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A collection of writings on various judicial and legal topics

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PREFACE

The Judicial Administration Training Institute was established by Act No. XV of 1995 for providing training to the members of the judicial service, the law officers of the government, the court support staff and the advocates enlisted with the Bangladesh Bar Council. The judicial education is a new discipline of adult education whose targets are the functionaries involved with the justice delivery system for improving their knowledge and skill, for better Court Administration and Case Management. The Institute has a wide range of functions including publication of journals and reports regarding judicial system and court administration.

The Institute began its work from 1996. The Institute published its first syllabus and the souvenir on the eve of its first training course, which was inaugurated by the Prime Minister on 1st March 1997. Institute's publication included brochures and course directories of limited use at the time of training courses. This time we have entered into what we have long cherished, a periodical containing judicial and legal literature. We are grateful to the writers who have contributed for this journal and we welcome contributions from intelligentsia in the field of law to enrich our future issues.

We like to devote a portion of journal with some training handouts prepared by Hon'ble Resource Persons of the Institute which can be used as tool of ready reference in court work by the judges, lawyers, court support staff and others. The journal will also focus on issues like ADR, human rights, good governance, juvenile, gender, computer and environment so that those issues can be understood by the legal fraternity. JATI is an adult education body of a special kind, which is involved in planning, implementing and evaluating educational activity of all persons connected with justice delivery system. So, a great deal of effort is devoted to the curriculum development process, application of modern pedagogical techniques and methodology for providing training. All contribution for the future issue of this journal will be highly appreciated.

Justice Md. Badruzzman
Director General and the
Chairman of the Editorial Board

May, 2002
Dhaka

HUMAN RIGHTS IN BANGLADESH IN THE LIGHT OF PRESENT GLOBAL CONTEXT

-Justice Mohammad Fazlul Karim

Inherent rights in a human being is termed as Human Rights, violation of which is negation of the existence of human being.

Since time immemorial human being out of necessity for protecting their lives perceived certain rights such as right to be treated equally and without discrimination, right to life, right to livelihood, right of association, etc. which through the passage of time and with the advancement of civilization has been recorded in the various charters protecting those rights of the human being.

International Bill of Human Rights in recent decades started its journey after the Second World War and in 1945 San Francisco convention adopted the Charter of United Nations. There was proposal to identify the various aspect of human rights, political, social, economic and cultural and ultimately in 1948 the Universal Declaration of H.R. was adopted on December 10 articulating inalienable and inviolate rights of all members of human family namely civil and political rights to life, liberty and property such as freedom from torture, fair trial, voting rights, freedom of speech, belief, press, association etc. This view has been recently confirmed by the World Conference on human rights in the Vienna Convention 1993 where it has been said that the human rights are universal, indivisible, independent and interrelated. Such rights incorporated with the laws of any country, the human rights become the fundamental rights of the citizen of that country. International Bill of Human Rights consists of the universal declaration of human rights adopted in 1948, international covenant on economic, social and cultural rights and international covenant on civil and political rights and optional protocol adopted in 1966 and came into force on 23.3.1976 vide 23rd instrument.

Universal declaration that proclaimed mainly civil and political rights, economic, social and cultural right consists of a preamble and thirty articles setting forth, the basic human rights and fundamental freedoms to all men and women everywhere in the world, without discrimination. Articles 3 to 21 thereof -deals with civil and political rights while articles 22 to 27 deals with economic, social and cultural rights. Article 28 deals with social and international order in which the rights and freedom are realised. Articles 29 and 30 provide limitation. Article I postulates that all human being are bom free and equal in dignity and rights. They are endowed with reasons and Conscience and should act towards one

another in a sprit of brotherhood. Article 2 sets forth in this Declaration, without distinction of any kind such as race, colour, sex, language and religion. Article 3 speaks right to life, liberty and security of person. Articles 4-21 enunciates civil and political rights of every person, namely freedom from slavery or servitude, freedom from torture or from cruel, inhuman or degrading treatment or punishment. Equality before the law, freedom from arbitrary arrest, detention or exile, right to free trial and public hearing by an independent and impartial tribunal, right to be presumed innocence until proved guilty (Article 11), freedom of movement and freedom of thought, freedom of assembly and association and right to equal access to public service etc. Article 22 declares that everyone, as a member of society is entitled to the economic, social and cultural rights which are indispensable for human dignity and free development of personality. Economic, social and cultural right enshrined in Articles 23-27 including right to social security, right to work, right to equal pay for equal work, right to form and to join trade unions, right to rest etc. and Article 28 not only speak of social order but also of international order.

The People's Republic of Bangladesh is a democracy in which fundamental Human Rights and freedom, and respect for dignity and worth of human person shall be guaranteed providing further that Bangladesh shall base its international relation on the principles of Article 25 thereof in respect for international law and the principle enunciated by the UN Charter."

With the passage of time and the development of conception of rights public interest litigation has developed as a mechanism used to enforce and release certain rights and entitlements and to remedy certain abuse of rights and in relation of certain civil rights in a civil society and the circumstance under which people can be deprived of their freedom of various nature while political rights deals with the important aspect of democratic participation in public life.

The Constitution of Bangladesh contains provisions similar to the comparable provisions of the India and Pakistan Constitutions. The right guaranteed under Part III are political in nature while the principles declared in Part II are of economic, social and cultural nature. While the rights are judicially enforceable, the principles are not. They are guides to interpretation and the Court must construe constitutional and legal provisions in conformity with those principles. Any law made to further the said principles is prima facie constitutional. The principles are used to test the reasonableness of legal and constitutional provisions and in cases of vagueness or double meaning of any law, the meaning close to the principles must be taken. In cases of a provision apparently repugnant to the principles, the Court must attempt to interpret the provision in conformity with the principles. As regards the question of conflict between principles and rights, the trend is to discard supremacy of rights doctrine and the Courts have gradually adopted a liberal harmonious interpretation rule giving the

principles higher importance and the same position should obtain under our constitutional dispensation as well.

In the case of *Hamidul Hoque Chowdhury Vs. Bangladesh* reported in *34 DLR 190* it has been held that "In case of conflict between Fundamental Rights and Fundamental Principles of State Policy, the Fundamental Rights shall prevail and laws so made which are inconsistent with Fundamental rights should be declared void by this Court.

Sometimes wholesale violation of human rights occur when a democratically elected Government is overthrown either peacefully or violently and such violation of human rights anywhere should be concern of everybody elsewhere.

The Courts sometimes have been called upon to decide the legal and constitutional validity of such regime overthrowing a popular regime but the views are not very much uniform in all countries. In Pakistan in the case of *State V. Dosso (PLD 1958 SC 533)* the Supreme Court not only held such military regime legal but was of the view that successful revolution is a law creating fact. But in *Asma Zilani V. Govt. of Punjab (PLD 1972 SC PI 39)* overruling Dosso held that Martial regime was not legal but a defacto government and all actions are to be tested on the doctrine of necessity. In Bangladesh in particular individual cases the Court upheld the legality of the laws made by Martial Law Authority *(Halima Khatun V. Bangladesh 30 DLR (AD) 207)* but in 8th Constitutional Amendment Case *(41 DLR (AD) 165)* our Supreme Court held that the basic structure of the Constitution cannot be changed by amendment or otherwise meaning thereby that this judgment to a great extent has protected the Constitution from undesirable intervention or undemocratic and anti-democratic forces.

Striking feature of the Constitution of Bangladesh is that the people of Bangladesh proclaimed independence on the 26th day of March 1971 and through a historic war of national independence, established the independent, sovereign People's Republic of Bangladesh pledging unto themselves that it shall be a fundamental aim of the State to realize through the democratic process a socialist society, free from exploitation- a society in which the rule of law, fundamental human rights and freedom, equality and justice, political, economic and social, will be secured for all citizens. In article 11 thereof it has enshrined that the Republic shall be a democracy in which fundamental human rights and freedoms and respect for the dignity and worth of the human person shall be guaranteed.

In chapter III of our Constitution, certain bill of rights in the nature of fundamental rights have been enshrined which include rights, as, equality before law, entitlement to equal protection of law and non discrimination on grounds of religion, race, caste, sex or place of birth and women having equal rights with

men in all sphere of their State and of public life. It also ensharines right to protection of law and that no action detrimental to the life, liberty, body reputation or property of any person shall be taken except in accordance with law and no person shall be deprived of life or personal liberty save in accordance with law. In contains safeguards as to arrest and detention and protection in respect of-trial and punishment under retroactive law as well as freedom of movement, freedom of assembly, freedom of religion, rights to property, freedom of profession or occupations etc. Article 44 of our Constitution which is itself a fundamental right provides right to move the High Court Division in accordance with Article 102(l) for the enforcement of fundamental right conferred by this part of a Constitution. Article 102(l) of the Constitution provides for enforcement of any fundamental right and at the instance of any person aggrieved directing a person performing any function in connection with the affairs of the Republic or of a local authority to refrain from doing that which he is not permitted by law to do or to do that which he is required by law to do and on the application of any person make an order directing that a person in custody be brought before it so that it' may satisfy itself that he is not being held in custody without lawful authority or in an unlawful manner. In the case of *Abdul Latif Mirza Vs. Govt. of Bangladesh* it has been observed by the Supreme Court of Bangladesh that the interpretation of statute or law which preserves a fundamental right is to be given rather than one which destroys it." As to the expression 'person aggrieved' we have as well included the public interest litigation giving liberal extended meaning to include such litigation even at the instance of any one whose hearts bleeds for his less fortune fellow beings for a wrong done by the Government or a local authority in not fulfilling its constitutional or statutory obligations *(Dr. Mohiuddin Farooque Vs. Bangladesh 49 DLR (AD) 1).*

In the case of *Kazi Mukhlesur Rahman Vs. Bangladesh* reported in *26 DLR (SC) 44* it has been held that cession of territory is a matter which effects every citizen in several ways and though the applicant before the Court is not a resident of Berubari but is entitled to move the Court on the ground that his fundamental right are affected. In interpreting the word 'person aggrieved' their Lordship held that "that the question of *locus standi* does not involved the Court's jurisdiction to hear a person but of the competence of the person to claim of hearing, so that the question is one of want of discretion which the Court exercises upon due consideration of the facts and circumstances of each case."

In Writ Petition No. 1825 of 1999 in the case of *Professor Nurul Islam Vs. Govt. of Bangladesh* in the case for a direction that any advertisement in any advertisement in any form regarding Cigarette, beedi and other tobacco related products must not be contained in any manner in newspapers, magazines, signboards, bill books or in any electronic media like television, radio beyond the period of existing contract/ agreement with the manufacturers or their agents.

It has been held that Article 102 of the Constitution provides remedy there under if any of the fundamental rights is infringed and thus the provisions as to fundamental right in our Constitution are self executory and any violation of provision of Article 31 i.e. right to life is subject to judiciary review in writ jurisdiction and the Court could remedy the wrong by issuing appropriate declaration and direction for enforcement of any of the fundamental rights, conferred by part III of the Constitution keeping in view of the principles of state policy (Part 11 thereof) as same is constitutionally impermissible to leave out of consideration when our interpretation under article 102 needs a guidance.

Police abuse: Bangladesh is a parliamentary democracy with in active political opposition. In underdeveloped countries violence is a pervasive feature of politics. Although the government generally respect the human rights of the citizen but the law enforcing agencies continue to commit serious abuses. They usually torture, beat and commit other forms of abuse while interrogating suspects, sometimes causing death of the accused. Police also commit rape on women and detain them in prison. The number of arbitrary arrest and detention violating fundamental rights of the citizens are also on rise. Violence against women are on the rise. Instead of suppressing terrorism, they themselves become terrorists or aid and abet of terrorism.

Rampant misuse of power by the Police causes gross violation of fundamental rights of the citizens as a result of which people's confidence in Police has decreased to a great extent. The simultaneous issue of order of detention while according an FIR in respect of cognizable offence with the apprehension of the police that the accused may be enlarged on bail in the case, contains an abuse of the provision of detention law and negation of fundamental right. Such more has not only furnished the image of the Police but in effect minimising the gravity and utility of the detention law. The illegal Police action has been noticed in the case of *Blast Vs. Bangladesh 4 (BLC 600).*

At a seminar held on 10.1.95 in observation of Police Week Mr. Justice Mustafa Kamal as the Chief guest and keynote speaker addressed the police, *inter alia*, that, I though to myself, the Police stands as the main accused in the eyes of the people since the British days, what new accused shall I discover? For many years past the Police force has been showered with many advice change your attitude, change your role as a servant and friend of the people, do not allow yourselves to be used in the interest of the political parties, be they in Government or in opposition, do not take the country to the bottom of the earth by playing the ruinous game of alliance, and sharing with the well organized gang of mastans, illegal subscription collectors, drug dealers, illegal arms holders, black marketers, terrorist and anti-social elements who flex their muscles in naughty arrogance outside the preview of civilian and military administration.

It has been reported in Daily Star dated 17.4.99 that a survey of eighty Police officers has found them all to be corrupt, with accumulated illegal wealth worth over Taka 20 crore. Bangladesh Society for enforcement of Human Rights conducted a survey in the last six months which revealed that the Police Officers earned 600 to 1000 times more than their salaries, mainly through bribes and extortion.

Since recent past the Police is frequently put on dock in their defence and the conscious citizen of the country are looking for a plausible explanation of illegal and inhuman behaviour of the Police which are in gross violation of human rights. Police killing of students, public and women, tragic deaths in Police custody have shocked the nation and their foolish actions sometimes put the democratic government into embarrassment. The horrifying incidents speak of the brutality and heartlessness of certain elements of our police force. Sometimes the vested quarter in the civil administration try to reap some advantage out of the demoralized police in lieu of the condemnation of Police excess for their selfish motive in repression over the rivals.

In a case at the instance of Blast V. Govt. of Bangladesh (Writ Petition No.2871 of 1999) the issue as to police terrorism against violation of Fundamental rights came up for consideration wherein it was observed that "Even if a particle of the allegations against the police is found to be true or has any basis in the instant case, it is a shame for the nation, for the police has a positive duty to protect a citizen from being thrown away from their homes and the alleged hounding of them is against the conscience of the nation. It is a pity that at least the police is seen to be playing a passive role in the entire episode of illegal eviction and aiding/abetting the owners and hoodlums in their illegal acts/crimes is highly reprehensible. It is now an admitted fact that direct involvement of police in crime is rising alarmingly with members of law enforcing agencies getting involved in crimes and a special cell has been formed by the authority to tackle the situation (Daily Mukatakantha, 24 May, 1999). Even from the finding of the survey conducted by transparency International, it is found that 96% of the victims asserted to the effect that it was almost impossible to get help from the police without money or influence. On the other hand, the police is on dock in the past decades being accused of murders, rape etc. even in police custody, which undoubtedly do not go to the credit of the police as an Institution.

Eviction of resident of Nimtali nd Tanbazar: The Court proceeded to say that it is painfully observed that though the police is the protectors of the oppressed, in the instant case they failed to fulfill their obligation in protecting the rights of the dwellers of Tanbazar and Nimtali. The sex workers were dealt with by the house owners and their hoodlums allegedly in connivance with the Local Police, but the onerous task of enforcement of the law that no man should be evicted except in

due process of law, rest upon the local civil and police administration. We do not find any reason on record as to why the said members in the services of the Republic remained so inactive or passive, may be at the behest of the local Member of Parliament or the house owners of the Tanbazar and Nimtali. We hope the authorities in the high ups would look into the matter in order to set its own chain of administration at right, which is the constitutional obligation of the Executive Government in a democratic country in promoting the causes of the Civil Society.

Basti Eviction: Some fundamental rights i.e., right to life and liberty under Articles 31 came up for consideration in *Ain-O-Salish Kendra Vs. Govt. of Bangladesh 19 BLD 488,* a direction was sought against the demolition of basties of Dhaka city and eviction of the inhabitants thereof by the respondents without arranging any alternative accommodation and without any prior notice, Article 31 of the Constitution was considered.

In the decision cited above of the High Court Division of Kerala as well in the line of our above decision in deciding right to life it has held:

"The word "life" has not been defined in the Constitution but it does not mean nor can it be restricted only to the vegetative or animal life or mere existence from conception to death. Life is not merely a continued drugery through life. The expression 'life' has a much wider meaning bringing within its sweep some of the finer graces of human civilization which a person born in a free -country is entitled to enjoy with dignity, legally and constitutionally. The amplitude of the word 'life' is so wide that there is a danger of encroachment of rights of citizens as in the present case.

The judgment further held: "The sweep of right" to life conferred by Article 21 of the Constitution is wide and far-reaching so as to bring within its scope the right to pollution free air and the right to decent environment. Under our Constitutional set up the dignity of man and subject to law, the privacy of home shall be inviolable. The Constitution through various Article in Part III and Part IV guarantees the dignity of the individual and also right to life which if permitted to trample upon will result in negation of these rights and dignity of human personality."

"Our Constitution both in the Directive State Policy and in the preservation of the fundamental rights provided that the State shall direct its policy towards securing that the citizens have the right to life, living and livelihood. Thus our country is pledge bound within its economic capacity and in an attempt for development to make effective provision for securing the right to life, livelihood etc. as to the fundamental State policy which is not enforceable and the fundamental rights the Indian Supreme Court held in the case of *Olga Talis Vs. Bombay Municipal Corporation (1985) 3 S.C.C. 454* that "Article 37 provides

that the directive principles, though not enforceable by any Court, are nevertheless fundamental in the Governance of the country. The principles contained in Articles 39(a) and 41 must be regarded as equally fundamental in the understanding and interpretation of the meaning and content of fundamental rights. If there is an obligation upon the State to secure to the citizens an adequate means of livelihood and the right to work, it would be sheer pedantry to exclude the right to livelihood from the content of the right to life. The State may not, by affirmative actions, be compellable to provide adequate means of livelihood or work to the citizens. But any person, who is deprived of .his right to livelihood except according to just and fair procedure established by law, can challenge the deprivation as offending the right to live conferred by Article 21."

Public health and morality (Article 18): "A healthy body is the very foundation for all human activities. It is an obligation of the State to rest ensure the creation and the sustaining of conditions congenial to good health..... Maintenance and improvement of public health have a rank high as these are indispensable to the very physical existence of the community and on the betterment of these depends the building of the society of which the Constitution makers envisage."

It is the primary obligation of the State to raise the level of nutrition and the improvement of public health by preventing use of contaminated food, drink, etc. Though that obligation under Article 18(l) of the Constitution cannot be enforced State is bound to protect the health and longevity of the people living in the country as right to life guaranteed under Article 31 and 32 of the Constitution includes protection of health and normal longevity of free from threats, of man made hazards unless the threat is justified by law. Right to life under the aforesaid articles of the Constitution being a fundamental right it can be enforced by this Court to remove any unjustified threat to the health and longevity of the people as the same are included in the right to life."

No action detrimental to life liber y: The protection as to right to life also came up for consideration in 20 BLD page 377:

The words "no action detrimental to the life, liberty, body, reputation or property shall be taken except in accordance with law" is almost the same provision appearing in Article 4(2)(a) for the Constitution of Pakistan "no action detrimental to the life, liberty, body, reputation or property of any person can be taken unless such detrimental action has the backing of some law in existence." The word 'life' in Pakistan Constitution is similar to the word "life" appearing in Article 21 of the Indian Constitution and an Article 21 of our Constitution. Right to life in Article 31 means right to sound mind and health.

Labour Rights-Justiciability: In order to protect the human rights, convention on Forced Labour of 1930 was adopted. Through the passage of time the ILO Governing body has as well set up its own Adhoc Committees on Forced Labour.

In 1957 the ILO adopted the abolition of Forced Labour Convention, which is the broader version of 1930 Convention, called for immediate abolition of forced labour, banned forced labour of all kinds including use as a tool of racial, social, national and religious discrimination. The convention received more than 100 ratifications by now; notables are Convention No.100 Equal Remuneration Convention, 1951 and Convention No.111. Discrimination (Employment and occupation) Convention,1958. Most of the under developed countries/developing -countries had shown little interest in the fight against violation of Trade Union rights and the use of forced labour, but fortunately through past few decades Bangladesh has been consistently and persistently trying to abolish forced labour and promoting Trade Union activities/rights of the workers adopting various legislations, *inter-alia* Industrial Relations Ordinance, 1969, Employment of Labour (Standing Order) Act, 1965, Payment of Wages Act 1936, Child Labour Restraint Act, Minimum Wages Act, Maternity Benefit Act, Shops and Establishment Act, 1965, Factories Act etc.

These legislations are in keeping with our Constitutional mandate, hopes and aspiration as enshrines in Article 20 of Part II, fundamental Principles of State Policy, providing "work is a right and a matter of honour for every citizen who is capable of working, and everyone shall be paid for his work on the basis of the principle "from each according to his abilities to each according to his work." Which is in keeping with Convention No. 100. But inspite of that we find in the T.V. screen the story of Fatema who is paid less than the male for the same work as a man does.

Fundamental Rights, Part III of our Constitution in Art 28 enshrines that the state shall, not discriminate any citizen on grounds of religion race, sex etc. and Article 34 provides that "All forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law."

Inspite of Constitutional commitment for restrain of Child Labour we could not do away the use of Child Labour in Mill and factories, and in Garments and in Bidi Factories which has a tremendous destructive physical impact on their health and upbringing.

In Writ Petition No.1825 of 1999 Professor Dr. N. Islam V. Govt. of Bangladesh our Supreme Court sought to depict the horrors of employing Child Labour in manufacturing Bidi as the Children suffer from occupational hazards since tobacco is absorbed due to handing. The Children suffer from all deleterious effect of tobacco which is not only violation of the right of Children's right to life but also contravention of the ILO Convention prohibiting employment of Child Labour and suggested option as to reemployment of the Child Labour in some other trade/vocation.

Human Right forums should not only be concerned at the sporadic violation of human rights in this South Asia region but should not be unmindful about the massive violative of human rights elsewhere in the world i.e. Bosnia, Harjgovina, Rowanda, Somalia, Angola, Palestine, Afghanistan and many other member states of the United Nations who though are beneficiaries of the Bill of human rights but are constant victim of atrocious violation and negation of human rights by the powerful member states.

Human rights postulates fundamental freedom and the Member countries of the Unites Nations must incorporate them in their Municipal laws and the Constitution and shall see that those are not in any manner infringed or violated. It is high time that we should glorify ourselves being the champions of the cause of promoting and preserving human rights and mobilise public opinion against any violation or impending threat thereto, instead of being the helpless on lookers at the violation of the human rights holding seminars and symposiums only.

EVOLUTION OF PUBLIC INTEREST LITIGATION IN BANGLADESH

-Justice Kazi Ebadul Hoque

Under the Common Law adversarial system of the administration of justice judges are looked upon as neutral arbiters or umpires and not as activists. They are not expected to initiate and decide a case unless that is brought before them by a person who has suffered some wrong or whose rights are threatened. In other words, under the anglosaxon jurisprudence a person having *locus standi* to file a suit or an action can seek remedy from the court of law and unless he is affected by any wrong done to him or his legal right is threatened by another person he cannot seek relief or remedy from the court. This strict rule of standing is founded on the laissez faire theory of the state where the main function of the state is to maintain internal law and order and defend the country from external aggression and having little or no concern for the welfare of the citizens of the state. In the wake of the socialist revolution in Russia in 1917 at the close of the First World War, spread of socialist movement in the world thereafter, the great economic depression of Nineteen thirties, rise of Nazi and Fascist movements in Germany and Italy and defeat of the axis forces in the hands of British, American and Soviet allied forces in the Second World War and consequent expansion of socialist rule in East European countries contributed to the emergence of welfare state in most of the West European capitalist countries to stem the tide of socialism by attending to the welfare of the general mass. To face the great economic depression the leading capitalist country of the world, the United States of America, took many public welfare measures. After the Second World War the United Nations was formed for maintaining world peace and many of its agencies were formed to achieve welfare of the people of the world. The Declaration of Human Rights and signing of the covenants and conventions for achieving civil, political, social and economic rights kindled high hopes in the mind of the deprived sections of the people. Rights created in the newly transformed welfare states for the benefit of the so-far-ignored segment of the people imposed corresponding obligations on the Government and the executive authorities to ensure those rights. Adoption of written constitutions in many Common Law countries after their liberation from colonial rule with assurances of social and economic justice and guarantee of fundamental rights and entrustment of enforcement of fundamental rights to the superior judiciary gave rise to hopes and aspirations in the mind of the people for fulfillment of their long cherished goal of improvement of the quality of life free from oppression, hunger and degradation. Litigation being a costly affair down trodden and

deprived sections of the people find it difficult, and at times impossible, to seek redress from the superior judiciary against violation of such rights. But such violations could be remedied if their cause is espoused by any public spirited person or any organization formed for the welfare of such persons.

In the welfare economy adopted in the United Kingdom governmental functions increased manifold with corresponding increase in the instances of abuse of power by the government functionaries, at times affecting many people. If such abuse is not checked public interest suffered. So the English courts felt it necessary in the changed circumstances to liberalise the standing to facilitate challenge of illegalities committed by public functionaries.

In R. V. Paddington Valuation Officer, exparte Peachy Property Corporation Ltd. (1966) 1 Q. B. 380 Lord Denning on the question of *locus standi* of the petitioner to challenge the valuation list, held:

"But I do not think grievances are to be measured in pounds, shillings and pence. If a ratepayer or other person finds his name included in a valuation list which is invalid, he is entitled to come to the court..... He is not to be put off by the plea that he has suffered no damage any more than the voters were in Ashby Vs. White. The court would not listen of course, to a mere busybody who was interfering in things which did not concern him."

In the case of R V. Metropolitan Police Commissioner, exparte Blackburn (I 968) 2 Q. B. II 8 the petitioner complained against inaction of the police in respect of gaming law. Though the petitioner had no personal interest in the matter court heard him without giving any specific answer as to his *locus standi.*

In the case of Blackburn V. Attorney General (1971) 2 All E. R. 1380 petitioner challenged govemment's right to join European Common Market surrendering part of the sovereignty of the crown in Parliament. Though court dismissed his petition held that he has *locus standi* to challenge the govermnent's entering into the treaty.

In R V. Metropolitan Police Commissioner, exparte Blackburn (1973) 1 All E. R. 324 petitioner complained against the police for not performing their duty towards his wife and children. Court heard him and found that he has *locus standi* to enforce a public duty owed by the police.

In A. G. V. Independent Broadcasting Authority (1973) 1 All E. R. 696 better known as Mc. Whirter's case petitioner sought an injunction to prevent the Broadcasting Authority from showing film without complying with legal requirements. Petitioner was found to have sufficient interest as he had a television set.

In R.V. Greater London Council, exparte Blackburn (1976) 1 WLR 550 petitioner complained against exhibition of pornographic films. In this case also

court found that the petitioner had *locus standi* to enforce the public duty owed by the greater London Council to the members of the general public.

Following aforesaid decisions order 53 rule 3(5) of the Supreme Court Rules of England provides that the applicant must have a "sufficient interest" in the matter to which the application relates. Section 31 of the Supreme Court Act 1981 provides that an applicant can seek judicial review if he has "sufficient interest" in the matter.

In the case of 1. R. C. V. Federation of Self-Employed (1981) 2 All E. R. 93 House of Lords in the opinion of Lord Diplock on the question of *locus standi* opined as follows:

"The reference here (Lord Denning's observation in the earlier case that any one of the offended or injured subjects by the transgression of law or threatened transgression by a government department or public authority can draw the attention of the courts and seek to have the law enforced) is to flagrant and serious breaches of the law by persons and authorities exercising governmental functions which are continuing unchecked. To revert to the technical restrictions on *locus standi* to prevent this that was current thirty years ago or more would be to reverse that progress towards comprehensive system of administrative law that I regard as having been the greatest achievement of my judicial life time."

Thus the English Courts and subsequently English law gave a goby to the old strict principle of *locus standi* and extended the same to a person having sufficient interest to go to the court to prevent violation of law affecting a large number of people or to enforce public duty owed by the persons and authorities exercising governmental functions.

Indian Independence Act 1947 partitioned Indian subcontinent into two independent countries-Union of India and Pakistan and both of the countries adopted constitution in which fundamental rights of the citizens and policy principles to be followed by the state for development of the countries and ameliorating the sufferings of the people were incorporated. Though the policy principles are not justiciable and enforcible the fundamental rights have been made enforcible through judicial review. Similarly superior courts have been given power to declare any illegal action by governmental functionaries or judicial or quasi-judicial authories to be declared without lawful authority by judicial review. Superior judiciary has also been given power to declare any law ultra vires the fundamental rights or any provision of the constitution. After liberation of Bangladesh in December 1971 the country adopted a constitution incorporating therein, amongst others, fundamental principles of state policy and fundamental rights.

Indian Constitution being the earliest one in the subcontinent incorporating those policy principles and fundamental rights and giving power of judicial review to

the superior courts could not earlier come to the assistance of the teeming millions as the judges and lawyers were attuned to the earlier system in which *locus standi* had very restrictive meaning allowing only those who had suffered any legal injury at the hands of those against whom they seek redress of their grievances i.e. the persons having the right to sue. In the cases of Chiranjit Lal V. Union of India AIR 1951 SC 42 and Hans Muller V. Supdt. Presidency Jail, Calcutta AIR 1955 SC 367 Indian Supreme Court followed the old rule of *locus standi* without appreciating the changed circumstances after the independence of the country and adoption of a written constitution incorporating fundamental rights of the citizens and providing for enforcement of the same and held that only a person aggrieved could challenge the constitutionality of a statute or legality of any executive action.

Indian Supreme Court for the first time liberalized the rule of *locus standi* in the case of Mumbai Kamgar Sabha V. Abdulbhai AIR 1976 SCC 1455.

In that case celebrated judge Krishna Iyer observed:

"Test litigation, representative actions, probono publico and like broadened forms of legal proceedings are in keeping with the current accent on justice to common man and a necessary disincentive to those who wish to bypass the real issues on merit by suspect reliance on peripheral procedural short comings..... Public interest is promoted by a specious construction of *locus standi* in our socio-economic circumstances and conceptual latitudinarianism permits taking liberties with individualization of the right to invoke the higher courts where the remedy is shared by a considerable number, particularly when they are weaker."

In the case of Fertilizer Corporation Kamgar Union V. Union of India AIR 1981 SCC 344 workers' union challenged sale of certain plants and equipments of Sindri Fertilizer Factory by the Fertilizer Corporation of India. In that case question of *locus standi* of the workers to challenge the sale was mooted. Though the court dismissed the claim held that the petitioners had *locus standi* to come to the court.

In that case of S. P. Gupta V. Union of India AIR 1982 SC 1491 government policy of transferring judges of one High Court to another High Court was challenged by some advocates of different High Court Bar Associations. In that case, known as Judges' case, Court held that petitioners had *locus standi* to challenge the government policy and laid down detailed rule of standing in public interest litigation with the following observation:

"Where a legal wrong or legal injury is caused to a person or to a determinate class of persons by reason of violation of any constitutional or legal right or any burden is imposed in contravention of any constitutional or legal provision or without authority of law or any such legal wrong or legal injury or illegal burden is threatened and such person or determinate class of persons is by reason of

poverty, helplessness or disability or socially or economically disadvantaged position, unable to approach the court for relief any member of the public acting bona fide and not for oblique considerations can maintain an application seeking judicial redress for the legal wrong or injury caused to such person or determinate class of persons."

It was further observed:

"Where the weaker sections of the community are concerned such as under trial prisoners languishing in jails without a trial, inmates of the protective homes in Agra, or Harijan workers engaged in road construction in the district of Azmer who are living in poverty and destitution, who are barely eking out a miserable existence with their sweat and toil, who are helpless victims of an exploitative society and who do not have easy access to justice this court will not insist on a regular writ petition to be filed by the public spirited individual espousing their cause and seeking relief for them. This court will readily respond even to a letter addressed by such individual acting probono publico."

In the case of People's Union for Democratic rights V. Union of India AIR 1982 SC 1473 petitioner, an organization having object of upholding democratic rights filed the case complaining about violation of the provisions of Labour Laws in employing child labour and non-payment of proper wages to the workers employed by contractors for construction works in connection with the Asian games to be held in Delhi. In that case known as Asiad case court held that the petitioner had *locus standi* to file the case. Justice Bhagabati enunciated the principle of public interest litigation as follows:

"We wish to point out with all the emphasis at our command that public interest litigation which is a strategic arm of the legal aid movement and which is intended to bring justice within the reach of the poor masses, who constitute the low visibility area of humanity, is a totally different kind of litigation from the ordinary traditional litigation which is essentially of an adversary character where there is a dispute between two litigating parties, one making claim or seeking relief against the other and the other opposing such claim or resisting such relief. Public interest litigation is brought before the court not for the purpose of enforcing the right of one individual against another as happens in the case of ordinary litigation. But it is intended to promote and vindicate public interest which demands that violations of constitutional or legal rights of large number of people who are poor, ignorant or in a socially or economically disadvantaged position should not go unnoticed and unredressed. That would be destructive of the rule of law which forms one of the essential elements of public interest in any democratic form of government.

In the case of D. S, Nakara V. Union of India AIR 1983 S. C. 130 a Registered cooperative society having one of its objects to ventilate legitimate public

concerns complained against discrimination in extending liberalised pension scheme to all the pensioners by excluding about three million pensioners. In that case it was held that the action by the petitioner was maintainable for judicial redress of public injury arising from the breach of public duty or from the violation of a provision of the Constitution or the law.

In the case of Bandhu Multi Morcha V. Union of India AIR 1984 SC 802 the petitioner was an organization dedicated to the cause of release of the bonded labourers. In spite of passing of the Bonded Labour System (Abolition) Act 1976 there was no improvement of the miseries of such labourers. In that case petitioner complained that workmen held in bondage under the guise of contract had been working and living in miserable conditions without any protection from sun and rain and without adequate food and pure drinking water violating their fundamental right. Court held that the petitioner has *locus standi* to move the court to enforce fundamental right on behalf of those who on account of poverty, disability or social or economic disadvantage cannot approach the court for redress of their grievance. Court observed in that case, "it is necessary to depart from the adversarial procedure and to evolve a new procedure and forge new tools, devise new methods and adopt new strategies for the purpose of making fundamental rights meaningful for large masses of the people."

In the case of M.C. Mehta V. Union of India (1987) 4 SCC 463 the petitioner, an advocate and social worker approached the court for restraining tanneries from discharging effluents of their factories in the river Ganges until such time as necessary treatment plants were installed by them to prevent pollution of the water of the river. The court gave hearing to the petitioner and allowed the prayer for the sake of protection of the environment and prevention of pollution. Court observed as follows:

We are conscious that closure of tanneries may bring unemployment and loss of revenue but life, health and ecology have greater importance to the people".

In the case of M. C. Mehta V. Union of India (1991) 2 SCC 353 the petitioner complained about environmental pollution by the Delhi Electric Supply Undertaking Court entertained the petition as threat to the environment was a threat to all the inhabitants.

In the case of Subhas Kumar V. State of Bihar AIR 1991 SCC 420 the petitioner complained about environmental pollution. Court held that right to life is a fundamental right and it includes a right to enjoy a life free form pollution of water and air and such a petition was maintainable at the instance of an affected person or a group of social workers or journalists.

Thus Indian Supreme Court liberalized and extended the rule of standing in public interest litigations allowing even a public spirited person or any body or association of per sons acting bona fide in public interest for enforcement of

fundamental or legal rights or prevention of abuse of such right to move the court on behalf of the poor and disadvantaged sections of the people who are unable to approach the court for remedy for their grievance.

Following the observation in the Judges case Supreme Court of India started the practice of treating letters and telegrams addressed to it as writ petitions and acting on those. This is known as court's epistolary jurisdiction. Supreme Court of India also appoints commissions for gathering facts in connection with the allegations of violation of fundamental rights of poor, weaker and disadvantaged sections of the people. By liberalizing rule of *locus standi* and evolving epistolary jurisdiction Supreme Court of India delivered judgments and passed orders to enforce fundamental rights for the benefit of deprived and disadvantaged segments of the people.

Following the liberalization of the rule of *locus standi* and evolving of the epistolary jurisdiction by the Supreme Court of India, Supreme Court of Pakistan in the case of Benazir Bhutto V. Pakistan PLD 1988 SC 416 held that any person bona fide alleging violation of fundamental rights of a class or group of persons could approach the court for enforcement of such rights for the benefit of such class or group of persons who are unable to approach the court due to poverty or disadvantaged condition.

In the case of *Darshan Masih V. State PLD 1990 SCC 513* Supreme Court of Pakistan on the basis of a telegram exercised its jurisdiction for enforcing the fundamental right of a brick kiln tabourer compelled to work as a bonded tabourer. This practice of taking action on the basis of letters and telegrams has been continuing in Pakistan by the Supreme Court as well as by the High Courts for giving relief to the poor and disadvantaged sections of the people when there is violation of their fundamental rights.

Long before this wave of liberalization of the rule of *locus standi* to enable public interest litigations reached Bangladesh in the case of *Kazi Moklesur Rahman V. Bangladesh 26 DLR (AD) 44* known as Beru Bari case petitioner, an advocate, challenged the legality of the Delhi Treaty of 1974 entered into between India and Bangladesh for demarcation of land boundary between the two countries. In that case question of *locus standi* of the petitioner was raised. Court held:

"It appears to us that the question of *locus standi* does not involve the court's jurisdiction to hear a person but of the competency of the person to claim a hearing, so the question is one of discretion which the court exercises upon due consideration of the facts and circumstances of each case." Court further held: "The fact that the appellant is not a residence of the southern half of South Beri Bari Union No. 12 or of the adjacent enclaves involved in the Delhi Treaty need not stand in the way of his claim to be heard in this case. We heard him in view

of the constitutional issue of great importance raised in the instant case involving an international treaty affecting the territory of Bangladesh and his complaint as to an impending threat to his certain fundamental rights guaranteed by the Constitution, namely, to move freely through out the territory of Bangladesh, to reside and settle in any place therein as well as his right of franchise. Evidently these rights attached to a citizen are not local. They pervade and extend to every inch of the territory of Bangladesh extending upto the continental shelf."

Of course that decision is no authority for the proposition that a person whose own fundamental right has not been infringed has a right to move the court for espousing the cause of other persons whose fundamental rights have been violated. So in that case no general rule for liberalizing *locus standi* even in public interest having been made High Court Division of the Supreme Court of Bangladesh continued to stick to the traditional view of *locus standi*.

In the case of Dada Match Workers Union v. Bangladesh 29 DLR 188 the question was whether a trade union can maintain an application for judicial review under article 102 of the Constitution of Bangladesh on behalf of its members. Considering some decisions of the Pakistan and Indian superior courts and interpreting "Person aggrieved" used in article 102 and without noticing and considering the decision in Beru bari case it was held that the petitioner was not a person aggrieved and hence can not seek judicial review.

Same view was expressed by the High Court Division in the case of K. S. Employees Union V. G. M. Khulna Shipyard 30 DLR 368.

In the case of M. G. Bhuiyan V. Bangladesh (I 98 1) I BCR (A.D) 81 appellant, an advocate, as petitioner filed a writ petition seeking declaration that Government Notification giving effect to Law Reforms Ordinance 1978 (amending some procedural laws) was without lawful authority as according to him the same was ultra vires the Constitution. High Court Division having refused the prayer on the ground of his *locus standi* he preferred an appeal before the Appellant Division which held that he was not a person aggrieved.

In the case of BSP V. Bangladesh 43 DLR (AD) 126 an association of owners of news papers and news organizations, registered under the Societies Registration Act challenged the constitutionality of the relevant Act and formation of an Wage Board and its interim award. In that case on the question of *locus standi* of the petitioner the view expressed in the Dada Match Workers' case was approved.

In the case of Bangladesh Electrical Association V. Bangladesh 46 DLR 221 High Court Division again held that the petitioner Association is not a person aggrieved and cannot maintain an application for judicial review on behalf of its members.

But the High Court Division for the first time in the case of Retired Government Employees V. Bangladesh 46 DLR 426 held:

"Since this association has an interest in ventilating the common grievance of all its members, who are retired government employees, to our view this association is a person aggrieved" within the meaning of clause (1) and clause (2) of article 102 of the Constitution. It is, therefore, entitled to maintain this writ petition."

In this country public interest litigation could not develop so long due to restrictive interpretation of *locus standi* to seek judicial review by a person who is not personally affected by the action or impending action of the governmental authority or any local authority or violation or thereat of violation of any legal or fundamental right. Even before liberalization of *locus standi* and extended meaning given to the expression person aggrieved" in article 102 of the Constitution Bangladesh Environmental Lawyers Association (BELA) started public interest litigations for environmental and ecological protection and public welfare.

Dr. Mohiuddin Farooque, General Secretary of BELA filed Writ Petition No. 186 of 1994 against Election Commission and others seeking prohibition of activities in connection with the Dhaka City Corporation election in 1994 causing nuisance violating laws and directives of the Election Commission. The case was disposed of in view of the assurance of the Attorney General that Government would take all necessary steps to implement all the directives of the Election Commission. In this case question of *locus standi* of the petitioner was not raised and decided. This decision has been published in 46 DLR 235.

On behalf of BELA Dr. Mohluddin Farooque filed Writ Petition No.891 of 1994 in the High Court Division seeking implementation of the Government Notification for undertaking pollution control measures by certain industries and not to set up any new industry causing environmental pollution without pollution control devices. Though rule was issued on the respondents including the Government the case is still pending for decision.

BELA through Dr. Mohiuddin Farooque filed another important public interest case being Writ Petition No.1783 of 1994 in the High Court Division to prevent continuous strike by the doctors in Government service paralyzing health services in the hospitals, health complexes and centers causing sufferings to the people. Court not only issued rule on the respondents including the Government but also granted mandatory injunction directing withdrawal of the strike and joining duties by the striking doctors.

Dr. Mohiuddin Farooque on behalf of BELA also filed Writ Petition No.300 of 1995 complaining against vehicular pollution, Writ Petition No.466 of 1995 complaining against partisan propaganda by state owned Television; Writ Petition No.948 of 1997 complaining against filling up of lake in Uttara, Writ

Petition No.6020 of 1997 complaining against cutting of hills; Writ Petition No.7422, of 1997 complaining against filling up of lake in Gulshan and other writ petitions for environmental protection and public interest. These cases are pending for final hearing.

Sometime after the election of 1991 to the Bangladesh Jatiya Sangsad (Parliament) members of the then Parliament belonging to the opposition political parties started boycotting the sessions of the Parliament demanding amendment of the Constitution incorporating provisions for a caretaker government to hold the general elections for the Parliament. Mr. Anwar Hossain Khan filed Writ Petition No.1001 of 1994 seeking direction and mandamus on the boycotting members of the Parliament to join the sessions of the Parliament. In that case reported in 47 DLR 42 on the question of *locus standi* of the petitioner court held:

"As Constitution is a solemn expression of the will of the people, the supreme law of the Republic, any violation of (it) by anybody including the members of the Parliament shall be called in question by each and every citizen of Bangladesh. Therefore, it can safely be said that the petitioner has got a *locus standi* to file this application by calling in question the conduct and actions of the respondent Nos.3-5 for getting appropriate relief."

Subsequently 147 members of the Parliament enmasse submitted resignation letters to the Speaker on 28.12.1994 as their demand for amendment of the Constitution was not accepted by the Government. Speaker was sitting over the matter without accepting or rejecting the resignation letters. One Rafique Hossain filed Writ Petition No. 88 of 1995 in the High Court Division seeking declaration that the resignation letters should be declared illegal and void. On the other hand one Md. Alaudding Khalid filed Writ Petition No. 161 of 1995 for directing the Speaker to take action as required under the Constitution on the aforesaid resignation letters. Both the Writ Petitions were heard by a Special Bench of three Judges and their common judgment was reported in 47 DLR 361. In that case on the question of *locus standi* of the petitioner the Court held:

"To sum up, in the light of the aforesaid decisions, I can safely say that the petitioner, who styles himself as a voter and because of submission of resignation letters by 147 members of the Parliament his right of franchise has been curtailed if election is held, does not stand on sound constitutional and legal foundation. His contention on *locus standi* on that count does not find favour with the observation made in the decision in the case of BSP and Ex-parte Albert Levitt. Consequently I hold that the petitioner does not qualify as a "person aggrieved" to bring the action before us under Article 102 (2) (a) (ii) of the Constitution and has no *locus standi* on the ground of maintainability."

In the case of Dr. Mohiuddin Farooque V. Bangladesh 48 DLR 433 the petitioner sought direction on the government to be issued by the court for filling up vacant post of judges in both Divisions of the Supreme Court of Bangladesh in public interest. Court rejected the writ petition on the question of *locus standi.*

Secretary-General of BELA Dr. Mohiuddin Farooque in another public interest litigation for prohibiting importation of contaminated food items in violation of the fundamental right to life and protection of life sought enforcement of those rights in his own interest and in the interest of the people. In that case Dr. Mohiuddin Farooque V. Bangladesh 48 DLR 438 on the question of petitioner's *locus standi* court observed as follows:

"In this rule petitioner seeks enforcement of fundamental right under articles 31 and 32 of the Constitution on the allegation that the right to life of the people of the country including himself who are the potential consumers of the condensed milk prepared using imported milk powder is under threat. Petitioner claimed that he sought enforcement of the aforesaid fundamental right in public interest. Respondents do not challenge such claim of the petitioner. So we need not consider as to whether petitioner is entitled to the enforcement of such fundamental right in his own behalf or in public interest."

Serious objection as to *locus standi* of BELA to seek judicial review through its Secretary-General was taken by the Court in Writ Petition No. 998 of 1994. In that case BELA, an environmentally concerned and active organization challenged Flood Action Plan-20 (FAP-20) project undertaken in the District of Tangail apprehending environmental degradation affecting the life, property, livelihood, vocation and environmental protection of more than a million people of the said district as it came to know from complaints of local people, inspection and investigation about ill-effects of the said project on the people of the locality who are against the said project and are not willing to be the subject of an experiment risking their lives and livelihood. High Court Division summarily rejected the writ petition relying on the decision in Bangladesh Sangbadpatra Parishad case and holding that the petitioner was not " any person aggrieved." Aggrieved by the same petitioner preferred appeal to the Appellate Division. In that appeal, Dr. Mohiuddin Farooque V. Bangladesh, 49 DLR (AD) I meaning of the expression "any person aggrieved" occurring in article 102 (1) and 102 (2) (a) of the Constitution has been liberalized and extended in respect of public interest litigations. In the leading judgment Mustafa Kamal J observed:

"The traditional view remains true, valid and effective till to-day in so far as individual rights and individual infraction thereof are concerned. But when a public injury or public wrong or infraction of a fundamental right affecting an indeterminate number of people is involved it is not necessary, in the scheme of our Constitution, that the multitude of individuals who has been collectively

wronged or injured or whose collective fundamental rights have been invaded are to invoke the jurisdiction under article 102 in a multitude of individual writ petitions, each representing his own portion of concern. In so far as it concerns public wrong or public injury or invasion of fundamental rights of an indeterminate number of people, any member of the public, being a citizen, suffering the common injury or common invasion in common with others or any citizen or an indigenous association, as distinguished from a local component of a foreign organization, espousing that particular cause is a person aggrieved and has the right to invoke the jurisdiction under article 102. It is, therefore, the cause that the citizen applicant or the indigenous and native association espouses which will determine whether the applicant has the competency to claim a hearing or not. If he espouses a purely individual cause, he is a person aggrieved if his own interests are affected. If he espouses a public cause involving a public wrong or public injury he need not be personally affected. The public wrong or injury is very much a primary concern of the Supreme Court which in the scheme of our Constitution is a Constitutional vehicle for exercising the judicial power of the people."

Thus *locus standi* of a person or organization for seeking redress in public interest having been liberalized and the meaning of the expression "any person aggrieved" appearing in article 102 (1) and 102 (2) (a) extended solid foundation for public interest litigation through judicial review has been laid in this country also. It may be mentioned in this connection that there are provisions in the Code of -Civil Procedure for initiating and conducting public interest litigation by one of the group of affected persons or a public spirited person with the leave of the court in the former case and with the permission of the Attorney General in the latter case. On the other hand even in article 102 (2) (b) the petitioner need not be "any person aggrieved" for seeking redress by issue of a writ of habeas corpus or quo warranto. The question of *locus standi* to seek judicial review having thus been settled High Court Division of the Supreme Court of Bangladesh has been entertaining public interest litigations and till date some such cases have been decided.

In the case of Dr. Mohiuddin Farooque V. Bangladesh 50 DLR 84 court found "FAP-20 activities have been undertaken by the respondents in accordance with the law of the land- regarding adoption and approval of the scheme but violations of some provisions of the law of the land in implementing the project is found but the fundamental rights stated above do not appear to have been violated." So the court directed compliance with the provisions of the relevant laws, secure archeological structures and ensure environment and ecology in the area.

In the case of Giasuddin V. Dhaka Municipal Corporation 49 DLR 199, another public interest litigation, the question was whether persons taking shelter during

flood in a park in the Gulshan Model Town of Dhaka city could be evicted long after receding of the flood violating their right to life. It was held:

"Right to life under article 31 of the Constitution may be interpreted in the facts and circumstances of a case, to mean right to accommodation without which human life cannot be protected. But that does not mean that one who is a mere trespasser in the land or property of another person is entitled to continue in such unauthorized occupation as his eviction would throw him in the street depriving him of accommodation and that might endanger his life. Protection of life under article 31 of the Constitution means that one's life cannot be endangered by any action which is illegal. But protection of life under that article does not mean protection of an illegal action of any person."

In the case of Mohsinul Islam V. RAJUK 52, DLR 8, another public interest litigation, the question was whether RAJUK (Capital Development Authority) could convert the land ear-marked for community purposes, recreation etc. into residential plots to meet growing demand for the same. In that case court held:

"..... it is an obligation of RAJUK to provide parks, open spaces, play grounds or similar amenities and it cannot deprive the residents of an improvement scheme like Uttara and Gulshan from such facilities on the plea of providing residential plots to the growing number of town dwellers. Maintaining healthy environment in a residential area is a prime necessity of the day and vacant spaces in the development schemes are kept under the requirement of law for maintaining healthy environment for the residents and RAJUK cannot deprive the residents of such facilities on any plea whatsoever."

Following those decisions Act No. XXXVI of 2000 has been enacted to preserve play grounds, open spaces, gardens, parks and natural water bodies in the cities and district towns.

In the case of Professor Nurul Islam V. Bangladesh 52 DLR 413 petitioner, president of an organization for prohibition of smoking of tobacco products, sought prohibition of advertisement of tobacco products in the radio, television, newspapers etc. as smoking of tobacco products was injurious to health. The court in view of the fundamental principles of the state policy for taking measures for improvement of quality of public health and nutrition and dignity and worth of human person which shall be guide to the interpretation of the Constitution and in view of the fundamental right to life contained in article 31 of the Constitution and for the preservation of environment and maintaining ecological balance gave the following direction:

"..... that advertisement in any form of Cigarette, Beedi, tobacco related products must not be continued in any manner in Newspapers, Magazines, Signboards or in any electronic media like Television/Radio beyond the period of the existing contract/agreement with the manufactures or their agents."

In the case of Aleya Begum V. Bangladesh 53 DLR 63 the question was weather slum dwellers in government land could be evicted without notice and making arrangement for their rehabilitation. Court observed in that case as follows:

"In the eye of law they are to be treated as unauthorized and trespassers. But even then justice demands that trespassers also cannot be evicted forcibly without notice and without giving chance to them to remove themselves willingly therefrom. Justice also demands that the slum dwellers should not be unkindly evicted without making any alternative arrangement for their rehabilitation as human beings."

In the case of Bangladesh Society for the Enforcement of Human Rights (BSEHR) V. Bangladesh 53 DLR 1 petitioner complained of unauthorized and forcible eviction of the sex-workers from their residences and confining them in the Vagrant Home. Court upheld petitioner's contention and directed to release them from the Vagrant Home.

Besides BELA other organizations such as Ain-O-Salish Kendro (ASK), Bangladesh legal Aid Services Trust (BLAST), Bangladesh National Women Lawyers' Association (BNWLA), Bangladesh Mohila Ainjibi Samiti (BMAS), Mohila Parishad (M.P), Bangladesh Society for the Enforcement of Human Rights (BSEHR), Consumers Association of Bangladesh (CAB) and other organizations and public spirited persons brought many public interest litigations before the High Court Division for redress of the grievance of the deprived sections of the people in addition to the cases referred to and discussed herein before. But all these cases are still pending for final decision though in some cases court granted interim relief.

With the liberalization of the *locus standi* public interest litigation (PLI) has great prospect in ameliorating the conditions of the down trodden and deprived sections of the people and to bring succour to their sufferings making the assurance of fundamental rights in the Constitution a reality in their lives. Though epistolary jurisdiction has not yet been developed and adopted by the High Court Division for further extension of the PIL like Indian and Pakistani Courts it is hoped that court may soon realize the necessity of adopting such jurisdiction.

PIL also poses a danger of flooding the court with unnecessary litigations at the instance of busybodies posing as public spirited persons and thereby unnecessarily burdening the High Court Division which is already over burdened with cases which take years for disposal and thus causing undue hardship on the litigant public. This danger could be averted if the court remains vigilant at the very inception of the case and meticulously examines the bona fide of the petitioner to seek redress through PIL and weeds out the busy bodies at the threshold. Moreover PIL has been serving the interest of the Non-Government

Organizations (N.G.Os) in our country rather than the interest of the people for whose benefit PIL is vouched. So court should remain altert as to the real motive of the petitioners in initiating PIL and see as to whether the same is really in the interest of that deprived segment of the people in whose name relief is sought or to ventilate private grievance or to earn publicity and should refuse to assist such motivated petitioners.

It may be mentioned that Supreme Court of India in a recent judgment in the case of BALCO Employees Union V. Union of India expressed its concern at gross misuse of PIL by private interest litigation or publicity interest litigation and gave guidelines for preventing misuse of court's jurisdiction in the name of public interest litigation and directed that petitioner should be put on appropriate terms as to providing an indemnity or an adequate undertaking to make good the loss or damage caused by the litigation in the event of PIL is dismissed and that no exparte relief by way of injunction especially with respect to public projects should be granted.

JUDICIAL ETHICS AND CODE OF CONDUCT OF JUDICIAL OFFICERS

-Justice Md. Badruzzaman

A strong and independent judiciary is indispensable to the proper administration of justice. Judges must be free to perform their Judicial duties without fear of reprisal or influence of any person, institution or authority. Judges should also recognize their duty to uphold high standards of personal conduct and professionalism so as to preserve the independence and integrity of their Judicial Office and to preserve the faith and trust that society repose upon them.

Judges, on amongst others, should follow the following principles in the performance of their judicial duties and in the conduct of their personal lives. The principles are not exhaustive and many more such principles may be enumerated on the basis of deliberation:

1. Judges should discharge the duties of their Judicial Office according to the *Constitution and the Laws of Bangladesh*. They have a duty to apply the relevant law to the facts and circumstances of the cases before the Court and render Justice within the framework of the law. Reasons for the Judgment/ Order should be recorded in clear language so as to enable the litigants to understand the reasons behind the decisions.

2. Judges must be *impartial and objective* in the discharge of their Judicial duties. They should not be influenced by public pressure or fear of criticism. Judges shall not by words or conduct, manifest favour, or bias or prejudice toward any party. They need not do anything which is improper to earn popularity from any person or group.

3. Judges shall endeavour to maintain *order and decorum* in Courts. They must strive to be patient, dignified and courteous in performing the duties of Judicial Office and shall carry out their role with integrity, appropriate firmness and honour.

4. Judges should conduct Court business with due deligence and dispose of all matters before them *promptly and efficiently* having regard, at all times, to the interests of Justice and the rights of the parties before the Court. There is no justice where delay is such that by the time the decision is rendered it nolonger has any practical meaning to the litigants. There is no justice if the prohibitive cost of litigation prevents a citizen from seeking justice through the court system. In order to ensure speedy justice the Judges should devote the entire prescribed

time for judicial work and discourage adjournment of hearing of cases on insufficient ground.

5. The primary responsibility of Judges is the *discharge of their Judicial duties.* Subject to any restrictions imposed by law or rules, the Judge may participate in law related activities provided such activities do not interfere with Judge's judicial duties.

6. Judge should maintain their *personal conduct* at a level which will ensure the public trust and confidence. Judges must not abuse the power of their Judicial Office or use it inappropriately. In other words, Judges should not involve themselves in any activity which is incompatible with their Judicial Office.

The Judges of the Subordinate Judiciary, being members of the Civil Service, are required to abide by the rules in the Government Servant (Conduct) Rules, 1979. Contravention of any of these rules shall be construed as "misconduct" within the meaning the Government Servant (Discipline and Appeal) Rules, 1985. A Government Servants found guilty of such contravention shall render himself liable to disciplinary action under the aforesaid Rules.

THE PROBLEMS OF LAW REFORMS IN BANGLADESH

-Justice Naimuddin Ahmed

Although Law Reform has been a continuing process in Bangladesh through institutionalized law reform agencies since the third decade of the nineteenth century when in 1834 the first Law Commission was set up in India (at a time when Bangladesh and Pakistan were parts of India under British rule) under the chairmanship of Thomas Babington Macaulay popularly known as Lord Macaulay, there are still misgivings in the minds of many that like any other branch a Law Reform Agency or a Law Commission is also a branch of the government meant for acting either as legal adviser or as the drafting cell or as an opinion cell of the government or a combination of all. None of these is the main function of the Law Commission though some of them may come up before it as incidental to its main function. Its main function is law reform which means that the Commission has to keep "all the law" under review and, accordingly, take up law reform programs in various areas.

There are innumerable issues related to the question of law reforms. I shall try to place a few of these issues which various sections of the people_ lawyers, judges, civil servants newspaper editors, businessmen, human rights activists, woman's rights activists and common people of every shade_ have been bringing before the Law Commission.

There is no doubt about the unthinkable advancement of science and technology in the modern world. There has also been globalization of scientific and technological developments. Simultaneously, there has been globalization of demoralization and erosion of moral values as well around the globe. This global demoralization has developed into a Hydra of which only one of its heads manifesting itself in the form of corruption in public life is the greatest concern of all men of sense and moral in many parts of the world today. The unprecedented development of science, technology, open-market economy, investment of capital for profit and profit alone unrelated to social needs have been meticulously accompanied by various types of scams_ arms scam, fodder scam, food scam, drug scam, share scam and even Olympic games scam. Then there are kick-backs, pay-off, money-laundering- there are trade in children, women and even men. In the modern world, these vices are not confined within the national boundaries of any one country but have assumed global character. They and their perpetrators and beneficiaries do not need any passport for inter-continental travel. Who are the persons who corrupt public life? A few persons who have the means. Farmers and workers do not have the means to do so. Many

people have been telling that corruption in public life has created these vices and these deadly vices can be met only by deadly laws and the Law Reform Agencies have a role in eliminating corruption from pubic life by proposing appropriate law.

Some countries face peculiar difficulties in implementing certain provisions of a number of international human rights instruments, particularly those relating to the equality clauses, for socio-political reasons. In these countries various communities are governed by their respective personal laws in matters of marriage, divorce, guardianship, inheritance, etc. The gender discrimination on the ground of sex is patent in these communities and is sanctioned by their personal law based, in some cases, on strong religious source. The task of law reform in such areas as these in pursuance of the equality clauses based on international human rights norms is extremely difficult.

Since the end of the Second World War the concept of human rights has gained a new dimension and the result is adoption of the International Bill of Human Rights and nearly or more than one hundred international human rights instruments. There may be domestic laws, existing or proposed, which are in conflict with the norms recognized in those instruments. It is the obligation of every country and particularly those that are parties to these international human rights instruments to make their domestic laws consistent with these instruments.

A system where effective economic demand does not correspond to real social need, as is often the case with free market economy based on wide-spread private sector investment where the object of almost every investment is profit, capital will be invested in building profit-earning luxury hotels when society badly needs a hospital, cosmetic industries will grow up in preference to houses for the destitute. In our region, we have seen luxury hotels becoming more luxurious and hospitals turning into cowsheds and virtual slaughter houses. Who are the beneficiaries of such a system? Only a fraction. Those few who control the economy. Who are the victims? Those millions and millions who live by the sweat of their brow. Pressure may be on the Law Reforms Agencies to mould the law in order to suit the interests of the few. What should be our role, particularly, in the context of the disastrous collapse of the systems in those countries which closed the operation of the forces of free-market economy.

Democracy means government by the people. We are being tutored this beautifully coined sentence since November 19, 1863, when a lawyer turned politician uttered these words in front of a cemetery at a small town in Pennsylvania. It simply means that the people shall select by vote who will run the government for a given period of time. To make mater complicated, an inevitable result of hi-tech civilization, it is called, 'the electoral process.' In many countries of the world, of Asia, Africa and South America in particular,

this electoral process has become the captive of the 'Mafia'. In these countries the 'Mafia', which operates under money and muscle control the electoral process and damns and then dooms that lawyer's government by the people. Many distinguished people have been telling that the election process in the region can be improved by uprooting this influence of money and muscle- the "Mafia" by reforming the existing electoral laws.

Lastly, the judicial process. In a number of the newly emerging democracies, the judiciary which is supposed to be the guardian of the constitution and the protector of the life, liberty and property of the subjects has been constitutionally made a captive of the executive organ of the state as a result of which the judges, in spite of the universal constitutional dictum that the "Judges shall be independent in the exercise of their judicial function", have to function under an unhealthy expectation of gaining some favour or a gnawing fear of victimization. So, unless the judiciary is completely and thoroughly freed from executive bondage both in letter and spirit as well as in practice, human bondage will not end. Have the Law Reform Agencies any role to play in this regard?

* *Adapted from a paper presented by the author at the Commonwealth Law Reform Agencies' Conference held in Perth, Western Australia, 1-3 April, 2000.*

HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

-Justice Mohammad Marzi-ul-Huq.

We are all for virtue and against sin. The question remains: do they speak any legal concept of value? The words "human rights" have an ancient heritage. They are objectives of law to be the restraint of the princes, and also the achievements for the people when faced with the power of the State. Two basically opposed approaches to the meaning of law can be detected the flat assertion that law is what the State, through its organs, that is legislature and the courts, says it is. The right and duties are what the legislature and the judges say. The second approach is the assertion that this is not all that there is natural law springing from man's humanity which must be incorporated into the positive law of the State. While revolution under the first approach is unlawful, under the second, revolution can be justified as lawful if the existing positive law of the State offends the natural law.

The major historical developments in the field of human rights have been associated with the aftermath of revolution and war. Magna Carta in 1215 was evolved to restrain the barons, in that year king John granted Charter of liberation under threat of civil war and it was reissued, altered with certain additions in 1216 and again with further changes in 1217, and the charter known as Magna Carta consists of a preamble and 63 clauses and described by Voltaire as the "Charter of liberty". Article 39 and 40 of the Charter reads:

"No freeman shall be taken or imprisoned, or disseized, or outlawed, or exiled or in any way destroyed; nor shall we go upon him, nor send upon him, but by the lawful judgment of his peers and by the law of the land. To none we sell, to none deny or delay right of justice."

Magna Carta was followed by Petition of Rights in 1628, Habeous Corpus Acts of 1640 and 1679 and then Bill of Rights in 1689 all of them declared in unequivocal terms the rights and liberties of the citizens and to set a limit to the power of the king. It may be mentioned that the pharase "due process of law" was first used in 1355 while confirming Magna Carta, the British parliament passed a Statute (Stat 28, Edward 111, Chaper 111) which declared that no man of State or condition so even he be, shall put out of his lands, or tenaments nor taken, nor imprisoned, nor indicted, nor put to death, without he be brought into answer by due process of law.

On 4 July 1776 the Declaration of American Independence was made. The preamble referred to law of nature and specifically mentioned that "all men are created equal, that they are endowed by their creator with certain unalienable

rights, which among them are life, liberty and the pursuit of happiness. The constitution of the United States drawn up in 1787 at Philadelphia contained no Bill of rights. The omission was considered to be a fatal defect and "sufficient of itself to bring on the ruin of the American Republic." In 1789 the American Congress passed the first 'The amendments' to the Constitution known as the Bill of Rights.

The American Bill of Rights advanced in more detail the rights to be treated as unalienable and include freedom of speech and of the press (Article I), the right of the individual to be secured in his person, houses, papers and effects against unreasonable searches and seizures (Article IV), the right not to be deprived of life, liberty, and property without due process of law (Article V), the right to a speedy, public, impartial trial (Article VI), the right to be protected from excessive bail and fines, and from cruel and unusual punishment (Article VII). Subsequent amendments to the Constitution have declared that the right of citizens to vote shall not be denied or abridged on account of sex, race, colour or by reason of failure to pay taxes.

The English Bill of Rights was to set a limit to the power of the king, the American Bill of Rights was to ensure that the President and the Congress respected the rights of man, and the French Declaration was designed to ensure that the future Constitutions of France should embody its principles. The historic French "Declaration of Rights of man and of the citizen" of 1789 described "the preservation of the natural and imprescriptible rights of man" which are "liberty, property, security and resistance to oppression" contained a set of fundamental or natural rights liberty of conscience and the press, the right of public meeting and the responsibility of government officials. Article 16 also contained the significant part that "every community in which a security of right and a separation of powers is not provided needs for a constitution.

The Universal Declaration of Human Rights, the most significant statement of fundamental rights and freedoms, was proclaimed on 10 December 1948. Its preamble chooses with a proclamation that the Declaration is "a common standard of achievement for all peoples". It did not purport to set out a law but rather an ideal, towards which "every individual and every organ of society ..... Shall strive." This may be regarded a land mark in history in the development of the concept of human rights. The United Nations was not with a mere declaration of human rights and as a result of the continued efforts of all its competent organs. The International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights and the Optional Protocol to the International Covenant on Civil and Political Rights were adopted on 16 December 1966.With the entry into force of the Covenants and Optional Protocol the world community approaches a new and more difficult phase. They also constitute a positive, effective and realistic step towards the international protection of the Individual.

The Universal Declaration as a standard of achievement is sometimes regarded as a guide to the interpretation and application of national laws. It has been relied upon as evidence to "modern law" on the protection of the basic human rights

and fundamental freedoms of individuals. The faithful observance of Article 55 and 56 of the Charter of the United Nations requires member States to consider the application of the principles of the Universal Declaration.

In United Nations practice, a 'declaration' is a formal and solemn instrument resorted to only in very rare cases relating to matters of major and lasting importance where maximum compliance is expected. There is probably no difference between a 'recommendation' and a 'declaration' as far as strict legal principle is concerned. A 'declaration' or 'recommendation' is adopted by resolution of a United Nations organ. As such it cannot be made binding upon Member States, in the sense that a treaty or convention is binding upon the parties to it, purely by the device of terming it a 'declaration' rather than a 'recommendation'. However, in view of the greater solemnity and significance of a 'declaration', it may be considered to impart, on behalf of the organ adopting it, a strong expectation that members of international community will abide by it.

Human rights are now seen to include not only the civil and political liberties specifically proclaimed in earlier times, but the freedom from want of poverty, the right to education and good life. Man has come to hold his social and economic rights to be as fundamental as his social and political rights. The United Nations Charter proclaims itself such rights as basic requirement for welfare of mankind. The Universal Declaration of 1948 after spelling out the civil and political rights associated with personal liberty, and the vote declares in Article 22: "Everyone as a member of the society, has the right to social security."

It has been argued that the terms of the Universal Declaration are vague and it neither contains definite recommendation to Member States nor provisions concerning international legal remedies for violation of human rights, that the overwhelming majority of Members regard the Declaration as creating no legal obligation. The main reason for such view is the fact that the language of the Declaration and the surrounding circumstances show that it was not intended to have such an effect. Moreover, the Declaration does not provide an enforcement procedure in favour of the individual. However, the Universal Declaration is an interpretation of the Charter and it embodies customary international law or general principles of law. Its legal significance derives from the fact that it is binding on the organs of the United Nations, and that its adoption meant that human rights were of international concern.

The Universal Declaration was formulated on the understanding that it was the most expedient way of providing a basis for joint and separate action towards the promotion of universal respect for and observance of human rights and fundamental freedom. Many national constitutions incorporate the terms of the Declaration in the preamble by reference. The Declaration has been referred to in numerous decisions of national courts which are evidence of the practice of the State.

The embodiment of human rights in the positive law of a country is beset with difficulties, to discover with any certainty what are these rights, and then having discovered them, one is faced with the of their limitation. The world has attained

considerable advances in the field of human rights. These advances are greater on paper than in the practices of nations. However, since 1945 we find advances in the identification of what rights are so fundamental to the man that they must be considered as "unalienable".

Broadly speaking, there are two ways of emboding human rights into a legal system; to declare them as a constitutional document and to incorporate them into law by the normal processes of legislation and judicial decision. In truth, they are complementary, each fulfilling a necessary, but different function. However, they are of little value unless worked out into detailed provisions, a task that can only be fulfilled by the ordinary processes of legislation and judicial decision. Parliament and the judges can be relied on to apply in their daily work the rights of life, liberty and the pursuit of happiness.

Parliament will select and formulate the rights to be included and the Act sill declares Principles for the guidelines of the judges. And when the individual is in dispute with the State, it will provide the courts with the guidelines for determining the lawful limits of State power.

The strength of law is the quality of its detailed provisions declaring that the citizens have an unalienable right to life, liberty, property and the pursuit of happiness. Thus it is by detailed provisions that the distinction between the civil and political rights and economic rights, money and administration are needed in addition. To secure social and economic rights, the intervention of the State, its taxes, administrative laws, its economic and social presence have been accepted. In order to attain social and economic security of the citizens, taxation and bureaucratic powers are necessary, but they bring many confrontations between the individual and the power of the State. And here Rule of law has to be invoked to secure justice to individuals seeking their welfare from the State. The need is to evolve an administrative structure for the welfare of the people with effective judicial control, to establish the Rule of law for protection of the economic and social rights.

In modem democratic States the concept of human rights has advanced at least to the extent that man will not live by rule alone and that he will live by the Rule of law. He will recognise rule as the rule of law only if it secures man's fundamental rights. The fundamental Principle of the rule of law, which is also called the principle of legality within the narrow meaning of the term, goes even further requiring legislative authorities for any action. It forbids any action which is not provided by law. The rule of law is not a legal rule but a statement of principle. Nevertheless, this fundamental principle should govern every limitation, restriction or interference of any kind in the exercise of the rights and freedom of the individual.

REGIONAL COOPERATION UNDER THE BANGLADESH CONSTITUTION: SUSTAINABILITY EVALUATION

-*Dr. M. Habibur Rahman

Abstract

The paper deals with regional cooperation and examines Bangladesh constitutional provisions. Emphasis has been given on promotion of cooperation as possible under the constitution. In reality, there is a fear of small and weak Bangladesh to strengthen cooperation with the big and powerful India. Therefore, needs arise to evolve confidence building so that the weak can be sure of not being exploited. the study explains cooperation under the SAARC frame and determines position of the Ganges Water Treaty of 1996 between Bangladesh and India. The binding of the study is that the mission of regional cooperation under the constitutional provisions will be fruitful if concerned states are cordial and unreserved and the fruition of the Ganges treaty largely depends on abiding by mighty India. Under the circumstances, Bangladesh will succeed to go with the mission of regional cooperation through constitutional provisions in the spirit of confidence to all intents and purposes.

1. ***Introduction:*** Sustainability of regional cooperation cannot be significant if it is not evoked by cooperation of the states. Regional cooperation cannot be enriched if it is generated by only nationalist attributes. Nationalism eventually is not an evil, evil is practically selfishness and exclusiveness. The paper will examine the extent of regional cooperation as far possible under the constitution of the People's Republic of Bangladesh. In so doing, attempts will be made about sustainability of regional cooperation for Bangladesh along with other states with special reference to the stronger ones. In fine, stresses will be given to reality. In this regard some issues arising out of the SAARC frame will be evaluated. Importantly, the role of India is dominant to promote confidence building among weak states. Bangladesh interests will be synchronized through the constitutional provisions. Above all, the study will keep pace with the legal regime of regional cooperation.

2. ***Regional Cooperation as promoting:*** The trend of regionalism and regional arrangements is one of the most interesting developments in recent international relations. Because of the frequent use of "regions" to mean areas smaller than

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states, it is important to emphasis that in international relations a region is invariably an area embracing the territories of three or more states. These are bound together by ties of common interests as well as of geography. They are not necessarily contiguous, or even in the same continent.[1]

Regional cooperation is an age-old mechanism acceptable and applicable to states to come close to each other, thereby settling differences peacefully. the Charter of the United Nations in its Chapter VIII specifically recognized regional arrangements.[2] At its inception, international law was confined to the states of Christian faith in Europe. but later, since Declaration of Paris, 1858 states of non-Christian faith of any region became subjected to international law. In view of the wide geographical, economic and cultural differences between states, the scope of rules capable of universal application must necessarily be more limited than in the relations of individuals within the states. The diversities between states may render necessary developments and adjustments on the basis of a regional community of interests, but such particular international law between two or more states presupposes the existence and must be interpreted in the light of principles of international law as binding on all states.[3]

Regional organizations have been established for Africa, the Americas, South East Asia, Europe, the Eastern Mediterranean and the Western Pacific, and all the assistance to governments which constitute a large part of the world of the organizations such as of WHO is given through these regional organizations.[4]

It ought to clearly recognize that the world organization is not being strengthened by the multiplication and tightening of the regional security arrangements on the most optimistic view, they are to be regarded as temporary expedience and as possible aide in creating conditions which permit the rehabilitation of the global system. If the United Nations as an organization to maintain international peace and security becomes effective, such regional arrangements should decline in importance and be subordinated in operation to its responsible organ.

The experience and perspective gained in many cooperation endeavors on the regional level should contribute greatly not only to the successful functioning of regional arrangements but also to the development of that international climate of opinion without which all efforts at international cooperation are doomed failure.[5] The concept of the individuality of peace is, however, false, and even

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1 *Important regional organizations are as follows NATO. OAS. LAFTA. OPEC. EEC. EFTA. WEU.OECF. COMECON. Arab League, CENTO. RCD. OAIL. SEATO. ANEUS. ASEAN For details see Dayton D. McKean (ed) International Relations (1969) 3rd edn. Scientific Book Agency. Calcutta. pp 518-598.*

2 *UN Charter, arts 52,53,54.*

3 *L. Oppenheim International Law. 1(1963) 7th Impression. Longmans. p 51.*

4 *Ibid. pp 977-1029*

5 *McKean at p. 598*

dangerous if it is taken to imply that a local outbreak of hostilities must necessarily lead to global conflict and should be dealt accordingly.[6]

It is worthy to mention that the South Asian Association for Regional Cooperation (SAARC) gives rise to promotion of relations among the member states. Bangladesh, Bhutan, India, Madives, Nepal, Pakistan, and Srilanka are determined through the Association to (a) promote the welfare of the people of South Asia and to improve their quality of life, (b) to accelerate economic growth, social progress and cultural development in the region and to provide all individuals the opportunity to live in dignity and to realize there full potentials, (c) to promote and strengthen collective self-reliance among the countries of South Asia, (d) to contribute to mutual trust, understanding and appreciation of one another's problems, (e) to promote at the collaboration and mutual assistance in the economic, social, cultural, technical and scientific fields, (f) to strengthen cooperation with other developing countries, (g) to strengthen cooperation among themselves in international forums on matters of common interests, and (h) to cooperate with international and regional organizations with aims and purposes.[7]

Cooperation within the framework of the Association shall be based on respect for the principles of sovereign equality, territorial integrity, political independence, non-interference in the internal affairs of other states and mutual benefit.[8] Exigency of SAARC is not challenged but its role for the people pertaining to their interests in the region should not be declined. Although in matters of disputes between two member states the SAARC machinery is ineffective, but the other member state should not be discouraged if it desires to render service voluntarily aiming at peaceful settlement of dispute. Such efforts are not only encouraging to accelerate trust and overcome dependability but also to perpetuate the goal of the Association.

*3. **Constitutional Urges:*** As for their sacred duty, the people of Bangladesh are determined to safeguard, protect and defend the constitution and to maintain its supremacy as the embodiment of the will of the people so that they may prospect in freedom and may make their full contribution towards international peace and cooperation in keeping with the progressive aspirations of mankind. Promotion of international peace, security and solidarity is ensured in the constitution of the People's Republic of Bangladesh as fundamental principles of state policy under article 25. the state shall base its international relations on the principles of respect for national sovereignty and equality, non-interference in the internal affairs of other countries, peaceful settlement of international disputes, and

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6 *Lestor B Pearson Democracy in World Polities (1955) Princeton University Press. p 28.*

7 *SAARC Charter, art 1.*

8 *Ibid, art 2*

respect for international law and the principles enunciated in the United Nations Charter, and on the basis of those principles shall (a) strive for the renunciation of the use of force in international relations and for general and complete disarmament; (b) uphold the right of every people freely to determine and build up its own social, economic and political system by ways and means of its own free choice; (c) support oppressed peoples throughout the world waging a just struggle against imperialism, colonialism of racialism.

Urges of self-determination without discrimination on the basis of religion, caste, creed, race, nobility, economic or social position brought about the emergence of Bangladesh. the constitution of the People's Republic of Bangladesh that came out first in 1972 embodied secularism as one of the fundamental principles of state policy.[9] By such provision the country presents itself to be liberal to maintain relation with other states at an equal footing. The present world is at the climax of scientific and technological attainment. The world now is in a difficult position to be free from mass destructive weapons. In the version of Boutros Boutros Ghali-civil wars are no longer civil and the carnage they inflict will not let the world remain indifferent. The narrow nationalism that would oppose or disregard the norms of stable order and the micro-nationalism that resists healthy economic and political integration disrupt a peaceful global existence. Nations are too interdependent, national frontiers are too porous, transnational realities in the sphere of technology and investment on the one hand, poverty and misery on

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9 *The constitution of the People's Republic of Bangladesh was adopted on 1 November 1972. It consists of 153 articles in XI parts specifying Part I. The Republic (1-7 articles). Part II Fundamental Principles of State Policy (8-25 arts), Part III Fundamental Rights (26-47 arts), Part IV the Executive (18-61 arts), Part V: The Legislature (65-93 arts); Part VI: The Judiciary (91-117 arts); Part VII: Elections (118-126 arts); Part VIII: The Comptroller and Auditor-General 917-132 arts); Part IX: The Services of Bangladesh (113-141 arts); Part IXA: Emergency Provisions (141-141B arts); Part X: Amendment of the Constitution (142 art); Part XI: Miscellaneous (143-153) arts); Fundamental principles of state policy are not judicially enforceable (art 8(2) Fundamental principles of state policy as enunciated in art 8(i) are nationalism, Socialism, democracy and secularism along with which other principles under Part II are treated as constituting the fundamental principles of state policy. That means, nationalism, socialism, and emancipation from exploitation, democracy, and human rights, secularism and freedom of religion, principles of ownership, emancipation of peasants, and workers, rural development and cultural revolution, free and compulsory education, public health and morality, equality of opportunity, work as aright and duty- duties of citizens and public servants, separation of judiciary from the executive, national culture, national monuments etc, and promotion of international peace, security are all the guaranteed fundamental principles under the constitution. As regards fundamental principles of state policy "The principle of absolute trust and faith in the Almighty Allah" has been substituted for "secularism" by the Proclamations (Amendment) Order, 1977 (Proclamation Order No. 1 of 1977).*

the other too dangerous to permit concentric isolationism[10] Egocentric isolationism on the part of any state at present is not possible. And as such, states promote international relations on their own to be related to each other. Under the situation, regional cooperation is getting momentum in conjunction with international relations at all spheres of states.

Constitutionally, Bangladesh have no limitation to maintain relations with other states at an equal footing. As provided in its constitution in 1972, secularism criterion given tise to the country to be indiscriminate to maintain relations with any state. All other states seem to be with equal weight to Bangladesh. Such open ended provision is undoubtedly encouraging to enrich regional cooperation. However, article 25 relating to promotion of international peace, security and solidarity was added by the Proclamation Order No. 1 of 1977 saying as "the State shall endeavor to consolidate, preserve and strengthen fraternal relations among Muslim countries based on Islamic solidarity." This provision is stimulating to the Muslim countries with whom Bangladesh can closely be in cooperation, in particular for favor mainly of economic assistance, manpower benefits and to promote trade as far possible for the country.

Those who are secular can have a privilege in criticizing the provision affecting the non-discriminatory objectives of the country and those who are ritual e.g. the Muslim more than 80 per cent can have a privilege to support the provision so proclaimed. Despite various comments, regional cooperation on the part of the country is not jeopardized. The fact that Bangladesh as an initiator has been actively functioning to promote SAARC norms in entirety. Thus, it is clear that there is no constraint to urge for promotion of regional cooperation under the Bangladesh constitution.

*4. **Matter of Fact Treatment:*** As an independent and sovereign state, Bangladesh is going with its entity and representing in the various forums of world body the United Nations and the specialized organizations. The country is bordered to the north, east and west by India with a small border to the east by Myanmar (Burma) and to the south lies the Bay of Bengal.

The rivers of Bangladesh and India flowing from the highest mountain of the world- the Himalayas carry down to the Bay of Bengal a colossal discharge of salts. Its effects together with a heavy mountain rainfall, cyclones, and tidal surges have contributed to a continuous process of erosion and shoaling both in land and in the mouth of the mighty rivers. New islands such as, South Talpatty/

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10 *Quoted in B G Ramcharan "The Security Council Maturity of International Protection of Human Rights", The Review. International Commission of Jurists, No. 48 June 1992, p 27.*

New Moore/ Purbasha are being formed in the coastal zone of the bay. The shoaling bed of the bay is believed rich in resources both food and minerals.[11]

Climate change and sea level rise could possibly have profound effects on Bangladesh's water, agricultural, forestry, fisheries and livestock resources. These resources are the mainstay of the country's economy, and will remain so for the foreseeable future.

For Bangladesh there are important issues concerning maritime zones. Cyclone effects and sea level rise inevitably have impacts on the coastline- the line from which all national maritime zones [territorial sea, contiguous zone, exclusive economic zone (EEZ), and continental shelf] are measured. by 1974 Declaration Bangladesh delineated baseline by 10- fathom contour (20-meter depth). Changes so brought into the castline might well cause jurisdiction problems and problem in determining boders with neighbours similar to those, which currently exist over South Talpatty.[12] Participation in international marine science, research projects particularly those related to ocean changes, will be beneficial to Bangladesh. It seems advantageous to ensure that national procedures are in place to approve appropriate projects relating to Bangladesh waters.

Many international problems will be felt across national borders, and there are some clear principles for international cooperation. Not only do treaties and customary law impose obligations to inform neighbors and to cooperate in facing common hazasrds but there is an obligation not to take actions which will exacerbate the impacts and climate changes on other states Similarly, there is an obligation not to use shared resources to the detriment of neighbors as the case of shared riyerine resources.

Bangladesh is a land of rives. All its rivers basically have originated from the upper riparian estate of India. The mighty rivers like Padma (The Ganges), Brahmaputra (The Jamuna) and Meghna originated from the Himalayan glaciers have flown over the territory of India and Bnagladesh and finally have fallen into the Bay of Bengal. Bangladesh is a part of the Gangetic plain, climatically being the monsoon area. The climate of Bangladesh is primarily influenced by the Bay of Bengal and by its rivers to some extent as well. As regards the rivers Bangladesh in all respects is a lower riparian country.

The economy of Bangladesh is predominantly agricultural. The land is fertile but densely populated and average income per capita is extremely low by

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11 *M. Habibur Rahman: Delimitation of Maritime Boundaries (1991), Rajshahi, p. 273.*

12 *O.K. Ahmad, R.A. Warrick, NJ Frieksen, MQ Mirza "A National Assessment of the Implications of Climate Change for Bangladesh: A Synthesis." Asia Pacific Journal of Environment and Development, Vol. 1, No. 1, June 1994. P 56. Also see M. Habibur Rahman "Maritime Baundaries: A Survey of Problem, "Asian Survey, Vol. XXIV, No. 12, December, 1984, pp 1312-13.*

international standards. The disruption usually arises from the frequent cyclones and floods. The densely populated Ganges-Brahmaputra deltas are criss- crossed with a close network of large and small rivers. They provided drainage and silt that may be added to the fields to help maintain soil productivity, and irrigation water for rice cultivation. Over and above, the rivers and the Bay of Bengal play a vital role in the environment of Bangladesh. It is to mention that India as an upper riparian country is in a favorable position in the view that it can affect Bangladesh arbitrarily in water flows of the rivers."[13]

Furthermore, environmental issues have badly arisen for Bangladesh from the Farakka barrage. Its control is with India the upper riparian state, which can make and unmake the Ganges water flow as it wishes. As the Ganges water sharing is seen to some extent to be effective by bilateral agreement between Bangladesh and India, but practically as a lower riparian country Bangladesh has become a victim of circumstances. Although Bangladesh and India have in December 1996 been successful to solve the long standing problem arising from the Farakka barrage on which depends the flow of Ganges water for the two countries by a treaty between them, the treaty virtually is being appreciated and regretted in both the countries. However, UN Secretary- General and western countries are applauding the treaty because it helps promote cooperation between the two neighboring countries. Anyway, the fruit of the treaty will be realized after time to come.

Environmental issues in the country, particularly in its northern and south-western regions are now common to the fact that as time goes on, deserts are being formed in this region. Since India as upper riparian state thinks to be in a privileged position, and consequently, lakes steps to construct barrages on the other rivers whose water flows are highly of some conform of the affected lower riparian Bangladesh. This results badly in environmental problems for the country.[14]

In the case of two neighboring countries environmental problems may arise from any issues. Bangladesh and India are not an exception to this proposition. Be that as it may, none of the two countries should think to be the sole arbiter of the problem. Each of the states must think of their rights and obligations to exist side by side. In view of this, state responsibility in international law refers to liability-that of one state to another for the observance of the obligations imposed by international legal system and thereby enshrining not only internationalism but also regional cooperation.[15]

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13 *Ibid pp 66-67: also see M Habibur Rahman "Whose is South Talpatty Island", Asian profile," vol. 15 No. 5, October 1987, pp 437-444.*

14 *M. Habibur Rahman: "The Role of Law and Technology for Maintaining Enviroment." 47 Dhaka Law Reports (1995), pp 81-87.*

15 *Oppenheim as in note 3 at pp 334-360.*

As a matter of fact, a state even small and weak should not face embarrassment to live as a neighbor of a big strong state. But if self- interest and tricky polities are activated by the big and strong state, the small and weak one will have no way other than seeking third party settlement to their dispute. But it is not so easy to achieve third party settlement by which the small and weak state will be benefited. As regards Bangladesh, matter of fact treatment cannot be singled out without the concern of India to a greater extent and Myanmar to some extent. Under the constitution, Bangladesh have no constraint to regulate regional cooperation with any state. But its sustainability for Bangladesh cannot prolong without goodwill of other states.

5. India and its Neighbors: As a region South Asia has certain special tracts. In fact, it is an Indo-centric region. India is central to it, geographically, culturally, politically and even economically. While no other South Asian nations share a common border, four of them have land borders with India and two of them-Sri Lanka and Maldives-maritime borders. The South nations are related to India individually in terms of socio-cultural bond and historical experience. India's geographical position bestows upon a strategic strength in relation to the India Ocean which no other country can claim. Moreover, India's size gives it political and economic clout. It bestrides the region like a colossus. In terms of area and demographic and economic resources. India is bigger than all the other countries put together.[16]

The high level of disparity between South Asian countries and asymmetrical relation between them has perhaps been the single most important factor imposing on cooperation in the region and the cause of tension and dissentions amongst them. All the small and not so small- the neighbors of India had misgivings, misapprehensions and anxieties about India's intentions and fear of its action and behavior. India represents a menacing and aggressive monster that sends nervous tremors through the region every time if shrugs.[17] This mistrust and suspicion has led to high walls which have been built between countries of the region by an interplay of global, regional and bilateral animosities. It may be noted, however, that because of geographical and historical factor, the intra-regional security of South Asian states has been marked by absence of bilateral or multilateral issues among the six smaller nations of the group. At the same time. India is a common factor in all major disputes existing within the region. the great divide between the six and the seventh. But then it must be borne in mind that India is the only country which has common land or sea frontiers with

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16 *R.P. Anand: South Asia in Search of a Regional Identity (1991). Banyan Publications. New Delhi, pp 4-6.*

17 *Dilip Boob: "South Asia Sphere of Suspicion". India Today. October 15, 1983, pp 55; also see Lt. Gen. (Retd.) A.I. Akram: "Security of Small States Implications for South Asia. Regional Studies. Vol. III. No. 3, Summer 1985, p. 5.*

all other members of the group. Since the five countries have common borders only with India and not with each other, the entire security problem tends to be blown up out of proportion as India versus other states.

Rightly or wrongly, India's neighbors feel themselves threatened by the bigger center power and accuse if of hegemonic designs. Relation between India and its four smaller neighbors Pakistan, Bangladesh, Nepal and Sri Lanka have been marked by continuing tensions which have varied in intensity at different times. In the case of Pakistan, besides the lingering Kashmir dispute, this hostility has led to three wars which climaxed in the dismemberment of Pakistan.[18]

Although helped in the emergence of Bangladesh, it has not been able to solve their maritime borders and the problem of immigrants from its eastern neighbor. The Ganges water dispute although seems to be settled, practically its perpetuity cannot be guaranteed. It is as if an ongoing test case the future of which may seriously be taken into consideration. With Sri Lanka the ethnic issue of Tamil minority community in that country has remained an irritant. Even Land-locked Nepal is unhappy with India about hindrance to its trade with the rest of the world and India's reluctance to accept Nepal as a "Zone of peace."[19]

In the context of South Asia, the concerns of India should not be nominally meant. In any case, relation among the South Asian countries can be enhanced if India embraces the other countries without intimidation, interference, pressure and tactics of whatever nature. The other countries should feel free of molding cooperation so that they are at all not affected in their sovereignty and independence. Its outcome should result in them that they need not worry of any threat from India.

6. What to suggest: Regional cooperation in respect of South Asia is not contrary to the purposes and principles of the charter of the United Nations. The legal regime of SAARC gives rise to member states for promotion of regional cooperation. Individual attempts for its advancement are not unwarranted. But problems arise from claims and counterclaims and as such, regional cooperation cannot be achieved without good will of the state parties.

If states are serious not only to its own rights but also to its obligations, there then seems to exist legal regime adjusting claims and counterclaims equally and equitably. However, needs arise to take into account state responsibility.[20]

The ongoing Ganges water sharing treaty between Bangladesh and India appears accelerating relation between the two countries. As a matter of fact, the Farakha barrae relates to livelihood concerns of northern and south-western region of

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18 *Anand at p. 7.*
19 *Ibid.*
20 *Oppenhein as in n 15*

Bangladesh and the Indian State of West Bengal as well. All this should be deait subject to exigencies of the matter. If the two countries remain stick to their own stand the treaty whatever outcome it aims at its future may not be free of constraints to fruition. It should be the feeling of India for Bangladesh and Bangladesh for India as if under an obligation. Thus, it will enable people of he regions to use river waters in a mutual spirit to save and strengthen humanity.

The international society we know is complex lopsided confused dissonant disorderly and hectic. In brief, we live in a fitful and intemperate age of political romanticism. There being commerce and communication global investment mobile and ambition for better life universal we must move from war to peace from destruction to development from rowdies to a regime from national interest to international cooperation and from despair to hope. National interests should be considered with priority in order to result in realty. If national interests are safeguarded through international cooperation such achievement should be taken as effective. Regional cooperation to that end may be treated with no alternative. Until and unless national arrangements are made in light of international cooperation perceptions regarding cooperation at all level- global, regional or sub-regional cannot sustain. It ensures that is a need o move from national interest to international cooperation and as such to promote regional cooperation for south Asian countries.

The legal regime for advantaged and disadvantaged groups has to take an account of distributive attributes. That is to say, there is a treatment of distributive attributes for the ends of justice. In fact, variations almost at all level are not uncommon to SAARC countries. Therefore, there is an opening to take into consideration distributive attributes to help enrich cooperation to each other.[21] In the case of Bangladesh and India the doctrine of distributive justice may be invoked for consideration to promote cooperation to each other. This can ensure sustainability of regional cooperation.

7. Conclusion: Bangladesh and other six South Asian member countries are promoting cooperation under the SAARC perceptions regionally effective to each other. In effect some common issues such as environment, trade and commerce and the like should be dealt with priority. The Ganges water sharing treaty is required to be likely dealt. Efforts must be concentrated to implement if without mistrust, misconception and misdeed between the two countries. Law as a living entity and technology as the use of knowledge and technique to change raw material into a useful product should march to the music of time to promote enrich and maintain environment for all so that urges can be made for

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21 *Justice Ranganath Mishra: "Distributive Justice", The Independence of the Judiciary in India (1990), International Commission of Jurists, p 341 also see Asma Jahangir "Distributive Justice", The Independence of the Judges and Lawyers in Pakistan (1989), International Commission of Jurists. pp 65, 70.*

cooperation among the countries. In order to reiterate settlement of common issues small scale solutions should be effected by local communities. Moreover, global, regional sub-regional and national measures should be taken into account to attain common issues solved.[22] Regional cooperation under the Bangladesh constitution is all inclusive in the sense that its operation does not obstruct to embrace peace globally regionally sub-regionally and nationally operative. However, regional cooperation for Bangladesh and other countries particularly SAARC countries cannot be up to the mark if the concerned countries are not confidently cordial and without reservation. Finally, it is encouraging for Bangladesh to enter into regional cooperation in particular with South Asian matters but its fruition is subject to the pursuit of other countries.

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22 *M. Habibur Rahman as in n 14 at p 87.*

LEGISLATIVE DRAFTING - ITS SUBSTANTIVE CONTENT AND STYLE

-Dr. Md. Abdul Karim Khan

Introduction

Legal drafting i.e. to engage you in the practical drafting experience that will form a major part of your work as a lawyer: preparing documents that effectuate clients intentions while planning to avoid potential legal problems. In law practice lawyers address specific disputes and also prevent disputes by designing documents to make clear to people what their rights and responsibilities are. As drafters, lawyers not only litigate; they also seek to avoid litigation. In litigation practice, they draft pleadings, motions, interrogatories, settlement agreements and order among documents. In practice that seeks to avoid litigation, they draft contracts, public and private legislation wills, trusts and other planning documents.

Legislation is most commonly thought to mean public legislation: constitutions, statutes, ordinances and regulations. Legislation however may be private as well as such as corporate by laws or covenants and restrictions for a condominium or a subdivisions. In a sense, contracts, wills and trust also legislate. From the perspective, an Act of Parliament and a two party residential lease are the same kind of documents. Whether a document is simple or complicated, it creates when executed, law not only for the parties but those who are bound by or rely on it.[1] It is not surprising then that when professor Dickerson revised his classic treatise, legislative Drafting,[2] he incorporated it into the Fundamental of Legal Drafting thereby emphasizing that most of legal drafting is actually legislative.

Where two or three or more are gathered together in contract they set up a small momentary sovereignty of their own. There is nothing fanciful about this. A contract is a little code for a special occasion. A lease is a little statute for your tenancy of a house you have neither built nor bought. Partnership articles or the charter and by-laws of a corporation are quite an elaborate code of law for those who are concerned. A corporate mortgage is a piece of legislation for a large and shifting population of bondholders.

Legislative Drafting Distinguished from other legal writing: Legislative drafting has been described as 'preventive Law' by R. Dickerson. As such, it should be distinguished form the other forms of writing that commonly engage

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1 *Robinson, Drafting - its substance and teaching, 25 J. Legal Educ. 514, 528 (1973).*

2 *Reed Dickerson, Legislative Drafting, Little, Brown and Co., Boston, Mass. (1954).*

lawyer's expertise. In briefs memoranda, and letters lawyers explain their analysis of legal materials and try to persuade someone to think or behave in a certain way. In fact, the study of this kind of writing is largely a study of the strategy of persuasion, complete with attention to effective appeals to emotion.

In contrast, legislative drafting, whether public or private is completely free from emotional content or 'sales pitch'. It is instead descriptive and prescriptive. The drafter has no need to convince anybody of anything, Instead the drafter describes a particular world, large or small, and either prescribes future behaviour in that world or describes the consequences of anticipated behaviour.[3]

Legislative document drafting also differs from memorandum and brief writing in that memoranda and brief usually focus on relatively few points or issues with sometimes extensive text devoted to each one. In document drafting, each sentence expresses one or more provisions, each with its own separate significance. Moreover, the exact wording of each sentence matters to an extraordinary degree. Good legislative drafting differs significantly form good writing generally. "Bill drafting must have the accuracy of engineering, for it is law engineering; it must have the detail and consistency of architecture, for it is law architecture."[4]

Every written law which goes beyond mere regulation of details is a work art: it can no more afford to dispense with unity of design and continuity of execution thus a monumental building. It should proceed from one mind, or from very few minds working is intimate association, and it should be framed, if not by one hand, at least under uniform general directions and by hands trained in one school.[5]

The Profession of Legislative Drafting: The legislative drafting does not encompass exclusively public legislation. Our governments Legislative bodies now generally employ staffs of professional drafter. They commonly have drafting manuals to spell out for them the exact parts, formats, styles, and sometimes language prescribed by state constitutions or statutes for the bills they draft. These staff drafters are taught mainly on job. Professional legislative drafter also have the services with the governments legislative body which conduct drafting seminars to hone the drafter's skill. In short, they do not learn their work in drafting courses in law school.

Legislative Drafting in Private Practice: Drafting private legislation is such a pervasive part of the practicing lawyers work that every lawyer needs to know

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3 *Reed Dickerson. The Fundamentals of Legal Drafting Little. Brown and Co. Boston, Mass, (1986).*

4 *D. Kennedy, Drafting Bills for the Minnesota Legislature 7 (1946).*

5 *Sir, Frederick Pollock, quoted in read, MacDonald, Fordham and Pierces Materials on Legislation 235 (4th ed. 1982).*

the principles that are transferable form one legislative document to another. Moreover, many a lawyer in private practice becomes involved in the process of drafting public legislation. On behalf of a client, the lawyer may respond to a call for comments on proposed state regulations,[6] which often amounts to proposing substitute language. On behalf of another client, the lawyer may tackle a local ordinance either as challenger or as drafter:

When a lawyer in private practice takes an active role in drafting local ordinance, the benefits to that lawyer's practice can spread widely.

Theories and Strategies: Drafting legislation involves considerable attention to process. It is a creative process and its fruit is public policy. Professor Eskridge and Frickey write about statutes, but it is easy enough to apply their theory of statutory drafting to other form of legislation as well. Their theory is known as three-step theory.[7] In other word, they express the process as one with three steps.

The first step is to determine what you want the proposed legislation to do. This involves a determination of your ideal objective and then any amelioration of that objective to maximize the chance that your bill will receive the legislative attentions you desire. Most of the time, the objective of the drafting project will be given to the bill drafter by someone else- by a legislator to her personal or committee staff, by as agency or executive department official to the agency or departmental lawyer by an organized lobbying group to its counsel or staff. But also most of the time the objective will be set forth in a general way. The fist job of a thoughtful drafter is to explore the objective more thoroughly on both a conceptual and a political level.

The second step is to determine the structure of your proposed legislation. Once you have decided on the basic idea for your proposed legislation, you need to figure out what needs to be done to implement the idea. This is more than just devising a simple format for the bill. Since most proposed legislation operates in a Framework created by or molded by existing statutes, the drafter needs to decide how to fit the proposal into the code of laws.

The third step is to draft the bill, so that the language and organization are no more complicated the necessary serve the object of the legislation without creating unnecessary problems and are internationally coherent and consistent with usage's in existing statute. The hardest step in this process is executing the concept and the organization developed in the first two steps.

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6 *For practical advice on drafting effective comments, sec Ridgway, Buranely, Hitchcock and O: Neill, influencing the substance of Agency Action 5 Ad. L. J. 51 (1991).*

7 *Reprinted from case and Materials on Legislation by W. Eskridge, Jr. and P. Frickey, Copyright 1988 with permission of west Publishing Co.*

Indeed, in drafting bill you may consider existing provisions as models such as prior contracts are often starting points for lawyers drafting new contracts. While you do not want to adopt the vices of the existing statute, its terms of art and set phrases are useful starting points in drafting a statute that will fit in with existing law.

The Drafters Role in Improving Legislative Substance: One writer, with 24 years experience as a state senator, regards defective drafting not merely as a sign of poor writing skills but as symptomatic of unclear focus on the substance of the policy expressed in the legislations.[8]

It is a commonly held but mistaken notion that the legislator who is the policy maker, is the one with all the ideas and that the drafter is a mere 'scrivener' with the limited role of getting those ideas into appropriate form. On the contrary, the skilled legislative drafter does far more than simplify or clarify without changing the substance of what someone else has proposed. To achieve legislation that fulfills its purpose, the more communication between proposer and drafter, the better. In fact, the more communication among proposer, potential user and drafter, the better.[9]

To become fully engaged in achieving a legislative purpose, you need to understand the legislative process, and you need to research the present law on the subject in your jurisdiction as will as the experience of any other jurisdictions that already have a law like the one you are contemplating.

This background research will equip you to help the policy makers articulate precisely what it is they want to do. You can formulate questions and options that will help them identify.

* whether their is need for a new law;
* what purpose it will serve;
* who will benefit from the law, who will be disadvantaged;
* what the costs of administering the law will probably be;
* what the likely response to the law will be from the courts, the bureaucracy, and the public.[10]

Drafting to Get the Legislation Passed: Professor Davies, more concerned with immediate practical strategy than long term speculative theory raises different issues for a bill drafter and policy maker to think through together.

Some provisions of a bill can be drawn (1) to offend a little, but also to gain little for its sponsors, (2) to achieve 100 percent of the sponsors objective, though to

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8 *J. Davies, Legislative law and process in a Nutshell 182, (2nd Ed. 1986).*

9 *The seminar was held at the University of Florida College of law, October 23-26, 1991.*

10 *W. Statsky, Legislative Analysis and Drafting 164, (2nd Ed. 1984) Copyright 1984. Reprinted with permission of west publishing Company.*

do so will spark vigorous opposition or (3) to finesse a critical issue by leaving it up in the air. Which choice should a sponsor select? The fist makes the job of passing the bill easier, for opponents are less aroused; most of the battle is left for a later day. The second choice gives a sponsor some trading stock for compromise and if the bill is passed with the particular provisions included, the victory is more significant. But the sponsor runs the risk that the tough bill will not pass. The third choice maker the bill incomplete. It will bother those who want the legislature to deliver certainty in the law. And when the issue is later decided in another arena, such as court or agency or trade association or by subsequent legislation, the issue that has been sidestepped may be resolved against the sponsor. On the other hand, vagueness may cause those affected to overlook some hazard in the bill or to decide they are willing to gamble on ultimately winning that finessed decision. The sponsor then faces opposition and a simpler legislative battle.

There is no one correct choice, but the third option, intentional vagueness serves legislature well and often. It may be adopted consciously, occur by oversight, or turn up as a compromise during negotiation on the bill. Legislators eagerly duck tough questions if answering them threatens the passage of a bill for which a consensus has developed.[11]

Drafting for the Affected Citizen: It is legitimate for the drafter to be alert to the needs of the legislating policymakers, the administering agencies and the courts; yet it is also important not to neglect the needs of ordinary citizens who ought to be able to figure out whether and how a law affects them. The first thing that any law reader wants to know is what the law is about. Does it affect him or does not it ? Most laws fail so utterly to are likely to be thrown in the waste basket before the reader even tries to decipher them.

Preparing a Legislative Plan: Legislative policy is not the same thing as the legislative plan; the former is the objective to be achieved, and the latter an outline of the method by which it is to be achieved. For example, it may be laid down as a policy that certain grants are to be paid to a class of persons under specified conditions. In order to give effect to such a policy, the statute must among other things describe the persons who are to benefit, specify the amount of the grant and the conditions under which it may be paid.[12]

Introductory Formalities:

A. Title: Titles are generally constitutionally or statutorily required for bills, acts, and sections of legislation. The requirements generally prescribe that titles of bill

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11 *Davies, above note 11, at 191-92, Reprinted from legislative law and Process in Nutshell by Jack Davies, 2nd Ed. (1986).*

12 *Driedges, the preparation of Legislation, 31. Can. B. Rev. 33. 39 (1953).*

express their purposes and that the titles of acts and sections express their subjects. Thus the full titles of bills may be very long, giving not only their subject and their purpose with respect to that subject but also listing the statutes to be amended or repealed. The titles of acts and sections are usually much shorter. Titles implement 'single subject' requirements and those designed to put people on notice of the content of legislation.

B. Enacting Clause: The exact language of enacting clause is prescribed by statutes or by state constitution.[13] Failure to use exactly the prescribed language can render the legislation invalid.

C. Short Title Section: The first numbered section in some state bills set forth a short title by which to cite the legislation after it is enacted. These short sections are practical only if the entire act is codified in one place rather than its various sections scattered throughout a code.[14]

D. Findings: Some but not all bills include a section reciting the legislative body's findings that gave rise to the legislation. In remedial legislation these are statements of the bills that the legislation is designed to remedy. These statements may also express what policy the legislation is designed to implement.

E. Definitions: It is wise to wait until you have finished a fist draft of a document to attend to definitions. Whenever you are inclined to define a term, the threshold question is whether the reader might be better served if you did not. If you use a term as it is commonly used, there is no need to provide a definition. If you are drafting legislation, it may become part of a larger body of legislation that already provides definitions. Then your task is either to draft according to those definitions, citing them if necessary, or to stipulate different definitions if necessary.

Organizing the Body of Legislation

A. The body as part of the whole: Assume you are preparing to draft legislation. You are not going to draft either a long or short title until everything else is finished, even though the title will come at the beginning. You are not going to draft definitions until you have drafted all the provision, even though the definitions will precede the body. You have supplied an enacting clause in whatever exact language is required. You have or have no drafted findings or purpose statements depending on whether you and the policy maker have determined them appropriate to include. You know that any housekeeping

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13 *R. Mastineau, Enacting clauses, Appendix, A, Drafting Legislation and Rules in Plain English 124 (1991).*

14 *R. Mastineau, Enacting clauses, Appendix, A, Drafting Legislation and Rules in Plain English 124 (1991) At 115, 116.*

provisions, such as a savings clause, repealing clause, severability clause, effective date clause, and expiration clause will follow the body.

B. Organizing Material within Sections: The requirements of absolute parallelism and consistency in organizing material within sections of legislation are what make this kind of drafting more exacting then any other. It is almost impossible to write a fist draft of a complex provision with sufficient attention to parallelism and consistency in its structure. It is much easier to write the provision in a solid block paragraph and then come back to perform on it the process that Professor Layman Allen calls 'normalization.'[15]

Suggestions and Guide line for Drafting Wonderful Legislation: In the nonlitigious area of legal planning which normally culminates in definitive documents whose purpose is to inform rather than persuade, the lawyer is freest to present balanced legal truth. But this calls for an expertise of which legal education provides little and for which case law is largely irrelevant. Certainly, the law's mission is broader than the disputes resolution represented by litigation.[16]

The substantive content of every legislative or contractual document may be policy. Many clients have only a rough idea of what they want to accomplish. Other have a detailed even rigidly formed, idea but little appreciation of its ramifications. The lawyer is often is a better position then the client to anticipate problems of administering or enforcing a policy. The client may ask the lawyer merely to put the clients ideas on paper in "proper legal form." But he process of drafting involves a great deal more then that.

A guideline is given below for drafting the best legislation.

Title

a. *Does the title express the nature of the legislation: constitution, bill, act, ordinance, declaration, by-laws, regulations, etc?*
b. *Does the title express the subject of the legislation? Is it a single subject?*
C. *If appropriate, does the long title list all sections that this legislation amends or repeals?*
d. *If appropriate, do you give a short title as well as a long one, putting the short fide in the fist section?*

Enacting and Other Introductory Clauses

e. *If you are drafting a bill, do you have an enacting clause that uses prescribed language exactly?*

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15 *Allen and Engholm, the need for clear structure in Plain Language, Legal Drafting, 13 J. L. Reform 455 (1980).*

16 *Dickerson, Toward a Legal Dialectic, 61, Ind. L. J. 315, 316-17 (1985-86).*

f. *If you are drafting private legislation, do you have an introductory clause that properly repeats the nature of the document from the title, identifies parties and subject, and establishes any short forms for future reference?*

Recitals

g. *Do you recite background findings and purposes only to the extent that they may aid implementation of the legislation?*
h. *Are you careful not to rely on recitals as aids to construction in place of clear drafting?*
i. *Do you draft recitals in "WHEREAS" clauses only if that is the accepted mode where the legislation will be codified?*

Definitions

j. *Do you have a definitions section only if you need to define words that are used in more than one other section of the legislation?*
k. *Do you restrict yourself to stipulative definitions that broaden, narrow or change ordinary meaning? Do you avoid lexical definitions except to restrict to one of multiple meanings in common use?*
l. *Do you abide by the conventions for defining and naming?*

Substance of the Legislation

m. *Do you make explicit at the beginning of the substance of the legislation to whom it applies?*
n. *Do provisions establishing rights, privileges, discretionary authority, duties, and prohibitions precede administrative provision?*
0. *Is the substance of the legislation no broader than it needs to be to accomplish its purpose?*
p. *Do you properly use each of the terms of authority: "shall," 'may," "must," etc.?*

Administration

q. *Do the administration sections attend to all matters necessary to give effect to the legislation, including authority for rulemaking, designation of enforcement agent, and appropriations?*
r. *Do you avoid devising any more of the procedural set-up for administration and enforcement than necessary?*

Sanctions

s. *Do administrative provisions precede sanctions?*

Housekeeping Provisions

t. *Do you avoid adding an unnecessary severability provision if a construction act in the jurisdiction imposes severability automatically?*
u. *Do you include any needed savings clause, repealing and amending clauses, and sunset or sundown clause?*
v. *Do you make clear whether the legislation gives rise to a private cause of action? If it does, do you clarify what statute of limitation applies, whether*

exhaustion of administrative remedies is a condition precedent, what court has jurisdiction, and what relief is available'7

w. *In private legislation, do you provide for later modification?*

x. *Do you include an effective date provision that is as precise as it is possible to be?*

Organization of Section and Text

y. *Does your division of provision into sections make the legislation easy to use for reference?*

z. *Do you divide sections into subsections when the subsections are readily separable and of equal weight?*

aa. *Do you further divide subsections into paragraphs only when the paragraphs are readily separable and of equal weight?*

bb. *Do you avoid division at any level that fragments one idea rather than revealing separate and equal parts?*

cc. *Do you give every section and subsection a heading (or "catch line')?*

dd. *Are headings informative?*

ee. *Are headings substantively and formally parallel?*

ff. *Do you normalize text as much as possible within each provision?*

gg. *Do you focus substance when possible to emphasize conditions ("if" clauses) and result ("then" clauses)?*

hh. *Are related provision together with no needless cross-references?*

ii. *Are provisions that could go under more than one heading put exclusively where the "logical pull" would have them?*

Across-the-Board Editing

jj. *If the legislation is to be codified, do you adopt word usage, style, and format that are consistent with the code as well as internally consistent?*

kk. *After you have finished redrafting and inserting material, are your numbering and lettering sequences accurate throughout?*

II. *Are cross-references accurate? Are you sure that every section you have cross-referenced elsewhere in code has not been amended or repealed?*

mm. *Have you consistently used any short forms you established in the beginning?*

nn. *Have you used any words for which you stipulated definitions consistently with those definitions?*

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THE US COURT SYSTEM

-Mohammad Waleeul Islam

[Every nation has its own court system. Several articles covering the US Court system were published in the "How US Courts work, Issues of Democracy, USIA Electronic Journals Vol. 4, No. 2, September 1999". The following extracts of the articles of the said journal are reproduced here to know how the US Court system works in practice; the system players, its structure, its function and its ethical safeguards].

Court system of the US[1]: The US judicial system is composed of multiple autonomous courts. There is the federal court system & each state has its own court system with a system of local courts that operate within the State.

The functioning of these systems is complicated by the fact that there are multiple sources of law, and courts of one system are often called upon to interpret and apply the laws of another jurisdiction. In addition, more than one court may have sovereignty to hear particular case.

The federal judiciary and the individual state judicial systems are each constructed like a pyramid. Entry-level courts at both the state and federal levels are trial courts, in which witnesses are called, other evidence is presented and the "fact-finder" (a jury and/ or sometimes a judge) is called upon to decide issues of fact based on the law.

At the top of each pyramid structure is the "court of last resort" (at the federal level, the US Supreme Court; at the state, the state Supreme Court). I most states and in the federal system there is also midlevel court of appeals.

The vast majority of courts at both the state and federal levels are "courts of general jurisdiction" meaning that they have authority to decide cases of many different types. There are no special constitutional courts in the US- any court has the power to declare a law or action of a government executive to be unconstitutional, subject to review by a higher-level court.

The Federal Courts[1]: These courts are organized in a three-tiered hierarchical structure and along geographic division. At the lowest level are the US District Courts, which are the trial courts. Appeals from the US District Courts are taken to the US Courts of Appeals, often referred to as US Circuit Courts, From there, cases may be brought to the US Supreme Court. Most of the Supreme Court's review power is discretionary, and only a small percentage of cases brought to it are actually ruled on by the Court.

The US District Courts are entry-level courts of general jurisdiction, meaning they hear cases involving various criminal and civil matters. There are 94 US federal judicial districts, with at least one district court in each state. Although each district court has numerous judges, a single judge presides over each case.

Appeals are taken from US district courts to the US courts of appeals if a losing party feels that the judge in the district court made an error of law. Appeal may not be taken to correct perceived errors of fact, unless there is a clear error of law. Thus, for example, losing party may argue that the judge erred by admitting a certain document into evidence; but the losing party may not argue that the judge or jury reached a bad conclusion based only on that document.

The US Courts of Appeals are divided geographically into 12 circuits.

The number of judges in each circuit varies widely and is determined by the population and size of each circuit. A panel of three judges- chosen at random sits on each case, and different combinations of judges sit on different cases.

The US Courts of Appeals may decide cases on the basis of written briefs submitted by the litigants or may order oral argument. A decision is based on written opinion drafted by one of the judges and circulated to the other two panel members. The opinion of court also must be signed by at least two panel members. Any of the judges on the panel may write a concurring opinion in which the judge agrees with the result reached in the majority opinion but for different or additional reasons. A judge that disagrees with the opinion of the court may instead write a dissenting opinion explaining why he or she has reached a different conclusion. Although dissention and concurring opinions do not have the force of law, they may be highly influential in subsequent court decisions.

After the three- judge panel has rendered a decision, litigants have several options; they may seek "reconsideration" of the decision by the same three-judge panel; they may seek "rehearing" of the panel's decision by all of the judges of that circuit sitting together; or they may seek review by the US Supreme Court by filing a motion for a writ of certiorari (when the lower courts have ruled on the case and disagreed on their opinions). Each of these measures of relief is discretionary, however, and is rarely granted.

The US Supreme Court is at the apex of the federal court system and consists of nine justices who hear and decide cases. At in the US Courts of Appeals, justices may join the majority opinion or may write or join a concurring or dissenting one.

The Supreme Court's general jurisdiction is largely discretionary through the process of certiorari. Under the so-called "rule of four," if four of the nine justices favour hearing a case then certiorari will be granted. The Court often

accepts cases in which three is a split of authority among different US circuit courts or in which important constitutional or other legal principles are implicated.

Besides a writ of certiorari, the Supreme Court can review cases on appeal from federal courts or state Supreme Courts whose decisions are based on an issue of federal law. The Court also may decide specific legal issues referred to it by lower federal courts.

The Supreme Court also "original jurisdiction" over certain limited cases: controversies between the United State and an individual state; actions by a state against a citizen of another state or an alien; and cases brought by or against a foreign ambassador or consul.

Special Courts[1]: In general, the federal court system does not create special courts for specific matters. Two notable exceptions to this rule are the US Court of Federal Claims, and the US Court of International Trade.

There is also one specialized federal appeals court- the US Courts of Appeals for the Federal Circuit. The Court has jurisdiction over appeals from the US Court of Federal Claims and the US Court of International Trade.

The federal system also embraces a number of courts known as legislative Courts. Appeals from these courts may be brought to the US Courts of Appeals.

Administrative Courts: Federal agencies play an enormous role in developing and carrying out US laws on a wide array of topics, from the regulation of natural resources to the health and safety of workers. Often, this means that an agency will sit as a fact- finding tribunal in applying federal regulations. When disagreements occur, the parties present their evidence to an administrative law judge.

The State Courts: Each state, as well as the District of Columbia and the Commonwealth of Puerto Rico, has its own independent judicial system that operates independently. The highest court in each state is the ultimate authority on what the law is with regard to state law, from the state's point of view.

The structure of state courts, like that of the federal courts, is in the form of a pyramid, Most states have a three tiered judicial system composed of a trial-court level (sometimes called superior courts, district courts or circuit courts), an appellate court (often called the court of appeals) and a court of last resort (usually called the Supreme Court). Some states simply have one level of appeal.

As in the federal court system, trials are presided over by a single judge (often sitting with a jury); entry-level appellate cases are heared by a three-judge panel; and in state Supreme Courts, cases are heared by all members of the court, which usually number seven of nine justices.

Also like the federal system, state court cases begin at the trial- court level. These courts are often divided into two levels; courts of general jurisdiction and specialized courts.

Local Courts[1]: Each of the 50 states is divided into localities or municipalities. Local governments, like their state counterparts, have their own court system, which are presided over by local "magistrates," who are public civil offices possessing judicial power delegated under the local governing laws.

The Jury & the Judge[2]: In separate interviews with Steve Mayo, a Sun Francisco attorney who served as Director of the Institute for the Study of Legal System, comments on the process for juri selection; and Judge Laura Safer Espinoza, a New York state judge, explains the mechanics of the courtroom. The interviews were published in the Issues of Democracy, USIA Electronic Journals, Vol. 4, No. 2, September 1999.

The Jury[2]: The responsibility of the jury in the US judicial process "is to make factual determinations," says Steve Mayo. He notes that if there were no jury, then the judge would have to make all of decisions in law and in fact. Instead, the jury makes its decisions based on facts presented during the trial, on the testimony of live witnesses, documents and arguments between the parties presented in court.

Selection of a jury of one's peers is a strictly random process. The clerks of local court system compile names from a number of lists, including, but not limited to, voter registration, automobile registration and drivers' licenses. Anyone who is at least 18 years of age, is a US citizen and has no felony conviction record is eligible, and is required to report to the courthouse on a given day as part of a jury pool. Some states require persons in the pool to return every day for a given length of time; others use a "one day or one trial" system, after which the citizen is excused from further duty. In either case, usually a person is not called back for several years.

On a typical day several hundred prospective jurors are called to a courthouse and are asked questions by the judge and the lawyers to determine their eligibility to serve. Examples of questions include "Do you speak and understand English?" and "Have you been the victim of a crime?"

In the criminal system, the lawyers on both sides have a number of challenges to excuse prospective jurors without giving a specific reason why. Ultimately, they agree on 12 men and women to serve on a trial and also select three alternates who serve if one of the 12 has to drop out during the course of the trial. For civil cases, sometimes only six jurors are needed.

Occasionally- often for some high-profile criminal cases- a jury is "sequestered" for the length of the trial. That means the jury members cannot go home and are

kept in hotel rooms where they do not have access to radio, television or newspapers so they cannot be influenced by what the media says about a case.

Immediately prior to a trial, the lawyers- in agreement with the judge have to decide what evidence is going to be allowed to go to the jury. He adds that the lawyers also come up with "questions to put to jury members so when they go to deliberate they will have specific questions they factually have to answer. "For example, he says a question in a civil case might be "Was the person negligent when he ran into the other car?" In a criminal case, a lawyer might ask" Did the defendant knowingly shoot the person?"

Specific instructions of law to the jury also have to be worked out by the lawyers and the judge. This could include such things as definitions of terms brought up during the trial, how to treat circumstantial evidence and how to treat expert witnesses.

Once the jury goes into deliberation, it selects a foreman from among its members. "This person serves as a moderator of the discussions, "Mayo says, noting that "frequently people become very firm in their beliefs and they are not willing to listen to other present their views." The foreman allows everyone to make their views known and keeps the discussion on track.

Deliberations can take hours or even several days because decisions have to be unanimous. A mistrial can be declared if a jury cannot reach a verdict. In a criminal case, if a guilty verdict is reached, the sentence is usually handed down by the judge at a later date, and guilty or innocent, at the conclusion of the trial the jury is excused with the thanks of the court for carrying out its civic duty.

With very few exceptions, Mayo concludes, the jury system does its job properly, and the decisions reached are almost always the same as the judge would have determined if there had been no jury.

The Judge[2]: "Judicial independence is of great importance "in the United States, and openness to the press and the public" is a good check on the judiciary," says Laura Safer Espinoza, a New York state judge. As such, the role of the Judge under the common law system in the United States is as "a neutral, impartial finder of facts and in some cases a finder of the law as well."

This differs from the civil law system practiced in many other countries, Espinoza continues, where a judge "takes the rule of investigator and formulator of charges as well as the tier of cases." She points out, however, that in both systems, in the event of a guilty finding, the judge usually determines the sentence.

In a criminal trial in the United States, defendants have the right to face an accuser, opposing counsel have the right to cross examine witnesses, and all of this takes place before a judge and/ or jury, who make "independent determination of fact" in the case. No judge is allowed to have *exparte*, or out-of-court, conversations without both of the attorneys being present, she adds. "This is required by our code of ethics, and is a critical component to maintaining honesty and a lack of possibilities for corruption in the system."

Regarding courtroom decorum, Espinoza says that trials are open to the public and "any citizen has the right to observe what is taking place. Judge has to maintain order among both the spectators and the two sides in the trial, while moving the proceedings along. If attorneys do not behave is a professional manner the judge has the power to hold them in contempt of court and they could face either a fine or a short jail sentence, though this rarely happens.

A firestorm of controversy has erupted in the United States over whether or not to allow trial to be televised. It is an argument about the balance between the rights of the public to know about the case and the rights of the accused to a measure of privacy.

Espinoza allows that the written press has a right to be in the courtroom, but she believes that cameras "can lead to a distortion of the proceedings," especially in high-profile cases. Different state legislatures set their own rules relating to TV in the courtroom, she says, but even where it is allowed, a judge still has he discretion to ban it in certain cases. By contrast, television cameras are not allowed in federal courtrooms.

The selection process for becoming a judge in the United States varies depending upon the state, but generally follows one of two main routes- through popular election or appointment by a governor or mayor. In Espinoza's home state of New York, a candidate has to be a practicing attorney for a minimum of 10 years and face a merit- selection screening panel of representatives of law schools, bar associations and community organizations. The panels then pass to electoral officials names for consideration to be placed on ballots, or to the selecting official if the appointment system is used. Terms for judges New York are for 10 years for lower courts and 14 years for higher courts. Depending upon their performance judges then may or may not be re-elected or re-appointed.

The Course of a Criminal Trial[3]: A criminal trial begins with opening statements- first by the prosecution and then by the defence. The prosecution then presents its evidence and witnesses, who are subject to cross-examination by the defence. The court, in essence, the judge- can dismiss he case at this stage if he or she believes the evidence does not prove the defendant committed the crime.

The defence then has the opportunity to present its evidence of the witnesses. After the defence case has been presented, the prosecution may present rebuttal evidence. As in a civil trial, the judge supervises the proceedings and rules on disputes about admissibility of evidence. The trial ends with closing statements by both sides and deliberation by the jury, following instructions by the judge.

The jury must find the defendant guilty or not guilty on each charge, A verdict of not guilty terminates the proceedings and the defendant is freed. In the case of defendant who is found guilty or who has pled guilty, obviating the need for a trial, the sentencing phase begins, except in death penalty cases, where the jury is required to decide between death and a lesser penalty.

The sentencing process includes a presentencing investigation and the filing of a report on all matters germane to the defendant's sentence. The defendant can review and comment on that report. The defendant also has the right to counsel at his sentencing hearing. The court then enters an order, specifying the punishment imposed on the defendant and how that punishment is to be carried out. The judge imposes the sentence subject to any sentencing guidelines that may have been prescribed by law.

Significantly, all defendants in criminal trials have the right to appeal to a higher court, including in some cases, up to the US Supreme Court. A trial verdict can be overturned if errors of law have occurred, or a defendant's rights have been violated. The appeals process is an integral part of the US judicial system. Many defendants have had their sentences overturned or reduced by appeal courts.

The Course of a Civil Trial[3]***:*** A civil action begins with a written statement of a plaintiff's claim and the relief he seeks, called a "complaint." The court then issues a summons, asking for a response to the complaint within a specific timeframe after the defendant receives it.

The defendant must admit or deny each allegation and present any defence. He may also assert claims against the plaintiff, a co-defendant or a person not originally part of the case. He may also move to dismiss the suit for failure to state a valid claim. He could also ask the court to dismiss the suit, claiming lack of jurisdiction over either the subject of the suit or the defendant himself. He might also suggest the plaintiff brought suit in the wrong court or that the defendant was not properly notified of the pending case.

The next phase is a broad "discovery process," which does not normally involve the court. A party seeking discovery, however, requests help from the court to compel a reluctant opponent or other person to give information. Similarly, a party from unreasonable discovery is sought may seek the court's protection.

Discovery may include; written questions to be answered under oath; oral deposition under oath; requests for pertinent document; physical or mental examinations where injury is claimed; and requests to admit facts not in dispute. Before trial, either party may move for summary judgment on any issue the evidence does not support. If the case continues to trial, the court may enter a pretrial order, defining the issues to be decided by the trial and making other provisions to expedite it.

Civil cases sometimes concern grave crimes, as in the Simpson case. Often, however, they concern less serious offenses. In some instances, third parties are sued. For example, in the case of a shooting in Atlanta, Georgia, in which the alleged triggerman was killed, a relative of one of his victims sued the investment company where the shootings occurred, the owners of the building, the company responsible for security there and the estate of the deceased gunman.

Civil action are normally tried in a court open to the public before judge and jury of six to 12 jurors chosen at random, unless the parties agree to a trial by a judge only. The parties have the right to dismiss certain jurors. The Judge manages the

trial proceedings and declares the applicable law. After opening statements, the plaintiff, who has the burden of proof, offers his evidence. If the evidence does not sustain the claim, it is dismissed at this point. If the evidence is deemed sufficient, the defendant presents his case.

After both sides present their evidence, the judge may dismiss any or all claims that are not supportable. Each party is then allowed to make a closing statement, and then, the judge explains the law to the jury. If the case goes to the jury, it alone must decide what the facts are and decide the case accordingly. In a case tried without a jury, the judge decides the outcome.

Civil penalties are generally much less onerous than those imposed in criminal trials. In the Simpson civil trial, for example, an $8.5 million verdict was imposed on the defendant. Although this may seem severe, it is considerably less punitive than the life prison term.

Reference :

1. *Extracts of the article "How the US Court System Function" by Tony M. Fine, Associate Director of the Global Law School Program at New York University Law School.**

2. *In separate interviews contributing editors of the USIA Electronic Journals met Steve Mayo, a Sun Francisco Attorney and Judge Laura Safer Espinoza, a New York state Judge. **

3. *Extracts of the article "Key Distinctions in the US Court System" by E. Osborne Ayscue, Jr., a civil trial Attorney in Charlotte, North Carolina, and the President of the American College of Trial Lawyers. **

* *The articles and interviews were published earlier in the issues of Democracy, USIA Electronic Journals, Vol. 4, No. 2, September 1999.*

APPENDIX-A

- *Reprint of Article from JATI Souvenir*
- *Training Support Material:*

Reprint from JATI's Souvenir

WHY JUDICIAL TRAINING*

-Justice Mustafa Kamal
Former Chief Justice of Bangladesh

Judicial Training Institutions are proliferating almost everywhere for varying reasons. For nearly 200 years this need was not felt in the sub-continent, because the standard of education, legal education in particular, was fairly reasonable. English, the vehicle of knowledge in law, was widely read, understood and practiced by the middle class from whom the lawyers and judicial officers were enrolled for the Bar and recruited for the services, case-load per judge was not unbearable and the lowest strata of judicial officers had the leisurely opportunity of acquiring knowledge of law and facility of expression through mature and distinguished lawyers at the Bar, wherever situated, and through experienced senior judicial officers. A formal training institute could not but be an idle decorative piece.

With an explosion of population, suddenly there has been an educational explosion as well as a litigants' explosion. Upto July, 1996 7,20,000 cases were pending in Criminal and Civil Courts, which number indicates a 50 percent increase from 1995 and more than 30,000 people or 67 percent of the country's total prison population, were awaiting trial ranging form an average of 6 months to several years. With the introduction of Bangla as the medium of instruction the capability of lawyers and judicial offices, at the initial stages of their career, to study, understand, develop and master the niceties of law and procedure, through a sustained and systematic study of law books and law journals, which are all in English, has diminished and consequently the rate of disposal of cases is steadily in the decline. The number of senior and able layers, ready and willing to lend a helping hand to the newest recruits in the judicial service, is steadily declining. Senior judicial colleagues are mush too harangued and pressed for time to be able to impart training to their junior colleagues. The need is felt, therefore, for a formal training center where the judicial officers will congregate in batches at different stages of their career, to take a stock of their insufficiencies and deficiencies, to refurbish themselves with fresh breeze of ideas and techniques, to co-relate their own experiences at the grassroots level with their instructors or trainers for the benefit of the latter and to go back to their own arena with a refreshed mine and spirit.

It is therefore of cardinal importance as to how the syllabi of these training sessions are formulated, who the instructors or speakers are and how in practice the training thus imparted is of practical use by the trainees. It is absolutely necessary to hear from the trainees themselves at various levels as to where and in which fields they perceive the deficiencies most and face difficulties intermittently, so that there develops a bond between the instructor and the

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* *The article was published in JATI's Sourvenir dated 1.3.97.*

trainee. The trainee should not leave the Institute with a feeling of having his time wasted. The syllabi should address to his needs, and not to the fancy of an academic paper setter.

There are may subjects which a law graduate does not have to study while taking a law degree from a college or university. But those subject are of immense everyday use for a legal practitioner and a judicial officer. While a legal practitioner masters those subjects at the Chamber of his senior or through a process of trial and error in course of his practice, a judicial officer is on his own from the very first day of his assumption of office. He has to learn the hard way all by himself and the ethics of his profession will not allow him the time and opportunity be taught , on a pupil-student basis, at the institute.

But there are other matters on which books should be written, instructors should be trained and a scheme should be prepared, borrowing from the experiences of other training institutions elsewhere, as to the art and skill of judging, manner, method and norms of appreciation of evidence, judicial ethics, relationships with communities and the media, good case flow management, alternate dispute resolution techniques, management skills, issues of court administrative, new techniques of record management, supervision over staff, computer automation in all courts, case management techniques, art and skill of writing judgments and various other allied topics which will be of professional and practical interest to the trainees. Rome was not built in a day and we will not expect the Institute to address itself all at once on every conceivable topic on its very opening. But we should know what was built in Rome, how and at what stages.

It will be useful, may necessary, at some stage to take up the responsibility of training Court Officials as well. They form an integral part of the judicial system and play a vital role in the preparation, management and placement of Court cases. Delay in the disposal of cases, corruption inside the judicial arena and machinations are often attributed to a section of them, but their problems have remained largely unaddressed and there has been no serious attempt so far to open a dialogue with them so as to understand their concerns and no meaningful step has been taken to integrate them with the national task of expeditious disposal of cases. A proper training scheme for them is a must if judicial training is to succeed.

All these ventures require time and study. It is therefore necessary to have a research wing at the Institute to explore the possibilities of imparting newer courses of study for trainees, of bringing in Court Officials within the network of training, of devising ways and means of training permanent instructors and of continuous updating and modernization of the training system.

Training Support Material

BANKING LAW AND PRACTICE RELATING TO INTERNATIONAL TRADE*

- Barrister Syed Ishtiaq Ahmed

When buying and selling of goods take place locally payment of the price and delivery of the goods bought do not present a problem. When the buyer and seller are in different countries, and goods are to be transported, say, by ship by a third party carrier, something more is required.

A documentary credit (also called letter of credit or commercial credit which are the same thing without any distinction) is the means to do this.

1. Documentary credit (hereafter called L/C) substitutes Bank for the buyer as the paying party to the seller. Payment is made by the Bank not for transfer of actual or physical goods but against documents representing the goods after they have been shipped and are in transit. L/C or Credit is used in international trade transactions and international banking system is utilized for this purpose.
2. The L/C has the following outlines:
   (a) The party who arranges the opening of L/C is called the "applicant". When the under lying transaction is sale of goods the applicant is the buyer.
   (b) The Bank who opens L/C is called the "issuing Bank".
   (c) The party in whose favour L/C is opened is called the "beneficiary". This will be the seller.
   (d) The issuing Bank instructs another Bank which is in the country of the seller for advising the beneficiary about the credit and to pay him when documents are presented to that Bank. The seller thus has the advantage of dealing with the Bank in his own country. It is called "advising Bank". The advising Bank by merely advising the credit does not give the "beneficiary" an undertaking to pay. But when the advising Bank adds its own undertaking to the undertaking of the issuing Bank to pay the beneficiary is secure. This happens when the advising Bank "confirms" the credit. The "beneficiary" then has an enforceable undertaking for payment from the issuing bank as well as from the Bank in his own country. When a Bank confirms the credit it is called "confirming Bank". The confirming Bank

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The material was handed out to the trainees by the Resources Persons in a training session of Joint-District Judges

undertakes to pay provided the terms of the credit are met, that is, the documents are presented to that Bank which comply with the terms of the credit and also the documents are presented within the time and at the place mentioned under the L/C.

4. In the aforestated circumstances an L/C gives rise to a number of contracts, generally five in number: (1) A contract between the buyer and seller; (2) between the issuing Bank and the buyer, the former agreeing to open L/C and to act on the instruction of the buyer; (3) between the issuing Bank and the confirming Bank by confirming Bank agreeing to make payment under L/C; (4) on confirmation of the L/C by the confirming Bank a contract comes into existence between the issuing Bank and the "beneficiary" and (5) lastly, on confirmation of L/C a contract comes into existence between confirming Bank and the beneficiary.

5. The importance and value of this arrangement lies in the security it provides to all parties concerned, namely.

   (1) Payment is assured to the seller provided he presents the correct documents at the proper time to the confirming bank in his own country.
   (2) The advising Bank or the confirming bank receives the documents when it makes payment and holds them as security pending payment by the issuing Bank.
   (3) The issuing Bank will have the documents as security for payment by the applicant, the buyer, since the Bank will release the document when it is assured of payment.

U.C.P.: Uniform Customs of Documentary Credit (UCP) is a document published by the International Chamber of Commerce (ICC) with Headquarters at Paris Adherence to UCP is effected by the bank opening L/C by incorporating in express terms that the L/C is issued subject to the terms of UCP or UCP 1993 revision (which is the current document) applies or similar words. This is provided for by Article-1 of UCP thus: "Where they are incorporated into the text of the credit"

The main purpose of UCP is to provide and international code governing L/C and providing uniformities in regard to documentary credits.

AUTONOMY OF L/C: L/C is an autonomous contract, that is, it is independent of the terms of the underlying contract of sale and purchase. Thus, with the documentary credits a Bank deals in document sand document alone. Consequently the performance of the contract of sale underlying the credit, is relevant to the performance of the credit.

Whether the goods are good or bad or there are disputes between the buyer and seller, are matters with which the banks are not concerned. Articles-3 and 4 of UCP.

REVOCABLE OR IRREVOCABLE CREDIT: A credit may be revocable or irrevocable by express term. If it is not so expressed it is irrevocable. Article 6 of UCP. Very little protection is provided by revocable credit because it may be amended or cancelled by the issuing Bank. See Articles-6 to 8 of UCP. Therefore, in modern international trading transactions almost all credits are irrevocable.

CONFIRMED OR UNCONFIRMED CREDIT: In a confirmed credit the advising Bank adds its own undertaking to that of the issuing Bank that payment will be made if the correct documents under L/C are presented within the time stipulated in the credit. When the credit is unconfirmed there is no such undertaking and the sole undertaking is that of the issuing bank only.

There are other kinds of credit, for example, revolving credits, back-to-back credits etc.

Extract from the Report on the Curriculum Development ... by Dr. N.R. Madhava Menon, Consultant and Resource Person, under the Legal and Judicial Capacity Building Project of the World Bank

Judicial education and training: An independent judiciary and an efficient system of administration of justice are the foundations for democratic development. Justice is the primary concern of every society and the basic obligation of any government. Despite its apparent importance in many developing countries, judiciary did not receive the attention it deserved. It is starved of resources and infrastructure facilities. Legal and Judicial system is not considered part of the development process and consequently, given low priority in governmental planning. The neglect common to countries in the Indian sub-continent has resulted in inefficient handling of trials, inordinate delay in disposals and increasing alienation of people from the system. .....

Judicial Education in Different Countries: Legal profession generally and judges in particular by and large seem to think that organized training is unnecessary for judges. This is probably the reason why there are very few judicial training institutions in the country. There are some who believe that judicial education may impair the independence of the judiciary and therefore to be avoided. Most judges think that if at all training is to be given, judges alone can give training to other judges. They seem to think that every superior court judge is fit to train the subordinate judge on whatever knowledge or skills required to function as a judge. In the context of such pervasive myths and misconceptions it is necessary to explain why training is being recommended and how it is being done in some of the developed countries.....

The case for judicial education arises from the changing role of judges today. Broadly speaking, his function is to decide cases brought before him according to law and in a manner accepted by society as just, fair and reasonable. A judge's personality and work ethic influence his decisions and the atmosphere he creates in the courtroom. His body language and tone of voice, his reactions to witnesses, his interaction with others in the court room, his manner of ruling on objections, his treatment of advocates and subordinates etc. affect public perception of fairness in a judicial proceeding. Appreciation of evidence, fact determination in complicated civil and criminal cases, evidentiary questions on admissibility, technological developments and legal management of change etc. demand from the judge a variety of knowledge and skills difficult to imbibe without organized and continuing education. Writing judgments is a science and an art. So also management of court system and procedures. All these demand

APPENDIX-B

- *JATI its Curriculum Development Process*
- *Some JATI's Existing Curriculum:*

scientific and systematic education if development is to be facilitated by efficient systems of dispute settlement and justice administration.....

Reflecting on the role of the judge, the Hon. Judge Sandra E. Oxner, President of the Commonwealth Magistrates' and Judges' Association wrote:

"The all powerful and righteous judge became exposed by the spotlight of contemporary media scrutiny as a human being subject to all human frailties.

The general public disillusionment with official office holders coupled with the lingering respect for the judiciary from a time when the judge and her behaviour were protected from public scrutiny combine to create an expectation of a very high standard of judicial conduct in and out of court. While the expectation is not misplaced, the burden it places on a judge is such that a support system of advice and collegiality must be in place to allow the judge to live up to these expectations and not inadvertently bring the administration of justice into disrepute. The establishment of ethical standards of conduct and collegial discussions of specific problems will assist the judge in ordering her affairs and conduct in such a way as to maintain the public trust and better withstand the searing light of media scrutiny.....

It is important that lines of communication are open between the media and the judiciary..... This analysis of the role of a judge points up the need for judicial support through education in the following various fields; the principle and practice of the independence of the judiciary; accountability to the public; judicial ethics and conduct; sensitivity training in contemporary social issues; gender, aboriginal, ethnic, and other disadvantaged groups sensitivity training; and Media-Bench relations". (Report of the Tenth Commonwealth Magistrates' and Judges' Conference, Victoria Falls, Zimbabwe, August 1994, p.137).

"The Judge's Book" a valuable handbook prepared by the National Judicial College and the American Bar Association and widely circulated among judges in U.S.A. and outside, quotes a study of the socialisation process to describe the transition in the role of a new judge. This study finds that "there are four steps to the socialisation of a judge and that moving through all the steps takes at least fifteen years of judicial service. The first of these steps, Professional Socialisation, occurs in the period before a person becomes a judge, and includes law school, legal practice experiences, and other career-related experiences. The second step, Initiation and Resolution, includes the first five years on the bench. During this period the judge undergoes an initial adjustment and self-concept

change in trying to define his or her role as a judge. Towards the end of this stage there is a resolution of role conflicts, and a transition to the decision to remain on the bench. The third step, Establishment, covers years six through fifteen on the bench. During this stage the role of the judge changes from that of altruist and legalist to guardian of the law, as another role definition and resolution of conflict occurs within the judge. The final step, Commitment, begins when the judge has served on the bench 15 or more years. During this final stage, there is an increased commitment to the bench, marked by a satisfaction with judicial life. The new judge would do well to consider these findings and to be thereby forewarned of what lies ahead". (Alpert, Atkins and Ziller, "Becoming a Judge: The Transition from Advocate to Arbiter" 62 Judicature 325(1979) quoted in The Judge's Book, Second Edition, The National Judicial College, Nevada, Page 9)....

In England the proposal for organized judicial training came from a working group appointed in 1975 under the Chairmanship of Lord Justice Bridge. The dislike of the word 'training' led to the nomenclature of "judicial studies" which came to be accepted in place of the then prevailing sentencing seminars. The Judicial Studies Board was created by the judges in 1978 with the initial object of reducing inconsistency in sentencing in criminal courts. Until 1985, the Board was concerned only with the criminal jurisdiction. Thereafter, its role was extended to the civil and family jurisdictions. The Board also became responsible for supervising the training of Magistrates and members of tribunals.....

Existing system of judicial training: In his message on the occasion of the inauguration of the Judicial Administration Training Institute in March 1997, the then Chief Justice of Bangladesh wrote:

"I wish the Judicial Administration Training Institute – now undergoing teething period – to be based on a solid foundation and not to run indefinitely on the basis of adhocism. Judicial officers from subordinate Courts (on deputation) are ill-suited for the works of this Institute which is meant for their training. The Institute must have its own specialised cadre devoted to study, research and academic planning and training. Any training scheme, to be productive, useful and result-oriented must have comprehensive program with appropriate syllabus which is a challenging task. As far as I am aware, there has been no serious ground work till date. And this is not also expected of Assistant Judges or Sub-Judges (on deputation). The authorities, to make the Institute really functional, must address themselves to the basics of a Training Institute, do something of substance rather than going for ceremony only" (Excerpted from the Souvenir brought out at the Inaugural function).....

Curriculum for District and Sessions Judges

A. *Law :*

Sl. No.	Subject	Topics
1.	The Constitution of Bangladesh:	Part: I-III
2.	(a) The Penal Code, 1860 :	Offences affecting the human body (Ch. XVI), Acts done by several person in furtherance of common intention (Sec. 34), Offence committed in prosecution of common object (Sec. 149), Abetment (Ch.V).
	(b) The Code of Criminal Procedure, 1898 :	The trial of cases by Magistrates (Ch. XX), Trial by Courts of Sessions (Ch. XXIII), Judgment (Ch. XXVI) and Bail (Ch. XXXIX).
3.	Special Laws:	(a) The Special Powers Act, 1974. (b) The Arms Act, 1878. (c) The Explosive Substance Act, 1908 (d) The Criminal Laws (Amendment) Act, 1958 (e) The Anti-corruption Act, 1957 (f) The Prevention of Corruption Act, 1947 (g) The Madak Drabba Niantran Ain, 1990 (Narcotics Control Act, 1990) (h) The General Clauses Act, 1897.
4.	(a) The Code of Civil Procedure, 1908 :	(i) General powers of transfers and withdrawal (Sec. 24) (ii) Appeals from original decrees and orders (Sec. 96 and Orders XLI & XLIII.
	(c) The Evidence Act, 1872:	(i) Confession - judicial and extra judicial. Dying declaration. Burden of Proof. (ii) Forensic Science.

B. ***Seminar on: "Case Management with the objective of ensuring inexpensive and expeditious disposal of cases".***

C. ***Judicial Skill :***

(a) Writing of judgment/orders in:
(i) Civil appeals, (ii) Criminal cases, appeals and revision.

D. Any other subject included in the curriculum or excluded therefrom, from time to time by the Director General.

Duration : 6 days.
Methodology : Lecture, seminar, presentation programme, assignment panel discussion, etc.
Resource persons : Hon'ble Chief Justice of Bangladesh, Hon'ble Minister for Law, Justice and Parliamentary Affairs, Sitting and former Judges of the Supreme Court of Bangladesh, Senior Advocates, Senior Judicial officers and Experts on different subjects.

Chairman of the Managing Board

[Approved by the Managing Board in its 6th Meeting held on 8.8.1998]

Curriculum for The Basic Course for newly Appointed Assistant Judges.

A. *Law :*

Sl. No.	Subject
1.	Constitution of Bangladesh.
2.	The Code of Civil Procedure, 1908 (Act V of 1908)
3.	The Court Fees Act, 1870 (Act VII of 1870)
4.	The Suit Valuation Act, 1887 (Act VII of 1887)
5.	The Stamp Act 1899 (Act II of 1899)
6.	The Civil Court's Act, 1887 (Act XII of 1887)
7.	The Limitation Act, 1908 (Act IX of 1908)
8.	The General Clauses Act, 1897 (Act X of 1897)
9.	The Village Court Ordinance, 1979 (Ord. No. LXI of 1976)
10.	The State Acquisition and Tenancy Act, 1950 (EB Act XIX of 1950)
11.	The Non-Agricultural Tenancy Act, 1949 (Beng. Act XXIII of 1949)
12.	The Family Court Ordinance, 1985
13.	The Small Causes Court Act, 1887 (Act IX of 1887)
14.	The Premises Rent Control Ordinance, 1991
15.	The Transfer of Property Act, 1882 (Act IV of 1882)
16.	The Evidence Act, 1872 (Act of 1872)
17.	The Oaths Act, 1883 (Act X of 1873)
18.	The Specific Relief Act, 1877 (Act I of 1877)
19.	The Easement Act, 1882 (Act V of 1882)
20.	The Registration Act, 1908 (Act XVI of 1908)
21.	The Local Government (Union Parishad) Ordinance, 1983 (Ord. No. LI of 1983)
22.	The Muslim Family Law Ordinance, 1961 (Ord. No. VIII of 1961)
23.	The Partition Act, 1893 (Act IV of 1893)
24.	The Guardians and Wards Act, 1890 (Act VIII of 1890)
25.	The Birth and Death Registration Act, 1873 (Ben. Act IV of 1873)
26.	The Succession Act, 1925 (Act XXXIX of 1925)
27.	The Contempt of Courts Act, 1926 (Act XII of 1926)
28.	The Bangladesh Legal Practitioner's and Bar Council Order, 1972 (P. O. 46 of 1972)
29.	The Public Demand Recovery Act, 1913 (Ben. Act III of 1913)
30.	The Carriage of Goods by Sea Act, 1925 (Act XXVI of 1925)
31.	The Arbitration Act, 1940 (Act X of 1940)
32.	The Co-operative Societies Act, 1940 (Ben. Act XXI of 1940)
33.	The Partnership Act, 1932 (Act IX of 1932)
34.	The Contract Act, 1872 (Act IX of 1872)
35.	The Penal Code, 1860 (Act XLV of 1860)
36.	The Code of Criminal Procedure, 1898 (Act V of 1898)

B. *Judicial Administration:*

Sl. No.	Subject
1.	Civil Rules and Orders Vol. 1,2
2.	Manual of Instruction of Civil Suits.
3.	Court Management

C. ***General Administration:***

Sl. No.	Title
1.	Government Servant Discipline and Appeal Rules, 1985
2.	The Government Servant Conduct Rules, 1979
3.	Bangladesh Service Rules-I
4.	Financial Rules
5.	Fundamental Rules and Subsidiary Rules

D. ***Practical Training in Judicial Skill :***

Sl. No.	
1.	The trainees should be imparted practical training as to how to write operative portion of the orders in different nature of suits and cases particularly relating to suits for i) declaration of title with consequential relief of confirmation/recovery of possession or permanent injunction in respect of the suit property ii) specific performance of contract for sale and reconveyance iii) suit for permanent injunction iv) cancellation/rectification of the deed v) preliminary and final decree in partition/mortgage suits vi) Family Court cases vii) money-suits viii) preemption cases and ix) rent control cases x) Cases under order IX of Code of Civil Procedure ix) interlocutory orders viz. ad-interim/ temporary injunction, attachment before judgment, appointment of receiver, rejection of plaint, order appointing commissioner for local investigation/inspection and order accepting/rejecting the report of local-investigation;

E. ***General Administration :***

Sl. No.	Subject
1.	Letter writing : Official and demi-official.
2.	Report writing.
3.	Conducting of departmental proceedings.
4.	Inspection of Offices.
5.	Administrative work in Judgeship.

F. Any other subject included in the curriculum from time to time by the Director General.

Duration : 4 months.

Methodology : Lecture, workshop, case study, presentation programme, assignment, study tour.

Resource persons : Hon'ble Minister for Law, Justice and Parliamentary Affairs, Sitting and former Judges of the Supreme Court, Senior Advocates, Senior Judicial officers, Experts on different subjects and others selected from time to time by the Director General.

Chairman of the Managing Board

[Approved by the Managing Board in its 6th Meeting held on 8.8.1998]

Curriculum for Training of the Public Prosecutors

1. **The *Constitution of Bangladesh:***
   i) Fundamental Rights (Part III) with emphasis on right to fair investigation and speedy trial.
   ii) The Judiciary (Part VI).

2. ***Professional Ethics and Code of Conduct of legal practitioners:*** *Emphasis on the obligations of the Public Prosecutors:* Cannons of professional conduct and etiquette.

3. **Conduct of Sessions Case and other criminal cases by Public Prosecutors:**
   A. Code of Criminal Procedure with emphasis on:
   i) Investigation into offences (Ch. XIV),
   ii) Framing of the Charge (Ch. XIX),
   iii) Trial by Court of Sessions (Ch. XXIII),
   iv) The Public Prosecutor (Ch. XXXVIII) [with emphasis on withdrawal from prosecution by the public prosecutor]
   v) Special Rules of Evidence (Ch. XLI),
   vi) Appeals and Revisions (Ch. XXXI and XXXII),
   vii) Bail (Ch. XXXIX)
   B. The Penal Code with emphasis on:
   i) General Explanations (Ch. II),
   ii) *Acts done by several persons in furtherance of common intention (Section 34),*
   iii) Abetment (Section 107 to 109),
   iv) Offence committed in prosecution of common object (Section 149),
   v) Right of private defence (Ch. IV, Section 96 to 106),
   vi) Offences affecting the human body (Ch. XVI, with emphasis to Sections 299-309),
   vii) Offences against property (Ch. XVII).

4. **Conduct of other Criminal Cases by Public Prosecutors:**
   i) Special Powers Act, 1974,
   ii) Nari O Shishu Nirzaton Daman Ain, 2000,
   iii) Jananirapatta (Bishesh Bidhan) Ain, 2000,
   iv) Other Relevant Special Laws.

5. **Evidence Act with emphasis on:**
   i) Admission and Confession (Ch. II),
   ii) Presumption as to documents (Ch. V),
   iii) Burden of Proof (Ch. VII),
   iv) Examination of Witness (Ch. X),
   v) Forensic Science in Criminal Investigation and Examination by Hand Writing Expert, Thumb Impression Expert, etc.

6. **Environmental Laws.**

7. **Skill Development of the Public Prosecutor:** Public Prosecutor's role in prosecution, filing of appeal and revision within the period of limitation: problems and their solutions.

8. ***Any other subject included in the curricula or excluded therefrom, from time to time by the Director General of the Institute.***

Duration	:	*6 days to 21 days.*
Methodology	:	*Lecture, seminar, panel discussion, workshop etc.*
Venue of training	:	*Judicial Administration Training Institute, Dhaka.*
Resource persons	:	*Hon'ble Chief Justice, Hon'ble Minister for Law, Attorney General, Deputy Attorney General, Deputy Commissioner, Solicitor, former Solicitors, Senior Advocates, former Public Prosecutors, sitting and former Judges of the Supreme Court, sitting and retired Judicial officers, experts on subjects, teachers, training experts.*

Chairman of the Managing Board

[Approved by the Managing Board in its 10th Meeting held on 25.11.2000]

Curriculum for Training of the Government Pleaders

1. The ***Constitution of Bangladesh:***

i) Fundamental Rights (Part III) with emphasis on right to speedy trial.
ii) The Judiciary (Part VI).

2. ***Professional Ethics and Code of Conduct of Legal Practitioners:*** *Emphasis on the obligations of the Government Pleaders:* Cannons of professional conduct and etiquette.

3. ***Knowledge and skill in managing civil suits and cases for and against the Government:***

i) Duties of Government Pleaders (Ch. II, L.R. Manual), (ii) Rules for conduct of Civil Suits Instituted by the Government, against the Government and steps required for filing appeal and revisions,

iii) *Rules for conduct of Civil Suits and Appeals on behalf of Government:*
(a) Appeals to the District Courts and (b) Appeals to the Supreme Court.

iv) Stages of suits and time limits of each stages,

v) ***Code of Civil Procedure with emphasis on:***
(a) The jurisdiction of courts and res-judicata (Sections 9, 10, 11), (b) Place of suing (Sections 15 to 20), (c) Summons and discovery (Sections 27 to 32), (d) Judgement and decree (Section 33), (e) Transfer of suits (Section 24), (f) Suits by or against Government or Public Officers in their official capacity (Sec. 79-82), (g) Suits relating to public matters (Sec. 91-93), (h) Appeals from original decree (Sections 96 to 107, Order XLI, XLIII), (i) Review (Section 114), (j) Revisions (Section 115), (k) Pleadings (Order VI, Rules 16 and 17), (l) Plaint (Order VII, Rule 10 and 11), (m) Written statement (Order VIII), (n) Appearance of parties and consequence of non-appearance (Order IX), (o) Execution of decrees and orders (Order XXI), (p) Withdrawal and adjustment (Order XXIII), (q) Suits by or against the Government (Order XXVII), (r)Temporary injunctions (Order XXXIX), (s) Arrest and Attachment before judgment (Order XXXVIII), (t) Appointment of Receivers (Order XL).

vi) ***Law Relating to Property of the Government:***
(a) The Government Estate Manual, 1990, (b) Government Lands and Buildings (Recovery of Possession) Act, 1953, (c) Law Relating to Vested, Abandoned Property, Acquisition and Requisition, (d) State Acquisition and Tenancy Act, 1950.

vii) ***Specific Relief Act with emphasis on:***
(a) Recovering possession of properties (Section 9), (b) Specific performance of contracts (Section 12), (c) Rectification and cancellation of instruments (Sections 31, 39), (d) Declaratory decrees (Section 42).

viii) ***The Evidence Act with special emphasis on:***
(a) Oral and documentary evidence (Ch. IV, V, VI), (b) Burden of proof (Ch. VII), (c) Examination of witness (Ch. X).

ix) ***Limitation Act, 1908.***

4. **Skill Development of the Government Pleader:** Government Pleader's role in institution of suits and cases, filing of appeal and revision within the period of limitation: problems and their solutions.

5. ***Any other subject included in the curricula or excluded therefrom, from time to time by the Director General of the Institute.***

Duration	:	*6 days to 21 days.*
Methodology	:	*Lecture, seminar, panel discussion, workshop etc.*
Venue of training	:	*Judicial Administration Training Institute, Dhaka.*
Resource persons	:	*Hon'ble Chief Justice, Hon'ble Minister for Law, Attorney General, Deputy Attorney General, Deputy Commissioner, Solicitor, former Solicitors, Senior Advocates, former Public Prosecutors, sitting and former Judges of the Supreme Court, sitting and retired Judicial officers, experts on subjects, teachers, training experts.*

Chairman of the Managing Board

[Approved by the Managing Board in its 10th Meeting held on 25.11.2000]

Curriculum for In-Service Training Course for Ministerial Officers of the Subordinate Courts and Tribunals

1. ***Ethics and Code of Conduct of Court Support Staff :***
   - i) The Government Servant Conduct Rules, 1979.
2. ***Civil Suits and Cases :***
   - i) Civil Rules and Orders, Vol. 1 and 2.
   - ii) Manual of Instructions for conducting civil cases.
     - (a) Different stages in trial of civil suits and cases and time limit for each such stages.
     - (b) Valuation of suits and cases and court fee payable on valuation.
     - (c) Assessment of stamp duty and penalty in impounding documents.
   - iii) Compliance of orders of Court.
   - iv) Filling up prescribed forms.
   - v) Maintenance of Registers.
3. ***Criminal Cases :***

   Criminal Circulars and Orders.
   - (a) Various stages and procedure in trial of sessions and criminal cases.
   - (b) Writing of non-judicial order, issue of summons / warrants, proclamation & attachment and their proper execution, bond & surety and their proper execution.
   - (c) Compliance of orders passed in criminal cases.
   - (d) Filling up of prescribed forms.
   - (e) Maintenance of registers.
4. ***Returns and Reports to be submitted to the Supreme Court and Government.***
5. ***Works of Various Departments viz.- Copying, Record Room, Nezarat, Accounts and Library.***
   - i) Skill in Court Management to prevent delay in disposal of suits, cases, appeals, revisions and preventing abuse in Court process with particular emphasis on proper service of summons and submission of service return to Courts well ahead of the date fixed.
   - ii) Skill in maintaining records, registers, preparing statements, maintaining accounts and making correspondence.
6. ***General Administration :***
   - i) Bangladesh Service Rules with particular reference to Leave Rules, Travelling Allowance and Pension.
   - ii) Government Servant (Discipline and Appeal) Rules, 1985 (as amended upto date).
   - iii) Some Important Financial Rules.
   - iv) Other General Order and Circular of the Government.
   - v) Office Correspondence.
7. ***Any other subject included in the curriculum or excluded therefrom, from time to time by the Director General.***

Duration : *One to two weeks.*

Methodology : *Lecture, seminar, workshop etc.*

Venue of training : *(i) JATI at Dhaka and (ii) At Divisional and District Head Quarters if arrangements for accommodation and other facilities for training are available.*

Resource persons : *Hon'ble Minister for Law, Justice and Parliamentary Affairs, sitting and former Judges of the Supreme Court, sitting and retired Judicial officers, officers of the Supreme Court and experts on different subjects*

Chairman of the Managing Board

[Approved by the Managing Board in its 9th Meeting held on 15.7.2000]

APPENDIX-C

- *Resume of Activities*
- *JATI's Statute*

JATI: A RESUME OF ACTIVITIES (JULY 1995 TO MAY 2002)

The Judicial Administration Training Institute Act No. XV of 1995 was passed on 9 July, 1995 for providing training of persons appointed in the judicial service, lawyers and some other professionals connected with the judicial system in order to increase their professional efficiency. Judicial Administration Training Institute (JATI) began its functioning in the Ministry of Law from mid 1996 with the appointment of Mr. Justice Md. Badruzzaman as its first Director General. The first batch of officers was appointed on deputation from the Judicial Officers who undertook the initial task in setting up a new institution. The works like the sanction of posts, the approval of first budget, procurement of goods and equipment, development of the curriculum for the training to be imparted by the Institute was done.

Once the sanction of post and approval of budget was given by the Government the Institute published the Regulations of service for the persons appointed in the Institute. The Institute being an adult education provider for persons in the justice delivery system, the job description of the employees was prepared to employ suitable persons to run the Institute for achieving its goal.

The judicial education and training is a new area in adult education and the Board of Management of the Institute from the very beginning took up important matters in hand. The first meeting was held on 27.5.96 and resolution as to amendment of section 6 of the Act was approved. Resolution for reorganization of the Board of Management of the Institute was adopted, making the Hon'ble Chief Justice of Bangladesh as Chairman of the Institutes Board of Management and the Hon'ble Minister for Law, Justice and Parliamentary Affairs as its Advisor. In later Board Meetings some other resolutions were adopted such as-

The Board of Management was reorganized on 6.6.96 and the post of one Vice-Chairman was created. The Board of Management was also widened by including the Deans of the Law Faculties of the Dhaka University and Rajshahi University as members of the Board.

On 7.1.1997 the *syllabus* for the In-service Training of Assistant Judges, Joint District Judges and Additional District Judges were approved it was decided that a final examination would be held at the last stage of every of training programme.

The Hon'ble Judges of the both division of the Supreme Court, former justice, high officials of the Government, former Government Officers, District Judge, Additional District Judge, Dean, Professor and Associate Professors of the Law Faculty and the senior Advocates of the Supreme Court were included as Resource Persons for the Institute.

The gradation of the Training Impact Assessment was adopted on 12.7.1997 as follows:

(a)	*Above 80% :-*	*Outstanding*
(b)	*65% to 80% :-*	*Good*
(c)	*50% to 64% :-*	*Average*
(d)	*Below 50% :-*	*Below Average*

The office hours of the JATI was re-fixed. It was decided that the office would start from 7:50 a.m. and close at 2:30 p.m. It was also decided that three posts of Directors and other posts of officers and staff be created. JATI has also appointed two core officers. At present the number of officers and staff of JATI are 50.

Present Management Board of JATI consists of 15 members. In order to make the Judges majority in the Board of Management, the Board at its 7th meeting dated 13.2.2000 recommended for inclusion of Metropolitan Sessions Judge as ex-officio member and requested the Government to make the necessary amendments in the Judicial Administration Training Institute Act, 1995.

Dr. N. R. Madhava Menon, the renowned educationist and the then Member of the Law Commission of India was assigned to prepare curriculum and training methodology for the Institute under the Capacity Enhancement of Judicial Sector Project of World Bank. A seminar was held in the Hall Room of JATI for discussion on the Preliminary Draft Report, which was then finalized. The report titled "Judicial Training: Curriculum Development, Training Strategies and Continuing Education" was prepared and submitted by Dr. N. R. Madhava Memon which was accepted on 15.7.2000 by the Management Board.

On 25.11.2000 it was decided that under the Legal and Judicial Capacity Building Project construction of the JATI complex would be started soon. The architectural design of Judicial Administration Training Institute Complex has been finalized by this time.

On 6.12.2001 office time of JATI was re-fixed. It was also decided that new office time would be from 7:50 a.m. to 2:30 p.m. everyday except Friday. From 30.4.2002 the new office time has been made effective. Before this new office time the previous office time was changed in the last part of 2001 in line with the general decision of the present Government.

Training Programmes at JATI: In 1997 the Institute arranged 5 training programmes for judges of different tires. A total number of 163 officers took part in the training programme of which 153 judges were male and the rest 10 were female. It included 4 courses for Sub-judges and 1 for Assistant Judges.

In 1998 the Institute organized 3 courses for Additional District & Sessions Judges and 1 course for Senior Assistant Judges. A total of 115 judicial officers took their in-service training at that time of which 8 female judges were also included.

Training with the assistance of the World Bank under Capacity Enhancement of the Legal and Judicial Sector Project: Three training programmes for District & Sessions Judges were held with the assistance of the World Bank in 1999 in which the Judges were given training on Case Management and Court Management above with other courts they are required to deal with.

Two programmes for Assistant Judges, 1 for Senior Assistant Judges, 1 for Sub-Judges and 1 for Additional District & Sessions Judges were also held. The Institute gathered experience of training up 258 officers at those programmes. 28 female officers successfully completed their training in that year. It may be mentioned here that the 2 basic training programmes for Assistant Judges were arranged for the newly appointed Assistant Judges who just had started their career as Judges. The Institute designed the 2 courses considering their basic needs. The duration of the District Judges courses were for 6 days, Basic Course for Assistant Judges were for 2 months and other In-service Training Courses for 21 days.

In the year 2000, the Institute for the first time arranged courses for Court Support Staff, viz. Administrative Officers, Nazirs and Bench Assistants in the Institute. The Institute also arranged two programmes for Government Pleaders and Public Prosecutors and one Basic Training Course for newly appointed Assistant Judges, 2 courses each for Senior Assistant Judges and Sub-Judges and Assistant Sessions Judges (presently named as Joint District Judges) and one for District & Sessions Judges. In the training programme of this year, a total number of 400 trainees participated of which 382 were male and 18 were female trainees.

In 2001 eight training programmes were organized by JATI. The Assistant Judges participated in two programmes, Additional District & Sessions Judges and District & Sessions Judges got one programme each and the rest four programmes were organized for the Ministerial Officers viz. Sheristadars, Accountants and Record Keepers. The numbers of the trainees were 289 and out of them 276 were male and 13 were female.

In this year (from January to May, 2002) the Institute has organized five training courses of which one each for Assistant Judges, Joint District Judges and Additional District & Sessions Judges and two for Government Pleaders and Public Prosecutors. 166 male and 6 female trainees took part in these programmes.

The JATI has so far trained 1397 Judges, advocates and court support staff in these programmes in five years.

Each training programmes was different in nature and intensity. The curriculum was made the basis of training but improvements were made as to their contents and methods to achieve optimum result in each course. Study tours are integral part of JATI's judicial training. The trainee-judges visited the Jatiyo Sangsad, the Supreme Court, the Ministry of Law, Justice & Parliamentary Affairs, UNICEF, Dhaka, Dhaka Central Jail, the Defence Staff College, the Islamic Institute of Technology, Bangladesh Livestock Research Institute, Bangladesh Academy for Rural Development (BARD), Bangladesh Agriculture Research Institute, Bangladesh Rice Research Institute, Bangladesh Atomic Research Centre, National Juvenile Correctional Centre, Tongi and other institutions of repute to

make trainees aware of their activities and gain some knowledge on other important issues beside the law.

The faculty development: The Institute from the beginning gave much impetuous on faculty development. The JATI's faculty members visited countries like Japan, India, Canada, Britain for gaining knowledge about judicial training and training-facilities there. The Institute officers also received various type of training and project related activities for better training management in JATI.

Danish Support to the Institute's Development: Support to Capacity Building of the Judicial Administration Training Institute of Bangladesh is a five-year capacity building project aiming at enabling the Judicial Administration Training Institute of Bangladesh to deal with well-structured professional training in order to increase judicial efficiency of the subordinate court level and make the judiciary understand its roles and responsibilities. The project constitutes a component of the World Bank financed Legal and Judicial Capacity Building Project. The major activities will include management and institutional development, development and implementation of training plans, development and implementation of training needs analysis tools, development of training curriculum, training materials, audio-visual aids and training of trainers as well as development and implementation of training courses for the target groups. Moreover, the project will include procurement of education and training equipment necessary for the function of an envisaged new Judicial Administration Training Institute.

Objectives of the 5 years Judicial Training Plan: The objective of judicial education is to support an impartial, effective, competent and efficient judiciary and to ensure a high level of professional performance. This involves not only the fact but also the community's perception that judges are free from external influence that right affect their impartiality. It also includes an understanding of the role and function of the judiciary in performing the public service of dispute resolution. Such a well functioning judiciary is part of the make-up of an environment which attracts foreign and national investment, and in which the poor and women are assured of better access to justice.

Human Resource Development in the Judicial Sector is a priority for the nation in which the Law Ministry and Supreme Court offered valuable support. JATI's endeavor will continue to grow with the increased need for judicial education and training in future.

The proposal for the curriculum development by the DANIDA was approved on 13.3.2000.

Table 1

The Institute has so far organized the following training courses from 1.3.97

Sl. No.	Course Title	Status of the Participants	No. of the Participants			Duration
			Male	Female	Total	
1	1st Judicial Administration Training Course	Assistant Judges/Senior Assistant Judges	24	1	25	1/3/97-21/3/97
2	2nd Judicial Administration Training Course	Sub-Judges and Assistant Sessions Judges	31	5	36	3/5/97-23/5/97
3	3rd Judicial Administration Training Course	Sub-Judges and Assistant Sessions Judges	33	1	34	1/6/97-21/6/97
4	4th Judicial Administration Training Course	Sub-Judges and Assistant Sessions Judges	36	1	37	20/9/97-10/10/97
5	5th Judicial Administration Training Course	Sub-Judges and Assistant Sessions Judges	29	2	31	25/10/97-14/11/97
6	6th Judicial Administration Training Course	Additional District and Sessions Judges	26	2	28	15/4/98-5/5/98
7	7th Judicial Administration Training Course	Additional District and Sessions Judges	25	1	26	9/5/98-29/5/98
8	8th Judicial Administration Training Course	District and Sessions Judges	17	1	18	6/2/99-11/2/99
9	9th Judicial Administration Training Course	Senior Assistant Judges	33	2	35	17/10/98-6/11/98
10	10th Judicial Administration Training Course	Additional District and Sessions Judges	23	3	26	9/11/98-29/11/98
11	11th Judicial Administration Training Course	District and Sessions Judges	34	1	35	20/2/99-25/2/99
12	12th Basic Training Course on Judicial Administration	Assistant Judges	31	13	44	1/3/99-30/4/99
13	13th Judicial Administration Training Course	Senior Assistant Judges	35	4	39	8/5/99-28/5/99
14	14th Judicial Administration Training Course	District and Sessions Judges	29	-	29	3/4/99-8/4/99
15	15th Basic Training Course on Judicial Administration	Assistant Judges	45	3	48	17/7/99-14/9/99
16	16th Judicial Administration Training Course	Sub-Judges and Assistant Sessions Judges	22	3	25	2/10/99-22/10/99
17	17th Judicial Administration Training Course	Additional District and Sessions Judges	17	3	20	6/11/99-26/11/99
18	18th Judicial Administration Training Course	Senior Assistant Judges	30	5	35	15/1/2000-4/2/2000
19	19th Basic Training Course on Judicial Administration	Assistant Judges	44	-	44	19/2/2000-18/4/2000
20	20th Judicial Administration Training Course	District and Sessions Judges	23	-	23	22/4/2000-27/4/2000
21	1st In-service Training Course	Administrative Officers	45	-	45	22/7/2000-27/7/2000
22	2nd In-service Training Course	Nazirs	40	1	41	5/8/2000-10/8/2000
23	21st Judicial Administration Training Course	Senior Assistant Judges	27	6	33	19/8/2000-8/9/2000

Sl. No.	Course Title	Status of the Participants	No. of the Participants			Duration
			Male	Female	Total	
24	22nd Judicial Administration Training Course	Sub-Judges and Assistant Sessions Judges	33	3	36	16/9/2000-6/10/2000
25	23rd Judicial Administration Training Course	Sub-Judges and Assistant Sessions Judges	29	3	32	21/10/2000-10/11/2000
26	3rd In-service Training Course	Bench Assistants	40	-	40	18/11/2000-23/11/2000
27	1st Training Course	Government Pleaders	33	-	33	2/12/2000-7/12/2000
28	2nd Training Course	Public Prosecutors	38	-	38	9/12/2000-14/12/2000
29	24th Judicial Administration Training Course	Additional District and Sessions Judges	30	3	33	20/1/2001-9/2/2001
30	4th In-service Training Course	Sheristadars	45	1	46	7/4/2001-12/4/2001
31	5th In-service Training Course	Sheristadars	35	-	35	21/4/2001-26/4/2001
32	25th Judicial Administration Training Course	District and Sessions Judges	28	1	29	21/7/2001-2/8/2001
33	26th Judicial Administration Training Course	Assistant Judges	27	1	28	11/8/2001-30/8/2001
34	6th In-service Training Course	Accountants	37	1	38	8/9/2001-13/9/2001
35	7th In-service Training Course	Record Keepers	40	-	40	15/9/2001-20/9/2001
36	27th Judicial Administration Training Course	Assistant Judges	34	6	40	20/10/2001-8/11/2001
37	28th Judicial Administration Training Course	Assistant Judges	26	1	27	5/1/2002-24/1/2002
38	29th Judicial Administration Training Course	Additional District and Sessions Judges	15	1	16	31/1/2002-20/2/2002
39	3rd Training Course	Government Pleaders	45	-	45	2/3/2002-10/3/2002
40	4th Training Course	Public Prosecutors	46	1	47	16/3/2002-24/3/2002
41	30th Judicial Administration Training Course	Joint District Judges	34	3	37	2/5/2002-22/5/2002
		Total =	**1314**	**83**	**1397**	

Table 2

Extract from 5-year training plan to be implemented under the Danish Support to the Capacity Building of JATI

2000-2001

Course Title	No. of Participant	Duration	No. of Programme
◆ Basic Training Course for Newly Appointed Assistant Judges	40	4 months	1
◆ (In-service) Judicial Administration Training Course for Assistant Judges	40	3 weeks	3
◆ (In-service) Judicial Administration Training Course for Subordinate and Assistant Sessions Judges	40	3 weeks	2
◆ (In-service) Judicial Administration Training Course for Additional District and Sessions Judges	40	3 weeks	3
◆ (In-service) Judicial Administration Training Course for District and Sessions Judges	40	1 week	1
◆ Orientation Course for Ministerial Officer/ Court Support Staff	40	1 week	6
◆ Orientation Course for Public Prosecutors and Government Pleaders	40	1 week	3
◆ Workshop/ Seminar for the Judges of the Women and Child Repression Courts.	40	1 week	3

2001-2002

Course Title	No. of Participant	Duration	No. of Programme
◆ Legal Education Courses for Junior Lawyers	40	3 weeks	1
◆ Basic Training Course for Newly Appointed Assistant Judges	40	4 months	1
◆ (In-service) Judicial Administration Training Course for Assistant Judges	40	3 weeks	1
◆ (In-service) Judicial Administration Training Course for Subordinate and Assistant Sessions Judges	40	3 weeks	2
◆ (In-service) Judicial Administration Training Course for Additional District and Sessions Judges	40	3 weeks	2
◆ (In-service) Judicial Administration Training Course for District and Sessions Judges	40	1 week	2
◆ Workshop/ Seminar for the Judges of the Women and Child Repression Courts	40	1 week	2
◆ Seminar for the Judges of the Labour Courts	40	1 week	2
◆ Seminar for the Judges of the Administrative Tribunals	40	1 week	2
◆ Orientation Course for Ministerial Officer/ Court Support Staff	40	1 week	6
◆ Legal Education Course for Junior Lawyers.	40	3 weeks	2

2002-2003

Course Title	No. of Participant	Duration	No. of Programme
◆ Basic Training Course for Newly Appointed Assistant Judges	40	4 months	1
◆ Training of Judicial Educators (TOT)	40	1 week	1
◆ Training of Legal Educators (TOT)	40	1 week	2
◆ Training of Remembraser Educators ((TOT)	40	1 week	1
◆ Training of Support Staff Educators (TOT)	40	1 week	2
◆ (In-service) Judicial Administration Training Course for Assistant Judges	40	3 week	1
◆ (In-service) Judicial Administration Training Course for Subordinate and Assistant Sessions Judges	40	3 weeks	1
◆ (In-service) Judicial Administration Training Course for Additional District and Sessions Judges	40	3 weeks	1

English Translation

Reg. No DA-1

BANGLADESH GAZETTE

Extraordinary Issue
Published by the Authority

Sunday, 9th July 1995

BANGLADESH PARLIAMENT
Dhaka the 9th July, 1995/25 Asharh 1402

The following Act of Parliament received the assent of the President on the 8th July, 1995 (24th Asharh, 1402) and are hereby published for general information:-

Act No XV of 1995

An Act enacted to set up Judicial Administration Training Institute

Whereas it is expedient to arrange for training of persons appointed in the judicial service, lawyers and some other professionals connected with the judicial system in order to increase their professional efficiency;

And whereas it is expedient and necessary to set up an Institute named Judicial Administration Training Institute to arrange and organize such training;

It is hereby enacted as follows:

1. Short title and commencement :- (1) This Act may be called the Judicial Administration Training Institute Act, 1995.

(2) It shall deemed to have come into force on the 23rd March, 1995, corresponding to the 9th Chaitra, 1401.

2. Definitions - In this Act, unless there is anything repugnant in the subject or context,-

(a) " Institute" means the Judicial Administration Training Institute set up under this Act;
(b) "Chairman" means the Chairman of the Board;
(c) "Chief Justice" means the Chief Justice of Bangladesh;
(d) "Regulations" mean regulations framed under this Act;
(e) "Rules" mean rules framed under this Act;
(f) "Board" means the Management Board of the Institute;
(g) "Vice Chairman" means the Vice Chairman of the Board;
(h) "Director General" means the Director General of the Institute;
(i) "Member" means a member of the Board.

3. Establishment of the Institute. (1) As soon as may be after the commencement of this Act, the Government shall, by a notification in the official gazette, set up an Institute named Judicial Administration Training Institute in accordance with provisions of this Act.

(2) The Institute shall be a statutory authority, having perpetual succession and a common seal, with powers, subject to the provisions of this Act and rules, to acquire, hold and dispose of property, both movable and immovable, and shall by the said name sue and be sued.

4. Office of the Institute. The Institute shall have its principal office in Dhaka and, with prior approval of the government, it can set up its branch offices at any other places.

5. Administration of the Institute. The management and administration of the Institute shall vest in the Management Board which shall exercise all powers and perform all functions of the Institute.

[1]*[6. Management Board:- The Management Board shall comprise of the following members, namely-*

(a) The Chief Justice, ex-officio, who shall also be its Chairman;
(b) Two judges of the Supreme Court either sitting or retired to be nominated by the Chief Justice, and the senior of them shall be its Vice Chairman;
(c) Attorney General of Bangladesh, ex-officio;
(d) Secretary, Ministry of Law, Justice and parliamentary Affairs, ex-officio;
(e) Secretary, Ministry of Establishment, ex-officio;
(f) Secretary, Ministry of Finance (Finance Division), ex-officio;
(g) President, Supreme Court Bar Association, ex-officio;
(h) District and Session Judge, Dhaka, ex-officio;
(i) Dean, Faculty of Law, Dhaka University, ex-officio;
(j) Dean, Faculty of Law, Rajshahi University, ex-officio;
(k) Vice Chairman, Bangladesh Bar Council, ex-officio;
(l) Rector, Bangladesh Public Administration Training Centre, ex-officio;
(m) Registrar, Bangladesh Supreme Court, ex-officio;
(n) Director General of the Institute who shall also be its secretary.]

[2]***[6. A. The Advisor :** (1) The Minister or the State Minister in charge of the Ministry of Law, Justice and Parliamentary Affairs shall be the advisor to the Board.*

(2) He shall advise the Management Board when solicited and in any other matter to fulfill the purpose of the Act.
(3) The Advisor, if considered necessary, can attend any meeting of the Board.]

7. Functions of the Institute. The functions of the Institute shall be as follows:

(a) Impart training to the persons appointed in the judicial service, Law Officers entrusted with conducting of government cases, Advocates enlisted with the Bangladesh Bar Council and officers and staff of all courts and Tribunals subordinate to the High Court Division of the Supreme Court;
(b) Arrange and impart training in legislative drafting and drafting of other legal documents;
(c) Impart training in legislative drafting and drafting of other legal documents to trainees from abroad in cooperation with international donor agencies;
(d) Conduct research and investigation in respect of court management and to publish the same;
(e) Arrange and conduct national and international conferences, workshops and symposia for improvement of the Judicial system and quantity of Judicial work;
(f) Publish periodicals, reports etc. on the judicial system and court management;

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1 *Section 6 was substituted for the former section 6 by the Judicial Administration Training Institute (Amendment) Act 1997 (Act 5 of 1997) s. 2 (with effect from 24th February, 1997)*

2 *Section 6A was added by the Judicial Administration Training Institute (Amendment) Act 1997 (Act 5 of 1997) s.2 (with effect from 24th February, 1997).*

(g) Advise the Government on any matter relating to the judicial system and court management;
(h) Determine the subjects of study and curriculum and all other matters relating to training programmes under this Act;
(i) Award certificates to those trained in the Institute;
(j) Establish and manage the libraries and reading rooms;
(k) Any work, determined by rules, to activise the judicial administration system;
(l) Any actions necessary for fulfilling the above functions.

8. Board Meeting. (1) The Board, subject to other provisions in this section, shall determine the procedure of its meeting.

(2) The meeting of the Board shall be held at place and time determined by the Chairman.
(3) The Chairman shall preside over all the meeting of the Board and in his absence by the Vice Chairman and in the absence of both by a member empowered in writing by the Chairman.
(4) The presence of at least one-third of the total number of members shall be required for quorum of the meeting of the Board but no quorum shall be needed for an adjourned meeting.
(5) Each members of the Board shall have one vote, and in the case of equality of votes the presiding member shall have a second or casting vote.
(6) No actions or proceedings of the Board shall be illegal due to vacancy in the Board or defect in its formation and no question can be raised about it.

9. Committee. The Board, in order to assist it in discharging its duties, may constitute one or more committees.

10. Fund of the Institute. (1) The Institute shall have a fund, and the following kinds of money shall be deposited therein:

(a) Grants from the Government;
(b) Grants from the local authorities;
(c) Loan obtained with prior approval of the government;
(d) Sale proceeds of the property of the Institute;
(e) Fund received from any other sources.

(2) The fund shall be deposited in the name of the Institute in a scheduled bank and can be withdrawn in the procedure to be determined by the Board.
(3) Necessary expenses of the Institute shall be borne from the fund.
(4) The Institute can invest the fund in any securities approved by the government.

11. Director General. (1) The Institute shall have a Director General.

[3]*[11(a) A person who is or has been or is qualified to be a judge of the Supreme Court shall be the Director General.]*

(2) The Director General shall be appointed by the Government and the terms and condition of his service shall be determined by the government.
(3) It the post of the Director General becomes vacant, or if he is unable to discharge his duties on account of absence, illness or any other cause, a person nominated by the Government shall act as Director General till a newly

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3 *Section 11 (1a) was added by the Judicial Administration Training Institute (Amendment) Act 1997 (Act 5 of 1997) s.3 (with effect from 24th February, 1997)*

appointed Director General takes over or the Director General resumes his duties.

(4) The Director General shall be the full time Chief Executive Officer of the Institute, and he shall;

(a) be responsible for the implementation of the decisions of the Board;

(b) discharge other functions of the Institute as per instruction of the Board.

12. Appointment of Officers and Employees. The Institute can appoint required number of officers and staff for proper discharge of its duties and the terms and conditions of their service shall be determined by regulations.

13. Annual Budget Statement. The Institute shall submit, within the time fixed by the Government, an annual budget statement for the next financial year to the Government stating therein the amount of the fund required by the Institute from the government.

14. Accounts and Audit. (1) The Institute shall maintain its accounts properly and prepare an Annual Statement of accounts.

(2) The Comptroller and Auditor General, hereinafter referred to as Auditor General, shall audit the accounts of the Institute every year and submit copy of the audit report to the Government and the Institute.

(3) For the purpose of audit of the accounts in accordance with sub-section (2), the Auditor General or a person authorized by him can examine all records, documents, cash or money deposited in Bank, securities, stores and other properties of the Institute, and can question any member, officer or employee of the Institute.

15. Report. (1) The Institute, shall submit to the Government an Annual Report stating the acts performed by it in that year immediately with the expiry of each financial year,.

(2) The Government, if considered necessary, can call for reports or statements on any matters of the Institute and the Institute shall be bound to send the same.

16. Indemnity of acts done in Good Faith. If any person suffers or likely to suffer loss by any act done in good faith under this Act, rules or regulation, no civil or criminal case or any legal proceeding shall lie against the Board, Chairman, Member, Director General or any other officer or staff of the Institute.

17. Delegation of Power. The Board, subject to any appropriate condition, may delegate any of its power or authority to the Chairman, any Member or the Director General or any other officer of the Institute.

18. Power to make Rules. The Government may for the purpose of this Act, make rules, by a notification published in the official gazette.

19. Power of make Regulations. The Institute, for the purpose of this Act, may make regulations, not inconsistent with this Act or rules framed thereunder, with the prior approval of the Government by a notification in the official gazette.

20. Repeal. (1) The Judicial Administration Training Institute Ordinance 1995 (Ordinance No 2 of 1995) is hereby repealed.

(2) Notwithstanding the repeal, the acts done and actions taken under the repealed Ordinance shall be deemed to have been done under this Act.

APPENDIX-D

◆ *Form JATI Album*

The inaugural ceremony of the Institute and inauguration of the 1st training program by the Hon'ble Prime Minister of Bangladesh on 1 March, 1997.

Awarding of certificates by the Hon'ble Chief Justice of Bangladesh Mr. Justice Mahmudul Amin Chowdhury as Chief Guest in the 29th in service training course for Additional District Judges on 20 February, 2002.

Barrister Moudud Ahmed, MP Hon'ble Minister for Law, Justice & Parliamentary Affairs in the inauguration of the 28th training course as Chief Guest.

Seminar on the Bankruptcy Act, 1997 held on 2nd May, 1998 (from left) Dr. M. Zahir, Senior Advocate, Mr. Md. Aminuzzaman, M.D. Uttara Bank, Mr. Aminullah, the then Law Secretary, Mr. Khondker Ibrahim Khaled, the then Deputy Governor, Bangladesh Bank, Dr. Kamal Hossain, Senior Advocate, Mr. Abdul Matin Khasru, the then Minister for Law, Justice Mr. Md. Badruzzaman, DG, JATI, Mr. Mahmudul Islam, the then Attorney General for Bangladesh and Barrister Rafiqul Huq, Senior Advocate.

Seminar on "Curriculum Development" with the assistance of the World Bank held on 25th March, 2000 (from left) Mr. N.R. Madhava Menon, the then Member, Law Commission of India and Consultant, JATI's Curriculum Development, Mr. Jutice Latifur Rahman, Chief Justice as he was then, Mr. Justice Md. Badruzzaman, DG, JATI and Mr. Abdul Matin Khasru, the then Law Minister.

(From right to left) Mr. Justice A.T.M.Afzal, the then Chief Justice of Bangladesh, Mr. Justice Md. Badruzzaman, Director General of JATI, Mr. Justice Mostafa Kamal, the then senior most Judge of the Appellate Division and Mr. Justice Latifur Rahman, the then Judge, Appellate Division of the Supreme Court of Bangladesh is seen in a Certificate Awarding Ceremony of the 13th In-service Training Course for Judges.

A section of participants and guests with the Directors of JATI are seen in the Inaugural Session of the 24th In-service Training Course for Additional District & Sessions Judges

Some participants with a Resource Person in a session of the Intensive Study Program for Judicial Educators organized by Commonwealth Judicial Education Institute in Canada from June 15 to July 03, 1998.

JUDICIAL ADMINISTRATION TRAINING INSTITUTE