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THE RUSHDIE AFFAIR : A CONFLICT OF RIGHTS

Introduction

The controversial work of Salman Rushdie, *The Satanic Verses*, has generated widespread international repercussions—both for and against. Many westerners have purported to justify the publication of the book on the pretext that it is an inalienable right of the author, who also adheres to his fundamental right to expression, opinion and ideas¹. The Muslims consider that the book is an attack on, and interference with, their right to freedom of religion, for the book is a blasphemy against Islamic religious belief and defamatory to its prophets. The rift between the two groups referred to over the Rushdie saga has been widening alarmingly both in gravity and intensity which has attracted the attention and concern of the international community in general.

The content of the book has received considerable scholarly attention and appraisal which is obviously not intended here. Rather, the legal consequences that flow from the publication of the book and other issues associated therewith are highlighted and commented upon. It is submitted that the crux of the problem is the conflict between two rights equally recognised in, and protected by, law. And the present crisis should not have been engendered, had the principle of reciprocal respect for each other's right been observed.

1, For excerpts of an interview with Rushdie, see *Far Eastern Economic Review*, 2 March 1989, pp. 11-12; also the *Post Courier*, PNG, 8 March 1989, p. 6.

Right to the Freedom of Opinion, and of Religion

The Universal Declaration of Human Rights prescribes the fundamental right of every individual to freedom of opinion and expression, and that of religion (Arts. 18 and 19). National constitutional fundamental rights for citizens, drawn mostly from the Universal Declaration of Human Rights, also include, among others, the right to freedom of opinion and expression, and of religion. The Holy Qur'an, the Muslim Scripture, guarantees these rights as well (see chapter 49, verses 11-12). Notwithstanding their successive acceptance, these two lawful rights have seemingly come into conflict in the Rushdie incident. Now the cardinal question is : Which one should be accorded priority ? I am of the opinion that this problem of conflict cannot be resolved by giving priority to one right over the other. A correct appreciation tends to impart that both rights are equally imperative and emphasised in law. One is qualitatively indistinguishable from the other. And one is as crucial as the other for the flourishing of human worth, dignity, and other humanitarian attributes. In this era of human hierarchy, both rights contribute significantly to the creation of conducive atmosphere for a dignified human existence—the most elementary expectation of all communities. This probably explains why both rights are deeply rooted in nearly all legal systems which stress the need to achieve an effective balance in the enjoyment of all legal rights. And every right is balanced against the necessity of safeguarding the other.

No legal right is absolute but is accompanied by its corresponding duty. In other words, rights are subject to one basic principle : 'Right implies duty'. Speaking negatively, a disregard for duty may preclude right. Quite consistently with this principle, the drafters of the Universal Declaration of Human Rights have formulated and embodied the right to freedom of opinion and expression, and of religion. The beneficiaries of the rights are not given unconditional freedom of enjoyment. Articles 29 and 30 expressly impose restrictions on their enjoyment. Article 29 requires that everyone, in the

exercise of his rights and freedom, shall be subject to limitations determined by law. Its ensuing part explains what it implies by the limitation clause. Those limitations are, singled out as 'limitations determined by law' which are solely for the purpose of securing due recognition and respect for the rights and freedoms of others, ... Article 30 warns against the abuse and misuse of the rights in their enjoyment. It overtly forbids any enjoyment of right 'aimed at the destruction of any of the rights and freedoms set forth' in the Universal Declaration of Human Rights. That these rights are circumscribed by a duty of mutual respect for other's right is also found in the Holy Qur'an (chapter 49, verses 11-12). It is thus quite evident that the right to freedom of opinion and expression, and of religion are not absolute but tempered by their associated duty of mutual respect for each other's right.

In fairness, let it be conceded that Rushdie is entitled to his right to freedom of opinion and expression without interference from the Muslims. This means that he is under no duty to tolerate such interference. The sanction, if any, that authorises Rushdie to claim so also empowers the Muslims to realise their right to freedom of religion without interference from Rushdie. The ground on which Rushdie claims immunity from Muslim interference, for the same ground he should respect the lawful right of the Muslims, who can also likewise invoke non-intervention and shall not allow any interference. Since both rights are on equal footing and counteract each other, the ultimate sanction of their enjoyment is the rule of reciprocity. This reciprocity in effect affords a safety-valve which is effectively engaged in minimising the abuse of rights and in maximising their materialisation. Hence the sanction that entitles Rushdie and the Muslims not to tolerate any external interference in the enjoyment of their respective rights is the one that requires mutual respect for each other's right. And a disregard for such a duty is likely to militate against the enjoyment of their rights.

In the style of a fiction, the book attacks, *inter alia*, various aspects of the revealed religion of Islam. It slanders the prophets

of god, their wives and companions, and more importantly ridicules the Holy Qur'an. Challenging the Divine Revelation of Islam, the author castigates Prophet Muhammad (may peace and blessings of God be on him) as an agent of evil who was incapable of distinguishing 'good' from 'evil'. The Prophet's wives are portrayed as women of the street, his home as a public brothel and his companions as bandits. All in all, the book vilifies the historiography of Islam going as far back as Prophet Abraham². In the face of these presentations, it is easier to affirm, than to deny, that the book launches an open and direct attack on the Muslims to damage their religious belief. For it is possible to prepare an impressive, if not an endless, list of authoritative prescriptions of both literature and history to repudiate the allegations against Islam made by the author. A strong case may be made out against the author for saying that he has made derogatory and defamatory statement against the religion of Islam and that the fiction is malicious, mischievous, and a distortion of facts to suit his ill-conceived, ill-thoughtout and rickety intention³.

The author's claim that his book is a fiction—a surrealistic novel—failed to convince religious experts who were given draft copies of the book three months before its publication. It may be noteworthy that nine scholars included Christians, Jews and Muslims. Upon a close

2. See generally the controversial text itself by S. Rushdie, *The Satanic Verses*, (London : The Viking Penguin Publishers, 1988).

3. A recent examination of the historiography of Islam may be found in Hugh Kennedy, 'Chapters and Verses' in the *Times Higher Education Supplement*, London, No- 855, 24 March 1989, p. 21.

Reference may be made, among many, to the main grounds invoked by the Censorship Board of Papua New Guinea (PNG) in prohibiting the book. Following an attentive examination of the book, the Board unanimously decided that the book (1) is profoundly obscene, and (2) has twisted the meaning of the Holy Qur'an, to serve the purpose of the author.

Almost all newspapers, radio and TV news and reports in PNG on 30 and 31 March 1989 contained a press statement of Bishop David Hand, Chairman of the Board; see also the sources cited below in note 16 (PNG sources only).

scrutiny, all experts warned about the publication of the book and its aftermath. They agreed that the book 'could not be considered a work of fiction because it used historical figures and would therefore cause a lot of offence.' They further cautioned that 'if the book was released it would unleash terror beyond the control of one person or even one country'⁴. So the prospect of the book as a potential source of fierce controversy and confrontation was amply predicted even prior to its publication, which went unheeded, of course. That the book is a fiction is no more than a self-assessment by its author, which is evidently inconsistent with the opinion of religious experts selected by the publisher. Should the appraisal of the book by its author be tenable in law, this will create an unhealthy precedent in the sense that it tantamounts to allowing him to act as a judge in his own cause, a striking negation of any legal system⁵.

In view of the foregoing discussions, it may be asserted that Rushdie, in exercising his right to freedom of opinion and expression, is obliged to take into account whether his exercise of right adversely affects others in their realisation of lawful rights. An analogous case in point is the recent vilification of Colin Blakemore, a British Professor, for pursuing his rather different intellectual work involving bio-medical experiments with animals. The Animal Defence League, among others, has considered these experiments as an infringement of animal rights in the UK and embarked on an extensive campaign against, and resistance to an act which is otherwise legitimate⁶. The necessity of performing mutual duty is also reiterated by the UN Secretary-General in response to the Rushdie episode. He pleads that whilst the freedom of speech should be respected by all, we should

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4. See the statement made by the London City Council Race Relations Officer published in the *Post Courier*, PNG, 17 March 1989, p. 6.
 5. See G. Schwarzenberger, *International Law As Applied By International Courts and Tribunals*, London : Stevens, 1945, p. 45.
 6. For a discussion on this issue, see the *Times Higher Education Supplement*, London, No. 853, 10 March 1989, p. 52.

have respect for all religions⁷. Rushdie has failed to comply with this legal requirement in writing *The Satanic Verses*. His attempt to impede and refute the integrity, morality, ideals and authenticity of Islam, a centuries' old and widely followed religion, clearly surpasses the permissible limit of his right and encroaches onto the arena of the Muslims' right to freedom of religion. As such, the book would be difficult to contain and subsume appropriately well within the purview of the author's right to freedom of opinion and expression. The author has abused and misused his right to the extent of its repugnance to, and interference with, the right of the Muslims to freedom of religion. This abuse and misuse of the author's right in turn furnishes some degree of strength and sanction that may reasonably, if not legitimate, be relied on to justify any subsequent action purported to repel his unlawful interference. And it would be improper to contemplate such action as artificially inflicted upon the author. Rather it is consequential of, and resulted from, his non-fulfilment of a duty owed to other beneficiaries,

Right to Life and Death Threat to Rushdie:

The Islamic Republic of Iran has issued a death decree on 14 February 1989 against Rushdie for his book—*The Satanic Verses*. This death threat has sparked off widespread condemnation and uproar particularly in the West. The wave of reaction against the Iranian death threat has also attracted the attention and concern of the Secretary-General of the Commonwealth and of the UN⁸. This writer is inclined to share the sentiment against the death threat. For the right to life is secret and inviolable. No state, government or individual has created the right to life for the benefit of human beings. This right is inherent in every human being and the community has

7. A statement to this effect has been made by the UN Chief during his visit to India in early March 1989. A brief of the statement may be found in the *Post Courier*, PNG, 6 March 1989, p. 6.
8. *Ibid*; for the reaction of Commonwealth Secretary-General, see the *Post Courier*, PNG, 16 March 1989, p. 6.

simply recognised its existence and assumed a responsibility to ensure protection to life. Since this right cannot be suspended or withdrawn either partially or totally, it is regarded as inalienable and not subordinate to the will of any authority⁹. Therefore, the right to life should deserve respect and protection under all circumstances at any cost.

That the right to life must be protected by law and that no one shall be arbitrarily deprived of his life has persistently been incorporated in numerous national constitutions and international human rights instruments. Implicit in all human rights provisions is the principle that the mankind is one and 'all human beings are born free and equal in dignity and right'¹⁰. Hence, every human being is entitled to life without distinction of any kind whatsoever¹¹. The most comprehensive formulation of the right to life is found in the Holy Qur'an which successively proscribes the killing of a soul that God has made sacred. Of the greatest sins in Islam, the killing of a human being is one (chapter⁶, verse 35, chapter⁵, verse 151). These formulations of the right to life are indeed authoritative precepts derived from the common hopes and aspirations of the mankind. Given their compelling authority, it would be difficult for Iran to exonerate its death order from external reproach. Moreover, it may be hard for Iran to defend its death sentence from Islamic viewpoint in the absence of a resort to the due process of law. Even if the Iranian contention, that Rushdie has committed an offence against Islam—an offence serious enough to be punished with death, is appreciated and shared, the fact remains that Iran cannot punish him by killing.

9. See the Report of the Committee of Experts on the responsibility of states for damages done in the territories to the person or property of foreigners in *American Journal of International Law*, suppl. vol. 20(1926), p. 182.
10. The Universal Declaration of Human Rights, General Assembly Resolution No. 217A (III) of 10 December 1949, *The International Bill of Human Rights*, UN, New York, 1978, Article 1, p. 5.
11. *Ibid.*, Article 2.

It is quite evident that Rushdie's book has provoked massive protests, both orderly and violent, throughout the Muslim world. At least 21 Muslims are reportedly dead in riots over the book¹². Human lives have already been lost following the publication of the book. An apposite question is : What is the legal status of these lives ? Were not these human beings entitled to their inherent right to life ? International adverse reaction, particularly from the West, to this loss of lives has been on the whole noticeably frosty, or does not seem to be as warmer as one discerns in the event of Rushdie's death threat. Does not the world community consider these assassinations as totally incompatible with the norms of free societies and aspirations for a world governed by law ? It is submitted that the right to life must be guaranteed to all human beings equally. No particular human being is more equal than others and the community should not lose sight of any valuable human life. The life of Rushdie is no more or less important than that of those deceased. International public opinion condemning these murders was in order and indeed warranted. A selective approach towards the implementation of right to life will amount to following a double standard which in effect is likely to create more problems than it solves. Moreover, any practice of discrimination in the enjoyment of right to life will have a far reaching consequence on the meaningful realisation of human rights set forth in the Universal Declaration of Human Rights, a document which is often attacked and criticised by many for its exclusive Western value and idea orientation¹³.

Another crucial point needs to be stressed here. 'Death threat' and 'death' are not the same but two different acts with quite dissimilar legal implications. Whilst the artificial and arbitrary killing

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12. For an account of these killings, protests and riots all over the world, see *Far Eastern Economic Review*, 23 March 1989, pp. 32-33; *Crescent International*, Canada, vol. 18, No. 1, 16-31 March 1989, pp. 1, 10 and 11
 13. Contemporary criticisms levelled against the document are presented in C.G. Weeramantry, *An Invitation to the Law*, Sydney : Butterworths, 1982, pp. 210-11.

of a human being constitutes a violation of right to life, a mere death threat, in the absence of its execution, does not tantamount to a violation of right to life. The element of success and failure is involved in a death threat which makes the execution of a death threat uncertain. In the case of a failure, a mere death threat may have any other legal ramifications but clearly is not a breach of right to life. However, the possibility of success may not be gainsaid. The party proclaiming a death threat may also succeed in executing it. Therefore, a death threat may be conveniently regarded as a potential or an anticipatory, not an actual, violation of right to life in that the threat is yet to be executed. As such, the Iranian death threat to Rusdie, who is alive and in hiding, may at best constitute a potential or an anticipatory breach of his right to life. But Rushdie, by writing the book, has already caused the loss of human lives. Viewed from this perspective, one may tend to argue with some measures of strength that Rushdie, through his act, has committed an actual transgression of right to life.

International Public Opinion

The world public opinion on the publication of Rushdie's book is sharply divided. The Western bloc in general supports the book on the ground of the author's right to do so and condemns the Iranian death threat on Rushdie. The Muslim world vehemently denounces the book for its bitter attack on Islam. In this respect, however, the statement of the Secretary-General of the Commonwealth at Scotland's Stirling University merits evaluation and comments.¹⁴ Referring to an appeal to support Rushdie against the death threat by more than one thousand prominent writers, publishers, and book-sellers of the West¹⁵, the Secretary-General claimed that they have spoken for the world, thereby indicating that the appeal represents

14. A summary of this address has been printed in the *Post Courier*, PNG, 16 March 1989, p. 6.

15. The text of this appeal may be seen in the *Independent*, London, 2, March 1989, p. 2: also the *Post Courier*, PNG, 13 March 1989, p. 6.

and reflects world public opinion on the Rushdie affair. Admittedly, the opinion of these writers, publishers and book-sellers forms an integral, may be even an important, segment of world public opinion on the issue. So does the opinion of one billion Muslims who are also members of the world community. Support on both sides have been mounting ever since the publication of the book. Almost all Muslim countries and some non-Muslim countries of the world have completely banned the book¹⁶. It is not denying that many Muslim countries apparently do not subscribe to the Iranian call for the murder of Rushdie. Nonetheless, these countries have not sided with, the appeal condemning the death threat. In order to acquire the character of an international public opinion, the appeal must command the spontaneous and substantial support of the bulk of the population, or must at least enjoy the benefit of absence of any strong, popular, and organised resistance. On the face of active Muslim opposition to the Rushdie affair which has polarised the world, the appeal referred to, as it stands, lacks a prominent, if not the decisive, attribute of a valid international public opinion.

Furthermore, the statement that the call for Rushdie's murder has 'understandably and rightly produced a wave of adverse reaction throughout the Commonwealth' is not factually true either. The Islamic representatives unanimously boycotted the Commonwealth Day Service held on 14 March 1989, attended by the Queen, in protest against the Rushdie affair¹⁷. Bangladesh, a member of the Commonwealth, has called for a trial of Rushdie, whilst other

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16. For an account of various adverse response to the book by members of the world community, see the *Christian Science Monitor*, London, vol. 81, No. 61, 23 February-1 March 1989, pp. 1-2; *Crescent International*, Canada, vol. 17, No. 23, 1-15 March 1989, pp. 1, 11, *The Post Courier*, PNG, 30 March 1989, p. 5; *The Times of PNG*, No 482, 30 March-5 April 1989, p. 2; *Niugini Nius*, PNG, vol. 27, No. 876, 20 March 1989, p. 2.
 17. See a report on the incident in the *Post Courier*, PNG, 15 March 1989, p. 6.

members, notably India, Malaysia, Nigeria, and Papua New Guinea, have outlawed the book in their territories¹⁸. Someone who has been following the developments on the Rushdie crisis will reasonably be reluctant to accept that there is a single world opinion, but two, if any. The events surrounding the book do not testify to the statement of the Secretary-General of the Commonwealth, which may not be taken for granted, as it seems to be based on a misreading, if not a suppression, of facts.

Also the claim that the row over *The Satanic Verses* is a shadow used by Iran as an external bogey to divert the attention of its own people from domestic troubles¹⁹, though appears intuitively appealing in view of Iran's current image to the West, does not have any bearing upon the real issue. Such a claim itself appears to be a diversion, designed to deviate world attention from the real issue. The Iranian death threat on Rushdie has undoubtedly dramatised the whole affair and has rapidly brought to the forefront of the world community. Nevertheless, the fact remains that the book has categorically disparaged various tenets of Islam—a religious faith followed and practised by one billion Muslims. The book has passionately stirred up the minds, emotions and religious allegiance of the entire Muslim world. It is, therefore, erroneous to pretend that the issue is a matter between Iran and the West²⁰. The world community ought to address, not to trivialise or side-track, the real issue: the conflict between the beneficiaries of two rights. The exercise of right by one beneficiary has produced disruptive impacts

18. See the sources cited above in note 16. The total population of all these Commonwealth countries is a factor that must be reckoned with in assessing the general public opinion of the organisation.

19. A report on such an assertion by certain interested corners may be found in the *Post Courier*, PNG, 3 March 1989, p. 6.

20. A picture of the Rushdie crisis to the effect has been depicted in the *Sydney Morning Herald*, 22 February 1989, editorial; also see the *Herald* 27 February 1989, p. 12 for a country view; *The Times*, London, 23 March 1989, p. 12.

on the enjoyment of a common right of *millions*—a conflict that need to be examined and weighed carefully in forming an opinion on the issue. The world community simply cannot afford to ignore or suppress the just grievances of the Muslim masses in the name of Rushdie's freedom of opinion and expression. This particular, indeed extraordinary, dimension of the crisis, *inter alia*, is likely to influence the shaping and reshaping of an international public opinion on the Rushdie affair.

Conclusion

A minimum standard of civilised behaviour and mutual respect is expected of every beneficiary of right. No legal right has been given unfettered application. It is quite discernible that, for the maximisation of right, it is not necessarily the best course for us to exercise right independently, irrespective of its consequence on other's right. Should we lose sight on other's right, legal impasse in the enjoyment of right is likely to be repeated at regular intervals to challenge the wisdom of dogmatic emphasis on our individual rights. This is what has precisely happened in the Rushdie affair, where not only the Muslims' right to freedom of religion suffers but also Rushdie's right to freedom of opinion and expression and to life are in a vulnerable position. It is therefore in the best interest of all beneficiaries that they should foster the principle of shared enjoyment and accommodation of rights through mutual respect.

The Iranian death threat on Rushdie cannot be a goal to be pursued. And it need not be seen as a furtherance of right. Instead, the execution of the threat will obviously multiply abrogation of rights. The rationale of such a killing may even be difficult to derive from Islam. Above all, the Iranians, who consider that Rushdie deserves a death sentence, cannot cure him by killing. Thus, there is no gain to anyone in killing Rushdie in retaliation of his alleged act. However, the real issue in point is somewhat different. Greater enjoyment of rights, however desirable it may be, calls for specific

obligations to be performed. And Rushdie has failed to comply with this requirement both by what he has done in his book and by what he has failed to do subsequently. So long the beneficiaries of rights display their scanty regards for each other's right, the danger of resorting to self-help remedy by aggrieved or interested beneficiaries such as by the Iranians, however arbitrary and unwarranted we may surmise, will probably be arduous to avert. The reason and force behind such an action is somewhat equal to, and parallel with, the reason and force that have made *The Satanic Verses* possible. Such a prior interference with right may be deemed by many as a strong mitigating factor for justifying a self-help measure—a trend that counts up cost to the world order. It is, therefore, in the best interest of freedom, justice, and peace that the international community concerned with the establishment of a legal order must respond promptly to protect the justifiable exercise of all rights, concomitantly preventing their denial, abuses and misuses. To this end, it is hoped that a seductive lesson may be learnt from the Rushdie experience.