1996 SHARE SCAM

Supreme Court Judgement on Merit of the Cases

Nothing created so much controversy in business and economy in this country as did the 1996 bubble and bust in the stock market. Thousands still continue to pay the price — their life's saving in many cases. There were many rags to riches story. But for thousands of poor investors it was mainly rags. Their life saving lost, these investors who had flocked to the capital market finding it more profitable a means to use their investible cash can never to forget the bitter experience. The result is known to all. Today's market gives ample indication of the degree of the crisis of confidence in the whole scheme of things. An expert-level inquiry found that a handful of manipulators were to blame, based on which the market regulators took them to court of law. But some of the alleged culprits sought to challenge the way the SEC went about. A lower court endorsed their view, but the High Court and then the highest seat of justice set aside the Sessions Court's judgment in what we consider a crucial verdict setting the tone of the process of justice in these 15 cases involving some 42 high-profile people in the trade. For reader interest, we publish the text of the verdict from the Full Bench of the Supreme Court Appellate Division.

In The Supreme Court of Bangladesh Appellate Division

Present:
Mr Justice A T M Afzal, Chief Justice
Mr Justice Latifur Rahman
Mr Justice Mohammad Abdur Rouf
Mr Justice Bimalendu Bikash Roy Choudhury

Criminal Petition for Leave to Appeal Nos. 52 To 54 of 1998
(From the judgement and order dated December 9, 1997 passed by the High Court Division, Dhaka in Criminal Reference Nos. 1 3 of 1997 respectively)
Shinepukur Holdings Ltd. & ors..... Petitioners (in Crl. P. 52/1998)
Beximco Pharmaceuticals Ltd & ors..... Petitioners (in Crl. P. 53/1998)
A K M Shamsuddin ..... Petitioner (in Crl. P No. 54 of 1998)

Versus

Securities and Exchange Commission & anr.....	:	Respondents (in all the petitions)
For the Petitioners (in all the petitions)	:	M/s. Serajul Huq and Rafique-ul Huq, Senior Advocates, instructed by Mvi. Md Wahiddullah, Advocate-on-Record.
Respondent No.1 (in all the petitions	:	Dr M Zahir, Senior Advocate, instructed by Md Aftab Hossain, Advocate-on-Record.
Respondent No 2 (in all the petitions)	:	Mr K S Nabi, Attorney General.
Date of hearing	:	May 12, 1998

JUDGEMENT

A T M Afzal, Chief Justice: These three petitions by the respective accused-petitioners arise out of a common judgement and order dated 9 December, 1997 passed by a Division Bench of the High Court Division rejecting Criminal Reference Nos. 1-3 of 1997 made by the Sessions Judge, Dhaka by his judgment and order dated 1.6.97 under section 438 of the Code of Criminal Procedure recommending quashing of the proceedings of CR Case Nos. 1075, 1076 and 1080 of 1997 pending in the Court of the Chief Metropolitan Magistrate, (CMM), Dhaka.

Facts of the case, briefly, are that the Securities and Exchange Commission (SEC) constituted under the Security And Exchange Commission Act, 1993 (Act No. 15 of 1993), briefly the Act, filed reports under section 25 of the Securities And Exchange Ordinance, 1969, briefly the Ordinance, through its Executive Director M A Rashid Khan before the Chief Metropolitan Magistrate, Dhaka alleging offences under section 17 read with section 24 of the said Ordinance against the present petitioners on 2.4.97 whereupon the CMM by orders passed on the same date took cognizance of offence under section 24 of the Ordinance and directed issuance of warrant of arrest against the accused petitioners in the following terms:

দরখাস্তকারীর নালিশী অভিযোগ দেখিলাম। নালিশী অভিযোগ দেখলাম। বাদি একজন সরকারী কর্মকর্তা। তিনি মামলা করার জন্য একজন ক্ষমতাপ্রাপ্ত ব্যক্তি।

ক্ষমতাপত্র দেখলাম। সরকার পক্ষে বিজ্ঞ এটর্ণী জেনারেলকে শুনলাম। মামলাটি সিকিউরিটি এন্ড এক্সচেঞ্জ অর্ডিন্যান্সের ২৪ ধারা মতে আমলে লওয়া গেল। আসামীদের বিরুদ্ধে ডব্লিউ/ এ দেওয়া হউক।

The aforesaid CR cases were accordingly registered. In the reports made to the CMM it was alleged, inter alia, that the accused companies and their directors were involved in fraudulent activities during the month of July to December, 1996 within the meaning of section 17 of the Ordinance and those were detected by an Enquiry Committee formed by the SEC under section 21 of the Ordinance to enquire into the matter. In the reports filed relevant portions of the findings of the Enquiry Committee were quoted in respect of the petitioners as were relevant in each case.

It appears that the accused-petitioners moved the High Court Division on the day following taking of cognizance by the CMM and obtained anticipatory bail. Then they filed Criminal Revision Cases No. 163-165 of 1997 before the Sessions Judge, Dhaka under sections 435 and 439A of the Code of Criminal Procedure for setting aside the order dated 2.4.97 of the CMM taking cognizance as aforesaid.

The learned Sessions Judge by his judgment and order dated 1.6.97 held that the C.R. cases were liable to be quashed and since he had no jurisdiction to quash he made a reference (3) to the High Court Division under section 438 of the Code of Criminal Procedure with his recommendation to quash the said proceedings. The learned Sessions Judge made the recommendation upon taking the view that M A Rashid Khan, Executive Director was not legally authorised to make the reports under section 25 of the Ordinance, that the provisions of law were not complied with, that there was no application of mind by the CMM in taking cognizance, that the issuance of warrant of arrest against the accused persons instead of summons without showing reasonable grounds was contrary to law for which the accused persons have faced harassment and financial loss and the same has caused failure of justice and further that those irregularities are not curable under section 537 Cr PC.

As already noticed, the High Court Division by the impugned judgment and order rejected all the references.

M/s. Serajul Huq and Rafique-ul Huq, learned Counsel made submissions on behalf of the accused-petitioners making a common ground that the High Court Division acted wrongly in rejecting the references. Both the learned Counsel ultimately submit that, even though they have assailed the order of taking cognizance on various grounds but their main contention is that the alleged report on the basis of which cognizance was taken by the learned CMM not having been filed in accordance with the provision of section 25 of the Ordinance i.e., the Executive Director not having been authorised by the Commission, the order taking cognizance was wholly bad and illegal.

This being the main submission made on behalf of the petitioners, the same naturally deserves to be addressed first. Section 25 provides that no Court shall take cognizance of any offence punishable under the Ordinance except on a report in writing of the facts constituting the offence by an officer authorised in this behalf by the Commission; and no Court inferior to that of a Court of Session shall try any such offence. It appears from the report which was filed before the CMM that in the cause title it has been duly mentioned that it was a report under section 25 of the Ordinance, that the SEC was the complainant/petitioner, that it contained extracts from the report of the Enquiry Committee which was set up by the SEC making various allegations against the petitioners which were alleged to be contravention of section 17 of the Ordinance and that it was ultimately stated that the SEC have authorised its Executive Director M A Rashid Khan to file the report/complaint. The said Executive Director was, however, authorised by the Chairman of the Commission to file the report before the CMM and not by the Commission as such. The authority letter which was on record was found to be dated 1.4.97 and the report/complaint was filed on 2.4.97. It is found from the Sessions Judge's judgment that on behalf of the SEC papers were produced to show that in the 28th Board meeting of the SEC held on 2.4.97 at 9:00 a.m. under the presidentship of the Chairman of the Commission the report of the Enquiry Committee on share market was considered under agenda No. 11 and it was unanimously decided to authorise the Chairman of the SEC fully to take all legal steps on the basis of the report of the Enquiry Committee.

The learned Counsel have argued that the Chairman was not the competent person to authorise and so the report filed on his authority was incompetent. Secondly, even if the Chairman could authorise being empowered by the Commission, the authority in the present case was bad because the Commission empowered the Chairman on 2nd April but the Chairman executed the letter of authority in favour of the Executive Director on 1st April at a time when the Chairman was not empowered. So the contention is that the report was filed with unauthorised authorisation.

We must say that in the facts and circumstances of the case, the objection raised is only technical and not of any substance. The purpose of authority from the Commission is to ensure that it is the Commission which should authorise/permit the prosecution to be launched. No officer, not even the Chairman can file a report on his own but the decision must come from the Commission. It has been found that the Commission did decide and authorise the Chairman to take legal steps in the light of the report of the Enquiry Committee on 2nd April before the report was filed before the CMM (we are told in the afternoon). So, the report cannot be said to be unauthorised. Had the Chairman executed the letter of authority in favour of the Executive Director after the Board meeting, there would have been no scope for any objection. Much ado is being made on the ground that the letter of authority was executed before the Board meeting was held. The technical objection will be ignored because the spirit behind the provision has been satisfied by the decision of the Commission before filing of the report.

The objection in any case is based on a disputed fact which cannot be resolved without evidence. From the impugned judgment it appears that there is a dispute over the date 1.4.97 as it appears on the letter of authority. It was submitted on behalf of the SEC that there was no date mentioned in the letter of authority but it (date) appeared mysteriously while the same was lying in Court. The High Court Division observed that it was not possible to decide the disputed question.

Be that as it may, what does it matter if the Chairman had already authorised the Executive Director to file the report and the Commission immediately thereafter authorised the Chairman to initiate the legal proceeding? After all, who is the Chairman? The Chairman is not a stranger to the Commission. He is not only a member of the Commission but he is the Chief Executive thereof. The Chairman, therefore, occupies a pivotal role in the Commission and, so to say, is its driving force. But this is not to say that the law should be ignored and authority from the Chairman should be considered sufficient for the purpose of initiating proceeding under Section 25 of the Ordinance. It will be a matter for consideration in the facts of each case whether the authority given for filing a report is sufficient to meet the requirements of law. What is of importance is that there must be something to show or it may be shown by evidence later on that the initiative to set the legal proceeding in motion was authorised by the Commission itself and not by an individual member. Ordinarily, however, a letter of authority from the Chairman should be prima facie evidence of authority from the Commission itself and a Court will be competent to take cognizance upon looking at such authority.

At this stage, we would like to observe that the objection raised by the petitioners as to lack of authority of the officer was premature in that they did not surrender before the CMM before whom the objection should have been raised first. The Sessions Judge, in our opinion, would have been well-advised to reject the revision petitions upon the view that the objection as to alleged lack of authority should be raised before the Court taking cognizance. In the facts of the present case, we are satisfied that there was sufficient compliance of the requirement of the law as regards authorisation of the officer who filed the report on behalf of the SEC.

The learned Sessions Judge held that there was no application of mind by the CMM in taking cognizance which finding the High Court Division has rightly reversed. The learned Counsel have argued that the order of the CMM does not show that he was prima facie satisfied about the truth of the allegations.

It is true that in criminal matters the accused should get all protection under the law but it is also important that the law should not be stretched too far so that big companies against whom serious allegation of foul play concerning national economy is being made before the Court by a statutory authority can themselves overtake the law by resourceful enterprise in raising ingenious contentions in order to frustrate the prosecution on the threshold. The Court must strike a balance. We are of the view that the learned Sessions Judge failed to maintain that balance which has been restored by the High Court Division.

The High Court Divisions correctly held:

Since there is no requirement of law to report reasons for taking cognizance we find no illegality in those orders on that Count. Learned Advocates for the accused 1st party could not show any decision that reasons are to the recorded for taking cognizance but persisted to say that there should be something in the order to show application of the mind of the Magistrate to the facts of the complaint to satisfy him to take cognizance of the offence. From the perusal of the extracts of the report (Complaint) by the CMM and hearing given to the learned Advocate of the complainant and the learned Attorney General it appears to us that the CMM applied his mind to the allegation made against the accused persons and on being satisfied that offence under section 24 of the Ordinance has been disclosed in the report/complainant took cognizance of the said offence, so, we find that there was application of mind by the CMM and his satisfaction in taking cognizance of the offence in question against the accused persons.

The learned Counsel have next argued that the report does not disclose any offence under Section 17 of the Ordinance but is capable of being interpreted as innocent activities of the petitioners rather than committing any offence. We have gone through the extracts from the enquiry report which have been made part of the complaint/report and we are satisfied that there is prima facie allegation of contravention of Section 17 of the Ordinance. When the SEC was making a complaint of fraudulent acts against certain companies and their directors on the basis of an enquiry undertaken by an expert Committee, a Court would be well-advised not to try to be more expert at the complaint stage because otherwise it will be an example of nipping the prosecution in the bud. We do not at all approve of the manner in which the revision petitions were disposed of by the learned Sessions Judge.

It was argued that the CMM acted wrongly in directing issuance of warrant of arrest all at once instead of issuing summons at the first instance. It was further argued that in the absence of list of witnesses and copies of complaint the order of issuance of warrant of arrest was violative of Section 204(1A)(B) CrPC. We agree with the reasons given by the High Court Division for rejecting these contentions. The learned Counsel before us have not put much emphasis on these contentions either for obvious reasons. As already stated their main submission was with regard to the competence and contents of the report on the basis of which cognizance was taken by the CMM. We would like to observe again that the learned Sessions Judge should not have given any importance to the above submissions because law permitted issuance of warrant of arrest and copies of complaint and list of witnesses were filed before him and no warrant of arrest was issued at all before the accused petitioners hurried to the Court of the Sessions Judge with revision petitions. They did not wait for any warrant of arrest to be issued but promptly appeared before the High Court Division on the next day and obtained anticipatory bail. Therefore, the objections as to warrant of arrest or absence of list of witnesses were but thin grounds to raise question as to the taking of cognizance by the CMM.

It is true that in criminal matters the accused should get all protection under the law but it is also important that the law should not be stretched too far so that big companies against whom serious allegation of foul play concerning national economy is being made before the Court by a statutory authority can themselves overtake the law by resourceful enterprise in raising ingenious contentions in order to frustrate the prosecution on the threshold. The Court must strike a balance. We are of the view that the learned Sessions Judge failed to maintain that balance which has been restored by the High Court Division.

At the same time we must say that there are some observations in the High Court Division judgement which cannot be supported and were better not to have been made. For example, it's observation as to 'report' as mentioned in Section 25 of the Ordinance appears to suffer from a confusion. The report mentioned in Section 190(1)(b) of the CrPC of Section 27 of the Special Powers Act is not the same as it has been mentioned in Section 25 of the Ordinance. The simple reason is that the 'report' as in the CrPC or Special Powers Act as aforesaid is not any other report but made by a police officer. The police officer upon investigation of a case submits report under Section 173 CrPC. It is not the same thing as in Section 25 of the Ordinance. There is no provision in the Ordinance that a report can only be made under Section 25 following an enquiry or investigation. Here the Ordinary meaning is required to be given to the word 'report' unlike a report field by a Police Officer upon investigation. The High Court Division is plainly wrong in holding that "it is clear when there is provision for taking cognizance on the basis of a report, such report must be prepared and submitted by a person authorised to hold enquiry or investigation." The High Court Division also completely went wrong in holding as follows:

"Had he (Executive Director) himself enquired into any allegation of contravention of the provision of Section 17 of the said Ordinance and prepared and submitted a report giving facts constituting the offence then the question of authorising him by the SEC would have arisen. He having not inquired and submitted any report in the matter and he having merely presented the extracts of the report of a duly authorised committee stating the facts constituting the offence, in our view, there was no requirement of the provisions of Section 25 of the said Ordinance to authorise him separately by the SEC and as such there was no violation of the provisions of that section in taking cognizance."

Except that there was a confusion in the mindset of the learned Judges as to the word "report" occurring in the usual criminal laws and as in Section 25 of the Ordinance which resulted in some unwarranted observations, we think the views taken by the High Court Division on other points were perfectly correct.

Before parting, we would like to observe that the reference made by the Sessions Judge was misconceived because he himself could set aside the order of the CMM which was actually prayed for.

All the petitions are dismissed.

Judgement signed by:

Sd/= A T M Afzal, CJ

Sd/= Latifur Rahman J

Sd/= M A Rouf J

Sd/= B B Roy Choudhury J

Rangamati: The Burden of Silence

by Sajjad Ahmed

EVEN the power of nature's silence can kill the soul. A tree in deep forest possesses the power to emanate extreme fear in a city man, while a tree in a city street is powerless of producing emotions to move even a teenager. Hill people have lived in deep forests, without God, but in such harmony with their natural surroundings that many others got too scared to leave them in peace. The path of confrontation of these others has been irrational, justified by herd ignorance, disguised by escapist dogmas and, armed with politics of the 'white ages'.

In 1715, Chakma Raja Jallal Khan signed a treaty with the Mughul rulers to preserve the former's independent status. The Mughuls allowed them self-governance, though revenue was paid from cotton and yarn. The Chittagong Hill Tracts (CHT) people even maintained their independent kingdom status under the British empire after the fall of the Mughul Empire, though Chakma warriors initially fought against the East India Company.

In 1947 Chakmas (along with other hill tribes people) chose to be a part of India (cf. from 15th-20th August 1948 Indian flag was flown in Rangamati Deputy Commissioner's office) but Honourable Sir Radcliffe decided their destiny along Pakistani lines. Pakistani rulers outflanked the insecurity of the then CHT People's Association as to whether their ethnic rights would be preserved in the new Pakistan State. An extreme example of the joyous outburst of politics is monumentally engraved by architectural splendour. In 1960, the 'beautiful' Kaptai dam was functional at the cost of submerging 400 square miles of sacred Buddhist city including 40 per cent of productive agricultural land. Even in 1998, not a single electrical bulb lit the deep dark dense forests of Rangamati, because of course 'they are used to it'! Violating the CHT Regulation 1900, Pakistan government settled several thousand Muslim families in Naniarchar, Langdu and Bandarban.

After 1971, Pakistani hatred towards India, though temporarily relieved, was substituted by Panchari killings of 5th December 1971. The framers of the Constitution consciously disregarded giving protection against violation of the rights of the Hill people. It is presumed that the farmers did not see the need of giving special attention to minority rights because 'guns and money' was never thought to be the 'order' of politics. Yet, as a show of respect and obedience to the then secular Constitution and the people of Bangladesh, Raja Manobendra Larma, elected representative, joined the Awami League. Only to go underground, after the birth of martial law regime through the barbaric murder of the Father of the Nation Bangabandhu (along with family), Shantibahini was born.

In Zia's regime, Hill Tracts was termed as an 'economic problem' (of course, natural reserves were not known). Army men are truthfully assertive. Major General Manzur summed up the whole ideology in his 1977 speech: 'We don't want you. You can go wherever you like. We want your land'. 200,000 Bengalis were injected in the area with awards of land and habitation assistance, although those who lost their lands from the consequences of the Kaptai dam were not properly compensated. Further, the ratio of military men in the area to tribal people was 1:5. One of the major atrocities in this period was that in Kolompati, 1980. Buddhist people were called to repair their temple. Upon their arrival at the temple premises Capt Kamal ordered his army soldiers to open fire on them without discrimination. 300 innocent Buddhists died without any sort of trial to date of the murderers. General Zia commented in the *Guardian* newspaper (29 July 1981): 'We are doing some wrong there.....We should, at least....ask them their demands'. Zia's life outlived his better visions.

Injection of Bengalis proved to be politically (un) productive even in Ershad's regime. Attacks and counter-attacks were easier to label as communalist encounters. By this time, the Constitution was defrauded to fully discard secularism. Secularism was expressly inserted in the original Constitution so that religion could not be used to further political motives of power and money as learned from 'past experiences'. In 1992, during BNP's rule, another 300 hill people were murdered and 587 of their houses were burned in one single incident.

Modernisation and Its Consequences

I

The sovereigns of Bangladesh are not the politicians themselves but the country's ordinary citizens (Art. 7 of the Constitution, still surviving!) but they are uneducated, hence ignorant of the fact and even of their abilities. Every elected government has owed their loyalty first to their party and secondly to the ordinary citizens i.e. the people of Bangladesh. When people are blind, puppetering is easily accomplished, because, for one, no effective demarcation is effectively possible when one is unaware of one's own nature. Traditional discourses are offensive when it costs human lives.

Every shift must have its proper time. Modernity was ushered in prematurely as capitalism flooded the indifferent consciences of policy makers. The adequacy of knowledge required to understand and take a decision was more discursive than practical. Rationality came too late to take responsibility for the unforeseen consequences. The incomprehensible and tempestuous modernity has created a distance between wo/men and nature that was not present in our culture, certainly at least in the Hill Tracts region.

The drive to fulfil oneself had opened the floodgates of unrestrained power. Even the order formed by check and balances can go disastrous if high degree of certainty is not present in one's own social goals, maybe because natural selection tends to supersede the social order. The formation and or coming of every new order or modification creates a cultural schizophrenia. It is similar to an organism's level of energy content. If the limit is exceeded it is destroyed/transformed. The organism adjusts itself to every new rise in limited energy level in itself. Socially, though I point out that there is no independent existence of any *cultural mind*, the incoming energy of modernity has a direct effect on the collective cultural mind. On the micro-level, whosoever is not prepared, but is highly influenced by the collective forces, for example, because s/he does not have effective concentrative boundaries, can have a shift in the level of consciousness. This shift can cause schizophrenia, which in most cases will find a new equilibrium to maintain itself or to re-adjust from the dis-equilibrium thus created. As a result, a new higher consciousness arises.

The new consciousness (relevant for the present writing) has, speaking nationally, have occurred in the hill people while the rest of Bengalis remain distinct. What I mean by this is simply that Chakmas (among other hill people) have had their collective cultural mind raised to a higher energy level relative to their own past before the Peace Treaty. While on the other hand, Bangalis remain not at a distance from their own selves to yet be aware of their own past exploitative side.

Thus in my view, the most significant separation between CHT people and the rest of Bengalis are *differentiated consciousness* in each of their collective cultural minds.

The political path pointed out in the introduction, is used only to emphasise that we, as Bangalis today, have emerged to devour the otherness in us, though as an ordinary citizen we remain unaware of the fact. If this line of reasoning is actually true, I conclude, that we shall only dig our own graves. The only alternative now is a distinction between our private and public lives.

Publicly we can be universal Bangladeshis. What this means is to have some basic rights not necessarily opposed to the international standards, while on the other hand, rights that derive from our own concept of justice, preserving our own diversity and, which is not made a weapon for our self-destruction.

One of the most important foundations, which ought to serve as an alternative to the progressive trend of self-annihilation, is language. Whatever form the public environmental interaction be, language must be evolved to accommodate space for diverse context sensitive interpretations for each actor. Though it is probably true that there can be no private language, it does not mean inability of having a different language in private life. It can be termed as *split cultural consciousness*, which we historically possess and the West do not (except by learning through colonisation), though failed to recognise so far. Recognition ought not to create enmity, but enrichment.

II

Adopting un-creatively from the West is founded on an unconscious biological attraction, which seeks satisfaction of one's own pleasure. It can be adversely utilised. Otherwise, a new social order would emerge from it. If we have no objection to it, it rests upon us to recognise and at least restrict ourselves from being indifferent to the exploitation that globalisation advances actually costs from our own impotent adoption of it.

Education is a prerequisite for knowledge to achieve a degree of potency of self-restraint especially in unpredictable times. Natural reactions must include a reflexive demarcation to superimpose and minimise chained proliferation of abuse if we are to socially evolve with rationality. Though it is not the time, but I would just like to point out that alongside Bengali and English, another language may open dimensions for creative wanderers, which might prove advantageous for Bangladesh.

If private life is demarcated and veiled from our public roles, peaceful co-habituating is possible. If we do not recognise that universalism in us now, then, when it eventually finds us, we shall have to bear much guilt on our shoulders. That will be the burden of silence, which we can no more tolerate with sanity.

Silence of Violent Blows

We have termed the indigenous people 'poor' so that we can make 'them' 'rich'.

Our 'richness' is thriving on our ever growing 'needs, productivity and growth', while on the other hand, they live their lives their own ways with 'modest consumption of natural resources', producing their own food without using 'modern fertilisers', sleeping in self-built houses of 'bamboo, timber and mud wall suited to local climate and ecology'. Their clothes are home-made and do not require our modern commercial productivity. Thus we have termed them a 'backward' community!

Our feel of superiority comes naturally and religio-culturally from our self-preservation and life proliferative drives. Thus we have automatically lowered the indigenous people from the equality status. Our ego disguises our domination and replaces with the group construct justification of sympathy if not outright moral obligations to 'better' them. Seen objectively, the ethnic minorities are now under a threat of losing their culture and, the ecosystem of Chittagong Hill Tracts faces disaster.

We have measured their culture, society, etc, with our own (and foreign) standards and found 'poverty' in every judgement. Though nobody requested for our judgements, we nevertheless thought it necessary to commence developmental work. Shiva notes that "This cultural perception of prudent subsistence living as poverty has provided the legitimisation for the development process as a poverty removal process."

Our developmental work includes USAID-imported 'food for work' programmes, military preference for barren hills, physical relocation of indigenous families for rubber and horticulture plantation etc.

Kabita Chakma and Glen Hill in their essay 'Thwarting the indigenous custodian of bio-diversity' rightly conclude that 'loss of authority and control over their land' has been preventing them from preserving their land and bio-diversity. Inclusive is the consequences that the indigenous peoples' cultural diversity hasn't only been devalued but is also decaying, they are beginning to be progressively more dependant on western technology and market economy, gradually being distanced from their 'natural environment'. As a rescuing alternative, the authors' suggestion, which is of crucial relevance even today, is that: "abandoning the western paradigm, and adopting in its place an indigenous paradigm as the framework for the indigenous community evolution". If we are to enrich ourselves, we must stop imposing our own cultural, political, societal structures on them in the guise of humanitarian services.

Restructuring Growing Structural Defects

Similar to an organism, no society can exist in stagnation. The progress must move through a balance, which will take the least toll. At any given time in history, there co-exists in any society, a number of social orders. The most important, and modern, of these is the order created by the legal system of a country. The laws help maintain this balance to steer social progress in the most efficient way.

Thus, the laws need to be progressively amended to take new decisions at hand. But to be efficacious laws must have a minimum content, which is not seen to disrupt the existing lifestyles of, at least, the majority of the people. Thus, the best and most just laws ought to be those, which does not interfere with religion and morals. Because for one reason, legislature regulated religiously linked laws can become very controversial. The latter should be left to the private lives of the people and the legislature should not be the guides of people's private lives. Therefore, the laws should be secular, though not intrusive for *any* religion. Instead, religion has been the most lethal weapon by which the people have been toyed with from the British period to the Pakistani rule.

Bangabandhu, and the framer's of the Constitution, expressly recognised this and acted accordingly to encode in the 1972 Constitution a complete prohibition of the trend. The martial law regimes gave a rebirth to the trend, and until today, our Constitution bears witness of the 'white seal'. The judges shifted their loyalty and in their judgement given on 4th January 1978, said: "The Constitution of Bangladesh, 1972, stands subordinate to the [Martial Law] Proclamations, Regulations or Orders as may be made..." The justification of legal revolution is not valid. Simple repeal of the Indemnity Act is a single example of invalidity of that excuse.

Conclusion

Progress brings with it its noises. Rangamati city is now increasing in non-biodegradable products, Babi taxis, toxic fumes, religious broadcasts, to mention only a few.

Raja Devasish Roy has cautiously termed the CHT Peace Accord a positive step. But there remain volatile issues to resolve. These include: the racial-communal friction between the indigenous people and military policed Bengali resettlement programme of 1979-80s, encroachment on forested lands by landless peasants, etc. Some regional critics think that in the near future the resettled Bengalis shall possibly outnumber the indigenous people, which might become a threat to the existence of the latter (who are less than one per cent of the Bangladeshi population). Another major insecurity lies in the denial of express constitutional recognition of the rights of CHT people. Thus a lack of constitutional guarantee leaves their rights vulnerable and at the mercy of any party with majority seats in Parliament and a different ideology.