



LAWS OF 2015

List of Laws:

- ❑ Metro Rail Act, 2015
- ❑ Bangladesh Energy and Power Resource Council Act, 2015
- ❑ The Formalin Control Act, 2015
- ❑ The Official Vehicles (Regulation of Use) Act, 2015
- ❑ Bangladesh Oceanographic Research Institute Act, 2015
- ❑ Youth Organisations (Registration and Management) Act, 2015
- ❑ Appropriation (Supplementary) Act, 2015
- ❑ Finance Act, 2015
- ❑ Appropriation Act, 2015
- ❑ Khulna Agricultural University Act, 2015
- ❑ Export Promotion Bureau Act, 2015
- ❑ International Finance Corporation Act, 2015
- ❑ Financial Reporting Act, 2015
- ❑ The Bangladesh Public-Private Partnership (PPP) Act, 2015
- ❑ Nuclear Power Plant Act, 2015
- ❑ The Development Surcharge and Levy (Imposition and Collection) Act, 2015
- ❑ Public Servants (Marriage with Foreign Nationals), 2015

SOURCE: BDLAWS.MINLAW.GOV.BD

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LEGISLATURE passed seventeen Acts in 2015, some of which directly signal the progress towards achieving technological and scientific development goals as promised in the government's manifesto. Whereas in 2014, the Parliament was more inclined towards enacting laws which regulated various aspects of education and tourism, in 2015 there was an ascension in tendency of addressing emergency situations, such as, inimical use of formalin in food.

In 2014, Acts like Journalist Welfare Trust Act and DNA Act apprehended the lime light, conversely in the year 2015 Nuclear Power Plant Act stole the show.

The Cabinet approved the Nuclear Power Plant Act on 4 May, 2015 with the aim of building a public limited company namely "Nuclear Power Plant Company Bangladesh Ltd," for commercial operation of the nuclear power reactors. Consequentially, Bangladesh signed a contract with Rosatom, Russia's state-run company, which will build the Nuclear Power Plant in Rooppur, Pabna. This Act was introduced by the Science and Technology Ministry to give this development a legal footing. The Act states the role of the government in regards to the functioning of the company, and also illustrates the responsibilities of Russia concerning the plant. The nuclear power reactors are said to be operating from the first of 2022. Through the implementation of this Act a rise in the supply of electricity to meet the rising demand is hoped to be achieved.

The Formalin Control Act, 2015 which introduced the highly awaited punishment for

importing, producing and storing of preservatives without licence will bring the use and business of formalin under a legal framework. Furthermore, the call for construction, operation, maintenance and control of the much anticipated Metro rail has been validated by passing of The Metro Rail Act, 2015. The Law will substantiate the government's initiatives to ease traffic congestion of Dhaka which is a well-timed step right now.

While Acts like these will have a direct impact on citizen's everyday lives, we saw the enactment of long-term proposals for developments through Bangladesh Oceanographic Research Institute Act, 2015 which became an opportune need as soon as Bangladesh settled its maritime boundaries with India. This will materialise into a research facility based at Cox's Bazar's Ramu Upazila for properly collecting and using maritime resources.

Reflecting the government's pledge to bolster research prospects, Bangladesh Energy and Power Research Council Act, 2015 was passed to particularly focus at the energy and power sector. Needless to say this will pave the way to sustainable industrial growth which lately Bangladesh has shown great prospects for. Along the same lines, Khulna Agricultural University Act, 2015 will supplement the ways for innovating the much needed new technologies for increasing agricultural production in Bangladesh.

Additionally, we have observed the legislature trying to modify a few managerial issues through Acts such as Youth Organisations (Registration and Management) Act, 2015. This one will see to the conventional problems arising out of random, unregistered non-political youth organisations and regulate their functions through National Youth Council.

On a more commercially saturated aspect, this year Financial Reporting Act was enacted to promote accountability, lucidity and transparency in regards to financial reporting activities. Under this Act, the Financial Reporting Council (FRC), will be the administrative and regulatory body of organisations involved in accounting and auditing of financial. Moreover, this body will also administer different government, autonomous and non-government institutions. Now, all such institutions will have to register with FRC, in absence of which they will be barred from operating and providing services to any entity with public interest. Thus, this Act brought such financing institutions under strong scrutiny and supervision. The Development Surcharge and Levy (Imposition and Collection) Act, 2015 will impose 1 per cent development surcharge on cell phone usage which in effect will generate Tk 140 crore to potentially Tk 200 crore after inclusion of the other services.

As the summary indicates, a number of pressing issues have been attended by the government in 2015 with notable effort in sectors of research and finance. For people on the other end of the legislators, some of the Acts were reasonably expected, specially those promising to bring an end to the intricacy created by traffic congestion, unhealthy aftermath of harmfully preserved food etc. However, the success of the legislations is only halfway achieved unless the laws are accurately implemented and that is the next big challenge of 2016.

THE WRITERS ARE STUDENTS OF LAW, UNIVERSITY OF LONDON INTERNATIONAL PROGRAMMES.



Epitomising mismanagement in public banks



The cantankerous position of someone within the bank ignoring the legal advisor's advice and resolution of the Board and vigilance of Bangladesh Bank authorities could make sure that the defaulters would not get their way.

MD. RIZWANUL ISLAM

MUCH has been written about the alleged banking scams in HallMark Group and also about the swindling of public money in BASIC Bank. These incidents appear to be outright scams and the magnitude of the money and people involved in them are very worrying and surely they entail outright squandering of public money. However, a relatively less reported phenomenon is the relaxed approach to recovery of loans at times bordering on an over-zealous approach to writing off loans due to public banks by powerful quarters. These though may not amount to crimes per se; are no less inimical to a sound management of public money. This brief essay would epitomise such a trend in the management of public banks as gleaned from a judgement of the High Court Division (HCD) where the Board of Directors of Sonali Bank were too eager to write off loans to those who seemingly had easy access to the leaders of the ruling party.

In *Elite Lamps Ltd v Government of Bangladesh and Others* (2012) 64 DLR (HCD) 62, the petitioner company obtained a loan from Sonali Bank Ltd. for the running of its business. It was alleged by the petitioner company that the bank did not provide it with the required working capital essential for smooth running of its business as a result of which it failed in its business. However, when the company failed to repay its loan, the bank filed a money loan suit for recovering the due amount under the contract.

On the other hand, a report submitted by a Sick Industries Rehabilitation Cell formed by the Government asked the bank for providing the company with adequate funds. Upon an initiative of the Prime Minister, a Parliamentary Sub-

committee was set up to look into the issue. Subsequently, on the basis of recommendations by the Public Understanding Committee and then by the Standing Privilege Committee of the Parliament; the office of the Speaker issued instructions to Sonali Bank authorities and the Government for taking necessary steps. On the basis of these recommendations, the Board of Directors of the Bank passed a resolution deciding, inter alia, to write off the whole liability of the company under the loan and release properties mortgaged as security for the loan. The resolution of the Board of Directors was even communicated to the petitioner company.

The Bank had also sent a copy of the board's resolution to the Government and the latter directed the Bank to settle the dispute with the petitioner. At this stage, ignoring the opinion of the legal advisors of the Bank, Sonali Bank (the judgment does not specify at the instance of whom in the management but clearly someone who is subordinate to the Board of Directors as ultimately the Board is the apex internal body of the company) decided not to implement the resolution of the Board and proceeded with the money loan suit against the petitioner company. The petitioner contended that in view of the board's resolution, the suit for recovery of the loan was not maintainable. Rejecting the petitioner's contention, the HCD observed that the Board's resolution is not enforceable by the petitioner company on the following grounds:

Firstly, because the decision that was taken did not reach finality for want of approval of the Ministry of Finance. Secondly, Bangladesh Bank did not give its clearance in respect off of the entire loan specially the capital amount. Thirdly, the move on the part of the Bank was tainted with external pressure. Fourthly, it is

against public policy in as much as by that way a group of people would have been blessed with unjust enrichment at the cost of public money. And finally, resolution of a bank, if any, does not bind the other respondents with any legal obligation to do a duty so that may be directed to do the act as prayed for. (Para 10)

Thus, the HCD observed that the very fact that despite the passing of the resolution, the bank continued with the suit which implied that the resolution fell short of a final decision. In any case, in the court's view, it was within the powers of Sonali Bank to take a decision and then to neglect it (para 12). The communication of the resolution did not give rise to any cause of action in favour of the petitioner company, the HCD found.

It is unimaginable that the board of directors of a private bank would have been as eager as the Board was in this case. The cantankerous position of someone within the bank ignoring the legal advisor's advice and resolution of the Board and vigilance of Bangladesh Bank authorities could make sure that the defaulters would not get their way. And despite such courage and vigilance, the disposal of the original money loan suit which was filed as early as in 1991 could be delayed by filing four writ petitions (including the one discussed here) and civil petitions to the Appellate Division of the Supreme Court until at least 16th October 2011 (the date of the delivery of judgement in this writ petition). It seems that the HCD has aptly remarked "[t]he scenario of this case provides a glaring example of abuse of the process of Court by an influential person in order to avoid huge liability he admittedly owes to the Bank in the form of loan taken in the name of industrial project." (para 13)

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Poverty and legal empowerment

LEGAL empowerment of the poor is seen as a pre-condition for eradication of poverty today. But are the global anti poverty programmes really bringing the needed relief to the world's poor? What is the position of urban population living in extreme poverty in this regard? Exploring the much needed answers to these questions, two renowned researchers spoke in a symposium before a concerned audience on Saturday, January 2nd 2015.

This successful symposium was conducted by Bangladesh Institute of Law and International Affairs (BILIA) on the theme of "Law, Inequality and Impoverishment". The first speaker was Mr. Mostafa Haider, who is an existing Resident Fellow at the Institute for

report entitled 'Making the Law Work for Everyone', prepared by an independent Commission on Legal Empowerment of the Poor in 2005. He claimed that legal empowerment of the poor, in contrast to the claim by the 2005 report, does little to challenge the normative basis that legalises inequality. Later on Ms. Cynthia presented the nature of structural injustices toward the urban poor mediated by the elite from a historical-political perspective. Focusing on the situation prevailing in Dhaka, she suggested that law can also be a means for a more just and egalitarian society by addressing important structural issues.

Open discussion by the participating academicians, researchers and legal



Global Law and Policy at Harvard Law School, and a doctoral candidate at the University of Sydney. The second speaker Ms. Cynthia Farid, is also a doctoral candidate and Law and Society Graduate Fellow at the University of Wisconsin Law School. Dr. Mustafizur Rahman, Executive Director, Centre for Policy Dialogue (CPD) was the chair of this event and Dr. Shahdeen Malik, Honorary Director of BILIA acted as the host.

In his speech Mr. Mostofa explained how current measures to solving global poverty are leading to legalisation of radical inequality. He made a valuable critique of an international

practitioners followed the presentations. Many key activists in legal empowerment including Honourable Justice Muhammad Imman Ali of the Appellate Division of the Supreme Court of Bangladesh, Ms. Sara Hossain, Honorary Executive Director of Bangladesh Legal Aid and Services Trust (BLAST) and Professor Syed Saad Andaleeb, Vice Chancellor, BRAC University added their expressive remarks making the symposium truly productive.

THE EVENT WAS COVERED BY MD MUSTAKIMUR RAHMAN AND PREETI KONA SIKDER, LEGAL RESEARCH ASSISTANTS AT BILIA.



Controversial cyber-security law

CHINA passed a controversial new anti-terrorism law on December 27th, 2015 that requires technology firms to help decrypt information, but not install security "backdoors" as initially planned, and allows the military to venture overseas on counter-terror operations.

The law has attracted deep concern in Western capitals, not only because of worries it could violate human rights such as freedom of speech, but because of the cyber provisions. However, the UK's Investigatory Powers Bill also requires that technology companies store sensitive information, including a requirement that internet providers hold records of browsing for a year, as well as weakening security so that

intelligence agencies can gain access to communications.

Both the UK and China have



claimed that the law doesn't ban encryption, which ensures that messages can't be read as they pass

over networks. But each appears to undercut the technology that powers such security measures.

The international community has condemned the new Chinese powers, and President Obama has raised concerns with Chinese President Xi Jinping. Though the UK's laws have received scathing reviews from Apple and other companies, they have not been publicly criticised by other governments.

The new law also restricts the right of media to report on details of terror attacks, including a provision that media and social media cannot report on details of terror activities that might lead to imitation, nor show scenes that are "cruel and inhuman".

COMPILED BY THE LAW DESK (SOURCE: REUTERS AND THE BBC)