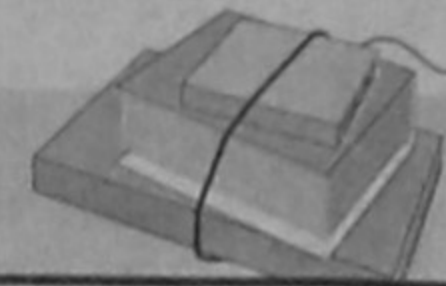
REVIEWING *the views*HUMAN RIGHTS *monitor*

# Unacceptable tax avoidance

NAZMUS SALIHEEN

THE citizen of a state use the state resources for his livelihood and business and pay tax for it; in exchange of the tax the state provides them with secure place of livelihood and business and also provides them with an assurance of good governance, rule of law, protection of fundamental rights, com-

ample opportunity to avoid his tax liability as per legal provisions.

Individual citizen can avoid individual tax by creating association, firm or any corporate body; he can take credit of his insurance, contribution to his provident fund, purchase of technical books, donations to any charitable organisation or to Zakat fund, day-to-day expenditure etc. For the corporate world they can avail

illegal extent, where it becomes illegal tax evasion.

Legal tax avoidances become illegal evasion only when the people illegally avoids taxes, fails to report, or reports inaccurately the statement of his assets. That means only the deliberate misstatement of assets could amount to be an attempt to evade tax.

In short the facts which are to be proved to bring an allegation for tax evasion are first: That the person owned substantial income in addition to that declared in his tax return; and second: That the person knowingly and willfully attempted to evade or defeat such tax.

Law can deal with these phenomenon with satisfactory certainty; but what happens, where the phenomenon can't be defined as deliberate misstatement by the assessee rather a deliberate attempt to avoid tax with the help of legal tools and the end result of that attempt is unacceptable because of its impact on the tax structure. This grey area between tax avoidance and evasion can be defined as 'unacceptable tax avoidance'.

Unacceptable tax avoidance is a phenomenon which is legal but unacceptable and should be avoided for the state interest.

If an individual tax payer is possessing properties out of a country or someone is holding some of his property on his behalf, he can be charged under the existing anti-corruption and anti-money laundering measures; but what happens when an individual over-under-pricing property at the time of registration or documentation and thereby evade tax or whiten black/undisclosed money?

This area is simply complicated in corporate field. One can shade his tax liability by using the loophole of corporate structure system; this structure, among others, gives the corporate body an

opportunity to run business in one venue and show sell in or shed the profit to other lower tax-rate venue. Some of the foreign investors are over-invoicing their intermediates, imported from related companies and under-pricing at exports just to record a loss and escape taxes. Manipulation of the company account and audit has already attained the label of common practice; they are manipulating their sell records, declaring the product at low price and so and so on. Under ordinary circumstances these are being considered as acceptable and getting its recognition as 'legal'.

Documentarily the phenomenon is legal but illegal in its spirit as the documents are not telling the truth of its content and thus should be considered as illegal; even though this can't be tagged as illegal.

This tool of 'documentary truth' helps the assessee to hide some of his asset which remains out side the revenue structure. The money is actually flowing in the state economy but the state is being deprived from getting the benefit of that money just because those are non-existent in the revenue structure, this money is called black/undisclosed money.

The unacceptable tax avoidance is the inventor of black/undisclosed money and pushes the state economy towards manipulated liquidity crises. If we need to get hold on black/undisclosed money we need to get hold on the unacceptable tax avoidance through getting hold no the individual entities of the tax structure the assessee, the mediators, the tax administrators and the auditors. Otherwise every effort to get hold on the actual revenue of the country will be proved to vain.

Barrister Nazmus Saliheen is Chairman ANM Associates.

## Sri Lanka: IMF should not condone abuses

Government should address human rights problems before receiving \$2.5 billion loan

The government continues to hold displaced persons in detention camps in violation of their rights to liberty and freedom of movement, limiting their ability to communicate and talk to others about what happened in the final stages of the war.

MEMBERS of the International Monetary Fund should insist that the government of Sri Lanka address significant post-conflict human rights abuses as part of the approval for a US\$2.5 billion stand-by loan, Human Rights Watch said. The IMF board is expected to vote on the stand-by arrangement. The proposed loan has created intense controversy because of concern over Sri Lanka's serious violations of international humanitarian and human rights law.

Two months after the end of the 25-year-long conflict with the Liberation Tigers of Tamil Eelam (LTTE), the Sri Lankan government continues to hold more than 280,000 people, almost all of them Tamils displaced by the fighting, in detention camps in violation of international law. The government also severely restricts access to the camps by humanitarian organizations, the media, and independent monitors, leaving the displaced vulnerable to government abuse.

"To approve a loan, especially \$600 million more than the government even asked for, while they have hundreds of thousands of people penned up in these camps is a reward for bad behavior, not an incentive to improve," said Brad Adams, Asia Director at Human Rights Watch. "The IMF needs to change its approach."

Key IMF members have raised concerns about the loan and condemned Sri Lanka's treatment of the displaced people on numerous occasions. In mid-May, the US secretary of state, Hillary Clinton, said that it was "not an appropriate time" to consider an IMF loan to Sri Lanka. The UK foreign secretary, David Miliband, said, also in May, that "it is essential that any government is able to show that it will use any IMF money in a responsible and appropriate way... I don't think that that's the case here."

In a statement issued on July 20, however, the IMF announced that it had reached staff-level agreement with Sri Lanka on the loan and that the executive board will vote on the loan on July 24. The \$2.5 billion proposed loan is \$600 million more than the \$1.9 billion originally requested by Sri Lanka in March. If the loan is approved, the stand-by arrangement will allow Sri Lanka to obtain about \$313 million immediately and the balance over 20 months.

In the July 20 statement, the IMF managing director, Dominique Strauss-Kahn, said that the loan would help Sri Lanka rebuild its international reserves, reduce its deficit, and support post-war reconstruction efforts in the war-affected north.

Current government policies, however, in failing to respect human rights standards, threaten post-conflict



reconstruction, reconciliation, and stability, and thereby undermine the purpose of the loan, Human Rights Watch said. The government continues to hold displaced persons in detention camps in violation of their rights to liberty and freedom of movement, limiting their ability to communicate and talk to others about what happened in the final stages of the war. It prohibits aid agencies from speaking out about poor conditions in the camps and expels critics. Persons suspected of having LTTE ties have been detained incommunicado, contrary to international law, and credible reports indicate that at least some have been mistreated.

The government has blocked all attempts to establish accountability for violations of international humanitarian law during the conflict. Government officials have failed to investigate attacks on journalists and civil society activists and have instead accused them of being in league with the LTTE, equating dissent with treason.

Following the defeat of the Tamil Tigers in mid-May, Sri Lankan military leaders announced plans to expand the size of the army substantially, from 200,000 to 300,000 troops. In addition, the government's policy of confining all internally displaced persons to detention camps means that they are not able to work, and the government or humanitarian organizations must provide for all of their needs. The camps are costing, by one organization's estimate, more than US\$400,000 per day. Human Rights Watch said that IMF members should question the government on how it intends to finance these policies while addressing its critical budget shortfalls.

"The IMF board of governors should make the release of each new tranche of funds contingent on tangible human rights progress," said Adams. "Allowing people to choose for themselves whether to stay in the camps and full access for independent monitors should be minimum benchmarks."

Source: Human Rights Watch.



munication, international relation etc and the citizen are being and doing business on the basis of this every assurance. This is a circular system; in absence of one the other can't be assured.

Every citizen is under an obligation to declare his assets correctly and pay tax for that but has

the opportunity of tax holiday, double taxation treaties, tax rebate and exemption in different heads, the list is not exhausted.

The tax avoidance within legal ambit is not blameworthy rather it could be practiced as of right; which is blameworthy is an effort to shade the tax liability to an

LAW *campaign*

## Handloom laws to empower the Tantis

S. M. MASUM BILLAH

THE weavers are a community preserving the handloom heritage of Bangladesh. They propel a handsome portion of national economy, retains the signifier of native culture, either ethnic or Bengalee. But this industry, the pivotal source of cloth supply to the teeming millions of Bangladesh from time immemorial, is now on the brink of extinction. The Bangladesh Handloom Census Report 2003 reveals that the operational looms in 1990 were 347214 while it reduced to 31185 in 2003. This is certainly not an encouraging picture. The economic depression & natural calamity has added a fuel to the situation culminating hundreds of looms in-operational.

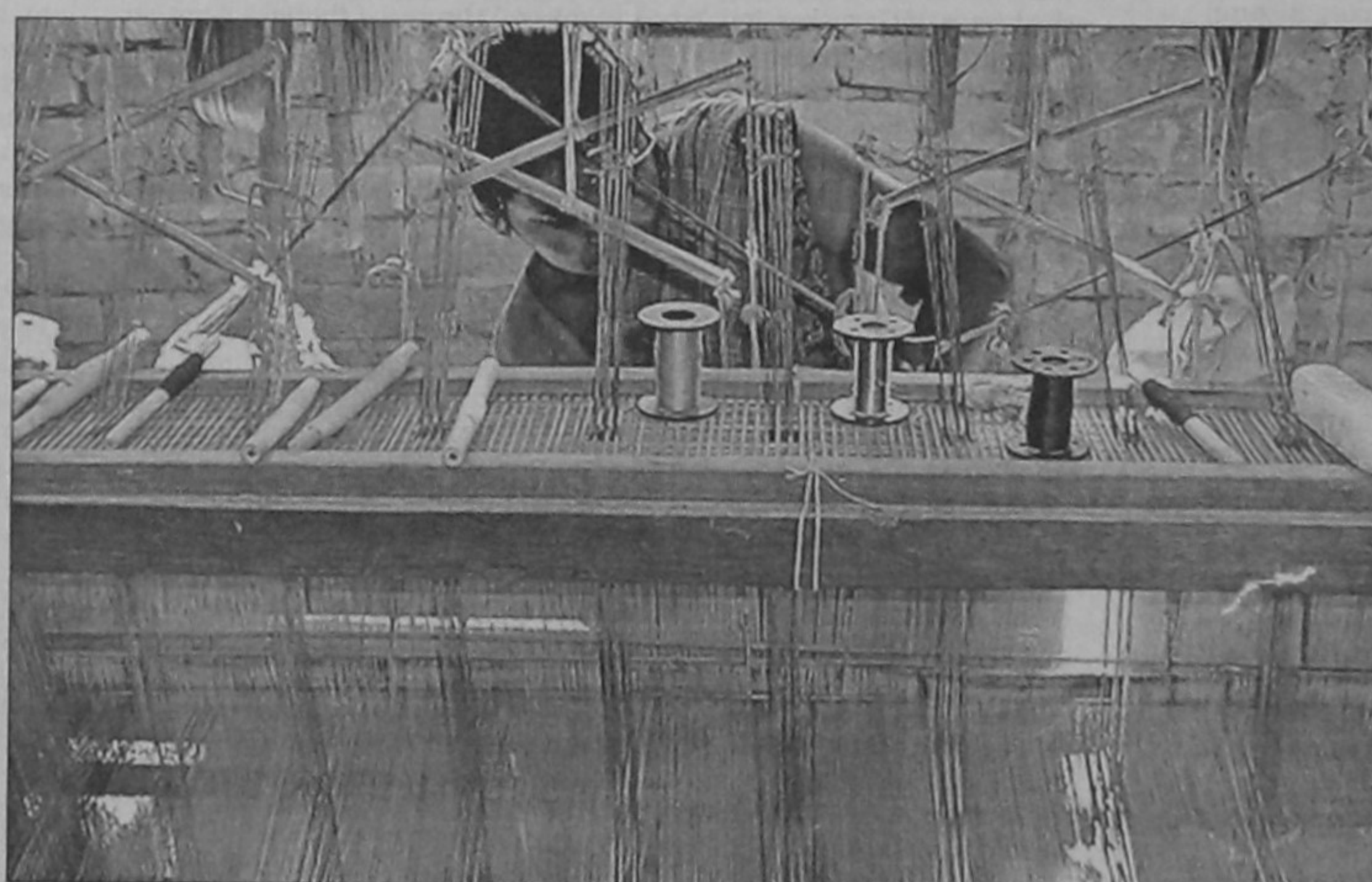
Inefficient administration by the government machinery and their lack of foresightedness, among other things, not only contributed to the failure of the policies but also complicated the situation. The threshold of globalization has posed a serious threat to the tant industry. Arguably, it deserves special concentration in terms of policy formulation, law making and community development.

Bangladesh Handloom Board Ordinance, 1977 defines handloom as "a weaving device operated manually for production of fabrics other than 100% silk or art silk and includes the following types of looms falling outside the scope of the Factories Act, 1965 a,

Shuttle pit loom including carpet loom and tape loom b. Fly shuttle pit loom c. Fly shuttle pit loom d. Semi-automatic of Chittaranjan loom e. Hattersley's loom f. Special types loom used by tribal people g. Cottage loom that is power loom up to three unit located in household and driven by power f. any other loom which is operated in household for production of heavy or light fabrics." The definition apparently engulfs wider amplitude no doubt. But the definition needs to be revisited in the changing circumstances.

Bangladesh Handloom Board (Amendment) Act 1990 in its justification paragraph had stated that the handloom industry is providing 63% of the clothing produce in the country. However, some recent newspaper study discloses that this contribution has shrunk to 43% over the years. About 15 lakh people (9 lakh as per New Nation report of September, 2007) directly or indirectly are engaged in this sector. Distributive justice has been an utter failure in case of impoverished Tanti community as a whole, as because from 1990, a considerable time has elapsed exhibiting a tremendous transformation in economic life of the Tantis. A process of structural dualism can be found in regulating the sector. It is held captive by a class of exploitative intermediaries, who left little surplus to the weavers for upgrading Tant technology.

The presence of such 'exploitative intermediaries' contradicts the constitutional oath of found-



ing a society 'free from exploitation'. Growth of the handloom industry is now under threat particularly from a reactivated power loom industry and the rampant growth of smuggled fabrics from India is driving the industry as a whole to the point of attrition. While urge from different segments of the society to rescue the Tantis from being impoverished has remained largely a 'rhetorical protestation', it is submitted that a revitalization and renewed vigor is needed to expose the threshold of the problems in this sector.

Newspaper report exposes a very discouraging picture of the

hand loom sector of Narshingdi, for example. Once known as a Manchester of Bangladesh for its handloom textiles, Narshingdi district is going through a very difficult phase. About 70 percent of the handlooms are closed there. Over the past thirty-five years, one lakh looms have closed down in this district and around 80,000 weavers lost their employment.

The grievances of this type of subjugated and browbeaten community is well protected and secluded by our constitution. The constitution of Bangladesh contemplates economic democracy as a fundamental aim of the state.

It vows to realize a society where rule of law, fundamental human rights and freedom, equality and justice economic, political and social-- will be secured for all citizens. It also pledges that all citizens are equal before law and are entitled to equal protection of law. A complete depiction of republic concept is enshrined within the ambit of constitution where it is written that all power belongs to the people. Empowerment of the mass people is the sine qua non in order to see that this power is effectively exercised. 'Empowerment' as the term connotes in modern terminology,

predominantly involves economic dimension. So, for the purpose of attaining constitutional pledge of 'social justice' in the meaning of economic democracy, it is incumbent that all communities of the country are allowed to flourish in terms of their life, livelihood, economic and cultural enrichment.

Article 14 of the Bangladesh Constitution casts responsibility upon the state to 'emancipate the toiling masses' from all forms of exploitation. Article 16 ordains to adopt effective measures to bring about a radical transformation in the rural areas through, amongst others, the 'development of cottage and other industries' and to remove disparity in the standards of living among urban and rural areas progressively. Guaranteeing endeavor to ensure equality of opportunity for every citizens, the assertion of Article 19 of the constitution has also become unequivocal and poignant. It stipulates that state shall adopt effective measures to remove social and economic inequality among citizens and ensure opportunities in order to attain a uniform level of economic development throughout the Republic. Article 23 ordains to take measures to conserve the cultural traditions and heritage of the people to foster and improve the arts of all sections of people for their participation in the enrichment of national culture. These all flourishments of a welfare state has transformed into economic, social and cultural

rights of the citizens. With the ripeness of inalienability, indivisibility, universality and interrelatedness of human rights concept, the watershed between civil & political rights (i.e. justiciable rights) on the one hand, and economic, social & cultural rights (non-justiciable) on the other hand, have become too meager.

It is in this background the problem of the handloom sector and the weavers of Bangladesh should be viewed and addressed. For ensuring community empowerment the present status of handloom sector, its stakeholders and confronting challenges posed by diverse national and global factors from socio-legal human rights perspective needs to be adhered to. Ethnic handloom being also a cultural heritage for Bangladesh an indigenous stature of the aspect should also be taken as imperative.

A full-fledged handloom legislation and policy should be made covering all the relevant aspects in this sector i.e. re-affirmation of it as a cultural and national legacy, investment policy, protection of weavers from intermediary exploitation, smooth administration of handloom tradition, proper equipment of Handloom Board, provision for soft loan, prevention of smuggling, importation of yarn, labor condition, women rights in the sector, ethnic dimension etc.

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