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FOREWORD

The Judicial Administration Training Institute (JATI) was established in 1996 with the purpose of capacity building of those involved with the legal system in Bangladesh. So far the institute has provided training to 1809 Judge, 427 Government Law Officers and 441 court support staff. But we are not complacent about the progress made by the Institute. We have been continuously trying to improve our faculty, curricula and pedagogy. We hope, in future, JATI will be more effective in delivering the service that has been entrusted to it by the nation.

Among the tasks reposed in the JATI, the publication of a journal is an important one. Starting from 2002 we have so far published four journals. The current one will be JATI's fifth volume. The journals so far published have been received very enthusiastically by the legal community. The huge number of articles we receive for the journal bears testimony to it. We hope that the support the journal has enjoyed will also continue in future. Such publication not only reflect the prevailing knowledge level but also provide a forum for broader participation and intellectual stimuli. We hope the insights reflected, and observations and analysis made in the articles will also act as a window to the legal world.

Our thanks to all those who have contributed or otherwise assisted in the publication of the Journal.

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

May, 2006
Dhaka.

VICTIMS COMPENSATION RIGHT

- Justice Mohammad Hamidul Haque

Introduction :

The basic principles followed in the trial of a criminal case are: (i) a person accused of an offence shall be presumed to be innocent and (ii) from the moment a case is initiated against such a person either by filing a petition of complaint or by filing an FIR, he should be given all opportunities to defend himself. The entire legal system is designed in such a way so that a person who is accused of an offence may get a fair trial. To ensure this, provisions have also been made in article 35 of the Constitution. There cannot be any two opinion about this age old principle, it is agreed by all that an accused must enjoy a legal right to defend himself and that he should get fair trial. But it appears to me very much strange that except those who are aggrieved as a result of a crime, only a small section of the society are concerned about the rights of a crime victim. Most of the people are vocal about the rights of the accused but little awareness is found in the society about the rights of a victim. As the accused has a right to get fair trial, an aggrieved person or a victim has also a right to get justice, right of a victim of rape or of acid burn to get justice is no less important than the right of an accused to get fair trial, the right to get protection or compensation is also not less important than the right to defend.

Need for compensation :

We all know about the tremendous sufferings of a victim or even of the members of his/her family, caused as a result of a crime but unfortunately nothing has been done to redress such sufferings. My purpose here is to create an awareness about the rights of the victims specially about their right to get proper compensation. Imprisonment for a certain period or even death penalty to the accused may not compensate the loss suffered by the victim or by the members of the family of the victim. It is true that when punishment is given to an accused, this may give some sort of mental satisfaction to the victim or the members of his/her family but in addition to such mental satisfaction, the victim or members of the family might be in dire need of some material help. To make the point clear, I may give reference to certain types of cases where a victim must get adequate monetary compensation as of right.

In an acid burn case, the disfiguration may be of such an extent that the victim may be permanently crippled and may not be able to earn his/her livelihood by engaging in any work or employment. If the victim is an unmarried young woman/girl possibility of her marriage shall be nil. What she will do for the rest of her life? She will be a burden to her parents but when they will be no more in this world, there will be none to look after her. Moreover, huge amount will also be required for her treatment. If she can be trained in some kind of work which she can do at her home, she would be able to earn her livelihood. All these will require a considerable amount of money.

Similarly, due to the social conditions prevailing in our society, no one will be willing to marry a victim of a rape case though she is not at all responsible for what had been done to her by a rapist. Not only the victim, sometimes it happens that no one is found to be willing to marry any other unmarried female member of that family. We can easily imagine the agony and helplessness of that family. So, something must be done to save the victim and the female members of the family. This can be done by providing adequate monetary help so that even if their marriage cannot be arranged, they may be able to earn their livelihood by doing some work in their home.

We know that everyday many causalities take place due to rash driving. Maximum punishment for such an offence is rigorous imprisonment for three years and fine. But it is strange that no one has any concern for the victim. If the victim survives, due to loss of a leg or a hand or due to head injury he may be crippled permanently and may not be able to pursue his normal life or employment. He will also be required to spend a huge amount for treatment. Only if he can get proper compensation, this may make his survival possible.

When only bread-earner of a family is murdered and if he leaves behind a wife and one or two minor school going children, there will be none to help them and the family will be virtually ruined if the family does not get any monetary help or assistance.

It is true that a loss or damage sustained by a victim cannot be compensated in terms of money. But in some cases as mentioned above, a victim shall be entitled to get compensation as of right not as a solatium. The payment of

compensation shall not be made part of the punishment imposed, it shall be in addition to such punishment. A victim may get such compensation only when this right is recognised and ensured by law. With that end in view, in different countries enactments were made enabling the victims to receive compensation in accordance with law.

If a legal right is conferred on the victim to get compensation, this will not only compensate the loss or damage sustained by him, this shall also act as a deterrent to some extent. An offender will be aware of the fact that in addition to undergo the punishment imposed on him by the court, he will be also required to pay a considerable amount to the victim as compensation. In case of an offence of rash driving, if the owners of the vehicle, specially bus or truck owners are compelled to pay compensation of Tk. 2/3 lacs to a victim, in future they will be very much cautious about appointment of drivers. This will help to check road accidents.

Historical background :

The idea of giving compensation to a victim is not a new idea. In most of the ancient societies such system was prevalent in one form or another. But the purpose of such a system of paying compensation was to effect a compromise. That is a different type of compensation. Here, our concern is not to make provisions for compensation as a consideration for compromise but to make provisions for payment of compensation which a victim shall get as of right.

We find that there is a provision of giving compensation in the Code of Criminal Procedure of 1898 which is still in force in our country. This provision was substituted in 1923 by the Code of Criminal Procedure (Amendment) Act, 1923 (Act No. XVIII of (1923). So, as far back as in 1923, the law makers made a provision in the Code to empower a criminal Court to give compensation to a victim. The provision is as follows:

"545.- (i) Whenever under any law in force for the time being a Criminal Court imposes a fine or confirms in appeal, revision or otherwise a sentence of fine, or a sentence of which fine forms a part, the Court may, when passing judgment, order the whole or any part of the fine recovered to be

applied-

(a) in defraying expenses properly incurred in the prosecution;

(b) in the payment to any person of compensation for any loss or injury caused by the offence, when substantial compensation is, in the opinion of the Court, recoverable by such person in a Civil Court."

It is clear from the above provision that there is no recognition of the right of the victim to get compensation. It is only an enabling provision empowering the Court to pass an order to the effect that the whole or part of the fine recovered to be applied in the payment to any person of compensation for any loss or injury caused by the offence. Moreover, it is also clear that the substantial compensation shall be recoverable by such a person in a Civil Court. Thus in order to get substantial compensation, the victim shall have to file a suit in the Civil Court by paying ad-valorem court fee. So, the above provision cannot meet the demand of the day to give compensation to a crime victim which she/he is entitled to get as of right.

Due to the inadequacy of the existing law to provide compensation to a victim, movements were initiated in different countries such as Great Britain, Australia, New Zealand, United States of America in the early sixties. Crime victim compensation programme was developed first in New Zealand and Great Britain. In USA, for the first time Senator Ralph Yarborough of Texas introduced a legislation in 1964 to establish a crime victim compensation programme in the pattern which established in the Great Britain and New Zealand but his attempt failed. However, in 1965, the State of California passed the victims' compensation programme. Subsequently, other states also introduced such programmes. Ultimately, in 1984 the Victims of Crime Act was enacted by the Federal Government. This Act provides for a federal victims compensation programme for victims of federal crimes and also provides for the federal subsidy to State victim compensation programmes.

In our country, in some special laws provisions have been made to pay compensation to the victim. We may refer here to the provisions of section 15 of the Nari-O-Shishu Nirjatan Doman Ain, 2000. It is provided in this section that if fine is imposed for any offence as mentioned in sections 4 to 14 of the Ain, the Tribunal may treat the fine imposed as compensation to be paid to

the victim or the aggrieved person. Procedure for realisation of fine is also mentioned in sections 15 and 16 and also in sub-section (4) of section 4 of the Ain. Here also we find that like the provisions of section 545 of the Code of Criminal Procedure, this provision is also an enabling provision empowering the Tribunal to treat the fine imposed as compensation. The idea of the victim's right to receive compensation is also absent in this Ain. I like to impress upon all concerned that time has come now to consider the making of an enactment conferring a legal right upon the victim of a crime to receive compensation for the loss or damage he/she suffered or sustained due to the crime committed.

Need for an enactment:

I hope there will be no two opinion as to the need for making provisions for payment of compensation to a crime victim. Such provisions may be added by way of amendment of the existing penal laws or by adding necessary provisions in the Code of Criminal Procedure in chapter XLVI i.e., the chapter where the miscellaneous provisions are contained. However, I myself is of the opinion that a self contained independent law should be enacted to meet the purpose more effectively.

An enactment as proposed above shall have to include various provisions regarding the eligibility to get compensation, definition of victim, aggrieved person, family etc, classification of offences, assessment of loss or damage, procedure for filing application for compensation, evidence to be considered in support of the claim, opportunity to the accused to oppose the claim, extent of the liability of the accused to pay the compensation assessed or determined by the Court, establishment of a Fund from which such payment may be made, extent of the liability of the State, procedure for realisation and similar other many more provisions. In this Act, there shall also be a provision to the effect that whether a case is tried in the ordinary criminal Court or in a special Court or Tribunal established under a special penal law, the victim shall be entitled to file an application in that Court or Tribunal for compensation. It will be better and effective if a separate independent enactment is made containing all such provisions.

We may have to face a difficult question as to from where money will come for making payment of compensation. I have already mentioned that such programmes were started in the several developed countries including Great Britain, Australia, New Zealand and United States of America. In these countries, law authorises payment from public treasury or from a Fund established for the purpose. Such fund is established with public monies and with the amount assessed against the offenders to be paid to the victims. The conditions prevailing in those countries and in our country are quite different. So, we may be required to evolve a procedure for raising the Fund.

In consideration of the socio-economic condition of our country, naturally State's contribution to the Fund may not be considerable but the State's initiative shall be of much help in establishing the Fund. The substantial portion, however, must be paid by the offenders. Of course, when the offender has no property, this may not be possible but if there is any scope of realisation from his future property, provision may be make to that effect. In one word, the law shall be designed in such a way so that if and when possible, the maximum share of the compensation may be recovered from the offender. However, the Government may also consider the acceptance of donations from any individual, from any foreign or international body which is concerned about the rights of the victims and their welfare. I also like to give emphasis on another point. Once the Fund is established, it shall be placed in charge of a Board or Committee comprising of a member from the Judiciary, a member from the medical profession, a member from any Human Rights Organization, Vice-chancellor of an University, a representative from the Bar, a representative from the Journalists etc. If necessary, there may be a committee in each District.

Conclusion :

In the above, I have given the broad out line of the proposed enactment for victim compensation right. There is scope of making it more effective by deliberation and dialogue. First of all, there shall be an awareness about the rights of crime victims. My effort may be considered as a small step towards that end.

HUMAN RIGHTS CONDITIONS IN BANGLADESH

- Justice Md. Awlad Ali

Human rights are the birth rights of human being given by God. Mankind i.e. all human persons used to enjoy and had the right to enjoy the rights even in the primitive society when the law of nature prevailed. Human persons individually or collectively had to protect their birth rights from the invasion of any powerful group of human beings. People in the old days had to assert and establish their rights through struggle and strife. With the emergence and development of human Society when the human beings started living within a geographically demarcated area and territorial limit forming state and government the human rights got its different dimension. After birth a human person in a civilized society must enjoy his or her birth rights, the fundamental human rights which were incorporated in the universal Declaration of Human Rights by the General Assembly of the U.N.O on 10th December 1948. It has been indicated in the said declaration that all nations and the Member states and every organ of society keeping the declaration in mind shall strive to promote respect for the rights contained in the declaration and to secure their universal and effective recognition and observance. It has been said that the individual member state must recognize the rights effectively and it shall observe, that means the individual state must practice it.

In article 1 of the Declaration it has been provided that all human beings are equal in dignity and rights. What is the meaning of equal dignity? Every human person having a soul in his body given by God the Creator, has sense of self respect whatever may be the avocation of life of that person. That self respect must not be disrespected by the other human person and the human society as a whole. Equal right means and implies the right to live which includes right to work, employment and all other rights for enjoyment of life.

Following the fundamental principles of human rights as enunciated in the universal Declaration of human rights, the framers of our Constitution incorporated in Part II under heading Fundamental principles of States policy the fundamental human rights and freedoms.

Articles 11 of the Constitution provides that the Republic shall be a democracy in which fundamental human rights and freedoms and respect for the dignity

and worth of human person shall be guaranteed and in which effective participation by the people through their elected representatives in administration at all level shall be ensured. Article 1 of the universal declaration has been reflected in article 11 of our Constitution.

Article 15 of the Constitution provides for it shall be a fundamental responsibility of the state to secure to its citizens:

a) the provision of the basic necessities of life, including food, clothing shelter, education and medical care;

b) the right to work, that is the right to guaranteed employment at a reasonable wage having regard to the quantity and quality of work.

c) the right to reasonable rest, recreation and leisure; and

d) the right to Social Security, that is to say, to public assistance in cases of undeserved want arising from unemployment, illness or disablement or suffered by widows or orphans or in old age, or in other cases. The provisions as laid in articles 15 of the Constitution are relating to right to life of human person, which are the fundamental human rights. The state must secure to its citizen these minimum rights by making proper legislation. Failure on the part of the state and the government to secure such rights will be violation of human rights. Other fundamental rights as incorporated in part III of the constitution are very much related to part II of the Constitution and they are derived from part II as indicated in article 11 (eleven) of the Constitution. Now what we mean by human rights that have become the constitutional rights.

Human rights Conditions in Bangladesh have its different phenomenon, problem of human rights are multifarious. And the multifarious problems can better be solved by enforcement of Constitutional rights by making appropriate legislations and implementation thereof. Lack of economic and Social justice as indicated in Article 8 of the Constitution is one of the main causes of violation of human rights in Bangladesh. Law enforcing agencies are exceeding their legally prescribed limits in discharging their duties causing human rights problems. For economic injustice countless people have become down trodden and underprivileged and are living beyond subsistence

level. Reckless unabashed accumulation of property in the hands of few by corrupt and illegal means is going on and consequently economic imbalance always exists in Bangladesh. Unless the gap between the haves and have-nots is narrowed down by bringing economic equilibrium in the society and bringing the indigent class to a subsistence level, human rights will continue to be violated and dignity of human person can not be maintained. In a truly democratic community there will be less degree of violation of human rights but when democracy turns to plutocracy, human rights will be dwindled and faded away. Democratically elected government will regard it as its responsibility to protect his or her human rights.

In Bangladesh we have not any legislation on human rights except the provisions of the Constitution. In England they have their Human Rights Act 1998 which is applied in conformity with the European Conventions on Human Rights.

One of the most important convention rights is article 2. Right to life (1) Everyone's right to life shall be protected by law; No one shall be deprived of his life intentionally save in the execution of sentence of a court following his conviction of a Crime for which this penalty is provided by law.

2. Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary-

a) in defence of any person from unlawful violence;

b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;

c) in action lawfully taken for the purpose of quelling a riot or insurrection.

The Tropic Human Rights conditions in Bangladesh have been discussed in various seminars symposium at the initiative of different human rights organizations and eminent jurists, legal and constitutional experts and judges of the highest judiciary of the Country participate in the discussion, focus on the human rights problems and by that educated and intellectual people get more enlightened within the four corners of the Seminars and Symposiums. Human Rights activists are many now a days in Bangladesh and they are

propagating their views. Some international Agencies have also focused on the human rights problems, violation of human rights. Our medias are also through their constant efforts publishing news and expressing their views on the subject to make the people conscious, particularly the people who are deprived of their basic human rights.

Under the leadership of Bangladesh Bar Council Training was being imparted and possibly is being imparted to Section of the lawyers about human rights problems through Human Rights training programme. This is really praiseworthy. Lawyers Community are very much conscious about human rights and human rights problems. They can render valuable service in this regard. This type of writings in the Magazine or in any other form may reach the educated people only who are conversant with the language. This may not reach the ordinary people, the sufferers or the victims of human rights violation. Therefore, the Human Rights activists, the Human Rights Movement Organization, Association must propagate and disseminate the theme of Human Rights problems and its solution in vernacular in simple language to make them conscious. Efforts and endeavour of Human Rights Movement Organization and human rights activities should be directed to the enforcement of fundamental human rights as incorporated in the constitution. And an independent judiciary which had long been recognized as a cornerstone of the political and legal system may help greatly in this respect.

ETHICS AND CODE OF CONDUCT OF JUDGES

- Justice A.T.M. Fazle Kabir

Introduction :

Among all creatures of the Creator man is the most rational being. So we live a moral life having faith in morality and believe in right and wrong, good and bad, virtue and vice. Ethics converts this moral faith into a rational insight. It investigates the nature and validity of rightness and wrongness of human conduct with reference to rationality. Here the discussion on ethics will be confined in terms of judicial propriety of a Judge. In every civilized country there is a judiciary and judges are entrusted with the sacred duty of dispensing justice by observing judicial ethics. We know ethics is the science of morality. Now a question may arise what is the meaning of judicial ethics? The word "judicial" is an adjective of the word "judge' and means pertaining to a judge or court of justice. The other word "ethics" is derived from the Greek word "Ethos" which means customs and habits. Literally, ethics is the Science of rightness and wrongness of human conduct. Thus, the general implication of the words "judicial ethics" means appropriate conduct of judges administering justice in the Court of Law as well as in leading private life, their actions and conducts should be in conformity with rightness, decency and the conventions of good behaviour.

Some features of judicial ethics :

Impartiality is the basic concept of the administration of justice. There is no justice if the judge is not impartial. Impartiality of the judge is his primary quality and it also extends within limits of his private life. So the Judge should be impartial at any cost. The idea of impartiality in the administration of justice is inherent and also symbolized by a pair of scale which inspires Judges to be impartial in their behaviour and decisions. There should be no interference in the judicial functions of the Judges by the Government or the executive authorities under it. In the above context, the establishment of impartial court and the independence of judiciary have been guaranteed by Article-35(3) and 116A of the Constitution of Bangladesh.

The Judge as a neutral person should have not cherished any weakness or favour for the Political party in-power. But a few jurists of this Sub-Continent

have advocated for "Committed Judiciary." The expression "Committed Judges" means Judges who believe in the Philosophy of the Political party in power. Sometimes, the political party in power uses to appoint Judges among those who are supporters of the ruling party with an aspiration that they will protect its interest in the court cases likely to come before them, but such idea is totally misconceived as the Judges are duty- bound to administer impartial justice to all. In my opinion, the Judges of Bangladesh should stand against the idea of Committed judiciary as it ignores the very concept of impartial justice. A Judge cannot be a robot, he must have courage to decide what is just and due in good faith without fear or favour, affection or ill-will. A Judge should be a staunch believer of the popular dictum- "Be you ever so high, the law is higher than you" and he must express such conviction in the dispensation of justice in order to uphold the supremacy of law. The Judge should be intelligent instead of clever and he ought to be more learned than intelligent. He should maintain civility and honesty at any cost in order to establish himself as good judge in the estimating of the people in general.

There is a popular maxim of jurisprudence- "Audi Alteram Partem" which means "hear the other party." Judges should keep in mind that the litigant parties are entitled as a matter of right to be heard in support of their respective cases and no person can be punished unheard. These elements are considered as guiding principles of fair justice. So Judges should hold trial in presence of the parties and no decision in Civil and Criminal matters should be taken without giving proper chance of hearing to the parties affected.

It is needless to say that hands of judges are tied by laws as such their decisions in the dispensation of justice must be based on evidence on record only. But the legislators have also bestowed some inherent powers to the court for exercising its discretionary powers including mercy in appropriate cases. It is presumed that Allah as All-merciful will show greater mercy in the trial of mankind in the Day of Judgment. As the Judges are regarded as the ambassadors of Allah they can also show mercy to the wrong-doers in fit and proper cases. Such a view has also been held by their Lordships in the Case of Major Asrafuddin V.S. State reported in 50 DLR (AD) 108. In view of fact, it is not illegal or unethical to administer justice tempered with discretion and mercy in appropriate cases but those must be exercised most judiciously for the ends of justice.

Code of Conduct :

From the ethical point of view, conduct is the outer expression of character and character is the inner side of a conduct. Both conduct and character are the objects of moral judgment. A person's conduct partly depends upon his character and partly upon his surrounding environments. In a word, a person's conduct is largely determined by the influence of his environments in which he lives. As a rational being, a man can acquire qualities to build up his characters by exercising his moral consciousness. So it is not a difficult job on the part of a Judge to follow rules of conduct which are required to perform in conformity with rightness, decency and the conventions of good behaviour.

There are some written and unwritten rules of conduct for the Judges to regulate their behaviour keeping pace with the dignity of judiciary. 'Civil Rules and Orders' Volume No. 1 provides some written code of conducts by rules Nos. 904, 905 and 907 but those have been found to be quite insufficient for proper guidance of the Judges. However, the following code of conducts should be strictly followed by a Judge as given below:

(a) A Judge will abstain from accepting an invitation from persons who likely have Court cases before him.

(b) A Judge is to avoid mixing freely with the members of the Public and he should not poke his nose in the local affairs Political or otherwise.

(c) A Judge posted in a district is not to do or permit any member of his family to do such a work likely to embarrass him in discharging of his judicial functions.

(d) He should be patient, speak little and not to show any temper or misbehaviour while conducting cases in the Ejlash.

(e) A Judge should never see any party in private nor allow him to do any favour.

(f) He should not accept any presentation nor hear any recommendation or request made by any interested person including the executive authorities under the government.

(g) A Judge shall not try any case to which he is a party or his near relation is a party or he is personally interested in it.

The Judge should follow the popular dictum- "Justice should not only be done but should be seen to be done" in exercising his judicial functions in order to show himself an impartial judge in the estimation of the public.

In holding trial of a case the Judge must show by outer expression of his conduct that all the parties are given equal treatment by him. No litigant should be allowed to leave the court with ill-feeling reasonably that his case has not been heard and not properly considered on merit. If a litigant leaves the court holding such bad impression, then justice may be done but it is to be held that the Judge has failed to do complete justice to that litigant. A Judge is duty-bound to do justice according to law but he will have to show an impartial attitude manifestly to the parties in conducting the case and in writing judgment as well.

Conclusion :

Broadly speaking, there is no complete rules to regulate the conduct of Judges of Bangladesh. Inspite of the fact, a Judge should bear in mind that the Judiciary is an old institution of this country and the Judges have got long tradition to maintain upright and uncontroversial behaviour. It is expected that the judges will follow the time-honoured convention of good behaviour with a sense of dignity. The characteristics of a Judge have been versified by a Jurist in the following lines:

"Learned in the law, patient on the dais,
And free from very personal bias,
These, the qualities of a worthy Judge,
from the righteous path not an inch to budge."

Reference books:

1. Principles and practice of Judicial property -By Annand Swarup Misra.
2. Principles of Ethics. - By Different writers.

b. Succession spirit for Residuaries :

Residuary's succession is formulated for the heir who is related as agnatic descendant (e.g. sons, son's son h.l.s.) or agnatic ascendant (e.g. father, true grandfather hhs) of the propositus. Agnatic ascendant (father)'s male descendants (e.g. germane brother/consanguine brother) where possible inherit as residuary only. Agnatic male ascendants (true grandfather hhs) inherit as residuary in presence of agnatic male ascendant's descendants (germane paternal uncle, consanguine paternal uncle). Succession spirit for residuaries is governed by paternity relation between the deceased and the survivors.

3. Legal Regime for Residuary's Succession:

Residuaries are accommodated in succession as (i) in its own capacity, (ii) in tasib principle, and (iii) with others. In presence of son, son's son hls father or true grandfather takes entitlement as residuary through (i) his own capacity. Where there is paternal relation of the successor with the deceased, succession results in by (ii) e.g. tasib principle in the sense that the male and female inherits in 2:1 proportion. In other words, two-thirds are alloted to son and one-third to daughter. This principle is applicable in entirety in the case of germane brother and germane sister; consanguine brother and consanguine sister. The position of germane sister and consanguine sister in presence of daughter(s) or son's daughter(s) is ensured through the rule governed by (iii) e.g. with others. The presence of daughter(s)/son's daughter(s) causes succession for germane sister(s)/consanguine sister as accompanying residuary.

4. Injuries to Residuary's Succession :

Muslim family Laws Ordinance, 1961 (in its section 4) gives rise to succession for children of predeceased son/daughter of the propositus. It is obvious that succession for the child of the predeceased son/daughter is in competition with the son/daughter of the propositus. Where competition is between son and son's son, from the traditional point of view, son's son is excluded on strength of the doctrine e.g. "nearer in degree excludes the remoter one." The

RESIDUARY'S SUCCESSION IN MUSLIM FAMILY : SPECIFICATION OF PRINCIPLES

- Dr M Habibur Rhaman

1. Introduction :

In succession residuaries are preferred next to Koranic sharers[1]. Twelve sharers inherit not only as sharer but several of whom also as residuary in certain cases. In some cases several sharers inherit as sharer and as residuary as well. The number of residuary is practically endless. But they are arranged through certain principles. The study of residuaries thus involves in various aspects. The purpose of the paper is to examine heirs who can inherit deceased's estate as residuary under the Hanafi system. In so doing, attempts will be made to evaluate some specification of principles for succession of residuaries. Incidentally, some impacts of Muslim Family Laws Ordinance, 1961 concerning succession of residuaries will be brought into consideration.

2. Genesis of Residuary's Succession :

There is no specification about the number of residuaries in succession. However, attempts have made such as:

a. Sharers as Residuary :

The principle of succession for residuaries is governed by paternal relation. That is to say, a person who is connected with father of the deceased is a residuary. In the truest view, father is the basis to succeed as residuary. Father as the base is placed in the realm of residuaries. Of the twelve sharers six– mother, true grandmother, wife, husband, uterine brother and uterine sister do not inherit as residuaries. The other six e.g. daughter, son, son's daughter, father, true grandfather, germane sister, consanguine sister can inherit as residuary too.

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[1] From the Koranic point of view, nine [e.g. wife, husband, daughter, mother, father, germane sister, consanguine sister, uterine brother, uterine sister] are sharers. In addition, true grandmother hhs true grandfather hhs, son's daughter [son's sons' daughter hls] are considered by qiyas as sharers as if Koranic sharers. But these three heirs are not accepted as such in Shii system of succession.

Family Laws Ordinance has made out a solution giving the predeceased son/daughter(s)'s child apportionment of his/her parent what the parent could inherit if alive at the time of opening succession. Speaking specifically, if the predeceased son/daughter succeeded the propositus, succession would be administered by traditional principle. To this end, there would be no application of the ordinance.

5. Residuary's priority in Succession :

A. Descendants :

i. Son :

Male agnatic descendant inherits always as residuary. In the case of son and daughter, succession is governed by tasib principle in proportion to 2:1, two thirds to son and one third to daughter.

ii. Son's son :

Succession is governed through nearness in tie. That is to say, 'nearer in degree excludes the remoter one.' Son's son always inherits as residuary. But with son's daughter succession is regulated in proportion to 2:1 e.g. two thirds to son's son and one third to son's daughter. When son's daughter/son's son's daughter is excluded to inherit as koranic sharer her succession will be governed equally as residuary with son's son's daughter-the lower son's daughter equally.

2 daughters	2/3
son's daughters	1/12
son's son's son	1/6
son's son's daughter	1/12

Except daughters other heirs here have no right to inherit as koranic share. The maximum koranic entitlement 2/3 for female is exhausted by two daughters. As a result, neither son's daughter, nor son's son's daughter is entitled to inherit as koranic share. Son's son's right arises as residuary. But along with son's son's son succession for son's daughter and son's son's daughter is governed as residuary. The principle of tasib is applicable. The

position of son's son's son is always residuary and as such, he has made son's daughter and son son's daughter to inherit as residuary. Factually, the lower degree heir son's son's daughter is seen rather to be benefited for inheriting in the same capacity of higher degree heir son's daughter. In the absence of heir of this group heir of next group will inherit.

B. Ascendants :

iii. Father :

Where there is no child father inherits as residuary. In the case of daughter he can inherit as residuary if there is residuary and if there is no residuary his right as residuary cannot arise.

iv. Father's father (true grand father hhs) :

If there is no child or child of a son hls father's father inherits as residuary and if there is daughter(s) he inherits as residuary if there is residuary. If there is no father, father's father will inherit in the same capacity as father's father inherits. In the absence of this group the heir of next group will inherit.

C. Descendants of father :

V. Germane brother :

It is important to note that except descendants and ascendants of the propositus an approach to how low so ever (hls) is not effective. In this case descendants of father and true grandfather and so on will be considered. Where there is anybody of the nearer group heir of the remoter group will be excluded. Succession as regards germane brother and consanguine brother is governed as such. That means, where there is germane brother along with consanguine brother there is no opening for the consanguine brother to inherit. The question of consanguine sister in the circumstances does not arise. It is to remember that germane brother and germane sister inherit as residuaries under tasib principle through which 2:1 e.g. two thirds to germane brother one third to germane sister will be followed. Only as to succession of germane brother and germane sister as residuary they can be regarded as descendant of parents.

vi. Consanguine brother:

There seems similarity in doctrinal approach of blood tie e.g. "deeper in blood precedes the remoter one." "Nearer in degree excludes the remoter one" is applicable in the case of heirs succeeding as descendants/ascendants of the propositus. In the case of successors as descendants of father and true grandfather and descendants of true great grandfather (hhs) the principle like "deeper in blood excludes the remoter one." The context of germane brother's son and consanguine brother is illustrative in the sense that whenever blood tie descends the situation cannot be considered with the blood tie that does not descend. German brother's son appears to descend from stronger blood tie (germane brother) this makes him ousted by blood tie not descending (consanguine brother). Consanguine brother and consanguine sister inherit as tasib principle governing residuaries. That means, succession of consanguine brother and consanguine sister is governed by 2:1 doctrine e.g. two thirds to consanguine brother and one third to consanguine sister.

vii. Germane brother's son :

The case of germane brother's son is considered with stronger blood tie than consanguine brother's son. As a result, germane brother's son excludes consanguine brother's son.

viii. Consanguine brother's son :

In the case of germane brother's son and consanguine brother's son there is no opening for succession of consanguine brother's son. Consanguine brother's son is excluded by germane brother's son. But lower degree heir (germane brother's son's son) although the former seems to descend with full blood connection.

ix. Germane brother's son's son:

In respect of blood tie germane brother's son's excludes consanguine brother's son's son.

x. Consanguine brother's son's son:

In the presence of consanguine brother's son's there is no opening for germane brother' son' son' son. In the absence of heir of his group heir of next group will inherit.

D. Descendant of father's father (true grandfather):

xi. Germane paternal uncle:

Germane paternal uncle being an heir of full blood tie is preferred to consanguine paternal uncle.

xii. Consanguine paternal uncle:

Although consanguine paternal uncle is an heir of half blood tie but he is preferred to germane full paternal uncle's son being an heir remoter in degree. Pursuant to this principle other heirs of this group inherit on priority basis as follows:

xiii. Germane paternal uncle's son
xiv. Consanguine paternal uncle's son
xv. Germane paternal uncle's son's son
xvi. Consanguine paternal uncle's son's son

If there will be no heir of this group heirs of next e.g. descendants male descendants) of true great grand father will accordingly inherit. This principle will likely be applicable for succession of descendants male descendants) of great great grand father.

6. Role of Residuaries in Hizanath (custody of child):

The right of hizanath (custody of child) primarily lies with mother and other female relations. In absence of these relations the right turns to father and other male relation. Generally speaking, mother is entitled to hizanath of a male child for a period less than seven years. In the case of female child this right for mother prolongs until puberty of the child. If there is no female relations or if they are barred to obtain hizanath the father and other male relations will be empowered with this right. After this period, the right of hizanath of the child goes to father and to other male relations as well. The father and other male relations can exercise right of hizanath of a male child until he attains majority. This right extends for a female child until she gets married. If there is none of the female or male relations the right of hizanath will be determined by the court.

The right of hizanath of child lies with the male relations as serially ordered in as much as residuaries. Specifically, the list of male relations entitled to custody (hizanath) of child subject to priority is as follows:

1. father
2. father's father hhs
3. full brother
4. consanguine brother
5. full brother's son
6. consanguine brother's son
7. full brother's son's son
8. consanguine brother's son's son
9. full paternal uncle
10. consanguine paternal uncle
11. full paternal uncle's son
12. consanguine paternal uncle's son
13. full paternal uncle's son's son
14. consanguine paternal uncle's son's son.

and thereafter, the male descendants of higher male ascendants likely will succeed this right too.

This reading gives rise to a fact that if there is well acquaintance with succession relating to residuari, an attempt on hizanath (custody of child) can easily be clarified. As a result, the role of succession as regards residuaries in hizanath matters is unquestionably significant. It seems that the residuaries have a role as if in the strength of a doctrinal view that the father and other male relations can step in the right of hizanath (custody of child) in accordance with priority basis of the residuaries as serially ordered).

7. Residuaries who have no Right to exclude:

The list of residuaries as in 5 under residuaries with priority includes some persons who can under certain circumstances inherit as residuary. But they cannot exclude other residuaries in succession. Specifically, daughter, son's daughter, germane sister and consanguine sister can inherit as residuary

along with the same degree of male relation. With son, daughter succeeds as residuary but in no circumstances she can exclude any other residuary. it is significant to note that daughter can never inherit as residuary without son. In the case of son's daughter it is likely applicable while there is son's son. That means, son's daughter can never succeed as residuary without son's son. Succession between germane sister and germane brother, and succession between consanguine sister and consanguine brother takes place as residuary. Under the circumstances, it is again to note that succession between daughter and son, son's daughter and son's son, germane sister and germane brother, and consanguine sister and consanguine brother is effected by tasib doctrine. In connection with this situation female successor like daughter, son's daughter, germane sister and consanguine sister has no right to exclude. Exclusion practically takes place by the concerned male relation like son, germane brother and consanguine brother.

The matter arising out of germane sister and consanguine sister along with daughter or son's daughter to some extent is notable in the sense that germane sister inherits as residuary (accompanying residuary) if any. Other residuaries after her (germane sister's) position as arranged in 5(v) will be excluded. In the same rule, consanguine sister along with daughter/son's daughter will inherit as residuary (accompanying residuary), and other residuaries as arranged after her position in 5(vi) will be excluded. Germane sister or consanguine sister has alone no right to exclude any other residuaries.

8. Cross Connection of Succession :

Succession of residuaries is spelled in the Koran not in specific entitlement but through some doctrine. There seems some implied epoch that can tune very distinctly in matters where there are no Koranic sharers. It is interesting to note that no residuary can be a sole successor where there is Koranic sharer like father, mother, daughter, husband or wife. This rule is equally applicable in the case of substitute sharers as made by qiyas like son's daughter hls, true grandfather (father's father hhs), true grandmother (father's mother/mother mother hhs). But under the Muslim Family Laws Ordinance,

1961 son's daughter is replaced as son the mighty residuary as well as the strongest heir of the propisitus. A share can inherit in the Koranic entitlements like 2/3, ½, 1/3, ¼, 1/6. 1/8 and or residuary where applicable. The case of father, true grand grandfather is very much specific. Father or true grandfather is the only sharer whose right as residuary makes the doctrine of 'raad' inapplicable. In the case of other residuaries, it is equally applicable. In gist, where there is residuary the doctrineof 'raad' is not applicable. The concern of succession for residuary does never arise where succession relates to 'awul.'

9. Conclusion:

Residuaries' succession in Muslim family dates to pre-Islamic customs. That is to say, male agnatic descendents e.g. son, son's son hls, and agnatic male ascendants like father, father's father (e.g. true grand father hhs), and male agnatic descendants of true grandfather such as germane brother, consanguine brother, germane brother's son consanguine brother's son, afterwards agnatic descendants of great grandfather e.g. germane paternal uncle, consanguine paternal uncle, germane paternal uncle's son, consanguine paternal uncle's son, germane paternal uncle's son's son, consanguine paternal uncle's son's son and so ever had succession which since promulgation of Islam through the Koran have been to be in that capacity as well. Innovation of spouse to inherit was made by the Koran as sharer but never as residuary. This is quite notable. It gives rise to a fact that their lacking of paternity relation with the deceased forbids them to inherit as residuary. The most striking approach doctrinally to apply for succession of survivors as residuary is to have paternity relation with the deceased.

REAL ESTATE BUSINESS IN BANGLADESH: AN APPRAISAL

- Dr Md. Abdul Karim Khan*

Abstract

Real estate is a modern concept and it is a very new subject especially in Bangladesh. It is a fascinating topic and real estate has generated complex legal theories and unusual fact situations. In this article real estate is defined and the present situation and status of real estate business in the national perspective are described. An attempt has been made here in this article to figure out the problems of both residential and commercial real estate business in Bangladesh. At the end of the article a conclusion with suggestion of enactments and guideline of implementing authorities has been upheld for the real estate in our national perspective.

Introduction

Bangladesh is a village-based country in South Asia. 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 recently the scenario is changing and people are moving from village to town. At the present time, with the expansion of economy and mounting movement of people form rural and mofussil areas to the sprawling metropolis of Bangladesh, housing and residential accommodation pose 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 professional. Technological advancement 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. This article has been written to provide with an understanding of the basic principles and business fundamentals of real estate. A suggestion of legal framework with an authority to carry out the legal requirements have been upheld keeping two

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things in mind i.e. "Why" things are done and "how" these can be applied to every day activities.

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. As understanding of this concept is important because given a particular parcel land, it is possible for one to own the right to use its surface (surface rights) another to own the right to drill or dig below its surface (subsurface rights) and still another to own the rights to use the airspace about it (air rights).

Anything affix 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, roads, pipelines and landscaping are real estate. As a group these are referred to as improvements because they improve or develop land.

The real estate business at present

The real estate is not only an idea or a concept at present in Bangladesh. It is getting the academic forefront. It is almost two decades the real estate business is going on in full swing and it has got a tremendous growth and success specially in Dhaka. But the sustainable system for the real estate business and practice has not yet been introduced or made. 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 courts and passes enactments 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 as one of the common wealth countries has common law origin. Sometimes common law concepts are enacted into statutory law. In Bangladesh many statutory laws pertaining to land, leasehold estates, 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. The existing laws regarding landed property for both in residential and commercial real estate are not sufficient in the present perspective of Bangladesh.

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 code with the income tax and local property tax laws in real estate.

Through interview of the tenants it is found that the silent confiscation of rights or illegal takeover of real estate by brute force or mal practice of real estate agent are being held now in Bangladesh. In most cases the people do not know what to do and how. The present land and civil suits are so complicated and time consuming that they do not encourage to challenge the brute force. However our government should organise a defense system, enact laws, establish courts to prevent confiscation of the rights and interest in real estate, illegal takeover by brutal force and malpractice of real estate agents in Bangladesh. What are the laws can be enacted and the implement authority can be formed that will be discussed in the following paragraphs.

Real Estate Regulations (Proposed)

There are a few questions in connection of the real estate business i.e., why and when a real estate license is required and how to obtain one. The answer is that one is required by law to obtain license for real estate practice. The license has to be obtained through rules and procedure specified by law. The next question is who makes these rules and how are they enforced. The starting point is the legislature. The legislature has the authority to enact laws to promote the safety, health morals, order and general welfare of the people. This includes the licensing and regulation of real estate brokers and salespersons. In Bangladesh basically the real estate business is running on the basis of contact made between the parties under contract Act 1972, land laws and a few concerned municipal laws. These laws are not up to the mark to deal with the real estate problems of this time. These are not enough and some cases they are to be amended. Now, it will be discuss what are the laws to be enacted for real estate in Bangladesh.

Statutory Laws

License Laws

Right now the legislature should enact laws requiring that real estate agents be licensed. The laws could be passed in keeping the follows issues in mind.

1. That there will be a pre-license education requirement.
2. That there will be a license examination.
3. That continuing education will be required.

Zoning laws

Zoning laws codes are to be enacted for maintaining proper order and environment and putting our real estate in the right track. The national Building Codes should be implemented properly and in some cases it has to be amended to meet the need of this century.

Consumer protection laws

Consumer protection laws are to be either passed or amended to hold the real estate agent, real estate company, real estate trade organisation, builders and association liable for their work.

Real estate agent, trade organisation, associations are constantly working to elevate the status-of-real estate brokers and salespersons to that of a competent professional in the public's mind. But as professional status in gained. There is an implied obligation to dispense professional quality service. Thus and individual agent is not only responsible for acting accordance with written laws but will also be held responsible for being competent and knowledgeable. Once recognised as a professional by the public, the real estate agent will not be able to plead ignorance. The law should be passed to keep the concept in mind "Let the Seller beware and let the agent beware."

Homestead Protection Laws

Homestead Protection laws should be enacted in Keeping the following matters in mind.

1. To provide legal protection for the homestead claimants form debt and judgments against them that might result in the forced sale and loss of the home.

2. To provide a home for a widow and sometimes a widower for life. Homestead law also restricts one spouse from acting without the other when conveying the homestead or using it as collateral for a loan.

Real Estate Settlement Procedures Laws

There are complaints for the consumers regarding real estate closing costs and procedures. In response to the consumers complaints real estate settlement procedure Act can be passed which will regulate and standardise real estate Settlement practice real estate Settlement practice in regard to loan made to one for residence, condominiums and cooperatives.

Professional Societies

Now, in Bangladesh real estate business is expanding day by day from Mega City to divisional cities of the country. We need to create societies, associations and institutions to educate our real estate professional and to recognise appraisal education, experience and competence. The continuing education is a pre-condition for providing professional services. REHAB is working in Bangladesh but is not enough to meet the demands of this century. The REHAB should set forth a code of Ethics and standards of practice of the realtors immediately.

Real Estate Management (Proposed)

The law can not work itself alone without the implement authority. The legislature should establish two bodies to carryout the requirements.

1. One body deals primarily with the adopting rules, statutes, ordinance and regulations to implement the license law as specified by legislature. This body may be called real estate commission consists of five to nine members. Some members can be licensees from the

real estate community while others can be non-licensed members of the general public. Commission members will be volunteers and selected by the President of the State to represent all geographical parts of the Country. The commission sit for the meeting time to time and provide input to the state in real estate for the welfare of the general in dealing with licensees.

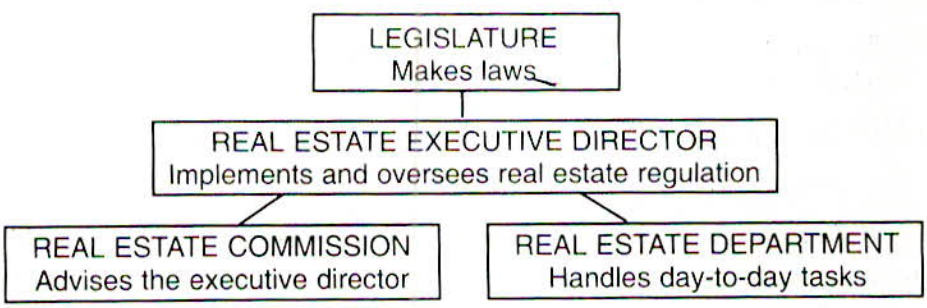
Executive director or Similar other title can be appointed by the government to oversee real estate regulations. His responsibility is to carry out the wishes of the legislature and the real estate commission on a day to day basis.

2. Second body called a real estate department or real estate division can be established by the legislature to assist in this.

The real estate department or real estate division answers correspondence, sends out application forms, arranges for examinations, collects fees, issues licenses, approves subdivision reports and so forth. Staff will be available for the investigation of alleged malpractice's and for audits of broker trust fund accounts. Additionally the department will publish newsletter or magazine to keep licensees informed about changes in real estate laws and will print books leaflets describing the license laws of the country.

In short, it is the real estate department with which licensees will have the most contact but it is the commission, the executive director, and the legislature that will set licenses requirements and will tell a licensee what he can and cannot do in real estate transactions. A visual graph is given for better understanding.

Real Estate Administration



Conclusion

Under all is the land. Upon its wise utilization and widely allocated ownership depend the survival and growth of free institutions and of our civilization. Realtors should recognise that the interest of the nation and its citizens require the highest and best use of the land and the widest distribution of land ownership. They require the creation of adequate housing, the building of functioning cities, the development of productive industries and firms, and the preservation of a healthful environment.

Such interests impose obligations beyond those of ordinary commerce. They impose grave social responsibility and a patriotic duty to which realtors should dedicate themselves and for which they should be diligent in preparing themselves.

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CHILDREN IN CUSTODY STILL DENIED JUSTICE

- Md. Nur Islam

The number of juvenile delinquents are not negligible. Most of those children delinquents are languishing in the jail custody with total denial of their rights. Since the crime is a social malady and the children are often considered to be most vulnerable to it. When the children are not allowed to be brought up in a desired, congenial and salutary environment, they tend to be involved in different types of crime and finally discover themselves to be delinquents. But in a society, no child is born as a delinquent. The parents of each child harbours future dreams centering their children but many of the dreams do not come into reality because of the adversaries of the society. Keeping this view in mind, the juvenile justice system should be given its due priority with regard to necessary developments and substantive changes in the enactment. For that end, juvenile justice system should not be confined to only the treatment of children when they come in conflict with the laws but to include the root causes behind the delinquent behaviour and the measures to prevent them.

In 1974 a comprehensive children Act was enacted, it has also got a complementary, namely, the children, rules-1976. And the cases of children supposed to be governed by Act aided by the criminal procedure code & the penal code.

Definition of children :

The different laws have defined children in different ways. But for the very purpose of this system, the children Act has defined a child as any person under the age of 16 years. The convention on the rights of children (C.R.C) defines a child as any person under the age of 18 years.

Juvenile Justice and Court :

Juvenile justice has become an international issue with introduction of the convention on the rights of the child (CRC) coming into force in 1990. The essential element of a juvenile justice system is an attitude. An attitude that values each boy and girl who is in the justice system and cares about how the experiences in the system will shape the life of each on of them. The manner

in which police arrest or interrogate a youngster, the way judges make decisions about guilt or sentencing, the educational, recreational and safety conditions in detention facilities, the programs for rehabilitation and reintegration that is to say every component of the entire system must be constructed to prevent humiliation and avoidable suffering. Juvenile justice in a broader sense not only includes the treatment of children when they come in conflict with the law, but also involves the root causes of the offending behaviours and the measures to prevent them.

In infringement of international standards, juvenile inmates are often held together with adults. A study shows that there are 1063 children in 60 jails and 280 more in the correction centers in Bangladesh. Many of Bangladeshi's jails and police lock-ups mix juvenile and adult prisoners. Children in such circumstances. frequently fall victim to bodily abuse, including sodomy and rape by adult inmates. In such a situation the appropriate measures have to be taken with a view to eradicate the impediments as existed in our juvenile justice system.

The children Act 1974 was enacted to consolidate and amend the hitherto existing laws relating to the custody, protection and treatment of children and trial and punishment to young offenders. This Act has laid down the provision for establishing the juvenile courts for any local for the purpose of the trial of the youthful offenders. The section 3 of the Act says" Not withstanding anything contained in the code, the government may be by notification in the official gazette, establish one or more juvenile courts for any local area. The section 4 of the act has provided provision to exercise the powers of juvenile courts by (a) the High Court Division (b) a court of sessions (c) a court of an additional sessions judge and of an assistant sessions judge, a sub divisional magistrate (district magistrate), a magistrate of the first class. The section 5 of the act deals with the power of the juvenile courts while the section 6 suggest separate trial of the children accused, the section 7 regarding the holding of setting of the courts, the section 9, 10, 11, 12, 13, 14 and 15 are procedural in nature. The part viii of the act has dealt with the provisions regarding the bail of the offenders, the restriction on punishment, power to

discharge or commit in suitable custody etc as espoused in section 48 while the part viii of the same act as enshrined in sections 55-61 has expressed the provisions regarding definition, supervisions etc of the victimised children. The demands of establishing juvenile court and the separate trial of the juvenile offender are getting momentum in our country. The need for separate juvenile court is being emphasised in workshop, seminar etc by the conscious section of the people.

Age Determination factor :

For smooth and proper functioning of juvenile justice system, the determination of age is a must. In laws of Bangladesh there is no uniform definition of children, the different laws define children differently Apart from this, the birth registration mechanism is very poor in our country and the same is not properly and adequately maintained and, as such, the concerned authority has to depend on mere inference and speculation while determining age of children. In this respect a proper device with determining the age of children should be chalked out. If need be, laws will be amended in case of juvenile justice to ensure that the age of a child offender is determined by the date of the offence committed.

Serious Contradiction in Laws :

There is also a serious contradiction in laws, while the children Act terms the under-16 as minor, the majority Act, 1875 terms all the citizens under 18 years as the same too. The government must revise the relevant laws in order to remove the inconsistencies. Moreover, this Act is silent about exploitation of children in the name of family enterprise/businesses. The issue is whether such exploitation in the name of family business is punishable or not.

Confidentiality and Non-Stigmatization :

Section 9 & 10 : The trial of juveniles shall be held in camera i.e. only people directly involved in the case and the officers of the court can be present during the trial. The Court may also ask people not involved with the case to withdraw.

Section 16 & 17 : The report of Probation Officer or any other report considered by the Court under 15 shall be treated as confidential and publication of report of proceedings, photograph of child leading directly or indirectly the identity of such child is prohibited and punishable by a fine of Tk. 200.

Section 70 & 71 : Words convictions and sentenced can not be used in relation to children and when a child is found to have committed any offence, the fact that she/he has been so found shall not operate as a disqualification for any office, employment or election under any law.

Recent Development at abroad :

International treaties and customary international law forbid capital punishment for offenders under the age of 18 at the time of the offence for which they were convicted. Iran, Saudi Arabia, Nigeria and the Democratic Republic of Congo are the only countries that are known to defy the world wide consensus that the death penalty should not be imposed on juvenile offenders. Recently, the governors of two states, South Dakota and Wyoming have signed the legislation raising the minimum age for capital punishment in their states to 18. In the United States, 31 states and the federal government now prohibit the execution of juvenile offenders.

Some Major Obstacles :

Poverty is major reason behind juvenile offence in a country where 48 percent people live under the poverty line; Most significant problem is ignorance of magistrate, law enforcement agencies and probation officer about the legal approach to children; Lack of training of magistrates and other law-enforcers on how to deal with children that impedes greater prevention of abuse of troubled children; Lack of society or community mechanism to address child-rights issues; Lack of relevant amendment, proper interpretation and understanding of the children Act, 1974 and children Rules, 1976; The existence of the 1943 vagrancy Act, which is said to be 'anti poor' and 'counter constitutional'; and lack of co-ordination among the government agencies.

Some Recommendations :

Reduction of poverty and socio-political instability should be viewed as fundamental changes that could positively change people's mind set towards children; a greater bondage between parents and children and lower incidence of broken homes could reduce the problem of children pushed towards crime; co-ordination between magistrates, policemen and probationer officers have to developed; And a greater awareness is needed among government workers about sensitivities in dealing with juvenile offender.

Concluding Remarks :

Juvenile justice is something completely different from criminal justice. Protective legislations and their proper implementation through an effective child-friendly legal system based on ground reality can safeguard the rights of juvenile offenders. A creative approach is necessary to improve the juvenile justice system and establish a just society. Only new thinking, new values, new projection and positive outlook with determined action can achieve this. With a humble hope of due consideration of authorities for enactment of adequate laws in this regard, this work is concluded herein.

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COMPLIANCE WITH THE WTO SYSTEM AND LEGAL AND INSTITUTIONAL REFORMS IN BANGLADESH

- Mohammad Monirul Azam*

I. Introduction

The last decade has been characterized by increased globalization on different levels. The term 'globalization' is known to all and has become an expression of common usage. Different people use this term with different colours representing a new brave world order with no barriers. It also means integration of economies and societies through cross country flows of information, ideas, technologies, goods, services, capital, finance and people. As a consequence of the growing interdependence on economical echelon, the World Trade Organization (WTO) - the only international institution dealing with the regulation of the trading system has developed into one of the main actors on the international scene. It was established on January 1, 1995 with the entering into force of the Marrakesh Agreement (WTO-Agreement)[1] and marks the biggest reform of international trade since the aftermath of the Second World War. It introduces a new trading system that replaced the General Agreement on Tariffs and Trade (GATT), and brings into reality the failed attempt of the 1940s to create the International Trade Organization (ITO).

Bangladesh did not face any obstacles to become the member of earlier GATT and thereafter of WTO. Just after its independence in 1972, Bangladesh became member of the GATT on the recommendation of the Great Britain as a member of the Common Wealth countries.[2] Again, Bangladesh has become member of WTO and is considered as the original member automatically as per article XI(I) of the agreement establishing the TWO.[3]

It is widely anticipated that the entry into the WTO will speed up the economic development while providing foreign investors free access to domestic

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markets and for more favorable environment for our export-oriented industries. However the accession to the WTO raises some potential legal challenges and to take the full advantage of the world trading system, implementation of the WTO agreements is a must. Although presently Bangladesh has around 1200 laws, which are more than even many developed countries, most of them are century old and lack effective enforcement mechanisms.[4] Article XVI (IV) of the Agreement establishing the WTO (hereinafter referred to as WTO agreement) provided that each member shall ensure the conformity of its laws, regulations and administrative procedures in line with the agreements of the WTO. Again as per Article XVI (V) of the WTO agreement reservation is not allowed. It's a complete package, either one have to accept the whole or reject the whole, there is no provision for the partial implementation.

Although Government of Bangladesh has either amended or repealed a number of laws, till date there is no systematic study so far, within the knowledge of this writer, to examine the legal system of Bangladesh in line with WTO obligation.[5] Someone may think that it is not necessary, but to take the benefits under the WTO agreements and to identify and face the threat, if any, against the national interest in the WTO agreements, a systematic study is a must.[6] Most of the WTO members already conducted this kind of study and have already made amendments of their existing laws to conform to the WTO-rules. For example The State Council of China after its accession to the WTO has examined all the administrative regulations passed prior to 2001, and has already abolished 221 regulations. China within a very short span of time (officially became a member of the WTO on December 11, 2001) has modified laws, regulations, and rules governing areas such as foreign investment, customs, intellectual-property protection, foreign trade, foreign exchange, and insurance etc. China has reviewed over 2500 pieces of WTO related legislation and based on this review, 830 laws were repealed, 325 laws were amended and 118 new laws were enacted as of January 8, 2004.[7]

Therefore, present legal system of Bangladesh will have to be reorganized at every level to satisfy the requirements of the WTO. To meet this purpose, legal, administrative, and judicial resources must be put into place to act as efficient and integrated whole for the effective implementation of the WTO

agreements and to minimize the conflicts with other WTO members. The key to success lies in the establishment of a legal system that protects investor's rights and our national interest as well. When such a system is in place, only then foreign investors and multinational and transnational corporations will be interested to invest here and thereby Bangladesh could attract more foreign direct investment (FDI) and could be able to extract the benefits of the multilateral trading system.

In Bangladesh, although a number of books, articles and reports made by a number of renowned authors, researchers and research organizations respectively, most of the study and reports highlighted the economic dimension. However, a few articles while making the economic study referred to the trade policy and legal policy measures. But all these articles limited to only investment laws, textile and clothing sector and import and export policy related matters.[8] Therefore, article tried to make a unique contribution in this field by making a study on the possible areas of legal reform and required institutional reforms that what would be useful for the country to meet the compliance with the WTO system and thereby extract maximum benefits under the multilateral trading system.

II. A Brief Overview on the WTO Provisions

Understanding of the functions and principles of the multilateral trading system is vital for introducing legal reforms for the successful integration of the country with that system. Therefore, before making any assessment of which areas of legal reforms are significant for Bangladesh and challenges (if any) for introducing legal reforms, it is better to make a brief overview on the WTO provisions relating to the functions and principles of the multilateral trading system.

A. Functions of the multilateral trading system under the WTO provisions

Article III of the WTO agreement defines the role of the World Trade Organization, which is laid down in the annexes. It defines five functions for the WTO, which are as follows:

i. Implementing agreements

The first function of the WTO is to 'facilitate the implementation, administration and operation, and further the objectives of this Agreement and of the Multilateral Trade Agreements, and shall also provide the framework for the implementation, administration and operation of the plurilateral trade Agreements.' There is a difference between the multilateral agreements and the plurilateral agreements. All members are bound to follow the obligations as set out by the multilateral agreements. This is not the same for the plurilateral agreement.[9]

ii. Forum for negotiations

The WTO has to be a forum for trade negotiations. A distinction is made between negotiations for which the WTO shall be the forum and other negotiations for which it may provide a forum. Article 3 Para 2 lays down that "the WTO shall provide the forum for negotiations among its Members concerning their multilateral trade relations in matters dealt with under the agreements in the Annexes to this Agreement. The WTO may also provide a forum for further negotiations among its Members concerning their multilateral trade relations, and a framework for the implementation of the results of such negotiations, as may be decided by the Ministerial Conference."

iii. Dispute Settlement Procedure

The dispute settlement procedure of the WTO is central element in providing security and predictability to the multilateral trading system. The 'Dispute Settlement Body' (DSB) is established to settle the disputes between members concerning rights and obligations under the different provisions of the agreement of the WTO. The DSB shall have the authority to establish panels, adopt panels and Appellate Body reports, maintain surveillance of implementation of rulings and recommendations, and authorize suspension of concessions and other obligations under the covered agreements.[10]

iv. Trade policy Review

The WTO shall control the trade policy of the member-governments at regular times. The purpose of this function is to see how far, the members are

following the rules of the trading system. This policy reviews are also a way to make the world trading system as clear and transparent as possible.

v. Coherence

Article 3 Para 5 of the WTO agreement is a declaration on its role in achieving 'greater coherence in global economic policymaking.' To achieve this purpose the WTO shall 'cooperate, as appropriate, with the International Monetary Fund and with the International Bank for Reconstruction and Development and its affiliated agencies.' The WTO keeps a strong relationship to these organizations. This is the only way to make the world trading system transparent.

B. Principles of the multilateral trading system

WTO is working with a few fundamental principles that run throughout all the agreements of WTO. Through various councils and committees, the WTO administers the implementation of multilateral and plurilateral trade agreements.[11] Together, these agreements create the multilateral trading system, which carries the following fundamental principles:

i. Trade without discrimination

There are two important principles of 'non discrimination.'

First: The principle of "Most-favored-nation" (MFN). Despite some confusion derived from the phrase 'most-favored', which seems to imply a favorable treatment, the concept is one of equal treatment. Under the WTO Agreements. countries cannot normally discriminate between their trading partners. When someone gives a special favor to one member (for example lower customs duty rate for one of their products), he has to do the same to all the WTO-members. There are exceptions to this principle, for example the regional agreements.

The second principle is that of "National treatment." This principle contains the obligations of treating foreign goods equally with domestic goods. Imported and locally produced goods should be treated equally, at least when the foreign goods have entered the market.

ii. Free trade: Gradually, through negotiation

Making the trade barriers as low as possible is one of the most important principles of the WTO. The barriers include customs duties and measures such as import bans or quotas. Since the creation of GATT in 1947 most rounds of trade negotiations[12] have focused on lowering tariffs and significant achievements have been made in market access for industrial goods. The main achievement in industrial countries is the reduction of the trade weighted average tariff by 40 percent, from 6.3 percent to 3.8 percent at the end of the 2000.[13] Since 1980 the trade negotiations have also been concerned with other forms of protection (non-tariff barriers). There are exceptions to this principle. Most exceptions are accorded to the developing countries. The WTO gives developing countries usually more extended time to fulfill their obligations.

iii. Predictable and growing access to market

The multilateral trading system is an attempt by governments to provide investors, employers, employees and consumers with a business environment that encourages trade, investment and job creation, as well as free choice and low prices in the market place. Such an environment needs to be stable and predictable, particularly to promote investment. While quotas are generally not allowed, tariffs are legal in the WTO, and are commonly used by governments to protect domestic industries (as well as to raise revenues). It should be noted that tariff reductions, made by over 120 countries in the Uruguay Round and contained in some 22,500 pages of national tariff schedules, are considered to be an integral part of the WTO.

iv. Promoting fair competition

The WTO extends the existing GATT 1947 rules which set out how governments could impose compensation payments in response to two forms of "unfair" competition: dumping and subsidization. The WTO Agreement on Agriculture is designed to increase fairness in the farm trade. The agreements covering intellectual property, and the General Agreement on Trade in Services, will improve conditions of competition in both these fields.

v. Encouraging development and economic reform

The provisions of GATT 1947, intended to favor developing countries, are maintained in the WTO. In particular, these were meant to encourage industrial countries to promote trade with developing nations. Developing countries are given "transitional periods" to adjust with the more difficult WTO provisions. The very least-developed countries are given even more flexibility and extended periods for the implementation of the agreements.

III. Legal and Institutional Reforms in Bangladesh

As mentioned earlier, Bangladesh along with other developing countries became a member of the WTO at the culmination of the Uruguay Round (UR) keeping in mind to avail the advantages of an open and liberal trading system. Since then, the Government has undertaken a number of bold steps, which include liberalization of the trade and foreign investment regime, strengthening the financial sectors and regulatory framework, closing and privatizing some loss-making state-owned enterprises and taking steps to improve the governance.[14] But to take full benefits, Bangladesh has to do a lot for legal capacity building to extract benefits under the WTO agreements. While doing this, it has to change or amend a number of existing laws and enact new laws and in a number of areas and at the same time it has to identify areas which may be detrimental to our national interest and then to proceed for amendment keeping in mind the ways and means to protect national interest. In this regard statement of Deng Xiaoping, the pioneer of China's great leap outward in the world economy is worth noting, who was reported to have said "When you throw open the windows, not only fresh, invigorating air comes in from outside, but also flies that irritate and distract accompany it."[15] In the same vein, as Bangladesh is integrating with the world economy though implementing WTO agreements and making corresponding legal reform, it has to consider not only opportunities but also assessment of risks or threats is vital. I have discussed in below what kinds of legal reforms, Bangladesh has to undertake for the successful integration with the multilateral trading system.

Promulgating and repealing laws or regulations

Bangladesh redoubled its efforts to reshape its legal environment line with WTO obligations just after the accession to the WTO. Just after accession to the WTO within one year, the Government felt it necessary to transform the temporary Law Commission into a permanent one under a regular statute. Steps were taken and the Law Commission Bill of 1996 was passed by the Parliament. Upon receipt of assent of the Hon'ble President on September 9, 1996 it became in Act of Parliament (The Law Commission Act 1996, Act no. XIX of 1996).[16] Under the auspices of the commission, Government has adjusted and is continuing to adjust its laws, regulations, and rules governing such areas as international trade, foreign investment, intellectual property protection and custom inspection, as well as arbitration and dispute resolutions as per the directions of the law commission.

Although there is no specific directives to meet the WTO compliance while drafting laws, over the years it has been observed that most of the times the law commission has given due consideration to the WTO compliance while drafting any law. However, Section 6(b) of the Law Commission Act may be utilized for justification of the reforming the law in line with WTO agreements that promote free market economy. As per Section 6(b) the Commission will-

> *(b) Keeping in mind the attraction of domestic and foreign investment and necessity of free market economy-*
>
> *(1) to recommend amendment of relevant laws including company law or legislation of new law in appropriate cases in order to create competitive atmosphere in the field of trade and industry and to avoid monopoly;*
>
> *(2) to recommend, after examination, measures with regard to relevant laws especially copyright, trademarks, patents, arbitration, contract, registration and similar other matters;*
>
> *(3) to recommend necessary measures for the establishment of separate courts for disposal of cases arising out of commercial and bank loan matters;*

Thus from the above section it is clear that law commission has the wide mandate to recommend amendment of laws to make the legal system ready

to take maximum benefit of the free economy. However, over the years the commission failed to do so due to the fact that reform plan or draft law made by the commission is considered just as recommendation, which Government may accept or reject. Therefore as per working methodology of the Commission, one can easily conclude that even a good reform plan made by the Commission may not see the broad day light due to lack of interest on the part of the Government regarding the same issue.[17] Again due to resource constraint like financial support and shortage of qualified researcher and technological facilities to conduct a research, the commission takes a very long time.

At present, in many areas regulated by WTO rules, such as different categories of services, information technology, competition policy and market monopoly, there are no applicable provisions within the legal system of Bangladesh.[18] In the line with WTO commitment to open its markets to various services and to remove price controls, great changes in laws and regulations is a must. Bangladesh have to make either new legislations or replace the century old legislations in a number of areas such as financial services, sale of goods, carriage of goods, travel agencies, environmental services, architectural services, medical services, education, engineering, transportation, cargo-handling, customs-clearance services for maritime transport, maritime agency services, aircraft repair and maintenance services, air transport computer reservation services, freight transportation and forwarding by rail and by road, and storage and warehousing etc.

Modifying existing laws and regulations

Bangladesh may need to abolish a number of existing laws, rules, and regulations that are unsuitable for modification or contrary to WTO compliance and replace them, where necessary, with new legislation. To date, it has made very significant progress to change its intellectual property rights (IPR) related laws in line with IPR agreement of the WTO, which is called Agreement on Trade Related aspects of Intellectual Property Rights (TRIPS).[19] It has already repealed earlier legislation regarding copyright and enacted a new law in 2000,[20] which is in line with the obligations set out in the

TRIPs agreement relating to copyright. Very recently another amendment is made to the Copyright Act of 2000 to redefine and extend the scope of computer programs and at the same time to increase the penalty and compensation for the infringement of copyright in computer programs.

Although Government is yet to repeal the old Patent and Trademarks Act, has introduced changes in the patent and trademark law in 2003 to make a uniform office for the administration of the patents and Trademarks under a single office.[22] As per this amendment, earlier patent office and trademarks office is no more exist and a new office named after 'The Department of Patents, Designs and Trademarks' is established, which consist of two wings namely the *Patents and Design Wing* to deal with matters related to the Patens and Design Act and *The Trademarks Registry* Wing to deal with matters related to the Trademarks Act.[23] However, the Law Commission has already drafted two complete new laws on the Patent and Designs and Trademarks respectively, which may be enacted by repealing the existing law relating to Patent and Designs and Trademarks, which were enacted as back as in 1911 and 1940 respectively. In addition to this, Law Commission has drafted 'Information Technology Law' to promote e-commerce and accord recognition to the electronic transaction, which is yet to be placed before the parliament. In addition to this, the Commission has to examine and introduce changes in a number of laws that needs immediate attention and through review such as Companies Act, Banking Companies Act, Bangladesh Bank Law, Custom and taxation related laws, foreign exchange law, Sale of Goods Act etc. But as mentioned earlier, all these reform agenda and already reformed draft may not see broad daylight unless or until approved by the Government.

Preparing Administrative and Judicial Institutions

In addition to the necessary statutory changes, all the WTO members have to ensure that all laws, regulations, and rules are applied and administered in a uniform and impartial manner. To meet this purpose, programs for the training and education of government employees, stakeholders and judges to understand the WTO system is a must.

To ensure WTO compliance numerous changes in customs procedures and inspections, dispute resolutions and governmental screening systems is also necessary. In addition, the government has to concentrate on shortening the customs process and use of Electronic Data Interchange (EDI), to modernize the customs administration etc.

The impression among the foreign investors regarding the judicial system of Bangladesh is that the Judiciary is very weak so as to enforce contracts and on an average around 10 years or more can be passed before a case is resolved.[24] It is also said that corruption is a common practice in the court procedure especially in the lower courts.[25] It is argued that lower courts are still working as per the direction of the executive and the issue of the separation of judiciary as per the direction of the Supreme Court is pending years after years.[26] Nevertheless, the Supreme Court has so far retained a reputation of fairness and competence.

Therefore foreign investors may not be interested to enforce contracts in the domestic courts rather they may be interested to settle the same out of international arbitration like arbitration procedure available under the International Convention for the Settlement of Investment Disputes (ICSID),[27] which is signed by Bangladesh. Newly enacted Arbitration Act 2001[28] repealing earlier law of 1940 to accord recognition to the international commercial arbitration and recently established ICC arbitration center in Bangladesh is a very positive step forward. In addition to this, the government may create a body to handle WTO complaints from foreign-funded enterprises. Finally, to protect the interests of domestic companies, the government has to take special care by providing legal and technical assistance and arranging constant training, education and research activities.

However, it is beyond doubt that for implementing the WTO agreements and its corresponding legislation under the domestic legal system good understanding of WTO law is a must. The Government of Bangladesh while changing the existing law in line with WTO compliance or in negotiation at the multilateral, regional or bilateral levels based on the WTO law cannot work

effectively due to lack of adequate (or no!) expertise on WTO law. Even till date no University in Bangladesh (either private or public) introduced this subject. Again, Lawyers, who are practicing in the lower courts and Supreme Court are also not suitably qualified or even lack mere understanding of this subject. Therefore, the country either has to take recourse to foreign expertise or proceed with the present level of expertise. Dependency on foreign expertise need huge expenditure and in the long run may not be useful for the country while proceeding with the present expertise is also problematic. It is problematic due to two reason-firstly, the country may go in the wrong direction and secondly, it may not be able to serve our national interest. That is why, the Government immediately has to consider in cooperation with Law Departments of the Universities to develop local expertise in WTO legal system.

In order to deploy WTO law to the advantage of the Country, the Government will need to maintain a regular coordination, contact and information sharing between national office and Representatives in Geneva (WTO Headquarter) and other multilateral bodies to keep constantly informed of regular development and must continue on-going routine procedures for gathering, processing and prioritizing information from foreign embassies, the private sectors, and international trade consultants regarding the matters of world trade and related policy considerations. Therefore, there must be a uniform department to consider every matter relating to WTO. It is worth noting that Government of Bangladesh established a WTO cell under the Commerce Ministry to deal with WTO related matters.

IV. Concluding Remarks

Bangladesh will need to continue to increase institutional capacity and coordination of Government bodies regarding WTO related issues at the national, regional and multilateral levels to participate effectively and meaningfully in the multilateral trading system. It is expected that the legal environment in Bangladesh, with the aid of presently established Anti-Corruption Commission and if constitutional commitment is fulfilled by the separation of the judiciary from the executive as per the direction of the

Supreme Court and along with the establishment of the office of the Ombudsman and Human Rights Commission in the coming days, may be considered a genuine steps forward towards ensuring transparent and sustainable legal system and good governance in the country.[29] These efforts, combined with the political commitment and the expectation of more changes to come in the near future to meet the WTO compliance and protection of the national interest as well, will make Bangladesh more thriving and prosperous. However, it may take a longer time for Bangladesh to play an efficacious role under the rules of a market-oriented economy.

To conclude, knowledge based leadership rather than hereditary leadership is essential to manage the complexities of the international trading system and to extract maximum benefits for the country from the prevalent multilateral system. However, any future binding commitments by the Government of Bangladesh must be made in consultation with the relevant industry and business sectors and stakeholders. Bangladesh should not liberalize more than what is required. Any move towards liberalization and required legal reforms should be carefully measured in terms of its prospective costs and benefits in the country.

Notes and References

1. The Uruguay Round negotiations that led to the conclusion of the WTO-Agreement lasted for seven and a half years, almost twice as long as the original schedule which had foreseen the culmination of negotiations as coming in 1990. After preparatory discussions since 1982 the Uruguay Round began in September 1986 at Punta del Este, Uruguay. The negotiation agenda covered virtually every outstanding trade policy issue. It extended into several new areas, notably trade in services and intellectual property and also aimed to reform trade in the sensitive agriculture and textile sectors. These negotiations were larger than any other in the history of mankind. During a conference in Montreal in 1988, a package of early results was agreed upon, despite the existing difficulties in finding a general consensus. This included some concessions on market access for tropical goods and the creation of a dispute settlement system. Further, the Trade Policy Review mechanism, which provided for the first comprehensive, systematic and regular

reviews of national trade policies, and which examined the practices of GATT members, was agreed upon. Due to difficulties in reaching agreement on the agricultural sector, the first draft of the "Final Act" was only produced in December 1991. However, the negotiations were then completed on December 15, 1993 in Geneva, and on April 15, 1994, the Uruguay Round Final Act was signed by the representative of the 125 participating countries, at a meeting in Marrakesh. The Act contains about 30 agreements, plus more than 25 additional ministerial declarations that clarify the provisions of the agreements.

2. Ullah, Dr. Md. Rahamat, *"Globalisation: Rhetoric or Reality? A Critical study"* in: The Dhaka University Studies, Part-F, Vol. XII (I): June 2001, p. 93.

3. Article XI (I) laid down that the Contracting parties to GATT as of the date of entry into force of this agreement (WTO agreement) ..... shall become original members of the WTO. See for details, Myneni, Dr. S. R, *'World Trade Organisation (WTO),'* 2nd Edition, Asia Law House, Hyderabad, 2003.

4. See, Bangladesh Code, Vol. (I-XI), Published by the Government of Bangladesh.

5. Azam, Mohammad Monirul, *"Ensuring the Compliance of the World Trade Organization (WTO): Challenges for Legal Reforms in Bangladesh,"* The Daily Star, Dhaka, January 2, 2005, P. 5.

6. Earlier it was considered that mere implementation of the WTO agreements would be enough. But later study revealed that in that case generally developing countries and more p more particularly Least-Developed Countries (LDC's) have to face critical situations. For example if the TRIPs agreement is implemented as it is, then it will become a threat for food security, biodiversity and public health in the developing and LDC's. That is why, country specific study is a must to understand what is good and what is bad for that particular country and then go for exploiting the avenues available under the WTO agreements for protecting national interest and utilize the capacity of bargaining for getting extended transitional periods and economical and technical cooperation. See for details, Carlos M. Correa, "Intellectual Property Right, the WTO and Developing Countries" Zed Books Ltd, London and New York, 2000, pp. 101-121; Azam, Mohammad Monirul, *"Effects of the TRIPs Agreement on Developing Countries,"* unpublished monograph

paper submitted for the partial fulfillment for the Degree of Master of Laws under the University of Chittagong, Bangladesh, 2000.

7. Hung, Verson Mei-ying, *"China's WTO Commitment on Independent Judicial Review: Impact on Legal and Political Reform"* in: American Journal of Comparative Law, Vol. 52, pp. 77-115, University of California, Berkeley, 2004.

8. In below first group of literature limited to only economic dimension while second group of literature extended to trade policy and limited legal policy measures like investment, import and export matters, textile and clothing, intellectual property etc.

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Second Group of literature includes Ahmed, Nasiruddin, "Trade Liberalisation in Bangladesh-An Investigation into Trends" The University Press Limited (UPL), 2001; Ahammad, H, "Foreign Exchange and Trade Policy Issues in a Developing Country: The Case of Bangladesh" Working Paper # 95/1, Canberra Research School of Pacific and Asian Studies, Australian National University, 1995; Ahmed, N, "Liberalizing Bangladesh External Sector" paper presented at the International Conference on South Asia held at the University of Sydney, September 12-14, 1997; Alam, M, "Trade and Financial Liberalization in Bangladesh"

Desh Prakashan, Dhaka, 1995; Choudhury, N, "Impact of GATT Uruguay Round on Bangladesh's External Economy" a report prepared for the World Bank, Dhaka, 1994; Imam, K.H, "Some aspects of the Foreign Trade Policies of Bangladesh" in: E.A.G Robinson (ed.)" The Economic Development of Bangladesh" The Macmillan Press Limited; Hossain, M.I and Rahman, M, "current External Sector Performance and Emerging Issues" in R. Sobhan (ed.) "Growth or Stagnation? A review of Bangladesh's Development" Center for Policy Dialogue and UPL, 1996; Mahmood, R.A and D.K Roy "Non Traditional Exports from Bangladesh: Problems and Prospects" paper prepared for a seminar organized by Export Promotion Bureau, Dhaka, 1994, M, "The GATT URUGUAY ROUND Multilateral Accord: Implications for Bangladesh" in: James Love and Mozammel Huq (ed._, Strategies for Development in Bangladesh, UPL, Dhaka, 1995; Bhattacharya, D and R.A.M Titumir, "Setting the Agenda for the Next WTO Round: Perspectives from Bangladesh on the Seattle Ministerial, CPD, Dhaka, 2000; Rahman, S.H, "Trade and Industrialization in Bangladesh: An Assessment" in G.K. Helleiner (ed.) Trade policy and Industrialization in Turbulent Times, London and New Yor, Routledge, 1994; Sobhan, R, "Bangladesh: Problems of Governance" UPL, Dhaka, 1994; World Bank reports namely "Bangladesh Trade Liberalization: Its pace and impacts" 1999 and "Bangladesh: Key Challenges for the Next Millennium" 1999; Islam, Sadequl, "The Textile and Clothing Industry of Bangladesh inna Changing World Economy" CPD and UPL, Dhaka 2001; Islam, Nurul, "Looking Outward: Bangladesh in the World Economy" UPL, 2004; Mazhar, Farhad, "Banijja O Bangladesher Jonogon" (In Bangla), China Prokashona, September 10, 2004; Ullah, Mahafuz, "Intellectual Property Rights and Bangladesh," Center for Sustainable Development, Dhaka June, 2002 etc.

9. Plurilateral agreements are binding only on those members who have signed voluntarily and accepted the obligation.

10. Article 2 of the Understanding on rules and procedures governing the settlement of disputes.

11. The WTO is a rules-based, member-driven organization - the member governments make all decisions, and the rules are the outcome of negotiations among members.

12. Although in its 47 years, the basic legal text of the GATT remained much the same as it was in 1948, there were additions in the form of plurilateral, voluntary membership agreements in a continual effort to reduce tariffs. Much of this was achieved through a series of eight "trade rounds." These negotiation rounds were:

- First Round: Geneva, Switzerland, 1947
- Second Round: Annecy, France, 1949
- Third Round: Torquay, England, 1951
- Fourth Round: Geneva, Switzerland, 1956
- Fifth Round: The Dillon Round, 1960-61
- Sixth Round: The Keneddy Round, 1964-67
- Seventh Round: The Tokyo Round, 1973-79
- Eight Round: The Uruguay Round, 1986-94

13. Bhandari, Surendra, "WTO and Developing Countries: Diplomacy to Rules Based System," Deep and Deep Publications Pvt. Limited, New Delhi, 2002, p. 69.

14. For details see, Ahmed, Nasiruddin, "Trade Liberalization in Bangladesh- An Investigation into Trends" The University Press Limited (UPL), 2001, pp. 46-54;

15. Quoted by Islam, Nurul, "Challenges of Globalization and Bangladesh" paper presented in a seminar jointly organized by BRAC University and Bangladesh Economic Association, June 2003, Dhaka.

16. Earlier there was a number of temporary law reform commission worked to meet specific areas of reforms. Permanent Law Commission was established by the Law Commission Act, 1996 (Act No. XIX of 1996).

17. Even the website of Law Commission itself contained the following regarding the non-binding nature of the recommendation in an indirect way- "the Commission's recommendations for reform of law will bring the desired result only if they are made into Acts of Parliament. The Law Commission can make research and recommendations, but Parliament alone can change the law for the welfare of the people." Available at www.lawcommissionbangladesh.org, accessed on January 15, 2005.

18. Till date on law is enacted in Bangladesh regarding competition policy, information technology and other related matters, which need immediate attention.

19. For details on the TRIPs agreements see, Azam, Mohammad Monirul and Khan, Morshed Mahmud, "TRIPs Agreement and Protection of

National Interest: Contention between Developed and Developing Countries" in The Chittagong University Journal of Law, Vol. V, 2000, pp. 1-34.

20. Copyright Act, 2000 (Act No XXVIII of 2000), which is adopted before the Parliament on July 9, 2000 and thereafter assented by the President on July 18, 2000.

21. Copyright (Amendment) Act, 2005 (Act No. XXIV of 2005).

22. This change is introduced by The Trademarks (Amendment) Act 2003 (Act No. XXIV of 2003) and The Patens and Design (Amendment) Act 2005 (Act No. XXV of 2003) respectively.

23. Section 4 of The Patens and Design (Amendment) Act 2005 amended section 55 of the earlier The Patens and Design Act 1911 to establish the Patent and Designs Wing and Section 2, of The Trademarks (Amendment) Act 2003 amended section 4 of the earlier The Trademarks Act 1940 to establish The Trademarks Registry Wing.

24. For details see, World Development Report, 2005 published by the World Bank, pp. 86-90.

25. Ibid.

26. Ibid.

27. The International Convention on the Settlement of Investment Disputes was adopted in Washington on March 18, 1965 and became effective from October 14, 1966 under the auspices of the World Bank. For details see, Islam, M Rafiqul, "International Trade Law," LBC Information Services, Australia, 1999, pp. 388-395.

28. Shalish Ain (The Arbitration Act) 2001 (Act No. I of 2001).

29. Someone may wonder, why establishment of the Anti-Corruption Commission, Office of the Human Rights Commission and Ombudsman is necessary for the fulfillment of the WTO compliance. In fact corruption, lack of transparency and accountability, exploitation of peoples under undemocratic and unjustified administrative rules, excesses of government officials and political leaders plaguing our state of governance. That is why, without preventing all these misdeeds, it would be quite difficult for Bangladesh to take the full potentials of the free trade and attracting foreign investment in the country. Therefore establishment of these organizations has become a part and parcel for taking full benefits of multilateral trading system and protection of national interest of Bangladesh.

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 9th Training Course for Government Pleaders held on 23 March, 2006 at this Institute.

Barrister Moudud Ahmed MP, Hon'ble Minister for Law, Justice & Parliamentary Affairs is delivering his valuable speech as Chief Guest at the Inauguration Ceremony of the 51st Judicial Administration Training Course for Additional District & Sessions Judges held on 10 November, 2005 at this Institute.

Mr. Justice Md. Hamidul Haque, Hon'ble Director General of Judicial Administration Training Institute is seen presenting his kind deliberation as President of the Certificate Awarding Ceremony of the 9th Training Course for Government Pleaders held on 23 March, 2006 at this Institute.

Mr. Justice Syed J.R. Mudassir Husain, Hon'ble Chief Justice of Bangladesh is seen awarding certificate to a participant.

Barrister Moudud Ahmed MP, Hon'ble Minister for Law, Justice & Parliamentary Affairs is seen as Chief Guest at the Inauguration Ceremony of the 52nd Basic Training Course on Judicial Administration for Newly Appointed Assistant Judges held on 3 December, 2005 at this Institute.

Mr. Md. Ruhul Amin, senior most judge of the Appellate Division of the Supreme Court of Bangladesh is seen awarding certificate to a participant of the 52nd Basic Training Course on Judicial Administration for Newly Appointed Assistant Judges held on 29 December, 2005 at this Institute.

Judges and Registrar of the Supreme Court, Solicitor and other officers are seen at a program held in the Institute.

Mr. Md. Alauddin Sarder, Secretary, Minister of Law, Justice & Parliamentary Affairs is seen with the faculty members of JATI at a program held in the Institute.

JUDICIAL ADMINISTRATION TRAINING INSTITUTE COMPLEX