

2018: THE YEAR IN REVIEW

REFLECTING BACK TO THE ACTS OF PARLIAMENT

PSYME WADUD and MD. AZHAR UDDIN BHUIYAN

A total of 61 laws has been passed last year by the Jatiyo Sangsad (National Parliament) in Bangladesh regulating different sectors such as health, education, press and media, sports, economic development and investment, agriculture and rural development, environmental protection, consumer rights, narcotics control, public services, electricity, water, seeds, police and armed forces, and so on. In this write-up, some of the major Acts of Parliament are summarily discussed for the readers of *The Daily Star*.

The Bangladesh Industrial Enterprises (Nationalisation) Act 2018

With the introduction of this Act, every corporation has to establish their head offices in Dhaka. A Chairperson is said to form a board of directors consisting of six directors appointed by the government. The Board of Directors are empowered to perform all the functions of the corporation and exercise all its powers.

The One Stop Service Act 2018

The law was enacted aiming to ensure business-friendly regulations and increase foreign investment. As the law has been enacted, investors will get entire services like project clearance, work permit, visa recommendation, import and export permits, building plan approval, wiring and plumbing plan approval, NOC for foreign loan, local sale and purchase services, utility connection approval, TIN registration, VAT registration, fire clearance and boiler registration at one place.

The Wage Earners Welfare Board Act 2018

This law has been enacted in order to establish the Wage Earners Welfare Board and ensure the security and welfare of the expatriates and their families in line with the international conventions and treaties ratified by Bangladesh. The Act contains a special provision for the benefit of the female wage earners.

The Chief of Defence Services (Appointment, Salary, Remuneration and other benefits) Act 2018

According to Article 62 of the Constitution,



the Parliament has enacted this law to regulate appointment, remuneration and benefits of the Chief of each of the defence services. The law contains a provision that removes all legal bars to appoint a former Chief of any of the defence services in any office of profit under the Constitution.

The Dowry Prohibition Act 2018

This Act, repealing the earlier Act of 1980, contains a provision that seeks to prevent filing of false cases by prescribing a punishment of maximum five-year imprisonment or a fine of maximum BDT 50,000 or both. The revised Act has made the offences under it cognizable, non-bailable and compoundable.

The Digital Security Act 2018

Amidst the fear and worries concerning the threat to freedom of expression, criticism from human rights organisations, media outlets against several sections of the Bill, the aforesaid Act empowers the police to search, confiscate or make arrests without a warrant. According to section 32, if a person commits any crime or assists anyone in committing crimes under the Official Secrets Act of 1923, through computer, digital device, computer network, digital network or any other electronic medium, he or she may face a maximum 14-year imprisonment or a fine of BDT 25 lakh or both. The law prescribes a seven-year imprisonment or a fine of BDT 5 lakh or both if anyone is found to have deliberately published or broadcast

something on a website or in electronic form which can spread hatred and create enmity among different groups.

The Press Institute of Bangladesh (PIB) Act 2018

The Act has been made for the establishment of an institute which will work for the development and advancement of professional journalism, research and publication. One of the important functions of the Institute is to formulate policies related to media and journalism.

The Road Transport Act 2018

This law has been enacted following the movement carried out by mostly the school going kids after the death of two high-school students in Dhaka upon getting struck by a bus. The new law provides a maximum sentence of 5 years in jail or a fine of BDT 5 lakh or both, if anybody kills or injures someone seriously by rash and negligent driving. It sets the education qualification of not below eighth grade for the drivers. A person must be at least 18 to get a driving license and 21 to get a professional license. The Act seeks to draw a line between "negligent" killings and "intentional" killings yielding yet another area of criticism.

The Narcotics Products Control Act 2018

This Act has repealed the Narcotics Products Control Act 1992 and made new provisions in order to ensure the control of narcotics, the reduction of supply and demand, abuse and

smuggling, and the treatment and rehabilitation of drug addicts.

The Mental Health Act 2018

Repealing the Lunacy Act 1912, the Mental Health Act 2018 has been made in order to provide health care to the individuals affected with mental health problems and to ensure their safety and dignity, property rights, rehabilitation and overall welfare.

The Public Services Act 2018

The Act has been made, among others, to consolidate and reconstruct the working departments of the Republic, to integrate and determine the employment of employees in the service of the Republic, and to determine and control their working conditions. Section 25 reminds the government servants that they have a duty to provide public services to the citizens in due time. Section 41 requires taking prior approval of the government or the employing authority before arresting a government servant in connection with a criminal case filed in relation to the duty of the government servant.

Making Dawrae Hadith (Takmil) Certificate in Qawmi Madrasa Equivalent to Master's Degree (Islamic Studies and Arabic) Act 2018

Under this law, there would be a board named "Al-Haiyatul Uliia Lil-Jamiatil Qawmia Bangladesh"; integrating the existing six Qawmi madrasa education boards. The board will prepare syllabus,

question papers, conduct examinations and award certificates among the Qawmi students. Besides, the status of postgraduate degree will be effective for the madrasas which would be registered under the board.

The Electricity Act 2018

With a view to ensuring better supply and progressively meeting the demand of electrical energy throughout the country, the Electricity Act 2018 has been enacted repealing the Electricity Act 1910. The new law introduces special service through special line subject to payment of special fees. The principles of collective as well as individual accountability have also been incorporated in the new law.

The Textile Act 2018

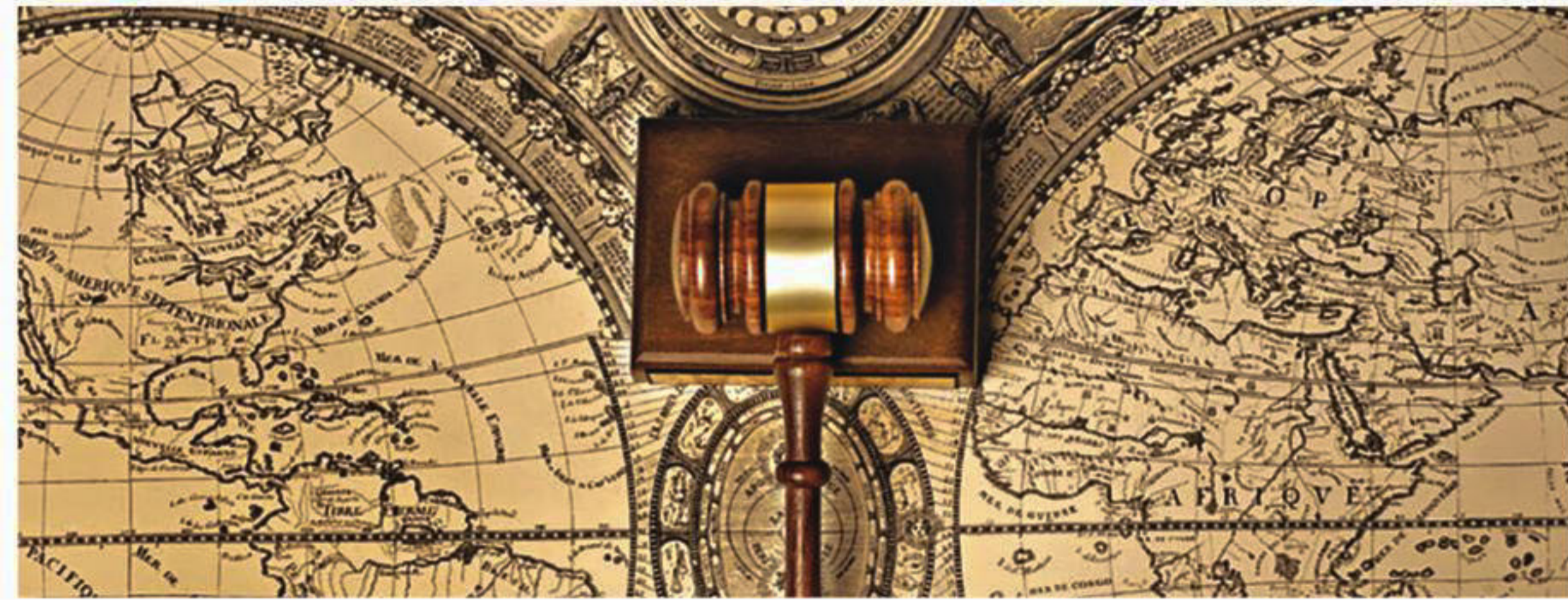
As per this law a directorate will be formed with a director general with supervisory powers. The directorate's officers will have the responsibility to inspect the quality of textile products. The law mainly aims to maintain the quality of textile products.

Apart from these laws, some Ordinances previously declared invalid by the Supreme Court of Bangladesh in 5th and 7th Constitutional Amendment cases have been considered necessary and revised into new laws last year after receiving necessary opinion of all the stakeholders and all concerned ministries and divisions.

THE WRITERS WORK WITH LAW DESK, THE DAILY STAR.

GLOBAL LAW UPDATES

2018 has witnessed an overwhelming number of developments garnering new ideas across the world



EXTRA TERRITORIAL IMPLICATION OF RIGHT TO ENVIRONMENT

The Inter-American Court of Human Rights, in its advisory opinion on environment and human rights, recognised the right to a healthy environment as fundamental to the existence of humanity. This Court opinion is precedent setting as it specifically enumerates the responsibility that states hold in protecting healthy environments and other environment-related rights. Notably, the Court included extraterritorial obligations (ETOs) saying that states' human rights obligations extend to all people, even those outside of states' borders.

US WITHDRAWAL FROM UNHRC

Former US Permanent Representative to the UN Nikki Haley announced that the United States was withdrawing from the UN Human Rights Council (HRC). Haley stated that the United States called for reform of the HRC a year ago and "made a good-faith effort to resolve the problems" they saw within the Council, but that progress had not been made since then.

UNSC RESOLUTION TO PROTECT CHILDREN IN ARMED CONFLICT

UN Security Council (UNSC) passed a resolution to strengthen protections for children in armed conflict. In the resolution, the Security Council condemns all violations of international law regarding recruitment of child soldiers to armed conflict, as well as all violence, abductions, and attacks against children in all situations of armed conflict. The resolution was passed unanimously.

DECriminalISATION OF CONSENSUAL ADULT SAME SEX RELATIONSHIPS

The Supreme Court of India, in a landmark judgment which came out in early September, decriminalised consensual same sex relationships holding that consensual sex between two adults was covered under the right to privacy. The Supreme Court said that Section 377 would continue to be in force in cases of unnatural sex with animals and children.

ICC TO EXERCISE JURISDICTION IN ROHINGYA CRISIS

International Criminal Court (ICC) Pre-Trial Chamber I held that the Court may exercise jurisdiction over the alleged deportation of the Rohingya people from Myanmar to Bangladesh. The Chamber held that although acts concerning the "alleged deportation of members of the Rohingya people occurred on the territory of Myanmar (which is not a State party to the Statute), the Court may nonetheless exercise its jurisdiction, since an element of this crime (the crossing of a border) occurred on the territory of Bangladesh (which is a State party to the Statute)."

ADULTERY PROVISION DECLARED UNCONSTITUTIONAL IN INDIA

The Supreme Court of India unanimously struck down a 150-year-old law that considered adultery to be an offence committed against a married man by another man. Defined under Section 497 of their Penal Code, adultery law came under sharp criticism for treating women as possessions rather than human beings.

CRIMINAL CONVICTION FOR DISPARAGING RELIGIOUS DOCTRINES

The European Court of Human Rights ruled in *E.S. v Austria* that the applicant's criminal conviction for disparaging religious doctrines by suggesting that the Prophet Muhammad had had pedophilic tendencies did not violate Article 10 (freedom of expression) of the European Convention on Human Rights.

THE PARIS RULEBOOK

After last-minute wrangling over wording, it has ultimately succeeded in its crucial primary task of agreeing the so-called rulebook for the Paris agreement. It is a significant achievement as it will enable all countries to implement all the different elements of the Paris Agreement in a manner that can be measured, reported and verified in a uniform manner.

FROM LAW DESK, THE DAILY STAR.

Notable Supreme Court decisions of 2018

ALI MASHRAF

2018 has been significant for the apex judiciary of Bangladesh. As 2019 approaches and legal scholars dissect and analyse the verdicts laid down by both the divisions of the Apex Court, this write-up aims to highlight some of the most talked about verdicts of the year.

HCD REJECTS WRIT ON ARTICLE 70 OF THE CONSTITUTION

After a High Court Division (HCD) bench had issued a split verdict on the legality of Article 70 of the Constitution, the single bench of Justice Abu Taher finally passed the order on March, upholding the Article. The Court observed that it could not interfere with the said provision since it has been incorporated in our original Constitution of 1972. The Court further said that Article 70 is a safeguard to democracy.

BANNING 'TWO-FINGER TEST' FOR RAPE VICTIMS

The landmark verdict came in April when the HCD prohibited the 'two-finger test' carried out on rape victims to prove rape. The court also asked lawyers not to ask any such questions to rape victims, which would hurt their dignity during trial proceedings.

RAJIB'S ACCIDENT CASE

On April 23, Rajib Hossain lost his hand between two racing buses in an accident and consequently died from his injuries. Following a writ petition, the HCD ordered BRTC and Swajan Paribahan to pay compensation worth taka 10 million to his family. However, in May, the AD stayed that order and directed the HCD to form an independent and impartial committee to identify the responsible persons for this fatal accident. The AD added that Rajib's brothers would be compensated based on the report submitted by the probe committee. While the three-member committee submitted its report, a final verdict is still pending.

GUIDELINES FOR SUBORDINATE COURT JUDGES

In June 2018, the HCD released a set of guidelines for the subordinate court judges for properly dispensing with their duties. The guidelines state that Sessions Judges have to hold a judicial conference once every month to review the hurdles they face in carrying out their responsibilities and to find solutions. Moreover, the verdict also outlined how Sessions Judges should exercise their criminal revision powers and what the conduct of District and Sessions Judges should be in the months leading to their retirement.

COMPENSATION FOR ROAD ACCIDENT VICTIMS' FAMILIES

In August, the SC upheld the HCD's order on Jabal-e-Noor Paribahan to pay compensation worth taka 5 lacs to the families of the two students who were killed in a road accident on July 29 on Dhaka's airport road.

AWARDING COMPENSATION TO EYE SURGERY VICTIMS

In October, the HCD awarded compensation worth taka 1

million to each of the 17 victims who lost their eyesight following cataract surgeries at the Impact Masudul Hoque Memorial Community Health Centre, Chuadanga. It further ordered the Centre to pay for the medical bills of all 20 victims should they receive treatments in other hospitals. Moreover, Irish Company, which provided drugs during the surgeries, will have to bear 50% of the total compensation money.

MEDICAL TESTS BEFORE MARRIAGE AND GOVERNMENT JOBS

The HCD issued a rule in November, asking the concerned authorities to respond as to why blood tests before marriage and dope tests prior to entry to government jobs should not be made mandatory. While the court is yet to reach a final verdict, the rule issued is the first step towards



checking whether or not would-be brides and grooms are affected with Thalassaemia and whether or not people seeking entry to government jobs are drug addicts.

LANDMARK VERDICT ON MEDICAL NEGLIGENCE CASE

In *Delwara Begum v Dr. Md. Surman Ali*, the HCD ordered the Chief Metropolitan Magistrate, Chittagong to proceed with the case against the accused after the trial court discharged him in a case of medical negligence. In 2013, following surgery on the patient to remove piles, Dr. Ali had left a broken needle inside the body. The HCD noted in its decision that the trial court had discharged him without applying judicial mind to the materials on record. While the accused is yet to be pronounced guilty, the HCD order is indeed a stepping stone for pursuing medical negligence cases against offending medical professionals.

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