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Rule of Law and Social Justice

Justice Syed J.R Mudassir Husain
Former Chief Justice of Bangladesh.

"Rule of Law and Social Justice is an appropriate appellation for our seminar. In my view, the spirit of rule of law is to be entrenched in all levels of the society in which we live and the same need to be enforced through binding mechanisms. The rule of law underpins the values which are to be protected in our social life. The primary object of this Organization, so far I know, is to ensure the existence of a culture of the rule of law necessary for a society which embraces and breathes Human Rights. Each and every individual within the society has the right to fully enjoy his or her economic, social, cultural, civil and political rights. It is commendable that some prominent judges, eminent lawyers and luminaries of our legal domain have been making a holistic approach under the umbrella of Human Rights Organization to secure social Justice and rule of law in the society.

Legitimate power is finite and its bounds are clearly delineated in the constitution in the laws of the land and other rules and regulations known as subordinate legislation. All these may broadly, be termed as 'Law' and their operation upon a subject population is called the "Rule of Law"~. In the scheme of Rule of Law, there is no scope to include the things like the whims of those in power and the conscious or unconscious violations of law committed by its keepers. To check the aberrant violations of law there exists a system of courts, which is entrusted with the responsibility to entertain the complaints and to provide redress in accordance with law.

You know the Locke's statement - 'where law ends, tyranny begins'. Rule of Law is not a 'mantra or magical sound' that chanting which will bring a magical change in the society and realize its revolutionary potential for equity, justice and universal well-being. I believe that we can best secure Rule of Law and promote respect for human rights by rooting the efforts in our own cultural and spiritual traditions, without, however, turning a blind eye to the positive lessons from the experiences of other countries around the world.

We cannot ensure all the right things in society by making some laws and by applying them alone. Law cannot teach a person to be compassionate, caring and sensitive to other people's sorrow and joys. So, it would hardly be possible to establish the Rule of Law and to protect or promote human rights in a society where those qualities are weak or absent. For example, oppression and atrocities on poor and weak people of the society cannot fully be stopped by Rule of Law or legal methods alone. Because social maladies call for social remedies.

Evolution of human society has followed the path from agricultural society of industrial, information and the present day knowledge society. In agricultural and industrial society, human being and machines were dominating factors. In the

information and knowledge society, intellectual capacity is considered as a dominating factor. Intellectual domination is represented by ideologies, principles and faiths.

Wherever they cross paths between individuals, societies and nations, then it denounces human rights and debacles the social justice, peace and harmony. To check such propensity of violating the human rights and to secure Rule of Law, we have no alternative but to follow the roadmap for graduating into a "Standard Human Being". I believe, the Standard Human Being can be created if we could get the combination of four essential elements, namely; a) education with value system; b) religions graduating into spirituality; c) removal of poverty through a vision for the nation; and d) responsible judiciary and human rights.

Historically there has never been a state that has not practiced repression. However, till the advent of the "Modern State" and the concept of "Rule of Law", the people ruled and repressed and the law was secondary. The thing has now been changed. The more we enforce the Rule of Law, the better we promote Human Rights. In the ideal scheme of things, the judicial is the ultimate protector of the Rule of Law. A state with an independent, effective and vigilant must be a state where the Rule of Law prevails. An independent judiciary is always indispensable to justice in our society. A free and independent judiciary constitutes the corner stone of the edifice of democracy and such a judiciary can alone contain the arbitrary attitude of any government in power and help the same to lead the nation to its destiny.

None can deny the fact that an impartial, efficient, competent and effective judiciary is a must for satisfactory working of the democracy in the country. 'Impartiality' and 'independence' are often used interchangeably. Judicial impartiality is used to describe the judicial character and state of mind. "Judicial independence" means freedom from improper pressure in the decision-making process from any quarter. The concept of judicial independence determines the role and responsibility for the judiciary, the executive and other organs of the state. While the importance of judicial independence cannot be gainsaid, I think it would be unsafe for us to treat it as end in itself. It seems to me that our ultimate goal should be aiming for an impartial, fair and ethical judiciary. In my view, impartiality is the end to be achieved and independence is an essential and crucial means to that end. Again independence of judiciary cannot be guaranteed without separation of Judiciary. The terms of "independence" and "separation" are complementary to each other. You are aware that in order to secure institutional independence of the subordinate judiciary and to make the same more effective the process of separation has already been initiated and that would be implemented in the spirit of the constitutional mandate and the directives given by the Supreme Court.

The struggle to ensure respect for the dignity and worth for the human knows no end, whether in this country or anywhere else in the world. It is true, we may never be able to eliminate all social injustices or to provide equality of opportunity to all people, but we can certainly take some practical steps to make our society little more compassionate and a little more humane."

(The above quoted speech delivered by the Hon'ble Chief Justice of Bangladesh in a Seminar held on 24th June, 2004, at Pan Pacific Sonargaon Hotel, Dhaka, organized by Monthly Legal Aid.)

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