

**IN THE SUPREME COURT OF BANGLADESH**  
**APPELLATE DIVISION**

**PRESENT:**

Mr. Justice Surendra Kumar Sinha, Chief Justice

Mr. Justice Syed Mahmud Hossain.

Mr. Justice Hasan Foez Siddique

Mr. Justice Mirza Hussain Haider

**CIVIL APPEAL NO.340-342 OF 2015.**

(From the judgment and order dated 29.08.2012 & 02.10.2013 passed by the High Court Division in Writ Petition No.8125, 8603 and 8602 of 2009.)

**With**

**C.A. Nos.332-339 OF 2015.**

(From the judgment and order dated 24.08.2010 and 02.10.2013 passed by the High Court Division in Writ Petition Nos.2647, 2916, 5209, 5210, 5208, 5211, 5212 and 7370 of 2010.)

**With**

**C.P. NOS.1802-1806 OF 2015.**

(From the judgment and order dated 02.10.2013 passed by the High Court Division in Writ Petition Nos.5208, 5209, 5210, 5211 and 5212 of 2010.)

**Bangladesh Bank:**

**Appellant.**  
(In all the cases)

**=Versus=**

**East West Property Developments (Pvt.)  
Limited and others:**

**Respondents.**  
(In C.A.No.340 of 2015)

**Meghna Cement Mills Ltd. and others:**

**Respondents**  
(In C.A.No.341 of 2015)

**Bashundhara Paper Mills Ltd. and  
others:**

**Respondents**  
(In C.A.No.342 of 2015)

**S. Alam Steels Ltd. and others:**

**Respondents.**  
(In C.A.No.332 of 2015)

**The Consolidated Tea & Land  
(Bangladesh) Ltd. and others**

**Respondents.**  
(In C.A.No.333 of 2015)

**Unique Eastern (Pvt.) Ltd. and others:**

**Respondents**  
(In C.A. No.334 of 2015)

**Unique Ceramics Industries (Pvt) Ltd.  
and others:**

**Respondents.**  
(In C.A.No.335 of 2015)

**Unique Hotel & Resorts Ltd and others:**

**Respondents.**  
(In C.A.No.336 of 2015)

**Mohammad Noor Ali and others:**

**Respondents.**  
(In C.A.No.337 of 2015)

**Borak Real Estate (Pvt) Ltd and others:**

**Respondents.**  
(In C.A.No.338 of 2015)

**Eastern Housing Ltd and others:**

**Respondents.**  
(In C.A.No.339 of 2015)

Unique Hotel and resorts Ltd and others: Respondents.  
(In C.P.No.1802 of 2015)

Unique Eastern (Pvt)Ltd and another Respondents.  
(In C.P.No.1803 of 2015)

Unique Ceramics Industries (Pvt) Ltd and others: Respondents.  
(In C.P.No.1804 of 2015)

Mohammad Noor Ali and others: Respondents.  
(In C.P.No.1805 of 2015)

Borak Real Estate (Pvt) Ltd and others: Respondents.  
(In C.P.No.1806 of 2015)

For the Appellant: Mr. M. Amirul Islam, Senior  
(In C.A.No.340 of 2015) Advocate, (with Mr. Mahbubey Alam,  
Senior Advocate) instructed by Mrs.  
Mahmuda Begum, Advocate-on-Record.

For the Appellant: Mr. M. Amirul Islam, Senior  
(In C.A.No.341-42 of 2015) Advocate, (with Mr. Mahbubey Alam,  
Senior Advocate) instructed by Mr.  
Md. Toufique Hossain, Advocate-on-Record.

For the Appellant: Mr. M. Amirul Islam, Senior  
(In C.A.No.332 of 2015) Advocate, (with Mr. Mahbubey Alam,  
Senior Advocate) instructed by Mr.  
Md. Toufique Hossain, Advocate-on-Record.

For the Appellant: Mr. M. Amirul Islam, Senior  
(In C.A.No.333-339 of 2015) Advocate, (with Mr. Mahbubey Alam,  
Senior Advocate) instructed by Mrs.  
Mahmuda Begum, Advocate-on-Record.

For the Respondent: Mr. Rokanuddin Mahmud, Senior  
(In C.A.No.340-41 of 2015) Advocate, (with Mr. Ahsan-ul-Karim,  
Advocate) instructed by Mvi. Md.  
Wahidullah, Advocate-on-Record.

For the Respondent: Mr. Shafique Ahmed, Senior Advocate,  
(In C.A.No.342 of 2015) (with Mr. Ahsan-ul-Karim, Advocate)  
instructed by Mvi. Md. Wahidullah,  
Advocate-on-Record.

For the Respondent: Mr. Shafique Ahmed, Senior Advocate,  
(In C.A.No.332 of 2015) (with Mr. Ahsan-ul-Karim, Advocate)  
instructed by Mr. Syed Mahbubar  
Rahman, Advocate-on-Record.

For the Respondent: Mr. Ahsan-ul-Karim, Advocate,  
(In C.A.No.333 of 2015) instructed by Mr. Nurul Islam  
Bhuiyan, Advocate-on-Record.

For the Respondent: Mr. Ahsan-ul-Karim, Advocate,  
(In C.A.No.334 of 2015) instructed by Mv. Md. Wahidullah,  
Advocate-on-Record.

For the Respondent: Mr. Abdul Matin Khasru, Senior  
(In C.A.No.335 of 2015) Advocate, (with Mr. Ahsan-ul-Karim,  
Advocate), instructed by Mvi. Md.

Wahidullah, Advocate-on-Record.

**For the Respondent:**  
(In C.A.No.336 of 2015)

Mr. Mohammad Yousuf Hossain Humayun,  
Senior Advocate, (with Mr. Ahsan-ul-  
Karim, Advocate), instructed by Mvi.  
Md. Wahidullah, Advocate-on-Record.

**For the Respondent:**  
(In C.A.No.337-338 of 2015)

Mr. Ahsan-ul-Karim, Advocate,  
instructed by Mvi. Md. Wahidullah,  
Advocate-on-Record.

**For the Respondent:**  
(In C.A.No.339 of 2015)

Mr. Ahsan-ul-Karim, Advocate,  
instructed by Mvi. Md. Wahidullah,  
Advocate-on-Record.

**For the Petitioner:**  
(In C.P. No.1802 of 2015)

Mr. Ahsan-ul-Karim, Advocate,  
instructed by Mr. Md. Abdul Hye  
Bhuiyan, Advocate-on-Record.

**For the Petitioner:**  
(In C.P. No.1803-1806 of 2015)

Mr. Ahsan-ul-Karim, Advocate,  
instructed by Mvi. Md. Wahidullah,  
Advocate-on-Record.

**Date of hearing:** 8<sup>th</sup>, 14<sup>th</sup> and 15<sup>th</sup> March, 2017.

**Date of Judgment:** 16<sup>th</sup> March, 2017.

### J U D G M E N T

**Surendra Kumar Sinha, CJ:** In these appeals some critical questions of law of public importance are involved to decide as to whether judicial review is available against unlawful retention of huge amount of money in the public exchequer of Bangladesh Bank on account of advance income tax, income tax and VAT from some business houses; secondly, whether if the money is kept in Consolidated Fund of the government can the court direct releasing of the said amount without any Act of Parliament following procedures

provided in article 90 of the Constitution; and, thirdly, whether the High Court Division has encroached upon the authority of the Parliament violating the doctrine of the separation power by directing the refund of the money within 90 days from the date of the judgment.

To resolve these points short facts narrated in Writ Petition No.8602 of 2009 which are almost identical with other petitions, are reproduced below:

At the advent of 2007, in the midst of immense political unrest, the then President Prof. Dr. Yeaz Uddin Ahmed declared the State of Emergency on 11.01.2007. The Joint Forces led by the Officials of Army arrested Mostafa Kamal Mohiuddin, the brother-in-law of the sponsor shareholder director of the companies, Ahmed Akbar Sobhan and several other employees of various business enterprises of Ahmed Akbar Sobhan on 11.04.2007. The Joint Forces having taken him in custody and some others officials of

Bashundhara Group were incarcerated without showing them arrested in connection with any case and they were subjected to inhuman torture. The representative of the company Mahbub Morshed Hasan, who was authorized to sign cheques of the writ petitioner No.1 Company was put to tremendous pressure by the officers threatening that unless he issued pay orders signed in the name of the government the lives of all the persons detained would be at dire stake. The families of those detained persons were in a disastrous state and were extremely worried for the lives of those detained persons. In the edge of such terrible moment, the companies succumbed to the illegal pressure of the officers of writ respondent No.3 and ultimately decided to do whatever the said officers demanded. The company and its other sister concerns issued pay order of Tk.2,56,00,00,000.00 and handed over the same to the officials of writ respondent No.3. The company under compulsion for securing release of

Mostafa Kamal Mohiuddin and other officials requested Mutal Trust Bank Ltd, Bashundhara City Branch, Dhaka to issue pay order Nos.185021, 185022, 185023, 185375, 185434, 189367,189607, 189752, 230472, 230693, 230917, 230969, 256189, 256429, dated 15.05.2007, 15.05.2007, 15.05.2007, 04.07.2007, 16.07.2007, 02.08.2007, 06.09.2007, 23.09.2007, 13.01.2008, 18.02.2008, 24.03.2008, 02.04.2008, 14.05.2008, 30.06.2008 for Tk.57,00,00,000.00 and also requested Pubali Bank Ltd., Motijheel Corporate Branch, Dhaka to issue Pay Order Nos.5197080, 5197869, 5198060 and 5198915 dated 15.05.2007,04.07.2007, 16.07.2007 and 06.09.2007 respectively of Tk.6,25,00,000.00 and also Social Investment Bank Ltd. to issue Pay Order Nos.511785, 511876, 512035, 512354, 512518, 512929, 512930,554062, 554063, 554665 and 554953 dated 04.07.2007, 16.07.2007, 02.08.2007, 06.09.2007, 23.09.2007, 12.11.2007, 25.11.2007, 11.11.2007, 03.02.2008 and 09.03.2008 respectively of

Tk.123,05,00,000.00 and Standard Chartered Bank, Gulshan Avenue, Dhaka to issue Pay Order No.919386 dated 15.05.2007 of Tk.2,50,00,000.00 in favour of the government, totaling Tk.189,00,00,000.00 crores. The officials of Directorate General of Forces Intelligence (DGFI, deposited the said pay order of Tk.189 crores with Bangladesh Bank on account of the government. Bangladesh Bank opened a suspense account being Account No.900 for the government and deposited the said pay orders in the said suspense account.

The company does not have any due with the government on account of tax or otherwise. At the fag end of the year 2008, the parliamentary election was held and democracy was restored. The Vice Chairman of Bashundhara Group Mahbub Morshed Hasan by his letter dated 28.04.2009 demanded the return of the said Tk.189 crores on behalf of Bashundhara Group to the writ respondent No.3 but the latter did not reply to the aforementioned letter. Thereafter,

the legal adviser of the company by notice demanding justice dated 08.12.2009 requested the government to pay back the said money, but it did not give any reply. In the meantime, the company enquired as to whether the pay orders were encashed on behalf of the government and the writ respondent Nos.4, 5, 6 & 7 by certificates dated 11.10.2009 stated that the aforesaid pay orders were encashed on behalf of the Government and that the said banks released the value of the said pay orders in the account of government maintained with Bangladesh Bank. The said pay orders were obtained not on account of any tax or duties of the government. The government failed to make any decision with regard to the refund of the said money and keep under any head of account under the Income Tax Ordinance of 1984, VAT Act, 1991 or any other revenue laws.

Appellant Bangladesh Bank filed an affidavit-in-opposition. Its case is that Bangladesh Bank has been empowered and bound to take deposit, collect



cheaques, pay orders in favour of government, foreign governments, domestic and foreign banks. The deposit of money in government account No.0900 is not a suspense account, rather it is a government account maintained by the Ministry of Finance and Bangladesh Bank received the money on behalf of the government. It further claimed that "DGFI deposited the said pay orders for onward collection from Janata Bank Limited and to deposit the proceeds to concerned Govt. Account. Respondent No.2 deposited the money to Govt. Account No.0900 (Finance Division) as per instructions of the Ministry of Finance". .....Bangladesh Bank merely acted on behalf of the government, under the instruction of the Ministry of Finance" ..... No one else except the petitioner instructed their bank i.e. Janata Bank Limited to issue those pay orders and handover the same to DGFI for onward to deposit government account".

The High Court Division observed that the procurement of money by way of pay orders is violation of article 83 of the constitution; that the realization of money was arbitrary, unreasonable, without sanction of law; that the respective bankers of the writ petitioners paid the value of the pay orders to the account of the government maintained with the Bangladesh Bank, be it Consolidate Fund or Public Account or Suspense Account; that DGFI did not have any jurisdiction to collect the said money in the name of the government under any law of the land; that if any tax is at all evaded or due from the writ petitioners then the tax authority can recover the same in compliance with the provisions of law; that the extraction of money in the manner is absolutely illegal, unlawful, unconstitutional; that the State being the highest authority the revenue collector cannot take any money without any law; that a tax cannot be levied or collected on an executive fiat or action without

any sanction of law; that the Bangladesh Bank cannot diverse any money out of the Consolidated Fund without Act of Parliament for Appropriation, but the amount being exacted from the writ petitioners without lawful authority the same cannot constitute part of Consolidated Fund or any account of the government since the writ petitioners are rightful owners of the said money, and therefore, for returning back the money any Act of Appropriation is not required and that the DGFI is not related to any taxation authority and is not justified in extracting the money from the citizen in the name of taxation without sanction of Act of Parliament".

One vital point is involved in these matters and the point is that though the money was collected against alleged evasion of tax and duties by different leading business enterprises as revenue for the government, the government did not file any affidavit-in-opposition or controverted the positive statements made on oath that the money was extracted

by force by an intelligence department taking advantage of the situation then prevailing in the country. Even after filing the appeals by the Bangladesh Bank, it filed some leave petitions which were kept for consideration at the time of disposal of the appeals, but it did not file concise statement either in support of its appeals or in support of the claim of the Bangladesh Bank. In the absence of any denial by the government against the statement of facts, and in view of the claim of the Bangladesh Bank that it merely acted on behalf of the government and also in the absence of filing concise statements by the government, the appeals and leave petitions are liable to be dismissed.

The jurisdiction and the powers of the High Court Division under article 102 of the constitution is summary in nature and the points in controversy in such petition are decided on the statements and the documents appended to the affidavit. According to section 3(3) of the General Clauses Act, 1897,

"affidavit" shall include affirmation and declaration in the case of persons by law allowed to affirm or declare instead of swearing. An affidavit is a declaration sworn or affirmed before a person to administer on oath. Though it is not an evidence within the meaning of section 3 of the Evidence Act, the only basis on which the affidavit of a living person not called into the witness box can be acted upon as admissible evidence is that it should be capable of being regarded as a statement in writing complying with the conditions prescribed in section 32 of the Evidence Act. Even if the provisions of the Evidence Act are not applicable to affidavits, yet it is open to a court on sufficient grounds to permit a fact to be proved by affidavit. The affidavit filed with a petition is used as evidence of facts alleged therein and it cannot be rejected merely because there has been verbal denial of the allegation by the opponent without any attempt to controvert them by a counter-affidavit.

In *R.P. Kapur v. Sardar Pratap Singh*, AIR 1961 S.C.1117, serious allegations have been made against the Chief Minister of the State but he did not refute the allegations and the affidavit was affirmed by the Additional Inspector General of Police. The Court held that refutation should not have been left with the officials. In *Madya Pradesh Industries Ltd. v. The Income-tax Officer*, AIR 1970 S.C. 1011, a proceeding under section 34(1) (a) of the Income Tax Act had been initiated, the company repudiated in its writ petition the assertion of the Income-tax Officer that he had reason to believe that due to omission, some income had escaped assessment. It was held that one would have expected the Officer who issued the notice to file affidavit setting out circumstances under which he formed opinion. The court held that the Officer had no jurisdiction to issue notice in the absence of denial. Similar views have been taken in *Jagdish Prasad v. The State of Bihar*, AIR 1974 S.C. 911.

Bangladesh Bank was established under the authority of President's Order No.127 of 1972. The object of raising this Bank is found in the preamble. It is stated that a central bank is established in Bangladesh to manage monetary and credit systems of Bangladesh and 'in order to stabilizing domestic monetary value and maintaining a competitive, external par value of the Bangladesh Taka towards fostering growth and development of country's productive resources in the best national interest'. This preamble is discernible and it is only to manage the monetary and credit system of Bangladesh for the purpose of stabilizing domestic monetary value. The main functions of the Bank are provided in article 7A as under:

- a) to formulate and implement monetary policy;
- b) to formulate and implement intervention policies in the foreign exchange market;
- c) to give advice to the government on the interaction of monetary policy with fiscal

and exchange rate policy, on the impact of various policy measures on the economy and to propose legislative measures it considers necessary or appropriate to attain its objectives and perform its functions;

d) to hold and manage the official foreign reserves of Bangladesh;

e) to promote, regulate and ensure a secure and efficient payment system, including the issue of bank notes;

f) to regulate and supervise banking companies and financial institutions.

The preamble as quoted above is reflected in the object of the establishment of the Bank, that is to say, to implement the monetary policy, to regulate foreign exchange market, to give advice the government on monetary policy, to secure efficient payment system including issue of bank notes and to supervise banking companies and financial institutions etc. Besides the above functions,



Bangladesh Bank cannot take any decision regarding the policy matter of or the implementation of realization of taxes, duties, charges, interests for default of payment of tax by any individual or company or business house.

Besides, it has also power to accept money on deposit from and the collection of money for the government, foreign governments, domestic and foreign banks, domestic and foreign financial institutions and local authorities with or without interest (article 16). So this provision clearly indicates that it is the custodian of money for the government and in dealing with the said objects, it has been empowered to deal with certain transactions enumerated in clauses (2), (3), (4), (5), (6), (7), (8), (9), (10), (11), (12), (13), (13A), (14), (15A), (16), (17), (18), (19), (20), (21), (22), (23), (24), (25) and (26) of article 16. Besides the above functions, it shall undertake to accept money for account of the government and to make payments

up to the amount standing to the credit of their accounts and to carry out its exchange, remittance and other banking operations and in doing so the government shall instruct the Bank with all their money remittances and banking transactions (article 20). It has another vital function to maintain that all commercial banks have with the Bangladesh Bank a balance the amount of which shall not be less than such portion of its total demand and time liabilities as may be prescribed by the bank pursuant to the monetary policy of the bank (article 36).

A combined reading of these provisions of the Order shows that this Bank conducts monetary policy, works to maintain a strong financial system and issues nation's currency, as well as being a policy making body it provides selected banking and registry services to a range of government agencies. It executes multiple functions, such as overseeing monetary policy, issuing currency, managing foreign

exchange, working as a bank of government and as banker of schedule banks. It also works for over all economic growth of the country. The main functions of a top bank of a country are *inter alia* (1) issue of currency, (2) banker to government, (3) bankers bank and supervisor, (4) controller of credit of money supply, (5) exchange control, (6) lender of last resource, (7) custodian of foreign exchange or balances, (8) clearing house functions and (9) public collection and public collection of data etc.

None of its functions, objects or obligations or policies, falls within its jurisdiction save and except to act as the custodian of the government money. It cannot, therefore, defend the actions of the government in presence of the Ministry of Finance representing the government which deals with matters relating to taxation, collection of revenues from the citizens.

Mr. M. Amirul Islam, learned counsel appearing for the Bangladesh Bank besides making oral

submissions, put forward written submissions, the substance of his submissions is as under:

"i. Pursuant to articles 16 (1) and (13) of Bangladesh Bank Order, 1972, the Bangladesh Bank is eligible and obliged to receive or accept any form of money from any bank or local authorities with or without interest. The Bangladesh Bank had only accepted the pay orders from different commercial banks and kept the money in Government Account No.0900 (Finance Division within the Govt. Account No.0001 which is known as the Consolidated Fund).

ii. No money can be withdrawn from the Consolidated Fund without an Appropriation Act passed by Parliament (Art.90(3)). Besides the Consolidated Fund, there is the Public Account in which are credited all money other than those which are to be put in the Consolidated Fund (Art 84(2)). Payment of

money into and its withdrawal from the Consolidated Fund of the Public Account is to be regulated by an Act of Parliament and if no such Act has been passed, by the rule made by the President (Art.85) (Bangladesh V Hon'ble Judge, (1982) 32 DLR (AD) 212)).

iii. Even in case of payment in satisfaction of a decree of the civil court, a bill has to be introduced in Parliament to provide for appropriation out of the Consolidated Fund and the expression in Art 85 'shall be regulated by Act of Parliament' refers to a further legislation other than the Code of Civil Procedure (Bangladesh Bank V. Rana Awan, (2006), 58 DLR (AD) 213).

iv. The Bank is the custodian of the Consolidated Fund, not being made a party in the suit out of which the execution case arose, is also not a judgment debtor and in view of Clause (b) of Article 90(1) he cannot pay the

decretal dues from Consolidate Fund unless Act of Parliament i.e. an Appropriation Act is passed in that behalf. There is also no authorization from the judgment debtors for release of the fund though the appellant tried to obtain such authorization from the respondents.

v. In terms of the Clause k(e) of Article 88 of the Constitution expenditure for satisfying such degree is a charge upon the Consolidated Fund. So it's desirable that Ministry of Finance, takes immediate steps for including the decretal dues, which is the subject matter of the present case in the annual financial statement to be prepared for next year so that the above decretal dues may be paid out of the Consolidated Fund.

vi. Article 266(3) make(s) it clear that no money out of the Consolidated Fund of a State shall be appropriated except in accordance with law

and for the purposes and in the manner provided in the Constitution. Article 283(2) provides that withdrawal of money from the Consolidated Fund or Contingency Fund of a State to be regulated by law made by the Legislature of the State and, until any provision in that behalf is made, by Rules made by the Governor of the State. There is no dispute at the Bar that no money could be expended from the Consolidated Fund of the State except without an appropriation bill passed by the concerned State Legislature. Though the Reserve Bank of India is the custodian of the Consolidated Fund of the State and it holds money on behalf of the State, yet no money there from could be expended except in accordance with the provisions of the Constitution and the laws framed there under. Every expenditure from the Consolidated Fund is required to be

ratified by the Legislative Assembly by passing an appropriation Act.

vii. The writ petitioners are tax evader who have paid the amount willingly in favour of the Government with the Bangladesh Bank and is now before the court, seeking judgment to get a refund of the amount paid in fear of prosecution.

viii. Equity, as it was based on good faith and conscience demanded fairness, uprightness and good faith not only from the defendant but also from the plaintiff. It is therefore aptly said that 'he that hath committed an inequity, shall not have equity'. This maxim goes a step ahead and expects the plaintiff conduct above reproach, just and fair before he comes to the court. It must be depravity in the legal as well as the moral sense and not a general depravity. That is to say that he must be clear of any participation in



fraud or similar inequitable conduct. The misconduct under this maxim is not necessarily that one which constitutes a basis of legal action or punishable as crime. The maxim as has been pronounced in *Mason V Clarke* is so good and active as it might have been in its inception, that even a reprehensible conduct in a suit matter enough to invoke the assistance of the court in applying this maxim. Therefore, taking into account the aforesaid facts, it is apparent that the Writ-Petitioner has himself committed an inequity in the legal as well as the moral sense and should not be entitled to invoke the equitable relief."

We find self contradictory submission of the learned counsel. On the One hand the learned Counsel argues that the Bangladesh Bank is the custodian of the money of the government and is obliged to receive or accept any money from any bank or local

authority, on the other hand, it justifies the action of the DGFI stating that the writ petitioners are tax evaders and that they paid the money voluntarily. It refused to return the money even after the judgment of the court without proper legislation. We are astounded to hear all these submissions from a Counsel not less than the one of high stature like Mr. M. Amirul Islam.

As regards first point raised by the learned counsel, we have discussed the role and functions of Bangladesh Bank. No matter the money are kept in Account No.0900 or Account No.0001 or in a suspense account, the question is whether can it contest the claim of the writ petitioners. If it claims that it is the custodian of the government money and as per direction of the Ministry of Finance it has kept the money, how can it contest the claim of the writ petitioners if the government represented by the Ministry of Finance opted not to dispute the claim

of the writ petitioners. So, this point merits no consideration.

In this connection the High Court Division upon analysis of the different provisions held that Bangladesh Bank does not have the jurisdiction to encash the pay orders issued by any person without ascertaining the reason for collecting the said amount. It further held that in the affidavits-in-opposition filed by Bangladesh Bank it reveals that account Nos.1100, 1101, 1102, 1103 and 1104 are related to Internal Resources Division, Income Tax, VAT, Import Duties and supplementary duties respectively and the said money were collected from the writ petitioners had not been deposited in those accounts; rather the money were deposited in the Government Account No.0900 under no heading at all.

In course of argument Mr. M. Amirul Islam has filed an additional paper book enclosing some papers including a Circular under the name 'বাংলাদেশ ব্যাংক কর্তৃক সরকারি হিসাবের লেনদেন সংক্রান্ত তথ্য সংরক্ষণের বিদ্যমান কাঠামো পুনর্বিন্যাস সংক্রান্ত পরিপত্র।' On

cancellation of its previous Circular regarding the various government transactions by the Bangladesh Bank it has been issued with a view to reorganising the existing system of the government's accounts transaction. This document is very fruitful for resolving the points in controversy in hand. A chart has been furnished which is relevant for our consideration and it is placed hereunder in verbatim for better understanding and appreciation:

বাংলাদেশ ব্যাংকে রক্ষিত সরকারি হিসাব নম্বরের তালিকা

ক্রমিক নম্বর	মন্ত্রণালয়/ বিভাগ কোড	সরকারি হিসাব নম্বর		হিসাবের বিবরণ	যে সকল মন্ত্রণালয়/বিভাগের জন্য একাধিক উপ হিসাব রহিয়াছে যে ক্ষেত্রে লেনদেদের প্রকৃতি সনাক্তকরণ পদ্ধতি	
		৩.	৪.		আদান	প্রদান
১.	২.	৩.	৪.	৫.	৬.	৭.
১.		০০০১		বাংলাদেশ ব্যাংক - সাধারণ (সরকারের মূল হিসাব)	এই হিসাবটি কেবল মাত্র বাংলাদেশ ব্যাংকের সরকারি হিসাব শাখা কর্তৃক ব্যবহার্য। দৈনিক ও মাসিক কোন প্রাপ্তি এই হিসাবে প্রদর্শিত হইবে না।	এই হিসাবটি কেবল মাত্র বাংলাদেশ ব্যাংকের সরকারি হিসাব শাখা কর্তৃক ব্যবহার্য। দৈনিক ও মাসিক কোন প্রদান এই হিসাবে প্রদর্শিত হইবে না।
২.	০১		০১০০	রাষ্ট্রপতির কার্যালয়		
৩.	০২		০২০০	জাতীয় সংসদ		
৪.	০৩		০৩০০	প্রধানমন্ত্রীর কার্যালয়		
৫.	০৪		০৪০০	মন্ত্রীপরিষদ বিভাগ		
৬.	০৬		০৬০০	নির্বাচন কমিশন		
৭.	০৭		০৭০০	সংস্থাপন মন্ত্রণালয়		
৮.	০৮		০৮০০	সরকারী কর্ম কমিশন		
৯.			০৯০০	অর্থ বিভাগ	ব্যাংক হিসাব নম্বর ০৯০১ হইতে ০৯০৪ এর প্রাপ্তিসমূহ ব্যতীত অন্যান্য প্রাপ্তি এই হিসাবে প্রদর্শিত হইবে।	ব্যাংক হিসাব নম্বর ০৯০১ হইতে ০৯০৪ এর প্রদানসমূহ ব্যতীত অন্যান্য প্রদান এই হিসাবে প্রদর্শিত হইবে।
১০.	০৯		০৯০১	অভ্যন্তরীণ ঋণের সুদ	কোন আদান প্রদর্শিত হইবে না।	কেবল মাত্র বাংলাদেশ ব্যাংকের শাখাসমূহ কর্তৃক ব্যবহার্য। ট্রেজারী বন্ড, ট্রেজারী বিল, প্রমিসরী নোট, উপায় ও উপকরণ

						প্রভৃতির সুদ এই হিসাবে প্রদর্শিত হইবে।
১১.		০৯০২	ফেজারী বন্ড/অন্যান্য বন্ড	কেবল মাত্র বাংলাদেশ ব্যাংক প্রধান কার্যালয় কর্তৃক ব্যবহার্য।		কেবল মাত্র বাংলাদেশ ব্যাংক প্রধান কার্যালয় কর্তৃক ব্যবহার্য।
১২.		০৯০৩	ফেজারী বিল, প্রমিসরী নোট	কেবল মাত্র বাংলাদেশ ব্যাংক প্রধান কার্যালয় কর্তৃক ব্যবহার্য।		কেবল মাত্র বাংলাদেশ ব্যাংক প্রধান কার্যালয় কর্তৃক ব্যবহার্য।
১৩.		০৯০০	উপায় ও উপকরণ	কেবল মাত্র বাংলাদেশ ব্যাংক প্রধান কার্যালয় কর্তৃক ব্যবহার্য।		কেবল মাত্র বাংলাদেশ ব্যাংক প্রধান কার্যালয় কর্তৃক ব্যবহার্য।
১৪.	১০		১০০০	মহা হিসাব নিরীক্ষক ও নিয়ন্ত্রকের কার্যালয়		
১৫.	১১		১১০০	আভ্যন্তরীণ সম্পদ বিভাগ	ব্যাংক হিসাব নং ১১০১ হইতে ১১০৭ এ প্রদর্শিত প্রাপ্তি ব্যতীত কাষ্টমস হাউজ ছটগ্রাম ও কাষ্টমস হাউজ মংলা কর্তৃক রেমিটেন্স চালানের মাধ্যমে জমাকৃত অর্থসহ অন্যান্য সকল প্রাপ্তি এই হিসাবে প্রদর্শিত হইবে।	ব্যাংক হিসাব নং ১১০১ হইতে ১১০৭ এর প্রদানসমূহ ব্যতীত অন্যান্য প্রদান এই হিসাবে প্রদর্শিত হইবে।
১৬.			১১০১	ভ্যাট	চালানে লেভেল ২ ও ৩ এ যাহাই উলেখ থাকুক না কেন লেভেল ৪ এ অর্থনৈতিক কোড রেঞ্জ ০৩০১ হইতে ০৩৯১ থাকিলে এই হিসাবে প্রদর্শিত হইবে।	শুধুমাত্র ফেরত প্রদান এই হিসাবে প্রদর্শিত হইবে। উলেখ্য, ডেডো কর্তৃক ফেরত প্রদানের উদ্দেশ্যে প্রদত্ত অর্থও এই হিসাবে প্রদর্শিত হইবে।
১৭.			১১০২	আয়কর	চালানে লেভেল ২ ও ৩ এ যাহাই উলেখ থাকুক না কেন লেভেল ৪ এ অর্থনৈতিক কোড ০১০১ এবং ০১১১ থাকিলে এই হিসাবে প্রদর্শিত হইবে।	শুধুমাত্র ফেরত প্রদান এই হিসাবে প্রদর্শিত হইবে।
১৮.			১১০৩	আমদানি শুল্ক	চালানে লেভেল ২ ও ৩ এ যাহাই উলেখ থাকুক না কেন লেভেল ৪ এ অর্থনৈতিক কোড ০৪০১ এবং ০৪২১ থাকিলে এই হিসাবে প্রদর্শিত হইবে।	শুধুমাত্র ফেরত প্রদান এই হিসাবে প্রদর্শিত হইবে।
১৯.			১১০৪	সম্পূরক শুল্ক	চালানে লেভেল ২ ও ৩ এ যাহাই উলেখ থাকুক না কেন লেভেল ৪ এ অর্থনৈতিক কোড রেঞ্জ ০৭০১ হইতে ০৭২১ থাকিলে এই হিসাবে প্রদর্শিত হইবে।	শুধুমাত্র ফেরত প্রদান এই হিসাবে প্রদর্শিত হইবে। উলেখ্য, ডেডো কর্তৃক ফেরত প্রদানের উদ্দেশ্যে প্রদত্ত অর্থও এই হিসাবে প্রদর্শিত হইবে।
২০.			১১০৫	অন্যান্য এনবিআর	চালানে লেভেল ২ ও ৩ এ যাহাই উলেখ থাকুক না কেন লেভেল ৪ এ অর্থনৈতিক কোড ০২১১, ০৫০১, ০৬০১, ০৮০১ এবং ০৯০১ হইতে ০৯৬১ থাকিলে এই হিসাবে	শুধুমাত্র ফেরত প্রদান এই হিসাবে প্রদর্শিত হইবে।

					প্রদর্শিত হইবে।	
২১.			১১০৬	জাতীয় সঞ্চয় প্রকল্পসমূহের আসল	কেবলমাত্র বাংলাদেশ ব্যাংকের শাখাসমূহ কর্তৃক ব্যবহার্য। জাতীয় সঞ্চয় প্রকল্পের উপকরণ বিক্রয়লব্ধ অর্থ এই হিসাবে প্রদর্শিত হইবে।	কেবলমাত্র বাংলাদেশ ব্যাংকের শাখাসমূহ কর্তৃক ব্যবহার্য। জাতীয় সঞ্চয় প্রকল্পের আসল পরিশোধ এই হিসাবে প্রদর্শিত হইবে।
			১১০৭	জাতীয় সঞ্চয় প্রকল্পসমূহের সুদ		কেবলমাত্র বাংলাদেশ ব্যাংকের শাখাসমূহ কর্তৃক ব্যবহার্য। জাতীয় সঞ্চয় প্রকল্পের সুদ পরিশোধ এই হিসাবে প্রদর্শিত হইবে।
২২.	১৩		১৩০০	অর্থনৈতিক সম্পর্ক বিভাগ	ব্যাংক হিসাব নং ১৩০৩ হইতে ১৩২৭ এর প্রাপ্তি ব্যতীত অন্যান্য সকল প্রাপ্তি এই হিসাবে প্রদর্শিত হইবে।	ব্যাংক হিসাব নং ১৩০১ হইতে ১৩২৭ এর প্রদান ব্যতীত অন্যান্য সকল প্রদান এই হিসাবে প্রদর্শিত হইবে।

This Circular reveals that 08 Codes have been used relating to different government accounts and it is described as under:

“0100 President’s Secretariate; 0200 National Parliament; 0300 Prime Minister’s Office; 0400 Cabinet Division; 0600 Election Commission; 0700 Jana Proshashan; 0800 Bangladesh Public Service Commission; 0900 Finance Division; 0901 Internal Loans Interest; Treasury Bond/other Bond; 0903 Treasury Bill, Promissory Note; 0904 Means and the Ingredients; 1000 Office of Comptroller General; 1100 Internal Resources Division; 1101 VAT; 1102 Income

Tax; 1103 Customs Duty; 1104 Supplementary duties; 1105 others NBR; 1106 National Savings Project principal amount; 1107 National Savings Projects, Interest and 1103 Economic Relations Division.”

In the column under the heading identification of transaction (যে সকল মন্ত্রনালয়/বিভাগের একাধিক হিসাব রহিয়াছে সে ক্ষেত্রে লেনদেনের প্রকৃতি সনাক্তকরণ পদ্ধতি) against account No.0900, it is mentioned that all receipts other than account number from 0901-0904 will be shown. Similar statements have been recited towards the expenditure/payment. In respect of account No.1101, it is clearly provided for VAT irrespective of anything mentioned in the chalan of level 2 and 3, if there is economic range from 0301-0391 in level 4, it will be shown in the said account. In the column of income tax it was clearly mentioned that it must be deposited by chalans irrespective of anything said in levels 2 and 3 if there is mentioning of code from 0101 to 0111. Similar

provisions have been mentioned regarding account No.1103 under the heading customs duty on imports, account No.1104 supplementary customs duty. All the amounts collected from VAT, Income tax, Import duty, supplementary customs duty must be deposited by chalans as is evident from column No.6, but nothing has been mentioned in respect of account No.0900. All the above accounts other than account No.0900 specific provisions have been mentioned as to the manner of receipt of the money and payments to be made. Therefore, it is apparent that this government account is meant for transactions which are not covered by any of the specific head mentioned in the chart. If there is no specific head, the irresistible conclusion is that this account is being maintained by Bangladesh Bank as suspense or miscellaneous account which does not cover any of the accounts mentioned in the above chart. In the affidavit-in-opposition by DGFI has admitted the same.



In the affidavit-in-opposition Bangladesh Bank has also admitted this fact that the money have been deposited in the government's account without mentioning whether it is against outstanding VAT, income tax payable by the writ petitioners. In course of hearing both Mr. M. Amirul Islam and Mr. Mahbubey Alam, learned Attorney General submitted that the writ petitioners deposited the money voluntarily and that the said amount of money have not been extracted from the writ petitioners by force. There is no denial by any of the writ respondents in this regard i.e. about collection of the money by force through DGFI, rather DGFI has admitted the claim. Therefore, there is not substance in the submission.

Mr. Rokonuddin Mahmud, learned counsel has drawn our attention to the statements made on behalf of DGFI in Writ Petition No.2647 of 2010. The affidavit-in-opposition was sworn by Captain Md. Abdul Mannaf, Grade Staff Officer-3, stating that he

was the authorised person of the respondent No.6 (DGFI) and that 'I am fully acquainted with the facts .....'. In paragraph 5 he stated that 'But as a Governmental authority the respondent No.6 does not have any involvement in the matter .... But if any officer of the office of the respondent No.6 has been found involved then the said officer is personally liable in his individual capacity for such action. For such involvement of any officials in extorting money from any citizen of the country the respondent No.6 as a Governmental authority is not liable to account for, because every single action of the respondent No.6 as governmental authority is taken, performed and discharged in compliance of the law of the land through a well defined procedure as stated hereinafter, more so the office of the respondent No.6 is accountable to the government of the Republic for all its actions'.

He further stated in paragraph 8 that 'all the said forty eight pay orders of different date had

been handed over to Lt. Col. Mr. Saiful Islam Jowarder as he was then posted as respondent No.6 and working under Director General, D.G.F.I. He received the said pay orders but no receipts were issued or given by him or by any authority to the petitioners at time of receipt of such amount'. He further stated in paragraph 11 that 'Md. Moazzem Hossain, lieutenant colonel for Director General vide Letter 1000/CT (1)01 dated 16.06.2008 acknowledged receipt payment of Tk.60,00,00,000.00 (Sixty Crore) only in favour of the People's Republic of Bangladesh as rant (sic) of "out of court settlement" and further acknowledged, that said amount has already been deposited to 'the National Exchequer of the People's Republic of Bangladesh and he requested respondent No.3 and 4 to give adjustment of the said amount with petitioners as duty on Board, Income Tax, VAT etc. under National Board of Revenue'. In paragraph 14 of the affidavit, he stated that the writ petitioners have

been informed that 'a suspense account has been opened by the Government of Bangladesh with respondent No.3 and deposited such money in the said account and till date such amount has been lying with this account.'

Mr. Mahmood vehemently argued that this officer admitted the claim of the writ petitioners partially as regards the claim of extortion of money, the documents proved that it was the said department which is responsible for extortion of money. In this connection the learned counsel has drawn our attention to, annexure-D to the writ petition, for better understanding:

ANNEXURE-D.

FROM: AL SAFA INTERNATIONAL.

SECRET

Directorate General of  
Forces Intelligence  
Dhaka, Cantonment

Telephone: 8754960  
June 2008

1000/CT(I)/01

S.ALAM GROUP

1. S. Alam Group Corporate Office, S. Alam Bhaban, 2119 Asadgonj, Chittagong paid a total amount of Taka.60,00,00,000.00 (Sixty Crore only) in favour of the People's Republic of Bangladesh as part of "out of Court Settlement" Details of payment made in the process is attached as annexure A.
2. As the amount has already been deposited to the national Exchequer of Government of the People's Republic of Bangladesh, we would now request you to kindly adjust the amount with following companies and related Individuals of S.Alam Group as Duty on bond Income Tax, VAT etc, under National Board of Revenue:
  - a. S.Alam Steels Ltd.
  - b. S. Alam Cold Rolled Steels Ltd.
  - c. S.Alam Cement Ltd.
  - d. S.Alam Vegetable Oil Ltd.
  - e. S.Alam Super Edible Oil Ltd.
  - f. Alhaz Md. Saiful Alam.

3. Please acknowledge.

MD. MOAZZEM HOSSAIN  
Lieutenant Colonel  
For Director General

In the affidavit-in-opposition filed by writ respondent No.3, Bangladesh Bank, it has enclosed a document, annexure-1, a report submitted by the officer of the co-ordination committee on crime prevention mission. The prefix of the said letter is mentioned as 'সেনা সদর পুরাতন অফিসার্স মেস, ঢাকা সেনানিবাস'. In the said report it is stated that said Tk.60,00,00,000/- (sixty crore) has been collected by 49 pay orders and the report has also been submitted by Md. Afzal Naser Bhuiyan, Lt. Col, a copy of the said report has been forwarded to (1) Dr. Saleh Uddin Ahmed, Governor, Bangladesh Bank (2) Director General, the Forces Intelligence Directorate, Cantonment Dhaka, (3) Mr. Badiul Alam, Chairman, Board of Revenue and (4) Mr. Abdul Karim, Secretary Ministry of Home Affairs. In the right hand column the Governor, Bangladesh Bank made an endorsement stating 'প্রাপ্ত পে অর্ডার

মূল্য সংগ্রহের জন্য ব্যবস্থা গ্রহণ করা যেতে পারে। সংগৃহীত মূল্য সরকারী কোষাগারে হিসাব নং-৯০০ এ জমা করা যেতে পারে। আগত অ----- জনাব মুসলিম চৌধুরী ঐ হিসাব এ জমা করনের জন্য পৌঁছালেন। মূল্য সংগ্রহের এর এই -----কপিসহ অর্থ বিভাগে জানানো যেতে পারে।' This endorsement of the Governor clearly shows that he has received the money directly and after directing the office to collect the money and then sent a copy thereof, to the Ministry of Finance for intimation. On perusal of the letter and endorsement two vital aspects reveal. The pay orders have been collected directly by the DGFI; that the money have been extracted at the behest of the authority of the said organisation and secondly, the Governor had collected the value of the pay orders at his risk and peril.

Besides the above admitted documents, in the additional paper book submitted by Mr. M. Amirul Islam on 14.3.2017, he has submitted some important documents. Bangladesh Bank has enclosed a letter issued from the same department on 30<sup>th</sup> May, 2007 acknowledging the receipt of pay orders valued at

Tk.20,00,00,000/- (twenty crore) from Basundara Group. After receiving the money he directed the office to intimate the same to the Finance Department. In another letter dated 30<sup>th</sup> May, 2007 regarding the pay orders valued at Tk.7,00,00,000/- (seven crore) from one Mr. Md. Shahajahan and his family, it received pay order under memo dated 28<sup>th</sup> May, 2007 valued at Tk.77,00,00,000/- (seventy seven crore) from Meghna Cement and other companies clearly pointing out that 'দীর্ঘদিন থেকে সরকারী আয়কর (AIT, Income Tax, VAT) ফাঁকি দিয়ে আসছিল।' So, the pay orders were received against advance income tax, income tax, VAT and other duties.

In another letter dated 23<sup>rd</sup> April, 2007 DGFI submitted a report to the Governor, Bangladesh Bank enclosing four pay orders amounting to Tk.23,80,00,000/- (twenty three crore eighty lacs) collected from MGH Group. It is stated that Joint Task Forces Team collected the same from MGH Group against Income Tax, AIT and VAT. The Governor of



Bangladesh Bank made similar endorsement. So, there is no gainsaying that the amount of money were collected against advance income tax, the alleged evasion of taxes by different business organizations and persons and the Governor, Bangladesh Bank collected the money without the consent of the government and after receipt of the money, he intimated the said fact to the Finance Division of the Ministry of Finance. Though the Governor received pay orders towards the evasion of AIT, Income Tax, VAT etc., the money were not deposited in Government Account No.1101, or 1102, or 1103, or 1104, or 1105 and kept the money in the account which is meant for no heading. Therefore, there is no doubt that the money have been kept in suspense account of the government despite the fact that there are accounts specifying the heads being maintained by the Bangladesh Bank as admitted by DGFI.

It is submitted by Mr. Rokonuddin Mahmood that all taxes are paid by chalans and in a chalan a TIN number is mentioned either it is VAT, income tax, import duty, supplementary customs duty and other duties payable to NBR, but in the cases in hand the amounts extorted from the respondents have been deposited in account No.0900, which shows that the amount was not collected against evasion of VAT, advance income tax, income tax and other taxes although DGFI mentioned that it collected the money for such purpose, but the Governor having realised that the collections were not made in accordance with law and did not keep the money in those particular accounts. Therefore, we find substance in the submission of the learned counsel. Mr. M. Amirul Islam, fails to satisfy us why the extorted money have been kept in account No.0900. In course of hearing this point has been drawn to his attention that why Bangladesh Bank has kept the money in account of 0900 instead of account No.1101 or 1102

or 1103 or 1104, learned counsel submits that it would be clarified on perusal of the report of the Comptroller and Auditor General, but concluded his argument without clarifying anything in this regard.

The next question is whether the writ petitioners have deposited the money voluntarily. The positive submissions of the learned Attorney General and Mr. M. Amirul Islam are that the writ petitioners have deposited the money voluntarily and that the question of extortion does not arise at all. However, learned Attorney General after referring the case of Unique Groups in Civil Appeal Nos.334, 335, 336, 337 and 338 of 2015 submits that these cases are distinguishable. Learned Attorney General impliedly concedes that the money have been extorted by DGFI from the said business house by creating pressure. Although Mr. M. Amirul Islam, learned counsel does not make any submission in this regard.

Civil Appeal No.340 of 2015 arose from judgment in Writ Petition No.7370 of 2010. In the petition the writ petitioners stated in paragraphs 6 and 7 are as under:

“That during this period the then some officers of the respondent No.3 abused their power and extorted huge amount of money from various business enterprises in the name of raising revenue of the government and compelled various business houses to deposit colossal amount of money in the name of the Republic without any justification and also without any sanction of law. The petitioner No.2 was intimidated by the Joint Forces and the then officers of the respondent No.3 told that unless his business concern deposited the demand amount in the name of the republic with Bangladesh Bank, i.e., the respondent No.2, then he will be subjected to various

criminal prosecution including acquiring his wealth beyond his known source of income. The petitioner No.2 having no other option to save himself from malicious prosecution, under a serious compulsion deposited the said amount of Tk.35 crore in the name of the Republic vide the said pay orders.

That the officials of the petitioner No.1 company handed over the said pay orders to the officials of DGFI i.e. the respondent No.3. The officials of DGFI in turn deposited the said pay order of Tk.35 crores with Bangladesh Bank on account of the Government of Bangladesh."

In the affidavit-in-opposition of writ respondent No.3 did not deny those facts and made an evasive statement stating that the statements are 'matter of fact'; that the circumstances of issuance of pay orders to be proved by the writ petitioners

and that the deponent is not required to make any comment about them. The writ petitioners made positive statements that the officials of writ respondent No.3 extorted the money but there is no denial of the said positive statements.

Civil Appeal No.341 of 2015 arose out of Writ Petition No.8025 of 2009, the writ petitioner made similar statements in paragraphs 11, 12, 13 and 14. In the affidavit-in-opposition the appellant did not deny the said statements; rather admitted in paragraph 10 that DGFI deposited the said pay orders for onward collection from Janata Bank Limited and deposited the proceeds in the concerned government account.

Civil Appeal No.332 of 2015 arose out of the judgment passed in Writ Petition No.2647 of 2010, wherein Writ petitioners made positive statements regarding the extortion of the money in paragraph 7 of the writ petition. In the affidavit-in-opposition the appellant did not make any reply or statement

and therefore, it has admitted the statements of fact of extortion of money. In Civil Appeal No.339 of 2015 arose from the judgment passed in Writ Petition No.7370 of 2010, writ petitioners made positive statements in paragraphs 6 and 7 in that regard. The appellant did not deny the said statements and simply mentioned that these are matters of fact to be proved by the writ petitioner.

Civil Appeal No.333 of 2015 arose from the judgment passed in Writ Petition No.2916 of 2010. The writ petitioners made similar statements in paragraph 14 of the writ petition. The appellant did not deny the said statements and stated that the writ petitioners willingly issued the pay orders from different banks and handed over the same to DGFI for depositing the proceeds in the government account. Civil Appeal No.342 of 2015 arose from the judgment passed in Writ Petition No.8603 of 2009, the writ petitioners made positive statements regarding the extortion of money in paragraphs 11,

12, 13 and 14. There is no denial on the part of the appellant. The above facts clearly proved that the entire money have been extorted from the writ petitioners by DGFI during abnormal situation of the country.

Assuming that the money have been kept in the Consolidated Fund as claimed by the Bangladesh Bank, the question is whether the writ petitioners can maintain writ petitions seeking direction to return of the money by writ of mandamus. Mr. M. Amirul Islam raises two points in this regard. His first point is that the writ petitioners cannot maintain writ petitions in view of article 90 of the constitution, inasmuch as, money have been kept in Consolidated Fund, and the said money have been amalgamated with other funds from different government accounts and therefore, the amount cannot be identified. Secondly, the payments of money kept in the Consolidated Fund are to be regulated by an Act of Parliament, and therefore, the court cannot



pass any judgment for refunding the money. In this connection the learned counsel has referred a decision in *Bangladesh Bank v. Mrs. Rana Awan, 2007 BLT(AD) 260*.

The procedure for dealing with a Money Bill is contained in article 81. A Money Bill deals with the following matters:

- (a) the imposition, regulation, alteration, remission or repeal of any tax;
- (b) the borrowing of money or the giving of any guarantee by the government, or the amendment of any law relating to the financial obligations of the Government;
- (c) the custody of the Consolidated Fund, the payment of money into, or the issue or appropriation of money from, that Fund;

- (d) the imposition of a charge upon the Consolidated Fund, or the alteration or abolition of any such charge;
- (e) the receipt of money on account of the Consolidated Fund or the Public Account of the Republic, or the custody or issue of such money, or the audit of the accounts of the Government;
- (f) any subordinate matter incidental to any of the matters specified in the foregoing sub-clauses.

It says that any imposition, regulation, alteration, remission, repeal of tax, borrowing of money or giving any guarantee by the government or amendment of any law relating to financial obligations, custody of the Consolidated Fund, payment of money into or the issue of Appropriation of money, the imposition of a charge of the Consolidated Fund and so on. Here we find that any

charge upon the Consolidated Fund or custody of Consolidated Fund has to be made by a Money Bill. However, any imposition or alteration of fine or other pecuniary penalty or levy or payment of licence fee or a fee or charge for any service rendered cannot be included or deemed to be included in a Money Bill in view of clause (2) of article 81. As per article 83 'no tax shall be levied or collected except by or under the authority of an Act of Parliament'. Article 84 clearly provides that 'all revenues received by the Government, all loans raised by the Government, and all money received by it in repayment of any loan, shall form part of one fund to be known as the Consolidated Fund'. Apart from the above, all other public money received by or on behalf of the government shall be credited to the Public Account of the Republic (clause 2). Therefore, from a combined reading of articles 83 and 84 it is clear that the government can collect any tax under the authority of Act of Parliament,

but any fine or imposition of any penalty or levy or any licence fee or charge cannot be included in the Money Bill, and therefore, it will be taken outside the ambit of Consolidated Fund. What we find from the above provisions is that the revenues received by the government and loans raised by the government and all money received by it in repayment of loan shall form part of the Consolidated Fund, but from the admitted position of these cases, the money collected and deposited with the Bangladesh Bank are not revenues of the Government since the money have not been kept in government revenue account Nos.1101, 1102, 1103, 1104, 1105.

Originally the British Parliament voted taxes to the king who was free to collect it and spent for purposes he liked and often the money was spent for purposes other than the purposes for which he asked it. Parliament then started to levy taxes and appropriate it for specific purposes as a result of which no money would be left for general purposes

when it came to passing Budget. To avoid this situation, a single fund was created into which all revenues were deposited and from which all expenditure was met according to the budget passed by Parliament (Mahmudul Islam, Constitutional Law of Bangladesh, para 4.43).

Tax revenue is paid in order to standing charges, especially interest payments on the national debt from the consolidated Fund. And Consolidated Fund or the Consolidated Revenue Fund is a term used in many countries with political systems derived from the Westminster system to describe the main bank account of the government. So far the India is concerned this is the chief account of the Government of India. The inflow to this fund is by way of taxes like Income Tax, Central Excise, Customs and also non-tax revenues which arise to the government in connection with the conduct of its business. Loans raised by issue of treasury bills are also received in this Fund. The government meets

all its expenditure including loan repayments from this Fund. No amount can be withdrawn from the Fund without the authorization from the Parliament. This Fund is formed under the provision of article 266(1) of the Indian Constitution.

The constitutional provision clearly shows that no money can be withdrawn from the Consolidated Fund without an Appropriation Act passed by Parliament (article 90(3)). Besides the Consolidated Fund, there is the public account which are credited all money other than those which are put in the Consolidated Fund. Payment of public money, the withdrawal from the Consolidated Fund or Public Account are to be regulated by Act of Parliament and if no Act has been passed, by Rules framed by the President (Article 85).

As regards the first question we find no merit in the submission, inasmuch as, the money have been kept in account No.0900 and it is ascertained amount, and therefore, there is no legal bar in

making payment in pursuance of the judgment passed by the High Court Division under Article 88(e) of the Constitution. In respect of Article 88(e) Mr. M. Amirul Islam submits that the judgment refers in clause (e) of article 88 should not be read in isolation. According to him 'judgment and decree' should be read together and it is meant a money decree, not a judgment of the High Court Division and in the absence of any money decree and in the absence of legislation, the said amount cannot be refunded. We find fallacy in the submission of the learned counsel, for it is provided in article 88 that the following expenditure shall be charged upon the Consolidated Fund. Clause (e) refers 'any sum required to satisfy a judgment, decree or award against the Republic by any court or tribunal'. Judgment according to the Code of Civil Procedure means 'the statements given by the judge on the grounds of the decree or order'. It does not confine to decree but also an order. Decree means 'the

formal expression of an adjudication which, so far as regards the court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final. It shall be deemed to include the rejection of a plaint and the determination of any question within section 144, but shall not include-

- (a) any adjudication from which an appeal lies as an appeal from an order, or
- (b) any order of dismissal for default.

This clause (e) clearly refers to judgment, decree or award and does not say judgment and decree. The conjunction '\,' comma, the punctuation mark indicating a pause between parts of the sentence or separating the words used in the sentence and it should be read disjunctively.

Public expenditures are classified in two categories, namely expenditures charged on the Consolidated Fund and the charges granted by



Parliament on an annual basis. The former category consists of the charges of a permanent nature or charges which it is desirable to keep above controversial party politics. Parliamentary control over these items is very limited as these can be discussed, but cannot be submitted to vote for Parliament (Article 89(1)). Therefore, the case of Mrs. Rana Awan (supra) has no application in this case, inasmuch as, in that case the plaintiff obtained ex-parte decree against the Bangladesh Bank and put the decree into execution. It was observed in that case that Bangladesh Bank being 'the custodian of the Consolidated Fund, not being made a party in the suit out of which the execution case arose, is also not a judgment debtor and in view of Clause (b) of Article 90(1) it cannot pay the decretal dues from Consolidated Fund unless Act of Parliament i.e. an Appropriation Act is passed in that behalf." More so, the money extorted from the writ petitioners are not revenues of the government.

We find in the above case that the decree was obtained for realization of money out of the Consolidated Fund and that Bangladesh Bank was not made a party in the suit. The present cases are quite distinguishable, inasmuch as, if the money recovered from the writ petitioners and kept in the Consolidated Fund for expenditure, the question of legislation would arise. So, it must be shown by Bangladesh Bank that the money kept or received from the writ petitioners were part of the Consolidated Fund. Any money kept by the government in Bangladesh Bank cannot be treated as revenues, inasmuch as, only those of money which have been collected in accordance with article 83 can be taken as revenue.

Article 88 has no manner of application, inasmuch as, article 88 speaks about expenditure to be charged upon Consolidated Fund. The expression expenditure has been used in article 87. It says that in every financial year there shall be laid, a statement of the estimated receipts and expenditure

of the government for that year before the Parliament. The amount received by the government must be against revenues, loan etc. and not otherwise. As observed above, public expenditures are classified in two categories, expenditure charged on Consolidated Fund and the charges granted by Parliament on an annual basis. The expenditure mentioned in article 88 should be read with article 87. This expenditure is public expenditure. If the money recovered and deposited with the Bangladesh Bank are not part of Consolidated Fund, no Act of Parliament is necessary for returning the said money under articles 85 or 90 of the Constitution, inasmuch as, the same were illegally extorted from the writ petitioners without any sanction of law.

The control of public finance is an important function of Parliament. It includes imposition of taxes, granting of money to the administration for expenses on public service and authorization of loans. Though Parliament exercises control over

executive, the latter can neither levy tax nor spend money by itself without any authorization of the Parliament. Only Parliament can impose a tax and grant funds to the executive to defray public expenditures.

Sometimes it happens that all the money required for the public expenditures cannot be raised by taxation and the government has to resort to borrowing. Article 144 gives authority to the executive to enter into contract and the government can borrow money for which sanction of Parliament is not necessary. All borrowings in a financial year are shown in the budget and in approving the budget the Parliament approves the borrowings. All borrowings do form part of the Consolidated Fund (article 84(1)) and Parliament's authorization is necessary for expenditure from the Consolidated Fund.

Article 83 provides that no tax shall be levied or collected except by or under the authority of an

Act of Parliament. This article provides a protection against arbitrary or illegal exaction which can be enforced through proper court proceedings. If a tax-payer is made to pay an unconstitutional tax, he can recover the money by suit or writ petition if the tax is sought to be levied without following the mandatory provisions of law (*Poona City Corp. v. Dattatraya*, AIR 1965 SC 555 and *Bharat Kala Bhandar v. Dhamangaon Municipality*, AIR 1966 SC 249). Where there is an express prohibition in the constitution from imposing or realising tax, whether it be with regard to an item of taxation or imposition of VAT, the action of the government or its officials or any of its instrumentalities in transgressing that prohibition must be regarded as being excess of its jurisdiction.

The word 'tax' has been defined in article 152(1) as follows:-

'taxation' includes the imposition of any tax, rate, duty or impost, whether general, local or special, and 'tax' shall be construed accordingly.'

The meaning of the word 'tax' has been used in a comprehensive sense to mean and include all money raised by taxation and includes those known as 'rates' or other charges levied by local authorities under statutory powers. (*Gouse v. Kerala*, AIR 1980 SC 271). A tax cannot be levied or collected merely by an executive fiat or action without there being a law to support the same. (*Kerala v. Joseph*, AIR 1958 SC 296). Article 83 contains in clear terms that "by or under the authority of an Act of Parliament". Therefore, no tax can be levied without any sanction of law. Under this article not only levy but also collection of tax must be sanctioned by or under the authority of an Act of Parliament. The expression 'levy' includes creation of liability or fixation of its quantum and the expression 'collect' refers to

physical realization of tax. (*Somaiya Organics v. UP, AIR 2001 SC 1723*). 'It is the States which were protected as a result of the declaration for otherwise on the conclusion that the impugned Acts lacked legislative competence the result would have been that any tax collected would have become refundable as no state could retain the same because levy would be without the authority of law and contrary to Article 265 of the Constitution', the court observed. Article 265 is couched in similar language of article 83 of our Constitution. Moreover, under the revenue laws, there are provisions for collecting revenue at a given rate fixed by Finance Act and also for collecting fine for non-payment of revenue. But there is no scope for collecting any lump sum amount.

Not only tax must be levied validly, its collection must also be made in accordance with an Act of Parliament. When an Act of Parliament provides that a tax shall be collected in such

manner as may be prescribed by rule, no tax can be collected until rules are made. (*Khurai Municipality v. Kamal Kumar*, AIR 1965 SC 1321). Article 83 gives protection against arbitrary collection of tax. When an assessment is made in an arbitrary manner there is no collection of tax in accordance with law. The language of article 83 clearly implies that the procedure for imposing the liability to pay a tax has to be strictly complied with. Where it is not complied with the liability to pay the tax cannot be said to be according to law.

A tax is an imposition made for public purpose without reference to any service rendered by the State. The object of the levy is to raise revenue (*Orissa Cement Ltd. v. State of Orissa*, 1991 SC 1676). The money raised by a fee is set apart and appropriated specifically for the performance of the service for which it has been imposed (*Jagannath Pamanju Das v. State of Orissa*, AIR 1954 SC 400) and is not merged in the general revenues of the State



*(Indian Mica and Micanit Industries v. State of Bihar, AIR 1971 SC 1182 and Southern Pharmaceuticals and Chemicals v. State of Kerala, AIR 1981 SC 1863).*

The money collected illegally is recoverable by a writ of mandamus. The aggrieved person has the right to move the High Court Division challenging the propriety of collection of money from the citizen without any sanction of law. In *Salonah Tea Company Limited v. Superintendent of Taxes, AIR 1990 SC 772*, it has been held that normally in a case where tax or money has been realized without the authority of law, the same should be refunded in an application under article 226 of the constitution. The court has power to direct the refund unless there has been unavoidable laches on the part of the petitioner which indicate the abandonment of his claim.

Though DGFI denied its role in the extortion of money, the documents filed by the Bangladesh Bank clearly show that the money have been collected by

Md. Afzal Naser Bhuiyan, Lt. Col. for DGFI. He sent the money on the letter head of DGFI to the Bangladesh Bank for taking action by the Governor, Bangladesh Bank. These money have not been deposited by the writ petitioners by any chalan rather the payments were made by pay orders and cheques although the officer mentioned in his forwarding letters as Income Tax, AIT and VAT. As per constitution or law, no officer of DGFI or any officer of intelligence forces has/had any right or authority to recover such money as tax or VAT. Article 83 totally prohibits in such process of realising any money otherwise than Act of Parliament.

After the independence of the country, National Security Intelligence (NSI) was created as the sole intelligence agency in Bangladesh. However, external threat from foreign military left to the creation of Directorate of Forces Intelligence (DFI) in 1972. The role of the DFI was only limited to sharing

intelligence with the Armed Forces. Under President Ziaur Rahman's presidency on 24<sup>th</sup> August, 1976, DFI was improved and renamed as Directorate General of Forces Intelligence (DGFI) which led to a massive modification in the organizational structure of the agency and the agency was transformed from or into defensive to an offensive intelligence unit. The DGFI's primary role is to specialize in the collection, analysis and assessment of military intelligence. Its purpose is to collect, collate and evaluate and disseminate all services strategic and topographical intelligence about law and order situation, armed forces and to ensure counterintelligence and security measures for Bangladesh and Bangladesh Armed Forces. In fact, DGFI is manned by Military Personnel that is from Army, Navy and Air Force.

Learned counsel has strenuously criticized the role of DGFI in the process of extorting money. An officer of DGFI who has sworn affidavit has also

admitted impliedly that the money have been extorted by an officer of DGFI, but according to him, he has acted access of power for which the DGFI shall not take any responsibility. This statement belies the documents submitted by Bangladesh Bank. This force cannot deny its responsibility in view of the fact that after collection of the pay orders the officer communicated his action to its chief. It is claimed by the writ petitioners and also by the learned Counsel that the businessmen have been compelled to attend at a specified office under its control. They were kept sitting from dawn to dusk for days together and sometimes detained there without furnishing any information to their near ones. It was not possible to act as such on the part of one officer without knowledge and concurrence of the authority on consideration of the fact that it was not an isolated incident, rather the arrest, detention and torture both physically and mentally were carried out for days together against dignified

and resourceful persons. It was a concerted effort on the part of this agency is beyond reprehensible. Those actions were taken openly and freely, and the same need not be proved.

The High Court Division in the premises has rightly held that "no situation, be it emergency or otherwise, justifies such action by any Governmental agency to extract money from citizen in the name of taxation without sanction of Act of Parliament in excess of Constitutional limitations. We firmly hold that it is essential jurisprudence of our legal system that emergency situation and proclamation of emergency situation under the Constitution or any other situation whatsoever does not give the President of Republic or the Government itself or any other governmental authority, be it law enforcing agency or DGFI, any extraordinary power to interfere in the life, property and private business and affairs or any individual or any other person including any incorporated body without positive

sanction of valid piece of statutory law, especially when extraction of money is involved.'

We take note that though all money were extorted by DGFI and deposited with Bangladesh Bank, the latter tried to justify its action which is reprehensible. It is the custodian of the public money - it has nothing to do with any action of the government or its agencies as to whether those actions were justified or unjustified. It is an independent organisation and its functions are totally different from the executive. It cannot act like the executive and justifies the illegal acts of an organ of the executive. It is the government which can explain in which manner and how the money have been collected or extorted. Government remains as a silent expectator but the Bangladesh Bank and its Chief executive supported the inhuman acts of an intelligence department of the government and thereby flouting and exceeding the norms of its

objects and purposes for which Bangladesh Bank was setup by the government.

Neither affidavit-in-opposition nor even any concise statement has been filed by the government refuting the claim of the writ petitioners despite drawing the attention to the learned Attorney General, but the learned Counsel for Bangladesh Bank was impassive. Under such circumstances, how, Bangladesh Bank can defend the retention of the money is not understandable. Since the money have been extorted form different business houses and business men, Bangladesh Bank should have refunded the money after the withdrawal of emergency. It has illegally retained the money as its risk and peril. The very claim of the officer proved that the money were extorted on behalf of the Revenue Department for the purpose of adjustment of future tax to be imposed upon the businessmen, which is totally unknown to our fiscal laws. The Revenue Department

did not claim that the amounts were realised towards the outstanding dues.

A defence force is an asset of our country. The primary responsibility for raising a defence force in a country is for national security including its boarder and approaches; to defend the country's sovereignty; to contribute to and, where necessary, lead peace and security operations; to protect the country's wider interest by contributing to international peace and security, and the international rule of law; to contribute to whole-of-government efforts at home and abroad in resource protection, disaster relief, and humanitarian assistance; peacekeeping, crisis management and humanitarian relief operations; protection of the internal security; defense scientific research and development; defence procurement and purchasing and so on. It can be said in brief that today the obligation of military is beyond their primary role of battling the external enemy as there is a



perceptible shift towards internal security involving deactivating terrorists, winning the hearts and minds of aggrieved people of the country, riot control, saving lives during natural disasters and military diplomacy.

After the independence Bangladesh Armed Forces have been fully structured organizing itself officially as the Bangladesh Armed Forces comprising the Bangladesh Army, the Bangladesh Navy and the Bangladesh Air Force. The forces perform traditional military missions. The Bangladesh Coast Guard under the Home Ministry plays a stronger role in the area of anti-smuggling, anti-piracy, and protection of offshore resources. In addition to traditional defense roles, the military has been called on to provide support to civil authorities for disaster relief and internal security. The military of Bangladesh fought tribal insurgents in Chittagong Hill Tracts since mid 1970s. In November 2008, Bangladesh Navy effectively

sends off economic aggression by Myanmar in the seas of Bangladesh. Occasionally the military forces have been called to participate in social activities like rehabilitation of people following a flood or cyclone. Since late 1980s, it has earned international reputation by working as part of United Nations Peacekeeping Missions in different countries of the world. The Bangladesh Military is recognized as a disciplined and well-trained national institution that can tackle critical national phases.

There is also a dark side of these forces as well. Some aberrant officers participated in the killing of the father of the nation Bangabandhu Sheikh Mujibur Rahman and other members of his family, his kiths and kins. They also committed heinous crime like the killing of four national leaders in the Dhaka Central Jail. Some of the aberrated personnel also brutally killed President Ziaur Rahman. Some misguided power monger high

ranking officers declared martial laws in 1975 and 1982. This National Forces should not take the responsibility of these deviant officers and jawans. Similarly, in 2007 some of the officers compelled the President to declare emergency in the country on 11<sup>th</sup> January, 2007. It was practically not their sole responsibility because then President Professor Dr. Yeaz Uddin Ahmed in violation of the constitutional provisions then prevailing assumed the functions of the Chief Advisor of the Non-Party Caretaker Government in addition to his own functions under clause (6) of article 58C of the constitution.

This illegal assumption of power inflamed the political parties and public in general. It is also not comprehensible how this regime has arrested Sheikh Hasina, the present Prime Minister, who was not the immediate past Prime Minister of the country on the ground of corruption without arresting the immediate Past Prime Minister. The political party

in power did not find such corruption case in five years against Sheikh Hasina, but the regime compelled one to file the corruption case against her. There was whispering as to their impartiality in the process of arresting in the name of prevention and corruption by the regime. After such whispering the regime arrested the immediate past Prime Minister Begum Khaleda Zia. This raised eyebrows to the citizens as to the motive behind such arrests. The regime indiscriminately arrested political personalities and businessmen. The country was about to brink of economic collapse by reason of indiscriminate arrest of politicians and businessmen by some ambitious officers of the Armed Forces. Illegal usurpation of executive power and excessive exercise of power by some officers of the Armed Forces without sanction of law has shattered and disparaged the respect of the people towards them.

In *Khondker Delwar Hossain v. Bangladesh Italian Marble Works*, 62 DLR (AD) (2010) 298, this

Court recorded its total disapproval of Martial Law and suspension of the constitution or anything like the one. The Court also opined that the perpetrators of such illegalities should also be suitably punished and condemned so that in future no adventurist, no usurper, would dare to defend the people's right, their constitution, their government established by them with their consent. It also observed that Parliament can make law in this regard and bid farewell to all kinds of extra constitutional adventure forever. Accordingly, the Parliament in the Fifteenth Amendment incorporated article 7A in the constitution wherein it has clearly been spelt out that if any person by show of force or use of force or by any other unconstitutional means abrogates, repeals or suspend the constitution or any of its article etc. shall be sentenced with highest punishment prescribed for other offences by existing laws. No doubt it is a unique provision. On perusal of the constitutions of

India, Pakistan, Nepal, South Africa and other developing countries of the world no such provision is enshrined.

In this connection it is worth to mention that how a defence forces can command respect from the citizenry if the over ambitious officers are not taken to task. How much the defence services of a nation can command respect to the citizenry in a country is narrated below?

Since Independence of India, there has been a constant effort to keep the achievements of the armed forces in the background, with the media playing along, strictly abiding by the adage for the military that, "good news is no news and bad news is news"! 'Bashing the Services', seems to be a by word. Despite this the armed forces continue to perform their varied roles with diligence and remain an organization which can be relied upon in any emergency. Despite India's increasing dependence on the army to pull its chestnuts out of the fire time

and again, the Indian Army has scrupulously remained apolitical. It has put down fissiparous and secessionist forces within India with great cost to itself over these 70 years. It has protected India from within and without. The India army has also a unique distinction of helping in creating a nation Bangladesh in the neighborhood and then quietly walking away to let the people take charge.

Since 1947, one institution that has remained absolutely free of communalism and divisive tendencies is the Indian Army. When caste and religious differences have beset the country's politics and society at large, the army has stood firm against these divisive forces. It has thus stood the test of time and has consistently upheld and protected the nation's constitution with unflinching loyalty, making a major contribution in nation building in the first seven decades of India's existence as an independent, sovereign nation. But unfortunately Bangladesh, Nepal,

Myanmar, Pakistan Armed Forces have had to intervene and run the affairs of the countries with gun point and thereby, democratic fabrics were destroyed and it has become tougher for the democratically elected governments to consolidate democracy, rule of law and sovereignty of the people of those countries. It is no secret that the political military interface is all but absent in India's institutional set up. The armed forces are completely under the day-to-day as well as policy control of the Ministry of Defense. The desirable politico-military interface is now reduced to weekly, sometimes fortnightly meetings chaired by the defense minister.

After the Revolutionary War of the United States, Congress declared on 2<sup>nd</sup> June, 1784 that 'standing armies in time of peace are inconsistent with the principles of the republican governments, dangerous to the liberties of a free people, and generally converted into destructive engines for establishing despotism'. So, the army was whittled



down to eighty men. Thereupon Congress created a first regiment of U.S. soldiers under the command of Josiah Harmar to fight Native American tribes. In 1792 Washington and his secretary created the Legion of the United States, what would become a standing army.

In the Vietnam War General William Westmoreland, a World War II hero, and youngest Major General in the history of the army, commanded the military forces, in which fifty seven thousand American troops died including a grime of fifteen thousand deaths in 1968, Westmorland's last year in command. Despite the American fatalities the General argued that America was wining the fight, pointing out the much higher body counts of enemy soldiers. This General Westmoreland and three other military leaders, Generals Creighton Abrams, William DePuy, and Frederick C. Weyand motivated by the damage done to the militaries reputation by Vietnam war played critical roles in today's American military. These

four generals rebuild an army of government broken in Vietnam and made it into the most highly respected institution in modern American life and arguably the strongest military force the world has ever known. General Westmoreland began the rebuilding process by going back to basics. He insisted on getting good students without criminal records and cadets and recruits, and treating them as military professionals. Following Westmoreland's lead, Abrams, DePuy, and Weyand gave new shape to the military with groundbreaking strategies for managing and training the new soldiers. They created performance standards to measure their training and skill. Together, they literally rewrote the basic manual on strategies for fighting wars. These mighty forces did not mingle into politics or involve in the civil administration of the country.

America's triumph as a global military superpower in World War II elevated the nation to new heights of moral authority on issues of right

and wrong, justice and injustice. Over the last fifty years, Gallup Polling shows a steep loss of trust of the USA's schools, banks, newspapers and Unions as well as its political institutions-most of all the US congress. But as the poll numbers show, the military is respected more and more.

Today the United States military is America's most trusted institution. And the most honored figures in modern American life at the start of the twenty-first century are the soldier, marine, airman, and sailor. "Today an otherwise politically polarized American public finds common identity in its uniformed service members. And since the 1970's, the number of Americans expressing trust in the military has increased to an astounding 76 percent. Over the last fifty years, Gallup polling shows a steep loss of trust in our schools, banks, newspapers, and unions, as well as our political institutions-most of all the U.S. Congress. But as the poll numbers show, the military is respected

more and more", observed by Juan Willams in his book 'We the People'.

In a democracy, firm constitutional guarantees should protect the State-including the armed forces-from two types of potential dangers: from politicians, who have military ambitions, and from military with political ambitions. There is no common model of how to establish armed forces in a democratic society and how to exercise control over the military. They include-

1. the existence of a clear legal and constitutional framework, defining the basic relationship between the State and the armed forces;
2. a significant role of parliament in legislating of defense and security matters, in influencing the formulation of national strategy, in contributing transparency to decisions concerning defense and security policy, in giving budget approval and in

controlling spending-using 'the power of the purse' in issues related to 'the power of the sword';

3. the hierarchical responsibility of the military to the government through a civilian organ of public administration-a ministry or department of defense-that is charged, as a general rule, with the direction and supervision of its activity;
4. the presence of a well trained and experienced military corps that is respected and funded by a civilian authority. It acknowledges the principle of civilian control, including the principle of political neutrality and non-partisanship of the armed forces;
5. the existence of a developed civil society, with a clear understanding of democratic institutions and values, and, as a part of the political culture, a nationwide consensus on the role and mission of their military.

6. the presence of a reasonable non-governmental component within the defense community capable of participating in public debate on defense and security policy, presenting alternative views and programs.

The most important pillar of the constitutional edifice in Bangladesh is rule of law. Everyone, whether individually or collectively is unquestionably under the rule of law. In our democratic polity under the constitution based on the concept of 'rule of law', which we have adopted and given to ourselves and which serves as an aorta in the anatomy of our democratic system i.e. the law is supreme.

In the case of Ramlila Maidan Incident, In re, (2012) 5 SCC 1 (para 308), Dr B.S. Chauhan, J. observed that rule of law means, no one, howsoever high or low, is above the law. Everyone is subject to the law fully and completely as any other and the government is no exception. Therefore, the State

authorities are under a legal obligation to act in a manner that is fair and just. It has to act honestly and in good faith. The purpose of the government is always to serve the country and ensure public good.

Echoing the words of P.N. Bhagwati, the former Chief Justice of India, it may be said that the judiciary is constituted the ultimate interpreter of the constitution and to it is assigned the delicate task of determining what is the extent and scope of the power conferred on each branch of government, what are the limits on the exercise of such power under the constitution and whether any action of any branch transgresses such limits. It is also a basic principle of the rule of law which permeates every provision of the constitution and which forms its very core and essence that the exercise of power by the executive or any other authority must not only be conditioned by the constitution but also be in accordance with law and it is the judiciary which has to ensure that the law is observed and there is

compliance with the requirements of law on the part of the executive and other authorities.

According to our constitution, the 'Armed Forces' is embedded in the system of the separation of powers. As part of the executive, the Armed Forces are bound by law and justice, and the protection of the basic human rights. Independent courts ensure that the Armed Forces comply with the law. A basic principle is that the members of the Armed Forces, like all other citizens, are subject to ordinary jurisdiction and also enjoy the guarantee of legal protection and the right to have recourse to the courts. There can be no independent military jurisdiction in the classic sense-i.e. jurisdiction as the product of the command authority of military leaders.

As with other democratic States, Parliament is central to the system of democratic control within the UK. However, the Sovereign, as titular head of State, is the technical Commander-in-Chief of the Armed Forces. Nevertheless, as servants supporting



the foreign and security policy of the State, the UK Armed Forces come under the clear authority of the elected government of the day, via the Prime Minister and a Cabinet of elected ministers, including that of the Secretary of State for Defence. The Defence Secretary, in turn, controls a Ministry of Defence made up of both military and civilian officials. (The Role of the Military in a Democracy- Major General H. Kujat, GEAF).

It is hoped that our Armed Forces shall lead the nation in the similar fashion in the manner the four Generals of the USA lead its forces with such pride, respect and trust of its citizenry.

These appeals are, dismissed without any order as to costs with the above observations.

**C.J.**

**J.**

**J.**

**J.**

**The 16<sup>th</sup> March, 2017.**

Md. Mahbub Hossain.

APPROVED FOR REPORTING