LAW VISION

FORMALIN CONTROL
a few steps of strategies ahead

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USE of formalin, though we may have lost our concern about it, is not reduced in the seasonal fruits. Buying any seasonal fruit, like lychee and mango, will reveal the truth before you. It is not surprising that apples kept openly in your house may not be rotten even for several weeks.

There are talks available in the newspapers, TV talk shows and in social media. Most of the talks are prone to regard the increase of punishment, in a more severe form, a panacea for all such crimes. Even the Government's concern in addressing the issue had given the birth of new laws with harsh punishments. However, a cautious study about the food safety law in particular, jurisprudence in general, will lead a reasonable and understanding mind to believe that making laws more strict and increasing punishments i.e. reforming the laws or enacting new laws are not enough in making the violators obey the law.

We think that the use of formalin and other harmful chemicals in seasonal fruits can effectively be stopped through application of some regulatory techniques; first of all, if we think that the severe punishment can prevent crime then the use of formalin would have been stopped long before the problem is seriously felt. The Pure Food Ordinance of 1959 (recently repealed) had prohibited the use of formalin (section 6A) with the punishment of maximum three years imprisonment, a fine upto taka 2 lac and even shutting down the concerned Business institute (section 58). But the Act was not a successful instrument to control the use of formalin for too many years until its death in recent years.

In 2013 the government has made another law namely the Safe Food Act. Section 23 of the Act prohibits the use in foods, preservation and sell of formalin and other chemicals which are injurious to health. Violators of this provision are to be punished with imprisonment of five years and with fine of twenty lac taka. But it is not proper time to say that how much the law is being implemented. Beginning of 2015 the Formalin Control Act was enacted. Section 22 of this Act prescribes the punishment of two years imprisonment or a fine of taka four lac for the use of formalin. The Pure Food Ordinance 1959, an Act prior to the Consumer Rights Protection Act, prohibited the use of formalin in food (section 6A). Moreover, the Consumer Rights Protection Act of 2009 has prohibited the use of materials in foods which is seriously harmful for the human body (section 2(20)c). Sale of any food in which such chemical were used is regarded as a violation of the consumer right. The Act provides several administrative cum quasi judicial mechanisms for addressing this type anti-consumer right activity e.g. under section 27(3) to read with section 70 the National Consumer Rights Protection Department of the Government can impose fine against the person, shop, business institutes violating this law, they can cancel the license and shut down the business permanently or temporarily.

But how much is the law implemented? Though the officers of the Department sometimes take action against the violators through setting up mobile courts and impose punishments upon them but the general consumers do not notice any regular activity of the Department. Besides there is provision for punishment of maximum three years of imprisonment or a fine of taka two lac for using any harmful materials in the food stuff (section 42).

The unfortunate situation is that no food seller has yet been punished in any finally decided case under this Act. So it is crystal clear that though there are three different laws addressing the issue of formalin the use of formalin is not controlled in fact.

Do we actually need three different laws on the same issue? Even if it is taken to be okay then how the consistency is maintained between the implementation agencies under these laws? A practical investigation into the markets answers both the questions in negative. Neither is it necessary to have three laws on the same issue and nor is there any coordination among the implementing bodies under these laws. Consequently the culprits using the formalin in food are thinking that it is not a matter that how many laws are there or how harsh the punishment is, the law is not going to be implemented.

A comparative study will show that in the countries where the consumer rights are more protected in practice give emphasise on the implementation of the laws rather than on the increase of punishment or making new laws.

However the issue of reform of the law will be left as we are giving space to the discussion of some adds on strategies which will help us to effectively control the use of formalin in food within the existing legal framework. Firstly, there is no culture of appreciation of those food sellers who abstain from such crime. Consequently after complying with the law for few days they lose inspiration and involve in the crime of food poisoning. So it is necessary to identify the sellers those who do not use formalin and inspire them through the media. The publication of the list of those sellers will help the consumers in getting pure food and the sellers being appreciated as well.

Secondly, there should be regular meeting among the implementing bodies under different laws to maintain the coordination among them. Proper coordination between different bodies will help us to control the use of formalin in an speedy and effective manner.

Moreover, research shows that the laws in addressing the food safety be more effective in increasing civil penalty or fine of a large amount of money than in increasing the term of imprisonment. Even the replacement of the form of punishment may thought about. We can say that the present legislations are more or less reflect this line of jurisprudential thinking.

However, our failure to control the use of harmful chemical in food will lead us to a dangerous consequence but let us hope for a healthy life which, in this respect, is a few steps of strategies ahead.

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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

I am a citizen of Bangladesh and I am curious to know whether we have any right to information that we can exercise in Bangladesh. Whether the Government authorities and private companies are bound to provide information to general public?

Nurullah
Dhaka

Response

Thank you very much for your query. Upon receipt of the query I have understood that you are desirous to know about your right to receive information from Government offices and Private authorities. According to the Right to Information Act 2009 (hereinafter referred as "the Act") every citizen of Bangladesh has a right to information from the Authority and the Authority shall, on demand from a

citizen, be bound to provide such information.

Hence, you, as the citizen of Bangladesh, have the right to receive any information from the Authority. However, the law has set down certain procedures for getting such information. However, at the very outset let us understand who is the "Authority"? The law defines the term "Authority" under section 2 of the Act and provides the list of authorities that are under an obligation to disclose information and their respective information providing unit, as has been illustrated below:

- Any organisation/institution constituted in accordance with the constitution of People's Republic of Bangladesh;
- Any ministry, division or office constituted under the Rules of Business as given in article 55(6) of the Constitution.
- Any statutory body or institution established by or under any Act.
- Any private organisation or institutions run on government funding or with help from the government exchequer.
- Any private organisation or institutions run on foreign funding.
- Any organisations or institution that undertakes public functions in accordance with any contract made on behalf of the Government or made with any public organisation or institution.
- Any other organisation or institution as may be notified by the Government in the official gazette from time to time.

Every Authority shall have an Information Providing Unit and these are:

- The head office, divisional office, regional office, district office or sub-district (Upazila) office of any department, directorate or office attached to or under any ministry, division or office of the government.
- The head office, divisional office, regional office, district office or sub-district (Upazila) office of an authority.

Another question that needs to be answered is what is information? Information has been defined in the Act as any information in relation to an Authority's constitution, structure and official activities and includes any memo, book, design, map, contract, data, log book, order, notification, document, sample, letter, report, accounts statement, project proposal, photograph, audio, video, drawing, film, any instrument prepared through electronic process, machine readable documents and any other documentary material regardless of its physical form or characteristics. However, information does not include office note sheet or photocopies of note sheets. Every Authority or Information Providing Unit is bound to provide anyone with any information which falls within the definition of Information provided that the said person follows the correct procedure.

However, there are few information which are not open to the citizen and, hence, none of the Authorities shall be obliged to give the citizens such information which includes Information, disclosure of which would be a threat to the security, integrity and sovereignty of Bangladesh. Information related to any foreign policy, the disclosure of which would lead to harming existing relationships with any foreign state, or international institution or any regional bloc or organisation. Information received in confidence from a foreign government etc. Similarly, few organisations and institutions involved with national security and intelligence are not bound to provide any information to the citizens.

Now, we shall talk about the procedure of acquiring the information. At first you need to identify the relevant Authority or Information Providing Unit where the information you are seeking is available. An application has to be made in writing or by e-mail to the responsible officer of any Information Providing Unit who is nominated by the Authorities for each Information Providing Unit.

In the application, the following information must be given: which shall include name, address, and where applicable fax number and e-mail address of the applicant; correct and clear description of the information sought; any other useful and related information that might help in locating the requested information; description of the method by which information is sought, namely by inspecting, taking photocopies, taking notes or any other approved method.

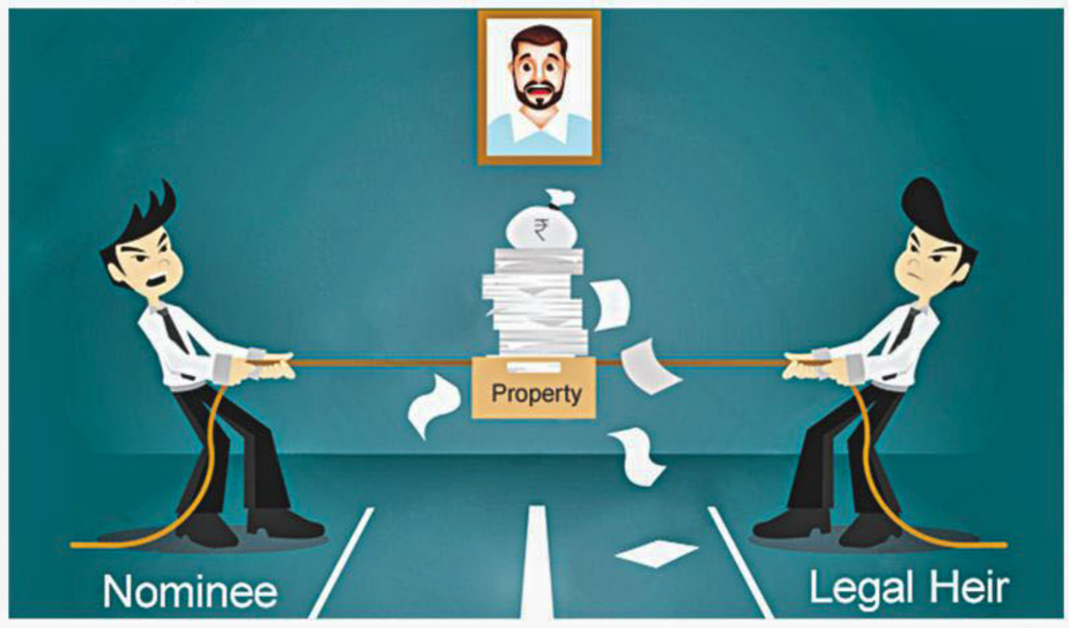
The information request shall be made either in the form printed by the Authority (Form A) or in the prescribed format. However, if the forms are not printed or are not easily available or the format has not been prescribed, then the application can be written on a plain white paper by giving all the information mentioned above or can be sent through electronically or by e-mail. An acknowledgement receipt needs to be collected after submitting the application.

I hope you have answer to your queries.

FOR DETAILED QUERY CONTACT: OMAR@LEGALCOUNSELBD.COM.

RIGHTS WATCH

Right of legal heirs against nominees



MD. MONIRUZZAMAN

ON 3 April 2016, the Supreme Court of Bangladesh delivered a historical judgment in establishing right of the legal heirs as against that of the nominees. A former deputy director of Bangladesh Bank had Tk. 30 lakh deposited in his bank account and he made his second wife the sole nominee. Upon death of the depositor, his children of the first wife went to lower civil court seeking succession certificate which the court rejected holding the second wife as the lone inheritor of the savings. This decision of the lower civil court was challenged in the High Court Division (HCD) by the plaintiff. The HCD bench of Justice Naima Haider and Justice Khizir Ahmed Choudhury altering the lower court's decision declared that, only legal heirs are the owner of the money from savings account of the banks not the nominee.

The legal position of the nominee has been a controversial issue in Bangladesh for a long time. Previously, under section 4 of the Government Savings Banks Act of 1873, a nominee was the absolute owner of the deposited money in the event of the death of the depositor excluding all rights of the legal heirs. Legal heirs were entitled to inherit only when the depositor dies without making any nomination. In such cases the legal heirs were required to obtain a succession certificate under the Succession Act of 1925.

Indian and Pakistani courts had interpreted laws regarding nominee in a different way. In a landmark case of *Sarbati Devi* v *Usha Devi*, AIR (1984) SC 346, the Supreme Court of India held that "the nomination only indicates the hand which is authorised to receive the amount, on the payment of which the insurer gets a valid discharge of its liability under the policy." While subsequent decision of the court extended the application of this rule in other instances of nomination such as bank savings, post office savings etc.

The Pakistani Supreme Court in *Amtul Habi* v *Musarrat Parveen*, PLD (1974) SC 185 laid down the same principle while holding that a nomination does not constitute a gift or bequest, "and, therefore, a nomination shall not deprive the legal heir of the nominator." In Bangladesh, however, prior to this decision there was no direction from the higher court on this issue.

The main purpose of the system of nomination in banking system is the smooth transaction of money. If the depositor does not leave any nominee, then the money will be transferred only after fulfilling certain formalities, which can be a hassle for both the bank and the heirs. But if nomination is made then the burden of the bank authority is reduced and it can easily hand over the money to the nominee.

The decision also made the nominee system consistent with the Muslim Personal Law (Shariat) Application Act of 1937. The previous system was a circumvention of Muslim law of succession which was against the application on personal laws in family affairs.

With this judgment the rules regarding nominee, which was a contradiction to the rule of succession under personal law, is correctly interpreted by establishing the rights of the legal heirs. Now the nominee is merely a trustee, whose obligation is to distribute the money among the heirs. Obviously if the nominee is a legal heir then he will get his portion according to the rule of succession. However, it will be interesting to see whether the application of this rule will also be extended to laws such as the Post Office National Savings Certificate Ordinance of 1944 or the Insurance Act of 2010.

Although the conflicting situation regarding rights of the nominee and the legal heirs is settled by this decision, a comprehensive and acceptable definition of nominee is still required. And for this the legislative body should act with accordance with the direction of the HCD and make necessary amendment to the respective laws.

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