SOME THOUGHTS ON THE PATTERNS OF RACE AND ETHNIC RELATIONS AND HUMAN RIGHTS

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One of the main functions of contemporary multi-ethnic societies is to maintain peace and harmony among the races and ethno-linguistic communities living within their territories. The task is by no means an easy one. Some say it is too difficult and at times, it may even be impossible to maintain peace and harmony among the races and ethno-linguistic communities. However, there are people who say that the task is difficult, but not impossible. The reality is that only a very few multi-ethnic societies may claim to be successful in doing this job. How can a multi-ethnic or multi-racial society do this job effectively? One of the main objectives of this essay is to look for an answer to this question.

In the first section of this essay I shall talk about some of the necessary terms and concepts relating to this issue. In the second section, I shall be concerned with the probable patterns of race and ethnic relations usually found in many multi-ethnic societies of the world. In the final section of the essay I shall try to look for a solution to the problem of race and ethnic conflict in a multi-ethnic society. In fact, this is the section where I shall try to answer the question raised above.

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SECTION ONE :

TERMINOLOGICAL AND CONCEPTUAL ISSUES :

In order to understand the nature and causes of race and ethnic conflict ,one must have to know the meanings of some terms and concepts relating to this issue. Among the relevant terms and concepts, following are the most important, and obviously deserve one's attention interested in this field. Let me talk about them at some length.

THE CONCEPT OF RACE AND RACISM:

A race is a group of human population which is set apart from others because of obvious physical differences (cf. Schaefer 1983: 543). How many races are there in the world? The number of races that is discovered, however, depends very much on the particular anthropologist who is doing the discovering: estimates range from three races to well over a hundred. The reason for the confusion is that there is no such thing as a "Pure" race. Different population groups have been interbreeding for tens of thousand of years, and categories of "race" are a creation of the observer, not of nature (Robertson 1980 : 262).

The physical difference between human groups are simply a biological fact, and as such, they are of no particular interest to the sociologist. Why are the sociologists and social anthropologists interested in this biological fact of race? Yes, they have some genuine reasons to be interested in this issue.

One of the most important reasons is that people attach meanings to the biological differences, real or imagined, between human groups. Usually, each racial group thinks to be superior to all other groups and therefore, each of the

races has some ethnocentric ideas. One of the evidences of these ideas is the preference for race-endogamy. Marriage outside one's own race is very few and for between.

The racist thinkers classify the human kind into so-called higher and lower races. The caucasoid race is usually considered the higher race. The racist thinkers call them superior and master race. The so-called higher race is believed to have contributed much to the human civilization. On the otherhand, all other races (e.g. Mangoloid, Negroid etc.) are considerd to be lower race. The racist thinkers call them inferior and slave race. The so-called lower race is believed to have contributed very little or nothing to the human civilization (cf. Sorokin 1928). Such ideas of the racist thinkers are known as Racism. The racist thinkers also suggest that since the higher race is superior in education, culture and technology people belonging to this race may very well claim to lead the universe. Following this idea many racist thinkers have tried to justify the white man's colonial rule in different societies of non-white races.

The results of different research works conducted on race and cultural capacity (or racism) proved that race had nothing to do with cultural capacity. In fact, people of all races are almost equally competent to contribute to the fields of education, culture, science and technology provided they are given equal environment and opportunity. The racist thinkers were hardly satisfied with these results of research works. Firally, in 1950, the matter was resolved in a meeting of UNESCO held in Paris. This meeting suggested :

(a) that race has nothing to do with cultural capacity and cultural attainment;

(b) that the physical differences between the races are not wider than those within the people of one particular race;

(c) that racial features have not been proved important in the history of the development of human civilization; and

(d) that cross-breeding among different races have not shown any problem from biological point of view— (Shapiro1952).

After the Paris-meeting people of all races—all over the world began to give up the idea of racism. Hence-forward, many anthropologists began to leave the topic on race and racism.

But there is a differance between theory and practice. Theoretically, there is no racism, and, therefore, it is not necessary to talk about race and racism. But, the reality is that racism exists— and it exists very much. How can we then drop race and racism from our academic discussion and dialogue? The racists need to be informed of the results of those research activities and of the outcome of the Paris-meeting. They also need to be informed that racism is a threat to the human rights and humanity,-humanity, as we know, is one of the goals of Anthropology. One of the functions of applied Anthropologists is to fight racism, and to make people free from the curse of racism. The recent socio-political change in Africa shows the sign of the victory of humanity and democracy and the fall of racist ideas.

ETHNICITY AND ETHNIC GROUP :

Race refers only to physical characteristics, but the concept of ethnicity refers to cultural features. These features may include language, religion, national origin, dietary practices, a sense of common historical heritage, or any other distinctive cultural trait (Robertson 1980 : 263).

Sociologically speaking, an ethnic group is a number of people who, as a result of their shared cultural traits and

high level of interaction, come to regard themselves, and to be regarded as a cultural unity. Unlike racial differences, ethnic differences are culturally learned and not genetically inherited (ibid P. 263). Many contemporary sociologists define an ethnic group as one that is socially distinguised from other groups, has developed its own sub-culture, and has "a shared feeling of peoplehood" (Gordon 1964, Popenoe1986).

MINORITY GROUP:

Louis Wirth (1945) is said to be the first author who defined the term minority group. According to him a minority group is a group who, because of their physical or cultural characteristics, are singled out from the others in the society in which they live for differential and unequal treatment and who therefore regard themselves as objects of collective discrimination.

The concept of minority group has been redefined by many sociologists. A minority group is any group in a society that consists of people whose particuler biological or social traits cause them to become the object of prejudice or discrimination (Popenoe 1986). Many sociologists now regard a part of the population as minority group if it has the following distinguishing features (Wagley and Harris 1964, Williams 1964, Vander Zanden 1972, Robertson 1980).

First, The members of minority group suffer various disadvantages at the hands of another group. The minority is often denied equal access to power, wealth and prestige. The dominant group exploits the minority in many ways. The minority groups are vicitims of prejudice, discrimination, abuse, humiliation and are considered inferior people in society (Robertson 1980).

Second, A minority is identified by group characteristics that are socially visible. All people sharing some visible or noticeable characteristic such as, skin colour, religion, or language, are lumped together into a single category (ibid).

Third, A minority is a self-conscious group with a strong sense of 'oneness'. The minority group's shared experience of suffering heightens these feelings; infact, the more its members are persecuted, the more intense their group solidarity is likly to bccome (ibid).

Fourth, People usually do not become members of a minority group voluntarily; they are born into it. The sense of common identity usually comes from an awareness of common ancestry and traditions (ibid).

Fifth, By choice or necessity, members of a minority group generally marry within the group. Members of the dominant group are usually reluctant to marry members of the stigmatized minority group, and the minority group's consciousness of kind prepares its members to look for marital partners within the group. As a result, minority status within a society tends to be passed on from generation to generation (ibid).

At the same time it should be noted that in some cases minority groups may feel victims of prejudice and discrimination even though they are equally treated. Indeed, experiences of minority groups living in different. societies are not same. Patterns of ethnic minority relations do vary remarkably-from harmonious relations to severe conflict (see below).

PREJUDICE AND DISCRIMINATION :

Literally, Prejudice means to "judge before". Prejudice stands for a judgement without having the exact idea,

identity or accurate knowledge about any people or object. It is an attitude, either positive or negative, towards any person, group or anything. Prejudice becomes a problem when the preformed judgement remains unchanged even after facts show it to be untrue (cf. Popenoe 1986).

Prejudice against ethnic or racial minorities is always learned. No one is born with prejudice. People learn it from their parents, at school, from friends or from some other social experiences. Popenoe says that the white children growing up in South Africa learn prejudice against blacks from nearly all their social experience (cf. Popenoe 1986: 279).

Prejudice and discrimination often go together. But they are separate concepts. Prejudice refers to a feeling or attitude, while discrimination refers to unequal treatment of individuals or groups. Discrimination is an action or behaviour (expresed) based on prejudice or an attitude (cf. Popenoe 1986).

Prejudice and discrimination do not always occur together. A prejudiced person may have a negative attitude towards a particular race, language or any religious group, but the person may not discriminate the people of that particular race, language or religion in giving appointment in his industry. That is to say, he may not show unequal treatment to the people towards whom he has negative attitudes or prejudiced ideas. At the same time, discrimination is also possible without prejudice. The proprietor, (a white) of a company may be aware that Mr. X, a Negro young man, is quite eligible for the post of manager, yet the proprietor may not promote Mr. X to that position because the proprietor is afraid their clients may not like to

deal with a black, and as such, the business may suffer a tremendous loss.

Prejudice and discrimination typically reinforce one another. Many forms of discrimination come from prejudiced attitudes, and continuing discrimination can create prejudice (Popenoe 1986).

SECTION TWO :

PATTERNS OF RACE AND ETHNIC (MINORITY) RELATIONS:

We can identify several patterns of race and ethnic minority relations, ranging from harmonious coexistence to outright conflict. George Simpson and Milton Yinger (1972) have given a very useful typology of six basic patterns of intergoup hostility or co-operation. This typology virtually covers all the possible patterns of race and ethnic relations, and each pattern exists or has existed in some part of the world (cf. Robertson 1980). Here is a brief note on the probable patterns of race and ethnic realtions.

ASSIMILATION :

Assimilation refers to complete integration or absorption of a minority group into the dominant society. There are instances where many minority groups have simply eliminated by being assimilated into the dominant group. This process may take two forms: cultural and racial assimilations.

Cultural assimilation occurs when the minority group abandons its distinctive cultural traits and adopts those of the dominant culture. On the otherhand, racial assimilation occurs when the physical differences between the groups

disappear as a result of inbreeding. Racial assimilation is also known as "amalgamation" which refers to the biological merging or an ethnic or a racial group with the native population or host society. Brazil is probably the best contemporary example of a country following a policy of assimilation. With the exception of some isolated Indian groups, the various racial and ethnic groups within the society interbreed fairly freely (Robertson1980).

Amalgamation is not always expected. However, instances of amalgamation are not unknown. True amalgomation can be seen in Hawaii and Polynesia, where Caucasions, Negroes, and Mongoloids have intermarried so often that the three race have partly melded into a single group (Popenoe 1986).

Although assimilation may seem to be a harmonious way for minority groups to adapt to a society, it is not always beneficial. Because, their presence helps stimulate desired social change, strong ethnic sub-cultures can be a natural resource for a sociely. They provide alternative ways of thought and behaviour that stir up new ideas and social insights for others in society. Moreover, many immigrants resist full assimilation. They naturally feel that their own cultures are valuable, so they are reluctant to disappear into the melting pot (cf. Popenoe 1986.)

PLURALISM :

Some minorities do not want to lose their ethnic identity. The members of these minority groups have a strong sense of unity and are proud of their own cultural heritage. They are very much loyal to their own group. The dominant group in the society may also be willing to permit or oven to encourage cultural variation within the broader

confines of national unity. Tanzania, for example, a pluralistic society that respects the cultural distinctions among its African, Asian, European, and Middle-Eastern peoples. In Switzerland, four ethnic groups, speaking German, French, Italian, and Romanche, retain their sense of group identity while living together amicably in the society as a whole (cf. Robertson 1980).

Pluralism is the dominant pattern in the United States of America. The government and different non-government agencies have been working for tolerance and pluralism in the United States. By and large, immigrant groups in America, are permitted to maintain their own religious affiliations and many of their cultural traditions (cf. Popenoe 1986).

However, cultural pluralism is not easy to maintain. To function as a unit, a society must have a certain degree of cultural unity (ibid). Tolerance is the key to the well-functioning of cultural pluralism. In deed, tolerance has no alternative, this is the key to the integrity and cohesion of any family, association, group, organization, society or State. This is the need of the day.

LEGAL PROTECTION OF MINORITIES :

There are societies where significant sections of the dominant group may possess hostile attitude toward minority groups, but the minorities may enjoy the protection of the government. In such cases, the government may feel it necessary to take legal measures to protect the interests and rights of the minorities. In Britain, for example, the Race Relation, Act of 1965 makes it illegal to discriminate aganist any person on racial grounds in employment or housing. It is also a criminal offence to

publish or even to utter publicly any sentiments that might encourage hostility between racial and ethnic groups in the population (cf. Robertson 1980).

POPUPATION TRANSFER OR EXPULSION :

In case of intense hostilities between groups, the situation is 'tackled' by removing the minority from the scene altogether. This policy was adopted, for example, by President Amin of Uganda, who simply ordered Asian residents to leave the country in which they had lived for generations (cf. Robertson 1980).

Transfer or expulsion may be nearly as costly as annihilation in terms of lost lives. If a minority group is reluctant to leave its home, force is necessary. And because the dominant society often shows little concern for the result of the move, the minority group's trip to its 'new home' (or unknown place) may be an ordeal of hardship and suffering. A good example is the recent expulsion of ethnic Chinese by the Socialist Republic of Vietnam. The Chinese were forced to emigrate by sea, and as many as half are estimated to have died (cf. Popenoe 1986).

Segregation is the involuntary separation of residential areas, services, or other facilities on the basis of the ethnic or racial characteristics of the people using them. It is a kind of partitioning within a society, but the boundaries it erects are social and lagal, rather than political. Members of the segregated minority group may be forced to live in one particular town or part of a town. They may be legally forbidden to leave the place except for work. The most radical form of segregation is *apartheid*, the term used to describe the system in South Africa (before the recent political change).

CONTINUED SUBJUGATION :

In some situations the dominant group wants to continue its dominance and privilege over the minority group indefinitely. In such cases, dominant group may use force to achieve this objective, and it may even physically segregate the members of the various groups. Historically, continued subjugation has been a very common policy. Colonial rule in different countries maintained its privilege and domination for many years. Now-a-days direct colonial rule is hardly possible. South Africa was the victim of this policy for a long time (cf. Popenoe 1986).

EXTERMINATION OR ANNIHILATION :

Genocide or extermination has been the most extreme policy adopted by many dominant groups in several parts of the world. Dutch settlers in South Africa entirely exterminated the Hottentots and came close to exterminate the San, who at one point in South African history were actually classified as 'vermin'. This policy is adopted in Tasmania, Brazil, Germany, and the African State of Burundi (See Robertson 1980 for detail).

The most infamous example of genocide in modern history is Hitler's "solution" to the presence of Jews in German society. The Nazi government rounded up an estimated six million Jews and sent them to gas chambers. Popenoe says that in some cases, annihilation is more accidental than purposeful. That is, it is not the result of planned action or warfare but rather the result of the uncushioned clash between two cultures. About 75% native Americans, for example, died as a result of European colonization (For detail please see Popenoe1986, and Kallen 1958).

I have already talked about the probable patterns of race and ethnic minority relations. According to Popenoe (1986) assimilation, amalgamation and cultural pluralism may be called **the patterns of acceptance,** while all other patterns, such as, annihilation, expulsion, partition, and segregation may be called **the patterns of rejection**. In the patterns of acceptance, the dominant group values equality and freedom in society where all groups of people, (minority or dominant) enjoy equal or almost equal opportunity. In all the patterns of rejection we notice the violation of human rights, all other norms of fundmantal rights. The most extreme form of rejection is extermination or annihilation, the process by which a dominant group causes the deaths of a large number of minority group members. Throughout history, socities have resorted to such brutality (Popenoe 1986).

SECTION THREE :

IN SEARCH OF A SOLUTION :

How can a multi-ethnic society maintain peace and harmony between its different racial and ethno-linguistic groups? How can it fight racism? How can it reduce or eliminate ethnocentric ideas? How can it eliminate prejudice and discrimination?

Racism has been proved unscientific. Race has nothing to do with cultural achievement. Therefore, no race can claim to be superior to all other races. The Paris-meeting also declared these very clearly. All we need is to educate and socialize all of our people in the light of the research findings on this issue. The racist and prejudiced ideas are learned in the process of socializalion. In other words, prople learn these in the context of their society. The type

of ideas, beliefs, customs, laws, education system and policy which feed and nurse racism should be changed. Attempts to be made to make it public that racism has been proved unscientific. People should be made aware of their rights as human being or human kind.

Now-a-days anthropololgists talk about cultural relativity. It means **no culture is superior to other culture. Cultures are simply different.** One connot judge other culture on the basis of one's own cultural standard. One cannot say that ones' culture is superior to other culture, one can't say that other cultures are inferior, barbarian, savage or uncivilized. Cultures (societies) are simply differnt. It is true that some societies and cultures may be technologically or economically more advanced or more developed than others. There are societies and cultures with simple technology. One culture may borrow the achievments of other culture.

Anthropologist who work as a participant observer or as a resident anthropologist in other culture need to take an insiders view in recording and describing his field data. This technique makes him more generous, liberal and humanitarian.

Therefore, an anthropologist usually speak of cultural pluralism as a solution to the problem we are talking about. Spontaneous assimilation can be a solution of the problem. But in most cases minority groups may not like to be assimilated with the dominant culture. In such a situation, there may be two approaches to the problems faced by the multi-ethnic societies. One may be called **individual approach**, and the other, **group approach.**

THE INDIVIDUAL APPROACH:

According to this approach the Government should insure fundamental rights of each individual (or citizen) of the state. It has no responsibility to look after the interest of any particular group (ethno-linguistic, racial, minority, majority or whatever); it will simply be concerned with the rights and interests of the individuals irrespective of any group, caste, creed or religion. The government of multi-ethnic society will give equal opportunity to each of its citizens and it will have no responsibility whether one group is losing its interest or benefiting very much from this policy .

The individual approach will consider each individual as a person, not as a member of this or that group. It is the choice of the individual whether he or she belongs to any group or not. The state will not interfere with that. The state will try to eliminate institutional or structural inequality from the society . Each individual will be given equal chance to build up career, and be recruited on the basis of individual merit and skill. The state will not take any official or formal measure to preserve any particular culture; nor, it will take any measure to destroy any culture. However, there will be freedom of thought and association.

Thus, when each group will see that the state is doing justice to each citizen of the land, then, all groups may stand unite for any noble work. No individual will come forward with his or her group identity; each will feel happy to see that his or her merit and skill have been taken into consideration, and have been well rewarded or properly rewared. The state, according to this approach, will take interest in the individual, not in the group to which the individual belongs. The government will not be a threat to

any group either. It will try to develop human resources and make scientific investment of that. And, accordingly distribute the fruits of achievement according to individual performance, merit and skill.

THE GROUP APPROACH :

This is the alternative to the individual approach I have just talked about. According to this approach, the goverment of multi-ethnic state will require to allow minority—cultures to flourish. The government or the dominant society will insure all minorites to live in peace and harmony. It means the dominant group will have to work for cultural pluralism. Tolerance and pluralism will be the policy of the society. The government will insure that each group can maintain its own culture, that no culture becomes a threat to any other culture. Examples of such pluralistic society are not unknown. Switzerland, Canada, Belgium, Lebanon, Malta, United Kingdom etc. are some examples of plural society. United States of America is also basically a pluralistic society where both government and non-government organizations have been taking different measures and approaches to insure tolerance and pluralism in their multi-ethnic society.

Although there are instances of conflict in those pluralistic societies yet, these societies have shown much tolerance to live together. Indeed tolerance has no alternative. This is the need of the day. It is the need in personal, social, national and international life of any human being, male or famale.

CONCLUSION:

Cultural pluralism is probably the best policy to be adopted by multi-ethnic societies. In order to live in a plural society we should remember that no culture (nor any race) is superior to other culture (or race). Cultures are simply different, and there is a beauty in difference.

The dominant society must treat all minority equally, and distribute its power, privilege, wealth and prestige equitively. If the circumstances do not allow the dominant group at all to insure the principles of a plural society then the second best policy will be the individual approach. But whatever may be the policy, tolerance has no alternative. Indeed, tolerance is one of the essential prerequisites of human rights we often talk about.

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* The author has borrowed many ideas and information from the above sources. Therefore, he expresses his hearty thanks and gratitude to the authors cited.

LEGAL FOUNDATION OF REFUGEE LAW

SAAD AL ATTAR

INTRODUCTION

"... the United Nations shall promote universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion". (Article 55)

This quotation from the United Nations Charter reminds us of the close link between UNCHR's functions and the broader context of human rights. This link is confirmed, moreover, in the Preamble to the 1951 Refugee Convention, which makes reference to the principle that all human beings shall enjoy fundamental rights and freedoms without discrimination. The Preamble also recalls that the United Nations has, on various occasions, manifested its profound concern for refugees and endeavored to assure refugees of the widest possible exercise of these fundamental rights and freedoms.

The protection of human rights has been an issue of major concern to the international community since the tragedy of the Second World War. It has been perceived as an essential condition of promoting and maintaining international peace and progress in accordance with the aims of the United Nations.

As in the case of humanitarian law, international refugee law, is in fact a branch of human rights law. It was

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developed to protect human beings in specific circumstances (i.e. in situations of possible persecution). Human rights law, a subject which most of you are studying in details is actually developed later in time than the basic international prinicples formulated to govern the refugee law. However, it is important to note that not all states are signatories to the international instruments protecting refugees. Although a number of important countries have not yet signed the 1951 Refugee Convention (such as Bangladesh, Pakistan, India), still they host substantive number of refugees and show good degree of adherence to the basic principles of international refugee law, such as the principle of non-refoulement, admission and temporary asylum of refugees.

International refugee law mainly comprises international instruments that define basic standards for the treatment of refugees. In this presentation we shall be looking briefly at the texts of major significance. The purpose is not to cover all the relevant instruments, nor to go into great details.

THE 1951 CONVENTION RELATING TO THE STATUS OF REFUGEES

The preparation of the Convention took place during the period between 1947 and 1950, following a recommendation of the UN Human Rights Commission that early consideration be given to the "legal status of persons who do not enjoy the protection of any government."

This work took place while the International Refugee Organization (IRO) pursued its activities, and while East-West tension increased, accompanied by a persistent flow of refugees.

THE SIGNIFICANCE OF THE CONVENTION

The Convention was a major achievement in international refugee law since :

- it contained a general definition of the term "refugee" (Article 1);
- it embodied the principle of "non-refoulement" (Article 3) according to which no person may be returned to a territory where he may be exposed to persecution;
- it set the minimum standard of treatment of refugees, including the basic rights to be granted, and the duties of refugees vis-a-vis their country of refuge;
- it contained provisions that concern their juridical status, gainful employment and welfare;
- it contained provisions regarding the issue of identity and travel documents, naturalization, and other administrative matters;
- it required States to co-operate with UNHCR in the exercise of its functions, and to facilitate the task of supervising the application of the Convention.

THE LIMITATIONS ON THE CONVENTION'S SCOPE

At the time when the Convention was adopted, States were anxious to focus on the existing refugee probems, and not to assume obligations for the future, the extent of which could be foreseen. This resulted in two major limitations:

THE 1951 DATELINE

The benefits of the Convention were not to apply to persons who corresponded to the definition, but who became refugees as a result of events occurring before 1 January 1951 (Article 1).

THE GEOGRAPHICAL LIMITATION

The events just referred to could be understood to mean either "events occurring in Europe before 1 January 1951":

or

"events occurring in Europe or elsewhere before 1 January 1951."

When becoming a party to the Convention, States had the possibility of making a declaration, limiting their obligations under the Convention to European refugees.

THE 1967 PROTOCOL RELATING TO THE STATUS OF REFUGEES

We have just seen that the Convention concerned persons who were refugees because of events occurring before 1951. The year that followed showed that the movement of refugees was not a phenomenon that was confined to World War II and its aftermath. New refugee groups emerged, particulaly in Africa, throughout the late fifties and the sixties. It, therefore, became necessary to make the Convention applicable in all such new refugee situations. For this purpose, the 1951 dateline was removed by the 1967 Protocol, giving the Convention a truly universal character.

The Protocol is an independent instrument to which States may accede without becoming parties to the Convention (although this rarely happens). States which acceded to the Protocol undertake to apply the provisions of the Convention to refugees who meet the Convention definition, but without the 1951 dateline. If a State accedes to the Protocol alone, there is no possibility of introducing a geographical limitation.

RESERVATIONS

When acceding to the Convention and /or Protocol, States may make reservations to articles which they feel unable to apply. There are, however, certain articles to which no reservations are permitted, and which acceding States must therefore accept. They are as follows:

- Article 1 (refugee definition).
- Article 3 (non-discrimination as to race, religion or country of origin).
- Article 4 (freedom to practise religion).
- Article 16 (1) (free access to courts).
- Article 33 (non-refoulement).
- Articles 36-46 (information on national legislation; final clauses).

ACCESSIONS TO THE CONVENTION AND PROTOCOL

In the early years, the parties to the Convention were relatively few. Six instruments of ratification or accession were required for the Convention to come into force. This did not occur until April 1954.

Since then, the number of accessions to the Convention and Protocol has grown to over one hundred. As we have seen from the task listed in the Statute, one of the High Commissioner's major protection tasks is to encourage States to accede to international instruments for the protection of refugees, and to supervise their application. This is an on-going task.

UNIVERSAL INSTRUMENTS

A number of texts, though not specifically of concern to refugees, may be of relevance to refugees in certain circumstances. Those mentioned below are the most significant :

— The Convention Relating to the Status of Stateless Persons (1954) defines the standards of treatment to be accorded to stateless persons, which are, broadly speaking, the same as those for refugees.

— The Convention on the Reduction of Statelessness (1961) seeks mainly to avoid statelessness at birth, by granting the nationality of the acceding State to persons born in their territory who would otherwise be stateless. It also provides, subject to certain exceptions, that a person shall not be deprived of his/ her nationality if this would result in making them stateless, and specifies that a person shall not be deprived of his/her nationality or racial, religious or political grounds.

— The Fourth Geneva Convention Relating to the Protection of Civilian Persons in Time of War (1949) contains an article (Art. 44) dealing with refugees and displaced persons. The Protocol Additional (1977) provides specifically (Article 73) that refugees and stateless persons shall be protected persons under the meaning of Parts I and III of the fourth Geneva Convention.

— The United Nations Declaration on Territorial Asylum (1967), unanimously adopted by the General Assembly, recalls Articles 13 and 14 of the Universal Declaration of Human Rights, and states the principle of non-refoulement in broad terms including non-rejection at the frontier. It also recognizes that the granting of asylum by a State is a peaceful and humanitarian act that cannot be regarded as unfriendly by another State.

REGIONAL INSTRUMENTS : AFRICA

The OAU Convention Governing the Specific Aspects of Refugee Problems in Africa, adopted in 1969, is of major importance for several reasons. It contains a broadened refugee definition and important provisions relating, *inter alia*, to asylum. Article One of this Convention cites the refugee definition stated in the 1951 Refugee Convention. However, paragraph 2 of this article has expanded the refugee definition by stating that "The term "refugee" shall also apply to every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order either in part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality". The Organization of African Unity (OAU) Convention also stipulates provisions which protect the rights and duties of refugees, and provisions which protect them against forcible return, expulsion and non-refoulement.

EUROPE

Several instruments concerning refugees have been adopted within the framework of Eurpean institutions. The most significant are listed below :

COUNCIL OF EUROPE

- Agreement on the Abolition of Visas for Refugees (1959);
- Agreement on the Transfer of Responsibility for Refugees (1980);
- Resolution on Asylum to Persons in Danger of Persecution (1967);

— Recommendation on the Harmonization of National Procedures Relating to Asylum (1981);
— Recommedation on the Protection of Persons not Formally Recognized as Refugees under the 1951 Convention (1984).

Provisions of concern to refugees also figure in the European Conventions on Extradition and Social Security.

EUROPEAN COMMUNITY

— Regulation No. 1408/71 on Social Security of Migrant Workers;
— Dublin Convention (1990), which lays down criteria for determining which member State is responsible for examining an asylum request when the applicant has passed through one or more member States of the Community;
— Schengen Agreement (1990), signed by the BENELUX countries, Germany and France, which contains similar criteria to the Dublin Convention, within the context of the progressive abolition of frontier controls between countries of the Community.

LATIN AMERICA

Political asylum has a long history in Latin America. The first texts date back to the late nineteenth century (Montevideo Convention). Since then, a series of other instruments has followed on territorial and diplomatic asylum. One of the most recent is the 1984 Cartagena Declaration on Refugees. The Colloquium adopted the conclusions: that in view of the experience gained from the massive flows of refugees in the Central American area, it is necessary to consider enlarging the concept of a refugee,

bearing in mind, as far as appropriate and in the light of the situation prevailing in the region, the precedent of the OAU Convention (Article I, paragraph 2) and the doctrine employed in the reports of the Inter-American Commission on Human Rights. Hence, the definition or concept of a refugee to be recommended for use in the region is one which, in addition to containing the elements of the 1951 Convention and the 1967 Protocol, includeds among refugees persons who have fled their country because their lives, safety or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances which have seriously disturbed public order.

CONCLUSION OF EXECUTIVE COMMITTEE

The United Nations High Commissioner for Refugee Executive Committee (EXCOM) is a body of States' Representatives elected by Economic and Social Council (ECOSOC), on wide "geographical basis". Representation in this body is drawn among countries which have shown good degree of interest and commitment to the refugee problem. Currently this body is constituted of the Representatives of App. 44-45 countries. This body was created in 1958. Its essential tasks are :

— to approve the High Commissioner's annual assistance programmes ;
— to advise the High Commissioner, at his request, in the exercise of his statutory functions (notably, international protection).

International protection is included as a priority item on the agenda of each session of the Executive Committee. The consensus reached by the Committee in the course of its discussion is expressed in the form of a general Conclusion.

It is important to distinguish between international instruments such as the 1951 Convention and 1967 Protocol, which have the force of law for the signatory States, and other texts (declarations, resolutions, recommendations etc.) which express an international consensus, but are not legally binding. The conclusions of Executive Committee belong to the latter category.

SUB-COMMITTEE OF THE WHOLE ON INTERNATIONAL PROTECTION

With the growing complexity of the High Commissioner's work in the protection field, it was decided in 1975 to create a Sub-Committee which would " study in more details some of the more technical aspects of the protection of refugees."

The Sub-Committee meets each year, immediately before the plenary session of the Executive Committee, and discusses specific protection issues. The conclusions it adopts are later submitted to the plenary Committee for endorsement.

Over the years, the Executive Committee has adopted Conclusions on a wide range of subjects. They include:

— issues of general concern (international insturments, asylum, "non-refoulement", expulsion, determinations of refugee status, family reunion, travel documents, voluntary repatriation, unfounded or abusive applications for refugee status or asylum, detention of refugees and asylum-seekers, refugees without an asylum country, etc.);

— the protection needs of specific groups (refugee women, refugee children, etc.);

— problems arising in various critical protection situations (military or armed attacks on refugee

camps and settlement; rescue of asylum-seekers at sea, etc.).

THE IMPORTANCE OF THESE CONCLUSIONS

Although, as we have seen, the Conclusions are not binding on States, they have come to be considered as making a positive contribution to the development of international refugee law. They serve, *inter alia*:

— to focus attention on protection issues, identifying existing short-comings;
— to reflect a consensus reached in a unique international forum;
— to propose appropriate remedies and guide governmental authorities on their course of action.

ENVIRONMENT AND HUMAN RIGHTS: NATIONAL AND INTERNATIONAL PERSPECTIVES

DR. M. M. AHSAN KHAN

INTRODUCTION

A law can be defined in various ways. But a rule which is not backed by any power and sanction can hardly be regarded as a law. In the modern world, law is predominntly related with the state power. And that is why despite some grave weakness of the definition that 'law is the command of sovereign power," it remains one of the popular and attractive sayings regarding law. But when we are talking about "Natural law" and "Moral law", it becomes difficult to relate them directly with state power. On the other hand, a state law without its moral foundation does not necessarily faces an unsurmountable difficulty to overcome the process of enactment and enforcement. Some laws may satisfy some standards of morality derived from some particular ideology, religion, creed and culture. But those standards or considerations might not be regarded as moral issues at all by other laws. It is not only applicable for different states and legal systems, it is also quite a relevant issue for different kinds of law even within a state. The question is very often asked: can a law be too immoral to be a law? Both the affirmative and negative answer to the

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question would be inaccurate in terms of dynamics and reality of a modern state affairs.

Moral dimensions and considerations, however, have never been altogether ignored by any ideology and state. Moreover, stronger ideology and state always speak about universal sense of morality and human dignity reflected in their prescribed and implemented legal systems. The very prominent dimensions regarding the interrelationship between law and morality are their correspondences, convergence and practical reasonableness. To approach these issues one has to determine first the very contents of morality and law, and their relation to the natural law.

In the **first chapter**, an attempt would be made to examine the **place of natural law** in this modern highly technological world, complicated state and societal affairs. The **second chapter, 'law as an integrated whole'** describes law as an abstraction and also as regulator of human behaviour, which on its parts is organically and functionally related to the various aspects of morality. In the **third chapter, the role and place of public and private morality** would be analysed in terms of effectiveness of laws. The **fourth chapter, "the European communist system: a moral dilemma"** would focus on moral achievement and failure of the regimes of the former East-European countries. The **fifth chaper, "capitalism in the former socialist countries: chanes of success and failure"** would analyse the hopes and fears of these countries in the process of making themselves co-partners of the capitalist world. The **sixth chapter, "legal environment: unity and diversity"** would show that ultimately not the legal norms but the legal environment as a whole characterises a society and determines the ultimate shape of the legal system. Simple

analysis of the formulation of codified laws hardly can express the real dynamism and flaws of a legal system. This appears to be true for all legal systems irrespective of their **secular, socialist or religious orientation.** The **seventh chapter, "ecological balance: legal environment"** would tell us how the environmental issues can be regarded as the ultimate test for a legal system. A legal system failing in the protection of environment, in fact fails in every sphere of its domain.

In conclusion, an attempt has been made to show how the natural law and the issues of morality are being forgotten as the factors, which are practically relevant to almost every important ethical and legal affairs of a modern state and world community at large. It shows that in an integrated world communication system, how the disintegration of different forms of society is a challenge to humanity. For a remedy proper emphasis ought to be given on the moral fabrics of different societies.

NORMATIVE LAW WITHOUT THE WISDOM OF NATURE

The universally well-known recorded history tells us that the Greeks firmly believed in the creative wisdom of the Nature. But they were not the believers in fatalistical determinism. **Was it a paradox in Greek civilizaiton?** Apparently the Greeks were not blessed with any universal religion or God. But despite that shortcoming their search for universal human values and efforts to make them in conformity with natural wisdom, in fact made the Greek civilization enormously rich in the annals of history. The Greeks were the champion in creating abstract and all encompassing ideas or moral and social order.[1] At the initial stage the Greeks believed in the rational unity of the

universe and then discovered that all customs, usages, moral and legal values also embodied in themselves a sort of natural essence.

In view of the Greeks the embodiment of natural justice in moral and legal conceptions is so obvious that a law diverging itself from them the essence of natural and moral justice can easily threaten its own survival. **Does orderliness of nature always keep an observable regularity? Does nature maintain a normative order in material world and social life of human beings?** In this highly technological world the destructive and creative ability of human beings overshadowed the observable orderliness of nature. Social and state affairs have now come under the control of legal positivism, which challenged the fatalistical determination. The victory of modern normative state law is undeniable. But how far did it succeed in preventing something from its inevitable destruction and emergence? Description of the material universe in terms of natural normative order seems to be metaphoric. Efforts to use the so-called natural normative terms to explain the socio-political development of a state is simply regarded as ontological study, which is unacceptable to a modern 'computer-styled' human brain and senses.

In ancient human civilization, where law existed in an organic relationshp with the religious precepts and distinct differences between public and private life did not exist, natural normative order both in state and personal affairs could easily be observed. It is a well-known fact that human activities can be divided into self-regarding and other-regarding, and all the regulators of human behaviour are directly or indirectly connected with the internal and external activities of human being. But in a very rudimentary

form almost all basic regulators, such **as religions, customs, morals and priniciples of law tended to regulate the entire human life.** Neither human civilization nor any particular socio-political system can entirely be sustained by only one set of rules. This problem, at the first place, whether related to the socio-economic system of a society or its legal system is a question of controversy. The range of human perception and thought is so vast that at least in conceptual matters or in the abstraction of ideas human brains knows no bounds.[2]

New ideas and thought do not necessarily bring about change in the existing order of the society, but almost all new ideas, good or bad, morally sound or not, get hold of the imaginations of some people. Conceiving new ideas or following them, human beings desperately try to project the novelty and superiority of those ideas over others. But experiment with new thoughts and ideas in upholding a new social order with a view to replacing the existing one, time and again, showed that genuinely new ideas are very few. Options of handling any concrete problem in real material life are very few. Moreover, many aspects of those options are closely related to one another. That is why legal positivism appears to be the strongest effective prescription to bring uniformity of human behaviour in specified circumstances.

By the end of medieval era, emergence of nation-states facilitated the opportunity to create uniform rules and regulations for the entire population of a state, while in the city-state system a uniform law for all was out of question. For example, in Sparta, a famous Greek city state, Helots or serfs were deprived from all kinds of civil and political rights. The perioikoi, can be regarde as middle class

engaged mainly in industry and commerce; but they did not possess political rights. Descendants of the original Dorian conquerors named as the Spartan-proper had absolute control in public affairs. Despite their absolute power in governing the state, their life was rigidly regulated and in fact, they had to lead a communistic style of life. At the stage of seven the children of the ruling class of Sparta were placed in the hands of state officials. Apparently similar state control prevailed for all the three classes of the population of Sparta. But the nature of state control over Helots and Spartans-proper maintained some fundamental differences. The chldren of the Helots were brought up to use them as agricultural labourers. They were born for the cultivation of lands to feed the entire population. But it does not mean that in Sparta the ruling class was born to lead a luxurious life at the cost of the miseries of other segments of the population. The Spartan-propers had to undergo rigid physical and intellectual training to undertake the responsibilities related to the security and military affairs of the state. For the purpose, they were forbidden to engage in trade, and all forms of luxury and advantageous position in wealth and opportunity were also forbidden for them. All the adult males had to take their food at the public mess Hall. [3]

The strict division of labour among the different classes and rigid legal order apparently tells us about a normative state order of Spartan society, but in reality codified laws were absent there. Even the magistrates were forbidden to give their judgements in writing. **It was strongly believed that in every conflict and dispute, the nature has its own prevalence. The main task of a law-maker or judge is to discover the desire of the nature.** And in doing so he has to use his intellect, discretion and reason. In other words, not

the creation of the law but the application of explicit and implicit laws provided by nature was the main task of state power.[4]

Though in principle, the city state, Athens, followed a similar philosophy or doctrine, but its liberal democratic state order led to an inequal distribution of power and wealth among various segments of the society. Inequality among the Athenian citizens quickly made the entire city-state disintegrated, while observance of the principles of equality among the Spartan-propers gave a solid foundation to the Spartan state institution.

Helots of Sparta and Athenian slaves were completely without rights of whatsoever. In both the cases, slavery was taken as the wish of nature. But not the state law itself could determine the real status of Helots and Athenian slaves, it is the moral standard of the ruling class, in the final analysis, determined the share of slaves in state affairs and social life. Apparently contrast between Spartan oligarchy and Athenian democracy was very striking and bound to be reflected in the life of the respective population. But in reality Athenian democracy had little concern for the Athenian slaves constituting one-third of the population of city state.[5]

The rise of the Sophists was both a cause and a result of new idea that not the nature, but human being is the ultimate arbiter of all things. Thus the basis of Greek philosophy and ethics came under direct attack. The Sophists believed that not the nature, but might makes the rights. **It was argued that the political power or law may be resulted either from an agreement among the strong to oppress the weak or from a union among the weak to defend themselves against the strong.** Thus according to

Sophists the laws were mere conventions, not unchangeable law of Nature.[6]

Whether the nature or human being is the just arbiter of all things is an irrelevant question to a legal positivist. But whether human being by his very nature is selfish and naturally social or unsocial entity is an enquiry for all to make. How far a state is entitled to regulate the life of an individual is an ever ending disputed question to be answered. A flight from monarchy to aristocracy or to democracy could not provide a universal answer to this question. Similarly neither divine nor secular ideas of law could entirely exclude the human factor in legal affairs. **It is only a matter of degrees of reliance of a particular law to some theocratic or secular thoughts and ideas.**

Since the rise of Sophists in the fifth century B. C. the law started its own independent journey maintaining a distinction between itself and morality.[7] But in search of its own independent identity it had to rely on religion heavily. **Appearance of law in written form dictated its deep concern to the scriptures of religions and moral parametres of the society.** Moreover substitution of the laws of nature by the laws of the state got to be justified by a better social order. Oppressive laws of the state usually go against the will of nature. The difference between a self-determined action of the people and an action determind by laws shows the viability of the positive law. An arbitrary imposition of laws on human beings quickly gives birth to an adverse reaction. **Thus in relations to the purely natural entities or human being a posititve law at its deeper level can not so easily dismiss the essences of the natural law.**

Wish or desire of the nature can not be regarded as the natural law. In an emergence or destruction of a thing or

entity whether nature already gave its verdict positively or negatively would remain a controversy in the minds of men. This controversy not necessarily leads to an objective discovery of a natural truth. As in controversial issues different parties have not only conflcting opinions, but also have conflicting interests. Thus ultimately human factor in the natural law plays a domineering role. Human beings not only discover the objective laws of natural sciences, they can also facilitate the smooth functioning of those laws. On the other hand, they can also create artificial barriers against the natural laws. In the second case ultimately natural laws prevails, but because of adverse intervention of human beings nature produces many unhappy surprises. That is why positive law has to maintain a strong conformity with the natural law. Freedom given by nature should not be curtailed by the positive law. "**Obligation under the posititve law is the analogue of human freedom within the natural order.**"[8] But how? Is every positive law unqualifiedly just? Whether one should unconditionally comply with the positive law? Human being's existence in nature and civil society is analogous in the sense that an individual alone is helpless in both the cases. On the other hand, as a positive law-maker an individual or a group of people possess an absolute political authority to control the entire civil society. He who makes the normative law and he who obeys that law obviously can not enjoy freedom in a similar manner. A law-maker can change both the wording and meaning of a positive law, and every time he can claim its conformity with the natural order and justice. On the other hand, an ordinary citizen of a state has no power of veto to the positive law. Prior to the rise of Western liberalism, a great majority of the people did not even dare to criticise the state laws. "They are obeyed so long as the relations of

production enable the full potentialities of the society to be exploited; they will be challenged when the forces of production are in conflict with the relations of production ..... Whenever this conflict occurs, the foundation of law is called into question. A struggle for their reconstruction takes place; and, **if those who challenge the law are successful in their effort, they move to the use of the state-power to redefine the legal postulates of society.**"[9]

Separation between church and state brought the opportunity to enrich the volume of the postive law up to any extent and the scope of criticism to state-law also becomes widened. Arguments for and against a particular law apparently allowed the positivists to be indifferent to the natural law because of its vagueness. But emergence of a large number of "man-made laws" in many instances made the establishment of justice in reality a distant dream. The legal positivists by their very nature are enthusiastic to bring a bigger horizon of human activities under the direct control or supervision of the normative law. To them for the sake of the establishment of a normative order in the society, positive law is the only tool to be used. to the legal positivists there is no other alternative no achieve a just society. But a large number of positive laws trying to widen its domain not only complicated the legal system itself, but also made themselves less effective. **The richer and stronger segments of the society "blessed" with a sense of unpunativeness can in reality ignore any positive law which is detrimental to their group or class interests.** This is not a new problem faced by humanity in this present age of individual ism and democracy. This problem is rooted in the Athenian democracy.

The famous Greek city-state, Athens, created a good number of state organs. These organs had been created to reflect the demands of the reforms of Solon in the seventh century B. C, and the legislation of Cleisthenes in the fifth century B. C. Conflicts between nobles and commons in Athens ultimately opened the doors of the political authority to the latter. Together with the blood connection, possession of wealth had started to be regarded as a strong reason to have share in political power. For the first time in the recorded history instead of blood relations possession of wealth appeared to have stronger influence to hold political power needed to control the public life.

The Assembly, the Council of Five Hundred, Board of Generals, boards of magistrates, demes and courts initially boosted the Athenian democracy. In the election process the use of lots were introduced to ensure wider peoples' participation in the public affairs. Unlike the Sparta, Athens did not fear written law. In the cases of conflicts between the laws adopted by the Council of Five Hundred and the Assembly the second always superseded the first. But to avoid frequent conflict between these two highest state organs usually the council of Five hundred formulated the legislative programme to be presented to the Assembly. To make the democracy extended to the grass-root level, the local districts, dames, were established. From their respective local districts, the demes nominated the members eligible to be elected as the members of the council of Five hundred. The system of lots in this election ensured to a great many citizens to be the members of the council by rotation. As a whole the Athenians followed a doctrine called "each is ruled by all and in his turn each rules over all." [10]

It is evident that the Athens was intensively democratic both in organization and spirit. But the Athenian democracy could not stop the disintegration process of the society, rather in many ways paved the ways for disintegration up to the collapse of its golden era. To keep the society integrated the Athenian democracy established a unique judicial system. The courts were composed of "judgement-finders", who were selected from a jury panel of six thousand. The judges were called "judgment-finders" not only for their efforts to find judgments according to the desire of the nature, but because the "judgment-finders" also had the power to testify the laws adopted by other state organs. They could nullify the laws held contrary to the custom or to the Athenian constitution. Adopting decrees the Assembly also could do the same. Thus one can observe that with the blessing of democratic institutions and atomosphere the Athenian citizens could almost free handedly legislate different laws and also nullify them.

With the help of its wide popular based democracy Athens successfully could attract its whole population. Almost all organised segments of population were attached to the socio-economic and political system. No group of people wanted any sort of revolutionary change of the society. For any revolutionary change merely radical ideas are not enough. Those ideas must be conceived and pursued by a segment of population, who are extremely unsatisfied by the existing order and ready to take risk in their efforts for a dramatic change. In Athenian democracy such a group was completely absent from the state. **Such an unchallenged democratic rule could easily lead to barbarism as well.** In 416 B. C. Athenians "conquered the island of Melas, put to death all men of military age and enslaved the other

inhabitants."[11] Protests against such state sponsored barbaric activities made Athenian government and democracy weak and at the battle of Aegaspotami in 405 B. C. Athenians were defeated by the Spartans, who established an oligarchical government in Athens. Because of its unpopularity the goverment was overthrown and democracy was restored. According to Bertrand Russell, this restored democracy was an embittered democracy.[12] More importantly, the place of armed forces in the then Athenian democracy was very apparent and all pervading. In such a democratic atmosphere the procedures of trial and death of Socrates could not be challenged.

Apparently in a so deep rooted and widely introduced Athenian democratic system the Board of Generals composed of ten miliary leaders held a special privilege to interfere in any important domestic and foreign policy, though legally the Board's powers were restricted to purely military affairs. In the periods of crisis the board's action could easily supersede all Athenian laws. Crises were so frequent occurences that in the late years of the life of Aristotle he witnessed a bleak Athenian democracy making him a supporter of traditionalism and aristocracy. The situation with the Athenian democracy deteriorated to the extent that after the death of Alexander in 332 B. C. Aristotle was forced to flee from Athens, otherwise he could have been murdered or sentenced to death. Aristotle in his Politics argued that the main purpose of a state is to produce cultural gentlemen dedicated to the processes of learnings of arts and wisdom. In this perspective also Aristotle was frustrated with the Athenian democracy. "**After the death of Socrates, the bigotry of the Athenian democracy diminished, and Athens remained the centre of ancient cultures, but political power went elsewhere. Throughout later antiquity, power and culture were usually**

separate power was in the hands of rough soldiers, culture belonged to powerless Greek, often slaves."[13] This thesis is not only true for the Greek civilization, it is equally true for the Muslim civiliation. It is still early to apply this truth to the modern Western civilization.

During the last two centuries in the Western developed world the scope of military coup has already diminished. A preponderance of civil rule over military in the developed world is at present a common phenomenon. But this feature of modern ruling system is of very recent origion. A strong preponderance of military over the entire civilian state system was "the norm in the classical and medieval European culture, but the two roles have been gradually separated in the West as a result of specialization of function.[14] This sort of specialzation in state affairs is the result of legal positivism. The huge number of normative laws kept no state affairs and crisis unhandled. Almost all important state affairs came under strong control of the normative law, keeping it practically irrelevant for a good number of people. The number of citizens taking the positive law as a mere black letters of law books are still fews in the western developed countries. But in the rest of the world a great majority of the population find the entire positive law greatly irrelevant to their practical life. This is why a strong argument, named the "**black letter view of law" which vehemently** criticise the positive law. **The black letter view of law suggests that the positive law too vaguely formulate a target to be worth refuting.**[15] Refuting the argument of the "black letter view" of law, a legal positivist ovbiously would argue that the legal positivism is not just a list of normative rules and regulation, but a body of them with a wider conception of Justice, which embodies a good number of inherent moral conceptions to be reflected in

the implementation of a functionable legal system. **Thus along with the defenders of natural law the positivists also agree on some areas where natural law and positive law generally coincide over a broad range.** But in the case of positive law there is little scope of ontological study, while in the case of natural law, a regulator of human behaviour, scope of ontological research is very vast. This is why legal positivism in fact changed the very conception of law.

LAW AS AN INTEGRATED WHOLE

It is not difficult to differentiate law from its normative principles. Normative principles do not depend on law for their validity. But law can not ignore the normative principles, as the second serves as the external evaluative standard for the first and directly or indirectly becomes the integral part of the whole body of law. This relationship may appear a theoretical one, not so much of practical use. **Law as an abstraction may be a problem of legal doctrines, but law at the hands of a judge is a practical question.** In every concrete case a judge has to reach a decision. Thus purpose of law is to establish justice. It is obvious that the law is based on this or that conception of justice. **The conception of justice on its part based on a particular political and moral theory.**

In practical terms law is a reflection of the ongoing active life of a society. It can not be a static one. In fact law is in a constant process of develpment, renewal and change. **But the ultimate purpose of law is the legitimate use of force for the sake of justice.** In view of Dworkin, a judge resolving a conflicting issue finds "the best constructive interpretating of the political structure and legal doctrine" of the state.[16] But rarely a judge interpretates the political

or legal doctrine. It is true that in a case-made legal system opportunity of a judge to take an interpretative stance of law, as an integrity, is very vast; still it is not so elastic to assert many legal rights and duties depending upon the implicit political values of a state. Political doctrines might not be so explicit in their uterances of lagal rights and duties, but legal doctrines have to be specific in their expression. Legal rights and duties by their very nature demand an explicit and uncontroversial declaration. Relationship between a law and its doctrine is such that it is difficult to give a superior status to either. **If we assume that law has a superiority, then why it depends on the ideas and values of a political system and doctrine?** On the other hand, why a political system or docrine needs legal protection, without which it is almost meaningless for the community. This complex relationship demands from a judge to fill the gap between the words of law and its spirit. It is no more a rare instance to reach more than one eligible interpretation of the same law or case. Thus it is understandable that law and justice are not identical conception, though an extreme theory of natural law or ethics can claim so. "This element of justice in the definition of law rightly emphasises the idea that law and justice are synonymous terms... **A complete analysis of the idea of law therefore involves an analysis of the ethical element of justice involved in it.**"[17] Ethically everyone has a right to build his own fortune according to his won perception of good and bad, depending upon his won knowledge and wisdom; he can promote his own welfare. But in acquiring wealth everyone can not be allowed to take as much as he can. On the other hand, **an arithmatical equitable distribution of wealth and opportunities is neither possible nor desirable.**

If we take the justice as a common good, then law would find it difficult to work efficiently. Equl distributtion of commodities among the people is apparently a common good. But relating distribution of commodities and benefits only to the needs of consumers and forgeting the prices of time, labour, energy and skill needed to produce those things is simply an injustice to both human beings and their creative activities. Moreover, every work and production is involved with some risk causing harm to individuals and community Payment of compensation to the individuals and organisations is very relevant to the production process and costs of modern age. This is why we find **two fundamental contrasting ideas of justice : distributive and commutative (or corrective).** Conceptually these two forms of justice are very contrasting, but material life of the community needs both the forms to foster the common good. In this perceptive, justice and common good are identical. Hence interrelationship between law and common good become more complicated.

The conception of common good is so vague and vast that hardly a law ignoring the specific aspects of its injunctions can take care of that. In the process of making a judgment, a judge obviously works out what the existing law is to that specific case. It is true that relevant legal rules might not provide an answer to some particular cases. In those cicumstances a judge has to rely on existing values, general state policies and moral precepts for his judgment. "Since the pre-existing law does not give an answer, the judge must decide the case on the basis of extra-legal considerations. In doing so he will establish a new legal rule. But what makes a rule a legal rule is the fact that it has been

laid down by a judge, not the fact, that it was based on moral considerations."[18] A legal rules made by a judge in the process of working out a judgment might become an equally strong law passed by a parliament. Strength and effectiveness of legal rules are a different problem than the question of mutual relationship between rulers and ruled. **The view-points and stands of the law-making authority or legislators are not necessarily the true reflection of the existing socio-political and moral values of the common people of the community.** On the other hand, a body of persons constituting the supreme law-making authority by the virtue of their position can claim habitual obedience to them from the bulk of the population, while they are not under any legal obligaton to show obedience to anyone. That is why there remains a controversy between what a law is and what it ought to be. [19]

Purpose of a law is also shrouded by various controversies. For example, usually it is believed that the criminal law is based on conceptions of justice as retribution of evil. But almost all forms of punishments under any criminal law can be regarded as barbaric remnants of an inhuman thirst for revenge. **Thus a law passes through the roots of philosophical notions up to the level of legal forms of taking revenge.** "Law as integrity would then amount to something like a strong recommendation for open-textured, purposive adjudication, in effect a call for conscientious, majoritarin judicial activism."[20] **A law as an integrated whole can be termed as a political morality sustained by legal rules and enforced by the judicial organs.**

LAW AND MORALITY : CORRESPONDENCE, DIVERGENCE, AND CONVERGENCE

Morality as an integrated whole is much more complicated than any conception of law. Arena of different forms of morality such as individualistic, collective, civic, religious and political knows so many diversity that it is very difficult to define what does morality means. Despite the difficuties related to the specification of moıal issues at different levels, it is a fact that legal system and orderliness of a community is primarily a reflection of moral standard of the society. Generally it is believed that law is the mirror of the progress of the society. **But here progress is taken as a comprehensive devolopment including spiritual and moral aspects.** Because of its specific character it ıs difficult to claim that every law is morally right. For the same reasoıı conception of justice is in uneasy harness in every legal system. Every legal rule serves a specific intention. A law is obviously a reflection of a state policy. But morality is not a direct reflection of a state policy. Both the legal rules and morality of the community are reflected in the law and order situation of the concerned state. That is why it is very important to establish a relationship between law and morals of a community. The apparent distinction on between these two regulators of human behaviour can be maintained as follows :

a) Almost all legal rules derived from some sources of law, such as religion, custom, constitution, statutes or decided cases. Proper linkage between a legal rule and its source is the prove of the validity of the first. Once it is established that a legal rule maintains its validity, it becomes a valid legal rule despite its goodness or badness. In other words, for a valid legal rule, parameters of justice

or unjustice become irrelevant as long as it is legally valid. On the other hand, if a just and reasonabe rule in no way succeeds to find its place in any law, it can not be treated as a legal rule. It remains in the orbit of the morals.

b) Whether every legal rights and duties has some moral judgments or bindings is also an irrelevant question for a valid legal rule. The simple fact that the legal rights and duties are not a variety of moral right or duty is a strong argument in support of sharp distinction between the two.

c) A very simple distinction between a law and moral precept is that the first is concerned with the external aspects of human behaviour and activities, while the second is concerned with both the external and internal aspects of human activities. **A law is neither interested in determining unexpressed intention of a human being nor it is ready to judge his intention with the help of other's activities.** A student blaming his parents or teachers for his unsuccessful performance in the examinations can think for himself to kill them even for thousand times, but as long as he keeps the intention in secret within himself, law has no concern for such thought. But morals of a normal human being would try to convince him to give up such thought.

Despite so sharp and distinct differences between law and moral, there exists a strong correspondence between the two. History witnesses a large number of horrible instances of authorised brutality or official injustice. Stalinist or Nazi laws violated many moral principles and for that we can only treat them as unjust laws. **Despite their horrible character as law, no one within their jurisdiction was in a position legally not to comply with those laws.** A similar statement is true for all sorts of enslavement including racialism. Enslavement of Palestinians, Bosnian and

Chechenian Muslims under the Israeli, Serve and Russian occupation respectively prove that morality of a state-law has very little concern with the real socio-political affairs of a state. Minorities in many modern states are charged with dual loyalty. Muslims in the non-Muslim countries are one of the typical examples of this problem. "This change of dual loyalty was formerly laid against chatheles in protestant majority countries and is feared by the Zionists in the diaspora who so fervently support the state of Israel." [21]

Minorities are bound to comply with the state-law despite its immoral character in handling thir rights. But if the immoral character of a state-law disregards even the rights of majority, the concerned regime may find it diffcult to hold legal system introduced by it. Insurgencies against an established regime may be justified on moral grounds, "But it is something else again to suggest that the society is one without any laws." [22] Any revolutionary situation or the revolution itself trying to overthrow the established regime in facts is a challenge to the laws. The revolutionaries justify their ideology, which in no way can be treated as law. Their ideological stances might have very solid moral ground and may serve as a strong source of their future visualised laws, but still they are not regarded as laws. **Thus forces tyring to maintain *status quo* and the force fighting against it have to rely on moral justification.**

Morality in the human being as an integrated whole is so powerful that every law has a core of morality. Generally speaking every law by its very nature must satisfy some minimum standard of morality. "**Within any established social order, the law and the prevailing morality will have countless points of contact with one another.**"[23] These contacts or correspondence between the law and morality

at the first place needed for an effectiveness of the legal system. In the final analysis, the moral standard of the society directly affects the legal system of the state. In the real dynamies of the society one can easily observe an absence of actual correspondence between the law and morality. **Societies undergoing a violent upheaval initially loose this correspondence and then pave the ways to lawlessness.**

Thus from the very beginning of its birth a law may be profoundly immoral on various grounds. It may fail to satisfy moral standards in natural and ethical terms or may ignore moral rights of a particular group of the society. Moreover, a moral principle itself might be immoral. Habits of homosexuals or lesbians are morally encouraged in their own groups and are legally accepted by some western counries, and here we can observe a close connection between the law and morals of a western society. But this very morality is an immoral one. Any sort of connection between law and morals is not enough, relationship must be appropriatly of positive character. A legal rule is abide by a human being for several reasons. a) As it is enforced by law and state agencies, so one can comply with it out of fear. b) In a civilized society majority people abide by law just because of habit. c) Concerned parties of a legal rule comply with it because of their benefits. d) Some people also abide by law out of conviction that the laws bring benefits to the state, society or different communities. **In every instance, in the core, morals play a very significant role.** "If the obligations imposed by law and morals do not correspond, whichever finally prevails does so at the expense of other."[24] For example, soilders are obligated by law to fight the enemies according to the wish of the state. But the war fronts of Afghanistan and Vietnam for the Soviet and

American soilders respectively proved that without moral justification even the soilders are not in a position to fulfil their legally bound obligation with enought strength and courage. Legally British or American government has every right to send their soilders to protect Israel or even fight against Palestinian enthefagatha (upraising), but morally it is not justified, as no government has any right to use its soilders or powers for thoroughly immoral, unjust and brutal cause.

Moral validity is of so paramount importance that even the fundamental law of a state can not ignore this aspect of law. From legal point of view no citizen has any right to rebel against any constitutional rule, but moral argument can provide serious justification to defy some constitutional rules as well. For example a particular group of people finding no reflection of their rights in state-constitution may rebel against it. Human morals being the fundamental reference of the conflicting parties may reveal the real situation of constitutionalism and rule of law. "A Constitution may be the foundation of law and order in a community, but mere law and order is not enough. **It must be good law and good order.** It is conceivabe surely that a minority may be right in saying that it lives under a constitution which establishes bad government and that, if all else is tried or fails, rebellion is right[25] From moral point of view rebellion against the entire constitution or a part of it may sound good, but in reality or from the legal point of view it is a difficult task to do so. Not even speaking of minority, even the majority of the British India and South Africa could not refuse to obey the constitutional rules enforced by the minority occupants because of their upperhand in state power.

Despite all paradoxes and difficulties, in the majority cases degrees of interdependence between legal and moral obligations ultimately determine the effectiveness of law. In the long run, for every society it proves to be correct. **Implementation of every law directly or indirectly pulls some rules into this or that direction causing some change in the community's perception of good or bad.** In an effective legal order such an impact is bound to be very apperent. The legal system having not serious connection with the grass-root levels of the society has very little impact in changing the community's perception of just or unjust, good or bad. If the effectiveness of legal order fundamentally depends on the convergence of community's legal and moral norms, how then a law would influence the morals? "The morality in question is not more than the morality that prevails in fact in the community where th law is applicable. Someone might note the convergence of law and the prevailing morality and, if his own moral system were very different, conclude that **the law in question was becoming increasingly immoral."**[26] **Thus we can differentiate prevailing morality from an ideal moral system.** For example prevailing morality in the Muslim countries sharply differes from the conceptual Islamic morality. Now adopting a western legal system a Muslim state takes risk in both the ways. On the one hand, in the total absence of convergence of law and morality, law becomes immoral. On the other hand, the prevailing morals without any legal support loose their grounds. Muslims opposing the western laws also loose in both ways. **Firstly, their moral basis of opposition become fragile, secondly, using an immoral law for their material benefits they do not hesitate to use the existing law in any corrupt way.** Though the problem of convergence of law and morals is not a normative notion

rather it is a descriptive or natural one, still it bears a strong significance for a normative order of the society.

Morality despite its abstraction can not be separated from the real material life of a community, as it is organically connected with the very existence of human being. In creating ideal concepts of morality the potentialities of human being is infinite. This is why convergence of law and morals can not be described in mathematical terms. "**Over time, law and morality are likely to converge by a gradual interactive process or, occassionally, by a more confrontation and elimination of dissimilarities.**" [27]

All the western legal systems can specially be marked with their permissive character. In the face of people's demands the law-makers are ready to go for any compromise with the existing religious and even with secular morals. As a doctrine, Western ultra—liberalism, can easily facilitate adoption of any immoral rule as a legal rule. "Western states and universities in the throes of the sexual revolution gave up almost all legal sanctions against fornication, adultery, homosexuality, pornography, obsenity, blasphemy, usury, alcohol, and, perhaps soon addictive drugs. **The functionality of the new removed age— old religious limitations on such human behaviour should be apparent to all ...**" [28] Except the inveteral liberalists or the feminists hardly one can disagree with the facts that curse like AIDS (Acquired Immune Deficiency Syndrome) is the result of western liberalism. Almost all the Semitic religions and traditions despite their puritanic attitude to legal doctrines failed to save their moral values in the face of aggression of the western culture. All the relative gains and loses of a legal rule vis-a-vis the status of moral values can

not be measured by biased social scientists or ideologues of this or that theory. With a comprehensive empiricism in mind an unbiased human wisdom can determine the consequences of age-old confrontation between legal and moral norms. For such an empirical method of study a frame of special reference to be made to keep the legal and moral norms in touch with liberty, equality and environmental issues.

THE EUROPEAN COMMUNIST SYSTEM : A MORAL DILEMMA

Apparenty emergence of Soviet socialist system and the subsequent establishment of the East European communist bloc was merely a reaction to the European capitalist exploitation. But a deeper study of the socialist legal system shows that in the core of its development initially there was a pious cause and wish. As a principle, "**from each according to his ability, to each according to his needs**" can be regarded as the best principle of equality and freedom. But in the face of hard dichotomy of ideolism and reality, and paradoxical character of human nature a state legal system can not adopt such a notion of equality to be implemented in the mode of production and distribution. Ignoring the bad potentialities of human beings and taking each and every individual highly developed creative personality no legal system can find its way to the real dynamics of life. Understanding the importance of relationship between human efforts and material benefits the socialists adopted the notion, " **from each according to his ability, to each according to his work**" as a practically workable principle. In view of the formulation of this principle it does not differ much from a capitalist nature of work and payment. But

guaranteed employment with a minimum state salary makes this socialist principle fundamentally different from a capitalist regime of work and payment.

Theoretically socialist moral principle could not be upheld without a strong all-pervading legal system. Though it is strongly believed by the communists that the state normative regulation would not be necessary in the optimum Communism, but to achieve a communist regime of work, strict organisation of labour forces and a appropriate economic impetus at work under a strong grip of the communist was an imperative. No doubt that the socialist regimentation of work greatly helped the East European countries to overcome the calamities of World War-II. The European socialist countries as a whole provided jobs to every abled adult member of the society. Once socialism provided almost equal rights to health protection, housing, education, rest and leisure, maintenance in old age, in sickness and in the event of complete or partial disability or lose of the bread-winner. Guaranteed employment with a minimum state salary could be regarded as a socialist blessing to all.[29] But simply an all pervading socialist legal system would not build a strong prosperous economic system capable of being competative to the capitalist system based on almost absolute private ownership. Private ownership can easily sustain vested interest groups both in the mechanism of production and consumption, while a socialist system officially is unable to create such privileged groups. A strong commitment to the socialist ideas and sincere contribution to their realisation is supposed to be the moral foundation of a socialist state and legal system. But in reality in the name of absolute state control on the means of production and production relations a tiny section of people of the socialist countries

had been using state power and privileges in a very similar way used by their capitalist counterparts in the west. On the eve of their collapse the socialist systems, almost every where, were ran by the "capitalists" of the communist parties.[30] **As a whole European pervassive society could not tolerate such a state-sponsored hypocritic rule.**

A Western society as a whole legally endorsed a system, where highly affluent sections of people are allowed to enjoy absolute freedom after paying their taxes fixed by the government. Technological development and booming consumerism are, first and formost, at the service of the capitalist class. The capitalists have been enjoying full moral and financial state support in this regard, while the socialists were supposed to humanise the course and methods of technological development. For that purpose the socialist regime with the help of the legal regimentation tried to create qualitatively superior human beings in terms of moral foundation and behavioural manifestation. Without any exception all the East European countries utterly failed in their attempts to create better human resources both in moral and material terms. **Thus their inevitable defeat to the western capitalist system is primarily a moral one.** Even a wide section of people in the socialist countries had been speaking about socialist spirit of works, but practised a strong capitalist mode and pattern of life. This capitalist mode was the instrumental in substantiating Gorbachevism, which on its part gave brith to a transitional period bringing the European socialist countries to the fold of the western capitalist bloc.[31]

Along with the American capitalists, the European industrialists have been celebrating their victory. The victory of capitalism and is of absolete charaeter a total

surrender of socialism was humiliating. As a whole western liberalism successfully made the socialism an utopian philosophy . Throughout the nineteenth century the ideas of socialism theoretically had been challenging the capitalist pattern of socio-political system. Both the typical socialist and capitalist ideas had been formulated by the European philosophers. The extreme expliotative character of capitalism not only gave birth to the theories of socialism, but also made it possible to establish socialism as a state recognised philosophy, the foundation of moral and legal values and norms. **In this perspective socialism is the twin brother of capitalism.** The West European communities found it illogical to pave the ways for further expansion of socialism at the cost of the legacies of colonial power, while to protect and preserve their own colonial interests the Russians got the socialism as the only means to maintain their national hegemony. Afghanistan was the last text case for both the Kremlin based Russian imperial power and European socialism. On other hand, world-wide American leadership was threatened severely than ever before. Amercia with the help of European and Muslim powers compelled the Russians to succumb to the western liberalism and American hegemony. **In 1990 the united attack of the USA and European forces against Iraq put an end to the bi-polar world. It can be characterised as a truimph of American imperialism.** But at the same time America with its allies took the responsibility to humanise the former socialist countries in a capitalist way.[32]

It is a moral duty of the Americans and the west European people to bring the former East European to the flod of capitalist mode of production and distribution. Politically Europe is now a single entity, but economically it is not. The West Europeans can not ignore both the East

European peoples and their products for a longer time, as there exists no ideology to divide them. "Western Europe must fully open itself as well as its existing institutions and peace structure to the countries of Eastern Europe in order to strenghen the process of democratization in the Soviet Union and Eastern Europe and, of course, to also preserve the magnetic effect of Western Europe. Economic equilibrium between Western and Eastern Europe must also be aspired to for the same reasons."[33] The East Europeans gladly accepted all the values and norms of Western liberalism. **Now there must be adequate rooms for their peaceful accommodation, otherwise European civilizations have to die at the wake of famine and ecological imbalance.**[34]

History provides numerours evidences that the socialist regimes failed to protect environment from the unwise interruption of state-sporsored programmes, though in theory in the protection of environment the socialist regimes were supposed to prove greater efficiency than the capitalist world. Not the legal system is to be blamed, but the moral degradation and unharmonised development of human resources can be characterised as the prime cause of disastrous course of human history. A socialist demand of employment for all working forces, in reality, not only produced unskilled labourers but also huge hidden unemployment.[35]

Both in industrial and agricultural sectors a large number of workers, technicians and administrators simply had been occupying the posts and drawing salaries without doing any jobs in real material terms. Misuse of human and material resources engaged in the environmental protection was colossal and consequence will continue to effect

adversely on every front of human life.[36] The socialist legacy and experiences proved that the collapse of the socialist legal system was the outcome of moral mistrust of the socialist peoples in the communist beliefs. **This moral mistrust was substantial in many ways.** Firstly, many believed that the communist ideals would never been inplemented in real life. Secondly, the great majority of the communists had never been serious in the communist morals; they simply used them for their own professional carrier. **Thirdly, affluent sections of the peoples were in uneasy harness with those values and norms.**

CAPITALISM IN THE FORMER SOCIALIST COUNTRIES: CHANCES OF SUCCESS AND FAILURE

The socialist countries and their people have been seeking salvage in capitalist mode of production and distribution. The new leaders of the former European socialist countries have been enthusiastic in adopting all capitalist ideas, values and norms as their own gevernmental policies. There exists no legal bar for that. The conservative communist forces are no longer in a position to bring back those countries to the fold of a socialist system. Many new laws have already been adopted by the supreme ligislative bodies of those coutries. Many more capitalist laws are in the process of enactment. In this regard some relevant questions are: Why the capitalist laws failed to bring economic emancipation to the third world countries? Why the capitalist laws are increasingly becoming obsolete in fighting crimes in their birth places? Is it not true that capitalism as a whole makes the poor more poorer? **How far exploitative capitalism turned into democratic humanism?**

Democratic capitalism can be regarded as the philosophical basis of the modern western civilization. It is the democratic system, which kept the exploitation of the richer sections over poorer sections of the population up to the tolerable level. Democratic system, on the one hand, permits criticism on every sort of unjust state and social system; on the other hand, allows all exploitative methods keep functioning. Fierce struggle for gaining material wealth among wealthier sections goes side by side with the deprivation of almost all means of survivals to the poorer section.[37] Thus fear of revolution or popular upraising against governmental system no more exists in a modern western democratic system; a peaceful method of succession of state power is also ensured.

Success of Western democratic capitalism caught the imagination of almost all the westernized intellectuals and wealthier sections of the population of the third world countries. In many countries a reasonable stable governments could be established with the help of democratic institutions provided that there did not occur frequent military intervention in the process of consolidation of civilian rule. The Socialist countries had adopted their own method of franchise in electing the members of legislative bodies and key figures in the executive Organs of their states. But one party system did not allow them to adopt western system of franchise. The socialist form of democracy is sharply criticised for its ingrained autocratic and dictatorial essence. **Absence of open criticism to the state sponsored policies kept the rulers of the socialist regimes above the law, while the politicians and the rulers of the western countries have been facing constant pressure of open democratic criticism of the opposition and people.**[38]

The socialist peoples as a whole get compulsory education and by this illiteracy was eradicated. But their acquaintance with the western democratic system was very superficial and on many accounts illusory. As they lost their faith in socialist morals, they became lethergic in implementing socialist laws. The capitalist conceptions and democratic methods of running the state and society appeared to them very attractive. Within a very short span of time principles of democratic capitalism had been adopted and were introduced in all the former European socialist countries. But the experience is very bitter. The countries are not only falling apart; holocaust and atrocities know no bounds. Atrocities and sixty thousands (60,000) of rape cases of Muslim women by the Serbs in Bosnia-Hereegovina brought the mediaeval barbarism again in Europe.

Legally the western powers and their leaders can escape from the liabilities of these atrocities and barbaric phenomenon sweft across the former socialist countries. **But morally they have to take the major responsibility for all those barbaric activities in the modern human history. The recent scale of atrocities and barbarism breaks all the socialist records once served as the instrumental cause to the collapse of cummunist regimes.** The renewal violences and extreme lawlessness throughout the former socialist countries already justified the socialist system in China, which rejecting classical Marxism and European consumerism trys to combine the ethics of Eastern and socialist values. But still it is under serious pressure of Western liberalism and forces of capitalism.

The history of human civilization can not put a blind eye on western capitalism and allow it to suppress all other ideologies or methods of fostering human values and morals.

The western capitalism has its united platform under the leadership of the USA. But to justify its leadership the USA government and its partners have to fulfil their moral obligation towards the former socialist coutries. By now it is clear that the western power did maintain no responsibilities towards the Muslim Asian former socialist peoples. The two main reasons can well explain the situation. Firstly, the western powers are either reluctant or incapable in absorving the Asian peoples. Secondly, none of the Asian former socialist nations are showing serious interests in the western values.[39]

Western values practised at private levels already have started to destroy the ethos of Asian nations, which somehow could maintain their own national, traditional and religious values and norms. History shows that the Middle Eastern countries with their huge oil resource utterly failed to save human race of their own capitalist system. And the western states and the their rulers find no uneasy harness with the extreme autocratic regimes of those states showing least concern to democratic values or even human rights.[40] **Thus morally western liberalism and democratic capitalism have failed to build solid ground in the entire Middle Eastern and Central Asian regions.**

The East European countries are now the test-case for the western laws and morals. In the case of their failure in those countries, the western leadership in the process of the development of a healthier human civilization would surely be faced by an inevitable decay. A strong partnership among the USA, Germany and Japan is the last resort to salvage western laws and morals in the rest of the world. In the economic front Franch, Germany and Japan are in uneasy harness with the USA. For their own economic

emancipation their collaboration and partnership with their neighbouring countries are of paramount importance, while the USA is under serious domestic imperatives to be looked into.[41]

The former socialist countries need huge foreign capital investment to modernise their economy, while the USA government needs more investments in its own territory to cut deficit of federal budget and decrease the rate of unemployment, and above all to ensure luxurious life for the craving Americans. The Americans hardly would go for any sacrifice of their luxurious life for the poverty strikened East European countries and peoples. If the West Europeans have to shoulder the entire responsibility of saving humanity in the East European countries, why should they continue to accept the leadership of the Americans? By now conflicts of interests between the USA and European countries have been mounting. Who will do sacrifice for whom? What would be the basis of sacrifice? Foreign investments can not be achieved as a sacrifice or gift. **Any sacrifice needs ideological, national and religios motivations and persuasions.** The East European peoples demanding sacrifices from their western counterparts still could not substantiate their cause. They can not hope to enjoy western luxurious life as they had been deprived from it so long. Even the East Germans could not use this logic of deprivation to their own West German citizens. The core principle of capitalism is that no one can expect anything without paying appropriate price. Compared to the peoples of the western countries crave for western products in the East European countries is even higher. In many cases their livelihood depend on western products, while they neither can afford to buy them nor they can no longer produce their own inferior socialist products. **Situation would be very**

grave in the very near future. Capitalist rhetoric would no longer be an answer to the problems of the former socialist countries.

LEGAL ENVIRONMENT : UNITY AND DIVERSITY

Moral and socio-political environment is the sustainer of a legal system of a state or community. The very complex of environment of human behaviour and values ultimately determine the variables of legal system, which on its part also influence the pattern and style of the manifestation of morality of a society. In the final analysis, **not the codified laws but the legal environment of a state tells about the overall general standard of morality of a society.** In the present-day diverse and complex society the legal environment appears to be more important than ever before to save a human society from the moral decadence. The legal environment is a reflection of existing law and order situation maintained by all sections of the masses of a state. Both the rulers and the ruled of a state have very important role to play in maintaining the purity of of legal environment of the society. The most weak and uninfluential section of a society showing their indifference to the law can also pollute the legal environment. Adherence and concern of the peoples of all walks of life to the legal environment sustained by the public and private institutions is very important. If psychologically peoples find themselves in hostility with the existing legal principles and norms, ultimately it would be impossible to maintain a desired law and order situation. **This is the reason why the same codified laws give different types of positive and negative results in different societies.** Compatibility of the moral and ethic standard of a society with the adopted codified laws is

the dominent factor to keep the particales of legal environment in appropriate proportions. Fear of punishment and hope for rewards go parallelly in the conscious section of people. And this complex state of mind is very relevant to keep the legal environment free from frequent unwanted intervention causing harm to it.

When a President or Congress of the USA has to put a ban on the homosexuals to join the country's military forces, that gives an idea of not only about the ethical conditions of the people, but also sends serious signal to the legal environment. The legal environment takes this sort of signals so seriously that it finds itself on constant pressure of both the conflicting parties and values. This is a long complicated process. For example, after a long struggle the forces of anti-abortionists have been succumbing to the pro-abortionists forces. Now obviously question arises to acquire a right to unconditional abortion at any time of the pregnancy. In the case of abortion a pregnant woman finds herself in conflict with her unborn child, and decision can be made according to the wish of the first, as the second can not raise his or her voice to claim any sort of rights. But in the case of homosexuals or lecbians apparently they are not threatening any interests of others. They are fulfilling their sexual desire within their own communities and their sexuals relations can not facilitate child birth. Even such sexual behaviour can be regarded as a measure of birth control, which is treated as the number one issue of public and private interest in the majority countries of the present-day world. But despite the overall acceptance of their sexual behaviour by the majority of the western countries, still publicly they are regarded as the people of unnatural behaviour. The legal environment of the Western communities by now accommodated them without any great

difficulties, while in almost all Eastern societies such a sexual behaviour is treated as not only unnatural or abnormal, but a serious sinful act. The legal environment of a Eastern society even does not allow the issue to be treated as an agenda discussed by the legislators, while President Bill Clinton has been trying to lift the ban on gays to serve the country's military and adopted a policy, "Don't ask and don't tell."

Thus one can observe that apparently invisible legal environment can strongly affects the minds and behaviour of the most powerful President of the modern world. Whether lifting ban on gays to serve the military forces is a good or bad sign for a legal environment would be determined in the future. But by the time the Western countries would reach to the conclusive results of the participation of the gays in their armies, the moral and ethical behaviour of the new generations would substantially be affected by this unnatural sexual behaviour. **And AIDS and many new other curses of nature might easily reach to an intolerable and uncontrollable level.**

It is true that in human life and behaviour absolute good or bad things are very rare. But that can not serve as an excuse to mix the ideas of objectively good with the bad actions. For example, if the entire Serb nation was overwhelmed by the homosexual behaviour then may be thousands of Bosnian Muslim women could have been saved from the brutal sexual abuse of Serb army whose atrocities know no parallel in the recent human histroy. But no bad potentiality dormant of human behaviour can be stopped by polluting the entire socio-economic and legal environment of a state or society. Like the natural environment, the legal environment ultimately does not confine within the territorial boundary of a nation-state.

Famine in Sudan, Ethiopia and Somalia is not an isolated tragedy in the modern human history. It is not only the outcome of tribal conflicts of the concerned countries. Ideological and military conflicts between the two former super powers directly facilitated to build huge armed forces in the third world countries. The poor countries in no way can sustain such colossal expenditure for their armed forces. In the absence of strong support from the outside the rulers of these countries are bound to loose their control over their own military forces. The frequent military coups in the poor countries can be well explained by the rivalry among the big powers to strengthen their influence on those countries as well as by the fierce struggle for power among the ruling elites of the concerned states.

Post cold-war situation already proved that none of the developing countries needs so huge military expenditure, which in some cases, constitutes about half of the total national budget in real trms. But the rulers and military leaders still find it an imperative to keep the military forces in tact to hold on the state power. After the end of Iraq-Iran war Saddam Hossain of Iraq with his strong one million army found no alternative but to invade Kuwait. **Killings of of thousands of Iraqi soidiers by the Western allied forces led by the USA in fact save the regime of Saddam Hossain from inevitable collapse.** The legal environment of the socialist countries dictated them to build a strong military in Iraq to face monarchical regimes of the Middle East. Subsequently both the Kremlin and the White House used Iraq against Islamic Iran. No Ideological imperative of the Western countries now dictates them to help the monarchical regimes of the Middle East. But the moral and legal environment of the Western countries made them

almost duty-bound to help the monarchical regimes, on the one hand, and the Israil, on the other, to face the so called Muslim fundamentalists. "Egypt, Saudi Arabia and Israil are said to be concentrating on defensive capabilities... The C. I. A. is in control of the situation. As arms are tracked, the information is shared with other agencies sympathetic to U. S. Government policy."[42] **Since the demise of cold-war the USA remained major arms dealer in the world market and its share has increased substantially.**

The Muslim fundamentalists and their unimaginable growing influence in the Muslim communities, having either a majority or minority status, in fact was a recent discovery of the western rulers, journalists and social scientists. In reality the colonial rule and its legacy in the Muslim countries made the Muslims understand that their existing legal environment controlled by their westernised elites failed to bring any remarkable change to the better for the majority of their population. Experiments made by the local socialists and democrats failed to create a legal environment, where they could project the superiority or even validity of their newly adopted principles and norms. Not the strength of rationality and logic has its final say in determining the course of legal environment in these countries, but the principle "might is right" prevails almost in every major conflicting issues of national and social interests. This is a situation of individualistic anarchism operating on the ideas of western old or extreme individualism. "**Fundamentalism overtook liberalism because the latter was unable to respond to questions of humiliation frustration, defeat, and so on plaguing the Arab people.**"[43] Now an ordinary Muslim neither interested in nor probably would try to know the root cause of their miseries, as he is in desperate situation to get rid of prevailing legal

environment, which utterly failed to provide him the basic human rights.

The Muslims in general treat the legal environment of a Western society not only unacceptable to them, but also have started to identify it as the final stage of western decadence, where conceptions of common good or bad lost in the games of dichotomy between ideals and reality. In the face of the revival of Islamic traditionalism the upholders of the Western values instead of rationalising their cause, frequently have been using forces against the opposition demanding radical change in their legislative and judicial system. "**The common contention was made of the 'notion of humiliation' whereby Arabs and Muslims are going through a period of assertiveness of identity, i. e. a return to the roots from which they have been alienated, in the face of repeated defeat and political subjugation**"[44] Only with the help of force no legal environment can be built or sustained. At present not only the overwhelming majority of the Iraqis or Iranians have been raising their voice against western powers and their policies, the entire moral and legal environment of some Muslim countries conclusively went against a typical western legal system. No western power possibly can establish any pro-western regime in these countries or can bring them to the fold of western powers. Moreover increasing number of Muslim communities have been taking preparation for a categorical rejection of western philosophy of governing a modern nation-state. This is no more a problem of philosophy, rather the concrete issues of modern state affairs. "**The west, like a child locked in a darkness room, is panicking.** Signs of rapid Islamic popularity in the Middle Eastern, Asian, an even Western nations have caused great concern amongst the ranks of Western intelligentsia, leaders, journalists and

so on. Foreign policy decisions concerning Islamic nations are often erratic and inconsistent...The dithering reaction by the West seems to be wavering on the path of failure... **The day may yet come when Western scholars and journalists will learn, at the very least, tolerate that which they do not understand.**"[44]

The Westernised luxurious life-style of some Muslim countries severaly hit hard the basic human interests of the others. The workers and labourers of poorer Muslim countries working for their livelihood in the rich countries already have been turning into unconventional slaves. Two centuries ago African slaves have built the American civilization and to-day the non-Arabs are being used in almost similar ways in some oil-riched Arab countries. Even the extreme hursh Muslim fundamentalist view can not subscribe the views and methods in using labour forces of their countries. Because of the close collaboration between the ruling elites of their countries and western powers, the latter is under constant watch of the common masses. This is a situation not only true for the Muslim countries, but all the former socialist countries have also already started to blame the western powers for the destruction of their hard earned socialist legal environment, which at least could save-guard the interests of the have-nots. How long the former socialist peoples have to wait to see a democratic system catering their basic human needs? Are the western powers in a position to accept different forms of democratic systems? The situation in Algeria can be characterised as a test that whether the West can reconcile with a government democratically elected, but fundamentally different from western type and pattern. Instead of supporting democratically elected government western states immediately provided 11.45 billion debt to Algerian military

regime. Who is to be blamed for not allowing democracy to take its course in the Muslim countries? In answering this question a study of the Washington Institute for Near East Policy tells us that "**Islamic groups may or may not be compatible with the western agenda, only time will tell. Yet condemning them as undemocratic before any precedent has been set must, in itself, be the ultimate undemocratic act.**"[46] Until now any western agenda regarded as identical as democratic. The recent success stories of former socialist countries apparently gave strong boost to all Wastern a agenda. **But fate of western democratic system is equally at stake as the fates of the former socialist peoples.**

Along wih the moral and legal environment, naturual environment finds no real protectors in those vast geographically important territories. The ruling elites and newly formed capitalist class can wait happily for a real truimph of capitalist liberalism, but extremely poverty strikened people and ecologically imbalance environment are desperate for a way out in finding real salvation of their lives.

ECOLOGICAL BALANCE : MORAL ENVIRONMENT

Economic advancement of a country or a region at the cost of ecological balance is no real progress. But the entire complex of human endeavour to achieve material progress seldom can immediately determine the cost-benefit effects to environment. Pressing needs to satisfy the demands of modern material life hardly allow to give comprehevsive attention to the major variables of ecological balance. The ruiling class has to justify their power with an eye-wash of material progress specifically reflected in building modern cities and facilities of modern transportation and

communication. The ruling elites have to be bestowed with the opportunities to ran after all sorts of consumerism. Everyone is in the high speedy atmosphere of competition. Hard reality of modern competition dictates everyone to make him fit alone, otherwise he will be forgotten and unattended. **As morality is the least concern of a typical modern man, so ecological balance is irrelevant to his moral values.**

Dazzling achievement of modern civilization and tis illusive attraction is so overwhelming that the ecological imbalance created by the wide use of modern technology have been overlooked for a long time. Use of modern technology for a long time has been regarded as purely non-moral issue nothing to do with the moral standard of the society.[47] But simple logic was forgotten. Any powerful thing may be potentially dangerous if it is not properly guided by human wisdom. Merely legal or formal guidance is not enough, as ulitmately every thing is handled and controlled by human brain and actions. The Western legal system failed to determine a clear-cut line between objectively good and objectively bad things and behaviour. In a western legal environment one can talk about the wide misuse of arms, alcohol, drugs, sexual urge and technological discoveries, but those discussions do not lead to any real impact on legal system or human behaviour. The silent majority have no way to affect the objecively bad activities, causing unprecedented harm to the environment. **The technological might is fully controlled by a tiny minority of the society. This tiny minority holds state power as well.** The ruling elites also already have been realising the consequence of unwise exploitation of modern technological know-how and skillfully trying to escape from bad consequences. By now severe consequences of modern industrial society and

extremely urbanised life-style produced so many by-products that no western medical care or facilities can cope with the situation. The use of latest models of many things has been causing brain cancers Secondary smokings are directly linked with the causes of various types of cancers and ncurable diseases. Fast foods are also regarded dangerous for health. Miscarriage of unborned child and birth of increased number of retarded childern is linked with the extreme artificial life-style of a modern man.[48]

Unimaginable progress of medical science in the West appears to be incapable of healing the terrible wounds caused by the legal environment and life-style of modern men, as ecological imblance has already started to produce surprising effects on all sorts of living entities including human being, animals, and environment itself. As a result they already changed their behavioural patterns and habits. Despite the misuse of modern technological know-how, with its blessings the developed countries could successfully establish their strong grip over all the developing countries. The ruling elites of the developing countries, exploiting the new technology, substantiated their absolute control over their own peoples. This is an invisible role of modern technology, which apparently is devoted to make the mankind more visualised. Human race of the twentieth century despite with its two World Wars and innumerable regional wars can claim its high height in the annals of human civilization. In this respect the main credit goes to the technological development. **But humane character of present development is under serious scrutiny both in the East and the West.**

In the final decade of the twentieth century humanity has been increasingly becoming conscious to use all readily

available technology. The developed countries with their more effective state machinery are in a position to influence the pettern and methods of exploitation of highly sophisticated techonlogy, while importers of those techonlogical know-how simply interested in their application for a public eye-wash to prove their stronger political legitimacy. **Irrespective of the degrees and causes of misuse of modern technology in the different countries, its global consequences are very apparent and devastating.**

Simply injecting some new laws in the legal system, no single state of modern age can do any headway in preventing ecological imbalance. The developed countries are no more in a position to inject new morals in the orbit of state laws which are very specific both in their formulation and implication. The subjective factors of the legislators and judges of the Western World are the last things to be manifested in the legal system. The legal systems of the developing countries in the majority cases are very vulnerable because of the whimsical steps of their rulers incapable of understanding the dynamics of modern state and legal affairs.

As a whole, like the issue of natural environment and ecology, the major elements sustaining the legal environment have been more polluted than ever before. Factors like poverty or mode of production can not be controlled by the efforts of some particular countries or state machineries. On the other hand, problems like drug and arms trafficking and AIDS remained in limbo throughout the entire world. Many other similar issues of modern world demand concerted efforts to be addressed on behalf of concious and powerful quarters irrespective of their creed, culture and religion. In the absence of such

conserted efforts in solving the burning problems of global, continental and regional character, the human race may find itself in a very degraded level of civilization, hardly differentiated from wild life. But a wide basis or a philosophy of synchonized efforts of different states of different ideological or socio-political orientation can not be built only upon the codified laws. **A healthy ethical and moral persuasion at publicaston and printed level is the only answer to this problem.**

CONCLUSION

It is commonly known that law is concerned only with the external affairs of human behaviour, whereas morality is concerned with both internal and external affairs of human beings. The internal aspect of human activities is either absolutely a sphere of private life or externally difficult to determine its real position and consequence. A modern legal system finds a wise decision not to interfere in the internal behaviour of a person irrespective of his native or foreign status. Since the adoption of western liberalism and ethics of individualism as a state ideology, state intervention to the personal and private life of a citizen reached to the minimum level. Both the state authorities and the citizens are happy with this priniciple of state non-interference in the personal affairs of the country's inhabitants.

The victory of the capitalist individualism is so overwhelming that the entire East European Socialist bloc crumbled to the knees of Western capitalism. But the holocaust and atrocities carried out by the new capitalist regimes of the East European countries ashamed the entire humanity. Moreover unrest, violence, widespreading homosexuality, drug and alcohol abuses have been

destroying the very fabric of Western civilization. The Western authors themselves "started examining the effects of sociological phenomena upon the legal order and the nature of the legal process itself, with analysis of judicial behaviour and the means whereby rules were applied in actual practice.....Empirical investigations proliferated, particularly in the United States, and the science of psychology and anthropology as well as sociology became allied to jurisprudence.... **legal rules were no longer to be accepted as the heart of the legal system.**"[49]

Thus instead of legal rules, the moral norms have been increasingly getting emphasis in regulating human behaviour, habits and life-style as a whole. The issues of morality are very closely related to the human nature, and different psychological disposition of human beings keeps the importance of natural law alive. During the last two centuries the concepts of natural law have been defeated by the legal positivist movement almost in every front. By the end of the twentieth century not only social unrest, violence and lawlessness of the human societies but the environmental disaster caused by the human organised efforts compelled the scholars, scientists and even many politicians to search new paradigms in legal system and environment.

But the laws still remain merely a collection of legal rules regulating only a small spectrum of the external behaviours of human being. May be the laws are helpless in this respect because of the very nature of their existence. But what about the activities of powerful governmental and non-governmental organs and even individuals? Existing laws are even helpless in the face of their external activities. State organs and powerful segments of pupulation can

manupulate the entire legal procedure to safeguard their vested interests. **The laws are no more the products of society as a whole.** The silent majority can do very little in shaping the legal system of their country. On the other hand, a small pressure group can easily translate their desires into a state law. This is why question of morality and immorality comes first. "Morality is the only source through which a man can develop in himself the heavenly qualities like love, affection, feelings, respect and appreciation for others in the society..... Without morality no democratic, judiciat and administrative values and institutions in any individual, societies and nations can be developed and nurtured . . . Today moral degradation is a serious threat to our individual, social, and universal life and peace. Individualised immoralities constitute social immoralities which ultimately lead to national and global immoralities. **Moral pollution is more harmful than environmental pollution.** Environmental pollution mainly presents unhealthy living to mankind whereas the moral pollution kills them mentally with the development of very low level awarness about all types of crimes they do . . . Thus there is no denying the fact that the morality is the root key to curb the widely talked about problems of environment pollution, Human Rights, Oppression of Women, AIDS spreading, Terrorism, Drug Abuses, Smokiong etc."[50] On the other hand, **one of the fundamental functions of law is to maintain moral standard of the society and to enrich it with greater number peoples of higher standard of morality.**

Almost all modern states are for pressing of new welfare legislations and their appropriate implementation. Though the concepts of human rights received a sort of global and universal character, diversity of human society demands a pragmatic approaches to the issues of legal concern. A

lagislator has to consider the particular character of a society, its moral, religious and cultural values without which a law can do very little in real life of the society. "The state has the obvious obligation to formulate and implement a cultural policy which will, among other things, create the necessary conditions for the co-existence and harmonious development of the various ethnic groups living in the territory."[51]

The entire Muslim world has been revolting against western system and blaming it for the destruction of the ethics of Muslim communities. Now the East European countries have been blaming the western capitalist law in a similar way. The ecological imbalance already hit hard many developed and developing countries. Technological progress is not to be balmed for this, rather it can be used for the protection of environment. In this regard the developed world has a greater moral responsibility. But for some financial benefits the developed world has been exporting their technology including arms, which is the root cause of all evils in the developing world and made the autocratic regimes stronger than ever before. The governments of the developing world in fact lost their own face in fronts of their peoples. The entire former Eurpean socialist bloc simply has been turning into a famine and poverty-striken world. Keeping the vast majority of the world population below the poverty line and paving the ways to make its own pelople also poverty-striken, the developed world can not hope to sustain their achieved life standard. Different types of cancer and AIDS is not a phenomenon limited to the health hazard it is obviously a syndrome to the worlds, legal and ethical system. Only an appropriate moral standard compatible with the dignity of human being can save the humanity from its artificial destruction. **In this respect a**

concerted effort of developed and developing world is to be made. Merely material achievement should not overshadow the wide moral spectrum of human life. In this respect the powerful and bigger states also can learn something from the poorer and smaller countries of the world.

If we can take the entire human race as a single entity, then we can observe that no existing phenomenon of the modern world is isolated from other. The terrific communication development of the present-world make this truth more prominent. A single moral government for the entire humanity is not visible, but a single world community might not be too far, if the human race can agree upon some fundamental moral values. **The moral values of human societies in their core essence are not fundamentally different from one another. It is the legal system which made them fundamentally different.** Each and every society striving to achieve a legal environment compatible with the wisdom of nature and sound moral values would ultimately lead to build a human race based on objectively good character and nature of human beings. **In this respect present human civilization has been failing.** Ecological imbalance and alarming environment pollution are the glaring examples of such failure. But without facing the problems of moral decadence of present human societies increased environmental pollution can not be stopped. As moral decadence is the main cause of environmental pollution and simply injecting new laws in the legal system, problems of environmental pollution can not be solved. Legal system both at national and international levels should be moulded in accordance with the wisdom hidden in the natural law. "In one sense, every life is in harmony with Nature, since it is such as Nature's laws have caused it to be; but in another sense a human life

is only in harmony with Nature when the individual will is directed to ends which are among those of nature. Virtue consists in a will which is in agreement with Nature."[52] **At this present stage of development of human civilization all sorts of dogmas can provide little help to protect the interests of humanity, while moral superiority over legal authority can help substantially in bending the modern states to the human rights, humanity, ecology and environment.**

NOTES AND REFERENCES

1. See for details: Charles H. Kahn, *Anaximander and the Origins of Greek Cosmology*, Columbia University Press, New York, 1960, p. 222.

2. Regarding this problem of new ideas, particularly of philosophical type, Somerset Maugham commenting on Bertrand Russel writes: "He was like an archtect who, when want a house to live in, having persuaded you to build it of brick, then sets before you good reasons why it should be built of stone; but when you have agreed to this, produces reasons just as good to prove that the only material to use is reinforced concrete. Meanwhile you have not a roof to your head." Somerset Maugham, "The Use of Philosophy". In: *Prose of Our Time*, eds, A. Haque, S. I, Choudhury & M. Shamsuddoha, Nawroze Kitabistan, Dhaka, 1993, p. 89.

3. See Lawrence C. Wanlass, *Gettell's History of Political Thought*, George Allen & Unwin Ltd., London, 1956, p. 35.

4. "Since the individual and the state were one, no distinction between public and private affairs could be made. The conception of public law, which defines the relation between state and idividual, had no place in Greek political theory.

Greek democracy contributed the idea of political rights, but not that of civil rights... The general principles of law were believed to be perfect and permanent not to subject to change at the will of the people. Nature was the source of law, and human reason the means through which nature's wishes could be discovered." In: *Ibid.* p. 42.

5. "People talk about the high point of Greek civilisation, but the Greek nation was not civilised —— the whole civilised population was not larger than the present population of Toronto." In: Bertrand Russel, "World Government or Annihilation". In: *Prose of Our Time*, op, cit. p. 46.

6. See for details: Lawrance C. Wanlass, *op. cit.*, pp. 43-44.

7. *Ibid.*

8. Lloyd L. Weinreb, *Natural Law and Justice*, Harvard University Press, 1987, p. 98.

9. Harold J. Laski, *A Grammar of Politics*, George Allen & Unwin Ltd, London, 1970, p. X.

10. Ernest Barker, *The Political Thought of Plato and Aristotle*, 1906, p. 447.

11. Bertrand Russell, *A History of Western Philosophy*, George Allen & Unwin Ltd., *London, 1979, p.97.*

12. See *ibid.*

13. *Ibid.* p. 204.

14. Theodor P. Wright, "The Problem of Empiricism in Comparative Political Research by Muslims: A Research Agenda". In: *The American Journal of Islamic Social Sciences*, Vol . 9, No. I. The International Institute of Islamic Thought. Herdon, USA, 1992, p. 45.

15. N. E. Simmonds, *Central Issues in Jurisprudence. Justice, Law and Rights*, Sweek & Maxwell, London, 1986, p. 4.

16. Lloyd L. Weinreb, *op. cit.* p. 118.
17. Hamid Uddin Khan, *Law and Life of the Society : Bangladesh Perspective*, World Peace Academy of Bangladesh, Dhaka, 1989, p. 4.
18. N. E. Simmonds, *op. cit.* p. 79.
19. "The law is not negative and unchanging. The law like the travellar must be ready for the morrow. It must have principle of growth. It should be not a yoke but a light harness holding the soceity loosely but firmly together so that is may move freely forward. Order it important but it must be an evolving order. The law must be firm but flexible and capable of adapting itself to a changing world." In: Hamid Uddin Khan, *op. cit.* p. 27.
20. Lloyd L. Weinreb, *op. cit.* p. 121.
21. Theodor P. Wright, p. 48.
22. Lloyd L. Weinreb, p. 102.
23. *Ibid.* p. 103.
24. *Ibid.* p. 104.
25. K. C. Wheare, *Modern Constitutions*, Oxford University Press, London, 1971, p. 64.
26. Lloyd L. Weinreb, *op. cit.* p. 107.
27. *Ibid.* p. 108.
28. Theodor P. Wright, p. 47.
29. See for details: M. M. Ahsan Khan, "Socialist Approach Towards Human Rights," In: *The Dhaka University Studies*, Part-F, Vol. II, No. I, June, Dhaka, 1991, p. 112.
30. See for details: *Ibid.* p.120.
31. *Ibid.* pp. 120-121

32. "The concern of capitalist is profit; the concern of the masses is material well-being. When the contraction of the economic system limits profit-making, the results are unemployment and a lower standard of life," In: Harold J. Laski, *op. cit.* p. XIV.

33. Volker Rittberger, Michael Zurn, "Transformation of Conflicts in East West Relations towards an Institutionalist Inventory." In: *Law and State*, Vol. 45, Institute for Scientific Co-operation, Tiibingen, Germany, 1992, p. 13.

34. "According to one member of the Russian parliament 90% of Russsain people live under the poverty line." In: *Echo of Islam*, No. 102, December 1992, p. 29.

35. See for detail, M. R. Khan, *Changing Faces of Socialism*, BIISS Papers, No. 9, Bangladesh Institute of International and Strategic Studies, Dhaka, 1989, pp. 72-76.

36. See for details *ibid.* pp. 77-83.

37. "Man is not, in fact, born free, and it is the price he pays for his past that he should be everywhere is chains. The illusion of an assured release from captivity will deceive few who have the patience to examine his situation." In: Harold J. Laski, *op. cit.* p. 18.

38. "Differences, or, let us say, the right to differ, lies at the roots of all knowledge, inquiry, investigation, research and progress. While, therefore, we must strive the safeguard the right to differ to question, to dissent and on occasion even to protest, we must at the same time strive to secure that our difference; in every sphere —— religious, philosophical, scientific, social, economic, political or whatever, should act and react beneficiently and not destructively." In: A. R. Chowdhury, *Democracy, Rule of Law and Human Rights*, University of Dhaka, 1993, p. 44.

39. "In the West today the main cause of social crisis is the strong inclination to extend the social responsibility from the minority to the majority." In: *Echo of Islam*, op. cit. p. 59.

40. See for details: M. M. Ahsan Khan, "Islam and Secularism: Constitutionalism in the Middle Eastern Counries". In:

FOCUS, a Journal of Legal Studies, Dhaka, 1993, pp. 26-40.

41. " It has been said on many occasions that the United States is facing one of the most impotant crises in its history, and it is true . . . In such a situation, the U. S. is confronted with two economic superpowers, Europe and Japan, with economic, financial, industrial, military, and political capabilities. . . . previously, communism, as an opponent was a pretext for America to sell its missiles and anti-missile systems, etc. and to justify NATO for the Europe. But what about today? . . . In fact, while the U. S. dominates as a superpower, yet it is financially dependent on Western Europe and Japan." In: *Echo of Islam, op. cit.* pp. 36-37.

42. "Islam and the U. S. : Challenges for the Nineties", In: *Middle East Affairs Journal*, United Association for Studies and Research, Vol. I, No. I, Summer 1992, p. 13.

43. Ahmad Abuljobain, "Islam and Democracy: Opportunities and Challenges in the Middle East". In: *Ibid.* p. 21.

44. "Has the West replaced 'Commun' with Islam as the New "Ism"? In: *Ibid.* pp. 37, 41, 43.

45. Ahmad Abuljobain, *op. cit.* pp. 20-21.

46. "Islam and the U. S. : Challenges for the Nineties." *op. cit.* p.17.

47. See for details: *Osnovi Kommunisticheskoi Morali Prosveshenic*, Moskva, 1984, pp. 15-97.

48. See *ibid.*, pp. 126-147.

49. Malcolm N. Shaw, *International Law*, Grotius Publications Ltd., Cambridge, 1991, pp. 48-49.

50. Abu Obaidul Haque, *A Proposal to the United Nations on Moral Development Approach: A New World Order for Peace*, Institute for Advancement of Science and Technology Teaching, Dhaka, 1992, pp. 2, 3.

51. Cited In: Hans-Jochim Heinze, "International Law and Indigenous Peoples". In: *Law and State*, Vol. 45, *op. cit.* p. 56.

52. Bertrand Russell, *A History of Western Philosophy*, *op. cit.* p 262.