

LAW WATCH

# Revisiting Small Cause Courts Act

MD. MOSTAFA HOSAIN

The Small Cause Courts Act 1887 was brought to regulate small issues and matters by the assigned courts. It is no doubt that the law was brought with the purpose of resolving disputes of small nature in a convenient manner. The first and foremost task is to determine matters considered 'small causes'. Section 15 of the Act provides two-fold criteria in this respect. First, suits of civil nature in which the pecuniary value

and revisit this value in order to bring the Act within the pace of society and making it convenient for the common people. The Law Commission of Bangladesh made recommendations twice regarding this Act. In 2005, it proposed for increasing the pecuniary value. However, the Commission recommended repealing the Act in its 2018 recommendation. Historically, the pecuniary ceiling had been revised from time to time. For instance, Rs.



does not exceed twenty five thousand taka shall be cognizable by this court. However, the government may direct the court to take cognizance of any suit up to thirty thousand taka. Second, suits which are listed in the second schedule under the Act are exempted from the jurisdiction of the court even if value remains within the limit of pecuniary jurisdiction. The schedule encompassed forty four categories of issues to be excluded from the jurisdiction of this Court.

The higher threshold determined for the pecuniary jurisdiction under the Act is the substantial focus of the present writing. The writer opines that it is high time to revise

500 was the highest cognizable value up to 1962 and maximised the said amount to 1,000 Rs which was again raised to taka 2500 by the Law Reforms Ordinance in 1978. In the year of 1983, the said amount was further increased to 12000 taka by Ordinance No. III. Finally, the last ever amendment in raising the amount was made in 1990 which fixed 25000 taka to be cognizable by the Small Cause Courts. Conversely, the existing amount of 30000 taka was 15000 taka before 1990, 6000 taka before 1983 and 2000 taka before 1978. At first it was actually Rs 1000 and started amending in 1962 onwards.

The purpose of brining this gradual change

in the law was to highlight that the attempt was always there on the part of the law makers to bring the Act in line with the then societal requirements and levels. The existing amount was fixed almost thirty years back. The cardinal question is how far the amount settled in the said year is going to be relevant after nearly thirty years whereas the value of objects and materials in the society has been quadrupled or even much more. This is a reflection of how the jurisdictional access of the Small Cause Courts has been shrinking over the time.

In 2005, the Law Commission recommended to maximise the monetary value up to 60000 and 70000 taka which is currently 25000 and 30000 taka respectively. The author draws the attention of concerned authorities to put serious thought on the pecuniary value particularly what could be the amount suitable today considering the socio-economic status of the country reached nearly after thirty years.

At present, mostly suits under this Act are brought by the landlords related to non-payment of house rent. In its 2018 report, the Law Commission highlighted that due to absence of specific time limitation to resolve disputes, parties have been experiencing difficulties in continuing the suit. It has been revealed in the survey of the Commission that from 1st January 2008 till 31 December 2017, 4661 suits were instituted under the Act, 2597 suits were settled and 4317 suits were pending before the Small Cause Courts. Considering this number, author observes that the Act is still very much relevant and also updating the Act would be more viable option than repealing. The basic feature in terms of serving the purpose of any law is to update that piece of legislation as far the demands of time and with the flow of society. The present Act lacks this feature which is concerning. Thus, updating rather than repealing would be sustainable option.

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RIGHTS ADVOCACY

# Is "Legal Aid" a constitutional right?



RAJIB KUMAR DEB

Political philosopher Charles de Montesquieu said, "In the state of nature...all men are born equal, but they cannot continue in this equality. Society makes them lose it, and they recover it only by the protection of the law." The concept of legal aid and constitutional rights circumscribe reflections of peoples' basic necessities. Legal aid and constitutional rights are intricately related for the realisation of equality before law. Sometimes, a question arises as to whether legal aid is or accrues to a constitutional right. In order to find a reliable answer, one must evaluate the Constitution in light of international documents on human rights and domestic laws.

Legal aid is a mechanism for providing legal advice and assistance to litigants and justice seekers who are otherwise unable to afford legal representation and access to the court system due to financial insolvency, destitution, helplessness and other socio-economic constraints. The concept of legal aid has been recognised in international documents on human rights including the Universal Declaration on Human Rights (UDHR), International Covenant on Civil and Political Rights (ICCPR), Commonwealth of Independent States (CIS) Convention on Human Rights and Fundamental Freedoms, Arab Charter, African Charter etc. These instruments set out specific obligations of states to provide state-funded counsel for indigent persons. On a domestic level, the concept of legal aid may be construed as a requirement for the achievement of a socialist society as enshrined in the Constitution. Furthermore, laws such as the Code of Criminal Procedure (CrPC), Code of Civil Procedure (CPC) and Legal Aid Act of 2000 prescribe state-funded legal assistance to appropriate persons.

There is no explicit, unambiguous and formal expression in any article of the Constitution which recognises legal aid. However, the concept of legal aid can be linked to the preamble which envisions

LAW NEWS

## Media to fight against disinformation

World Press Freedom Day was observed on May 03, 2019. The day, which commemorates the Declaration of Windhoek, was first proclaimed by the UN General Assembly in 1993. This year's celebration was organised jointly by UNESCO, the African Union Commission and the Government of the Federal Democratic Republic of Ethiopia. The theme for the celebration was "Media for Democracy: Journalism and Elections in Times of Disinformation".

The Media has always played a central role in the establishment and sustenance of democracies around the world, but as the cyber space takes over as the mainstream medium of communication, very serious concerns of disinformation arises. The digital space is not subject to any form of central supervision and therefore, the flow of disinformation has a far greater impact. This year's theme addressed the rising concerns about such disinformation as well as the persistent threats journalists face around the globe.

The 2019 theme addressed the necessity of neutrality and authenticity in media reports during elections and questioned the extent to which electoral regulations should be applied to the internet. The programme also included elaborate discussion on the issue of harassment of women journalists faced while covering elections. Furthermore, the UNESCO/Guillermo Cano World Press Freedom Prize for 2019 was awarded to imprisoned Myanmar journalists Kyaw Soe Oo and Wa Lone. The recipients, who have been sentenced to seven years in jail, are glaring examples of the dangers journalists are subjected to.

According to the report of International Federation of Journalists, 95 journalists were killed in the line of work in 2018. Globally, journalists have been subjected to threats, violence and continue to struggle for their right to disseminate information.

The situation is particularly dire in Bangladesh, which ranks 150th in the World Freedom of Press Index 2019 published by Reporters Without Borders (RSF). The report mentions the arrest and detention of photojournalist Shahidul Alam as an example of how the judiciary is used to silence dissenters.

According to the report of Article 19, a UK-based Human Rights organisation, there were 31 defamation cases, 71 cases under Digital Security Act 2018, and illegal arrest warrant and 20 more different types of legal harassment against journalists last year. Furthermore, two journalists were murdered, 19 suffered severe physical assault, 156 were victims of different physical attacks and 22 were kidnapped in 2018, according to the Article 19 report.

COMPILED BY THE LAW DESK (SOURCE: UN.ORG)

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. Our civil and criminal law experts from reputed law chambers will provide the legal summary advice.

I am student of BBA (General) in Southern University. I have to bear the cost of my higher education by myself. Recently, it has become very difficult for me to continue my studies with limited financial support that I have. That's why I was planning to register myself as motor-cycle rider with Uber. Can you tell me what would be the legal consequences if I register myself with Uber for earning by riding motor-cycle?

Sumon, Dhaka

RESPONSE

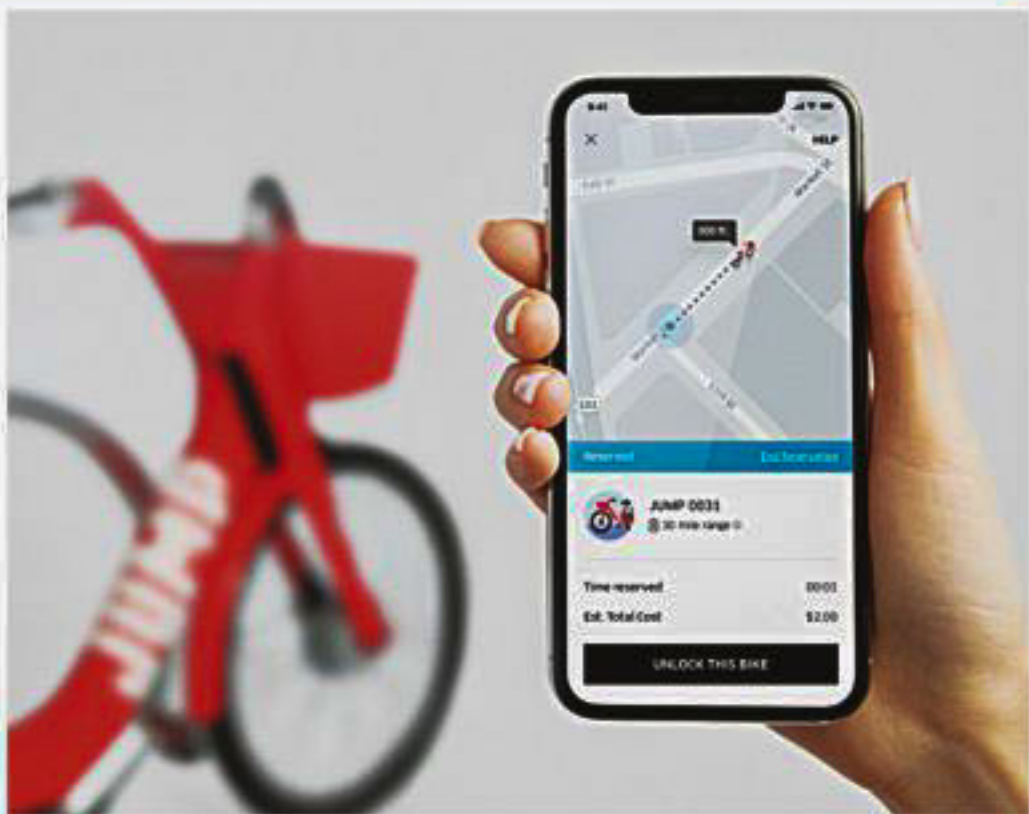
Thank you for your query. I can understand your hardship as to bearing the financial responsibility for your education. I believe you are seeking to know the lawful steps of joining Uber motors as a driver.

At first you should open up an account as a driver in the Uber app, or else you can go to their website and follow the same steps. Since you want to join Uber as a driver, there are some list of documents that you have to provide to Uber, such as- Driving License, NID Card, Vehicle Tax Token, Vehicle Insurance and Vehicle's Fitness Certificate.

Further, it is important for you to keep in mind that since you will be under a contractual obligation with Uber as soon as you join them as a driver, it is important to read their terms and policy (specifically, clauses 12.2 and 14.2) governing the contractual relationship between Uber and driver.

There are a few more aspects that you have to keep in mind. For instance, Uber expects their drivers to drive safely and to be courteous and professional. Thus, actions that would manipulate the normal operation of the Uber system and any unfair means for earning addition trip fares or extra incentives should not be performed. Such activity would make the driver liable for the breach of the policy and Code of Conduct, and his/her account with the Uber will be discontinued or deactivated.

Following up on the aforesaid requirements, Uber also instructs their drivers to undergo an enhanced background (DBS) check as



required by the relevant licensing authority. They also have a dedicated incident response team on call 24/7 to investigate safety incidents. Besides, they expect their drivers comply with all national and local laws and the rules of the road at all times. This includes obeying all of the rules of Private Hire or Hackney Carriage license.

Considering the current situation where we require a high threshold of road safety, Uber has make sure they have complied with the medical insurance as to any incident that report any accident of their rider or driver, as currently the insurance policy offers compensation of Tk 2 lakh in case of accidental death, up to Tk 2 lakh for permanent disability, and Tk 1 lakh if a person is hospitalised. The policy covers UberMOTO drivers from the moment a trip has been accepted till the end of the trip, while riders are covered from the start of the trip till they reach their destination.

Lastly, I would appreciate your initiative of joining Uber as it helps you to earn money, within a flexible time as that would be much convenient for you being a full-time student. You can find more information on the Uber website and Facebook. You can also look into other ride-sharing app like Pathao, Obhai, Shohoz, PiickMe, for a better idea of terms and policies of such ride-sharing.

I hope my aforesaid instructions help you in opening your account as a driver in Uber.

Constitutional rights don't provide any financial range as a qualifying factor but legal aid prescribes so for the persons entitled to its benefit. For example, all citizens are entitled to the constitutional rights but only the persons whose financial condition fulfills the requirements prescribed thereby are entitled to legal aid.

a socialist society. Article 14 places a duty upon the state to emancipate the working class, article 27 enshrines equality before law and equal protection of law and article 31 encompasses due process of law. Article 33 provides the right to a counsel and defence in case of arrest and detention and article 35 mandates a fair trial. Unless legal aid can be claimed as of right it cannot be said that the goals as set out in the above-mentioned articles have been achieved. So legal aid as being adopted in the Constitution as a principle, it shall come under the consideration of "right" not "constitutional right".

Constitutional rights don't provide any financial range as a qualifying factor but legal aid prescribes so for the persons entitled to its benefit. For example, all citizens are entitled to the constitutional rights but only the persons whose financial condition fulfills the requirements prescribed thereby are entitled to legal aid.

Another point of contention is that constitutional rights are enforceable in a court of law but legal aid can only be executed by the institution created thereof, such as, the legal aid office. To be specific, violation of any constitutional right can be grounds for an application under article 102 of the Constitution but refusal to legal aid cannot be questioned before a court of law. A complaint to the district legal aid Committee is the only remedy for such refusal.

However, one may argue that if obligation of the state to make law in respect of public employment or advancement of backward section of citizens can be a constitutional right, why not legal aid? In response to this argument, it may be said that those constitutional rights are applicable only to backward section of citizens but legal aid is a generalised concept which is accessible to whole nation subject to qualification.

So, in view of the findings mentioned above, it can be surmised that legal aid is not a constitutional right but a right created under legislative enactment. It is the result of the governmental responsibility and a gateway to ensure access to justice. The Constitution directs the State to enable institutional intervention for the empowerment of the marginalised and backward section of people. So, in the context of our justice system, legal aid is the result of the constitutional commitment of equality.

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LAW EVENT

## DU competes Media Law Moot Court in Oxford

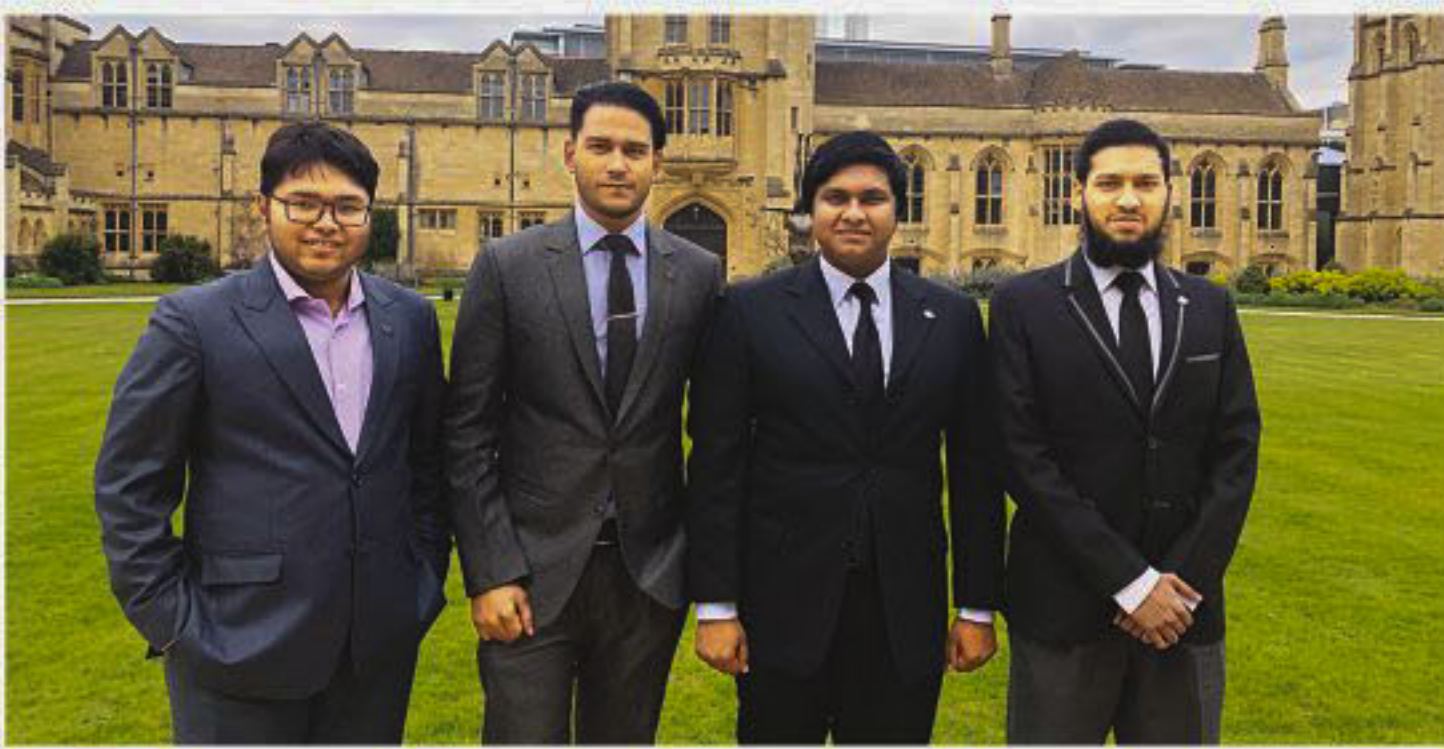
ALI MASHRAF

The Price Media Law Moot Court Programme established by the Programme in Comparative Media Law & Policy at the University of Oxford, United Kingdom, is the largest moot competition in the field of international media law. Inaugurated in 2008, it was named after the founding director of the programme, Monroe E. Price.

39 out of 96 teams representing many countries around the world, including Bangladesh, Belarus, China, Egypt, Hungary, India, Iran,

Latvia, Lebanon, Palestine, Philippines, South Africa, Ukraine, USA, Zimbabwe etc. qualified for the global rounds at Oxford.

A team from University of Dhaka qualified for the global final rounds based on the assessment of its memorials i.e. the written submission. The team consisted of Riasat Azmi, Md Jahid-Al-Mamun, Md Azhar Uddin Bhuiyan and Ali Mashraf. Ms. Arpeeta Shams Mizan, lecturer of law, DU, was the team's coach. The team was generously



funded by IFIC Bank Limited, Confidence Group and Bangla Trac Ltd. (BanglaCAT) for this competition.

The competition case for this year's moot was based on contemporary socio-legal issues, such as freedom of speech and

expression, privacy rights of public figures, regulation of social media prior to elections, extent and reach of political propaganda and hate speech in interfering with elections in democratic countries etc. The competition also featured a Mooting Master Class by Ms. Sarah Phillimore on advanced tips and techniques of mooting and an open discussion session with the author of the competition case, Mr. Gehan Gunatilleke.

THE WRITER IS A STUDENT OF LAW, UNIVERSITY OF DHAKA AND A PARTICIPANT OF THIS COMPETITION.