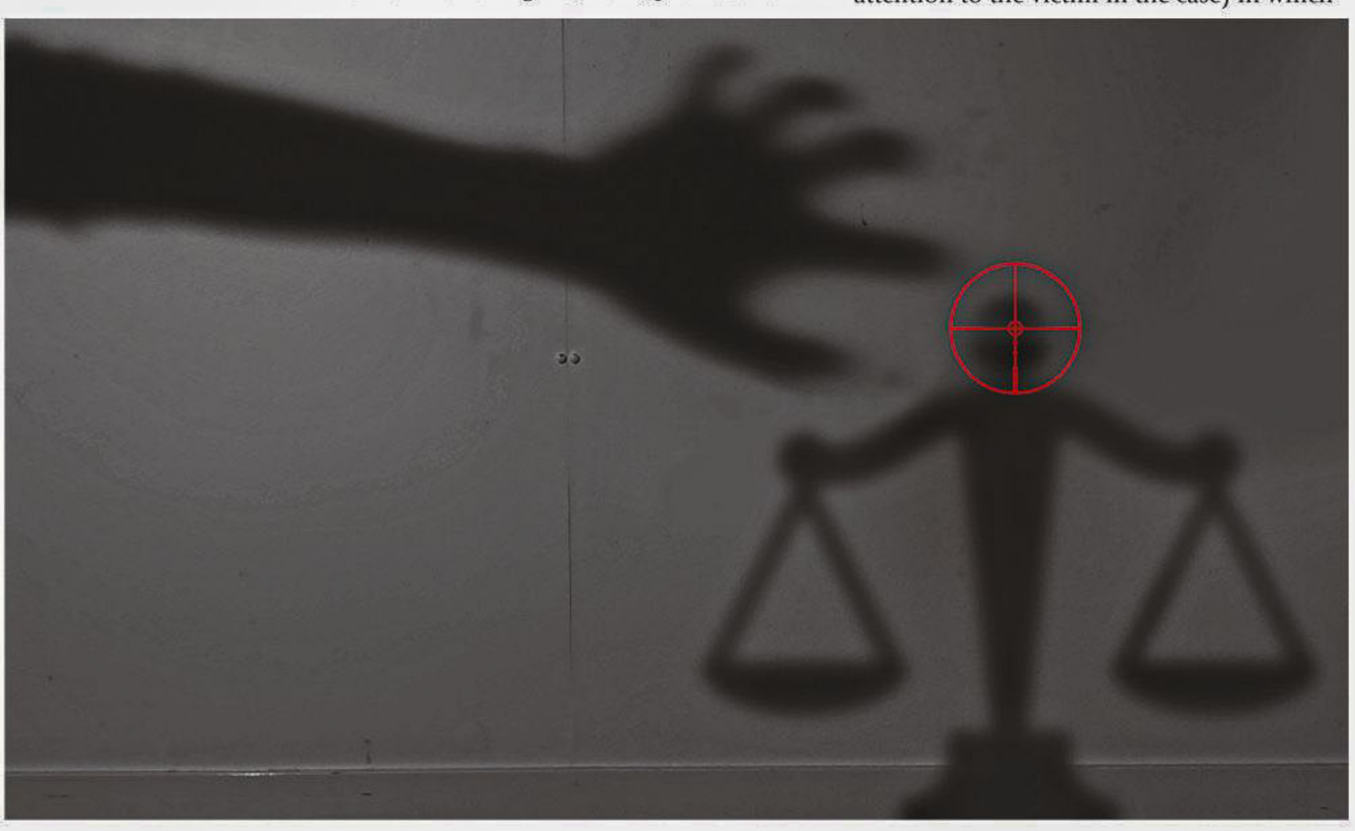
"ALL CITIZENS ARE EQUAL BEFORE LAW AND ARE ENTITLED TO EQUAL PROTECTION OF LAW"-ARTICLE 27 OF THE CONSTITUTION OF THE PEOPLE'S REPUBLIC OF BANGLADESH ● dslawdesk@yahoo.co.uk

LAW IN-DEPTH

Protection of the identity of victims in judgements

MD. RIZWANUL ISLAM

PROVISIONS designed for the protection of the identity of victims of crimes and witnesses in one form or another can be gleaned in many legal systems of today. Bangladeshi legal system is no exception to this. A number of laws, for instance, Section 14 of the Repression of Violence against Women and Children Act, 2000; Section 5 of the Public Interest Information Disclosure (Protection Provision) Act, 2011/ Whistleblower Protection Act, 2011; Section 37 of the Prevention and Suppression of Human Trafficking Act, 2012; provides for the protection of identity of victims of crimes and witnesses or other related persons. Typically, legal provisions on this point make any publication of the name, photograph, or any other form of identity of victims or witnesses a punishable offence.



The rationale for protection is mainly two-fold. In case of a victim, it is essentially about protecting her/him from unwarranted publicity which may adversely impact her/his family or professional life and thus, further victimisation. Regarding the witnesses, in essence, it is about the protection from the wrath of an accused or her/his near and dear ones. However, this write-up argues that the protection of the identity of the victims and witnesses during the court proceedings is only a part of the protection. This write-up will demonstrate that another important part of the protection lies in the protection of the identity in the judgements which seems to remain neglected in our country.

To illustrate the thinness of the protection of the victims during the court proceedings, let us take a reported case (the citation of the case is omitted here to avoid any needless attention to the victim in the case) in which the High Court Division (HCD) of the Supreme Court held that a victim of human trafficking who was languishing in India had a right to be repatriated to Bangladesh under the official arrangements of the Government of Bangladesh. Relying inter alia, on Article 31 of the Constitution, the HCD held that by neglecting to repatriate her in an expeditious manner, the government functionaries failed to perform their duties on good faith. However, while the writ petitioner, the victim's father, received the remedy that he had applied for, he rather ungainly received potentially unwarranted publicity in that the judgement mentioned the name of his hapless daughter and part of his home address. For sure, this publicity is further magnified and perpetuated by the reporting of the judgment. There seems to be nothing contentious in the case which had anything to do with name and address of the victim girl or her family, except at best, a simple point addressing whether or not she was a citizen of Bangladesh.

Had the matter been a criminal trial of human trafficking, any party to the case, the lawyers, members of the public, or any members of the public attending the court proceedings would have been under a legal obligation of non-publishing any identifying information of the victim. However, the same restriction would not have applied to the judgement which makes a mockery of the prohibition on the disclosure of identifying information. In some ways, the disclosure of identifying details in the judgement of a case can be more lasting than the publication or broadcast of identifying information of the victims and witnesses by news and print media. This is because the former creates a public record which is officially recorded by the court and may be reported in various law reports and thus, form part of even wider public dissemination to any readers of these reports.

The need for the protection of the identity of persons involved in court proceedings may not necessarily be limited to criminal trials. There seems to be a persuasive case for ensuring anonymity in the judgements of many family-related cases where publicising the judgment may serve the best interest of the parties involved in that case. And there may be other cogent reasons which cannot be detailed within the limits of this brief write-up. However, if the policymakers recognise that the protection of identity is by no means merely an issue during the pendency of court proceedings but may equally apply to the judgements, in what kind of matters and how the identity would be protected should not be too complex. Anonymising the name of the parties to a case and their other identifying details should be an easily accomplishable task for our legal system.

THE WRITER IS AN ASSOCIATE PROFESSOR, DEPARTMENT OF LAW, NORTH SOUTH UNIVERSITY.

FOR LAW STUDENTS

HRSS reaches its 20th year

EMPOWERMENT through Law of the Common People (ELCOP) conducted its 20th Human Rights Summer School (HRSS) from 10th to 21st October, 2019. On its landmark 20th session, the HRSS was themed "Human Rights and Rebellious Lawyering" to commemorate ELCOP's long standing work in promoting and establishing anti-generic learning and in fostering the spirit of pro-poor lawyering among the budding law students from home and abroad.

42 participants from 22 law schools of South Asia gathered for a 10 day-long learning experience at Proshika HRDC, Manikganj. Apart from interactive group exercises and field visits, the summer school offered lectures from distinguished practitioners, academicians and judges.

The two-week long residential programme was inaugurated by Dr. Shirin Sharmin Chaudhury, Honourable Speaker of the Jatiya Sangsad of Bangladesh. Dr. Atiar Rahman, former Governor of Bangladesh Bank graced the event as the Guest of Honour and delivered a lecture on financial inclusion and human rights. This year, the summer school dedicated a day to the work and legacy of Professor N. R. Madhava Menon, the distinguished teacher widely recognised as the father of modern legal education in India.

In the valedictory session, SM Rezaul Karim, MP, Minister of Housing and Public Works attended the event as the Chief Guest and Professor Dr. Md. Rahmat Ullah, Dean of Faculty of Law of University of Dhaka was present as the Special Guest.

Tahseen Lubaba and Shahrima Tanjin Arni from University of Dhaka received the Professor ZI Chowdhury Memorial Trophy for Academic Excellence and Justice KM Subhan Memorial Best Mooter Trophy respectively. Irfanul Alam Estiak from Jagannath University and Sunjana Alam Sana from North South University jointly bagged the Professor N. R. Madhava Menon Memorial Trophy for best fact-finding, and Joshua Aaron Baroi from North South University won the Professor K. A. A. Quamruddin Memorial Best Fellowship Trophy. Sharika Maharjan from Chakrabarti Habi Education Academy, College of Law won the prize for Professor A. R. Chowdhury Memorial Trophy for Best Cultural Performance.

FROM LAW DESK.

LAW WATCH

Precedents to be used to avoid the misuse of the Artha Rin Adalat Ain

NAFIZ AHMED

THE Artha Rin Adalat Ain, 2003 (Money Loan Court Act, 2003) is the primary legal instrument dealing with bank and non-bank financial institutions' (NBFI) loan defaulters, which prescribes mechanisms for the banks and financial institutions (FIs) to get reimbursed. The Act provides for the establishment of a separate court for dealing with money loan cases, which can only be filed by a bank or an NBFI. The Act obliges the banks and NBFIs to auction the mortgaged property before approaching the Money Loan Court and empowers the Court to give ex parte decrees (by hearing only one party) provided that summons have been duly served. The whole legislation carries the spirit of resolving loan default matters as quickly as possible since the objective of this law is to ensure fast repayment.

Even though the legislation was made to benefit banks and NBFIs, the trend is to use this legislation to delay the reimbursement process. It is now a usual practice for defaulters to not show up during the trial and let the Court pass ex parte decrees by only hearing the plaintiffs, followed up with writ petitions to the High Court Division (HCD) of the Supreme Court of Bangladesh seeking a stay order. Rarely is the intention of the defaulters to get the ex parte decrees thrown out; instead, they seek to delay the process for as long as possible, which allows the defaulters more time to do business with the credited amount and pressurise the banks to decrease the interest rate. This is one of the many ways to delay the repayment process. Because of this, many are advocating to amend the Act.

Although I agree that the legislation is far from perfect, I do not think amending the law is the only available way of redress in this situation. We live in a common law system where the judgments of the Judges of the Supreme Court are binding. One attractive characteristic of the common law system is the adaptability it offers. The legislative process is rigorous and in Bangladesh, they are enacted by a unicameral body. The lack of adaptability of legislations is compensated by the decision making power of the judiciary. The Judges have the power to develop the legal system. Noting the propensity of filing writs against the special provisions of the Artha Rin Adalat Ain, 2003, the Supreme Court, from time to time has given judgments to limit the scope of misusing the legal technicalities regarding loan repayment methods. If they are followed stringently, amending the law will become unnecessary.

For example, defaulters tend to include the government as the primary respondent just to invoke the writ jurisdiction of the HCD granted in Article 102 of the Constitution, such as in *Mamun-ur-Rashid (Md)* v *Secretary, Ministry of Law and others* (2013), where the petitioner filed a writ petition challenging the auction proceeding initiated by the bank under Section 12 of the Act when the petitioner defaulted his loan. In this case the HCD found that the government was made a party to the petition just as a cunning device to attract the writ jurisdiction, and held, "[w]rit petition is not maintainable against the private bank and if in such a case to attract the jurisdiction under Article 102 a device is taken by impleading the government a party that would be only a futile exercise." [para. 6] Upholding this precedent set by the Court will automatically bar unwarranted writs, put a stop to the floodgate of writs filed with the same intention, and save a lot of precious time.

Instead of filing an application to set aside an ex parte decree or lodge an appeal, the defaulters often file writ petitions, looking for a stay order to buy some time. To block this, the Appellate Division of the Supreme Court held in *Gazi M Toufic* v *Agrani Bank and others* (2002), "[s]ince specific provision for

appeal has been made against the judgement and decree passed by the Artha Rin Adalat no application under Article 102 lies against such judgment and decree." To block any writ petition against the auction proceeding provided for in the Act the Appellate Division held in *Banesa Bibi* v *Senior Vice President* (2011) that "In case of an auction held illegally or with irregularity, the same cannot be challenged."

So it is clear that many Judges of the Supreme Court have been aware of the misuse of the Artha Rin Adalat Ain armed with the writ jurisdiction and have developed jurisprudence to combat this misuse. If these precedents are followed properly and the writs filed with mala fide intentions are discharged quickly, this trend of embezzlement can be somewhat restrained. The lawyers have a big role to play here as they suggest these mechanisms to the defaulters fully knowing that the writ will ultimately be discharged.

THE AUTHOR IS A RESEARCH ASSOCIATE, SATTAR & CO.

YOUR ADVOCATE

ON LAWS RELATING TO ALCOHOL CONSUMPTION

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.

Query

Currently the Government of Bangladesh has been very strict in controlling the consumption of alcohol. So, I was wondering as to what extent alcohol consumption is permissible under Bangladeshi law. Can you please explain the laws in relation to the intake of alcohol in Bangladesh?
Arnob, Dhaka

Response

Dear Arnob,
Thank you for your query. Please be informed that the Narcotics Control Act 1990 has been repealed and the new Narcotics Control Act 2018 is in place. Depending on the offences concerned, the new law imposes death penalty and long-term life imprisonment as a punishment for any person. Such initiative of the government was absolutely inevitable considering the fact that a large number of people, especially the youth, have been using drugs.

For the benefit of the readership, I am inclined to discuss some more aspects beyond your specific question. In our country, the Narcotics Control Act 2018 has broadly divided narcotics into two categories namely alcohol and other narcotics.

As per Section 9 of the Act, apart from alcohol, cultivation, producing, manufacturing, carrying, transporting, exporting, importing, delivering, buying, selling, bearing, preserving, displaying, storing of all other drugs and plants and the ingredients for the manufacturing of the drugs are prohibited. However, if such prohibited drug is required for the purpose of producing any medicine or scientific research, the government may provide license to produce, import, export, preserve, sell and buy of such drugs.

Under the law, alcohol means any spirit or any other kind of wine or beer or any liquid containing more than

0.5% alcohol. Moreover, Section10 of the Act states that without a license or permit from the government, no one can establish distillery, produce, distribute, sell, consumption, import or export or preserve alcohol. Even for manufacturing any medication that requires alcohol, one has to obtain the license from the government. Thus, any Bangladeshi needs to have a permit from the government to drink alcohol; and in case of Muslims, such permit may only be given on medical grounds. For such medical treatment permit, one must provide the prescription that has been prescribed by a civil surgeon or associate professor of a medical college, and the prescription should contain the name of the disease along with the explanation as to how the alcohol is necessary for the treatment.

Besides, such restrictions regarding the consumption of the alcohol do not apply for the foreigner who can drink inside a licensed bar. Foreign diplomat passport-holders have some wide-ranging facilities in terms of buying, selling and carrying alcohol. Further, it is also stated in the Act that the indigenous people of Rangamati, Bandarban and Khagrachari are allowed to drink any alcohol that is traditionally produced in these districts. Alongside, people employed as dome, cobbler, sweeper, tea-garden labourers are permitted to drink "Taree" and "Pochui", which are mainly fermented liquor and spirit.

In accordance with Section13 of the Act, one must fill a form, accept the conditions of obtaining such license and pay a certain fee to acquire a license. After that, one can get the license from the Director General of the Department of Narcotics Control of Bangladesh, subject to their satisfaction. Such license needs to be renewed in every three years. And if someone has any case filed against him for an offence committed by him for his moral degeneration, and for such he has sentenced for more than three months or more than TK. 500 fine, they will not be able to obtain such license. Moreover, if someone violates any condition or term stated in the license will be held liable to pay compensation amount up to TK. 100,000 and if the condition of the license is violated for the second time, in such case the license will get revoked.

Under Section 36 of the Act, if someone establishes a distillery and produces alcohol without a license, they shall be imprisoned for a term not exceeding 10 years along with compensation. Further for selling, buying, importing, preserving, manufacturing, and distributing alcohol without the license, a person will be imprisoned for 6 months to maximum three years, if the amount of the alcohol is up to 10 litres, consecutively, if the amount of the alcohol exceed up to 100 litres, the person will be imprisoned for 3 to 5 years and for more than 100 litres, he will be imprisoned for five to ten years.

I hope you will have the answer to your query from the aforesaid opinion.