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FROM THE DESK OF DIRECTOR GENERAL

Judicial Administration Training Institute has three departments. These are Administration, Training and Research & Publication. One of the most important functions of Research & Publication Department is to publish periodicals, reports, etc. on the judicial system and court management. JATI Journal is a periodical of Judicial Administration Training Institute. This issue is the 4th volume of JATI Journal. This current volume comprises of various articles relating to judicial system and court management which is likely to enlighten all its esteemed readers on diverse thoughts, ideas and subjects.

The prime object of this Institute is to make the judges and others connected with the administration of justice to ensure just, speedy and inexpensive justice to the litigants. Recently positive changes have been brought in the training courses to meet the present needs of the trainees. Sessions on judicial skill, problems and solutions relating to trial of cases, oral presentation programme based on case law are the recent addition in the Judicial Administration Training Course. Discussion on judicial skill would enhance the knowledge of the trainees in writing judgment, order, recording of evidence, framing of issues, examination under section 342 etc. There is a computer training facility in this Institute under DANIDA-JATI Project to provide IT Literacy to the judicial officers and court support staff.

This journal will focus on issues like trial of offences, human rights and democracy, Alternative Dispute Resolution, rights of children, art and mechanism of reading law, issues relating to real estate and environment.

Our laws are being changed frequently. Keeping these changes in mind, the Institute has included the newly amended and enacted laws in the curriculum of JATI so that the new laws and amendments can be

disseminated quickly and properly to the judges, lawyers and others connected with the administration of justice.

We are grateful to the writers who have contributed to this journal. Any suggestion for the improvement of JATI Journal will be highly appreciated.

May, 2005
Dhaka.

Justice Md. Hamidul Haque
Director General
and
Chairman of the Editorial Board.

LAWS RELATING TO OFFENCES AGAINST WOMEN AND TRIAL OF SUCH OFFENCES

- Jutice Md. Hamidul Haque

Violence against women increased alarmingly during last few decades in Bangladesh. Attempts were made to curb offences against women by introducing new laws. Of course, some provisions are there in the Penal Code which relate to offences against women but these were found to be not sufficient to cope with all types of offences against women. At first Dowry Prohibition Act was passed in 1980 and thereafter, Cruelty to Women (Deterrent Punishment) Ordinance, 1983 was promulgated. The first enactment was made with a view to curb the demand for dowry, which increased manifold during last few decades. The second law was promulgated with a view to check some offences specially to check violence against women but these two laws were also found to be not sufficient and in 1995, Nari-O-Shisho-Nirjaton (Bishesh Bidhan) Ain was passed. After five years, again Nari-O-shishu-Nirjaton Damon Ain was passed in 2000 and the Act of 1995 was repealed by this new Act. In July 2003, the Act of 2000 was amended and some new provisions have been introduced and some existing provisions were modified or substituted.

The major offences against women are kidnapping, abduction, rape, trafficking in women, torture for dowry, acid throwing etc. All these offences are included in the Act of 2000 along with the amendments made in 2003. During last several years, some young women committed suicide due to some acts of some young people of the locality. Previously, there was no relevant provision, neither in the Penal Code nor in the Act of 2000 but a new section, section 9 (Ka) has been introduced by the amendment Act of 2003 to cover such offence. However, the punishment as provided for this offence appears to be not sufficient, the sentence should have been imprisonment for life.

Section 10 of the Act relates to যৌনপীড়ন (sexual assault) and শ্লীলতাহানী. The offence as described in this section does not cover all related offences. For example, causing harassment by making obscene, offensive or annoying telephone calls, blackmailing of a woman by taking her photographs, secretly video recording of any scene of a woman etc, are not included. Though, in sub-section (2) of this section, the expression 'শ্লীলতাহানী' has been used but it has not

been defined any where. So, there is scope of further amendment of section 10 of the Act.

The prohibition in section 14 regarding publication of news relating to the victim disclosing her identity is undoubtedly a good provision. In our society, if the victim woman or girl survives, instead of getting sympathy, gets blame - No one comes forward to marry such a victim or even treat her honourably. But the media cares little. It is noticed that inspite of the prohibition imposed by section 14, publications of the details are made disclosing the identity of the victim. Provision should be added in this section empowering the Tribunal to take action suo moto in case of violation of the prohibition imposed by the section.

Section 9 deals with offence of rape and causing murder after rape and gang rape. The word 'rape' has not been defined in this Act but from the definition as given in section 2 (Uma) we find that the definition of 'rape' as given in the Penal Code has been accepted. However, from 'explanation' as given in section 9, we find that if the act is done without consent or by putting in fear or by obtaining consent by deceitful means, the act will be considered as rape. The explanation also appears to be not exhaustive. We have come across dozens of cases where co-habitation with a woman was made by giving false promise of marriage. Such an act is not an offence within the meaning of section 493 of the Penal Code. It is doubtful whether such an act comes within the meaning of 'cheating' as defined in section 415 of the Penal Code. In dozens of cases where evidence was led to show that co-habitation was made after obtaining consent of the woman by making a false promise of marriage, court held that no offence was committed under section 493 and in all such cases, the accused persons were acquitted. Most of such victims became pregnant and gave birth to unwanted child who do not get recognition from the society for no fault of their own. Recurrence of such occurrences may be checked by further amending the definition of 'rape' and expanding the 'explanation' as given in section 9 of the Act.

Now, as regards the actual difficulties which are faced by the courts in trying cases relating to offences against women, it may be pointed out that in cases of offences specially in sex offences such as kidnapping and rape, in most cases it is difficult to prove the allegation by independent, neutral witnesses. Courts in this subcontinent previously used to give much emphasis on a rule of prudence that conviction in a rape case should not be given only on the evidence of the

prosecutrix, some corroboration must be there. Moreover, the courts also used to give much emphasis on medical evidence. But now a days, situation has changed. Previously, in many cases following the principle that there must be some corroboration of the evidence of the prosecutrix, many accused were acquitted due to lack of such corroboration. This question was elaborately discussed in the case of Jahangir Hossain Vs State reported in 1 BLC 292. In this case, the victim, a 14 year old girl was taken to the room of the accused where she was raped. The tribunal found the accused guilty under section 4 (c) of the Cruelty to Women (Detterent Punishment) Ordinance, 1983 relying mainly on the evidence of the prosecutrix. The accused then preferred an appeal. In the appeal, the main argument was that the Tribunal committed an illegality in convicting the accused relying on the uncorroborated evidence of the prosecutrix. In this appeal, a Division Bench after considering the previously followed principle by the higher courts in this subcontinent, considered some decisions of the Indian Supreme Court on the point and also the decision of the Appellate Division of our Supreme Court. In one case, the Indian Supreme Court after referring to section 114 illustration (b) and section 133 of the Evidence Act observed as follows:

"A prosecutrix of a sex offence cannot be put on par with an accomplice. She is, in fact, a victim of the crime. The Evidence Act nowhere says that her evidence cannot be accepted unless it is corroborated in material particulars. She is undoubtedly a competent witness under section 118 and her evidence must receive the same weight as is attached to an injured in cases of physical violence .... The degree of proof required must not be higher than is expected of an injured witness .... to insist on corroboration except in the rarest of rare cases is to equate a woman who is a victim of the lust of another with an accomplice to a crime and thereby insult womanhood".

In another case reported in AIR 1983, page 753, the Indian Supreme Court mentioned about 12 reasons for reluctance on the part of women in India to lodge complaint or FIR if subjected to any sexual assault or rape. The Court also observed as follows:

"In view of these factors the victim and their relatives are not too keen to bring the culprit to books. And when in the face of these factors the crime is brought to light there is a built -in assurance that the charge is genuine rather than fabricated".

The Appellate Division of our Supreme Court also made some observations in the case reported in 13 BLD (AD) 79. The observations are as follows:

> "It may be observed that it has long been a rule of practice for insisting corroboration of the statement of the prosecutrix, but if the Judge feels that without corroboration in a particular case the conviction can be sustained without independent corroboration, then the Judge should give some indication in his judgment that he has/ had this rule of caution in his mind and then should proceed to give reasons for considering it unnecessary to require corroboration and for considering that it was safe to convict the accused in a particular case without corroboration"

However, in this case the Appellate Division found that the evidence of the prosecutrix was not satisfactory. In spite of this, the Appellate Division did not hesitate to observe that there was scope of giving conviction in a particular case relying on the statement of the prosecutrix without corroboration.

I have referred to the above cases, decisions and observations of the higher courts only to give emphasis on the fact that there is no reason to stick to the stringent rule that corroboration of the evidence of the prosecutrix is necessary for giving conviction to an accused in a sex-offence case. In view of the present situation prevailing in the society it is now very difficult to get evidence of independent or neighbouring witnesses. So, if after considering all the facts and circumstances of a particular case, the court finds no reason to disbelieve the evidence of the prosecutrix, in view of the above decisions of the higher courts, there should not be any hesitation to convict an accused in a sex-offence case relying on the evidence of the prosecutrix. However, inspite of the decision of the Appellate Division, most of the Courts follow the earlier principle that some corroboration of the evidence of the prosecutrix is necessary to convict an accused charged with offence of rape. So, it is desirable that the relevant provision of the Evidence Act may be amended suitably by incorporating a provision that if the evidence of the prosecutrix is unimpeachable and believable, conviction may be given relying on her evidence without any corroboration.

In a sex-offence case particularly in a rape case importance is also given on the medical evidence but it is noticed that in many cases, investigating officers do not

take the victim to the hospital or to the doctor for medical examination immediately after the occurrence or after recovery of the victim.

Due to such negligent act on the part of the investigating officers, when the victims are examined after 4/5 days from the date of occurrence, the doctors who examine them do not find any sign or marks of rape. At the time of trial, the accused persons take advantage of this medical evidence and we have found that in almost all cases when no sign of rape is found in the medical report, the courts consider the prosecution case shaky and acquit the accused.

There is no doubt that there is importance of medical evidence but if we consider the present day conditions that victims are not taken to the doctors for examination immediately after the occurrence, perhaps it will not be very wise to give much importance on medical evidence. When the most valuable property of a woman is lost, only due to questionable performance of duty by an investigating officer, such a woman should not be deprived of getting justice. In recent decisions, it has been held that medical evidence is not a must, if the allegation of rape can be proved by other evidence, conviction may be given relying on such evidence. It is quite natural that if medical examination is done after 4/5 days, the doctor may not find any sign of rape. In cases of a married woman or mother of 1 or 2 child, medical evidence may not be affirmative. So, the court is to assess the total evidence and if the court is satisfied that allegation of rape has been proved by other evidence, there is no reason why conviction cannot be given on the basis of such evidence.

In this connection, we may refer the case of Alamgir Hossain Vs State reported in 49 DLR 630. In this case, the victim was taken to Dhaka from Joydebpur by the accused by making a false representation to the father of the victim that she would be provided with a good employment. Then the victim was taken to a house at Gopibagh where she was confined and raped by the accused. After few days, the accused returned to Joydabpur and when parents of the victim put pressure on the mother of the accused to inform them about their daughter, the victim was returned to her parents to whom she narrated the story. Then the father took her to the police station, the police recorded FIR and after investigation submitted charge sheet against the accused. In this case, there was no eye witness and even there was no scope of medical examination of the victim immediately after she was raped by the accused. The tribunal, in spite of absence of corroborative

evidence and medical evidence in support of rape, convicted the accused relying on the evidence of the victim and her parents. The accused could not file appeal within time and then filed an application under section 561A of the Code of the Criminal Procedure. The High Court Division upheld the decision of the Tribunal holding that medical examination is not a must if the allegation can be proved otherwise.

In another case, the High court Division (in which I myself was the author Judge) upheld the conviction given by the Tribunal though no marks of rape were found on medical examination. This case is reported in 4 BLC 381. A 14 year old girl who was waiting in the bus stand was taken in a lonely place behind a college and two accused raped her by showing a pistol. The occurrence took place at about 8 P.M. on 11.11.1996 and doctor examined the victim at 1 P.M. on 19.11.96 after more than seven days from the date of occurrence. So, the doctor did not find any sign of rape. In this case, the victim was taken to the Magistrate on 13.11. 96 on which date the Magistrate passed an order for medical examination. But the investigating officer did not produce the girl before the Magistrate on 14.11.96. Then again on 15.11.96, the Magistrate passed an order for medical examination but in the following day, the civil surgeon did not examine her and ultimately the victim was examined on 19.11.96. In this case, the delay was intentional. However, considering the total evidence, High Court Division upheld the decision of the Tribunal though medical evidence did not support the prosecution case of rape. There may be similar cases where medical evidence may not support the prosecution case but still there is scope of convicting the accused in consideration of the total evidence.

In the above, I have tried to point out some problems which the prosecution face in cases relating to offences against women specially rape. Nowadays, it is very difficult to obtain corroboration. The cardinal principle which is followed in criminal cases is that the accused should be presumed to be innocent and the prosecution shall prove the guilt of the accused, the accused has no onus to discharge. Another principle followed is that there must be corroboration on material points by independent, neutral and neighbouring witnesses. But at present the socio-economic condition has changed much, corruption is rampant, performance of investigating officers sometimes are not at all satisfactory due to various reasons, witnesses are reluctant to depose before the Investigating officer,

sometimes even before the court due to fear of life and retaliation. In view of such a position, the higher courts have taken the view that in certain cases, conviction may be given to an accused relying on the sole evidence of the prosecutrix. Even then, some courts hesitate to apply this principle. In view of this position, the question whether onus in such a case can be shifted, at least in part, upon the accused deserves some consideration.

It is heartening to note that the legislature in the Act of 2000, to some extent shifted onus upon the accused in respect of offences of trafficking in women and other related offences. The relevant provisions are sub-sections (2) and (3) of section 5 of the Act. This idea may be extended to some other offences, for example, if the victim is recovered from the custody of the kidnapper or if the victim in a rape case is recovered either from the custody of the accused or from a place which is within the control of the accused, then the onus may be shifted upon the accused to explain how the victim came to his custody or came to that place. In this respect, the scope of section of 106 of the Evidence Act may also be expanded or be made more exhaustive.

Another difficulty is faced by the courts in respect of trial of offence under section 11 of the Act of 2000. The section deals with offences of murder for dowry or causing grievous or simple hurt for dowry. In some cases, the courts find that actually the victim was murdered or assaulted but there is no sufficient evidence to show that the death or hurt was caused for dowry. In such cases, it has been found that some of the Tribunals convicted the accused under section 302 or 304 of the Penal Code for murder in the absence of evidence for causing the death for dowry. Such judgment and orders of the Adalots/Tribunals were challenged in the High Court Division and one case went up to the Appellate Division. Question raised was: Nari-O-Shishu-Nirjatan Damon Adalot being a special forum, it cannot try and convict an accused for an offence which is not triable by the Adalot. In two cases reported in 5 BLC at pages 230 and 353, when it was found by the High Court Division that the death was caused not for dowry, the conviction given by the Adalat under section 10(1) of Nari-O-Shishu-Nirjaton Damon (Bishesh Bidhan) Ain, 1995 was converted into conviction under section 302 of the Penal Code. In both the cases, a decision of the Appellate Division reported in 19 BLD (AD) page 119, was relied upon. The accused of this reported case was tried under section 10(1) of Nari-O-Shishu-Nirjaton Damon (Bishesh Bidhan) Ain, 1995. The Adalot found that death was caused to the victim but there

was no sufficient evidence to show that it was caused for dowry. So, the Adalot convicted the accused under section 304 Part 1 of the Penal Code. In the appeal, the High Court Division held the view that under the Act of 1995, the Adalot had no jurisdiction to try an offence under the Penal Code and as such the order of conviction and sentence under section 304 of the Penal Code was without jurisdiction. So, the High Court Division sent back the case for re-trial by an appropriate court. Against this order of re-trial, the convict appellant filed an appeal before the Appellate Division. The observations of the Appellate Division in this case are as follows:

"...........when it is found after a full trial that there was a miss-trial or trial without jurisdiction, the court of appeal before directing a fresh trial by an appropriate court should also see whether such direction should at all be given in the facts and circumstances of a particular case. For example, if it is found that there was no legal evidence to support the conviction then in that case it would be wholly wrong to direct a re-trial because it would then be an useless exercise."

After making the above observations and some other observations the Appellate Division sent back the appeal to the High Court Division to consider the case on merit and then to pass whatever order or orders the High Court Division would consider appropriate in the interest of justice.

But in another case, the Appellate Division took a different view. This case is also reported in 19 BLD (AD) at page 4. The facts of this case are that the victim was confined by the accused persons in an office room of the Driver's Association of which one of the accused was an office-bearer and in that office room she was raped by the accused. The accused persons were charged under section 376 of the Penal Code read with section 4(c) of the Cruelty to Women (Deterrent Punishment) Ordinance, 1983. The Tribunal found the accused persons guilty. In the Appeal, High Court Division held that though the allegation of rape was not proved, it was proved that the victim was confined in the office room of the Driver's Association by the accused persons and as such the High Court Division altered the conviction under section 342/34 of the Penal Code. The convicts then filed appeal before the Appellate Division in which the Appellate Division has held that the Special Tribunal had only jurisdiction to try cases as mentioned in the schedule of Special Powers Act and not beyond that and as the offence under section 342 of the Penal Code is not included in that schedule, alteration of the conviction from a schedule offence to an offence of Penal Code is not legal.

So, in the above, we find that the Appellate Division has taken two different views in the above two cases. It may appear from the reasoning given in the case reported in 19 BLD (AD) page 119, that there is scope of convicting an accused for causing hurt or death even when the allegation of causing such death or hurt for dowry has not been proved satisfactorily. However, it depends upon the facts and circumstances of each case to apply the above principle. The guideline to apply the principle is also given in the above case by the Appellate Division. However, it may be mentioned here that three Division Benches of the High Court Division in cases where demand for dowry was not proved but death was proved, followed the principle laid down in 19 BLD (AD) 119 and decided the cases on merit without sending back the cases for retrial and the conviction given under section 10(1) of the Nari-O-shishu Nirjatan Damon (Bishesh Bidhan) Ain 1995 was converted into conviction under section 302 of the Penal Code - vide the cases of State Vs Abul Kalam, State Vs Eunus Khan reported in 5 BLC 230 and 353 and death reference No. o7/1996 State Vs Jahangir Bepari. But another Division Bench by referring to the case of Eunus Khan observed that the decision in that case was per incuriam - vide the case of State Vs. Bahar Miah reported in 56 DLR 454. The same Bench instead of deciding the appeal on merit sent back the above case and another similar case for retrial- vide 56 DLR 556. So, even after decision of the Appellate Division as reported in 19 BLD (AD) 119, some difference of opinion still prevails which is evident from the above decisions of the High Court Division.

In view of the above position, I think that it will be proper if the relevant provisions of the Act are suitably amended to cope with cases where death or hurt is proved but demand for dowry is not proved. It is quite natural that it may not be always possible to prove the demand for dowry because such demand is made either to the wife or her father - so, corroboration by independent witnesses may not be possible. But if the allegation of murder or causing of hurt, either simple or grievous, is proved, there cannot be any reason to disbelieve that part of the story. So, in such cases, after a full trial, instead of sending the case to a proper court for fresh trial, the Tribunal shall be empowered to pass proper judgment on merit.

Lastly, I like to mention that in the existing laws relating to offences against women, provisions for giving compensation appears to be not adequate. Section 15 of the Nari-O-Shishu Nirjatan Damon Ain, 2000 provides that when fine is imposed for any offences under sections 4 to 14, if necessary, the same fine may

be treated as compensation for the victim. Under sub-section (3) of section 4, maximum fine which may be imposed is Taka fifty thousand, under sub-sections (2) and (3) of section 9 and sub-section (2) of section 14, minimum amount of fine that can be imposed is Taka one lac. In my opinion, there shall be specific provisions for giving compensation to the victim or the members of the family of the victim as the case may be. If the accused of a kidnapping case is sentenced to imprisonment for life, this may give some sort of mental satisfaction to the victim and the members of her family but the consequences of such act will have to be suffered by the victim and members of her family for years together. In view of the conditions prevailing in our society, it may not be possible to find a bridegroom for such a victim. In such a case, adequate compensation should be given to the victim. Similar fate will happen to a victim of acid burning. Sub-section (3) of section 4 provides for imposing maximum fine of Taka fifty thousand. Such amount, even if treated as compensation, cannot be considered as adequate. So, specific provisions should be made in the Ain itself or in a separate enactment, for giving adequate compensation to a victim or members of her family. Different countries such as U.S.A, England, New Zealand made such enactments long ago. In U.S.A, the state of California at first took measures for paying compensation to crime victims in 1964 and in 1982 Victim and Witness Protection Act was passed by the Congress. It is high time that provisions should be made to give proper and adequate compensations to the victim or members of the family of the victim.

In the above, I have discussed about the existing laws relating to offences against women, trial procedure and evidence which is available in such cases. I am of the view that there is scope of improvement of the trial procedure by making necessary amendments in the relevant laws. But till such improvements are made or necessary amendments are made, the courts while trying cases relating to an offence against a woman, should take into consideration of the existing socio-economic condition, the changes in the nature of crime, the fear psychology which is working in the mind of the victim or aggrieved persons and witnesses, unsatisfactory condition of investigation etc. If all these existing conditions prevailing in the society are taken into consideration, this may help the courts to arrive at a correct or proper decision in a case relating to offences against women. The duty of the court is also to change its mind-set with the changes taking place in the society.

IMPACT OF DEMOCRACY ON HUMAN RIGHTS

- Dr. M. Habibur Rahman*

1. Introduction :

Democracy as known to accomplish "government of the people by the people and for the people" is a tool for the governance of nation state[1]. The spirit of democracy is the involve every body's interests in state's affairs. Responsibility of government to people and obligation of people to the state are created by democracy. Human rights are indispensable for human beings; its renovation cannot take place other than itself. Human rights and democracy are reciprocal in the sense that whenever democracy sustains injuries its ultimate effect will result accordingly in human rights. Where there will be the promotion of democracy there will automatically be the promotion of human rights. Along with that transition to democracy for democratizing nation's affairs will take place. The purpose of the paper is to disseminate impact of democracy on human rights. Attempts will also be made about concomitant approach of democracy and human rights. In so doing, the study will pinpoint democracy and human rights towards democratization of human life. Over and above, democratization of human affairs through the promotion of democracy and human rights will be highlighted.

2. Human Rights Identity :

Human rights concerns are indispensable in the sense that one's such rights cannot be substituted. The case of human rights is so strong that it argues itself. It is an instance of what lawyers call *res ipsa liquitor*- the thing speaks for itself. Human rights imply justice, equality and freedom from arbitrary and discriminatory treatment. Concern of human rights in modern times has been a product of social and cultural development. The approach of democracy is to its exercise by each and every people of all walks of life. All people have interests in democracy concerned phase. Whenever one's interests are elevated human rights

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[1] M Habibur Rahman : Modern State and the Constitution of the People's Republic of Bangladesh, 1972, *South Asian Studies,* January 1997, Vol 14, No 1, pp 45-62.

matter will ultimately be maintained. Human rights spirits cannot be separated from democratic spirits while a society is taken for democratization then there will be promotion of human rights. As time passes, human rights approach seems to be multidimensional to the fact that it is not only to be concerned with the fundamentally issued right to person. Economic, political and sociological aspects are seen to be in the human rights realm.

In the preamble to the United Nations Charter, the people of the United Nations declare their determination "to save succeeding generations from the scourge of war, reaffirm faith in fundamental human rights, and to promote social progress and better standard of life in larger freedom". Accordingly, Article 1 of the Charter proclaims that one of the purposes of the United Nations is to achieve international cooperation in promoting and encouraging respect for human rights and fundamental freedom for all without distinction as to race, sex, language or religion.[2]

Potentially all human rights are implicated in and agenda of global economic justice, or, more narrowly, poverty reduction, and many might be implicated in contradictory ways. In reality, human rights are often classified into first, second, and third generation: the first referring to civil and political rights; the second referring to social, economic, and cultural rights; and the third referring to more diffuse rights such as the right to development (which simply restates the question) and the right to a sustainable environment. Leaving to one side the broader notion of human development and its relationship to political rights, one might draw links between political rights and poverty reduction insofar as political rights help to provide political stability. On the other hand, to the extent that political rights, particularly of expression and participation, destabilize economic policies that governments otherwise view as favorable to economic growth, such rights might actually stall poverty reduction[3].

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[2] Preamble to the Charter of the United nations and its article 1(3), 13(1)b, 55(c), 62(2), 68, 76(c) are also related with human rights.

[3] See Chantal Thomas : *Does the* "Good Governance" Policy of the International Financing Institutions Privilege Markets at the Expense of Democracy?, 14 CONN. J. IN'L L, 557-62(1999) (discussing the extent to which "democratic politics in developing countries are seen as defying, rather than accepting, the liberal

The relationship between social, economic, and cultural rights seems more straightforward. The right to work, to free choice of employment, to just and favorable conditions of work, and to protection against unemployment would seem directly to support a poverty reduction agenda. Again, however, one could view such a right as contradictory in that it might require interventionist policies that would be viewed as inimical to economic growth, and therefore poverty reduction. One might say the same of third generation rights such as the right to a sustainable environment[4].

3. Democracy and Human Rights Interrelationship :

Democracy is considered to mean a system of government in which all the people of a country can vote to elect their representative. It is based on the principle that all members have an equal right to be involved in running an organization. Democracy is also based on the principle that all members of society are equal rather than divided by money or social class. The end of government is the mankind and which is but for mankind, that the people should be always exposed to the boundless will of tyranny, ór that the rulers should be sometimes liable to be opposed, when they grow exorbitant in the use of their power, and imply it for the destruction, and not, the preservation of the properties of their people[5] Democracy and human rights are interwoven in the theme that a state can present itself as running through civilization and promoting it in entirety. The measure of civilization lies in how well the government has protected human rights and complied with democracy to all intents and purposes. and in what degree it has ensured human rights in its territory for all people. The nexus of democracy and human rights is not to destabilize peace and security but to launch for its harmony at all levels of national and international regime. Where there are democracy and human rights there will be the legal regime. A legal regime cannot exist if it does not take an account of every body's ends. No law is

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international economic order") quoted in Vol 18, No 6, *American University International Law Review (2003) 1418, n 66.*

4 Chantal Thomas : Poverty Reduction, Trade, And Rights, Vol 16, No 6, *American University International Law Review (2003) 1418.*

5 Peter Laslett : *John Locke Two Cities of Government (1963),* Cambridge University Press P 435.

to be justified which is not equally applicable to all. And Rousseau was convinced – far more deeply convinced than he had any right to be- that no community will pass a law from the effect of which every member is liable to suffer[6].

Democracy results from elections. Elections are by no means the perfect test of the accuracy of the polls. Nevertheless, you must agree that the record is extraordinary. Professor Samuel Stouffer of Harvard once said that modern sampling polls "represent the most useful instrument of democracy ever devised". Whether you share this means of the measures not the truth is that the concept of polling public opinion has captured the imagination of the people world over. Polling organizations are more operating in a major democracies, the least in forty nations, polling procedures are now regularly employed. Democracy and human rights cannot be singled out; the two themes are integrally operative. People are practically known that their representatives are elected by their votes. Their representatives are so elected to serve them and work for the country and thus they grow leaders to lead them. It is often told that the function of leadership is to lead. Not poll results, but that inner voice alone, should be headed. This is an attractive and appealing concept of leadership and one which has imagined a kind from the earliest days. Unfortunately, it fits perfectly such eminent leaders as Adolph Hitler, Benits Mussolini, and Premier Stalin. All three had supreme contempt for the views of the mass of people. Hitler described the common people as "mere ballot cattle". This is not the kind leadership we want. In a democracy we demand that the views of the people be taken into account. This does not mean that leaders must follow the public view slavishly; it does not mean that they should have an accurate public opinion and take some account of it in throwing their decision. According to Bryce the people are better fitted to determine ends than to select means to their ends. The task of the leader is to decide how best to achieve the goal by the people[7].

As times goes on, problems are arising to make election candid for democracy. But polls help the democratic process by refuting the claims of pressure groups.

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6 C.E. Vanghan(ed) : *The Political Writings of Jean Jacques Rousseau* (1962), Basil Blackwell Oxford, p 70.

7 George Gallup : Polls and the Political Process – Past, Present and Future, XXIX (1965) *The Political Quarterly* 544-547.

They help by trying new ideas, as better needs and interests arise. If governments are to move forward, they must accept new properties that meet with public acceptance. The legislative area of government is the logical place for initiating legislation the aim of which is to meet changing needs of the people more quietly and more efficiently. But it is seldom seen to take initiative to activate for good governance. If some steps are taken, those cannot work for the perceived goal. Polls actually suffers from rigging. Lack of polls environment that results in a greater degree on the attitudes of government, governed, political parties and election actors is seen to be more effective. Moreover, external behavior of the major powers plays a vital role in the polls, in particular, in developing countries[8].

About the future needs arise to point out certain related theme. As students, scholars and the general public gain a better end of polls, they will have a greater appreciation of the service; polls can perform in a democracy. It is in practice a fact that modern polls are the chief hope of lifting government to a higher level, by showing that the public widely support the reforms that will make this possible, by providing a *modus operandi* for testing new ideas and by helping to reduce what senator Clark calls "congressional las". Polls can help make government more efficient and responsive the quality of candidates for public office; they can make this a truer democracy[9].

Believers in democracy today emphasize peaceable elections, universal suffrage and majority rule, sometimes rejects the claims made by or for the revolutionaries of the 1790's to be democratic. Democracy and rule of law have been the most acceptable machinery for the countries to run. But in countries around the world, innocent civilians, by the thousands, are being massacred for racial, ethnic or political reasons. Elsewhere, entire populations are being displaced, deported or subjected to inhuman treatment. And all of these crimes are committed under the authority of governments, which, in many cases, have ratified the very treaties and conventions designed to protect the most basic

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8 It is mentioning that Bangladesh legislation introduced Caretaker Government under which national polls are held. The very purpose is to promote fair, free and impartial polls in the country. But it is failing to work owing to rigging claimed and counter-claimed.

9. George Gallup, *supra 549.*

human rights[10]. Nevertheless, no action is brought against them, and their crimes thus fall into official oblivion.

Many newly formed democratic governments are currently faced with the thorny problem of how to treat the perpetrators of serious human rights violations committed under the previous government. Often, the firm resolve of new leaders to bring these criminals to justice is gradually weakened during the transition period. This provides many perpetrators of serious human rights violations a means of escaping justice. Such impunity hardly contributes to strengthening the people's confidence in new administration, especially when officials are allowed to remain in office in spite of their past crimes. It is useful, at this point, to recall that, by virtue of international instruments, obligations assumed by States to ensure respect for human rights carry with them the implicit duty to investigate the facts and bring to justice those guilty of violating human rights. In the terms of the Convention against Torture, on the other hand, the duty to punish tortures is explicit[11].

Should all persons suspected of involvement in human rights violations be prosecuted? Aside from the fact that this is virtually impossible, some feel that such a policy would be very dangerous with respect to efforts to achieve national reconciliation. It must be borne in mind that the goal of prosecution is to discourage the recurrence of such abuses, as well as to strengthen the Rule of Law, and thereby demonstrate to those invested with State authority that they are ultimately responsible for their actions. As time passes, democracy is being required to be properly exercised. But to do that needs arise to promote an environment congenial to democracy

4. Transition to Democracy :

As time passes, democracy is becoming wide spread in the world. Democratic objectives are seen to be honoured by the political party that comes into power. But the party which fails to come to power by election tries to adapt techniques to be in power. It has been a practice particularly in developing countries to attain power and if the political party can do that, it submits to democracy.

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[10] Adama Dieng : Opening Speech, *Justice Not Impunity,* ICJ/CNCDH July 1993 20.

[11] Ibid 21.

Democratic transition in Latin America has been characterized in many instances by a high degree of impunity, even though the police forces in these countries frequently and systematically practiced such acts as torture and summary executions. The fact is that military officers who had agreed to yield control to the civilians in the name of "national reconciliation" have remained in office is difficult to understand. Such compromise is more indicative of the weakness of the new democratic regimes than of the desire to establish a genuine Rule of Law, based on the respect of justice. Moreover, tolerance of past human rights violations does not create a favourable environment for improving practices in such untouchable institutions as the army and the police force, which virtually constitute a State within the State. Democratic development is thus mortgaged in exchange for a fragile compromise. Yet, to call the compromise into question during the delicate period of transition would risk hardening the position of the military who would interpret this as a challenge. As elsewhere, the events of the past, together with the duration of dictatorship and the scope of its repression, are factors to be considered individually in each case[12].

The process of democratization currently under way in a number of African countries has led, in some cases, to political upheaval. Decisions concerning what type of attitude to adopt towards the former leaders is a problem facing the new governments and one which is made all the more difficult by the fact that some leaders have claimed responsibility for serious economic or human rights offences.

The concern for "national reconciliation" in the transition towards democracy has generally taken precedence over other consideration. This desire for political tranquility may also be explained by the refusal to systematically investigate members of outgoing governments, for the simple reason that many current leaders are more or less directly descended from them. The few trials which have been conducted in order to punish the former leaders remain limited in number[13]. National differences are even more pronounced in Asia, where democratization

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[12] To this end situation of Argentina, Brazil, Uruguay, Paraguay, Chile, El Salvador can be known in Emmanuel Decaux : International Law and National Experiences, *International Meeting on Impunity of Perpetrators of Gross Human Rights Violations ICJ/CNCDH July 1993 45-48.*

[13] To this end situation of Guinea, Benin, Mail, Congo can be known; *ibid 49-52.*

remains a marginal phenomenon. Authoritarian regimes continue to exist, under the pretext of economic liberalism and free capitalism, next to that last remaining Marxist powers on the planet and following the collapse of communism in Europe. The growing militarization of the region, originating from past Cold War tensions and new regional rivalries, further reduces the chances of an emerging "civil society" to challenge the current political, economic and importance of the continent lead its spokesmen to question the term "universal values", and to favour instead an Asian versions of human rights in which society takes precedence over the individual[14].

The collapse of the communist regimes which were established more than 40 years ago poses a number of basic problems with respect to dealing with the past. A country's legal situation is largely determined by such factors as whether the democratic transition is gradual and peaceful or whether there are brutal attempts at repression on the part of the established government, as well as and whether formal conditions for the transfer of power are handled by maintaining legal continuity or by making a clean break. A political choice must also be made as to whether to let run its course or whether to choose national reconciliation instead, that is, whether to make amends for the past or simply "turn the page"[15].

It is becoming increasingly urgent to establish a judicial system within the framework of the United Nations (in connection with the International Court of Justice), to try and punish, not only the so-called "war crimes", but also gross and systematic violations of the human rights recognized and proclaimed in the International Covenants.

Also urgently needed is a system of severe, but not cruel, penalties, which categorically excludes the maintenance or reinstatement of the death penalty, even against terrorists. In any case, impunity must not be tolerated; emphasize should be placed on bringing the perpetrators of those crimes to justice, rehabilitating the convicts, granting gradual amnesties or pardons for purposes of national pacification, and providing compensation to the victims or their relatives.

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[14] To this end situation of Bangladesh, The Philippines, Thailand, Indonesia, Cambodia can be known, *ibid 53-59.*

[15] To this end situation of Czechoslovakia, Hungary, Bulgaria, Romania can be known, *ibid 62-66.*

It is mentioning that without the establishment of democracy and the accompanying structures and institutions of the Rule of Law, the protection of human rights in each nation is devoid of meaning. Confronted with the risk of totalitarianism – either old or new – and faced with the barbarism of terrorism, drug trafficking, abuse and mistreatment of children, immigrants and refugees (to mention only a few of the more inhumane examples), it is important to note that the establishment of a democracy is a necessary condition but it is not, in and of itself, sufficient.

There is almost a feeling to call to reflect upon the current fragility of many democratic governments, and on the need to forge sound democracies which are truly pluralist, participatory and transparent with regard to the actions of political parties and all institutional organizations. Democracy cannot exist solely as a structure for the organization of powers; it must also be a way of collective living, a public ethic. As regards the Rule of Law, it is important that it be qualified as the "social" Rule of Law. A State without freedoms is inhumane and in no way acceptable at the close of the twentieth century. A liberal State, in the classic sense, as true protector of the freedoms is of its citizens, but not as promoter of equality and solidarity, is equally unacceptable. The establishment of a genuinely social and democratic Rule of Law for the protection of human rights and peace is the great challenge facing us in this closing century and millennium[16].

Democracy considers all parameters to be taken into effect. Democratic norms as arising out of equality factor are indivisible to the fact that no impunity may take its course of action. That is to say, democracy is as inextricably bound to justice as it is to the respect for the constitutions and the law; those governing and those being governed must submit to them equally, and the law must prevail over force. In the sphere of human rights impunity seems to be an embargo for promotion of a legal regime of human rights. Democratic norms cannot prevail where human rights are infringed. Human rights violations usually imply concrete violations of national criminal laws and therefore call for legal action.

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[16] Prof. Joaquin Ruiz-Gimener : Democracy and the Rule of Law in the Face of Totalitarianism and Barbarism. ibid 72.

Impunity is sometimes granted through legal channels and at others it is brought about by circumstances. It is granted through legal channels in the form of amnesty, exemptions, pardons, favours or any other measure through which investigation and trial are waived. In Latin America, for example, there have been a series of acts and decrees issued which grant impunity. These, include: in Argentina, the "Self-Amnesty" Law No. 22.924 of 22 September 1983 (which was later cancelled by the democratic government), the "Final point" Law No. 23.492 of 12 December 1986, the "Due Obedience" Law No. 23.521 of 5 June 1987, and the pardons granted on October 1989 to a series of mid-level commands and in January 1991 to the ex-Commanders in Chief of the Armed Forces; in Brazil, act 6.6833 of 28 August 1979 and Constitutional Amendment No. 26 of 27 November 1985; in Chile, Legislative decree 2.191 of 1978 granting "self-amnesty"; in El Salvador, Decree 805 of 1987; in Guatemala, Legislative decree 8/86 of 10 January 1986; in Honduras, the "Act of General and Unconditional Amnesty" of November 1987; in Uruguay, the "Expiration of the Punitive Power of the State", Act 15.848 of 22 December 1986.

In exercising the powers provided by internal law, authorities may, in principle, grant amnesty, exemptions, pardons or favours. However, international law imposes limitations on the ability to grant such measures of clemency when they imply the waiving of investigation and trial. Some of these limitations arise from customary international law *(jus cogens),* and other from multilateral treaties concerning human rights, to which governments have freely consented.

By their acceptance of the United Nations Charter (of 1945) and regional instruments, such as the Charter of the Organization of American States (OAS, 1948), the Council of Europe (May 1949), and the Organization of African Unity (1963), States undertook a solemn commitment, of both a legal and ethical nature, to respect and to ensure that others respect the fundamental rights of human beings and the dignity and worth of the person. Whenever, impunity is made to prevail in human rights regime, needs arise to it to be limited by necessity – of what are known as crimes against humanity.

After experiencing the horrors of the Second World War, the international community concluded that certain types of conduct because of other seriousness and their grave consequences for large sectors of society, constitute and attack on the very conscience of humanity. They violate principles which should govern

the life of civilized nations and transgress the principles and objectives of the United Nations Charter, thereby posing a threat to international peace and security. For this reason they must be classified as crimes in violation of international law, regardless of whether or not they have been punished as offences in any particular country.

These crimes, which have been given a number of labels – crimes in violation of international law, crimes against humanity, crimes against people, rights – shall be referred to in this document as crimes against humanity. They require and deserve special procedures for handling their prevention, suppression and punishment. The international community concluded that it was neither sufficient nor advisable to entrust their prosecution solely to the national courts of the State in which they were committed, but that they should be prosecuted on an international level as well[17].

In modern democratic societies subject to the Rule of Law, it is the work of the judiciary to protect human rights when they are seriously threatened and to punish those responsible for violating those rights. Protecting by international tribunals is an ideal that is still far from reality. Therefore, national judicial system must be improved, a task that could be done simultaneously and with immediate effect. It is all too obvious that in order to protect human rights effectively it is not enough, indeed it is dangerous merely to go through the legal motions, to maintain the appearance of legal protection, since this is nothing more than the illusion of justice[18].

As a matter of fact, there are many obstacles hindering the spread of the Rule of Law throughout the world and the eradication of impunity for human right violations. To achieve these two goals require constant, untiring, uncompromising effort. It is in this way that the world will be able to live in justice and peace. Transition to democracy gives rise to a legal human rights regime to be promoted in the world.

5. Whose is Democracy as to Human Rights ?

While exception is brought into action to govern the rule, impunity may have an opening. But if impunity is referred to as an affront to justice and undermines the

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[17] Alejandro Artucio : Impunity and International Law, *ibid 187, 188.*

[18] Dalmo De Abreu Dalleri : National Jurisdictions and Human Rights, *ibid 201.*

principle of equality before the law by freeing certain persons from all responsibility, such individuals are considered to be above the law by sole virtue of their belonging to the police force or to the military.

The opposite of impunity is the proper functioning of justice. It holds all persons responsible for their actions, avoids the temptation to take into one's own hands, affords a measure of stability to society, and as mentioned previously, provides an effective deterrent to future criminal behavior. Democratic results are aimed to be effective to all. All factors are considered so that each and everybody becomes beneficiary to it. Although democracy is governed by equality, needs arise to take care for a rational treatment. To all intents and purposes, democracy governed by equality is the principal mechanism for promoting human rights. It is also a fact that "equality' may not give rise to a well balanced treatment if it is not considered in equal plan. That is to say, there requires an environment that can pose 'equality' to be equitably effective.

While impunity is made applicable the theme results in exemptions in the sense that general human rights are not treated to be in practice. Practically speaking impunity is a grave and universal phenomenon. It presents and obstacle to democracy, constitutes a failure of the Rule of Law and encourages the perpetration of further violations. Its effect on society is to destroy confidence in the initial stages of the democratization process. Impunity is a cancer on the social body, in the sense that it arises out of a "brotherhood of shame". Attempts to exorcise it are in vain; it being essential for the victims to be heard. Impunity impairs the collective memory and allows martyrs to fall into oblivion. It prevents institutions from fulfilling their role of transmitting the non-selective history of a people. No people can afford to forget its past, which provides the very foundation for its reconstruction.

Impunity threatens a budding democracy by rendering its constitution meaningless, weakening its judiciary and damaging the political credibility of tits executive. Impunity is unlawful, and constitutes an affront to the Rule of Law.

Total impunity is a violation of international law.

Impunity is an attack on the dignity of the human person, which is a universally recognized principle.

While it recognized that impunity may also be found in connection with gross and systematic violations of economic and social rights, there is little for its

legality in human rights purview. The purpose of rejecting impunity is to discourage the repetition of violations and to reinforce the Rule Law. Sometimes between impunity and vengeance – which is an admission of weakness and cowardice – lies the risky and difficult gesture of pardon, a gesture which conveys neither forgetting nor indifference.

Legal and moral responsibility are primarily incumbent upon the State; however, private entities also share in this responsibility.

The monitoring of human rights violations is the task of the State. If it fails to accomplish this task, it discredits itself and undermines its own legitimacy.

The State must respect the international obligations and responsibilities it has undertaken.

However, if domestic legal systems are incapable of resolving an issue, then an international response and sanctions are called for.

For many years now, and following the example of the Convention against Torture, expressly stipulates that violations be denounced as punishable offences, various international instruments have been aimed at establishing standards applicable to situations of impunity. As regards the overall problem of impunity, some initial thoughts on the subject resulted from the 42nd session of the United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities which requested a report of Messrs Joinet and Guisse[19].

In the absence of sufficiently effective international standards, many countries have taken their own approach to dealing with the problem of impunity. Such experiments, applicable to specific times and places, are not always easy to reproduce elsewhere and in other circumstances. Nevertheless, they may serve to illustrate potential solutions.

For some countries, a peaceful transition helps avoid chaos and violence – not by advocating disregard for the past, but by seeing that justice is done. The matter of punishment must be balanced with the historical need for reconciliation if the goal of democracy is to be achieved, given that fact that as long as human rights are not respected, lasting peace is not possible.

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[19] Gerard Fellous : *General Report, ibid 340.*

Reconciliation, or at least national conciliation, may be considered a means of beginning the process of transition towards democracy or towards peace. This method, however, is complicated by that it denies the historical truth and the need to punish the guilty.

Reconciliation, or failing this, national conciliation, only seems to be possible given certain combinations of factors. For some, it is only achieved if accompanied by sincere repentance on the part of the offenders. For others, it must be based exclusively on justice, and not on the State's interests on the condition that it does not deny the people's desire for justice.

A normative to penalties and sentences, in keeping with the principle of proportionality, stands in contrast to the extremely serious nature of violations (genocide, for example) in which no compensation seems sufficient. Some advocate a contextual approach as opposed to a universal one, taking into account the fact that laws apply to particular societies. According to this approach, punishment in determined on a case-by-case basis, within the following three parameters: who was responsible for the impunity and have statutory limitations for the crimes expired and is remission on longer possible? What type of behaviors do the offenders exhibit? Are they repentant?

As regards promotion of a true legal human rights regime, needs may arise to preserve historical memory. Whereas the collective memory may be selective and therefore distorted, the "scholarly memory", or that recorded by historians, does not distort the truth. A society is incapable of building its future upon a denial of its past.

Victims, or their relatives, may attempt to forget the terrible situations they have experienced by refusing to talk about them. It therefore takes quite some time to bring them forward as witnesses. And yet, the relatives of victims, especially of the disappeared, are eager to know the truth. This, however, remains difficult and even dangerous so long the former offenders remain in office, causing the victim's memory to be blocked by terror.

The victim is at the very heart of any discussion of impunity and of any action aimed at combating it. It is in emphasizing with the victims that the world's conscience mobilizes on their behalf.

The first task is to identify the victims, together with all of the problems this entails, in particular; obtaining prison registers and compiling lists of

unregistered detentions. The practical difficulties of investigation are aggravated by the impunity of the tortures. It should be noted that in some cases, the phenomenon of detention and disappearance is linked to other so-called structural practices in the societies concerned.

Victims are often marginalized and many stumbling blocks are laid in their paths. However, victims in a number of countries are now beginning to break the pattern of silence and to speak.

Theoretically, victims may obtain restitution and compensation by virtue of existing international instruments. This is normally in form of material, non-financial assistance. It is hoped that future international standards will include such compensation. It was even suggested that an International Center for Defence of Victims be created.

In the meantime, the non-governmental organizations in the field which are involved in providing assistance to victims are at least managing to break the chain of silence, which serves to encourage impunity.

The right to equality before the law and courts is the principal rule of human rights[20]. The notion 'equality' in the context of the trial process is multifaceted. It prohibits discriminatory laws and includes the right to equal access to the courts and equal treatment by the courts. All peoples are entitled equal treatment before the law[21]. The right to equality before the law means that laws must not be discriminatory and that judges and officials must not act in a discriminatory fashion in enforcing the law.

The right to equal protection of the law prohibits the discrimination in law or in proportion in any field regulated and protected by public authorities. However, this does not make all differences of treatment discriminatory only those not

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[20] Articles 7 and 10 of the Universal Declaration, Articles 2(1), 3 and 26 of the ICCPR, Articles 2 and 5 of the Women's Convention, Articles 2, 5 and 7 of the Convention against Racism, Articles 2 and 3 of the African Charter, Articles 1, 8(2) of the American Convention, Article 14 of the European Convention, Articles II and XVIII of the American Declaration.

[21] Article 14(1) of the ICCPR, Articles 2 and 25 of the Women's Convention, Articles 2 and 5 of the Convention against racism, Article 2191 of the Yugoslavia Statue, Article 21(1) of the Rwanda Statute, Article 67(1) of the ICC Statute.

based on reasonable and objective criteria[22] Democratic inputs are destined for all, but in practice it occurs otherwise in the world. Behind it works for power mongers to execute democratic regime. In election it is now in seldom practice to accept democracy in entirety. Those who get victory as they want, seem to submit to democracy, but those who fail to express their attitude about their counterpart not to comply with democracy in reality. As regards human rights democracy cannot be said to be partially effective in human community. Its parameters result from each and every concern. The notion as to 'whose is democracy as regards human rights', is met with universal application. While it is made to apply otherwise, impunity is viewed to stand. But references can be taken into account from article 7 of the Charter of the International Military Tribunal of Nuremberg. That means, the principle of international law, which under certain circumstances protects the representatives of a state, cannot be applied to acts condemned as criminal by international law[23]. Democracy exerts human rights that will be eloquently exercised if dealt with as such.

6. Steps for Defence of Self-Regime :

International human rights law imposes limitations on the power of States to grant amnesties or any other of clemency measures when such measures would imply waiving investigation or judgment of certain crimes. These restrictions are even more definitive when there are laws deriving from written treaties. In effect, such treaties have binding legal value. States that ratify or adhere to a treaty on human rights freely accept limitations on their sovereignty out of a common interests considered to be superior, such as human dignity. They are, therefore, obliged to fulfill their obligations under such treaties, both vis-vis the other States that have signed the treaty as well as with regard to their own population. This is particularly so in the case of treaties concerning human rights[24]. Human rights matters should be dealt with at an international level, since they are addressed specifically in a series of international treaties, and other documents pertaining to

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22 *Broeks v. the Netherlands* (172/1984, Human Rights Committee, 9 April 1987 2 Sel. Dec. 196; *Zesaan-de-Vries v. the Netherlands (182/1984*, Human Rights Committee, 9 April 1987, 2 Sel. Dec. 209.

23 Crimes Against Humanity Pinochet Faces Justice, *GIJL-July 1999, p 64.*

24 *Ibid 21.*

international law. Human rights documents state that the following are to be considered grave infractions : international homicide, torture, inhuman treatment, series of attempts upon the physical integrity or health of persons, hostage-taking, forced disappearance of persons[25]. Furthermore, grave infractions as to human rights – crimes against humanity can be noted such as : assassination; extermination; incarceration and other serious cases of deprivation of physical liberty in violation of fundamental norms of international law; torture; persecution of a group or collectivity having its own identity for political, racial, national, ethnic, cultural, religious, sexual or other motives universally recognized as unacceptable under international law; forced disappearance of persons; and other inhuman acts of a similar character which intentionally cause great suffering or represent serious attempts against the physical integrity or mental or physical health of persons[26].

State measures are variable in different services. Civilians are dealt with laws of the land. General provisions are taken for consideration. Civilians and personnel of different cadres are entitled to dispose of their disputes in the courts and tribunals. They can uphold rights and can seek remedies against the measures injurious to their interests. Human rights can also be upheld through such bodies. Despite these bodies special arrangements are also made to exercise matters concerned.

Military service is an environment unlike any other, Training human beings to kill obediently and efficiently is the central mission of the armed forces, and especially of combat units. Regimentation and control characterize nearly all personnel activities in the military environment, imposing severe deprivations on individual liberty.

Military trainers exercise extraordinary control and power over their subordinates. They also face the difficult task of molding often undisciplined and

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25 III Geneva Convention on the Treatment of Prisoners of War, 1949; IV Geneva Convention on the Protection of Civilians in Time of War, 1949; Convention against Torture and Other Cruel; Inhuman or Degrading Treatment or Punishment, 1984; Inter-American Convention to Prevent and Punish Torture, 1985; Declaration on the Protection of All Persons from Enforced Disappearance, 1992; Inter-America Convention on the Forced Disappearance of Persons, 1994.

26 Statute of the International Criminal Court (Rome, July 1998) Art 7.

unschooled recruits with no interest or experience in military matters into willing combatants. As a result, military trainers commonly employ both fear and terror as motivators and tools of discipline.

Military personnel figure prominently in international human rights advocacy and litigation as suspected or accused perpetrators of gross human rights violations. In contrast, human rights advocates traditionally give little attention to military personnel as victims of systematic human rights abuses.

Documented abuses suffered by military personnel vis-a-vis other military personnel range from severe forms of corporal punishment to ritual hazing practices that leave recruits maimed or dead. Superiors may force recruits to masturbate in front of roommates or even rape them. In countries where women serve in the armed forces, rape, sexual assault, and sexual harassment are pervasive. At the extreme, military training for some recruits may even include the consumption of animal or human blood[27].

Three dimensions of military life expose military personnel to abusive measures; (1) recruitment, (2) basic training and ritual initiation, (3) punishment and discipline.

The growing problem of child soldiers stems in part from the widespread use of forced recruitment. Recruiters frequently receive a bounty for each recruit they obtain or are required to meet a specific quota. Such practices readily lend themselves to abuse. In protracted armed conflicts where the supply of military-age youth is minimal, military forces frequently resort to the conscription of children.

The problem of abuse also exists in countries where military service is voluntary. Military recruits frequently face accusations of rape and sexual assault of recruits. In some instances, recruiters demand sexual favours from the youth in exchange for more desirable military occupational training and service locations. Recruiters themselves acknowledge that these problems are pervasive and under-

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[27]. Raymonds J. Toney & or : International Human Rights Law : A Look Behind the Barrack Walls, *American-University International Law Review,* Vol 14, No. 2 (1998) *52-522.*

reported[28]. Human rights abuses in military personnel thus ensure needs for promotion of human rights regime.

More specifically, it is to mention that many unit members are subjected to blows and physical punishments with instruments such as machetes, sticks, rifle-butts or pistol butts, and dagger-handles on sensitive parts of the body; burns with lighted cigarettes on various parts of the body; forced ingestion of lighted cigarettes; punches to the head, nape, neck, or ears; kicks to the legs or stomach; and stamping on the hands.

Many abuses of military personnel are officially sanctioned and considered legitimate exercise of military discipline and authority. The official use of physical exercise as punishment, however, often leads to severe injury and death. Such exercise can be accompanied by kicks, beatings with a club or rifle, cigarette burns, insults, and humiliation. The resulting injuries range from broken bones to permanent neurological impairment[29]. Whatever measures are seen to justify an international regime for promoting and accelerating human rights at all levels in unquestioned.

7. Conclusion :

Democracy, rule of law, and human rights are in compact. Their essence is to provide for protection of humankind against all odds physically, mentally, morally and otherwise concerned. One of the very positive developments resulting from human rights purview has been the way it has emphasized and highlighted the important progress made in the practical application of the mechanism of universal jurisdiction. There is to its "practical application", because the principle of universal jurisdiction has been incorporated into written international law since August 1949 when the international community approved the four Geneva Conventions on International Humanitarian Law. The objective of this mechanism is to secure the prosecution of certain particularly serious offences which, because of their gravity and regardless of where they where they were committed, not only affect the victims and those around them but also strike

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28 *Ibid 523.*

29 Hugo Valiente : Military Service and Human Rights, IV Paraguay Rep. 1989-95 (1996) (noting the prevalence of forced recruitment on the poorer classes in Paraguay) 28.

deeply at the conscience of humanity. Pursuant to the Geneva Conventions, universal jurisdiction represents the application of the principle of *aut dedere aut judicarei (extradite or judge).* If extradition of the suspect is not carried out – because existing juridical norms prevent it or because of lack of a will to do so- the person must be judged by the national tribunals of the State in which he was found, even if the crime or crimes of which he was accused were committed in a territory under the jurisdiction of another State.

It is worth noting that in a variety of international and national concerns specific violations of human rights or humanitarian law take place. Crimes committed as such constitute against humanity and/or grave infractions against the Geneva Conventions on International Humanitarian Law, the States Parties to specific international treaties are both legally and ethically obliged (at least when the suspect is found to be present on their territory) to take the necessary measures to extradite the person or submit him to its national courts for the purpose of trying him. If he is found guilty they must punish him, whatever his nationality or that of the victim and wherever the crime he is accused of has taken place.

The perpetrators of war crimes and crimes against humanity, including genocide, all to often escape prosecution at the international level, even through their crimes are among the most serious that can be committed.

International law contains all of the necessary provisions and instruments to counter the impunity with which serious violations are committed. Such violations are an attack on the life and integrity of the human being. Crimes against humanity are defined and expressly codified in international instruments. Provisions concerning the search for perpetrators exist in many of the declarations and conventions mentioned.

Impunity nevertheless prevails owing to the fact that an international jurisdiction has not yet been established, despite the fact that legal debate on this subject has been in progress on for some time and is currently very active. The choices to be made require taking courageous political stances.

Concerning the creation of international jurisdiction, a consensus was reached on at least four points:

(i) impunity, as it relates to major international crimes, conscience of mankind;

(ii) criminals under prosecution must be guaranteed the right to a fair trial;

(iii) the national courts are responsible for judging these criminals. However, if they fail to do so, which happens all too frequently, this responsibility should be assessed by an international court;

(iv) lastly, all are in favour of the sort of international legal environment in which its effectiveness as a deterrent would count as one of its most outstanding features.

It is in the recent past that human rights on certain occasion and in certain areas have come under threat at the hands of various state agencies and also sometimes at the hands of armed political deserters (extremists). But it is to be noted that the role played by human rights activists, the judiciary, NHRC and others in these circumstances in building pressure for the respect of human rights and the various strategies innovated, confirm universal commitment to the cause of human rights. Of course there is no denial that a lot could have been done and a lot needs to be done if wished nationally and universally to implement universal commitment to protect, preserve and foster a human rights culture.

With the passage of time the growing realization is seen about human rights in the sense that human rights regime should work in entirety. Its ultimate goal for democracy is to ascribe to a true democratization of human rights concerns. That means, people can accept democracy not only as government of the people, by the people and for the people but also nourish and practice it in all aspects of life to promote human rights regime. The impact of democracy on human rights will then be meaningful.

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POTENTIAL BENEFITS OF ALTERNATIVE DISPUTE RESOLUTION (ADR) TOWARDS CIVIL JUSTICE

- Mr. Sheikh Sayedul Islam

Introduction :

The loom of time weaves coarse and fine as change takes place in the attitude of the people. Change is a product of necessity. Necessity is the outcome of hopes and aspirations of the people. Discovery of new laws, is thus, a historical realism to meet the demand of time as thought out by the peoples of the globe at large.

In the bygone days, might was right. As the civilized society grew, right became mightier than the sword. Disputes on rights in between the peoples invited a solution. A system developed embracing some accepted principles to resolve the problems among the litigants. Law became the shield of protection of rights of the people. The remedy for rightful cause gradually developed on the state machinery. Judiciary takes place to resolve the dispute through some recognized system of rules, procedures and laws. The sanctity of law became acceptable to the people. The court took the responsibility of distributing justice towards the conflicting rights of the people. There has been growth of many kinds of substantive and procedural laws to facilitate justice among the litigants. Speedy justice is cherished by the people. The modern idea of justice is that it should be speedy and inexpensive. Unfortunately, we have inherited a traditional system of the administration of civil justice which fails to accommodate desirably speedy justice. It is a proverbial truth that the peoples of our country inherit litigation as it takes many years to resolve a litigation. Many a cases are there in which the plaintiffs could not derive the finality of a decision in their lifetime from the Courts in the existing system of civil justice. As such there is a growing disregard towards the law and existing legal system. The average longevity of life of our peoples being short, there is an essence of policy in making the system of justice speedy and dynamic. The adversarial system of civil justice of our country being lengthy and expensive, there is need for introduction of a new device to meet the demand of people and time.

Political Thinker's View of Justice :

Professor Laski and Lord Bryce, the great political thinkers, highlighted the essence of speedy distribution of justice by the judiciary as being the most

important organ of the state. They emphasized the excellence of a better judicial system with availability of a speedy justice to the people at large. In a word, they maintain the significance of an effective system of judiciary with providing of administration of justice to the whole community. The welfare of the people, is thus, immensely dependent on the judiciary which can provide fair, dynamic and expeditious justice to the nation.

Constitutional Mandate for Fair Justice :

The preamble of our Constitution enjoins that it shall be a fundamental aim of the state to realize through the democratic process a socialist society, free from exploitation – a society in which the rule of law, fundamental human rights and freedom, equality and justice, political, economic and social, will be secured for all citizens. Democracy signifies the prominence of a better system of civil justice within a short span of time for securing the solution of rightful causes to the people. Discrimination and disparity are bound to exist in case of the non-mitigation of the problems and disputes of the people. Exploitation becomes prevalent on unresolving of the litigative problems of the people. Article 11 of our Constitution provides that the Republic shall be a democracy in which fundamental human rights and freedom and respect for dignity and worth of the human person shall be guaranteed. Article 14 provides that it shall be a fundamental responsibility of the state to emancipate the toiling masses – the peasants and workers and backward section of the people from of all forms of exploitation. Article 27 states that all citizens are equal before law and are entitled to equal protection of law. Article 31 provides enjoyment of the protection of law and to be treated in accordance with law and only in accordance with law being the inalienable right of every citizen. The Constitutional mandate of equally treating all citizens in accordance with law is bound to be injured and hampered, if there is a failure to distribute administration of justice to the people within a short period. The existing legal system affords lengthy distribution of justice for various reasons, specially for procedural complexity and legal jargon. As such, the traditional concept of the administration of civil justice must be modernized so as to be bestowed with a scheme of speedy justice. The legal luminaries of both national and international repute, stressed the need for an effective civil justice system as would be able to maintain and advance the rule of law with furnishing of means to secure legal rights and enforce legal duties, otherwise the good governance of the state for which a Constitutional mandate has been focused, would be meaningless.

Need for ADR as a Supplement to the Court System :

Now question arises as to what we are in need for an effective civil justice system and what can be the method of distributing speedy civil justice to the people? Around the globe, many a countries are there which stressed reliance upon a system of alternative dispute resolution through the agency of the existing traditional legal system.

Meaning of the Concept of Alternative Dispute Resolution (ADR) :

Most of the litigants are not aware of the concept of alternative dispute resolution, nor there is any venture from the legal experts or advisors to clarify the essence of such concept of ADR. What does alternative dispute resolution mean? It is a new device, a new approach and an idea of public policy in the field of legal system being mostly unknown to both the litigants and to the peoples at large. Alternative dispute resolution or ADR is an alternative to the traditional judicial process. It is a quicker, cheaper and friendly way of establishing and distributing justice among the litigants through the jurisdiction of the Courts. To the litigants, ADR is a new and novel device because the litigants by this method of the system can get themselves involved in the process of distributing justice or resolving their own disputes. The adversarial system, as we do have now, is most formal being full of legal complexity, but ADR does not have any such legal complexity, rather it is informal and simple in nature being understandable to the litigants. The litigants can balance fairness of attitude in resolving their own problems with speed, informality and flexibility. In the system of ADR there is no ground of causing delay as the consequence of delay is felt to be injurious by the litigants themselves. In a word, the existing legal system is a court-style procedure of administering justice among the litigants, while ADR is a people-style procedure for resolving the disputes by themselves in an informal and flexible way. The existing adversarial system is linked-up with the possibility of delay, legal complexity and expense, whereas the system of ADR is linked-up with speed, simplicity, flexibility and low-cost. ADR can be defined as a legal system which provides quick, inexpensive, informal and fair remedies to the litigants with the minimum of procedural complexity and legal jargon.

The concept of ADR received recognition from the legal exponents in various countries of the world because it is quicker than the judicial proceedings, as it can lighten or shorten or ease the burden of cases on the Courts and it is cheaper as it can help to lessen the legal costs, legal aid and incidental expenditures. The existing legal system on adversarial footing can be regarded as too formal, too

complicated being full of legalism and too remote, whereas ADR is a speedy step or the solution of the litigative problems in an informal way as per the choice, method and means available to the litigants themselves.

Different Forms of the ADR :

Arbitration, conciliation and mediation are the three main recognised methods of Alternative Dispute Resolution. Introduction of these methods as a compulsory step in any suit or case, pending in any Court, requires the existence of a legal framework for regulating the procedures of such methods. Legal framework is there for effecting arbitration in the Shalish Ain, 2001 (Act I of 2001). As per section 2(m) of the Shalish Ain, 2001 Arbitration means any arbitration whether or not administered by permanent institution. Arbitration agreement means an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not [section 2(n) of the Shalish Ain, 2001]. Recently, arbitration has been incorporated in section 89B of the Code of Civil Procedure, 1908 (Act V of 1908) as a compulsory step at all stages of suits of civil nature.

Section 89B provides that if the parties to a suit, at any stage of the proceeding, apply to the court for withdrawal of the suit on ground that they will refer the dispute or disputes in the suit to arbitration for settlement, the court shall allow the application and permit the suit to the withdrawn and the dispute or disputes, thereafter, shall be settled in accordance with Shalish Ain (Act I of 2001) so far as they may be applicable. Ample scope has been opened for settling the dispute through the arbitration even after filing of a suit. Not only that provision has been made in the said section allowing re-institution of the suit permitted to be withdrawn in case of the failure of effecting arbitration on withdrawal of the suit. Apart from applicability of arbitration in civil suits and cases, provision of alternative dispute resolution has been inserted in the Artharin Adalat Ain, 2003 (Act 8 of 2003) for resolving disputes through arbitration, mediation and conciliation. It is worthwhile to note that alternative dispute resolution has been recognised as a mandatory method by way of mediation thereby incorporating the same in section 89A of the Civil Procedure Code (Amendment) Act, 2003.

The methods of alternative disputes resolution by way of arbitration, mediation and conciliation having been introduced generally in all types of suits and cases filed in the civil courts and other special courts as are covered by the Artharin Adalat Ain, 2003 (Act 8 of 2003) and Family Court Ordinance, 1985 (Act XVIII

of 1985). Suits and cases relating to dues and monetary transactions of banks and financial institutions, have now become easily resolvable at the instance of the parties involved in such transactions. Family suits have also become easily remediable by the parties involved therein. The pre-trial and post-trial camera procedures as provided in the Family Court Ordinance, 1985 as handled by the Family Courts at the presence of the disputing parties, which facilitate the easier, friendly and amicable solutions and the effect of such process of alternative dispute resolution has acquired commendable success and satisfactory achievement in resolving many complicated family matters.

Unlike other countries, the government of Bangladesh has come onward to explore the positive effect of resolving the disputes of the litigating parties through an alternative method of resolution of disputes other than the conventional method of adjudication relating to commercial matters and monetary transaction and in that regard sent a reference to the Law Commission on 9-5-2002 vide memo no. 224 Ain dated 9-5-2002 from the Ministry of Law, Justice & Parliamentary Affairs. In the reference, opinion of the Law Commission was sought as to whether alternative methods for resolution of disputes involving commercial and monetary transaction can be introduced as a mandatory procedure at an appropriate stage of such suits and if so, what provision can inserted in the existing law for implementing matter under reference. The Law Commission submitted at final report on resolution of disputes relating to commercial matter and monetary transaction in alternative methods on October 7, 2002 by highlighting the problems and prospects of the same. Recommendations of the Law Commission were accorded in favour of the settlement of disputes by the methods of alternative disputes resolution, such as arbitration, conciliation and mediation with providing of the insertion of the provision of alternative disputes resolution in the existing laws in force in the country. The ways and means of implementing the provision of the alternative dispute resolution were thoroughly recommended with specific insertion of legal provision in the existing laws. It is appreciative that the government has been pleased to accept the recommendations of the Law Commission in that regard and consequently there has been insertion of compulsory legal provision in the existing laws of the country relating to compulsory handling of the methods of alternative disputes resolution. The recommendations of Law Commission have been effectively implemented relating to alternative disputes resolution in the Code of Civil Procedure (Amendment) Act, 2003 with incorporation of section 89A (Mediation) and 89B (Arbitration). There has been also incorporation of

alternative dispute resolution within the provision of Artharin Adalat Ain, 2003 (Act VIII of 2003) in section 21, 22 and other sections. The demand of time to cope up with the hopes and aspirations of the people has thus been satisfactorily met up by the government in recognizing the salutary provisions of alternative disputes resolution being adopted by the developed countries much earlier. If the methods of alternative dispute resolution, as have been incorporated in the existing laws of the country, can be properly appreciated, activated, explored and implemented with cooperation of all concerned, then the huge back-log of suits and cases pending in our civil courts and other Special Courts are bound to be settled, compromised, resolved and adjudicated upon with commendable success and remarkable progress.

Why the culture of alternative dispute resolutions is to be made :

(a) ADR is very often quicker than conventional method of judicial proceeding as it offers choice, choice of method of proceeding, of cost, of presentation and of location and it can simplify the aspect of litigation though involved with excessive legalism and thus can ease the burden of the court in respect of huge backlog of suits and cases. ADR is cheaper which can assist to combat the spiral of legal cost and can thus benefit the litigating parties involved therein.

(b) ADR is welcome to the people as a friendly procedure of resolving their disputes by making effective participation by themselves. ADR possesses superiority over most peoples' perception of the court. ADR is certainly capable of enhancing the existing system of civil justice and multi-faceted subject of controversy can be friendly and amicably settled down with direct bearing of specification. The conflicting issues which involve complicated question of law and fact can be easily made negotiable with fairness to be settled down. It is possible, through ADR, to balance flexibility and achievement of financial saving by low-cost, removal of excessive legalism and lingering of the litigation by multiplicity of proceeding.

(c) ADR has been proved most useful in respect of resolving the family disputes. The Camera trial both at pre-trial and post-trial stages in presence of the parties at disputes through the court is nothing but a recognition of the mechanism of ADR through mediation. Very many complicated family disputes have so far been resolved through such a

method of trial, which could not have been possible through the conventional method of trial. The real injurious consequence of the controversy in between the couples and others can be made to understand by holding negotiation with the parties at disputes. As such the contributory influence of ADR can be activated in the resolution of family matters. Family mediation in UK has become a source of resolving all kinds of family troubles and disputes.

(d) ADR is most welcome with continuity of its more development because the traditional and conventional method of proceedings are bound to be changed with the gradual benefits to be derived out of the novel device of ADR. The acceptance of the mechanism of ADR would certainly establish a culture of resolving disputes friendly and amicably at the option of the contending parties and such outlook would be the outcome of implementing civil justice reforms thereby changing our traditional view of the administration of justice. More reform programmes are liable to be gradually chalked out so as to distribute justice at a short period with low-cost. A change of sentiment will also take place in the traditional judicial rigidity and culture. The good effect of ADR, must, in consequence, bring flexibility for judicial work and thus legal reform is bound to be established in future. Procedural rigidity is bound to be removed by the adoption of the outlook towards ADR. New court rules and management are likely to be evolved out in going to implement the sound culture of ADR. This style of resolving of disputes is likely to impart a new dynamism in order to remove the excessive reliance on legalism and the professional advisers would be steadily moving towards the reduction of the delay, cost and complexity of going to law.

(e) The recognized methods of ADR have been invited by so many philanthropists, legal advisers, professionals and executives of voluntary sectors and commercial organizations as they have been able to realize that the litigants are likely to obtain remarkable benefits from the system of court-annexed, mediation, arbitration and conciliation. In UK a remarkable consensus of opinion has grown in adopting the system of ADR into the court system. Private and voluntary dispute resolution services for the establishment of ADR has effectively gained momentum in the United Kingdom and as such a growing expertise has been in the making to train-up some persons so as to encourage to implement the

real benefits of ADR among the disputing parties. Import of expertise in the field of ADR is also likely to be developed in our country in near future when the potential benefits of ADR would reach to the litigants alike other countries which have so far been benefited by ADR. If the court-annexed ADR can be translated into action in its proper perspective, the speedy distribution of justice is bound to develop with better establishment. The rising cost of legal expenditure and awarding of legal Aid are likely to be minimized at the voluntary participation of the litigating parties, legal professionals and the courts because the longevity of the litigation would be shortened remarkably and as such, pacification of dispute by voluntary approach of the litigants at the instance of the lawyers and the courts would be much more easier. The traditional problems in the existing legal system in respect of excessive legalism, cost and delay as are found now by the litigating people, will gradually be replaced with introduction of some new procedures under the devices of ADR.

(f) The incorporation of ADR in our civil justice system which has been done recently, would certainly impart a significant role in mitigating the suffering for the litigants thereby increasing the efficiency of the civil justice system about which the people at large has a dissatisfaction. The maxims of equity, especially "justice delayed, justice denied" or "delay defeats equity" etc. would disappear and the maxim of equity that "justice should not only be done, but it must be shown to have been done", would come into play. Laymen and poor litigants can have accessibility in the resolving of their disputes in a simpler and intelligible way.

Conclusion :

There is a long way to go in the development of our judicial system in the removal of the lengthy process of resolving disputes by the broaden scope of introducing the recognized methods of ADR wherein complex issues of fact and law can be made to disappear by the informal procedure of legal assistance, legal advice and representation. To enhance our civil justice system, the potential benefits of ADR must be implemented with the working of the government, lawyers, courts and litigants in closer partnership. The established methods of ADR having been annexed to the courts of our country by incorporation of the legal provisions as stated above, would certainly be treated as means of helping the litigants towards earlier settlement with the saving of time, money and energy.

CHILD & ITS RIGHTS

- **Ranabir Kumar Paul Chowdhury**

Introduction :

Children are universally recognized as the asset of a nation. The future of any society depends on how the children are reared up to fulfill in their requirements. Fortunately or unfortunately, a child is proud of the environment around it. In a country like Bangladesh, survival of children are beset with numerous difficulties. The actual realities of the situation towards children can be determined by the nature and extent of parental care. State response to the amelioration of children can be reflected in the legislations enacted, implementation of the same, and the percentage of budget allocation made for it.

Various laws are made to protect the abuse of children in their walks of life. But those laws do not draw the attention of the persons who have concern for the cause of children. As such, those who are interested in child welfare can not approach the respective forums in order to seek appropriate remedies to minimize the child abuse. It is, thus, essential for every one of us to strive our best to bring up the children in a healthy atmosphere so as to make them useful to the society in future.

(2) International overview of Rights of child :

As early as in 1924, the need to extend special care to the child was set out in the Geneva Declaration of the Rights for the child. In December 1948, the universal Declaration of Human Rights proclaimed that childhood is entitled to special care, attention and assistance. This has also been affirmed in the International covenant on Civil and political Rights, International covenant on Economic, social and cultural Rights and in the statutes and relevant instruments of specialized agencies and international organizations concerned with the welfare of the children. Yet another Declaration of the Rights of the child was adopted by the General Assembly of the United Nations in 1959. A Convention on the Right of the Child (CRC) was also adopted by the General Assembly in November 1989 in which Bangladesh acceded on 22nd September, 1991.

Article 12 of C.R.C provides that: (i) State Parties shall assure to the child who is capable of forming his/her own views, the right to express those views freely in all matters affecting him/her, and the views of the child being given due weight in accordance with the age and maturity of the child.

(ii) For that purpose, the child shall be provided the opportunity to be heard in any Judicial and administrative proceeding affecting the child.

Generally in our society, alike all traditional societies, children are to be seen and not to be heard. Bangladeshi law is generous in allowing the views of the child particularly in court and administrative procedure. But children and girls in particular, have little opportunity and say in the matter of marriage chosen by the parents in the rural areas. Child marriages are usually and largely not registered as per personal laws. A large number of girls are got married before the age of 15 and boys by the age of 18 at the attainment of puberty which violate the laws restricting the child marriage. So, the state should come forward to strictly implement the provisions of the Child Marriage Restraint Act, 1929. All the guardians of the children should be made aware of the provisions of Child Marriage Restraint Act to prevent early marriage.

There should be right of children to education, development, protection and survival in all places, even in the parental homes. There should be institutions to afford child care like homes and also juvenile and special homes for the neglected and delinquent children.

Child labour though constitutionally forbidden is also seen in a wide range of working sectors, industries and occupations. Children are subjected to exploitation by the industrial enterprises. It is children, particularly poor children who are dropped-outs of school are bound to work in order to earn their livelihood. Poor children also wish to go to school but their adversity prevent such desire. Illiterate parents are aware that the access of their children to education will afford self respect and dignity to them and to the society. So, it is to be ensured that place of a child is the school and not the field of work or the factory. Replacement of child is necessary from the field of work to the field of education.

Recognizing that child-hood is entitled to special care and assistance, child should be made to grow up in an atmosphere of happiness, love and understanding. For that purpose wide awareness is required for the guardians and

states to move onward to discover a comprehensive framework of rights of the children followed by a proper implementation of the same.

(3) Bangladesh Constitution and Domestic Law :

The Constitution of the People's Republic of Bangladesh recognizes the rights of the children which is in accord with the C.R.C. It proclaims that the child is entitled to equal protection of the laws, that the child shall not suffer from any discrimination and that child labour is prohibited. A healthy environment for child and its nutrition, food and education is recognized. In spite of the Constitutional guarantees and laws for child welfare, proper care and protection of rights to children could not be implemented as yet owing to resource-constraint. Socio-economic conditions have caused denial of such rights.

As the children of today are the leaders of tomorrow to take the helm of the state, the children should be reared up in such a healthy atmosphere so that they can flourish with perfection of their mental faculties and accomplishments in all respects.

(4) Application of the Laws :

According to the convention on the Right of the child (CRC), children are all persons under 18 years, Bangladeshi Legislations are not consistent in defining the age of a child. Various laws such as The children Act, 1974, Nari-O-Shisu Nirzaton Domon Ain, 2000 and the National Child Policy defined the child as a person under the age of 16 years. Child Marriage (Restraint) Act, 1929 defined a male child to be below 21 years of age and a female below 18 years. Disuniformity of various laws of Bangladesh towards the age of a child which though proposed by many legal experts to be removed by being confined to 18 years of age in order to recognize the international sentiment as focused in C.R.C. but some outstanding legal luminaries of this country are not in agreement with such a proposal on the ground that a child here, under 16 years of age, attains puberty and sufficiency of maturity owing to climate and ecological impact.

Though the children Act, 1974, provides lenient and moderate outlook for the custody, protection and treatment of children and also trial and punishment of

youthful offenders, yet it must be ensured by the law enforcing authority that no child under any circumstances should be in jail or police custody to be treated similarly as that of the adult offenders which is usually seen and unless sympathetic attitude is shown to the youthful offenders, the spirit of such enactment would be ignored and violated.

The Ministry of Women and Children Affairs, Bangladesh, in association with UNICEF and other working group brought together a draft document for a National Social Policy on Alternative Models of Care and Protection for Children. That draft document recommended that a child should be defined as a person under 18 years of age. But such determination of the age of 18 years for a child in Bangladesh lacks mobilization of opinions of the legal exponents and experts because of the climatic and ecological impact.

In Bangladeshi perspective, the real age of the child can be determined by the system of issuing the birth certificate under strict control and supervision of the state and its various local organs.

In order to ensure the betterment of the child the following measures should be adopted :

(1) Free Primary education for children should be made compulsory by the Government. Children should be made aware for the protection of their interests and rights. Parental as well as institutional care for the children must be ensured for their overall development and enrichment.

(2) There should be a comprehensive legislation prohibiting all kinds of child labour, and age of the child should be unfailingly made below 16 years in the contexts of Bangladesh in all legislations as the child attains puberty by that period with obtaining of its maturity of understanding the consequence of its performance.

(3) There should be a compulsory registration of birth of the child in order to determine the real age of the child. Child Marriage (Restraint) Act, 1929 should be implemented. The guardians of the child should be made aware of the injurious consequences of the child marriage through mass media and sensitization of such issues is likely to have a good effect in the society at large.

(4) There should be augmentation of cultural, social, recreational and physical activities for promotion of the child. Parents should be vigilant enough to observe the day-to-day activities of the child and in case of its deviation from the right path, the parents must give proper guidelines. The conflicts in the mind of a child should be removed.

(5) Children committing offences should be leniently dealth with and they should be treated as victims other than as offenders.

(6) Children addicted to drugs should be medically treated in a proper way and they should be given sufficient understanding as to the injurious consequence of drugs. Children should be safe guarded, so that they cannot mix with offenders carrying arms and addicted to drugs.

(7) The involvement of a child in sex work should be leniently treated and the vigilance of the parents and society can keep them away from committing sexual offences.

(8) The educational institutions and homes of the children should take enough care so that they can't become unmanageable for their unjust and undesirable demands.

(9) Orphan and destitute children should be given opportunities to be legally adopted by making appropriate laws for all communities.

(10) The female should be given opportunity to become legal guardians in case of absence of male guardians and in case of conflicting situation to protect the interests of the child.

(11) The primary school going children who are poor should be accommodated with the residential schools with facilities to be created for them by the state, local organs and philanthropists.

(12) There should be a national committee for supervising the short-comings of the deprived children and measures should be taken to safe guard their interests and facilities.

(13) Juveniles should be fairly treated with leniency for the correction of their profiles both during trial and punishment.

(14) The Juveniles should not be arrested easily alike adult offenders and police remands for juveniles should be sparingly allowed.

(15) The police as well as courts should be alert and kind to treat the juveniles.

(16) A recent publication in the Daily Star dated 4 August, 2004 quotes a directive of the Hon'ble High Court Division of Supreme Court of Bangladesh.

The High Court Division has come forward to ensure the protection of the children who are without trial in the jail custody. A Division bench of the High Court has recently issued directives for transferring of 1233 child prisoners from jail to correction centers with withdrawal of cases against 12 prisoners and the child against whom cases cannot be withdrawn has been ordered to be released on bail. Such directives nonetheless recognize the implementation of the constitutional mandate for the welfare of the children as an acknowledgement of our love, affection and sympathy for our children. Let all of us be lovers of our children with imparting of the best nourishments to them.

Reference Books :

(1) Constitution of Bangladesh.

(2) The Convention on the Right of the Child (C.R.C).

(3) Child marriage (Restraint) Act, 1929.

(4) The Children Act, 1974.

(5) The Child and the law (a publication by Gita Ramaswmy for Andhra Pradesh Judicial Academy, India).

THE ART AND THE MECHANISM FOR READING LAW

- Md. Zakir Hossain

A law is an obligatory rule of conduct. The command of him or them that has coercive power (Hobbes). A law is a rule of conduct imposed and enforced by the Sovereign authority (Austin). But the law is the body of principles recognized and applied by the State in the administration of Justice (Salmond). Blackstone, however, maintained that a rule of Law made on a pre-existing custom exists as positive law apart from the legislator or Judge. Our constitution gives the definition of Law under Article 152 of the constitution. While reading law or statute, the reader must bear in mind the definition of law recognized in our constitution, apart from other jurisprudential definitions made by different jurists. "Law"[1] means any-

i) Act, ii) Ordinance, iii) Order, iv) Rule, v) Regulation, vi) Bye-law vii) Notification or other legal instrument, and viii) Any custom or usage, having the force of law in Bangladesh.

We have different kinds of Acts. The Act does not itself mention the technical name of it. We have the following Acts:

i) Codifying Act. ii) Consolidating Act. iii) Declaratory Act. iv) Remedial Act. v) Enabling Act. vi) Disabling Act. vii) Penal Act. viii) Taxing Act. ix) Explanatory Act. x) Amending Act. xi). Repealing Act. xii) Curative or validating Act.

Codifying Act :

The object of codification is to arrange and to reduce the whole of *corpus juris*, so far as practicable, to the form of enacted law. In the view of Paton, codification is possible in two types of countries: (i) Firstly, a country with well-developed systems where the possibility of further development is remote, and (ii) secondly, a country with under-developed systems which cannot grapple with

[1] Article 152 of the constitution of the People's Republic of Bangladesh

new economic problems.[2] A codifying Act is one which codifies the law, or in other words, which purports to state exhaustively the whole of the law upon a specific subject. The code contains the pre-existing provisions in different Acts on the subject as well as the common law on it.

Consolidating Act :

Consolidation is the act of combining in a single Act of Parliament all the provisions relating to a particular topic, making only minor improvements. As Sir Courtney Illbert puts it "it is the reduction in to a systematic form of the whole of the statute law relating to a given subject as illustrated or explained by judicial decisions"[3] A consolidating Act is one which consolidates the law on a particular subject at one place; it collects all statutory enactments on a specific subject and gives them the shape of one Act with minor amendments, if necessary.

Declaratory Act :

By reason of the word, "declaratory", what is actually meant is that an Act is so passed to explain and declare the Common Law which has fallen into disuse or become disputable. According to Blackstone, an Act is said to be declaratory " where the old custom of the realm has almost fallen into disuse or become disputable, in which case Parliament has thought it proper, in *perpetuum rei testimonium*, and for avoiding all doubts and difficulties, to declare " what the law is, and ever hath been".

A declaratory Act is an Act to remove doubts either in the common law or in the statutory law. Passing of a declaratory Act becomes desirable when certain expressions in common law or Acts are being misunderstood. This may happen, for instance, where the courts have been interpreting a particular expression as connoting a specific meaning which the legislature feels is a wrong notion of the expression. In such a case, the legislature may pass a declaratory Act declaring the correct meaning of that expression thereby setting at rest the controversy about the correct meaning of the expression.

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2 Paton-Jurisprudence, 3rd Edn, Chap. ix

3 Encyclopedia of English Law, 2nd Edition, Sir Courtney Illbert

Mere use of the expression it is hereby declared does not necessarily make the Act a declaratory Act. Generally, a declaratory Act contains a preamble and also the word declared as well as the word enacted. The main object of such an Act is to remove doubts as to the meaning of the existing law, or to rectify an interpretation which the legislature thinks is wrong. Such an Act does not create substantive rights; it simply declares the law as it is and as it had been at the time when the Act came into force. A declaratory Act has retrospective operation but already decided matters under the Act cannot be reopened. If, however during the pendency of an appeal, a declaratory Act is passed, the appeal still be decided on the basis of such Act.

Remedial Act :

A remedial Act is one whereby a new favour of a new remedy is conferred. The main object of passion of such an Act is to make improvements in the enforcement of one's rights or for redress of wrongs and remove defects or mistakes in the former law. Of late, another synonymous expression, viz. socio-economic legislation, is being preferred by many. Some illustrations of remedial Act are the Maternity Benefits Act and the Workmen's Compensation Act.

Enabling Act :

An enabling Act is one which enlarges the common law where it is narrow. It makes doing of something lawful which would not be otherwise lawful. By an enabling Act the legislature enables something to be done. It empowers at the same time by necessary implication, to do the indispensable things for carrying out the object of the legislation.

Disabling Act :

A disabling Act is one which restricts or cuts down a right conferred by the common law.

Penal Act :

A penal Act is one which punishes certain acts or wrongs. Such an Act may be in the form of a comprehensive criminal code or a large number of sections providing punishments for different wrongs. Some instances of such Act are the Penal Code, Arms Act, Prevention of Food Adulteration Act etc.

Taxing Act :

A taxing Act is one which imposes taxes on income or certain other kinds of transaction. It may be in the form of income tax, wealth tax, sales tax, gifts tax, etc. The object of such an Act is to collect revenue for the government.

9. Explanatory Act :

An explanatory Act is one which explain a law. Such an Act is generally enacted with a view to supply apparent omission or to clarify ambiguity as to the meaning of an expression used in a previous Act.

Amending Act :

An amending Act is one which makes an addition to or operates to change the original law. So as to effect improvements therein or to more effectively carry out the purposes for which the original law was passed. An amending Act cannot be called a repealing Act. It is part of the law amends.

Repealing Act :

A repealing Act is one which repeals an earlier statute. This revocation or termination may be by express or explicit language of the Act or it may be by necessary implication also.

Curative or validating Act :

The Act which validates the previous activities of the Government is curative or validating Act. As for example, the law validating the activities of Martial Law Government is normally called validating Act.

An Act or Ordinance may have the following particulars:

i) Short title ii) Long title iii) Preamble iv) Marginal notes v) Headings of a group of sections or of individual sections. vi) Definition or interpretation clauses. vii) Provisos. viii) Illustrations. ix) Exceptions and saving clauses. x) Explanations. xi) Schedules xii) Punctuation xiii) Object and reasons.

Short title :

The short title is a nickname given to the Act for identification only, such as the Evidence Act, 1872, the Penal code, 1860, etc. The title of a statute is an

important part of the Act, and may be referred to for the purpose of ascertaining its general scope and of throwing light on its construction, although it cannot override the clear meaning of the enactment.[4] But this is not the case with the short title. That title is given to the Act solely for the purpose of facility of reference. It is a statutory nickname to obviate the necessity of always referring to the Act under its full and descriptive title. It is not legitimate to use it for the purpose of ascertaining the scope of the Act. Its object is identification and not description.[5]

Long title :

The long title is mentioned at the head of the Act and contains a brief but fairly understandable general description of the purpose of the Act. For instance, the long title of the Code of Civil Procedure, 1908 reads: An Act to consolidate and amend the laws relating to the procedure of courts of civil judicature.

Preamble :

Preamble contains the main objects of the Act. For instance, the preamble of the transfer of Property Act reads here as it is an Act to amend the law relating to the transfer of Property by Act of Parties. Where the language of an Act is clear, the preamble must be disregarded. Where the object or meaning of an enactment is not clear the preamble may be resorted to explain it. Where very general language is used in an enactment which, it is clear, must be intended to have a limited application, the preamble may be used to indicate to what particular instances the enactment is intended to apply.

The Courts cannot, therefore, start with the preamble for construing the provisions of an Act, though they would be justified in resorting to it, may, they will be required to do so, if they find that the language used by Parliament is ambiguous or is too general though in point of fact Parliament intended that is should have a limited application.[6] The preamble of an Act sets forth the reason

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4. AIR 1952 SC
5. AC (1913) 107, 128, 129
6. AIR 1961 SC 954

for the particular Act of the Legislature and foreshadows what is intended to be effected by the Act. It is a key to open the minds of the framers of the Act.[7]

A preamble does not show the entire scope or intention of the Act as a whole.[8] The preamble cannot restrict or extend the enacting part when the language and scope of the Act are not open to doubt.[9] The legislative will is declared by the preamble of the Act which seeks to deal with the subject of an enactment. Generally, preamble to an Act briefly indicates the object of the legislation. It may not be exhaustive, but still it discloses the primary purpose of the legislation.[10] When there is a preamble it is generally in its recitals that the mischief to be remedied and the scope of the Act are described. It is, therefore, clearly permissible to have recourse to it as an aid to construing the enacting provisions.[11] A preamble can only be brought in as an aid to the construction of a statute if the language is not clear and admits of a plurality of meanings; but where it is clear and unambiguous it cannot be used to extend or limit the meaning and scope of a statute.

Marginal notes :

Marginal notes are those notes which are inserted at the side of the sections in an Act and express the effect of the sections. It is undoubtedly true that the marginal note to a section cannot be referred to for the purpose of construing the section but it can certainly be relied upon as indication the drift of the section or to show what the section is dealing with. It cannot control the interpretation of the words of a section particularly when the language of the section is clear and unambiguous but being part of the statute its *prima facie* furnishes some clue as to the meaning and purpose of the section.[12] While construing a statute the court has to read both the marginal notes and the body of its provisions. Whether the marginal notes would be useful to interpret the provisions and if so, to what

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7 AIR 1970 SC 540

8 Shriram Gulabdas v Board of Revenue (1953) Nag 332

9 AIR 1944 Lah 266: (1944) 25 Lah 555 (FB).

10 AIR 1988 SC 526

11 1957 AC 437, 467, 468, Maxwell on Interpretation of Statutes, 12th Ed, p. 7

12 AIR 1982 SC 149

extent, depends upon the circumstances of each case.[13] If there is any ambiguity in the meaning of the provisions in the body of the statute, the marginal note may be looked into as an aid to construction.[14]

Headings :

Headings are of a group of sections or of individual sections. These are generally treated as preambles to the group of sections or the individual sections to which they are appended. It is a well settled rule of interpretation that the headings or titles prefixed to a section can be referred to in determining the meaning of doubtful words but those headings cannot be used to give a different effect to clear words in the section.[15] Such headings or entries cannot control the plain words of the provision. They cannot also be referred to for the purpose of construing the provisions when the words used therein are clear and unambiguous; nor can they be used for cutting down the plain meaning of the words in the prevail.[16]

Definition or interpretation clauses :

These exist generally in the earlier part of an Act. Certain words or expressions used in different provisions of the Act are defined in these clauses. Naturally, the meanings of these words wherever they exist in the Act will be in accordance with their meaning given under the definition clauses generally. When a word has been defined in the interpretation clause, *prima facie* that the definition governs whenever that word is used in the body of the statute unless the context requests otherwise.[17] When the Act itself provides a dictionary for the words used, the court must look into that dictionary first for an interpretation of the words used in the statute. Judicial definitions are not statutory definitions; they are merely explanatory and definitive. The tendency to try to interpret the language employed by the Judges in the Judicial definition as if, it has been

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13. AIR 1982 SC 149
14. AIR 1982 SC 149
15. AIR 1984 SC 29
16. AIR 1990 SC 689
17. AIR 1990 SC 808

transformed into a statutory definition, is wrong.[18] Judicial interpretation to the words defined in one statute does not afford a guide to construction of the same words in another statute unless the statutes are *pari materia* legislations.[19] The dictionary meaning of a word cannot be looked at where that word has been statutorily defined or judicially interpreted.[20]

To succeed in the profession of the law, you must seek to cultivate command of language. Words are the lawyer's tools of trade. When you are called upon to address a judge, it is your words which count most. It is by them that you will hope to persuade the judge of the rightness of your cause. When you have to interpret a section in a Statute or a paragraph in a Regulation, you have to study the very words. You have to discover the meaning by analyzing the words-one by one - to the very last syllable. When you have to draw up a will or a contract, you have to choose your words well. You have to look into the future-envisage all the contingencies that may come to pass and then use words to provide for the. On the words you use, your client's future may depend.[21]

Provisos :

Whenever proviso is inserted in a section, the natural presumption is that had the proviso not been inserted the enacting part of the section would have included the subject matter of the proviso. In construing a section full and natural meaning should be given to a proviso, if any.[22] Ordinarily, a proviso is not interpreted as stating a general rule. It qualifies the generality of the main enactment by providing an exception and taking out, as it were, from the main enactment, a portion which, but for the proviso, would fall within the main enactment. Ordinarily, it is foreign to the proper function of a proviso to read it as providing something by way of an addendum or dealing with a subject foreign to the main enactment.[23]

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[18] AIR 1983 SC 1

[19] AIR 1990 SC 1747

[20] AIR 1985 SC 1293

[21] The Discipline of Law, Lord Denning, Butter worths; First Indian Reprint 1993

[22] AIR 1991 SC 1538

[23] AIR SC 1596

Illustrations :

An illustration is appended to a section with the purpose of illustrating the provision of law explained therein. The Privy Council has laid down that illustrations to an Indian statute are to be taken as part of the statute.[24] The function of an illustration is to show how the principle already enunciated in the section of the enactment to which the illustration is appended is to be applied, or how the particular facts of the case supposed by the illustration come under the principle.[25] Illustrations cannot have the effect of modifying the language of the section which alone forms the enactment.[26] They furnish some indication of the presumable intention of the Legislature. They are not binding when inconsistent with the language of the section.[27]

Exceptions and saving clauses :

The purpose of adding an exception to an enactment is exempting something which would otherwise fall within ambit of the main provision. Thus, an exception affirms that not exempted are within the purview of main enactment. Similarly, a saving clause is generally appended in cases of repeal and re-enactment of a statute normally appended in the repealing Act and its object is that the rights already created under the repealed enactment should not be disturbed.

Explanations :

Explanations are inserted whenever the legislature feels that a particular provision needs explanation essential to remove doubts which may arise in the absence of it. An *Explanation* in a section is not a proviso. It does not carve out of the section something which the section has provided and deal with that part which is carved out. It is not the function or purpose of and *Explanation* to extend the scope of the section itself or to restrict its operation. An *Explanation*

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[24] Lala Balla Mal v Ahad Shah (1918) 21 Bom LR 558 (PC)

[25] Saadat Kamel Hunum v Attorney-General for Palestine (1939) AC 508

[26] AIR 1956 SC 404

[27] AIR 1916 LB 114 (FB)

ordinary is intended to apply to the whole ambit of the section and to throw light on the construction of the words used by the Legislature.[28]

Schedules :

Schedules attached to an Act deal with as to how claims or rights under it are to be asserted or as to how powers conferred under it are to be exercised. A schedule may some times contain certain subjects in the form of lists. The schedules mentioned in the Special Powers Act, 1974 is illustration of this kind.

Punctuation :

Statutes may contain punctuations in the forms of semi-colon, colon, comma, full stop, hyphen, dash, bracket and the like. Punctuation cannot be regarded as a controlling element and cannot be allowed to control the plain meaning of the text.[29] More thoughtful use of punctuations would have helped make the meaning of the clause clear beyond controversy. Grammar and punctuation are *Hapless* victims of the place of life, and it would not be proper to go merely by the commas used in the clause in question.[30]

Objects and Reasons :

As per the mandate of Rules of Procedure of Parliament a Bill is to send by the concern Minister to the Secretary, Parliament Secretariat for laying the same before the house by appending an Objects and Reasons to new legislation.[31] This is the legal obligation of the administrative Ministry which prepares the draft the Bill. In order to interpret a particular provision and to infer intention of the legislature, the objects and reasons stated in the Bill when it is presented to the legislature, could be used.[32] A statute is best understood if we know the reason for it.

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28 AIR 1981 SC 1274

29 AIR 1952 SC 369, 383

30 AIR 1982 SC 949

31 Rules of Procedure of the Parliament, Rule 75 (sub rule 2)

32 AIR 1986 SC 2014

The reason for a statute is the safest guide to its interpretation. The words of a statute take their color from the reason for it. There are external and internal aids to discover the reason for a statute. The external aids are statement of objects and reasons when the Bill is presented to Parliament; the reports of Committees. Occasional excursions into the debates of Parliament are permitted. Internal aids are the preamble, the scheme and the provisions of the Act. Having discovered the reason for the statute and so having set the sail to the wind, the interpreter may proceed ahead.[33] The statement of Objects and Reasons should be read as an aid to the construction of a statute. Very often they furnish valuable historical material in ascertaining the reasons which included the legislature to enact a statute, but in interpreting the statute they have to be ignored. However the statement of Objects and Reasons is now a days frequently referred to ascertain the legislative intent which is the primary function of court in the matter of interpretation.[34]

Precedent of the Apex Court :

Our constitution under Article 111 it has been clearly spelt out that the Law declared by the Appellate Division shall be binding on the High Court Division and Law declared by the either division of the Supreme Court shall be binding on all courts subordinate to it. Therefore, it is advisable to read the provisions of Law in conjunction with the Law declared by the Apex Court, which has binding force.

Expression of the words "Include", "May" and "Shall" in Legal literature :

In legal literature, the words *Include, May and Shall* are famous expressions in law other than its grammatical expression. They have profound meaning.

The word "include" is very generally used in interpretation clauses in order to enlarge the meaning of words or phrases occurring in the body of the statute; and when it is so used, these words or phrases must be construed as comprehending, not only such things as they signify according to their natural import but also

33 AIR 1987 SC 1454

34 AIR 1985 SC 4

those things which the interpretation clause declares that they shall include. *Regional Director, E.S.I. Corpn. v. High Land Coffee Works*[35].

The word "includes" is often used in interpretation clauses in order to enlarge the meaning of the words or phrases occurring in the body of the statute. When it is so used, those words and phrases must be construed as comprehending not only such things as they signify according to their nature and import but also those things which the interpretation clause declares that they shall include. The word "include" is also susceptible of other constructions. *CIT vs. Taj Mahal Hotel*[36]

It is true that "includes" is generally used as a word of extension, but the meaning of a word or phrase is extended when it is said to include things that would not properly fall within its ordinary connotation.

Also there could not be any inflexible rule that the word 'include' should be read always as a word of extension without reference to the context. South Gujarat Roofing Tiles Manufactures' Assn. v. State of Gujarat[37],

It is true that the word "may", in some context, has been interpreted as containing a mandatory direction and the authority given the power has to exercise that power unless there be special reasons. But normally, the word "may" is used to grant discretion and not to indicate a mandatory direction. *Sahodara Devi vs. Govt. of India*[38].

Though the word "may" might connote merely an enabling or permissive power in the sense of the usual phrase "it construed as referring to a compellable duty, particularly when it refers to a power conferred on a court or other judicial authority. As observed in Maxwell on Statutes:

"Statutes which authorize persons to do acts for the benefit of others, or, as it is advancement of justice, have often given rise to controversy when conferring the authority in terms simply enabling and not mandatory. In enacting that they 'may', or 'shall' if they think fit, or 'shall have power', or that 'it shall be lawful' for

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35 (1991) SCC 617, 620.

36 (1971) 3 SCC 550

37 (1976) 4 SCC 601

38 AIR 1971 SC 1599

them to do such acts, a statute appears to use the language of mere permission, but it has been so often decided as to have become an axiom that in such cases such expressions may have-- to say the least-- a compulsory force[39].

The use of the word "shall" in a statute, though generally taken in a mandatory sense, does not necessarily mean that in every case it shall have that effect, that is to say, that unless the words of the statute are punctiliously followed, the proceeding or the outcome of the proceeding, would be invalid. On the other hand, it is not always correct to say that where the word "may" has been used, the statute is only permissive or directory in the sense that noncompliance with those provisions will not render the proceeding invalid[40].

The word "shall" is ordinarily mandatory, but it is sometimes not so interpreted. It may be directory if the context or the intention otherwise demands[41]. In this respect the provision of order 8 rule 1 of the Code of Civil Procedure may be cited as an example.

The question whether a particular provision of a statute which on the face of it appears mandatory inasmuch as it used the word 'shall' is merely directory cannot be resolved by laying down any general rule and depends upon the facts of each case and for that purpose the object of the statute in making the provision is the determining factor. *Hiralal Agrawal vs. Ramapandarath Singh*[42].

The expression 'Or ' and 'And' :

Depending upon the context 'or' may be read as ' and' , but the court would not do it unless it is so obliged because 'or', does not generally mean 'and' and 'and' does not generally mean 'or'.*R.S. Nayak vs A.R. Antulay.*[43] The expression 'and' has generally a cumulative effect, requiring the fulfillment of all the conditions that it joins together and it is the antithesis or 'or'. *M. Satyanarayana vs State*[44]. In ordinary usage, 'and' is conjunctive and 'or' disjunctive. But to carry out the

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39 AIR 1963 SC 1088

40 AIR 1957 SC 912

41 AIR 1961 SC 1480

42 AIR 1969 SC 244

43 AIR 1984 SC 684

44 AIR 1986 SC 1162

intention of the legislature it may be necessary to read 'and' in place of the conjunction 'or', and vice versa.[45]

Doctrine of reading down :

It is an internal aid to construe the words or phrases in a statute to give reasonable meaning. The object of reading down is to keep the operation of the statute within the purpose of the Act and constitutionally valid. The courts though have no power to amend the law by process of interpretation, but do have power to amend it so as to be in conformity with the intendment of the legislature. The doctrine of reading down is one of the principles of interpretation of statue in that process. Resort, however, cannot be had to the doctrine when the language used by the legislature is clear, precise and unambiguous. *Delhi Transport Corporation vs. D.T.C. Mazdoor Congress*[46]. Reading down meanings of words with loose lexical amplitude is permissible as part of the judicial process. *Bhim Singhji vs. Union.*[47]

Mischief rule :

The language of a statute which is enacted to curb and remedy the widespread evil, should be construed in a manner which would suppress the mischief, advance the remedy, promote its object, prevent its subtle evasion and foil its artificial circumvention.*Municipal Corporation vs. Vacheroo Mal*[48]. The construction must not, however, be strained to include cases plainly omitted from the natural meaning of the words. It is the duty of a judge to make such construction of a statute as shall suppress the mischief and advance the remedy. *Municipal Corporation vs. Ben Hirabe.*[49]

Latin Words & Phrases :

Latin has great influence in Common Law as we received law from Rome. Without proper understanding of Latin it is very difficult to read law. Of late, it has been made compulsory for the students to overcome the test conducted by

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45 Maxwell on interpretation of Statutes 12th ed

46 AIR 1991 SC 101

47 AIR 1981 SC 234

48 AIR 1976 SC 394

49 (1983)2 SCC 422

Oxford & Cambridge to get them admitted there in the Law Department. A lawyer has to remember at least 200 Latin Words. That will help him to study law with proper understanding. I delighted to cite some Latin expressions for better understanding i. e. *locus standi, prima facie, ipso facto, fucntus officio, inter alia, in limine, sine- qua-non, amicus curiae, aninus, inter se, ne bis in idem, obiter dicta, ratio decidendi, res judicata, res nullius, stare decisis, pacta sunt servanda etc.*

In the conclusion, I must venture to say that all concerned should read the law systematically following the procedure as set forth above. My endeavor is to refresh the memory of the reader who wants to conceive the inner meaning of law. At the fag end, I have no hesitation to admit candidly that I had to wade through the books of many writers of home and abroad to prepare this article. So I owe to them.

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RIGHTS AND INTEREST IN REAL ESTATE

- Dr. Md. Abdul Karim Khan

Abstract :

Real estate is a unique subject, and because it is unique, real estate has spawned complex legal theories and very unusual fact situations. Real estate is defined and rights to Real estate are also described. An attempt has been made here in this article to provide general and legal information concerning rights and interest in real estate with a brief history of land ownership thereby. It begins with a brief discussion of government rights in land, individual rights, easements, encroachments, deed restriction and types of liens. It also includes various types of estates, homestead rights, chattels, and subsurface rights. At the end of this article a conclusion with suggestions has been given for the real estate in the national perspective.

Introduction :

In modern Real Estate, one must be prepared to learn a lot of new concepts and be willing to commit the time and effort to that end. Many ears ago real estate was considered to be a "marketing" or "salesmanship" business and experience was the best teacher. In recent years, however, is seen the development of extensive academic and technological applications in real estate education. Real Estate has come to the academic forefront undergraduate degrees in real estate are becoming more common in the developed countries and graduate level degree programs are proliferating.

Bangladesh is a village-based country. There are eighty six thousand villages in Bangladesh. Eighty five percent of the people lives in the rural area. The economy of Bangladesh is based on agriculture. But at the present time, with the expansion of economy and mounting movement of people from rural and mofussil areas to the sprawling metropolis of Bangladesh. Housing and residential accommodation poses a really challenging sector. It is almost two decades have passed the real estate business is running here. But the sustainable system and sufficient Legal footing have not yet been formed for the real estate business and practice in Bangladesh.

There is also resulting emphasis on the professionalism and ethics of these new real estate professionals. Technological, advances in all phases of the real estate

industry have placed both real estate education and real estate practice on a new level of competition and efficiency.

Historical Background :

One will better understand real estate law when one understands its roots. Most of the law originally come from early English law through English colonization. The Laws that take root in Bangladesh originated in predominantly agricultural economics. There has been a great deal of legal modification over the years by legislature and Courts. One will also find it helpful to understand the difference between common law and statutory law. Common law derives its authority from usage and custom over long periods of time. Thus the concepts of fee simple estates, qualifies fee estates, leasehold estates, life estates, mortgages, air rights and subsurface rights, grew out of usage over hundreds of years. Individual court decisions also contributed to the development of common law in England and the Indian sub-continent.

Ancient History of Land :

During the ancient time man was nomadic and hand no idea of real estate. Roaming bands followed game and the season, and did not claim the exclusive rights to use a given area. When man began to cultivate crops and domesticate animals, the concept of an exclusive rights to the use of land became important. This right was claimed for the tribe as a whole, and each family in the tribe was given the right to the exclusive use of a portion of the tribe's land. In turn each family was obligated to aid in defending the tribe's claim against other tribes.

During the rolling of time individual tribes allied with each other for mutual protection, eventually these alliances resulted in political states. In the process, land ownership went to the land of the state, usually a king. The King, in turn, gave the right called a feud to use large tracts of land to select individuals called lords. The lords did not receive ownership. They were tenants of the King and were required to serve and pay duties to the King and to help fight the King's wars. It was customary for the lords to remain tenants for life, subject, of course, to the defeat of their King by other King. This system, wherein all land ownership rested in the name of the King became known as the feudal system. The lords gave their subjects the right to use small tracts of land. For this, the subject owed their lord a share of their crops, and their allegiance in time of war. The subject were, in effect, tenants of the lords and could not sell his rights nor pass them to their heirs.

The first major change in the feudal system occurred in 1285 when King Edward of England gave his lords the right to pass their tenancy right to their heirs. Subsequently tenant were permitted to convey their tenancy right to others. By the year 1650, the feudal system had come to an end in England and in Indian sub-continent in 1950, in France, it ended with French Revolution in 1789. In its place arose the allodial system of land ownership under which individual were given the right to own the land. Initially, lords become owners and the peasants remained tenants of the lords. As time passed, the peasants become landowners either by purchase or by gift from the lords.

Real estate :

Real estate or real property is land and the improvements made to the land and the rights to use them. Often one thinks of land as only the surface of the earth. But it is substantially more than that. Land starts at the center of the earth passes through the earth's surface and continues on into space. An understanding of this concept is important because given a particular parcel land, it is possible for one to own the rights to use its surface (surface rights) another to own the right to drill or dig below it's surface (subsurface rights) and still another to own the rights to use the airspace above it (air rights).

Anything affixed to land with intent of being permanent is considered to be part of the land and therefore, real estate. Thus houses, schools, factories, barns, fences, roods, pipelines, and landscaping are real estate. As a group these are referred to as improvements because they improve or develop land.

Government Rights in Land :

Under the feudal system, the king was responsible for organizing defense against invaders, making decisions on land use, providing services such as roads and bridges, and the general administration of the land and his subjects. An important aspects of the transition from feudal to allodial ownership was that the need for these services did not end. Consequently, even though ownership could now be held by private citizens, it became necessary for the government to retain the rights of taxation, eminent domain, or land acquisition police power, and escheat or abandoned. Let look at each of these more closely.

Property Taxes :

Under the feudal system, governments financed themselves by requiring lords and vassals to share a portion of the benefits they received from the use of the

king's lands. With the change to private ownership, the need to finance governments did not end. Thus, the government retained the right to collect property taxes from landowners. Before the advent of income taxes, the taxes levied against land were the main source of government revenues.

Eminent Domain (Land Acquisitions) **:**

The right of government to take ownership of privately held real estate regardless of the owner's wishes is called eminent domain. Land for schools, roads, streets, parks, urban renewal, public housing, public parking, and other social and public purposes is obtained this way. Quasi-public organizations, such as utility companies and railroads, are also permitted to obtain land needed for utility lines, pipes, and tracks by state and laws. The legal proceeding involved in eminent domain is condemnation, and the property owner must be paid the fair market value of the property taken from him. The actual condemnation is usually preceded by negotiations between the property owner and an agent of the public body wanting to acquire ownership. If the agent and the property owner can arrive at a mutually acceptable price, the property is purchased outright. If an agreement cannot be reached, a formal proceeding in eminent domain is filed against the property owner in a court of Law.

Police Power :

The right of government to enact laws and enforce them for the order, safety, health, morals and general welfare of the public is called police power. Examples of police power applied to real estate are zoning laws, planning laws, building, health and fire codes, and rent control. A key difference between police power and eminent domain is that although police power restricts how real estate may be used, there is no legally recognized "taking" of property. Consequently, there is no payment to an owner who suffers a loss of value through the exercise of police power. A government may not utilize police power in an offhand or capricious manner; any law that restricts how an owner may use his real estate must be deemed in the public interest and evenhandedly to be valid. The breaking of a law based upon police power result in either a civil or criminal penalty rather than in the seizing of real estate, as in the case of unpaid property taxes. Of the various right government holds in land, police power has the most impact on land value.

Escheat **(Abandoned) :**

When a person dies and leaves no heirs and no instruction as to how to dispose of her real and personal property, or when property is abandoned, the ownership of that property reverts to the government (state or county). This reversion to the state is called escheat from the Anglo-French word meaning to *fall back*. Escheat solves the problem of property becoming ownerless.

Ownership :

It cannot be overemphasized that, to have real estate there must be a system or means of protecting rightful claims to the use of land and the improvements thereon. In the United States, the federal government is given the task of organizing a defense system to prevent confiscation of those rights. In the USA and Europe the government, in combination with local governments also establishes law and courts within the country to protect the ownership rights of one citizen in relation to another citizen. Whereas the armed forces protect against a takeover, within a country deeds, public records, contracts, and other documents have replaced the need for brute force to prove and protect ownership of real estate. In Bangladesh, we do not have such a defense system yet to protect the ownership of real estate.

Fee Simple :

The concept of real estate ownership can be more easily understood when viewed as a collection or bundle of rights. Under the allodial system, the rights of taxation, eminent domain, police power and escheat are retained by the government. The remaining bundle of rights, called fee simple, is available for private ownership. The fee simple bundle of rights can be held by a person and his heirs forever, or until his government can no longer protect those rights.

The word estate is synonymous with bundle of rights. Stated another way, estate refers to one's legal interest or rights in land, not the physical quantity of land as shown on a map. A fee simple is the largest estate one can hold in land. Most real estate sales are for the fee simple estate. When a person says he or she "owns" or has "title" to real estate, it is usually the fee simple estate that is being discussed. The word *title* refers to the ownership of something. All other lesser estates in land, such as life estates and leaseholds, are created from the fee estate.

Encumbrances :

Whenever a stick is removed from the fee simple bundle, it creates an impediments to the free and clear ownership and use of that property. These impediments to title are called encumbrances. An encumbrance is defined as any claim, right, lien, estate or liability that limits the fee simple title to property. An encumbrance is, in effect, a stick that has been removed from the bundle. Commonly found encumbrances are easements, encroachments, deed restrictions, liens leases, and air and subsurface rights. In addition, qualified fee estates are encumbered estates, as are life estates.

The party holding a stick from someone else's fee simple bundle is said to hold a claim to or a right or interest in that land. In other words, what is one person's encumbrance is another person's right or interest in that land. In other word, what is one person's encumbrance is another persons right or interest or claim. For example, a lease is an encumbrance from the standpoint of the fee simple owner. But from the tenants standpoint, it is an interest in land that gives the tenant the right to the exclusive use of land and buildings. A mortgages is an encumbrance from the fee owner's viewpoint but a right to foreclose from the lender's viewpoint. A property that is encumbered with a lease and a mortgages is called "a fee simple subject to a lease and a mortgage".

Easements :

An easement is a right or privilege for one party who has to use the land of another for special purpose consistent with the general use of the land. The landowner is not dispossessed from his land but rather coexists side by side with the holder of the easement. Examples of easements are those given to telephone and electric companies to erect poles and run lines over private property, easements given to people to drive or walk across someone else's land and easements given to gas and water companies to run pipelines to serve their customers.

There are several different ways an easement can come into being. One is for the landowner to use a written document to specifically grant and easement to another party. A second way is for an owner to reserve (withhold) an easement in the deed when granting the property to another party. For example a land developer may reserve easement for utility lines when selling the lot and then the easement to utility companies that will service the lots. Another way for an

easement to be created is by government condemnation, such as when a government flood control district purchases an easement to run a drainage pipe under someone's land.

It is also possible for an easement to arise without a written document. For example, a parcel of land fronts on a road and the owner sells the back half of the parcel. If the only access to the back half is by crossing over the front half, even if the seller did not expressly grant an easement, the law will generally protect the buyer's right to travel over the front half to get to his land. The buyer cannot be landlocked by the seller. This is known as an easement by necessity. Another method of acquiring an easement without a written document is by constant use, or easement by prescription: if a person acts as though he owns an easement long enough, and the use is open, obvious, and without permission of the property owner, that person will have a legally recognized easement. One using private road without permission for a long enough period of time can acquire a legally recognized easement by this method.

Easement Appurtenant :

The drive way form the road to the back lot is called an easement appurtenant. This driveway is automatically included with the back lot whenever the back lot is sold or otherwise conveyed. This is so because this easement is legally connected (appurtenant) to the back lot. Please note that just as the back lot benefits from this easement, the front lot is burdened by it. Whenever, the front lot is sold or otherwise conveyed, the new owners must continue to respect the easement to the back lot. The owner of the front lot owns all the front lot, but cannot put a fence across the easement, or plant trees on it, or grow a garden on it or otherwise hamper access to the back lot. Because the front lot serves the back lot, the front lot is called the serviant estate and the back lot is called the dominant estate. When one party has the right or privilege, by usage or contract, to travel over a designated portion of another person's land, it is called a right-of-way.

Although the law may protect the first purchaser through the doctrine of easement by necessity, it is nonetheless critical that any subsequent purchaser of back lots and back acreage carefully inspect the public records and the property to make certain there is both legal and actual means of access from a public road to the parcel.

Easement in Gross :

An easement in gross differs from an easement appurtenant because there is a servient estate but not dominant estate. Some example will illustrate this: telephone, electricity, and gas line easement are all easement in gross. These easement belong to the telephone, electric, and gas companies, respectively, not to a parcel of land. The servient estate is the parcel on which the telephone electric and gas companies have the right to run their lines. All future owners of the parcel are bound by these easements.

Party Wall Easement :

Party wall easement exist when a single wall is located on the lot line that separates two parcels of land. The wall may be either a fence or the wall of a building. In either case each lot owner owns that portion of the wall on his land, plus an easement in the other half of the wall for physical support. Party walls are common where stores and office buildings are built right up to the lot line. Such a wall can present an interesting problem when the owner of one lot wants to demolish his building. Since the wall provides support for the building next door, he must leave the wall, and provide special supports for the adjacent building during demolition and until another building is constructed on the lot. A party wall is an easement appurtenant. It is noted that easements may be terminated when the necessity for the easement no longer exists.

Encroachments :

The unauthorized intrusion of a building or other form of real property into another person's land is called an encroachment. A tree that overhangs into a neighbour's yard, or a building or eave of a roof that crosses a property line are examples of encroachments. The owner of the property being encroached upon has the right to force the removal of the encroachment. Failure to do so may eventually injure his title and make his land more difficult to sell. Ultimately, inaction may result in the encroaching neighbour claiming a legal right to continue his use.

Liens :

A hold or claim that one person has on the property of another to secure payment of a debt or other obligation is called a lien. Common examples are property tax

liens, mechanic's judgment liens, and mortgage liens. From the standpoint of the property owner, a lien is an encumbrance on the title. Note that a lien does not transfer title to property.

Property Tax Liens :

Property tax lines result from the right of government to collect taxes from property. It is removed when the property taxes are paid. If they are not paid, the lien gives the government the rights to force the sale of the property in order to collect the unpaid taxes.

Mechanic's Lien :

Mechanic's lien laws give anyone who has furnished labour or materials for the improvement of land the right to place a lien against those improvements and the land if payment has not been received. A sale of the property can then be forced to recover the money owed.

Judgment Lien :

Judgment liens arise from lawsuits for which money damages are awarded. The law permits a hold to be placed against the real and personal property of the debtor until judgment is paid. Usually the lien created by the judgment covers only property in country where the judgment was awarded.

Mortgage Lien :

A mortgage lien is created when property is offered by its owner as security for the repayment of a debt. If the debts secured by the mortgage lien is not repaid, the creditor can foreclose and sell the property. If this is insufficient to repay the debt, some states allow the creditor to file a petition the court for a judgment lien for the balance due.

Voluntary and Involuntary Lien :

A voluntary lien is a lien created by the property owner. A mortgage lien is an example of a voluntary lien: the owner voluntarily creates a lien against his/her property in order to borrow money. An involuntary lien creates a lien against his/her property is order to borrow money. An involuntary lien is created by operation of law. Examples are property tax liens, judgment liens, and mechanic's liens, which have already been discussed before.

Special and General Liens :

A special lien is a lien on a specific property. A property tax line is a special lien because it is a lien against specific property and no other. Thus, if a person owns five parcels of land scattered throughout a given county and fails to pay the taxes on one of those parcels, the county can force the sale of just that one parcel; the other cannot be touched. Mortgages and mechanic's liens are also special liens in that they apply to only the property receiving the materials or labour. In contrast, a general lien is a lien on all the property of a person in a given jurisdiction. For example, a judgment lien is a lien on all the debtor's property in the country where the judgment has been filed.

Qualified Estates :

A qualified fee estate is a fee estate that is subject to certain limitations imposed by the person creating the estate. Qualified fee estates fall into three categories: determinable, condition subsequent, and condition precedent. They will be discussed only briefly, as they are rather uncommon.

A fee simple determinable indicates that the duration of the estate can be determined from the deed itself. For example, Mr. Moti donates a parcel of land to a mosque so long as the land is used for religious purposes. The key words are so long as. So long as the land is used for religious purposes, the mosque has all the rights of fee simple ownership.

A fee simple subject to condition subsequent gives the grantor the right to terminate the estate. Continuing the above example, Mr. Moti would have the right to reenter the property and take it back if it was no longer being used for religious purposes.

With a fee simple upon condition precedent, title will not take effect until a condition is performed. For example, Mr. Moti could deed his land to a mosque with the condition that deed will not take effect until a religious sanctuary is built. Occasionally, qualified fees have been used by land developers in lieu of deed restrictions or zoning.

Life Estates :

A life estate conveys an estate for the duration of someone's life. The duration of the estate can be tied to the life of the life tenant (the person holding the life

estate) or to a third party. In addition, someone must be named to acquire the estate upon its termination.

A life estate can also be created for the life of another. For example, I will deed this property to Akbar for the life of his mother (anticipating that Akbar will maintain control over the property for the purpose of taking care of his mother) – perhaps given the opportunity to live there at no cost. Then, upon the death of mother, the life estate would then revert to the grantor or vest in the remainder-man, depending on the terms that created the life estate. In legal terms, this is called a life estate pur autrie vie.

Since a life estate arrangement is temporary, the life tenant must not commit waste by destroying or harming the property. Furthermore, the life tenant is required to keep the property in reasonable repair and to pay any property taxes, assessments and interest on debt secured by the property. The life tenant is entitled to income generated by the property, and may sell, lease, rent, or mortgage his or her interest.

Statutory Estates :

Statutory estates are created by the law. They include succession dower, which give a wife rights in her husband's real property; succession gives a husband rights in his wife's real property, and the each Spouse will get one half in the father's property. Additionally there is laws for protection of the family's home form certain debts and, after death distribution of the property.

Dower :

Historically, dower came from old English common law in which the marriage ceremony was viewed as merging the wife's legal existence into that of her husband's from this viewpoint, property bought during marriage belongs to the husband, with both husband and wife sharing the use of its. As a counter balance, the dower right recognizes the wife's efforts in marriage and grants her legal ownership to one-eight (in some cases one fourth) of the family's real property for the rest of her life. This prevents the husband from conveying ownership of the family's real estate without the wife's permission and protects her even if she is left out of her husband's will.

In real estate sales the effect of dower laws is such that when a husband and wife sell their property, the wife must relinquish her dower rights. This usually

accomplished by the wife signing the deed with her husband or by singing a separate quitclaim deed. If she does not relinquish her dower rights, the buyer (or even a future buyer) may find that upon; the husband's death, the wife may return to legally claim; an undivided ownership in the property. This is important if one buys real estate, have the property's ownership researched by an abstracter and the title insured by a title insurance company.

Freehold Estates :

In a carryover from the old English court system, estates in land are classified as either freehold estates or leasehold estates. The main difference is that freehold estates cases are tried under real property laws whereas leasehold (also called non-freehold or less-than-freehold) estates are tried under personal property laws.

The two distinguishing features of a freehold estate are (1) there must be actual ownership of the land, and (2) the estate must be of unpredictable duration. Fee estates, life estates, and estates created by statute are freehold estates.

Leasehold Estates :

The distinguishing features of a leasehold estate are (1) although there is possession of the land, there is no ownership, and (2) the estate is of definite duration. Stated another way, freehold means ownership and less-than-freehold means rental.

As previously noted, the user of a property need not be its owner. Under a leasehold estate, the user is called the lessee or tenant, and the person from whom he leases is the lesser or landlord. As long as the tenant has a valid lease, abides by it, and pays the rent in time, the owner, even though he owns the property, cannot occupy it until the lease has expired. During the lease period, the freehold estate owner is said to hold a reversion. This is his right to recover possession at the end of the lease period. Meanwhile, the lease is an encumbrance against the property.

There are four categories of leasehold estates, estate for years, periodic estate, estate at will, and tenancy at sufferance. Note that here in this we will be examining leases primarily form the standpoint of estates in land.

Estate for Year :

It is called a tenancy for years, the estate for year is somewhat misleadingly named as it implies that a lease for a number of years has been created. Actually,

the key criterion is that the lease have a specific starting time and a specific ending time. It can be for any length of time, ranging from less than a day to many years. An estate for years does not automatically renew itself. Neither the landlord nor the tenant must act to terminate it, as the lease agreement itself specifies a termination date.

Usually the lessor is the freehold estate owner. However, the lessor could also be a lessee. To illustrate, a fee owner leases to a lessee who in turn leases to another person. By doing this, this first lessee has become a sub-lessor. The person who leases from him is a sub-lessee. It is important to realize that in no case can a sub-lessee acquire from the lessee any more rights that the lessee has.

Periodic Estate :

It is also called an estate from year-to-year or periodic tenancy, a periodic estate has an original lese period with fixed length; when it runs out, unless the tenant or the landlord acts to terminate it, renewal is automatic for another like period of time. A month-to-month apartment rental is an example of this arrangement. To avoid last minute confusion, rental agreements usually require that advance notice be given if either the landlord or the tenant wishes to terminate the tenancy.

Estate at Will :

It is called a tenancy at will, an estate at will is a landlord-tenant relationship with all the normal rights and duties of a lessor-lessee relationship, except that the estate may be terminated by either the lessor or the lessee at any time. However, most states recognize the inconvenience a literal interpretation of *anytime* can cause, and require that reasonable advance notice be given. What is considered "reasonable" notice is question of facts and circumstances and after specified by the law of the land.

Tenancy at Sufferance :

A tenancy at sufferance occurs when a tenant stays beyond his legal tenancy without the consent of the landlord. In other words, the tenant wrongfully holds the property against the owner's wishes. In a tenancy at sufferance, the tenant is commonly called a holdover tenant, although once the stay exceeds the terms of the lease or rental agreement, he is not actually a tenant in the normal landlord-tenant sense. The landlord is entitled to evict him and recover possession of the

property, provided the landlord does so in a timely manner. A tenant at sufferance differs from a trespasser only in that the original entry was rightful. If during the holdover period the tenant pays and the landlord accepts rent, the tenancy at sufferance changes to a periodic estate.

License :

A license is not a right or an estate in land but a personal privilege given to someone to use land (the license). It is non-assignable and can be canceled by the person who issues it. A license to park is typically what an automobile parking lot operator provides for persons parking in his lot. The contract creating the license is usually written on the stub that the lot attendant gives the driver, or its is posted on a sign on the lot. Tickets to theaters and sporting events also fall into this category. Because it is a personal privilege, a license is not an encumbrance against land.

Chattels :

A chattel is an article of personal property. The word comes from the old English word for cattle, which of course, were (and still are) personal property. Chattel is a word more often heard in a law office than in a real estate office. Occasionally you will see it used in legal documents, such as in the case of a chattel mortgage, which is a mortgage against personal property.

Conclusion :

The real estate is not only an idea or a concept at present in Bangladesh. It is almost two decades the real estate business is going in full swing and it has got a tremendous growth and success specially in Dhaka. But the sustainable system has not yet been formed or made for the real estate business and practice. It will not be over emphasized that to have real estate, there must be a system or means of protecting rightful claims to the use of land and the improvements thereon. In Europe and America the government in combination with the local government establishes laws and courts within the country to protect the ownership rights of one person in relation to another person. Therefore, we really do need to develop a system or means of protecting rights of the citizen in real estate. Bangladesh is one of the common wealth countries have common law origin. Sometimes common law concepts are enacted into statutory law. Many statutory laws pertaining to leasehold estates and the rights and obligations of landlords and

tenants have come directly from common law. Additionally, statutory laws have been passed where common laws held to be unclear or unreasonable. At the present circumstances, to put our real estate in the proper system and on the right track in our country, we need to enact laws for licensing of the real estate agents, Zoning laws and building codes with the Income Tax and local property, Tax laws in real estate. Though we are not facing the confiscation of rights or illegal takeover of real estate by brute force or malpractice of real estate agents right-now in Bangladesh, our government should organize a defense system, enact laws and establish courts to prevent confiscation of the rights and interest in real estate, illegal takeover by the brutal force and malpractice of the real estate agents in Bangladesh.

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ENVIRONMENTAL CONSERVATION AND BANGLADESHI LEGAL REGIME: WITH PARTICULAR REFERENCE TO ENVIRONMENT COURT

*- Md. Zahurul Haq**

As one of the developing countries of world's Economic-Atlas, when Bangladesh became independent environmental concerns were not as dynamic as it is now. Today we have environmental legislations along with individuals; NGOs and Government level strives to *do something* for the protection of our natural world.

The Environment Court Act, 2000 (Act No 12 of 2000) has found two Courts to try cases relating to environmental violations under any of the environmental legislations. These two courts, located one in the Capital and another in Port City Chittagong refer to special protective needs of our ecological frets. This is of course one of the key efforts Bangladesh has ever taken for the conservation of her natural environment, yet, left plenty of opportunities for further development. Environmental legislations do not, in many respects, impart to crucial challenges of the society, thus keep many vital issues out of their perimeters hosting avoidable complexities in pre-trial, trial and post-trial procedures.

Right thinking citizens of this country believe, our national environmental legislations should be more focused on real life themes and backed by other supporting units.

Our today's lawmaking efforts in this regards are not an immediate way out to a sudden uprising. History of these legislative developments goes back to 1860 AD when the British Colonial power enacted the Indian Penal Code (IPC). However, the pre-independence laws have not dealt with environmental protection exclusively neither established a separate Court or Bench for this purpose as it exists today in India and Bangladesh. For example, the IPC, (1860), had a Chapter (Chapter XIV) which dealt with offences affecting public health, safety and convenience, which covered aspects like water, air and noise pollution, whereas, many post-independence laws deal exclusively with environmental protection. This is true for both India and Bangladesh.

Till now, we have the same penal system in force in Bangladesh with basic modifications under the title of 'Penal Code' which we inherited from Pakistan and acted out by the Bangladesh Laws (Revision and Declaration) Act, 1973, (Act VIII of 1973).

Since the Stockholm Conference on Environment in 1972, the Government of Bangladesh has been trying to be hands-on as regards various environmental issues and concerns. Early actions toning the insight of the Conference include the creation of the Department of Pollution Control in 1974 and enactment of the Pollution Control Ordinance in 1977. The Ministry of Environment and Forest (MOEF) was set up in 1989 with the Department of Forests and newly created Department of Environment (DOE) under it.[1]

In the First Five Year Plan (1973-1978) the emphasis was on the reduction of poverty which, according to present approach, is one of the main reasons for degradation of environment. However, the objectives of the Fifth Five Year Plan (1997-2002) designed to promote, nurture, protect and expand nature and natural resources and to link all developmental activities with environment for improving the quality of life.

The Bangladesh Environment Conservation Act, 1995 has been enacted to provide for strict liability for environmental pollution, control and mitigation of environmental pollution and overall improvement of environmental standard by conserving its natural state.

For effective and expeditious disposal of cases arising from the application of the aforesaid legislation the Environment Court Act, 2000, has been passed. The law was further amended by the Environment Court (Amendment) Act, 2002, (Act 10 of 2002).

Environment Court of Bangladesh; A critical discussion:

Establishment:

A judge from the rank of Joint District Judge shall be appointed by the Government as Environment Court Judge with specific authority to dispose of

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[1] The DOE was established under Section 3, Clause (a), of the Bangladesh Environment Conservation Act, 1995 (Act No I of 1995)

the cases under the jurisdiction of Environment Court only. If the Government considers necessary, it may appoint a judge of the rank of Joint District Judge for a Division or a specified part thereof to act as the judge of an Environment Court in addition to his ordinary function. Each Environment Court shall have its seat at the Divisional Headquarters; however, the Government may specify places outside the Divisional Headquarter where the Court can hold its sittings.[2] The Act also empowers Magistrates of the first class or Metropolitan Magistrates to deal with environmental misdemeanors punishable with less than 2 years imprisonment or Taka 10,000 as fine or both.

Concept of Green Bench :

India has National Environmental Tribunal and National Environmental Appellate Authority. Besides, they have Green Benches. Green Benches are those constituted by the Chief Justice of the respective High Courts either on their own or on directions from the Chief Justice of the Supreme Court to constitute exclusively a bench (quorum consisting of more than one judge) to deal with matters relating to environment and connected there with. The Green Bench in the respective High Courts deals with matters relating to Environment either on a particular day of the week exclusively or when and where the situation demands immediate action. West Bengal and Tamilnadu are examples of some states which have constituted Green Benches.

Taking Environmental crisis seriously, the 42nd Amendment[3] to the Indian Constitution was brought about in the year 1974. Two new Articles were inserted: Article 48-A and Article 51-A (g). The former, under Directive Principle of state policy, makes it the responsibility of the State Government to protect and improve the environment and to safeguard the forests and wildlife in the country. The latter, under Fundamental Duties, makes it the fundamental duty of every citizen to protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures. However, in Bangladesh, we are far away from doing anything like that.

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2 Section 4 of the Environment Court (Amendment) Act, 2002

3 Environmental Laws of India: An Introduction, Environmental Education Centre, page-12, Second edition, 2000

Procedure and the Judges of Environment Court:

As long as the procedure and power of the Environment Court are concerned, generally[4] the Criminal Procedure Code[5] shall be followed in the case of lodging a complaint about an offence under this Act. The trial thereof and the Environment Court shall be deemed to be a criminal court and it shall follow the procedure laid down in the Criminal Procedure Code[6] for trial and disposal of a case triable by the Session Court.[7]

This is an unexpected paradox. A Joint District Judge, who is a Civil Court Judge by nature, is responsible to dispose of cases in the Environment Court which is a Criminal Court in fact. More to the point, Environmental Laws are unique kinds of laws that appreciate scientific evidence and involve complex scientific technicalities.

Experience of other countries shows that whenever an Environmental litigation comes before the court, the generalist Judges are perplexed to take a decision due to lack of scientific knowledge.

If we look at Indian practices, quite often, the Supreme Court as well as the High Courts in India has referred the matters to expert committees and professional institutions to get their opinion on environmental problems.[8]

Hence, it becomes necessary to constitute environmental courts in every district of Bangladesh which comprise of environmental experts in it, besides other Judges. The subject matter bears special gravity and complexity plus most of the Court's works involve various public interest questions. On top of that, few environmental violations will not necessarily fall within the definition and nature

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4 Under section 8 (6), of the Environment Court (Amendment) Act, 2002, CPC will be applicable to the trial of a case relating to compensation

5 The Code of Criminal Procedure, 1898, (Act V of 1898)

6 ibid.

7 Section 8, Clause (1), the Environment Court (Amendment) Act, 2002

8 Environmental Laws of India: An Introduction, Environmental Education Centre, page-52, Second edition, 2000

of common criminal activities, hence, let alone the concept of Environment Judges[9], at least the Session Judges could have been the first choice.

Jurisdiction :

In accordance with the provisions of this Act, a case shall be directly instituted in an Environment Court for trial of an offence or for compensation under an environmental law, and only that Court can take cognizance and hold proceedings for trial and disposal of those cases.[10] The Court is competent to impose penalty for offences under section 5A of this Act and under any other environmental law, to confiscate equipments, articles or parts thereof.

The Court is also empowered to issue direction to relevant person or persons not to repeat, continue or, as the case may be, not to do the act or to make the omission which constitute the offence.

For the purpose of Environment Court, 'environmental law' generally means this Act and the Bangladesh Environment Conservation Act (ECA), 1995 (Act No 1 of 1995). Though the Act[11] empowers the Director General of the DOE with the power of advising the Government regarding 'hazardous substance', taking measures[12] for the conservation of environment which include closure, prohibition or regulation of any industry, undertakings or processes, yet the Government keeps the same provisions in its hand under section 6(A)[13] of the same Act. Absence of a consistent explanation as to why the Government is tempted to keep up parallel direct authority with DOE merely demonstrates the disquiet and reservation of the former regarding the latter. For proper execution of DOE's analysis and decision vis-à-vis the tasks they are entrusted with, a certain level of autonomy should be guaranteed.

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9 'Environment Judges' are specially skilled judges sit in New Zealand Environment Courts

10 Section 5, Clause (1), the Environment Court (Amendment) Act, 2002

11 The Bangladesh Environment Conservation Act, 1995

12 ibid, section 4

13 ibid

On the other hand, focuses of the law and its enforcements are limited within few common areas of environment pollution. It deals primarily with *equipments, manufacturing processes, ingredients or substances;* hitherto, many other vital areas are left behind and thus not brought in to with specific terminology and explanations.

Environmental laws do not provide sufficient definition of environmental offences. Some offences fall within the ambit of other penal provisions that provide different punishments and not akin to environmental laws. Environmental Acts should come up with useful clarification in this regards.

The Environment Court's work could be directly related to different public sectors like energy projects, hospitals, schools, prisons, sewage work, fire stations, major roads and bypasses and also major private projects, for example dairy factories, tourist resorts (in Cox's Bazar, Saint Martine island and Kuakata), timber mills and shopping centers.

Country's population boost is an old issue, nevertheless, responsible for multilateral fresh problems in the society. Use of land is on a rise and people suffer a lot from diverse land related dealings. Environment Court is not one of the busiest courts and under any special provision it could entertain cases of other laws which are exclusively environment related. Issues like land subdivision approvals and conditions, development levies, car parking contributions, regional roads, access roads, exploration and mining could be brought under the jurisdiction and functioning of the Environment Conservation Act.

The ECA, 1995, bears provisos in order that new environmental issues are brought within the realm of this law by official gazette notifications. These arrangements paved the way so that new ecological challenges can be addressed with rapidity and efficiency.

Indiscriminate use and disposal of polythene shopping bags[14] has been efficiently controlled while the government has banned all kinds of hazardous activities in

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[14] The Government banned indiscriminate use of Polythene Shopping Bags throughout the country by a Gazette Notification on 8/4/2004

some areas declaring them as Ecologically Critical Areas (ECA)[15]. Such efforts are taken because the Government has been convinced that the Eco-System of certain areas has become very hazardous and/or likely to deteriorate further in future due to some unplanned activities.

These efforts could only be effective and work out their projected objectives if they were supplemented with a monitoring and implementing authority. Neither the Act nor the Gazette Notification articulates who should oversee the observances or violations as far as the ECAs are concerned. Therefore, Environment Court's operation might face real challenge unless it is propped up by requisite pre and post trial executive supports.

Pre-Trial and Trial in Environment Court :

Due to the pre-colonial nature of justice delivery systems and other procedural hazards, when access to justice has been marked as one of the major holdups on the way of justice in Bangladesh, then newly found Environment Court could be a guiding example.

Though it is endowed with the Act that Environment Court shall not adjourn hearing more than three times and shall conclude the trial within 180 days, and in case it fails, within an additional 90 days after the expiry of the above mentioned 180 days[16], however, the pre-trial procedure with the Environment Court is not promising enough to ensure smooth and speedy trial.

No Environment Court shall take cognizance of an offence or receive any suit for compensation except on the written report of an Inspector or any other person

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15 The Sundarbans, Cox's Bazar Sea Beach, Saint Martine Island, Sonalia Island and few other water bodies have been declared as Ecologically Critical Areas by a Government Gazette Notification on 19/04/1999, and the Gulshan-Baridhara lake areas on 26/11/2001

16 Section 8, Clause (7) of the Environment Court (Amendment) Act, 2002

authorized by the Director General (DG).[17] The DOE may act by itself or an individual may bring complain about an offence or a claim for compensation to the said Inspector.

The Inspector or other officer, hereinafter referred to as the Investigating officer, shall on the basis of a written complain or other information, initiate proceedings after obtaining approval of the officer authorized in this behalf by the DG.

At first, the Investigating officer will initiate primary inspection, make a preliminary report thereon and submit the same to his higher officer authorized by the DG. Upon consideration of the relevant facts and circumstances, he will give his decision within seven days as to whether a formal investigation may be initiated or no action at all is necessary.

If a decision is taken to go further, the Investigating officer will present the said preliminary report to the concerned police station as a First Information Report (FIR). With the lodging of FIR, he will launch formal investigation.

The investigating officer, with approval of the higher officer, shall make 3 (three) copies of the Formal Investigation report, of which; one shall be submitted to the Environment Court, one copy for his office and another to the concerned police station.

However, if an Environment Court is satisfied that a person presented a complaint or claim for compensation deserves to be taken into cognizance for trial but the Inspector failed to initiate proceeding within sixty days from receiving the complaint, then the Court may directly receive the complaint.

The aforementioned pre-trial procedure and other bureaucratic hindrances are mainly responsible for a significant lower rate of complaint with the Environment Courts. So far the Dhaka Environment Court is reportedly dealing with a tiny number of 10 (ten) cases while the Chittagong Environment Court is dealing with 5 (five) cases only.

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[17] Section 5, Clause (3), ibid

Functioning of the Dhaka Environment Court at a Glance

Sl. No.	No. of Cases	Parties	Present Status	Fact of the Case
1	Environment Case No. 1 of 2003	Al-Haj Md. Hossain Khan, Plaintiff/ Complainant Vs. Abdul Matin Biswas and others, Defendants/ Accused	Proceeding have been stayed by the High Court Division in Writ Petition No. 4078 of 2003	Petitioner field the case under Section 5 (1) of the Environment Court Act, 2000 seeking relief against noise pollution created by stone crushing operation of the Defendants at a place adjacent to the premises of the Plaintiff in Savar.
2	Environment Case No. 2 of 2003	State Vs. Ali Hossain and Others, Accused	Under trial	Relief has been sought under Section 4 (3) (regulating industrial operation, closing down industry) & 12 (requirement of environmental clearance) of ECA, 1995
3	Environment Case No 3 of 2003	Ashraf Chowdhury, Complainant Vs. M.A. Zaher and Others	Under trial	Petition has been filed under Section 4 (3) of the ECA, 1995 against the owner of Dip Textile Mill operating at Dhamrai for certain harm to ecosystems through noise and water pollution by the Mill.
4	Environment Case No. 4 of 2003	State Vs. Serajul Islam & Others, Accused		
5	Environment Case No. 5 of 2003	State Vs. Abdus Samad Azad and Others, Accused		
6	Environment Case No. 6 of 2003	Kazi Md. Solaiman Complinant Vs. New Loknath Dyeing and Others, Accused	Pending for Cognizance Hearing	The Complainant complained about the water and noise pollution created by the Accused.
7	Environment Case No. 7 of 2003	---	---	---

8	Environment Case No. 8 of 2003	State Vs. Serajul Islam and Others		
9	Environment Case No. 9 of 2003	Kazi Md. Solaiman. Complinant Vs. Bright Textile and Others, Accused	Pending for Cognizance Hearing	The Complaint filed a case against a Mill operating in Narayangonj that was polluting water and air and also creating health hazard in the adjacent area.
10	Environment Case No. 10 of 2003	Kazi Md. Solaiman, Complainant, Vs. Abonti Color (Pt. Ltd) And Others, Accused	Pending for Cognizance Hearing	The case has been filed against 7 dyeing factories operating in Narayangonj for polluting air and water and also for creating water logging in the area.

Case No. 4, 5,7and 8 of 2003 have been transferred to the Court of Special Magistrate due to want of jurisdiction.

Courtesy: The Bangladesh Environmental Lawyers Association, BELA

The cases filed with the Dhaka Environment Court relate mainly to environmental pollution due to textile manufacturing process, washing plants, brick kiln and a lime and glass factory. On the other hand, Chittagong Environment Court's cases relate mainly to Hill Cutting.

We are fortunate that we have an Environment Court which many of the countries do not have. This is a paradigm that paves the way to our future battle with contemporary challenges. However, still the country lacks an umbrella law regarding environmental conservation, i.e. a direct provision in the Constitution that would articulate that environmental conservation would be one of the fundamental responsibilities of the State and the Citizens.

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Some Legal Quotations About Judges :

1. *"They will not be diverted from their duty by any extraneous influence; not by hope of reward nor by the fear of penalties; not by flattering praise nor by indignant reproach. It is the sure knowledge of this that gives the people their confidence in the judges."*

   Lord Denning, What next in the Law, 1982, P. 310

2. *"The parts of judge in hearing are four : to direct the evidence; to moderate length, repetition, or impertinency of speech; to recapitulate, select, and collate the material points of that which hath been said; and to give the rule or sentence."*

   Francis Bacon (1561-1626),
   Essays, 1625, LVI, 'Of judicature'

3. *"Judges ought to be more learned than witty, more reverend than plausible, and more advised than confident."*

   Francis Bacon (1561-1626),
   Essays, 1625, LVI, 'Of judicature'

4. *"It is the best, we may observe, where the Laws are enacted upon right principles, that everything should, as far as possible, be determined absolutely by the Laws, and as little as possible left to the discretion of the judges."*

   Aristotle (384-322 BC),
   The rhetoric, trans, Welldon, BK I, ch. 1

5. *"Judges .... should always be men of learning and experience in the laws, of exemplary morals, great patience, calmness and attention; their mind should not be distracted with jarring interests; they should not be dependent upon any man or body of men."*

   Thomas Jefferson (1743-1826)
   Letter to George Whythe, July 1776

THE INSTITUTE HAS ORGANIZED THE FOLLOWING TRAINING COURSES FROM 1/3/1997 TO 19/5/2005

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

Sl. No.	*Course Title*	*Status of the Participants*	*No. of the Participants*			*Duration*
			Male	*Female*	*Total*	
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
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 Alternative Dispute Resolution	Judges and Government Lawyers	37	-	37	29/3/2003

Sl. No.	Course Title	Status of the Participants	No. of the Participants			Duration
			Male	Female	Total	
51	2nd Judicial Education and Training Programme on Alternative Dispute Resolution	Judges and Government Lawyers	38	-	38	31/3/2003
52	3rd Judicial Education and Training Programme on Alternative Dispute Resolution	Judges and Government Lawyers	35	1	36	3/4/2003
53	4th Judicial Education and Training Programme on Alternative Dispute Resolution	Judges and Government Lawyers	38	2	40	5/4/2003
54	5th Judicial Education and Training Programme on Alternative Dispute Resolution	Judges and Government Lawyers	35	1	36	7/4/2003
55	6th Judicial Education and Training Programme on Alternative Dispute Resolution	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 Cours	Bench Assistants	27	-	27	17/5/2003-24/5/2003
59	8th Judicial Education and Training Programme on the Code of Civil Procedure (Amendment) Act, 2003 and the Artha Rin Adalat Ain, 2003	District Judges	29	-	29	12/7/2003-13/7/2003
60	9th Judicial Education and Training Programme on the Code of Civil Procedure (Amendment) Act, 2003 and the Artha Rin Adalat Ain, 2003	District Judges	28	1	29	16/7/2003-17/7/2003
61	10th Judicial Education and Training Programme on the Artha Rin Adalat Ain, 2003	Joint District Judges	23	1	24	28/7/2003-30/7/2003
62	37th Judicial Administration Training Course	Senior Assistant Judges	18	1	19	31/7/2003-13/8/2003
63	1st Judicial Information Technology Training Course for Judicial Officers	Judges of 5 Pilot Districts and JATI Officers	17	-	17	20/8/2003-4/9/2003
64	2nd Judicial Information Technology Training Course for Judicial Officers	Judges of 5 Pilot Districts and JATI Officers	16	2	18	6/9/2003-18/9/2003
65	11th Judicial Education and Training Programme on recent Acts and Amendments	District Judges	27	-	27	20/9/2003-21/9/2003
66	12th Judicial Education and Training Programme on recent Acts and Amendments	District Judges	29	-	29	27/9/2003-28/9/2003
67	38th Judicial Administration Training Course	Joint District Judges	18	3	21	2/10/2003-15/10/2003

Sl. No.	Course Title	Status of the Participants	No. of the Participants			Duration
			Male	Female	Total	
68	39th Judicial Administration Training Course	Additional District & Sessions Judges	27	2	29	6/11/2003-12/11/2003
69	11th In-service Training Course	Administrative Officers	17	1	18	29/11/2003-28/12/2003
70	40th Judicial Administration Training Course	Assistant Judges	26	2	28	12/2/2004-26/2/2004
71	13th Judicial Education and Training Programme on recent Acts and Amendments	District Judges	31	-	31	10/3/2004
72	14th Judicial Education and Training Programme on recent Acts and Amendments	District Judges	27	-	27	17/3/2004
73	41st Judicial Administration Training Course	Senior Assistant Judges	14	3	17	18/3/2004-31/3/2004
74	42nd Judicial Administration Training Course	Joint District Judges	24	4	28	15/4/2004-29/4/2004
75	43rd Judicial Administration Training Course	Additional District & Sessions Judges	22	1	23	13/5/2004-27/5/2004
76	44th Judicial Administration Training Course	District & Sessions Judges	14	3	17	2/9/2004-16/9/2004
77	7th Training Course	Public Prosecutors	32	-	32	18/9/2004-23/9/2004
78	8th Training Course	Government Pleaders	29	-	29	30/9/2004-6/10/2004
79	12th In-service Training Course	Newly Recruited Court Support Staff	40	-	40	25/11/2004-15/12/2004
80	13th In-service Training Course	Stenographers	29	2	31	26/12/2004-1/1/2005
81	45th Judicial Administration Training Course	Senior Assistant Judges	17	1	18	6/1/2005-19/1/2005
82	46th Judicial Administration Training Course	Joint District Judges	20	3	23	26/2/2005-17/3/2005
83	47th Judicial Administration Training Course	Additional District and Sessions Judges	23	-	23	2/4/2005-13/4/2005
84	48th Judicial Administration Training Course	District and Sessions Judges	21	-	21	8/5/2005-19/5/2005
		Total =	2423	134	2557	

Seminar :

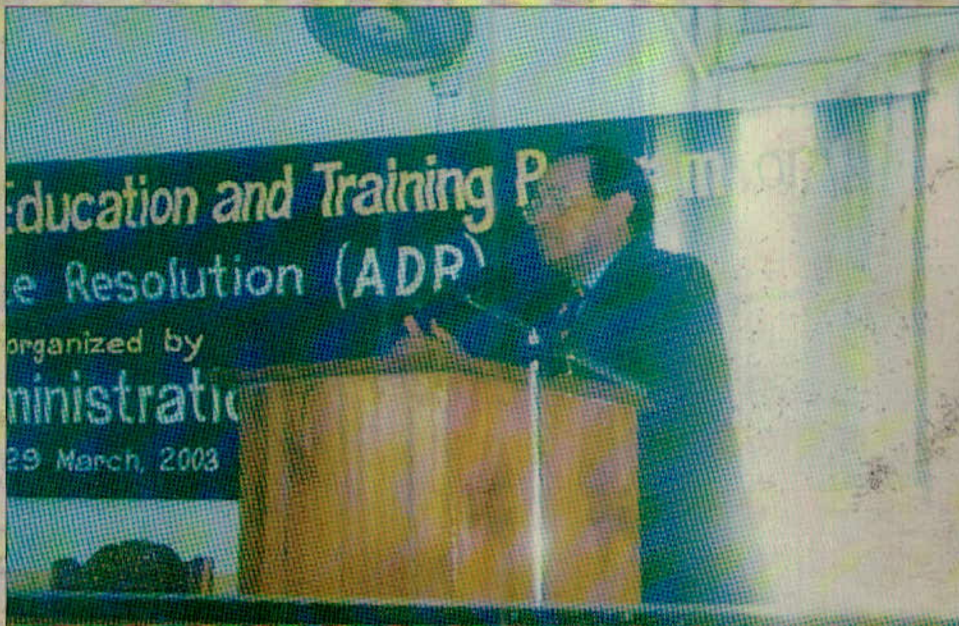
Sl. No.	Name of the Seminar	Date
1	Curriculum Development for Training of the Judges	25/3/2000

Workshop :

Sl. No.	Name of the Workshops	Status of the Participants	No. of Participants	Date
1	Legal and Judicial Reforms (Recent Enactments and Amendments)	Judicial Officers posted in Courts and Tribunals at Dhaka	67	17/10/2003

JATI ALBUM

Mr. Justice Syed J.R. Mudassir Husain, Hon'ble Chief Justice of Bangladesh is delivering his erudite speech as Chief Guest at the Certificate Awarding Ceremony of the 47th Judicial Administration Training Course for Additional District and Sessions Judges held on 13 April, 2005 at this Institute.



Barrister Moudud Ahmed MP, Hon'ble Minister for Law, Justice & Parliamentary Affairs is delivering his valuable speech as Chief Guest of the 1st Judicial Education and Training Programme on Alternative Dispute Resolution for Judges and Lawyers held on 29 March, 2003 at this Institute.

Mr. Justice Syed J.R. Mudassir Husain, Hon'ble Chief Justice of Bangladesh is seen awarding certificate to a participant in the 46th Judicial Administration Training Course for Joint District Judges held on 17 March, 2005 at this Institute.

Barrister Muhammad Shahjahan Omar Bir Uttam MP, Hon'ble State Minister for Law, Justice & Parliamentary Affairs is seen awarding certificate to a participant Public Prosecutor in a training programme held at this Institute.

Mr. Justice Md. Hamidul Haque, Hon'ble Director General of Judicial Administration Training Institute is seen making his kind deliberation as President of the Certificate Awarding Ceremony of the 47th Judicial Administration Training Course for Additional District and Sessions Judges held on 13 April, 2005 at this Institute.

Mr. Justice Mohammed Fazlul Karim, Judge, Appellate Division of the Supreme Court of Bangladesh is seen awarding certificate to a participant Government Pleader in a training programme held at this Institute.

Faculty Members of JATI are seen with a section of participants of a training course.

Faculty Members of JATI are seen with another section of participants of a training course.

JUDICIAL ADMINISTRATION TRAINING INSTITUTE

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