized countries. With the help of Western technology and capital Gorbachev wanted to rejuvenate the Soviet economy. He was convinced that once the Soviet economy starts reaping the fruits of open market, economic solvency would defuse nationality problems. But Yeltsin found it impossible to move with such a huge limping economy. Yeltsin representing solely the interest of the Russians, in fact, wanted disintegration of the Soviet Union and waited for a favourable time.

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49. Ibid.

On his part Gorbachev came with two formulas : a) Common European Home and b) New Union Treaty. While the former formula intended more integration with the European countries, the later purposes more cohesion with the internal nationality interests. But his emphasis on Europeanism tended to alienate him from the Asian nationalities. In defence of his New Union Treaty (NUT) Gorbachev voiced that "there should be real sovereignty for the republics in all spheres of their life. There should be qualitatively new relations between the republics and the centre and also among individual republics."[50] On March 9, 1991 Kremlin published the text of NUT, which allowed every Soviet republic to establish diplomatic relations with foreign countries and to join the international organizations freely. Three Baltic republics, Georgia and Maldavia simultaneously and categorically rejected the NUT and insisted on their full independence from Moscow. Other republics, though outrightly did n ot reject the treaty, expressed their dissatisfaction over some of the provisions of the treaty.

Against this backdrop of the nationality problems and crisis of Soviet federal system, Gorbachev hoped for enthusiastic support of his Westen partners to strengthen his personal grip on power. But once the nightmare of communism and cold war fizzled out from European scene, the Western leaders became less enthusiastic in their support for Gorbachev. The western countries main concern was the nuclear arsenals of the Soviet Union particularly in Kazakhstan. "A wave of nationalism and religious fundamentalism is propelling Muslims towards independence. Given the fact that some of the most dangerous Islamic nations might have nuclear weapons".[51] Not a Soviet leader, but a Russian leader could ensure the West that the Russians would not allow any non-Russian nations to possess nuclear weapons. Yeltsin was ready to offer this service to the West on behalf of the Russians.

But still Yeltsin was not the dominant personality vis-a-vis Gorbachev on the Russian scene and, therefore, the western leaders did not want to betray Gorbachev overtly. The military coup of

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50. Ibid.

51. The Sunday Times, London, June 10, (1990).

August 1991 against Gorbachev paved the way for Yeltsin to become sole representative of the Russian Federation in the international arena.[52] Soon after the coup, formation of the Commonweath of Independent States (CIS) made the dismantlement of the Soviet Union a reality for all. Thus Gorbachev's initial success in managing the recalcitrant nationalities was more apparent than real. As a protector of the Russian interests Yeltsin has started jettisoning the vociferous nationalities and drifted to influence them indirectly.

THE RUSSIAN FEDERATION AND THE FOURTEEN OTHER INDEPENDENT STATES.

Both the nuclear arsenals and the veto power in the security council of the UN are controlled by the Russian Federation. The western help to Boris Yeltsin is entirely meant for the Russians. All other fourteen independent states are almost forgotten entities to the western big powers. All the fourteen states are increasingly becoming helpless in their relations with the Russian Federation. Along with Kazakhstan, Ukrain and Belo-Russia had to surrender unconditionally their all nuclear arsenals to the Russian Federation. The Russian Federation on its turn even did not ensure security to any of the fourteen states, but become a trustworthy ally to the West.

In short, this can be regarded as the scenario of the relationship between the Russians and the non-Russian peoples of the former Soviet Union. But it has also wide implications manifested in the affairs of European civilization. The Serbs are the traditional allies of the Russians. Though militarily the western powers, with the help of NATO, could easily stop the atrocities, war crimes and violation of all sorts of human rights by the Serbs against the Bosnian Muslims; by adopting strong policies against the Serbs, but they did not want to

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52. "Once widely thought of as a drunk and a demagogue, Mr. Yeltsin has seen his reputation rise over the past year as it became increasingly apparent that it was he, not Mr. Gorbachev, who most strongly advocating the sort of reforms the West favours. He performed well on a recent visit to America." In : *The Economist,* August, 24th-30th p. 25. (1991).

hurt the Russian interest in the former socialist Ygoslavia. The Russian support for the illegitimate interests of the Serbs fully manifested itself in the UN sponsored Geneva Human Rights Conference held in June 1993, when eighty members of the UN voted for a proposal of lifting arms-embargo against Bosnia. The Russian Federation was the only state which voted against such a proposal, while the rights of self-defence of the Bosnian Muslims, at least theoretically, was recognized by all the Western powers. It is needless to mention that because of arms-embargo on the Bosnian Muslims, they have been completely denied to the rights of self-defence.

The foreign policy of the Russian Federation is quite happy with the present Serbian atrocities in the territories of Bosnia, which is an independent state and a member of the UN. The is not an incidental Russian foreign policy. The parochial view of the Russian Federation as tilted forwards Serbia for obvious reasons of historical and ethnic alignment could not put Serbia and Bosnia in the same footing as independent states. The situation is very simliar to that of Armenia and Azerbaijan. With the help of the Russian soldiers Armenia has been occupying more than twenty per cent territories of Azerbaijan.[53] In fact, the Azeri nationalists spearheaded the independence-movements of all the non-Russian republics of the former Soviet Union. It was the Azeri parliament, who became champion in realising their constitutional right, stipulated by the constitution of the USSR, to secede from the Soviet Union. Now the Azeris have been paying a heavy price in terms of material and human resources for their independence and for many hundreds of thousands Azeris their independent status became a symbol of untold sufferings. And in a bid to save the Azeri people from further Armenian and Russian aggression, the Azeri government joined the CIS in 1993.

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53. "The mercenary problem is bound to grow worse. The Russian army demobilized 72, 000 officers last year, and plans to let an additional 25, ooo go in 1993 ... So far, Russian's dogs of war are a disorganzed lot, but they could grow into a menacing pact." In : *Time*, January 25. 34. (1993).

The Russian nationalism with the help of western capitalism might easily overcome its economic crisis for the simple reason that all the fourteen non-Russian states are no more an economic burden for the Russian Federation. At present none of those fourteen states can blame the Russians for their own problems and failure. Similarly the Russian Federation can not accuse other fourteen states for its own backwardness. Because of its territorial vastness, resources and better organizational structure of state organs, the Russian Federation is in an advantageous position vis-a-vis other fourteen states. It was the earner of eighty per cent of hard currencies of the then Soviet Union. By virtue of the rules of free-market economy all these newly independent states would possibly find themselves more dependent on the Russian Federation than before. But still the principles of free-market economy in the Russian Federation remains in the papers.

Democratic constitutional principles have yet to regulate the nationality issues. After the referendum held in 1993 Yeltsin now has wide ranging executive powers. But in the process of achieving strong executive power challenging the supremacy of the Russian parliament, Yeltsin government demonstrated its military might killing five hundred people in besieging the parliament house in 1993 and putting some parliamentarians in jail. As a consequence Yeltsin and his supporters could not win the majority seats in the first parliamentary election of the Russian Federation. Success of the extreme Russain nationalists in this election is remarkable and the ultra-nationalist forces are posing a real threat to the Yeltsin government. All these sequence of events have their implications and ramification in all other fourteen republics.

The Russians living in the non-Russian states can easily claim their representation in the respective parliaments. But achieving independence from the Russians, the non-Russian nations are still blaming the Russians for their own miseries and are not ready to provide the Russians a proportionate representation in their parliaments."Today, more than twelve million Slavs live in central Asia,

almost twenty five per cent of the total population."[54] Ninety per cent of these Slaves are Russians. In Kazakhstan about forty per cent of its total 18 million population are Russians. Though the Russian colonial rule brought these Russian people to these Muslim states, still their legitimate rights should not be denied as the majority of them were born and brought up in these traditional Muslim lands. More importantly, Islam does not allow the Muslims to persecute the non-Muslims living in the Muslim states. But prolonged colonial rule made the Muslim rulers and citizens downgraded in spirit and values. Morally they are not in a position to adopt the Islamic principles to be followed in their state system.

In terms of legislation the Muslim states are still in a formative stage. They have just rejected the colonial legislations, but yet could not develop their own system. In these circumstances, the Russians can not demand a very ideal situation for them in the six Muslim states. Situation in other eight non-Russian states is in no way better for the Russians. In the three Baltic states the Russians have been treated as the second class citizens of those countries and even are under the pressure of forceful migration to the Russian Federation. The Russian Federation providing the legitimate rights to its twenty per cent non-Russian population can yet set an example to be followed by all other fourteen states. Muslim autonomous republics, Tataristan and Bashkiria of the Russian Federation, cover an area of 68.000 and 143,600 sq km. respectively and about fifty per cent of their eleven million population are Muslims. Chuvash, Daghistan, Checheno-Ingushetia, Crimea, Kabardino-Balkarn have strong Muslim heritage. All these autonomous republics and regions of the Russian Federation demand appropriate attention of Moscow and their proportionate representation in the Federal and provincial state organs, specially in the legislative bodies. Guaranting such a constitutional place in the parliament probably the Russian

54. Diloram Ibrahim; Op. cit, PP. 19-20.

Federation can only hope to protect the legitimate rights of the thirty million Russians living in other fourteen states.

Beside these constitutional problems Yeltsin has been facing more serious ideological and political problems. Yeltsin could not organize his own strong political party to rely on. His popular support is mainly based on capitalist ideals and democratic ideas, none of which are ingrained in the Russian soil. During the Soviet rule interests of socialism and Russian nationalism had been converged in the major policies of the CPSU and Kremlin. Majority of the Russians could easily see their national pride and glory in implementation of the socialist policies in the non-Russian republics. Now the situation is completely different. Until now the ordinary Russians can not see the success in the rules of capitalist mode of production and distribution. In fact, the ideals of the western democracy are still distantly related with the hopes and aspirations of the Russians. On the other hand, the newly emerging Russian capitalist class is still in a disorganized shape. Moreover, the exploitative character of capitalism and the Western democracy is so apparent in all the former Soviet republics that the Russians are increasingly becoming disillusioned with the positive aspects of liberalism and individualism. The Russian are not yet psychologically ready to take "blood-bath" to earn their livelihood in the free-market dynamics.

The problem with the capitalism is that it needs resources to be given in the hands of private individuals. Religious or national identities of the capitalists are irrelevant to the Western democracy. For its effectiveness democracy needs big tax-payers. It has no time or scope to be selective in collecting taxes. Thus the Russians have no scope to deny the rights to the non-Russians to be asserted as capitalists. The few years' experiences show that the non-Russian citizens of the Russian Federation are much more enthusiastic and successful in the capitalist mode of ownership and possession. The Russian Federation is abundant in natural reasources including oil, gas, steel and other valuable mineral resources. But in the absence of highly technological might and efficient management the Russian Federation can not exploit those resources. Though the world's

largest oil reservoir, the Russian Federation has been failing in using the oil industry for its ecomoic emancipation; rather it invites foreign investors to exploit all natural resources including oil. This is the reason why western powers fear that in the absence of Yeltsin leadership Russians may witness a backlash, an unpalatable phenomenon for the West. Moreover, many westerners believe that their cooperation with the Russians in introducing capitalist economy in Russia would not only allow the Western capitalists to have an access to the vast natural resources,which the Russian Federation command, but also burgeoning consumer market there. Huge Russian consumer market is wide open for western goods, but very rarely Russian rubles can buy them. Not of speaking about millions of unemployed Russians, even the majority of employed Russians hardly can buy the necessary commodities needed for their normal daily life. Chances of bright success of capitalism in the near future is very slim, but the constitutional crisis demands an urgent solution of power sharing system between legislative and exective branches both in central and provincial level.

CONCLUSION

The founders of the Bolshevik state pinned their hope that the proletariat internationalism would eventually usher a unified Soviet Russia transcending creed, colour, ethnic and other peculiarities. But history went wrong for them. It was not the socialist creed but totalitarian regimentation, Stalinism and the Red Army that played pivotal role in enforcing their envisioned unity. But the nercissus of nationalism was only marking time. Gorbachev's *perestroika* and *glasnost* programmes together with his abandonment of international proletariat commitment provided the long awaited moment for the hydra of nationalism to expose itself. As a result, all the fifteen Union republics of the former Soviet Union declared their independence in quick successions during the early months of the 1990. Some of the autonomous republics also followed suit. At the initial stage except three Baltic republics, other republics declaring their independence wanted to boost their bargaining lever in the ongoing agreements for a new form of federation, or at least a confederation.

The leadership of several republics knew very well that they were lacking in necessary economic muscle to give concrete expression to their sovereign will. They were helplessly dependent on the Russian Federation for many essential supplies. Free market economy put them in a disadvantageous position as most of the republics had few valuable articles in their store to sell to other republics.[55]

During the Gorbachev era the West could come up with succour to resume republics in their quest for sovereignty. Such an opportunity would have been seen as a heaven-sent opportunity by the West in the cold war era. But the Western countries kept themselves as silent observers in this regared. Rather they had been helping Gorbachev to implement his policies throughout the former Soviet Union. The collapse of the Soviet Union and the Gorbachev era had to be finalised simultaneously.The Russian Federation under the leadership of Boris Yeltsin followed the American policy in all important internationnal affairs except Bosnia. Gorbachev had been allowing the Soviet republics sufficient lee-way to assess their position, while Yeltsin wanted to see non-Russian republics to be dismantled from the Russian Federation. The west European leaders were cautious about the nationalist movements in the former Soviet Union because of its repercussion in the entire Europe. The Americans had no problems with the secessionist trend in the Soviet Union, but could not foresee that the tempo of pan-European integration would ultimately reinforce anti-Americanism in Europe.

In view of impending secessionist threat, Gorbachev came out with two new formulas to salvage the Soviet Union from collapse. His common European Home policy aimed at more accommodation with the West, whereby he hoped to take advantages of the Western

55. "That question—how to earn money and make their way in the world— is the toughest one facing the Balts. Their road to independence has been hard and bloody, and the jubilation that followed their success was short-lived. They have virtually no natural resources, few products good enough for export to the West and little hard currency to pay for their needs on the world market." In : *Time*, September 9, 22. (1991).

technological and managerial expertise. The economic dividend that might follow from such Western co-operation could extinguish nationalist chauvinism. His proposed new Union treaty, a loose federal system among the republics, while ensuring national cultural distinctiveness for all nations hoped to maintain a semblance of Soviet unity. Apparently the Russian Federation might be a looser from such an arrangement. In reality economically and politically advanced Russian Federation could gain more in a competative economy. Thus Gorbachev could only bolster the dominance of the Russians. There was sign that Gorbachev's plan was bearing some fruit. But August military coup of 1991 turned table entirely against him and Yeltsin himself finalized the dismantlement of the Soviet Union and declared the formation of the CIS. Except the three Baltic states all other twelve former republics gradually joined the CIS in a bid to make use of their socialist legacy.

As an idea the Commonweath of Independent States (CIS) is very similar to that of the British Commonwealth. Gorbachev was categorical in his view to oppose the idea of CIS and argued that it would never be a viable alternative to the Soviet Union. Yeltsin needed a formal allaince of the former Soviet republics to neutralize the forces subscribing to the ideas of Gorbachev. The existence of the British Commonwealth has provided a strong argument to Yeltsin in favour of his CIS policies. During the second half of the twentieth century the British Commonwealth has been serving the neo-colonial interesrts and apparently there is no reason why the Russians can not use the CIS in a similar way. During the struggle of independence from British rule, the British imperial rulers playing with the national and religious issues put the colonies in an inferno and divided the colonies in a way, which ensured internecine conflicts among the newly independent states and nations. Moscow has been using Nagorno Karabakh issue to prolong the war between Azerbaijan and Armenia. It is also helping the Serbs against the Bosnian Muslims. In the near future many more issues are at sight,

where the Russian military involvement may play a very dominant role.[56] Abkhajia and Krimea are two examples of such issues.

It is most probable that without many other war fronts for the purpose of its compelling security and economic stratagem, Moscow has little opportunity to establish its upperhand in the affairs of the former Soviet republics. Some of these countries along with central European states have been struggling hard to acquire the membership of NATO. But unlike the British, the Russians are almost surrounded territorially by the non-Russian nationalities sharing socialist legacy. In the hands of all these people capitalism is now a tool to salvage their national and religious interests. The Russian Federation occupaying the three-fourth territory of the former Soviet Union with a population of 150 million of different nationalities is still facing crucial choice between constitutionalism and dictatorship or real federalism and further dismantlement.

56. "Outside the Caucasus, Russian mercenaries have turned up in Moldovia and Tajikistan. There have been numerous reports of whole companies of Russian "Volunteers" fighting on the side of the Serbs in what used to be Yugoslavia, and at least 30 Russians are known to have joined the French Foreign Legion." In : *Time* January 25, 34. (1993).

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CONSUMER PROTECTION INSTITUTIONS IN SWEDEN : AN OVERVIEW *

by

Dr. Mizanur Rahman

1. INTRODUCTION

In the contemporary world when ideology has finally ceased to be the dominating factor both in internal and external affairs of a state, the individual as a consumer is gaining increasing attention as the primary objective of national policy. The need for consumer protection has long been recognized in countries throughout the world. While Sweden is no exception, it has developed some major innovative approaches to consuer protection both in respect of institutions and legislation the following is a brief overview of the development of institutional framework in the sphere concerned.

Consumer information has been a government responsibility in Sweden since 1940. At that time shortage of goods and the emergence of substitute products motivated the setting up of a government information bureau known as **Active Housekeeping.**[1] The purpose of the Bureau was to supply information which would assist the individual household in working the best of the available resources.

The Bureau operated independently until 1954 when it was merged with the **Home Research Institute** which had been founded earlier.[2] The main purpose of the Institute was to make house work more efficient by research concerning domestic commodities and tools and by information.

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* This avticle is part of a research monograph by the author entitled Consumer Protection Law and the Swedish Approach, Prudential Publications, Dhaka, 1994.

1. **Consumer Committees Report.** Summary. Swedish Government publication, 25 (SOU 1971:37) .
2. ibid.

In 1957 the Government assumed financial responsibility for the organization and changed its name to **National Institute for Consumer Information.** The central purpose of the Institute was "to promote the improvement of working efficiency in private homes and collective households and to encourage the production and consumption of goods and useful consumer goods".[3] It was the special function of the Institute to conduct research and supply information concerning the technical, economic hygienic and other problems which are associated with homes and households as centres of consumption and as workplaces.The Institute supplied advice and information to consumers by regionally located "**Home consultants**".

In 1951 the **VDN Institute for Informative Labelling** was founded. Although it was private, its organizational charter and by-laws were approved by the government. The principle objective of the Institute was "to promote the wider use of informative labelling on consumer goods". The labels should include "product specifications that are uniformly formulated and also details of the goods material and functional qualities".[4]

Two important steps toward consumer protection was taken in 1957 : **The National Council for Consumer Goods Research and Consumer Information** was created to sponsor research on consumer matters and to co-ordinate consumer information programmes of the Institute and other bodies. The Council set up a **Public Complaints Board,** as an experimental undertaking to receive complaints from consumers relating to goods and services and resolution thereof.

In the same year, the **National Price and Cartel Office** was established for investigating and researching problems of pricing and restrictive practices.

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3. Consumer Committee Report. op. cit.
4. ibid.

From the mid-1960 questions relating to consumer information aroused steadily growing interest in Sweden which was manifest in the appointment of several special commissions.

However, it was not until the beginning of the 1970s that consumer protection became a major issue and significant steps taken to effectuate such policies. On June 29, 1970 a new law called the **Market Court Act** was passed.[5] This Act became effective January 1,1971. The Act established a special new court to deal with unfair marketing practices and improper terms in consumer contracts. In connection with it a **Consumer Ombudsman** (KO) was established which is now universally recognized as a major innovation in consumer protection institutions. Less directly affecting consumer is the **Freedom of Commerce Ombudsman** whose function is to enforce legislation promoting fair competition in business and prohibit restraints on trade.

In May, 1971 the **Swedish Consumer Committee** which had been appointed earlier, published a major report advocating that three existing governmental agencies working for some aspects of consumer protection be consolidated into one major agency.[6] This new Super consumer Agency would develop broad consumer policies and take over the work of a number of the separate agencies concerned with consumer protection.

In 1972, a bill was introduced in the parliament for the establishment of the proposed new consumer agency and passed. In 1973, the new agency, the **National Board for Consumer Policies (Konsumentverket)** began its operations and the earlier established Consumer Institute, the Consumer Council and VDN abolished at the same time.

The legislation administered by the Consumer Ombudsman (KO) was expanded in 1976 when konsumentverket and LO were amalgamated. Now Konsumentverkets Director General is also the KO.

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5. The Market Court Act, Act of 29 June, (1970:417)
6. SOU 1971:37

Over the years a variety of mass movements, trade unions and political organisations, women's organisations and adult education associations have shown a great deal of interest on consumer affairs. They take part in the making of consumer policy parallel to and jointly with Konsumentverket and the municipal consumer policy parallel to and jointly with konsumentverket and the municipal consumer guidance officers.[7] Local consumer support activities exist in nearly all of Swedens 284 municipalities.

Certain of the Swedish institutions for consumer protection have been tried elsewhere. They are of great importance to the Swedish consumer and also offer other countries possible mode of consumer protection. Such major innovations, therefore, merit a closer look.

2. CONSUMER OMBUDSMAN AND THE NATIONAL CONSUMER BOARD

While the institution of "ombudsman" is old and well established in Sweden, with the Ombudsman of the parliament established in 1809, the idea of a consumer ombudsman is relatively new, and its creation has been dubbed as the "most novel approach to the problem of consumer protection".[8] It is the first such Ombudsman created anywhere and reflects the complexity and importance attached to consumer protection in Sweden.

The office of the Consumer Ombudsman (referred to as (KO) was established at the beginning of 1971 on the effective date of the **Marketing Practices Act.**[9] It provides that "for questions concerning marketing practices there shall be a consumer ombudsman".[10] He "shall be appointed by the king-in-Council for a specified term and shall be legally qualified".[11] This signifies that the

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7. **The National Swedish Board for Consumer Policies.** Information Booklet. (1990)
8. Donald B. King. Consumer Protection Experiments in Sweden. 3 (1974)
9. The Marketing Practices Act, Act of June 29,1970 (1970:412)
10. ibid.
11. ibid.

KO is not legally answerable to the Parliament and subject to political pressures. Rather his position is like that of other civil servants.

The KO is directed to protect individuals as consumers and to act as a special prosecutor when necessary. He is also expected to take initiatives of his own and to respond to complaints from the public. However, the KO is supposed to police the business community and not the government bureaucracy. Moreover, the KO does not intercede in specific disputes. He is directed to protect consumers as a group by way of negotiation and petitions to the Market Court.[12]

Six months after the Marketing Practices Act became effective, the KO was assigned the additional responsibility of enforcing the Contract Terms Act. However, as indicated earlier, in 1976 the KO was merged with the National Consumer Board, created in 1973, into one super agency with the KO retaining his separate indentity as the prosecuting authority under the Marketing Practices Act and the Contract Terms Act. The KO was at the same time made **Director General** of the new super agency, designated **Konsumntverket/KO.**[13]

Konsumentverkets board of directors is composed of **ten members**. The Director General of the agency is the Chairman of the board. Two members are representatives of consumer and one of labour interests. Two members are representatives of the business community. Two are members of Parliament, and there is one representative of the municipalities. The Director General of the National Food Administration makes the tenth member. In addition, two representatives for the agency staff serve in a advisory capacity. The Agencys Director General is appointed for six years and the Boards other members for three years. It is the duty of the board to set a general policy for the agency, including the allocation of resources among various functions performed within the agency. This includes setting the budget for taking cases to the Market Court

12. For a distinction of KO from other categories of Ombudsman, especially the parliamentary Ombudsman see **Fact Sheets on Sweden**. FS 71 odc. The Swedish Institute, July (1990).
13. **Supra note 7**. see also: 96-97, 114-117 Prop. 1975/76:34.

under the Marketing Practices Act and Contract Terms Act by the Director General in his capacity as Consumer Ombudsman.

In a nutshell, the work of the Board refers to the following fields, among others:

i. household economies

ii. product safety

iii. corporate marketing and contract terms.

The Boards principle means of furthering the objectives of consumer policy are as follows[14] :

i) Activities to influence the market situation in order to ensure that goods, services, marketing methods and contract terms are adapted to consumers needs. The Board carries out tests and evaluates different kinds of goods and services, company marketing activities and the terms of contracts. The Board also contacts producers, distributors and marketers to seek to influence products in a direction favorable for consumers. KO also acts to introduce Standard Contract Forms in areas where they are not used and to generally investigate the fairness of contract terms in entire areas. If voluntary agreement is not possible, the KO may act as a prosecutor in the Market Court on behalf of consumers in those matters regulated in any of the following four laws: **the Marketing Act, the Consumer Contract Terms Act, the Consumer Credit Act and the Product safety Act.**

ii) **Activities to improve the general situation of consumer.** In the sphere of education the Board sees to it that consumer matters receive attention in school curricula at all levels, produces teaching aids and keeps in touch with schools and universities.

The new focus of consumer policy implies greater decentralization and wider duties for municipal consumer advice organizations. The Boards task is to encourage municipal consumer advisers by

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14. See. **Fact Sheets on Sweden**. FS 81 mQC. The Swedish Institute. (Nov. 1990.)

supplying them with information and other services. Municipal activities are based on voluntary undertakings.

One of the main aims of municipal consumer policy is to provide individual consumers with **guidance in various questions.** Other aims are to provide general information on consumer issues, to report on consumer problems to central authorities, to provide statements of opinion concerning consumer matters, and to support other consumer policy activities in the community.

iii) **General information to the consumers**. One of the Boards central functions is to provide information. The goal is to disseminate information which will familiarize consumers with matters of consumer policy and which will give them guidance in selecting goods and services as well as in household planning. For this reason the Board publishes periodicals, fact sheets, research reports, booklets etc. Particular mention may be made of **Rad & Ron (Advice and Results)** which publishes information and reports on consumer products.

The duties of the Director General in his capacity as the KO have been largely delegated to the **KO Secretariat.** The Secretariat brings action before the Market Court in cases concerning marketing practices, dangerous products or unfair terms. It also deals with prosecution matters.

When the Board, either as the result of a notification from outside or in the course of its own scrutiny, notices an undesirable marketing action or condition in a contract, it attempts first to have the matter put right voluntarily, by discussing with those responsible. If a correction cannot be agreed upon, the KO can refer the case to the Market Court, requesting that the entrepreneur be prohibited from continuing to use the undesirable marketing practice or condition in the contract.

Preliminary injunctions may be sought in the Market Court by the KO when it is necessary to bring the practice in question to an immediate halt. He has this power under both the Marketing Practices Act (13) and the Contract Terms Act (5). However, a preliminary injunction will

be granted only if it appears very likely that a permanent inject ion will follow.[15]

The KO is empowered to subpoena documents, information, product samples and the like necessary to carry out investigations. Subpoenas are issued when companies refuse to supply requested materials, and the subpoenas, like the decisions of the Market Court are complemented by specific fines.[16]

Violations which clearly fall within existing precedents of the Market Court may be dealt with by a method called **Consent Orders** which are provided for under both Marketing Practices Act and the Contract Terms Act.[17] Once the businessman has agreed to a consent order proposed by the KO, the Order has the same force and effect as an injunction of the Market Court.[18]

Depending on the nature of a complaint KO can issue a recall injunction, requiring the company to repair, exchange and recall hazardous products which it has sold.

Injunctions are always combined with contingent fines i.e. a substantial penalty which the company can be made to pay if it continues an activity which has been prohibited or fails to supply important information.

Konsumentverket/KO deals with around 4000 cases every year, almost half of which concerning the Marketing Act. About 20 cases a year are referred to the Market Court.[19] Once the KO receives a complaint it is thoroughly investigated. This investigation, together with selection and careful preparation of cases contributes to very high percent of cases won by the KO in the Market Court.[20]

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15. **Ulf Bernitz & John Draper.**Consumer protection in Sweden. Legislation, Institutions and Practice. Stockholm, (1986)
16. **Marketing Practices Act** § 11 and § 12 Contract Terms Act § 3a.
17. **Marketing Practices Act § 14, § 15, Contract Terms Act §6.**
18. More on Consent Orders see: Konsumentratt och Ekonomi, No.6 30. (1977)
19. Supra note 12
20. For example, in the first 20 cases KO brought before the Court, he lost only one, **Supra note 8** at 8.

3. THE MARKET COURT

In most countries, cases concerning consumer protection must be brought in the regular courts with corresponding delays and lack of special judicial insight into consumer problems, and obviously, with no priority for such cases. In Sweden, on the other hand, there exists a special court—**The Market Court**—which has aptly been regarded by some authors as the "**Consumers court**".[21] This court constitutes another novelty in consumer protection institutions in Sweden.

The Market Court was created by the **Market Court Act (1970:417)** simultaneously with the office of the KO. Its main function is to serve as the precedent-setting authority for the interpretation of the Marketing Practices Act and the Contract Terms Act. It is the first and the last instance for the KO to settle disputes with businessmen/companies arising under these acts. It also enjoys exclusive national jurisdiction under the **Restraint of Trade Act, (§1).**

The Market Court is composed of a president or chairman, a vice-chairman and six lay members representing in equal numbers business interests and consumer/labour interests. In addition, two economic experts are members of the court, one having special knowledge of trade and industry and handling cases under the Restraint of Trade Act, and the other having special knowledge of consumer problems and handling cases under the Marketing Practices Act and the Terms of Contract Act (§ 3, § 5). Each member has one or more deputies. Members and deputies as well as the chairman and vice-chairman are appointed by the king-in-Council (§ 6). The Act requires the Chairman and Vice-chairman to be learned in the law and have judicial experience (§ 4). The Chairman serves for a term of six years and the other members for three years each.

The procedure before the Market Court in a case under the Marketing Practices Act is as follows: the KO submits a written petition setting out the activity complained of and the reasons for

21. **Supra note 8** at 15

which it should be enjoined by the Court. The Court then forwards the petition to the respondent who must answer within 21 days. The Court, if it so wishes, may ask for amicus briefs, although this is seldom done.

Statistically, the respondent is represented by a lawyer in a little more than half of the cases.[22] A pretrial conference is often held with the chairman of the Court. Almost half of the cases under the Marketing Practices Act are then decided without a hearing before the Court. In cases which do go to hearing, the Court will take evidence and hear argument by the parties or their lawyers. A quorum of the Court is constituted by the Chairman and four other members representing equally consumer and business interests (§ 9).

The Market Courts power is exercised in the form of injunctions. It enjoins businessmen from engaging in misleading advertising or using improper terms of contract. It generally includes in the injunction a provision that failure to follow it is subject to fine.

If the injunction is violated, the matter will be called to the attention of the public prosecutor who will bring an action in regular courts to collect the fine.

The decisions of the Market Court are summarized in the periodical **"Konsumentratt och Ekonomi"** (Consumer law and Economy) published by Konsumentverket. It subscribes to wider awareness both among the business community and lay consumers.

4. THE PUBLIC COMPAINTS BOARD

An overwhelming majority of consumer disputes in Sweden are referred to the Public Complaints Board (Allmana Reklamationsnamnden) which is often regarded as "a third major innovation for consumer protection developed in Sweden".[23] This Board was established in its present form in 1968[24] and functions from 1981 as an independent agency. A consumer may go to this

22. See **Ulf Bernitz & John Draper** 92, op.cit.
23. **Supra note** 8 at 19
24. For further information on public Complints Board see: Jan Hellner. The Consumers Access to Justice in Sweden, **40 Rabels Zeitschrift**, 727 (1976) See also, **SOU 1978:40**

Board if he is unable to get any satisfaction from his seller. The importance and confidence attached to the Board by consumers is illustrated by the fact that nearly 3000 complaints per year are lodged with the Board since its creation.[25]

The public Complaints Board is headed by a chairman and seven vice-chairman who are learned in the law and have judicial experience. The Board also has approximately seventy four members chosen in equal numbers from business and consumer entities, to a certain extent similar to the make up of the Market Court. The Board is divided into ten divisions: travel, motor vehicles, electrical appliances, boats, textiles, laundry and cleaning, footwear, furs, insurance and miscellaneous. Six to ten members serve in each of these divisions. The Board also has a staff which advises consumers and prepares disputes for resolution by the appropriate divisions.

The consumer complains to one of the divisions. The complaint is then investigated and the office contacts the seller or manufacturer and asks for its side of the story. If the complaint appears justified, the Board may then hold a hearing on the matter. While each party could appear before the Board to argue its case, the usual procedure is for the Board to review the written reports and written arguments presented by the consumer and the business and reach its decision on this basis. It is worthwhile to note that in its discussions the Board centres more upon the question of what is fair as contrasted to legal issues.

Another striking feature of the decision of the Board is that, although a judgement in favour of the consumer will state the amount of damages to which the consumer is entitled according to the division concerned, the decision is not enforceable as a matter of law—— it is merely a recommendation and as such, may be disregarded by the business.

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25. Memo of November 16, 1972 on **Main Features of Swedish Consumer Policy,** by the office of the Consumer Ombudsman, 6 (1972).

In such a case of non-compliance, the business however, risks being entered on a "blacklist" of uncooperative companies in newspapers and in the publications of the Consumer Board and digest corresponding consequences for such negative publicity. This, it must be construed, has had a marked positive effect on the behavior of the business. While in the early years of the Board forty percent of the recommendations were not followed, the figure has in recent years drooped to less than fifteen percent.[26] The statistics by themselves speak of the positive effect of the Board on the business community and thereby, on consumer protection. And in fact, a number of business organizations have bound themselves to follow the racommendations of the Consumer Board and have taken definite steps to that direction.

5. THE SMALL CLAIMS PROCEDURE

The concept of the small claim seprocedur is that persons may come to such a court without having to hire an attorney. Legal formalities and technicalities are stripped away from this type of procedure.The claimant may simply present his case and the judge, after hearing both sides, renders his decision. Justice is thus obtained without expense, delay or the complexities of the usual legal system. Another feature of this procedure as indicated by its name, is that the court handles cases wherein claims do not exceed a certain amount defined by law. The absence of a lawyer, however, presents a drawback in that the case will not be as thoroughly considered and that the risk of substantive miscarriage of justice is much greater—— a sacrifice accepted for the advantages mentioned above.

The innovative character of the Swedish Small Claim sprocedure may be found in that it places primary emphasis on consumer problems.

The Small Claims Procedure was established in accordance with the passing in 1974 of the **Small Claims Act i. e. the Act on**

26. UIF Bernitz et al. 99 op. cit

Simplified Legal Procedure.[27] Professor Ulf Bernitz maintains that this court was created to "facilitate the assertion of claims by consumers" under the consumer legislation and "to circumvent shortcomings of the procedures of the Public Complaints Board".[28]

Non-admission of oral testimony in proceedings before the public Complaints Board makes it quite unattractive to plaintiffs, especially where oral testimony is thought to be necessary, such as in cases arising under the Door-to-Door Sales Act where the commitments by the salesman in the consumers home is at issue. Unlike the decision of the Public Complaints Board, the judgement of the Court in a Small Claims case is enforceable. This is an obvious advantage over Public Complaints Board.

Anyone, not just a consumer, may initiate an action in the Small Claims Court, and in practice, many actions are brought by businessmen to collect debts owed by consumers.

As has been indicated above, there is an upper limit to the size of claims brought in the form of a Small Claims case.[29] This limit, however, does not apply if the matter has already been heard by the Public Complaints Board and the party refers to the Boards decision in connection with his request that the case be tried under the Small Claims Court.

There are several other provisions of the Act whose aim is to cut down expenses for the consumer and expedite the resolution of the dispute. The Act, contrary to usual practice, allows the consumer to sue the respondent in the consumers home district, resulting in significant advantage to the consumer. Moreover, appeals to decisions in the Small Claims case may only be taken with the consent of the Appellate Court, thus bypassing the usual procedure

27. Lagen (1974:8) om rattegangen i tvistemal om mindre varden. See Ulf Bernitz. Standardavtalsratt 48, 3rd Revised Edition, (1978)
28. **Supra note 26** at 102, 103
29. The limit in 1991 was SEK 16,100. 1USD is approximately equivalent to 6 crowns (Kronor)

of appeal to the regional courts of appeal. The consequence is that, a case may come to final solution much sooner than is generally true. Statistics show that the average time between the filing of the complaint and the Courts decision has been about two months, even shorter than the time for cases before the Public Complaints Board.[30]

6. CONCLUSION

The aforementioned institutions established with the underlying objective of consumer protection reflect the importance of and emphasis on safeguarding of consumer interests in Sweden. Consumer protection has indeed achieved wide recognition as constituting an important element of the **"quality of life"** The establishment of specialized institutions solely for the purpose of consumer protection also manifests the novelty and uniqueness of the **Swedish approach.**

The existence of a Consumer Ombudsman gives a national focus to consumer problems. It also furnishes an effective means for obtaining major consumer protection through negotiation as well as court proceedings. Intertwining of **Consumer Ombudsman** and the **Konsumentverket** also helped avoid duplicity in consumer protection measures and added more substance to the institutional mechanism of safeguarding consumer interests.

The Market Court with its wide jurisdiction in specific areas of consumer protection is a uniques wedish brainchild and has so far produced commendable results. The necessity of having a court with expertise in consumer problems hardly needs to be overemphasised.

Consumer problems are necessarily connected with interests of the business community, and individual consumer and

30. **Supra note 26 at 104.**

businessman/company/seller constitute the opposing parties in any consumer dispute. The nature of such disputes demands immediate and, in many cases, extra-judicial resolution. These purposes are met in the Swedish model by the **Public Complaints Board** and the **Small Claims Court**. While the former puts pressure on resolution through decisions which are not binding, the latter ensures immediate resolution by summary trials.

Thus, the Swedish model provides a picture of institutional set-up for protection of consumer interests which can well be termed **full and complete.**

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AN EVALUATION OF THE TRUST SYSTEM OF BANGLADESH.

by

Liaquat Ali Siddiqui.

Definition and related problems

'Trust' literally means confidence. But as a legal device of transferring property it may mean transferring property to someone with the confidence that he will hold the property for the use or benefit of others as nominated by the transferor. For example. A conveys property to B for the use or benefit of C. Here A creates a trust. A is the author of the trust. B is the trustee and C is the beneficiary. But this is the most simple example for firsthand Knowledge on the subject. With the use and development of trust system for different purposes and in different manners, it has become almost difficult to give one commonly acceptable definition of trust. Many well-known authors and jurists on the subject have tried to define trust. But no definition seems to be exhaustive. Prof. Keetons definition "Trust is a relationship which arises whenever a person called the trustee is compelled in equity to hold the property, whether real or personal, and whether by legal or equitable title, for the benefit of some persons (of whom he may be one and who are termed cestui que trust) or for some objects permitted by law, in such a way that the real benefit of the property accrues, not to trustee, but to the beneficiaries or other objects of the trust"[1] . But Keeton is criticized on that nobody can be compelled to undertake a trust and also that his definition does not solve the question who is the actual or real owner.[2] Underhill defines trust as" an equitable obligation binding a person (who is called a trustee) to deal with property over which he has control (called the trust property) for the benefit of the persons (called the beneficiaries) of whom he may himself be one, and any one of whom may enforce the obligation."[3]

1. George. W. Keeton: The Law of Trusts, 9th Edn. 5 (1968).
2. Snell's Principles of equity, 27th Edn., 88 (1973), by R. E. Megarry and P. V. Baker.
3. Sir A Underhill: Law of Trusts, 12th Edn. 3(1970).

But underhills definition is not exhaustive in the sense that it does not include charitable trust and some unenforceable trust which are permitted by law although having no human beneficiaries.

Even to define a trust as a confidence (i. e. lewin's definition)-has been criticized by maitland[4] . There may be cases where no reliance or confidence is reposed by one person in another e. g. where the owner creates a trust by declaring himself a trustee of his property i. e. a watch for his child. Here a trust is constituted from the moment of the declaration though the child may not even know anything about it.

Hanbury in his Modern Equity [5] says:" It is not thought that a dissection and criticism of earlier definitions are very rewarding, rather it is better to describe than to define a trust, and than to distinguish it form related but distinguishable concepts". Snell, a renowned authority on the subject, also holds the same view. [6]

We have got the same definition problem in Bangladesh. The definition of trust given in Section 3 of the Turst Act, 1882, says: "A Trust is an obligation annexed to the owneship of property, and arising out of a confidence reposed in and accepted by the owner, or declared and accepted by him, for the benefit of another, or of another and the owner."

Since the Act applies to the private secular trusts only ; the definition does not include charitable trusts, public religious trust, private religious trust etc. Moreover, the words "confidence reposed in and accepted by the Owner" shows that it refers to express trusts only. Resulting and constructive trusts are not within the purview of the definition and are discussed seperately in chapter IX of the Act under the heading "Obligations in the nature of trusts. "In fact, no enactment has given an exhaustive definition of trust in Bangladesh.

In the history of English legal system, as we know, because of the rigidity and inflexibility of the common law courts, it could not give remedies to the people in many cases. That is why the court of equity

4. F. W. Maitland: Lectures in Equity, 44-45 (1969 Edn.).
5. Hanbury's Modern Equity, by R. H. Maudsley, 9th Edn. 85 (1969).
6. Snell's Principles of equity,27th Edn. 87 (1973) , by R. E. Megarry and P. V. Baker.

came into existence to solve the problems of the society on the basis of equity, Justice, fairness and good conscience. Thus trust dealings being a new innovation of society were unknown to the common law courts. Thus where 'A' transfers property to 'B' in trust for C, common law courts recognised B as the legal owner; because with the passing of the property legal ownership passed from A to B But for many reasons i.e. (i) the rigidity and inflexibility of the common law courts and (ii) there was no law before the court to recognize C, (iii) no capacity to enforce a moral obligation etc. the court, therefore, refused to help C in cases of breach of trust by B. To remove this uncertanity, court of equity came forward. The court of equity recognised B to be the legal owner but it attached an obligation to B on the basis of conscience, wherby he was bound to hold property for the benefit of C, for to do otherwise would be an act of dishonesty. Thus the court of equity gave B an equitable ownership. In other words equity converted moral obligation into legal obligation by separating beneficial interest from legal title and gave the benefit to C and the husk to B. A trust thus arises when beneficial interest is separated form legal title and confidence is reposed in the legal title-holder. This double ownership idea i. e. legal ownership to trustee and equitable ownership to beneficiary, is not present in this sub-continent. The same court here applies both law and equity. The beneficiary, here does not have equitable ownership but he has only rights against the trustees (Sec. 3 of Trust Act. 1882)[7]

Both private and public trusts are in operation in Bangladesh. A private trust is one where benefit is conferred to some selected individuals,i. e., beneficiaries are identified. For example, A conveys his land to B in trust for C. In a public trust benefit of the trust is conferred to public at large[8]. Here beneficiaries are not identifiable. Trusts to promote public welfare activities or education are public trusts. It may be a charitable or religious trust. For example, A transfers his land to B for building a hospital for the public at large.

In Bangladesh private trusts are at present guided mostly by the Trusts Act, 1882. Prior to the enactment of the Act there were

7. Tagore vs. Tagore (1872) BLR.377(P. C.)
8. Deokinandan V. Murlidhar AIR. 1957 SC 133.

various provisions under different enactments dealing with the subject. Thus trust Act of 1866; the penal code contained provisions for the punishment of criminal breach of trust, the Specific Relief Act made provisioins of suit for the possession of property by trustee. the Civil Procedure Code made provisions of suite by and against the trustees executors and administrators and suits relating to public charity, Limitation Act, 1877 provides the time limit of recovering the property transferred by breach of Trust. So the Act. of 1882 was passed to define and ammend the laws relating to private tursts and trustees. But the Act does not apply to (i) The Rules of Mohammadan law as to wakf; (ii) The mutual relations of the members of an undivided family as determined by any customary or personal law; (iii) public or private religious or charitable endowments (iv) trusts to distribute prizes taken in war among the captors.[9] It is said that the English rulers, at the time of British India did not want to injure the religious feelings of the people. Therefore they made above reservations in order to leave Muhammaden and Hindu religious and charitable trusts untouched.

The Trust Act 1882 has got 96 Sections and is divided into nine chapters. In the Preamble it says that the object of making the lagislation is to define and amend the law relating to Private Trusts and Trustees. In section 3 - Interpretation clause -it defines the relevant terms like Trust, author of trust, trustee, beneficiary, trust property, breach of trust etc. The Act, does not use the English names like express trust, implied trust, resulting trust, constructive trust, etc rather the arrangements of the Act shows that Sections 4-79 deal with express trust and section 80-96 deal with implied, resulting or constructive trust. Section 4 says that a trust can only be made for lawful purposes. A Private trust, in Bangladesh in order to comply with Section 4 of the Act must not be against the rules of valid disposition of property i. e. the rule against perpetuities under section 14 of T.P Act 1882, section 114 of the Succession Act, 1925, Section 13 of the T. P. Act 1882, Section 113 of the Succession Act relating to the gift infavour of unborn persons, the

9. Sec, 1 of Trust Act, 1882

rule against accumulation under section 17, T. P. Act and section 117 of the Succession Act.

Any trust which is directed to alter the ordinary law of descent or succession is void[10] Under the Act, a trust can be declared both by way of a gift and a will and of both for moveable and immoveable properties. In the case of a gift of immoveable property it must be in writing signed by the author or the trustee and registered under the Registration Act, 1908. If it is by way of a will it must comply with the provisions of the Succession Act, 1925, except where the testator is a Muslim (section 58 of Succession Act, 1925). Trust of moveable properties can be declared as aforesaid or by transfering the ownership of the property to the trustee (Section 5). In the latter case registration is not compulsory. The property must be transferred to the trustee Unless - (a) The trust is declared by a will or (b) the author of the trust is himself to be the trustee (Section 6).

But the absence of the above mentioned formalities in the creation of trust (Section 5, 6) can not be pleaded as a means of effectuating a fraud (Proviso to Section 5)[11]. It is also held that the acquisition of title by adverse possession will not be affected by the requirements of the trust Act. Thus where the trust is void ab initio for want of registration, uncertainty etc; the trusrtee acquiring title by 12 years adverse possession and a suit by settlor to repudiarte the trust and recover the possession from the trustee being void, would be barred. [12]

Section 6 of the Act embodies the English rule of three certainties [13] i. e. (i) certainty of intention (ii) certainty of subject matter (iii) certainty of object i. e. beneficiaries. Apart form these three it adds two further essentials - (iv) certainty of the purpose and (v) the transfer of the trust property to the trustee.

Sections 11-22 discuss about the duties of a trustee; and sections 23 to 30 discuss about the liabbilties of a trustee for breach of trust. Sections 31 to 45 deal with rights and powers fo a trustee, sections

10. Tagore V. tagore (1872) B. L. R. 377.
11. Ramchandra V. Anandibai, A. I. R. 1932 BOM 188.
12. Hemchand V. Pearylal (1942) 47. C. W. N. 46. P. C.
13. Knight V. Knight (1840) 3 Bear 148.

46 to 54 deal with the disabilities of a trustee, sections 55-69 deal with the rights and liabilities of beneficiaries, sections 70-76 about the vacation of office of trustee and appointment of trustees, sections 77 to 79 about extinction, revocation of trust, sections 80 to 96 about certain implied resulting or constructive trusts.

In the recent years, there have been major changes in the field of private trust i. e. the annulment of Benami Transaction.Benami Transaction means a Transaction without using the name of a real purchaser. For example under sec. 82 of Trusts Act, 1882: where property is transferred to one person for a consideration paid or provided by another person, and it appears that such other person did not intend to pay or provide such consideration for the benefit of the transferee, the transferee must hold the property for the benefit of the person who pays or providing the consideration.

In a Benami transaction, the apparent owner in not the real owner. The purchased land is registered in the name of a third person, not in the name of a person who pays the money. People used to take recourse to such transactions for various purposes alongwith an object of defrauding the creditors. One of the legal characteristics of such transaction was that it did not create any title or interest in favour of the Benamdar i. e. apparent owner. To prove a Benami Transaction court had to cosider the follwing points. (i) Source of consideration (sec. 82, trust Act, 1882) (ii) Relationship of the parties, if any (iii) Motive of purchase (iv) who was in possession and enjoying profits (v) who had the custody of title deeds (vi) Subsequent conduct of the parties relating to the property in question etc. Such transactions used to encourage lot of frauds, and malpractices in the society. Even in some cases the Benamdar did not know that his name had already been used. In the Trial Court it took lot of time and caused complexities to prove the transaction. Therefore it was repealed by sec. 5 of the Law Reforms Ordinance, 1984.

A major portion of public religious and charitable trust in Bangladesh relates to the wakf estates operation. The term "wakf" literally means detention or stoppage. According to the two disciples, Abu Usuf and Muhammad, Wakf, singnifies the extinction of the appropriators

ownership in the thing dedicated and the detention of the thing in the implied ownership of God, in such a manner that its profits may revert to or be applied for the benefit of mankind (Baillie, 557-558, Hedays 231, 234). According to Abu Hanifa-(i) It singnifies the appropriation of any particular thing (Corpus) in such a way that (a) the appropriator's right in it shall continue, and (b) the advantiages of it go to some charitable object; or (ii) It is the (a) detention of a specific thing (Corpus) in the ownership of the waqf or appropriator, and (b) the devoting or appropriating of its profits or usufruct in charity, on the poor, or other good objects in the manner of an ariyat, or commodate loan.[14]

The view of Abu Yusuf and Imam Muhammad has been generally accepted. The term wakf in Islamic law, is not restricted to an appropriation of a pious or caritable nature but includes settlements on a person's self and Children.

Under the wakf Ordinance of 1962, which applies to wakf in Bangladesh, "Wakf" means the permanent dedication by a person professing Islam of any movable or immovable property for any purpose recognised by Muslim Law as pious, religious or charitable, and includes any other endowments or grant for the aforesaid purposes, a Wakf by use and a wakf created by a non-Muslim. [15]

The above definition of wakf given by the wakf ordinance 1962 seems to cover wakfs of public nature i. e. wakf conferring benefit to the public at large. It is not an exhaustive definition since it does not include wakf al-al-aulad i. e. wakf in favour of family, children or descendants. The latter kind of wakf is dealt with under Mussalman Wakf validating Act, 1913 and the Bengal, Wakf Act, 1934. In fact, there is no officially recognised exhaustive, comprehensive or conclusive definition of wakf.16

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14. Bail. I 549 (557)
15. Sec. 2 (10) of the Wakfs ordinance, 1962
16. Dr. Tahir Mahmood : The Muslim law of India, 269 (1980 Edn)

SOME IMPORTANT RULES OF WAKF UNDER ISLAMIC LAW

Muslim as well as a non muslim can make a valid wakf (Ordinance 1962). A wakf may be made for any good purpose not prohibited by Islam. The following are some lawful purposes of wakf mentioned in the texts of Islamic law.17

i. maintenance of mosques, including the remuneration of imams and muazzins;

ii. maintenance of educational institutions, including salaries of their staff;

iii. giving of alms to the poor and the needy;

iv. financing Haj pilgrimage for the poor;

v. construction or maintenance of bridges; aqueducts,etc.

A wakf may be made either orally or in writting. In the latter case the Registration Act 1908 will apply.It can be created either by an act inter vivos, non-testamentory form i. e. gift or by testamentory instrument i. e. will, taking effect after the death of the wakif. In the former form (gift) a muslim can wakf his entire property. In the latter form (will) he can wakf only to the extent of one-third of his property normally.

Any property which has value,whether moveable or immoveable, may be the subject of wakf. Hanafi law does not insist on Transfer of property to Mutawali, so musha i. e. , Undivided share of a property which is capable of being separated, can be the subject of wakf. But musha, whether it is capable of devision or not, is not a valid subject of making wakf for musque or burial ground.18

The wakif must be the actual owner or must have a permanent dominion over the property, a temporary interest will not do.[19]

A wakf for a limited period of time is void.[20]

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17. 278 (1980) ibid.
18. Mohd. Ayub V. Amir Khan. A. I. R. 1939 cal. 268
19. Rahiman V. Bagridan (1936) 11 Luck. 735; 5 DLR 109.
20. Mst. Peeran V. Hafiz Mahd, (66) A. All. 201.

According to Abu Hanifa the ownership of the property even after the dedication continues to be with wakif and as auch the wakif is at liberty to resume the wakf, while according to the disciples the wakif ceases to be an owner and hence can not be revoked. The view of Abu Hanifa is not accepted. An inportant characteristics of wakf is perpetuity and irrevocability. When a wakf is created through a will, before the death of the testator like any other will it can be revoked,[21] but after the death of the testator as soon as it becomes operative it can no more be revoked being a perpetual thing.

All the schools of muslim law are in agreement that a contingent wakf is invalid. [22]

a wakf created during death illness (maraz-ul-maut) is - as in the case of gift - regarded as a testamentory wakf-[23]

Wakf can broadly be divided into two :-

(a) Wakf benefitting the public at large,

(b) Wakf benefitting the family, children or descendants.

(a) wakf benefitting the public at large : Wakf for public purposes (Masliah -al aama) e. g. mosques, graveyards, dargahs, takias etc.

In Bangladesh the major law on this public wakf is wakf ordinance, 1962 (Ord No. 1 of 1962) which was enacted to consolidate and amend the law relating to the administration and management of wakf properties in Bangladesh.

(b) wakf benefitting the family, children or descendanrts :

These may be of three kinds :-

(i) Exlusively for the family :

Wakfs for the family are recognised by the Muslim Law. The view is expressed by Ameer Ali relying on a number of traditions of the prophet (sm) that a Wakf even exclusively for the benefit of the wakif's family (without any provision for charity) is a valid one. Bikani

21. D. F. Mulla: Mahomedan Law, 18 th Edn; 207 (1977)
22. Habib Ashraff V. Syed Wajibuddin (1933) 144 I. C. 654. Baillie; 564.
23. Dr. Tahir Mahmood: The Muslim law of India, 271 (1980).

Mia vs. Shuk Lal I. L. R. 20 Cal, 116. But this view of Ameer Ali was disapproved by the Privy Council and it was held that wakf exclusively for one's family was not a wakf for charitable purposes and was therefore invalid. Abul Fata Mohammad vs. Rasamaya 1LR 22 Cal. 619 (P.C.)

(ii) wakfs substantially for the familly

With some provisions for charity :

Prior to the passing of the Act 1913 it was held by the privy Council that if the primary object of the wakf was the aggrandizement of the family, there the wakf would be invalid even if there was some gift of an illusory kind for charity.

Abdul Fata Mohammad vs. Rasamaya (I. L. R 22 Cal. 619 (PC) It was held that a wakf both for the charity and for the benefit of the family was valid only if there was a substantial dedication of the property to charitable uses but not otherwise. Under Act, 1913 wakf substantially for family is recognized the only condition being as ultimate dedication to charity. The Act is intended to expand the law relating to wakfs and not to restrict.

(iii) Wakfs substantially for charity with some provision for the family :

Even before the Act, 1913; wakf, the primary object of which was a permanent dedication of the property to charity held to be valid even though there was private settlement in favour of the wakif himself or his family.

Mohammad Ahsnullah v. Amarchand I. I. R. 17 Cal. 498. (P. C.)

Such wakfs have thus been always valid and are valid even now without invoking the provisions of the wakf Act of 1913.

Thus we see that law relating to wakfs in Bangladesh is guided and governed partially by the Statutes, Judicial decisions and partially by the personal laws of Muslims.

Follwing are the Enactments on the law on wakfs in Bangladesh : --

1. Mussalman wakf validating Act, 1913
2. Mussalman Wakf validating Act, 1930
3. The Mussalman Wakfs Act (XLII of 1923)
4. Bengal. Wakf Act, 1934
5. Official Trustees Act, 11 of 1913
6. Charitable Endowments Act. VI of 1890, Secs. 2, 3, 4, 5, 6, and 8.
7. Religious Endowments Act, XX of 1863 Sec. 14.
8. Charitable and Religious Trusts Act, XIV of 1920.
9. Civil Procedure code, 1908, Sec. 92-93
10. East Bengal Non-agricultural Tenancy Act, 1949 Sec.85
11. Wakf ordinance of 1962.

Religious and charitable endowments under Hindu Law

Religious endowments like Debottar (property dedicated to the ownership of Deity) and Mutts (religious educational institution) can be created both orally and in writting. And can take the form of both gift and will (in case of a will section 57 of the succession Act, will apply if the case is governed by theAct). [24] Endowments for charitable purposes can be created for feeding the poor or Brahmans etc. Formal Deeds of Endowments for religious or charitable purposes must comply with the provisioins of T.P. Act, 1882. and registration Act, 1908. Religious Dedication may be of two types i. e. complete or partial. In case of a complete dedication the owner loses his tille completely and diety becomes the absolute owner and in case of a partial dedication the ownership is retained by the owner and only a charge is created in favour of the object [25] Where the dedication is of absolute nature any surplus money can be utilised by applying the doctrine of cypres.[26] Debottar may take two forms i. e.

24. D. F. Mulla : Hindu Law, 9th Edn. P. 475.
25. Hemantakumari V, Gourishankar (1940) C. W. N. 637 P. C.
26. Pillayan V. Commrs, H. R. E. . . . Board, A. I. R. 1948 P. C. 25.

public and private. In public debottar,[27] the right of worship is open to the public at large, In Private debottar the right is confined to the members of a particular family or the members of a definite group of persons and public are not entitled to as of right. In an English model of trust, the beneficiaries with common consent, can put an end to the trust. Privy council by applying this principle has decided that in a private debottar, the interested members,with common agreements, may change the debottar character of the property into an ordinary secular property; although this was criticised. [28]

Generally no formalities are required for the creation of a Hindu Religious or charitable endownent. But according to some authorities[29]

(A) The object or purpose of the trust must be a valid religious or charitable purposes according to the rules of Hindu law.

(b) The founder should be capable under Hindu law of creating a trust in respect of the particular property,

(c) The founder should indicate with sufficient precision the purpose of the trust and the property in question,

(d) The trust must not be opposed to the provisions of law for the time being in force.

In Bangladesh it is held that the Government can not take possession of such debottar property as an enemy property merely because the shebait has left the country[30] . Thus apart from the Hindu religious rules, and judicial decisions, following enactments apply to the Hindu Public or private religious and charitable endowments :-

(a) Religious endowments Act, 1863,

(b) Charitable and Religious Trusts Act, 1920,

(c) Sec. 92 of Civil Procedure Code, 1908,

(d) Transfer of property Act, 1882,

27. Venkataramana V. State of Mysore A. I. R. 1958 S. C. 255
28. Mukherja: "Hindu Law of Religious and charitable Trusts" (Tagore Law lectures), 3rd Edn. PP-193-194.
29. Mukherjea: P. 52 ibid.
30. Shuk Deb V. Province of East Pakistan 22 . D. L. R. P-245.

(e) Registration Act, 1908

(f) Succession Act, 1925

It will not be irrelevant here to try to make a comperative examination of these three, institutions i. e. (i) Trust in the English sense, (ii) Wakf under Islamic Law, (iii) Debottar under Hindu law.

The privy council[31] examined the fundamental differences of Muslim and Hindu system with the English juridical conception of trust. In an English trust, the legal interest is given to the trustee but equitable interest is given to the beneficiary. But neither under Muslim law[32] nor under HIndu law [33], the legal interest is given to the Mutwalli or Shebait although they have certain obligations and duties like a trustee. Mutwalli is not a trustee in the legal sense.[34] In case of wakf, the ownership of the wakif is extinguished and transferred to the Almighty. In Hindu law the property is vested to the idol or deity. The idol or temple etc in Hindu law, are juridical persons[35] The juridical person acts through Shebait o. manager. But under the trust the property vests in the trustee. In the case of a Kahankas the head is called sajjadanashin althoug he enjoys more facilities, he is of the same legal character. Certain enactments have, after considering wakf and Debottar etc, as trust of public nature, given remedies for breach of trust by trustees of Muslim or Hindu religious endowments of public nature i. e. section 92 of C. P. C. 1908, section. 14 of Religious endowments Act, 1863.

The privy council[36] has held that since the property is not vested in the Shebait, Mutwalli, they are entited to plead limitation in a suit to recover endowed property form their head. But a legislative amendment (Second paragraph to Sec .10 limitation Act, 1929) has changed the position saying "shall be deemed to be property vested

31. Vidyavaruthi v. Balusamy (1921) 44 Mad. 831. P. C.
32. Alla Rokhi V. Abdur Rahim, A. I. R. 1934 P. C. 77.
33. Vidyavaruthi V. Balusamy (1921) 44 Mad 831 P. C.
34. Nawab V. Directo of Endowments, A. 1963 S. C. 985.
35. Pramatha V. Pradyummal (1925) 30 C. W. N. 25 P. C
36. Vidyavaruthi V. Balusamy (1921) 44 Mad. 832

in trust" and "shall be deemed to be the trustee." It attempts to equalize Shebait and Mutwalli to a trustee in respect of liabilities. Like a trustee a Mutwalli or a Shebait can sue or be sued for legal matters. [37]

Mutwalli and Shebait like a trustee are held liable for breach of their duties and are liable to be removed almost for similar grounds. [38]

A Trustee has got wider power than a Mutawalli. A mutwalli acts like a manager. A wakf is perpetual, irrevocable and inalienable but it is not necessary that a Trust may be perpetual, irrevocable or inalienable.

Conclusion :

It appears that the consequencs of repealing the law of Benami Transactions were not given due thought There is no exhaustive definition of wakf. Even the criteria used for deciding public or private wakf is confusing. Explanation to Section 2 (10) of the Ordinance of 1962 says," when more than fifty percent of the net available income of wakf is exclusively applied for religious and charitable oruposes, such a wakf shall be deemed to be a public wakf withing the meaning of clause (e) of sub-section (1) of Section 85 of the East Bengal Non-agricultural Tenancy Act, 1949. Whereas under the Bengal wakf Act. 1934 section 2 (11) says wakf al-al-aulad means a wakf under which not less than seventy-five percent of the net available income is for the time being payable to the wakif for himself or any member of this family or descendants.

Well-known authorities like Ameer Ali and D. F. Mulla claim that under pure Islamic Law wakf to the family, children or descendants is valid, even though there is no dedication to charity but this view in not legally recognised. Privy Council's decisions hold that to be a valid wakf there shold be a substaintial dedication to the charity and illusory or remote dedication to charity with substantial dedication to the family children or descendants is not valid, Although Mussalmen

37. Jayadivdra V. Hemartakumari (1904) 8. C. W. N. 809 P. C.
38. Husain V. Nur Hussain (1928) 32 C. W. N.

Wakf validating Act, 1913 has validated such kind of wakf, it is claimed that the Act of 1913 does not operate to validate wakf exclusively for the family, children or descendants's without any dedication to charity and on this subject privy Council's decision is still the law. Nearly on hundred years have passed since the decision of privy Council (1894) so, in my view, the matter demands special attention of the legislative body of Bangladesh, so as to make the law according to islamic Sharia. The Law on the whole subject is not clear and systematic. Ordinanc of 1962 in not clear about the functioning of other enactments. By the ordinance, none of the previous enactments, i. e. Bengal wakf Act, 1934 or the wakf validating Act, 1913 has been repealed. Different enactments, originated for different purposes have piled on the subject.

Legal sanctions and remedies are spread haphazardly in different enactments. There can be a complete legislation regulating the whole subject within one and the same system of administration.

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"RIGHTS TO HEALTHY ENVIRONMENT : LEGAL EFFORTS IN BANGLADESH"

by

Md. Nazrul Islam

At present environment and its relation with development have become matters of growing concern for the modern world. This concern has got connection with the revolution of post-second world war era in science and technology. During this period due to the rapid development of the productive forces of the society, human intervention in natural environment has been intensified alarmingly. Consequently the delicate balance between man and environment has been disrupted severely. In the backdrop of the fear of further deterioration in natural environment, the questions of saving it and achieving harmony between development and environment are receiving utmost attention in national, regional and international forums all over the world now.

Global environmental concern led to the first United Nations Convention on "Human Environment" in 1972. In recognition of Sweden's contribution in first proposing the idea of holding a UN conference on human environment, that conference was held in Stockholm. The most remarkable aspect of Stockholm declaration is that it for the first time proclaims the right to a healthy living environment to be a basic human right. At that time "Environmental Pollution" was considered as the only culprit, but economic and development issues were poorly addressed to find out their relationship with environmental degradation, living standard etc[1] .

The Declaration of Stockholm conference was criticised for its poor concern about the fundamental environmental problems of developing countries, the poverty and population.[2]

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1. M. Monirul Qader Mirza, "Agenda 21: Will It Make Our planet Green or Hunger Free" Grassrouts,Adab Quarterly, Vol. 2 issue V/VI, 5(1993).
2. For details, see Indira Gandhi on Global Environment and Development. The international Journal on Sustainable Development New Delhi, India, Vol. 1 No. 2, P. (137-140.)

The second UN conference correctly linked the development issue with environment. That UN conference On Environment and Development (UNCED) was held in 1992 in Rio-de-Jenerio, the capital city of Brazil. Participated by 172 countries, the conference stressed on the balance between development and environment. That conference underscored the need for sustainable development, the conception which connotes the strategy of development without depletion and destruction of national resources. Rio conference has adopted a broadbased programme of action covering development and environmental issues, a programme commonly described as Agenda 21. The core chapters of Agenda 21 relates to the financing of its implementation and to the institutional follow-up to the UNCED. The conference recommended that the General Assembly would establish a high power commission on sustainable development and that commission would be accountable to the General Assembly through UN Economic and Social Council (ECOSOC). This commission will particularly monitor the action programme of individual government in the spirit of the Agenda 21.[3]

Apart from the question of international integrated effort to save environment Rio summit expected every state to take measures to save environment at the national level also.[4] Among these measures that summit paid a great importance to the effective environmental legislation.

Rio declaration provides that "State shall enact effective environmental legislation ....," [5] It further provides that "State shall develop national law regarding liability and compensation for the victims of pollution and other environmental damages. State shall also co-operate in an expeditions and more determined manner to develop further international law regarding liability and compensation for adverse effects of environmental damage caused

3. M. Moniruł Qader Mirza, "OP. Cit, 7—8.

4. Brundtland Bulletin. The centre for our common future/1 (1992).

5. Principle 11, Rio declaration cited in The Bangladesh Observer. July 16, (1992).

by activities within their jurisdiction or control to areas beyond their jurisdiction.[6]

So Rio declaration stresed on two aspects of legal efforts to save environment- firstly concerning extra-territorial environmental effects, to one state arising from activities of another state, secondly concerning inter-territorial environmental problems affecting nationals of a state.

So far as second question in concerned, many states has strengthened and still is strengthening their national laws to discourage the reasons of environmental hazards. National laws and legal frameworks have been developed in these states to fix the liabilities of the person or bodies causing pollution and to ensure compensation for the victims of pollution and other environmental damage.

In this essay an attempt will be made to evaluate the legal efforts Bangladesh has taken domestically to ensure right to healthy environment. For that purpose the environmental challenges Bangladesh is facing now, should be mentioned firstly.

BANGLADESH : VULNERABILITY TO ENVIRONMENTAL CHALLENGES :

Like all other third world countries, the environmental problems Bangladesh faces are based on poverty, illiteracy and ignorance of a majority of population. These environmental problems are the consequence of absence of development rather than the outcome of any development strategy. Being economically and technologically backward, having non-accountable administrative machinery, the vast population of this country are largely dependent on nature for their livelihood and are helpless while facing the disturbance in the balance of nature. Observing this type of socio-economic conditions Yezid sayingh remarked: "Instead of attainting the conventional task of Socio-economic development and political stability, the challenge facing a number of them (the developing

6. Principle 13, Rio declaration, Ibid.

countries) in the 1990s and early twenty first century is likely to be one of ensuring mere physical survival. [7]

In case of Bangladesh this observation bears special importance as only a few countries are faced with environmental challenges that could be compared with one faced by Bangladesh. Bangladesh is vulnerable to environmental degradation at all levels-global, regional and national.[8]

While global environmental threats are remote in nature Bangladesh in facing acute environmental hazards at regional and national levels. At the regional level Bangladesh's vulnerability to environmental problems is basically due to its geographical location. Bangladesh is the lower riparian country of its three most important rivers- The Gangs, the Brahmaputra and the Meghna- The rivers whose water courses are mainly dominated by upper riparian states Viz, India and Nepal. Consequently activities like deforestation in India and Nepal and construction of numerous dams and barrages on the common river by India are causing annual food and alternate drought in Bangladesh. Diversion of water flows and unilateral control over water share result in decreased water level in dry seasons which leads to the problem of agriculture, industry. navigation fishery and domestic use. Hydrology change due to upstream diversion are causing some other serious environmental problems like siltation, rise of river beds, demolition of river embankment, changed river course, decreased soil moisture and salinity leading to desertification, damages to the mangrove forest, unexpected change in water pattern etc.[9]

At the national level the root of the environmental problems of Bangladesh lies in its socio-economic structure. The booming population and chronic poverty of the country are seriously effecting the limited natural resources as well as the ecological balance.[10]

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7. Yezid sayigh, "Confronting the 1990s: Security in the Developing countries". Adelphi papers, No. 151 summer, 42 (1990)
8. Nahid Islam, Environmental challenges to Bangladesh. BISS Papers, Number-13. 4 (1991)
9. Ibid, 23.
10. Ibid, 37.

Deforestation, water, air and industrial pollution, Unsustainable land use, intense use of fisheries, soil and water resources[11] might be traced as the most acute environment challenges Bangladesh is facing domestically. But in fact there are so many other environmental hazards people of this country are facing which can never be assessed without proper administrative efforts. While addressing these issues, the national legislations of Bangladesh lack in clarity due to absence of any environment quality and impact assessment.

LEGAL RESPONSE TO ENVIRONMENT ISSUE

Since environmental problems at the national level are largely caused by human behavior, perception and conduct, legal response has a great role to play to combat environmental problems, Specially pollution. Bangladesh echoing the voice of most advanced countries, is vocal in the UN and other international conferences on environmental issues. Bangladesh is signatory to a number of international conventions also. But at the national level its legal framework has done very little to save its citizens from environmental pollution which on many occasions costs thousands of lives. But we know environment is inextricable from life. To ensure the vary basic needs of that life, like all other law our environmental laws are for the most part silent. Before discussing those laws the international conventions to which Bangladesh is a signatory can be mentioned relevantly.

INTERNATIONAL CONVENTIONS RELATED TO ENVIRONMENT : BANGLADESH AS A SIGNATORY :

The international conventions, to which Bangladesh is a signatory, in many cases deal with the advanced aspects of environment. These conventions are as follows :-

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11. Bangladesh: Environment and Natural Resources Assement," Final Report, prepared by the World Resource Institute, Centre for International Development and Environment, Washington, U. S. A. 1 (1990).

a) International plant protection convention : to maintain and increase international co-operation in controlling pests and diseases of plants and plant products and in preventing their introduction and spread across national boundaries.

b) International convention for the prevention of pollution of the sea by oil : to take action to prevent pollution of the sea by oil discharged from ship.

c) International convention relating to intervention on the High seas in oil pollution casualties : to enable countries to take action on the high seas in cases of a maritime casualty resulting in damage of oil pollution of sea and coastlines, to establish that such action would not affect the principle of freedom of the high seas.

d) UN convention of the Law of the sea : To set up a comprehensive new legal regime for the sea and oceans and as far as environmental provisions are concerned to establish national rules concerning environmental standards as well as enforcement provisions dealing with pollution, of the marine environment.

e) Convention of the prohibition of military or any other hostile use of environmental modification techniques.

f) Convention concerning the protection of the world cultural and natural Heritage.

g) Convention on international trade in endangered species of wild Fauna and Flora.

Bangladesh has also become a signatory to five additional international maritime conventions, primarily dealing with passenger safety, navigation, load and space requirements.[12]

From the nature of the above mentioned conventions it is clear that these conventions are of less importance in respect of the

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12. The Environment and Development in Bangladesh; An Overview and strategy for the future, Wit Treygo and P. B. Dean, Canadian International Development Agency, 16 (1989).

environmental problems Bangladesh is facing. Furthermore the conventions are merely declaratory, Bangladesh Government has not taken any step to have an effective implementation machinery to comply with the convention. Neither has it enacted proper national laws with the specific intention of meeting the purposes of these conventions.

ENVIRONMENTAL LAWS OF BANGLADESH

The first and till now the only law in Bangladesh which has been promulgated for the specific purpose of controlling, preventing and abating environmental pollution is the Environmental Pollution cont.ol ordinance of 1977. Besides that, there are more than 100 laws in Bangladesh which have relevance to environment, Though, in most of the cases the primary objectives of these laws are not necessarily resource oriented or concerned with environmental pollution these laws can be invoked to cover different aspects of environment. These laws cover different sectorial aspects of environment like pesticide, land use, fisheries, forestry, food stuff, human health, black smoke, sanitation, local administration, urban facilities, industrial pollution, wild life protection, environmental quality and pollution control etc. Laws having bearing on environment of Bangladesh can broadly be divided into four categories :

i) Laws relating to duties of local authorities

ii) Laws relating to protection of environmental health

iii) Laws relating to conservation of natural resources

iv) Laws relating to control of environmental pollution.

i) Laws relating to duties of Leal authorities :

The old local government laws like Bengal local self Government Act of 1919, Bengal Village Self Government (Amendment) Act 1935, Bengal Municipal Act of 1931 were revised, updated and to some extent developed in the form of the pourashava ordinance 1977, the Local Government (Upazila Parishad and Upazila Administration Reorganization) ordinance 1982 and the Local Government (Union

Parishads) Ordinance 1983.[13] These laws have assigned the local authorities like municipal corporations, upazila administrations and union parishad, some responsibilities relating to assurance of environmental facilities. The concerned legislations expect the local authorities to deal with issues like sanitation, water supply, public bathing, public garden, plantation and preservation of trees etc. to satisfy the environmental need of the people. The pourashava ordinance has specifically laid down that a pourashava shall be responsible for the control of environmental pollution in the municipality area and for that purpose it may cause such measures to be taken as are required by or under this ordinance. However the ordinance has not gone into details to clarify those requirements.

The Town Improvement Act provides for some environmental facilities in large cities like Dhaka, Chittagong, Rajshahi and Khulna. This Act established a development authority in each city which may pass resolutions and frame improvement schemes in respect of ventilation, sanitation water supply, drainage and sewerage system.

ii) Laws relating to protection of environmental health :

The Acts passed to deal with the environmental health in industrial areas, are mainly Factories Act of 1965 and The Factory Rules of 1979. The Factory Act contains adequate provisions for health and hygienic working atmosphere. This law requires every factory employing ten or more workers to be kept clean and free from effluvia arising from any drain privy or other nuisance and in particular to regularly wash and clean all accumulated dirt and to provide for drainage wherever the factory premises accumulate water that can not be drained. [14]

The Factory Rules 1979 specify some responsibilities relating to disposal of waste water and supply of drinking water to be shouldered by the factory management.

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13. Overview of Environmental Legislations, Their Constraints and suggested Measures for Effective Implementation. An article prepared by Risalat Ahmed, Director General, Department of Environment, Government of Bangladesh, 387.

14. Ibid, 390

The Tea plantation labour ordinance 1962 and Rules of 1977 require adequate supply of drinking water, arrangement of sufficiently clean latrines and urinals and maintenance of medical facilities for the labourers. Shops and Establishment Act of 1965 provides for clean and hygienic atmosphere in shops or commercial establishments. Pesticide ordinance, 1971, Agricultural pesticides (Amendment) Act of 1980 and the Agricultural Pesticides (Amendment) Ordinance of 1983 are intended to save people, animals and vegetation from import manufacture, sale and distribution of pesticides harmful in nature. Bangladesh pure Food ordinance 1959 provides for the prevention of adulteration of food and prohibition on sale or distribution of food injurious to health. The penal code 1860 proscribes certain acts viz. 'Voluntary corrupting or fouling the water of any public spring or reservoir', selling impure food, drinks, noxious drugs and medicines, The purpose of the relevant provisions of B.P.C. can be interpreted to protect environmental health of the public at large. Air pollution from vehicles is intended to be restrained by the Motor Vehicle Ordinance of 1939, as modified in 1983 to curtail "black smoke". The other important laws which can be interpreted to deal with issues of environmental health are - Water Supply and Sewerage Authority Ordinance, 1963, Boiler Act 1923, Poisons Act 1919, Embankment and Drainage Act 1952, Water Hyacinth Act 1936, Agriculture and Sanitary Improvement Act 1920, Bengal Smoke Nuisance Act 1905 etc.

iii) Laws for the conservation of Natural resources :

Protection of natural resources like forest, fisheries, wild life etc are very important to ensure environmental balance and the substantiality of future generations. Some important laws which aim at preventing destruction and depletion of these natural resources are cited below :

The Forestry Act provides for reserve forest over which the government has an acquired property right. This Act has made any type of unauthorized use or destruction of forest produce punishable. The supplementary Rules to Regulate Hunting,

shooting and Fishing within the controlled and vested Forests of 1959, have empowered the concerned governmental bodies to restrict totally or for a specied period the shooting, hunting or catching of various species of birds, animals and reptiles. Again Bangladesh wildlife (preservation) order, 1973 aims at protecting some wild animals from being hunted, killed or captured. For the protection and conservation of Fish and other Aquatic Resources in the inland waters of Bangladesh, East Bengal protection and Conservation of Fish Act was passed in 1950 and the protection and conservation of Fish (Amended)Ordinance was passed in 1982. According to these laws the government may frame rules to save fish and aquatic resources, which shall apply to any water or waters save private water. Marine Fisheries ordinance was passed in 1983 for the management, conservation and development of fisheries of territorial waters and exclusive economic zones. Territorial water and Maritime Zones Act of 1974 provides for conservation zones in territorial waters to protect the living resources of the sea from indiscriminate exploitation, depletion or destruction.

in) Law relating to control of Environmental Pollution :

Pollution control issue was first directly dealt with by "The Water Pollution Control Ordinance, 1970. After independence, some nonsignificant change was brought in this ordinance by the Water Pollution Control (amendment) Order of 1973. This order was restricted to water pollution only, having no regard to air, industrial or drug pollution. At that time increased awareness about environment at home and abroad led the government to adopt an ordinance - The Environment Pollution Control Ordinance-1977. At the preamble, this Act is proclaimed to be passed for the purpose of control, prevention and abatement of pollution of environment of Bangladesh. The EPC Ordinance provides for the establishment of an 'Environment Pollution Control Board'.[15] This board is entrusted with the responsibility of formulating policies for the control prevention and abatement of environmental pollution. It is given the responsibility of suggesting measures for implementation of its

15. Section 3, Environment Pollution Control Ordinance 1977.

policies also.[16] This board can require commercial or industrial establishments to adopt such measures including construction, modification, extension or alternation of any disposal system in order to prevent, control and abate existing or potential pollution of environment. By virtue of the EPC ordinance such establishments can also be required to furnish information as to wastes, sewerage system or treatment work in any land or building owned by that establishment.[17]

EPC ordinance also provides that in case of disposal of solid wastes and control for radioactive substances supervisory powers have been vested in the Environment pollution control Board. It makes its provisions binding, the penalty for their violation may extend to one year of imprisonment or a fine of five thousand taka or both.[18]

EFFECTIVENESS OF THE EXITING LAWS TO SAVE ENVIRONMENT :

Though the number and contents of environmental laws in Bangladesh might seem impressive, an analysis of their effectiveness reveals a contrary picture. At the outset of this discussion it should be said that the majority of environmental laws were developed under substantially different population and industrial development condition.[19] Many of the laws are only recently being revised and updated or are yet to be updated.[20] As for example the Boilers Act 1923, Agriculture and sanitary improvement Act 1920, Water hyacinth Act 1936, Embarkment and Drainage Act 1952, The Town Improvement Act 1953, Shops and Establishment Act 1965, Factories Act 1965, Bangladesh pure Food

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16. Section 4, EPC Ordinance 1977
17. Section 6, EPC Ordinance 1977
18. Section 11, EPC Ordinance 1977
19. Malcolm Forles Baldwin, "An Assessment of Governmental Laws and Institutions Affecting Natural Resource Management in Bangladesh". cited in the Final Report, 55. op. cit
20. Final Report, 31. op. cit

Ordinance 1953, these important environmental laws have not been updated yet. These outdated laws and other improperly and incompletely updated laws are neither adequate to meet the present day needs of the country nor consistent with the changed environmental scenario of the world. A law passed two to five decades back can not incorporate the concept of sustainable development' or 'right to healthy environment' which are the outcome of very recent concerns about environment. Such a law can't plav any effective role in combatting environmental pollution in today's Bangladesh, where overpopulation, poverty and illiteracy are aggravating this crisis day by day.

Moreover most of the existing laws are incomplete, ineffective and unenforceable.Very often the implementation mechanism is not clear and the functions of implementing authority are not well defined or the implementing authority is institutionally very weak.[21]

The local governmental laws speak about facilities relating to environmental health, but these are of bookish nature. Because these laws have not clarified the enforcement procedure of those facilities, leaving the question of accountability of the concerned governmental bodies. These laws do not spell out the steps which could be taken in case of the failure of those bodies to carry out the responsibilities assigned to them.

The laws relating to environmental health suffer from non-implementability because of two main reasons (a) absence or institutional weakness of controlling authority (b) absence of statutory environmental quality standards. The Factory Act has aimed at protecting workers from occupational health hazard, but it, infact, does not make any provision as to industrial pollution control. Furthermore the supervising authority of enforcing health facilities is institutionally very weak. The shops and Establishment Act even does not specify the duties of the controlling agencies to ensure its provisions. On the other hand Bangladesh Pure Food Ordinance does not clearly settle the question what will the particular organisation do to ensure its implementation. The Tea Plantation

21. Risalat Ahmed, Overview of Environmental Legislations : 394 op. cit.

Labour Ordinance 1962 and subsequent rules of 1977 are not being implemented properly because of lack in inspectorate responsibility.

The laws for conservation of natural resources have largely failed to meet their purpose mainly because of institutional weakness of enforcing authorities. The Forestry Act of 1927 categorized forest land when enforcement against deforestation was manageable. But that Act and subsequent law or governmental policies have not bolstered the enforcement authority when uncontrolled use of forest produce is mounting day by day. In respect of protection of wildlife fish and other aquatic resources, the relevant legislations do not provide scope for creation of a strong organisation which can take appropriate steps to protect these natural resources.

The EPC ordinance is basically an insufficient attempt to fight pollution. It uncertainly and inadequately covers some aspects of air and water pollution. This Act created two bodies Environmental pollution control Board and the Department of Environment, but these bodies are not well equipped to define, investigate and central pollution. It has failed to provide for a strong framework of administrative mechanism, having powers and standards for its effective implementation.

The EPC ordinance keeps silent in respect of some important environmental issues. It does not contain any provision to cover the operation of shipping or pollution of the marine environment in the sea adjoining the coast of Bangladesh and pollution of the marine environment from land based sources. It does not comprehensively cover matters like land use, planning, zoning rules, regulations to control production, registration, transportation, storage, disposal of potential pollutants or economic and development activities affecting water, air quality.[22]

Apart from these aspects the existing environmental laws can be criticised for their non-punitive approach. Only some legislations like Penal Code, EPC Ordinance, Tea Plantation Labour Ordinance, Bangladesh Wildlife (preservation) Order etc. provide for punishment

22. 347. Ibid

to the persons responsible for pollution, which are also too marginal to influence the people's tendency of causing pollution.

Another remarkable thing is that except Workman Compensation Act of 1923 and Employers Liability Act of 1938, there is no law providing any monetary compensation to any victims of environmental pollution. This is a very important matter to be concerned with. Bangladesh is a country where deaths of thousands of people are caused by impure food and polluted water, where thousands of children have to ingest harmful drugs, where millions of peasants suffer because of environmental degradation, where many workers are vulnerable to industrial pollution. Recently in poisonous paracetamol and in diarrhoeal cases. We have seen how environmental pollution plays havoc with human life.

Keeping the question of compensating the victims of environmental pollution in mind some innovative legal approaches are being attempted in many commonwealth jurisdictions.

Among them incorporating the 'polluter pays principle for damages' in the environmental legislations, application of principles of tortious liabilities, liberalising the concept of locus stand are very important to be mentioned. But these approaches are also being ignored in our legal systems.

CONCLUSION :

In line with current worldwide concern about environment, Bangladesh Government has already vowed to protect environment and keep it safe for future generations. This led to the establishment of a separate Ministry for Environment and Forest in 1989 and declaration of 1990 as the year of Environment and the decade of the nineties to be the Decade of Environment. As an important part of legal efforts to save environment, a new ordinance called, Bangladesh Environment Preservation Ordinance has already been drafted, which is going to be promulgated soon.

But as far as legal efforts to save environment is concerned, that effort must be made integrated. Uncoordinated, adhoc, patchwork

legislative approaches to the problem and the solution are not enough for that purpose. Identification, examination and necessary amendment of all laws relating to environmental aspects are necessary to remove the existing ineffectively and lacunae in legal provisions. At the same time appropriate institutions capable of implementing environmental laws and supporting institutions competent to implement environmental protection and management programme have to be developed. The Government can seriously think about establishing environmental courts having specialist assessors to assist the courts, with exclusive jurisdiction in environmental matters. But before taking these steps the government has to adopt realistic national environment quality standards, pollution regulation guidelines and legislation regarding environmental impact assessment.

One of the serious problems in respect of non-enforcement of law in third world countries is lack of knowledge about the law at the operational level. So an attempt should be made to train the people manning different bodies dealing with environmental issues in order to make them competent enough to shoulder their responsibilities. Simultaneously mass awareness and publicity of legal standards and requirements relating to environment have to be promoted.

It is true that many of the environmental problems people of Bangladesh are suffering from have been caused by activities in neighboring Countries But this can not be a logic to avoid the hard need of combatting environmental problems being caused internally. And in this respect a vital role can be played by the legal framework of our country. Because this is the machinery which can directly enforce rights of citizen including a right to healthy environment also. To strengthen the potentiality of that enforcement, Bangladesh Government can recognise a citizen's right to healthy environment as a fundamental human right by making constitutional provision.

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THE ROLE OF JUDICIARY IN THE PROMOTION AND PROTECTION OF HUMAN RIGHTS.

by

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Introduction.

Human rights are those universal, inalienable and fundamental rights and freedoms of all members of the human family which they shall equally enjoy freely i. e. free of arbitrary public or private interference. A common observation in all human societies has it that people may treat each other "well' or "badly", depending on whether they are motivated by love, generosity, gratitude, co-operation and creativity, or by hatred, greed, envy and destructiveness. Deeply buried somewhere in that observation are the origins of what are today called 'human rights' and the legal rules associated with them.

All human beings display certain needs which must be satisfied if they are even to survive, let alone to grow, develop their potential, and contribute to the development of the potentials of others. These needs are often painfully frustrated by unavoidable causes like disease or natural calamities and man-made interference. It is the paramount objective of human rights law - both national and international - to seek to protect individuals form man - made suffering inflicted on them through deprivation, exploitation , oppression, persecution, and other forms of maltreatment by organized and powerful groups of other beings. For that purpose human right law uses the classical transformations of philosophy from needs to moral claims, and from those claims to 'rights', founded first on morality and ultimately on positive and enforceable law.

Now, human rights are based on certain principles i. e. (1) the principle of universal inherence i. e. every human being has certain rights capable of being inumerated and defined, which are not conferred on him by any ruler nor acquired by purchase, but which inhere in him by virtue of his humanity alone. (2) The principle of

inalienability i. e. no human being can be deprived of any of those rights, by the act of any ruler or even by his own act; and (3) The rule of Law i. e. where rights conflict with each other, the conflicts must be resolved by the consistent, independent and impartial application of just laws in accordance with just procedures.

The Rule of Law therefore is a fundamental principle of human right law, since law is the condition of human rights and freedoms, said by James williard Hurst. Within a state, rights must themselves be protected by law; and any dispute about them must not be resolved by the exercise of arbitrary discretion, but must be consistently capable of being submitted for adjudication to a competent, impartial, and independent tribunal applying procedures which will ensure full equality and fairness to all the parties, and determining the question in accordance with clear, specific and pre-existing laws, known and openly proclaimed. So, the Rule of Law is of particular importance for establishing the boundaries of the different human rights.

The International Bill of Human Rights.

The struggle for human rights and freedom is as old as humanity and reconciliation of the freedom of the subject with the authority of the state has been a problem throughout ages. The struggle for freedom, to start with was against arbitrary power and unjust laws. Since political power remained with the king, or with an oligarchy, the attempt of the people was to secure self-government, which lies at the very foundation of the democratic society.

These democratic rights of man earlier conceived by 'Rule of Law' propounded by Dicey required clearer definition after the vast political, social and economic upheavals that followed the World Wars which awakened the word leaders to the need for concerted action to protect human rights under the dynamic Rule of Law which led to the adoption of the charter of the United Nations on 26 June, 1945 and subsequently of the Universal Declaration of Human Rights formulated by the United Nations on 10 December 1948, which was viewed as the first step in the formulation of an international bill of human right that would have legal as well as moral force, and which

sets out a list of human rights which are similar to and include more important of the fundamental rights considered as essential for a society under the Rule of Law and as the common standard that should apply to human race irrespective of race, religion, colour, sex language, birth or other status. Three decades thereafter in 1976 the provisions and ideals of the Charter and of the Universal Declaration became more specific and obligatory with the entry into force in the three significant instruments : (1) The International Covenant on Economic, Social and Cultural rights; (2) The International Covenant on Civil and political Rights; and (3) The Optional Protocol to the latter Covenant. After ratification by individual nations these Covenants and the International Bill of Human Rights took on the force of International Law in 1976.

Apart from gaining the status of international law, the International Bill of Human Rights is also obligatory in its implementation by virtue of Articles 55 and 56 of the UN Charter. And by adhering to the charter, states expressly "pledge themselves to take joint and separate action in co-operation with" the U. N. Organization to promote "universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion." This article has created a sort of international accountability for all member states of the U. N. so that we can now say that a violation of human rights anywhere is the concern of democratic people everywhere, states not excluded.

The Universal Declaration of Human Rights is as its title implies, truly universal in its application and applies to every one of the human family, everywhere, regardless of whether or not his government accepts its principles or ratifies the Covenants; while the Covenants, by their nature as multi-lateral Conventions, are binding only upon those states which have accepted them by ratification, accession or otherwise. Nonetheless the standard is there.

It is to be observed that there are some activities like aparthy, slavery, genocide, which are declared to be crime against humanity applicable to all in all circumstances, and that some rights like right to life, freedom of thought, conscience and religion, and freedom from

torture are non-derogable human rights, in that they could at no time and by any form of government be abrogated though may be regulated within the parameter set by the U. N.

Many countries including Bangladesh have in their Constitutions not only pledged the respect for International Law and the principles enunciated in the U.N. Charter, but included entrenched Bill of Rights in their written Constitutions in substantial agreement with the International Bill of Rights, and so the Bill is as much as part of the International Law, as part of our Constitution. Unfortunately, however, Bangladesh has not yet become party to the aforesaid international Covenants and protocol nor any regional Convention of Asian Countries has been formed like those of Europe, America and Africa providing means for protection of human rights namely, (1) The European Convention on Human Rights and Fundamental Freedoms, 1950 coming in force in 1953, (2) The American Convention on Human Rights, 1969, and (3) The African Charter on Human and Peoples Rights, 1981.

United Nations recognize non-governmental organizations to aid and advise the world body on matters of international concern and on legal matters. International Commission of Jurists,Law Asia, International Lawyers Association, World Peace Through Law Centre etc are such organizations which are deliberating and adopting many resolutions in amplification of Human Rights in many congresses and conferences. The World Conference on the Independence of Justice held in Montreal in 1983, adopted resolutions on the pre-condition of independence of justice relating to judges, international and national lawyers, jurists and assessors, and made recommendations to the U. N. for acceptance.

The Role of Judiciary.

The role of the judiciary in a democratic country, no doubt, is to administer justice according to law, and in a country governed by laws and not by men, the laws are framed by the elected representative of the people. In other words we have to combine democratic right with sovereign right, to unite the value and dynamic power of a common

will, with the stability and control of a common rule of reason. And that is not all; not only the laws are to be framed by the chosen representatives, but they will be for the people's interest. Law in the ultimate analysis must reflect the values of the nation and bind both the citizen and the government. When values are joined with laws and they are so administered by courts, then we get administration of justice in the real sense of the term, and that is the ultimate and solemn purpose of the judiciary. Such a country is known to have a government under the Rule of Law.

With regard to the solemn purpose of judiciary in administering justice, Henry Sidwick says :"The importance of judiciary in political Constitution is rather profound than prominent. On the one hand, in popular discussion of forms and changes of government, the judicial organ often drops out of sight, on the other hand, in determining a nation's rank in political civilization, no test is more decisive than the degree in which justice defined by law is actually realised in the judicial administration, both as between one private citizen and another, and as between citizen and members of the government."We can supplement this profound observation by another telling expression of Laski : "The men who are to make justice in courts, the way in which they are to perform their function, the methods by which they are to be chosen, the terms on which they shall hold power, these and other related problems lie at the heart of political philosophy and when we know how a nation state dispenses justice, we know with some exactness, the moral character it can pretend." The judiciary, therefore, is not a mere instrument of conflict resolution. but citadel of justice, where the values of the nation are preserved, protected and expressed. An independent judiciary in preserving and protecting human rights serves a barometer of national values.

Rights imply existence of the institution "judiciary" for their protection. Although the International Bill of Human Rights has not amplified but has referred to competent, independent and impartial tribunal in Article 10 thereof, the International Commission of Jurist and other international bodies have identified an independent judiciary as the best organ of the state to guarantee the protection of

human rights. When human rights are codified in international legal system and entrenched in domestic law,they become legal rights of the citizens enforceable in a court of Law.

It is to be observed that in the world conference leading to the Universal Declaration on 'Independence of Justice held in Montreal in 1983, an independent judiciary was proclaimed to be an indispensable requisite of a free society under the Rule of Law and a detailed rights and duties of judges and other law agencies have been adopted and recommended to U. N. General Assembly for adoption. Like non-derogable human rights, an independent judiciary, under no circumstances, by any government, could be intermeddled, since it is the only instrument for the protection of human rights.

Under Article 10 of the Universal Dcelosation of Human Rights everyone is entitled in full equallty to a fair and public hearing by an independent and impartial judiciary, in the determination of his rights and obligation out of every criminal charge against him which proclaims protection of rights and personal liberty by an independent judiciary. But the pre-conditions of impartial judiciary contemplate a representative or democratic government with emphasis on the sovereignty of the people, which means a government deriving its power and authority from the people. And this sovereign power exists for protection of their democratic rights, which we can now say, Human Rights, which according to the International Commission of Jurists could be best protected by laws made by the people through legislature freely chosen by a government governed not by men but by and responsible to them and the justice administered according to that law will be tempered with real justice.

To understand the implications of law with justice. we must observe that by law we understand rules of external human behavior enforced by the organized power of the state. The rule may be given by one supreme authority of the state, but the rule and the authority may or may not be the representatives of the people or the authority holding the power may not be with the consent of the governed. Similarly the rule of conduct may not be for the benefit of the people and may be

for the perpetuation of the rule of a despotic ruler. The law will only become just or wedded to justice when the rules of conduct will be framed for the benefit of the individual or the society or both. We may have justice under the rule of law, where the authority of law will hold power with the consent of the governed. It is not enough that law should be wedded to justice, but to realize justice it is to be interpreted and applied by impartial judiciary.

But fair and equal dispensation of justice demands more than equality between parties to individual law suits. It requires that all be equal before law. It does not mean that all should enjoy equality of legal rights, it rather means that persons having legal rights should be given equal protection by the court. It further means that to-days plaintiff and tomorrow's receive the same sort of hearing and that judges should meet out justice without fear or favour and without distinction between high or low, rich and poor. This again entails that like cases be treated alike both as regards hearing and in respect of finding. That means there should be the rule of judicial precedent.

The ultimate protection of individual in a society governed by Rule of law depends upon the existence of an enlightened and independent judiciary and upon adequate provision for speedy and effective administration of justice. It may be noted that although duty of a judge is not to make law but to apply law made by the legislature yet the judiciary has to play a very important role in making case laws by way of interpretation of ambiguous statutory provisions and the principles enunciated by judiciary is translated into the fact of recognized and enforced law. We may quote here a seminal observation of a political personality like Roosvelt:

"The chief law makers in our country may be and often are the judges because they are the final seat of authority.Every time they interprete the contract, property, vested rights, due process of law, liberty; they necessarily enact into law a part of a system of social philosophy and as such interpretation is fundamental; they give direction to all law making, and we shall owe most to those judges who hold a twentieth century economic and social philosophy."

So, the role of judiciary will not merely be legal interpretation but to serve as an instrument of "social engineering" as propounded by Roscoe Pound of the Sociological School of Jurisprudence.

Conclusions and Suggestions.

Since the rights and freedoms of some may and, do clash with those of others singly and collectively, the reconciliation of individual liberty and social or government's authority has been the perennial problem of a democratic state. After centuries of trials, errors, bloodsheds, upheavals and catastrophic wars, our generation has evolved the Universal Declaration of Human Rights on balancing diverse conflicting forces in 1948, which is now recognized as the Magna Carta of all mankind. The Declaration, however, has not clearly articulated the system of government of a state in which the human rights can be realised,but is not silent either.

Human Rights, it need not be emphasized, is nothing but the reconciliation of the eternal conflict between the liberty of the individual and the authority of the government, and in so doing it has attempted, in the broadest outline, in Article 21 of the Universal Declaration of Human Rights, to define the basis of authority of the State and may be set out as follows :

"21. (1) Everyone has the right to take part in the Government of his country directly or through freely chosen representatives; (2) Everyone has the right of equal access to public service in his country; (3) The will of the people shall be the basis of authority of government expressed in periodic and genuine elections by universal suffrage. Therefore, a democratic government shall be governed and justice administered according to the law made by the people though their freely chosen representative according to their aspirations.

As to the mature and character of Bangladesh as an independent state, it may be stated in brief that the government of Bangladesh is a multi-party democracy and with the restoration of the parliamentary executive by the twelfth Amendment in 1991, a Westeminister type

of parliamentary system or Cabinet form of government headed by the prime Minister has been reintroduced. The Constitution is written, rigid and supreme law of the land and envisages a democratic system where the legislature has plenary power within its legislative field, and proclaims sovereignty derived from the people and incorporates entrenched Bill of Rights known as the Fundamental Rights with provision for enforcement thereof. Independence of Judiciary is also proclaimed in Article 94(4) read with Article 116 A of the Constitution with a directive in Article 22 to ensure its separation from the executive.

But the problem with Bangladesh like other developing countries lies in effecting the formulation of the basic principles of the Rule of Law, more or less entrenched in the Constitution, in the real life of the people. The principles, in fact, exists as ideals rather than real. So great hiatus is left between the ideal and the actual. The great impediments to democracy reaching its highest expressions and fullest realization are illiteracy, ignorance, poverty and other factors akin to illiteracy of the great majority of the people who are unable to form an independent opinion in national issues at the time of election, thereby making the democracy undemocratic and meaningless and rendering the government of the people into that of the interested group resulting in group tyranny. But that does not shake our faith in democracy. We are to wait for desired changes through trial and error process.

With regard to the Constitutional provisions on judiciary, we find that the Supreme Court Judges satisfy almost all the rules of independence which correspond substantially with the declaration of the World Conference on the Independence of Justice in Montreal relating to national judiciary. But the provisions relating to preventive detention and proclamation of emergency as subsequently introduced in Art. 33 and 141A of the constitution in 1973 are contrary to the concept of democracy and have been misused undermining the constitutional safeguards as to arrest and detenation and suspending the fundamental rights off and on by declaration of emergency for political reasons depriving of one's liberty except upon a charge of specific criminal case and preventive

detention without trial are contrary to rule of law, as indiscrimate use of power, vague suspicion by the police and callous disregard of the detenue are the chronic and common causes of such detention. Living democracy cannot allow such an undemocratic law to live in the present form without suitable and specific provision for protection of the right of representation of the detenue. The maintenance of independence and impartiality of the judiciary both in letter and spirit is the basic condition of the operation of Rule of Laws for protection of human rights and human progress ensuring liberty of the people. Such independence implies freedom from interference by the executive or legislature with the exercise of judicial function, but does not mean that the judges are entitled to act in an arbitrary manner.

The angelic law of Habeas corpus evolved in the 17th century in England to free the citizen from arrest without legal warrant, from unlawful detention without trial and from punishment without a conviction, was overpowered by the ghost of subjective consideration as for detention according to the majority view in the *Liversidge* V. *Anderson* (1942 AC 206) (Lord Atkin dissenting and observing that reasonable grounds should be assigned and judicial serutiny is necessary for objective satisfaction) which had an adverse effect and influence over the Colonial Courts including those of this sub-continent for a long period. But the "hands off" approach to the exercise of subjectively worded powers by ministers and other administrative bodies no longer pertains. Subsequently in *IRC* V. *Rossminster* (1980 A C. 952) Lord Scarman of the House of Lords stated that "the ghost of *Liversidge* V *Anderson* casts no shadow; it need no longer haunt the law and that it is now beyond recall." At the same time we are proud of a number of cases decided by the Pakistan Supreme Court, namely *Malik Ghulam Jilani, Mir Abdul Baki Baluch, Begum Shorish, Kashmiri and Jibendra Kishore,* as well as of some of the decisions of the Indian Supreme Court in the famous *Keshavanda Bharate's* case and in *Minerva Mills Ltd* case all of which upheld the fundamental rights and liberties of the people.

The Supreme Court of Bangladesh also upheld the glorious tradition of judicial independence in protecting and safeguarding the

fundamental rights and liberty of the people in several cases, namely, *Habibur Rahman, Mrs. Aruna Sen, Firoz Ahmed, Nurunnahar Begum, Amaresh Ch. Chakraborty, Mrs. Saleha Begum, A. K. M. Shamsuddin, Asmat Ullah Mia,* and *Abdul Latif Mirza,* holding that power has been expressly given under Article 102 of the Bangladesh Constitution to prove into the exercise of public power by the executive how highsoever and to see whether they have acted in accordance with law. In a recent historic judgment (in *A. Hossain Chowdhury V. Govt. of Bangladesh*, popularly known as the 8th Amendment Case) the Supreme Court of Bangladesh held in line with the Indian *Keshavanda Bharate's* case, that basic structure of the Constitution cannot be altered by the legislature and aptly played the role of a guardian of the Constitution.

The decision of the Pakistan Supreme Court in the leading *Malik Ghulam Jilani's* case overruling the *Liversidge,* which was referred to and envoked by the Bangladesh Supreme Court in the cases mentioned above, had the effect of eliminating the ghost of *Liversidge's* majority view, following the famous minority view of Lord Atkin enunciating the 'objective test' which has become the most respected guiding principle for judicial independence.

Even then in *Dosso's* case Pakistan Supreme Court invented and applied the doctrine of necessity and political reality to legalise otherwise illegal coup d'etat only on the basis of expediency. It is interesting to recall that the same Supreme Court under changed circumstances overruled *Dosso's* in *Asma Jilani's* case in 1972 holding the Martial Law by General Yahya Khan in 1969 as illegal.

The foregoing discussion about the judiciary in a democratic state shows that fundamental human rights and liberties have been substantially provided in the constitution and the superior courts played their role as guardian of the Constitution in safeguarding and protecting these rights whenever necessary. But it may be reminded that although under Article 56 of the U. N. Charter and the Bill of Rights each nation has pledged to achieve and uphold those noble objectives, how many of us have honoured that solemn pledge given to the world organization?

More than forty years have now elapsed since the adoption of the Universal Declaration of Human Rights but the thing which has unfortunately become more and more conspicuous is the politicization of human rights. Attention of violation is focussed if it is found politically expedient, otherwise we shut our eyes, no matter how cruel and serious the violations are.The tragic plight of our unfortunate palestanian, Kashmiris and Bosnia-Herzegovina brethren who are victims of supreme power veto are the glaring examples in recent time of gross violations of U. N. Charter and Human Rights. The judiciary in this sad state of affairs can only regret but has little power and scope to help. That is why Justice Robert Jackson who in *Board of Education* case observed : "one's right to life, liberty and other fundamental rights may not be submitted to vote; they depend on the outcome of no election, " later exclaimed;

> I know of no modern instance in which any judiciary has saved a whole nation from the great currents of intolerance, passion, usurpation and tyranny which have threatened liberty and free institution."

Therefore, if Human Rights under the Rule of Law is to prevail, people must come out into the open to talk, work honestly to reason together, and to help and support each other. Then alone can public opinion has a chance to form, then alone can the public restore its confidence in the authorities to enforce the law; then alone can we restore our respect for the Rule of Law for protection of human rights and allow it to rule, guide and govern us. In our attempt to state in rough outline the Bangladesh's experience like many other developing countries about the aspect of legal system under the rule of law in an immature political and economic background, we have observed that problems are many, intractable in some,but not insurmountable. Development in reality means economic growth and social change and the legal institution like an independent, enlightened and courageous judiciary is an indispensable instrument to achieve peaceful transition from a traditional rural society to a modern industrial society, and our courts pretty obviously have a job of formidable proportions on their hands to strike a balance between

the private interest and public need and thereby to maintain its creative role to mould the system of justice to respond the aspiration and needs of the common man keeping in view the promotional role of an welfare state.

Let objective reasons shape all of our state activities, under the Rule of Law so as to strike the balance between the authority of the state and the fundamental human rights of the citizen by proper and prompt application and enforcement of the law on which rests the peaceful and civilized existence of the society.

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১.	মোহাম্মদ মনিরুজ্জামান *বাংলা সাহিত্যে উচ্চতর গবেষণা,*	১৯৭৮	৩০.০০
২.	এস. জেড. হায়দার ও এস. শফিউল্লাহ *পরমাণুর ইলেকট্রন সংগঠন,*	১৯৭৯	১৮.০০
৩.	কবীর চৌধুরী *প্রাচীন ইংরেজী কাব্যসাহিত্য,*	১৯৮১	২০.০০
৪.	সৈয়দ আকরম হোসেন *রবীন্দ্রনাথের উপন্যাস ঃ চেতনালোক ও শিল্পরূপ, পুর্নমুদ্রণ*	১৯৮৮	১১৫.০০
৫.	আবদুল মতীন *শিক্ষা সহায়িকা,*	১৯৮১	৬.০০
৬.	সাইদুর রহমান ফাউণ্ডেশন বক্তৃতামালা		১০.০০
৭.	শেখ আবদুল ওয়াহাব *কান্টের নীতিদর্শন,*	১৯৮২	৫০.০০
৮.	সাঈদ-উর-রহমান *পূর্ব বাংলার রাজনীতি-সংস্কৃতি ও কবিতা,*	১৯৮৩	৬৫.০০
৯.	সিরাজুল ইসলাম চৌধুরী *উনিশ শতকের বাংলা গদ্যের সামাজিক ব্যাকরণ,*	১৯৮৩	১৮.০০
১০.	রতনলাল চক্রবর্তী *বাংলাদেশ-বার্মা সম্পর্ক,*	১৯৮৪	৫০.০০
১১.	এ. এফ. এম. আবদুর রহমান *গণিতের সংক্ষিপ্ত ইতিহাস,*	১৯৮৪	৬০.০০
১২.	মুহম্মদ এনামুল হক (সম্পা.) *ইউসুফ-জুলেখা,*	১৯৮৪	১৩৫.০০
১৩.	মুহাম্মদ আফসার উদ্দিন (সম্পা.) *এ. কে. নাজমুল করিম স্মারকগ্রন্থ,*	১৯৮৪	৭৫.০০
১৪.	রবীন্দ্রনাথ ঘোষ ঠাকুর *স্বপ্ন-বাসবদত্তম,*		১৫.০০
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২১.	জালালুর রহমান *অর্ধপরিবাহী কৌশলাদি*	১৯৮৭	৭৫.০০
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২৪.	সৈয়দ মকসুদ আলী *ফরাসী বিপ্লবোত্তর রাষ্ট্রচিন্তা,*	১৯৮৮	৩০.০০
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