

LAW REFORM

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LAW, ethics, values and morality forms an integral part of the society. Law is omnipresent whereas ethics, values and morality are the inner instinct. Their blend is a requirement for the amicable survival of the society especially for the protection of the children. In Bangladesh a large number of children are deprived of their basic human rights due to unacceptable health, nutrition and education as well as social conditions. In addition, recently children are facing violence in a range of settings including at home and in the family, in schools and in care and justice systems, in workplaces and in the communities. Although morals and laws have the same goals but lack of professional ethics of concerned authorities, the children did not get improved social services from the judges, prosecutors and investigators. The consciousness is reflected in the international legal instruments as well as in the Constitutions of Bangladesh to protect children against neglect, cruelty, exploitation and to provide equal opportunities to children for development. Furthermore, the government has been enacted the new Children Act in 2013 on the basis of the Convention on the Rights of the Child (CRC) 1989 and adopted the provisions for child-friendly justice and different kinds of professional responsibilities in a number of settings, such as, child help desks in the police station, separate children's court and child development centres, national child welfare board and probation officers. In practice, lack of new Children Rules or guidelines and lack of coordination among concerned ministries; these mandates are not implemented yet. Committed personnel with requisite skills, knowledge and ethical approach are one of the major challenges in treatment of child

offender. For implementation of these provisions need enormous financial and logistic supports from the government. Child protection systems comprise the set of laws, policies, regulations and services needed across all social sectors especially

in the management of child protection. Identifying responsibilities in laws is essential to address most of the human rights issues as they directly deal with people and the societies they live in. Issues of crucial importance such as protection of children's rights, require an active

Police Officers in the police stations, establishing sufficient numbers of safe homes and certified institutes, Gazette notification setting up the Children's Courts and framing of Rules. Rules are most urgently needed, as without them many of the new concepts,

ensured. Many of the aspects dealt with in the new statute are inter-linked. The judiciary, law enforcing agents and the parents and guardians of children themselves, must be sensitised to the provisions of the Convention on the Rights of the Child and the laws protecting children in Bangladesh. Furthermore, children need to be protected from vested interest groups and acts of impunity towards children by those purporting to protect society must be dealt with seriously and in accordance with the law. There is needed the human rights-based approach and emphasises prevention as well as the accountability of governments. Governmental commitment to fulfilling protection rights: includes social welfare policies, adequate budgets, public acknowledgement and ratification of international instruments. As time has passed, the child protection system has changed throughout the world. The stakeholders, the family, the court, the detention facilities and programs, and the community are responsible for the adoption of the new change. A sound child protection system fundamentally require improved social services, specialised assistance, child-centered initiatives and committed personnel with requisite skills, knowledge and experience. It is also important to train up the persons concerned in the child protection system so that proper implementation of the Children Act 2013 can be ensured. Many of the aspects dealt with in the new statute are inter-linked. Therefore, a ethical approach must be taken by all concerned to ensure that the children of this country may achieve the fulfillment of their rights.

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social welfare, education, health, security and justice to support prevention and response to protection related risks. In this context, ethics, values and morality have been playing phenomenal role in nourishing and building social relations and growth of society especially

participation from the individual member, family, community and society as a whole along with the processes of law.

At present the most important matters for the government are: setting up the Child Affairs Desks and the appointment of Child Affairs

such as diversion, family conferencing, alternative care, dispute resolution etc. cannot be put into practice. It is also important to train up the persons concerned in the children justice system so that proper implementation of the new law can be

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.

Question: I used to work in a limited company. The company's Managing Director used to behave badly with the employees and did not pay bonus and salary. In meetings he has been giving excuse of shutting down the company due to lose and inability not to pay salary and bonus on time. The office environment is not good and as a potential scholar, I was mentally abused. In this regard, I resigned from the job. But, the MD is not giving me release letter and has become hostile against me. When I resigned he did not give me clearance letter and salary. Also my bonus is pending. I have every evidences and reasons to leave the job. He is also kind of dictating with his own law and compelling employees to work on public holidays without any reason. How can I get legal support regarding the issues?

Answer: Thank you for seeking my advice regarding several aspect of your former employment. Labour and employment issues in Bangladesh are largely governed by the Bangladesh Labour Act 2006 (hereinafter referred to as the 'BLA'), which has been amended from time to time (hereinafter collectively referred to as 'the Amendments'), and the recently implemented Bangladesh Labour Rules 2015 (hereinafter referred to as the 'BLR'). However, it shall be clarified at the outset that the provisions of the BLA hereinafter detailed, are applicable to employees considered to be 'workers' in an establishment. Section 2(65) of the Act provides the definition of worker, which means any employee having managerial, supervisory or administrative capacity in an establishment shall be considered to be a non-worker and all other employees having responsibilities other than that shall be regarded as workers. When the governing law for workers is BLA, please note that in case of non-workers the terms and conditions prescribed in the

employment agreement and the internal policies or manual, if any, would apply as the binding law as there is no statutory provisions governing the employment of non-workers. However, the companies may adopt a policy, which applies for all types of employees and is also in compliance with the BLA. Since your query does not give a clear picture as to your nature of your service, I shall assume that BLA applies in your case. Since you have resigned from your position therefore in terms of law your employment agreement was terminated when you have resigned from your post. It shall be borne in mind that resignation is not subject to any approval from the employer's side and you need not have any reason as such for resigning

to compensation depending on the number of years completed. S.27 (4) (a) provides for compensation at the rate of fourteen days wages for every completed year of service, if you have completed five years of continuous service or more but less than ten years; or, (b) at the rate of thirty days wages for every completed year of service if you have completed ten years of continuous service or more; or gratuity, if any, whichever is higher, in addition to any other benefit to which he may be entitled under this Act. Such compensation shall be payable to you within 30 (thirty) working days by your employer as stipulated under S.30 of BLA. In regards to the release letter, under S.31 of BLA you are also entitled to a certificate of service.

On your other complain, it may be informed that a private organisation is not bound to observe all public holidays, expect for 11 days of festival holiday as determined by the organisation. If someone has to work on a festival holiday, total of three days alternative and compensatory holiday has to be given to him. In case if someone works on a public holiday which is not considered as a festival holiday for that organization then the day shall be considered as any regular working day.

I would advise you to try and resolve the matter amicably with your former employer and then pursue for legal course of action, if be required. You may first serve a letter as soon as possible and then a legal notice before actually starting any formal legal process. In case of no positive reply you may either start a case or may refer the matter to the Chief Inspector under the Ministry of Labour And Employment for conciliation.

I hope the aforementioned information and advice answers your queries.

FOR DETAILED QUERY CONTACT: OMAR@LEGALCOUNSELBD.COM.



from the job. You have formally and legally separated yourself on the day the registration was served with the effective date as mentioned. Furthermore, acceptance of resignation is a mere formality and the employer can only reject/withheld resignation when there is a pending disciplinary action against the employee. From your words that does not appear to be the case and, therefore, there appears to be no reason for the resignation not being accepted. However, you are very likely to be required to give certain days notice. In case if you have not given the required notice, basic salary for those days may be adjusted from your final payment.

I am unaware of whether your employment type was permanent and the number of years you have completed at the company. Nevertheless, if you were a permanent worker, then under S.27 (4) of the BLA you are entitled

FOR YOUR INFORMATION

THE Penal Code, 1860 in its section 124A defines the offence of sedition. According to this section, anyone who by spoken or written words, or by signs, or by visible representation, or otherwise, brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards the lawful Government can be accused of committing sedition. The punishment prescribed varies from imprisonment up to three years to life imprisonment, with fine or without it. It is to mention that the expression "disaffection" under this section includes disloyalty and all feelings of enmity. However, any comment expressing disapprobation of the measures of the Government with a view to obtain their alteration by lawful means, without exciting or

attempting to excite hatred, contempt or disaffection, does not constitute an offence under this section. Even comments expressing disapprobation of the



administrative or other action of the Government without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section. Section 108 of the Code of

Criminal Procedure, 1898 provides an option to have security for good behaviour from persons disseminating seditious matter. According to this section, the District Magistrate, or

any other Executive Magistrate specially empowered by the Government, may require any person – accused of disseminating of any seditious matter the publication of which is punishable under section 123A or section 124A of the Penal

Code – to show cause why he should not be ordered to execute a bond, with or without sureties, for his good behaviour for such period, not exceeding one year, as the Magistrate thinks fit to fix. However, no proceedings can be taken under this section against the editor, proprietor, printer of publisher of any publication registered under, and edited, printed and published in conformity with, the provisions of the Printing Presses and Publications (Declaration and Registration) Act, 1973, with reference to any matters contained in such publication except by the order or under the authority of the Government or some officer empowered by the Government in this behalf.

COMPILED BY LAW DESK. Source: bdlaws.minlaw.gov.bd

Sedition law in Bangladesh

LAW EDUCATION

Barrister: To be or not to be!

NABIL AHSAN

A barrister (barrister-at-law or Bar-at-law) is a type of lawyer in common law jurisdictions with a split legal profession. In England and other Common law countries with split legal profession, a barristers does not take client's direct instruction, he is instructed by a solicitor with a brief and supporting documents to appear before the courts on behalf of his client. A barrister is therefore a lawyer specialized in court room litigation. By contrast, in Bangladesh, the roles of solicitor and barrister are fused and we have only one type of lawyer referred to as 'Advocates'. A barrister is therefore a professional qualification and should be distinguished from an academic degree. A person is 'called to the bar' by any of the four Inns (Lincoln's, Gray's, Inner Temple and Middle Temple) and upon becoming a member of any particular inn, he becomes a barrister.

To qualify as a barrister the most common route is to have a LLB degree (from a University recognised by the Bar Standards Board) and thereafter successfully complete a one year vocation training called 'Bar Professional Training Course' (BPTC). Most people in Bangladesh prefer to do their LLB here under international programme/external system and then go to UK to do the BPTC as it significantly reduces cost. Therefore before one engages in such a costly education one needs to understand the advantages and disadvantages of pursuing this education track which I discussed below.

First, it is an expensive education track, even though the skills learnt though the BPTC course is useful, on a balance it does not justify the cost. Our Bar Council can easily follow the English model and start a one year vocational training like the BPTC, so that a law graduate can learn these skills locally without going to the UK. Also it should be noted that not all the skills learnt cannot actually be applied here due to differences in our 'litigation culture'. Second, it gives no benefit in terms of enrollment as an advocate, whereas in Pakistan and Malaysia a barrister gets exemption to practice in the courts without sitting for further professional exams. Under Bangladeshi regulations, a barrister will have to go through the same process as a local LLB graduate to qualify as an advocate. Third, in the beginning of practice a young barrister is not familiar with laws of Bangladesh. It should be noted that for practical purposes, law in practice is very different from law as studied in law text books, ultimately both foreign graduates and local graduates learn from experience and practice in the courts.

Now considering the other side of the motion; the BPTC course develops practical skills such as advocacy, drafting, legal research, client conference, legal ethics etc. A local

candidate after studying LLB is directly pushed into professional arena with little professional training. A barrister having these skills finds himself at a competitive advantage over the local candidates. Second, at the LLB stage (under English law curriculum), students are forced to apply their mind and think about the law; they are taught to analyse and interpret law. By contrast the local syllabus tends at making students memorize a lot of law without developing a sharp legal mind. Thirdly, barristers have knowledge about a developed legal system. Therefore, if he wants to engage himself in the process of legal reform he is more likely to think out of the box and propose solutions to remedy the loopholes in our existing legal system, which is backdated and needs



major reform. Fourth, if one practices at the Supreme Court, barristers find it much easier to deal with some area of law like Constitutional, admiralty, company law etc, as they are familiar with the English principles which are often applied by our Supreme Court. Finally, clients sometimes prefer barristers over advocates. This is nonsense of course; an advocate can be equally good or better than a barrister if he understands the law and procedure and knows the art of advocacy. But it is a left-over of our colonial legacy and not surprisingly many practicing advocates want to become a barrister to get that professional edge.

Ultimately, it's a personal choice. The seats in public universities are limited and the private law schools have a lot to be desired. While I do not personally see any harm in pursuing foreign legal education one should be mindful of the fact that, our own law schools and the Bangladesh Bar Council must work together to modernise the syllabus and provide practical education to new graduates so that their entry into the legal profession is not met with hurdles and frustrations.

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