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IN the post World War I era, self-determination emerged as a purely political concept and not as a norm of international law. Eventually, it evolved into a 'right' of colonial self determination- the right of seceding from a colonial State. After decolonisation virtually (!) ended, it became unclear as to what will be the content of self- determination and whether the same can be exercised 'externally' - by seceding from the parent sovereign state and altering its original boundary. With the bliss of a newly-born decolonised world, the tension between self-determination and territorial integrity of State(s) arose.

The UN Charter recognised the right of self-determination; however in practice the same was limited to colonial situation(s) only. If seen through the specs of the post-modern contemporary world and the two human rights convention of the UN, self-determination would manifest itself in the right of people of an existing State to choose their own political system freely and to pursue own economic, social and cultural developments. Hence, the principle of self determination does not include a general right of groups to secede from the State of which they form a part and the buzzword in the post-colonial era therefore, was (arguably is) 'self-governance' and not separation.

Immediately before the birth of Bangladesh, in the *Namibia opinion* (1970) International Court of Justice affirmed the firm establishment of the right of self-determination in international law. However, Namibia situation, too, concerned a colonial territory. In 1971, Bangladesh exercised its right to external self-determination and seceded from West Pakistan. Under international law, the people of East Pakistan did never have the 'general' right to secede since international law has always been (and still is) neutral on the question of secession. It was possible because of the extraneous circumstances present at that particular time. The secession happened at a time when the scholars didn't even start unanimously sympathising, in principle, with the concept of secession. Bangladesh situation thus widened a new horizon for the future development of remedial secession as a 'right' in extraordinary circumstances when the parent State violates or lacks the will or power to protect the human dignity and the most basic human rights. A reflection thereof can be seen



Painting by Shilpacharya Zainul Abedin on Bangladesh Liberation War.

PHOTO: COLLECTED

in the *Quebec case* (1998) in which the court, while declaring that the principle of self-determination has acquired a status beyond 'convention', also admitted the possibility of 'secession' as a 'remedy' in extraordinary situations.

From 1947 onward, Bangladesh has gone through a number of phases and finally underwent remedial secession. The seed of remedial secession was sown in the language movement of 1952. In the nation-building of State, language has always been seen as an essential homogenising element. Language is central for the cultural and ethnic identity of all groups, regardless of whether they are aware of it or not. In my understanding, for Bangladesh, language as a homogenising element in 1952, right after four years of partition, superseded religion as another homogenising element, working in the pre-partition period. The validity of the West Pakistani people's own definition of own group and their status as such, had language as the basis. And as a homogenising element, Bangla as a language became an important means for counter-hegemonies and for creating a pretext for demanding and exercising the right to self-determination at several levels: mass psychology, education and politics.

The formation of United Front in 1954 had in itself the essence of internal self-determination or to put it without jargons, the essence of self-governance. In the election, The United Front got 223 seats out of 237 seats and thus the people of East Pakistan implicitly expressed their support for autonomy. Bangla language subsequently received constitutional recognition as one of the state languages in the first constitution of Pakistan framed in 1956. This recognition strengthened the homogeneity of the Bangla speaking people and created the bedrock for the remedial secession in 1971. One might argue that considering this recognition as the bedrock for the secession would be far-fetched. However, upon that bedrock, stood the actual demand for autonomy and the ultimate exercise of external self-determination followed by remedial secession. The essence of self-governance finally flourished as a demand in the 'charter of freedom' of 1966 when Bangabandhu placed his historic Six-Point formula at a political conference in Lahore which called for a federal state structure for Pakistan and full autonomy for Bangladesh with a parliamentary democratic system.

1966 was followed by the mass

upsurge of 1969 and the general election of 1970. The success of the then Awami League both in the provincial assembly and the national assembly, in my understanding, weakened the persistent demand for autonomy. Because the success opened the door for co-existence between the East and the West with the East having a good or to some extent, a better position because of the healthy majority it got. The first couple of months in the post-election period finally paved the way for remedial secession, the only remedy to put an end to the tyrannical holdover. The right to external self determination, against all odds, was exercised through the Unilateral Declaration of Independence given on 26th of March, 1971 by the father of the nation and the then elected prime minister of the whole of Pakistan.

From 1948 till 1971, legally speaking, Bangladesh has had multifaceted experience(s). The war lasted for long nine months; however, the struggle lasted for years, starting with the demand for Bangla as a state language and ending with the desired separation.

THE WRITER WORKS AT LAW DESK, THE DAILY STAR.



Multilingual education for future



INTERNATIONAL Mother Language Day was proclaimed by the General Conference of the United Nations Educational, Scientific and Cultural Organization (UNESCO) in November 1999 (30C/62). The date, 21 February, was selected to coincide with the Language Movement Day in Bangladesh, one of the co-sponsors of the resolution. The UN General Assembly welcomed the proclamation of the day in its resolution of 2002.

This has been observed every year since February 2000 to promote linguistic and cultural diversity and multilingualism. The theme for 2018 is Linguistic diversity and multilingualism count for sustainable development. International Mother Language Day also supports target 6 of Goal 4 of the Sustainable Development Goals (SDGs): "Ensure that all youth and a substantial proportion of adults, both men and women, achieve literacy and numeracy."

Multilingual education facilitates access to education while promoting equity for populations speaking minority and/or indigenous languages, especially girls and women. It facilitates participation and action in society and gives access to new knowledge and cultural expressions, thus ensuring a harmonious interaction between the global and the local. It also reinforces the cognitive aspect of learning by ensuring the direct application of learning outcomes to the learner's life through the mother tongue. To foster sustainable development, learners must have access to education in their mother tongue and in other languages. It is through the mastery of the first language or mother tongue that the basic skills of reading, writing and numeracy are acquired. Local languages, especially minority and indigenous, transmit cultures, values and traditional knowledge, thus play an important role in promoting sustainable futures.

Due to globalisation processes, they are increasingly under threat, or disappearing altogether. When languages fade, so do the world's rich tapestry of cultural diversity, traditions, memory, unique modes of thinking and expression — valuable resources for ensuring a better future. More than 50 per cent of the approximately 7,000 languages spoken in the world are likely to die out within a few generations, and 96 per cent of these languages are spoken by a mere 4 per cent of the world's population. Only a few hundred languages have genuinely been given pride of place in education systems and the public domain, and less than a hundred are used in the digital world.

COMPILED BY LAW DESK (SOURCE: UN.ORG).



Enforcement of contract in Bangladesh

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ENFORCEMENT of Contract' is a very important regime of the Ease of Doing Business Ranking of the World Bank held every year. In 2018, India ranks 164th in Enforcement of Contract indicator, whereas Bangladesh does 189th. Very unfortunately, in 2017 as well as in 2018 total score in Enforcement Contract issue is 22.21 (out of 0-100), time (days) to resolve a dispute is 1442 days, cost of resolving the issue is 66.8% of claim amount, and quality of judicial process index is 7.5 (out of 0-18). This is very strange how and why an index in its every component is same in two consecutive years.

To improve its ranking, India enacted the Commercial Courts in 2015 which provides for constitution of specialised commercial divisions in the High Courts. This Act seeks to achieve its objectives through a three step approaches: (a) the Commercial Courts/Divisions are to be manned by specialised judges "who have experience in dealing with commercial disputes", (b) specialised procedure by amendments to the Code of Civil Procedure, 1908; and (c) narrow appellate jurisdiction against interlocutory orders. Further, the President of India has promulgated the Arbitration and Conciliation (Amendment) Ordinance, 2015 and the Act 2015 accordingly. This Act contains provisions for the enforcement of contract, specially international contracts and to attract Foreign Direct Investment (FDI). This Act (specifically Section 29A) requires that an arbitral award has to be passed within a period of 12 months, which can be extended further by another six months with the consent of both the parties. Otherwise, the provision stipulates that the mandate of the arbitrators shall be terminated, unless a court of competent jurisdiction grants a further extension.

Despite these laws, finding little development in index, on 19 December 2016 India has schemed an

eight-point strategy to make it to the top 50 of the list in Ease of Doing indicator. Improving its rank under the 'enforcing contracts' parameter was the first priority.

In the Ease of Doing Business indicator, India has developed their position from 130 in the year 2017 to 100 in the year 2018. Only one day after the Ease of Doing Business Ranking heightened, for the activities they have taken, the government on 2 November 2017 took major legal moves to improve the regime for enforcement of contracts. The changes they intended to bring forth are, to amend the law to designate a few district courts in Delhi and Mumbai, to begin with, as commercial courts. In addition, the law will be amended to allow for

an alternate dispute resolution, such as mediation before a case is filed.

Very unfortunately, position of Bangladesh went down despite some steps taken, including the declaration of Executive Chairman of Bangladesh Investment Development Authority (BIDA) to develop Bangladesh by a certain period of time. BIDA adopted a memorandum and action plan for reform. But till today there is no substantial development in terms of implementation of the policies.

Therefore, the

recommendations for development in 'Enforcement of contract indicator' should be, such as, the constitution of specialised commercial court/tribunal; making arbitration and mediation more popular in terms of resolving commercial disputes; amendment to the court processes to ensure expediency, introducing effective pre-action protocol type procedure in Bangladesh; and bringing more effective changes in the Code of Civil Procedure and in, specially, ADR and arbitration laws of Bangladesh.

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Learning land law comprehensively

JALAL UDDIN AHMED

LAND Law: Texts, Cases & Materials by Dr. Mohammad Towhidul Islam, Professor of Law at University of Dhaka, is the reflection of the writer's decade long experience in teaching land law and property law. The purpose of writing this book is, as the author describes, 'to make the learning of this extensive field more accessible by focusing on actual learning needs, and by critically analysing the existing provisions of land law'. While doing so, the author performed his obligation in a comparative way by discussing major sub-continental and British precedents to investigate the necessity of a particular law.

Land law is an essential branch of law in Bangladesh. Almost 80% disputes creating backlog in the sub-ordinate judiciary is related to land. All the prominent law schools of Bangladesh teach land law to its student. The syllabus of Bangladesh Judicial Service Commission Examination includes land law. In Bangladesh, it is a stereotypical belief that land law is limited to only the State Acquisition and Tenancy Act and the Non-Agricultural Tenancy Act. Professor Towhid has completely discarded this misnomer in his book. This book addresses all the laws that deal with land. The book discussed about the newly enacted Acquisition and Requisition Act of 2017, the Real Estate (Development and Management) Act, 2010 and also the laws of balumohal (Sand Estate).

There are a number of books on land law in Bangladesh, but none of them is updated and thus not academically suitable for students. This book alternatively provides an in-depth analysis of land laws and every issue pertaining to land use, precisely yet comprehensively.

As Justice Mirza Hussain Haider puts it in his foreword to the book, the book provides a reasonable account of laws and topics related to land law through broad examination of its

LAND LAW

Text, Cases & Materials

Second Edition

Foreword by
Justice Mirza Hussain Haider
Judge, Appellate Division
Supreme Court of Bangladesh

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Land Law: Texts, Cases & Materials.
Mohammad Towhidul Islam.

Dhaka: Centre for Human Rights and Legal Research (CHRLR),
2018 (2nd Edition). 728 pp.

sources. It also includes "should have been" topics such as enemy property law, abandoned property law, acquisition and requisition law, real estate law and even law of sand estate.

The book is divided into 28 chapters. The first four chapters gives the readers an introduction to land law, an insight into the development of land law, hierarchy of land administration in Bangladesh and the concept of ownership of land. In the next chapter, the author discusses about the State Acquisition and Tenancy Act. In the following chapters, he discusses about rights and liabilities of raiyats and preparation and revision of record-of-rights, i.e. land survey. Next he discusses about the concept of transfer of land and the modes of it. The next chapters deal with amalgamation, consolidation and sub-division of holding and registration. The following chapters deal with mutation, pre-emption, sub-letting and barga. Then the author discusses about alluvion and diluvion of land and adverse possession. The following two chapters deal with the laws of enemy property and abandoned property respectively. Then the author discusses about land taxes, certificate, khas land, non-agricultural lands, rent control laws, land use policy, real estate law, balumohal and soil management law and land reforms. In the last chapter, the author evaluates the future of land laws and puts emphasis on the need for more reforms.

The author's clarity of expression enables the reader to gain a crystal clear understanding of the fundamental principles of the subject and at the same time makes the reader curious about the tensions and debates in land law. The book is intended to provide the students with a comprehensive source of relevant materials, and undergraduates will find everything they need in this one convenient and easy-to-use book.

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