



LAWS FOR everyday life

Noise

Be it the honking of hydraulic horns, the untamed loud music next door, the neighbour's rooftop amplified birthday bash, the growling equipments used at the office next door - if the sound is loud, unpleasant, unexpected, or undesired, it can be classified as noise.

If you're thinking of taking noise for granted, as a part of life - think again. Why should one put up with noise, which is causing persistent disturbance to one or a community? Continual exposure to noise does not only trigger annoyance, but also discomfort and injury to many. This is why there are set of laws which protect us for excessive noise and prevent us from causing such disturbances.

These include

The Dhaka Metropolitan Police Ordinance, 1976
Section 31. Power of Police Commissioner to prohibit, restrict or regulate use of music, etc.-

If, in the opinion of the Police Commissioner, it is necessary so to do for the purpose of preventing annoyance, disturbance, discomfort or injury or risk of annoyance, disturbance, discomfort or injury to the public or to any persons who dwell or occupy property in the vicinity, he may, by order in writing, prohibit, restrict, regulate or impose conditions on-

- (a) the use or continuance in any area, premises or vehicles of-
 - (i) any vocal or instrumental music;
 - (ii) microphone, loudspeaker or other instruments for amplifying music or other sound;
 - (iii) sounds caused by the playing, beating, clashing, blowing or use in any manner whatsoever of any instrument, appliance or apparatus on contrivance which is capable of producing or reproducing sound; or
 - (b) the carrying on in any premises of any trade, avocation or operation resulting in or attended with noise.
- Section 33 of The Chittagong Metropolitan Police Ordinance, 1978 and Section 33 of The Khulna Metropolitan Police Ordinance, 1985 provide the same provisions regarding offences related to noise.

HUMAN RIGHTS advocacy

From buyer beware to seller beware

SYED GOUSEZZAMAN HAIDERI ALI

'Caveat Emptor' or 'Buyer Beware' was the principle that prevailed in the law of sale of goods before. After the advent of the idea of consumerism and consumer movement, the table has turned around. The concept of Caveat Emptor or Buyer Beware is giving way to the concept of Caveat Venditor or Seller Beware.

Previously, a buyer was responsible to see and check goods before purchase. The Contract Act 1872, the Sale of Goods Act 1930 and principles of 'Duty of Care' under the Tort Law could not afford adequate protection to the consumer. Later, the idea of consumerism has developed. Therefore, in Bangladesh as well as in other countries many laws have been enacted to protect the purchaser-consumer. In Bangladesh, the Consumer's Right Protection Ordinance 2008 has been recently passed. The enactment of this Ordinance may be a small step for the government but a giant leap for the purchaser-consumer.

In the USA, several laws had been enacted such as the Wholesome Meat Act 1967, the Motor Vehicle Safety Act 1966 and the Consumer Product Safety Act 1972. Recently, yet another law namely, the Consumer Product Safety Act 2008 has been passed at the initiative of president George W. Bush which puts more liabilities on the manufacturer, importer, dealer and retailer. In Canada too same kind of law has been passed this year. It provides more authority to the governments to supervise and control all the sellers including manufacturers, importers, dealers and retailers.

In the UK, there is a Consumer Protection Act 1987. Presently, it gives new rights to consumers to win cases against producers without proving negligence. Further, in the UK, section-5 of the Unfair Contract Terms Act 1977 affords a real and strong protection to consumers. According to this Act, when loss, damage or defects arise in goods while in consumer's use due to negligence of manufacturer, distributor or retailer, their liability cannot be exempted by any terms of contract or notice contained in the guarantee of the goods.

India is also collaborating with the US to introduce Consumer Product Safety Act.

The main objectives of consumerism are:

- i) To afford a measure of protection to the ultimate consumers of goods and users of Services;
- ii) To protect consumers from unfair trade practices and restrictive trade practices;
- iii) To set out the responsibility of all the sellers such as manufacturers, importers, wholesalers, and retailers to the consumers.

To protect the ultimate consumers

The spirit of consumerism is to protect the consumer of goods and user of services. The government, society and the legal system- all are proceeding towards it. In Bangladesh, besides the Consumer Rights Protection Ordinance 2008, there are other laws in favour of the buyer or consumer of goods such as, the Bangladesh Standard and Testing Ordinance 1985, the Pure Food Ordinance 1959, the Food (Special Court) Act 1956 and the Drug (Control) Ordinance 1959. Besides, there are some provisions in the Penal Code and CrPC in favour of the purchaser-consumer.

A case law from the USA can be cited as an example for the protection of the consumer of goods. In *Baxter vs. Ford Motor Co.* 1934 12P, 2d, 409, the manufacturer was held liable to a buyer from a retailer. The customer bought a car from a retailer on the basis of the advertisement by the manufacturer that the car was equipped with a "shatter proof" windshield. It was found that the car did not have shatter proof windshield.

Regarding the user of services, in Bangladesh there are relevant laws such as the Medical and Dental Council Act 1980, the Medical Practice and Laboratories (Regulation) Ordinance 1982 and the Legal Practitioner and Bar Council Order 1972. One of the relevant Indian cases, concerning protection of users of services is *Sau Madhuri vs. Dr. Rajendra and Others* 1996, III (1996) CPJ 75 (NC). Here the complainant was a patient who had undergone surgery for a caesarian childbirth. After the operation, her pain continued. She was operated once again. It was found that a pair of scissors was left inside her body. Serious negligence in service on the part of the doctor is evident. The complainant was granted compensation.



To protect consumers from unfair trade practices

Consumers must be protected from any of the malpractices of the business communities, such as unfair trade practices and restrictive and monopolistic trade practices. Business communities should be prevented from restrictive and monopolistic trade by which they manipulate the prices and supplies of the consumer goods. Business communities should also be restrained from taking recourse to unfair means in trade. Sellers should not in their promotional activities or during advertisements excessively highlight the quality of their goods or services. The producers or sellers must disclose the actual qualities and merits of their products in their advertisements.

To set out the responsibility of all the sellers

All the sellers, right from the manufacturers, importers, wholesalers to the retailers should be tied with responsibility to the ultimate purchaser-consumers. In *MacPherson vs. Buick Motor Co.* 1916, 111 N.E. 1050, 217 N.Y. 382, an automobile manufacturer's liability extended beyond the immediate purchaser. This is the precursor to the rule for product liability.

In Bangladesh, in addition to the Consumer's Right Protection Ordinance 2008, there should be another law in

favour of the consumer, like the Consumer's Product Safety Act of the USA and that of Canada. We can change the appellation of the proposed Act and call it the Products and Services Safety Act. This Act should impose more liabilities upon the manufacturers, importers, dealers, wholesalers and retailers. In short, this Act should bind the whole chain of sellers. Further, the proposed Products and Services Safety Act should impose liabilities upon the sellers of services too, like medical service, legal service, transport service, utility service and other similar services.

Assuredly, manufacturers have more knowledge than buyers. Manufacturers know with what raw materials and in which way, they have manufactured a certain product. How can buyers know about the manufacturing process? Even importers, dealers, wholesalers or retailers have more knowledge about the product than purchasers. So, the buyer is in the weakest and in the least advantageous position of all. Hence, the onus or obligation should be on the seller's side rather than the buyer's side. Therefore, the principle should be Caveat Venditor i.e., Seller Beware, instead of Caveat Emptor, i.e., Buyer Beware.

The writer is an advocate in the Supreme Court of Bangladesh.

SC directive ignored

In a surprise move, the establishment ministry appointed 319 executive magistrates authorising them to try electoral offences ignoring the Supreme Court (SC) directives for engaging judicial magistrates to do the job. The ministry sent a letter to the Election Commission (EC) that said 319 officials of administration cadre were appointed executive magistrates, and were vested with the authority to run mobile courts, EC sources said. The ministry, which was notified of the SC order, came up with the appointments just a day after the EC decided to ask the SC to engage judicial magistrates for trial of electoral offences in the December 29 parliamentary polls. As per its decision on Sunday, the EC Secretariat sent a letter to the office of SC registrar seeking appointment of judicial magistrates. The letter however did not specify the number of magistrates required, sources said. The Criminal Procedure Code (CrPC) allows only judicial magistrates to try electoral offences as these are punishable with both imprisonment and fine. - *The Daily Star, December 23, 2008*

35pc TIN fake

A sample survey by the National Board of Revenue (NBR) showed that 35.3 percent Tax Identification Numbers (TINs) are fake. More than 50 percent fake TINs have been used for buying land and taking credit cards. Findings of the survey were released at a high-level meeting at the NBR. It was attended by representatives from different agencies concerned including Rajuk, BRTA and banks. NBR Chairman Abdul Mazid later told journalists that they will soon conduct a comprehensive survey and take legal steps against fake TIN users. The NBR informed the meeting that many applicants for Rajuk plots at Uttara Model Town and Prubachal used fake TINs. It recommended cancellation of plot allotment if any evidence of using fake TIN is found. Submitting TIN is mandatory in 15 areas including purchase of land and car, taking bank loan of over Tk 5 lakh, opening L/ Cs and taking credit cards. The NBR survey covered five sectors. It collected 371 samples, of which 240 were found valid and 131 fake. - *The Daily Star, December 23, 2008*

SC rejects EC bid

The Election Commission (EC) decided to deploy judicial magistrates in the December 29 general election, following the Supreme Court's (SC) disapproval of its earlier decision to empower executive magistrates to try punishable electoral offences. A quasi-judicial body, the commission on November 27 chose to give executive magistrates the power practised by their peers in the judiciary. It was only later that it sought the apex court's opinions on the matter. In a circular on December 7, the home ministry said the establishment ministry would take necessary steps to translate the EC plans. However, the general administrative committee of the SC headed by the chief justice recently concluded that only the experienced judicial magistrates should be engaged to administer justice with regard to electoral offences, said sources in the SC registrar's office. It observed that as jurisdictions of the judicial and executive magistrates are clearly delineated, the latter need not be entrusted with the authority of the former. - *The Daily Star, December 22, 2008*

ACC sues 23 BTCL staff for

Tk 41cr embezzlement

The Anti-Corruption Commission (ACC) filed 11 cases against 23 staff of Bangladesh Telecommunications Company Ltd (BTCL) on charges of misappropriating around Tk 41 crore. ACC Deputy Director Nurul Islam and Assistant Director SM Shaidur Rahman filed the cases with Ramna Police Station against the officials of BTCL, formerly known as BTTB. Of the cases, seven were filed against 14 employees for embezzling Tk 32,55,30,200 by using fake bills and vouchers in the name of repair and maintenance costs of vehicles over seven fiscal years from 2000-2001. Four other cases were filed against nine BTTB staff for misappropriating Tk 8,07,83,975 in the name of conveyance bills between the fiscals 2004-2005 and 2007-2008. According to the cases, Tk 2.10 crore, Tk 2.46 crore, Tk 2.26 crore and Tk 1.25 crore were embezzled in four fiscal years between 2004-2005 and 2007-2008 in the name of conveyance bills through mutual collaboration of eight staff. Seven cases were filed for misappropriation of Tk 5.84 crore, Tk 4.57 crore, Tk 3.78 crore, Tk 4.05 crore, Tk 5.00 crore, Tk 4.84 crore and Tk 4.17 crore in the seven fiscal years from 2000-2001 to 2006-2007 respectively. - *The Daily Star, December 22, 2008*

No easy going yet for court-cleared aspirants

The Election Commission (EC) will challenge the court orders that have enabled the loan defaulters and convicted individuals to be candidates in the December 29 parliamentary polls. "We will contest the cases at an appropriate time," Election Commissioner Brig Gen (ret'd) M Sakhawat Hossain told reporters at his office. "If the Appellate Division's ruling in the end goes against a candidate who has participated in the election on the High Court's order and won, he will be disqualified as a member of parliament," he added. The EC has already consulted a former attorney general regarding the rulings, sources in the commission said. The lawyer has suggested that this time the EC challenge the orders and get to the bottom of the matters. The EC faces legal problems before every general election, but seldom pursues those once the election is over. - *The Daily Star, December 21, 2008*

'Independent' judicial secretariat has to depend on ministry

The Judicial Service Secretariat Ordinance 2008 for establishing an independent judicial secretariat triggered frustration among judicial officials as the ordinance keeps the law ministry's 'control' over the new secretariat. The council of advisers to the caretaker government on Sunday gave the final approval to the ordinance, which is now waiting to be promulgated by the president, sources said. According to the ordinance, the judicial service secretariat headed by the chief justice must go through the law ministry to contact the president and the prime minister regarding any matter related to the functioning of the secretariat. It means the chief justice will not be allowed to communicate directly with the president or the prime minister regarding the secretariat's functioning. Legal experts said the new ordinance is against the spirit of the judiciary's separation from the executive branch of government, with some of its provisions running counter to relevant articles in the country's constitution. - *The Daily Star, December 20, 2008*

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LAW amusements



Interesting laws...

Greece

All electronic games are banned. (Greek Law Number 3037)
Why does this law exist? The law was introduced as an attempt to curb illegal gambling. However, all games were banned since the government could not distinguish between harmless Internet chess and other games it deemed illegal.

One could not wear a hat in the Olympic Stadium in ancient times, as it would obstruct someone's view.

Canada

Comic books, which depict any illegal acts, are banned.

35% of a radio stations content must be "Canadian Content".

You may not pay for a fifty-cent item with only pennies.

Citizens may not publicly remove bandages.

It is illegal for clear or non-dark sodas to contain caffeine.

Businesses must provide rails for tying up horses.

Wooden logs may not be painted.

You may never use dice to play craps.

If you are released from prison, it is required that you are given a handgun with bullets and a horse, so you can ride out of town.

When raining, a person may not water his/her lawn.

It is illegal to turn right on a red light at any time.

Margarine producers can't make their margarine yellow.

All business signs in the province of Quebec must be in French.

Homeowners are responsible for clearing snow off of municipal sidewalks.

The city is classified as a no-pee zone.

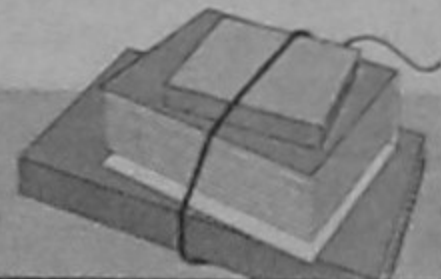
The colour of house and garage doors is regulated by city bylaws (a purple door get you a fine).

You can't work on your car in the street.

It's illegal to climb trees.

Source: www.geocities.com

LAW lexicon



Of counsel - A phrase commonly applied to counsel employed to assist in the preparation or management of the case, or its presentation on appeal, but who is not the principal attorney for the party.

Official reports - The publication of cumulated court decisions of state or federal courts in advance sheets and bound volumes as provided by statutory authority.

On a person's own recognizance - Release of a person from custody without the payment of any bail or posting of bond, upon the promise to return to court.

Opening statement - The initial statement made by attorneys for each side, outlining the facts each intends to establish during the trial.

Opinion - A judge's written explanation of a decision of the court or of a majority of judges. A dissenting opinion disagrees with the majority opinion because of the reasoning and/or the principles of law on which the decision is based. A concurring opinion agrees with the decision of the court but offers further comment. (A per curiam opinion is an unsigned opinion "of the court.")

Oral argument - Presentation of a case before a court by spoken argument; usually with respect to a presentation of a case to an appellate court where a time limit might be set for oral argument.

Order - A mandate, command, or direction authoritatively given. Direction of a court or judge made in writing.

Ordinance - A rule established by authority; may be a municipal statute of a city council, regulating such matters as zoning, building, safety, matters of municipality, etc.

Source: Jurist International

HUMAN RIGHTS monitor

Growing calls at UN to end executions

Over one hundred countries voted overwhelmingly in favour of a second resolution on "Moratorium on the use of the death penalty" at the United Nations (UN) on Thursday. The resolution reaffirms last year's UN General Assembly call for a moratorium on executions. 106 states supported the resolution, 46 voted against and 34 states abstained. In 2007, the vote was 104 in favour, 54 against and 29 abstained.

"This increased support solidifies the solid and long-standing trend towards global abolition of the death penalty," said Martin Macpherson from Amnesty International.

When the Universal Declaration of Human Rights was adopted in 1948, eight countries had abolished the death penalty in law or practice. Sixty years later, as of December 2008, the number stands at 137. More than two thirds of the countries in the world have abolished the death penalty and the numbers continue to grow. "The trend towards abolition is unmistakable," said Martin Macpherson. "This trend can be seen in all regions in the world."

In Central Asia, there is a clear move towards abolition. Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan and Uzbekistan retained the death penalty when they gained independence in 1991. However, by December 2008, Kazakhstan, Kyrgyzstan, Turkmenistan and Uzbekistan had abolished the death penalty. The Russian Federation and Tajikistan have a moratorium on executions and death sentences. Europe is a virtually death penalty-free area, the only exception being Belarus. The continent of Africa is largely free of executions, with only seven of the 53 African Union member states known to have carried out executions in 2007. Botswana, Egypt, Equatorial Guinea, Ethiopia, Libya, Somalia and Sudan. In November 2008, the African Commission on Human and Peoples' Rights (African Commission) adopted a resolution calling on African States to observe a moratorium on the death penalty. It is an important step towards making the African Union (AU) a totally death penalty-free zone. In the Arab League, several states, Bahrain, Jordan, Oman, Mauritania and the United Arab Emirates, abstained rather than voting no. At national level, draft abolitionist laws have been tabled in Algeria, Lebanon and Tunisia. In Asia, the total number of

countries that have now abolished the death penalty in law or practice in the Asia Pacific region has reached 27. On 21 May 2008, the Chinese Ministry of Justice and the Supreme People's Court (SPC) jointly issued a regulation to outline the defence lawyers' role in capital cases. According to a senior official of the Supreme People's Court, the SPC re-turned for retrial about 15 percent of the death sentences handed down by higher people's courts in the first half of 2008. However, this was impossible to confirm as data concerning the use of the death penalty in China is considered a state secret and not publicly available.

In South Korea, there have been no executions since 1998 and a Death Penalty Abolition Bill is under consideration. Viet Nam is reviewing the number of offences punishable by death. The Americas are almost free of executions. Since 2003, only the United States of America continues to execute on a regular basis. The only other countries to have carried out executions this century are Cuba in 2003, Guatemala in 2001 and the Bahamas in 2000. Although the 10 countries of the English-speaking Caribbean retain the death penalty in law, there remains a

hiatus on executions. Central and South America are virtually death penalty free, with only Guatemala, Belize and Guyana retaining the death penalty.

On 29 April 2008, Cuban President Raúl Castro announced in a speech concluding the Sixth Meeting of the Central Committee of the Communist Party of Cuba that virtually all death sentences in Cuba will be commuted to life imprisonment or to 30 years imprisonment.

The United States of America is turning against the death penalty. The Death Penalty Information Centre reported that the annual number of death sentences has dropped by 60% since the 1990s. 37 executions took place in 2008, marking a 14-year low and continuing a downward trend that began in 2000.

This week, the Maryland Commission on Capital Punishment this week released its final report, calling for an end to capital punishment and making Maryland the latest state in the nation to move toward abolishing the death penalty. Fourteen states in USA do not have the death penalty.

Source: Amnesty International