

Law and Our Rights

CIVIL PROCEDURE CODE NEEDS AMENDMENT

By M Saleem Ullah

THE Code of Civil Procedure needs amendment to make it more contemporary. There are provisions in Code of Civil Procedure to amend it. Part X of the Code provides power of the Supreme Court to make rules. Section 123 Part X of the Code laid down for the constitution of Rule Committee. Section 123 (3) empowers the Chief Justice to appoint the committee but the Rules so made require previous approval of the President.

A careful scrutiny of Code of Civil Procedure reveals that the last Code of Civil Procedure was enacted by Act V of 1908 or March, 21, 1908. It came into force on January 1, 1909.

Since the enactment it has been amended several times but major changes were made on three occasions. First, by Central laws (Statutes Reform) Ordinance 1960. Secondly, by Ordinance 1975 (XIX of 1975) and thirdly, by the Code of Civil Procedure (Amendment) Ordinance No. 48 of 1983.

Because of delay in disposal of civil litigation people generally do not feel encouraged to get redress of their grievances through Civil Court, specially if the plaintiff is a pauper. He has to wait at least for five years, only to get a report of the local Revenue office, upon which the court determines the status of a pauper or otherwise.

The provisions relating to the institution of the suit by paupers needs to be amended. In India the words 'suit by paupers' was amended by Act 104 of 1976 by the words 'suits by indigent persons'. By the same amendment, explanation of 'pauper' (indigent person) was changed. The definition of pauper is given in our Code which says if a person is not possessed of sufficient means to enable him to pay the fee prescribed, when he is not entitled to property worth Tk 100, other than his necessary wearing apparel and the subject matter of the suit. The value of Tk 100 was reasonable during the British reign but now it is a paltry amount.

In Indian Code the definition was amended with: 'If he is not possessed of the sufficient means to enable him to pay the fee prescribed by law for the suit in such suit or if he is not entitled to property worth one thousand rupees...' They have also amended the provisions for inquiry into the means of an indigent person.

In India the provisions for execution of the decree went under seven amendments, but they have not deleted Section 47. They have amended Section 47 to cope with the change of time. Their amendments seem to be more reasonable. Our law reformers by amendment in 1983 have omitted Section 47 for reasons best known to them, as a result the government is the worst sufferer. The government is now compelled to bring law suits against each and every decree that has been passed against it and specially in cases where the limitation is a bar for filing miscellaneous case for setting aside the decree. A bona fide claimant suffers in similar cases specially where fraud has been practiced upon him. He cannot file objection under the existing law or get redress in the execution proceeding as it was

possible under Section 47. Both government and the private individuals are compelled to institute fresh suit, in some cases paying huge amount of court fees, to get any relief even against a fraud. It seems that the old Section 47 of Code of Civil Procedure needs to be restored with necessary amendments to avoid multiplicity of litigations.

The Order 21 of the CPC provides provisions relating to the execution of decree and an order. In India this Order was amended in 1976 to make the execution a speedy procedure.

Our procedure, so far it relates to the execution proceeding, remains almost unamended resulting in unlimited delay in reaping the fruit of the litigation. Moreover, once the property is delivered by the civil court there is no provision for the decree holder to protect the possession so delivered. If immediately after the receipt of possession, the decree holder is dispossessed by the judgment debtor or his masters the poor decree holder will have to go again through the long process of law.

The present system of delivering possession through process-server, sometimes with the help of police force, needs to be amended. Possession of the decree holder needs to be protected at any cost. If this protection is once ensured then there will be no attempt on the part of judgment debtor to dispossess the decree holder by force.

The officer-in-charge (OC) of the police station should be given full responsibility to evict the judgment debtor and to keep the possession under his control till such time the court directs the OC to hand over the same to the decree holder.

In any case of dispossession the same court will restore possession of the property upon an application by the decree holder. The same court will also punish the person or persons, responsible for dispossession of the decree holder and also award exemplary damages against the guilty person. The concerned officers-in-charge of the police station will also be held responsible for such dispossession. Experience testifies that in all the cases of dispossession the OC of the concerned PS is directly or indirectly involved or he shows his ignorance about the same. It is alleged by many that in majority of such cases OC of the police station was found involved in the abatement of the suit on the death of a party in the suit, should be amended. In India, in order 22 of the Code a new rule namely Rule 4A was introduced in 1976 which provides a procedure for cases where there is no legal representative of any party who has died during the pendency of the suit or appeal.

The law provides for permanent appointment of persons to represent the estate of the deceased person for the purpose of the suit. This is necessary in our country, specially in the cases involving the laws of abandoned property and vested property. In many cases under these two laws it is alleged by many, the real owners either had died or had left the country and the cases go *ex parte* against the real owner.

The procedure relating to the abatement of the suit on the death of a party in the suit, should be amended. In India, in order 22 of the Code a new rule namely Rule 4A was introduced in 1976 which provides a procedure for cases where there is no legal representative of any party who has died during the pendency of the suit or appeal. The law provides for permanent appointment of persons to represent the estate of the deceased person for the purpose of the suit. This is necessary in our country, specially in the cases involving the laws of abandoned property and vested property. In many cases under these two laws it is alleged by many, the real owners either had died or had left the country and the cases go *ex parte* against the real owner.

The existing method of computing cost of suit by the court under section 35 and 35A of the CP Code and awarding cost under section 34 of the CP Code need amendment. Awarding of nominal cost should not be left on the discretion of the judge. The cost should be made mandatory and may be fixed at 25% value of the suit. In our country in 90% cases court does not award any cost, as if, the plaintiff should be grateful that he got the decree. The principle of awarding mandatory cost may be given in Appeal cases also. In all cases the minimum cost should be Tk 5,000.00 as lawyers fee in addition to other expenses.

There should be two kinds of costs to be awarded by the court. In cases of frivolous and vexatious cases there should, in addition to ordinary expenditure, an exemplary cost be awarded to the party against whom the false suit was filed or a false defence was made.

The provision relating to awarding exemplary cost to a party may be extended to the case of temporary injunction. In case of any frivolous prayer for injunction or any false defence against an injunction order, the responsible party must be punished with exemplary damages. Unless the damages are paid by one party to the other, suit should not be allowed to proceed. This surely will contain the present tendency of seeking injunction in almost every case.

The Order 39 should be amended to cater to the need of the day. The sub-rule 2 of rule 3 of Order 39 of the Code need be amended and the present system of awarding punishment in case of disobedience be enhanced. The Code provides for detention of offender in civil prison for a term not exceeding six months. This should be enhanced to at least 5 years and the case should be treated as a criminal case and guilty person should suffer rigorous imprisonment and the possession of the property or the position be restored, status quo-ante and make the violator of the injunction order to realise that arm of law is longer than it is apparently seen.

In many cases it reveals that the mighty or powerful party always violates the injunction order and the party who obtains injunction order becomes helpless spectator for many reasons mainly the present procedure to punish the violator is cumbersome; secondly before sending the violator to civil prison the cost is to be borne by the other side, thirdly it is very difficult to arrest the person and to bring him in front of jail gate and also to compel the jailor to accept him in civil prison. This procedure is merely a joke for the poor party and the mighty offender gets the benefit of the loopholes of the law.

In India the Order 39 has been suitably amended but this loophole remains there. When ever there be any amendment in the Code itself the Forms in the First Schedule, in Appendix A to E be suitably amended.

M. Saleem Ullah, Advocate, Bangladesh Supreme Court

A 13-year-old Canadian, Craig Kielburger, has launched a children's crusade against child slavery. It's called **Free the Children**, headquartered in his home in Thornhill, Ontario. Among his many recent public speaking engagements was one in Capital Hill in Washington, D.C. on April 29, when he addressed the Democratic Policy Committee hearing on Consumer Choice and Corporate Responsibility. He illustrated his words with pictures of child slavery taken during his recent seven-week visit to South Asia. That explains several references in his testimony, reprinted here.

WHEN speaking about the global economy, or worker rights, many people will come forth with facts and statistics. We must remember that often we are talking about working children, children with real hopes and real dreams. These children have the same basic rights and are no different from the young people here, in the United States.

An estimated one million children are working as carpet weavers in the Indian subcontinent. They work up to 20 hours a day for pennies a day. These (pointing to a photograph) are children who were



rescued from a carpet raid while I was in Asia. They were tricked into bondage by a factory owner who had promised them that they would learn a trade and have a fair wage.

They were locked up and forced to work 15 hours a day for 20 cents a day, which they had to return to their master in exchange for one bowl of rice and watery dal (a gruel). This is Moonilov, (again pointing to a photograph) he told me how the master would beat him when he cried for his mother, so he spoke to her in his dreams at night.

Last year, the United States imported 146 million dollars worth of carpets from the same country where these children work in slave-like conditions.

These (again a photo) are children who work in the brick kilns. They work from dawn to

dark, seven days a week making bricks. They do not go to school or play or do any of the things which your children do. Most of these children are working as bonded laborers to pay of the debts of their parents or grandparents. A child must make 100 bricks to earn about 30 cents, which is then exchanged for food.

This boy was hurt in a fireworks' explosion where he worked. He is one of the lucky children. Many of his friends died in the same explosion. Many more were scarred for life. Explosions frequently occur in fireworks' factories because the children are working with dangerous chemicals, with few safety precautions. These two water buckets serve to put out fires. Yet, when we checked, there was no water in them.

These are the faces of children who work in match and fireworks factories. How many of them will be killed making the fireworks imported into the United States this year?

And the list goes on — children in dangerous glass and metal factories, children in textile factories, children in sugar cane fields, children physically, sexually and verbally abused, children making many products we buy without ever considering their source. Products made from the suffering of children.

labor — underpaid workers and children.

Poverty is no excuse for exploitation. Poverty is no excuse for child abuse. Although the majority of child labor today is not related to the export market, this is rapidly changing in our global economy. I think that a labeling system, with independent monitoring, which identifies products not made by child labor, is a good idea because it gives consumers a choice.

I think that business men who go into Third World countries for cheap labor and cheap products should be held responsible to make sure that these products have not been made from the exploitation of children. UNICEF has set an example in its own procurement policy with a child labor clause based on the United Nations' Convention on the Rights of the Child.

We are receiving hundreds of calls from consumers in Canada and the United States who are saying that they do not want to buy products made by kids like Iqbal Masih, who was sold into slavery and never saw the inside of a classroom.

The role of consumers is important but we can't let governments off the hook. Eliminating child labor comes down to a question of political will. Why are some countries spending

needed to eliminate child labor, and we, the children, are now organizing ourselves on a world level to take action.

Some people are surprised at what we are doing. But the real heroes are the boys and girls who work in slave-like conditions to make soccer balls which your children play with, to make clothes which your children wear, to even make fireworks which light up the American skies on the 4th of July. You are a powerful nation. You have the power in your words, in your actions, and in

your policy making to give these children hope for a better life. What will you do to help these children?

Free the Children can be reached by fax (905-881-1849) and by e-mail (INTERNET: freechild@clo.com). It also has a Web site that can be accessed at HTTP://schoolnet2.carleton.ca/freechild/

Law Review Media Cell

REJOINDER

The attribution of Ain O Salish Kendra to the article 'The Trial of Irin Fernandez' published in the 9th September issue was mistakenly not mentioned.

Lawscape

A Letter From Jakarta

Greetings!
This is Hendrik Dikson Sirait, an activist member of PIJAR Indonesia where I am actions coordinator of the advocacy bureau.

I was released on 26 August 1996, after being detained in connection with the 27 July 1996 affair.

I was kidnapped by intelligence agents of Bakorstanasda, the army's stability agency, after attending the court hearing of Megawati Sukarnoputri's lawsuit on 1 August. As I was standing, waiting for a bus, I noticed some suspicious-looking men on my left and right. Suddenly one of these men approached me and punched me in the face. As I shouted, 'What have I done wrong?' Two other men grabbed hold of me and assaulted me. Then they took me to a building nearby. Not long afterwards, a vehicle turned up and drove us away. In the vehicle, I was pushed onto the floor and my face was covered over with a bag so that I wasn't able to see where we were going.

After arriving at their headquarters, they took my shirt off and used it to cover my face, possibly so that I would not know the location of their headquarters. They then put me into a cell. About ten minutes later, I was called and taken to a room at the back used for interrogating people.

After a few minutes, five intelligence agents turned up and, without asking me any questions, they began to beat me ferociously. Then they ordered me to strip down to my pants. (For the whole time I was there, I only wore my pants.) As this was happening I was able to see something on the typewriter which said, 'Jakarta military command intelligence.' It was then that I realised that I was in the hands of Bakorstanasda, the army's national stability agency.

Then I was interrogated. Basically, what they tried to do for two days was forced me to confess that I was one of the ringleaders of the riots and that I took part in burning buildings and vehicles on 27 July. I was also forced to admit that I gave orders to the masses to resist the security forces even though I had a very strong ability to prove that I wasn't even there. I was also forced to say that I was a member of Partai Rakyat Demokratik, the PRD. Still worse, I was forced to admit that I was planning to bomb a number of buildings in Jakarta.

They even wanted me to say what my aspirations were. They made me admit that the reason I wanted to do all this was because I wanted to become the Minister of the Interior. Their accusations against me were really appalling. My limitations as a human being meant that I was not able to withstand this kind of violence and torture, so in the end I said yes to everything they accused me of.

Both my ears and hands were given electric shocks. They burnt my body in many places with lighted cigarettes, and they kicked and beat me, all the time they were interrogating me. I have to admit that I was extremely afraid. I could not withstand these atrocities and lost my will to resist. But I want to say that as they were giving me electric shocks, I swore that I would never use violence against anyone, anyone at all, whether I know them or I don't. And this includes members of my own family, friends, acquaintances and even people I hate. I feel a sense of revenge against those who inflicted these atrocities on me because I feel quite sure that they don't really understand what they were doing.

Finally, on 6 August 1996, I was transferred to the Metropolitan Police headquarters in Jakarta. The treatment there was quite different. I have to admit that the police used persuasive methods, seeing that this was a political case. I experienced no violence at all the whole time I was in their hands. They were quite worried about the state I was in, the injuries I had sustained. They interrogated me again and all the results of the interrogation at Bakorstanasda were ignored by the police.

On 26 August, I was released although I am required to report twice a week to the police. I don't understand what the political considerations were for releasing me. From a juridical point of view, there was a request from my parents that my detention be suspended.

It is my conviction that providence is responsible for all this, something that is beyond the comprehension of human beings. The Power of God, this is what ultimately saved me.

I feel deeply grateful to all those who took an interest in my case.

Hendrik Dikson 'Tblis' Sirait

Law Review Media Cell

The Daily Star Entertainment Guide

Sunday 15th September
(All programmes are in local time. We recommend programmes printed in bold. There may be changes in the programmes)

BT/

3:00 Opening Announcement
Al-Qur'an Programme Summary
3:10 Recitation from the Bible
3:15 Cartoon: Woody, Woodpecker
3:45 Retelecast of Weekly Drama 4:00 News in Bangla 4:45 Anu Paramanah
5:00 News in Bangla 5:25 Sports Programme 6:00 News in Bangla 6:30 Anur Daktar
7:00 News in English 7:05 Open University 7:25 Tagore
8:00 News in Bangla 8:25 Janmabumi 8:30 Shiba-Banjia-Artho 9:00 Film Series: Akbar The Great 10:00 News in English 10:30 Shasthatatha
10:45 Sur Lohori 11:30 News in Bangla 11:35 Monday's programme 11:40 Close down

BBC

6:00am BBC World News 6:30 India Business Report 7:00 BBC World News 7:25 This Week 8:00 BBC World News 8:30 India Business Report 9:00 BBC World Headlines 9:30 Horizon 10:00 BBC World News 10:20 Britain in View 11:00 BBC World News 11:25 India Business Report 12:00noon BBC World News 12:20 This Week 1:00 BBC World Headlines 1:05 Correspondent 2:00 BBC World News 2:30 Time Out: Film 36 3:00 BBC World News 3:30 Time Out: Airport 4:00 BBC World Headlines 4:05 Heart of The Matter 5:00 BBC World News 5:20 Whicker's World: A Taste Of Spain 6:00pm BBC World Headlines 6:05 White Heat 7:00 BBC World Headlines 7:05 Breakfast With Frost 8:00 BBC World News 8:30 Time Out: Jeremy Clarkson's Motorworld 9:00 BBC World Headlines 9:05 Horizon 10:00 BBC World News 10:20



3rd Rock from the Sun on Star Plus Tonight at 8:00

Earth Report 10:30 Time Out: Film Man in France 11:00 BBC World News 11:20 Britain in View 12:00noon BBC World News 12:20 Window On Europe 1:00 BBC World Headlines 1:05 Window On Europe 2:00 BBC World News 2:30 Time Out: The Farmborough Air Show 3:00 BBC World Report 3:05 World Business Report/24 Hours 5:00 BBC World News 5:10 The Money Programme

CHANNEL V

6:00am Frame by Frame 7:00 Rewind VJ Sophtia 8:00 Frame by Frame 9:30 Soul Curry 11:00 BPL OYE 12:00 Sansui Manglajha 12:30 First Day First Show 1:00 Big Bang VJ Alessandra 2:00 Speak Easy 2:30 Videcon Flashback 3:00 Asian Top 20 VJ Trey 5:00 The Vibe Weekend VJ Luke 7:00 Palmolive Extra Time Pass 8:00 The Indian Top 10 9:00 Launchpad VJ Sophtia 10:00 House of Noise VJ Luke 11:00 Rewind VJ Sophtia 12:00 Big Bang VJ Alessandra 1:00 The Ride VJ Trey 2:00 By Demand VJ Trey 3:00 Big Bang VJ Alessandra 4:30 Launchpad VJ Sophtia 5:30 VJ Alessandra

STAR MOVIES

7:30am Action: Blackout 15 (Hindi Subtitles) 9:30 Family: Fergully: The Last Rainforest PG (Hindi Subtitles) 11:30 Adventure: Oceans Of Fire 15 (Hindi Subtitles) 1:30 Sunday Classic: Western: The Long Rope 15 (Hindi Subtitles) 3:30 Sunday Show Time: Dick Tracy Ep 13-14-15 PG (Hindi Subtitles) 4:30 Sunday Show Time: All About The Movies Ep 17-18 (PG) (English Subtitles) 7:30 Sunday Family Double Feature: The Dogpound Shuffle 12 (Hindi Subtitles) 9:15 Film 96 9:30 Gold 29th Street (Hindi Subtitles) 11:30 True Story: Love And Betrayal: The Mia Farrow Story (Arabic Subtitles) 3:30 Action: Malone 16 (Arabic Subtitles) 5:30 Comedy: Bhaji On The Beach 16 (Arabic Subtitles)

ZEE TV

5:30 Surtal 6:00 The News 6:30 Jagran 7:00 Suno Bhai Sadho 7:30 Mas 8:00 Mythological Hindi Film 10:30 Aap Ki Adalat 11:00 Galaxsee 11:30 Lakme Khoobsurat 12:00 Beep Ke PG 12:30 Bourvita Quiz Contest 1:00 Namaste India 1:30 Asian Sky Show 2:30 HFF Takkar 5:00 Dhak Ghar/Apna Ghar 5:30 Insight 6:00 Colgate Gai Yoodie 7:00 Mere Ghar Gai Zindagi 7:00 Gane Anjane 7:30 Ad Mad Show 8:00 Tumhare Liye 8:30 Shuno Shuno Tring 9:00 Nimmo Aahaa 9:30 9 Malabar Hill 10:00 The Zee Horror Show 10:35 The News 11:00 Index 11:30 Philips Top Ten 12:30 Gopajee 1:00 Mr Muntu 1:30

STAR Sports

6:00am WTA Tour 1996 Toshiba Tennis Classic From San Diego 8:00 Live Pepsi Asian Cricket Council Trophy Final From Kuala Lumpur 10:30 Asia Sports Show 11:00 Lunch 11:30 Live Pepsi Asian Cricket Council Trophy Final 3:30 Omega Tour Film Open His 5:00

Graviera Ki Umeed 2:00 Arabic Programme 2:30 TMM 4:00 Dastan 4:30 Goomta Ana 5:00 Jooran

EL TV

00:30pm Lata Mangeshkar Special 1:30 Haste Haste 2:30 Ajeeb Dastan 3:30 Sur Sargam 4:30 Pyar Hi Pyar 5:30 Lata Mangeshkar Special 6:30 Haste Haste 7:30 Ajeeb Dastan 8:30 Its My Choice 9:00 Aloo Ru-Ba-Ru 9:30 Fit Or Fat 10:00 Fauji 10:30 Song Yatra 11:00 Sorry Meri Lorry 11:30 Liberty Public Demand 1:00 Number One 1:30 Mito Ustra Uthup Show 2:00 Wonder Wings Amar Prem 2:30 Money Game 3:00 Instinct Purnashresta 4:00 Zandu Balm Dastan 4:30 Ortem Hit Thi Hit Hai 5:00 People's Club 5:30 Hee Hee Ha Ha 6:00 Hollywood Bollywood 6:30 Dear El 7:00 Kai Bhi Aaj Bhi 7:30 Humrahi 8:00 Kamaal Combination 8:20 Hasen Pal 8:30 The Music Show 9:00 V3 9:30 Shatranj 10:00 Aloo Ru Ba Ru 10:30 Stand-by 10:40 Adhineti 11:00 Anadi 12:00 Meri Marzi

PTV

8:00am Tilawat Aur Tarjuma/Hamd/Naat 8:20 Cartoon 8:30 Khabraam 8:45 Fun Time 9:05 TV Encyclopedia 9:25 Khat Khat 9:40 Sports Clinic 10:05 PTV Gold 10:30 English Film: Darkwing Duck 10:55 Masti Masti 11:00 Khabraam 11:10 Sports Hour 12:05pm Biscop 95/Qasmi Hani 12:55 Quran-e-Hakeem 1:02 Bismillah 1:15 Aaj Di Ka Hani 1:40 Aaj Di Shaam 2:00 Khabraam Ep 431 (Drama Serial) 2:55 Ghost Writer 3:55 Karabar 4:15 Education 5:25 Razi for Sen 5:55 Zameen Per Zindegi (Drama Serial) 6:25 Ajoop Course 7:00 English News 7:30 English Film: Star Trek Deep Space Nine 8:20 Hawwa Ki Naam 9:00 Break for Headlines News 9:20 Sur Tasver

(Pakistani Film 1947-95) 10:00 Khabraam & Commercial News 11:00 Pezwaan 11:35 Home Victims (New Serial) 12:35 Music Masters Raag Rang 1:00 Khas Khas Khabraam

DD 7

9:00 Janmadin 9:05 Geetmalay Closed

9:30 Movie Club Film 12:30 Surur Asar 1:00 Dhang Dhang Bole 1:30 Movie Club Film 3:30 Geet Sangeet 4:30 Bangla Feature Film 5:30 News 7:20 Bironod 7:30 Bangla Sambad 8:00 Marzada 8:25 Ek Tuku Basa 9:30 Drama 10:00 Dance Prog 10:30 News/Bangla Sambad 11:00 Closed

2:00 Hum Se Barker Gong 2:30 Mere Massage Meri Geet 3:00 Naye Tarane 3:30 Gaane Jaane Maane 4:00 Dekh Tamasa Dekh 4:30 O'Maria 5:00 Jannat Kaha Mera Jigar Gaya Ji 5:30 Ghar 6:00 Dekh Tamasa Dekh 6:30 Aahat 7:00 Endless Bol 8:00 Cine Classics Hindi Feature Film 11:00 The Young And The Restless 12:00

SONY ET

8:30am Jai Bir Hanuman 9:00 Yaadon Ki Baarat 9:30 Gaane Jaane Maane 10:00 Hindi Hits Songs 10:30 Buddha 11:00 City Lines 11:30 Sunday Ki Dance 12:30 Pehli Mulakat 1:00 Good Shot 1:30 Pehchan

2:00 Hum Se Barker Gong 2:30 Mere Massage Meri Geet 3:00 Naye Tarane 3:30 Gaane Jaane Maane 4:00 Dekh Tamasa Dekh 4:30 O'Maria 5:00 Jannat Kaha Mera Jigar Gaya Ji 5:30 Ghar 6:00 Dekh Tamasa Dekh 6:30 Aahat 7:00 Endless Bol 8:00 Cine Classics Hindi Feature Film 11:00 The Young And The Restless 12:00

Ghaav 12:30 Aahaat 1:00 Fasle 1:30 Surf-Wheel Of Fortune 2:00 Premier 2:30 Closed

ZEE CINEMA

6:30 Hi Hai Fil Hai 8:00 B/W Film 10:45 Break Ke Baad 11:15 Film 2:00 Filmi Chakkar 2:30 Film 5:15 Songs

Garfield®

by Jim Davis

