

A call for reform

From contracts to a special commercial courts



Md. Saameer Sattar

LAW OPINION

OVER the years, Bangladesh has been achieving progress with its development and poverty reduction in spite of its many challenges and limited resources. By the 50th anniversary of Bangladesh's independence in 2011, the Government of Bangladesh wants to achieve the vision of attaining a middle-income status. To achieve that goal, the Government has undertaken significant steps and identified infrastructural development as one of the key areas of focus. In a country like Bangladesh, for economic growth and sustainable development, infrastructural development is one of the most important areas. Research studies have shown that a country with a good infrastructure is likely to attract more foreign Direct Investments (FDI). This will in turn accelerate the development of the country from the perspective of income and employment generation. However, FDI does not depend upon their business environment as there are other factors, which are equally important. Other factors, such as a stable business environment, the ease of starting and operating a business, paying taxes, procedure for obtaining licenses and permits and licenses, dispute resolution system etc., are very important in terms of attracting FDI into Bangladesh.

The Doing Business Report is an index created by the World Bank Group, which gives rankings to different countries depending upon their business environment. It is a very important tool for foreign investors in order to determine whether to invest in a country or not. A higher ranking in this Report is an indication that the concerned country is an investment friendly jurisdiction. One of the components for such rankings is "enforcement of contracts". This indicator measures the time and cost for resolving a

commercial dispute through a first-instance court. The efficiency of the legal system and the pace at which disputes are resolved by courts are very important factors in deciding the growth of investment and the overall economic development of a country. If one peruses the World Bank Report, he or she can see that there is a significant scope for Bangladesh to improve its environment for enforcing contracts. Enforcement of contracts has been a key problem in Bangladesh for many years, which is

with cases and some disputes take several years before a judgment is received, it is hoped that with the introduction of specialised Commercial Courts, parties will be able to resolve their business disputes quickly and in a cost-effective manner. If Bangladesh introduces a separate and specialised Commercial Court, then the number of business disputes pending before the lower Courts will be significantly reduced. This will in turn lead to a qualitative resolution of disputes.

Division of High Courts Act 2015, which is an important step taken by India to expedite the justice delivery system at least as regards commercial disputes. The said Act introduces setting up of separate commercial courts, having ordinary original civil jurisdiction, in order to deal with commercial disputes of a specified value exclusively. The said Act also requires the separate Commercial Appellate Divisions to hear appeals from the judgments/orders of the specialised

in dealing with commercial disputes, are important for the expeditious disposal of cases and the success of such commercial courts. It also requires filing of all documents relevant to a dispute at the time of filing of the suit itself or at the time of filing of the defense, as the case may be. This is because the said Act acknowledges that piece meal production of documents by parties at different stages tends to delay proceedings.

Similarly, in Singapore, the new Singapore International Commercial Court (SICC) was officially launched on 5 January 2015 with a view to deal with international commercial disputes quickly and efficiently. The SICC also has several advantages for international users over Singapore's existing domestic courts. The Supreme Court of Judicature (Amendment) Act 2014 stipulates that parties who have agreed to submit to the jurisdiction of the SICC shall, unless expressly stated otherwise, also be considered to have agreed to submit to the exclusive jurisdiction of the SICC, to carry out any SICC judgment without undue delay and to waive any recourse to any court or tribunal against any SICC judgment and the enforcement of such a judgment.

It is clear why the amendments and structural reforms introduced by Singapore and India are steps in the right direction in so far as FDI is concerned. In order to stand out and attract FDI, and also to increase Bangladesh's rankings in the World Bank Report, it is recommended that Bangladesh introduces these structural changes to its legal infrastructure. With these changes, foreign investors will be more interested to establish businesses and/or invest in Bangladesh as they can confidence level, in so far as it relates to enforcing their legal rights, will increase.

Since the Courts of Bangladesh are already overburdened with cases and some disputes take several years before a judgment is received, it is hoped that with the introduction of specialised Commercial Courts, parties will be able to resolve their business disputes quickly and in a cost-effective manner.



For example, recently India and Singapore have adopted a similar approach in order to improve their legal system's effectiveness vis-à-vis enforcement of business contracts. In 2015, the Government of India has passed the Commercial Courts, Commercial Division and Commercial Appellate

Commercial Court and six months of their filing date. The existing Code of Civil Procedure 1908 is also amended so as to improve the efficiency and expeditious disposal of commercial cases. The said Act recognises that competent judges, having experience

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harming the country's reputation as an investment friendly place.

Introduction of a specialised Commercial Court will be a valuable addition to our present judicial system and will alleviate many problems being faced by the business community in Bangladesh. Since the Courts of Bangladesh are already overburdened

LAW WATCH

Sahin Sultana

THE object of criminal justice system is to punish the wrongdoer and thereby to ensure justice for the victims. When any person comes to the court of law, it is thought that he has come with a grievance. But the things are not always as thought of. Sometimes criminal proceedings are initiated only to harass the accused persons.

In Bangladesh, there are multiple sections in the penal laws to punish persons filing false and frivolous or vexatious cases. But rarely do those provisions are utilised to punish those abusing and misusing the judicial system. Apart from the special laws, there are two specific provisions in the Penal Code 1860, namely section 211 and section 182, under which persons instituting any false information case or lodging a false First Information Report (FIR) can be punished. But in case of these provisions,

simple imprisonment of 30 days. Additionally, the court may order that the person shall also suffer imprisonment up to 6 months and fine up to taka 3000.

Although the compensation is small in amount, use of this provision can send a message to the persons filing false cases that the law is not a tool for abuse in their hands. In *M/s Indial Oil Corporation v NEPC India Ltd. & Others* (2006) 6 SCC 736, Justice R. V. Raveendran stated that "One positive step that can be taken by the courts to curb unnecessary prosecutions and harassment of innocent parties, is to exercise their power under section 250 of the CrPc more frequently where they discern malice or frivolousness or ulterior motives on the part of the complainant." This statement was also cited by Justice R. Bhanumathi in a recent case namely, *International Advanced Research Centre for Powder Metallurgy and New Materials (ARCI) & Ors v Nimra Cerglass Tehnics (P) Ltd &*

Despite having similar provisions in the Indian Code of Criminal Procedure, 1973, the Sessions Courts were allowed to apply this section in India. In *State of Rajasthan v Jaiudeen Sheikh and Another* (Criminal Appeal No. 1085 of 2015 @ SPL (Cri) No. 2623 of 2015) decided on August, 2015, the Court opined that "Section 250 of the Code confers power on the Magistrate to grant compensation on certain conditions being satisfied. A procedure has been engrafted in the said provision. There are certain cases in which the learned Sessions Judge can grant compensation." The Court also referred to the case of *Daulat Ram v State of Haryana* (1996) 11 SCC 711 in this respect. In our country, the case of *Karimuday v Abul Hossain* was decided in the year 1988. It is high time we should consider the matter taking into account the legal developments of Indian Jurisdiction.

In our law, the amount of compensation under section 250 is very trivial, i.e. maximum taka 1000. In India, the amount of compensation is to

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such amount as the Magistrate is empowered to impose as fine. In Pakistan, the compensation is maximum 25,000 rupees or, if the Magistrate is of third class, 2500 rupees. Considering the changes in other countries, the amount of compensation should be increased in our laws in order to dissuade people from filing false cases or lodging false FIRs. Only if the existing provisions are invoked by the Courts while trying any offence, upon introducing the necessary changes, some innocent persons can be saved from being harassed by the abuse of law.

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Conservation of ECAs



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THE Ecologically Critical Area (ECA) is an environmentally protected zone where the ecosystem is considered to be endangered to reach a critical condition by the changes brought through various human activities. Section 2(gg) of the Bangladesh Environment Conservation (Amendment) Act (2010) provides that "Ecologically critical Area" means such area which is rich in unique biodiversity or due to the importance of environmental perspective necessary to protect or conserve from destructive activities. ECA also falls within the category of natural and cultural heritage.

The Government of Bangladesh has declared eight areas as ECAs in 1999, e.g. Cox's Bazar and Teknaf Peninsula, St. Martin's Island, Sonadia Island, Hakaluki Haor, Tangsar Haor and Marjat Baor, Gulsban-Baridhara Lake and Sundarbans. Subsequently in 2009, four rivers (e.g. Buriganga, Sitalaksha, Balu and Turag) around Dhaka city were declared as ECAs.

Bangladesh is a signatory to the Ramsar Convention (1971) and the World Heritage Convention (1972) which are the principal instruments ensuring the conservation of natural heritages worldwide. The principal legislations that safeguard ECAs in Bangladesh are the Environment Conservation Act (1995), Environment Conservation Rules (1997), and the Constitution of Bangladesh.

The Act of 1995 in its section 5(1) contains provisions regarding declaration of ECA by the Government of Bangladesh. The Act provides that, an area is an environmentally critical situation or is threatened to be in such situation, the Government may declare such area as an ECA. Sub-section (2) also points out that, the Government shall under sub-section (1), specify the activities or processes that cannot be initiated or continued in an ECA. The Act also confers power to DOE to order corrective steps to be taken by any person believed to be responsible directly or indirectly, for causing harm to the ecosystem. Again, Rule 3(1) of the Rule of 1997 states that, the Government shall take the following factors into consideration while declaring any area as ECA under section 5(1) of the Act: (a) human habitat; (b) ancient monument; (c) archeological site; (d) forest sanctuary; (e) national park; (f)

game reserve; (g) wild animals habitat; (h) wetland; (i) mangrove; (j) forest area; (k) biodiversity of the relevant area; and (l) other relevant factors. Furthermore, Article 180A of the Bangladesh Constitution contains provisions regarding the protection and improvement of environment and biodiversity and states that, the State shall endeavour to protect and improve the environment and to preserve and safeguard the natural resources, bio-diversity, wetlands, forests and wild life for the present and future citizens.

The significance of conserving the ECAs has been highlighted by few esteemed decisions of the Bangladesh Supreme Court. Thus two PIL were lodged before the HCD by BELA seeking directives of concern authorities to undertake special measures to protect the *Sonadia Island* and *Sundarbans* mangrove forest as ECAs in (1) *BELA v Ministry of Land and Others* (Writ Petition No. 4286 of 2003); and (2) *BELA v Bangladesh and Others* (Writ Petition No. 2224 of 2004) respectively. In the earlier case, the petition was moved by BELA seeking protective measures to conserve *Sonadia Island* an ECA. The petition argued that the declaration of *Sonadia Island* as an ECA established the fact that the mangrove forest of the said land has a special ecological significance. Upon hearing the petition, the HCD issued a Rule Nisi calling upon the respondents to show cause as to why they should not be directed to undertake protective measures as requested under section 5 of the Act to conserve *Sonadia Island* as an ECA.

The key aim of conserving ECAs is to protect the major environmental features from encroachment by skewed development. ECAs perform numerous key environmental functions and provide desirable green space to enhance urban aesthetics. With constant environmental degradation in Bangladesh, the amount and area of ECA is still increasing. Despite a large number of ecosystems in Bangladesh could perfectly be described as "threatened", it is quite impossible for the government to find out, declare and manage all of them as ECAs. However, the DOE is implementing co-management system for conserving the ECAs and necessary rules are being framed to regulate different activities contrary to the conservation of ECAs in Bangladesh.

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separate proceedings have to be commenced which will ultimately increase the multiplicity of cases. However, there are chances to punish the persons making the false accusation by remaining within the same proceeding. Here comes the application of section 250 of the Code of Criminal Procedure (CrPc), 1898. As per this section, upon finding the accusation to be false and frivolous, the court may call upon the complainant or informant to pay compensation to the accused followed by an opportunity to show cause as to why he/she should not make the payment as such. The compensation ranges from taka 500 to 1000. In default of payment, he/she may have to suffer

Another decree on 22 September 2015 by the Supreme Court of India. As far as section 250 of CrPc is concerned, it is widely believed that only the Courts of Magistrate can apply this provision.

Now comes the question if the Sessions court can apply this provision or not. In *Karimuday v Abul Hossain* 40 DLR (1988) 441, the High Court Division held that "Section 250 of the Code of Criminal Procedure empowers only a Magistrate to invoke the said provisions while trying a case by him he finds that the accusations are false and either frivolous or vexatious and the same does not empower an Assistant Sessions Judge" (para 09).