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JUDICIAL ADMINISTRATION TRAINING INSTITUTE
OLD HIGH COURT BUILDING, DHAKA.

JATI JOURNAL

A collection of writings on various judicial and legal topics

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FROM JATI ALBUM

Begum Khaleda Zia, Honible Prime Minister of Bangladesh installed the foundation stone of Judicial Administration Training Institute Complex (JATIC) on 22 May, 2003. On her left Barrister Muhammad Shahjahan Omar Bir Uttam, Honible State Minister of Law, Justice & Parliamentary Affairs, Barrister Moudud Ahmed, Honible Minister for Law, Justice & Parliamentary Affairs, Mr. Justice Mainur Reza Chowdhury, Honible Chief Justice of Bangladesh and Mr. Fredrick T. Temple, World Bank, Dhaka, Bangladesh.

Judicial Administration Training Institute Complex (under construction).

Mr. Justice Mainur Reza Chowdhury, Honible Chief Justice of Bangladesh presiding over the 12th Meeting of Board of Management of Judicial Administration Training Institute held on 26 April, 2003. On his right Barrister Moudud Ahmed, Honible Minister for Law, Justice & Parliamentary Affairs, Mr. Justice Md. Ruhul Amin, Honible senior most Judge of the Appellate Division of the Supreme Court of Bangladesh and on his left Mr. Justice Md. Badruzzaman, Honible Director General of Judicial Administration Training Institute.

Barrister Moudud Ahmed, Honible Minister for Law, Justice & Parliamentary Affairs is seen as Chief Guest at the inauguration ceremony of 31st Judicial Administration Training Course for the District & Sessions Judges held from 18 July, 2002 to 31 July, 2002 at this Institute.

(From right to left) Mr. Justice K.M. Hasan, Honible Judge of the Appellate Division of the Supreme Court of Bangladesh, Barrister Moudud Ahmed, Honible Minister for Law, Justice & Parliamentary Affairs and Mr. Justice Md. Badruzzaman, Honible Director General of Judicial Administration Training Institute is seen in the 6th Judicial Education and Training Programme on Alternative Dispute Resolution on 12 April, 2003.

Mr. Ove Fritz Larsen, the then Minister Counsellor of Royal Danish Embassy with Mr. Justice Md. Badruzzaman, Director General, JATI, Ms. Bodil Ruberg, Senior Project Advisor and Mr. Kazi Habibul Awal, the then Project Director, Legal & Judicial Capacity Building Project is seen in the Steering Committee Meeting of the DANIDA-JATI Project at Gulshan, Dhaka.

Mr. Justice Md. Badruzzaman, Honible Director General of the Judicial Administration Training Institute attended the First Australasia Judicial Educators Forum held from 11 February, 2003 to 14 February, 2003 at Manila, Philippines. On his left Honible Chief Justice of Philippines and on his right Honible Chancellor & Vice-Chancellor of the Philippine Judicial Academy and another.

A section of participants with the Directors of Judicial Administration Training Institute are seen in the inaugural session of the 35th Judicial Administration Training Course for the Additional District & Sessions Judges under the Support to Capacity Building of JATI Project.

FROM THE DESK OF DIRECTOR GENERAL

Training is an essential and integrated part of human resource development activities and this applies with equal force in the matter of judicial education and training. The Judicial Administration Training Institute was set up for enhancing the knowledge and professional skill of the judges and others connected with the administration of justice to ensure just, speedy and inexpensive justice to the citizens. The curriculum of training course has been designed to enable the persons connected with the administration of justice to achieve those objectives and to equip them properly for discharging their responsibilities. Besides orientation of the law dealt with by the trainees, training on computer literacy and some cross cutting issues are being provided in the training program.

JATI has so far organized 58 training programs providing training to 1236 judges, 338 court support staff and 335 law officers of the Government. Besides the faculty members of the Institute, resource persons on amongst others, include the judges of the Supreme Court, reputed lawyers and subject matter specialists who have proficiency in imparting judicial education. Hon'ble Chief Justice of Bangladesh and Hon'ble Minister for Law, Justice and Parliamentary Affairs and other legal luminaries are invited as resource persons in the training program of JATI.

JATI is temporarily housed at Old High Court Building, Dhaka. It will shift in near future to the JATI complex at 15, College Road, Dhaka planned to be constructed with the financial assistance of the World Bank under the "Legal and Judicial Capacity Building Project." The present shortage of accommodation, which hinders the desired expansion of activities of the Institute is likely to be overcome with the construction of JATI Complex. The Danish Government has also agreed to provide assistance for equipping the complex with modern training tools.

According to the section 7 of the Judicial Administration Training Institute Act, 1995 (Act No. XV of 1995) one of the important functions of the Institute is to publish periodicals, reports etc. on the judicial system and court management. The Institute has already published JATI Journal, Vol. I as its first issue in May, 2002. In continuation with that the Institute is going to publish this volume of JATI Journal.

Our laws under go changes frequently. All students of law, judges, legal practitioners alike need to update themselves on these changes. JATI has made endeavour to bring out this periodical covering the current topics and critical appraisals covering law made and law in the making. The present issue of JATI Journal comprises of collected dew drops of wisdom, social ethics and legal perspectives flowing from the pen of the distinguished judges and academicians, which is likely to enlighten all its esteemed readers on diverse thoughts, ideas and subjects.

I express my sincere gratitude to all those who contributed in this issue.

May, 2003
Dhaka

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

SPEECH AT THE JATI *

- Justice Md. Joynul Abedin

My Lord the Chief Justice of Bangladesh Mr. Justice Mainur Reza Chowdhury, Chief guest of today's function, My Lord Mr. Justice Md. Ruhul Amin, the senior most judge of the Appellate Division and the special guest of today's function, Director General of the Judicial Administration Training Institute (JATI) Mr. Justice Md. Badruzzaman, Honourable Judges of the Appellate Division and my fellow judges and also the former judges of the High Court Division present, learned resource persons present, Additional District Judges, who just completed their training here, functionaries of JATI present Assalamo Alaikum.

It is indeed a great privilege for me to have an opportunity to speak this evening before this selected gathering comprising legal luminaries and legal experts. Bangladesh is just born the other day as an independent sovereign country. But its judiciary has a long and rich heritage and tradition. Subordinate judiciary is the foundation of the judiciary of Bangladesh. We all are therefore interested to see and ensure that the foundation always remains strong. It is with this end in view JATI has been doing wonderful job in arranging short but regular training, so that the members of the subordinate judiciary are enriched with the legal knowledge and are capable to keep pace with the changing concepts in legal education. This training, I am sure, will help keep themselves alive to the great obligation that lies upon them to play their part in shaping the life of the community and the country. The profession or the office of a judge no doubt claims for a greater knowledge or greater intellectual grasp.

Search for the right and for the remedies has caused the concept of *"locus standi"* to undergo much change all over the world over the years. There has been a great change in the concept of the "aggrieved person." This has been mainly in the public interest litigations where even a public spirited person or body of persons have been allowed to knock the door of the Court for relief on behalf of socially disadvantageous people in this subcontinent. Judges of all courts, be that of the subordinate or higher judiciary, must keep themselves well-apprised of this useful, beneficial and contemporary concept to provide desired relief to cater the need of the civil and democratic society.

A judge is not only required to be well-equipped in legal learning but is also expected to maintain his manly independence, courteous dignity, stiff but polite disposition. These are indispensably necessary to create an atmosphere of

confidence in the mind of the members of the litigant public that he will get proper justice.

This apart, a judge is also expected to have 4 things: clear conception, comprehension, compassion and integrity as a pre-requisite in administering justice. He should never be mechanical in his approach in adjudicating any dispute. He should resolve any such dispute not only with legal acumen but with clear conception with required compassion. He must give undeviating attention to the case, as an wandering mind achieves nothing but an erratic judgment.

In our country, nay of the whole world, the ever increasing expense of litigations, frightful back-log of cases resulting in delay in disposal of them have eroded the confidence of the people in the judiciary. This has made it all the more necessary for the judges not only to accelerate the pace of disposal of cases but to impose necessary discipline at different stages of trial of cases to avoid unwanted and unnecessary growth of cases. "This obviously needs constant vigilance, alertness and application of mind by the judges. Various reformative measures are being taken in our and also in other countries, such as ADR. The judges these days must keep attuned to these reforms.

Additional District and Sessions Judges being No. 2 in the order of seniority in a judgeship, I understand, are mostly involved in the trial of important and intricate criminal cases. I have noticed, while sitting as an appellate court over their judgments in many cases, that they had no control over the proceedings during trial. Unduly long evidence is recorded, most of them are not relevant. Such evidence is recorded for not being able to stop the defence lawyer to make unnecessary pointless cross-examination, which could have been curved and precious courts' time could have been saved if they were aware of the rules of Evidence namely, section 5 evidence of relevant fact, section 60-oral evidence must be direct, section 64- proof by primary evidence, section 136-admissibility of evidence and section 165 Judges power to put question to discover or obtain proper proof. In a trial of a case, whether civil or criminal, the trial judge must stop the witness giving inadmissible evidence whether it is objected to or not by the lawyers of the parties. The judge should exercise his discretion in using powers conferred by the said sections to disallow cross-examination on immaterial and irrelevant matter or needlessly lengthy cross-examination even on a relevant matter. In essence, the judge must not loose control over the proceeding. I would urge them to be mindful in this regard.

I would also advise them not be mechanical in granting adjournments. Granting of adjournment should not be as a matter of course or right. There has to be an application of mind in every case to avoid granting unnecessary and frivolous adjournments.

I hardly need emphasis that judges must sit and rise in time. The judges, like the students, must cultivate and inculcate the habit of reading the law books and the law journals. A tray full of law books of day-to-day use must be at hands while holding the court so that they can easily reach out for reference whenever necessary. This improves efficiency.

Arrest by police u/s.54 Cr. P. C. and seeking remand of the arrestees under section 167 Cr. P. C. at the time of producing them before the Court to enable them to procure materials to start a case against them is illegal and should not be allowed. Remand to police custody is only permissible where regular case has commenced on lodgment of F.I.R. Because this is a part of investigation. The police however is not permitted in law to subject the accused to any manner of physical torture, farless any third degree method for extracting any materials in the name of investigation. But in most cases of arrest under section 54 Cr. P.C. there exists no regular case. In recent days there is a serious out-cry to remove section 54 from the Code of Criminal Procedure. I find no force in that. Corresponding provision is also available even in many developed countries. But such countries have also enacted mechanism to curb abuse of such provision of arrest without warrant. We may consider such mechanism by way of amendment of the section.

I like to take this opportunity to remind the Sessions, Additional Sessions Judges and Assistant Sessions Judges to be acquainted with the relevant sections, particularly sections 5, 60, 64, 136 and 135 while conducting sessions trial. I would also remind them not to forget in sending the case diary in criminal cases involving capital punishment.

The training just concluded, I am sure, has immensely benefited the Additional District & Sessions Judges. Because it not only provided opportunity to them to hear from and discuss legal problems with legal experts but it also helped them sort out all by themselves through interactions among themselves. I would urge the Additional District and Sessions Judges, who just successfully completed their training, to retain whatever they have been taught and have learnt and use them during their day-to-day judicial works back at their respective stations. They should not consider their short period of stay here in training as a pastime or a joy-ride on the JATI. I wish all of you god-speed and best in life.

Thanking you.

**The speech delivered on behalf of the Resource Persons at the Certificate Awarding Ceremony of the 35th Training Course for Additional District & Sessions Judges on 5th March, 2003.*

PRESENT COMPOSITION OF LABOUR COURT AND DIFFICULTIES IN ADJUDICATION OF CASES

- Justice Zinat Ara

Introduction :

As the very name indicates, Labour Court is a special Court. It is the creature of a statute namely, the Industrial Relations Ordinance, 1969 (IRO). However, the Court does not deal with all cases involving labour problems. The IRO confines the Court's jurisdictions mainly to the adjudication of the Industrial disputes under this Ordinance for enforcement of rights guaranteed to or secured for employers, workers and collective bargaining agents.

The Court is also empowered to try the offences under I.R.O. and to adjudicate other matters when the relevant law or in some cases, the Government decides to confer jurisdiction on the Court.

However, the principal object of establishment of Labour Court is the speedy disposal of industrial disputes. But my experience is that the attainment of the objects is being hampered for a number of reasons. One of the major reasons is the composition of Labour Court as reflected in day to day function.

This paper is an attempt to highlight the problems arising out of the present composition of Labour Court and to suggest some solutions to these problems. To this end, this paper focuses on the following:

Section-1- Unique composition of Labour Court.
Section-2- Appointment of chairman and selection of members.
Section-3- Legislation and Practice for disposal of cases.
Section-4- Problems and consequences.
Section-5- Adjudication of some labour disputes by chairman only.
Section-6- Present statutory provisions in India and Pakistan.
Section-7- Suggestions.

1. The unique composition of labour Court :

As a statutory Court, its composition, Jurisdiction, procedure, etc. are regulated by the IRO and the Rules made thereunder.

Section 35(2) of the IRO provides that "a Labour Court shall consist of a Chairman appointed by the Government and two members to advise the Chairman, one to represent the employers and the other to represent the workmen ....." The Chairman is normally selected from amongst District Judges, and the other two members are selected in accordance with the rules.

Such composition is unique in as much as, unlike other Courts, Labour Court, has a representative character which is ensured through some sort of mandatory provision for presence of the representatives of both employers and workmen. The Court is also special in that it has both civil and criminal jurisdiction in relation to the matters adjudicated by it.

The composition of a Labour Court has some similarity with that of a village Court (also a statutory Court). In case of a village Court however each side of a particular case may nominate one person as members of the village Court. The village Court consists of 5 members with the Chairman of the local body (Union Parishad).

2. Appointment of chairman and selection of members, etc :

The Government may appoint the chairman of the Labour Court from amongst persons qualified to be a Judge or an Additional Judge of the High Court Division or from amongst District Judges or Additional District Judges as per provision of section 35(3) of the IRO.

However, to my knowledge, since the establishment of Labour Courts in this country, only District Judges have been appointed as Chairman of Labour Courts.

For the purpose of appointment of the two members, the Government, by notification in the official Gazette, constitutes for each Labour Court two panels, one for the representatives of employers and the other for representatives of workmen. The panels so constituted remain valid for two years. However the members continue on such panel after the expiry of two years till a new panel is notified. Each panel consists of not more than five persons.

The panel is constituted in consultation with the Organizations of the employers and workmen.

After publication of the panels of the representatives of employers and workmen, Government has nothing to do in respect of selecting a particular member to deal with any case. That part is the job of the Chairman.

4. Legislation and practice for disposal of cases :

Section 35(2), (4A) and (7) of the IRO deals with the constitution of a Labour Court. According to these provisions the Court comprising the Chairman and one representative from each of the two panels is to be constituted for each individual case.

Legal question has been raised whether the constitution of the Court is valid if on the first hearing of a particular case presence of the chairman and both the members are mandatory. The superior Courts have replied to this question in the positive.

However, if one member is absent in any subsequent sitting of the Court, the proceedings of the Court may continue and decision and award may be given in the absence of such member.

But what happens if both the member are absent on a subsequent day? The Chairman of Labour Courts appears to be confused on this issue. Section 37(7) provides that any act, proceedings, decision or award of the Court shall not be invalid or be called in question merely on the ground of absence of any members or on the ground of any vacancy in, or any defect in the constitution of the Labour Court. The word "any member" is generally understood by the Chairmen, members, lawyers and others concerned to mean "One member". Section 13(2) of the General Clauses Act provides that 'singulars' includes 'plural'. But in the arena of Labour Court we are confused. The practice is that if both the members are absent the case is adjourned.

Now let me throw some light on how the Chairman of a Labour Court handles a case with regard to ensure presence of members. The Chairman at first selects the names of members one from employers panel and another from workmen's panel, and thus pre-fixes the dates on which such selected members are to attend the sitting of a Court. Such advanced dates are fixed generally for two/ three months and it is duly notified to the members.

A sample of such list is as follows :

"In pursuance of section 35 of the Industrial Relations Ordinance..... the following learned members are requested to remain present at 9.30 a.m. as members of Labour Court.....

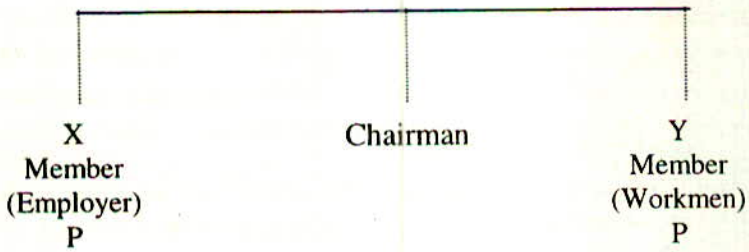
1.	a.	Name of Member (employer)	Dates
		Designation	
		Address	
	b.	Name of Member (Workmen)	
		Designation	
		Address	
2.		....."	

For disposal of a particular case, the chairman of a Labour Court constitutes the Court with himself and these named members (employer and workmen) who are present on that day. If hearing is not completed on that day (which is normally common), then the next date of hearing of that particular case is to be fixed for further hearing when the said members' attendance dates are pre-fixed.

On the next date if both members or a single member of the constituted Court for that particular case is present then the hearing continues. If both the members are absent then the case is again adjourned and the next date is fixed in the above-mentioned procedure. This is done to avoid any doubt as to validity of the composition of the Court and also to ensure transparency.

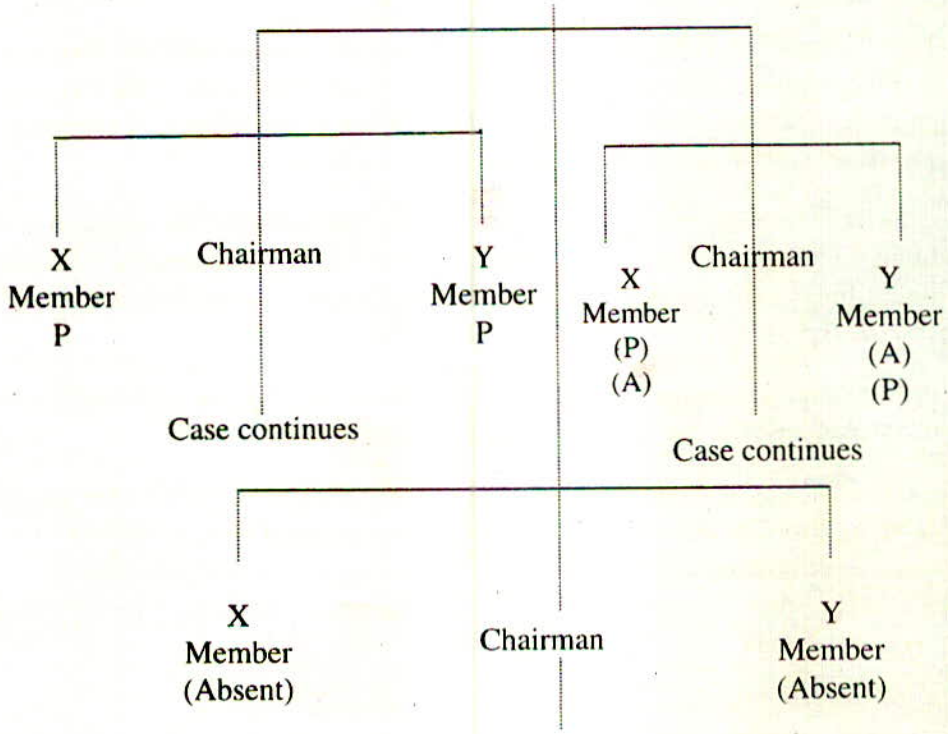
FUNCTIONAL COMPOSITION OF A LABOUR COURT FOR A PARTICULAR CASE

FIRST DAY



X or Y Member absent case to be adjourned.

SUBSEQUENT DATES



Case adjourned

P - Present
A - Absent

4. Problems and Consequences :

The present practice is that on a particular day only two members representing two sides are notified to attend the Court. If a new case is fixed on that date and one member is absent the hearing of the new case cannot commence. Because according to section 35(2) and (4A) of IRO the Court has not been constituted, in relation to that case. Consequently that case must be adjourned for another day on which these two members are expected to attend the Court according to the prefixed schedule. These dates are generally at an interval of one to two months.

However if on the first hearing both members are present the Court is properly constituted for the particular case and the proceeding of the case may continue even if one member is absent. But if both the members are absent in any subsequent sitting, the Court cannot function although the Court was properly constituted at the beginning. So, the case is to be adjourned and the next date is to be fixed in the manner as stated earlier.

The Chairman is a full time Government official who attends the Court regularly. But the members do not work on full time basis. They have their own Job/ profession. So, many of them are naturally reluctant to attend the Court regularly. The result is unavoidable delay in disposal of cases.

A member may be removed for his absence in three consecutive sittings of the Court without the leave of the chairman [rule 33(d)] of the Industrial Relations Rules. But the Government is generally very reluctant to do so even though such absence is reported.

In fact some of the Chairmen are also reluctant to write to the Government for removal of absentee members to avoid embarrassment.

As a result the existing composition of Labour Court is causing unnecessary delay in disposal of cases. The main reason for establishment of Labour Court was speedy disposal of cases. But the same is being frustrated for its composition itself. Thereby it is causing immense suffering for the litigant people specially the poor workers.

5. Different system of adjudication of some industrial dispute :

Industrial disputes as defined by the IRO no doubt connotes a broader sense than a dispute between a worker and his employer. But in practice, most of the cases brought before the Labour Court are disputes between individual/ group of

workers and employers. Whatever might have been the rationale of the representative member-system in the composition of Labour Court, the reality is that it is not yielding the expected result. That situation is perhaps known to the law makers and accordingly they have prescribed different procedures for some labour dispute. Thus the labour dispute arising out of the Payment of Wages issues under the Payment of Wages Act, 1936 is to be disposed of only by the Chairman of a Labour Court, who is authorized by the Government by a Gazette notification. SRO No. 298-Ain/94/Sha-6/M-4/94, dated 8-10-1994.

Similarly, the disputes over the payment of compensation to workmen under the Workmen's Compensation Act, 1923 are also adjudicated by the Chairman of a Labour Court only, who is authorized to resolve these disputes by virtue of a Gazette notification SRO NO.299-Ain/94/Sha-6/M-4/94, dated 8-10-94.

Even certain cases under the Emigration Act, 1982 are adjudicated by the Chairman of Labour Court alone [section 26(2) of the Emigration Act]. However, these cases are relating to violations of the provisions concerning probable emigrant worker, who are not organized. But the rationale of the jurisdiction conferred on the Chairman is that these would be emigrants who are mostly labourers.

The disputes under these statutes do not suffer from any functional difficulties concerning composition of a Labour Court, since representative membership system is absent.

6. Present Statutory Provisions in India and Pakistan :

India has the provision of constitution of Labour Court consisting of one person only (section 7 of the Industrial Dispute Act, 1947). Hereunder section 7A of the same Act there is also provisions for constitution of Industrial Tribunal for adjudication of specified industrial disputes. Under section 7A (2) of the said Act, A Tribunal shall consist of one person only to be appointed by the Government.

However, section 7-A(4) provides that the Government may, if thinks fit, appoint two persons as assessors to advise the Tribunal in the proceedings.

On the other hand both Pakistan and Bangladesh i.e. erstwhile East Pakistan had the same legislation with regard to composition of Labour Court.

However, Pakistan has emended the composition in 1973 and adopted a one person Court consisting of a presiding officer only.

7. Suggestions :

In order to avoid the difficulties arising out of the present composition of a Labour Court the following alternatives are suggested:

1. A Labour Court shall ordinarily consist of a Chairman appointed by the Government, and two full time ex-officio members selected by the Government from amongst person holding certain position in certain organization, industry, etc. The tenure of the members may be for six months. Their role will be only advisory and their presence will not be mandatory for any stage of a case.

The full time membership of the representatives of workers and employers will ensure their participation in the Court.

However, in this process, the organization from whom an ex-officio member is appointed is to attend the Court for a continuous period of six months. This may give raise to some difficulties. But the difficulty for the absence of a member from duty in his organization for six months is affordable in the context of Bangladesh. Because most of the members are generally appointed from state owned enterprises or big industries. As such there would be no difficulty in implementing this procedure. Moreover, there are only 7 (seven) Labour Courts in Bangladesh and only fourteen members would be necessary for this purpose.

2. The second alternative is that the requirement of inclusion of the employers and workers representative may be done away with. India and Pakistan have already enacted legislation like this. To my knowledge the system is working in both the countries without any difficulty.

PUBLIC INTEREST ENVIRONMENTAL LITIGATION IN BANGLADESH

- Justice Naimuddin Ahmed

Attempt to commit suicide is a punishable offence in probably throughout the world. The human race has begun the process of committing suicide throughout the whole world by destroying the global environment. I do not use the soft word "polluting", I use the word "destroying". You will see the process of destruction in the rain forests of Brazil, in the Ganga of India, in the Himalayas of India, Nepal and Tibet, in almost all the cities throughout Asia, Europe and America. The mountains and hills of Arabia, Egypt, India, Pakistan, Bangladesh are levelled indiscriminately to make room for multiple- star hotels, factories and commercial buildings by multi-national companies. Even the mighty Atlantic and the Pacific have become jimmies at the hands of powerful shipping companies, fishing companies, and oil companies as a result of which aquatic lives are being destroyed in millions everyday. Human greed is, in the modern world, the greatest enemy of nature and this greed is the greed of the rich. The poor villager who cuts the branches of a tree in a government forest for providing fuel for cooking causes very little damage to the forest compared to the rich timber merchant who smuggles out truck-loads of timber from forests for fattening his already fat bank account.

It is true that there is need for technological and industrial development in order to cope with the high rate of growth of population, particularly, in the developing countries but since population growth and consequent technological and industrial development pose grave danger to environment and all living organisms including the human race, ways must be found out to stop all types of pollution of the environment-water, air, noise and a variety of others. The Stockholm Conference, 1972, the Habitat Conference, 1976, the World Water Conference, 1977, and the well known Earth Summit in Rio played significant roles in raising global awareness for protection of environment.

The Courts have also a duty in respect of environmental issues and while discharging this duty the traditional notion of *"locus standi"* has become irrelevant. When the issue is environmental pollution, the issue involves general public interest and when general public interest is involved any person other than

a busybody or an interloper must be allowed standing to approach the Court and heard whether he is personally aggrieved or not. The Court should turn him out only if he is found to be an interloper.

The above principle has been reiterated in a number of cases by the Indian Supreme Court and at least in one case by our Supreme Court.

Before referring to the specific cases it will be convenient if reference is made to certain enactments with regard to environmental law in Bangladesh. Let us first refer to the Constitution. Although by sub-clauses (a) and (b) of clause (1) of Article 143, all minerals and other things underlying any land and all lands, minerals and other things of value underlying the ocean within the territory of Bangladesh vest in the Republic, no specific provision has been made anywhere in the Constitution for protection of the environment. By an amendment in the Indian Constitution in 1976 it has been embodied that it is the fundamental duty of every citizens "to protect and improve the natural environment, including forests, lakes, rivers and wild life and to have compassion for living creatures." It has also embodied a directive principle of state policy which begins thus: "The state shall endeavour to protect and improve the environment and to safeguard the forests and wild life." (Article 51 A(g) and Article 48 A of the Indian Constitution). There are, however, many enactments aimed at protecting the environment in direct as well as indirect ways, such as Chapter X and XI of the Code of Criminal Procedure, Chapter XIV of the Penal Code, the Public Parks Act, 1904, the Smoke Nuisance Act 1905, the Destructive Insects and Pests Act, 1914, the Poisons Act, 1919, the Agricultural and Sanitary Improvement Act, 1920, the Mines Act, 1923, the Factories Act, 1965, বাংলাদেশ পরিবেশ সংরক্ষণ আইন, ১৯৯৫, etc. The last mentioned Act is important for more than one reason. It is a comprehensive Act providing for setting up a Department of Environment and adoption of measures for protection of the environment in various ways. One thing must be remembered. Legislation is one thing and its implementation is a different thing. It is with respect to the latter aspect that the Court's intervention in the shape of public interest litigation for protection of environment has become necessary.

We will now discuss a few of the cases on this burning issue. On *locus standi* the Indian Supreme Court decisively held in S.P. Gupta's case (S.P Gupta V. Union of India, AIR 1982 SC 149):- "The view has therefore been taken by the Courts in many decisions that whenever there is a public wrong or public injury caused by an act or omission of the state or public authority which is contrary to the

Constitution or the law, any member of the public acting bona fide and having sufficient interest can maintain an action for redress of such public wrong or public injury." Destruction of environment is certainly a public injury.

Probably, the first public interest litigation case in India in the area of environmental law is the Limestone Quarry or the Doon Valley case (Rural Litigation and Entitlement Kendra, Dehradun V. State of U.P.(AIR 1985 SC 652; AIR 1987 SC 359; AIR 1987 SC 2426). In this case, by a letter dated 14 July, 1983, a voluntary organization, the Rural Litigation and Entitlement Kendra, complained of unauthorized and illegal mining in the Mussorie-Dehra Dun belt which adversely affected the ecology of the area and led to environmental imbalance. The Supreme Court of India directed the matter to be registered as a writ petition and after having directed closure of all but eight limestone quarries in the Doon Vally in view of the reckless destruction of the habitat and the grave ecological imbalance in the area. This case emphasized the need to protect people's right to unpolluted air, water and environment above the private interest of the lessees.

The next landmark cases in the Indian Supreme Court are M.C Mehta and another V. Union of India and Others and Shriram Foods and Fertiliser Industries V. Union of India (1986) 2 S.C.C 176, which were heard together. The cases arose in connection with leakage of oleam gas from the plant of SFFL affecting a large number of persons both amongst the workmen and the people in the neighbourhood. It was a public interest litigation (the former one) initiated by Mr.M.C Mehta who was not directly affected by the leakage. The Court held the management of the SFFL guilty of negligence in the operation and maintenance of the caustic chlorine plant and of not taking necessary measures for improving the design and quality of the plant and the safety equipment to ensure maximum safety of the workers and the people of the neighbourhood. It was held that a company can be forced to adopt necessary measures to ensure proper safety of all concerned and to bear the costs of monitoring the plant. It was a case in which the traditional concept of *locus standi* was brushed aside and the principle of entertaining litigation involving public interests initiated by a public-spirited person (although having no direct interest) was established.

Then Mr. M.C Mehta again. He filed a writ petition urging a pollution-free Ganga [the Ganga Pollution Case, M.C. Mehta V. Union of India, (1987) 4 S.C.C 463]. The Court ordered the closure of a number of tanneries since they were found guilty of discharging toxic waters in the river.

The next important case is the Bhopal Gas leak case. It was a landmark decision with regard to environmental issues.

In Bangladesh, the most important case so far decided on the question of locus standi is Dr. Mohiuddin Farooque V. Bangladesh [49 DLR (AD) (1997)1]. In this case, Dr. Mohiuddin Farooque, and Advocate and Secretary-General of a private lawyers' association named Bangladesh Environmental Lawyers Association challenged construction of certain embankments in the District of Tangail on the ground that the said embankments would disturb the ecological balance and thus cause floods and other calamities. His challenge was met by the respondent by a challenge of his *locus standi* as, admittedly, he being a lawyer living in Dhaka, had not even the remotest connection with Tangail. The High Court Division relied on a decision of the Appellate Division, the Bangladesh Sungbad Patra Parishad case [43 DLR (AD) 126] and threw Dr. Mohiuddin Farooque out of the Court saying that he had no *locus standi*. Dr. Mohiuddin Farooque went to the Appellate Division only on the question of *locus standi*. Happily, the highest court said the case was in the nature of public interest litigation and Dr. Mohiuddin Farooque must be heard in the matter.

I would like to end with a quote from Mr. Justice Umesh C. Banerjee of the Calcutta High Court who said in a seminar in Dhaka in October, 1992:- "As times have changed, the concept of law has also changed. In to-day's context, we can not over-emphasise the need for judicial dynamism in entertaining application for the effective redress of genuine grievances with regard to the violation of statutory duties by way of public interest litigation."

THE LAW OF THE SEA: AN INCOMING STUDY FOR THE MILLENNIUM

- Dr. M. Habibur Rahman

1. Introduction :

The issues of the law of the sea are rather practical than theoretical. The twentieth century is ended with the magical development of science and technology giving rise to enrichment and ruination of mankind and the species of all kinds whether living and non-living. The twenty-first century is with questions whether so may mass destructive weapons and mass enrichment gains will be left unused or be used for human development by the states possessing. The law of the sea cannot be unquestioned as to its enforcement against nuclear test in the ocean space. The touchstone of the study will be the notion that the New Millennium will be reflected by the rules of international regime governed by conventions, customs, general principles, judicial decisions, teachings of publicists and ex aequo et bono with a suggestion for inclusion of distributive principles to help promote come together with a feeling to each other.

2. Innovatory Approach :

At present the law of the sea has achieved an entity of its own as a separate and an important discipline of international law. Earlier, it was embodied in most of the texts and monographs to be studied as a part under maritime jurisdiction or as a part of state territory. The idea of developing international law through the restatement of existing rules or through the formulation of new rules is not of recent origin. In the last quarter of the eighteenth century Jeremy Bentham proposed a codification of the whole of international law, though in a utopian spirit. Since his time, numerous attempts as codification have been made by private individuals, by learned societies and by Governments. The history of the modern international law of the sea can perhaps be best understood by perceiving it as a continual conflict between two opposing, yet complementary, fundamental principles-territorial sovereignty and the freedom of the high seas.[2] Because of the manifold and complex problems which it confronts, the law of the sea is now the most interesting and challenging areas of growth in the body of international law. For three centuries-from the beginning of seventeenth century to our time, it was a stable regime. The rules were established on an open doctrine of the freedom of the sea. The four freedoms have now developed to six freedoms, but the doctrine is till now a good philosophy for nations with strong navies, and the people who have power and technology want the freedoms to apply for their own

interests.[3] But the small, weak, poor and underdeveloped nations cannot take advantage of the freedoms in the same degree.

The international law of the sea is governed by the United Nations Convention on the Law of Sea, 1982. The very unregulated ocean space the seabed and ocean floor and subsoil thereof beyond the limits of national jurisdiction (Area) to be governed by the provisions of the Convention through the International Seabed Authority (Authority) has now been a domain of burning issues between the developing and developed states.[4]

The Treaty Banning Nuclear Weapons Tests in the Atmosphere, in the Outer Space and Under Water, 1963 though existing but states are seldom seen to be unreserved to it.[5] States are not particular to honour it. Moreover, they are not seen indifferent towards their interests even at the cost of nuclear tests. Defenses are made with pleas that tests are carried out within their territories.[6] Despite Court's verdict against Nuclear Tests France did not comply with it.[7] There is then a scope to innovate a rule governing distribution of justice in matters of the Area and its resources between haves and have-nots and between the states who can and cannot effectively participate in the activities of the Area.

3. The Legal Regime of the Area :

The Area and its resources conventionally known as the common heritage of mankind are very much concerned with all activities of their exploration and exploitation. Activities in the Area are concerned with all activities of exploration for, and exploitation of the resources of Area.[8]

The practice of the high seas necessitates on the strategic activities on the high seas. A significant restriction on the strategic use of the high seas has been imposed by the establishment of the nuclear test ban. Article 1 of the Nuclear Test ban Treaty prohibits explosions in the areas of the high seas: "Each of the parties to this Treaty undertakes to prohibit to prevent and not to carry out any nuclear explosion, or any other nuclear explosion on any place under its jurisdiction of control; including territorial waters or high seas". According to this provision nuclear explosions are prohibited in all areas of the high seas, that is to say, not only on the surface of the high seas, but also in the subsoil on the seabed and in the water mass beneath the high seas, and in the airspace above the high seas.[9] Considering that nuclear explosions hinder navigation and aviation in the areas of the high seas, the nuclear test ban promotes the freedom of the high seas.

All rights in the resources of the Area are vested in mankind as a whole, on whose behalf the Authority shall act. These resources are not subject to alienation. The minerals recovered from the Area, however, may only be alienated in accordance with the rules, regulations and procedures of the

Authority. No state or natural or juridical person shall claim, acquire or exercise rights with respect to the minerals recovered form the Area except in accordance with Part XI of the LOS Convention. Otherwise, no such claim, acquisition or exercise of such rights shall be recognized. Activities in the Area shall be carried out for the benefit of mankind as a whole, irrespective of the geographical location of states, whether coastal or land-locked, and taking into particular consideration the interests and needs of developing states and of peoples who have not attained full independence or other self-governing status recognized by the United Nations. The Authority shall provide for the equitable sharing of financial and other economic benefits derived from activities in the Area through any appropriate mechanism, on a non-discriminatory basis.[10]

It seems that an international legal regime may rationally be effective. But where capital, equipments, technology and expertise are largely involved as a result, there is no doubt that the developed states will be substantially benefited from activities to be carried out under the existing international regime. It is, therefore, felt that the international legal regime in spite of its existing rules may need some more rule to face situations likely arising.

4. The Rules of International Regime :

The interplay of political and military rivalry and cultural and commercial intercourse between different considerations can be traced through most of the recorded history, but this interplay remained intermittent until the maritime discoveries of the fifteenth and sixteenth centuries inaugurated the age of western supremacy. Only with the industrial revolutions of the eighteenth and nineteenth centuries did the economic interdependence of nations begin to foreshadow its contemporary importance. World politics remained until the dawn of the twentieth century essentially a projection over a wider area of the interplay of the interests and politics of the major European powers.[11]

Nuclear energy and space are the most dramatic illustration of the need to deal with the impact of science and technology on human destiny on a worldwide basis, but the problem is a much broader one and includes all the manifold ramifications, over the whole range of current scientific and technological development, of the determination of the rule of law in man's control of, and adaptation to, this challenging natural environment.[12]

Those rules which have come to be associated with the vital safety of the community are those which are not likely to be enforced by the community both by means of condemnation by public opinion and any sanctions within the community's command.

With the coming of nuclear age, the threat or use of force by any member of the community except in self-defense and subject to community review and

condemnation has become dangerous to be tolerated and world community exercising itself in the General Assembly of the United Nations and through all available media of expression may be said to have served notice that such aggression must not occur again.[13]

The rules of international legal regime are enshrined in Article 38 of the Statute of the International Court of Justice. The court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply: (i) international convention whether general or particular, establishing rules expressly recognized by the contesting states; (ii) international customs, as evidence of a general practice accepted as law; (iii) the general principles of law recognized by civilized nations, (iv) judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law. Moreover, this provision is considered not to prejudice the power of the court to decide a case ex aequo et bono if the parties agree thereto.

In solving problems the application of equity in international law is substantial although it has not been embodied in Article 38 of the state the Court. The UN conventions on the Law of the Sea, 1982 has devised it for equitable solution for delimiting maritime boundaries between states with opposite or adjacent coasts.[14] Although equity and ex aequo et bono appear to ensure from a twinbed but there is a difference between the two. Equity has an entity of its where as ex aequo et bono has to come into effect if the parties agree thereto. The umpire in the case of equity is free to apply whereas in the case of ex aequo et bono he has to depend on the consent of the parties.[15]

The aftermath of the Great Wars has substantiated all disputes to be settled by peaceful means the League of Nations followed it but finally failed. The United Nations is also destined to settle dispute through its prescribed means to maintain international peace and security.[16] What to take into account is the fact that the twentieth century is the victim of ruination of the Great Wars and at the same time is the innovator of international legal system.

In the phases of magical development of science and technology, it may not be difficult to assume that new variables to come into being will cause some parameters to be deduced to embody certain rules for enrichment of international legal regime along with its existing rules.

5. Deep Seabed Mining- A Forwarding Approach :

In order to carry activities in the Area a number of states and their consortia have already been registered. France, India, Japan and Russian Federation have been registered. As a result, they have been carrying activities in the Area. India (1987) has been registered to carry activities in the Central Indian Ocean, France

(1987), Japan (1987) and Russian Federation (1987) in the Clarion Clipperton Zone of the Pacific Ocean. Virtually, these states have been honoured to have been registered as pioneer investors.[17] The People's Republic of China (1991) has been registered for carrying activities in the Equatorial Pacific Ocean Basin and Eastern Pacific Ocean Basin. In 1991 the Government of the Republic of Bulgaria, the Republic of Cuba, the Czech and Slovak Federal Republic, the Republic of Poland, and the Russian Federation have been registered for mining in the North Eastern Pacific Ocean.[18] The deep seabed regime as such has been effective in the various parts of the Area under the aegis of the Authority. In addition, several multinational consortia are also destined for exploring and exploiting the resources of the Area under the control of the International Seabed Authority.

The Enterprise is a parallel entity; it is prescribed to carry activities in the Area as a mining arm of the Authority.[19] Its purpose is to be acquainted with the overall position of activities and is to enable the developing countries to participate in the mining. A direct and clear picture about the deep seabed mining is thus expected to be available on which the Authority may proceed further for effective purposes. But it depends on funds, equipments and expertise which the Enterprise should have to achieve. The very impact is that all these practically shall have to be available from the developed states.

The twenty-first century's most operational area on ocean spaces is the seabed, ocean floor and subsoil thereof beyond the limits of national jurisdiction. All mineral resources have to be explored and exploited therefrom. The industrialized states have no problem to boost more and more benefits whereas the poor developing countries have to raise pleas for their share in the resources as common heritage of mankind as achieved from activities.

There is a need of promoting cooperation between states whether developing or developed. The epoch of the millennium should be to come together to implement international regime whenever and wherever necessary.

As for instance, land-locked developing countries require technical and financial assistance for restricting of their economies. It would be worthwhile for these countries to explore the possibility of establishing import substitution industries which produce high-bulk, low-value goods.

This would save them increasing high transport costs for their imports from other countries. Furthermore, the development export industries producing high value, low-bulk goods should receive high priority. In order to enable land-locked countries to devise substantive gains from region of economic cooperation, UNCTAD should on request, provide technical assistance from these countries in formulating suitable regional economic cooperation agreements with their neighboring countries. Land-locked countries require technical and financial

assistance in order to carry out a detailed survey and development of their mineral and energy resources and to study new forms of transport which will enable them to exploit such resources.[20]

It is viewed that the forwarding approach towards the international regime relating to the Area and its resources is to follow the existing rules with a suggestion for inclusion of some principles to cope with the forthcoming exigencies of the New Millennium.

6. Suggestive Rules for the Millennium :

The extended maritime zones such as 200 n.m EEZ and 350 n.m 2500 m cum 100 n.m continental shelf have made the industrialized states to be highly benefited. In the case of maritime zones within national jurisdiction the objective of developed states cannot help legally substantiating their claims in those zones.[21] As regards the Area and its resources there is a need for participation of all states in the exploration and exploitation of the resources. But the matter is reverse in the case of the developing countries. Anyway, the only satisfaction is that they have been successful against the industrialized states who could substantiate the Area and its resources if there would be no common heritage doctrine.

The international legal regime concerns with convention, custom, general principle of law, judicial decisions, teachings of the publicists as well as ex aequo et bono if the parties concerned in respect of the disputes agree thereto.[22] Whereas commerce and communications are global; investment is mobile; technology is almost magical; and ambition for better life is universal we should welcome international rules to enable states to live together in peaceful competition with all people across the earth.[23]

Wherever, all means of law are exhausted, equity takes its room to fill in the gaps of law. But the present scientific and technological innovations have made all so fast changing, as a result, it is difficult to depend on equity for solution substantially and eventually effective. The ex aequo et bono doctrine has no entity of its own; the whole theme depends on consent of the parties. The umpire has nothing other than being authorized by the parties as to what to follow for a solution to the problem.

The legal regime of distributive justice can be highly effective in the case of inequalities and such, the doctrine should have a field relating to the matters between developed and developing countries.[24] The doctrine of distributive justice should be applicable in a sprit that the developed and developing countries belong to the same family. The universal family now seems to be materialized by the United Nations in which the member states must have feeling to each other to live together with peaceful competition in spite of scientific and

technological inventions. The twenty-first century- the beginning of the New Millennium should be forwarded with the existing rules of international regime along with the inclusion of distributive justice as a doctrine to promote harmony between the developed and developing countries. The deep seabed regime can be morally and substantially fruitful if the doctrine of distributive justice is taken into account.

7. Reflection :

International legal system as innovated and enjoyed originally is a system of civilized nations possessing machine guns and battle ships of whiteman's club.[25] But since the Great Wars, it has been an international system of sovereign and independent states taking into account the self and non-self governing territories. The term "civilized nations" has been now replaced as "nations". [26] As time passes, universal ideas are being developed, as a result, states whether developed or developing are coming together to promote universal fraternity as an obligation they should feel to fulfill. At the present stage, where civil wars are no longer civil and the carnage they inflict will not let the world remain indifferent. Narrow nationalism that would oppose or disregard the norms of stable international order and micro-nationalism that resists healthy economic and political integration disrupt peaceful global existence. Nations are too interdependent, national frontiers are too porous, transnational realities in the sphere of technology and investment on the one side, and poverty and misery on the other, too dangerous to permit egocentric isolationism.

Therefore, it is possible to come to an assumption that international legal regime should not be limited to the purview of certain states who caused to result in the last countries.[27] Law is to meet the changing norms of situations, this then gives rise to a tendency to cohere all states in the planet we have to nourish for peaceful uses of its land, seas, airspace and whatever else.

The international legal regime must be workable to promote all these for the New Millennium. Conventionally, the deep seabed regime is subjected to amendments after expiry of 10 years from the date of entry into force.[28] Ultimately, the amendments will take place on and from 16 November 2004. By this time, there ma be more and more achievements of science and technology in the spirit of which needs might not be limited to existing rules of international regime. Under the circumstances, the new Millennium should be felicitated for nourishment of the doctrine of distributive justice to be embodied in international legal regime. The law of the sea in matters of the Area and its resources will, it is submitted, be enriched if distributive justice is effected and this deal as an incoming study for the Millennium will then be internationally purposeful.

Notes and References :

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1. *See Statute of the International Court of Justice, Art 38.*

2. *E.D.Brown, "Maritime Zones- A Survey of Claims" in New Directions in the Law of the Sea 3(1973)157.*

3. *See Convention of the High Seas of 29 April 1958 (Geneva). It came into force on 30 September 1962. Article 2 of this Convention deals with the four freedoms e.g.(i) freedom of navigation; (ii) freedom of fishing; (iii) freedom to lay submarine cables and pipelines; (iv) freedom to fly over the high seas. The Work of the International Law Commission, Fifth-edition, United Nations, New York, 1996, 258. United Nations Convention on the Law of the Sea of 10 December 1982. It came into force on 16 November 1994. Article 87 of this Convention deals with the six freedoms e.g. (i) freedom of navigation; (ii) freedom of overflight; (iii) freedom to lay submarine cables and pipelines; (iv) freedom to construct artificial islands and other installations permitted under international law; (v) freedom of fishing; (vi) freedom of scientific of research.*

4. *The UN Convention on the Law of the Sea (1982) hereinafter cited as LOS Convention deals with the Area in its Part XI.*

5. *See Treaty Banning Nuclear Weapons Tests in the Atmosphere, in the Outer Space and Under Water, 1963 (UK, USA, USSR at Moscow, 5 August 1963, effective on 10 October 1963), 480 UNTS 43. Also see Declaration of Indian Ocean as a Zone of Peace. UNRES 3269 XXIX of 9 December 1974; UNRES 3468 XXX of 11 December 1975 and Resolution 32/86 of 12 December 1977.*

6. *In may 1998 India and Pakistan made explosion of nuclear bombs. It is questioned whether the two countries will comply to honour the region of Indian Ocean as a Zone of peace. Unless they are under binding obligations, there seems a threat for the region to remain as a zone of peace. If the two countries cannot be above emotion, there then cannot be said that the Indian Ocean will be continuing as a zone of peace. However, defenses are made with pleas that the explosions have been made in their own territory.*

7. *See Australia v. France and New Zealand v. France ICJ (1974) Reports (1974) 253-455, 457-533.*

8. *See LOS Convention, Art 1(3).*

9. *See John Kish, The Law of International Spaces (1973), A.W.Sijthoff 159.*

10. *LOS Convention, Art 137, 140.*

11. *C. Wilfred Jenks, A New World of Law (1969), Longmans 6.*

12. *Ibid 11.*

13. *See Wallace McClure, World Legal Order (1960), Clarendon Press, The University of North Carolina 322.*

14. *LOS Convention, Art 73, 84.*

15. *See H. Lauterpacht, The Function of Law in International Community (1933), Clarendon Press, Oxford 153, 331.*

16. *See UN Charter, Art 33.*

17. *See Resolution II of the Final Act of the LOS Convention e.g. Governing Preparatory Investment in Pioneer Activities Relating to Polymetallic Nodules.*

18. *See Law of the Sea Bulletin Special Issue September 1991, 14-40 and 41-75. As a matter of fact, those countries at that time were registered with the Preparatory Commission for the International Seabed Authority and for the International Tribunal for the Law of the Sea.*

19. *See LOS Convention, Annex IV.*

20. *Shigeru Oda, The International Law of the Ocean Development (1977), Sijthoff, Part VII, 33.*

21. *See Lewis M. Alexander and Robert D. Hodgson, "The Impact of the 200-Mile Economic Zone on the Law of the Sea", 12/3 (1975) The San Diego Law Review 572, 573.*

22. *See Statue of the International Court of Justice, Art 38.*

23. *See US President Clinton's text of his address of January 20, 1993.*

24. *What was considered distributive justice in the last century has gradually come to be understood as he equivalent of social justice, and the appeal to social justice has now become the most widely used and effective process in modern times. "Distributive Justice" is a more rarefied concept than the normal legal precepts relating to equality and justice, and goes beyond the principles of equity. Distributive justice implies the application of law, not only according to the rules of equality and equity, but also to ensure that the application takes into account the inherent disadvantages between two disputing parties. See Asma Jahangir, "Distributive Justice", The Independence of Judges and lawyers in Pakistan (1989), International Commission of Jurists (Geneva) printed in Pakistan, 65; Justice Ranganath Mishra, "Distributive Justice", ibid (1990) printed in Switzerland, 31.*

25. *Michael Akehurst, A Modern Introduction to International Law (1971), Geoge & Unwin 23.*

26. *Basic Facts About the United Nations (1995), New York 16.*

27. *See Perez de Cuellar, "Sovereignty and International Responsibility", 47 (1991) The Review, International Commission of Jurists (Geneva) 24-27.*

28. *LOS Convention, Art 312.*

COMPUTER AND COURT: A MODERN TECHNOLOGY FOR SPEEDY DISPOSAL OF CASES

-Md. Abdur Razzaque

Computer is one of the most important and remarkable gifts of modern science. It has brought epoch-making changes in the modern civilization. Now, all are possible to do with the help of computer. Although it is a man-made instrument, even then it can do many things, which a man cannot do.

I shall try to point out only a few of the computer-generated works, which are helpful for daily reading and writing, specially in our court's work. Computer does those works with the help of different types of software namely: text-to-speech, the screen magnification, screen reading, document scanning, word prediction, virtual keyboards and switch systems, mouse and keyboard adaptations, document magnifiers, personal listening systems, voice recognition and so on. Of all those, word prediction software is very interesting and helpful to those who are weak in English or whose word recognition is better than their spelling or habitual in writing ornamental language. If clear speech is possible, a voice recognition system offering complete hands free control may be a more viable alternative.

Voice recognition software enable speech to be converted into text on the computer screen and can also allow complete hands free control of the computer i.e. applications can be opened, text can be entered and edited, files can be saved and documents can be printed all by voice. This can be useful for people with physical difficulties, who are unable to use a keyboard or mouse. Voice regognition softerware can also be useful for people with writing difficulties, particularly for those who prefer dictation. However, voice recognition software requires the user to train the computer to recognize their voice and this typically involves reading lists of words, sentences and sometimes paragraphs of text. Hence, the user needs to have sufficient reading skills in English in order to train the system effectively. Voice recognition systems learn each time they are used but in order to improve accuracy it is vital that if any word recognition errors are identified and corrections are made, it is to be saved in user's speech files. Specialist vocabulary can be added but the system needs to be trained to recognize each new word, which is not in its original dictionary.

There are so many software supporting voice recognition, namely: Dragon naturally speaking IBM Via Voice, AT&T Natural Voices, and Call Audit etc. There is another device called "Naturally Speaking Mobile" which is a voice

recognition system for people who is on the way or in journey. For effective utilization of this device, it requires Naturally Speaking Preferred or Professional CD and Sony Digital Dictation Recorder. It is claimed that Dragon Naturally Speaking is the best of all the voice recognition software so far created. It is a very simple, fast and accurate voice dictation program for word-processing. Naturally speaking will quickly tune itself to your voice and allow you to begin dictating with ease. The more you use it, the better it gets. You can dictate naturally and without pause. Your words, in correct tense and spelling will appear on the screen in seconds. It is also claimed that accuracy is typically high and correction is a snap. In case of correction, simply select the wrong word or character by voice and then speak the correct one. Not only you can correct easily by voice, but every function can be easily controlled with a few simple commands. I had the opportunity to work with IBM via voice. But I didn't get the desired result.

I have been working with Dragon naturally speaking during the last two years. Initially, I involved myself in using voice recognition software only to know the fact. Subsequently, I got very much interest in the subject and started writing of judgment and orders as my daily routine works. In the mean time I have already written more than 50 judgments and so many orders by using the system. Now the computer takes my regular dictation with at least 90% correct speech. But Dragon Naturally Speaking system claims that the original software with its recognized microphone takes dictation with more than 98% correct speech.

Dragon naturally speaking has four different types of CD, namely: Dragon naturally speaking professional, medical solutions, legal solutions and preferred version. In our daily court's work, we require Dragon naturally speaking legal solutions. But all those original CD are not available in the local market and these are also very costly. I have been working with a duplicate CD (preferred version 5.0) valued only at Tk. 100/-and an ordinary microphone valued at Tk. 200/-. There are different types of prescribed microphones for the purpose and purpose and those are not so costly. It may be mentioned here that only one software (CD) is sufficient for using in hundreds of computers. The software (CD) is required only for installation of the program in each computer. For the purpose of dictation, each computer requires a separate microphone. There is a microphone having direct noise cancellation technology, i.e. this type of microphone accepts only your voice and not any noise or other sounds.

The total system of Dragon Naturally Speaking has been modified and upgraded from version 5.0 to version 6.0. It is claimed that the performance of this upgraded version 6.0 is much more effective than the earlier one and the price of each item has been reduced to a considerable stage. Now the price of Dragon Naturally Speaking Professional version 6.0 is $515.00. The price of Dragon

Naturally Speaking Medical Solutions version 6.0 is $724.00. The price of Dragon Naturally Speaking Legal Solutions version 6.0 is $695.00. This software i.e. Dragon Naturally Speaking legal Solutions shall be very much effective in our daily court's work. The price of Dragon Naturally Speaking Preferred version 6.0 is $169.95. Earlier, the price of Dragon Naturally Speaking Legal Solutions version 5.0 was $995.00. The name of the microphone which is very much suitable for the purpose is: CVL-1064, direct noise cancellation technology. The price of this microphone is $12.99.

It is interesting to note that Dragon naturally speaking software is not only a working device but also a teacher for the user. There is "help menu" which contains:

(1) Getting started.
(2) Dictation.
(3) Dictating using a portable recorder.
(4) Correcting recognition errors.
(5) Revising text.
(6) Improving recognition accuracy.
(7) Working on your desktop and in programs.
(8) Configuring your system.
(9) Creating commands with my commands.
(10) Tips to be remembered.
(11) Resolving problems and so on.

The device itself teaches its user how to learn, how to use, how to dictate, how to improve accuracy etc. It contains tutorial system and command list, which teaches the system of:

(1) Controlling the microphone.
(2) Entering punctuation and symbols.
(3) Adding lines and spaces.
(4) Selecting text.
(5) Correcting text.
(6) Erasing and undoing.
(7) Moving around in a document.
(8) Cutting, copying and pasting.
(9) Capitalizing text.
(10) Formatting text.
(11) Playing back and reading text.
(12) Working with e-mail.
(13) Using Internet Explorer etc.

It has got a vocabulary containing more than 2,30,000 words. There are also systems for train up of your own words and phrases. There is also a system called Dictation-Shortcuts or Macros. In this system you can use any simple word or a number as a code name. A number of words or sentences or even a paragraph can be written by saying the said code name as a train word. The device itself may mistake in typing your dictated subjects but at the same time it shows the mistake if any, done by you. It also shows and corrects spelling and grammar of your dictated subject. In short, the software itself contains everything you needed.

For saving your time or avoiding working hazard you can use the system of mechanical voice with the help of working Assistant or Stenographer. You can dictate at any time and in any place in a digital dictation recorder which can be subsequently recorded in the computer by your working Assistant or Stenographer if you train up your computer to that effect.

It is not possible on the part of a working Assistant or Stenographer, i.e. any third person to correct your dictated subject or proofreading without any help of the original. In that case You can use another device i.e. while you are dictating any subject in the computer by using naturally speaking device, at the same time you can record your audio voice directly in the computer or in any digital audio recorder having voice activated system so that, your working Assistant or Stenographer may get help at the time of proofreading by playing the said audio recorder. The voice activated system means your audio tape will not run without your voice or any sound. Your audio tape will run so long you are dictating. If you stop your dictation or make no sound, your audio tape will automatically go to sleep.

There is another system in the computer which may be helpful to those who feel easy to dictate in Bengali or in any other language. The system is very simple. Before starting dictation, open the audio recorder of your computer and then dictate clearly, specifically and correctly as fast as you can or as you feel comfortable and then leave the computer. Subsequently, your Typist or Stenographer will hear you audio voice and type the subject matter. In this device you can hear any audio voice by a digital regulatory system like the volume controller of a radio or TV. Adjust the running speed of your audio player with the speed as fast as you can type. But the problem is computer wants many, many more space in the hard disk in case of audio recording in comparison to written text. In that case, it is advisable to preserve the audio text in the CD by using a CD writer.

Dragon naturally speaking device claims that it is so easy to have trained up and use, that it does not require any help from any corner. It requires only five minutes to recognize your voice. Time may be required if you do not know how to operate a computer. A little time may also be required to have your control

over the commands which operates the device. I think that only seven days training may be more than sufficient for a new user who did not even see a computer in his life. The device claims that you can dictate 160 words per minute which is even theoretically impossible on the part of a human being like Stenographer.

In short, it claims that it is:

* *The first and the best having 150+ awards for accuracy and ease of use.*
* *Large installed base.*
* *Supported by speech recognition specialists and system integrators.*
* *Customer services and support.*
* *Partnering with the best make an investment in Dragon Naturally Speaking.*
* *The first and the best speech recognition software.*
* *A source of cost savings and productivity gains.*
* *Proven solution for corporations.*
* *Comprehensive solutions tailored to your needs and so on.*

In writing judgment and orders in our daily routine work in the court, easily we can use any of the devices stated above. Earlier we used to record the oral evidences in English. Now, generally we use to record the oral evidences in Bengali. If law permits and for speedy disposal of the cases if the authority desires, the oral evidences of all nature of cases can be recorded in English by using naturally speaking software in the computer. Usually, we use to write the oral evidences and take the signature of the witnesses giving a certificate that the contents have been read over to him and admitted to be correct. The witness himself or the learned lawyer does not have, any time to go through the evidences at least on that very moment. In that case, if we record the evidences in the computer by using big letter fonts after setting the computer in Ejlash, everybody present can see the subject matter just like a running commentary. For better transparency in the judicial work we may proceed one step more. The evidences recorded in the Ejlash by using Dragon Naturally Speaking software in the computer may be casted on the screen setting the same on the back wall by a projector, so that everybody can guess what is happening. At the same time we can record the evidences in two ways, i.e. as a written text and also in the audio voice of the presiding judge. It may be mentioned here that the courtroom may not be as quiet as required. In such cases, there is a system for splitting up what is voice and what is noise. We may preserve the voice after expunging the noise from the audio record. We may preserve the evidences so recorded as a written paper by using printer and also in the CD by suing CD writer.

It has been advised that for getting fast and improved recognition accuracy, the following tips are to be remembered:

* *Position your microphone correctly.*
* *Speak properly and clearly to the computer.*
* *Speak continuously and enunciate each and every word.*
* *Speak in long phrases rather than in short phrases or individual words.*
* *Speak at you normal speed.*
* *Do not mumble or slur your words.*
* *Try not to say "um" or "uh". Pause silently instead.*
* *Correct recognition mistakes.*
* *Add words to the Dragon Naturally Speaking Vocabulary.*
* *Run Vocabulary Builder.*
* *Train Dragon naturally speaking to recognize problem words.*
* *Run general training again.*

Dragon naturally speaking does not always type the word you want for various reasons. Some of those reasons include:

* *The correct word was not in the vocabulary.*
* *The word or phrase you spoke sounded very similar to the word or phrase the program typed.*
* *The sound of your breath or other random noises was interpreted as small words like "in" that appeared where they didn't belong.*

When dictating for long periods of time, posture, correct breathing, and regular breaks are important and for that:

* *Use good posture, sit up straight or stand in front of your computer.*
* *Do not speak in a loud voice or in any way that is stressful to you.*
* *Breathe deeply from your abdomen and not from the top of your chest.*
* *Loosen up and relax, stretch your arms, shoulders, neck, and jaw muscles.*
* *Take operational breaks, get up, move around, and stretch.*
* *Keep your vocal cords moist, take sips of water and use a straw so you don't need to move the microphone.*
* *Do not dictate for longer than is comfortable.*

Now the question is why we shall use naturally speaking or a voice recognition system? The simple reply is that the benefits are multipurpose:

1) It is confidential in all respect (if required).
2) The dictated subject can be saved by a code number.
3) The dictated subject can be opened only by using the said code number.
4) All the dictated subject can be preserved in the computer.

5) Hundreds of the dictated subjects can be copied in a CD by a CD-writer or in a Floppy.
6) Thousands of CD can be preserved in a Box or Almira.
7) The dictated subjects may be copied at any time by using a printer.

The other benefits are:

* *It produces e-mail and documents faster.*
* *It increases productivity outside office.*
* *It enables everyone to create their own output.*
* *It reduces or repurposes of office staff.*
* *It helps from repetitive strain injury/musculoskeletal disorder.*
* *It supports move to paperless office.*
* *It reduces or eliminates transcription costs and delay.*
* *In this way, the entire judicial system can be converted into a single network starting from the Honourable Supreme Court to the lower judiciary at district levels, which must help in monitoring any case pending in any court and speedy transmission of the data of all or any nature of cases from one level to another.*

A question may arise how computer converts audio text into written text. When we first start using speech-recognition software, we might be surprised to see that the computer makes mistakes. But it is to be remembered that talking to a computer is not the same as talking to a person. What computer does when it listens to speech is different from what a person does.

The first challenge in speech recognition is to identify what is speech and what is just noise. People can filter out noise clearly and easily, which lets us talk to each other almost anywhere. We have conversations in busy train stations and in crowded restaurants. It would be very dull if we had to sit in a quiet room every time we wanted to talk to each other! Unlike people, computer need help separating speech sounds from other sounds. When you speak to a computer, you should be in a place without too much noise. Then, you must speak clearly into a microphone that has been placed in the right position. If you do this, the computer will hear you just fine and not get confused by the other noises around you.

A second challenge is to recognize speech from more than one speaker. People do this very naturally. For example, after hearing the voice of my Aunt who has a high thin voice and my Uncle who has a voice like a foghorn, easily you can understand who is talking. In such cases people may easily adjust the unique characteristics of every voice. Speech recognition software on the other hand

works best when the computer has a chance to adjust each new speaker. The process of teaching the computer to recognize your voice is called training.

Another challenge is how to distinguish between two or more phrases that sound alike. People use common sense and context... knowledge of the topic being talked about -- to decide whether a speaker said "ice cream" or "I scream". The speech recognition programs don't understand what words mean, so they cannot use common sense in the way people do. Instead, they keep track of how frequently words occur by themselves and in the context of other words. This information helps the computer to choose the most likely word or phrase from among several possibilities.

Finally, people sometimes mumble, slur their words, or leave words out altogether. They assume usually correctly that their listeners will be able to fill in the gaps. Unfortunately: computer would not understand mumbled speech or missing words. They only understand what was actually spoken and do not know enough to fill in the gaps by guessing what was meant.

To understand what it means to speak both clearly and naturally, listen to the way the newscaster read the news. If you copy this style when you use Dragon naturally speaking, the program should successfully recognize what you say.

My nephew Master Fahim Chowdhury who is now only a boy of class-v is doing so many things with the help of computer. He has helped me much in writing this Article. But a few days back his father used to say and belief that computer cannot do anything more than that, introduced in it.

This may be concluded with a few simple words more: A bus driver is in the river with his bus. He is saying that he cannot understand his fault as to why he is there. He is boldly saying that he has given side to the truck, bus and even a Rickshaw-Van. After that he has also given side to a bridge!! Now the question is, while the people in the developed world is trying to go to the "MOON" by using the Rocket and modern technology, at the same time we are drowning in the river by giving side to the bridge!!!! ***Right now, no more side to the bridge.*** Let us proceed with the modern technology to build our Nation and the Country.

JUDICIAL APPLICABILITY OF FORENSIC DNA TECHNOLOGY IN BANGLADESH

- A. F. M. Mustafa

DNA is the Molecule of life. It contains the Chemical Code specifying our functions, appearance and lineage and is unique in all individuals except identical twins. It can be used to examine relatedness and common ancestry between individuals, and is especially useful for identifying badly decomposed or burnt remains.

DNA profiles are useful for identification of a person and can provide insights into many intimate aspects of a person and their families including susceptibility to particular diseases, legitimacy of birth etc.

There is wide scope for accepting DNA report as an evidence in the courts of Bangladesh.

Section 45 of the Evidence Act, 1872 deals with the opinions of third persons when relevant. This section read as follows:

"45. Opinion of Experts – when the court has to form an opinion upon a point of foreign Law, or of science, or art, as to identity of hand-writing or finger impressions, the opinions upon that point of persons specially skilled in such foreign law, science or art, or in questions as to identity of hand writing or finger impressions are relevant facts.

Such persons are called experts."

Section 510 of the Code of Criminal Procedure deals with the report of chemical examiner, serologist etc. This section read as follows:

"510. Report of Chemical examiner, serologist etc.- Any document purporting to be a report under the hand of any Chemical examiner or Assistant Chemical examiner to Government or any serologist, handwriting expert, finger print

expert or fire arm expert appointed by the Government, upon any matter or thing duly submitted to him for examination or analysis and report in the course of any proceeding under this Code, may without calling him as a witness, be used as evidence in any inquiry, trial or other proceeding under this Code."

It appears from the above mentioned provisions of law that the opinions of experts are relevant and the same may be used as evidence without the expert being called as witness. The expression "science or art" mentioned in section 45 of the Evidence Act, would include almost all branches of human knowledge requiring special study, experience or training.

DNA test is one type of serological test and sometimes it is only a chemical test and as such the DNA report comes within the preview of section 45 of the Evidence Act, 1872 and section 510 of the Code of Criminal Procedure, 1898.

As a rule a witness is required to depose on the facts which he has seen or is acquainted with and not to give his opinion. But in cases where special knowledge and expertise is necessary for the court to understand a matter, the court can rely on opinions of experts.

A REVIEW ON THE NARI-O-SHISHU NIRJATAN DAMAN AIN, 2000

- *Muhammad D. M. Sarker*

There is adequate provision for revengeful offences towards women of Bangladesh in Penal Code but even then different Special Laws and Rules have been famed regarding cruelty to women. Sufficient discussions have not been made about drawbacks of the previous laws immediate before enactment of the Nari-O-Shishu Nirjatan Daman Ain, 2000 (hereinafter called as Ain). I have been encouraged to write this article just to make out a comparative picture among the existing and repealed laws as to revengeful offences towards women of Bangladesh which will give out a transparent idea about the contribution of enactment of special laws as to the trial and repression of revengeful offences towards women.

Nari-O-Shishu Nirjatan Daman Ain, 2000 was enacted on 14th February 2000 and this law got priority over all other existing laws regarding offences towards cruelty to women. It also repealed the Nari-O-Shishu Nirjatan (Bishesh Bidhan) Ain, 1995.

If there is proper application of Penal Code with active measures to implement criminal justice system, it would have played a more effective rule in suppressing criminal offences as the Elites of the society tries to discharge their social duties by identifying some offences the state so also tries to perform its liability by enacting some new laws. The state is not so sincere as to how the law will play effective role in suppressing offences that is as to its aspect of practical implementation.

The rule of Court is always preferable as to trial of offences regarding cruelty to women. Different information like F.I.R., statements recorded under section 161 Cr.P.C., statement of victim recorded under section 22 of the Ain, medical examination report and charge sheet plays vital role as to proof of offences. It becomes difficult to prove the offences, if there is any discrepancy among these documents. Besides, fair trial is being affected in most of the cases and the offenders are being acquitted as the honesty sincerity and efficiency etc. of the evidence supplying agency are not beyond question. Thus it is evident that the proper application of law is more important than making new laws frequently.

Positive aspect of the Ain :

(i) Time for trial and investigation is fixed. In case of its proper application rapid investigation and trial is possible, specially the prescribed time limit for investigation and in case of its failure, the provision for change of investigating officer will make the I/O's more active, reducing the cause of delay in disposal of cases.

(ii) Like the Nari-O-Shishu Nirjatan (Bishesh Bidhan) Ain, 1995, the matter of extension of time for investigation is directly under the consideration of the tribunal which will expedite the process of investigation.

(iii) Though there is wide provision for trial of some offences in the Penal Code, the fact of specification of some offences in the Ain will make it possible to play an effective role in suppressing such offences.

(iv) Where the offender is capable for earning, the provision of awarding fine is applicable. For instance, where the victim is maidservant, poor and powerless, becomes the victim of sexual harassment by their employer and the provision of awarding fine may be applicable in such cases.

(v) There is tendency to resist the opponent by filing false case for long since. Sometimes, many women compelled to file false case being influenced by their guardians, relations and muscleman, this problem can be solved and filing of false cases can be reduced with the proper application of this Ain.

(vi) There is provision for 'camera trial' in this Ain. That is the Judge can conduct trial only with the parties and their engaged lawyers. Due to this provision victims of sexual harassment may be more benefitted.

(vii) Under this Ain, tribunal can take direct cognizance if the police refuse to take any case. But there is no wide publicity of this provision among the people which can be more helpful to them to some extent.

(viii) There is provision for trial of juveniles offenders under section 20(7) of the Ain and in that case provision of Children Act, 1974 (XXXIX of 1974) will be applicable. Thus the guardians and parents of any accused of this offence can easily understand the process of trial.

(ix) Under this Ain both attempt to kill by throughing corrosive substance and attempt to rape as well have been considered as offence.

Negative aspect of the Ain :

(i) Ten kinds of offences as to cruelty to women have been inserted into the Nari-O-Shishu Nirjatan Daman Ain, 2000. Among these offences except sexual harassment, child born resulting rape and publication of news with identity of the victims, rest of the offences were mentioned into the Nari-O-Shishu Nirjatan (Bishesh Bidhan) Ain, 1995. We think that the application of Penal Code is very much wide in respect of kinds and definition of offences. For instance, the fact of sexual harassment is often

involved in case of murder of maidservant after rape and such murder after publication in news media. In such cases, absence of rape allegation from the very beginning will not be tried under the special law. But such offences are triable under various sections of Penal Code.

(ii) Save and except the 8 offences mentioned in sections 4, 5, 6, 7, 8, 9, 10 & 11 of the Nari-O-Shishu Nirjatan Daman Ain, 2000, a woman can be victimized in many ways, for instance, if a woman is murdered and if the murder is not related with any of 8 offences, such occurrence shall not be an offence under this Special Law. For instance, forceful abortion resulting death. In case of such death, Nari-O-Shishu Nirjatan Daman Ain, 2000is ineffective. Death in abortion cases, being a heinous offence has not been made triable under this Ain.

(iii) Suicidal case of any victim is quite absent in this Ain. For instance, if any women as victim of any circumstances other than offences mentioned in this Ain, commits suicide or attempts to commit suicide being censured or neglected by society or by any member of her family, in such case there is no provision for taking legal action against such person.

(iv) There is provision for imposing fine in this Ain. But there is no mention as to what step will be taken against the convict, if he fails to pay the fine in time.

(v) There is provision for awarding fine if the victim is dead being attacked by any corrosive substance. Normally it is found that the face of the victim is the target of acid attack. In that case the victim becomes a burden of the family loosing the natural figure of her face. If the position of the victim is considered in the socio-economic context of our country, she is to live in a hostile circle in the society. Under this circumstances, there is possibility to kill the victim by any of her successor having tempted to get the compensation awarded to her. It is to be mentioned that there is provision to get compensation by the successor of the victim after her death. So we should think how far this provision is safe for a victim.

(vi) Age of the victim is very much vital in case of rape, sexual intercourse and marriage. But in this respect there is no similarity among the Penal Code, Nari-O-Shishu Nirjatan Daman Ain, 2000 and Child Marriage Restraint Act, 1929.

According to Penal Code, a woman under the age of 14 years cannot give her consent to sexual intercourse. A man is said to commit rape if he has sexual intercourse with a woman under 14 years of age and this provision is enforceable into the Ain, 2000. But in the Nari-O-Shishu Nirjatan (Bishesh Bidhan) Ain, 1995 the age for giving consent to sexual intercourse was mentioned at 16 years. There may be reason to reduce the age limit from 16 years to 14 years. But whatever may be the reason, a woman of 14 years age can not be physically of mentally fit to bear the consequence of establishing such sexual intercourse.

(vii) Under Penal Code and Ain, 2000 sexual intercourse by a man with his own wife, the wife not being under 14 years of age, is not rape. That is under these two Acts, marriage of a girl of 13/14 years has not been discouraged. But under the Child Marriage Restraint Act, marriage of a girl below 18 years of age is prohibited. So there is apparent discrepancy regarding marriageable age of a girl among the Penal Code, Ain, 2000 and Child Marriage Restraint Act. For instance if a girl marry her lover without the consent of her guardian or parents, in most of the cases, the guardian of the girl files case of kidnap or rape or both kidnap with rape on the plea that their girl is not adult. After the case is filed, there begins an act of dragging forcibly with the guardian, police and the people of the lover. And the victim girl is put into jail hajat in the name of safe custody. Thus we find that the marriage of minor girl has not been discouraged into the Ain, 2000.

(viii) The question of legitimacy of child is unsettled in this Ain. Though the responsibility of maintenance of child of rape victim is upon the rapist, there is no provision for maintenance of child born of without valid marriage. Such child will bear the curse of illegitimacy during whole life. For instance, in a rape case, the victim is pregnant and her age is above 16 years and she failed to prove that she has been compelled to sexual intercourse without her consent and as a result the accused is acquitted. In such case, the future of the child is unsettled and there is no solution of such problem into the Ain, 2000.

(ix) The provision for taking action against the news media for disclosing the identity of the victim is not clear. There is no practical application of this provision. Firstly, after the enforcement of the Ain, we find many news regarding cruelty to woman in daily news papers. But there is no single instance of taking any case by police for such cognizable offence. Secondly, many occurrences get its real importance after publication into newspaper and the law-enforcing agency get less opportunity to refuse such complaint. So restriction as to publication of all news of the victims is not materials in fact.

(x) Time limit for investigation is 4 months and extra 30 days. But there is doubt how far the distribution of time will be fruitful. It is not clear how a new investigating officer will complete investigation by 30 days only in case the original investigating officer fails to investigate within 120 days. Now a days the people cannot rely on the present system of investigation. For instance, people have less confidence upon the honesty and efficiency of the persons employed for investigation. Proof of any allegation requires fair investigation and proper presentation of the subject of investigation. For proper application of any special law like the Ain, 2000, above-mentioned defects should be removed, otherwise all efforts will be in vain. So special measures should be taken to remove all these shortcomings from the Nari-O-Shishu Nirjatan Daman Ain, 2000.

RIGHTS OF VICTIM AND THE ROLE OF POLICE

- Ikteder Ahmed

Victim means an oppressed person or a person who has been subjected to torture, harm, injury, mental agony, etc. No definition of victim is available either in Cr.P.C or in Penal Code. It is a recently developed concept and the idea first developed in the United States. Now a days throughout the world victims are the persons who are subjected to repression or oppression. There is a debate amongst legal experts as to the extent of the term victim. Some say that it should be restricted only in relation to women and children while some say that it should include all that is both male and female as well as adult and minor. The widely accepted notion is that the victim is both major and minor irrespective of sex.

With the nature of case the location of victim also changes. If it is a case under Women and Child Repression Act, 2000 containing a charge of rape then the victim is a woman and when self same charge is against a person for violating a minor then the victim is a minor girl. Similarly when a person is charged with committing murder then the victim is the deceased. In the same way when a person is charged with inflicting injury upon a person then the victim is injured person. So it is not necessarily that the victim should always be an alive person. Depending on nature of case the number of victim varies, In some cases the number is only one and in some cases the number is more.

The term right is of wide application but here the term is used only in the context of rights of victim. As regards legal protection the Constitution of Bangladesh guarantees certain rights which have been incorporated in articles 27, 31, 32, 33 and 35. The rights which have been described in those articles are available to all citizens of the country including that of victims.

In order to have a concrete idea about constitutional rights of a citizen it is necessary to discuss about the provisions of articles 27, 31, 32, 33 and 35.

Article 27 provides that all citizens are equal before law and are entitled to equal protection of law.

Article 31 provides that it is the inalienable right of every citizen wherever he may be and of every other person for the time being within Bangladesh to enjoy the protection of the law and to be treated in accordance with law and only in accordance with law and in particular no action, detrimental to the life, liberty, body, reputation or property of any person shall be taken except in accordance with law.

Article 32 provides that no person shall be deprived of life or personal liberty save in accordance with law.

Article 33 provides that no person who is arrested shall be detained in custody without being informed as soon as may be of the grounds for such arrest nor shall he denied the right to consult and be defended by a legal practitioner of his choice.

Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of 24 hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the magistrate and no such person shall be detained in custody beyond the said period without the authority of a magistrate.

But the aforesaid provision shall not apply to person –

(a) who for the time being is an enemy alian.
(b) who is arrested or detained under any law providing for preventive detention.

Article 35 provides that no person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence nor be subjected to a penalty greater than or different from that which might have been inflicted under the law in force at the time of the commission of the offence.

No person shall be prosecuted and punished for the same offence more than once.

Every person accused of a criminal offence shall have the right to a speedy and public trial by independent and impartial court or tribunal established by law.

No person shall be subjected to torture or to cruel inhuman or degrading punishment or treatment.

But nothing in clause 3 or clause 5 of article 35 shall affect the operation of any existing law which prescribes for any punishment or procedure for trial.

The aforesaid rights which are available to victims and which have been described as fundamental rights in our constitution are some of those rights which are human rights under the Charter of United Nations Universal Declaration of Human Rights which came into effect in 1948. Bangladesh is a signatory to UN Charter 1948 and in addition to that since rights declared in the UN Charter have been incorporated in our constitution so apart from a right

under the general law of the land a victim has also the constitutional right to seek protection of law when there is infringement of any of the above rights.

Police in Bangladesh has been given a wide range of duty. Although primary duty of the police is to maintain law and order and give the citizens of the country proper security of life and property but besides this primary duty police are to perform some other types of jobs, such as, protocol duty, conducting inquiry and investigation and surveillance duty of any nature, etc. In most of the countries of the world the investigating police is a separate branch and this branch is never given the job of maintaining law and order or any other job. As in our country the police officer who is maintaining law and order is also investigating the case so in most of the cases it is seen that investigation is perfunctorily conducted. Investigation is regarded as heart of the case and if the investigation is perfect there is no reason of failing of the case. As the investigation is carried out by a government agency so the scope of acquittal of person in a case where charge sheet is submitted is very limited. In Bangladesh what is called charge sheet in the advanced countries of the world that in called indictment and in those countries once the investigating officer decides to indict a person then the chance of acquittal is less than one percent. In our country the conviction rate is alarmingly low. It is now below four percent. This has now posed a question with this conviction rate the need for bringing about reforms in the entire administration of criminal justice ranging from lodging of case to ending of trial. For ensuring fair trial perfect and proper investigation is a pre-condition and when there is laches in the investigation then with all fairness on the part of the trial judge hardly there is any scope to say that the trial would end in conviction.

In Bangladesh there are three modes of taking cognizance of an offence by a magistrate, one is on the basis of the police report, another is on the basis of a complaint lodged by private individual and the other is *suo moto* by a magistrate. The police report means, the report submitted under section 173 of the Cr.P.C and not the report under section 154 of the Cr.P.C. When an offence is committed and the police is informed of commission of an offence then the first responsibility of police is to reach to the place of occurrence within the shortest possible time. In Bangladesh the response rate of the police in rushing to the place of occurrence is yet to be determined but in Japan it is now two and half minutes. This means in Japan the police is reaching to the place of occurrence within two and half minutes of being informed of the occurrence. This response rate in other advanced countries of the world is almost like Japan. The sooner the police would reach to the place of occurrence the better is the chance of getting material and valuable information and also securing arrest of the offender.

In a case when the victim is a woman and the offence is rape then for proof of the case it is must on the part of the police to get the victim examined by a medical officer within twenty four hours of commission of rape upon the victim provided the police is informed within the period having sometime ahead for taking the victim to medical officer for conducting the examination. As in a case of rape in most of the cases usually no eye witness is available so for the purpose

of the proof of the case the medical report plays a dominant role. Thus it is clear that in a case of rape delay beyond the period of twenty four hours would materially affect the proof of the case. In case of murder the more rapid is time of reaching to the place of occurrence the more bright is the collecting of material evidence necessary for proof of the case.

A common practice is prevalent throughout the country that in the name of safe custody victims are kept in the judicial custody by the court. In fact there is no legal basis of keeping the victim in judicial custody by the court and it has been observed that sometime finding no other shelter court is rather compelled to pass order concerning judicial custody of the victim. This matter is now a very debated issue in the society and in connection with some cases it drew the attention of the highest court of the country which by way of different observations totally discouraged the issue of keeping the victim in judicial custody. So it is the police to look for finding out a suitable abode for the victim.

In the same way in case of hurt whether grievous or simple the speedy examination of the victim always has a material bearing towards proof of the case. After being informed of the occurrence and after being recording of the case it is duty of the police to conclude the investigation of the case within the time prescribed in section 167 of the Cr. P.C. Although in case of failure of the police to conclude the investigation within the prescribed time the law provides for extension of time by the magistrate or Judge but it is advisable that investigation should be concluded within the timeframe without asking for any extension.

In our country it is often seen that after lodging of the case, victims of the case are to encounter different troubles of wrongdoers and in that perspective the role of police in very vital and police must ensure proper safety and security of the victim during the whole period of trial and even after trial.

In a cognizable offence the police should try to arrest the offender immediately after lodging of ejahar and such rapid action always has a contributory effect to the smooth investigation of the case. When the victim is either abandoned or shelterless then it is the duty of the police to secure proper shelter of the victim.

If the police adhere to the provisions, rules and instructions discussed above while conducting investigation of a case and also while handing a victim then that would lay the basis of submission of a charge sheet with all material information which in turn increase the confidence of the people in general and victim in particular in the role of the police for giving proper redress.

Throughout the world the police are being motivated towards prevention aspect of the crime and in this context considering number of cases now pending before different criminal courts it is high time for us to imbibe the police with motto that prevention and only prevention can be a eliminating factor of making a new victim in the process of law.

ALL ABOUT THE LEGAL HELP IN OUR JUDICIAL SYSTEM

-S.K.M. Anisur Rahman Khan

Lawyers are the indivisible part of our judicial system. Justice cannot be fulfilled without their contribution. Lawyers are said to be the "Office of Court." Even though according to Penal code, Code of civil procedure, Bar council Act and the prevalent custom of the Court, the lawyers are honoured enough but their means of subsistence is not assured. Here lies a great beneficial deceit.

A young gets his certificate, as a Lawyer is indeed to earn his livelihood. But there is assurance of his means of living. Still he has to depend upon his client's satisfaction after a daylong participation in help of judicial work. The fees are not certain. If there is no client, fees are then an out of question. In that case he has to leave for home empty. In such a condition a lawyer cannot maintain his duties well in any way. That's why the evolution of the lawyers having contingence and who are promising are interrupted. So is being affected our Judicial System.

Amount of the fees given by the clients depends upon how far the corresponding lawyer in case movement can satisfy his clients. The duty of a lawyer at the court is to help the Judge to identify the truth and to help his client to defend himself right way.

If in a case there has been a possibility that if the truth comes out, the court will ignore client's properties and his designation, the client will deny at any cost truth to be established. Similarly if truth comes out the guilty person is identified, determination of dimension of faults becomes easier. But the actual guilty person will try to hide the truth to avoid his trial and will try to lay the blame upon another one as he posses the chance of self-defense. For all these reasons the interested party will try to use their lawyers. Those who will be involved in the movement of this case and are devoted to help in this case should not be dependent upon the plaintiffs. If this happens Justice will not be assured. The Judge welters in sweat to identify the truth if there has been the tendency to hide the truth and to lay the blame upon others. For this tendency an activity to make the trial delayed is observed. Up to the time when a lawyer is dependent upon his plaintiff client, during that time he cannot overcome this tendency of his clients even though he has enough sincerity. So even after having enough sincerity the general speed of judicial process is interrupted.

'Pandit' Jaohar Laal Nehru in his book "Discovery of India" described about the discovery and evolution of the occupation in law in a logical and informative way. The method developed at the then dependent country's world-economic-political-social atmosphere is now needs to make a change. Because situation has changed a lot. Today there is no foreign ruler, no feudal society and has got no colonized exploitation. So there's the time to make our Judicial Systems more modernized.

To do that a lawyer should not be kept dependent upon the fees given by the plaintiff person/organization. Negative effects of this have been discussed earlier. We should have to measure today how much obstacles created in this system. Besides, we need to consider actively about the persons who are engaged in law occupation if they can be provided with salary allowance from state along with other facilities and can be provided into higher posts according to their efficiency and worth. If this is done a lawyer will not be dependent upon any one at the question of his livelihood, he will have no uncertainty in his means of living, he will active to gain a higher post by achieving efficiency and worth, so will the Judge and Lawyers can work with the aim to identify the truth at the court. So the assurance of justice will be easier.

A question may arise if any effective result will come or not after taking an effective step by investing a large amount by following this proposal. Even it is not visible with natural sight but a deep thinking and research will prove that development and production has a proportionate relation with judicial system. It effects negatively to the development and production if there has been weakness in judicial system. Again if judicial system is developed then it effects the development and production positively. If the way of searching the truth becomes easier and assured, causes to make delaye the trial will disappear, scope of hiding the truth will be abolished, all sorts of crime spirits will be abolished remarkably. Then naturally the speed of development and production will be increased. So the rate of economic growth will be increased. In that case it will be observed that for the proposed reformation the excess expense being bored by state is higher than the income for the above-mentioned cause.

So it can be achieved a positive effective result if the concerned authority and the intellectuals think about the previously mentioned proposal to provide legal help to our judicial system. No doubt in it.

COURT ADMINISTRATION AND MANAGEMENT

- Mohammad Ali Khan

1. The management of Courts includes both judicial and administrative work. The two topics, court administration and problems of delay in disposal of cases are closely related and are directed to the same purpose of speedy disposal of suits, cases, appeals, revision etc. achieving substantial justice. In each judgeship the judicial officers are placed in charge of different department, such as:

Nazarat Department
Copying Department
Record Room
Accounts Department
Library etc.

The District Judge is responsible for overall management of all the courts within his judgeship and is required to issue instructions and to supervise the work of subordinate judicial officers and the departments.

2. "Justice delayed is justice denied" is one of the golden principles having universal recognition in all ages. At the same time justice hurried is justice buried. The ideal is to strike a balance between speedy and ready disposal and achievement of real and substantial justice. To show the importance of courts and its management, I like to quote few words from the Encyclopedia Britannica:

"The primary function of any court in any Nation to help keep domestic peace-is so obvious that it is rarely considered or mentioned. If there were no agency to decide impartially and authoritatively whether a man had committed a crime and if so, what should be done with him, other persons offended by his conduct would take the law into their own hands and proceed to punish him according to their uncontrolled discretion. If there were no agency empowered to decide the dispute impartially and authoritatively self-help, quickly degenerating into physical violence, would prevail and anarchy would result. Not even a primitive society could survive in such conditions and social order would be destroyed. In this most basic sense courts constitute an essential element in society's machinery for keeping peace."

It is needless to say that such machinery should be functioning efficiently in order to keep the very existence and order of the society we live in.

3. The District Judges and other judges, down to the assistant judge are trial judges which is the first resort for all seekers of justice and the confidence of the common man in the system of judicial administration depends largely on the image created by the trial judges. It depends on the intellectual, moral and personal qualities of the judge. The trial judge must be a man of exceptional integrity-financially, politically and socially. A judge has to be of keen intellect to be able to deal with a variety of new situations, which can arise in course of trial of cases in the modern complex society. No system can provide guidance in all situations. It is in such a situation that a good judge makes himself mainfest. In order to manage a court and an agencies involved in it, a trial judge, whatever his rank, must be above criticism and of clean character.

The conduct of a judge in the chamber, inside and outside the courthouse is very important. It is better to remain as silent as possible while hearing cases and not to generally talk with the lawyers and clients on matters not concerned with the case in hand, and when relevant and necessary, to use as few words as are essential.

This habit gives a judge the benefit of saving much time in the unnecessary arguments and the frequent petition for transfer of cases and the present deterioration of relationship between bench and the bar. If we cultivate the habit of good listening and help other judges of the station to follow it, better judgments in lesser time will be the result. We know how overburdened our courts are, distributive justice cannot be achieved without speedy relief to the litigants. So the number of courts must be proportionate to the number of pending cases and the judges are to be made accountable through effective control and monitoring by the Supreme Court. The procedures in our courts are very lengthy and expensive to such an extent that the poor people are in reality, deprived of access to justice.

4. The lawyer-at the other end there are the learned members of the Bar whom the court has to deal with for conducting the business of the courts. Their profession is a branch of administration of justice guided by some rules framed by the Bar Council. The rules relates to various aspects of professional conduct and etiquette of the members of the Bar, namely:

* Conducting with regard to colleagues
* Corresponding moderately with clients
* Being responsible to the court obligations
* Maintaining rational relationship with public.

The progress of the courts work is hindered by some of the learned members of the Bar imposing upon the junior judges and Magistrates with lengthy and irrelevant examination-in-chief, cross examination and arguments only in order to kill time. The learned members of the Bar appear to be either ignorant or willfully disregardful of their professional conduct and etiquette. The Bar Council has already taken up program of imparting training to the new entrants in the Bar in this regard.

How to Manage

A) The increase of the number of judges and magistrates has enhanced the administrative function of the District Judge for regular inspection of their courts and attached departments.

B) Most of the courts are facing with the shortage of printed form required in day-to-day administration of the court. So the office assistants are to use manuscript forms killing much time. The judiciary has expanded due to creation of new district and the forms required are also voluminous. In view of the changed circumstances, the concerned authority may think of establishing a separate printing press to meet the requirements of the courts. The Judgeship may be provided with computer and other necessary modern equipment for saving time. This will help management of the courts in so many ways. The concept of "Alternative Dispute Resolution" (ADR) system may be introduced especially in adjudicating the family court cases, commercial disputes, Money Suites, House Building Loan cases etc.

C) The newly recruited judges should be subjected to intensive training before they finally get into judicial work. The training program that has been undertaken for the newly recruited judicial officers should be intensified and made larger. The newly recruited Magistrates should also be included in the above training program.

Legal Knowledge and its Application

A) The main procedure of the courts are there is the civil procedure code and the criminal procedure code. In addition, there are the civil rules and orders, civil courts Instructions Manual and criminal rules and orders. A proper appreciation of the procedural law and the rules framed thereunder and their timely application is the keynote of proper administration.

B) It is the duty of the court to examine a plaint before issuing summons (Rule 59, chapter 2, part 1, C.R.O. Vol. I). The trial court can lessen the burden of cases by returning the plaint under order 7 Rule 10 of the Civil Procedure Code if it is not within his pecuniary, territorial jurisdiction or other causes. A plaint may be rejected if it is insufficiently stamped and the deficit court fees are not paid within the time specified or where the plaint is undervalued and is not properly valued within a time limit and where the plaint does not disclose any cause of action.

The Sheristadar of the court should be able to scrutinize and point out the defects so that the courts may avail of the provisions of Order 7 Rule 10 & 11 of the Civil Procedure Code. In fact the above provisions are not properly followed by the trial courts.

C) The court should take proper steps to ensure that summons are properly sent to the Nazarat, making over the same to the Process Server, return of the process to Nazarat and from Nazarat to the issuing court.

D) In criminal cases it is the responsibility of the Police to ensure the production of witnesses in court. But most of the cases are adjourned time and again on the prayer of the prosecution on the ground that the witnesses failed to turn up on the date fixed. It is not clear in the above amendment what measures can be taken against the Police for their non-compliance of the process of the court.

E) Issue should be framed by the court himself on perusal of the plaint, written statement and available documents and at that stage the court may apply the provisions of Order 6 Rule 16 of the Civil Procedure Code and strike out the unnecessary portions of the plaint and the written statement. The court should make full use of the provision of section 30 and Orders 11 & 12 of the Civil Procedure Code relating to Discovery, Admission, Interrogatories and Inspection.

The Manual of Practical Instructions for the Conduct of Civil Suits specially remarks of the civil justice committee at page 33 gives very useful instructions and guide to the solution of the common problems of court administration.

The main function and management of the court is at the trial stage. It is always of benefit to the trial judges to read the records beforehand. At the time of opening of the case, the judge should take a short note. During recording of evidence, it is the duty of the court to disallow either examination or cross examination on immaterial, irrelevant and inadmissible matters. After cross examination or at any time the judge may ask questions to clear up doubtful points as per provisions of section 165 of Evidence Act. The role of lawyer is very significant. Sometimes a good case has failed because of a lack of necessary knowledge of the Evidence Act and other laws on the part of the engaged lawyer. After closing of argument the court should finally revise the record to see that the same contains all that has been admitted in evidence. The court should deliver judgment in open court without undue delay preferably within 7 days of hearing of the arguments so that the matters are fresh in mind.

Conclusion :

The Govt. has established a permanent Law Commission to undertake necessary reforms and modernization of existing laws and a Judicial Administration Training Institute to impart modern training to the judicial officers for better administration of justice. Recently, Government has taken up a project styled as "Legal & Judicial Capacity Building Project" for overall improvement of court administration and case management system. The ultimate object of administration of Justice is to ensure easy, inexpensive and speedy justice to all. The issue of separation of judiciary from administration is also linked to ensuring accountability of the judiciary. So we need an independent, effective judiciary, which can uphold the values of the rule of law and inspire public confidence.

COURT ADMINISTRATION AND CASE MANAGEMENT WITH THE OBJECTIVE OF EXPEDITIOUS DISPOSAL OF JUDICIAL PROCEEDINGS: PROBLEMS AND INADEQUACIES IN EXISTING LAW, RULES AND ORDERS AND THEIR POSSIBLE SOLUTIONS.

- Hasan Shaheed Ferdous

Introduction:

Court administration includes monitoring of the court works and the works of the departments of courts mainly for the timely disposal of Judicial Proceeding. Besides adjudicational functions the judges are also required to play a major role in reducing backlog of cases and other works which involves basic administrative skill over and above the basic knowledge of law, rules and instructions made for timely disposal of cases.

The Civil Courts Act, 1887 provides for the various tires of Civil Courts and their jurisdiction. The Code of Civil Procedure is the adjective law for proceeding of cases of civil nature. Under section 122 of the Code the Supreme Court (High Court Division) has framed the Civil Rules and Orders volumes II, & I for the guidance of subordinate courts for proper administration of the Courts and the departments and management of cases. Moreover, in 1935 Registrar of Calcutta High Court Mr. Hindlly published the Practical Instruction for Conducting Civil Suits for better management of Cases. The main purpose of these civil rules and orders and the instructions & circular orders issued by the High Court Division of the Supreme Court from time to time is to minimize delay in courts, reduce backlog & impose responsibility, accountability of the Judicial Officers in proper discharge of their judicial & administrative duties.

Like the Civil Rules and Orders, Criminal Circular Orders were issued and compiled for the guidance of the Criminal Courts.

Experience in applying rules of procedures:

In 1983 Upazila Assistant Judges Court was created. These Courts had Sheristra, Nazarat Copying, Accounts department directly under the Control of the Upazila Assistant Judge. In Srimongal Upazial Court at the end of 1983 there were about three hundred and fifty (350) cases received by way of transfer from the then Maulavibazar Sub-Divisional Munsif Court. The Srimongal Upazila Court started with a Presiding Officer, one Sheristadar and one peon. There were only two junior lawyers in the Upazila.

The main problem was to inform the litigant about setting up of the Court and the transfer of cases to it by an administrative order. The Court was under pressure

due to shortage of staff for issuing the required notice. In order to set the Court in motion administrative arrangement was made so that the sheristadar took over the duties of bench clerk, nazir and accountant and the peon was given the duty of process server. Daily a good number of notices were prepared and sent to the parties. Within a month the staff was increased and in the successive months about fifteen hundred court notices were served.

From the beginning of 1984, the court became busy with lawyers and clients. The problem arose that no Government Pleader (G. P.) was appointed from the beginning of the Upazila system. So the cases by or against the Government could not be disposed. In 1984, a Circular was issued by the Registrar of the Supreme Court that the Assistant Judges must dispose of at least six civil suits in full trial. The judges became aware of the minimum number of cases they have to do and fixed their court diaries accordingly. The District Judge of Moulvibazar District inspected the Assistant Judges Courts in January, 1985 and made instruction that the Presiding Officers should dispose of as many cases as he can above the limit of minimum requirement. From then on an average 9 to 12 Civil Suits were disposed of in that court. A judicial conference under the Civil Rules & Orders was convoked in 1984 presided over by the Learned District Judge Sylhet & subsequently the learned District Judge of Moulvibazar in 1985 in which the members of Bar, Bench, Police, Magistracy, Advocates, Government Pleaders, Public Prosecutors & Senior Court support staff participated. The main purpose of these judicial conferences were to device strategies for disposal of cases.

By the middle of 1985, the Srimangal Upazila Court disposed of two-third of its case-load and started disposing cases which were filed in 1983 and '84 including partition suits.

From the above court experience some points can be summarized:-

(a) *The old cases were not properly monitored by the presiding officers as because there were about two thousand cases in the sub-divisional Munsif Court;*

(b) *The summons were not served in time and in proper manner;*

(c) *numerous adjournments were given without causing reason;*

(d) *the clients and their lawyers were not interested in speedy disposal;*

(e) *the presiding officer shifted dates due to lack of his own time at least in 20% of cases;*

(f) *the government pleaders (G. P.) sought adjournment as the government could not provide statement of facts;*

(g) *time for submission of written statement was leniently given;*

(h) *the issues were not timely framed;*

(i) *steps for discovery, inspection etc. were not taken for long time;*
(j) *documents were not produced & impounded in time;*
(k) *expert evidence was not submitted for long time;*
(l) *commission reports of inspection and investigation were not submitted for long time;*
(m) *the suits were not fixed for hearing for long time and were kept in the stage of settlement of date (S. D.) for long time;*
(n) *the hearing could not be completed due to absence of witnesses, documents, departmental evidence, volume of registration office etc.;*
(o) *the interlocutory matters under various provision of law were initiated but remained undisposed of;*
(p) *stay orders of Higher Court staying the judicial proceeding for long time;*
(q) *transfer of cases under section 24 of the C. P. C. in nearly final disposal of cases;*
(r) *numerous application for setting aside of ex-part decrees and dismissal for default;*
(s) *the execution cases are not at all given any attention;*
(t) *No Annual Inspection by District Judges was done.*

The above causes for delay of the older cases received by way of transfer gave the impression that unless whole-hearted effort of the judge, the lawyers, the court support staff and the clients can be secured, the cases can't be disposed of. The main tool for court administration prevalent is the procedural law and the Rules and Circulars. The judges, the court staff & the lawyers must not only know the rules but believe in applying rules for upholding the administration of justice. The motivational activity in the judicial conferences convoked by the District Judges had some positive effect. The judges from now started insisting upon speedier disposal, reduced granting of adjournments, monitor the works of Nazarat and had a competitive attitude among themselves regarding maximizing outturn. The clients who were subjected to delay and lost hope in the Civil Justice system that there is no end in civil cases started changing their attitude by seeing disposal of Civil Cases and execution of the decrees.

The solutions were found mainly in adopting the following measures:

(1) *regularity in attendance of the Presiding Officers and support staff in the Court and offices;*
(2) *service of summons on the day of filing of the case;*
(3) *return of service of summons on the date fixed for the purpose;*
(4) *strict surveillance of the works of Pesker, Sheristradar, Nazir and the process servers in dealing with summons;*

(5) *strictly maintaining the time limit for submission of written statement within two months from the date of return of summons either by process servers or by post;*

(6) *the temporary matters and other interlocutory issues being disposed of in short time;*

(7) *framing of issues by the presiding officer himself;*

(8) *hearing of the preliminary issues and taking early steps regarding valuation of court fees, amendment, addition/ substitution of parties, procuring expert opinions, commissions report and other steps for making the case matured and ready for trial by regular insistence and strictly maintaining the time allotted for taking procedural steps;*

(9) *the hearing of the cases took unduly long period due to lack of proper control over the examination of witnesses, the lawyers were persuaded to strictly remain within the frame-work of the pleadings of the cross-examinations were reduced to required length;*

(10) *the number of witnesses were also reduced substantially by calling only the best and necessary witnesses. The exhibit lists were prepared so as to contain only the documents required for proof of the contention of the parties and all irrelevant documents were returned reducing the bulk of the record;*

(11) *the arguments were heard at the close of the deposition and adjournments were strictly given at this stage;*

(12) *the judgments were written within three or four days and delivered in the open court and the result was noted in the court diary and cause list on that vary day.*

(13) *the Sheristradar was instructed to prepare decree within seven days by giving due notice so that the advocates of the parties could participate in preparing the decree. Strict surveillance was carried out so that there is no delay in drawing up of decrees and put up for signature of the Presiding Officer.*

(14) *the execution cases were dealt with under special scrutiny and care and disposed of;*

(15) *monitoring the departments of Court. At the end of the day the respective Sheristradar, Pasker, Nazir, accountant and the process servers were called and evaluation of the days business was thoroughly done and instructions were issued for completing the*

recurring works then and there and no business was ordinarily left for the next day;

(16) the main points for day to day supervision was the Filing Register, the Court Fee Register, Suit Register, Process Register, Copying Register, Chalan Register, Process Server's Diary, Court Diary, Cause List, Dispatch Register, Register of Stay Orders, Register of Documents Returned, Attendance Register, Register of Issue of Receipt of letters;

(17) often and on casual inspections were carried out so as to monitor about preparation and sending of periodical returns to the Supreme Court and the District Judge Court.

Adoption of these measures created positive impact on the court's performance and even two or three months long cases were disposed of in full trial.

In Gualanda Upazila it was found that the area was reverie and there were four unions mostly char land. There were about two hundred pending cases out of them fifty percent were pre-emption cases. There is less credit for disposal of pre-emption cases and three of such disposal was equal to disposing of one suit. On the first day of joining, a courtesy call was given by the Bar and the staff of the court. There were two lawyers regularly attending the Upazila Court, rest of the lawyers shuttled from the district Bar twelve miles away. In the first courtesy visit the lawyers and the staff were sensitized on the poverty of the areas and the implication of speedy disposal of cases. The probable target of disposal was set at 7 suits equivalent number of cases to be disposed of. From September 1986 to January 1988 about 175 cases were disposed of and only less than 50 cases remained. During this tenure the Presiding Officer had to do circuit duty in two other courts for which there were less working days in Gualanda Court but a good number of suits were disposed of in Rajbari Sadar Court and Baliakandi Upazila Court. The District Judge of Rajbari convoked four judicial conferences in which the clear message to the judicial officers, the members of the Bar and the court staff were to increase disposal and the District Judges monitored the performance of each court of the district very keenly. They inspected the courts often and on and surprise visits were at times made. An atmosphere was created in which the disposal of age-old cases were attended strictly and adjournments were severely curtailed. As the jurisdiction was that of alluvion and deluvion, the Civil Court Commissioner's report remained pending for long time due to less number of Civil Court's commissioners in the Bar. Some lawyers were asked to prepare themselves by receiving proper training and with their assistance a lot of cases which were strict up for investigation report were disposed of within possible short time.

The nature of court work and the court atmosphere was very much different in Gualanda Court from Srimangal Court. In Srimangal there was only one survey (S. A. record), there is no C. S. or R. S. record in greater Sylhet. But in Gualanda, like in Greater Faridpur, there are C. S., R. S, S. A. and diara survey so the cases are more complicated and the adversity involved among the parties are greater. In Gualanda cases great number of unregistered Amalnama, Zamindari Dakhila & other indigenous mode of proving settlement and jots right are matters of controversy. In order to manage the cases in Gualanda a thorough study of the documents and materials had to be made. This involved a great deal of study of the land, its people, the changes due to the river Padma, the nature of settlement prevalent in the area during the prevalence of the Bangal Ternary Act had to be mastered for the purpose of proper adjudication. In many cases documents had to be sent to the Deputy Commissioner for impounding and for that delay occurred in some cases.

The Presiding Officer of Gualanda Court definitely was less burdened with case load but more involved with land law. A need was felt for appropriate reading materials. Fortunately the Rajbari Bar Association Library was a good one and the lawyers were of high quality and standard, high motivated for preparation of trial and ultimate disposal of cases. The tools applied in Gualanda were the application of the Civil Rules & Orders more particularly, strict monitoring of the works of the Court Staff, Civil Court Commissioner and the Co-operation of the legal paternity of Rajbari Bar Association.

When the poor litigants of Gualanda saw rapid disposal of suits and cases as well as appeals preferred from their suits by the learned District Judge their enthusiasm for remaining present in cases, presenting their witnesses, persuading their lawyers to conclude civil cases increased and the net result was that the court by the end of 1988 became almost case less. In Malandaha, Chagalnaiya, Sonagazi, Feni Sadar & Mymensing Sadar, Assistant Judges Courts were administered & cases therein were managed in the light of their own problem inherent in them by strict monitoring of the affairs of the court. The tradition role of the judges coupled with managerial skill in the line of basic management was found useful.

Effect of Training :

The training of judicial officers organized by the Bangladesh Institute of Law and International Affairs (BILIA), Foundation Training, Land Management Training, Survey & Settlement Training increased the capacity of the presiding officers of courts in discharging their day to day duties. These trainings provided opportunity for interaction with other officers, judges, magistrates, administrators, doctors and engineers, agriculturists, police, forest officers &

widened the perception and knowledge of the judicial officers. By the end of 1993, there were rapid progress in disposal of cases by employing the newly imparted skill to the officers. The courts mentioned above witnessed great reduction in cases and all the courts had less than fifty cases in the Upazila & less than two hundred cases in the Sadar.

The main tool the Presiding Officer employed here is strict adherence to the rules of procedure & statutory limitations applied to Civil Cases.

Court of Subordinate Judges and Senior Assistant Judges :

Some Upazila Assistant Judges Courts and the Sadar Assistant Judges Courts are invested with "Senior" powers which means these courts can try suits upto valuation of Taka = 1,50,000/- and can try small causes cases valued upto Tk = 50,000/-. The Sadar Assistant Judges Courts also try cases under The Premises Rent Control Act. As there is little credit in deciding Small Cause Cases and Rent Cases, the Presiding Officers give less priority in deciding such cases for which there is backlog of these cases in Sadar Courts.

Family Courts under Family Court Ordinance, 1985 :

In 1985, all the Assistant Judges became the Judge of the Family Courts, which deal with cases involving dower, divorce, maintenance, guardianship, etc. By 1987 a good number of cases were filed but there was no circular by the Supreme Court regarding credit for their disposal and for that reason the cases under Family Court Ordinance did not receive Priority in disposal by the Assistant Judges. Subsequently the credit for disposal of Family Court Cases were specified and the Assistant Judges took more initiative in disposal of such cases. The Family Court provides for pre-trial and post-trial stages for conciliation between the parties which aimed at early disposal of such matters but as the Supreme Court did not provide for any credit for conciliations, the Judges were not eager in disposing those cases before full trial. Recently credit for pre-trial and post-trial conciliations are given and it is hoped that the disposal of such cases before full trial can be done which will reduce delay in disposal of Family Court Cases in about 460 Assistant Judges Courts in the Country.

Delay in the Subordinate Judge and Assistant Sessions Judges' Court and administration of those Courts and case management :

Subordinate Judges Court, as it was seen in case of third Artha Rin Adalat, Chittagong, shows that this court was trying original Civil Cases of unlimited pecuniary value, money suits mainly involving claim cases for Carriage of Goods. Rent Control Cases of higher valuation. The Court had a good number of cases under Artha Rin Adalat Ain, 1991 involving money suits with mortgage and simple money suits. The credit for disposal of simple money suits were three

cases equal to one suit and one mortgage suit equal to one civil suit. The presiding officers were more interested in doing mortgage suit but did not prefer to do money suits as the time and labour is in disposing both kinds of suits are same. Due to practical reasons the banks and the borrowers were not interested in concluding the loan cases. So the Presiding Officers emphasized on disposal of other suits and cases which led to delay and piling up of loan cases.

The Subordinate Judges Court receives by way of transfer civil appeals, civil misc. appeals, rent control appeals, family case appeals. In appeal cases credit for disposal in three to six appeals will equal to one suit. There is a huge piling of appeal cases in the above mentioned Court.

Measures taken to administer the court and the cases in Subordinate Judge's Court :

(a) The original suits and cases were categorized wherein the older cases were fixed for disposal first. The Judge had to take some drastic action to bring forward the old cases from the Bar. The Judge had to pursuit the Bar and gradual response began to show. Within three months from June 1994 the congestion began to clear.

Regarding the appeals special measures were taken to hear them in analogues and simultaneously wherever it was possible. At least two appeals were heard and disposed of daily and the original cases were instantly sent down. By the end of 1995 the third Artha Rin Adalat, Chittagong became fee from backlog. The main tool employed here was strike adherence to the Rules of Procedure and monitoring of the court and its departments.

(b) ***Criminal Matters:***

There were about 100 Criminal Cases in the Third Artha Rin Adalat mostly cases under Arms Act, 1878. It can be recalled here that Criminal Cases are received by way of transfer from the Court of District and Sessions Judge who receives them from the Court of Magistrates. The Criminal Cases involve the role played by the Police. Prosecution plays the vital role in dealing with the Criminal Cases and their progress depends largely on the Police and the Prosecution. In most of the cases the informant and investigating officer are Police Officers. As their services are transferable most of the informant and investigating officers were transferred in Courts of the trail of a particular case. The Court was facing great difficulty in bringing informant/ IO, Policemen who left their station.

In order to solve this problem the court took some administrative measures like informing the Inspector General of Police so that he can direct the Police Officers to come and depose. But such measures did not always give positive result. It was also found that members of the Public were reluctant to come as witness

before the court and in most of the cases their versions were contradictory which eventually resulted in the failing of the cases.

From 1994 to 1996, no judicial conference as provided in Civil Rules and Orders was held. For that reasons the Presiding Officers of the judgeship could not have any meeting with the members of the Bar, the Police, the Magistracy and no interaction was possible which eventually led to dependence upon the judges' individual administrative measures to solve delay in disposal of cases.

If the Supreme Court gives more credit for disposal of money suits, civil appeals, family appeals, the Presiding Officers will be more enthusiastic in disposal of appeals side by side with the original appeals of suits and cases.

Court Administration and Case Management in Additional District and Sessions Judges Court :

The experience in 5th and 6th Additional District Judges Court is that the Presiding Officers have to share the chamber and the Ezlash due to lack of accommodation in the Court Building. The Government, although created a lot of posts did not show much care for proper accommodation which resulted in reduction of court and chamber time to be devoted by the Presiding Judges.

The Additional District and Sessions Judges mainly deal with serious criminal cases. Like the Assistant Sessions Judges, the Additional Sessions Judges also face great trouble in bringing the police witnesses, medical witness and Magistrates who recorded statements under sec. 164 of the Cr. P. C. The Court had to take some administrative measures to secure the appearance of the witnesses through their respective departments. Regarding management of Criminal and Civil Cases, it was found that the members of the Bar do not strictly comply with the Procedural law and the law of Evidence in the trial which is increasing length of the trial. The cross examinations are too long and the members of the Bar do not discharge their legal duty in keeping the trial within the bounds of law. The judges have little control over the proceedings of the courts and at times they are helpless in controlling the examination of witnesses.

In order to solve these problems attempts were made to control the progress of the trial by adhering to the provisions of the law.

Criminal Appeals and Revisions :

The Additional Sessions Court is overloaded with Criminal Appeals and Revisions. The reason for the backlog is lack of proper attention and monitoring of the Presiding Judges over these proceedings. Little credit is given for disposal of Criminal Appeals and Revisions.

Some administrative and managerial steps were taken to reduce the Criminal Appeals and revisions in 5th and 6th Additional Sessions Judge Court, Chittagong. The older cases were soughed out and instantly decided and sent down to the Court of Magistrates. Five revisions and 2 Criminal Appeals were disposed of daily and in this way the backlog was addressed.

Civil Appeals and other Cases :

There were a number of Civil Appeals and Cases under Waqf Ordinance which were in the bottom of preference. A day was fixed for disposal of Civil Cases specially the urgent Civil Misc. Appeals arising out of temporary Injunction matters.

While being in charge of the court of District and Sessions Judge, Chittagong, it was observed that the court and its departments are the foundation of all the administration and management of courts and cases. The Code of Civil Procedure and the Civil Rules and Order, Vol. I & II and the other circulars and orders issued from time to time by the Supreme Court, the service rules, circulars of Govt. the Criminal Circular Orders compiled in Vol. I and II and other prescribed rules and forms has to be strictly applied and closely monitored by the District Judge himself. Although Civil Rules and Orders are nearly followed in all courts, most of the presiding officers of criminal courts are not aware of the Criminal Circular Orders.

In Chittagong judgeship, last quarter of 1999, two judicial conferences were convoked where all the presiding officers of the judgeship including the out stations, the magistracy, collectorate, police, District Bar Association, Law Officers of the Govt., the Court Support Staff participated. In the first conference, the causes of delay in disposal of civil and criminal cases identified and the participants agreed to do their best in solving the problems.

In the subsequent conference, it was observed that the problems were slightly diminished. The Statement of Facts to be prepared by the Government to be submitted by the Govt. Pleaders in the courts increased which made more civil suit ready for disposal.

The magistrates could increase their sending up the cases to the Sessions Court more promptly, the paper publications regarding fugitives were geared up, the superintendent of police took more initiatives to improve the execution of summons and warrants and presence in courts as witnesses. The adjournments also declined as the Bar responded to the courts administrative and management initiatives to increase disposals.

Measure found appropriate seem to be:

(a) Adherence and compliance of all laws, rules;

(b) *Strictly following of civil rules and orders and Criminal Circular and Orders as guidance for administration and management of courts and cases;*

(c) *Monitoring by often and on, casual and annual inspection of courts and its departments by the presiding officers,*

(d) *Controlling the court support staff for strict compliance of orders;*

(e) *Dealing execution cases more attentively;*

(f) *Monitoring by District Judge;*

(g) *Monitoring by Supreme Court;*

(h) *Improving infrastructural facilities in courts;*

(i) *Incentives like judicial officers accommodation;*

(j) *Improvement of relationship with local Bar Association, Collectorate, Magistracy, Police and other departments connected with dispensation of justice;*

(k) *Improve the period of probation of newly appointed officers;*

(l) *Skill development of officers, staff and lawyers;*

(m) *Stenographer typists for all officers and other office equipment;*

(n) *Regular supply of printed forms for all courts;*

(o) *Team work in the judgeship in Nazarat, Accounts, copying and record room.*

Court Administration and Case Management is done for positive result in disposal of cases and other functions. It can be observed that if the presiding officer applies the basic principles of management i.e. *commitment* and *actual work with great skill*, the purpose of court administration and case management can best be achieved.

Inadequacies in the existing law :

There is no deficiency in the law and in the rules of procedure. What is needed is to apply the laws and rules of procedure in the appropriate circumstances which requires intelligence, moral courage, judicial ability, managerial ability to guide the subordinate, amiable disposition with members of Bar, hard work and support from the District Judge, the Supreme Court and the Ministry of Law, the Bar Associations. The Administration of Courts and the Management of Cases therefore greatly depends on the ability of the judge himself who is the nucleus of all activities of judicial proceedings and their timely disposal.

Some updating may be done in some portions of CRO and Criminal Circular Orders to bring those rules in law with modern concept of Court computerization etc.

Conclusion :

Over the past 20 years, judges became more involved in reducing court delay. To many observers the judge's role as impartial umpire in adversarial limited his power to control the flow of cases. For example, the law usually considers cases ready for trial only when all the are and ready to proceed. Many observers now agree that the judge must control the speed at which cases should move to help or eliminate the backlogs and delay troubling many courts.

Possible solutions :

The Courts can truly reduce delay by managing the speed at which case move without losing the procedure by employing some administrative measures and management techniques via:

1. *Continual court control of the speed of the legal process from the filing of the case in court,*
2. *Time fixing for taking major steps in the case,*
3. *Monitoring of courts procedure and compliance by Court Support Staff,*
4. *The commitment of all concern to complete trial and hearings as and when date fixed,*
5. *Opportunity for adjustment, compromise, and out of court sectoral.*

**** Alternative Dispute Resolutions :***

Civil and criminal cases take too long time and involve too much cost that the courts and other organizations are studying these problems and thinking of using alternative dispute resolution options such as mediation and arbitration.

Before thinking of going to court the citizen can think of out of court settlements. Two forms of such settlement are mediation and arbitration.

**** More recourse to small causes court :***

In small causes courts there are simple procedure for filing and trial of suits.

**** Law allows people in this country to enjoy their rights and know their duties therefore, basic purposes of court administration and case management should to be :***

- To do justice in each case,
- To stick to morality and fairness,
- There must be a result and a prompt decision,
- To protect the people from arbitrary power,
- To declare legal status.

From the above discussion it is evident that the main thing in Court Administration and Case Management is monitoring the works of the court by the Presiding Judge. By proper monitoring ninety percent of the problems of delay and backlog of cases can be resolved.

PRE-EMPTION UNDER SECTION 96 OF THE STATE ACQUISITION AND TENANCY ACT AND LAND CEILING AS A RESTRICTION

- G. M. S. Farid

Apart from Sharia and Customary or Contractual right of pre-emption, the Bengal Tenancy Act (VIII of 1885) introduced a statutory right of pre-emption in the then undivided Bengal except some specific areas, as it is apparent in the background. After the partition of India, the Non-agricultural Tenancy Act (XXIII of 1949) and the State Acquisition and Tenancy Act (XXVIII of 1951) gave recognition of this right and made it applicable to the whole of the then East Pakistan except the Hill-tract areas of Chittagong. The Declaration of Independence of Bangladesh and the law Continuance order dated the 10th day of April, 1972 read with Bangladesh (Adaptation of Existing Bangladesh laws) order (P.O. 48 of 1972) recognized statutory right of pre-emption as it was. Policy behind it was and is to prevent the inconvenience which may result from the introduction of a disagreeable stranger as a co-sharer or a neighbour and bring the property under one ownership in such an event. Right of pre-emption, so created, is consistent with right, declared in Article 42(1) of the Constitution, of a citizen to acquire, hold and dispose of an immovable property. It is, in law, a right (of an owner) of an immovable property to be substituted in place of a vendee of another immovable property. It is not a *right-in-personam* but a right-in-rem, i.e. it is not a right of the pre-emptor apart from his ownership of an immovable property; rather it is a right vested in him by virtue of his ownership of an immovable property. It is not a right of repurchase from the vendee; rather it exists prior to the date of transfer of an immovable property but gets enforceability only after the event of transfer of it takes place. In essence, the vendee as regards the right and obligation arising out of the transfer of the pre-emptible property.

It is Act no. XXVIII of 1951 which deals with this right of an agricultural tenant. Section 96 as a whole details the time, manner and circumstances for exercise of this right by an agricultural tenant. It vested this right in a co-sharer of the tenancy to pre-empt any parcel of land transferred there from to a stranger. A co-sharer may come out of inheritance or purchase. A co-sharer by inheritance is

given precedence over a co-sharer by purchase in exercise of this right. Apart from those two classes of pre-emptor, a contiguous land owner is given recognition as a third category of pre-emptor but allowed with the last chance in the preferential schedule for exercise of this right. Right of precedence itself is a restriction on this right of a co-sharer by purchase and a contiguous land owner.

Sub-section (1) of section 96 of the Act speaks for submission of an application for pre-emption by a co-sharer tenant within 4 months of the service of notice under section 89 of the Act or if no notice has been served under section 89 of the Act, within 4 months of the date of knowledge of the transfer. It also speaks for submission of an application for pre-emption by a contiguous land owner within 4 months of the knowledge of the transfer. When an application has been made under section 96(1) of the Act, sub-section ((4) of this section speaks for or allowed the remaining co-sharer tenants or the contiguous land owners to come up within time referred to sub-section (1) or to turn up within 2 months of the date of the service of the notice of the application under clause (b) of sub-section (3) of this section, whichever is earlier. A practice, with reference to a decision in the case between Abdur Rahman Vs. Baser Ali reported in 21 DLR (1996) 599 is developed for allowing a co-sharer tenant or a contiguous land owner to exercise his right of pre-emption within the aforesaid statutory period from the date of registration of the pre-emptible instrument under section 60 of the Registration Act (XVI of 1908). Such a time limit is naturally a legal restriction on a co-sharer tenant or a contiguous land owner in exercise of his right of pre-emption.

Clause (a) of sub-section (3) of this section speaks for making deposit into Court the consideration money plus 10% of the consideration money as compensation along with the application for pre-emption and gives a direction for dismissal of the pre-emption application for non-compliance. The decision of a case between Akhtarunnessa Vs. Habibullah reported in 31 DLR (1997) (AD)88 established this principle for the pre-emptor to make deposit of the same within the statutory period. Direction for making deposit of the consideration money plus the statutory compensation thereto within a define period is a legal restriction on a pre-emptor in exercise of his right.

Sub-section (10) of this section debars a pre-emptor in express language from exercising this right to (a) a transfer to a co-sharer in the tenancy whose interest has accrued otherwise than by purchase, or (b) a transfer by exchange or partition, or (c) a transfer by bequest or gift (including Heba-bil-ewaz for any consideration) in favour of the husband or wife of the testator or donor, or of any relation by consanguinity within three degrees of the testator or donor, or (d) a

simple or complete usufractuary mortgage, or until a decree or order absolute for foreclosure is made, a mortgage by conditional sale, or (e) a wakf in accordance with the provisions of the Muhammedan Law, or (f) a dedication for religious purposes without reservation of pecuniary benefit for any individual. These debarring clauses are absolute restrictions on a co-sharer tenant or a contiguous land owner in exercise of his right of pre-emption.

Sub-section (2) of this section speaks for impleading all other co-sharer tenants and the transferee when an application is made by a co-sharer tenant. It also speaks for impleading all co-sharer tenants, contiguous land owners and the transferee when the application is made by a contiguous land owner.

Under this law, a co-sharer tenant or a contiguous land owner, if he succeeds to prove those incidents, must be allowed, subject to the exception under section 96(10) of the Act, to pre-empt the land transferred to a stranger. Incidents for proof under this section are that the applicant is a co-sharer tenant or a contiguous land owner, as the case may be; that he has come within time as is prescribed in sub-section (1) or (4) as the case may be; that he impleaded all necessary parties as is referred to sub-section (2) of this section; that he has made legal deposit along with the application and that the pre-emptible instrument does not come within the purview of sub-section (10) of this section. So, it is crystal clear that section 96 of the Act read with section 101 of the Evidence Act (I of 1872) burdens the pre-emptor to prove the aforesaid incidents to get pre-emption. Also it is crystal clear that this section speaks of nothing as to whether a co-sharer tenant or a contiguous land owner, who has already owned the extent or area of land which can be retained under section 20 of Act No. XXVIII of 1951 or East Bengal State Acquisition and Tenancy (Third Amendment) Ordinance (E. P. Ord. No. XV of 1961) or the Bangladesh Land Holding (Limitation) Order (P.O. 98 of 1972) or Land Reforms Ordinance (X of 1948), shall be allowed to exercise his right or pre-emption or not. As of amendment of land ceiling, the provision of section 20 of Act No. XXVIII of 1951, E. P. Ordinance XV of 1961 and P.O. No. 98 of 1972 went out of the scene. Only the land ceiling under section 4 of Ordinance No. X of 1984 continues to remain in force on and from 14-4-1984 on this point. Section 4(1) of Ordinance No. X of 1984 speaks flatly that a malik who or whose family has already owned more than 60 standard bighas of land shall not acquire any new agricultural land by transfer, inheritance, gift or any other means. The words 'any other means' in this section seems to include the acquisition of land by pre-emption. Article 42(1) of the Constitution of Bangladesh declared the right of a citizen to acquire, hold and

dispose of an immovable property subject to any other law in force. Section 4(2) of Ordinance No. X of 1984 speaks for acquisition of new agricultural land by any means by a malik who or whose family owns less than 60 standard bighas of agricultural land if such new land, together with the agricultural land owned by him or his family, does not exceed 60 standard bighas. Article 42(1) of the Constitution of Bangladesh read with section 4 of Ordinance No. X of 1984 as a whole made in crystal clear that a co-sharer tenant or a contiguous land owner who or whose family has already owned 60 standard bighas of agricultural land can not acquire any new agricultural land by pre-emption on and from 14-4-1984 the date on which Land Reforms Ordinance (No. X of 1984) came into operation. This piece of law placed the pre-emptor to prove another incident that he or his family owns less than 60 standard bighas of agricultural land or that the land under pre-emption together with the agricultural land owned by him or his family shall not exceed 60 standard bighas. Section 102 of the Evidence Act (I of 1872) too burdens him with the duty to prove this incident for his success in exercise of his pre-emption right. As the land ceiling is not brought in section 96 of Act No. XXVIII of 1951 by way of amendment, in almost all cases, the pre-emptor does not produce the account of land under the ownership of himself or his family, save and except an averment in the application that he or his family owns less than 60 standard bighas of agricultural land or that the land under pre-emption, together with the agricultural land owned by him or his family shall not exceed 60 standard bighas. On this point, an argument is always advanced that it is the duty of the defender to show that the pre-emptor or his family owns more than 60 standard bighas of agricultural land or that the land under pre-emption together with the agricultural land owned by him or his family shall not exceed 60 standard bighas. But in law, it is not the duty of the defender rather it is the duty of the pre-emptor to prove this incident to get success. Sub-section (3) of section 4 of Ordinance No. X of 1984 provided for vesting in the government of the land which is, if acquired by pre-emption, in excess of 60 standard bighas. On the other hand, if such a pre-emption would not be allowed, the land would remain in the ownership of the pre-emptee. Even an authority, who is in control and management of Government land, has no normal scope to know such an event. To allow the laws to run smoothly and to compel the pre-emptor to prove this incident, it is of utmost necessity to bring the land ceiling into section 96 of the State Acquisition and Tenancy Act (XXVIII of 1951) by way of amendment.

With a humble hope of amendment, this work is ended herein.

LAWS RELATING TO WATER AND ENVIRONMENT IN BANGLADESH: AN APPRAISAL

- Dr Md. Abdul Karim Khan

Introduction :

Water is the most essential resource for life. But in the present day world water has become quite scarce. Although it is recognized as valuable natural resource and also a socio-economic and cultural commodity, it is now felt that it needs prudent management at all levels for sustainability of life on earth. This realization has led to a series of international seminars, most important outcome of which was the Dublin Statement on water and Bangladesh, the rapid population growth and increasing demand for water have seriously strained the availability of water resources.

About one fourth of the country is flooded every year. The flow drastically reduces in winter. There is scarcity of water for agriculture, fisheries, navigation, industries, drinking and domestic uses. In addition, a large quantity of fresh water is needed to prevent penetration of the salinity front from the Bay of Bengal and to maintain the ecology and environment. The annual cycle of water from over abundance to scarcity in a dominant factor of life in Bangladesh. Crop production, fisheries transportation and other activities follow this annual cycle. The rapid population growth place constant pressure to increase food production from the available land. The water sector program is therefore dominated by agricultural investments to increase food grain production. In order to achieve this target projects which have already been designed and implemented did not consider the negative impacts vis-a-vis conflicts with other water uses. Many flood control, drainage and irrigation. FCDI projects were implemented by constructing flood embankments and drainage structures. Intensification of agriculture in the flood protected areas create adverse impact on soil fertility, fisheries, ground water and transportation.

Environmental effects are slow and gradual bared on a complex set of issues. In the part, planners used to pay less attention to environment issues. As a result, remedial measure were not taken to offset the environmental impacts. In recent times, the environmental issue has assumed universal importance due to concern for the protection and preservation of the environment from degradation. Many donors and countries have adopted environmental policies to minimise and mitigate the environmental degradation Bangladesh became aware of the

problem recently and environmental impact assessment has become an integral part of resources projects planning.

The History of Water management in Ancient Bengal :

The main ingredients of the history of the states and royal families of Bengal were ancient writings, copper and stone inscriptions. Most of those were panegyrics of the royal families, documents of the lands sale or donation and inscriptions on state or temple. Those inscribed ingredients also include the books "Pabandut" of Dhoyi, "Ramcharit" of Sandhakar Nandi and "Sadyukti Karnanmmrita" of Shridhar Das. The books Brihat Dharma, Brahma Baibarta etc. written by Brahmin intellectuals, tourists from china like Fa-Hien, Uh.en Tsang it sing, the reports of geographers of Egypt, Historian of Greece and ancient manuscripts received at Nepal and Tibet from Buddhist monks and other also were used as ingredients. There are also some ingredients available from the utterance of Khsana and Dak. From this, the social status of the 10^{th} and 11^{th} century also made out.

There is an illusion about the period that belongs to "Shunnyapuran", "Gopichader geet", "Sheikh Shuvodaya" Adder Gambhira" and fairy tales of old age, though the subject matter of these is ancient. As per Bangla calendar, the situation for the period from 3^{rd} century is available but from 5^{th} to 13^{th} century is available particularly chronologically. But before 5^{th} century our knowledge is not clear.

Water Resources :

Bangladesh is a deltaic flood plain located at the confluence of the Ganges and the Brahmaputra. Flooding and drainage congestion affect over half of the country during the monsoon. The country suffers occasionally from drought during the dry season. All the major rivers flowing through Bangladesh originate in the neighboring countries. Major water resources projects upstream affect the flows entering Bangladesh. The Farakha Barrage in India which diverts a major part of the dry season flows of the Ganges already has had significant effects on the down-stream dry season flows of the Ganges and its distributaries in the south-western part of Bangladesh.

Surface Water :

The greater part of the country has been built by the deposition of silt and sediments carried by the large rivers: the Ganges, the Brahmaputra and the Meghna and their tributaries. These rivers annually carry over 2.4 Billion tons of the sediments and discharge into the Bay of Bengal. The total catchments area of these three river basins is about 1.72 million sq. km. Of which less than 10 percent is within Bangladesh.

The annul peak discharge of the Ganges River since commissioning of the Farakha Barrage varies from 36,900 to 76,000 cubic metre per second at the Hardinge Bridge. The peak discharge of the Brahmaputra river varies from 43,100 to 98,300 cubic metre per second. The Meghna carries 1400 m.sq. In contrast to these flood flows, the dry season discharge are quite low; the Ganges recorded a minimum flow of 838 m.sq. at the Hardinge and the Brahmaputra 2860 m.sq. in 1971. The Meghna is tidal during the dry season.

Since India has started withdrawal of flows of the Ganges at Farakha barrage environmental change have been noticed m the south western part of the country. Salinity has penetrated deep inside, affecting agriculture, water supply, industries in the area and certain species of the Sundarban forest. Many tidal creeks have been silted up which has created navigational problem. These has been considerable destruction of the ecosystem of the south western region creating further environmental damage.

Ground Water :

Besides surface water ground water is the other major source of water in Bangladesh for agriculture, drinking water, municipal and industrial use. Recharge to ground water occurs primarily through direct infiltration from rainfall. The ground water reservoir is hydraulically connected to the major streams of Bangladesh. At high stage in the river, in monsoon, there is direct recharge into the upper aquifers after rainfall. At lower stage of the rivers, the discharge is from the aquifer to the river. Upstream diversion of surface water from major river affect ground water levels in the country and increase salinity in the shallow aquifer of the coastal region.

According to estimates made in May 1984 on upazila-wise recharge condition of Bangladesh prepared by the Ground water Directorate of BWDB, the total available recharge is 14,802 macm over 92960 Km. The potential for further development is limited.

Economic Importance :

Bangladesh suffers from a chronic shortage of food grain production has to come from intensification in use of available arable land as well as increasing the yield from the crops grown, as there is virtually no additional land to be brought under cultivation. Water is the most important factor that influences crop production. The traditional system of agriculture practices that evolved through ages was overwhelmingly concentrated in the rainy season based on rain-fed cropping system. All government plans so far have wet food self-sufficiency as one of the primary objectives of development through rapid diffusion of new bio-chemical technology consisting of HYV seeds, irrigation water, fertilizer and pesticides,

flood control and drainage Though introduced in 1960's this technological approach lacked adequate policy support before independence. As a result, food production increased only from 9.6 million tons in 1960-61 to 11.9 million tons in 1969-70. Since then the importance of water, land and agriculture development is reflected in the high financial share they have commanded in planned out lays. Water plays important role in inland navigation: domestic and industrial water supply, and fisheries sectors.

Environmental Impact of Embankments :

Construction of flood embankment along major rivers and control of flood level in the adjoining flood plain has some positive as well as negative implications. On the positive side are: the progressive reduction or elimination of flood damage to crops, livestock, habitation and homesteads, improvement in health and sanitation, and also the general benefits resulting from over all water management, including the opportunities offered by flood protection for additional development and employment. The negative impacts are likely changes in river morphology, the instability of river and estuaries, closure of minor navigation channels, reduction in employment in fishery and navigation, and changes in physical and chemical properties of soil. Among other disadvantages with rigid embankment system are that it prevents the desirable level of flooding that is necessary for the cultivation of rice and jute. Rainfall is less predictable than river flows and cannot be relied upon to irrigate the land. The embankment prevents surface water drainage to in the river. Sometimes rainfall behind the embankment cause worse flooding than if the embankment had not been constructed. Embankment also prevent deposition of silt on floods plain that help in rising of low-lying lands.

On the other hand flood embankments make land available for HYV rice cultivation in the rainy season, land that would normally have been under low yielding deep water Aman. It has been observed that flood control measures causes the decline of fish yield through the virtual disappearance of various water bodies in the flood plains traditionally used for fishing (Ahmed 1987, Rahman 1989). The following impacts on fisheries have been recorded in the Chandpur irrigation project (Rahman 1989, Inpo 1986) in the first two years of operation fish production within the project area had declined by 35 percent within two years following the operation of the project, highly valued commercial of giant fresh water prawn in the south Dakatia river inside the project area was as replaced by very low valued prawn fishery of the smaller sized species, eighteen (18) species of fish of tidal or estuarine origin *(e.g. Hilsha, Pangas etc.)* which used to be available in the said capture fishing before, are now almost extinct within the project area. However, (Ahmed and Nishat 1988) reported that total fish catch in the Chandpur irrigation project started to increase exceeding the

decreasing trend after the beginning of the project operation in 1977 as a result of increases in out put from close water fisheries out put.

The impact of FCDI project on fishery are expected to be three fold (Ahmed 1987):

(a) ***Positive Impact :*** The prospect of pisciculture improves as ponds and tanks would no longer be inundated during the monsoon, thus preventing out migration of fish from these water bodies. This phenomenon has been observed in Chandpur and Meghna Dhonagoda irrigation project;

(b) ***Negative Impact :*** FCDI projects impedes natural fish breeding spawning usually takes places in the big rivers; fish fries and fingerling come to the project area with tide and foods. Empoldering completely stops this process of natural recruitment. Regulation on the estuarine side of the Meghna (in CIP) and the Feni (in Muhari irrigation project) stored this process.

(c) ***Controversial Impact :*** There is controversy about the net effect of an FCDI project on the habitual of fish which generally depends on pollution is general and oxygen content and fish food in particulars it is conceived that chemical pollution will increase as a result of higher use of chemical fertilizers and pesticides that oxygen content will diminish in the internal canal which will have lesser water flow and increased chemical pollution. The contrary argument is that domestic pollution will decline since water bodies will no longer be connected by flood with polluted sources. Moreover, the clear water of internal canals and ponds being free from silt will enhance photosynthesis and thus production of various aquatic plant that provide food for fish. It is clear that this effect in this regard is complex and requires every careful monitoring.

Environmental Impacts on Irrigation Projects :

Irrigation projects are aimed at increasing yield for a given piece of land. This enhances the living standards of the projects. However the various activities can cause undesirable side effects leading to unexpected changes in the environment, unless they are carefully planned and implemented. They may also give rise to irreversible process, causing deterioration of the desirable balance of nature. Irrigation projects in variable change the river flow characteristics, and ecosystem regimes of the command areas. The capacity of the river to flush the pollutants, which accumulate during the non-rainy season, is greatly reduced. The irrigation project may also result in abnormal and variable flows in the original river course owing the different levels of regulation to suit heavy rains and drought periods. Ecological impacts are exhibited along the route of the

canal system in clouding the major branches, distribute and water courses. The impacts includes: ecpage along the unlined water conveyance resulting in water logging rise in water tables along their courses the formation of stagnant water bodies in the borrow pits on either side of the canal improved water transports facilities; the introduction of pests through the water conveyance system; and introduction of schistosomiasis and water borne disease. Though detailed study is available several locations in the G.K. Projects water logging has become a major problem.

The ecology of the irrigation commands area gets the modified substantially after the introduction of irrigation. Agriculture changes from that of rained farming to intensive irrigated farming. Fauna and flora become modified. The ill effects attributed to the poor water management are rise of water tables: the build up of salinity; leaching of nutrients; the accelerated use of pesticides and their effect on flora and fauna; in erase of malaria and toner vector borne; and development of wet environmental which increases weeds etc.

Laws relating to water resources :

Due to uneven spatial distribution of water coupled with sleep rivers gradient, a wide range of variation of river flows exist in the country. Most of the small rivers in Bangladesh become dry during the dry season while in monsoon the flows increase by more than hundred times the mean annual flow which results in huge damages due to floods, bank erosion, siltation and landslides.

Management of water resources is a complex managerial issue for the government. There are a number of government organizations arid agencies that are primarily responsible for their domain related to water. However, BWDB is the principle organization that is expected to develop the infrastructure for proper water development in the country. Under the P.O. 59 of 1972 the BWDB has been made responsible for preparation of the comprehensive plan for the development and utilization of water resources of Bangladesh. The organization was also mandated to regulate rivers flow for efficient movement of water and silts take up projects to prevent salinity intrusion water conservation, land reclamation and watershed management.

The BWDB over the years, has grown into a very large organization, interested mainly to go for project implementation, with little interest in operation maintenance on the completed ones. This is of course mainly due to constraint of fund for operation and maintenance (Nishat 1989) MPO has been setup a permanent organization with new name Water Resources Planning Organization (WARPO). Among the tasks of WARPO will be:

* To plan for the harnessing of the water resources of Bangladesh in order to achieve harmonious development of projects for floods control, irrigation, hydropower, fisheries, inland water transport, industrial and domestic water supply, agriculture, sewerage, drainage and assist pollution control. So, that the projects become technically sound, economically feasible, socially acceptable and environmentally justifiable.

* To effectively coordinate the activities of water sector and water used agencies to ensure optimum utilization of water resources of the country.

And

* To monitor adjudicate, review and arbitrate on issues and problems arising out of activities of different agencies in water guidance towards an orderly development of all water resources of the country, consistent with principle of optimum utilization, conservation and protection.

Thus it is expected that WARPO will take up the role of ensuring harmonious as well as judicious development of water sectors. It has already been discussed that under the flood action plan Environment Impact Assessment has been made mandatory for all projects components and steps be taken to overcome the adverse effects in an appropriate way. International aspects of water development of Bangladesh are quite intriguing. As most of the major rivers flow into Bangladesh from India with some parts of their catchments lying in China, Nepal and Bhutan, all the rivers take the status of international river The indo-Bangladesh Joint Rivers Commission (JRC) which was set up in 1972, had been entrusted to jointly develop and implement projects from maximizing the benefits from river system common to both the countries. The JRC was also mandated to develop floods control projects and cooperate on floods forecasting. While in initial years it did take some steps towards carrying out these mandates, since 1976, when India unilaterally diverted the flows of the Ganges, it was transformed into a negotiation forum for arriving at a sharing formula for the Ganges. While some short-term arrangements have been made no effective and long-term agreement has so tar been worked out.

However in June 1990, the two countries reviewed possible cooperation in the field of floods control and agreed to tie up flood control embankment at common border and improve on lead time of flood flow to be used in floods forecasting.

Legislation in force in relating to water resources :

Water resources laws in Bangladesh consists of customary and statutory law. Customary laws are required through years of usage as incident to ownership of land abutting the stream or river. The statutory law comprises of numerous acts

passed by the legislature of the country. In this chapter a comprehensive list of legislation in force which are directly or indirectly related to water resources is given below:

Statutes and Subsidiary Legislation :

1. Bangladesh Institute of Nuclear Agriculture Ordinance, 1984.
2. Bangladesh Agricultural Resources Council Act, 1996.
3. Bangladesh Irrigation Water Rate Ordinance, 1983.
4. Bangladesh Merchant Shipping Ordinance, 1983.
5. Bangladesh Rice Research Institute Act, 1973.
6. Bangladesh Agricultural Research Institute Ordinance, 1976.
7. Constitution of the People's Republic of Bangladesh, 1972.
8. Destructive Insects and Pests Act, 1974.
9. Environment Conservation Act, 1995.
10. Essential Commodities Act, 1957.
11. Essential Commodities Storage, keeping and disposal Order, 1973.
12. Fertilizer, Regulation Order, 1995.
13. Government Fisheries Protection Ordinance, 1959.
14. Jute Research Institute Act, 1974.
15. Marine Fisheries Protection Ordinance, 1983.
16. New Agriculture Extension Policy, 1996.
17. Public Safety Ordinance, 1953.
18. Paurashava Ordinance, 1977.
19. Public Health, Emergency provision Ordinance. 1994.
20. Epidemic Disease Act.
21. Private Fisheries Protection Act, 1889.
22. Protection and Conservation of Fist Act, 1950.
23. Statute of the Indo-Bangladesh Joint River Commissions.
24. The Local Government Union Parishad Ordinance, 1983.
25. The Canals Act, 1864.
26. The Irrigation Act, 1876.
27. Tanks Improvement Act, 1973.
28. The Forest Act, 1927.
29. The Coast Guard Act, 1994.
30. Agricultural and Sanitary Improvement Act, 1920.

Ownership of Water :

Since the ownership of water is vested with the state, individuals or the community were given the right to use the resources. These rights have been acquired through years of usage or have been authorized to use as precedent or have been given by granting of a permit or a license.

Discussion of a few Legislation's :

Bangladesh Irrigation Water rate Ordinance, 1993 was introduced to impose water rate for supply regulation or storage of water for irrigation or drainage. Water rate may be imposed by the Government for supply or regulation for water in any area, rates shall be prescribed, remission of water rate in case of crop failure, owners of land shall allow free passage of water, diversion of normal flow of water is prohibited, unauthorized use or wasting of water is prohibited.

Bangladesh Agricultural Research Institute Ordinance, 1976 – For the establishment of Bangladesh Agricultural Research Institute of which the functions shall be undertaking of research to ensure a stable and productive agriculture through scientific management of land and water evaluation new varieties of various agricultural products and development of appropriate technology and pest management method etc.

Bangladesh Institute of Nuclear Agriculture Ordinance, 1984 - By establishing this institute to undertake research adopting nuclear techniques for the purpose of ensuring a stable and productive agriculture through evolution in new varieties of crops, scientific management of land and water.

New Agricultural Extension Policy 1996 :

The policy objectives includes-

- Sustainable agricultural, growth through more sufficient and balanced use of land, water and other resources.
- Reduce environmental degradation.

The Canals Act of 1864 was enacted to regulate the collection of tolls on canals or other lines of navigation and also for the construction and improvement of lines of navigation. This Act has detail provisions regarding the procedure to be followed in facilitating the objectives.

The Irrigation Act of 1876 was promulgated to provide the government the authority to use the water of rivers or stream flowing in a natural channel or of any lake or other natural collection of water, for the purpose of any existing or projected canal. While exercising such authority persons who sustain any loss in a way as specified in this Act shall be properly compensated.

Agricultural and Sanitary Improvement Act, 1920 applies to certain areas in Bangladesh regarding the construction of drainage and other works for the improvement of the agricultural and sanitary conditions of those area.

Tanks Improvement Act, 1939 concentrates the improvement of tanks for purpose of irrigation. The law enunciated the procedural matters regarding the

taking possession of tank fallen into disrepair or disuse and improvement and the use for irrigation purpose.

Private Fisheries Protection Act, 1889 :

Section 2 of the Act defines fish as shellfish and turtles and the "Private Waters" which means:

- the exclusive property of any person.
- in which any person has an exclusive right of fishery.
- in which fish are not confined but have means of ingress or egress.

Section 3 prohibits certain activities in private water:

- fishing in private water without having a right.
- erects, place, maintains or using of any fixed any in private water.
- any matter for catching or destroying fish.

Protection and Conservation of Fish Act, 1950 :

The title of the Act implies its objectives of protection and conservation of fish.

Section 2 of the Act defines – 'Fish' as all cartilaginous, bony fishes, prawn, shrimp, amphibious, tortoises, turtles, crustacean, animals, mollusks, echinoderms and frogs at all stages in their life history. "Fishery" means any water body natural or artificial open or closed, flowing or stagnant (such as river, haor, baor, beel floodplain, canal etc.)

Protection and Conservation of Fish Rule, 1985 :

This rules prohibits certain modes of catching fish in water bodies

- Erection of fixed engines.
- Construction of bounds weirs, dams, and embankments.
- Destruction of fish by explosives.
- Destruction of fish by poisoning.
- Catching and destruction of fish during certain period.
- Catching of carp fish.

In 1995 an amendment was inserted under rule making power as clause (g) which runs the catching of fish by de-watering or drying any water body.

The Territorial Water and Maritime Zones Act, 1974 :

Section 6 Conservation Zone - the Government may declare such zone in marine water. The Coast Guard Act, 1994 - to regulate the destruction fisheries resources

and prevent illegal fishing agricultural revolution, pesticide, fertilizer and industrial pollution.

The Essential Commodities Act 1957 :

Section 2(2) essential commodity means food, water, fuel, ught, power, or any other thing essential for the existence of the community which is notified by the government.

While it is expected that the Water Resources Planning Organization (WARPO) will take responsibility for monitoring, adjudicating, reviewing and arbitrating on issues and problem arising out of activities of different agencies in water section and water uses, no effort has been made to develop a water code and institutional mechanism to make such a code effective in real life.

In depth Evaluation :

Potentials of ground water resources; there is disagreement with other available estimates; also ground water quality should be properly monitored. Assessment of water requirement from stream flows for salinity control; this will be the major constraint for utilization of major river water at up land locations. A technology to be used in groundwater utilization; situations leading to water mining is undesirable.

Evaluate scope and potential of water conservation and conjunctive use of water. Quantitative assessment of water for navigation and development of this pollution free sector. The policy of making every project to undergo EIA must be strictly followed. EIA methodology has been proposed by FPCO. This should review by concerned professionals before it is finalized. Environmentally and ecologically sensitive areas have been intensified. These locations should be carefully monitored that further degradation does not take place.

For sustainable development of water resources the steps are essential:

1. Finalization of the EIA Guideline and Manual :

This manual is to be used in evaluation of all water development Projects at the planning stage. The Flood Plan Co-ordination Organization (FPCO) of Ministry of Irrigation Development and Flood Control (MOIWDFC) has already prepared and published one such manual as one of the supporting studies the Flood under the Flood Action Plan. The manual has been prepared recently which may be critically reviewed and then adopted as a standard document for all projects in the water sector.

2. Evaluation of Surface Water Quality Monitoring Network :

It has been discussed that salinity level limitation will eventually control the extent up to which surface water resources may be extracted in irrigation development, as ground water utilization will reach the maximum allowable limits very soon. Presently BWDB maintains water quality data collection network. It is proposed that the data collection program be reviewed in respect to both quality and quantity of data and the network be upgraded to meet future data needs.

3. Evaluation of Ground Water Data Monitoring Network :

BWDB maintains a vast network of ground water level monitoring stations. Data on ground water quality is rather limited with rapid expansion in ground water abstraction for irrigation .It is important that the existing data collection program be evaluated both with respect to water quality assessment and ground water level fluctuations without close and effective monitoring of ground water level lowering trend, eventually water mining situation may develop.

4. Study on Interaction Between Soil Fertility and Floodwater :

This study is aimed at quantifying the interrelationships between soil fertility and floodwater. It is the popular belief that floodwater is the fertilizing agent. Is the sediment earned by floodwater is the fertilizing agent or is it the dissolved chemicals erred by floodwaters? Out put from such a study would be helpful in planning environmentally sound projects based on the concept of controlled flooding.

5. In-depth Assessment of Environment Impact of Sleeted FCDI Projects:

A number of FCDI projects have already been completed and so far no serious quantitative assessment on the adverse environmental impacts has undertaken in a professional way. A through and in-depth study would lead to proper understanding of adverse aspects which could eventually lead to incorporation of appropriate measures at the planning state of future projects as well as remodeling of already completed ones. Output from this assessment would provide valuable input in finalizing the EIA manual as well as guidelines for planning.

6. Development of Water Code and Institutional Mechanism :

While it is expected that the WARPO will take responsibility for monitoring adjudicating, reviewing and arbitrating on issues and problems out of activities of different agencies in water sector and water uses, no effort has been made to develop a water code and institutional mechanism to make such a code effective in real life.

7. Monitoring of Environment Critical Location:

Twelve location have been indicated which are already vulnerable from unplanned activities in land and water resources development. A study may be undertaken to make qualitative as well as quantitative assessment of environmental concerns. This would lead to remedial measures to mitigate the adverse impacts as well as to arrest further deterioration.

8. Environmental Tribunals :

Need for establishment of environmental Tribunal as the existing civil courts. Lack of environmental expertise and dispense delay justice. An appeal from the environmental tribunal should lie to the Supreme Courts.

9. Ecological Science Research Group :

To assist the environment Tribunals in dispensation of environment justice, Ecological Science Research Group shall be established. The group should consist of independent and professional competent experts different branches of science and law. Research group will act as an information Bank for 1he environmental tribunals and generate new information according to the particular needs of the tribunals.

10. Environmental Police :

Environmental Police should be created under the present police department or established independently to deal with the environmental crimes.

11. Mobile Court :

Mobile Courts should be established under Penal Code to deal with the environmental crimes. This will speed up the justice and control the crimes.

12. Accountability :

Every authority, Ministry, department and persons exercised power or authority in relating to water and environmental must be bound to the law and by the law.

13. The Rule of Law :

The rule of law should be established and maintained in the true sense of the term. Nothing would be beyond or above the law.

14. The law enforcing agencies must be paid adequately for their proper maintenance and efficiency.

Conclusion :

In the recent past all countries of the world have been working towards the creation of adequate legal framework to prevent the gradual decline of the environment and conserve the natural resource capital, such concern has also been expressed at earth summit held at Rio de Janerio in 1992 and other global gatherings. As stated in the earlier chapter in order to meet the present charged circumstances, a major revision and upgrading of the environment pollution control ordinance 1977 became necessary. Thus to prevent escalation of Pollution Problems in the country and recognizing the importance of environmental protection and sound management practice for long term sustainable development, the government introduced the environment conservation Bill in the Parliament in 1994. The contents of the bill was discussed also in a member of gatherings in 1994. Including one held at the Planning and Development Academy, Dhaka organized by Bangladesh environmental lawyers association (BELA) and Bangladesh Unnayan Parishad, finally the environmental conservation Act 1995 (ECA 1995) was enacted by the parliament and Gazette in Feb. 1995 and comes into force June, 1995.

The appropriate judicial response and enforcement measures shall intensify the control efforts, Bangladesh being one of the developing countries must cooperate with the advanced nations in developing scientific and technological sophistication and using its legislative judicial and executive organs to effectively curbs the problem of global environmental change. At present, in turn, call for a holistic approach to water resources management in Bangladesh subsuming both surface and ground water as well as maximal possible cooperation with riparian countries. This important issues should not be limited to within the country. It needs cooperation of all coriparian countries, as the problems transmit to boundaries and call for a cooperative response from these countries, the region and the globe.

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* *Janks Improvement Act 1973.*
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RIGHT TO ADEQUATE HOUSING

- Mohammad Waleeul Islam (Ripon)

Adequate housing is universally viewed as one of the most basic human needs. Housing is a foundation from which a number of other legal entitlements can be achieved. It is also the single most important environmental factor. This article reflects what the United Nations is doing to promote and protect the human right to adequate housing. The UN activities are based upon the International Bill of Rights.

[The following extracts were published earlier in the Human Rights Fact sheet No. 21. The Human Rights fact sheet series is published by the Centre for Human Rights, UN office at Geneva. It deals with selected questions of human rights that are under active consideration or are of particular interest.]

The International Bill of Rights :

At the core of United Nations action to protect and promote human rights and fundamental freedoms is the International Bill of Right. The Bill consists of three instruments:

(i) The Universal Declaration of Human Rights (1948);
(ii) The International Covenant on Economic, Social and Cultural Rights (1966);
(iii) The International Covenant on Civil and Political Rights (1966).

These three documents define and establish human rights and fundamental freedoms. They form the foundation for the more than 50 additional United Nations human rights conventions, declaration, sets of rules and principles.

The Covenants are international legal instruments. This means that members of the United Nations, when they become parties to a Covenant or other conventions by ratifying or acceding to them, accept major obligations grounded in law.

States parties voluntarily bind themselves to bring national legislation, policy and practice into line with their existing international legal obligations.

By ratifying these and other binding texts, States become accountable to their citizens, other States parties to the same instrument and to the international community at large by solemnly committing themselves to respect and ensure the rights and freedoms found in these documents. Many of the major international human rights treaties also require States parties to report regularly on the steps

they have taken to guarantee the realization of these rights, as well as on the progress they have made towards this end.

Achieving Economic, Social and Cultural Rights :

Despite the fact that there are two Covenants, each guaranteeing a separate set of human rights the interdependence and indivisibility of all rights area long accepted and consistently reaffirmed principle. In reality, this means that respect for civil and political rights cannot be separated from the enjoyment of economic, social and cultural rights and on the other hand, that genuine economic and social development requires the political and civil freedoms to participate in this process. It is these underlying principles, of interdependence and indivisibility, which guide the vision of human rights and fundamental freedoms advocated by the United Nations.

Nevertheless, the mutually reinforcing nature of human rights implying that all human rights should be treated equally under law and in fact, has proven difficult to translate into practice. While the implementation of all human rights is problematic, the difficulties encountered in realizing economic, social and cultural rights have proved particularly intractable. In response to these challenges and in recognition of the direct link between human rights and development, the UN is paying an increasing degree of attention to economic, social and cultural rights and to ways in which the international community can work together to ensure their realization.

A number of specific steps towards the effective implementation of economic, social and cultural rights have been taken by various UN human rights bodies in recent years.

The right to adequate housing is one of the economic and cultural rights to have gained increasing attention and promotion, not only from the human rights bodies but also from the Centre for Human Settlements (Habitat). This began with the implementation of the Vancouver Declaration on Human Settlements issued in 1976, followed by the proclamation of the International Year of Shelter for the Homeless (1987) and the adoption of the Global Strategy for Shelter to the Year 2000, by the United Nations General Assembly n 1988.

What does Housing have to with Human Rights ?

At first glance, it might seem unusual that a subject such as housing would constitute an issue of human rights. However, a closer look at international and national laws, as well as at the significance of a secure place to live for human dignity, physical and mental health and overall quality of life, begins to reveal some of the human rights implications of housing. Adequate housing is universally viewed as one of the most basic human needs.

Yet as important as adequate housing is to everyone, the UN Centre for Human Settlements estimates that throughout the world over 1 billion people live in inadequate housing, with in excess of 100 million people living in conditions, classified as homelessness.

Access to drinking water and adequate sanitation facilities are additional basic needs directly associated with housing. 1.2 billion people in developing countries do not have access to drinking water and 1.8 billion people live without access to adequate sanitation (WHO Decade Assessment Report, 1990). These figures serve to illustrate the enormous scale of the global struggle to fulfill the right to adequate housing.

The International Year of Shelter for the Homeless in 1987 facilitated the raising of public awareness about the housing and related problems still prevalent throughout the world. The follow up to the Year, the Global Strategy for Shelter to the Year 2000 has propelled housing issues forward, and has resulted in housing rights being placed more prominently than ever before on the human rights agenda of the UN.

The right to adequate housing forms a cornerstone of the Global Shelter Strategy:

> "The right to adequate housing is universally recognized by the community of nations..... All nations without exception, have some form of obligation in the shelter sector, as exemplified by their creation of housing ministries or housing agencies, by their allocation of funds to the housing sector and by their policies, programmes and projects..... All citizens of all States, poor as they may be, have a right to expect their Governments to be concerned about their shelter needs, and to accept a fundamental obligation to protect and improve houses and neighborhoods, rather than damage or destroy them."

Adequate housing is defined within the Global Strategy as meaning adequate privacy, adequate space, adequate security, adequate lighting and ventilation, adequate basic infrastructure and adequate location with regard to work and basic facilities..... all at a reasonable cost.

The Legal Status of Housing Rights :

With the adoption of the Universal Declaration of Human Rights in 1948, the right to adequate housing joined the body of international, universally applicable and universally accepted rights law. Since that time this right has been reaffirmed in a wide range of additional human rights instruments, each of which are relevant to distinct groups within society. No less than 12 different texts adopted and proclaimed by the UN explicitly recognize the right to adequate housing.

The Housing Rights of Everyone :

Many of the instruments that recognize the right to adequate housing phrase this right as one to which everybody is entitled. This is important, because although other texts mention entitlement to adequate housing in the context of certain groups (thus providing such groups added legal protection), ultimately adequate housing is the right of every child, woman and man-everywhere. Article 25.1 of the Universal Declaration of Human Rights thus proclaims that:

> "Everyone has the right to a standard of living adequate for the health and well being of himself and of his family, including food, clothing, housing and medical care and necessary social services and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control".

The International Covenant on Economic, Social and Cultural Rights contains perhaps the most significant foundation of the right to housing found in the entire body of legal principles which comprise international human rights law. Article 11.1 of the Covenant declares that:

> "The States parties to the present covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international cooperation based on free consent."

In addition to these two sources, both the UN Declaration on Social Progress and Development (1969) and the UN Vancouver Declaration on Human Settlements (1976) recognize the rights of everyone to adequate housing.

Housing and other rights: An often unrecognized link-

The indivisibility and interdependence of all human rights finds clear expression through the right to housing. As recognized by several human rights bodies of the UN, the full enjoyment of such rights as the right to human dignity, the principle of non-discrimination, the right to an adequate standard of living, the right to freedom to choose one's residence, the right to freedom of association and expression (such as for tenants and other community based groups), the right to security of person (in the case of forced or arbitrary evictions or other forms of harassment) and the right not to be subjected to arbitrary interference with one's privacy, family home or correspondence is indispensable for the right to adequate housing to be realized, possessed and maintained by all groups in society.

At the same time having access to adequate, safe and secure housing substantially strengthens the likelihood of people being able to enjoy certain additional rights. Housing is a foundation from which other legal entitlements can be achieved. For example: the adequacy of one's housing and living conditions are closely linked to the degree to which the right to environmental hygiene and the right to the highest attainable level of mental and physical health can be enjoyed. The World Health Organization has asserted that housing is the single most important environmental factor associated with disease conditions and higher mortality and morbidity rates.

This relationship or "permeability" between certain human rights and the right to adequate housing show clearly how central are the notions of indivisibility and interdependence to the full enjoyment of all rights.

Clarifying Governmental Obligations :

The widespread legal recognition of the right to adequate housing is of the utmost importance. In practical terms, however, it is necessary to spell out the specific steps which Governments should take to turn these legal rights into concrete realities for the people who are entitled to them. It is sometimes mistakenly thought that rights such as the to housing simply require Governments to provide sufficient public funds towards this end and that the subsequent allocation of monetary resources is al that is needed for obligations surrounding this right to be satisfied. However, the right to housing and, indeed, all economic, social and cultural rights confer a much more lengthy and complex series of obligations on States.

The Committee on Economic, Social and Cultural Rights has helped to clarify the various governmental obligations arising from recognition of the right to adequate housing. It has done this through a number of initiatives. These include (a) holding a "general discussion" on this right; (b) comprehensively revising the guidelines for States' reports under articles 16 and 17 of the Covenant on Economic, Social and Cultural Rights; (c) adopting its General Comment No. 4 on the Right to Adequate Housing and (d) including in its concluding observations on some States parties reports remarks to the effect that the State in question was infringing the right to adequate housing owing to the practice of forced eviction.

These steps and of course the norms of the Covenant and other legal sources of the right to housing outlined above, give rise to various levels of governmental obligations towards the realization of this right.

The legal obligations of Governments concerning the right to housing consist of (i) the duties found in article 2.1 of the Covenant, and (ii) the more specific obligations to recognize, respect, protect and fulfill this and other rights.

Article 2.1 of the Covenant is of central importance for determining what Government must do and what they should refrain from doing in the process leading to the society wide enjoyment of the rights found in the Covenant. This article reads as follows:

> "Each State party to the present Covenant undertakes to take steps, individually and through international assistance and cooperation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures."

Three phases in this article are particularly important for understanding the obligations of Governments to realize fully the rights recognized in the covenant, including the right to adequate housing: (a) "to take steps... by all appropriate means"; (b) "to the maximum of its available resources"; and (c) to achieve progressively".

The Obligations of the International Community :

The obligations of the international community (a term which en-compasses all States and international agencies) towards the realization of the right to adequate housing are more extensive than is generally assumed.

For example, under Articles 55 and 56 of the Charter of the UN and in accordance with well-established principles of international law, international cooperation for the realization of economic, social and cultural rights is an obligation of all States. This responsibility is particularly incumbent upon those States which are in a position to assist others in this regard.

Similarly, the 1986 Declaration on the Right to Development emphasizes that in the absence of an active programme of international, technical and financial assistance and cooperation, the full realization of economic, social and cultural rights will remain an unfulfilled aspiration in many countries.

In more specific terms, related to the right to adequate housing, the international community as a whole is legally obligated to ensure protection of this right through a number of measures, such as:

— Refraining from coercive measures designed to force a State to abrogate or infringe its housing rights obligations;

— Providing financial or other assistance to States affected by natural, ecological or other disasters, resulting in, inter alia, the destruction of homes and settlements;

— Ensuring the provision of shelter and/ or housing to displaced persons and international refugees fleeing persecution, civil strife, armed conflict, droughts, famine, etc.;

— Responding to abject violations of housing rights carried out in any State; and

— Diligently reaffirming the importance of the right to adequate housing, at regular intervals, and ensuring that newly adopted legal texts do not in any way detract from existing levels of recognition accorded to this right.

The Entitlements of Housing Rights :

One of the barriers to achieving housing rights has been the absence of a universally recognized definition of the set of entitlements comprising this norm. This hurdle was perhaps more the result of perception than genuine legal analysis. In recent times, a number of steps have been taken to refine legal approaches to this matter. Most notably, General Comment No. 4, of the Committee on Economic, Social and Cultural Rights, on the Right to Adequate Housing defines this right as being comprised of a variety of specific concerns. Viewed in their entirety, these entitlements form the core guarantees which, under international law, are legally vested in all persons.

1. Legal Security of Tenure :

All persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats. Government should consequently take immediate measures aimed at conferring legal security of tenure upon those households currently lacking such protection. Such steps should be taken in genuine consultation with affected persons and groups.

2. Availability of Service Materials and Infrastructure :

All beneficiaries of the right to adequate housing should have sustainable access to natural and common resources, clean drinking water, energy for cooking, heating and lighting, sanitation and washing facilities, food storage facilities, refuse disposal, site drainage and emergency services.

3. Affordable Housing :

Personal or household costs associated with housing should be at such a level that the attainment and satisfaction of other basic needs are not threatened or compromised. Housing subsidies should be available for those unable to obtain affordable housing, and tenants should be protected from unreasonable rent levels or rent increases. In societies where natural materials constitute the chief sources of building materials for housing, steps should be taken by States to ensure the availability of such materials.

4. Habitable Housing :

Adequate housing must be habitable. In other worlds it must provide the inhabitants with adequate space and protect them from cold, damp, heat, rain, wind or other threats to health, structural hazards and disease vectors. The physical safety of occupants must also be guaranteed.

5. Accessible Housing :

Adequate housing must be accessible to those entitled to it. Disadvantaged groups must be accorded full and sustainable access to adequate housing resources. Thus, such disadvantaged groups as the elderly, children, the physically disabled, the terminally ill, HIV-Positive individuals, person with persistent medical problems, the mentally ill, victims of natural disasters, people living in disaster-prone areas and other vulnerable groups should be ensured some degree of priority consideration in the housing sphere. Both housing law and policy should take fully into account the special housing needs of these groups.

6. Location :

Adequate housing must be in a location which allows access to employment options, health care services, schools, child care centres and other social facilities, Housing should not be built on polluted sites nor in immediate proximity to pollution sources that threaten the right to health of the inhabitants.

7. Culturally Adequate Housing :

The way housing is constructed, the building materials used and the policies underlying these must appropriately enable the expression of cultural identity and diversity. Activities geared towards development or modernization in the housing sphere should ensure that the cultural dimensions of housing are not sacrificed.

These extensive entitlements reveal some of the complexities associated with the right to adequate housing. They also show the many areas which must be fully considered by States with legal obligations to satisfy the housing rights of their population. Any person, family household, group or community living in conditions in which these entitlements are not fully satisfied, could reasonably claim that they do not enjoy the right to adequate housing as enshrined in international human rights law.

Towards the Justiciability of Housing Rights :

The question of whether the legal principle of justiciability or the provision of domestic legal remedies are applicable to economic, social and cultural rights, in particular the right to adequate housing, has been answered affirmatively by the

Committee on Economic, Social and Cultural Rights. According to the Committee, areas where such provisions would apply, include:

(a) Legal appeals aimed at preventing planned evictions or demolitions through the issuance of court-ordered injunctions;
(b) Legal procedures seeking compensation following an illegal eviction;
(c) Complaints against illegal actions carried out or supported by landlords (whether public or private) in relation to rent levels, dwelling maintenance and racial or other forms of discrimination;
(d) Allegations of any form of discrimination in the allocation and availability of access to housing;
(e) Complaints against landlords concerning unhealthy or inadequate housing conditions; and
(f) Class action suits in situations involving significantly increased levels of homelessness.

Legal Sources of the Right to Adequate Housing under International Human Rights Law:

* *International Covenant on Economic, Social and Cultural Rights (1966).*
* *International Convention on the Elimination of All Forms of Racial Discrimination (1965).*
* *Convention on the Elimination of All Forms of Discrimination Against Women (1979).*
* *Convention of the Rights of the Child (1989).*
* *Convention Relating to the Status of Refugees (1951).*
* *International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (1990).*
* *The Universal Declaration of Human Rights (1948).*
* *Declaration of the Rights of the Child (1959).*
* *International Labour Organization (ILO) Recommendation No. 115 on Worker's Housing (1961).*
* *Declaration on Social Progress and Development (1969).*
* *Vancouver Declaration on Human Settlements (1976).*
* *Declaration on the Right to Development (1986).*
* *General Assembly resolution 41/146; and resolution 42/146.*
* *ECOSOC resolution 1987/62.*
* *Commission on Human Rights resolution 1986/36; resolution 1987/22; resolution 1988/24; resolution 1993/77*
* *Commission on Human Settlements resolution 14/6.*
* *Sub-Commission on Prevention of Discrimination and Protection of Minorities resolution 1991/12, and resolution 1991/26.*

Training Courses organized by the Institute from 1.3.1997 to 24.5.2003

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

Sl. No.	*Course Title*	*Status of the Participants*	*No. of the Participants*			*Duration*
			Male	*Female*	*Total*	
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
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 Trainng Course	Accountants	37	1	38	8/9/2001-13/9/2001
35	7th In-service Trainng 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
42	31st Judicial Administration Training Course	District and Sessions Judges	21	5	26	18/7/2002-31/7/2002
43	32nd Judicial Administration Training Course	Assistant Judges	24	1	25	8/8/2002-28/8/2002

Sl. No.	Course Title	Status of the Participants	No. of the Participants			Duration
			Male	Female	Total	
44	33rd Judicial Administration Training Course	Additional District and Sessions Judges	27	-	27	12/9/2002-2/10/2002
45	5th Training Course	Public Prosecutors	34	1	35	9/10/2002-17/10/2002
46	6th Training Course	Government Pleaders	26	-	26	23/10/2002-31/10/2002
47	34th Judicial Administration Training Course	Assistant Judges	28	2	30	9/1/2003-23/1/2003
48	35th Judicial Administration Training Course	Additional District and Sessions Judges	9	1	10	20/2/2003-5/3/2003
49	36th Judicial Administration Training Course	District and Sessions Judges	19	4	23	13/3/2003-19/3/2003
50	1st Judicial Education and Training Programme on ADR	Judges and Government Lawyers	37	-	37	29/3/2003
51	2nd Judicial Education and Training Programme on ADR	Judges and Government Lawyers	38	-	38	31/3/2003
52	3rd Judicial Education and Training Programme on ADR	Judges and Government Lawyers	35	1	36	3/4/2003
53	4th Judicial Education and Training Programme on ADR	Judges and Government Lawyers	38	2	40	5/4/2003
54	5th Judicial Education and Training Programme on ADR	Judges and Government Lawyers	35	1	36	7/4/2003
55	6th Judicial Education and Training Programme on ADR	Judges and Government Lawyers	37	-	37	12/4/2003
56	7th Judicial Education and Training Programme on Artha Rin Adalat Ain, 2003	Judges and Government Lawyers	30	3	33	22/4/2003-24/4/2003
57	9th In-service Training Course	Bench Assistants	26	-	26	3/5/2003-10/5/2003
58	10th In-service Training Course	Bench Assistants	27	-	27	17/5/2003-24/5/2003
		Total =	**1805**	**104**	**1909**	

Some Legal Quotations:

* *"Four things belongs to judge:*
to hear courteously,
to answer wisely,
to consider soberly and
to decide impartially."
- Socrates

* *"Let justice be done though the havens fall."*
- Sir James Mansfield

* *"Justice delayed is worse than injustice."*
- Joseph L. Baron

* *"A good judge conceives quickly, judges slowly."*
- Rosalind Fergussion

* *"Fresh justice is the sweetest."*
- Francis Bacon

* *"Justice is truth in action."*
- Benjamin Disraeli

* *"Be just before you are generous."*
- Bergen Evans

* *"The greatest of all gifts is the power to estimate things at their true worth."*
- La Rochetoucauld

* *"There are no more reactionary people in the world than judges."*
- Lenin

* *"One thing a judge must never do. He must never lose his temper. However sorely tried.*
- Lord Denning

* *"Justice is the arm of law."*
- Luther A. Huston

* *"A Code of Laws is like a vast forest; the more it is devided, the better it is known."*
- Jeremy Bentham

Judicial Administration Training Institute


বিকাশ প্রশাসন প্রশিক্ষণ ইনস্টিটিউট
১৫, কলেজ রোড
তারিখ.....
ঢাকা