"ALL CITIZENS ARE EQUAL BEFORE LAW AND ARE ENTITLED TO EQUAL PROTECTION OF LAW"-ARTICLE 27 OF THE CONSTITUTION OF THE PEOPLE'S REPUBLIC OF BANGLADESH • dslawdesk@yahoo.co.uk

LAW ANALYSIS

Code of marketing of the breast-milk substitutes

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MARKETING of breast milk substitutes, infant foods and commercially manufactured foods are regulated by International Code of Marketing adopted by World Health Assembly (WHA) of World Health Organisation (WHO) on 21 May 1981. A number of subsequent WHA resolutions have further clarified or extended certain provisions of the Code.

In Bangladesh to control the marketing of breast milk substitutes, a domestic law was adopted in 1984, being one of the first countries in the world

with a domestic legislation for applying the code in the country. The law was amended in 1990 to make registration compulsory for selling the substitutes. Later on when infant and young child feeding was placed at the top of the global public health agenda, Bangladesh replaced the law in 2013 by The Breast-milk Substitutes, Infant Foods, Commercially Manufactured Complementary Foods and the Accessories Thereof (Regulation of Marketing) Act, 2013. The law enhanced its scope and included two other items along with breast milk substitutes. One is infant foods, which are applicable for the babies' up-to 6 months, and second is, commercially manufactured alternative foods in which the targets are babies from 6 months to five years..

According to section 4 of the new Act of 2013 no person shall print, exhibit, circulate or publish any advertisement of any breast-milk substitutes, infant foods, commercially manufactured complementary foods and any accessories thereof. Therefore, advertisements of these products telecast in different television channels and advertisements published in different newspapers in Bangladesh completely violate of the law.

Several attractive advertisements of different infant foods and commercially manufactured alternative foods are frequently seen in the television amongst which some of the foods are very popular to us. Baby foods' advertisements are so unregulated that some advertisements show that doctors prescribe these commercially manufactured foods for increasing height and brain development. The law however does not include the foods applicable for children above five years. But the popular advertisements are not clear or specific about age of consuming. In addition, any leaflet, handbill or similar instrument wherein there is an advertisement of food supplement is prohibited from circulation. Section 7 of the Act mentions that, people should be made aware of advantages of breast feeding and importance of homemade nutritious foods.

Section 4 of the Act prohibits offering or giving any financial or other benefits to any person or any officer or staff of any health care centre or any health worker for receiving any higher education or engaging in any research by the funding of the manufacturer. Moreover, offering or proposing offers to any person such as to promote or allure the sale of these products are forbidden by the law. To organise any competition or function for or to render any other assistance to children for promoting these products is not permitted.

The law prohibits indirect advertising too, that means exposure during the publicity of any commodity, particularly child commodity such as: diaper, clothes, toy, etc. In addition, the law prohibits donating or distributing these items to any organisations or rescue shelters that are engaged in saving or reducing risk of children below five years of age or pregnant woman or newly delivered woman who are affected or endangered by natural calamity in the time of disaster.

If anyone contravenes any provision of this Act, such contravention shall constitute an offence, and for that, he shall be punished with imprisonment which may extent to maximum 3 (three) years or with fine which may extent to maximum 5,00,000 (five lacs) or with both. Whoever commits an offence for second time shall consecutively be liable to be sentenced with double term of punishment. The Act stated that no person shall print, exhibit, circulate or publish advertisement of the mentioned products and at the same time no person shall engage himself in any such work. Hence, the print and electronic media along with the producer, importer, distributer and seller may be liable for committing the offence. Therefore, in order to implement the law in true sense, mass awareness is required.

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LAW EVENT

17th Human Rights Summer School

MD. TAHMIDUR RAHMAN

ORGANISED by Empowerment through Law of the Common People (ELCOP), the 17th Human Rights Summer School (HRSS) took place in Proshika HRDC, Koitta, Manikganj from 10-20 October 2016. In total 48 law students from Bangladesh, Nepal and India participated in the school to learn various practical aspects of law and human rights. The theme of this year's summer school was 'Human Rights and Displacement'.

The idea of organising human rights summer school was first thought and executed in Bangladesh by Professor Dr. Mizanur Rahman, former chairman of National Human Rights Commission. With a vision of 'lawyering with the poor is lawyering for justice', ELCOP under the leadership of Professor Dr. Mizanur Rahman and other law academics and lawyers, trains up summer school participants to be acquainted with the concepts and standards of human rights and dignity. Following the method of 'clinical legal education', the summer school facilitates the participants with an opportunity to exchange their ideas and opinions concerning human rights and associated issues.

The HRSS follows different types of interactive mechanism. One of the mechanisms is technically called 'simulation', which gives the participants a glimpse of real world scenario through attending multi-cultural team-work. In this process, students play the key-role, and instructors observe and evaluate them. In short, it follows the well-known principle: "I listen, I forget; I see, I remember; I act, I understand".

Another important feature of the summer school is the day-long community visit, commonly known as Community Law Reform (CLR) field visit. The law is written in the statute and treatise, but it is applied in the community. Unless one can observe the problems and living condition of the community members, he or she will never be able to contribute to the society nor will he or she be able to understand the implication of law in the society. And without observing and knowing the community, it is not possible to understand whether people are enjoying their guaranteed rights or not.

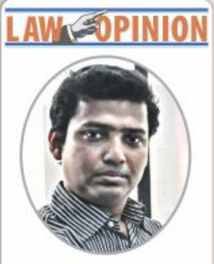
Mooting is another interesting aspect of the summer school. Starting from preparing together, writing memorial till presenting the case in front of the judges in a mock court – all gives a real-life court room taste. The special thing about the HRSS Moot Court Competition is that it teaches one how to get prepared to stand before the court within a shortest possible time.

Going beyond the traditional teaching method, ELCOP's summer school has been immensely contributing in the legal education of Bangladesh, by producing rebellious lawyers each year. Therefore, participating in the summer school is a memorable and life-learning experience for all law students.

THE WRITER IS PARTICIPANT, 17TH HUMAN RIGHTS SUMMER SCHOOL, ELCOP.

TIME LIMIT FOR SETTLING SUITS *unavoidable dilemma for judges*

LAW OPINION



RIZWANUL ISLAM

SECTION 37(1) of the Artha Rin Adalat Ain, 2003 (also known as Money Loan Court Act, 2003) provides that subject to the provision of Sub-section (2), an execution suit under the Artha Rin Adalat Ain, 2003 (ARAA) would be settled within 90 days or an additional 60 days only after recording reason/s for the failure to settle it within the stipulated time. However, Section 37(2) explains that if some time is spent in settling the claim of anyone who is not a party to the suit or some time is allowed to the judgment-debtor for making payment in instalments, those periods would be excluded from the calculation of the total time. At the outset, let us make this point very clear that a textual reading of the provision would indicate that the drafters have viewed the disposal of execution suits beyond 150 days (except when a third party has intervened under Section 32 or the court has allowed time for satisfaction of the decree in instalments) as a 'failure' and imposed a duty on the money loan courts to assign reasons for such a 'failure'. It would also seem that the drafters have not foreseen any execution suit under this Act to run for more than 150 days.

In *Md. Abul Basher* v *The Judge, First Artha Rin Adalat, Chittagong and Others*, (2009) 29 BLD (HCD) 517, the petitioner claimed, that a strict compliance with Section 37(1) of the ARAA is mandatory and when an execution suit is not disposed of within the stipulated period, it would automatically come to an end. The High Court Division (HCD) has taken note of the intention of the legislature in promulgating the law (the prompt recovery of loans) and also noted that the statute has not provided for any consequence of an execution suit running beyond 150 days. Hence, the HCD has rejected the petitioner's claim by holding that the provision in Section 37(1) concerning the time limit for disposal of an execution suit under the ARAA is only a directory one.

While the reasons for non-following of the mandatory time limit for settling cases are understandable and it would be argued here justifiable, there are some concerns about this. Indeed, this essay would argue that had the HCD accepted the contention by the appellant; it could have been blamed for defeating the purpose of the law that is to ensure the prompt recovery of loans disbursed by financial institutions. Let us first explore the justifications for the approach taken by the HCD. The HCD's relaxed approach may be because of the workload of the judges and officers of the money loan courts. It is unrealistic to expect that judges would always be able to settle all suits of a particular type within a rigid time-frame. The HCD's approach may also be justifiable because, in an execution suit, at least three set of actors would be involved: namely the judge and the court officials under the direct control and supervision of the judge, the financial institution and its lawyer/s, and the judgment-debtor/s and lawyers representing them. And the delay in disposal of the execution suit may be attributable to the fault of any of these groups and hence, putting an end to the suit itself simply for the delay would be harsh and absurd.

Again, had the court taken the route as contended by the appellant, clearly the HCD would have incentivised the judgement-debtors to resort to all sorts of delaying tactics. This is not to say that in absence of a directory time limit for settling execution suits, the judgement-debtors would have an incentive for not trying to delay the execution suit. But when the judgment-debtors would know that if the execution suit can be dragged beyond 150 days, it would be dismissed, the judgement-debtors having a weak case would have every reason to clutch on to all sorts of delaying tactics.

However, despite these merits in the finding of the HCD, apparently, there are reasons to surmise the unintended (probably even unavoidable) consequences of the method. The transformation of the seemingly mandatory time limit for disposal of suits to a directory time limit may confuse ordinary litigants who could expect an execution suit to be disposed of within 150 days. Because the unequivocal nature of the provision may create such an expectation, however, impractical that may be. Now, a question should arise, who is to be blamed for this? It would be argued that it is the drafters. The paradox for the judges here is that if they follow a textual approach, they become unrealistic and if they follow a purposive approach, they have to defy or at least dilute fairly straightforward words of the law and may confuse ordinary litigants. It would be argued here that this paradox has been created by quite a slapdash drafting.

The task of the drafters of law is almost always a complex one. They have to be precise, clear, and at the same time, have to provide for a myriad of unforeseen circumstances which have to be tried to be foreseen. Indeed, the drafters may have wanted to send a message to the judges of the loan courts that it is expected by the Parliament that the money loan courts would dispose of the execution suits within 150 days. But for signifying that intention, a much less stringent wording should have been used. Language which would indicate that the courts would try their best to settle an execution suit within 150 days would have sufficed, something along the lines of 'the money loan court would endeavour to settle an execution suit within 150 days and if it is unable to do so, the reason for the inability would be recorded'.

There is no doubt that law in this country as well in most other countries in the contemporary world, requires specialist skills and much of the practice of the law will only be the realm of persons skilled in the art of professional practice of law. But the drafters of law have to remember that laws are binding on the citizens. When the apparently unambiguous connotations of plain words push the court to such implausibility that they have little option but to take the legal provisions as directory and not mandatory, the public may not only be confused about legal provisions but their faith regarding the binding force of the law may also be somewhat dented.

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LAW LETTER

Strict abortion law

"These restrictions harm women's health and place an unconstitutional obstacle in the path of a woman's reproductive freedom." said Barack Obama after Supreme Court Rejects Texas Abortion Law addressing as 'Undue Burden'.

While the feminist and abortion activists had been protesting against the existing laws on abortion; on 9th June, the UN Human Rights Committee constituting experts from 17 nations called on Ireland to "amend" its abortion laws and somewhat similarly on 27th June the U.S. Supreme Court ruled 5-to-3 to strike down a Texas law that imposed one of the nation's strictest obstacle to abortion.

Earlier it was the case of Amanda Mellet, an Irish woman who came to know that her fetus had congenital defects and the child is more likely to die either in the womb or after its birth. She was denied abortion in her own country. But Amanda decided to abort the baby to get rid of the mental trauma she was going through and therefore had to fly all the way to Britain and bear the air fare on her own ,moreover she had to return right after twelve hours in that condition as she couldn't meet the expenses. The Committee consisting of experts from around 17 nations acknowledged the hassle she had to suffer from and asked the Catholic country to amend its law on abortion, based on "Protection of Life During Pregnancy Act 2013".

In Bangladesh, the punishment of crime is regulated by the Penal Code 1860 while under sections 312-316, punishment of causing miscarriage, causing miscarriage without women's consent and death caused by the act done with intention to cause miscarriage -are conspicuous. Abortion is only allowed when the women's life is in danger, which proves the ground to be circumscribed and confined. In our country abortion was legalised for a certain period in 1972, for the rape victims of the liberation war. However attempts, taken by Bangladesh National Population Policy to make abortion legal for the first time were failed in 1976. We haven't faced any active

or consistent protests against the law so far but research says, in Bangladesh abortion is more prevalent among unmarried adolescent girls than married women. The comparison is about thirty five times more among the girls who are less than eighteen years of age and these are in most of the cases unlawful abortion.

Ours is a country where law is seldom seen to be executed, and still we are struggling with law enforcement. But such actions of miscarriage are being adapted unlawfully to deceit the law, which raises a question to the health and hygiene of particularly the young girls who seek to get rid of their pregnancy.

More often than not such incidents seem to be correlated with rape incidents or pre-mature marriage which again brings the execution of law to question. So, laws in our country need to recognize the circumstances of the cases before reaching any judgment and need to be reformed in a way to adapt to the situation of people for whom the laws are made.

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