

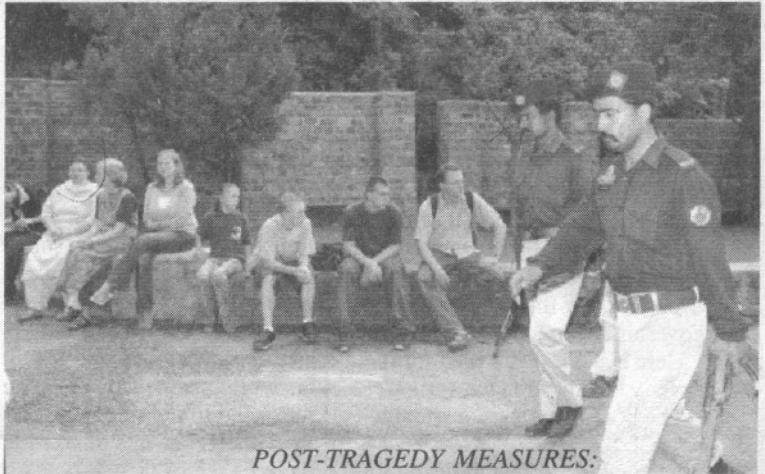
Dicey called the rule of law a system in which no man is punishable, or can be lawfully made to suffer in body and goods except for a distinct breach of the law of the land. In this sense, the rule of law is contrasted with every system of government based on the exercise by persons in authority of wide, arbitrary or discretionary powers of constraint. It is not enough to have rightly determined the substance of law, for it may be entirely ruined by the manner of its formation. Both Montesquieu and Austin placed the highest value on the drafting of law quite properly when one considers the problems it could raise. It is desirable that law should be as simply, that is, as economically worded as possible. Ludicrous inconsistency must be avoided.

State of law varies very much in different countries owing to the peculiar constitutional history of a particular country. In this respect Britain, France and Germany share the most honourable place in the community of nations. To rule by law has always required the rarest degree of knowledge and wisdom. The scale of the society is so stupendous, the detail is so minute and manifold and interests so special, that only a comprehensive mind, the patient, deep insight of the genius and vivid feelings of the fanatic, can muster and reproduce their meanings for purposes of governmental control. No man is above law whatever be his rank or position. Equality before law is not an isolated principle. It stands by the principle of liberty and fraternity. Both liberty and equality matter; but there are reasons for thinking that liberty matters even more than equality. In its application and general extension, it is in our history, assorted and vindicated in the course of our struggle for independence. "Seek ye liberty, and equality shall be added unto you", because freemen unite together in something which each and all can possess. This dream could only be fulfilled with the liberation of judiciary from the executive. It is the faith in and loyalty to the law of the land, a common recognition of values upheld, that leads to loyalty for the state and its system. It is the national feeling or nationalism in the best sense of the word. According to Aristotle, normal states pursue justice, the perversions are those that disregard it. Mill defines

'Laws're like cobwebs...!

Terrorism Nation
11-8-02

GHULAM ASGHAR KHAN says that law exists as long as legal institutions and their associated bodies are working strictly in accordance with the Constitution



POST-TRAGEDY MEASURES:
Policemen inside Christian School

justice as the impartial administration of law as justice in itself, is prevention of injustice.

The basic and most vital duty of judiciary is the preservation of every citizen's constitutional liberties and legal rights against all encroachments, whether by government, by powerful groups, or by other individuals. The law should apply equally to rich and poor, urban and rural, literate or illiterate and without any distinction of caste and creed. The courts must be staffed by judges of unquestioned integrity and impartiality. The judges should have the highest qualifications and the judicial temperament and detached aloofness from partisan politics and other controversies. The only thing they need the most, is deep devotion to the cause of abstract justice.

In dictatorship and totalitarianism, judiciary has been treated as a merely another arm of the state and party whose primary function was



not to judge according to law and justice but rather to advance the ends of the ruling groups. Britain and France are unsurpassed because of the fairness, order and dignity of their courts. Despite that when Richard Ingram, British writer and editor wrote as far back in the July 30, 1977 issue of the *Guardian* that he had come to regard law courts not as cathedral but rather as casino, the *Guardian* was neither banned nor the editor was incarcerated but the judiciary looked into as to where they went wrong.

Law deals with the conduct of man in society. It is a control, which concerns relationships existing between man and man, between man and the state,

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between states themselves and even between states, individuals, and international organisations. It is not a fable in which two cats were fighting over bread. The arbiter, a monkey solved the dispute by eating the bread in the process of balancing the two unequal halves on his "balance of justice". Law is a basic technique by which justice may be achieved. Justice means the existence of ideal relations among men and between men and the state. Where justice is equated with preserving the rulers, it proves itself lacking in morality. In such a state justice becomes the monopoly of the ruling group. The rule of law is not jeopardised by the circumstances that citizens, legislators and even judges may often hold conflicting views on the questions of interpretation. All institutions of the state without any exception, are under the law and that their acts are subject to judicial scrutiny. Judges decisions rest on interpreting existing law and relative precedents that judges must justify their verdicts by reference thereto and adhere to consistent reading from case to case or else find a reasonable basis for distinguishing them, and so on. The rule of law exists so long as such legal institutions and their associated practices are conducted strictly in accordance with the constitution and not under the sword of PCO (Provisional Constitutional Order) which has no existence in the annals of constitutional history except, perhaps, for Pakistan where this feature is replayed with every military take over. The concept of just society and rule of law cannot hold against this background. A just society features a consensus on principles of justice.

Attempts to define the limits of the state authority and the laws higher than the state had been familiar in all ages of political speculation. Philosophers of ancient Greece discussed the question as to whether political justice and right were created by laws, or vice versa. They contrasted 'pure' with 'perverted' forms of state: the former polity, ruling subjects to the written laws; the latter 'tyranny'- governing in defiance of these laws. "Where laws end, tyranny starts", said William Pitt the Elder. Orderly social life can exist only where there is a general recognition of an

obligation to abide by law as law is superior to all authority; and courts play the chief part in building the essential features of the national law. As for the credibility of courts, Justice Nazir Akhtar of the Lahore High Court while addressing the farewell function held in his honour by the Bar on August 5, remarked that bypassing the seniority principle had weakened the judiciary as this act of the Executive would start a rat race in the junior judges to do their utmost to skip over their seniors to get elevation. This action would weaken the judiciary and would consequently weaken the social fabric. Justice Nazir, rightly pointed out that such measures had distorted the image of the judiciary in the eyes of the people and to restore their image the judges would have to demonstrate 'courage' and 'character'. He further said that it was inside frailty of the judiciary that enticed the government to exploit this weakness. His remarks that the governments which are not formed on the rule of law, always want to see the judiciary weak and that state's strongest pillar was facing critical erosion. Who is at fault; the judiciary or the government? The stone does not fall in order to fall, but because it must fall as its support is taken away. Law is made for the masses of men. It is a means to an end, and justice is the end of the law. It is the law that binds the individual because it is the inevitable means for maintaining the society. It is the totality of human achievements in knowledge, literature, art and religion. Law, in fact, is a force assisting society towards its final goal. All the activities of the state must have the sanction of law. An enactment of the government cannot be called a 'law' until a legislative body has acted. Human authority can make only ordinances, and these have for their end, the crucifixion of the laws.

Ordinances contrary to essential laws are null. The question of PCO and Ordinances enters only where the pressure of necessity is telling; the powerful exact what they want and the weak grant what they must. Francis Bacon once said that laws were like cobwebs; where the small flies were caught, and the great brake through. Aren't we facing a very similar catastrophic situation? ■