"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 ● dslawdesk@yahoo.co.uk

LAW ANALYSIS

The chronicle of gambling law: A legal analysis

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OF so many queries that the recent drive against the casino by the law enforcing agencies put before the citizen of the courtly, one that comes out on top and perplexes us the most is – 'are running and playing casino legal in Bangladesh?'. Though many of us are aware of the fact that article 18(2) of Bangladesh Constitution obligates the state to take effective measures to prevent gambling, but few of us know about the existence of a law regulating gambling – the Public Gambling Act, 1867.

This law was originally passed by the British Raj back in 1867; seven years after the enactment of the Penal Code. Subsequently, it has been made applicable in Bangladesh by the 'Bangladesh Laws (Revision and Declaration) Act, 1973' (Act No. VIII of 1973). The very purpose of the law is to provide for the punishment of public gambling and the keeping of common gaming-houses in Bangladesh.

Though it is 152 years since the law has been passed, no amendment has been brought to the law. The punishment and fine remain the same as prescribed in the original Act. For example, it provides monetary punishment of taka 100 for gambling which, in no way, corresponds to the present context of time.

Section 1A of the Act does not define gaming but prescribes what it includes - wagering or betting excepting lottery. The 'gaming-house' includes any house, room, tent, or walled enclosure, or space, or vehicle, or any place whatsoever, in which any instruments of gaming are kept or used for the profit or gain of the person owning, occupying, using or keeping such house, etc.

Section 3 punishes owning or keeping, or having charge of common gaming-house with a fine not exceeding two hundred Taka, or with the imprisonment of either description for any term not exceeding three months. The persons found in common gaming-house are also subjected to the punishment of fine not exceeding one hundred taka or to the imprisonment for any term not exceeding one month. Section 5 empowers the superintendent of police and Magistrate of a District or any other person authorised by them to enter and search any such house etc. and take into custody all persons whom he or such officer finds therein, whether or not such person may be then actually gaming; and may seize all instruments of gaming, and all moneys and securities for money, and articles of value, reasonably suspected to have been used or intended to be used for the purpose of gaming.

Section 6 obliges officer searching to preserve any cards, dice, gaming-table, cloth, boards or other instruments of gaming which are found in the house etc. for the purpose of presenting them as evidence before the court as to support the allegation that such house etc. is used as a common gaming house. And on the final conviction of the accused the convicting magistrate can order the instruments seized to be destroyed. Section 9 narrates the interesting part of the statute – that it shall not be necessary, in order to convict any person of keeping a common gaming house, or of being concerned in the management of any common gaming-house, to prove that any person found playing therein at any game was playing for any money, wager or stake. The very presence of the person in such a gaming house is sufficient to award him with the conviction. This provision reflects the intention of the legislature – reducing the fascination of the common people towards gambling who go there as spectators and end up in participation.

The Act ingeniously puts gambling out of the domain of sports. In sports, by its inbred nature, teams engaged in playing have the chance of either winning or losing, depending on each teams' capability and talent. But in case of the casino, as the statistics and reports depict – it has always been the proprietor of the casino who bags the last penny on the 'board' and the players remain on the losing side. The very idea of the gambling is – you win or lose. In this connection, a stricter law punishing gambling could serve the purpose of the legislators. In that respect, a thorough revision of the law is a must.

The gambling equipments are not enlisted in IPO (Import Policy Order 2015-2018) as prohibited or controlled goods which leaves a justification for the custom authority for sanctioning the freight.

The Act has not provided any punishment for importing gambling items, taking the opportunity of which, the importers are bringing gambling instruments in the country. Moreover, the gambling equipments are not enlisted in IPO (Import Policy Order 2015-2018) as prohibited or controlled goods which leaves a justification for the custom authority for sanctioning the freight. Besides, the scanty amount of fine and slim volume of imprisonment impliedly offer a quasi-impunity to the culprit, which should also be properly addressed by bringing amendments to the Act. Like India, as it made gambling legal in her some states, Bangladesh may also think about legalising gambling in certain places upon certain conditions but the socioeconomic as well as constitutional archetype may not permit the state to give that a go.

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LAW WATCH

Strengthening the National River Conservation Commission of Bangladesh

Imtiaz Ahmed Sajal

RECENTLY, in a ground-breaking and precedent setting judgment, the High Court Division (HCD) of the Supreme Court of Bangladesh declared that the river Turag and all other rivers flowing throughout the country are 'living entities' with legal personalities. After attributing legal personality to the rivers, the Court has identified National River Conservation Commission (NRCC) of Bangladesh as a legal guardian for all the rivers. The Court released the full judgment on 1 July 2019 in response to a public interest litigation (WP No. 13989/2016) filed by the Human Rights and Peace for Bangladesh (HRPB). In a 17-point directive, the Court, inter alia, called for strengthening the NRCC by making it an effective and independent body. The Court also entrusted the NRCC with the responsibility of conservation and overall development of rivers.

Back in June 2009, the HCD, in another landmark case (WP No. 3503/2009) ordered the government to form a 'National River Conservation Commission' consisting of concerned experts. The Court gave only three months' time to form the Commission and declared the writ petition as a continuing mandamus, giving the Court the power to monitor the implementation of its decision and give necessary directions when required.

The obligation emanating from the said decision paved the way for subsequent enactment of the National River Conservation Commission Act, 2013 and establishment of the Commission in September 2014. The preamble of the Act says that the Act has been promulgated "to provide for the establishment of a Commission to prevent illegal encroachment of rivers, water and environment pollution, river pollution created by industries, illegal construction of structures and various irregularities and to ensure multi-dimensional use of rivers in socio-economic development including recovery of natural flow of rives, proper maintenance of rivers and to make rivers as navigable". The preamble is consistent with the letter and spirit of order of the HCD, but the same cannot be said about the body of the law. According to section 12 of the Act, the sole function of NRCC is to make recommendations to the government for preventing pollution and illegal encroachment, eviction of illegal structures, excavation of extinct or dying rivers, ensuring ecological balance and sustainable management of rivers, necessary changes in relevant laws, and overall development of rivers.

From the above provision, it is understood that the NRCC is merely a recommending body without any statutory power of implementation

Another anomaly of the Act is that it has been prepared by the Ministry of Shipping. This is rather questionable, since the 'regulation and development of rivers and river valleys' is in the domain of Ministry of Water Resources in accordance with Schedule I of the Rules of Business, 1996.

Moreover, the NRCC is legally bound to submit an annual report to the Government regarding its activities of the previous year within 1 March in each year. However, the NRCC has submitted only one report so far. In the report, the Commission expressed its miseries as a recommending body without any power to do anything. The Commission also conveyed its helplessness when its recommendations are not considered by the respective authorities.

Furthermore, a question may be raised regarding the inaction by the HCD throughout the law-making process and subsequent establishment and functioning of the NRCC, despite its declaration of a continuing mandamus. Such judicial restraint from the part of the Court can be argued to that further aggravated the situation, leading to yet another writ petition praying for the same relief.

Therefore, it is suggested that the Act be amended as necessary for the strengthening of the NRCC in terms of power and authority as an independent and effective institution.

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LAW EXCERPTS

Can intoxication be a defence in murder? Not always

ONE of the general exceptions provided in the Penal Code 1860 goes on to exempt persons who happen to be incapable of judgment by reason of intoxication caused against his will. Section 85 categorically says that nothing is an offence which is done by an intoxicated person who, at the time when he was doing it, is, incapable of knowing the nature of the act; or he is incapable of knowing that what he is doing is either wrong, or contrary to law. A proviso to this section says that the thing which intoxicated him has to be administered to him without his knowledge or against his will.

Section 86 further speaks about particular intent or knowledge committed by one who is intoxicated. It says that when the thing that intoxicated the accused person was not administered to him without his knowledge or against his will, it will be presumed in cases where an act done is not an offence unless done with a particular knowledge or intent, that a person who does the act in a state of intoxication, had the same knowledge as he would have had if he had not been intoxicated.

As far as murder under section 302 is concerned under the Penal Code, a necessary element of murder is knowledge or intention. Therefore, in case of murder by an intoxicated person, the defence of intoxication can only be taken successfully when the intoxication happens owing to a thing administered on the accused murderer without his knowledge or against his will and not otherwise. In cases when the intoxicant is administered without his knowledge or against his will, the law will draw a presumption of his having the knowledge or intention that he could have, if he were not intoxicated.

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LAW REVIEW

An Overview of the Animal Welfare Act 2019

THE Parliament of Bangladesh enacted the new Animal Welfare Act of 2019 earlier this year, replacing the century-old Cruelty to Animals Act of 1920. This new Act contains a more comprehensive enumeration of cruel and unjust treatment of animals and substantially raises the penalty for the same, while also keeping room for further elaboration through rules and gazettes. This law is a substantial leap forward in the recognition of the need to treat animals with kindness.

The Act has been promulgated with the objective of ensuring proper treatment and responsible rearing of animals and of preventing cruel treatment. The law greatly focuses on the treatment of domesticated animals, specially farm animals. Farms are defined in the Act as any establishment where five or more of the same or different kinds of animals are reared for business purposes.

The Act enlists a number of activities which fall within cruelty to animals, but does not restrict the list to the included activities only - in section 6(2), it creates an avenue of further additions through official gazettes. The existing provision lists activities such as overfeeding, underfeeding, long and unnecessary restrictions, failure to provide medical treatment, unpermitted use of animals for recreational purposes, using unfit animals for reproduction, etc. An important addition to the list is the prohibition of injecting or feeding harmful and unnecessary medicines - this is particularly relevant as there is a widespread practice of medicating farm animals with excessive antibiotics. It is also worth mentioning that the High Court issued orders during Eid-Al-Adha this year, directing the sellers to refrain from serving unprescribed antibiotics to the cattle.

The activities defined in section 6, subject to the exceptions under sub-section (4), are punishable with imprisonment of up to six months and/or a fine up to Taka ten thousand. The allowable exceptions, among others, include use of animals for research and academic purposes and sacrificing animals for religious purposes. Moreover, in section 5, the Act stipulates that the government may issue gazettes outlining the ways in which animals are to be sacrificed. This allows a scope to

ensure a proper balance between religious activities and the need to adhere to the standards of animal welfare.

While not explicitly mentioned, the nature of the activities addressed therein implies that section 6 largely determines how domesticated animals shall be treated. But the Act does not only encompass domestic animals - it includes punishment for the causing of death of a stray animal as well. However, no clear mention of cruelty against stray animals (for example, dog culling) have been made although the High Court earlier issued directions against it. Alongside this, the Act makes acts such as poisoning animals or causing loss of their organ(s) punishable with up to two years of imprisonment and/or a fine of up to Taka fifty thousand.

An impressive aspect of the Act is that it refers to the standards of the World Organisation of Animal Health (OIE) in identifying the humane ways in which a diseased animal may be put to rest. Furthermore, the Act recognises painless death of a diseased animal through the use of euthanasia under the guidance of and with the written permission of a veterinary surgeon. The Act also iterates that registration and written permission must be obtained for farming establishments or use of animals for demonstration and training purposes respectively.

The Act gives authorised persons the power to visit and inspect any registered or unregistered farms within their jurisdiction and undertake appropriate steps as per the Act or its subsequent rules. However, in the absence of any requisite frequency of such inspection, it is likely that the well-formulated provisions of the Act will remain largely ineffective.

In summary, it can be said that the law does a commendable job of encompassing the standards of treating domesticated and farm animals. However, it falls short on proper determination of supervisory duties of the authority. On a positive note, the Act makes several mentions of the issuance of rules and gazettes to supplement or clarify its position, an avenue which can be utilised in order to bring the law to fruition.

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