

LAW NEWS



Protecting rights is not a luxury job.

O DHIKAR marks its 17th year of formation on 10 October 2011, which is also the World Day Against the Death Penalty. Campaign against the death penalty is one of the many areas in which Odhikar has dedicated itself for last seventeen years. Created after the fierce movement against military dictatorship, Odhikar as a network of human rights defenders in Bangladesh has earned its credibility by becoming a part of the peoples' movement to constitute Bangladesh as a democratic state, ensuring liberty, rights, justice and participatory governance. Odhikar's core commitments for human rights and rule of law; and against discrimination, exploitation and impunity remain as relevant as they were on the day of its formation. The struggle it started in 1994 continues today, even more intensely and under restrictive conditions.

Over the years, Odhikar has extended its activities through networking in South Asia as well as at the Asian level. Internationally too, Odhikar is involved in a number of campaigns; such as the campaign against the death penalty, against torture, for international justice and the ICC, monitoring elections as a part of its democracy programme, ratification of international human rights instruments, protocols and implementing legislations, the international campaign against crimes against humanity and campaigns for human rights defenders etc.

At home, Odhikar's main priority areas are the monitoring of human rights and freedoms in Bangladesh; gender rights and violence against women; press and media freedom; violations of human rights in boarder areas with India; anti-terrorism measures; legal discrimination; victims of crime and torture etc. Odhikar also monitors the progress in realizing the commitments of Bangladesh made before the UN Human Rights Council in Geneva.

It regularly publishes its monitoring reports on violations of rights in its monthly bulletins and other reports. To address urgent situations, Odhikar issues 'Urgent Appeals' either alone or with its international partners.

After 17 years of work to improve human rights, Odhikar has earned some credibility nationally and globally, but the human rights situation still remains critical, which makes Odhikar even more determined to continue its struggle for freedom and rights of the people of Bangladesh. Although its campaigns have achieved successes, at the same time, it has suffered a lot. The organisation operates under constant threat and the non-cooperation of the authorities. For Odhikar, 'human rights' is not a luxury job but a struggle that has to be continuously waged until basic rights are secured.

LEGAL MAXIM



Melior est conditio possidentis, ubi neuter jus habet - Better is the condition of the possessor where neither of the two has the right.

Melior testatoris in testamentis spectanda est - In wills the intention of a testator is to be regarded.

Meliorem conditionem suam facere potest minor deteriorem nequaquam - A minor can make his position better, never worse.

Mens rea - Guilty state of mind.

Mentiri est contra mentem ire - To lie is to act against the mind.

Merito beneficium legis amittit, qui legem ipsam subvertere intendit - He justly loses the benefit of the law who seeks to infringe the law.

Minatur innocentibus qui parcat nocentibus - He threatens the innocent who spares the guilty.

Misera est servitus, ubi jus est vagum aut incertum - It is a miserable slavery where the law is vague or uncertain.

Mors dicitur ultimum supplicium - Death is called the extreme penalty.

Multa exercitatione facilius quam regulis percipies - You will perceive many things more easily by experience than by rules.

Nam nemo haeres viventis - For no one is an heir of a living person.

Naturae vis maxima est - The force of nature is the greatest.

Necessitas inducit privilegium quoad jura privata - With respect to private rights necessity induces privilege.

Necessitas non habet legem - Necessity has no law.

Necessitas publica est major quam privata - Public necessity is greater than private necessity.

Negligentia semper habet infortuniam comitem - Negligence always has misfortune for a companion.

Nemo admittendus est inhabilitare se ipsum - No one is allowed to incapacitate himself.

Nemo bis punitur pro eodem delicto - No one can be twice punished for the same offence.

Source: Inrebus.com.

RIGHTS CORNER



Use of CCTV: means of security or invasion of privacy?

NOOR JAHAN PUNAM

IT is hard to believe that there are no substantial laws in Bangladesh regulating the use of CCTV or any other technological devices used for security purposes in today's time. In absence of relevant legal provisions within the country, it is desirable to have a look at what laws and regulations are provided by other countries. In so doing, the undeniable relation between use of CCTV and right to privacy will be observed.

If seen on an international basis, right to privacy is best protected under the European Convention on Human Rights and the member countries to the Convention are supposed to maintain their laws in compliance with the rules of the Convention. Within Europe the use of CCTV is differentiated in terms of use in public and private places. In the context of use of CCTV, United Kingdom remains at the top. The use and installation of CCTV in United Kingdom is governed by the Data Protection Act 1998. All CCTV controllers are obliged to register with the Information Commissioner in order to make sure that they are operating in compliance with the provisions of the Act. Breach of the provisions under the Act is treated as a crime. The keyword here is proportionality i.e. the use of CCTV must be proportionate in the sense that the data collected via CCTV can only be used when the evidence which lies within is so important that it overrides the right to privacy of the individuals concerned. However, the United Kingdom regulations have caused the proliferation of the use of signage. Thus if someone enters an area where there is CCTV in operation seeing the sign there is an implied consent from that person which can defeat any claim that that person's right to privacy has been infringed.

In the context of use of CCTV, the regulations of Denmark are rather stronger than United Kingdom. The regulations prohibit CCTV surveillance gener-

ally. Only owners of certain properties can use CCTV for example, petrol stations. But they are required to let the people under surveillance about it. Police and Public bodies can use CCTV and police can also use it secretly.

In France, there is a requirement that the Prefect of each French administrative region must be informed as to any plans of installing a CCTV and the Prefect will then decide whether to approve the plan by consulting a local committee which will include a judge, a magistrate, a politician and a representative elected by the local trade chamber. The decision is provided by a majority vote and the Prefect will follow the decision on most occasions. The person applying for permission would have to show that the area in which



installation of CCTV is required can be subject to theft or attack.

In Sweden, a kind of licensing system works. Everyone who wishes to use CCTV will have to apply to the County Administrative Board providing detailed information about the area covered by surveillance, etc. Signposting is generally the norm. CCTV can only be used for prevention of crime and for detecting reasons. The application will be granted only if the interest which relates to the surveillance outweighs the interest of the individuals under surveillance. However, where owners like banks are the applicant they just have to inform the authority about the installation and it is always deemed to be acceptable. The decision of the Board can nevertheless, be appealed against.

The general norm in using CCTV is that of signposting about the surveillance and whenever a law has to be created as to use of CCTV, right to privacy has to be given a deep thought. It should be a balancing act so as to make sure that enough efforts has been made to provide security and at the same time the privacy of the individuals must be well respected.

The writer has completed Bachelor of Law from University of London.



YOUR ADVOCATE

This week Your Advocate is Barrister Omar Khan Joy, Advocate, Supreme Court of Bangladesh. He is the head of the chambers of a renowned law firm, namely, 'Legal Counsel', which has expertise mainly in commercial law, corporate law, family law, employment and labor law, land law, banking law, constitutional law, criminal law, IPR and in conducting litigations before courts of different hierarchies. Our civil and criminal law experts from reputed law chambers will provide the legal summary advice.

Query

We are two brothers and a sister. I am the elder of the two brothers. I am 65 years old now. our mother died quite some years ago. Our father died later. He left us quite a sizable urban property in his name, while alive he gifted a portion of the said property by registered deed. I had my name mutated and have a separate khatian thereof and had taken possession of the land too. Now my siblings want to divide the total property mention above as per shariah. My question is whether this apportionment of property will be with or without



the land gifted to me by our father many years before his death. I shall be much obliged if you would kindly give your expert opinion at your earliest convenience. Thanking you

Iskandar Ali

4/6 jakir hossain road
khulshi Chittagong.

Response:

Thank you for your e-mail. I understand that you and

your siblings have inherited some properties from your parents. As you are Muslims, the properties will be distributed amongst you as per the provisions of the Muslim Law of succession. However, the question of succession arises regarding the properties that were owned by your father and/or your mother. The fact that your father has gifted you a property ('heba') during his lifetime will mean that the said property is not at all a subject matter of distribution amongst the successors. Since your father no longer owned the said property in issue at the time of his death, it did not pass on to the successors after his demise. Accordingly, you can safely hold that you and your siblings should distribute the rest of the properties amongst yourselves as per the ratio mentioned in the Muslim law of succession.

However, it is a matter of regret that with the hike of the property value in the recent years, the close family members have now become less accommodative. Hence, we witness lots of partition cases in the recent years. In case you fail to distribute the properties amongst yourselves by an amicable partition deed, the matter may ultimately resort to the court. In such a case, I do not rule out the possibility that one of your siblings may challenge the validity or the very existence of the heba. If such situation arises, you have to be very vigilant so that the heba can stand. Having said the same, from a practical point of view, I would strongly advice all of your siblings to try to distribute the properties by amicable partition deed during your lifetime. The more the number of successors the more difficult it would be to reach a consensus and this may end up with an unhappy litigation within the family!

I hope the above shall help. Take care.

For detailed query contact: omar@legalcounselbd.com.



LAW WEEK

HC seeks report on embassy role

The High Court on October 12 asked Bangladesh ambassador to Saudi Arabia to submit a report on the steps it took to save the lives of eight Bangladeshi nationals who were beheaded in Riyadh on October 8. The ambassador has been asked to submit the report in four weeks. The court asked the ministries of foreign and labour affairs to investigate the role of the Bangladesh embassy officials in Saudi Arabia in saving the lives of the eight workers and to submit a report to the court in eight weeks. The HC also issued a rule upon the officials concerned to explain in four weeks why their "inaction or failure" to save the lives of the eight Bangladeshi citizens should not be declared illegal. The HC bench of Justice Farid Ahmed and Justice Sheikh Hassan Arif came up with the order and rule following the writ petition filed by Human Rights and Peace for Bangladesh.- *The Daily Star online edition October 12 2011.*

Contempt rule against CEC

The High Court on October 11 issued a contempt of court rule against Chief Election Commissioner ATM Shamsul Huda and five others for declaring a candidate of Pirojpur municipality polls as elected uncontested ignoring its order. In the rule, the court asked the CEC and others to explain in two weeks why appropriate legal action would not be taken against them for violating the order. On January 2 this year, an HC bench directed the authorities concerned to allow one Nasim Uddin Khan to contest the Pirojpur municipality polls by allocating a symbol to him and not to declare anybody elected uncontested. But the Election Commission (EC) on January 20 issued a gazette notification declaring Md Habibur Rahman Malek as mayor uncontested. Habibur Rahman is one of the six persons against whom the HC issued the contempt of court rule. The HC bench of Justice Md Ashfaqul Islam and Justice M Moazzam Husain issued the rule. - *The Daily Star October 12 2011.*

Hearing deferred for 20th time

A Dhaka court on october 11 deferred for the 20th times the hearing on charge framing against Arafat Rahman Koko, son of BNP Chairperson Khaleda Zia, in a tax evasion case. The court fixed November 20 for the hearing. Judge Mohammad Zohurul Haque of the Senior Special Judge's Court extended the time following a time petition submitted by Koko's lawyer Zainul Abedin Meshbah. In his petition, Meshbah said he could not bring any order on the rule issued earlier from the High Court (HC) following a writ challenging the legality of the case. The HC issued a rule upon the government on June 9 last year to explain why the proceedings of the case should not be declared illegal.- *The Daily Star October 12 2011.*

HC drops Khaleda's petition from hearing list

A High Court bench on October 11 dropped from its hearing list a petition by BNP Chairperson Khaleda Zia challenging proceedings against her in the Zia Orphanage Trust case. The bench of Justice Mohammad Anwarul Haque and Justice AKM Zahirul Hoque dropped the plea. The HC on October 15, 2009, issued a rule on the government and the Anti-Corruption Commission (ACC) to explain why the proceedings against Khaleda in the case should not be scrapped. The petition came up in the cause on October 11 for final hearing.- *The Daily Star October 12 2011.*

HC directed to maintain status quo

The High Court on October 11 directed the government to maintain status quo for ten days on felling trees on both sides of the road from Jhanjail Bazar to Durgapur upazila in Netrakona. The court passed the order following a writ petition filed by Liton Mrong, general secretary of Garo Baptist Convention Bangladesh (GBCB), seeking status quo order in respect of cutting down the trees. The HC bench of Justice Farid Ahmed and Justice Hassan Arif ordered the petitioner and the Netrakona district council authorities to inform the position of the tress and its land to this court within ten days.- *The Daily Star October 12 2011.*

Remove CCTVs from beauty parlours

A High Court on October 10 directed the government to take necessary action immediately for removing closed-circuit televisions (CCTVs) from the service rooms of the beauty parlours across the country. The court also issued a rule upon the five government officials to explain within two weeks why they should not be directed to make a policy on the use of CCTV cameras in service rooms of the parlours. The five are information secretary, home secretary, labour secretary, inspector general of police (IGP) and director general of Rapid Action Battalion (Rab). A HC bench of Justice Farid Ahmed and Justice Sheikh Hassan Arif passed the order.- *The Daily Star October 11 2011.*

Dear reader,

You may send us your daily life legal problems including family, financial, land or any other issues. Legal experts will answer those.

Please send your mails, queries, and opinions to: Law Desk, *The Daily Star* 64-65, Kazi Nazrul Islam Avenue, Dhaka-1215; Tel: