



LAW LETTER

Minimizing road accidents: a constant endeavor

In Bangladesh, the citizens of Bangladesh constitutionally enjoy the protection of law, the meaning of which includes, but not limited to, no action detrimental to their life, liberty, body, reputation or property of any person shall be taken except in accordance with law. Moreover, it has been ensured in Article 32 of the Constitution that no person shall be deprived of life or personal liberty save in accordance with law. However, the real world is quite different for the citizens of Bangladesh. Among many other causes road accidents vis-à-vis failure to ensure road safety are contributing in deprivation of life without in accordance with law. It must be noted the relationship between road safety and right to life under Article 32 is not farfetched since World Health Organization (WHO) in 2007 recognised in a policy briefing on 'Youth and Road Safety in Europe' that "A failure to safeguard the roads compromises their fundamental right to safety".

Recently, two persons died in two separate road accidents in Dhaka, both students, one of Notre Dame College and another of Dhaka Commerce College, and these incidents have infuriated the inhabitants of Dhaka. On both occasions questions like why these accidents happen and who is responsible for both the accidents were raised and within days people also forgot all about these accidents and most surprisingly also the questions, as if, the accidental demise of these two bright students have never taken place; as if, nobody cares much about finding the answers of these questions. We know even this article will not be able to create more than a ripple into the senses of the reader. In spite of that we will keep trying to find the answers of those questions and point our fingers to that authority of the Government who is bound by law to ensure road safety and to ensure that every single user of the road, may it be a pedestrian or a driver, is aware of the means and ways to protect themselves from road accidents and to respect the life of other road users.

If we go into the deeper picture first we

will see that high rate of fatal accidents in Bangladesh is alarming and hence undesirable. According to police statistics, road accidents in Bangladesh claim, on average 4,000 lives and injure another 5,000 a year. Actual estimated road fatalities each year about 10,000 to 12,000 which is at least 50 times higher than the rates in Western Europe and North America. In current prices, road accident in Bangladesh is costing community at least Tk. 5,000 crore per annum. Not only on the highways, but also urban accidents cause fatal injuries sometimes resulting into 'negligent' loss of lives.

Now let's have a look into the main factors which contribute accidents. These include road user errors, adverse road conditions or environment, vehicle defects. If we be more specific on the causes leading to road accidents are- unskilled/unqualified drivers, reckless driving, crossing the speed limit, overloading, vehicular defects, lack of knowledge and consciousness of road users, hazardous roads, poor implementation of traffic rules, alcoholic driving, poor utilization of safety measures like seat belts and helmets, pedestrians using road instead of footpath/over bridge, improper road design, insufficient road safety measures etc.

At this above mentioned outset, we need to review the steps that are or will be taken by the Government of Bangladesh. The Government has set a 'road safety target' according to which the Government is planning to reduce nearly 50% road accident fatalities within 2020 and nearly 30% reduction of the frequency of road accidents in whole of Bangladesh. It is working towards achieving of 15-20% reduction in the annual number of road accident fatalities by the end of 2013. According to the Economic and Social Commission for Asia and the Pacific (ESCAP), road safety target for achieving 50% reduction in Road Traffic Accident (RTA) fatalities by 2020 will be achieved if the actions, that have been assigned for various sector or organizations by the Bangladesh Road Transport Authority (BRTA) of the Ministry of Communications which was prescribed in



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the 6th National Road Safety Strategic Action Plan (2011-2012) for the prevention of road traffic accidents, are fulfilled. These actions include:

- to set a goal towards achieving of a 5% reduction in the annual number of RTA fatalities by 2020;
- Approval of the strategic action plan by the National Road Safety Council;
- National Highways are recommended to be the principal target of road safety initiatives of GOB as 45% of all fatal accidents occurring on national highways; and
- RHD field division identified accident prone black spots on highways and already took measures for design correction.

Question is who is supposed to perform all these actions? Answer is BRTA. As the major stakeholder, BRTA performs the biggest role as their responsibility includes registration of motor vehicles (Chapter IV of the Motor Vehicles Ordinance, 1983), issuance of fitness certificate of motor vehicles (Section 47), route permit for transport vehicles (Chapter V), motor driving licenses (Chapter II), motor driving instructor licenses, registration of motor driving training

schools, inspection of motor vehicles involved in road accidents etc. Another stakeholder, Traffic Department, is responsible to ensure traffic rules are being adhered to, drivers possess genuine driving license, vehicle registration documents, fitness and tax certificate, insurance papers etc. while driving and so on. The owners and drivers are responsible for complying with the Motor Vehicles Ordinance, 1983.

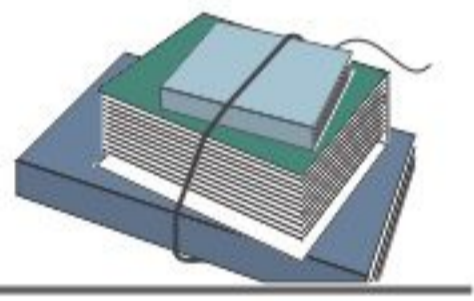
Do they perform all these responsibilities? Answer is a NO. Road safety improvement efforts in Bangladesh suffer from several drawbacks, i.e., lack of a strong professional safety agency with adequate executive powers and responsibilities; fragmentation of responsibilities between agencies and insufficient inter-agency coordination; low level of staffing and lack of professional capacity; lack of trained traffic police for effective enforcement of traffic regulations; and too few resources directed towards tackling the safety problem etc. In addition, recent news, like - mass corruption while issuing driving license or giving fitness certificate also intensifies the situation. All these drawbacks reflects that the BRTA is hardly playing any role in fulfilling the actions mentioned above, which means

they are violating fundamental rights like Articles 31 and 32 of the Constitution. Addressing the road safety problems emerges a serious challenge in the absence of adequate transport safety professionals and resources. Intensified efforts are needed to bring about changes in the attitudes of drivers and other users towards safe operations.

Improvement of road safety is a multi-disciplinary task and does not occur by itself. Road accidents are problems that cover many sectors (social, health and economic), which can only be handled efficiently if the Government takes a leading role and responsibility with due commitment. We agree we have road environmental deficiencies, we have inadequacy in police inspection and safety, we are lacking in systematic understanding and investigation of the accident problems etc. Still, going forward, we need to consider road safety, first, as a fundamental right, then a policy priority since 'it is an emerging global public health priority'. Issues like - seeking solutions of accident problems through correct procedures, standards, safety conscious planning and design and good practices, improving the roadway system, educating people on road safety, traffic law enforcement and above all reducing corruption in BRTA are critical components in reducing road accidents. Otherwise BRTA, as a part of the Government, will fail to ensure the fundamental rights, e.g., right to life, which has been engraved in the Constitution of Bangladesh and thus the State itself will fall short in ensuring the fundamental rights to its citizens, which is not desirable by any of us. We will conclude by quoting Mr. Ban Ki-Moon from his statement on the UN Decade of Action for Road Safety 2011-2020, "...each of us has a role to play in preventing deaths and injuries on the road. We can save human lives ... Let us all work together to make sure the world's roads are safe".

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LAW LEXICON



Request for admission - Also, Request to Admit. Written statements of facts concerning a case which are submitted to an adverse party and which that party must admit or deny; a discovery device.

Request for production of documents - A direction or command served upon another party for production of specified documents for review with respect to a suit; a discovery device.

Res ipsa loquitur - Literally, "a thing that speaks for itself." In tort law, the doctrine which holds a defendant guilty of negligence without an actual showing that he or she was negligent. Its use is limited in theory to cases in which the cause of the plaintiff's injury was entirely under the control of the defendant, and the injury presumably could have been caused only by negligence.

Res judicata - A rule of civil law that once a matter has been litigated and final judgment has been rendered by the trial court, the matter cannot be relitigated by the parties in the same court, or any other trial court. A court will use res judicata to deny reconsideration of a matter.

Rescission - The unmaking or undoing of a contract; repeal.

Research - A careful hunting for facts or truth about a subject; inquiry; investigation.

Resolution - The formal adoption of a motion.

Respondent superior - Literally, "a superior (or master) must answer." The doctrine which holds that employers are responsible for the acts and omissions of their employees and agents, when done within the scope of the employees' duties.

Respondent - The person against whom an appeal is taken.

Rest - A party is said to "rest" or "rest its case" when it has presented all the evidence it intends to offer.

Restatement - A publication which tells what the law is in a particular field, as compiled from statutes and decisions.

Restitution - Act of restoring anything to its rightful owner; the act of restoring someone to an economic position he enjoyed before he suffered a loss.

Source: Jurist International.



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 hermaphrodite and I live in Comilla. I am not educated as when I went to school, the children at school would not wish to sit with me and would always shun and avoid me. Even the parents of other children did not like the fact that I would go to the same school as their children. They filed complaints against me to the school authority so that I could not study there. Now that I am older, I cannot even go and use the public toilets as there are no toilets for my gender, people would beat me up if I use either the Male or Female toilets. From public toilets to public schools I had no place anywhere. I was wondering if there is any law to provide any solution to my distress. Am I not a rightful citizen of Bangladesh or what?

Ratna Rahman
Comilla

Response

I would like to thank you very much for your queries. From the fact it appears that you have been discriminated being a hermaphrodite who are unfortunately considered as a member of a marginalized and deprived community. As far as any legal solution is concerned, the state recognizes two sexes namely male and female. In consequence, people with physical impediments like yours are not officially recognized although such transgender people constitute a socially recognized community in Bangladesh.

Being a citizen of Bangladesh, you are entitled to protections offered by the Constitution of Bangladesh in terms of equality and discrimination. The Constitution provides for equality to all the citizens along with equal protection. Moreover, discrimination on account of religion, race, caste, sex has also been prohibited. The Constitution also prohibits any restriction imposed on any citizen on account of religion, race, caste, sex with regard to admission to any educational institution and employment. From your given fact it appears that you have been deprived of such protections in terms of equality and discrimination as offered by our Constitution. You may consult a lawyer and file a Writ Petition before the Hon'ble High Court Division in that regard. Such step may be beneficial to the entire community as the Hon'ble High Court Division may issue rulings on concerned authorities asking them to take appropriate

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ate measure for the benefit of the community.

As the Constitution has empowered the State to make special provision for the advancement of the backward section of the community, the Government should consider the plight of the transgender people and recognize them as third gender officially so that they can enjoy same rights and entitlements as men and women. However, it is a good sign to observe that the situation has been changing albeit slowly. Gradually people are becoming aware of the stigmatized and impoverished life lead by the community and a change of mind-set is very much visible from the fact that films and motion pictures are being made depicting the misery and sufferings of transgender people along with a surge of other awareness raising activities like seminars, rallies, talk shows etc. Moreover, the Government has also made special allocation for such backward communities along with harijon and bedays in its latest budget for the current fiscal year. In addition, for the first time in the history of the country, the Government has taken a pilot project to enhance the skill of transgender people in order to bring them to the mainstream of the society.

It must be borne in our mind that people of the transgender community are normal human being like any of us. Therefore, we should try collectively not to prejudice them by way of raising awareness. The Government, NGOs, Civil Society, religious leaders and other concerned bodies can play an important role in this regard. I hope you will be benefited from the aforesaid opinion.

For detailed query contact: omar@legalcounselbd.com.

LAW WEEK

Court questions blasts case probe

A Dhaka court on July 26 questioned the legality of the investigation into the blasts case filed against BNP acting secretary general Mirza Fakhrul Islam Alamgir and 28 others. Judge Mohammad Zahurul Haque of the Metropolitan Sessions Judges Court raised the question as the investigation officer (IO) of the case submitted charge sheets in the case against 29 abettors keeping the principal accused untraced. Detectives on May 31 charged 28 accused in the case plus BNP activist Mirtazul Karim Badru with blasting the bombs. Earlier, the case was filed with Shahbagh Police Station against 28 leaders of the 18-party alliance including Fakhrul in connection with the bombs explosions during hartal hours on April 29. - *The Daily Star online edition July 26 2012.*

HC disposes of writ petition

The High Court on July 24 disposed of a writ petition challenging the legality of Speaker Abdul Hamid's June 18 ruling and said it would make some observations on the issue later. In his ruling, the Speaker said an HC judge [Justice AHM Shamsuddin Choudhury Manik] had violated the constitution by making "derogatory remarks" about parliament and the Speaker. Earlier in the day, the bench of Justice Hasan Foez Siddique and Justice ABM Altaf Hossain heard arguments from the petitioner's counsels and the deputy attorney general. Supreme Court lawyer AKM Shafiuddin filed the petition on July 18. In the petition, he prayed to the HC to direct the Speaker not to issue such rulings in future, saying that the Speaker could not rule against an SC judge as per parliament's rules of procedure. - *The Daily Star July 25 2012.*

HC questions legality of Bar Council election

The High Court on July 24 questioned the legality of Bangladesh Bar Council election which was held on July 18. In response to a writ petition, the court issued a rule asking the Bar Council chairman and 38 candidates of its election to explain in 10 days why holding of the polls based on the panels should not be declared illegal. The writ petition claimed that as there is no provision or rules in the Bangladesh Bar Council law for holding its election based on panels of candidates, but the election was held on July 18 based on the panels backed by two political parties. The HC bench of Justice Naima Haider and Justice Muhammad Khurshid Alam Sarkar issued the rule following the petition filed by Advocate Yunus

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: