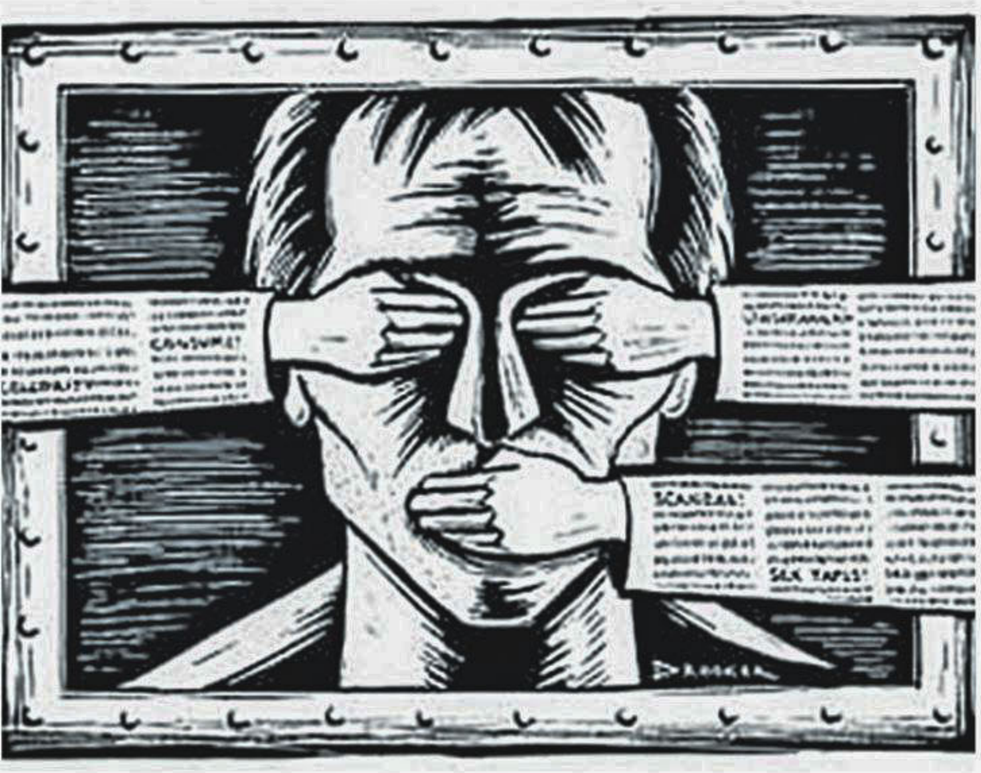
LAW VISION

Comparison of our freedom of expression



S M Abu Nayem Ahmed

BANGLADESH has Defamation Act dates back to1898. Too little has been done to upgrade it. The defamation suits had so far been used as a tool to harass opponent and to ventilate the personal grudge. In absence of a time befitting defamation law, the issues are coming within the purview of contempt of court, Information and Communication Act and more likely to be caught under recently introduced controversial Broadcast policy. The Acts did speak about the utter disregards of democratic value and sentiments.

A time befitting Defamation Act took place in UK by Defamation Act 2013 with the participation of hundreds of organisations, citizens, scientists, writers and online forums. Its aim is to "overhaul and bring them into the 21st century." Many criticised that it tilted in favour of defendant where the journalist is a prominent party.

Whatever way one looks at, it gives lessons worthy for a country like Bangladesh as far as its process, contents and the way it developed especially when our government shows intolerance with anyone who differs. However, if the defamation law is reformed with the way people and society has been tuned to cyber world and Government's belief of 'Digital Bangladesh' many controversial laws like ICT, Broadcast Policy even Special Power Act would not be required.

As per Defamation Act 2013, there are two forms of defamation: Libel by publishing a defamatory statement in permanent form, while slander in transient forms, such as speech. Defamation against the media can defame someone by publishing materials like newspapers or other printed media, electronics and web/ online forums, social media etc. In explaining the ruling, Lord Judge, LCJ said that as a consequence of modern technology and communication systems, stories can "go viral" more widely and more quickly than ever before and courts cannot treat Twitter and Facebook as if a casual chat in the pub. As the law of UK goes, defamation occurs in the estimation of right-thinking members of the public being shunned or avoided; disparaging in office/ trade or profession and exposes one to hatred ridicule or contempt. Under that new law claimants to show that the publication has caused, or is likely to cause, 'serious harm' to their reputation or for a company 'serious financial loss'.

In the UK, individuals, legal bodies can, whereas, Trade Unions, political parties and unincorporated organisations, elected authorities cannot sue for defamation over their governmental or administrative functions, but they may sue for malicious falsehood. A member of a political party may also sue for libel over defamatory statements about the party concerning personal reputation.

Now, press in Bangladesh, before being measured in the court, cannot be tried arbitrarily. Constitution of People's Republic of Bangladesh in Article 39 upholds the right to freedom of expression. Article 43 provides protection of privacy to the citizen. On the other hand, section 57 of ICT Act given the power to law enforcers to arrest any person without warrant as a non bail able offence. Facebook suspended for a week on 29 May, 2010 for national security issues and recently, 7 years imprisonment by the Cyber Tribunal for "a derogatory song" seems to be the beginning and many more are forthcoming. Introducing broadcasting policy, drafting an online media policy cannot be welcomed by the press already constrained with sedition and criminal libel laws, contempt of court, 1974 Special Powers Act etc.

Section 499 of our Penal Code; and in civil liability, in Bangladesh, any person can file a petition in a civil court. Every citizen to protect his/her reputation can sue for damages for libel and slander. This is inadequate in its definition and explanation. The civil liability for defamation to pay compensation is not governed by any statutory law in Bangladesh; rather by the principles of equity of UK and other countries. If they have changed, why shouldn't we? Instead, going back to 'bygone era' and tighten the rope of freedom of expression is suicidal.

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So far few case laws are found on defamation, printing and electronic media increases, so is the use of internet getting deep into the lives of locals, the necessity to bring reform in the law of defamation cannot be left for another day. Time befitting amendment could resolve the necessity to justify the enactment of many laws those are unnecessary, irrational and oppressive. From 1996 till July 2013, a total 124 proposed reports were found on various legal matters. One of such reports was on defamation Law in the year 2007 that recommended for no amendment. In any consideration, this may not sound rational as this is the 21st century, when so many activities of our lives have changed. We can strike out balance between our freedom of expression and right to reputation/privacy. Undoubtedly, Bangladeshi defamation law is deficient, weak to respond the demand of growing society. Defaming should be everybody's business every day not just the headache of Government alone. Freedoms of speech should not be burdened for not agreeing. Tolerance and respect not emotion should control us. If properly looked into, Defamation Act should be able to save publishers, editors from frivolous lawsuits and at the same time root out "stories that are not newsworthy".

As the new UK Defamation Act started functioning, the UK citizens see their rights are realised. The citizens of Bangladesh having live in a global village, in information dominated age cannot see their rights not protected this or that way be it a journalist or simple facebook users.

THE WRITER IS HEAD OF PRESS & PUBLICATION-ICAB.

LAW ANALYSIS

Artha Rin Adalat Ain, 2003

Objection petitions by third parties

Md. Rizwanul Islam

SECTION 32 of the Artha Rin Adalat Ain, 2003 (ARAA) deals with the procedure for presenting objection petitions by third parties against execution of the decrees/orders of the money loan court. Section 32(2) of the ARAA provides that when a third party wants to present a petition against the execution of the decree/order of the money loan court, such party may do so under the provisions of the Code of Civil Procedure, 1908 (CPC), by depositing 10 per cent of the amount decreed or if the decree has been partially satisfied by depositing 10 per cent of the unsatisfied portion. Section 32(2) also states that if the security deposit is not made, the petition presented by the third party would be dismissed. Section 32(4) of the ARAA provides that if the court while rejecting a petition filed by a third party feels that the petition was presented with the mala fide intention of delaying the execution suit, it would forfeit the deposit and pay it to the decree-holder.

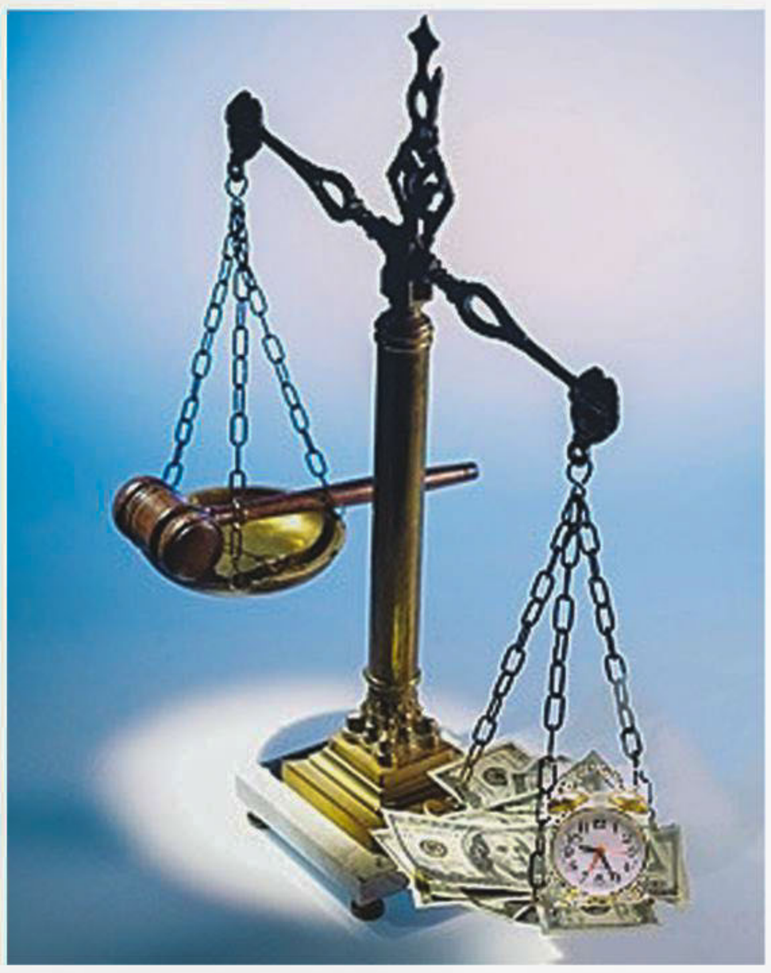
In *Mollah Shahidul Islam* v Md *Monsur Rahman and Others*, (2005) 57 DLR (HCD) 164, at the stage of the execution of a decree passed by a money loan court, the petitioner and his brother filed a petition for setting aside the auction sale of a property, under Order XXI, rules 90 and 91 of the CPC, alleging inter alia that they were not responsible for the loan as they were neither the debtors nor the third party mortgagors. The petitioners alleged that their title to the property in question had been established by a competent court and they became aware of the auction sale well after it was confirmed by the money loan court. The learned judge of the money loan court asked them to deposit 25 per cent of the amount decreed (as was the requirement until the amendment of 2010) and held that in default, their case would be rejected. The petitioners filed a writ petition against this order of the deposit. The High Court Division (HCD) upheld their petition observing that:

> The petitioner in the instant case although apparently made claim over the property auction sold, but in substance they have challenged the auction sale proceeding on the ground of fraud. So the kind of claim that has been preferred does not come within the ambit of rule 58 of Order XXI of the CPC. It is further indicated in sub-section (1) of section 32 of the Ain, 2003 that the decree-holder also may file objection within the period not exceeding 30 days and can claim hearing for disposal of the claim made by the 3rd party. Therefore, the contemplation of the legislature in section 32(2) is the investigation of claims and objection as provided under Order XXI, rule 58 not beyond the periphery of rule 58, and since the petitioner filed the petition under Order XXI rules 90 and 91 for setting aside the sale on the ground of fraud they are not required to furnish any security as provided under sub-section (2) of section 32 of the Artha Rin Adalat Ain, 2003. (para 6)

The aforementioned observation of the HCD in this case is very curious. Indeed, from the fairly unambiguous wording of Section 32(2), it is difficult for one to see how has the Parliament contemplated to differentiate between various types of claims that may be made by third parties against execution of decrees passed by money loan courts. The literal meaning of the wordings would rather lead to the conclusion that for presenting any legally admissible claim by a third party, the payment of security deposit is a condition precedent for the court to consider the objection petition on merit.

Section 33(4) would imply that this requirement of deposit has been devised by the Parliament as a weapon against vexatious claims designed to delay the execution of a decree or order of the court. For waiving the requirement of deposit, the HCD needed to show that the petition for setting aside the auction sale is indeed not a claim. It is also of utmost importance to point out that the ARAA is a special law and its provision could only be interpreted by effectively subjecting it to CPC; if it could be shown that the Parliament clearly wanted that to happen. If the effect of the provision of a special law is effectively nullified through recourse to this type of interpretative method, then the whole purpose of promulgating the special law gets frustrated.

It is quite possible to contemplate that a humane consideration has prompted the HCD to take the interpretative route that it has pursued. After all, reasonable minds would probably agree that when a person has been allegedly a victim of fraud, she/he should not have to go through more pain by being asked to pay a security deposit simply for presenting a petition to the court for the claim to be heard on merit. Hence, when an innocent third party's



property would be attached by a decision of the money loan court, if the third party is unable to furnish security, she/he would be left with no remedy.

On the other hand, even if no security deposit is furnished and the third party's claim is ultimately rejected after hearing on merit, the decree-holder financial institution's loss would generally be no more than a delayed satisfaction of the decree. That said when the requirement of security is waived; the threat against any vexatious claim as devised by the explicit wordings of the statute appears to have been defeated. Thus, the apparent quest for justice by the HCD may have undermined the true intentions of the Parliament. It may be respectfully submitted that the interpretative venture of the HCD has effectively created a law and thus, indirectly encroached (even if only for the sake of rendering justice) upon a domain which is exclusively reserved for the Parliament.

THE WRITER IS AN ASSISTANT PROFESSOR OF LAW, BRAC UNIVERSITY.

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

"Please advise me what measures can one take if a tenant does not pay rent to the landlord according to agreement?

Does the landlord can disconnect his electricity, gas and water supply connection?

Best regards

Dr. Zakir."

Response

The law that governs the rights and obligations of landlords and tenants is the Premises Rent Control Act, 1991 ("the Act"). Under the Act, the earlier law relating to premises rent control has been repealed with the aim to implement a tighter control on the landlords and inhibit them from increasing rent or evicting tenants at their will. Current law tends to favour the interest of tenants with very limited recourse to the landlord. Under the Act the landlords have very limited right to evict a tenant as provided in section 18 of the Act, which provides as long as a tenant pays his rent regularly and complies with the terms and conditions of renting premises, he cannot be evicted except in the following in five situations where (1) the tenant has done any act contrary to the provisions of clause m), clause c) or clause p) of section 108 of the Transfer of Property Act, 1882; (2) in the absence of any contract to the contrary, the tenant has, without the consent of the landlord in writing, sublet the premises in whole or in part; (3) the tenant has been guilty of any such conduct as is a nuisance or an annoyance to occupiers of adjoining or neighboring premises; (4) the tenant has been using the premises or part thereof or allowing the premises or part thereon to be used for economic purposes; or (5) the premises are bona fide required by the landlord either for purposes of building or rebuilding the premises or for his own occupation or for the occupation of any person for whose benefit the premises are held, or where the landlord can show any cause which may be deemed satisfactory by court. However, if any tenant pays rent regularly and complies with the terms of the rental agreement in such an event he will get the protection from being evicted.

It would appear from the above, if any tenant fails or refuses to pay rent in accordance with the terms of the rental agreement, in such an event in view of the provisions of the act, the first measure any landlord may take is to terminate the rental agreement by issuing notice to the defaulting tenant. Secondly, the landlord may issue an eviction notice to the defaulting tenant outlining the defaults committed by the said tenant particularly the period from which rent has been outstanding and allow certain period to vacate the premises as stipulated in the rental agreement, if any. In the absence of any rental agreement the landlord will have to allow the tenant 15 days period to vacate the premise. The termination of the rental agreement and the eviction notice can be issued in one single letter.

In the event the defaulting tenant forcefully occupies the premise without paying rent, the landlord will have to file an eviction suit in order to evict the defaulting tenant from the premises and recovering the arrear rent. The landlord will have to file the suit before the Senior Assistant Judge (Small Cause Court) for recovery of possession, arrear rent and compensation from the defaulting tenant.

As for the second query, the provisions of the Premises Rent Control Act, 1991 do not permit the landlord to disconnect water, gas and electricity connection under any circumstances. The landlord has no other alternative but to file an eviction suit if any defaulting tenant forcefully occupies any premises despite receiving eviction notice from the landlord.

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