

LAW reform



Amendments of C. P.C and the ' Legal Practitioners' Order, 1972 Can they serve the purpose of justice and democracy?

M. MOAZZAM HUSAIN

RECENTLY two laws came to light touching upon the legal arena, namely, Code of Civil Procedure (Second Amendment) Act, 2003, and the Bangladesh Legal Practitioners and Bar Council (Amendment) Act, 2003 bringing about a number of amendments in the Code of Civil Procedure, 1908 (CPC) and in the Bangladesh Legal Practitioners and Bar Council Order, 1972, respectively.

The lawyers have come out on the street to protest against the amendments of two laws (except section 115 of CPC) calling them undemocratic and black laws. An extended meeting of the Bangladesh Bar Council held on the 26th September attended by the Presidents and Secretaries of all the 65 Bar Associations of the country condemned the laws and demanded their immediate repeal. Later in the day a six-point-program is launched in fulfilment of the demands. The Demand Implementation Committee announced a month-long program including country-wide court-boycott on the October, 1.

It is learned that meanwhile Government has backed out from giving effect to the CPC (Amendment) Act and is going to get the law examined by experts so as to identify and remove the inexpediency, if any, in it. Let us see for ourselves the amendments that have sparked off the lawyers' resentment against the same.

Amendment of the CPC Substitution of new section 35A

The Code of Civil Procedure (Second Amendment) Act, 2003 has made a number of amendments which includes, inter alia, substitution of the old section 35A by new 35A with provision for enhanced compensatory cost ranging from a minimum of Tk.5000/- to Tk.100000/- to be imposed upon the party whose claim or defence in any suit or proceedings, objected to by the other party as false or vexatious, is disallowed. The court, in the circumstances, shall, after recording its reasons for holding such claim or defence to be false or vexatious make an order for the payment of the cost to the objector.

There is a serious pitfall inherent in the wordings of the new law. It has introduced a short-cut to the court's satisfaction as to the falsity or vexatious nature of a claim or defence. It is extremely difficult to determine to the full satisfaction whether any claim or defence is false or frivolous. Mere disallowing a claim or defence on the objection of the other party cannot lead to the conclusion that the same is false or frivolous. There are many different factors involved in it. Making a short-cut to decision of the kind is, more often than not, bound to defeat justice and make innocent parties suffer. Most of the litigants in our country come from poor agrarian background. The stupendous amount of cost once imposed on a poor litigant rightly or wrongly he stands trapped in the technicalities of law and cannot pay his way out. Therefore, in our socio-economic background virtually it will drive out the poor and economically weaker from justice. In the old law the amount of cost was much lesser and satisfaction of the court was controlled by three safeguards which are omitted by the amendment, namely, a) the objection has to be raised at the earliest opportunity b) claim or defence has to be found false or vexatious to the knowledge of the party by whom it has been put forward and c) if the court is satisfied of the justice thereof, that is, if the court feels such imposition will serve the purpose of justice. Therefore, imposition of such a high amount of cost upon a litigant in absence of adequate safeguards can not serve the purpose of equity, justice and good conscience.

Insertion of new section 35B

Newly inserted Section 35B provides for 'cost for delay in making application etc in respect of interlocutory matters. This new section makes provision for imposition of cost up to Tk.5000/- but not less than Tk.1000/- for default in filing application or written objection in any suit or proceedings within the time fixed by the court. The time is made a deadline not to be extended in any circumstances be that a natural disaster or for reasons beyond the control of the party. Sub Section (2) of the inserted Section says- after filing of the written statement if any application is made on any matter which, in the opinion of the court could be or ought to have been made earlier and likely to delay the main proceedings of the suit, the application may be admitted but

shall not be heard without payment by the defaulting party an amount of Tk. 2000/- at the minimum which may be extended up to Tk. 10,000/-.

This newly inserted Section seems to be devoid of rationale and again oblivion of the socio-economic condition of our people. The provision and practices of adjournment has not been developed out of fancy for delaying the suit or proceeding. There are human exigencies and compelling circumstances beyond control of the parties in which question of adjournments comes up as of necessity. It depends upon the attendant facts and circumstances in which the delay is caused and the satisfaction of the court whether the delayed step is attributable to an intention to delay the suit or proceeding. Human exigencies do not permit any superimposition of deadline as sacrosanct. Whether an adjournment is necessary for ends of justice must be left to the discretion of the court to decide. This will virtually serve as a tool in the hands of the economically stronger for grabbing the property of the weaker precisely because, the stronger can get over the hurdle by paying off the cost while the poor cannot.

Insertion of new sub rules in Order XVII

The newly inserted sub rules under Order XVII seems to be more draconian and unrealistic than the foregoing amendments. These new rules provides for imposition of a minimum amount of Tk. 500/- as against each adjournment that may follow from the third one irrespective of its justifications and the amount of cost may be extended to Tk 2000/-. Failure to pay the cost by the plaintiff shall render the suit liable to be dismissed and if it is by the defendants the suit shall be liable to be disposed of ex parte. No discretion is left with the court to extend time for whatever good reasons. More rigorous and harsh aspect of this provision is if the suit is dismissed or disposed of ex parte the party affected shall have to pay Tk.5000/- for restoration or setting aside the ex parte order/decrees as the case may be regardless of his fault.

Insertion of rule 16A under Order XVIII

The rule 16A, newly inserted under Order XVIII makes a short-cut to cross-examination. That is, the phase of examination-in-chief is dropped. Consequently the plaintiff or defendant shall be directly exposed to cross-examination as soon as he takes oath without proving his case for himself. The apparent intention of law is minimising time. This is like saving the money of medicine to buy a space for grave. I am afraid, no purpose of justice will be served by this short-cut. Over and above question of demeanour in assessing evidence is no less important. This is a gratuitous legislation as the necessity of examination-in-chief of any kind has never been doubted or questioned from any quarters at any point of time.

Insertion of rules 5A and 5B under Order XXXIX

Insertion of rules 5A and 5B under Order XXXIX CPC specially so far as those relate to the payment of compensatory cost in matters of loss caused to the other party by order of injunction and furnishing security bond as condition precedent before obtaining an order of injunction is by far the most irrational, precedent and utterly draconian legislation. It is not clear what jurisprudence do they fit into and what purpose of law do they serve. It is bound to spell disaster on our poor litigants. They will hardly feel encour-



aged in filing injunction petitions regardless of merit and virtually be deprived of justice for want of money.

The CPC (Amendment) Act by most part is inherently prone to discrimination between the rich and the poor. It being predominantly oriented to high compensatory cost poorer section of the people will shy out with the feeling that justice is meant for the rich not for them. The amendment has virtually closed the door of justice for the poor and for the richer opened the avenues of sufferings through injustice.

Amendment of the 'Bar Council Order, 1972

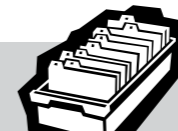
Among the amendments brought to the Bar Council Order, 1972, the most crucial ones are disqualifying an Advocate who has been elected for two consecutive terms as member of the "Council" from seeking election for the term following next and reconstitution of the enrolment committee including in it non-elected persons.

Bar Council is an autonomous body. It has its own laws rules and practices governing its internal administrations, including election, finance and enrolment of Advocates. As in any other democratic society it is expected that Government should facilitate democratic practices in an autonomous body and not hinder them by unnecessary interference. If any problem is found to creep into it that should be dealt with democratically within the framework of law governing the body. But superseding an elective body, as it is hoped in the preface of the new law, cannot enhance the dignity of the Council, by non-elected persons.

I hope the Government will take a more conscientious view and will avoid setting example detrimental to democratic practices for which we are so much striving.

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FACT file



Drug addiction undermines youth in northern Bangladesh

ATAUR RAHMAN

RANA gave his family some golden moments to cherish. The family distributed sweets after he obtained "star marks" both in SSC and HSC examinations. The family's hopes were high when he opted for studying business administration or BBA.

That was until a couple of years ago when the parents noticed something strange about their talented son. Rana began coming home late and missing classes. He started spending more time with some jobless youths than with books. The parents were shocked to learn one day that their most trusted son had found him in the wrong company and taken to drugs.

Rana's family could afford his study abroad and so he was sent to Bangalore in India. This was intended to keep him away from his drug addict friends and bring his attention back to books. It did not work. After just one year, Rana had come back home and his condition deteriorated. He also returned to his bad friends and began stealing money from the family to buy drugs.

Unable to control him, Rana's family even tried to lock him in. Confined to his room, the young man tried to kill himself at least twice. Alarmed by his condition, the family took him to a clinic that treats drug addiction. At 22, Rana committed suicide there.

"I've lost my best friend," says Rana's closest friend Shafiqul Alam Bakul. Bakul witnesses how his friend destroyed himself despite being a bright student. According to him, Rana started taking phynsidiyl with friends for the sake of fun. "But he did not stop there. Rana gradually became addicted to more harmful drugs such as heroin," says Bakul. During this period, Rana stopped attending classes and steal money from his family to buy drugs. He was expelled from his college after the authorities came to know his drug addiction. Rana's 40-year-old mother believes



she was too young to see the death of her son.

Drug addiction has killed many young people like Rana and shattered the dreams of their families in northern Bangladesh. A recent survey says that drugs claimed at least 4,000 lives in this region in past 15 years, about 80 percent of them were young people. In last one decade, desperate parents handed to police at least 1520 children for severe drug addiction, according to the survey by a drug treatment medical centre and a NGO named, (Shotto) Reality.

The survey has revealed some alarming statistics. It says that nearly 120,000 people in Rajshahi division are regular drug addicts. And at least 12,000 people are involved in illicit drug trafficking in the region bordering on India.

Says a local resident, "ganja is the widely used and easily available drug in the area. They usually start with phensydil and then take all kinds of drugs, including heroin. Drug addiction is also growing among young girls." A single drug addict spends from Tk. 1,200 to Tk. 12,000 on drugs a month and many of the addicts are from rich families.

Zahurul Alam, a Rajshahi University student, says he believes that at least 5,000 university students in Rajshahi division are drug addicts. He says drug addiction begins mostly in college.

Another study has found that drug addiction has increased along the frontier districts. It says at least 1,500 people died from drug addiction in past five years in the north-western frontier districts.

Says Abdul Berek Khan, an anti-drug activist in Bogra, "Government authorities are doing nothing to stop drug trafficking in this frontier region. And this is one of the reasons why drug addiction is increasing."

- NewsNetwork.

RIGHTS corner



Liberia Where the arms come from

TAKIRAM BUDEE

The image of corpses piled up before the U.S. Embassy in Monrovia in July shocked Americans' conscience. Despite several thousand marines offshore, however, Washington has still not made a real commitment to solving Liberia's crisis.

If people knew more about how those Liberians on the embassy doorstep were killed, they might also understand how limited U.S. action has been so far, and what Washington still needs to do. Peacekeepers alone won't solve the problem.

The dead were civilians killed in indiscriminate rebel shelling in late July. Dozens of mortar rounds fell on a compound across from the U.S. Embassy, where thousands of civilians had taken shelter. Scores of civilians died and over 2,000 people were wounded by mortars and stray bullets in the attack.

Where did the rebels get the mortar rounds? In late June, troops from the Liberians United for Reconciliation and Democracy (LURD) ran out of ammunition and were forced to abandon an offensive in Monrovia. Three weeks later, resupplied with ammunition, including 81- and 82-millimeter mortar rounds, LURD attacked again. Their bombardment led to many of the casualties around the U.S. embassy.

The LURD mortars very likely came through neighbouring Guinea, a recipient of U.S. military aid. Human Rights Watch documented LURD's links to Guinea last year and called on Guinea and the United States to hold LURD accountable for its abusive conduct of war. This spring, a U.N. panel of experts, which had also linked Guinea and LURD, reported suspicions that flights into Guinea for a mining company carried weapons that were later transported to LURD by sea and land.

Belatedly, the U.S. government called on Guinea to cease its support for the LURD. But Guinea has thus far evaded international condemnation for its record in fueling the Liberian conflict.

Côte d'Ivoire has played a similar role arming the other Liberian rebel group, Movement for Democracy in Liberia (MODEL). Witnesses have told Human Rights Watch that the Ivoirian government recruited fighters for its own conflict with the promise that they could "keep their arms and take them back to Liberia to fight Taylor." Toulepleu, a town in the west of Côte d'Ivoire, has proved an ideal base for MODEL to launch attacks into Liberia.

Charles Taylor's government in Liberia relied on help from across the border, too. The Liberian government is under U.N. sanctions, but counted on regional allies such as Burkina Faso to help cover up its illegal arms imports. Regular night flights to Monrovia's Robertsfield International Airport continued through early August.

The LURD and MODEL rebels profit from the regional and international antipathy to Charles Taylor, who fomented instability and human rights abuses across West Africa and earned an indictment on war crimes in Sierra Leone before being forced into exile in Nigeria last month. Taylor's militias regularly recruited children, tortured, raped and summarily executed civilians in Liberia.

The West African intervention has brought some stability to Monrovia, but the regional force remains too small to deploy outside the capital in significant numbers. Meanwhile, all three warring parties - the government militias, LURD and MODEL - have continued to rape, loot and displace civilians in the rural areas. This despite Taylor's departure and arrangements for an interim government to take power in Monrovia next month.

Liberia urgently needs more peacekeepers. But West Africa as a whole needs sustained and skillful diplomacy just as badly. The continuing war in Liberia is a regional war, and the United States has lost many opportunities to engage West African governments in ways that might have lessened the suffering this war has caused. The Bush administration should not lose any more chances.

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RIGHTS monitor



Good governance and rights of the child

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Good governance is one of the lucrative subjects of civil society and academician in our country. Everyone feels the necessity of good governance as it fulfils democracy. However, you would find an askance note in the face of many, if you speak of good governance for children. It is considered as a matter of adults as subject matter is pedantic.

UN Convention on the Rights of the Child (UNCRC) simply asserts human rights of a child. Even though we forget this truth quite frequently, UNCRC clarifies it most distinctively. UNCRC bears the spirit of Universal Declaration of Human Rights (UDHR) to the core. Fortunately, Bangladesh is one of those forty-five countries, which ratified it at the very beginning.

Moreover, we could feel proud of lawmakers of our country who thought of children even before the ratification of UNCRC. Children Act 1974 evident our commitment towards children that forbids juvenile offender from the company of adults. After 6 years, UNCRC had started to sing in the same tune. Despite various efforts and promises, has the condition of our children been improved significantly?

Article 37 of UNCRC states that every child deprived of his or her liberty shall be separated from adults unless it is considered in the child's best interest to do so. Article 51(2). Children Act 1974 declared it well before. Ironically, the reality is that children are often kept in prison with adults unlawfully. So, where is the problem? We have the laws and our government is democratic and committed about children in particular case. The only answer could be good governance still doesn't persist here.

Similarly, primary education has been made compulsory and free for all. It has been reflected in Article 28(a) of UNCRC. States Parties recognise the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall in particular: make primary education compulsory and free for all.

Still, a good number of children are deprived from primary education. Article 17 (c) of the Constitution states- the state shall adopt effective measures for the purpose of removing illiteracy within such time as may be determined by law. Dropout rate is however, high in primary education and illiteracy-free Bangladesh is still a dream even after 32 years of independence.

Government provides stipend for female students, but there are a lot of allegation of irregularities and corruption. Though resources and energy have been employed, mission fails due to lack of good governance largely.

Transparency International ranks Bangladesh as the topmost corrupt country in the world. While police stands top, lower court is found next to the police in corruption. Certainly children who engaged in conflict with law are in a state of helplessness since two key actors of juvenile justice system are most corrupt. If those institutions are in such a vulnerable state, who would bell the cat?

To recapitulate, children are in vulnerable condition due to the absence of good governance. They are not only being deprived of the right of education assigned by the Constitution, a good number of them are engaged in the worst form of child labours. Bad companions sometimes make them involved in criminal activities and consequently pass their time in prison where there is no hope for them. Therefore, good governance is essential for the establishment of rights of the child.

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