Law and Our Rights

"All citizens are equal before law and are entitled to equal protection of law"-Article 27 of the Constitution of the People's Republic of Bangladesh

PSA and the Existing Laws: Did We Really Need a Special Law?

by Nurul Kabir

IN a bid to justify enactment of the controversial Public Safety (Special Provisions) Act, Home Minister Mohammad Nasim claimed in Jatiya Sangsad on January 27 this year that the country's existing laws have proved inadequate to curb serious crimes as these are not clearly defined in existing laws.

In view of the delay in disposal of cases, occasioned by lengthy litigation, the Bill recognises certain crimes as non-bailable offence and seeks for summary trial of alleged criminals in special tribunals. The Bill also takes away the jurisdiction of the judges to grant bail to an accused during the investigation period (75 days in all).

The Home Minister got the controversial law enacted in absence of the opposition legislators on January 30 amidst criticism that it has been specially designed to harass political opponents.

Contrary to the government's claims, most of the crimes under the PSA are actually covered by the existing laws. In certain cases, the existing laws are more stringent in terms of punishment to be meted out to a criminal. In case of other crimes some amendments to the existing provisions of the Bangladesh Penal Code (BPC), especially in terms of clearly defining crimes and specifying punishments, would have certainly served the government's pronounced purpose.

Eight separate sections (from 4 to 11) of the PSA address a total of eight crimes: (1) Extortion; (2) Interference in the process of tender; (3) Damaging vehicles, and public and private properties; (4) Obstruction of traffic movements; (5) Demanding as well as securing ransom, (6) Creating panic, (7) Snatching, and (8) Instituting false case. Of them, only 'snatching' is missing in the conventional laws including the BPC. But some legal experts are of the opinion that snatching is a form of extortion and thereby is well covered by different sections of the BPC.

The present article seeks to draw a comparative study between the provisions of the PSA and the relevant sections of the BPC and certain other laws.

Extortion (*Chandabazi*)

The section 5 of the PSA says, "Whoever by using illegal force or by putting any person in fear of any kind –

a. obtains any money or goods or illegitimate favours in the name of subscription or donation or anything else from any person or institution; or
b. compels such other person or a third person or an institution to give subscription or donation of any kind or to deliver any property or to provide any other facility to him or to any other person,

he shall be said to have committed *chandabazi* and shall be punished with imprisonment for life or with imprisonment for a term, which may extend to fourteen years and shall not be less than three years; and shall also be liable to fine.

Section 383 of the BPC defines the crime quite substantially: "Whoever intentionally puts any person in fear of any injury to that person, or to any other, and thereby dishonestly induces the person so put in fear to give donation or subscription of any kind or to deliver to any person any property or valuable security of any or anything signed or sealed which may be converted into a valuable security, commits 'Extortion'."

As regards punishment for extortion, section 385 of the BPC says: "Whoever in order to the committing of extortion puts any person in fear or attempts to put any person in fear of any injury shall be punished with imprisonment of either description for a term which may extend to fourteen years and shall not be less than five years or with fine or with both."

Punishment for extortion is more stringent under the BPC (minimum five years of imprisonment) than under the PSA (minimum punishment is three years of imprisonment).

Interference in the Process of Tender

Section 6 of the PSA says: "Whoever by using illegal force or by putting in fear of any kind, interferes or mounts pressure or create obstacles in the process of invitation, submission or acceptance of tender of a government or non government organisation, or interferes or mounts pressure or creates obstacle in the process of discussion for making estimate of a work or issuing work order as regards the tender, or compel the authority to accept a submitted proposal or reject an accepted proposal or issue an work order, shall be punished with imprisonment for life term or for a term which may extend to fourteen years and shall not be less than three years."

The BPC does not specifically address the issue of tender, but a couple of its provision does cover the crime to a great extent.

Section 184 of the BPC says, "Whoever intentionally obstructs any sale of property offered for sale by the lawful authority of any public servant, as such, shall be punished with imprisonment of either description for a term which may extend to one month, or with fine which may extend to five hundred taka, or with both."

Again, section 186 of the BPC says, "Whoever voluntarily obstructs any public servant in the discharge of his public functions, shall be punished with imprisonment of either description of a term which may extend to three months, or with fine which may extend to five hundred taka, or with both".

Damaging Vehicle, Property etc.

Section 7 of the PSA deals with the crime. It says: "Whoever by using illegal force,

a. intentionally causes destruction of or damage to any vehicle or
b. intentionally causes destruction of or damage to any movable or immovable property belonging to any person, or government or government controlled institution, or any institution or organisation or authority established under law, or any company or firm or any non government institution or embassy, or any foreign or international institution or organisation, shall be punished with imprisonment for a term which may extend to ten years and shall not be less than two years and shall also be liable to fine."

Section 425, and also sections 426, 435 and 436 of the BPC address the crimes.

Section 425 of the BPC says, "Whoever with intend to cause or knowing that he is likely to cause, wrongful loss or damage to the public or to any person, causes the destruction of any property, or any such change in any property or in the situation thereof as destroys or diminishes its value or utility, or affects it injuriously, commits mischief. "

Section 426 of the BPC says, "Whoever commits mischief shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both."

Section 435 of the BPC says, "Whoever commits mischief by fire or any explosive substance, intending to cause, or knowing it to be likely that he will thereby cause damage to any property to the amount of one hundred taka or upwards or (where the property is agricultural produce) ten taka or upwards, shall be punished with imprisonment of either description for a term which may extend to seven years and shall also be liable to fine. "

Section 436 of the BPC says, "Whoever commits mischief by fire or any explosive substance intending to cause, or knowing it to be likely that he will there by cause the destruction of any building which is ordinarily used as a place of worship or as a human dwelling or as place for the custody of property, shall be punished with imprisonment for life, or with imprisonment of either description for a term, which may extend to ten years, and shall also be liable to fine. "

Obstructing Traffic Movement

Section 8 of the PSA says, "Whoever by using illegal force or by putting in fear of any kind causes obstruction to traffic movement in any public road, waterway or railway, or compels the driver/operator of any vehicle or vessel to change its normal route, shall be punished with imprisonment for a term which may extend to fourteen years and shall not be less than three years and shall also be liable to fine."

Section 431 of the BPC says, "Whoever commits mischief by doing any act which renders or which he knows to be likely to render any public road, bridge, navigable river or navigable channel, natural or artificial, impassable or less safe for travelling or conveying property, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine or with both."

Demanding as well as Realising Ransom

Section 9 of the PSA says, "Whoever with the intention to realise ransom confines or abducts any person, other than a woman or child, or puts such other person or any other person in fear of confinement or abduction, or after such wrongful confinement or abduction demands or realises ransom, shall be punished with imprisonment for life or with imprisonment for a term which may extend to fourteen years and shall not be less than three years and shall also be liable to fine."

Sections 340, 347 and 348 of the BPC deal with this crime, too.

Section 340 says, "Whoever wrongfully restrains any person in such a manner as to prevent that person from proceeding beyond certain circumscribing limits, is said 'wrongfully to confine' that person."

Section 347 says, "Whoever wrongfully confines any person for the purpose of extorting from the person confined or from any person interested in the person confined, any property or valuable security or of constraining the person confined or any person interested in such person to do anything illegal or to give any information which may facilitate the commission of an offence, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine."

Section 348 says, "Whoever wrongfully confines any person for the purpose of extorting from the person confined any confession or information which may lead to the detection of an offence or misconduct, or for the purpose of constraining the person confined or any person interested in the person confined to restore or to cause the restoration of any property or valuable security or to satisfy any claim or demand, or to give information which may lead to the restoration of any property or valuable security, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine."

Creating Panic

Section 10 of the PSA says, "Whoever suddenly or in a pre-planned manner, sets fire on the road or in a vehicle or in an educational institution or in the vicinity of the institution or in places used by public or in a market place or any other places, or creates panic in the public mind or causes obstacle in their day to day work or in the movement in the public way by causing explosion or demonstrating illegal force or power shall be punished with imprisonment for a term which may extend to ten years and shall not be less than two years and shall also be liable to fine."

Section 148 of the BPC and the sections 3 and 3A of the Explosive Substances Act, 1908 deals with the crimes described in Section 10 of the PSA.

Section 148 of the BPC says, "Whoever is guilty of rioting being armed with a deadly weapon or with anything which, used as a weapon of offence, is likely to cause death, shall be punished with imprisonment of either description for a term which may extend to three years or with fine or with both."

Section 3 of the Explosive Substances Act, 1908 says: "Any person who unlawfully or maliciously causes by any explosive substance any explosion of a nature likely to endanger life or to cause serious injury to life or property shall, whether any injury to person or property has been actually caused or not, be punishable with death, or with imprisonment of life, to which fine may be added, or with imprisonment for a term which may extend to ten years and shall not be less than five years, to which fine may be added."

Section 3A of the Explosive Substances Act, 1908 adds: "Any person who unlawfully or maliciously causes by any explosive substance any explosion with intent to commit or, to enable any other person to commit, an offence punishable under any law for the time being in force shall, whether any offence has been actually committed or not, be punishable with imprisonment for a term which may extend to seven years and shall not be less than three years, to which fine may be added."

Now, as told earlier, the BPC does not specifically deal with a crime like **Snatching (*Chhintai*)**. About snatching, section 4 of the PSA says, "Whoever, by using illegal force or by putting any person in fear of any kind, snatches away money, ornaments or property or valuable documents from the person so put in fear, or from any other person, shall be said to have committed *Chhintai* and shall be punished with imprisonment for a term which may extend to ten years and shall not be less than two years and with fine."

Those who believe that snatching is a form of extortion refer to the section 383 and 385 of the BPC, already quoted earlier.

Instituting False Case and Charge

Section 11 of the PSA says, "Whoever with intent to cause injury to any person, institutes or causes to be instituted any criminal proceeding against that person or falsely charges any person, knowing that there is no just or lawful ground for such proceeding or charge against such person under this Act, shall be punished with imprisonment of either description for a term which may extend to seven years and shall also be liable to fine."

The government has repeatedly claimed that such a provision, incorporated into the PSA as 'a safety valve' to protect innocent citizens from unscrupulous ones, had never been there in the country's legal system.

But contrary to the government claims, section 211 of the BPC says: "Whoever, with intent to cause injury to any person, institutes or causes to be instituted any criminal proceeding against that person, or falsely charges any person with having committed an offence, knowing that there is no just or lawful ground for such proceeding or charge against such person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both; and if such criminal proceeding be instituted on a false charge of an offence punishable with death, imprisonment for life, or imprisonment for seven years or upwards, shall be punishable with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."

The present study as well as the translation of the PSA have been done in collaboration with the legal research wing of the Bangladesh Legal Aid and Services Trust (BLAST)

Setting the Tone

Protecting Environment through Judiciary

by Amina Rahman Chowdhury

ENVIRONMENTALLY, Bangladesh stands at a crucial juncture. Arsenic contamination of groundwater, air pollution, fast depletion of greenery and water bodies, etc. aside, the country is extremely vulnerable to the ill-effects of sea-level rise -- induced by global warming. Unfortunately, like many other developing countries, we, too, have been slow to react. True, we have been signatory to different international treaties, conventions and declarations environment protection; and also have enacted a wide range of legal provisions addressing the issue. However, at the enforcement and implementation level, our performance has so far been disappointing. Besides, we have failed to adequately sensitise common people about the importance of environment conservation. Even many a policy-maker is not adequately aware in this regard.

There are 185 laws, which directly or indirectly address environmental issues. Environmental policies, strategies, guidelines and legislative provisions were developed since 1860. Unfortunately, the members of different professionals or even the judiciary are not aware of these policies, strategies or guidelines let alone the common people. Hence, participating actively in the environmental activism remains a far cry.

Right to environment is a much-talked about concept since the 70's. A number of international declarations embodied to prevent environment from further degradation.

Certain states have even embedded environment related provisions in their constitutions to establish that right. In our country, the Supreme Court has been playing an encouraging role in establishing the global standard setting tone in national jurisdiction albeit progressively. Environmental justice has been defined and discovered in the interpretation of fundamental right enshrined in constitution and in various decisions of the learned judges.

In Bangladesh, an environmental jurisprudence is yet to develop. This requires an eco-friendly legal system, apart from educating and informing different parts of our society, creating awareness among the judicial officers are equally important. Because, only an enlightened judiciary can ensure the proper implementation of environmental policies and granting people their right to environment, known as a third generation right.

Bangladesh Environmental Lawyers Association (BELA) that successfully pioneered the Public Interest Environmental Litigation in Bangladesh, has initiated yet another innovative programme by arranging a workshop on Environment, Environmental Law and Judiciary, to inform the judicial officers regarding the environmental policies, guidelines, strategies and the implementation status in order to create an effective environment- friendly legal system in the country. The response was very encouraging. Judicial officers, numbering 26 from different parts of the country and representatives from donor agencies attended this two-day workshop from 10th to 11th March and interacted with the speaker panels which consisted eminent lawyers, journalists, judges and leading environment specialists.

Participants at the workshop

The participants were:

Mr. Mir. Md. Awlad Hossian Additional District Judge, Dhaka, Mr. M. Kader Nawaz Additional District Judge, Dhaka, Begum Kaniz Akhter Nasreena Khanam Additional District Judge, Mymenshingh, Mr. A.S.M. Salahuddin Khan, Additional District Judge, Kishorganj, Mr. Md. Shahinur Islam, Additional District Judge, Dhaka, Mr. Md. Ashrraf Hossain, Additional District Judge, Munshiganj, Mr. Md. Mokter Ahmed, Additional District Judge, Madaripur, Mr. Md. Arifur Rahman Sub-Judge, Mymenshingh, Mr. Md. Rafi Imam Sub-Judge, Dhaka, Mr. Mohammad Altaf Hossain Sub-Judge, Tangail, Mr. Bimal Chandra Sikdar Sub-Judge, Faridpur, Mr. Md. Manjurul Basit Sub-Judge, Dhaka, Mr. Md. Muklesur Rahman Sub-Judge, Gazipur, Mr. A.K.M. Arifur Rahman Sub Judge, Mymenshigh, Mr. Md. Golam Sarwar Senior Assistant Judge, Dhaka, Mr. Shahidul Alam Zinuk Senior Assistant Judge, Dhaka, Mr.A.B.M. Joherul Gony Chowdhury, Senior Assistant Judge, Narayanganj, Mr. Md.Bazlur Rahman Senior Assistant Judge, Manikgonj, Mr. Humayun Farhad Senior Assistant Judge, Gazipur, Mr. A.S.S.M. Zahirul Haque Senior Assistant Secretary Ministry of Law, Justice and Parliamentary Affaires, Mr. Md. Rafiqul Alam Senior Assistant Secretary Ministry of Law, Justice and Parliamentary Affaires Mr. Md. Helal Chowdhury Senior Assistant Secretary Ministry of Law, Justice and Parliamentary Affaires, Mr. Sheikh Mafizur Rahman Senior Assistant Secretary, Ministry of Law, Justice and Parliamentary Affaires, Mr. Md. Golam Kibria First Assistant Registrar, High Court Division, Bangladesh Supreme Court, Dhaka, Mr.A.H.M. Habibur Rahman Bhuiya Law Officer, Ansar & VDP, Ministry of Home Affairs, Begam Zebunnesa Assistant Judge ,Netrokona.

'In our country, environmental consciousness is a recent phenomena . However, in our Constitution, Article 32 provides us right to life and at the session on 'Environmental Law and Justice — Challenges and Prospect', Justice Mainur Reza Chowdhury, Honourable Judge of Bangladesh Supreme Court, explained the notion of 'Right to life' while discussing constitutional rights and remedies provided for environmental protection.

He opined that, life is not just life in clinical sense but a healthy and productive life that depends on man's right to enjoy the nature. It is man's fundamental right to the protection of environment.

As the environmental sensitisation program is taking a stronger turn, there is a growing recognition by the Supreme Court of Bangladesh, the need for protection of environment as a fundamental right under Article 102 of the Constitution, in writ petitions filed by those directly aggrieved or affected and also by the petitions filed on their behalf by organisations concerned about degradation of environment. Against environmental wrongs, constitutional remedies and protection can be made available when the case will be brought before the court and that is not a matter dealt solely by the judiciary or by the citizen. It has to be confronted collectively by the citizens of the states and political suits should be brought in favour of environmental protection.

Hon'ble Judge of Bangladesh Supreme Court, Mr. Justice Fazlul Karim, while speaking on the 'Role of Judiciary in Protecting Environment — the Status of Public Interest Litigation in Bangladesh', cited a number of leading cases of this sub-continent pointing out the constitutional and legal provision that has been established through specific decisions.

While discussing on the status of PIL in Bangladesh, he cited recent leading cases brought by different human rights organisations on various wrongs committed against human rights as well as against environment.

He said, though judicial activism is a very often mentioned pronouncement among judges, judges are duty and oath bound to preserve, protect and defend the Constitution and the laws of Bangladesh, leaving less or even no scope for any activism. Rather they, by expanding their power, can secure the rights enshrined in the Constitution. Civil society can act as watch-dog to ensure that the state machinery is working properly. He hoped that, an active civil society would be able to solve much of our social, economical and environmental problems through their meaningful participation.

In a poor country like Bangladesh, most of the people are not aware of the rights provided to them by the law and not familiar about environmental hazards to which they are exposed. Even the educated lot do not know how law protects them and what legal provisions are applicable to a particular infringement of a particular right.

Barrister Amir-ul Islam discussed on the 'Environmental Wrong: Criminal and Tortious Liability'. He said, Environment is the third generation of human rights and there have been quite developments in the developed nations that are established by several timely decisions. He mentioned some related leading cases of tort. He further said, 'tort' is a civil wrong and if we can develop a legal culture, then suits against environmental wrong can be brought under existing civil jurisdiction. He mentioned a number of leading cases of tort and emphasised on the concepts of duty of care and absolute liability. He suggested provisions regarding environmental rights should be inserted in our Constitution. People are more keen to go to Criminal Court, but they should be made aware that those are civil wrongs. In this regard, he mentioned the laws regulating environmental Law in Bangladesh and the wrongs defined in such laws.

While summing up the session Justice Naimuddin Ahmed, Member of Bangladesh Law Commission, told that judiciary made the Constitution working. He mentioned a case where a difference was drawn between Writ Jurisdiction in India and in Bangladesh. He said, mentioning Section 9 of the Civil Procedure Code (CPC) where it is prescribed, the Courts shall have jurisdiction to try all suits of a civil nature unless barred. So there is a scope of interpretation of any other wrong or injury to public.

He pointed out, if we could claim damage for property then why not for environment that encompasses our life and property ?

The participating judicial officers also showed their keen interest as well concern and asked about the Lawyer's role to introduce such practice in Bangladesh.

Environment and human existence go hand in hand. And our right to environment, comes with a co-relative duty to protect it. An environmentally sensitised and assertive judiciary can manifestly help us to save our endangered environment from further deterioration and thereby make a better place for ourselves and the generation yet to be borne.

Environment, Environmental Law and Justice

by Justice Latifur Rahman
Hon'ble Chief Justice of Bangladesh

MOST of us live in the city of Dhaka which has a population of 10 million people who live in an area of 1,353 Square Kilo Meter. The problem of pollution in Metropolitan City of Dhaka is enormous and it needs immediate and meaningful solution.

The effects of human development on the environment are wide spread, such as air and water pollution, climate change, deforestation, loss of biological diversity, degradation and soil erosion. Thus, necessary and effective laws keeping pace with time must be made in these fields. It is undeniable that with the advent of technological development and advancement of human knowledge, the environment is bound to be affected. But we must make an effort to make a balance between the two, so that the human health hazards due to technological civilization may not corrode adversely on our existence.

As a Judge, I must say a word about the Environmental Constitutionalism. I will refer to the constitutional provisions regarding "environmental protection" in SAARC countries such as, India, Sri Lanka and Nepal. In Indian, Articles 48A and 51A(g) of the Indian Constitution make it imperative for the State as well as for every citizen to do everything to protect and improve the environment including forests, lakes, rivers, wild life and to have compassion for living creature.

In, recent years, in India more than 200 central or state laws have been passed on water pollution, air pollution, wild life, forests and environmental protection.

Sri Lanka's present Constitution provides that the state shall protect, preserve and improve the environment for the benefit of the community.

In the new Constitution of Nepal in 1990, some new Articles have been incorporated as Directive Principles of State policy to preserve the environment and reduce adverse impact on environment due to physical development activities. A new era of environmental constitutionalism has ushered in through the constitutional dictates and policy decisions in many countries of the World. Strictly speaking, in our Constitution, there is no such Article with regard to the protection and preservation of environment. A time has come to ponder over it and to incorporate some provisions in our Constitution to protect environment and ecology for all.

In our country, environmental cases are very few. India being a vast and industrially developing country, the increase in environmental awareness since 1980, has triggered a large number of cases in various courts. In India, every provincial High Court has a Bench dealing with environmental cases. Luckily, I sat in one such Bench along with the Chief Justice of Madras in 1995. In India before 1984, the Indian Judiciary made very little contribution in the area on environmental protection. The "Bhopal Disaster Case" is an example of that. But during late 1987, Indian Supreme Court has started a vigorous role in preventing environmental degradation.

I must put on record my deep appreciation for BELA in improving environment in Bangladesh. I recall with respect the contributions of late Dr Mohiuddin Farooque who was a public spirited lawyer in this regard. I hope that public spirited lawyers in our country through various discussions and seminars will motivate the people and will put pressure on the law givers to make effective laws for the Protection of Environment in Bangladesh.

The Government must declare policy decision and enforcement mechanism to help prevent further damage to our environment. The Judges and lawyers of a country can be an effective tool to maintain a balance between the environment and development. Right to healthy environment should be considered as a fundamental right as because the very existence of human life depends on the environmental conditions around us. If, we cannot lead a healthy life all our endeavors will end in futility. So I urge the Government and the people to be conscious of the environmental degradation and find out possible solutions of the same. For that end the Judges must be imbibed with a sense of judicial activism.

The Supreme Court of India held that the right to life is a fundamental right under Article 21 of the Indian Constitution and it includes the right to enjoyment of pollution free water and air for full enjoyment of life. The importance of law in environmental protection may be summed up by quoting Justice P N Bhagawati, the former Chief justice of India who said as follows:-

"Environmental protection includes maintenance and preservation of ecological balance and conservation of non-renewable as well as careful exploitation of renewable resources. It is necessary to have a comprehensive law which will take all these aspects and prevent ecological deficits."

In conclusion, I urge the Government to look into the matter of environmental problems with great care for the well being of the city dwellers. The trainee Judges should be conscious to implement the environmental laws in Bangladesh.

This article is based on author's concluding address to the Judicial Officers at BELA's workshop on Environment, Environmental Law and Justice'

Degradation of environment not only affects the present but also the future.