Law and Our Rights

"All citizens are equal before law and are entitled to equal protection of law"-Article 27 of the Constitution of the People's Republic of Bangladesh

Women initiating *Talaq*

Tearing Away the Uneasy Bond

by Amina Rahman Chowdhury

REBECCA had an arranged marriage when she was 26 years old. After eight years of married life as she divorced her drug addict husband, she fell under the wrath of both her parental and in-laws end. Instead of being empathetic to her, everyone was more keen to criticise about her fidelity towards her husband.

Rebecca is one in thousand who despite being criticised are initiating *Talaq* to get out of the shackle of suffocating nuptial tie. Thus, the trend of the *Talaq-e-Tawfeez* is on the increasing lately.

In the '80's, a survey of a quarterly national vernacular magazine revealed a startling statistics. It indicated that almost 86 per cent married women would have preferred to dissolve their marriage, if they had a source of income to support herself.

At that time this raised eyebrow of many and thus the authenticity of that survey was challenged, the statistic was opposed vehemently at different level of our society.

But, within the span of a decade, there was a radical change in the social scenario. Women have come into the forefront of country's political and economic arena. They are now educated, skilled and exposed to the real world. So, to them, marriage now offers a different meaning, other than providing them social security and economic stability. They expect mutual respect, understanding, compatibility, and freedom. Any lacking in these, on the counterpart, often leads to termination of matrimonial contract.

The report of Dhaka City Corporation's Shalishi Parishad exposed that since last five years women were initiating *Talaq* more than men. The percentage of that is approximately 71 which, in a way, supports the trend revealed in that decade-old survey of the said quarterly journal.

Unlike Hindu and Buddhist family Law, Muslim Law permits divorce. *Talaq* is the broad Arabic term used in matters of dissolving marriage under Muslim Law.

The word *Talaq*, means repudiation; which comes from a term Tallaqa meaning "to release an animal from a tether": whence to repudiate the wife or free her from the bondage of marriage.(A.A.A.Fayzee)

The underlying principle of *Talaq*, in its original meaning, ruled for quite a long period and in that, man enjoyed unlimited power to give *Talaq*. As Baillie (208 and 209) states, "Any Muslim of sound mind who has attained puberty, may divorce his wife whenever he desires without assigning any cause". The woman did not have much say but to submit themselves into the feudalistic approach of their partner.

Muslim law has undergone much evolution through the years and a number of learned Muslim jurists interpreted the Shariah. Outcome of their research introduced, - since marriage is a civil contract under Muslim Law, then both the parties must be empowered to repudiate it.

The Muslim Family Ordinance, 1961 has given a statutory recognition to *Talaq-e-Tawfeez*. Earlier women were given a limited power to initiate a divorce to her husband, under certain conditions provided by the Dissolution of Muslim Marriage Act 1939. The Act laid down a number of grounds of divorce such as, when the whereabouts of the husband is unknown for a period of four years or more, or failure of husband to provide maintenance for a period of 2 years or more etc.

But the Muslim Family Ordinance, 1961 provided the wife to exercise her power to divorce freely and to extend the horizon of her liberty in the society. As per the provision of section 8 of the said Ordinance, where the right to divorce has been duly delegated to the wife and she wishes to exercise that right ... notice, penalty for default, arbitration, conciliation and effectiveness of *Talaq* shall so far as applicable, will apply.

Apart from that, women can initiate to dissolve her marriage by *Khulaa Talaq* which is a kind of agreement between husband and wife that they will dissolve the marriage with some conditional payments..

The Law Officer and the President of Shalishi Parishad of Dhaka City Corporation, Mr. M S Karim Khan said — the case of *Khulaa Talaq* is very rare, out of 100 *Talaq* cases, only about 2 of them are *Khulaa Talaqs*. The women pervasively use the power of *Talaq-e-Tawfeez*. And one cannot specifically identify the reasons of its increase in last 5 years. One of the prime reasons could be the women empowerment. They are now more confident to face the world. They are initiating *Talaq* for very many reasons, from complex extra marital affairs of husband even to a flimsy reluctance to adjust with the party. He revealed another startling fact, pointing that, women of lower class are also using their delegated power to divorce. May be less than the educated middle class, or the upper class, but they are also aware of their rights. Since they have joined the workforce and capable of maintaining themselves, they prefer to live a peaceful and independent life while supporting their parents. For quite sometimes our male dominated society misinterpreted the legal provisions and kept women in the dark, regarding their entitlement to dower in case of *Talaq-e-Tawfeez*. Which in different cases restrained the women to seek *Talaq*.

While talking to **Barrister Tania Amir** she projected light on a very fundamental ground.

According to her, the prime reason women initiating *Talaq* can be the women empowerment. As they are no more confined within the four walls, but more openly facing the outside challenges and achieving economic independence. They can now make a decision to live independently.

The second reason is, in a way, concomitant with the first

one. Women in our country have been subjected to domestic violence for various reasons, number of these are related to dowry and infertility. In this changing world, as they can have a second consideration, they are choosing an option to break qualm of the vicious circle and live a peaceful life.

Apart from that a women was not allowed to give *Talaq* if the delegated power was not expressly mentioned in the *Nika Nama* or Marriage Contract Document. If no such power to give *Talaq* is expressly delegated in Nika Nama, even then the wife can file a suit for dissolution of marriage under Family Court Ordinance, 1985. Now, it has become a practice to entitle the women with power to *Talaq* whether specifically mentioned or not.

Besides, there was another misconception regarding the payment of dower money. Except for the *Khulaa* (redemption) *Talaq*, which is a form of *Talaq* at the wife's instance and with her consent to give a consideration, where she surrenders her dower money to get out of the wed-lock only then the husband is released from paying the dower. Except this, under the statutory law a wife is always entitled to dower money after *Talaq* whether it is initiated by her or not.

While discussing the reason of such excessive use of power to Talaq and its after effect **Dr. Saira Rahman Khan, member, Executive Committee, Odhikar: A Coalition for Human Rights said.**

"The institution of *Talaq-e-Tawfeez* has given women wider opportunity to come out of a marriage. A Muslim marriage is a contract between two parties and like all contracts, it too can come to an end when necessary- amicably or otherwise. However, I do not think any woman in a happy, well adjusted atmosphere would suddenly ask for a divorce. Women have more asthetic sense than men and are strong enough to create their own little worlds and survive all sorts of stormy weather. The recent Dhaka City Corporation statement and statistics which show that a majority of divorces in the last few years have been filed by or on behalf of women in Dhaka city is probably due to the fact that by having jobs and being one of the earning partners in a family, women have learned to become economically independent and need not lean on the husband for monetary support.

This has enabled them to leave turbulent marriages knowing that they will be able to survive financially. The social aspect, however, is a different picture. Divorcees are still a topic of social gossip and a woman who initiates her own divorce is still regarded as 'fast', 'loose of character', etc. Furthermore, religious obscurantists have also played their part in denouncing divorce and are one of the reasons why society still thinks this subject taboo. These obscurantists forget that Divorce is allowed by Islam. Even though *Talaq-e-Tawfeez* is not directly derived from Quranic teachings, it is a product of fair and conscious *Ijmaa* and *Qulas* — sources of law which are allowed by Islam to flow with the modern times. As for the effect of divorce on children, I do not believe all children from broken families end up being unbalanced, confused, social misfits. Would it not be better for them to see their parents separate and happy rather than together and violent?"

Dr. Shamim Karim's opinion was somehow different. She is the Professor of Psychology Department, Dhaka University. According to her, an educated capable woman should not submit herself to tortures and noose of a troubled marriage. But, that also does not mean that a woman would initiate a divorce without developing adjustment and compatibility power.

She said no matter how much progressive a woman may be she has a separate and a distinct role to play to keep her family together. Repudiation is very easy but to maintain a relationship needs a lot of effort. She opined that the power of tolerance has decreased and that could be one of the reasons why women are initiating divorce.

She termed the trend as alarming and expressed her fear that it might cause a negative impact on the mental development of the children involved. A disturbed relationship between father and mother can no doubt cause negative impact on a child. But a distorted and separated family may cause even more complications in a child's mental structure and personality. Specially, when the trend of single parent is not well established and well-accepted in our country.

There may be some unfolded matters, for which women are initiating Talaq. Till now one of the main reasons of Talaq remains the torture — mental as well as physical. Men still discriminate women and unwilling to give their due respect. They still treat women as the weaker sex and pose as a feudal lord. The more women are enlightened and accomplished, they are contriving to achieve their rights and establish their appropriate place in the society. If their counterparts do not treat them accordingly, trend of women initiating Talaq may become more frequent, alarming and can lead to a social disorder.

Children's Magna Carta Facing Daunting Challenges

A.H. Monjurul Kabir writes from UK

HERALDING the arrival of a new era in the development of children's rights, in 1989 the United Nations General Assembly, without a dissenting vote, adopted the Convention on the Rights of the Child (CRC). The adoption of the Convention, signalled the international community's approval of a statement of children's rights, which in many respects, is considerably ahead of municipal standards prevalent around the globe. Thomas Hammerberg former Chair of the UN Committee on the Rights of the Child, maintained, "The line between visions and clichés is usually thin, but the principles in the Convention do make sense... Together they make a new attitude towards children... a global movement is being built." This groundbreaking culmination of a long international campaign was even signified as a 'Magna Carta for children'. The Convention entered into force in September 1990, just over six months after its signing ceremony and attains almost universal ratification within 8 years. Bangladesh was one of the first countries to ratify it. Such global endorsement is unprecedented for a human rights treaty and can be viewed as a major step forward in the recognition of the children's rights.

All the states except United States of America and Somalia now agree to guarantee the rights enunciated in the Convention by undertaking all appropriate legislative, administrative and other measures required for their implementation. World support for the Convention will not be meaningful unless the Convention's standards are complied with. Like other UN human rights treaties, the convention contains an identical implementation system. Article 43 establishes the 'Committee on the Rights of the Child' of independent experts much like those created by other UN conventions. According to Article 44, States Parties must submit to the Committee periodic reports on the status of the children's rights in the respective countries and their endeavours of complying with the Convention standards.

The Challenges

This implementation approach of the Convention to its guaranteed rights faces the same problems as the other human rights conventions. Moreover the comprehensiveness of the Convention (as it aims to cover civil, political, economic social and cultural rights in a holistic approach) and its almost universal ratification make this a formidable task. The magnitude of the rights aimed at and their distinct implementation strategy occasioned real challenges before the Committee on the Rights of the Child. It has already been overburdened with the backlog of states parties' reports.

Another difficult problem of implementation is reservations to the Convention made by its states parties. In fact the impressive support for the instrument is regrettably mitigated by the reservations. Reservations limit the scope of the instrument, which has had the effect of diminishing the protection of the individuals intended to be covered by the Convention.

This series, attempts to analyse primarily the distinct challenges of implementation faced by its treaty body the Committee on the Rights of the Child. It discusses the impact of other practical limitations of its monitoring mechanism. Finally, it examines some possible means to combat the challenges it had faced in its first decade (1989-1999).

The Implementation Regime of the CRC

Rights are only effective when implemented. Effective monitoring of the implementation of the Convention's provisions is a *sin qua non* for making the Convention a truly living document. The unique success of the convention has led to an increased burden being placed on monitoring provision. Generating more respect for children and thus improving their living condition is described in the Convention as a continuous task.

The international community has paid attention to monitoring quality requirements in the Convention on the Rights of the Child itself. Article 43 enumerates the monitoring role of the Committee on the Rights of the Child. The aim is to provide an international mechanism for monitoring progress on implementation of the Convention for the "purpose of examining the progress made by states parties in achieving the realisation of the obligations undertaken in the... Convention." Article 44 broadly sets out the obligation of the States Parties to the Convention to report to the Committee within two years of ratification, and then every five years. It now becomes a binding practice that state parties do not need to submit information, which they have already provided. States are expected in each periodic report to address matters raised by the Committee in its earlier sets of Concluding Comments. From the experience of the previous years, it appears that states tend to submit albeit unrealistic and somewhat overly optimistic picture of their own laws and administrative practices and the Committee is very often not in possession of the information to counter such claim.

Several underlying reasons, not uncommon to other UN human rights bodies, contribute to the problems. Members of the Committee work on an almost voluntary basis, they all have their full-time professional involvements in their respective countries. Besides, there is hardly any scope for the Committee to conduct its own research. The Committee meets three times a year for sessions of four weeks, which is also inadequate to dispose of all its remaining tasks. As of June 1999 the Committee had received 133 initial reports and 23 periodic reports, it could consider 102 reports. The Committee is already running almost four years behind. As a consequence of this limitation, it can not exert it pressure on truant states parties.

The implementation mechanism is that of reporting combined with the provision of technical advice and assistance and not the reception of individual complaints. Though attempts were made to incorporate an individual petition system coupled with a reporting process into the Convention but failed to gain due support because of the clear lack of interest among the negotiating states. In recent years some discussions has been taken place at the Committee level on the possibility of drafting an optional protocol to add such a provision. The prospect of such initiative is slim, as many states are not interested to consider an international forum to resolve domestic disputes involving the rights of children.

Still a Distant Reality?

Never in history has so much attention been paid to children's rights especially from the last two decades of the 20th century. This can, for instance, be illustrated by the World Summit for Children, which brought together seventy-one Heads of States and Prime Minister in order to put children's rights higher on the agenda for the next decades. This growing recognition and popularity of children's rights, however, is not free from danger of becoming a fashion" What James P. Grant, former Executive Director of the UNICEF dreamt of the principle that the lives and normal development of children "should have first call on society's concerns, will hopefully affect the course of political, social and economic progress in all nations over the next decade and beyond" are still a distant reality.

On Independence and Separation of Judiciary

by Adilur Rahman Khan

THE functioning of democracy largely depends on the independence of Judiciary in any State. A Judiciary is independent when it is free from all external pressures and totally separated from the Executive organs of the state. The Constitution of Bangladesh was enacted with unbelievable speed and without any national consensus. The framers ignored the aspirations of different power blocs operating in the newly independent country. That the Judiciary shall oversee the conduct of the Executive in discharging its responsibilities, was also ignored.

Whatever democracy and independence of judiciary contained in the Constitution, at the time of its enactment, was lost on 25 January 1975 when the 4th Amendment of the Constitution was passed in the first Awami League dominated Parliament. This was done within the course of a few minutes, without any deliberation or debate on the subject. The Amendment drastically changed the Constitution by introducing a system of constitutional autocracy in the name of BAKSAL. The representative character of the local government was abolished and independence of the Judiciary was cut down by the amendment of Articles 115 and 116. Mr. Justice Shahabuddin Ahmed (as his Lordship then was) in Anwar Hussain vs. Bangladesh (1989 BLD (Spl) 1 at page 139), which is popularly known as the judgment of the 'Eighth Amendment Case', clearly gave a description of the drastic surgery carried out on the Constitution of Bangladesh. In his judgment, his Lordship said:

"... The Constitution Fourth Amendment Act, dated 25 January 1975, changed the constitution beyond recognition in many respects and in place of a democratic parliamentary form of Government on the basis of multiple party system a presidential form of Government authoritarian in character on the basis of a single party was brought about overnight hereby. Fundamental rights to form free association was denied, all political parties except the government party were banned and members of Parliament who did not join this party lost their seats though they were elected by the people. Freedom of the press was drastically curtailed; independence of the judiciary was curbed by making the judges liable to removal at the wish of the Chief Executive; appointment, control and discipline of the subordinate judiciary along with Supreme Court's Power of superintendent and control of subordinate courts were taken away from the Supreme Court and vested in the government. The change was so drastic and sudden, friends were bewildered, enemies of the Liberation had their revenge and the critics said with glee that it is all the same whether damage to democracy is caused by democratically elected persons or by undemocratic means like military coup."

The Judiciary in Transition

The subsequent martial law governments became the beneficiaries of an enfeebled Judiciary, the handiwork of the previous regime. Judges of the martial law era exercised their authority in such a way that citizens felt that they were less powerful in respect of defending the Constitution and protecting peoples' rights than some officers sitting in the martial law courts. The judgment in Halima Khatoon's Case is one of the blatant examples of such subservient attitude displayed by such responsible people. In the judgment of this case, it has been clearly stated that 'martial law is the supra law and the constitution should not contest with that'. This judgment was followed by many other judgments of this kind collectively representing a dark era of the history of judiciary.

Few attempts were made to reassert the Judiciary's independence. The most notable and successful example of this, remains in the judgment of the Eighth Amendment case (Anwar Hossain Chowdhury vs. Government, Jalaluddin vs. Government, Ibrahim Sheikh vs. Bangladesh). By this judgment, the amendment of Article 100 of the Constitution — which created six permanent Benches of High Court Division — along with consequential amendment of Article 107, was held to be ultra vires and invalid. This judgment laid down the theory of basic structures of the Constitution.

The Case for an Independent Judiciary

The Joint declaration of the 5-Party, 7-Party and 8-Party alliances on 19 November 1990, gave outlines for the stepping down of the military regime of General Ershad. Justice Shahabuddin Ahmed, the Chief Justice of Bangladesh, became the President of Bangladesh on 6 December 1990 on the basis of national consensus and the guidelines given by the aforesaid three alliances. He formed a caretaker government to hold general elections within a period of 3 months. General elections were held on 27 February 1991 with great possibilities and expectations for strengthening democracy and democratic institutions by making the same as participatory as possible for the people of all walks of life and to give the people a real taste of political democracy and a vehicle to change their life for the better.

Within a short period people realized that in the name of democracy, the traditional system of urban dominated new rich people, with the help of black money and goons, took over the power to control the poor and marginalized people in the periphery further denying their access to the system.

Independence of judiciary was further curtailed by the amendment of Articles 115 and 116, which brought the subordinate judiciary under the control of the Executive for the purpose of appointments and service regulations-without any say from the Supreme Court.

Separation of Judiciary — What it Means

The concept of 'separation of judiciary' is derived from the theory of 'separation of powers'. This means that the three organs of the state, the Executive, the Legislature and the Judiciary should exercise their powers separately and effectively, enforce checks and balances in all respects, where judiciary should act independently as the custodian of the Constitution, as the final place for protecting and enforcing the rights of individuals in particular and common people in general.

Actual separation of judiciary practically means that the judiciary should be independent in all respects including the exercise of its judicial functions; appointment, promotion, posting, and disciplining of the persons employed therein. Furthermore, the Supreme Court should have effective control over it all.

Article 22 of the Constitution of Bangladesh (one of the Fundamental Principles of State Policy) states:

"The State shall ensure the separation of the judiciary from the executive organs of the State". It could be that, due to practical realities (the difficulties which all newly independent countries are first faced with regarding governance), the framers of the Constitution kept the provision of separation of judiciary within the section on Fundamental Principles of State Policies. However, it appears that the framers stopped short of providing provisions for a totally separate and independent judiciary. Unfortunately, all the governments of the past as well as the present in power had always ignored even this principle regarding the separation of judiciary.

Although the higher judiciary in Bangladesh is enjoying some independence from the Executive, the situation of the subordinate judiciary is totally different. The judicial magistracy is still under the direct control of the Executive. There is no doubt that the higher judiciary is independent in respect of exercising its judicial functions, but the theory of separation of power is not followed in respect of appointment of judges in both the Divisions of the Supreme Court.

Moreover, our bureaucracy is very much opposed to any kind of separation. A Bill was introduced before the Fifth Parliament in this regard for separation. This was sent to the Parliamentary Committee for scrutiny. The Committee failed to submit any report after several meetings and ultimately it was not placed before the Parliament for consideration - as a vested interest group did not want it to be placed. Bureaucrats have always played a negative role against such separation and the interests of successive governments have coincided with that of the bureaucrats in this regard.

The "official" position of the establishment and bureaucracy is that, if the Judiciary is totally separated from the Executive, then running of administration would become difficult, and the law and order situation will deteriorate. They want both the powers of the Executive and the Judiciary to be exercised by the same person who will consider the political and administrative factors in disposing the matters before him/her. He/she will be more careful in respect of granting or rejecting bails. This view has already been proved as baseless and ill motivated. This is because the administrative magistrates performing the judicial work can never be neutral in dispensation of justice and therefore in most cases will deliver biased or dictated orders. Whereas elsewhere in the South Asian region, i.e., in India, Pakistan and in Sri Lanka the judicial magistracy has already been separated from the executive organs of the government. Bangladesh has yet to follow the same. If the separation of Judiciary can take place, then magistrates would be able to give more time to their administrative functions with greater energy and dedication.

Recruitment of Judges

In respect of the recruitment of judges, there should be a separate Judicial Service Commission which is different from the Public Service Commission and it will only be entrusted with the job of recruiting judicial officers. Apart from recruiting judges by creating a totally separate cadre service, there should also be judges who are recruited from promising lawyers, which only happens in respect of the judges of the High Court Division. This practice needs to be extended down to the District Judges level — and may be by direct appointment up to the level of Appellate Division.

However, it is not only lawyers and others who could be recruited into the judicial services as judges. Academicians who have shown their extraordinary qualifications may be recruited as judges as well, on the basis of their merit and performance. This is practiced in Germany and in the United States of America.

Masdar Hossain's Case: A Plea for Reform

In the recent case of Md. Masdar Hossain and 441 others vs. Bangladesh and Others (Writ Petition No. 2424 of 1995), the Judges of the Subordinate Courts agitated the issue of independence and separation of judiciary with the question of their pay scales and the forum for their grievances. In this instant Writ Petition, Mr. Justice Md. Mozammel Hoque and Mr. Justice Hassan Ameen the Judges of the High Court Division of the Supreme Court, in their judgment and order mentioned that, "the provisions of separation of judiciary are already there in the Constitution itself and it is to be implemented or carried out or given effect to only by making rules under Article 115, and enactment if it is so necessary. We further hold that the Supreme Court shall have overall control, supervision and management over the Subordinate Courts along with the Judicial Magistrates and the Executive will have no control, supervision and management over the same in any manner whatsoever".

In their judgment the Judges also mentioned, "Article 109 provides that the High Court Division shall have superintendent and control over all Courts and Tribunals subordinate to it ... So according to this provision of the Constitution, it appears to us that the Courts and Tribunals subordinate to the High Court Division are under direct control and supervision of the High Court Division in all respect and as such no further Constitutional provision is necessary to bring the Subordinate Courts under the supervision and control of the High Court Division".

In this instant case the Judges ordered that, "the present petitioners and other judicial officers are not required to go to the Administrative Tribunal for redress of their grievances". They further ordered that, "all the judicial officers of Bangladesh i.e. all the Judges of the different Courts from the Assistant Judges to the District and Sessions Judges are not required to go and submit before the Administrative Tribunal for any grievance or relief with regard to their service conditions and all other matters including punishment of any kind in as much as the Courts are not Subordinate to the Tribunal and the said Judges and magistrates performing judicial functions shall be guided under Article 115, 116 and 116A of the Constitution and according to our findings (made above)".

In the said case the High Court Division commented on Article 22 of the Constitution as follows; "This Article No. 22 was not meant for beautifying the Constitution as an ornament, but the will of the people was intended to be implemented within a reasonable time and this period of 25 years from independence is definitely a reasonable period to implement the cherished will and desire of the people..."

Although the Government did not contest the Writ Petition No. 2424 of 1995, they preferred an appeal before the Appellate Division of the Supreme Court of Bangladesh being the Civil Petition No. 788 of 1997. The Appellate Division of the Supreme Court, after hearing submissions from both the sides, partly accepted the position taken by the High Court Division of the Supreme Court in the case of Md. Masdar Hossain and others vs. Bangladesh and others. The full text of this judgment has not been made available as yet.

The Appellate Division has taken further notice of the significance of the fundamental principles of the state policy of the Constitution in the judgement given by Mr. Justice B. B. Roy Chowdhury, in the case of Dr. Mohiuddin Farooque vs. Bangladesh:

"Part II of it embodies the Fundamental Principles of State Policy, Article 8(2) mandates that the principles set out in this Part shall be fundamental to the governance of Bangladesh, shall be applied by the state in the making of laws, shall be a guide to the interpretation of the Constitution and of the other laws, but shall not be judicially enforceable. Among other things, Article 11 is to the effect that the Republic shall be a democracy in which fundamental human rights and freedoms and respect for the dignity and worth of the human person shall be guaranteed. Article 14 and 15 state that, it shall be a fundamental responsibility of the State to emancipate the toiling masses the peasants and workers and through planned economic growth, a constant increase of productive forces and a steady improvement in the material and cultural standard of living of the people, with a view to securing to its citizens the provision of the basic necessities of life, including food, clothing, shelter, education and medical care; 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 such cases. Articles 16,17,18 and 19 likewise impose a duty upon the State to adopt effective measures for rural development and agricultural revolution, free and compulsory education, raising the level of public health and morality and ensuring equality of opportunity to all citizens. Under Article 21(1) it is obligatory for all citizens to perform public duties and to protect public property. They are not merely programs for socioeconomic development of the people, but much deeper in content. They firmly recognize human sensitivity for fellow-citizens and State responsibility for protection of human rights enshrined in Article 1 of the Universal Declaration of Human Rights (to which Bangladesh is a signatory) that 'all human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.' "

Indicating the role and the power of the Supreme Court his Lordship further pronounced that,

"In order to ensure that the mandates of the Constitution are observed the High Court Division of the Supreme Court is vested with the power of judicial review under Article 102 which is contained in Part-VI of the Constitution. The power is wide enough to reach any person or place where there is injustice."

It is apparent that judicial independence is totally dependent on the separation of the Judiciary from the Executive.

The writer is an advocate of the Supreme Court of Bangladesh.