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LAW REVIEW

Laws enacted in 2014

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IN the year of 2014, the Government of Bangladesh enacted some important laws e.g. The Journalist Welfare Trust Act, DNA Act, Chittagong Hill Tracts Board Act, Investment Corporation of Bangladesh Act, Rural Savings Bank Act etc. The key aim of this article is to review the Acts of 2014 in the light of aspirations of the people propelled by the Government to exacerbate the pedigree of its democratic image.

The use of DNA evidence in criminal investigation has grown in recent years. Taking the context of science of forensic evidence, government enacted the DNA Act. There was no specific legislation before the enactment of this Act which can provide specific guidelines to the investigating agencies and the court. The procedure should be adopted in the cases involving DNA as its evidence. The most shocking part of this Act is the wordings of section 3 (2), where it reserves its efficacy when section 112 of Evidence Act 1872 applies. There still lies an ambiguity in the contents of section 112 that if a child is born within 280 days, after dissolution of marriage, the legitimacy of that child is conclusive. It is basically an issue of medical science which has to be dealt with sincere scientific aptitude and by Laws of Nature. Deciding this issue, on the recourse of legal arguments, is totally a faulty approach and the course, which we are following today, deliberately ends up in faulty conclusions. The Courts readily admits the scientific evidences in case of theft, rape, murder and what not. But it is far beyond the reasonable understanding as why the issue of legitimacy is left open, to be decided by the legal interpretations and not by DNA technology.

To drum up the benefits for journalist, government enacted the Journalist Welfare Trust Act. Journalist should be accorded greater financial and social security to motivate and encourage them to perform their duties and responsibilities as truth informers of the people. High official public servants, journalists and representatives of civil society organisations will be members of the trustee board which will be a statutory authority. The numbers of journalists will be significantly high in the board. Under section 7 of the Act, the main functions of the trustee board are to give financial assistance to journalists and their families in cases of deaths, accidents or loosing working capacity etc. But the amount of financial assistance is not determined. So, the maximum and minimum limit of assistance should be specified by making rule as soon as possible for specific grade and category of journalist as well as for death, severity of accident etc. Otherwise the purpose of the Act might be foiled by biased consideration.

Among the various Acts adopted by the present government, the reformation of the Chittagong Hill Tracts Development Board (CHTDB) deserves special attention. Government re-enacted the Chittagong Hill Tracts Development Board Act by repealing Chittagong Hill Tracts Development Board Ordinance, 1976. The CHTDB consists of six members including a chairman, a vice-chairman and 4 other members. But its functioning board formed under section 8 maintains the major representation from bureaucratic structure instead of local indigenous people. Under section 9, Board can approve of projects and schemes involving not more than 2 crore taka. So question remains that the development works taken by the board within its bureaucratic bottlenecks, how far it will touch the need of the hill people. Although there is a consultative committee comprised of maximum representation of local hill people only to advise and support the implementation of development projects and schemes initiated by the CHTDB, but their role is limited. Therefore, it should be addressed immediately.

The new Palli Sanchay Bank Act is enacted to set up a specialised bank for the rural people to shield themselves from the high interest charged by microfinance institutions. It is a unique approach of the government to set up such a bank funded by the savings of the poor beneficiary groups of the 'One House, One Farm' project. The bank's board of directors will consist of 18 members. Of the total, seven directors will be selected from the shareholders from the division level associations of the project. The remaining 11 posts will include from the bureaucratic ladder. The representation of the rural people in the board of directors should be increased to formulate the policy for their own needs. Finally, the success of Palli Sanchay Bank mostly depends the on the effectiveness of the project.

So, Legislation must be prepared conscientiously as it is normally prospective not retrospective, as it can comprehensively change the whole diagram of the people's life.

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RIGHTS INVESTIGATION

To ensure nutrition for all

OLI MD. ABDULLAH CHOWDHURY

A shamble state of nutrition has recently been reported in the well-off parts of Bangladesh. As it appeared in The Daily Star (December 1, 2014), Sylhet division has the highest rate of children suffering from under nutrition and stunted growth, followed by Chittagong. The North-east part of Bangladesh has the highest rates of stunted and underweight children. Findings from recent nutrition mapping by Bangladesh Bureau of Statistics (BBS) and World Food Programme (WFP) appear to surprise many because Sylhet region is well known for being the wealthier part of Bangladesh. Still, Sylhet shows lowest progress on tackling chronic malnutrition.

Bangladesh is one of the earliest signatories of Convention on the Rights of the Child (CRC) and has made commendable progress in reducing child mortality. It has been stated in Article 24(1), "States Parties recognise the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services".

However, combating malnutrition has been suggested in Article 24(2) "States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures: (a) To diminish infant and child mortality; (b) To ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care; (c) To combat disease and malnutrition, including within the framework of primary health care, through, inter alia, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution".

It is commendable that Bangladesh already met the target of reducing under-five mortality rate: against the target of achieving 48 per 1,000 live births in 2015, it has already achieved 44 per 1,000 live births in 2011. The target of reducing the infant mortality rate is also on track. The successful programs for immunization, control of diarrhoeal diseases and Vitamin A supplementation are considered to be the most significant contributors to the decline in child and infant deaths. However, there is growing concern regarding combating malnutrition.

According to Bangladesh Poverty Maps 2010, Rangpur and Barisal divisions have the highest poverty rates while Chittagong and Sylhet divisions have the lowest. However, malnutrition is not limited to poor households and nutrition mapping confirms the mismatch. At least 44.6 percent children below the age of five in Sylhet have stunted growth, while 38.5 percent are underweight, according to nutrition map. Sylhet has the highest rates of inequality and stunting is known to be more prevalent amongst the extreme poor.

Researches reveal that stunting has negative impact on children's learning too. Stunted children are more likely to start school later and drop out, and are less able to learn due to compromised brain and mental development at a young age. Stunting at age two is associated with reduced school attendance of nearly one year and a 16 percent increased risk of a child failing at least one grade while attending school.

While Bangladesh submitted the last periodic report to CRC committee, the Committee noted with interest the information from the State party delegation on the newly adopted "Vision 2021" which aims to double GDP per capita, reduce poverty and create a more inclusive and equitable society. However, regional inequality still exists and it is apparent from nutrition mapping. In order to create inclusive and equitable society, stunting problem must be addressed.

THE WRITER IS A HUMAN RIGHTS WORKER.

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.*

Query:

Recently I have lost my mobile phone. I was logged in to my google accounts. Right after I lost my mobile phone someone went into my account and posted many private photographs of me. My account was also used in posting many obscene pictures and videos. I have tried to change down the password but before I could do it, the password was changed. I do not have access to the account now and the person who is using it right now, have not yet stopped posting obscenities. I need your advice as to what can I do and whether the person doing such things have committed any crime or so?

Anonymous

Response:

Thank you for soliciting me to provide legal advice on the aforesaid matter of yours. From your query what I understood is that your mobile phone was lost and someone else now is using your mobile phone and other accounts of yours to post obscenities, but the user is unidentified and unknown. At the beginning, I urge all the readers to secure their passwords of all internet based accounts.

I would like to start by saying that whoever is using your mobile or account to post obscenities and private pictures and information of yours have committed offences under Information and Communication Technology Act 2006. The name that is commonly used to address such offences is Cyber Crime.

Over the years many has been using technologies, like computer systems, mobile systems etc. to commit crime via the cyber world, however, the government and the authorities are now being more vigilant regarding such.

The offence is dealt under Chapter 8 of the ICT Act 2006 in which section 57(1) of the Act says that if any person deliberately publishes or transmits or causes to be published or transmitted in the website or in electronic form any material which is fake and obscene or its effect is such as to tend to deprave and corrupt persons who are likely to read, see or hear the matter contained or embodied in it, or causes to deteriorate or creates possibility to deteriorate law and order, prejudice the image of the State or person or causes to hurt religious belief or instigate against any person or organization, then this activity will be regarded as an offence.

From the facts it is clear that the person who has been using your mobile and your accounts has clearly committed an offence under section 57(1) of this Act and therefore if that person can be identified and later tried and found guilty by the courts of Bangladesh, such person shall be punishable with imprisonment for a term which may extend up to ten years and with fine which may extend to Taka One Crore.

Further, the person may also be charged under section 54, 55 and 56 of the ICT act 2006 for damaging computer network, tampering with computer source code and hacking with computer system respectively as the person has changed, altered or destroyed information which caused disruption in your accessibility to your accounts and computer networks.

However, the person who has been using your mobile and accounts here in your case is unknown. So it is my advice that you go to your local police station and lodge a formal complaint stating all the detailed facts. I expect that the police will take all necessary steps in tracking down the current user of your computer accounts. It may be mentioned that the person may also be guilty of theft and related offences under the Penal Code, is he has stolen your phone. Besides, all are advised to contact with your mobile phone service provider so that they can block the SIM to avoid further unauthorized activities. However, you should do so after consulting with the police as active SIM may be required to trace the perpetrator.

I hope that the aforesaid information and advice answers your queries.

For detailed query contact: omar@legalcounselbd.com.

Dear reader,
You may send us your daily life legal problems, queries, write ups, opinions to: Law Desk, 64-65, Kazi Nazrul Islam Avenue, Dhaka-1215; Tel: 9144330,8124944, fax 9144332;

LAW EVENT

Realising the spirit of Liberation War

EMRAAN AZAD *and* NAUREEN RAHIM

WITH the participation of 40 students and professionals including journalists, media personalities and lawyers, Liberation War Museum's (LWM) Center for the Study of Genocide and Justice (CSGJ) organised its first winter school on "genocide and justice" from December 18-25, 2014 at Proshika, Manikganj. Resource persons in the school included numbers of faculties of law, history and social science from Australia and Bangladesh; Chief Instigation Officer and Prosecutors of International Crimes Tribunal-Bangladesh (ICT-BD); former Chief of Public Affairs, and Victim Support Section in the Extraordinary Chambers in the Courts of Cambodia, and others.

Throughout the school, the participants worked together to draft, adopt and declare a memorandum of common intention to spread out and realise the ideals of 1971 liberation war, to create mass awareness for the prevention of genocide and advocacy for justice, and to uphold the dignity and recognise the sacrifice of all Beerangonas (war heroines) and freedom fighters from generation to generation.

Four important commitments have been made by the participants in the school are: promotion and dissemination of liberation war history, research and education nationally and internationally; full-fledged assistance to the ICT-BD trial; innovation of new technology for extending the message of liberation war to the mass people; and upholding dignity, rights and recognition of all Beerangonas, children of war and freedom fighters.

Among different activities, the participants visited language martyr Shahid Rafiq's village in Manikganj called Paril to find out and know about historical importance of liberation war. The participants also watched one research based stage-play commemorating the sacrifice of the Beerangonas titled Bideho directed by Lucky Enam. The most significant activity was the Non-Judicial Hearing where the participants group-wise performed the roles of Commission, Victims, Prosecutors, Defense Counsels, and Civil Parties.

Seeing through the lens of transitional justice prospect, the participants stressed that reconciliation and peace is not possible without ensuring justice to the victims of 1971. Likewise, trauma and suffering of the Beerangnas and generation of brave martyrs cannot be healed without effective reparation towards restoring solidarity and rebuilding our nation. The school concluded with the motivation to strengthen the existing justice process and initiate a truth justice and reconciliation mechanism in Bangladesh to address its forgotten genocide and ensure justice.

The closing ceremony was honored with the presence of sculptor Ferdousi Priyobhashini, Professor Dr. Muhammed Zafar Iqbal, and Dr. Sarwar Ali (Trustee, LWM). Among others, Mofidul Hoque (Director, CSGJ, and Trustee, LWM), Umme Wara (Coordinator, CSGJ and Lecturer of Criminology, Dhaka University), were present to coordinate the whole course. All the participants were given certificates upon the completion of the program and Emraan Azad from Dhaka University was awarded for academic excellence, while Sheikh Raisul Islam from Chittagong University was awarded for best performance.

THE WRITERS ARE THE LAW GRADUATES FROM UNIVERSITY OF DHAKA AND EASTERN UNIVERSITY RESPECTIVELY.