



Star LAW history



Declaration of the Rights of the Man and the Citizen, 1789

LAW DESK

Inspired by some declaration of the American independence of 1776 and the philosophic spirit of the XVIIIth century, the Declaration of the rights of the Man and the Citizen of 1789 marks the end of the "Ancient Régime" and the beginning of a new era.

The Declaration of the rights of the Man and the Citizen is, with the decrees of August 4th and 11th, 1789 on the abolition of the right feudal lords, one of the fundamental texts voted by the constituent National Assembly formed following the meeting of the General States.

Adopted in its principle before July 14th, 1789, it gives place to the elaboration of numerous projects. After long debates, the representatives vote for the final text on August 26th, 1789.

It contains an introduction and 17 articles which involve capacities concerning the individual and the Nation. It defines "natural and imprescriptible" rights as the freedom, the property, the security, the resistance for the oppression. The Declaration also recognises the equality, notably in front of the law and the justice. It asserts finally the principle of the separation of the powers.

Ratified only on October 5th by Louis XVI under the pressure of the Assembly and the people run up to Versailles, it use as introduction to the first Constitution of the French Revolution, adopted in 1791. Although the Revolution denied itself, afterward, some of its principles elaborated two other declarations of the rights of the Man in 1793 and 1795, it's the text of August 26th, 1789 that became a reference for our institutions, notably in the Constitutions of 1852, 1946 and 1958.

The Declaration of 1789 inspires, in the XIXth century, similar texts in numerous countries of Europe and Latin America. The French revolutionary tradition is also present in the European Agreement of the rights of the Man signed in Rome on November 4th, 1950.

The representatives of the French people, made up as a national Assembly, considering that ignorance, the lapse of memory or the contempt of the humans right are the only causes of public misfortunes and the corruption of the governments, solved to expose, in a solemn declaration, the rights natural, inalienable and crowned of the man, so that this declaration, constantly presents to all the members of the social body, ceaselessly points out their rights and their duties to them; so that the acts of the legislative power and those of the executive power, being able to be at every moment compared with the aim of any political institution, are respected of it; so that the complaints of the citizens, founded from now on simple and undeniable principles, always turn to the maintenance of the Constitution and the happiness of all.

There are 17 Articles in the declaration. The major Articles are the following:

Article 1 - the men are born and remain free and equal in rights. The social distinctions can be founded only on the common utility.

Article 2 - The aim of any political association is the conservation of the natural and imprescriptible rights of the man. These rights are freedom, the property, safety and resistance to oppression.

Article 3 - The principle of any sovereignty lies primarily in the Nation. No body, no individual cannot exert authority which does not emanate from it expressly.

Article 4 - Freedom consists in being able to do all that does not harm others: thus, the exercise of the natural rights of each man has terminals only those which ensure the other members of the company the pleasure of these same rights. These terminals can be given only by the law.

Article 5 - The law has the right to defend only the harmful shares of the company. All that is not defended by the law cannot be prevented, and no one cannot be constrained to do what it does not order.

Article 6 - The law is the expression of the general will. All the citizens have right to contribute personally or by their representatives to his formation. It must be the same one for all, either that it protects, or that it punishes. All the citizens, being equal in these eyes, are also acceptable with all public dignities, places and employment, according to their capacity and without another distinction that their virtues and their talents.

Article 7 - No man cannot be marked, be stopped or held that in the cases determined by the law and according to forms' which it prescribed. Those which solicit, dispatch, carry out or make carry out arbitrary commands must be punished; but any citizen called or seized under the terms of the law must obey at the moment; he makes himself guilty by resistance.

Article 8 - The law should establish only sorrows strictly and obviously necessary, and no one can be punished only under the terms of one law established and promulgated before with the offence, and legally applied.

Article 9 - Any man being supposed innocent until he was declared guilty, if it is considered it essential to stop him, any rigour which would not be necessary to be ensured of his person must severely be repressed by the law.

Article 10 - No one should not be worried for his opinions, religion, provided that their demonstration does not disturb the law and order established by the law.

Article 11 - The free communication of the thoughts and the opinions is one of the most invaluable rights of the man; any citizen can thus speak, write, print freely, except answering of the abuse this freedom in the cases determined by the law.

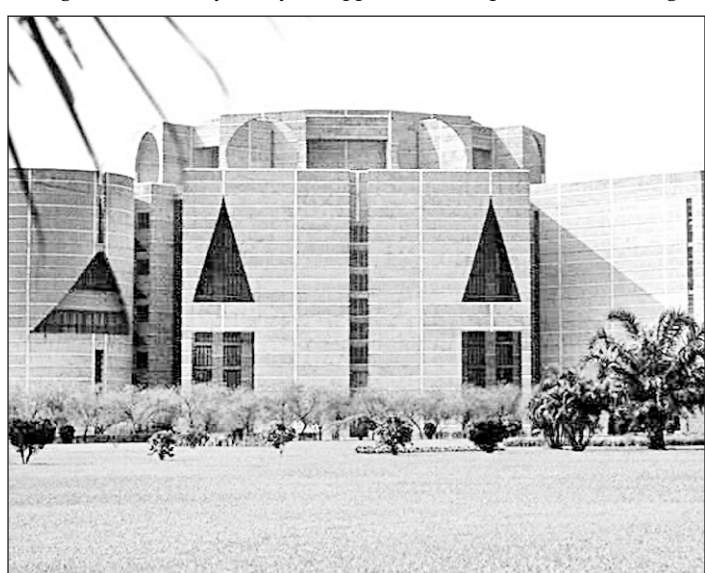
Article 14 - The citizens have the right to note, by themselves or their representatives, the need for the public contribution, to agree it voluntarily, to follow employment of it, and to determine of it the share, the balance, covering and the duration.

LAW letter



Rule of law and democracy

The concepts of 'rule of law' and 'democracy' are complementary to each other. It commands equality i.e. everyone irrespective of his race, religion and caste is equal before law and have an equal protection of law. It also shows the superiority of law and declares that everyone whatever his rank or position will remain under the 'yoke' of law. In the preamble of our constitution it has been pledged to ensure rule of law in the society. It implies that the rule must be by a democratic law that is passed after adequate debate and discussions in the democratic parliament. It is the people who elects their representative to the parliament. And our country is a democratic one. We have been practising parliamentary democracy since 1991. Now the question is, to what extent our parliament is democratic and up to which extent the rule of law has been ensured in our society? The answer is simply frustrating. Because of boycott by the oppositions, the parliament is losing its



importance.
MD. Kamal Hossain Meahzi,
LL.B (Hons), University of Chittagong.

Star LAW report



Carrying frivolous, malafide suit is punishable offence

High Court Division
Supreme Court of Bangladesh
First Appeal No 343 of 2002
Delwar Hossain and others
Vs
Janata Bank and others
Before Mr Justice AK Badrul Huq
and Mr Justice Md Abu Tariq
Date of Judgment: 5.5.2003

Background

AK Badrul Huq, J: It is wretchedness to observe that many unscrupulous litigants in order to steer clear of order, judgment and decree of courts adopt dubious ways and take recourse to ingenious methods of presenting fraudulent and untenable litigations/proceedings to foil judgment, order and decree of courts. Such tendency deserves to be taken serious note of and fraudulent proceedings are to be nipped in the bud at the threshold. The present proceeding is one of such where judgment-debtors in order to nullify judgment and decree passed by Artha Rin Adalat, Khulna in Artha Rin Case No 54 of 1998 without resorting to remedies available to them under Artha Rin Adalat Ain of 1990, laid a suit being Title Suit No 1 of 2002 in a court of ordinary civil jurisdiction that is First Court of Joint District Judge, Khulna against decree-holder Janata Bank. The suit is instituted for a declaration that the preliminary and final decree passed in Artha Rin Suit No 54 of 1998 of Artha Rin Adalat, Khulna is collusive and, also, for a declaration of Maliki Right free from all encumbrances on the property mentioned in schedule to the plaintiff and some other incidental declarations. Learned Joint District Judge on the strength of a petition laid under Order VII, Rule 11 of the Code of Civil Procedure (For short The Code) filed by decree-holder Janata Bank rejected the plaintiff. Judgment dated 27.8.2002 was followed by a decree. In recording rejection of plaintiff learned Joint District Judge took into account section 6 of The Ain of 1990 and, also, provisions embodied in Order VII, Rule 11(d) of The Code and rendered positive decision that Ain of 1990 is special statute and



subject to provisions contained in section 7 no order, judgment and decree of Artha Rin Adalat could be challenged before any court or authority. Feeling aggrieved, appellants preferred this appeal before this Court.

Deliberation

The fate of this appeal hinges on answer to the core question which is whether the decision of rejection of plaintiff by Artha Rin Adalat warrants any interference by this Court in the exercise of its appellate authority. The question posed now may be broached and answered. Under Order VII, Rule 11 of The Code a plaintiff can be rejected under four clauses which are:

- Where it does not disclose a cause of action
- where the relief claimed is undervalued, and the plaintiff, on being required by the court to correct the valuation within a time to be fixed by the Court fails to do so:
- where the relief claimed is properly valued, but the plaintiff is written upon paper insufficiently stamped, and the plaintiff, on being required by the court to supply the requisite stamp-paper within a time to be fixed by the court, fails to do so:
- where the suit appears from the statement in the plaint to be barred by any law.

Clause (d) of Rule 11 is relevant for our purpose. Rule 11(d) contemplates that a plaint merits rejection when it stands barred by law on the doctrine that still born suit should be buried in its inception so that no further time is consumed in a fruitless litigation. The word "law" in clause (d) means written law, general law or statute law. A suit which is on the face of it incompetent because of an express or implied embargo imposed upon it by a law should not be allowed to further encumber legal proceedings. On examination of the plaint it is found that the suit is barred by some provision of law, it is the statutory duty of the court to reject the plaint. The provision of Order 7 Rule 11(d) of The Code can be, thus, pressed into service when the suit is barred by any law.

Section 6(1) enshrines that subject to the provision contained in section 7 of The Ain of 1990 no question in respect of proceeding, order, judgment and decree passed by Artha Rin Adalat can be put forward in any court or before any authority. Section 6(2) enjoins that notwithstanding anything contained in sub-section (1) in the event of presentation of any petition before Artha Rin Adalat under Order 9 Rule 13 of The Code for setting aside any ex parte decree passed by Artha Rin Adalat, the petitioner is required to deposit half of the decreed amount or Bank Guarantee equivalent to the said amount and that failure to deposit the petition shall not be entertained.

Section 7 postulates that any person feeling aggrieved by any judgment or decree of Artha Rin Adalat can file appeal before High Court Division within 30 days of the judgment and decree. Section 7 further provides that no appeal can be filed against an interlocutory order. The requirement is deposit of half of the decreed amount.

Under the Ain of 1990 two remedies were available to judgement-debtor-plaintiff-appellant. One, a petition under Order 9 Rule 13 of The Code and the other an appeal before High Court Division. In both deposit of half of decreed amount was a positive requirement and mandate. The plaintiffs-appellants without availing the remedies available to them, challenged the rightness of the judgment and decree in a suit before a court of ordinary civil jurisdiction. The suit, thus, is eminently barred by law justifying rejection of plaintiff. Examination of the decision rendered by learned Joint District Judge and grounds canvassed in leading to decisions and ultimate conclusion reached demonstrates that those are well founded on law. No interference is, therefore, warranted.

Decision

Resultantly, this appeal is devoid of any substance and the same, thus, fails. Appeal stand dismissed. Judgment and decree dated 27.8.2002 recorded by learned Joint District Judge, First Court, Khulna in rejecting the plaint are maintained. Regard being had to the blameworthy conduct of plaintiffs-appellants in carrying frivolous, malafide and untenable suit to the door of ordinary civil court we award cost of Taka 5,000/- (Five Thousand) only upon them. Cost shall be paid to the decree holder respondent Janata Bank.

Mr M Qumrul Haque Siddique for appellants and Mr Syed Mafizur rahman for respondent no 1.

LAW week

Corruption alleged against Minister

A parliamentary standing committee has brought allegation of corruption in import and distribution of CNG autrickshaws against Communications Minister Nazmul Huda. Members of the parliamentary standing committee on communications ministry told that a CNG autrickshaw sold at up to Tk 3.67 lakh, up from the actual price at Tk 1.67 lakh as a result of monopoly by Uttara Motors. The parliamentary body accused the communications ministry of favouring Uttara Motors, allowing it to have monopoly on the business, as the company is the sole importer of CNG autrickshaws. The committee formed a three-member sub-committee to probe the allegations and asked it to submit its report in 30 days. The committee also discussed the activities of Bangladesh Road Transport Authority and asked it to introduce modern equipment to collect licence fees and expressed dissatisfaction at its performance. -Prothom Alo, 8 January.

New Justice in Appellate Division

Justice MA Aziz has been appointed as judge of the Appellate Division of the Supreme Court. Chief Justice KM Hasan administered the oath at a ceremony at the Judge's lounge, attended by judges of the Supreme Court. Traditionally, the Supreme Court Bar Association felicitates the newly appointed judges but its members did not attend the ceremony in protest at the appointment superseding his seniors. Justice Aziz has been appointed by superseding Justice Syed Amirul Islam. Earlier, Justice Amirul was also superseded on two occasions. -Law Desk

Law on use of compressed block bricks afoot

The government is planning a law to make use of compressed block bricks mandatory in construction of buildings and walls both by the government and the private sector in the next two months. Environment minister Shajahan Siraj said that the ministry is going to make the law to discourage use of traditional bricks, as they contribute to environmental pollution. The law will be enacted in one or two months. The minister said there are four factories which make compressed block bricks in the capital and the government will take an initiative to set up more such factories across the country in government and private hands. The minister told that construction of roads will not fall under the purview of the law, as the country does not have adequate amount of stones. -New Age, 8 January.

IGP's apology petition rejected

The High Court has rejected the petition of the inspector general of police (IGP) offering apology for his 'insolent and contemptuous' remarks about a judge and decided to hear the case on its merit. A division bench of Justice M A Matin and Justice Syed Refat Ahmed appointed Mahmudul Islam, a former attorney general, as amicus curiae to assist the court and adjourned the hearing until January 20. The court asked him to come up with a fresh application. The court had issued contempt rule upon the IGP for his written remarks while replying to certain queries in connection with a contempt case against five police sergeants for not showing due respect to a sitting judge at Farmgate as he was on his way to court in a flag car. The court exempted the IGP from his personal appearance during the next hearing. -Daily Star, 7 January.

Special tribunal for land dispute on the cards

The government is set to introduce special tribunals for disposal of land-dispute settlement, in line with a recommendation from the cabinet committee concerned. The cabinet Committee on land reforms has proposed enactment of a new law for trial of civil and criminal cases under the same courts, competent sources said. A permanent law cell at the land ministry has also been recommended to address the complicated cases. Within the broader framework of the recommendations, the cabinet committee has proposed amendment to six existing laws. The laws are the Registration Act 1908, the Transfer of Property Act 1882, the Specific Relief Act 2003, the Limitation Act 1908, the State Acquisition and Tenancy Act 1950, and Land Reform Ordinance 1984. As part of the reforms, completion of registration within two months of preparing documents of land purchase and sales would be made mandatory. The cabinet committee is also planning recommendation for a separate land cadre in recruitment process under the Bangladesh Civil Service (BCS). -New Age, 8 January.

Law to enhance efficiency of civil procedure

A new civil law titled 'Court Reform Implementation (supplementary rules) Act 2004' is being formulated to enhance the efficiency of civil procedure management. The draft of the proposed law would be placed before the next meeting of the cabinet for its approval. This was stated by Law, Justice and Parliamentary Affairs Minister Moudud Ahmed. Once the cabinet approves, the draft would be tabled at the house in the upcoming session of the Jatiya Sangsad. In this context, the law minister said the government has taken up a pilot project to reduce the harassment of the justice-seekers, and quicken the settlement of trial in Dhaka, Gazipur, Khulna, Comilla, and Rangpur districts. The minister said the proposed law would be promulgated on experimental basis for two years. He added if the new law is proved helpful for implementing the pilot project, it would be extended to other districts gradually. -Prothom Alo, 5 January.

Harsher law to fight land grabs proposed

The secretary committee on recovery of occupied land has recommended major changes to the existing law to make it tougher to stem the tide of land grabbing. The committee observed that although the law had provisions to punish illegal encroachers, it lacked proper guidelines and bite to resist encroachment and recover grabbed lands. The secretary committee saw articles 427, 447, 448 of the criminal procedure code (CrPC) that deal with punishment to land encroachers outdated and called for making the articles tougher. The body proposed to rename the law as the Government, Local Authority and Private Lands and Buildings (Recovery of Possession) Ordinance and an increase in jail terms to five years from two years and fines from Tk 1,000 to Tk 50,000 for land and building grabs by individuals. In case of land or building grabs in an orchestrated way by organised gangs, the committee recommended jail terms from five to 14 years along with a fine of Tk 10 lakh. It also recommended for introduction of non-bailable and non-settleable clauses to Section 7(1) of the ordinance. The body suggested amendments to Section 9 (1) of the ordinance, giving trial courts the powers to fix and realise compensations from the offenders and give them to the affected people. -Daily Star, 4 January.

READER'S queries



Your Advocate



This week your advocate is M. Moazzam Husain of the Supreme Court of Bangladesh. His professional interests include civil law, criminal law and constitutional law.

Q: With reference to my previous query which was published on November 30, 2003 I would appreciate if you kindly let me know the following: 1. I have three sisters and two niece from my deceased brother (aged 16 and 14). While distributing our assets left by my parents who should be their representative. (mother is now married to another person and children are living with the mother with all intension to grab their asset in her favour). 2. If we all agree to a mutual distribution how can we make it legalised without going to normal court case etc. and save time. 3. Who will look after the asset and money for my nieces and when can we hand them over their asset and money. 4. Where and how do we look for a good lawyer for our case 5. From your opinion how can we settle our distribution if every one comes to a decision and make it legalised so that nothing happens in future and in less time as most of us lives overseas and time is most important to us.

Sheikh Rahman,
On E-mail.

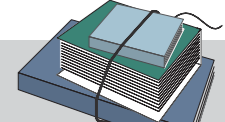
Your Advocate: You have possibly noticed the 'correction' of your original reply published on the 14th day of December last. Be that as it may, the present queries follow as a sequel to the original. You have put five questions for my opinion. Let me address them one after another. The first one relates to the question of guardianship. The only relations who are legal guardians of the property of a minor are the father and the paternal grand father. No other relation is entitled to the guardianship of the property of a minor as of right. The legal guardian is competent to dispose of the property of the minor under certain circumstances or represent them as and when necessary. But the father, or the grand father of the minor may appoint the mother, brother, uncle or any other person as executor/executrix in which case they become legal guardians acquiring all the rights of a legal guardian including the power of alienation of the movable or immovable property belonging to a minor. The court also may appoint any one of them as guardian of the property of a minor in which case he or she will have the powers of disposal of the property of the minor subject to permission of the court. In your case there is no surviving legal guardian of the property of your minor nieces. Therefore, the situation has necessitated appointment of one by the court. In such circumstances there are instances that mothers were appointed legal guardians of minors. Merely because their mother has taken second husband after her first husband's death she is not disentitled to be so appointed. The paramount consideration is the welfare of the minor. Any one can generally the nearest of kin do aspire for guardianship and it is the discretion of the court, in view of the wellbeing of the minor, to appoint the most competent from among them as per law.

As for the second question, it is not always imperative to go to court in such circumstances for distribution of the family property. There may well be a family arrangement in matters of division of the immovable property in presence of the legal guardian of the minors to be appointed by court. After settling the shares the deal may be documented by a deed of partition duly registered so as to avoid future complications.

The reply of your third question lies in the reply of the first question. A legal guardian of the property of a minor has power to look after the assets, goods and chattels of a minor. The fourth question relates to appointment of a lawyer. You have every right to appoint for your cause a lawyer of your own choice. The place and manner of looking for one also come within your exclusive domain. Once you decide I do not think you will feel any difficulty in finding out a good lawyer for you.

Finally the question of my opinion as to the way of settling things once for all leaving no scope for future complications. My opinion is latent in the question-wise replies given above. I hope you will feel addressed on this point by a plain reading through.

LAW lexicon



Pettifogger

A petty or underhanded lawyer or an attorney who sustains a professional livelihood on disreputable or dishonourable business. The word has also taken on an common usage definition referring to anyone prone to quibbling over details.

Physical custody

A child custody decision which grants the right to organise and administer the day to day residential care of a child. This is usually combined with legal custody.

Picket

To object publicly, on or adjacent to the employer's premises, to an employer's labour practices, goods or services. The most common form of picketing is patrolling with signs.

Pillory

A medieval punishment and restraining device made of moveable and adjustable boards through which a prisoner's head or limbs were pinned. Pillories were often fixed to the ground in a city's main square and on market days, local criminals were exhibited. Citizens were given license to throw things at the prisoners. As such, this method of punishment was not just humiliating but often led to serious injury or death. For the government, this was a public statement serving to warn others of the consequences of crime.

Plaintiff

The person who brings an case to court; who sues. May also be called "claimant", "petitioner" or "applicant". The person being sued is generally called the "defendant" or the "respondent".

Petty offence

A minor crime and for which the punishment is usually just a small fine or short term of imprisonment.

Corresponding Law Desk

Please send your mails, queries, and opinions to: Law Desk, The Daily Star, 19 Karwan Bazar, Dhaka-1215; telephone 8124944, 8124955, 8124966; fax 8125155, 8126154; email dslawdesk@yahoo.co.uk