ADMINISTRATIVE REFORM

CONFINED

THE
BANGLADESH ADMINISTRATIVE STAFF COLLEGE
DACCA

18

JUDICIAL SYSTEM OF BANGLADESH

A CASE FOR JUDICIAL REFORM IN BANGLADESH

By
A. R. CHOWDHURY
*Secretary, Ministry of
Law & Parliamentary Affairs,
Government of the People's Republic of Bangladesh
Dacca*

December, 1979

ADMINISTRATIVE REFOR

CONFINED

1. JUDICIAL SYSTEM OF BANGLADESH

ADDRESS AT THE LECTURE-DISCUSSION ON JUDICIAL SYSTEM OF BANGLADESH

By

A. R. CHOWDHURY

Secretary, Ministry of Law & P.A.

I have been asked to initiate the lecture-discussion on "Judiciary—Judicial system in the past—as at present and future set-up". I do not presume, in the course of initiating the discussion on the subject, to enlighten you with any information or material with which you are not already acquainted. Some of you are eminent lawyers from whom it is rather I who would get enlightenment. Others who are not lawyers have better experience in life as well as in administration of human affairs which must have given them keener insight into the actual working of our administration of justice. In the course of our day-to-day life or administration of affairs we generally get a partial view of our judiciary. This discussion would enable us to get a comprehensive view of our judicial system as it was in the past and as it is at present. About the future set-up I am not that confident as to offer any definitive suggestion for acceptance. The working out of the future set-up should be a collective venture keeping in view the lessons of the past, the experience of the present and a vision we hold of the society of the future.

This discussion on our judicial system reminds me of a boastful statement of Mrs. Margaret Thatcher, the present British Prime Minister, in course of a debate in the House of Commons on the 13th January, 1976 when she was the Leader of the Opposition. She said: "They have given to a quarter of mankind and the same fraction of the earth's surface the best laws, an impartial system of justice and an incorrupt administration." By "they" she meant the British people, particularly those responsible for the administration of the territories of the empire. The portion of the earth's surface she had in view includes the territory which now constitutes Bangladesh. Even if we discount the prodigy of the claim and the panegyric, her statement is not without foundation. It cannot be gainsaid that our present judicial system is more or less unmodified inheritance of the past and it was the handiwork of the British rulers. The system did not emanate or develop from the indigenous society or native institutions. It was imposed from above more to suit the needs of administration than the needs of society.

To get to the genesis of the system we have inherited one has to go back to 1862 when the High Court of Judicature at Fort William was established by Letters Patent of the 23rd June, 1862 to abolish

and replace the Court of Sadar Diwani and Nizamat Adalat at Calcutta—the vestige of the indigenous institutions of the Nazim and the Diwan of the pre-British days. The Letters Patent also abolished at the same time the Supreme Court established under the East India Company Act, 1773, which applied English law and exercised jurisdiction in respect of British subjects residing in Bengal, Bihar and Orissa and also in respect of other persons for certain causes and in certain circumstances. The High Court so established had, in addition to original and appellate jurisdictions spelt out in its charter, also all the jurisdictions of the courts it replaced.

When the Government of the territories under the control of the East India Company was taken over by the British Crown by the Queen's Proclamation of 1st November, 1858, there were, next below the Court of Sadar Diwani and Nizamat Adalat, four Provincial Courts of Appeal and Circuit. These courts were abolished in the course of continuous change in the judicial institutions, jurisdictions and procedure. The courts which were next below in hierarchy were the courts of Zilla and City Judges. These courts were the outcome of changes which were being continuously made in the judicial system as reorganised by the Regulation of 1793 in respect of gradation of authorities, principles of administration, jurisdiction and procedure. The real position even in 1853 was so confused that Mr. Richard Clarke, the official compiler of the enactments in force in Bengal in that year observed that the changes had caused "such entanglement and perplexity that ascertainment of the correct position required laborious study and comparison of numerous measures and references". The Zilla and City courts presided over by a single judge exercised civil jurisdiction. The judges of these courts being Magistrates for the Zillah or City under his jurisdiction also exercised criminal jurisdiction in lesser offences. In the case of serious offences, these judges committed the accused for trial to the court of circuit.

The jurisdiction of the Zillah and City court had undergone changes by successive measure until, on the criminal side, the courts were given a sort of settled shape by the Codes of Criminal Procedure of 1872, 1877 and 1882. Successive revision of the Code of Criminal Procedure culminated in the enactment of the Code of Criminal Procedure, 1898 (Act V of 1898), which continues to be the charter of our subordinate judiciary on the criminal side.

On the civil side also the jurisdiction and composition of the courts had undergone several changes until they took a settled shape under the Bengal, North-Western Provinces and Assam Civil Courts Act, 1877 (XII of 1877). This Act, with the modified title of the Civil Courts Act continues to be the charter of our subordinate judiciary on the civil side.

The structure of the judiciary and the hierarchy, jurisdiction and powers of the ordinary civil and criminal courts took a settled shape at the close of the nineteenth century. At the appex was the High Court of Judicature at Fort William established by the Letters Patent of the 28th December, 1865. On the criminal as well as on the civil side the High Court had both original and appellate jurisdiction regulated by its charter, that is, the Letters Patent and the Codes relating to civil and criminal procedure and other relevant statutes. Subject to qualification appeals from the decision of the High Court lay to the judicial committee of the Privy Council.

Next below the High Court were the district Courts—the Court of the District Judge on the civil side and, except in the Presidency town of Calcutta, the Court of Session on the criminal side. The Court of the District Judge was the principal civil court of original jurisdiction. It had also appellate jurisdiction. There were also Additional Judges in a district where the volume of business before the District Judge required aid. An Additional Judge exercised the same jurisdiction as the District Judge.

The Court of Session, presided over by the Sessions Judge, was the highest ordinary criminal court of original jurisdiction except where the High Court had been given such jurisdiction in the presidency-town. There were also Additional and Assistant Sessions Judges appointed to exercise jurisdiction in the Court of Sessions. The Additional Sessions Judge, like the Sessions Judge, could pass any sentence authorised by law, but an Assistant Sessions Judge was not competent to pass sentence of death or of transportation or imprisonment for a term exceeding seven years. The Court of Sessions tried offences triable by it upon commitment of the accused by the Magistrates. The Court of Session had also appellate powers in respect of sentences passed by Magistrates and Assistant Sessions Judges except in cases where such sentences were appealable to the High Court.

Though the Court of District Judge or Additional District Judge was different from the Court of Session, the same person was appointed both as the District Judge and the Sessions Judge or, as the case may be, both as the Additional Judge and the Additional Session Judge. A Sessions Judge of one sessions division could be appointed as Additional Session Judge of another division.

The civil court next below that of the District Judges was the Court of Subordinate Judge who had also unlimited pecuniary jurisdiction. Except where a statute in respect of any particular matter otherwise provided, all civil suits above a certain pecuniary limit were

to be instituted in the Court of Subordinate Judges, being the court of the lowest grade in respect of suits above that limit. Appeal from the decision of a Subordinate Judge lied to the District Judge if the value of the original suit did not exceed a specified pecuniary limit and to the High Court in other cases. A Subordinate Judge was also used to be appointed as Assistant Session Judge in the Court of Session and therefore, also exercised criminal jurisdiction as Assistant Sessions Judge.

The lowest in the grade of ordinary civil courts was the Court of the Munsif. The jurisdiction of the Munsif was limited to suits of which the value did not exceed specified limit. Except suits triable by a Small Cause Court, the Court of the Munsif was the court of original jurisdiction in respect of all civil suits within the limits of its jurisdiction. A Munsif had no appellate powers.

The Criminal courts below that of the Court of Session in the Districts outside the Presidency-town was the Courts of Magistrates. The Magistrates were of three grades—Magistrate of the First Class, Magistrate of the Second Class and Magistrate of the Third Class. In every district one of the Magistrates of the First Class used to be appointed as the District Magistrate and one of the Magistrates of the First or Second Class used to be placed in-charge of a subdivision who was called the Subdivisional Magistrate. The Magistrate of the First Class could pass sentence of imprisonment not exceeding two years, fine not exceeding one thousand rupees and whipping; the Magistrate of the Second Class could pass sentence of imprisonment not exceeding six months and fine not exceeding two hundred rupees; and a Magistrate of the Third Class could pass sentence of imprisonment not exceeding one month and fine not exceeding fifty rupees.

In the Presidency-town, the criminal courts below the High Court exceeding original criminal jurisdiction were the courts of the Presidency Magistrates one of whom used to be appointed as the Chief Presidency Magistrate. The extent of power of a Presidency Magistrate was the same as that of the Magistrate of the First Class.

There were another class of civil courts called the Courts of Small Causes which may be regarded as courts of lowest jurisdiction. They were first established in the Presidency-town and were designed for speedy disposal of money suits of small valuation. The law on the subject of such Courts in the Presidency-towns, which was first enacted by Act IX of 1850, was consolidated and amended by the Presidency Small Cause Courts Act, 1882 (Act XV of 1882). In districts outside the Presidency-town, the Courts of Small Causes were first established by Act XLII of 1860 which was replaced by

Act XI of 1865. The Act of 1865, as amended in 1867, was replaced by the Provincial Small Cause Courts Act, 1887 (Act IX of 1887), which consolidated and amended the law on the subject. Except an order for payment of costs for false claims or defences or an order imposing fine or directing imprisonment in civil prison, a decree or order of a Small Cause Court was final. The High Court could call for any case decided by a Small Cause Court and pass any order thereon.

This is the broad outline of the judicial system of Bengal at the commencement of this century. This system continued more or less undisturbed right up to the close of the British rule in August, 1947 except for the introduction of the Federal Court on the 1st October, 1937 at the top of the judicial hierarchy in India. The Federal Court was an element in the scheme of the judicial structure of Federation of India contemplated in the Government of India Act, 1935. The Federal Court had original jurisdiction, to the exclusion of all other courts, in disputes between the Federation and a Province or a Federated State, or between two or more provinces, or between a Province and a Federated State. This original jurisdiction was further limited when a State was a party or when any agreement specifically excluded jurisdiction. In the exercise of its original jurisdiction the Federal Court did not pronounce any judgment other than declaratory judgment. The Federal Court had also appellate jurisdiction in respect of the decisions of a High Court if the High Court certified that it involved a substantial question of law as to the interpretation of the Government of India Act, 1935 or any order in council made thereunder. Appeal to His Majesty in Council lay from the decision of the Federal Court in the original jurisdiction or, with the leave of the Court, in other cases. The Federal Legislature had power to enlarge the jurisdiction of the Federal Court but it was not, before the close of the British rule, enlarged.

To sum up, the British rule closed with a judicial system which, excluding the courts and tribunals set up for special purposes, such as, labour courts under labour laws, consisted of the Federal Court at the top which was the only court at the federal level and the High Court which was the highest court at the provincial level from whose decisions appeal lay the Federal Court. Below the High Court, in the descending order of hierarchy, the civil courts were the Courts of District Judge, the Court of Additional Judge, the Court of Subordinate Judge, the Court of Munsif and the Court of Small Causes; and the criminal courts were the Court of Session in which the Additional Sessions Judges and Assistant Session Judges also exercised jurisdiction and in the Presidency-town, the Presidency

Magistrates and outside the Presidency-town the Magistrates of the First Class, the Magistrates of the Second Class and the Magistrates of the Third Class.

Pakistan comprising a part of the territories of British India was born on the 14th August, 1947 as an independent Dominion with the Government of India Act, 1935, as adapted, as its provisional Constitution. She inherited, in relation to her territories, the judicial system with which British rule in India closed. A Federal Court was established with the same jurisdiction, powers and functions as the Federal Court of India had in British India. East Bengal, as a province of Pakistan, inherited the judicial system of the undivided Province of Bengal. The High Court of East Bengal was set up for the Province, which comprised part of the territories of the Provinces of Bengal and Assam, with the same jurisdiction, powérs and functions as the High Court of Calcutta had in relating to those territories except jurisdiction and powers relating to the Presidency-town of Calcutta. The decisions of the High Court of East Bengal was subject to the appellate jurisdiction of the Federal Court to the same extent as the decisions of the High Court of Calcutta was subject to the appellate jurisdiction of the Federal Court of India. The Judicial Committee of the Privy Council continued to have the same appellate jurisdiction in respect of decisions of the High Court of East Bengal and the Federal Court of Pakistan as it had, before the 14th August, 1947, in relation to the decision of the High Court of Calcutta and the Federal Court of India.

The Federal Court (Enlargement of Jurisdiction) Act, 1949 (I of 1950), which came into force on the 1st February, 1950, enlarged the jurisdiction of Federal Court for entertainment of appeals from decisions from which appeals used to lie to the Privy Council Jurisdiction of the Privy Council to entertain appeals and petitions in respect of judgements, decrees or orders of a Court or tribunal in Pakistan was abolished with effect from the 1st Mav. 1950 by the Privy Council (Abolition of Jurisdiction) Act, 1950. Thus, after the commencement of these two Acts, the Privy Council ceased to have any jurisdiction in respect of judgements, orders or decrees of any court of tribunal in Pakistan except those in respect of which the proceedings were already pending before it.

So far as East Bengal, later named as East Pakistan was concerned, the Constitution of Pakistan of 1956 or of 1962, did not bring about any change in the judicial system or its basic principles except that at the Federal level a Supreme Court was established to replace the

Federal Court. The Supreme Court took over the jurisdiction of the Federal Court.

All the other courts in East Bengal, renamed as East Pakistan, below the High Court with their hierarchy, composition, powers and functions remained undisturbed. Apart from the ordinary civil and criminal courts which in the main constituted the judicial system, special courts and tribunals were also set up under special laws, such as, Tribunals under the Foreign Exchange Regulation Act, 1947 (II of 1947), Courts of Special Judges under the Criminal Law Amendment Act, 1958 (XL of 1958), Labour Courts under labour laws, etc. Another class of courts, called Conciliation Courts which were of the nature of conciliation machinery, was established at the lowest level for composition of minor civil and criminal disputes by the Conciliation Courts Ordinance, 1961 (XLIV of 1961). These Conciliation Courts were not innovations but were only modified versions of the Union Benches constituted under the Bengal Village Self-Government Act, 1919 (Ben. Act V of 1919). If those special courts and tribunals and conciliation courts which did not materially affect the basic structure of the system are ignored, the judicial system of East Pakistan did not, for so long as it remained a Province of Pakistan, undergo any change worthmentioning in character, composition and powers or in the basic principles from what it had inherited from Bengal in British India; and that system was, as has been shown earlier, virtually the same as it was at the beginning of this century.

The people of the Province of East Pakistan christened the Province as Bangladesh and declared Bangladesh so christened to be an independent sovereign People's Republic by the Proclamation of Independence issued on the 10th April, 1971. Though the Proclamation of Independence was given retrospective effect from the 26th March, 1971, Bangladesh authorities were not able to exercise effective control of the territory until the surrender of the occupying Pakistan Army on the 16th December, 1971. Until that date all authorities, including the High Court and other Courts, continued to function as if no such Proclamation had been made. The High Court of East Pakistan, now being an institution under an existing law, ceased to exist from the day the Proclamation became an effective reality on that date. Hence, a High Court of Bangladesh was established by the Provisional Constitution of Bangladesh Order, 1972. This Order gave no indication as to the powers, functions and jurisdictions of the High Court so established. Later, by the High Court of Bangladesh Order, 1972 (P.O. No. 5 of 1972), issued on the 17th January, 1972, the High Court of Bangladesh was

given all such original, appellate, special, revisional, review, procedural and all other powers as were exercisable in respect of the territories of Bangladesh by the High Court at Dacca before the 26th March, 1971, except the power to issue any writ, order or direction in the nature of *habeas corpus, mandamas,* prohibition, *quo warranto* and *certiorari.* All proceedings which were pending before the High Court of East Pakistan were taken over by the High Court of Bangladesh. Nothing was said about the proceedings before the Supreme Court of Pakistan relating to the causes arising from the territories of the Province of East Pakistan. The Constitution of the People's Republic of Bangladesh which was adopted by the Constituent Assembly on the 4th November, 1972, came into force on the 16th December, 1972. The Constitution established a Supreme Court for Bangladesh with two divisions—one called the Appellate Division and the other the High Court Division. Generally speaking, the High Court Division has inherited all such original, appellate and other jurisdictions and powers as were exercisable by the High Court of East Pakistan and the Appellate Division has inherited all such powers and jurisdictions as were exercisable by the Supreme Court of Pakistan in relation to the territories of the Province of East Pakistan. Considered in the historical perspective, the High Court Division of the Supreme Court of Bangladesh may be said, without gross inaccuracy, to be the continuation, with different name and identity, of the High Court at Fort William in Calcutta in relation to the territories of Bangladesh through the High Court of East Pakistan established by successive Constitutions and the Appellate Division of the Supreme Court of Bangladesh to be the continuation of the Federal Court of India in relation to those territories through the Federal Court and the Supreme Court of Pakistan. The composition of the Court, the qualifications of the Judges, the practice and procedure, formalities and rituals, dress and language and even the manner of addressing the judges. which is indubitably repugnant to the principle of a republic, continue to be the same. The only change worthmentioning is the addition of the power in respect of prerogative writs in favour of the successors of the High Court of Calcutta and the addition of the powers and jurisdiction of the Privy Council in favour of the successor of the Federal Court of India.

The Conciliation Courts introduced in 1961, which were the successors of the Union Benches introduced in 1919, have been replaced, with additional powers, by the Village Courts established under the Village Courts Ordinance, 1976 (Ord. LXI of 1976). The composition of the Village Courts is the same as that of the conciliation courts. Governing principle is composition rather than adjudication of disputes.

If certain adjustments in jurisdictions and powers required by changed circumstances are ignored, all the other courts, tribunals and judicial institutions continue to function as before as if there has been no political or constitutional change from the time of the British Rule. The composition of the courts, the practice and procedure and the language and formalities remain unaltered. The qualifications and method of recruitment of the judicial officers and their conditions of service still continue to be governed by, and in accordance with the principles of, the same old rules and, where they have been replaced, by rules drawn up almost in identical terms.

This gives us an overall picture of our judiciary as it has emerged in the course of developments during a period of more than a century which is replete with events of revolutionary magnitude affecting the social and political landscape of the sub-continent. I would here like to enumerate again in more precise terms the courts and adjudicating agencies in the ascending order of their powers and jurisdictions. Such enumeration, I feel, would be helpful for better comprehension and memory inasmuch as the cases for trial and adjudication move upwards from the lower to the higher authorities.

The ordinary civil courts, including appellate courts, that is, the courts of general jurisdiction on the civil side are the following:

1. The Village Courts for rural areas and Conciliation Boards for the urban areas;
2. The Court of the Munsif;
3. The Court of Subordinate Judge;
4. The Court of Additional Judge and the District Judge;
5. The High Court Division of the Supreme Court; and
6. The Appellate Division of the Supreme Court.

The ordinary criminal courts, including appellate courts, that is, the courts of general jurisdiction on the criminal side are the following:

1. The Village Courts for rural areas and Conciliation Boards for urban areas;
2. The Magistrates who are classified into Third Class, Second Class and First Class Magistrates according to the extent of sentences they can pass;
3. The Court of Session which includes the Courts of Assistant Sessions Judge whose power to pass sentence is restricted and the Court of Additional Sessions Judge with the same unrestricted power of a Sessions Judge;

4. The High Court Division of the Supreme Court; and
5. The Appellate Division of the Supreme Court.

There are also tribunals and adjudicating authorities of special jurisdiction both on the civil and the criminal side. They exercise special jurisdiction for adjudication of disputes of a special kind or trial of offences of special category. They generally follow special procedure laid in the statute by which they are constituted. It might be of interest to know about them. I would like to enumerate them here and such enumeration itself would give a general idea about them.

The Tribunals or adjudicating authorities of special jurisdiction on the civil side are the following:

1. The Income-Tax Appellate Tribunal which hears appeals from the decisions of the Income-Tax Authorities;
2. The Labour Courts which adjudicate and determine industrial disputes;
3. The Labour Appellate Tribunal which decides appeal from the decisions of the Labour Courts;
4. The Commissioner for Workmen's Compensation who adjudicates and determines compensation or liability to pay compensation under the Workmen's Compensation Act, 1923;
5. The Insurance Appellate Tribunal which determines appeals in respect of decisions of the Insurance Authorities under the Insurance Act, 1938 (IV of 1938); and
6. The Tribunal constituted under the Bangladesh Legal Practitioners and Bar Council Order, 1972 (P.O. No. 46 of 1972) which adjudicates upon questions arising under that Order.

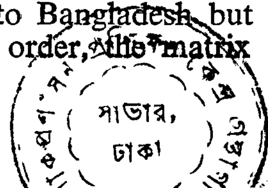
The Tribunals or adjudicating authorities of special jurisdiction on the criminal side are the following:

1. The Tribunal constituted under the Foreign Exchange Regulation Act, 1947 (II of 1947), which tries offences under that Act;
2. Special Judges appointed under the Criminal Law Amendment Act, 1958 (XL of 1958), who exercise exclusive jurisdiction to try, accordance to the special procedure, the offences specified in the Schedule to that Act;

3. The Special Tribunals constituted under the Special Powers Act, 1974 (XIV of 1974), which try, accordance to the procedure for summary trial of summons cases, the offences specified in the Schedule to that Act; and

4. The Appellate Tribunal constituted under the Special Powers Act, 1974 (XIV of 1974), which decides appeals from the decisions of the Special Tribunals constituted under that Act:

This is so far as the past and the present positions of our judiciary are concerned. Coming to the question of future set-up, it arises only if the present system is proved to have failed to meet the requirements of the time or is not likely to stand up to the challenge of the future. The first question, therefore, is: Does the present judicial system meet our needs? In spite of the fact that the system, whose basic structure and principles continue to be what they were eight decades ago, has demonstrated a vitality of its own and that it has many votaries, the answer to the question from all sides, I am sure, would be an emphatic No. Apart from other complaints against it, the very fact that more than twenty-five thousand cases are pending in the Supreme Court for disposal—some for more than a decade—and about three lakh cases are pending before the Subordinate Courts for trial and adjudication for several years is enough to condemn the system. It is not simply inadequacy of number or deficiency of procedure. Even ten-fold increase in the number of courts and judges and adoption of summary procedure consistently with the requirements of fairness will not be sufficient for disposal of pending cases in the course of next two years not to speak of disposal of current cases in addition to the arrears; and such ten-fold increase is impractical. Increase in number or simplication of procedure will not, in any manner, cure the malady which aflict the system. The fundamental malady has to be identified and cured. The fundamental malady of our judicial system, as it has emerged from the colonial era, is its insultation from the fabric of the indigenous society, the remoteness of approach, the procedural hurdle and the cost and trouble involved. This has made justice, if not the proverbial sour grape, a bitter fruit for the common man. For a common man a victory in a litigation, if it so happens in any case, is most often of the nature of Pyrrhic victory and ultimately turns out to be his undoing. With all the rhetoric about equal protection of law, right to life and liberty, inviolability of the person and sanctity of property and all the procedural safeguards and excellence of form, justice was always and still continues to be, a prohibitive luxury for the common man. This is a phenomenon not peculiar to Bangladesh but common to almost all countries where the social order, the matrix



of the legal order, is founded on property regime with the primacy of the individual over the collective. Today the disintegration of the erstwhile cohesive social forces and the volatile political and economic climate with concomitant social and administrative disorder during the last four decades and creeping corruption and corrosion of values have made the quest for justice in Bangladesh a quest for the unreal. The judicial system and also to a great extent the general legal and administrative system are out of tune with the current social reality and devoid of any promise for the future. The current judicial system, in alliance with the administrative system, is operating as a convenient tool of the high and mighty for depriving and breaking the poor. As to the reasons for this sorry state of affairs, I cannot do better than quote what our Vice-President Mr. Justice Sattar, said in an address at a Lawyer's Conference in 1976, as to how and why the legal framework and the judicial system of Bangladesh has reached the stage of irrelevance in the context of our progressive needs. This is what he said :

"Society has outgrown the legal framework designed to meet the needs of the tardy nineteenth century. Though the ravages of the First World War did not directly touch our part of the globe, we had not remained as we could not remain, immune from its fall-out. Industrial growth because of the needs of the war, new concepts of political, economic and social relationship, new values and new sense of urgency had generated a mobility and tension that the old legal framework, institutional and procedural, could not cope with, its insulation and alienation from the people and the society now appeared in bold relief because of its insufficiency and inefficiency. This also led to its corrosion from within, that is, through corruption and contempt of its own functionaries, without social resistance. Simultaneously with this process, social commotion and clash and contradiction between the ruling power and native aspirations mounted to such an extent that it was hardly possible to look at the problem in correct perspective. Though the current needs of the law and order situation and of resolving conflicts and commotions in new fields, such as, labour relations, were sought to be met by new laws, both substantive and procedural, the basic problem of recasting the entire structure to meet the demands of the changed and everchanging situation remained unattended. The legal procedure and the institutions for adjudication of disputes and dispensation of justice had, by the time the Second World War broke out, retained only their form but lost their content and social utility. Whatever service or social benefits could be derived from their continued existence was due to mental habit and popular psychology rather than to their own worth and vitality."

"The Second World War came with its challenges in the administration of justice in fields new as well as in fields old which were getting more and more complex and the old legal framework and institutions, with their supplements and modifications, could hardly meet them. The war generated new activities, new needs, new rights and obligations, new restrictions and responsibilities, new fields of tension and conflict. new social relationship and social behaviours, new laws, new forums and new procedure. The disputes under, and contraventions of, new laws, regulations and directions far outnumbered the traditional civil disputes and criminal offences which did not show any sign of decline or abatement. Administration of justice was in a state of flux in exact correspondence to the chaotic state of economic and social life of the community. Irregularity or delay in dispensation of justice was only one of the manifestations of social chaos."

"Before the society could recover or rediscover a balance and a sense of value after the close of the Second World War, foreign rule came to an end with the partition of the then one country. This change-over brought in its wake its own problems and challenges with which we were not acquainted. We failed to anticipate the shape of things to come. Problems created by communal riots of national dimension, mass migration, rehabilitation of refugees, establishment of new trade and other economic relationship to replace the old, needed immediate attention and claimed priority to the ordinary problems of administration including administration of justice. A general legal framework for administration of justice designed for the nineteenth century society and polity continued to serve the post-independence society and polity. Some changes have, no doubt, from time to time, been introduced by way of reform, but they were, in the main, nothing but attempts at adjustment and patchwork to meet the needs of administration rather than the needs of the people. The administrative machinery including that for administration of justice continued to be as insular and alienated from the people as it was during the alien rule. It was, therefore, no wonder that we had to engage in a struggle for. and win, liberation from independence. A contradiction between the legal framework and the social needs of the changed situation also accounted for the delay in the administration of justice."

"The struggle for liberation, because of its nature and process, contained and nurtured within it the germs of social disorder and moral anarchy. The contradiction between its revolutionary form and reversionary content did not permit, rather, prevented the growth of institutions to take over the social and administrative functions of

the post-liberation society. The debilitated pre-liberation administrative organisations, agencies and other institutions had, of necessity, to take on the responsibilities, for which they were neither prepared nor groomed, of contending and containing the forces of disorder and anarchy unleashed after the restraint of war was over. Apart from the load of responsibilities of unanticipated dimension and complexity, the administrative machinery, including the judiciary and law-enforcing agencies, had to work within the legal framework and the limitations of the pre-liberation period which were again the same as those of the nineteenth century. Our principal substantive and procedural laws, both civil and criminal, which govern and regulate the day-today life of the generality of the people still continue to be the nineteenth century statutes founded on the then property relations, economic structure, concepts of rights and obligations and sense of value. This is true also in the case of composition, hierarchy, jurisdictions, powers and procedure both of the judiciary and the law-enforcing agencies. I am not suggesting that they were or are bad but I feel that with all their merits they are out of tune with the present reality and have outlived their utility. They may continue to generate fear but have ceased to inspire confidence. They certainly do not animate the affection of the people which is due to an institution of their own. Fear is not a substitute for affection. An institution to generate fear is a weapon of the ruler against the ruled but an institution drawing the affection of the people is an agency of service. In spite of our independence in 1974 and liberation in 1971, it is the continued style, appearance and trappings of our judicial institutions and law-enforcing agencies designed as weapons of the ruler against the ruled and not as agencies of service by, of and for the people that explains their continued insulation and alienation from the people. It is this insulation and alienation, coupled with the disharmony with the current social and economic realities and the work-load beyond their strength to bear that, in a large measure, account for the failure of our present legal machinery to administer speedy and effective justice."

That the judicial system we now have is inadequate and deficient for the purpose of our current and growing needs admits no contradiction; and it would not be exaggeration to go further and say that it has lost all relevance to the realities of life. When an institution ceases to be relevant or useful for the purpose of social needs it forfeits its right of continued existence. It has to give way to the new. This is true in the case of our judicial and other institutions as well. Hence the need for their replacement. But how and in what form? As I have already said, the projection of a future set-up of our judiciary has to be a collective exercise. What has to be kept in view is that the judicial system of a polity is a part of the legal system

which again is the product of the socio-economic order. The new set-up to be worked out, if it is to be effective and efficient, must not only be in harmony with the socio-economic order we aspire to, but also be coordinated with the administrative system designed for that order. I do not, therefore, at the moment offer any suggestion in regard to the future.

By the way, I might mention that a few months back I had prepared, just by way of an academic exercise, a paper on judicial reform in Bangladesh and that paper suggests a specific scheme for reform.

[The paper is annexed]

2. A CASE FOR JUDICIAL REFORM IN BANGLADESH

A CASE FOR JUDICIAL REFORM IN BANGLADESH

by

A. R. CHOWDHURY

Secretary, Ministry of Law & P.A.

I

"They have given to a quarter of mankind and the same fraction of the earth's surface the best laws, an impartial system of justice and an incorrupt administration." This is what Mrs. Margaret Thatcher, the Leader of the Opposition (now Prime Minister). asserted in the British House of Commons on the 13th January, 1976, about the contribution of the people of the British Islands to the history of the human race. In this respect she had expressed the general belief of a Briton and may be also that of many on that portion of the earth's surface she had in mind. The portion includes British India and, therefore, Bangladesh.

A few months earlier, on the 26th March, 1975, the then President of Bangladesh in an address at Suhrawardy Uddyan lamented that under the current judicial system proceedings initiated by a person in a court to enforce, protect or defend a right do not conclude even during the life-time of his children. In this respect he had expressed the general feeling of disapprobation of the people about the alien system of justice they have inherited and have still to endure.

The laws and systems of justice introduced in the colonies and dependencies by the colonizing and ruling Briton were not that paragon as Mrs. Thatcher seems to convey nor were they that unclean as the indignance at colonial exploitation makes the colonized and subjugated people to portray. An objective survey of the social, cultural, political and administrative history of the region which now constitutes Bangladesh would suggest that the claim of the colonizer is not wholly untrue nor is the censure of the colonized wholly unfounded.

The judicial system of a society like other institutions which control, regulate or condition individual and social life evolves, as a general rule, with the evolution of binding legal norms and precepts generated by the dynamics of social growth and those norms and

precepts are necessarily conditioned by the political, economic and cultural moulds of that society. The judicial system of the territory now called Bangladesh—its decay and disintegration in the eighteenth century, its replacement and development in the nineteenth century and its stasis and consequent asymmetry with social reality in the twentieth century—has not been, and could not be, an exception to that general rule. The last two centuries have witnessed the vicissitudes of political and economic regimes and therewith the accretions, attritions and absorption of rights, duties, obligations, attitudes and values. The evolution of the judicial system in this territory during that period has been in step with the progression and mutations of political, economic, social and cultural regime and consequent changes in legal norms and precepts. The historical perspective of this evolution is a surer guide for the interpretation of the present; and correct interpretation of the present is a condition precedent for evolving a meaningful scheme for the future. A proposal for judicial reform drawn up without correct appraisal of the present as it has emerged from the past might turn out to be only a vision without purpose.

Our current judicial system, like many of those of the former colonies and dependencies of the British empire, is an inheritance from the British rule. Survival and continuance after the end of British rule of this system, more or less uninterrupted with only adjustments here and there to suit the changing political and social scene, in a way supports the claim of Mrs. Thatcher. This system took its shape in the last quarter of the nineteenth century after experiment and trial for more than a hundred years with various forums and procedures for adjudication of disputes and trial of offences. During the earlier period of British rule—legally speaking the period of Diwani of the East India Company—those forums and procedures, not unoften mingled with substantive law, were only adaptations of, and additions to, what was inherited by the Company from their predecessors—the Muslim rulers.

II

By a Farman, dated the 12th August, 1765, Shah Alam, the then Emperor of Delhi, made a perpetual grant to the East India Company of the Diwani of the three provinces of Bengal, Behar and Orissa. The terms of the grant was as follows "We have granted them the Diwani of Bengal, Behar and Orissa, from the beginning of the Fasl-i-rabii (spring harvest) of the Bengali year 1172, as a free gift and altamgha without the association of any other persons and with an exemption from the payment of the customs of the Diwani, which used to be paid by the Court. It is requisite that the said Company engage to be security for the sum of twenty-six lakhs of rupees a year,

for our roval revenue which sum has been appointed from the Nawab Najam-ud-Daulah Bahadur, and regularly remit the same to the royal Sarkar (Government); and in this case, as the said Company are obliged to keep up a large army for the protection of the provinces of Bengal, etc., we have granted to them whatsoever may remain out of the revenues of the said provinces, after remitting the sum of twenty-six lakhs of rupees to the royal Sarkar and providing for the expenses of the Nazamat.".

The Diwani carried with it the right to collect revenue and to exercise judicial powers in civil and financial causes. By the terms of the Farman, the grant of Diwani was accompanied by the responsibility to provide for the expenses of the Nizamat, that is to say, the administration of police and original justice. Though theoretically the two institutions, Diwani and Nizamat, had, so far as judicial functions are concerned, two separate jurisdictions—Diwani in civil and revenue matters and Nizamat in criminal matters—for all practical purposes, Nizamat also came under the effective control of the East India Company inasmuch as the purse-strings in respect of the Nizamat were in the hands of the Company. Thus the entire range of the administration of justice—civil, revenue and criminal—came under the superintendence and control of the Company.

Mr. C. D. Field, in his Introduction to the Regulations of the Bengal Code, enumerates the following judicial authorities, which the East India Company found in existence immediately after the grant of Diwani, namely :—

1. The Nazim, who, as Supreme Magistrate, presided personally at the trial of capital offenders;

2. The Diwan, who was supposed to decide cases relating to real estate or property in land, but who seldom exercised this jurisdiction in person;

3. The Darogha-Adalat-al-Alia, or Deputy of the Nazim in the Criminal Court, who took cognizance of quarrels, frays and abuse, and also of all matters of property excepting claims of land and inheritance;

4. The Darogha-i-Adalat-Diwani, or Deputy of the Diwan in the Civil Court;

5. The Faujdar, or Officer of Police and Judge of all crimes not capital;

6. The Kazi, who decided claims of inheritance or succession;

7. The Muhtasib, who had cognizance of drunkenness, the vending of spirituous liquors and intoxicating drugs and the examination of false weights and measures;

8. The Mufti, who expounded the law for the Kazi, who, if he agreed, decided accordingly. If he disagreed, a reference was made to the Nazim, who called a Council of the Jurisconsults;

9. The Kanungos, or Registrars of the lands, to whom cases connected with land were occasionally referred for decision; and

10. The Kotwal, or Peace-Officer of the night, subordinate to the Faujdar.

What and how many judicial authorities were there during the closing half-a-century of Muslim rule in Bengal, what was their hierarchy or subordinaton, what jurisdictions they exercised, what procedure they followed and how and to what extent their decisions were or could be given effect to need a separate study for a precise answer. Governing principles in the dispensation of justice were, however, those of Muhammadan jurisprudence. Muhammadan criminal law applied equally to Muslims and non-Muslims. In the realm of civil law also such rules of Muhammadan law as were not repugnant to the personal laws of the non-Muslims were of general application. Personal laws of non-Muslims such as those relating to marriage, adoption, inheritance, widow's estate, etc., and their religious usages and institutions remained unaffected.

Leaving aside Nazim on the criminal side and Diwan on the revenue and civil side at the top, both of whom appear to have had their deputies for the exercise of their functions, the Foujdars on the criminal side and the Kazis and Muftis on the Civil side seem to be pivotal in the scheme of the administration of justice. Influential Zamindars and revenue officials not unoften exercised judicial functions without, of course, any commission or legal sanction. The administration of justice was in tune with the social and political order, rather, disorder of the time which invariably cast its shadow on the former. This evidently gave the Company the occasion to tamper with the judicial system by successive measures in 1772, 1774, 1775, 1780, 1781, 1782, 1787 and 1790 until 1793. The changes brought about by those measures, both with respect to forum and procedure, do not, however, bring out a comprehensive scheme. They were of the nature of temporization which again reflect the still unsure position of the Company and the chaotic condition in the social, economic and political horizon. Quick succession of incumbent of the office of

Nazim, famine of 1770 and various experiments with land settlement and revenue administration go to confirm the prevalence of a chaotic condition of the body politic.

On the 22nd March, 1793, Permanent Settlement was introduced in the then provinces of Bengal, Bihar and Orissa by Regulation I of 1793. This measure was a landmark in the social history of Bengal. The land system that developed on the foundation of that measure had the effect of restructuring the society, causing realignment of social forces and creating new social equations. It generated a new life-style, reshaped cultural forms, conditioned behavioural pattern and sowed new seeds of disputes and offences. Though the land system and its social effects did not have a direct bearing on it, the judicial system was given a new shape by a number of Regulations promulgated in the same year. This demonstrated a self-confidence and unchallenged pre-eminence of the Company in the exercise of sovereign functions of the state. Mr. C. F. Field describes the courts for the administration of civil and criminal justice, as reorganised by those Regulations, as follows:

(i) *The Sadar Diwani Adalat and Nizamat Adalat* which may be regarded as a single Court having a civil and a criminal side. The members of this Court were the Governor-General and Members of Council, with addition, on the criminal side, of the Head Kazi of Bengal, Bihar and Orissa and two *Muftis*.

(ii) *Four Provincial Courts of Appeal and Circuit,* one for each of the Divisions of Calcutta, Dacca. Murshidabad and Patna. Each of these Courts was presided over by three Judges. These Courts were in fact established in 1790 and were only remodeled as to constitution and jurisdiction.

(iii) *Twenty-three Zillah and three City Courts,* each presided over by a single Judge, who also held the office of Magistrate for the Zillah or City under his jurisdiction, in which latter capacity he was further vested with the superintendence and control of the police.

(iv) *Native Commissioners for the trial of civil suits,* chosen from amongst the principal proprietors of land, farmers, tehsildars, managers, under-farmers, creditable merchants, traders and shopkeepers, altamghadars, jagirdars and Kazis.

(v) *A Registrar* was attached to each of the three classes of Courts (not native Commissioners). The Registrar was the chief ministerial officer of the Court. He also exercised

minor judicial powers. The Registrars had jurisdiction in suits for money or personal property not exceeding in amount or value 200 sicca rupees, for rent-paying land the annual produce of which did not exceed the same amount and for lakhiraj land the annual produce of which did not exceed twenty sicca rupees. Their decrees were not valid until approved and countersigned by the Judge. Registrars had no criminal jurisdiction.

The Judge of the Zillah Court and City Court was also the Magistrate. In the capacity of Magistrate he exercised minor original criminal jurisdiction in respect of petty assaults and thefts, and committed persons charged with more serious offences for trial before the Court of Circuit. In the capacity of Civil Judge he could take cognizance of all suits respecting the succession or right to real or personal property, land-rents, revenues, debts, accounts, contracts, partnerships, marriage, claims to damages for injuries and generally of all suits and complaints of a civil nature. The Judges were "invariably to state in every decree the grounds on which" it was passed, and an appeal lay from their decrees in all cases to the Provincial Courts.

The Native Commissioners exercised their judicial functions as follows :

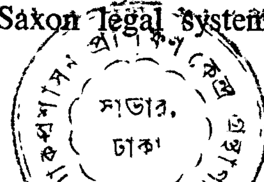
1. *As Amins* or Referees for the trial of such suits for money or personal property not exceeding fifty sicca rupees in amount or value as might be referred to them by the Judge;
2. *As Salisan* or arbitrators for the decision of such suits as the parties referred to them under an arbitration bond containing an agreement to abide by their decision;
3. *As Munsifs* for receiving and trying suits preferred against under-renters or raiyats in the estate, farm or jagir in virtue of which they were vested with the office of Commissioner. An appeal lay from their decisions to the Judge. These officers had no criminal jurisdiction.

The judicial system, as reorganised by the Regulations of 1793, had been so extensively modified by subsequent legislation that, by the time the Government of the territories under the control of the East India Company was taken over by the Queen by the Proclamation of the 1st November, 1858, the original scheme could hardly be recognised. Certain courts and jurisdictions, such as, the Provincial Courts and Registrars were abolished. Certain powers and jurisdictions were transferred from one class of courts or authorities to

other class. New institutions, new jurisdictions, and new procedures were being introduced. The concepts of English judicial system were creeping in consciously or unconsciously. As observed by Mr. Richard Clarke in his prefatory note to the Regulations and Acts in force in Bengal in 1853 compiled under the authority of the Company, the changes brought about at successive periods in respect of gradation of authorities, principles of administration, jurisdiction, procedure, execution and control had caused such entanglement and perplexity that ascertainment of correct position required laborious study and comparison of numerous measures and references. This was because changes had been effected more frequently by partial modifications and references than by enactment of new and consolidated rules or by rescission of matters that had been superseded. This reflect the confused and uncertain state of mind of the Company as to the administration of the affairs of the territory, including administration of justice. It is also indicative of the social transformation that was then in process with attendant dissensions and tensions which exploded in the upheaval and mutiny of 1857.

The explosion of 1857 followed by the take over by the British Crown of the Government of the territories under the administration of the East India Company brought about a qualitative change not only in the administration but also in the social and political climate. The spirit of revolt particularly of the Muslim community broke in. The other communities consolidated their gains and elevations in the economic and social field under the new political order. By and large, society settled down with new equations. The Government also found its mooring under the British Crown and shed it ambivalence. The administrative and the legal system with its concomitant the judicial system were being given a new shape. There was no more any need for old institutions and forms for the purpose of administration, rather, they were impediments to progressive development. A sense of purpose, albeit in harmony with imperial needs, could be discerned in the process. Indeed, recasting of the legal order, the offspring of the social and political order, was also an imperative of the era and the measures adopted were only the acknowledgment of that imperative.

The principal method of effective transformation of the legal order was codification of the laws, both substantive and procedural, in almost all fields. Exceptions were those of the personal laws of the different communities. Codification of laws extended to fields where even the English laws were not codified. The process of codification brought in the principles of Anglo-Saxon legal system



to which the principles of Muhammadan law, the erstwhile governing principles, gave way. The law of crimes was consolidated and codified in the Indian Penal Code, 1860 (Act XLV of 1860). The law of evidence was codified for India by the Indian Evidence Act, 1872 (Act I of 1872) which was in fact consolidation and codification of the principles of the uncodified English law of evidence. The procedure of the criminal courts was codified in the Code of Criminal Procedure which, after successive amendments and revisions since first enactment in 1861, finally emerged as the Code of Criminal Procedure, 1898 (Act V of 1898). Similar is the case with the procedure of the civil courts which was first codified in 1859 and after successive revisions took final shape in the Code of Civil Procedure, 1908 (Act V of 1908). Though legislation has been the principal instrument for bringing about the change, the judicial decisions of English judges of the Judicial Committee of the Privy Council and the High Courts have exercised no mean influence and such decisions quite naturally leaned heavily on the principles of Anglo-Saxon law. Some of the principal statutes which, in prescribing or defining rights, liabilities, legal relationships and procedure, have, in a manner, recast the legal system of the country are: the Indian Penal Code, 1860 (Act XLV of 1860), the Indian Evidence Act, 1872 (Act I of 1872), the Contract Act, 1872 (Act IX of 1872), the Specific Relief Act, 1877 (Act I of 1877), the Negotiable Instruments Act, 1881 (Act XXVI of 1881), the Trusts Act, 1882, (Act II of 1882), the transfer of Property Act, 1882 (Act IV of 1882), the Easements Act, 1882 (Act V of 1882), the Code of Criminal Procedure, 1898 (Act V of 1898), the Code of Civil Procedure, 1908 (Act V of 1908), the Limitation Act, 1908 (Act IX of 1908) and the Companies Act, 1913 (Act VII of 1913). Some of them are, of course, modified re-enactment of earlier enactments and have undergone amendments. These statutes have acquired some sort of permanency and the principles embodied therein stand integrated into our legal system.

The change in the legal system could not and did not leave the judicial system undisturbed. The Court of Sadar Diwani and Nizamat Adalat at Calcutta was abolished in 1862 upon the establishment of the High Court of Judicature at Fort William in Bengal by the Letters Patent of the 23rd June, 1862, which was replaced by the Letters Patent of the 28th December, 1865. At the same time and by the same provision [s. 8 of East India (High Court of Judicature) Act, 1861], the Supreme Court established under the East India Company Act, 1773 (s. XIII) was also abolished. The Supreme Court exercised jurisdiction in respect of British subjects residing in Bengal, Bihar and Orissa and also in respect of any

other person for certain causes and in certain circumstances. The High Court established by the Letters Patent had, apart from other original and appellate jurisdictions conferred by the Letters Patent, inherited all the jurisdictions of the Courts which. stood abolished upon its establishment.

Below the High Court there were Zillah and City judges who had both civil and criminal jurisdictions. These jurisdictions had undergone a number of changes by successive legislation until on the criminal side, they were given some sort of settled shape by the Code of Criminal Procedure which, through the Codes of 1872, 1877 and 1882, culminated in the enactment of the Code of Criminal Procedure, 1898 (Act V of 1898). The offices of Collector and Magistrate of the District, which were separated in 1837, were again united in 1859 on the ground that "maintenance of the position of the District officers (Collector-Magistrates) is essential to the maintenance of our rule; and that, in order to maintain their position, judicial power in criminal matters must be left in their hands." The Zillah and City judges who were given, first indirectly and later directly, the jurisdiction as Sessions Judges, were also given appellate powers in respect of certain orders of the Magistrates. The Magistrates' powers also came to be regulated by the Code of Criminal Procedure. The same person, however, held the office of Collector as well as that of Magistrate of the District. The Code also provided for classification of Magistrates into Magistrates of the First Class. Magistrates of the Second Class and Magistrates of the Third Class, with certain appellate powers for the Magistrate of the District.

On the civil side also jurisdiction and composition of the courts had undergone changes until they took a settled shape under the Bengal, North-Western Provinces and Assam Civil Courts Act, 1877 (XII of 1877). The Courts of Amins and Sadar Amins were abolished and their functions and jurisdictions were transferred to Munsifs and Subordinate Judges.

The structure of the judiciary and the hierarchy, jurisdiction and powers of the ordinary civil and criminal courts took a settled shape at the close of the nineteenth century. At the appex was the High Court of judicature at Fort William established by the Letters Patent of the 28th December, 1865. On the criminal as well as on the civil side the High Court had both original and appellate jurisdiction regulated by its charter, that is, the Letter Patent and the Codes relating to civil and criminal procedure and other relevant statutes. Subject to qualification appeals from the decision of the High Court lay to the judicial Committee of the Privy Council.

5

Next below the High Court were the district Courts—the court of the District Judge on the civil side and, except in the Presidency town of Calcutta, the Court of Session on the criminal side. The Court of District Judge was the principal Civil Court of original jurisdiction. It had also appellate jurisdiction. There were also Additional Judges in a district where the volume of business before the District Judge required aid and an Additional Judge exercised the same jurisdiction as the District Judge.

The Court of Session, presided over by the Sessions Judge, was the highest ordinary criminal court of original jurisdiction except where the High Court had been given such jurisdiction in the Presidency town. There were also Additional and Assistant Sessions Judges appointed to exercise jurisdiction in the Court of Sessions. The Additional Sessions Judge, like the Sessions Judge, could pass any sentence authorised by law, but an Assistant Sessions Judge was not competent to pass sentence of death or of transportation or imprisonment for a term exceeding seven years. The Court of Sessions tried offences triable by it upon commitment of the accused by the Magistrates. The Court of Session had also appellate powers in respect of sentences passed by Magistrates and Assistant Sessions Judges except in cases where such sentences were appealable to the High Court.

Though the Court of District Judge or Additional District Judge was different from the Court of Session, the same person was appointed both as the District Judge and the Sessions Judge or, as the case may be, both as the Additional Judge and the Additional Session Judge. A Sessions Judge of one sessions division could be appointed as Additional Session Judge of another division.

The Civil Court next below that of the District Judges was the Court of Subordinate Judge who had also unlimited pecuniary jurisdiction. Except where a statute in respect of any particular matter otherwise provided, all civil suits above a certain pecuniary limit were to be instituted in the Court of Subordinate Judges, being the Court of the lowest grade in respect of suits above that limit. Appeal from the decision of a Subordinate Judge lied to the District Judge if the value of the original suit did not exceed a specified pecuniary limit and to the High Court in other cases. A Subordinate Judge was also used to be appointed as Assistant Sessions Judge in the Court of Session and therefore also exercise criminal jurisdiction as Assistant Sessions Judge.

The lowest in the grade of ordinary Civil Courts was the Court of the Munsif. The jurisdiction of the Munsif was limited to suits of which the value did not exceed specified limit. Except suits

triable by a Small Cause Court, the Court of the Munsif was the court of original jurisdiction in respect of all civil suits within the limits of its jurisdiction. A Munsif had no appellate powers.

The Criminal Courts below that of the Court of Session in the Districts outside the Presidency-town were the Courts of Magistrates. The Magistrates were of three grades—Magistrate of the First Class, Magistrate of the Second Class and Magistrate of the Third Class. In every district one of the Magistrates of the First Class used to be appointed as the District Magistrate and one the Magistrates of the First or Second Class used to be placed in-charge of a Subdivision who was called the Subdivisional Magistrate. The Magistrate of the First Class could pass sentence of imprisonment not exceeding two years, fine not exceeding one thousand rupees and whipping, the Magistrate of the Second Class could pass sentence of imprisonment not exceeding six months and fine not exceeding two hundred Rupees; and a Magistrate of the Third Class could pass sentence of imprisonment not exceeding one month and fine not exceeding fifty Rupees.

In the Presidency-town, the criminal courts below the High Court exercising original criminal jurisdiction were the courts of the Presidency Magistrates one of whom used to be appointed as the Chief Presidency Magistrate. The extent of power of a Presidency Magistrate was the same as that of the Magistrate of the first class.

There were another class of civil courts called the Courts of Small Causes which may be regarded as courts of lowest jurisdiction. They were first established in the Presidency-town and were designed for speedy disposal of money suits of small valuation. The law on the subject of such courts in the Presidency-towns, which was first enacted by Act IX of 1850, was consolidated and amended by the Presidency Small Cause Courts Act, 1882 (Act XV of 1882). In districts outside the Presidency-town, the Courts of Small Causes were first established by Act XLII of 1860 which was replaced by Act XI of 1865. The Act of 1865, as amended in 1867, was replaced by the Provincial Small Cause Courts Act, 1887 (Act IX of 1887), which consolidated and amended the law on the subject. Except an order for payment of costs for false claims or defences or an order imposing fine or directing imprisonment in civil prison, a decree or order of a Small Cause Court was final. The High Court could call for any case decided by a Small Cause Court and pass any order thereon.

This is the broad outline of the judicial system of Bengal at the commencement of this century. This system continued more or less undisturbed right up to the close of the British rule in August, 1947

except for the introduction of the Federal Court on the 1st October, 1937 at the top of the judicial hierarchy in India. The Federal Court was an element in the scheme of the judicial structure of Federation of India contemplated in the Government of India Act, 1935. The Federal Court had original jurisdiction, to the exclusion of all other courts, in disputes between the Federation and a Province or a Federated State, or between two or more Provinces, or between a Province and a Federated State. This original jurisdiction was further limited when a State was a party or when any agreement specifically excluded jurisdiction. In the exercise of its original jurisdiction the Federal Court did not pronounce any judgment other than declaratory judgment. The Federal Court had also appellate jurisdiction in respect of the decisions of a High Court if the High Court certified that it involved a substantial question of law as to the interpretation of the Government of India Act, 1935 or any order in council made thereunder. Appeal to His Majesty in Council lay from the decision of the Federal Court in the original jurisdiction or, with the leave of the Court, in other cases. The Federal Legislature had power to enlarge the jurisdiction of the Federal Court but it was not, before the close of the British rule, enlarged.

To sum up, the British rule closed with a judicial system which, exlcuding the courts and tribunals set up for special purposes, such as, labour courts under labour laws, consisted of the Federal Court at the top which was the only court at the federal level and the High Court which was the highest court at the provincial level from whose decisions appeal lay with the Federal Court. Below the High Court, in the descending order of hierarchy, the civil courts were the Court of District Judge, the Court of Additional Judge, the Court of Subordinate Judge, the Court of Munsif and the Court of Small Causes: and the Criminal Courts were the Court of Session in which the Additional Sessions Judges and Assistant Sessions Judge, also exercised jurisdiction and in the Presidency-town, the Presidency Magistrates and outside the Presidency-town, the Magistrates of the First Class, the Magistrates of the Second Class and the Magistrates of the Third Class.

Pakistan comprising a part of the territories of British India was born on the 14th August, 1947 as an independent Dominion with the Government of India Act, 1935, as adapted, as its provisional Constitution. She inherited, in relation to her territories, the judicial system with which British rule in India closed. A Federal Court was established with the same jurisdiction, powers and functions as the Federal Court of India had in British India. East Bengal, as a

Province of Pakistan, inherited the judicial system of the Undivided Province of Bengal. The High Court of East Bengal was set up for the Province, which comprised part of the territories of the Provinces of Bengal and Assam, with the same jurisdiction, powers and functions as the High Court of Calcutta had in relation to those territories except jurisdiction and powers relating to the Presidency-town of Calcutta. The decisions of the High Court of East Bengal was subject to the appellate jurisdiction of the Federal Court to the same extent as the decisions of the High Court of Calcutta was subject to the appellate of the jurisdiction Federal Court of India. The Judicial Committee of the Privy Council continued to have the same appellate jurisdiction in respect of decisions of the High Court of East Bengal and the Federal Court of Pakistan as it had, before the 14th August, 1947, in relation to the decision of the High Court of Calcutta and the Federal Court of India.

The Federal Court (Enlargement of Jurisdiction) Act, 1949 (1 of 1950), which came into force on the 1st February, 1950, enlarged. the jurisdiction of Federal Court for entertainment of appeals from decisions from which appeals used to lie to the Privy Council. Jurisdiction of the Privy Council to entertain appeals and petitions in respect of judgments, decrees or orders of a court or tribunal in Pakistan was abolished with effect from the 1st May, 1950 by the Privy Council (Abolition of jurisdiction) Act, 1950. Thus after the commencement of these two Acts, the Privy Council ceased to have any jurisdiction in respect of judgments, orders or decrees of any court or tribunal in Pakistan except those in respect of which the proceedings were already pending before it.

So far, as East Bengal, later named as East Pakistan, was concerned, the Constitution of Pakistan of 1956 or of 1962, did not bring about any change in the judicial system or its basic principles except that at the Federal level a Supreme Court was established to replace the Federal Court. The Supreme Court took over the jurisdiction of the Federal Court.

All the other courts in East Bengal, renamed as East Pakistan, below the High Court with their hierarchy composition, powers and functions remained undisbursed. Apart from the ordinary civil and criminal courts which in the main constituted the judicial system, special courts and tribunals were also set up under special laws, such as, Tribunals under the Foreign Exchange Regulation Act, 1947 (II of 1947), Courts of Special Judges under the Criminal Law Amendment Act, 1958 (XL of 1958), Labour Courts under labour laws,

etc. Another class of courts, called Conciliation Courts which were of the nature of conciliation machinery, was established at the lowest level for composition of minor civil and criminal disputes by the Conciliation Courts Ordinance, 1961 (XLIV of 1961). These Conciliation Courts were not innovations but were only modified versions of the Union Benches constituted under the Bengal Village Self-Government Act, 1919 (Ben. Act V of 1919). If those special courts and tribunals and conciliation courts which did not materially affect basic structure of the system are ignored, the judicial system of East Pakistan did not, for so long as it remained a province of Pakistan, undergo any change worth mentioning in character, composition and powers or in the basic principles from what it had inherited from Bengal in British India; and that system was, as has been shown earlier, virtually the same as it was at the beginning of this century.

The people of the Province of East Pakistan christened the Province as Bangladesh and declared Bangladesh so christened to be an independent sovereign People's Republic by the Proclamation of Independence issued on the 10th April, 1971. Though the Proclamation of Independence was given retrospective effect from the 26th March, 1971, Bangladesh authorities were not able to exercise effective control of the territory until the surrender of the occupying Pakistan Army on the 16th December, 1971. Until that date all authorities, including the High Court and other Courts, continued to function as if no such Proclamation had been made. The High Court of East Pakistan, now being an institution under an existing law, ceased to exist from the day the Proclamation became an effective reality on that date. Hence, a High Court of Bangladesh was established by the Provisional Constitution of Bangladesh Order, 1972. This Order gave no indication as to the powers, functions and jurisdictions of the High Court so established. Later, by the High Court of Bangladesh Order, 1972 (P.O. No. 5 of 1972), issued on the 17th January, 1972, the High Court of Bangladesh was given all such original, appellate, special, revisional, review, procedural and all other powers as were exercisable in respect of the territories of Bangladesh by the High Court at Dacca before the 26th March, 1971, except the power to issue any writ, order or direction in the nature of *habeas corpus*, *mandamas*, prohibition. *quo warranto* and *certiorari*. All proceedings which were pending before the High Court of East Pakistan were taken over by the High Court of Bangladesh. Nothing was said about the proceedings before the Supreme Court of Pakistan relating to the causes arising from the territories of the Province of East Pakistan. The Constitution of the People's Republic of Bangladesh which was adopted by the Constituent Assembly on the 4th November, 1972, came into force on the 16th December, 1972,

The Constitution established a Supreme Court for Bangladesh with two divisions—one called the Appellate Division and the other the High Court Division. Generally speaking, the High Court Division has inherited all such original, appellate and other jurisdictions and powers as were exercisable by the High Court of East Pakistan and the Appellate Division has inherited all such powers and jurisdictions as were exercisable by the Supreme Court of Pakistan in relation to the territories of the Province of East Pakistan. Considered in the historical perspective, the High Court Division of the Supreme Court of Bangladesh may be said, without gross inaccuracy, to be the continuation, with different name and identity, of the High Court at Fort William in Calcutta in relation to the territories of Bangladesh through the High Court of East Pakistan established by successive Constitutions and the Appellate Division of the Supreme Court of Bangladesh to be the continuation of the Federal Court of India in relation to those territories through the Federal Court and the Supreme Court of Pakistan. The composition of the Court, the qualifications of the Judges, the practice and procedure, formalities and rituals, dress and language and even the manner of addressing the judges, which is indubitably repugnant to the principle of a republic, continue to be same. The only change worth mentioning is the addition of the power in respect of prerogative writs in favour of the successors of the High Court of Calcutta and the addition of the powers and jurisdiction of the Privy Council in favour of the successor of the Federal Court of India.

The Conciliation Courts introduced in 1961, which were the successors of the Union Benches introduced in 1919, have been replaced, with additional powers, by the village Courts established under the Village Courts Ordinance, 1976 (Ord. LXI of 1976). The composition of the Village Courts is the same as that of the Conciliation Courts. Governing principle is composition rather than adjudication of disputes.

If certain adjustments in jurisdictions and powers required by changed circumstances are ignored, all the other courts, tribunals and judicial institutions continue to function as before as if there has been no political or constitutional change from the time of the British Rule. The Composition of the courts, the practice and procedure and the language and formalities remain unaltered. The qualifications and method of recruitment of the judicial officers and their conditions of service still continue to be governed by, and in accordance with the principles of, the same old rules and, where they have been replaced, by rules drawn up almost in identical terms.

This brief account of the evolution of the judicial system of Bangladesh, whose basic structure and principles continue to be what they were eight decades ago, demonstrates on the one hand the vitality and resilience of the system designed for the purposes of colonial rule and acknowledges on the other the sterility of successive political changes in generating social progression. Silent acceptance of the system for more than three decades after the end of the colonial rule goes to justify the boastful claim of Mrs. Margaret Thatcher that the British rule had given the best laws, an impartial system of justice and an incorrupt administration to a quarter of the earth's surface which includes Bangladesh. But the painful realities of the life of the common man give a lie to that claim. The then President of Bangladesh in his address of the 26th March, 1975, highlighted only one aspect of the deficiency of the system, namely, the delay in judicial process. Insulation of the system from the fabric of the indigenous society, the remoteness of approach, the procedural hurdle and the cost and trouble involved had made justice, if not the proverbial sour grape, a bitter fruit for the common man and it still remains so. For a common man a victory in a litigation, if it so happens in any case, is most often of the nature of Pyrrhic victory and ultimately turns out to be his undoing. With all the rhetoric about equal protection of law, right to life and liberty, inviolability of the person and sanctity of property and all the procedural safeguards and excellence of form, justice was always, and still continues to be, a prohibitive luxury for the common man. This is a phenomenon not peculiar to Bangladesh but common to almost all countries where the social order, the matrix of the legal order, is founded on property regime with the primacy of the individual over the collective. But the disintegration of the erstwhile cohesive social forces and the volatile political and economic climate with concomitant social and administrative disorder during the last four decades and creeping corruption and corrosion of values have made the quest for justice in Bangladesh a quest for the unreal. The judicial system and also to a great extent the general legal and administrative system are out of tune with the current social reality and devoid of any promise for the future. The current judicial system, in alliance with the administrative system, is operating as a convenient tool of the high and mighty for depriving and breaking the poor. Hence, the crying need for reform of the judicial system in Bangladesh.

A judicial system develops or is set up for dispensation of justice; and the concept of justice in a given society takes its complexion from the values cherished by that society. To be effective it has to move in harmony with the progression of social development and concomitant mutation of the sense of values. It has also to act in harmony

with the politically adopted social aspirations. It is when there is any contradiction or disharmony between the form, principles and working of the judicial system and the contemporary social and political circumstances and aspirations that the system fails in its purpose and gives rise to the question of its reform. An exercise on judicial reform has, therefore, to keep in view the current social and political circumstances as they have emerged from the past and also the envisioned future.

The judicial system which we now have, as inheritance from the foreign rulers, reached its maturity at the close of the last century and it has not, as shown in the historical account of its evolution, undergone any material change in principle, structure, composition or procedure notwithstanding successive economic, social and political changes of revolutionary magnitude during the last eight decades. There is thus a lack of correspondence of the inherited judicial system with the current socio-economic and political reality which accounts for its failure to meet the challenge of the time. The maturity which the judicial system reached at the close of the last century corresponded with the maturity which the socio-economic system that emerged on the foundation of the permanent settlement reached at that time. This again corresponded with the matching maturity of the administration under the British Crown. Reaching this maturity, the socio-economic system. the administrative system and the judicial system reached also their stasis.

The nineteenth century closed in Bengal with the society as archaic and stagnant as it was for the past few centuries with only realignment of forces consequent upon the advent of British rule and introduction of permanent settlement. The economy continued to be as predominantly, if not wholly, agricultural as it traditionally was and more so because of the decadence of the thriving indigenous industry due to calculated suppression in the interest of the foreign rulers. The cultural pattern and social values continued to be as introvertive and unresponsive to fresh light as they were for ages with only imperceptible simmerings of a countable few of the upper stratum enlightened by English education. The landed gentry who in general continued to live in their own homes in villages continued to constitute the indigenous power base to the exclusion, since the consolidation of British rule, of the erstwhile native state functionaries. The political consciousness of the generality of the people continued to be as marked by its absence as the village communities of the sub-continent had been in the past though dynasty after dynasty had tumbled down

and revolution had succeeded revolution. The maturity that the administrative and judicial system reached at the close of the nineteenth century was in the context of the political and socio-economic circumstances of that time.

The twentieth century opened to tell a different tale. The germ of disintegration and dissolution of idyllic village communities with their stagnatory and vegetative life which the British rulers unconsciously sowed with the dissemination of modern learning and introduction of railway and industries, whatever may be their inadequacy and deficiency, began to sprout and started causing social revolution. The first ostensible event which gave occasion to bring the generality of the people in a political movement and thereby to generate in them some sort of political consciousness was the partition of Bengal in 1905. The advanced section of the English educated middle class of Bengal who preceived in the partition a threat to their vested interests in Government employment, professions and other privileges determined to undo the partition and resorted to popular movement which was the only weapon then available to them without risking their privileged position in society and with Government. But the dialecties of popular movement with political content inevitably widened and deepened political consciousness. The visible fall-out of this movement was the terrorist movement of Bengal aimed at putting an end to British rule in India. The administration reacted to the terrorist movement by the Criminal Law Amendment Act of 1908—a draconian law by the standard of that time. This was a violent departure from the normal judicial process. There was of course the Bengal Regulation III of 1818 (The Bengal State Prisoners Regulation, 1818), a law relating to preventive detention of political recalcitrants, but this caused no concern for the generality of people because of the very nature of the then opposition to foreign rule. The partition of Bengal was, of course, undone but for a price. The capital of British India was transferred from Calcutta to Delhi. But the movement against partition left its mark in the political consciousness of the masses.

Before the commotion caused by partition of Bengal and its undoing could subside came the first world war. The war in its wake added new ingredients to quicken the transformation of the socio-economic and political scene. The reasons of war necessitated, in the economic field, the first conscious step towards industrialisation of the country to a limited extent and, in the political field, mobilisation of the people in support of the war. Britain held out a prospect of a better deal for India. When the allied victory was in sight, the

promise of "progressive realisation of self-government" belied the expectation of Indian political leadership. The political movement for "Swaraj" was gathering momentum and therewith the terrorist movement was also raising its head. The administration reacted with the Rowlatt Bill. The ruthlessness of Government action, particularly in Jalianwallabagh, caused a political explosion. Thereafter events followed in quick succession. The magnitude of the commotion of the non-cooperation movement and the Khilafat movement, which hardly left any section of the people unaffected, added new dimension to the political consciousness of the masses. This consciousness by its own logic generated consciousness of social and economic rights particularly those of the underprivileged. The class rights of workers and peasants were getting to be issues for movement. Governmental functions and regulations began to extend to new fields, including commercial and industrial fields, and fields which previously were considered to be not appropriate for Governmental regulation or interference. The cumulative effect of all these factors was dissolution of old forces and values that hitherto maintained a social balance. The old principles of social and legal relationship and the old administrative and judicial systems were showing symptoms of inadequacy and decrepitude.

Though the vigour of the non-cooperation and the Khilafat movements had come down, the silent process of transformation of the economic and social scene continued unabated. This process which by its own law of motion developed momentum gained acceleration from internal and external factors like civil disobedience movement of 1930, the world economic recession of 1929—32 and the constitutional change in 1937. This process, apart from sharpening social conciousness and questioning the traditional norms and values, developed contradictions within the old social, legal and administrative framework and naturally generated heat, tension and conflict. This framework with its resilience, however, continued to hold out and was not wholly incapable of containing social, economic and political disorder until it reached the breaking point soon after the outbreak of the second world war. The circumstances arising from, and in the wake of, the second world war, the Bengal famine of 1943 and the political commotion and communal riots of 1942—47 had shaken the old social order and old values and beliefs to their foundations. The magnitude of the problems created by those circumstances so overwhelmed the administrative and the judicial system that they could hardly maintain the form not to speak of serving the social purpose for which they were designed. Soon followed the political partition of the sub-continent to give birth to two independent states

of India and Pakistan. The partition, apart from taking its toll of human misery due to mass migration and communal riots, had the crippling effect on the administrative and judicial structure inherited by East Bengal, the newly curved out province of the new state of Pakistan. The Pakistan polity had its inherent contradictions which gradually gravitated towards the War of Liberation in 1971 of the people of the Province of East Pakistan and found resolution in the emergence of the independent State of Bangladesh. The War of Liberation with its attendent violence and disorder had thrown the administration, including administration of justice, in a state of complete disarray. The Vice-President Mr. Justice A. Sattar, in an address at a Lawyers' Conference, neatly summarised in the following words how and why the legal framework and the judicial system of Bangladesh have, in the course of the last seven decades, reached the stage of inadequecy and irrelevance in the context of our progressive needs.

"Society has outgrown the legal framework designed to meet the needs of the tardy nineteenth century. Though the ravages of the First World War did not directly touch our part of the globe, we had not remained, as we could not remain, immune from its fall-out. Industrial growth, because of the need of the war, new concepts of political, economic and social relationship, new values and new sense of urgency had generated a mobility and tension that the old legal framework, institutional and procedural, could not cope with. Its insulation and alienation from the people and the society now appeared in bold relief because of its insufficiency and inefficiency. This also led to its corrosion from within, that is, through corruption and contempt of its own functionaries, without social resistance. Simultaneously with this process, social commotion and clash and contradiction between the ruling power and native aspirations mounted to such an extent that it was hardly possible to look at the problem in correct perspective. Though the current needs of the law and order situation and of resolving conflicts and commotions in new fields, such as, labour relations, were sought to be met by new laws, both substantive and procedural, the basic problem of recasting the entire structure to meet the demands of the changed and everchanging situation remained unattended. The legal procedure and the institutions for adjudication of disputes and dispensation of justice had, by the time the Second World War broke out, retained only their form but lost their content and social utility. Whatever service of social benefits could be derived from their continued existence was due to mental habit and popular psychology rather than to their own worth and vitality.

"The second World War came with its challenges in the administration of justice in fields new as well as in fields old which were getting more and more complex and the old legal framework and institutions, with their supplements and modifications, could hardly meet them. The war generated new activities, new needs, new rights and obligations, new restrictions and responsibilities, new fields of tension and conflict, new social relationship and social behaviours, new laws, new forums and new procedure. The disputes under, and contraventions of, new laws, regulations and directions far outnumbered the traditional civil disputes and criminal offences which did not show any sign of decline or abatement. Administration of justice was in a state of flux in exact correspondence to the chaotic state of economic and social life of the community. Irregularity or delay in dispensation of justice was only one of the manifestations of social chaos.

"Before the society could recover or rediscover a balance and a sense of value after the close of the second World War, foreign rule came to an end with the partition of the then one country. This change-over brought in its wake its own problems and challenges with which we were not acquainted. We failed to anticipate the shape of things to come. Problems created by communal riots of national dimension, mass migration, rehabilitation of refugees, establishment of new trade and other economic relationship to replace the old, needed immediate attention and claimed priority to the ordinary problems of administration including administration of justice. A general legal framework for administration of justice designed for the nineteenth century society and polity continued to serve the post-independence society and polity. Some changes have, no doubt, from time to time, been introduced by way of reform, but they were, in the main, nothing but attempts at adjustment and patchwork to meet the needs of administration rather than the needs of the people. The administrative machinery including that for administration of justice continued to be as insular and alienated from the people as it was during the alien rule. It was, therefore, no wonder that we had to engage in a struggle for, and win, liberation from independence. A contradiction between the legal framework and the social needs of the changed situation also accounted for the delay in the administration of justice.

"The struggle for liberation, because of its nature and process, contained and nurtured within it the germs of social disorder and moral anarchy. The contradiction between its revolutionary form and reversionary content did not permit. rather, prevented the growth of institutions to take over the social and administrative functions of

the post-liberation society. The debilitated pre-liberation administrative organisations, agencies and other institutions had, of necessity, to take on the responsibilities, for which they were neither prepared nor groomed, of contending and containing the forces of disorder and anarchy unleashed after the restraint of war was over. Apart from the load of responsibilities of unanticipated dimension and complexity, the administrative machinery, including the judiciary and law-enforcing agencies, had to work within the legal framework and the limitations of the pre-liberation period which were again the same as those of the nineteenth century. Our principal substantive and procedural laws, both civil and criminal, which govern and regulate the day-to-day life of the generality of the people still continue to be the nineteenth century statutes founded on the then property relations, economic structure, concepts of rights and obligations and sense of value. This is true also in the case of composition, hierarchy, jurisdictions, powers and procedure both of the judiciary and the law-enforcing agencies. I am not suggesting that they were or are bad but I feel that with all their merits they are out of tune with the present reality and have outlived their utility. They may continue to generate fear but have ceased to inspire confidence. They certainly do not animate the affection of the people which is due to an institution of their own. Fear is not a substitute for affection. An institution to generate fear is a weapon of the ruler against the ruled but an institution drawing the affection of the people is an agency of service. In spite of our independence in 1947 and liberation in 1971, it is the continued style, appearance and trappings of our judicial institutions and law-enforcing agencies designed as weapons of the ruler against the ruled and not as agencies of service by of and for the people that explains their continued insulation and alienation from the people. It is this insulation and alienation, coupled with the disharmony with the current social and economic realities and the workload beyond their strength to bear that, in a large measure, account for the failure of our present legal machinery to administer speedy and effective justice."

This is the reality of the present state of administration of justice in Bangladesh and it is in the context of this reality that Mr. Justice Sattar concluded his address with the observation: "The old society has lost its balance with the natural process of decay and disintegration of its values and beliefs without laying the foundation for the healthy growth of the new. New balance will have to be worked out on new values and human relationships expressed and epitomised in a new legal system". Working out of a new legal system to express new values and new human relationships is not, however, the purport of this essay. What this essay aims at is projection of only a judicial system which will be free, to the extent human nature permits from

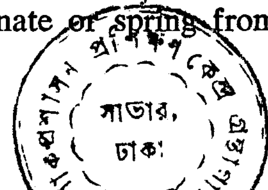
the deficiencies and afflictions of the current judicial system which is a continuation of the system introduced for the purpose of colonial rule.

IV

The judicial system of a polity is a part of its legal system; and the legal system is the product of the socio-economic order. A projection of judicial system for Bangladesh cannot, therefore, be devoid of a vision, however inchoate, of a socio-economic order reflecting our aspirations. Our aspirations and our vision of a socio-economic order have been sought to be given expression to in Part II of the Constitution which sets out the Fundamental Principles of State Policy. The programme and procedure for the realisation of our aspirations and vision will necessarily be conditioned by the character of our polity which is declared to be a republic by article I and is required to be democratic under article 12 of the Constitution.

In a republic sovereignty vests in the people and is exercisable in different fields—executive, legislative and judicial—by institutions and authorities named and defined by the Constitution and laws made under the authority of the Constitution and in a democracy, if it is not intended to be a pretension or an apolocy, the institutions and agencies for the exercise of sovereign authority and other governmental functions are required to be designated, elected or appointed by the people. The character of a republic and principles of democracy require that in Bangladesh the agencies and functionaries of the State at every possible level, particularly, those with decision making authority, which include judges and persons exercising judicial functions, be named and selected by. or in such manner as to reflect the will of. the people for whom and in whose name the decision or action is to be taken. It is only such naming and selection that would justify calling our polity a democracy.

Moreover, selection of the State functionaries by the people alone can prevent insularity and alienation of state agencies and functionaries from the people and the local society in which they are required to function. Such insularity and alienation which constituted the basic principle of the administrative steel-frame and the judicial system were calculated for the purpose of colonial rule. Unfortunately in spite of the constitutional declaration that our polity is a republic with principles of democracy, the colonial principle of selection of state functionaries continues to guide our administrative framework as well as the judicial system. The administrative or judicial authorities for any local area do not now emanate or spring from the



people of that area. These authorities have the character of being the agencies or commissioners and, hence, the representatives of the central authority like those under colonial rule. Here is the contradictions between the principle we have adopted in theory and the reality and between our pretension and our practice. The resolution of this contradiction is a condition precedent for progressive realisation of our aspirations and vision. The framework of a new judicial system will, therefore, have to be kept free from this contradiction. Hence, the first basic principle for a new judicial system of Bangladesh is that its composition at every level must reflect democratic principle.

Article 22 of the Constitution provides that the State shall ensure the separation of the judiciary from the executive organs of the State. The justification and need for separation of the judiciary from the executive branch of the Government has never been disputed except in the early stages of British rule. As has been shown in the history of the judiciary, the office of the Collector was separated from that of the Magistrate of the district as early as 1837. But they were united again in 1859 on the ground that maintenance of the position of the district officers, which was considered essential to the maintenance of British rule, required judicial power in the hands of those officers. Successive political changes have not affected the position. The executive officers continue to exercise judicial powers in criminal matters in spite of the fact that manifold functions of those officers which are continuously on the increase hardly enable them to attend to judicial functions. The Code of Criminal Procedure (East Pakistan Amendment) Act, 1957 (XXXVI of 1957), which was enacted in November, 1957, to relieve the executive officers from judicial functions, that is to say, to effect separation of the judiciary from the executive at the only stage it is not separate, has not been brought into force. The reasons are partly administrative and partly political. That presumably explains the need for the standing directive in Article 22 of the Constitution. The second basic principle for reform of the judicial system in Bangladesh has, therefore, to be complete separation of the judiciary from the executive.

Rule of law is a pre-condition for social order and social progress if not for the very social existence of a community; and rule of law in a democratic polity is predicated on the independence of the judiciary from the executive or from political control or interference. It is such independence alone that can guarantee individual rights and liberations and protect the weak against the strong. A democratic polity without an independent judiciary loses all its merit and exposes itself to the risk of abuse by unscrupulous persons in authority and, on occasions of civil commotion, the risk of rule of the mob. Independence of the judiciary has, of course, wider and deeper connotation

than simple independence from the executive branch of Government. As has been aptly put by Prof. K. W. Patchett: "The essence of judicial independence is that the Judge, in the discharge of his functions, reaches his decisions because his analysis, legal knowledge and understanding, his training and system of values, and no one else's lead him to particular conclusions. That independence is in the Judge's refusal to submit to any external pressures to reach conclusions different from those which, in his evaluation of the law and interpretation of the evidence, appear to be right ones." This speaks of only external pressures and external pressures are varied, subtle and complex in the present day complex society. Apart from external pressures there are many internal or subconscious impediments to independence or impartiality of a judge as has been aptly expressed in the passage. The notion of a judge being impartial needs more thought than it is commonly given. Strong views may obviously affect decisions, but general outlook and mental habits can have just as much influence without being so noticeable. Whatever the conscious effect to be impartial, there is always the prejudice or bias or as Holmes called it "the inarticulate major premiss of the judge." An independent judiciary implies immunity of a judge rendering a decision from influences external or internal which impair impartiality and also involves integrity of the judge to resist temptations and overcome prejudice. Judicial independence does not, of course, mean a licence for a judge to act arbitrarily or an immunity from public scrutiny. As Lord Atkin put it: "Justice is not a cloistered virtue: she must be allowed to suffer scrutiny and respectful, even though outspoken, comments of ordinary men." Nor does judicial independence mean "a trapping of judicial office designed to bestow on the judges a special status with special privileges to satisfy their personal vanities". It is aimed at the protection of the interest of the community by excluding arbitratiness in the administration of justice. Judicial independence, therefore, also imposes a social responsibility on the judge who has to take account of, but not ruled by, contemporary public opinion.

Present judicial system of Bangladesh grants, in theory and also in law, judicial independence but external pressures to impartiality of a judges, are not absent and, in the present socio-economic and cultural context, internal pressures, including temptations and prejudices, are not few. After all human rights "are not protected simply by Constitutions, legislation, speeches or proclamations". Our judges, except those of the Supreme Court, are members of the Civil Service and their appointment, transfer and promotion are governed by the same principles as apply to the executive services. Their amenities are subject to the control of the executive. They

are not unoften involved in public duties unassociated with judicial functions, such as, enquiries or commissions which have bearing on sensitive political problems. Such involvement cannot but impair the reputation for impartiality, if not impartiality itself of the judge. In the matter of amenities judges are not unoften discriminated against. These factors correde in practice judicial independence granted in theory. All these factors have an unquantifiable cumulative effect on the quality of justice administered. Hence, the third basic principle for reconstitution of the judicial system in Bangladesh has to be independent of the judiciary in theory and practice coupled with social responsibility.

Next to the above three basic principles, come certain other principles which should find reflection in the judicial system if it is to justify its legitimacy to the common man and earn his esteem. The first of these principles is that justice must be cheap if not free. Article 31 of the Constitution declares that to enjoy the protection of the law, and to be treated in accordance with law, and only in accordance with law, is the inalienable right of every citizen and Article 27 declares that all citizens are equal before law and are entitled to equal protection of law. To a common man these declarations cannot but be empty phrases when enforcement or defence of his rights is beyond his means. After all human rights are not protected by such declarations but by readily available effective remedies within means. Realisation of equality as envisioned in those articles in a fundamentally unequal society would call for dispensation of free justice with availability of free legal aid. But in the given circumstances of our society it would be idle to attempt even in the near future at the creation of "an oasis of equality within an environment of inequality". Hence, the aim has of necessity to be limited to making justice cheap.

Administration of justice aims principally at the maintenance of rule of law which seeks to ensure the principle of rule of right in the relations between the governors and the governed and between man and man. If properly adapted, it can be directed to serve other social purposes as well. After all human relationships and consequently social relationships constitute a part of the fabric of daily life and such relationships are not governed by the principles of any mechanical process. Community or social life is as much determined by process of adjustment and compromise as individual life. Enforcement or maintenance of rule of right or rule of law cannot, therefore, be a wholly mechanical process. Consequently compromise and composition of disputes has to be a part of the process of administration of justice. With this principle in view the courts can be

developed into institutions of social service to foster harmonious social relationship and thereby to thin out the causes for adjudication which now crowd the courts beyond their capacity. Hence, compromise and composition of disputes without detracting from determination of rights should also constitute a directive principle for the judicial system of Bangladesh.

Legal service, that is, Lawyer's service, is universally recognised as a necessary part of the judicial process and an autonomous part at that. This recognition has found expression in our laws and rules and the practice and procedure of our courts. The right to consult and be defended by a legal practitioner of his choice has been recognised as a fundamental right of a citizen by Article 33 of the Constitution. A lawyer has thus a very significant role to play and this role is not confined only in the administration of justice but extends also to other fields of social life. In the field of administration of justice he has the responsibility to assist in the just, prompt and efficient disposal of the business of the court and also to represent his client competently so as to fully maintain the client's interest within the bounds of the law and the ethical rules of the profession. In correctly playing his role in the administration of justice, the lawyer, in a manner, not only assists in the maintenance of law and order but also acts as a custodian of civil liberties of the citizen. Apart from his responsibilities in the field of administration of justice, a lawyer has also certain social responsibilities which include work for the selection of an enlightened judiciary, initiation of proposal for law reform and providing legal service to those who need them. The public responsibilities of the members of the legal profession, as submitted by the New Zealand Law Society to the Royal Commission on the Courts, also include:

(a) maintenance and promotion of the integrity and competence of the profession;

(b) assistance to ensure that legal services are available to all sectors of the public;

(c) providing public service in areas of special legal competence; and

(d) assistance to facilitate and improve the administration of the law and the fairness and efficiency of the legal system.

Whatever might have been their role in the past, it would be a distortion of reality to assert that the lawyers in Bangladesh, of course with honourable exceptions, stand up to their aforesaid responsibilities. Apart from progressive deterioration of the quality of service

which is not the peculiarity of the legal service alone, the allegation that the lawyers are in no mean measure responsible for the current ills of the administration of justice is not unfounded. This is particularly true in causing delay in the judicial process by taking advantage of the procedural laws, in suborning witnesses, in knowingly suppressing or fabricating evidence and in proliferating avoidable proceedings. The lawyer's complicity in contaminating the judiciary with corruption cannot also be ruled out. The lawyer in most cases consults his own pecuniary interest more than the interest of justice or of his client. There are many a reason for the deflection of the members of the legal profession from their responsibilities. The general reason is that the rule of law itself has lost its vitality in Bangladesh due to social, economic and political instability during the last five decades coupled with the corrosion of moral values. Besides the general reason, the particular reasons relatable to the legal profession are, to state a few, first, the qualitative poverty of persons who take up, or rather, are compelled to take up, law as profession if a few exceptions coming generally from affluent families whose services are not available to the common man are discounted, second, the method of induction to the legal profession; third, the complete dependence on litigation and litigating public of the generality of lawyers for their living; and fourth, the denigration of the judicial process due to the dominance of the Governmental and corporate agencies in the economic life of the society without scrapping the regime of private property and individual enterprise.

Efficient legal service with integrity is a necessity for healthy administration of justice. A judicial reform would, therefore, also call for reform of the institution rendering legal service, that is to say, reform of the legal profession so as to ensure that it honourably acquits itself of its social responsibilities. The profession, for the redemption from its present state of morbidity, needs a regulated and selective induction, restriction of the number to the extent of the need, securing a minimum income to each of its members, principled distribution of work amongst all and a closer association with the administration of justice. To put it shortly, the legal profession needs integration with the judicial system without compromising its independence and such integration should also constitute a principle of the judicial system of Bangladesh.

Enunciation of the above guiding principles sets the stage for working out a new judicial system to assist us in the realisation of our aspirations. The shadow of the past and the weight of the present may suggest many a scheme for judicial reform but such a scheme generally has a tendency to be merely a rehash of the current

system." It is to restrain that tendency that, after giving the historical background and analytical appraisal of the judiciary we have inherited, the guiding principles have been set out so that the judicial system designed to reflect those principles is not conditioned by that shadow or weight. Those principles do not, of course, rule out many alternative schemes. The purport of this essay is to project one such scheme the outline of which is set out below. The scheme, for its implementation, would, of course, need elaboration and adjustment with reference to economic feasibility, availability of the required personnel, convenience of the people and administrative efficiency.

The scheme covers only the courts and authorities designed to exercise general jurisdiction, civil and criminal, for purpose of adjudication, settlement or composition of disputes, claims or offences. The courts, tribunals or authorities which may be necessary for the exercise of special jurisdiction on specific matters, such as, institutions like Labour Courts, Prize Courts, Income-Tax Appellate Tribunal, etc., call for separate treatment. By their very nature they do not fall within the ambit of the general judicial system. They have not, therefore, been brought within the scope of the Scheme.

THE SCHEME

I Conciliation Boards

At the base of the judicial system shall be the Conciliation Boards which shall reflect the same principles and shall be constituted somewhat on the same lines as the existing Village Courts under the Village Courts Ordinance, 1976 (LXI of 1976). These Boards will not adjudicate or try, but will only settle or compose, disputes, claims and offences. They will not be courts of record and will not be part of the judiciary but will nevertheless be a component of the judicial system in the sense that the settlement or composition effected by them will have finality, and the jurisdiction of all courts will stand barred, in certain classes of disputes, claims or offences. The jurisdiction and functions of the Conciliation Board will be so adjusted as to enable them to replace both the existing Village Courts and the Courts of Small Causes constituted under the Small Cause Courts Act, 1887 (IX of 1887).

II Local Courts

1. At the lowest rung of the judiciary shall be the Local Courts. The local courts shall be set up with reference to judicial circles and there shall be one Local Court for each such circle.

2. The judicial circles shall be the territorial subdivisions of a judicial district. A judicial circle shall ordinarily comprise an area of a Thana but at the initial stage a bigger area not exceeding the areas of three thanas may be included within it. Thus initially there will not be more than six Local Courts within the present administrative subdivisions.

3. A Local Court will be located at such a place within its territorial limits as is most convenient to the people of the area for which it is set up. This will cut the expenses of litigation and mitigate the inconvenience of the parties and witnesses.

4. A Local Court shall have both civil and criminal jurisdiction. They will replace the existing courts of Munsifs and all classes of Magistrates and their jurisdiction and powers shall be laid down accordingly. At present there are on an average three courts of Munsifs and five courts of Magistrates in a subdivision. Hence replacement of the Courts of Munsifs and Magistrates by Local Courts would not increase the number of civil and criminal courts we now have in a subdivision. Such replacement will have the effect of separating the judiciary from, and making it independent of, the executive.

5. A Local Court shall consist of a presiding judge and two honorary advisers. The presiding judge shall be a permanent member of the judiciary whose appointment and terms and conditions of service shall be prescribed by law. The two advisers shall be selected by the presiding judge for adjudication or trial of each case by drawing a lot from the panel of advisers.

6. There shall be a panel of advisers for each Local Court consisting of nine advocates selected from amongst their number by the members of the local bar. No person shall be included in the panel of advisers unless he has not less than seven years practice as an advocate. An advocate on the panel shall be bound to serve as an adviser if he is selected for a case. For the purpose of drawing a lot, the advocate on the panel who has taken the brief on behalf of a party shall be excluded. No party shall have the right to engage more than one such advocate as is on the panel to represent his case.

7. If a party raises objection in respect of any adviser selected by lot, the presiding judge shall by lot select another adviser in his place from amongst the remaining advocates on the panel. No party shall have right to raise objection more than twice.

8. If a plaint or application in the original civil jurisdiction of the Local Court is contested, the court shall, before selecting the advisers, direct the advocates representing the parties to make an effort for conciliation or settlement out of court. If the conciliation or settlement fails, the advocates concerned shall submit to the court a joint statement to that effect specifying therein the agreed points of fact, the disputed points of fact and the disputed points of law. After submission of such statement, the court shall select advisers and proceed with the trial.

9. The decision of the Court shall be given by the presiding judge after obtaining the opinion of the advisers. If the decision of the presiding judge is not in agreement with the opinion of any adviser, that adviser shall have the right to record his opinion which shall be appended to the judgment of the court.

10. No appeal shall lie from a judgment or decision of a Local Court if it is in agreement on all points with the opinion of both the advisers except on a point of law with special leave to appeal from the appellate court.

II—District Courts

1. Next above the Local Courts in the hierarchy of the judiciary shall be the District Courts which shall be established with reference to judicial districts and there shall be at least one District Court for each judicial district. Additional District Courts may also be established for a judicial district if it is warranted by the volume of business required to be transacted by a district court of that district.

2. The judicial districts shall be the territorial subdivisions of a judicial division. The extent of a judicial district shall ordinarily be the same as an administrative district. If in the interest of efficient administration of justice, economy and convenience of the people so require. the territorial extent of a judicial district may, from time to time, be varied to comprise areas which may be different from those of an administrative district.

3. The District Courts and the Additional District Courts shall ordinarily be located in the headquarters of the general administration of the district unless there are cogent reasons for locating them elsewhere. The Additional District Courts may be located, if the convenience of the people so require, at other places of the district preferably in the headquarters of the general administration of a subdivision.

4. Except in matters in which Local Courts have jurisdiction, the District Courts and Additional District Courts shall have such original and appellate, civil and criminal, jurisdiction, as may be prescribed by law. In General they shall be designed to replace, and to have the jurisdiction and powers as are now exercisable by the Court of Session, the Courts of District Judge, Additional District Judge and Subordinate Judge. So far as criminal matters are concerned they may also have to have the powers of a District Magistrate.

5. A District Court or an Additional District Court shall consist of a presiding judge and two honorary advisers. The presiding judge shall be a permanent member of the judiciary whose appointment and terms and conditions of service shall be prescribed by law. Two advisers shall be selected by the presiding judge for adjudication or trial of each case by drawing lot from the panel of advisers.

6. There shall be a panel of advisers for each District Court and Additional District Court. The panel for each such court shall consist of such number of advocates, not being less than nine, as may be prescribed by law. The panel shall be selected from amongst their number by the members of the district bar. No person shall be included in the panel unless he has not less than ten years practice as an advocate. An advocate on the panel shall be bound to serve as adviser if he is selected for a case.

7. The principles laid down in relation to the Local Courts as to the exclusion of an advocate on a panel from the drawal of lot, objection by a party to an adviser. restriction on the engagement of an advocate on the panel to represent a party in a case, the manner of giving decision of the Court and recording of opinion of the advisers and the procedure for conciliation or settlement of disputes in the case of suits in the original civil jurisdictions shall, with necessary adaptation, apply also in relation to a District Court or an Additional District Court.

8. No appeal shall lie from any judgment or decision passed or given in an appeal by a District Court or an Additional District Court in its appellate jurisdiction nor shall any appeal lie from any judgment or decision of such court in its original jurisdiction if it is in agreement on all points with the opinion of both the advisers except in both circumstances with special leave to appeal from the appellate court on the ground that the judgment or decision involves a hitherto unsettled important question of law or interpretation of law or that it is contrary to law.

IV—The Supreme Court

1. There shall be a Supreme Court which shall be the highest judicial authority of Bangladesh. The Supreme Court shall consist of such number of judges as may be necessary for competent discharge of its functions. Appointment of a judge of the Supreme Court shall be made by the President with the concurrence of the Parliament from the panel of select candidates.

2. There shall be a panel of twelve select candidates for appointment as judge of the Supreme Court. The panel shall be nominated by the Chief Justice with the concurrence of the Supreme Court Bar from amongst persons qualified for appointment as judge of the Supreme Court. The nomination shall be so made that there are six candidates from the members of the Supreme Court Bar, four from the judges of the District Courts and two from jurists of repute who are not advocates or judges.

3. The senior of the judges of the Supreme Court shall be the Chief Justice who shall be known as the Chief Justice of Bangladesh; and the seniority shall be determined with reference to the date of first assumption of office as judge and, in case such date is the same, with reference to age.

4. The territory of Bangladesh shall be divided into such number of judicial divisions as may be considered necessary for the purpose of efficient exercise of powers, jurisdiction and functions of the Supreme Court; and each judicial division shall, as far as may be, correspond with an administrative division.

5. The Supreme Court shall have as many Divisions as there may be judicial divisions; and each Division of the Supreme Court shall exercise the powers, jurisdictions and functions of the Court in relation to a judicial division. The Supreme Court shall have permanent seats in all the judicial divisions, of which Dacca shall be one; and the seat in Dacca shall be the principal seat of the Court.

6. The Supreme Court shall have such original, appellate and other jurisdictions and shall have such powers and functions as may be prescribed by the Constitution and law; and the jurisdiction powers and functions of the Supreme Court may be exercised by a Division of that Court in benches of that Division in accordance with rules made by the Court or instructions given by the Chief Justice.

7. The law declared and decision given by the Supreme Court shall have the finality and be binding on all but no decision of the Court shall have effect unless it is confirmed by Parliament if that decision :

(a) overrules or reverses, or has the effect of overruling or reversing, any declaration or interpretation of law as settled by any of its earlier decisions or by any earlier decision of the highest judicial authority in relation to Bangladesh which includes in the relevant period the judicial Committee of the Privy Council, the Federal Court of India, the Federal Court and the Supreme Court of Pakistan in respect of the period during which they exercised jurisdiction in relation to territory of Bangladesh; or

(b) relates to a matter in which the jurisdiction of, or cognizance by, the Supreme Court or any other Court has been declared to be excluded or barred by any law or any instrument having the effect of law; or

(c) declares or has the effect of declaring any law, or any rule or order made under the Constitution, to be ultra-vires of the Constitution.

8. Where a decision of the Supreme Court requires confirmation by the Parliament for its effect, the Chief Justice shall, by a letter addressed to the Speaker, refer the decision together with all relevant records to the Parliament for confirmation, and the Parliament shall return a reply to the reference within six months stating either that it confirms or that it declines to confirm the decision. If no reply is returned within six month of the reference, the Parliament shall be deemed to have confirmed the decision which shall have effect accordingly. If the Parliament returns a reply declining confirmation, the Supreme Court shall reconsider the decision in the light of the reply and revise it accordingly.

V—The Parliament

1. The Parliament shall not be a part of the judiciary but shall exercise functions in the judicial process in a limited field. The field is confined to the decision of the Supreme Court which has the effect of settling the law of the land and as such impinges on the legislative field. Hence, the introduction of Parliament in the judicial process without making it an appellate authority in the sense that the House of Lords of the British Parliament is an appellate authority.

2. A reference of a decision of the Supreme Court for confirmation shall be considered in the Judicial Committee of the Parliament constituted for the purpose consisting of not more than seven lawyer members of Parliament. The Judicial Committee shall consider as the only issue whether as legal policy the Parliament should accept the overruling or reversal of the earlier decision, the assumption of jurisdiction where it was declared by law to be barred or the declaration of a law being ultra-vires of the Constitution, as the case may be.

3. The Committee shall hear the Attorney-General and the advocates of the parties and may also hear such other lawyers and jurists as it may deem fit on the only issue to be considered by it. After considering the issue the Committee shall make its recommendation either that the Parliament may confirm, or that the Parliament may decline to confirm, the decision of the Supreme Court. The recommendation of the Committee shall be placed before the Parliament for consideration.

4. After considering the recommendation of the Judicial Committee, the Parliament shall, by resolution, approve a reply to the Supreme Court either that it confirms, or that it declines to confirm, the decision of the Court. In the case of a decision which declares any law, or any rule or order made under the Constitution, to be ultra-vires of the Constitution, the Parliament shall not be deemed to have declined to confirm the decision unless the resolution has been passed by a majority of two-thirds of the total number of members of Parliament and the fact that it has been so passed is conveyed while returning the reply to the Supreme Court.

V—The Legal Practitioners

1. A legal practitioner shall be required to be enrolled in a Bar; and there shall be a Bar constituted with reference to each Court. For the purpose of the Constitution of a Bar, a Division of the Supreme Court shall be treated as a separate court and the District Court and Additional District Courts for a judicial district shall collectively be treated as one court. The maximum number of legal practitioners that may be enrolled in a Bar shall be prescribed by law keeping in view the volume of business in the court with reference to which the Bar is constituted.

2. The legal practitioners shall be classified into three categories according to their enrolment. Those enrolled in the Bar for a Division of the Supreme Court, the Bar for a District Court and the Bar

for a Local Court shall respectively be classified as Advocates of the Supreme Court, Advocates of the District Court and Advocates of the Local Court.

3. Enrolment of a legal practitioner in a Bar shall be made on the basis of competitive examination held by such authority and in such manner as may be prescribed by law. The first enrolment of a legal practitioner shall be in a Bar for a Local Court and only a person who has the prescribed academic qualifications and is not less than twenty-five years or more than forty-five years shall be eligible to be a candidate at a competitive examination for such first enrolment. A person shall not be eligible for being a candidate at a competitive examination for enrolment:

(a) in a Bar for a District Court unless he has been an Advocate of a Local Court for not less than three years; and

(b) in a Bar for a Division of the Supreme Court unless he has been an Advocate of a District Court for not less than five years.

4. An Advocate of a Local Court shall not be entitled to practise in a District Court or the Supreme Court but may appear and plead before any other Local Court if so required by that Court or engaged as senior for assistance by an Advocate of that Court. An Advocate of a District Court shall not be entitled to practise in the Supreme Court but may appear and plead before any other District Court or any Local Court if requested by that Court or engaged as senior for assistance by an Advocate of that Court. An Advocate of the Supreme Court enrolled in any Division of that Court shall be entitled to practise in any other Division of the Supreme Court and may appear and plead before any District Court or Local Court if requested by that Court or engaged as senior for assistance by an Advocate of that Court.

5. The name of an Advocate shall be withdrawn from the roll of the Bar in which he is enrolled on the occurrence of his death or if he—

(a) makes an application for such withdrawal;

(b) seeks enrolment and is enrolled in any other Bar;

(c) takes up any disqualifying employment or is engaged in any disqualifying business or other professions;

(d) is adjudged guilty of any disqualifying misconduct or offence;

(e) becomes invalid by reason of any disablement or incapacity; or

(f) attains superannuation on reaching the age of sixty-five years.

6. A person whose name has been withdrawn from the roll of a Bar may be re-enrolled in the same Bar or enrolled in any other Bar of the same category without such examination as is required for enrolment if he is not otherwise disqualified for enrolment and there is vacancy in that Bar.

7. Each Bar shall arrange a Group Insurance Scheme for disablement benefits for each of its members and shall also provide for retirement pension for its retiring members.

B.G.P.—79-80—6150A 21-12-1979—500