

REVIEWING THE VIEWS

On the brink of opposition and sedition

M. JASHIM ALI CHOWDHURY

THE Honorable Leader of Opposition seems to be seriously confused on the demarcation line of Opposition and Sedition. Some two years back, the Leader of Opposition threatened to 'throw away' the Constitution. While lecturing on Constitutional Law, I was highly critical of such a blasphemy to the Constitution, the supreme law of the land and the supreme edifice of the spirit of Liberation War. Then one of my students stood up and sought the floor. As I am, I gave him the floor with a nod of welcome. And I was quite happy with the maturity of his vision and wisdom. The speech was no doubt 'a bit harsh,' he acknowledged. Yet he was interested in taking it as a 'political' one and urged the class to consider it within the ambit of 'Freedom of Expression and Opinion' and as a critic of the government and governance in general. Quite relevantly, he brought into attention the newly inserted Article 7A of the Constitution.

The newly inserted Article 7A seeks to bring to book the perpetrators of unconstitutional intervention into politics. Introduction of such a Clause in the Constitution was a welcome development especially in light of the celebrated 5th and 7th Amendment judgment of the Supreme Court. But the grey area of the provision was in Clause (1)(b). There the Constitution wished to travel beyond the actual abrogation, suspension or repeal of the constitution. Now the subversion of



'confidence, belief or reliance of the citizens to the constitution' by 'show, or use of force, or by any other unconstitutional means', will also have to be accounted for.

My extremely brilliant student quite rightly raised a note of doubt on this point. His concern was regarding the scope of possible abuse of this by the government of a given time to suppress the opposition. Apparently, the provision seeks to prevent the undemocratic forces from destabilizing the democracy and thereby preparing the stage for an unwelcome military coup by using their democratic freedom of speech and expression. However, being in apparent conflict with

Article 39 Freedom of Expression, the exact reach of the Clause remains undefined and quite likely to be abused. Therefore, he called for a careful, liberal and steady attitude to be shown towards the alleged offences under Article 7A(1)(b). The comments, gestures and behavior critical of the constitution should be seen within the widest possible ambit of Article 39 Freedom of Expression and only sparingly the crime of sedition be alleged, he argued. Otherwise, every criticism of, and every movement against, the government of the day would be labeled with the offence of sedition against the State and the democratic process would be at stake.

I as well as the whole class was held spell bound and overwhelmed. I took the floor, thanked him and decided to add something more. I had a clear justification for Article 7A(1)(b). I asked the students to take the offence of 'Contempt of Court' and compare it with the newly introduced offence of 'Contempt of Constitution'.

The approach taken by the courts in contempt of court cases may come to aid in realizing the philosophy underneath the Article 7A(1)(b). Of course, Article 39 freedom of speech and expression remains there to allow hard, but constructive, criticism of the process, personnel or judgment of the Court in general. But no one has any right to flout the mandate of law or the authority of the Court under the cloak of freedom of speech and expression or the freedom of the press. Now I ask, while undermining the institutional prestige of a Court is jealously protected, should the constitutional edifice remain unprotected from unjustified attack and criticism?

Yes, the courts almost 'always ignore by a majestic liberalism the trifling and venial offences'. 'The dogs may bark, the caravan will pass,' as the Court says it (See- State v. Chief Editor Manabjabin and another 57 DLR (2005) 359; para 356). Yet nobody denies necessity of the law of contempt itself. If this is the case with Contempt of Court, why should the approach on 'Contempt of Constitution' be not so?

Explaining the arch rival ideologies of the major political forces of the day and the unfortunate U-turn we took in 1975, I asserted that while insertion of such a

clause sounds good, the enforcement will be extremely difficult one. But I stood firm on my belief that while a threat to 'throw away' the Constitution may escape the reach of law for the time being, it will not be able to do so in some near or distant future. Of course, the dogs will bark and the Caravan will pass. But sometimes the pye-dogs need be killed to sweep the roads, I concluded.

Today, I am quite disturbed to see my assertion coming true so early. This time the Leader of the Opposition has called upon the military to raise arms against the constitutional system of the country (!). I just recall a quote from the Pakistan Observer, Dhaka, October 15, 1958:

"It was the Constitutional responsibility of the President to call a halt to that was leading the country to disintegration. If he had not done so, it would have been the Army's responsibility to do it because in the final analysis the Army was to maintain the law and order in the country and to save it from ruination(!)"

Dear reader, it was none other than Ayub Khan addressing a press conference in Karachi justifying his military coup (See Constitutional Glimpses of Martial Law, Dr Aleem Al Razee, UPL, Dhaka, 1982, p 32)! The Honorable Leader of the Opposition must know that days of Ayub Khan are gone and indemnity that could easily be enjoyed in 1970s may not be so easy to reap in 2013.

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LAW EVENT

Training on law making process held

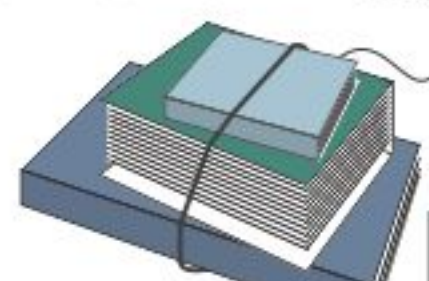
THE Legislative and Parliamentary Affairs Division of Ministry of Law, Justice and Parliamentary Affairs has been consistently working not only to assist the government in its law making and reforming procedure but also to incorporate well accepted principles of law making which are acclaimed throughout the world. These actions necessarily involve arranging consultation meetings and sensitisation workshop and training on the legal reform processes of Bangladesh.

In continuity of these endeavors a Training programme on Law Making Process was organised by this division on 28th March, 2013 at Hotel Ruposhi Bangla. The Training session was conducted by the Secretary of Legislative and Parliamentary Affairs Division, Mohammad Shahidul Haque. 34 officers, who are closely related to law making process of 17 different ministries, participated in the session. This is the Fourth and concluding training programme of the series on law making process of Bangladesh which has been started since 1st quarter of 2012.

With the discussed successful training programme, a number of 123 senior officials from 51 Ministries/agencies of the country have received the necessary understanding of Law making process. The legislative and parliamentary Affairs division with assistance of Promoting Access to Justice and Human Rights in Bangladesh Project organised this series of training on law making process of Bangladesh.

The series of training immediately served valuable understanding of the law making process and insights of procedural issues of legislative reform to the executives of different ministries/divisions who are involved in the process. In coming days, this series is expected to have substantial impact in framing of a Legislative Calendar which will better guide the Ministry of Law as well as all other Ministries/Divisions to efficiently coordinate the legislative proposition/reform process.

-From Law Desk.



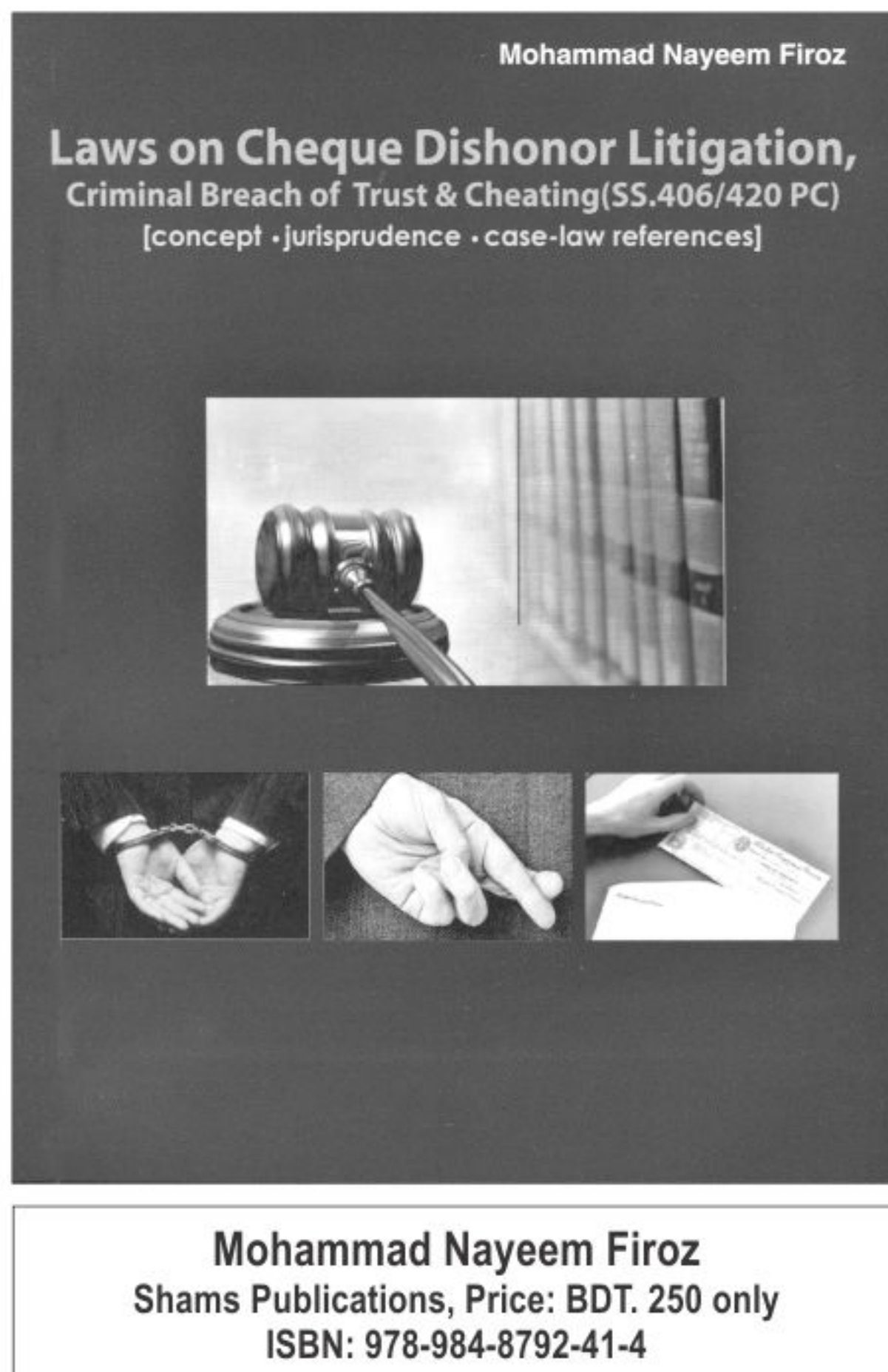
BOOK REVIEW

A book on Cr. Breach of Trust, Cheque Dishonor Litigation

TANZIM AL ISLAM

TO be frank, this paperback work is really a demanding endeavor of Mr. Mohammad Nayeem Firoz (a Judge working as the member of Bangladesh Judicial Service) to unlock the critical legal issues in criminal cases involving the allegations of the offences of Criminal Breach of Trust, Cheating and Cheque Dishonor. The Penal Code, 1860 as one of the cardinal substantive criminal law in the criminal justice system of Bangladesh has created inter alia the offences of Criminal Breach of Trust and Cheating. The Code has also prescribed the quantum of punishments for the overt or covert act committed in the commission of such offences. Like the Classical Roman Law's 'Twelve Table' the Author has incorporated in his book 12 chapters to unleash chronologically the quantum of knowledge of the litigations regarding SS.406 and 420 PC and S.138 Negotiable Instruments Act through his 'jurisprudential voyage' into several legal literatures on the subject. After the last copy of the 1st edition of this book has been sold out from country's law-book-pavilions and as the time advanced in its normal course to this date the incumbent reality was demanding another edition of this work.

In pursuant to the demand of incumbent reality and the Author's present professional strata this edition contains some reflection on the subject from his own adjudicating experience which only a Judge encounters through his day-to-day judicial functions. Sometimes circumstances arise when the litigations u/SS. 406/420 PC brought before the Criminal Courts involves such claims which are purely of civil nature and the relief the litigants seek through such complaint could easily be sought to a competent Civil Court having jurisdiction on the subject matter. Litigations u/SS.406/420 PC and u/S.138 NI Act, if proven to be groundless, frivolous and vexatious then those must be disposed of negatively within the framework of relevant provisions of procedural laws. But dismissal of such complaints should be made with sufficient reasons to be recorded in the judicial orders. Nevertheless when litigations brought u/SS.406/420 PC involves claims of both the civil and the criminal nature in an amalgamated format and on a multifaceted fact then the Criminal Courts have to deal the matter very cautiously in a systematic judicial approach. It is observed widely that cent percent litigations brought u/SS.406/420 PC involves allegations of Cheating only and those are manifestly devoid of having within it any ingredients of the offence of Criminal Breach of Trust. So, a keen inquiry and analysis is obvious in detecting the actual nature



of allegations brought in the dress of litigations u/SS.406/420 PC. A chapter of this book, at the tail of it, envisaged the jurisprudence of Cheque Dishonor litigations and incorporates legal discussions regarding the situations when those are filed under SS.406/420 in lieu of filing under S.138 of NI Act. As it is known that Cheque Dishonor litigations have been brought before the Courts under SS.406/420 in the situation when the statutory limitation period for filing a case under S.138 of NI Act elapse. Finally, relevant it will be to say that though this book was mainly designed for the Benches and the Bars concerned with litigations u/SS.406/420 PC and u/S.138 NI Act but the law-readers with legal minds shall also found this as a help-kit in better understanding the Criminal Jurisprudence concerning the crimes of 'Criminal Breach of Trust and Cheating' along with crime of 'Cheque Dishonor or Bouncing of Cheque'.

I will be deeply glad if this work receives reasonable approbation from its target groups and the potential readers thereof. May this work be appreciated to all corners where any legal mind is concerned with the Jurisprudence of Cr. Breach of Trust, Cheating and Cheque Dishonor litigations. We are ardently waiting for the next work of Mr. Mohammad Nayeem Firoz on any legal issue for the greater interest of the law-readers.

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LAW WEEK

Attacks On Minority Writ filed for investigation

A writ petition was filed with the High Court on April 4 seeking its directives on the government to investigate the incidents of attacks on Hindu community across the country. The writ also sought a court rule upon the government to explain why its inaction to protect the minority citizens should not be declared illegal. A number of Hindu temples were torched and ransacked and their deities were also vandalised across the country allegedly by the activists of Jamaat-e-Islami after international crimes tribunals delivered verdict against two of its leaders Abdul Quader Mollah and Delawar Hossain Sayedee for their wartime crimes. Six human rights organisations, including Ain O Salish Kendra and Bangladesh Legal Aid and Service Trust, and an individual jointly filed the writ petition. - *The Daily Star* online edition April 4 2013.

Ctg Triple Murder Court frames charge against accused

A Chittagong court on April 3 framed charge against Tareque Chowdhury who is accused of murdering a woman and her two children in their residence in Chittagong city last October. The court also fixed April 25 to record deposition of the witnesses, said court sources. Chittagong Metropolitan Session Judge SM Majibur Rahman passed the order on April 3. Earlier on February 26, Mohammad Solaiman, sub-inspector of Panchlaish Police Station and also the investigation officer of the case, submitted the charge sheet mentioning 44 prosecution witnesses. Doly Akhter, 30, wife of expatriate Anwar Hossain, and her children Albhi Ibn Anwar, 10, and Adiba Payel, 6, were found dead in their rented flat in Chittagong's Khotiber Haat area on October 23, 2012. - *The Daily Star* April 4 2013.

Contempt of Court Act HC questions legality of eight provisions

The High Court on April 3 issued a rule asking the government to explain in 10 days why the eight provisions of Contempt of Court Act, 2013, which allegedly curtail the court power, should not be declared unconstitutional. The rule was issued following a writ petition moved by advocate Manzill Murshid saying the eight provisions are illegal and unconstitutional. According to the provisions, the court cannot issue any summons against any government official if they have committed contempt of court and contempt of court cases against them become ineffective just after their retirement, Manzill said. The provisions curtail the court's power in dealing with contempt of court cases against the government officials, he added. Secretaries to the cabinet division, the president office, Prime Minister's Office, ministry of law, and the parliament have been made the respondents to the rule. - *The Daily Star* April 4 2013.

Defying Court Order Health DG, RMC principal to face HC on April 11

The High Court on April 1 summoned the director general of health services and the principal of Rangpur Medical College (RMC) before it on April 11 for not complying with its order. The director general (DG) and the principal have allegedly disobeyed the HC order that on January 23 asked them to allow Ashirbad Hossain, an aspiring medical student, to attend the classes at RMC until its further order. The HC issued the summons following a prayer moved by Manzill Murshid, the lawyer for Ashirbad, for taking steps against the DG and the principal for not complying with its order. - *The Daily Star* April 2 2013.

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