IN THE SUPREME COURT OF BANGLADESH

APPELLATE DIVISION

(Civil)

Present:

A. B. M. Khairul Haque, CJ
Md. Muzammel Hossain, J
Surendra Kumar Sinha, J
Md. Abdul Wahhab Miah, J
Syed Mahmud Hossain, J
Muhammad Imman Ali, J

Dates of hearing. : The 1st, 2nd, 9th March, 2011, 25th, 26th, 27th, 28th April, 2011 and 4th May, 2011.

Date of Judgment : The 12th May, 2011.

Result: Allowed in part

Mohammad Tayeeb. :
... (In C.A. No.593/2001)Appellant.

Moulana Abul Kalam Azad.
... (In C.A. No.594/2001)Appellant.

=VS=

Government of the People's Republic of Bangladesh, represented by the Secretary, Ministry of Religious Affairs and others. :
... (In both the appeals)Respondents

CIVIL APPEAL N0s. 593-594 of 2001.

(From the judgment and order dated 1st Januray,2001 passed by the High Court Division in Writ Petition No.5897 of 2000).

ADVOCATES WHO APPEARED IN THIS CASE:

For the Appellant. (In C. A. No.593/2001) : Mr. Muhammad Nazrul Islam, Senior Advocate (with Mr. Md. Ahsanullah Chowdhury, Advocate), instructed by Mr. Md. Nawab Ali, Advocate-onRecord.

For the Appellant. (In C. A. No.594/2001) : Mr. Abdur Razzaq, Senior Advocate, instructed by Mr. Md. Aftab Hossain, Advocate-on-Record.

For Respondent Nos.1-3. (In C. A. No.593/2001) : Mr. Mahbubey Alam, Attorney General (with Mr. M.K. Rahman, Additional Attorney General), instructed by Mrs. Sufia Khatun, Advocate-on-Record.

For Respondent No.1. (In C. A. No.594/2001) : Mr. Mahbubey Alam, Attorney General (with Mr. M.K. Rahman, Additional Attorney General), instructed by Mrs. Sufia Khatun, Advocate-on-Record.

For Respondent No.6. (In C. A. No.593/2001) : Dr. Kamal Hossain, Senior Advocate (with Ms. Sara Hossain, Advocate), instructed by Mr. A.K.M. Shahidul Huq, Advocate-on-Record.

For Respondent No.2. (In C. A. No.594/2001) : Dr. Kamal Hossain, Senior Advocate (with Ms. Sara Hossain, Advocate), instructed by Mr. A.K.M. Shahidul Huq, Advocate-on-Record.

For Respondent Nos.4 &5. (In C.A. No.593/2001) : Not represented.

For Respondents Nos.1, 3-4. (In C. A. No.594/2001) : Not represented.

As Interveners. : Mr. M. Amirul Islam, Senior Advocate Ms. Tania Amir, Advocate.

As amici curiae. : Mr. T. H. Khan, Senior Advocate. Mr. Rafique-ul-Huq, Senior Advocate. Mr. Dr. Zahir, Senior Advocate. Mr. A.B.M. Nurul Islam,Senior Advocate. Mr. Mahmudul Islam, Senior Advocate. Mr. Rokanuddin Mahmud, Senior Advocate. Dr. Rabia Bhuiyan, Senior Advocate. Mr. M.I. Farooqui, Senior Advocate. Mr. A.F. Hassan Arif, Senior Advocate.

As amici curiae 5 (five) Olayma Kerams. (As referred by the Islamic Foundation) :
মুফতী মাওলানা রুহুল আমীন । মুফতী মুহাম্মদ কিফায়াতুলাহ । মাওলানা কাফীল উদ্দি নসরকার । মুফতী মিযানুর রহমান সাইদ । ডঃ মুফতী আব্দুলাহ আল-মারুফ ।

The Constitution of Bangladesh, 1972

Article 102

The High Court Division could not and cannot exercise any power either original, appellate and other jurisdiction and powers unless such powers are vested on it either by any provision of the Constitution or law. In other words, the High Court Division cannot exercise a jurisdiction unless it is clothed with such power either by any provision of the Constitution or by any other law. *(Md. Abdul Wahhab Miah, J).* ...(Para-170)

The Constitution of Bangladesh, 1972

Article 102 (1) (2)

At the risk of repetition, I say that in the Rule issuing order, the District Magistrate and Deputy Commissioner was not, at all, asked to 70 show cause as to why fatwas including the instant one should not be declared unauthorized and illegal and thus he was not given any chance of hearing on the subject or the point or the issue. It may be stated that the Rule was issued only upon the District Magistrate and Deputy Commissioner, Naogaon. I failed to understand how the High Court Division could merrily exercise its jurisdiction under article 102 and hold all the fatwas including the instant one as unauthorized and illegal without giving the sole respondent any chance of hearing. It was clearly a violation of the principles of natural justice. I could not lay my hands on any decision either under writ jurisdiction or under the civil jurisdiction by this Court or any other superior Court approving such kind of exercise of power by the High Court Division. I am afraid that if this kind of exercise of power by the High Court Division is approved or sanctioned, then the High Court Division shall be on the spree of disposing of the Rule, in exercising jurisdiction under article 102, giving relief to a party at its own whims and sweet will beyond the pleadings and the prayer and without caring the right of hearing of the other side. And in the process, it will give rise to judicial anarchy. It also needs to be mentioned that the language used in the Rule issuing order "and/or pass such other or further order or orders as this Court may deem fit and proper", in no way, gives a Court jurisdiction to give relief to a party or to hold something or to make any declaration or to make observations and recommendations beyond the Rule issuing order; such a language gives jurisdiction to a Court or authorises a Court to give only the ancillary or consequential relief that may follow from the Rule issuing order. Therefore, I am constrained to hold that the High Court Division exceeded its jurisdiction as well in making the Rule absolute in the terms as indicated hereinbefore. *(Md. Abdul Wahhab Miah, J).*

...(Para-193)

The Constitution of Bangladesh, 1972

Article 102 (2)

Whether the High Court Division can issue suo motu rule– Where the fundamental right of a citizen is infringed, the High Court Division can issue suo motu rule provided the infringement of right is amenable to the writ jurisdiction and is of great public importance. In this context, a news paper report, post-card, written material may be treated as an application in order to overcome the obstacle of application. But before issuance of suo motu rule, the High Court Division must

record its satisfaction in clear terms about exercise of such power. The High Court Division shall exercise such power sparingly. *(Syed Mahmud Hossain, J).* ...(Para-320)

Who can give Fatwa on religion–

(i) Fatwa on religious matters only may be given by the properly educated persons which may be accepted only voluntarily but any coercion or undue influence in any form is forbidden.

(ii) But no person can pronounce fatwa which violates or affects the rights or reputation or dignity of any person which is covered by the laws of the land.

(iii) No punishment, including physical violence and/or mental torture in any form, can be imposed or inflicted on anybody in pursuance of fatwa.

(iv) The declaration of the High Court Division that the impugned fatwa is void and unauthorized, is maintained. *(Syed Mahmud Hossain, J).* ...(Para-325)

JUDGMENT

A. B. M. KHAIRUL HAQUE, C.J:

01. I have had the advantage of reading the draft of the judgments proposed to be delivered by my learned brothers Md. Abdul Wahhab Miah and Syed Mahmud Hossain, J J. While agreeing with Syed Mahmud Hossain, J., I would like to share and advert my thoughts by way of supplementing his opinion, but in brief.

02. In this appeal, a preliminary objection has been raised with regard to issuing of a suo moto Rule by the High Court Division.

03. Generally, the High Court Division under Article 102 (2) of the Constitution of Bangladesh, is empowered to make an order, firstly, on an application, and secondly, the said application is to be made by an aggrieved person. The objection is, since in the instant case, there was no application, as envisaged under Article 102(2) of the Constitution, the issuance of the suo moto Rule by the High Court Division, was misconceived.

04. If we confine our attention only on Article 102, then no doubt the above objection is apparently correct, i.e. the High Court Division, may in its discretion, pass an order, but only on 'an application', filed by 'an aggrieved person.'

05. But we should not be that myopic. There are other provisions also in the Constitution, highlighting the rights of the people. Part II of the Constitution spells out the Fundamental Principles of State Policy, while, Part-III stipulates the Fundamental Rights of the people of Bangladesh.

06. Article 11 within Part II of the Constitution stipulates that the Republic of Bangladesh shall be a democracy in which fundamental human rights and freedoms and respect for the dignity and worth of the human person, shall be guaranteed. These are not mere empty flowery words. These are the dictates of the Constitution. This Article glorifies the State Policy, emburdening the Republic with the obligations, among others to protect the dignity of its citizens. The dignity of a citizen is no less important than his life or limb. This Article casts a duty upon the State to protect the dignity of its citizens.

07. Similarly, Article 14 enjoins upon the State to emancipate the backward section of the people from all forms of exploitation.

08. Part III of our Constitution guarantees Fundamental Rights of the people of Bangladesh, such as, among others, equality

before law (Art. 27), equal rights of women with men [Art. 28(2)], right to protection of law (Art.31), protection of right to life and personal liberty (Art.32) etc.

09. Besides, Article 148 provides for taking oath or affirmation by the Judges of the Supreme Court, among others, as mentioned in the Third Schedule of the Constitution, before entering upon the office.

10. The oath (or affirmation) of the Judges is administered in the following form: " আমি , ... , প্রধান বিচারপতি (বা ক্ষেত্রমত সুপ্রীম কোর্টের আপীল / হাইকোর্ট বিভাগের বিচারক) নিযুক্ত হইয়া সশ্রদ্ধ চিত্তে শপথ (বা দৃঢ়ভাবে ঘোষণা) করিতেছি যে, আমি আইন-অনুযায়ী ও বিশ্বস্ততার সহিত আমার পদের কর্তব্য পালন করিব; আমি বাংলাদেশের প্রতি অকৃত্রিম বিশ্বাস ও আনুগত্য পোষণ করিব; আমি বাংলাদেশের সংবিধান ও আইনের রক্ষণ, সমর্থন ও নিরাপত্তাবিধান করিব; এবং আমি ভীতি বা অনুগ্রহ, অনুরাগ বা বিরাগের বশবর্তী না হইয়া সকলের প্রতি আইন-অনুযায়ী যথাবিহিত আচরণ করিব।" (অধোরেখা প্রদত্ত)

11. The English version of the oath (or affirmation) is as follows: "I, ..., having been appointed Chief Justice of Bangladesh (or Judge of the Appellate/High Court Division of the Supreme Court) do solemnly swear (or affirm) that I will faithfully discharge the duties of my office according to law: That I will bear true faith and allegiance to Bangladesh: That I will preserve, protect and defend the Constitution and the laws of Bangladesh: And that I will do right to all manner of people according to law, without fear or favour, affection or illwill."

(The underlinings are mine)

12. The above mentioned portion of the oath (or affirmation) which are underlined requires special attention: ''আমি বাংলাদেশের সংবিধান ও আইনের রক্ষণ, সমর্থন ও নিরাপত্তা বিধান করিব; And ''. . . . . সকলের প্রতি আইন-অনুযায়ী যথাবিহিত আচরণ করিব।"

13. The English version is: "That I will preserve, protect and defend the Constitution and the laws of Bangladesh:" And ".....do right to all manner of people according to law....."

14. Any person, if he is aggrieved, has a constitutional right of redress under Article 102 of the Constitution.

15. The High Court Division, if satisfied that no other equally efficacious remedy is available or provided for by law, may under Article 102, make an Order in the nature of the writs of prohibition, certiorari, habeas corpus and quo warranto.

16. The question is whether a person who is aggrieved but unable to file a formal application as envisaged under Art. 102, should remain without any remedy, specially when Art. 21 pronounces: (1) It is the duty of every citizen to observe the Constitution and the laws, to maintain discipline, to perform public duties and to protect public property. (2) Every person in the service of the Republic has a duty to strive at all times to serve the people.

17. The Constitution not only imposes obligation upon the citizens but also protects them from the excesses as well as laches of the authorities. As such, the persons who are unable to file a formal application, cannot be without remedy in vindication of their rights guaranteed under the Constitution and the laws of the land. If so, it would be in total negation of the spirits enshrined in our sacred Constitution.

18. In the back-drop of the oath of office of the Judges and the above noted provisions of the Constitution we are to read Article 101 and Article 102 of the Constitution.

19. We must appreciate that the fundamental rights guaranteed under the Constitution would be meaningless to the

inhabitants of this country, if their remedy is impeded for want of a formal application.

20. In the instant case, there was no formal application, not even a telegram or a letter, but the learned Judges of the High Court Division, on noticing the news item on Shahida, issued a suo moto Rule upon the concerned officials with a direction to produce Haji Azizul Huq, who pronounced the impugned so called fatwa that her marriage was dissolved, just because her husband, in a momentary fit of anger, had uttered the word 'talaq', almost a year back, but thereafter without further disharmony, continued to live together.

21. The question is whether the learned Judges of the High Court Division on noticing the news-item in a news-paper on 2.12.2000, with the caption "নওগাঁর গ্রামে আজ ফতোয়াবাজদের সালিশে ভাগ্য নির্ধারণ হবে গৃহ বধু সাহিদার , ' was justified in issuing a Rule in the absence of a formal 'application' of an 'aggrieved person', apparently without strictly following the procedure, set out in Article 102.

22. Long ago in 1831, Professor Amos said in his lecture at the University College, London : "A law student in the present day should be like the ancient God Janus. He should have two faces, looking forwards and backwards on his profession; or he may perchance find the choicest stores of his industry suddenly converted into useless and cumbersome rubbish." (Prof. J.H. Baker: An Introduction to English Legal History).

23. Let me hark-back to legal history as suggested by Prof. Amos but very briefly, in order to trace the development of jurisprudence, specially when there was dearth of a specific provision in a particular field to meet the demand of the day.

24. Thousand years ago, the writs or the royal commands were the prerogatives of the King alone who was the acclaimed fountain of justice. Those are called prerogatives, because, commands were issued either by the King himself or on his behalf by the Royal Court Judges in order to protect the temporal interest of the King. This was allowed by the common law of the Realm. Those ancient processes of extraordinary nature were available only to the King to protect his interest but were not available to any of his subjects. Even by the writ of habeas corpus, the Court commanded to 'have the body' of a person before it but not for setting him free, rather, to put him in prison. Similarly, the writs of mandamus, prohibition, certiorari and quo warranto were used to be issued by way of royal command to secure his own interest or for his information. Nobody in that ancient times could imagine that those writs can be used for the benefit of the subjects of the Realm. But by and by, the Royal Courts started to issue such prerogative writs in the name of the King but for the benefit of the subjects also, allowing them redress. This was made possible by the ingenuity of the Royal Court Judges, in expounding and expanding the horizon of the common law, to bring justice to the oppressed, which took couple of centuries but long before those were statutorily recognised in Great Britain and elsewhere in its colonies.

25. To- day orders or writs in the nature of prerogative writs are frequently issued by the superior Courts almost all over the globe including the Republics having written Constitutions, in order to establish and enforce the fundamental rights of its citizens and also to prevent illegalities.

26. Next, I shall consider how the doctrine of judicial review came into being.

27. In the United States of America, Article III of its Constitution conferred the judicial powers upon the Supreme Court. It generally

contained the appellate but not the original powers and did not contain any specific provision for power of judicial review.

28. Let me examine again very briefly, how the Supreme Court in the United states inaugurated the power of the judicial review without any specific provision in the Constitution.

29. Article III of the Constitution vested the judicial powers upon the Supreme Court. Surprisingly, it is very short. The relevant portion of section I reads as follows: "Section 1. The judicial power of the United states shall be vested in one Supreme Court , and in such inferior courts as the congress may from time to time ordain and establish....."

30. The words conferring the powers of the Supreme Court are 'the judicial power' appearing above. It meant, however, in the language of John Marshall, C.J., in Marbury V. Madison, 1803, that "The Constitution vests the whole judicial power of the United States in one Supreme Court". The Supreme Court, in construing the words 'The judicial power', held it to be the whole judicial power of the Republic.

31. Although the power of judicial review was nowhere mentioned either in Article III or anywhere in the Constitution, the Supreme Court in Marbury V. Madison, -(1803), while considering a prayer for mandamus, in an original action, made under the provisions of the Judiciary Act of 1789, found the said law in opposition to the Constitution. Marshall , C.J., emphatically held : ".....the Court must determine which of these conflicting rules governs the case. This is of the very essence of judicial duty".

32. This 'judicial duty' contains in effect the power of 'judicial review'.

33. With this pronouncement in Marbury V. Madison, the doctrine of 'judicial review' was born, although it was nowhere mentioned in the Constitution of the United States or any law made thereunder, but propounded from the words 'judicial power' appearing in Section 1, Article III of the Constitution.

34. But Marbury never intended or even thought about challenging the vires of the concerned provision of the Judiciary Act, he only made a prayer for mandamus but Marshall, C.J., on his own motion considered the vires of the said provision. In the process, he unknowingly made another history. He suo moto declared the concerned provision of the Judiciary Act ultra vires the Constitution. This is possibly the first suo moto decision made by a superior Court more than two hundred years ago.

35. These could be made possible by the boldness of the Judges of the then Supreme Court who could not be daunted by the dearth of a proper provision in the Constitution but acted sua sponte in propounding the said Charter from their notion of doing justice in its proper spirit.

36. This judicial power of review is now exercised all over the globe and expressly accepted by all including in Bangladesh.

37. Next, I shall consider how the principle of legitimate expectation came into being.

38. Generally speaking, without any legal right, no remedy can be allowed. An expectation remains a mere anticipation and nothing more. This was the legal position, necessarily rigid and prevalent in England and elsewhere.

39. But Lord Denning, M .R., in 1968, made a departure from this rigid legal position in the case of Schmidt V. Secretary of State for Home Affairs and baptised the principle of

legitimate expectation although initially it was based on some right, such as a right to hearing in the said case. But in due course, this principle was allowed to travel beyond any legal right in its strict sense. This principle was lucidly explained by the House of Lords in Council of Civil Service Union V. Minister of the Civil Service (1985) AC 374.

40. The Supreme Court of India also accepted this principle in many of its decisions, no elaborate discussion is called for in this context.

41. In Bangladesh, the High Court Division, in 2001 made an elaborate discussion and propounded this principle of legitimate expectation in the case of Soya-Protein Project Ltd. V. Secretary, Ministry of Disaster Management 22 BLD(2002)378. The Appellate Division also accepted this principle in the case of the Chairman, Bangladesh Textile Mills Corporation V. Nasir Ahemd Chowdhury 22 BLD(AD)(2002)199. The said principle was again considered and explained by this Division in Government of Bangladesh V. Md. Jahangir Alam (C.A. Nos. 45 to 47 of 2010).

42. This is how, even without any legal right, in its strict conventional sense, an expectation may be bloomed into a legitimate one, capable of enforcement, although, there is no specific provision for it, still, the will and initiative of the Judges, made it possible from their sense of jurisprudence and justice for the people for whom the bell of justice always tolls.

43. Now the question of locus standi. It is very important in every suit, even in a writ petition. It is a vexed question, specially in respect of a public interest litigation (PIL). Generally, if the party fails to establish his locus standi, his suit or petition, as the case may be, is bound to fail, simply for the reason that an action of a busybody or meddlesome interloper is not maintainable. That is the general principle, the traditional view, at least in respect of adjudication of disputes between the two parties who are aggrieved.

44. Earlier English law has not allowed the action popularis of Roman law, rather, the question of standing was always narrowly construed and tended to take a restrictive view.

45. One of the first departures from this conservative view was taken by Lord Denning in 1957, in the case of R V. Thames Magistrate's Court, ex p. Greenbaum, where as a Law Lord he indicated that certiorari may be granted even to a stranger.

46. Since 1968, Lord Denning M.R., in the Court of Appeal, allowed standing to one Raymond Blackburn in a number of cases and made the prerogative remedies available to any responsible citizen (The Discipline of Law).

47. In India, after initial hesitation, the Supreme Court made a bold assertion in the case of S.P. Gupta V. Union of India AIR 1982 SC 149 and held that 'any member of the public acting bona fide can move the Court'. This decision was followed in People's Union for Democratic Rights V. Union of India AIR 1982 SC 1473 where the principle of Rule of Law was invoked in allowing locus standi in the PIL.

48. In Bangladesh, the Supreme Court, no doubt made an early start in Kazi Mukhlesur Rahman V. Bangladesh 26 DLR (SC) (1974) 44 where standi was allowed to the appellant although in a particular constitutional context but in the process obliquely opened a new vista. But after such an initial glimpse, lost its way and remained barren for the next 23 years. The principle was again reincarnated in Dr. Mohiuddin Farooque V. Bangladesh 49 DLR (AD)(1997)1 where the appellant had no personal interest or grievance in the matter, as

such, not an 'aggrieved person' within the language of Article 102, still his appeal was entertained, in the discretion of the Court, because, the paramount interest of the people was involved.

49. This is how the traditional conservative view on standi melted into a liberal one in respect of PIL cases.

50. The above discussions are made not to give an exposition to legal history but are made in order to highlight how strict legal formalities from ancient times, gave way to procedural fairness based on the notion of dispensation of justice to the people for whom the judiciary exists.

51. The 'due process of law' as appearing in clause iv of the Petition of Right, 1354, and in Fifth and Fourteenth Amendments in the Constitution of the United States or the 'Rule of Law', propounded by Professor William E. Hearne and Professor A.V. Dicey, envisaged that the law is not what it appears to be in the strict lexicographical sense but what it ought to be in the dispensation of justice. According to Professor Stanley de Smith, 'the law should conform to certain minimum standards of justice, both substantive and procedural'.

52. Let me raise a basic question : why is there a need for a Constitution in the first place? Since the ancient times the people lived in countries ruled by a Monarch or a Ruler, why the people of 13 colonies of America felt the necessity of a Constitution in the first place, and that is also a written one.

53. In a Monarchy, with or without a democracy, the Monarch is sovereign. In a Republic, the people are sovereign and the character of its government is essentially a democratic one. In order to run the Republic, a charter is required, which would recognize the existing sovereignty of the people with their rights and obligations. It also delineates the functions of the Republic. This charter creates the institutions and functionaries of the Republic, so that they can serve the people. This charter is the Constitution and the people themselves are the centre-piece of the Republic and its Constitution. Everything belongs to them, the fourcorners of the State, the political rights and powers and so also their preexisting fundamental civic rights, recognised and guaranteed under the Constitution.

54. In this manner, with this end in view, the Constitution of the United States of America was framed which was rather a short one. The Constitution of India is quite a long one while the Constitution of Bangladesh is in between. The purpose and focus is the same in all the Constitutions, it is the people around which the Constitutions wound around. The Constitutions project, protect and uphold the rights of the people. For them alone the Republic and its Constitution exist, their interest is the highest law. Not only the nation but the Constitution is also 'of the people, by the people, for the people'. For them the notion of justice also rise high.

55. The Constitution of Bangladesh is no exception. Part III of the Constitution guarantees the fundamental rights of the people and Part II narrates the fundamental principles of State Policy which are also propeople.

56. Similarly, Article 101 narrates the general jurisdiction of the High Court Division while certain extraordinary powers of the High Court Division are exercised under Article 102. Those are substantial as well as procedural.

57. The general purpose of any procedural law is to streamline the meaningful implementation of a substantial law in its real spirit which is the law above the law.

58. The High Court Division, under Article 102 of the Constitution, may issue orders and directions in the nature of prerogative writs, stated therein, in order to establish and to enforce the fundamental rights of the people, to ameliorate their sufferings, to provide redress from the high handedness of the people in authority and others and to establish the rule of law. The right to enforce a fundamental right is also a fundamental right.

59. These are extraordinary original jurisdiction of the High Court Division. Of necessity, access to this jurisdiction is some what restricted. In the absence of an equally efficacious remedy, which is a precondition, an aggrieved person is entitled to file an application before this High Tribunal, praying for appropriate relief.

60. The purpose of procedural law is for proper exercise and implementation of substantive law so as to avoid busybodies or meddlesome interlopers, otherwise, its real beneficiaries would be lost in their crowd. The procedural law in this case is to promote the substantive right of the people. It cannot hinder or frustrate its real purpose, the interest of the people. After all, the Constitution along with its Article 102 has been enacted, as an expression of the will of the people. The rights of the people cannot be overlooked or sacrificed in the rigour of procedure. The procedure is needed in order to streamline enforcement of the fundamental rights of the people but not to create impediment to its fulfillment.

61. The purpose of law is not to hinge on the web of procedure against the interest of the people, rather, the other way around. That is why the ancient rigour of the prerogative writs were modified and used for the benefit of the people. Two hundred years ago, Marshall, C.J., acted sua sponte, may be even without thinking about it but it was done, and a history was made. In the case of Dr. Mohiuddin Farooque V. Bangladesh, the procedural requirement of filing an application by an actual 'aggrieved person' took a back-seat and the rights of the people were glorified.

62. The learned Advocates, do not apparently have any doubts about the grievance of Shahida or her rights under the Constitution, their only objection is in respect of the lack of an application.

63. What is the necessity and purpose of an application?

64. Generally, the application contains the information of the concerned person, his grievance and his prayers. The learned Judges on consideration of the facts revealed in the application, exercise their discretion.

65. A formal application, however, must be supported by an affidavit. The letters, post-cards, telegrams were all treated as applications by the Supreme Court of India and Pakistan. None of those are supported by any affidavit as required by the concerned Rules. As such, certainly those cannot be applications within the meaning of the Rules.

66. Why then did those apex Courts become so charitable in accepting those apology of applications for consideration? Because, the learned Judges of those Courts know and appreciate the true spirit of law. They know the background and purpose of the Fundamental Principles of State Policy and the Fundamental Rights of the people enshrined in the respective Constitutions. They know that the said rights are not restricted only to those fortunate few who can avail the services of the learned Advocates and come before the Court with 'perfect' applications but the sacred provisions of the Constitution are not that much discriminatory, those rights are equally open to the poor, to the down-trodden illiterate mass,

many of whom are unfortunate sufferers of oppression, direly requiring the protection of the Constitution but they have no means.

67. It is not their fault that they have no means to come before the Court. Is Bangladesh not their country? Is it not their Constitution also? Have the framers of the Constitution kept them outside its ambit because of their misfortune? Far from it, it is very much their Constitution endowed them, entitled them, blessed them with all the rights spelt out therein.

68. Generally, no doubt the Judges of the High Court Division should follow the High Court Rules. But can an oppressed person be bolted out of the High Court Division because of non-fulfillment of certain provisions of the High Court Rules? Hardly.

69. In this connection, the observations of Prof. Dr. Werner Menski in his article 'Introduction : The Democratisation of Justice in India', may profitably be quoted : ..... If a judge, reading his paper over breakfast, discovers that a poor individual has wilfully been deprived of a basic right, how can he go to court a little while later and pretend that he can be in charge of processes designed to achieve justice? It is a matter of individual conscience, and a matter of respecting the suffering of others, less fortunate than oneself, that one cares and takes action.

70. In this connection, one should appreciate that an aggrieved person may or may not be an oppressed but an oppressed person is inevitably and invariably an aggrieved person. Should the Judges refuse to uphold the rights guaranteed under the Constitution to an oppressed person in such a situation? Can the purpose of the fundamental rights guaranteed under Part III of the Constitution be defeated by some provisions of the Rules, made under the Constitution?

71. Certainly not. The jurisdiction of the Judges of the superior Courts, guaranteed under the sacred words of the Constitution, cannot be thwarted by the Rules. The spirit of the substantive law takes precedence. This kind of exceptional situation brings the discretion of the learned Judges of the superior Courts into play as glorified by the learned Judges of the Supreme Courts of India and Pakistan, to exercise their jurisdiction.

72. If the oppressed persons specially the helpless womenfolk, are unable to come before the Court, the Court would not stand idly by but the spirit of the Constitution would bring the Judges to them, in order to remove the discrimination created because of their inability to come before the alter of justice where their in humane miseries may, at least be properly addressed. There comes the question of issuing a suo moto Rule by the learned Judges to rescue those persons who have none around them with helping reassuring hands of law and justice.

73. Admittedly, there was no application in the instant case. There was a news-paper report about the sad plight of Shahida, an unfortunate helpless woman.

74. I would not however, make a pretence that the letters, post-cards, telegrams and even news-paper reports are 'applications' within the meaning of the Rules. Those are exactly what they are. But those contain information. Information about violations of human rights, injustice and oppression.

75. What is the purpose of publishing this kind of news items in the print and electronic media? It is to bring, among others, to the knowledge of the people in general and the concerned authorities in particular, about the incident. The news-item mentioned in the instant suo moto Rule, at least attracted the

notice of the learned Judges of a bench of the High Court Division.

76. The learned Judges on reading the news-item were, however, apparently satisfied about the fundamental rights of Shahida, its breach and also her grievance, but there was no application, which is a procedural requirement under Article 102, as argued by the learned concerned Advocates.

77. The learned Judges must have weighed in one hand the grievance of a helpless woman, for whose redress this Constitution exists, just like a pole-star to a lost sailor, on the other hand, the lack of an application, although its purpose had been somewhat satisfied since the facts and violations of law are brought to the knowledge of the learned Judges through news-paper reports. So the filing of the application, although a procedural requirement, but since this is not an absolute pre-condition for exercise of the powers of the learned Judges under Article 102 of our Constitution, may in their discretion be dispensed with to act on their own motion, on the basis of the information contained in letters, telegrams and even on a news-paper report, to dispense justice accordingly to law to the oppressed.

78. The last but not the least, the consideration of grievance and the discretion of Judges must not be lost in the haze of the procedure, they should not sport away the rights of the people, guaranteed under the Constitution, specially, the down-trodden ones, who are unable to come before the Court. A Judge must keep his eyes on the ultimate dispensation of justice, in his discretion, to the needy, the poor, the oppressed, to all who suffered injustice, on consideration of law in its proper perspective, highlighting : '.... those canons of decency and fairness which express the notions of justice of English-speaking peoples....' (Justice Frankfurter in Adamson V. California, 1947).

79. We are not English-speaking people but the ideals of justice is same and similar all over the globe which inescapably impose upon the High Court Division, an exercise of judgment, based on the principles of Rule of Law.

80. Another illustration may be recalled from our own memory and experience.

81. Earlier, nearly 30 (thirty) years back, presumably on the strict interpretation of the singular words 'the application' and 'any person' appearing in clause (2) of Article 102 of the Constitution, an application at that time could contain the grievance of a single person only but over the years, similar kinds of grievance of a number of aggrieved persons are now allowed to be raised and canvassed in one single application before the Court.

82. This is how the rigours of strict legal formalities give way to simpler procedure to meet the needs and exigencies of time so that instead of filing dozens, sometimes hundreds of similar applications, all those aggrieved persons can now file one single application, with the permission of the Court, containing all their names and the nature of their similar grievances which were not entertained earlier.

83. This is how the law moves on to further refinements.

84. This is how the procedure contained even in the Constitution has been developed to meet the exigencies of time for ends of justice.

85. Law does not stand still. Law is not the stagnant water in a waterhole. It moves on with the advent of civilization.

86. Besides, there is no reason to disagree with Lord Denning M.R., when he speaks about the functions of a Judge: He must not be a mere mechanic, a mere working mason,

laying brick on brick without thought to the overall design. He must be an architect thinking of the structure as a wholebuilding for society a system of law which is strong, durable and just. It is on his work that civilised society itself depends. (Denning, M.R., Forward to the Supreme Court of India : A socio-legal crititique of its justice techniques by Rajeev Dhavan, quoted by Krishna Iyer, J. in Union of India V. Sankalchand, AIR 1977 SC 2328).

87. This very sense of justice requires us to hold that one should not make much ado about lack of an application when the question of dispensation of justice to a helpless oppressed woman arises. It may at best inhibit the discretion of the learned Judges but not their jurisdiction. As such, the lack of the procedural requirement of an application of an aggrieved person, would not necessarily impede the jurisdiction of the Court.

88. Under the circumstances, the vindication of the rights of an oppressed outweigh the procedural requirement of filing of an application.

89. In the instant case, because of the uncalled for fatwa, Shahida suffered extreme humiliation and outrageous indignity. As such, her inalienable rights guaranteed under Articles 27, 28 (2), 31 and 32 of the Constitution, have been violated. Besides, the provisions of the Muslim Family Law Ordinance were also flouted.

90. Shahida, above all is a human being. Her right to life is not that of a chattel but that of a citizen of sovereign Bangladesh. As such, she enjoys her inalienable rights guaranteed under the Constitution and the laws adopted or made there-under. Her rights under those provisions of laws had been violated. No doubt, she is an aggrieved person. She has rights as well as great expectations from the Constitution as any other citizen of this country.

91. Should she continue to suffer the humiliation, the indignity and injustice since she was unable to come before the Court with an application in her hand. If so, what value our valued and sacred Constitution holds for her with all its guarantees, superbly phrased and gloriously spelt out therein ? It would become stale and meaningless flowery hollow words to Shahida and the thousands of faceless unfortunate women like her in the far away hamlets. To her, to them, the Constitution with all its guarantees to the fundamental rights, would become mere worthless sheafs of paper although the Constitution stringently ensured that no body would trifle with her, with them.

92. The sad and inhuman plights of Shahida was reported in a newspaper and two of the learned Judges of a Bench of the High Court Division, noticed the said newsitem. Should they keep their eyes shut, close their conscience and leisurely wait for an application, as stated in Article 102, when the whole world was collapsing around Shahida, if so, how are they going to mince and digest the sacred words of Part-III of the Constitution and their own oath of office ?

93. The words "…. I will do right to all manner of people according to law." in this respect mean, among others, the implementation of the rights guarenteed under Part III of the Constitution.

94. The Judges are bound by their oath to uphold the provisions of the Constitution including the fundamental rights of the people guaranteed therein. The mere procedural veil cannot smog and delude their conscience. They ought to rise to the occassion when the Constitution is violated or fundamental rights

are endangered or even threatened. In the instant case, they indeed did, they rose to the occassion, they issued the Rule suo moto.

95. What else could they do?

96. Let us visualize what would have had happened if this kind of social ills is ignored and not promptly addressed. This would have subjected not only Shahida but the whole community to utmost disgrace. This would also be an insult to humanity. Besides, the failure to halt the receding human values would have encouraged and emboldened others to commit such and other violations of law and human rights, specially in the far-flung areas. This would inevitably lead to further violations of decency, human values, violations of the Rule of Law and also the Constitution. This cannot be allowed in any ordered society.

97. Let it be known that the society which does not honour its womenfolk cannot be called civilised.

98. In this back-ground, the learned Judges of the High Court Division, instead of waiting for an application, presumably dispensing with such a requirement, issued the Rule on their own motion, in vindication of their oath of office, as dictated by their conscience.

99. I am of the opinion that they took the right decision, as any other Judge, any other right thinking person, would have done.

100. Under the circumustances, the learned Judges of the High Court Division were fully justified in issuing the Rule suo moto and hearing the matter in this case.

101. In this connection, one other matter requires serious consideration and attention. Our Constitution stipulates separation of powers. The Parliament or the House of the Nation enacts laws for the State, the executive government implements those laws and the Judiciary ensures that the Parliament enacts laws within the bounds of the Constitution and the government implements those according to law.

102. The works and functions of the executive government is most extensive. Anything and everything, leaving aside the functions of the Parliament and the Judiciary, falls within the domain of the Executive. This is the view of the Supreme Court of India and we also hold the similar view.

103. Naturally, the executive government is emburdened with the functions of maintaining the law and order and implementation of development projects in various fields up and down the country. The executive arm of the government is duty bound and obliged under the Constitution and the laws adopted or made there under, to look into issues, such as, the alleviation of poverty, saving the oppressed from the high-handedness of the influential people, maintenance of law and order, encroachments in the river, environmental pollution or excesses or laches and negligence or recklessness on the part of the concerned indifferent officials of the government, ensure good governance and provide necessary redress in accordance with law at the earliest opportunity.

104. It is the failure of the governments to ensure good governance, that obliged the learned Judges of the superior Courts in this part of the world to become more pro-active. There is hardly any PIL case in the superior Courts in the developed countries, because, accountability of the governments to the people are ensured, as such, the concerned officials, under the political leadership, readily address the problems themselves before those can even reach the Courts. This is unfortunately not the case in the third world countries like India and Bangladesh. Poor governance is prevalent

everywhere, forcing the conscientious persons to file PIL cases.

105. It is only when the executive branch fails to uphold the law, address the problems and provide the necessary redress or to come to rescue the sufferers, the Judges of the High Court Division of the Supreme Court, are constrained to look into the matter, but only as a last resort, either on an application filed by an aggrieved person or by the oppressed or by any conscientious person or an institution, on his/her behalf, praying for appropriate relief or in an extreme situation even in the absence of any application, by being aware of the violations of any law or violations of human rights, from the electronic or print media, by issuing a Rule upon the perpetrators of illegality and also upon the concerned officials, because ultimately those officials of the government would do the needful, not the Court. But, by and large, the Judges should normally remain aloof from the policy decisions of the government of the day which generally represents the will of the people.

106. However, activism can be allowed in the interest of justice but a learned Judge must not be an adventurist, some times the line is very thin, one should be careful.

107. The Court may only over-see that law has been obeyed and the rights of the people, guaranteed under the Constitution, are upheld. This is in vindication of the Constitutional obligations of the learned Judges, not for any personal or even institutional aggrandisement .

108. The learned Judges should also be very careful when they issue any Rule, either on any application or even suo moto, that they are so acting not for any personal exaltation or enhancement but solely in vindication of their obligations under the Constitution and their oath of office and no earthly or even heavenly consideration should influence them in any manner. If so, they would violate their oath of office.

109. The learned Judges must appreciate that they are also subject to the same Constitution and the laws of the land which they are obliged to exercise in order to uphold justice for all, but they must not even imagine that they are above the law.

110. However, the learned judges should not be over anxious or overreact to issue a Rule merely on an unsubstantiated news-item, rather, it is sometimes wise to proceed slowly and not in hot haste. It may happen that the concerned authority may take necessary steps, so that interference by the Court would not even be called for. Only in case of imminent danger to life, liberty and dignity of a human being, the Court may act with due promptitude, but as a last resort, otherwise not.

111. Besides, it is the paramount obligation of the Judges to uphold the dignity and the independence of the judiciary as a whole and the Supreme Court in particular, which is one of the basic structures of the Constitution. If it is threatened by any body, the learned Judges of the Court may act sua sponte but again with judicious restraint, keeping in view the ultimate interest of the people of the Republic and certainly not for any personal vanity or egotism but only for the people for whom not only this great Institution but all the Institutions of the Republic exist.

112. It should also be remembered that while the Supreme Court does not claim any superiority over any body, it would not allow any body to claim any superiority over it. This Institution belongs to the sovereign people.

113. In short:

firstly, the Court may issue a suo moto Rule, in the circumstances as mentioned above; but

secondly, the Court should be slow in assuming such jurisdiction unless there is compelling reason to do so,

and thirdly, the Court should not assume the role of the executive government, keeping in view the principle of seperation of powers, while issuing a Rule either suo moto or even on an application.

114. So far the merit of the appeal is concerned, my learned brother Syed Mahmud Hossain, J., has so very aptly and ably examined the concept of 'fatwa' and the tenets of Islam that I have hardly anything to add. Still in order to complement his opinion, I would like to add a few words.

115. Allah Sobhana-Tala, the most Beneficent, the most Merciful and the Eternal Owner of Sovereignty, is the greatest of all teachers. Our languaze is ill equipped, awfully poor and most inadequate to express His alround greatness. The Holy Quran was revealed upon our Holy Prophet, Hazrat Muhammad Rasulullah Salla'llahu Alaihi Wa Sallam, with the following opening words (Al-Alaq) : "Read, in the name of your Lord, who created. He created man from an embryo. Read, and your Lord, Most Exalted. Teaches by means of the pen. He teaches man what he never know."

116. The translations of the Holy Quran referred to herein in this opinion, are made by Dr. Rashad Khalifa Ph. D.

117. The Lord taught the human-being even how to worship Him by saying among others (Al-Fatehah) : In the name of God, Most Gracious, Most Merciful. Praise be to God, Lord of the universe. Most Gracious, Most Merciful. Master of the Day of Judgment. You alone we worship; You alone we ask for help. Guide us in the right path; the path of those whom you blessed; not of those who have deserved wrath, nor of the strayers.

118. Our Holy Prophet Hazrat Muhammad Rasulullah Salla'llahu Alaihi Wa Sallam is the greatest law-giver of the world as revealed to him, although he never had any institutionalised education. He was the greatest and the final messenger of the Almighty Lord, and He Himself was his instructor. From the early childhood he never spoke any thing but truth, as such, he was named 'As-Sadiq Al-Amin'. He was the first, the best and the superior most of all the creations of Allah, the greatest Exalter. He is God's mercy to mankind, to all.

119. At the age of 40, first revelation was made to him and after some time he was directed to proclaim the grace of the Lord of the Universe. But the people of Makkah fell upon him as tyrants and started to treat him with extreme cruelty. At one stage, one idolater asked the Holy Prophet to describe his Lord. The Lord himself revealed His Absoluteness (Allkhlas) : "Proclaim, He is the One and only God The Absolute God Never did He beget. Nor was He begotten None equals Him."

120. The new muslims used to ask the Holy Prophet very many questions in order to run their life in Islamic way. Not only the muslims, even the non-believers used to ask him questions some times in jest, some times in real earnest. The Holy Prophet answered them as revealed to him.

121. God Himself commanded (Al-Baqarah): "----------There shall be no compulsion in religion: the way is now distinct from the wrong way……"

122. In sura Al-Nesa, God indicated that people would come to the Prophet for consultation and He Himself advised him accordingly through Jibrail Alaihissalam, the great angel.

123. Even the great angel Jibrail Alaihissalam sometimes visited him and asked him questions in order to educate his companions. One such occasion was narrated by Hajrat Umar Farooq (R.A) as stated by Prof. Masud-ul-Hasan in his book : Hadrat Umar Farooq (page-79-80): "Hadrat Umar stated that one day when he and some other companions were with God's Messenger, a man with very white clothing and very black hair came up. Sitting down beside the Holy Prophet, leaning his knees against his, and placing his hands on his thighs he said, "Tell me Muhammad about Islam." The Holy Prophet said, "Islam means that you should testify that there is no god but Allah; that Muhammad is God's Messenger; that you should observe the prayer, pay the Zakat, fast during Ramadan, and make the pilgrimage to the House of God, if you have the means". The visitor said "You have spoken the truth. Now tell me about faith." The Holy Prophet said, "It means that you should believe in Allah, His angels, His books; His Apostles, and the last day, and that you should believe in the decreeing both of good and evil." The man said that that was true. He then asked, "Now tell me about doing good." The Holy Prophet said, "It means that you should worship Allah as if you are seeing Him, and if you are not seeing him (perceive) that He is in fact seeing you. The man accepted the statement as correct. He next asked, "Now tell me about the Hour". The Holy Prophet said, "The one who is asked about is no better informed than the one who is asking." Thereupon the man said, "Then tell me about its signs." The Holy Prophet replied, "The signs are that a maid servant should beget her mistress, and that you should see barefooted, naked poor men and shepherds exulting themselves in buildings." The visitor felt satisfied. Then he sought leave to depart and as soon as leave was given he disappeared. Hadrat Umar who was present wondered who was the visitor. Turning to Hadrat Umar, the Holy Prophet said, "Do you know who was the visitor?" Hadrat Umar replied that he did not know. Thereupon the Holy Prophet said, "He was Gabriel, who came to you to teach your religion".

124. On another occasion the non-believers asked three questions and the Prophet got his answers from the angel Jibrail. In most occasions when he replied to any query, it was brought by the angel. In this way, his commands, his conducts in his daily life, his answers or his comments and even observations were all made but obviously with the approval of God. All these directions and instructions were his fatwas, though were not revelations but were made obviously with heavenly touch. These were Sunnah and as muslims we are fully and wholly bound by the revelations (Holy Quran Majid) and the Holy Prophet's Sunnah.

125. No wonder when some one asked Hazrat Ma Ayasha Siddiqua Radia Allhu Taala Anha about our Holy Prophet, she replied, have you not read the Holy Quran.

126. A notable example of fatwa is the address of the Holy Prophet in the Farewell Pilgrimage at Arafat.

127. With the sad demise of the Holy Prophet, the scope of further revelations had ended forever.

128. Hazrat Abu Bakr Siddique, Radia Allahu Taala Anhu, on assuming the office of Caliph and Amirul Momenin, gave a most eloquent sermon to the people of Medina, outlining the priorities of his government. Hazrat Omar Farooq, Radia Allahu Taala Anhu and Hazrat Ali, Radia Allahu Taala Anhu, as Caliphs, similarly sent instructions to the Kazis and the provincial Governors as to how they should administer justice and run their

administration. Delivered in the first half of the 7th century, the sermon of Hazrat Abu Bakr Siddique (R.A) and the instructions of Hazrat Omar Farooq (R.A) and Hajrat Ali (R.A) were spectacular instances of statesmanship unparalled not only at the then world but also of the modern world. But those were in effect fatwas.

129. The gradual development of the schools of Islam, propounded by the great Imams and other school of thoughts have been aptly narrated and analysed by my learned brother Sayed Mahmud Hossain, J., as such. I would not dwell on those all over again.

130. But one thing I would like to emphasis that unlike other religions, the history of Islam shows that there is as such, no place for the office of Priesthood in Islam.

131. The 10 (ten) Ashab including 4 (four) Caliphs of Islam were recipient of the great heavenly news (Ashara Mobashshara). That itself was enough to show their purity and greatness even to God. The place of Ashab were also in the highest position in the Islamic world. No other human being can ever attain their status. But most of them were mere idolators before they embraced Islam. In Islam all men are equal before God. The companionship of the Holy Prophet and their new religion transformed them into great men. Hazrat Bilal (R.A) was a negro slave of Abyssinian origin . He was the first muazzin of Islam. His birth and calling in life made no difference.

132. The Holy scripture, the Hadith and Sunnah, the opinions of great Imams and works of other great scholars and saints are handed down to us from generation to generation. Anybody may read those great works and enlighten themselves, and attain the position of a Haqqani Ulema. But like any other discipline, they may require instructions from the persons, learned in Holy Quran Majid and Hadith, to attain knowledge and appreciate the correct spirit of Islam and its way of life.

133. From this background history we have to understand and appreciate fatwa in this 21st century in the true spirit of Holy Quran Majid and Hadith and not struck in the 7th century in its abstract sense.

134. We must appreciate that in the early years of Islam, the muslims, notably Hazrat Umar Farooq (R.A) used to ask questions all the time to the Holy Prophet and his replies may be termed as 'fatwas'. Besides, there were other great scholars who were the constant companions of the Holy Prophet. But only 6 (six) persons were entitled to pronounce fatwa and among them, Hazrat Umar Farooq (R.A) and Hazrat Ali (R.A) were the most prominent. The others were Hazrat Abdullah Ibne Mashud (R.A), Hazrat Ubai Ibne Qaab (R.A), Hazrat Jaed Ibne Sabeth (R.A) and Hazrat Musa Ashari (R.A). This strict restriction in allowing only a handful of Ashab to pronounce fatwas was observed in order to keep and maintain the correctness of the fatwa even at that time inspite of the acknowledged superiority of the Ashab.

135. People like Haji Azizul Haq and others like him should take note of it and beware about giving fatwas.

136. During the reign of Hazrat Umar Farooq (R.A), no body was allowed to preach 'waj' and pronounce 'fatwa' without his permission. He himself made more than one thousand pronouncements on Fiqh or Islamic jurisprudence. All the great schools of thought on Islamic jurisprudence followed the laws laid down by Hazrat Umar Farooq (R.A). He held the Prophetic acts of the Holy Prophet as binding while his day to day performances as a

human being were held as a model guide to suit the changing situations. He also developed the doctrine of Qiyas or logical deduction.

137. After the demise of Hazrat Umar Farooq (R.A), the division among the muslim leaders became apparent. Fatwas were being issued more for political reasons than for religion and justice. As a result, wars, strifes, and murders for political gains amongst the different leaders and their tribes became prevalent instead of brotherly spirit of Islam, so very earnestly preached and upheld by our most honoured, most revered and most beloved Holy Prophet.

138. In this sub-continent, under the auspices of Emperor Aurangazab, all the available Fikhs were compiled in one volume, known as 'Fatwa-eAlamgiri'. It was more like a Code than fatwa as it is understood.

139. In this historical background, we ought to appreciate that the great men of Islam are no longer there. They however, left their great works, legacies, precedents and examples on the tenets of Islam as propounded by our Holy Prophet and glorified by his great body of Ashab, Tabeins, Tabe Tabeins, great Imams, Haqqani Ulemas who were no doubt Naibe Rasul and as such, definitely call for utmost respect and reverence. But at the same time, it is reiterated that Islam does not provide for Priest-hood and any body who ardently follows the Holy Quran Majid, Hadis and Sunnah, left by our Holy Prophet, God in His unbounded Mercy, may allow him His forgiveness and hedayet.

140. However, one may always seek guidance on religious matters from others who are learned in Fiqh or Islamic Jurisprudence. But then again they must appreciate that they are not Ashab or Tabeins or Tabe Tabeins or great Imams. As such, they have inherent limitations. They may become learned by reading the Holy Quran and Hadis and other works of the great scholars of Islam but their prouncements are not sacrosanct and one may differ with respect from their point of view with logic. Islam allows it, because God in his unbounded mercy bestowed His creation with excellent reason and wisdom. One has to cultivate it.

141. That is why a 'fatwa' is only an opinion, may be by a very learned Mufti but it is still an opinion only and being an opinion, it is not binding or coercive on the recipient or any body else. In this connection, one has to remember that for all our conducts we are accountable to God and only to God, who in His unbounded Mercy, for His pleasure created us all and we shall definitely return to Him and to Him alone. The Lord remains in our heart and with every heart throb we feel His Supreme Existence always in our lowly and very humble beings. To Allah we belong and to Him we return.

142. We must also appreciate that all the directions given in the Holy Quran and Hadis which we follow or try to follow and all our prayers, are all for our Eternal and Sovereign Lord alone, certainly not for any mortal, no matter whether he is a great King-Emperor or a great Mufti. They themselves are also accountable to God for all their acts just like the humblest creation of God, because only He knows whose prayers and conducts would be acceptable to Him. No body else knows. Let it be understood that the person who pronounces fatwa and its recipients are all creations of Almighty Allah and nobody knows who is the real muttaqee. Only He, the Sovereign Lord of the day of Judgment, knows best.

143. As such, instead of claiming any superiority or even having pride in our 'knowledge', all of us should always be utmost submissive in our prayers, very humbly

begging for His mercy. We all should beware that God had revealed what would happen on the day of Judgment (AlZalzalah) : "--------- Whoever does an atom's weight of good will see it. And whoever does an atom's weight of evil will see it."

144. However, with the advent of civilisation, the rights of the people, the best creation of God, in contradistinction to the powers of the Kings and other autocratic Rulers, are now acknowledged throughout the world. Now, no body rules, the Head of the State, the Head of the Government and other authorities serve the people.

145. In this connection, we should remember that, our government is the government of laws and not of men. We all are bound by the Constitution of the People's Republic of Bangladesh and the laws of the land. The laws rule.

146. The Constitution of Bangladesh guarantees` and allows freedom of expression but the said freedom is not unfettered, rather, accompanies and enjoins responsibilities also. One is entitled to express his opinion or fatwa but at the same time, he must be careful not to violate any law or hurt the feelings of anybody, specially the women. One must remember with great respect and reverence that Hazrat Khadeejah, Radia-Allahu Taala Anha, was the first person to embrace Islam and Hazrat Sumayyah, Radia-Allahu Taala Anha, was the first person to become shahid (martyred) in the path of God from amongst the companions of our Holy Prophet. Our beloved Prophet himself was respectful towards womenfolk and we all should follow his noble example.

147. Under the circumstances, nobody is allowed to function independent of or in derogation of the laws of the land. As such, although a Mufti, Maulana, or Imam may pronounce a fatwa, if requested, but cannot violate the laws of the land, rather, are bound by it. He should also be respectful of the fatwa or opinion of others.

148. Besides, let it be known if it is not already understood that in respect of a fatwa, no coercion or undue influence, can be exercised upon any body, far less any punishment or torture, physical or mental, can be imposed or inflicted upon any person, for not adhering to any fatwa. If so, beware, he may be visited by the laws of the land.

149. Under the circumstance, I agree with the Orders proposed to be passed by my learned brother, Syed Mahmud Hossain, J.

A.B.M. Khairul Haque, C.J.

MD. MUZAMMEL HOSSAIN, J:

150. I have had the advantage of going through the judgments to be delivered by my brothers, Md. Abdul Wahhab Miah,J. and Syed Mahmd Hossain,J. I concur with the judgment to be delivered by my brother, Syed Mahmud Hossain,J. J.

SURENDRA KUMAR SINHA, J:

151. I have had the advantage of going through the judgments to be delivered by my brothers, Md. Abdul Wahhab Miah,J. and Syed Mahmd Hossain,J. I concur with the judgment to be delivered by my brother, Syed Mahmud Hossain,J. J.