

"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



LAW ANALYSIS

Diminishing quality of law reports in Bangladesh

SHERIFF MD. MUHIBULLAH
 TYPING law reports is an inseparable part of an engagement with the law. Anyone dealing with the law in any professional capacity - student, teacher, lawyer, judge, court reporter or columnist for newspapers - has to engage with law reports. The doctrine of stare decisis means in countries following English common law

reports, an indispensable element of legal education, has rarely been a topic of discussion in Bangladesh. First and foremost concern that I have about some of the law reports is in some cases it is hard to decipher what novel point of law has been elucidated or how in the reported decision there is a new twist to the law. Some cases reported in the law reports involve so trivial points

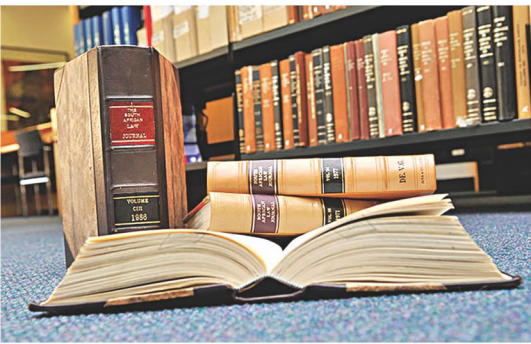
existing law etc. When a reported case would not meet any of these criteria, the perplexed reader may be excused for thinking that some extra-legal considerations let alone the arguments of the decision reporting. This sort of concern would be even stronger when the time gap between the date of the court's decision and the reporting year is quite substantial (sometimes more than a couple of years) and the

days in writing the decision and a headline summarising the key facts and observations of the court cannot encapsulate all the nuances of the judges' observations let alone the arguments raised by the lawyers of the parties involved in the case. Reading the full-text of a well-written legal decision can be charming in its own right and no-frills headlines cannot offer anywhere near the same charm. Indeed, reading headlines alone and relying on it can be precarious in many cases. That being said, the quality of headlines is always important for almost all readers of law reports, not just for theones in a hurry. Well-written headlines can always save the precious time of readers in deciding what not to read (even if not always what to read, and perhaps more precariously, not what to rely on or cite from the decision).

However, if readers compare the headlines of the law reports of the contemporary era with those of the past, often they would not but notice a general decline in the quality. In some cases, the headlines of the contemporary era are nothing but mere lavishly copied, word-by-word inclusion from the decision which can be produced with little care and serves very little of the need for the readers.

If the reproduction of some part of the decisions (no matter how important those parts may be) would have sufficed the need of the readers, then law reports would not have needed investment in editors, sophisticated machines or may be just photocopyers could have done the job. Even when there is a genuine contribution of the editors in the headline or at least an effort, often the quality of the language is a lot to be desired.

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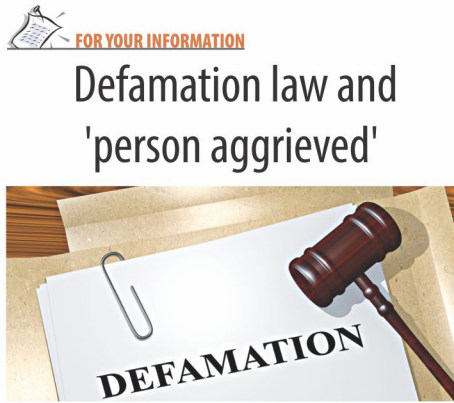


tradition precedents are of immense importance and law reports are the place where to locate them systematically. Currently, in our country, there are quite a few law report series. However, although there is currently no dearth in the number of law reports, there are reasons to be wary about some aspects of the law reports. Indeed, many have criticised us, the legal academics and educational institutions for a relative decline (perceived or real) in the quality of legal education in Bangladesh. However, the quality of law

of law that perhaps even a very rigorous research would fail to discern what aspect of the reported decision has made it worthy to have a place in the limited spaces of the report. Many readers of law reports would perhaps agree with me that some of the decisions of this nature are at best a brief judgment or order reiterating settled legal points with no novelty whatsoever. Indeed, the basic criteria for a decision to be reported would be its novelty or public importance or critique of or a thorough evaluation of the

case does not deal with a novel point or take a new turn from the previous case laws. The fundamental concern here is that every trivial case reported would probably mean the space for a more important case is taken away and the precious time of the readers wasted.

Another concern is about the quality of headlines. Of course, all serious readers of law reports would know that headlines are not and can never be the alternative to a careful, complete reading of the reported decision. The judges may have taken days of



FOR YOUR INFORMATION

Defamation law and 'person aggrieved'

SHERIFF MD. MUHIBULLAH

ONCE the US President Thomas Jefferson said, 'Defamation is becoming a necessity of life; inasmuch as a dish of tea in the morning or evening cannot be digested without this stimulant.' It goes without saying that he successfully unraveled the ugly truth. This has been happening in Bangladesh for so long. Sometimes the defamation suit has been filed even before the 'defamatory' conversation is about to take. Frequently enough, defamation cases are being filed in our courts, though in maximum cases they do not appear to be defamatory at all.

The incorporation of this law has a strong purpose behind it - that is to maintain an apt poise between the protection of an individual's reputation and freedom of expression and thereby to protect people against false and libelous statements causing damage to their honour, fame and reputation.

The Penal Code 1860 defines defamation as, making or publishing any imputation by words either spoken or intended to be read, or by signs or by visible representations concerning any person intending to harm the reputation of such person is said to defame that person and whoever does this commits the offence of defamation which is punishable by 2 years simple imprisonment or with fine or with both (Sections 499-500).

Now the question is who shall file an allegation of defamation and where? Section 198 of the CrPc says that no court shall take cognizance of an offence of defamation, except upon a complaint made by some person

aggrieved by such offence. It clearly states the term 'person aggrieved' and avoided the term 'person defamed'. The words 'person aggrieved' has a wider connotation than the words 'person defamed'. Legislators put the word 'aggrieved' so that the third party in some exceptional cases can file a defamation suit on behalf of other. However, the prior law of the court shall have to be taken.

Generally before taking cognizance of the complaint the court needs to see how the complainant is aggrieved and in what manner his fame, reputation or honour has been damaged. Furthermore, if he is filing the case on behalf of a deceased person, it is to be proved that how he is connected to that person's family or near relatives in that particular complaint. If the complainant fails to satisfy the court then one option is left before the court - to dismiss the complaint on the merit of insufficient ground under section 203 of the CrPc.

In India, Mr. Justice B. B. Ghose in his dissenting judgment in the case of *Pratap Chandra Guha Roy v King-Emperor* (1925) observed that "the true rule appears to be that if a person complains that he has been defamed as a member of a class he must satisfy the court that the imputation is against him personally and that he is the person aimed at, before he can maintain a prosecution for defamation".

It has to be kept in mind that a complainant may genuinely be aggrieved or his feelings hurt but in law, the action in respect of defamation being an action in personam, the complaint or complaint on behalf of the complainant is not maintainable (*Vishesh Verma and Ors. v State of Bihar and Ors.* on 7 April 2008). It is recommended that a central authority should set up that shall deal with frivolous allegations of defamation.

THE WRITER IS RIGHTS ACTIVIST AND JOURNALIST.

LAW INTERVIEW

Sameer Sattar is one of the leading commercial lawyers in Bangladesh. Recently, he has been ranked in Band 1 by Chambers & Partners: Asia Pacific and also recommended by The Legal 500. Moreover, he has been recognised as one of 33 worldwide thought leaders in arbitration, by a London-based international legal publication, Who's Who Legal. Law Desk talks to him on the following issues:

LD: You have appeared as an advocate before numerous international arbitral tribunals and the courts in Bangladesh as well. In light of your practical experience, what are the challenges and prospects for Bangladesh in terms of arbitration?

investors and States will have the option to choose an arbitrator for their dispute from this Panel. Once chosen, you will have to fulfill the role of an arbitrator and arbitrate the dispute between the State and the foreign investor.

Sameer Sattar (SS): I am optimistic about the Bangladesh legal environment in terms of commercial dispute resolution. As Bangladesh courts are over-loaded, I think there are many reasons to opt for alternative methods of dispute resolution like mediation and arbitration. The Government of Bangladesh has also taken proactive steps in this regard. For example, for the Government mandated certain laws for making mediation mandatory in certain cases. This shows the Government's commitment to take arbitration forward in the right direction in so far as dispute resolution is concerned.

LD: Would you like to inspire young lawyers of Bangladesh who wish to work as counsels in international arbitration sector?



SS: International arbitration is not only intellectually stimulating but it is also great fun as it allows one to travel around the world and learn more about different legal systems and culture. You need to be conversant not only with the laws of Bangladesh but also with the procedural laws of other countries like Singapore, England etc. For me, I also see this as an opportunity to grow one's professional network worldwide. Hence, I would highly encourage our youngsters to start early and develop a practice in international arbitration.

LD: You have also worked on investment treaty disputes concerning States and State entities. How challenging were those transnational investment disputes involving two States?

SS: As mentioned earlier, I think these arbitrations are very intellectually stimulating and there is a great deal of adrenaline rush when working on such matters. For example, you are advising Governments of different countries and dealing with senior Government officers, understanding national policies balanced against the interests of foreign investors. On one occasion, I remember that I came back from a Middle Eastern State into the UK around 6am and was required to conduct a hearing starting from 10am. Since the ICSID arbitration was before a world class arbitral tribunal, I remember not sleeping for more than 30 hours only in anticipation of the hearing. This experience was both challenging and enjoyable.

LD: Commercial arbitration, as a career path, is yet to get the appraisal in our country. As a successful lawyer and arbitrator, how do you assess this situation?

SS: It is true that commercial arbitration, as a career path in Bangladesh, is yet to get the due recognition and appreciation that it deserves. But, I think that it is changing. Huge foreign investments are being made into Bangladesh by investors (especially in infrastructure projects) and most of these investment contracts have arbitration as their mode of dispute settlement. Since the Arbitration Act 2001 also strongly recognizes arbitration and foreign awards, I am confident that this field will pick up very soon - and I have placed myself accordingly for the action.

LD: Thanks for your time.
SS: You are welcome.

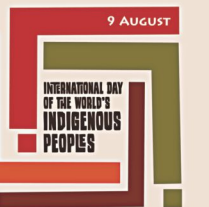
LAW NEWS

Embracing the differences

INDIGENOUS peoples, making up less than 5 per cent of the world's population, seek recognition of their identities, way of life and their right to traditional lands, territories and natural resources for years. However, throughout history, their identity have been ignored and hence, their rights have always been violated. Indigenous peoples today, are arguably among the most disadvantaged and vulnerable groups in the world.

Over the last decade, the implementation of the Declaration has achieved some major successes at national, regional and international levels. Despite the achievements, there continues to be a gap between the

In 1990, the UN General Assembly proclaimed 1993 the International Year of the World's Indigenous Peoples. Later, the General Assembly established the International Decades of the World's Indigenous Peoples: the first (1995-2004) and the second (2005-2014) by virtue of two resolutions with the goal of strengthening international cooperation for solving problems faced by indigenous peoples in terms of human rights, the environment, development, education, health, economic and social development.



Ten years ago, on 13 September 2007, the General Assembly adopted the United Nations Declaration on the Rights of Indigenous Peoples, a major milestone with respect to the cooperation and solidarity between indigenous peoples and Member States. This declaration affirms that indigenous peoples are equal to all other peoples. This declaration is the most comprehensive international instrument on the rights of indigenous peoples. It embodies global consensus on the rights of indigenous peoples and establishes a universal framework of minimum standard for their survival, dignity and well-being.

formal recognition of indigenous peoples and implementation of policies on the ground. By resolution 49/214 of 23 December 1994, the United Nations General Assembly decided that the International Day of the World's Indigenous Peoples shall be observed on 9 August every year. The date marks the day of the first meeting, in 1982, of the UN Working Group on Indigenous Populations. Since year 2017 marks the 10th anniversary of the said declaration, the theme for this year is '10th anniversary of the UN declaration on the rights of indigenous peoples'.

SOURCE: UN.ORG