



Proposed Payment System Act 2015: A critical analysis of cheque

DR. SAYEEDA ANJU

BA NGLADESH Bank circulated a notice published in 'Daily Prothom Alo', in April, 2015 asking for general recommendations that it is going to enact an Act on payment system entitled 'Payment System Act 2015'. The draft of this Act as it stands now, revises the administrative regulations of Bangladesh Bank regarding payment system in the country.

The proposed draft includes the definitions of payment instruments including different forms of cheques. Generally a cheque is paper based under the traditional banking system. At present under the e-banking systems different model of cheques including electronic form of cheques (e- cheques), electronic image of cheques and several cards are in practice in several countries. In Bangladesh machine-readable magnetic ink character recognition (MICR) cheques are introduced in online banking and some banks started internet banking by using computer or other devices connected with internet under the banner of e-banking. Starting e-banking as per international standard inside the country needs comprehensive law and the proposed 'Payment System Act 2015' is a step in this regard.

At present the only statutory law relating to cheque is the Negotiable Instrument Act, 1881 (NI Act) in Bangladesh. Section 6 of the



said Act defines a cheque that it is a bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand.

Section 2 in the proposed draft of the Payment System Act 2015 is a definition section. It includes different modern defini-

tions of cheque in different sub-sections of section 2, for example, section 2(5) "Cheque", Section 2 (6) "Cheque in the electronic form", Section 2(13) "Cheque Image", Section 2 (18) "Electronic presentment of cheques", Section 2 (52) "Truncated cheque". The new law acknowledges different dimension of cheques

but these are not well placed systematically which may create anomaly. Definition of several types of cheques may be setup in a single sub-section. That may be as Cheque: (i) Cheque, (ii) Cheque in the electronic form, (iii) Truncated cheque. The sub-sections of section 2 of the proposed draft are alphabetically arranged hence if 'Truncated cheque' were 'Cheque Truncated' then cheque related provisions might be placed aside.

It is written in Section 29 of the proposed Act that, (1) In order to ensure enforceability of cheques truncation and electronic presentment of cheques, the appropriate provisions of Negotiable Instruments Act, 1881 shall apply. (2) Bangladesh Bank may issue additional instructions from time to time to specifically address the processing of cheques in electronic form, any such instruction will take precedence over the provisions of Negotiable Instruments Act 1881.

Although the proposed Act acknowledged the NI Act but NI Act is not improved accordingly and no amendment so far has been made yet. Even it is not found that any initiative is taken in this regard.

Part nine, section 30 of the proposed draft includes the provision,

(1) Enforceability and evidentiary value of electronic transfers and records shall be granted according to relevant provisions of the Information and Communication Technology Act, 2006 and the Bankers' Book Evidence Act 1891. (2) In implementation of the provisions of this

Act, and in accordance with any other relevant laws on electronic transactions, Bangladesh Bank shall promulgate regulations, instructions or other relevant measures within its powers to cover specific issues on payment orders and money transfers executed by electronic messages, including, when deemed relevant, protection of users of electronic payment instruments. Such measures shall complement those of this Act and shall not conflict thereof. Subsequently Communication Technology Act, 2006 and the Bankers' Book Evidence Act 1891 are interrelated in the area of banking. And the proposed Act recognises the laws but no similar change is made on the original part.

Cheque defined in Negotiable Instruments Act, 1881 includes only paper based cheques. If cheque in the electronic form, cheque Image, electronic presentment of cheques, truncated cheque, is introduced in the country, it must amend the existing related laws, that is, Negotiable Instruments Act, 1881, Communication Technology Act, 2006 and the Bankers' Book Evidence Act 1891. It would be better if the country had a single or consolidated law on cheque or other payment system to reduce anomaly. The consolidated form of Bangladesh Labour Act 2006 may be an example here.

THE WRITER IS AN ASSOCIATE PROFESSOR, DEPARTMENT OF LAW, RAJSHAHI UNIVERSITY.



Legal education outside the classroom

CHAUMTOLI HUQ and FARHAN HOQUE ZULKARNINE MIM

DURING the past several months, I was assisted by two volunteer law students attending Dhaka University, on my research on the labour conditions in the garment industry in Bangladesh. As I approached the end of my field research, the students realised the enormous educational value field research provided them and could provide other law

field of law, which touches on human behavior and society, it is important to step outside the classroom for one's legal education. Law requires mastery of communication with the public. You may be the smartest person in class, but without practical knowledge of communication, you cannot apply your knowledge outside the classroom. The chemistry between practical as well as theoretical education gives students an accurate understanding of the practice of law.

shift their interaction based on the person being interviewed, and build trust and a rapport so that they could obtain the necessary information.

But, do law schools in Bangladesh teach students how they can communicate using simple words and a welcoming tone or show empathy to the vulnerable groups so that they would want to share their legal problems? How should male lawyers interact with a predominantly female workforce addressing sensitive topics or vice versa?

Generally, an interviewer has a prescribed questionnaire, but a formalistic and strict set of questions creates a problem for those who have never before been interviewed. It is important to conduct the interview more in the style of a conversation while ensuring that all the essential information is obtained; this is often difficult to balance. It requires skills, practice, and training.

Students shared with me one example. During an interview session of a group of garment workers, students had a set of questions in hand and were in a hurry to finish the interview. They told the interviewees to respond quickly. The interviewees became scared because they were rushing them for answers.

On my advice, the students slowed down the questions, explained each point, and the workers then responded positively. Drafting questions and devising questionnaires does not assure that you will create a comfortable, safe environment for the interviewees. This is a valuable example to demonstrate how applying skills is very important.

In addition, while interviewing, one needs to understand the body language of the interviewees. In one case, students found that the workers were feeling uneasy in answering some questions.

Students shifted their tone and approach, and the workers' demeanors changed. It is important to know how to deal with different sections of people.

In working with law student volunteers, and interacting with law students, I observed that students lack opportunities to gain practical skills that are essential to the practice of law. They graduate without much of an idea as to how to be a lawyer. In part, this is because my students explain that the legal curriculum in Bangladesh is mostly theory and focused on book knowledge. Students also state that faculty often does not spend time to explain the actual practice of law.

Of course, students need to obtain mastery of the laws, but to apply their knowledge, the legal curriculum should be based on hands-on experience. Law Clinics should be installed at every law school where students can work on short-term field research or client-related projects. Externships can be created under the supervision of faculty where students work with non-profits that can often benefit from law student volunteers. Non Government Organizations can work with law school students to create Know Your Legal Rights programs where students can begin to learn how to communicate complicated legal information to a wide population.

Incorporating even a small practical component can bring a positive shift to their education and to the legal profession in that it will connect law students early on to their professional obligation to serve society. While I have benefitted from their assistance, I did not realise how much they appreciated the availability to experience law outside of the classroom.

THE WRITERS ARE AIBS SENIOR RESEARCH FELLOW AND LL.M STUDENT AT DHAKA UNIVERSITY RESPECTIVELY.



students. We wanted to share our reflections so as to encourage law schools to evaluate their curriculum to provide legal experiences outside of the classroom with the supervision of a lawyer or law faculty.

Undoubtedly, in any field of advanced study, academic discourse plays a significant role. Law is an intellectually intensive and enriching field requiring voluminous and precise reading, sharp analysis, and strong writing. Additionally, in the

From the student's perspective, research typically involves collecting information from reference books, articles, and the internet and analysing laws. However, an important part of the research is to conduct field interviews and to interact with people who may eventually become one's clients. In my case, students had to conduct interviews with garment workers as well as other stakeholders, which included garment owners. They had to learn to



Protecting the rights of migrant workers

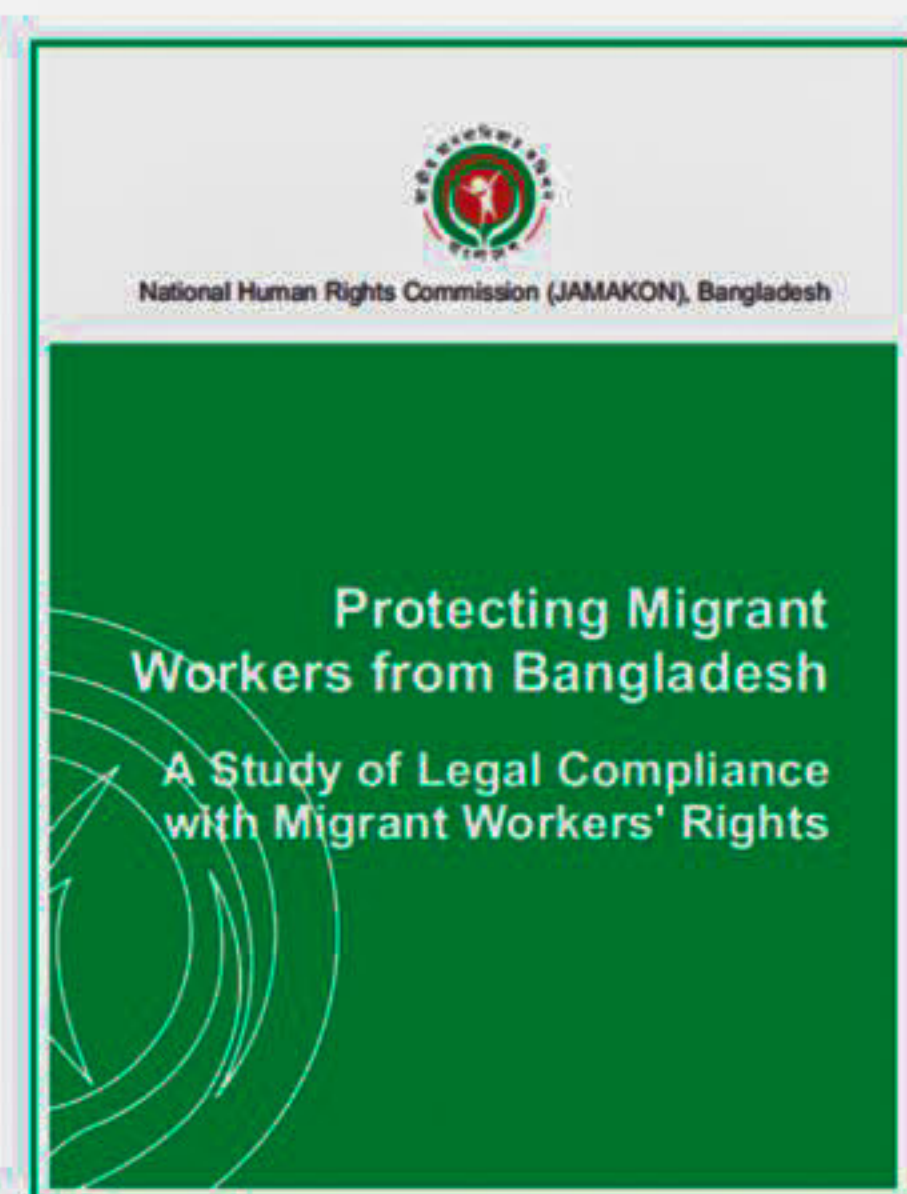
EMRAAN AZAD

WITH an aim to protect the rights of Bangladesh's economic migrants by enhancing the capacity of National Human Rights Commission, the UNDP-Bangladesh has recently published a study report titled 'Protecting Migrant Workers from Bangladesh: A Study of Legal Compliance with Migrant Workers' Rights' (2014). Prepared by Dr. Ridwanul Hoque, an associate professor of law at the University of Dhaka, the report basically assesses the compliance level of Bangladesh's laws, policies and practices with the UN International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families 1990 (shortly known as MWC), and also analyses how compliance can be better ensured by the destination countries.

The report argues that the MWC is just one of a set of several human rights treaties and as such, other major human rights treaties and several ILO Conventions concerning the labour rights have an operative regime of rights protection for migrant workers. Uniquely, the report explains that the majority of rights enshrined in the MWC reflect the globally agreed highly

normative standards, some of which have assumed the character of non-derogable basic rights. Hence, even the States that have not signed or ratified the MWC have an obligation under the general rules of international law to protect and provide the rights of migrant workers.

Divided into six chapters, the introduction of this report in chapter 1 describes the content of the MWC and justifies that protection of the rights of migrant workers has been the subject matter of major human rights treaties of general application such as UDHR, ICCPR, ICESCR, CEDAW and so on. By referring to the UN Convention against Transnational Organized Crime 2000, this chapter highlights the situation of human trafficking and smuggling of migrants across the world, and addresses the inadequate protection regime for them under international law. Changing landscape of labour migration has been identified as one of the crucial points of existing inadequate protection regime. Such changes, as per the report, include the decreasing significance of the State in recruiting migrant workers and the increasing importance of private agents with a considerable growth in irregular migration. Chapter 2 gives an overview of the



rights of migrant workers and of obligations of State Parties, while the third chapter describes and analyses the legal rights regime of Bangladesh vis-à-vis migrant workers. Relevant constitutional provisions, the Overseas Employment Policy 2006, the Emigration Ordinance 1982 and the Anti-Human Trafficking Act 2012 have been discussed in reference to mea-

sures so far Bangladesh government has taken for the protection of Bangladesh's migrant workers overseas against the phenomenon of cross-border human trafficking.

Based on the discussions in chapters 2 and 3, chapter 4 analyses the compatibility of Bangladesh's laws and practices with the MWC, and looks for any vacuum in the existing laws and practices. This chapter highlights the challenges in managing Wage Earners' Welfare Fund, controlling illicit recruiting agencies and delivering effective remedy through the trial of offences related to human trafficking and others.

Chapter 5 focuses on compliance with the MWC and seeks to reconcile the duty of Bangladesh to meet its own obligations under the Convention coupled with the challenges in achieving some measure of compliance by migrant-receiving countries that have not undertaken such obligations. The final chapter summarises the key findings and draws a set of recommendations defining the areas in which legal, administrative and judicial actions are required in order to protect and improve the rights of Bangladeshi migrant workers under the Convention.

THE WRITER IS AN LL.M STUDENT AT THE UNIVERSITY OF DHAKA.



UN creates International Day against Sexual Violence in Conflict

IN an effort to boost the global fight against the horrors faced by women and girls in zones of conflict worldwide, the United Nations General Assembly on June 19 approved by consensus a new resolution to commemorate 19 June as the International Day for the Elimination of Sexual Violence in Conflict.

"Rape and other forms of sexual violence in conflict and post-conflict constitute grave violations of human rights and international humanitarian law," President of the 193-member Assembly, Sam Kutesa, declared as he greeted the resolution's adoption. "Yet these depraved acts still occur and are used to terrorise and control civilian populations in conflict zones."

"Together, we must prioritise prevention and response efforts, empower victims, provide comprehensive assistance and shift the stigma of shame from the victims of these crimes to those who commit them and condone them," he added.

The International Day - which will now be observed annually - will aim to raise awareness of the need to end conflict-related sexual violence and urge the international community to stand in solidarity



with the survivors of sexual violence around the world.

The new initiative, moreover, comes amid an uptick in reports from areas controlled by militant groups aligned with the Islamic State of Iraq and the Levant (ISIL) of brutal acts of sexual violence against women and girls. Just last year, ISIL affiliate Boko Haram abducted some 276 girls their school in Chibok, located in Nigeria's restive north-eastern Borno state, as the militant group ramped up brutal attacks targeting the African country's children.

"Rape as a weapon of war must be stopped," Mr. Kutesa continued. "We should ensure that the perpetrators of these crimes and their superiors who condone their actions are held accountable and that victims get justice."

Also welcoming the creation of the Day, the UN Secretary-General's Special Representative on Sexual Violence in Conflict, Zainab Bangura, commended delegates, especially Argentina, which led the drafting of the text, for the increasing attention paid by the international community to the scourge of sexual violence but warned that the challenge now remained in converting "political will into concrete actions and protections on the ground."

She said the Day will also create opportunities to pay homage to the thousands of survivors of sexual violence including women, girls, men and boys, who, despite the grievous harm suffered, have shown extreme determination, resolve and unflinching courage to speak out against this scourge.

"This annual commemoration will serve as a global call to action for security, justice and service actors on behalf of survivors of sexual violence in conflicts all over the world," she added.

-COMPILED BY LAW DESK. (UN.ORG)