



The need for enacting tourism law

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BANGLADESH has very diverse and distinctive flora and fauna, which include a mixture of species at the Sundarban and Chittagong Hill Tracts. Many of them are unique to Bangladesh and largely unknown to the rest of the world. In fact, numerous globally threatened and endangered species inhabit Bangladesh. Combination of diverse landscapes, unspoiled habitat, and some rare wild plant and animal species have become a subject of growing international attention and conservation efforts. Tourism is always proud of having inherited all resources of environment. Besides all measures, tourism law may effectively come forward to contribute to overall conservation of environment. Deforestation and poaching of birds and animals are a threat to the development of tourism. This is the right time to initiate a long-term plan to develop Bangladesh as an internationally competitive tourist destination supported by mid-term plan to enhance tourism in the region and short-term plan to develop new tourism destinations, products and attractions. And this is time to adopt measures for tourism development through enacting strict tourism law.

To denote tourism as the world's largest industry, there is some statistics for those who like facts and figures against the belief of real scenario. According to the World Tourism Council, last year tourism generated revenue over US\$6 trillion. It provided around the world 221 million jobs, with an expectation that by 2015 it will be providing some 269 million jobs. Between ages for disappointment. Second, the

2006 and 2015, tourism's growth rate is expected to average 4.6 percent per year. Law for tourism industry in Bangladesh would definitely result in a great success for controlling deforestation and conserving environment. The cardinal objectives of tourism law may be:

- a) To drive economic and social development in the country, while respecting its forest, fauna, flora, mineral, archaeological and heritage, sites, which should be preserved and passed on to future generations;
- b) To preserve historical and cultural values and promote national pride;
- c) To contribute to the harmonious and balanced development of the country;
- d) To contribute to job creation, economic growth and relief from poverty;
- e) To stimulate the domestic private sector to participate in the promotion and development of tourism resources;
- f) To establish mechanisms for inter-institutional coordination and participation;
- g) To promote the conservation of biodiversity and marine and land ecosystems;
- h) To improve the standard of living of local communities, encouraging their active participation in the tourism sector;
- i) To encourage measures for the safety and tranquillity of tourists, consumers and suppliers of tourism services;
- j) To ensure equal rights and opportunities for all those subject to this law.

Tourism Law is eclectic and can be divided into two broad parts: first, the general laws which apply to this industry often in unexpected ways because of its peculiar characteristics, eg damages for disappointment. Second, the

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industry specific laws from the ancient common innkeepers and carriers document to the labyrinth of local, state, federal and international regulations which now govern this industry.

Travel, by definition, involves cross border social, cultural and commercial transactions, which arguably raise more regulatory challenges for this industry than perhaps, any other. To establish "Bangladesh as a land of tourism" beside "Land of birds and rivers", the enactment of tourism law is urgent for action.

Tourism in Bangladesh has strengths to play a significant role in expanding domestic demand, increasing earnings in foreign currencies, eliminating poverty and providing jobs. The existing rules and regulations on tourism service

cannot meet the needs for the development for the tourism industry in the context of present era. So, the Tourism Law should be enacted as soon as possible in order to standardize the development of tourism industry. The law should define the status of tourism industry in the national economic and social development, and the government policy and measures on expanding the tourism industry. The law should decide on the system for the rational development and scientific utilization of tourism resources and environmental protection, and provide for the protection of tourists' rights and interests.

There is an increasing recognition by industry, government and international agencies that effective laws and institutions are fundamental to achieving upshot.

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"Conviction can be based on testimony"

Apex court quashes Rajasthan High Court's ruling

- Witness must pass test of reliability
- Independent corroboration of testimony

Conviction of an accused by a court in a criminal trial can be based on the testimony of a sole witness even when he/she is related to the deceased, the Supreme Court has held. Reiterating the law in this regard, a Bench of Justice Arif Pasayat and Justice B.P. Singh said, "conviction can be based on the testimony of a single eyewitness and there is no rule of law or evidence, which says to the contrary, provided, the sole witness passes the test of reliability. So long as the single eyewitness is wholly reliable the courts have no difficulty in basing conviction on his testimony alone."

The Bench said, "however, where the single eyewitness is not found to be a wholly reliable witness, in the sense that there are some circumstances which may show that he could have an interest in the prosecution, then the courts generally insist upon some independent corroboration of his testimony, in material particulars before recording conviction."

Writing the judgment Justice Pasayat said, "mere relationship of the witness with the deceased is no ground to discard his testimony, if it is otherwise found to be reliable and trustworthy. In the normal course of events, a close relation would be the last person to spare the real assailant and implicate a false person. However, the possibility that he may also implicate some innocent person along with the real assailant cannot be ruled out and therefore, as a matter of prudence, the court should look for some independent corroboration of his testimony to decide the involvement of the other accused in the crime."

In the instant case, Om Prakash was awarded life imprisonment by the Sessions Court at Nagaur in Rajasthan for killing his wife, Shivpuri on May 14, 1992. The conviction was based on the sole evidence of the brother of the deceased. On appeal, the High Court set aside the order holding that the evidence of the interested witness was not reliable and acquitted the accused.

The present appeal by the Rajasthan Government was directed against this judgment. The apex court quashed the impugned judgment.

Source: The Hindu, 17/06/2007.



Framework of criminal justice system

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THE cardinal conception of the scheme of criminal justice system is the prevention of offences by inflicting punishment on the bad elements in the society causing serious injury and damage to the social texture. The definition of crime, the types of punishment, the mode of inflicting punishment and the various components the criminal justice delivery system are also

problem of criminality. So the policy makers of the society spent lot of time how to control crime and criminals. Accordingly different societies devised and introduced different penal policies to meet the demand of the time. Every penal policy though formulated by the ruling elites and imprinted their values, thoughts and interests nevertheless constrained the vestiges of the attitude of societal people towards crime and criminals of a given time. Montesquieu very correctly said, "The mood and temper of

penal policies in the criminal justice system. These are: deterrent, retributive, preventive and reformative. The exponents of deterrent theory tried to achieve social security by inflicting severe penalty on the offenders. Firstly, they endeavoured to incapacitate the offenders in repeating the crimes. Secondly, by giving severe penalty on the offenders they tried to set an example before common people that if you indulge in criminal activities you will have to receive same punishment. The retributive theory does not bother social welfare, the philosophy of 'blood for blood', 'life for life' is the core point of the rhetoric of the supporters of this theory who considered that evil should be returned for evil without any regard to consequences. The retributive theory has its origin in the crude animal nature of individual or group to retaliate when hurt.

The exponents of preventive theory are eager to take precautionary measures for preventing crime and criminals. As an off-shoot of preventive views prisons have been developed in different countries. All the theories, deterrent, retributive and preventive, stand rejected as modes of dealing with crime and criminals. The reformative theory has evolved with its humanising and progressive philosophy. It does not believe in awarding severe penalty to the offenders. It tells of giving an opportunity to the offender in order to transform him/her into a law-abiding citizen. This theory ponders the offender as a patient who should be treated and given a chance to rehabilitate in the society.

As an inevitable outcome of deterrent and retributive views offenders of different countries had to endure corporal punishments which were barbaric and inhuman in nature. In course of time prisonisation in criminal justice system has become the principal mode of punishment. But modern view does not prefer the same because it decreases the ability of offenders to adjust with the society and impose stigma on the offenders which act as a major obstacle to his/her rehabilitation in the outside world. So reformative view prefers alternative measures like probation, parole, open prison etc rather than prisonisation.

Criminal justice system of Bangladesh

Bangladesh has got a criminal justice delivery system which it inherits from the British rulers. Though later on this system was modified but the vestiges of the

nineteenth century colonial thoughts on it is still clear. Criminal justice of a country mainly provides what sort of machinery and components will be allowed to adjust in respect of awarding to persons convicted. In 1898, more than one hundred years back, the Code of Criminal Procedure was enacted by the British rulers. The Act provides the constitution of mainly higher courts and lower courts. In the apex of our criminal justice delivery system, we have the Supreme Court having two respective divisions, the High Court division and the Appellate division.

And in the lower judiciary there are different tiers of criminal courts. High courts have also been given original as well as appellate jurisdiction under the Code of Criminal Procedure.

Though in our country the adversarial system of judiciary has been evolved and virtually developed, the Code of Criminal Procedure recognises the following legal conceptions taking the ground reality into consideration for smooth, easy and time saving dispensation of justice,

namely --

(I) **Bail** -- In our criminal justice system the provisions in relation to bail have been incorporated into the Code of Criminal Procedure. The offender may be enlarged on bail pending trial for disposal. The Code of Criminal Procedure deals with the basic principle of bail. Section 496 of the Code provides that in a bailable offence, the offender is entitled to get bail as of right. Section 497 deals with the bail in non-bailable case. One of the important provisions of this section is that the Court may grant bail to a woman, a person under the age of 16 years and a sick person having serious complications.

(II) **Burden of proof** -- The accusation against the offender is to be proved by evidence by the prosecution. The burden of proof never shifts and it lies on the prosecution alone. The innocence of the accused need not be proved by the defence because the court begins the trial treating the accused to be innocent. This is an important matter in our criminal jurisprudence. In law it is said that to every rule there is an exception. The Evidence Act (Section 105) provides that the special plea (plea of alibi) taken by the defence is to be provided by the defence. However, failure on the part of defence to substantiate any plea taken by it does not necessarily prove the guilt of the accused.

(III) **Benefit of doubt** -- Our criminal

justice system recognises the principle of benefit of doubt. The cardinal principle of our criminal justice system is that the accusation must be proved beyond any reasonable doubt. The court is to review the evidence of a case as a whole and if it finds that there is slightest doubt about the trueness of the prosecution case, the offender is entitled to get acquittal not as a grace but as of right.

(IV) **Judicial confession** -- If the offender confesses his guilt before a magistrate, his recorded confession can form the basis of his conviction provided the confession must be voluntary as well as true.

(V) **Compounding offences** -- The Code of Criminal Procedure (Section 345) gives a chart of offences which can be compounded. In that case the court is to follow the provisions laid down in Section 345 of the Code of Criminal Procedure.

Right to speedy trial

In the context of the administration of criminal justice system, it has a dual significance as because 'justice delayed is justice denied' or 'delayed justice is an infliction of injustice in the name of justice'. Viewed from the angle of accused person, it is in his interest that there should be a speedy trial so that there may be an early end to the proceeding against him resulting in acquittal or conviction. Article 35(3) of the Constitution of Bangladesh lays down "Every person accused of criminal offence shall have the right to a speedy and public trial by an independent and impartial court or tribunal established by law."

In our country by an amendment of the Code of Criminal Procedure, provision was made for stopping the proceeding after expiry of time fixed for concluding the trial but the provision did not work and by another amendment the provision for stopping the proceeding was repealed and a provision for release of the accused on bail was made the provision of Article 35(6) excluding the operation of Article 35(3) in case the existing law does not present any difficulty in view of the provision of Section 561A of the Code of Criminal Procedure, and the Supreme Court always enforce the provision of Article 35(3) relating to speedy trial whenever justice demands it. In order to ensure this notion, there must be smooth administration of criminal justice delivery



Offences and trial under general law and special law

The general law and the special law cover a variety of offences. The laws in relation to offences have been formulated depending on the penal policies of the country.

Our country very recently has signed the convention on the prevention of corruption. And in this respect, the special laws with regard to the same has been enacted for prevention of corruption. Moreover, our Penal Code has got the traditional classes of offences.

Whatever may be the nature of offences does not matter, the trial system remains more or less the same. Our legal system functions on the principle of adversarial system of judiciary as the same emerges from the common family of laws. In this trial system, the party is more active in dealing with the cases whereas the passivity of the court is very much expected.

Classes of criminal courts and powers

Section 6 of the Code of Criminal Procedure 1998 describes the classification of criminal courts. Besides the

Supreme Court and the courts constituted under any law other than this code for the time being in force, there shall be five classes of criminal courts in Bangladesh, namely: (I) Courts of Sessions; (II) Metropolitan Magistrates; (III) Magistrates of the First Class; (IV) Magistrates of the Second Class; (V) Magistrates of the Third Class.

Section 36: ordinary powers of magistrates -- All district magistrates, sub-divisional magistrates and magistrates of the first, second and third classes have the powers hereinafter respectively conferred upon them and specified in the third schedule. Such powers are called their ordinary powers. Section 37 of the same has given the powers conferrable on magistrates.

Concluding remarks
In a country a well organised and well functioning criminal justice delivery system plays a proactive role in respect of ensuring the social and economic security of the country resulting in acceleration of its ongoing development process. At the same time law should be amended for accommodating diversion measures with regard to criminal justice system keeping a pace with the time to come. That will meet up progressive demand of humanity and will better ensure the security of organised society and state.

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