

Noteworthy SC Verdicts of 2017



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2017 has been a remarkable year for the higher judiciary of Bangladesh. While legal scholars dissect, analyse and critique the verdicts laid down, this write-up sheds light on 10 most talked about verdicts of the year.

SC upholds decision to scrap the 16th Amendment
The most discussed verdict came in July when the SC upheld the decision of striking down the Constitution (Sixteenth Amendment) Act, 2014, thereby reinstating the power of impeaching the apex court judges back to the Supreme Judicial Council from the hands of the Parliament. The government has already started the proceedings for a review petition of the case.

The Catherine Masud verdict

On 3rd December, the HCD awarded BDT 4.6 crore to renowned filmmaker Tareque Masud’s family in damages against the insurance company, the bus owners and the bus driver over his death via road accident in 2010. Given the scarcity of tort cases in Bangladesh, this decision will definitely set a precedent in seeking compensation from the courts under the Motor Vehicles Ordinance, 1983 by road accident victims and their families besides filing criminal cases against the perpetrators.

HCD commutes the death sentence of Oyshee Rahman

In November 2015, a Dhaka court sentenced Oyshee Rahman to death for murdering her parents and fined her BDT 20,000/-. However, on 5th June, the HCD commuted her death sentence to imprisonment for life taking into consideration a number of extenuating factors including- a lack of motive, her physical and psychological ailments, past criminal records and surrender to the police. This has indeed upheld the principles of natural justice as Oyshee was bound by factors outside her control in committing the murders.

HCD orders compensation to be paid to Jihad's family over his death

On 24th December 2015, young Jihad died after falling into an unprotected shaft. Besides the criminal case, a writ petition was also filed before the HCD seeking compensation for his wrongful death. The HCD released the full verdict on 8th October directing Bangladesh

Railway and Bangladesh Fire Service and Civil Defence to pay BDT 10 lakh each as compensation to the family within 90 days..

HCD upholds the death sentence of Rajon's murderers

In July 2015, 13 year old Rajon was brutally beaten to death in Sylhet. Afterwards, a Sylhet court handed down death penalty to four of the perpetrators and life imprisonment to the person filming the incident and fined them BDT 10,000/- each. The HCD, after hearing the death reference case, upheld the death sentences but commuted the life imprisonment of another convict to imprisonment for six months on April 11.

HCD issues suo moto rule regarding the birth and subsequent death of a child in the open street

On 18th October, 26 year old Parvin Akhter gave birth to her child in the open street in front of Azimpur Matrishadan after being deprived of medical facilities from three hospitals. Consequently, her child died due to want of proper medical care. A High Court bench issued a sue moto rule afterwards, asking the concerned authorities as to why steps should not be taken against the three hospitals for failure to discharge their duties. While the litigation is still pending, the apex court deserves praise for this suo moto rule to uphold justice.

HCD awards compensation for medical malpractice

In perhaps another instance of tort litigation, the HCD ordered compensation worth BDT 900,000/- to be paid to Maksuda Begum of Patuakhali, after she was left with gauze in her body following a childbirth surgery. The surgeon performing the operation was later discovered to be a fake one and would have to pay BDT 500,000/- while the clinic would have to pay BDT 400,000/- within 15th January 2018.

SC's directives on legal education

In the case of *Bangladesh Bar Council & Others v A.K.M. Fazlul Kamir & Others* decided on 8th February, the SC allowed the admission of students in law schools of all universities except Darul Ihsan University and issued various guidelines to the public and private universities, UGC and Bangladesh Bar Council regarding legal education, student enrolment in the universities and enrolment of advocates in the bar. Various aspects of the verdict have been vehemently questioned by legal scholars since then.

SC's interpretation of 'life imprisonment'

In the case of *Ataur Mridha v The State* decided on 14th February, the court held that life imprisonment within the meaning of s.53, read with s.45 of the Penal Code means imprisonment for the rest of the life of the convict, while reducing the death sentences of the appellants to imprisonment for life. This verdict has led to confusions regarding the interpretation of the power of commutation of sentences of different authorities provided in various legislations

SC's verdict on mobile courts

In May, the HCD declared 11 sections of the Mobile Court Act, 2009 unconstitutional, thereby pronouncing executive-run mobile courts illegal. It however, observed that mobile courts can be run by judicial or metropolitan magistrates. While the SC stayed this order from time to time since then and allowed executive run mobile courts to function, various instances of abuse of power by the mobile courts have been reported in the media. It remains to be seen as to what the final verdict would be from the SC.

THE WRITER IS A CONTRIBUTOR TO THE LAW DESK, THE DAILY STAR.

Right to food security

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A report published in The Daily Star (December 23, 2017) regarding food security situation in Bangladesh revealed that Bangladesh stood 89th in the Global Food Security Index-2017, as the last one among the South-Asian countries. The Global Food Security Index considers the core issues of affordability, availability, and quality across the 113 countries. The index is a dynamic quantitative and qualitative benchmarking model, constructed from 28 unique indicators, that measures these drivers of food security across both developing and developed countries.

Article 15 of the Constitution of the Peoples Republic Of Bangladesh state- “it shall be a fundamental responsibility of the state to attain, through planned economic growth, a constant increase of productive forces and a steady improvement in the material and cultural standard of living of the people, with a view to securing to its citizen- the provision of basic necessities of life, including food, clothing, shelter, education and medical care”. Bangladesh is vulnerable to climatic disaster and repeated floods caused great damage to rice crops this year. A section of rice millers allegedly hoarded rice and deliberately hiked prices after the country lost crops -- primarily estimated at 20 lakh tonnes -- to flashfloods in Haor areas and fungal attack in the last Boro season.

The National Food Policy of 2006 represents an important departure from the past by applying a comprehensive and integrated approach to food security, including the availability, access and utilisation dimension



of food security. Policy has outlined following three main objectives:

Objective 1: Adequate and stable supply of safe and nutritious food

Objective 2: Increased purchasing power and access to food of the people

Objective 3: Adequate nutrition for all individuals, especially women and children

However, Cox’s Bazar district administration imposed a weeklong ban on NGOs involved in distributing aid to Rohingyas at Ukchia and Teknaf starting from December 11, 2017. Interestingly, government circular stated that the amount of food and non-food items being distributed by the NGOs among the refugees were more than what they require. Food availability does not necessarily guarantee food security and moreover, refugee children largely suffer from malnutrition.

Let alone refugees, a large segment of Bangladeshi population still suffers from food insecurity. Recent price hike had an impact on food security and overall poverty situation. At least 5.2 lakh people have fallen into poverty because of rice price hike, according to a recent study of the South Asian Network on Economic Modelling (SANEM). It has also caused a rise in head count poverty rate by 0.32 percentage points in past few months in the country.

There is a demand to promulgate food security act. Most of the countries of the world have right to food law but Bangladesh doesn’t currently have one. It is high time to codify a law to ensure food security.

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LIST OF LAWS

- Cadet College Act, 2017
- Bangladesh Biodiversity Act, 2017
- Civil Aviation Authority Act, 2017
- Bangladesh Rural Development Academy Act, 2017
- Jute Act, 2017
- Child Marriage Restraint Act, 2017
- Bangladesh Unnayan Gobeshona Protishthan Act, 2017
- Bangladesh Accreditation Council Act, 2017
- Bangladesh Shipping Corporation Act, 2017
- Bangladesh Atomic Research Institute Act, 2017
- Bangladesh Agricultural Research Institute Act, 2017
- Specification (Supplementary) Act, 2017
- Finance Act, 2017
- Specification Act, 2017
- Bangladesh Jute Research Institute Act, 2017
- Bangladesh Road Transport Authority Act, 2017
- Civil Aviation Act, 2017
- Bangladesh Rice Research Institute Act, 2017
- The Requisition and Acquisition of Immovable Property Act, 2017
- Bangladesh Wheat and Maize Research Institute Act, 2017
- Bangladesh Atomic Energy Commission Act, 2017



ADIB SHAMSUDDIN

2017 has been a rather busy year in the judicial calendar. We have seen decisions generating new ideas, and we have seen a plethora of legislations. All in all we have got 24 laws being enacted in the year 2017. A notable few have been discussed below:

CADET COLLEGE ACT

The first enactment of 2017 replaced the 47-year-old Pakistan-era legislation, specifically setting out provisions for establishment of cadet colleges by issuing government notification and allowing college governing system as a statutory institution.

BIODIVERSITY ACT

The constitution of Bangladesh in Article 18(a) talks about the preservation of biodiversity. Bangladesh, as part of United Nations Convention on Biological diversity, is committed to the protection of biodiversity, sustainable use of resources, and dispensation of knowledge regarding such. The Biodiversity law dictates that if someone’s actions leave an adverse impact on the ecological system or endangers ecological community, that person shall incur a maximum penalty of 5 years imprisonment or fine up to ten lac taka or both.

BANGLADESH RURAL DEVELOPMENT ACADEMY ACT

This Act has sought to replace the 1986 ordinance. This law has added provisions for establishing offices at the departmental level. Under the law, the Chairman of the Board of Directors would be the Minister of the Local Government, Rural Development and Cooperatives. The law provides that in the absence of a minister, the state minister or sub-ministers will be appointed as chairman.

JUTE ACT

The Act contains 32 sections comprising the power of the government to produce, research on and promote jute and jute goods, the power of the government in the business of jute and jute goods, licensing, valuing, imposing development fees, formation of

development fund, contract registration, sale, prohibition power, sales direction, power, information, the ability to summon, the ability to seize extra-stock reserves, false statements or violations of the law, impunity and penalties etc. The maximum punishment for violation of the law is three years of imprisonment or Tk 100,000 fine or both.

CHILD MARRIAGE RESTRAINT ACT

With the passing of this law, the marriageable age for girls and boys continue to be 18 years and 21 years, but inclusion of ‘special circumstances’ creates the much debated exception. But what is the special context and how young can be married at this age, has not been made clear in the law. However draft rules have been formulated in order to give an explanation to what would constitute these ‘special circumstances. As per the cabinet, it was said that the courts will decide on the interpretation of such.

BANGLADESH UNNAYAN GOBESHONA PROTISHTHAN ACT 2017

This enactment undertakes to establish an institution for the purpose of undertaking and promoting study, research and for dissemination of knowledge in the field of development economics, demography and other social sciences and for related purposes by repealing the Bangladesh Unnayan Gobeshona Protishthan Act 1974. Under this law, the chairman of the Planning Minister has been asked to form a 14-member board. It has specific provisions for the meetings of the Board, Director General Secretary, Committee, Policy Coordination Committee, Administration Committee, Finance Committee, Committee Meeting, Fund, Budget, Accounting and Audit, Report, Rules and Regulations.

BANGLADESH ACCREDITATION COUNCIL ACT

The responsibility of the council will be to ensure high quality education, to monitor the activities of the university, to set the conditions of the certificate and to cancel accreditation

certificates, if necessary. However, cancellation of certificate is amenable to review. According to the law, without any accreditation certificate, an organisation cannot promote accreditation. Higher institutions will not be able to give certificates without the national qualification framework. After withdrawing the certificate of an organisation, that institution will be forced to surrender the certificate within the stipulated time of the council. The council cannot present any wrong information and any concealment of information during the visit of any higher organisation will be treated as an offense, rendering the accreditation certificate canceled.

BANGLADESH AGRICULTURAL RESEARCH INSTITUTE ACT

It has been decided to abolish the pre-existing Bangladesh Agricultural Research Institute Ordinance. The provisions of the Act set out specifics for offices and centers, the activities of the Institute, the guidance given by the council. In this Act, the provision of formation of a board of 12-member institute has been made with the task of deciding related matters such as board functions, board meeting, appointment of recruitment, employee recruitment, funding, budget, accounting and audit, reports, committee formation, ability to borrow, contract signing, foreign training and education, rules of rules and regulations.

BANGLADESH ROAD TRANSPORT AUTHORITY ACT

The law expressly confers power on authority to form a company. Previously, the authorities have been able to form one or more companies under the Company’s Act 1994. For the creation of a board of directors, a meeting of BRTA Advisory Council and chair of the BRTA has to be made. The members of the Dhaka North and South City Corporation, Secretary of Road Transport and Highways Division, Home Secretary, Local Government Division Secretary, Trade Secretary, Housing and Public Works Secretary, Railway Secretary and Shipping Secretary and relevant departments will be members of that Advisory Council.

THE WRITER WORKS WITH LAW DESK, THE DAILY STAR.