

Legal analysis of withdrawal of cases

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THE recent trend of withdrawal of the cases by the ruling government on the ground of 'political harassment' is an issue to be reconsidered. This 'withdrawal' culture may create an array of mistrust and non-confidence about the government's commitment to rule of law as well as the necessity of judiciary in the country. If the ruling as well as the opposition does not show their allegiance to the judicial system, then probably the other people will loose their faith on the rule of law.

Can the government withdraw criminal cases by an executive order?

A Public Prosecutor can seek withdrawal of the prosecution only when instructed by the government in writing. The powers relating to withdrawal of cases is dealt with under section 494 of the Code of Criminal Procedure, 1898 wherein it is said that any Public Prosecutor may, with the consent of the Court, before the judgment is pronounced, withdraw from the prosecution of any person either generally or in respect of any one or more of the offences for which he is tried; and upon such withdrawal-

(a) if it is made before a charge has been framed, the accused shall be discharged in respect of such offence or offences;

(b) if it is made after a charge has been framed, or when under the Code no charge is required, he shall be acquitted in respect of such offence or offences.

Why the learned court is to consent on the withdrawal of cases where there are a lot of alternatives in the hands of the law? There is a chance of discharging the accused from the allegations under section 241A and section 265C of the Code of Criminal Procedure, 1898. 'Political consideration' should not be taken as a standard for the withdrawal of cases. Rather the suspects should be surren-



dered to the hands of the normal procedure of law. An exemption for political leaders engulfs a sense of classification. If the political bigwigs are set free through the judicial prisms, that would ultimately increase the credibility of the political leaders.

Whether withdrawal of cases are inconsistent with the

constitution?

Articles 26 and 27 of the constitution of Bangladesh provide equality before law and equal protection of law. First of all we need to scrutinize the provisions of Article 27 as to whether this provision of the constitution gives any exemption to the political activists or not. In this regard, Article 27 ensures equality before law by providing that all citizens are

equal before law and are entitled to equal protection of law. So, it is evident that the political activists or leaders are no exception to Article 27 of the constitution. Rather the withdrawal of cases under section 494 of the Code of Criminal Procedure is inconsistent with the spirit of Article 27 and violation of the fundamental rights of equality before law and thereby liable to be ineffective. As Article 26 provides that all existing laws inconsistent with the provisions of this Part (Part-III: Fundamental Rights) shall, to the extent of such inconsistency, become void on the commencement of this constitution and the State shall not make any law inconsistent with any provisions of this Part and any law so made shall, to the extent of such inconsistency, be void.

Interference with independence of judiciary?

Independence of judiciary truly means that the judges are in a position to render justice in accordance with their oath of office and only in accordance with their own sense of justice without submitting to any kind of pressure or influence be it from the executive or legislative or from the parties themselves or from the superiors and colleagues. The present government can instruct the Public Prosecutors concerned to apply to the court for withdrawal of cases filed against the political leaders. But the government cannot put pressure on the courts to agree to the withdrawal of cases. Ready acceptance of the government's recommendation to withdraw cases creates an inference of indirect interference, if not direct. If government pressurizes the courts, it will tantamount to interference in dispensation of justice. Independence of judiciary is the hallmark of democratic polity and the key to proper functioning of the rule of law.

Violation of this independence will have serious repercussions that can jeopardize the smooth functioning of democracy.

Will withdrawal of case jeopardize the rule of law?

By 'rule of law' we mean the equality of law or equal subjection of all classes to the ordinary law of the land administered by the ordinary law courts. In this sense rule of law conveys that no man is above law. From this definition of rule of law, it can be said that the withdrawal of cases on political consideration specially on subjective satisfaction of the government machinery, is deplorably inconsistent with concept of rule of law and consequently the latter will jeopardize the former.

Alternative remedies available in the existing laws

a) Before the pronouncement of judgment:

The existence laws of the country concede a lot of provisions regarding the false, frivolous and vexatious accusations in different Codes. First of all, if the allegation is groundless, the court will discharge the accused under section 241A of the Code of Criminal Procedure. Again, if the offence alleged is triable by the Sessions Court according to section 195 of the Code of Criminal Procedure, 1898 then there is also the chance of discharging the accused, if the court considers the charge as groundless under section 265C. Section 245 and section 265H of the same Code says that the Magistrate and the Sessions Court respectively shall record an order of acquittal, if he finds the accused not guilty. Besides these, section 248 of the Code of Criminal Procedure, 1898 provides for the withdrawal of complaint by the complainant but not necessarily by the

State party. If a complainant, at any time before a final order is passed in any case, satisfies the Magistrate that there are sufficient grounds for permitting him to withdraw his complaint, the Magistrate may permit him to withdraw the same, and shall thereupon acquit the accused.

b) After the pronouncement of judgment:

The Government has also the power to suspend, or remit sentences after it has been pronounced. There are also the provisions regarding the compensation as well as imprisonment (in case of default to pay compensation) of the complainant /informant under section 250 of the Code of Criminal Procedure as well as under section 211 of the Penal Code, 1860. Section 250 of the Code of Criminal Procedure, 1898 prescribes actions that can be taken against the False, frivolous or vexatious accusations and the Magistrate may direct that compensation to such amount not exceeding one thousand Taka or, if the Magistrate is a Magistrate of the third Class, not exceeding five hundred Taka, as he may determine be paid by such complainant or informant to the accused or to each or any of them. Not only that but also the Magistrate may, in default of payment, direct the person ordered to pay such compensation shall suffer simple imprisonment for a period not exceeding thirty days.

So, it is very much clear that the Government has lot of alternatives to resolve rather than to withdraw the cases on the 'political consideration.' Thus, it is expected from the Government to reconsider the trend of withdrawal of cases on political consideration. Exhaustion of judicial procedure is also the essence of rule of law.

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LAW campaign

Post Office Act: Need for a reform

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COURIER service is highly essential and accepted by the cross section of people of Bangladesh. As per Post Office Act 1898, no private operator is allowed to deliver postal services. Disregard of this provision incurs monetary penalization. Under this Act, couriers are not allowed to operate business. That is why they have been delivering letters in the name of 'document'.

Government regulates postal services for the citizen through Post Office under the provisions of Post office Act 1898. This Act is more than a century year old and has failed to deliver quality service to meet the global standard. Due to ancient services of the post office, customers tend to dissatisfy by this department's services and are eager to use more service oriented courier services.

Introduction of courier service in Bangladesh

In Post Office Act 1898, there was no provision or even a Government rule/ regulation to operate Courier Service in Bangladesh. General booking, to pay booking, value declared booking were undertaken through Air Express Service of Biman under a 'Cargo Regulation' of the Government. Air Express Service of Biman was closed down in 30 October 1983. Following the procedures of the cargo regulation of Air Express Service, some Courier Services started the similar types of operations of 'to pay booking, general and Value Declared booking (VD booking) like Air Express Service of Biman. Due to increasing demand of the community, gradually this service expanded to all urban areas including some Upa-Zilas' of Bangladesh. Now Courier service has become

essential and necessary for the citizen of Bangladesh. Till today there is no rule and regulations for operating courier services in Bangladesh. Considering the increasing demand of the Courier Service and persuasion of the Courier Service Association of Bangladesh (CSAB), NBR gave them a SO-28 Code through issuing a SRO-17 in 2000 to operate this business. In 2004, another SRO (SRO # 173) was issued fixing 15% VAT on its services. In 2007 another SRO (SRO # 130) was also issued and enlisted Courier Services as a 'service provider' and reduced VAT rate of its income from 15% to 4.5%.

Initiatives of amending section 4(1) and 58 of the Post Office Act' 1898

(1) Presently, Courier Service Providers have been delivering a number of services in Bangladesh in different categories like-dispatch general/ valuable documents, deliver special services, remittance collection, parcel booking, and tie up with international Courier for handling documents to and from overseas countries and so on. The Couriers offer services mainly in urban areas, as urban areas are potential for Courier business. Most of the Couriers don't have rural coverage, as number of customers is very few. In some special cases, some big Courier Service providers deliver documents in rural areas but charges higher fees for those transmissions. Couriers don't operate business where they don't profit; because; they have to maintain office, pay staff salary and above all make profit as they invest money and time in this profession. The Courier Services employed more than 1, 00,000 people in this sector. Although this service is necessary and essential in the present reality

but they don't have legal coverage. On the other hand, the Government has no regulatory role to monitor their services. That is why; Courier Service Association of Bangladesh (CSAB) and the customers have been demanding to the Government to bring this sector under legal framework. It will help Government to look after the affairs of Courier, monitor the quality of services, ensure transparency and accountability of its operation, fixing appropriate fees and so on.

(2) The issue of Courier Service was brought to the notice of the Regulatory Reforms Commission (RRC). Regulatory Reforms Commission analysed the matter in the meeting. As the services of the Courier is widely accepted all over Bangladesh and as it already has got SO code and paying VAT/ Tax as per Government instruction and employing more than 1,00,000 people; so, it is rational to bring them under legal framework and facilitate them to improve their services.

(3). Thus, the Regulatory Reforms Commission (RRC) took decision and requested Government to reform the Post Office Act' 1898 by amending section 4 (1) and 58. The RRC further suggested the Government to make provision in the Act to formulate 'Rules' to operate 'Courier Service' in Bangladesh. This Rule would help Government to monitor activities of Courier Service and protects customers' interest. In addition, Courier Service Operators would also have access to different facilities of the Government. Thus, this will allow Courier Service providers to operate their businesses in a legal way.

Why reform is needed

The Post Office Act' 1898 is the legal basis for the Postal Department to

deliver postal services in Bangladesh. Postal Department has the nation wide service coverage. It is a very cheap and affordable for all classes of people of the Country. The services of the Post Office are slow and primitive nature; which don't satisfy today's demand. Where as, courier delivers documents as per desire of the customers with a quick and efficient delivery; which makes the sector trustworthy to the stakeholders.

That is why; customers are run after 'Courier Service' to get efficient and quick delivery of documents although it is costly. That is why; number of Courier has been increased over the last few decades due to increasing demand of this service. At the same time, the number of employment is also being increased and that exceeds 1, 00,000 since its inception in 1983. Having no regulatory body or rules to fix fees to carry documents they have been charging fees with the decision of their association and that is slightly higher. Couriers have been doing their business by taking SO code from National Board of Revenue and trade license from the City Corporation/Municipality. It is quite usual that without having legal bindings, customers' interest might not be ensured and also might not have transparency and accountability on their services. In absence of regulatory body; they are not been penalized if they are involved in unethical or illegal activities. Without reform of section 4(1) and 58 of Post Office Act' 1898; Courier Services are not to be brought under legal framework or regulated.

Recommendations

- After Close down of Air Express Service of Biman in 30 October' 1983, some potential private



entrepreneurs started Courier Service as a business profession. But these services of the Couriers are to be given legal back up, as this sector has been contributed in the economy. Thus the section 4(1) and 58 of the Post Office Act' 1898 is to be amended.

- Couriers and Couriers' Services are to be defined. Categorizes of services, finalize of service jurisdiction, fixing fees, maintain safety and security are to be mentioned in the definition.
- If commission or rebate for single or bulk booking is fixed and disclosed earlier then the business secrecy and techniques would also be disclosed. In that case business environment would be totally damaged and

most of the Couriers would be bound to close their business. So, this provision in draft rules is to be removed.

- To promote Courier Service; access to finance, tax-free import of scanners/vehicle/equipments and other facilities are to be given to this sector. So that Courier can scan documents and identify explosive and contraband articles and their service delivery would further improved.
- Before reforming Post Office Act; an exposure visit can be arranged with the representatives of CSAB, Post Office, Ministry Post & Telecom, RRC and other relevant bodies to Asian & advanced countries.

Concluding remarks

Government exchequers a lot of money in the form of VAT/Tax from the courier services. That is why; Government should pay attention of this sector and their issues are to be considered during formulating rules. There is great hope that the Government has accepted the recommendation of Regulatory Reforms Commission and planned to amend the Post Office Act' 1898. Government has to come up with positive actions to reform relevant sections of the Post Office Act and formulate 'Rules' for operating Courier Service.

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