



LAW LETTER

Understanding law through HRSS model

RECENTLY, I participated in 12th Human Rights Summer School (HRSS) organized by Empowerment through Law of the Common People (ELCOP). It was a good opportunity to enlighten myself through the endeavour provided by the HRSS. The HRSS, a two weeks residential human rights and advocacy course, acts as a platform where different legal minds come together and reach in consensus that law must be understood in pro-poor sense. In our legal system, law does not focus on our social and economic context and for that the true essence of law that is social engineering remains in vain. Only the prudence of human rights can create sensitivity towards common people and HRSS emphasized this aspect of creating sensitivity since its journey 2000.

One of the important endeavours governed by HRSS is to demarcate between theory of law and reality through community visit. Amongst many tenets of teaching methodology of HRSS, I would pick up 'community visit' which introduced a new chapter of understanding law going beyond the periphery of black letter contained in text book. As participants of HRSS, we went to the community people in the three villages of Koitta Mankiganj.

It is true that functioning of law depends entirely on how people think about law? Law is for the people and for that people would have minimum respect towards law which is vital in terms ensuring the true essence of justice. In terms of ensuring justice for common people it is vital to create an atmosphere where people have access to justice without facing any difficulties and impediments. Access to justice is essentially based on the universal concept of equality which requires necessary legal framework and institutional arrangement through which every person have access to legal sys-

tem on equal footing. Now, reverting to the practical scenario experienced from the community visit at 12th HRSS, we discovered that most people in the villages are ignorant about law, human rights and legal rights. The most unfortunate point is that people are not only aware of their rights but showed tremendous reluctance to



12TH HRSS

know about their entitled rights. Some people said that they are not the right person to know about their rights and it is the local representatives who are supposed to know about their rights. This is horrific, because it is the local representatives, not the justice system, as per their understanding, determine their fate. Over the long years they are cultured or nurtured in such way that the common people need not understand about their rights and quite interestingly it seems that they are quite happy with their perceived happiness.

Now the question is: by keeping those people ignorant about their rights can the power be exercised for

the benefit of the people? The constitution which is embodiment of the will of the 'people' expressly enshrines that all power belongs to the people. So we are confronted with another question: does the term 'people' mean only those who make law to exploit other people? The answer, it seems is in the positive from the societal reali-

ties of power structure which provides instrumentalities in the hands of the haves. From our filed visit it became transpired that access to legal remedy against exploitation is a far cry for the socially disadvantaged segments of the society as they cannot afford to pay lawyers, to vindicate their rights, which itself constitutes a violation of human rights.

Our realization is that law must address the social and economic context of society otherwise law itself would create injustice rather than providing justice. Establishment of social justice would not be possible without institutional arrangement through which justice can be delivered in effec-

tive manner. The question of providing legal aid comes here. The people are not familiar with the legal aid service provided by the government in our visited locality. Lack of institutional arrangement for providing legal aid was one of the identified reasons behind this. People do not feel comfort to get that free service for which they are legally entitled. Rather they feel comfort being deprived of their rights. This scenario shows tremendous rejection of the instrumentalities of justice delivery system by the community people. Legal aid should not be a charity and a mere lump sum rather it should be a right to such an environment which empowers a people to take the recourse of law effectively. Vaccination of human rights education through legal literacy movement, equitable distribution of resources, making the village courts functioning are some of the possible ways of addressing the situation. Addressing the social and economic texture in terms of law making and proper functioning of instrumentalities for providing justice concurrently can ensure the proper exercise of power which in real sense belongs to people.

The community visit at HRSS has unfolded the eyes of young law learners to understand the social function of law. It is argued that the legal curricula of the law schools should contain the opportunities of interacting with the community people. It is hard to think about studying law merely being engraved by four walls. To make a people friendly generations of legal community legal study must be taken out of the class rooms. At 12th HRSS the participants have made a commitment that their lawyering would be lawyering with the poor and lawyering for justice.

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LEGAL MAXIM



Non facias malum ut inde veniat bonum - You shall not do evil that good may come of it

Non jus, sed seisia, facit stipitem - Not right, but seisin makes a stock (from which the inheritance must descend).

Non refert quid notum sit judici si notum non sit in forma iudicii - It matters not what is known to the judge if it is not known judicially.

Non sequitur - An inconsistent statement, it does not follow

Nullus commodum capere potest ex sua injuria propria - No one can derive an advantage from his own wrong.

Nullus recedat e curia cancellaria sine remedio - No one should depart from a Court of Chancery without a remedy.

Omne sacramentum debet esse de certa scientia - Every oath ought to be of certain knowledge.

Omnia delicta in aperto leviora sunt - All crimes (committed) in the open are (considered) lighter.

Omnia praesumuntur contra spoliatores - All things are presumed against a wrongdoer.

Omnis innovatio plus novitate perturbat quam utilitate prodeat - Every innovation disturbs more by its novelty than it benefits by its utility.

Optima legum interpretis est consuetudo - The best interpreter of laws is custom.

Optimus interpretis rerum est usus - The best interpreter of things is usage.

Pacta privata juri publico non derogare possunt - Private contracts cannot derogate from public law.

Partus sequitur ventrem - The offspring follows the mother.

Pater est quem nuptiae demonstrant - The father is he whom the marriage points out.

Peccata contra naturam sunt gravissima - Wrongs against nature are the most serious.

Pendente lite nihil innovetur - During litigation nothing should be changed.

Source: Inrebus.com.



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

I am a managing director of a private limited company. I need to know the process of changing the private limited company to public limited company.

Anonymous.

Response

Thank you very much for your query. We have understood that you are the Managing Director of a Private Limited Company and are desirous to convert the same to a Public Limited Company. Such conversion is not at all a complex process and the provisions related to the same can be found in the Companies Act 1994, section 231. It provides that if a Private Limited Company has at least seven members it has to alter its Articles of Association to amend its provisions related to Private Limited Company. By doing so, the company shall be a Public Limited Company as on the date of the alteration. Within a period of 30 days from the date of the alteration you need to file with the Registrar of Joint Stock of Companies and Firms (RJSC) either a prospectus or a statement in lieu of prospectus to this effect.

If your company does not have seven members (i.e. shareholders) at present then you need to have seven members first before such conversion can be made. Members can be added by issuance of new shares to new members or by transferring of existing shares by any shareholder to new members as per the provisions contained in the Articles of Association of your company.

That prospectus or statement in lieu of prospectus has to contain the particulars set out in Part I and the reports specified in Part II of Schedule IV of the Companies Act 1994.

It has to be remembered that non-compliance with the above section will render the company and every officer of the company in default punishable with imprisonment for a term of up to 2 years or with fine of up to five thousand taka or with both.

Worth noting is also the fact that should any prospectus or statement in lieu of prospectus filed under this section include any untrue statement, any person

authorizing such filing shall be punishable with imprisonment for a term of up to 2 years or with fine of up to five thousand taka or with both. However, that person may not be thus punished if he proves either that the statement was immaterial or that he had



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reasonable ground to believe, and did up to the time of the filing of the prospectus or statement believe that the statement was true.

It is pertinent to mention here that a Public Limited Company is not necessarily a listed company. If you want to become a listed company you have to be listed with the Stock Exchanges and obtain a listing permission from the Securities and Exchange Commission. In case the paid up capital of your company exceeds 50 crore then it is compulsory to become a listed company and is obliged to issue shares to public. If, on the other hand, the paid up capital of your company remains within 50 crore then you can continue with the company in its Public Limited status without listing the same.

We also advise you to consult a lawyer expert in company matters to deal with the entire issue of conversion and filing with the RJSC.

For detailed query contact: omar@legalcounselbd.com.



Ghulam Azam lands in jail

Forty years after liberation, former Jamaat-e-Islami ameer Ghulam Azam was sent to jail on January 11 on charges of committing crimes against humanity and peace, genocide and war crimes in 1971. The International Crimes Tribunal, rejecting his petition for bail, ordered sending Azam to Dhaka Central Jail. The prosecution on January 5 brought 62 specific charges against the former Jamaat chief. On January 9, the tribunal accepted the charges. Ghulam Azam, one of the front men who actively helped the Pakistani occupation forces' attempt to foil the birth of Bangladesh in 1971, comes under the spotlight once again. -The Daily Star January 12, 2012.

MP Shaon not charged

On January 11, Criminal Investigation Department (CID) pressed charges against six people excluding ruling Awami League lawmaker Nurunnabi Chowdhury Shaon in connection with the killing of Jubo League leader Ibrahim Ahmed in August 2010. The accused are Shaon's bodyguard Delwar Hossain, driver Kamal Hossain Kala, personal secretary Sohel Ahmed, Jubo League activist Golam Mostafa Shimul, Mazharul Islam Mithu and Nur Hossain Munna. All the accused are now on bail. Jubo League leader Ibrahim received a bullet fired from a licensed pistol of MP Shaon in the parliament complex on August 13, 2010. Driver Kala filed an unnatural death case the following day with Sher-e-Bangla Nagar Police Station claiming that the gun went off when Ibrahim was handling it in the lawmaker's car. -The Daily Star January 12, 2012.

Rajuk files case against Bashundhara

Rajdhani Unnayan Karttripakkha on January 10 filed a case against East West Property Development, a concern of Bashundhara Group, for filling up Boalia canal illegally in the capital's Khilkhet area. Manzur Elahi Bhuiyan, assistant director of Rajuk, filed the case accusing the company's Managing Director Ahmed Akbar Sobhan, also chairman of Bashundhara Group. The case was filed under Playfield, Open Space, Park and Natural Water Reservoir Conservation Act, 2000, for all metropolitan areas, divisional areas and including all district areas. -The Daily Star January 11 2012.

HC asks govt to act against private schools

The High Court on January 9 directed the government to take immediate steps to prevent private educational institutions across the country from charging additional admission fees from students. In response to a writ petition, it ordered the authorities concerned to investigate allegations against the schools and colleges imposing additional fees and charges in the form of donations violating the guidelines issued by the government. The HC issued a rule asking the education ministry, directorates and education boards to submit to it within a month reports what steps have been taken to stop charging excess fees and punish violators of the guidelines. An HC bench comprising Justice AHM Shamsuddin Choudhury Manik and Justice Jahangir Hossain Selim came up with the rule after hearing the petition jointly filed by two rights bodies--Campaign for Popular Education (CAMPE) and Bangladesh Legal Aid and Services Trust. -The Daily Star January 10 2012.

HC asks authorities to stop filling up city canal

The High Court on January 9 ordered East West Property Development Ltd, a concern of Bashundhara Group, to stop filling Boalia Khal (canal) inside its Bashundhara residential project and any on-going construction on the canal for next three months. The court passed the order in a suo moto rule following a report published on January 8 in the daily Prothom Alo with a headline "Housing project by filling Boalia Khal". It also asked the company to explain in three weeks why the construction under the housing project in the city by filling the canal should not be declared illegal. The HC bench of Justice AHM Shamsuddin Choudhury Manik and Justice Jahangir Hossain Selim passed the order after Deputy Attorney General ABM Altaf Hossain drew their attention to the report. -The Daily Star January 10 2012.

Charges against six pressed for forgery

The Detective Branch of police (DB) on January 9 pressed charges against six people in a case filed for submitting forged documents to the High Court in order to obtain bail for killers of the couple slain in Gulshan. The charge sheeted accused include a Supreme Court lawyer, Mohammad Moniruzzaman, while the others are Mohiuddin Azad Rabbi, Faruque Ahmed, Abul Kashem, Halema Begum and Dwigendra Kumar Chanda. Earlier, On January 11, 2011, Rubel and Mithun fled on being released on bail from the HC. Fake documents were submitted to secure their bail. The HC on February 9, cancelled the bail order, directed police to arrest the accused and ordered the lawyers to explain within a week their conduct over securing the bail by means of forgery. -The Daily Star January

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