"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 VISION

No photograph policy of retailers

MD. RIZWANUL ISLAM

SHOPPERS of retail stores would have noticed that many of these stores insist on a policy of not taking photographs within the store. As claimed in some of their notices, such a policy may serve the need of protecting the security and privacy of the stores and other customers. Despite these potential merits, the policy seems to pose a few questions. Firstly, in an era, when businesses are quite keen on promoting their brands through advertisements, it would seem bizarre that they are adopting a policy which shuts an avenue of advertising at no cost. Even in the ongoing Dhaka International Trade Fair, some businesses are encouraging visitors to their stores to take selfies.

Of course, retail stores are private properties and they can set rules for their stores that they feel would serve their best interest and there can be some legitimate reasons for adopting a no photograph policy. A no photograph policy may have been somewhat dictated by the concern of copycat use by competitors. However, it seems rather unreasonable that mere photographs would give away so much information to competitors which they would not otherwise be able to obtain by employing alternative means such as using human beings to gather such information. And a business worrying about the very basic information that a photograph may capture would appear to be trying to protect something which is not protectable.

To assume that photographs by a customer would be harming the privacy of other customers seems to be unconvincing. Of course, retail stores are not a public place such as the playgrounds, parks, and streets etc. But a retail store is not a private place either where there may be a reasonable expectation of protection of privacy in the way people can expect the same in their homes or hotel rooms or beauty parlours. Again, for the possibility of preventing a few irresponsible customers from taking snaps in a way that may harm the privacy of other customers, an outright ban on the taking of snaps altogether does not seem to be proportionate or reasonable. Retailers need not be ultra-protective of their customers' privacy. In any case, any customer taking a photograph of another customer in an unlawful manner intruding on the privacy of the latter can be legally pursued by the latter and the retailer need not intervene in that case by a pre-emptive blanket ban. Another legitimate reason for retailers to adopt the no photograph policy may be to reduce the scope of casing the joint that is potential shoplifters checking out the stores to plan on what could be stolen. However, it would appear that close circuit television cameras installed inside the stores and the barcode scanners at their exit points should be able to take care of their concerns about shoplifting.

From another perspective, the regulators may have something to ponder about the merits and demerits of this policy adopted by some of the retailers. A no photograph policy can promote a culture of secrecy which would help some retailers to avoid or reduce unwanted (from their viewpoint) attention or scrutiny of their unlawful practices. By the banning of shooting photographs, retailers can reduce the scope of probing eyes of the customers. Such a possibility is not far-fetched but real. There are several offences punishable under the Consumers' Right Protection Act, 2009 (CRPA) which can be proven more easily if consumers can use photographs as evidence. For instance, under Section 37 of the CRPA, selling any product without the required packaging and without inscribing weight, amount, ingredients, instructions for use, maximum retail price, date of manufacture, date of packaging and date of expiry of that goods on the label is punishable when under any law, the sale or delivery in question is required to be done with such packaging and accompanying information. Similarly, violating any obligation imposed by any Act or Rule of displaying the price-list of goods by affixing it at a conspicuous place of a shop or organisation is an offence punishable under Section 38 of the CRPA. Selling or delivering any goods or service in a manner which is in violation of a promise made by concerned business is punishable under Section 45 of the Act. Thus, for instance, offering a good on discount and then taking the regular price would be an offence punishable under Section 45. In all of these three cases, it is not difficult to understand that photographs may potentially serve as evidence, in resolving a complaint before the Directorate of National Consumers' Right Protection or a court of law. Thus, it would be argued here that the regulators should assess whether or not the retailers and other business adopting the same policy would have a free reign regarding the policy of taking photographs within their stores. A legal intervention on this and the parameter of such intervention would require a scrutiny of the assessment of the retailers right to regulate their private property and the consumers right to greater freedom and transparency which is beyond the scope of this brief essay but a discussion on this may be desirable from the viewpoint of protection of the interests of consumers.

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RIGHTS CORNER

Maintenance to the parents

NAZIA WAHAB

ENACTED in 2013, the Maintenance of the Parents Act has already considered to be one of the contemporary and progressive laws in Bangladesh. The law is very precise having only nine sections and comprises legal provisions for maintaining parents. With all of its positive sides, however, the law is not free from some defects.

The first case under this Act was filed in November 2013 by a father against his children in Chandpur Magistrate Court. Since then a number of cases have been filed, but critics and rights activists have drawn attention of the Government by pointing out the shortcomings and limitations of the Act. The Government is yet to pay its attention to improve the law and facilitate its proper implementation.

There was no specific legal framework to bring any legal action against the children for ensuring maintenance of the parents before this Act. However, they could file law suit under section 5(d) of the Family Courts Ordinance 1985 for maintenance. It was observed in the case of Jamila Khatun v Rostom Ali reported in 48 DLR (AD) 110 that "under Mohammedan Law children in easy circumstances are bound to maintain their poor parents, although the later may be able to earn something for themselves. These poor parents may also file a suit in the Family Court for maintenance from their opulent children under the Ordinance of 1985."

Traditionally, it is the sons who are responsible to afford food and shelter to their parents as well as take care of the other elderly members of their family. But, in the Act of 2013, it is said both male and female children are responsible to maintain their parents (Section 2).

However, according to this Act "Father" and "Mother" means only biological ones and does not include the step parents. This raises question if the step mothers or fathers are not etitled to maintenance by their step children.

The Act stipulates that the parents must live with their children. Moreover, every child must provide a sufficent/reasonable amount for

maintenance from their earnings if the parents do not live with the children (Section 3). There remains ambiguity as to the determination of the amount.

The Act also mentioned that any person violating any of the provisions, shall be subject to the highest punishment of one lakh taka. Failing which he/she shall be liable to the highest imprisonment of three months.

On the other hand, in India the Maintenance and Welfare of Parents and Senior Citizens Act 2007 defines the term 'parents' as 'father or mother whether biological or step father or step mother'. According to the same Act, children means 'son, daughter, grandson, granddaughter but does not include a minor'.

Unlike Bangladesh, the Indian Courts has the discretion to determine the minimum and maximum amount of maintenance considering the circumstances. The application can be made by either of the parents. If anyone is incapable to do so, the application can be made by any other person or organisation authorised by the sufferer.

Under the Bangladesh Act of 2013, the offences for providing no maintenance are cognizable, bailable and compoundable. Considering the nature of the offences, Alternative Dispute Resolution (ADR) system should be introduced in this Act as the matters are purely family in nature. looking at the positive aspects of the Act it can be vouched that, if the Act is properly amended and implemented, it will bring welfare to many unfortunate parents of our country.

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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 work in a private Bank in Dhaka. Reguarly I notice that the footpath adjacent to my office is occupied by hawkers, tea stalls, iron workshops and garages. Due to this, people are forced to walk on the main road which causes traffic jam and is very dangerous for public safety as well. It seems that the authorities are turning a blind eye to these people and take no action against them. I would like to know if this issue has any legal solution.
Ahmed Rubel, *Dhaka.*

Response

Dear reader, thank you for your query. I would like to start by saying that occupation of any public building and/or land in part or full, without prior permission from the concerned Government authority is outright illegal. The issue that you have raised regarding the occupation of footpath by hawkers, local shops or anyone is certainly illegal. Footpaths are created for the sole purpose of pedestrian use and thereby ensuring public safety on roads and also to prevent unwarranted congestion on the roads.

Under the definition provided by the Government and Local Authority Lands and Buildings (Recovery of Possession) Ordinance, 1970 'land' means any land which vests in, or is owned by, or is in the possession or under the management and control of, the Government or Local Authority and includes any water. Under such definition, footpaths clearly qualify as land. In the metropolitan area, the City Corporation is the Government authority in charge of maintenance of footpaths under the Local Government (City Corporation) Act 2009 and outside the metropolitan area such responsibilities fall on the Union Parishad under the Local Government (Union Parishad) Act 2009.

Under the above mentioned 1970 Ordinance, the Deputy Commissioner of District on his own motion or on the complaint of or upon information received from anybody or a Local Authority shall investigate the matter. After such investigation if the Deputy Commissioner or other authorised officer is certain that a person is an unauthorised occupant of such land, he may, initially issue a notice directing such person to vacate the land or any part thereof, within the period of thirty days from the date of service of the notice. However, on the event where the Deputy Commissioner is satisfied that thirty days will not be in public interest, he may reduce the period of such notice although not less than seven days. As illegal occupation of footpath is an obstruction towards public safety, it is more likely that a notice of seven days will be served in such situations.

After service of such notice if the person illegally occupying such footpath has been made, refuses, or fails to vacate the footpath within the stipulated time, it shall be lawful for the Deputy Commissioner to recover possession of such footpath by evicting such illegal occupants and by demolishing and removing structures, if any, erected or built by such occupant.

The Ordinance also stipulates that the Deputy Commissioner or other authorised officer, after completion of the investigation may give such information to the Police Station with jurisdiction. Thereupon such illegal occupation shall be deemed to be an offence which shall be punishable with imprisonment for a term not exceeding two years or with fine which may extend to taka one thousand or with both. Furthermore, such offence shall be cognizable and shall be considered non-bailable offence.

Additionally, any fixtures or structure remaining in such footpath after the above mentioned notice period shall be deemed to have been forfeited to the Government or the Local Authority. Furthermore, if the concerned authority deems that such illegal occupation has caused damage to the footpath or any part thereof, the concerned authority may assess and impose fine on such person.

In my opinion a stricter implementation of law and frequent evection drives coupled with practical relocation plan for hawkers and local shops can remedy the illegal occupation of footpaths.

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LAW LETTER

ANIMAL WELFARE BILL

A legit concern

ON 20 February 2017, the cabinet gave a go-ahead to the proposed Animal Welfare Bill. Apparently this nod of approval seems to be pro-bono; however, from a less legally critical perspective, it really is. This draft law has tried to redefine the term 'animal' and attempted to widen its domain. One of the most admirable steps is to increase the jail terms and fines as forms of punishment for animal abuse. Undoubtedly, compared to the existing eighteen-century law, i.e. Cruelty to Animals Act of 1920, this draft bill will prevail.

How far this law can be praised as a bio-centric legislative step, is subject to another discourse under the ever-evolving environmental law. The idea underlying this entirely subjective reaction to the draft Bill is to critically analyse the provisions of punishment enshrined in the Act.

From more of a pair of environmentally ethical eyes, being cruel to animals is a moral wrong. However severe the punishment is, the abused can't have a redress thereby. In that case, punishment, by deterring the offenders, can play one of its most theoretically important roles. And a well-calculated increase in jail terms can definitely serve the need. The problem lies with the alternative monetary charges. The provision of alternative monetary charges saddeningly drags this praiseworthy endeavor one step backward.

Getting away with committing offences under the draft Bill without the crime even being reported will be very common. Monetary charges therefore can't be a proper deterrent. Even though the second alternative (imprisonment or fine or both) creates a space for the judiciary to apply its discretion by imposing both imprisonment and fine, that can hardly be counted on. Animal rights are not widely accepted in our country. Whether or not we can hope for a proper implementation of the second alternative overnight, is the main concern.

Almost all the states in the US provide for the similar sort of monetary charges, alternatively or jointly with imprisonment. Animal activism, as more of a movement, is traceable back to the mid-fifteen century in the US. The kind of consciousness regarding animal rights the judiciary in the US would possess, certainly cannot be brought on a par with that of ours. Any legislative intent, however noble tends to be, will fail, if the same doesn't have a connection with the psyche of the people.

The judiciary will apply the Bill, along with those who are targeted by the same, need to be made aware of animal ethics and rights. Only then we can hope for someone to apply his discretion and go for a simple imprisonment instead of fine, considering the gravity of the offence. This might seem to be a naive suggestion. However, that's the only possible way out since the provision of imprisonment, exclusively, will have a more disastrous effect.

The Bill speaks on behalf of those who can't speak for themselves. And it's up to us to make their voices heard through the proper implementation thereof.

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