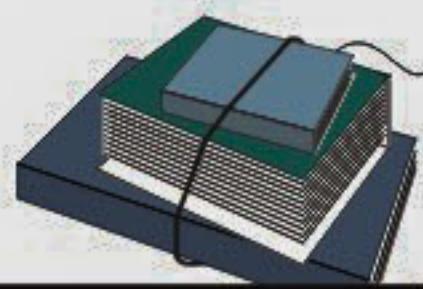


LAW BOOK REVIEW



Law of Writs: A book writ large!

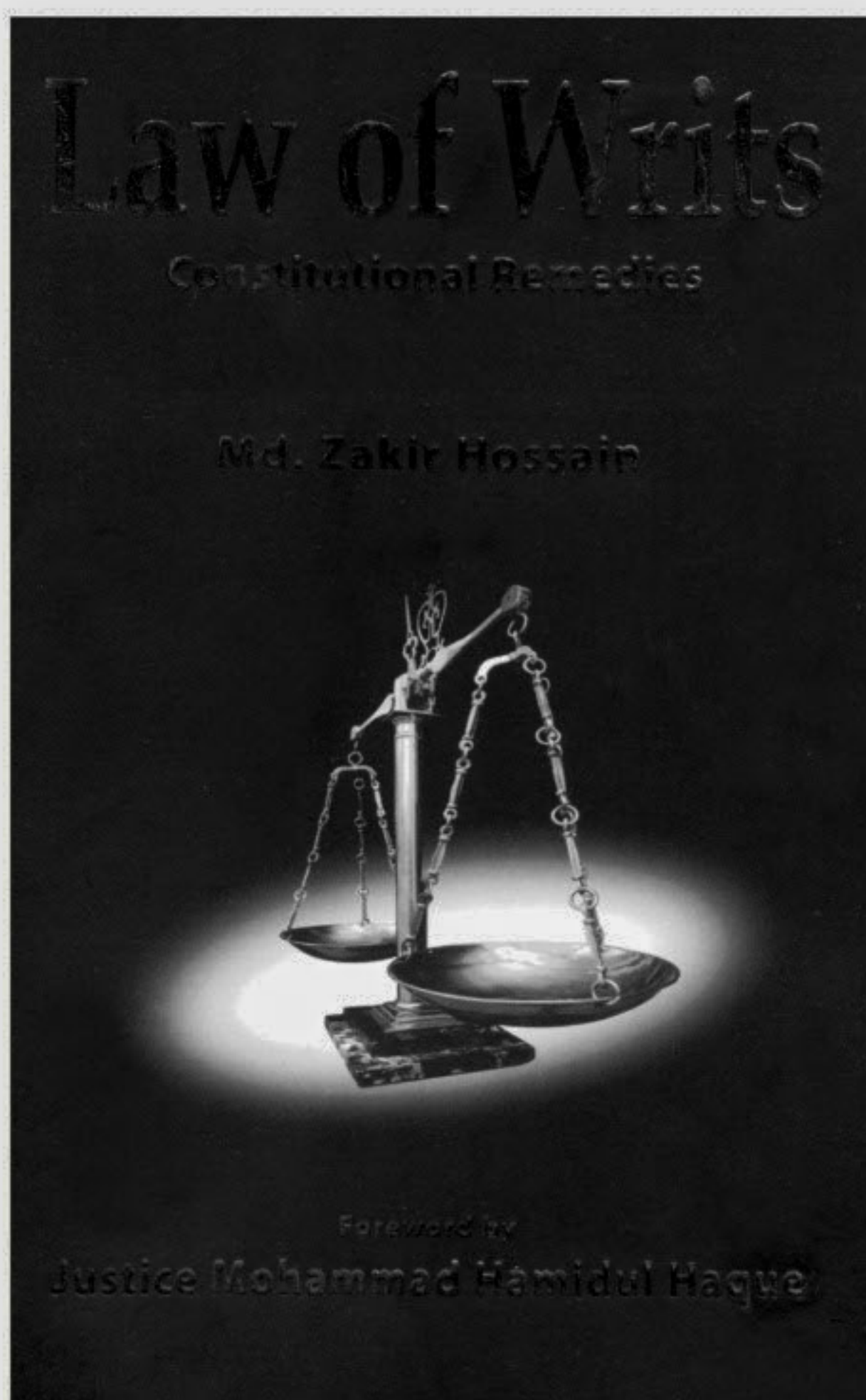
THE illuminating, eloquent, evocative and forthright speeches delivered in 53rd Annual General Conference of Judicial Service in 2003 by then Honorable Chief Justice of Bangladesh as it insists a young researcher to work on Writ in Bangladesh. The concept of law of writs has assumed much importance in the last few decades and many important judgments of far reaching consequences were delivered by the High Court Division while exercising power under the writ jurisdiction. Dr. Ambedkar, the architect of the great Indian Constitution argued that "If I was asked to name any particular Article in this Constitution as the most important an Article without which this Constitution would be a nullity I could not refer to any other Article except the Articles which dealt with writ remedies. It is the very soul of the Constitution and the very heart of it." In the same way Mr. Md. Zakir Hossain who is a Judge by profession and a recipient of distinction at Masters Studies (LL.M) from IMO IMLI, Malta and LL.B (Hon's), LL.M. (Dhaka University) think that a right is a dominating relation of a man with the things or object of his necessity and the man creates a world to live in and attempts to shape it to his inner ideal. He too believes that it is only possible by seeking resort to Writ jurisdictions of High Court Division.

Law is a discipline that keeps growing simultaneously with the development in

the society has to be learnt continuously and consistently with the times. In Bangladesh, literature on the Law of Writs is quite scant. Hence, the author motivated to study on the same and divulges the four corner of writ in Bangladesh in the form of a book namely "Law of writs Constitutional remedies"

The present book under review written by Mr. Md. Zakir Hossain, Director (Judge), Judicial Administration Training Institute (JATI), is an insightful Study, where he worked hard for about seven years on the subject and which shows that the writs are valuable weapons for enforcement of Human Rights i.e. fundamental right & other legal rights. It is basically based on Bangladeshi case-law, attempts a historical and up-to-date account of the extraordinary legal remedies as developed by our Courts in controlling administrative & judicial actions. The historical evolution of certiorari, habeas corpus, mandamus, prohibition, and quo warranto are given in separate chapters to present the materials in their respective perspective. Wherever appropriate, comparable American, Pakistan, Indian & UK law is also mentioned in the book.

The book 'Law of Writs constitutional remedies' tersely presents the trajectory of the life and develop-



Law of Writs: Constitutional Remedies
Author: Mr. Md. Zakir Hossain
Publisher: Universal Book House
1st Edition : January, 2012
Price shown: BDT 1200/- Tk.

ment of fundamental rights which are sine qua non for a civilized man and has been dealt with under different chapters and their enforcement by way of writ jurisdiction has also been discussed from practical perspectives and definitely gives the reader a taste of fresh view on the subjects.

The book can boast of being the first of this sort in Bangladesh. The book claims to be unique as it demonstrate the Chronological Account of the Present Trends and Future Issues of the Writ Remedies in Bangladesh, which appears timely and in accordance with the needs. The Fundamental Rights are made legally enforceable. It is their justifiability that makes them instantly efficacious through the judicial mechanism of writs. It is the efficacy of this aspect, namely, the justifiability under the writ jurisdiction of the High Court Division that constitutes the core-basis of the present work.

The author worked hard for about seven years on the subject. The layout of the book is divided into 26 chapters including appendix. Almost all the matters relating to writ jurisdiction have been included in the book. Almost all the matters relating to writ jurisdiction have been included in the book. Chapter 1 laid bare the general condition how

Fundamental Rights could be enforced through Writs Jurisdiction. Outstandingly, chapter 20,21,22,24 carries much importance as it introduced, most probably for the 1st time in Bangladesh, the provision concerning legal aid in writ proceedings, essential doctrine applies in writ proceedings, pleading and procedure therein and Contempt Proceedings Arising out of the decisions and orders on Writ petitions.

The author firmly believe that it may shed light upon the lawyers, Judges, law teachers, law students and all concerned on this subject as each and every elements including latest development of writ jurisdiction has been addressed therein. Nonetheless, no work is beyond slip-up. I have no major criticism over the present cherishing publication.

In spite of some minor clerical and/or loquacious shortcomings Mr. Md. Zakir Hossain showed excellent expertise in writing the book for the mass. Probably that is why Former Judge Appellate Division of the Supreme Court of Bangladesh Justice Mohammad Hamidul Haque in his forward to the book expressed his optimism that the author deserves proper appreciation for his hard work from all relevant quarters. In addition the book will be of use not only to the judges and members of the Bar; even the students of law will also be able to have clear idea about the law of writs.

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-Reviewed by Law Desk.



YOUR ADVOCATE

This week Your Advocate is Barrister Tanjib-ul Alam Advocate, Supreme Court of Bangladesh. He is the head of the chamber of a renowned law firm, namely, 'Tanjib-ul Alam and Associates ', which has expertise mainly in commercial law, corporate law, admiralty, employment and labor law, land law, banking law, constitutional law, telecom law, energy law, Alternative Dispute Resolution, Intellectual Property Rights and in conducting litigations before courts of different hierarchies.

Query

What are the terms and condition in the concerned Act in regard to house rent? Most of the house owner in Dhaka city force their tenants to maintain a so called agreement which is set out by arbitrary terms and conditions stipulated by house owner. The tenants are compelled to maintain such terms and conditions finding no alternative. Is there any remedy under any Act in Bangladesh? If there is, what is the procedure to get remedy?

Ariful Islam

Mohammadpur, Dhaka

Response

Thank you for your query. You have raised an issue which is at the heart of Dhaka city dwellers who have no place to live on their own and compelled to rent premises for their living.

Thankfully, the Parliament has passed a legislation protecting the tenants. Under the Premises Rent Control Act 1991 a landlord cannot fix any rent at his sweet will. This Act also prohibits increase of rent

extend to twice the amount recovered in excess of the standard rent, and every subsequent occasion to a fine which may extend to three times the amount of such excess. If any landlord receives, asks for or invites whether directly or indirectly any premium, salami, security or any other like sum in addition to the standard rent for any reason other than those specified in section 11 the accused landlord may be fined which may be extend to two thousand taka on the first occasion and on every subsequent occasion to a fine which may extend to five thousand taka.

If any landlord receives any sum as rent in advance in excess of one month's rent without the written consent of the Rent Controller the landlord may be fined which may extend to double the amount which he received in excess of one months rent and every subsequent occasion to a fine which may extend to three times the amount received in excess of one month's rent. Under this Act Govt. may appoint any person as a controller for any area to exercise the powers and functions and discharge the duties conferred and imposed upon a controller by or under this Act. Generally a senior assistant judge is treated as a rent controller.

If any disputes arise regarding the house rent any tenant can seek remedy before the Rent Controller and the Controller has the jurisdiction to settle the dispute under the provisions of the Act. If any landlord improperly refuses to accept the rent, a tenant can take steps for the protection of his tenancy by filing an application to the Rent Controller and depositing the rent with the Controller.

To sum up, the tenant must pay the rent in terms of the contract and in the absence of the contract within fifteenth day next following month on which the rent falls due. If the landlord refuses to accept the rent tendered by the tenant, he must remit the rent within the fifteenth days of the

following month by money order. If the rent remitted by money order is refused the tenant can deposit the rent before the rent controller within the fifteen days of the refusal.

In your query you have said most of the house owner in Dhaka City force their tenants to maintain a so called agreement which is set out by the arbitrary terms and conditions stipulated by house owner. Under the laws of Bangladesh, there is no scope to enter into any deed which is in violation of law. If any landlord compels its tenant to agree on a term which is in violation of the laws of Bangladesh, the tenant can take recourse of law by filing a suit for cancellation of the deed in civil court. Thank you.

For detailed query contact: info@tanjibalam.com



beyond the standard rent. Though there is no specific definition of the standard rent but section 15 of this Act and Rule 7 of the Premises Rent Control Rules 1964 defined the standard rent.

Section 7 of the Act imposes restrictions in increasing rent beyond certain rate. This section provides that subject to the provision of this Act where the rent of any premises has been increased so as to exceed the standard rent the amount of such excess shall, notwithstanding any agreement to the contrary, be irrecoverable. Section 23 of the Act also provides for penalty for recovering in excess of the standard rent. Under this section whoever knowingly receives whether directly or indirectly a rent in excess of the standard rent for any reason other than those specified in section 8 or in section 9 he may be punished to a fine which may be

LAW EVENT



Reform in personal law stressed

LAW Commission Bangladesh organised a daylong workshop at BIAM Auditorium on 24 March 2012. Distinguished participants at the workshop stressed the need for reform on diverse aspects of Muslim-Hindu-Christian family laws. Academicians, Judges, Lawyers, law students, rights activists, political party representative and civil society members from different strata of the society participated in the workshop. Dr. Faustina Pereira, Advocate Bangladesh Supreme Court, suggested reform proposals of Christian law and argued to amend section 10 of the Divorce Act of 1869. She also expressed the view that a new law of adoption amongst Christians in Bangladesh is to be enacted. Dr. Faustina said, "all citizens must be recognised as equal claimants of constitutional guarantees of equality and human dignity. When religious practices fall short of universal standards and constitutional guarantees of human rights the State has a duty to protect each and every citizen, irrespective of their religion or their sex."

Dr. Debapriyo Bhattacharya gave his reform proposal from three standpoints: polygamy, marriage registration and life estate. He emphasised on the necessity of Hindu marriage registration and opined that the life interest in property by the widow should be made full interest.

Advocate Salma Ali mentioned that, Bangladesh National Women Lawyers' Association (BNWLA) has been working for last 27 years on Hindu and Muslim law. From her experience she reveals that amongst 300 Hindu women present in a workshop, 98% were in favour of reform. 'Because they were the victims of existing law', she observes. She mentioned that after 1946, no modifications to the corpus of Hindu law have been made, and therefore, there is no alternative of reform. Advocate Subrata Chowdhury of Bangladesh Supreme Court gave a sad description of the legacy of vested property law up to 2012. He favoured the reform with the note of caution that while dealing with personal law we remain in a dwindling situation. Reverend David A. Das termed himself as the victim of law and inform the audience that the Jatiyo Church Parishad is also not an exception to this. He argued that most of the Christian laws including divorce law, marriage law, adoption and maintenance law, inheritance law contain discriminatory provisions.

Professor Dr. Shahnaz Huda of Dhaka University observes that though Muslim law prohibits adoption of child, but actually it is being taking place in the society. She expressed the view that time has come to think over how this aspect of law can be reformed without offending Muslim law.

Dr. Shahdeen Malik, Director, BRAC School of Law, says that amongst the 1200 laws of the country 1180 laws does not reflect any religious provisions. 'These laws are applicable for all. If the religious feelings are not offended by those, will it be offended if marriage law is made secular', he questioned.

Md. Shajahan Miah says, "the sole granddaughter inherits all the property of the grandfather in case her father dies before the grandfather, whereas, In case of father's property, the sole daughter does not inherit the entire property of her father, some portion goes to the



uncles. This discrimination needs to be removed."

Justice S K Sinha stressed on the best interest of the children in case of determining guardianship. He Clarified that the apex court has not granted any right of giving verdict it has merely recognized the right to give ones opinion. Fouzila Karim Firoze, Member of NHRC mentioned about welfare doctrine in case of maintenance. She said rational interpretation of personal law is possible even with the bounds of law given the needs and exigencies of the society.

Madam J. Salam Masud Chowdhury says, "Constitution is above all law. We should be waiting to enjoy the benefits law." Law, Justice and Parliamentary affairs Minister Barrister Shafique Ahmed was present at the workshop as the Chief Guest. Honble Minister said that reform in the family law regime is not a matter of overnight. Any law is to be interpreted in the light of humanity. Barrister Shafique said any reform will be made without offending one's religious sentiment. 'New law will be enacted in the light of deliberate opinion of all and sundry', the Minister reiterates.

Acting Chairman of Law Commission Professor Dr M Shah Alam in his end note said that the Commission is carrying out research on family law. The workshop was designed as a manifestation of this noble agenda. He says, "all the different opinions would be counted and we would continue to conduct discussion on it. As a part of fundamental research, a complete final report will be submitted to the government for taking necessary action", he observes. Hasina Rowshan Jahan, Secretary of Law Commission and Sharmin Nigar, Senior Research Officer of Law Commission also presented their views on the occasion.

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-From Law Desk.

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, 64-65, Kazi Nazrul Islam Avenue, Dhaka-1215; Tel: