

2020: THE YEAR IN REVIEW

Looking back at the laws enacted in 2020

TAHSEEN LUBARA

THE *Jatiya Sangsad* of Bangladesh went into session for a total of 10 times in 2020; only 4 of them since the COVID-19 outbreak. Despite this, some significant amendments to existing laws were made and new pieces of legislation were passed. 19 new Acts of Parliaments were passed and 8 Amendment Acts were enacted in 2020. Besides, different ministries and governmental agencies played an active role in controlling the COVID-19 by passing several regulatory orders. This write up provides a brief overview of some of the laws enacted in 2020.

Women and Children Repression Prevention (Amendment) Act, 2020

Amidst pressing demands of protests across the country for rape law reforms, the Women and Children Repression Prevention (Amendment) Ordinance 2020 was passed and later enacted by the Parliament as the Women and Children Repression Prevention (Amendment) Act 2020. The Amendment most notably introduces death penalty as a punishment for rape. The Amendment also amends the provision relating to medical tests and widens the law to include medical test of both the victim and the accused. Furthermore, it introduces a provision for mandatory DNA test of the accused irrespective of their consent. The amendments have received mixed reaction as many rights organisations raised concerns regarding the effectiveness of death sentence as a deterrent of rape and the shortcomings in using DNA evidence in rape trials.

Use of Information Technology by Court Act, 2020

Following the closure of the Supreme Court from 24 March, several developments took place which allowed the court to hear cases virtually and entertain cases that are 'urgent'. With a view to regulating the



functions of the virtual courts, the Use of Information Technology by Court Ordinance, 2020 was passed which was later replaced by the Use of Information Technology Act, 2020. The Act defines 'virtual presence' as the presence through audio-video or other digital means, in the proceedings of the court. As per the law, the courts may conduct trial, inquiry, hear appeals, take evidence, hear arguments and pass orders and judgments virtually. Apart from the procedures therein mentioned, the existing procedural laws shall be applicable. The Act has been seen as a necessary step in ensuring that the rights of

the people to access justice are not obstructed during the pandemic; however, in the absence of prior experience in digital platforms, the adaptation has been a challenge.

Companies (Amendment) Act, 2020; Companies (Second Amendment) Act, 2020

The Companies Act 1994 was amended twice – once in February and again in November. The first amendment removed the requirement of use of the company's seal in documentation with a view to easing the procedure of transactions. The second amendment introduced the concept of One Person Company (OPC) with a view to

extending the advantages of incorporation to sole proprietorships. The amendment allows natural persons to form an OPC and states that the minimum paid-up capital for OPCs is BDT 50 Lakh and the maximum paid-up capital shall be BDT 10 crore. The Act also states that one natural person may only form one OPC and must nominate a person to whom the share shall pass upon the death or incapacity of the shareholder. Although a significant step in providing recognition to sole proprietorships, the amount of the minimum paid-up capital has been criticised as being too high, thus being

disadvantageous to small businesses.

Air Transport (Montreal Convention) Act, 2020

The Act has been enacted in order to incorporate the provisions of Unification of Certain Rules Relating to International Carriage by Air signed in Montreal on 28 May, 1999 (Montreal Convention) into the domestic legal framework. The Act applies to passengers, baggage and cargo carried by air transports. Under this new law, the passengers shall be entitled to compensation from the airlines in case of death or injury and for damage to their baggage, the amount of which is to be calculated as per the Special Drawing Rights (SDR) provisions in line with the Montreal Convention. In case of death of passengers, their successors may apply for compensation and such compensation shall be divided proportionately if there is more than one successor.

Marine Fisheries Act, 2020

The Act replaces the previously applicable Marine Fisheries Ordinance, 1983. Under the Act, the Government is empowered to declare, in line with international standards, any sea area as areas where fishing is allowed and also to declare, with a view to protecting the fisheries, restrictions on fishing for any particular species. The government is also empowered to pass necessary directions and orders in order to prevent illegal, unreported and unregulated fishing. The Director General of Fisheries may, under this Act, take necessary actions including monitoring, controlling and surveillance, and determine the allowable catch with regard to any species in order to ensure maximum sustainable yield. Licenses issued under the Act shall specify the areas in which fishing is allowed, the species of fish that may be caught and the machineries that may be used for fishing. The government may also declare specific areas as 'mariculture areas' for the expansion of Blue Economy.

The writer works for Law Desk, The Daily Star.

REGULATORY RESPONSES TO COVID-19 IN BANGLADESH

THE COVID-19 pandemic posed unprecedented challenges across all aspects of public and private life all over the world, including Bangladesh. The government was also faced with various obstructions which necessitated it to undertake actions and issue regulatory measures for the protection of life and health of the people. These measures have had multifaceted impacts upon the people and their rights. This writing reviews some of these measures in light of their impacts.

Declaration of General Holiday and the virtual 'lawlessness'

The Ministry of Public Administration declared general holidays through gazette notifications which extended from March till May, 2020. The general holiday exempted hospitals, pharmacies, grocery stores and essential services. In the gazette published on April 1, 2020, the transport of food, medical equipment, essential goods agricultural products, insecticides, fossil fuel, newspaper, industrial goods etc. were exempted. On April 5, the gazette stated that transport facilities such as rickshaw, van and bus/rail would eventually restart movement. This unofficial lockdown resulted in loss of employment for a significant portion of the population, especially those engaged in informal sectors. Furthermore, during this so-called general holiday, since the forum for enforcing fundamental rights, namely, the Supreme Court, was not functioning, such rights remained virtually suspended; that too, without a declaration of emergency.

Resumption of all courts, including the Supreme Court

All courts, including the Supreme Court of Bangladesh had remained closed since 24 March until the passage of the Usage of Information and Technology by Court, Ordinance (subsequently replaced

by the Act in the same name) was passed. Under this law, the courts were empowered to conduct proceedings virtually. However, the practice directions issued under the Ordinance mandated an urgency application, the ultimate determination of which remained with the Court(s) in question. As a result, as far as fundamental rights were concerned, the right of the litigants to move the Supreme Court remained at first, entirely restricted and subsequently, entertained subject to the urgency of the matter. Shutdown of educational institutions and cancellation of HSC Exams The educational institutions at all levels have been closed since March, 2020. The government undertook the initiative to broadcast digital classes on television whereas the physical classes remained closed. Public universities began taking online classes in July amidst concerns regarding the digital divide and scope of discrimination against students from peripheral areas. In October, it was declared that Higher Secondary Certificate exams were cancelled and grades would be determined on the basis of results of the previous Board exams. The continued shutdown of physical classes as well as conducting educational activities online raise concerns as to the deprivation of students from a proper education and of exacerbating existing inequalities.

Suspension of religious gatherings

The Islamic Foundation Bangladesh, operating under the Ministry of Religious Affairs, issued a notification in April suspending religious gatherings including Jummah prayers on Fridays. Other religious groups were also urged to restrict their gatherings in an effort to minimise the spread of the COVID-19 virus. Although largely unregulated, such restrictions have affected the people's right to observe their religion.

Directions under the Communicable Diseases Act, 2018

The Director General of Health Services issued a circular in April, stating that not wearing masks in public would be deemed an offence under Section 24 of the Act for 'transmitting a communicable disease' – the fine for which can be up to BDT 1 Lakh and also under Section 25 of the Act for failure to comply with the directions of the DG – the fine for which can go up to BDT 50,000. The Mobile Courts have been prosecuting people across the country for failure to adhere to these directions. Although seen as a measure for extraordinary circumstances, the functions of the mobile courts are questionable for their lack of compliance with constitutional standards and due process principles. Other directions provided guidelines on how to dispose dead bodies of patients contaminated with the COVID-19 virus.

Directions on Healthcare providers to not speak to the media

In mid-April, the Director General of the Department of Nursing and Midwifery stated via an office order that the officials and staff members under the said department cannot speak publicly without permission of the authority. The Health Minister also spoke at a public event where he stressed on the need for healthcare officials to refrain from portraying the government in negative light before the media. These directions had bearing on the right of freedom of speech of healthcare personnel as well as the public's right to information. While a pandemic like the COVID-19 necessitates free flow of information for people to remain informed and better-prepared to deal with their vulnerabilities, censorship as the ones imposed by the Government and different agencies thereof left people more vulnerable amid the unprecedented crisis.

From Law Desk, The Daily Star.

Notable Supreme Court Pronouncements of 2020



ALI MASHRAF

THIS write-up compiles notable pronouncements of the Appellate Division (AD) and the High Court Division (HCD) of the Supreme Court (SC) of Bangladesh from 2020.

Interpreting the tenure of life sentence

In Criminal Review Petition 82/2017, the AD harmoniously interpreted sections 45, 53, 55 and 57 of the Penal Code (PC), 1860 and section 35A of the Code of Criminal Procedure, 1898 to decide that life imprisonment amounts to rigorous imprisonment for 30 years, not the whole of the convict's natural life, as laid down in the appeal verdict. It further held that while awarding sentences, if a court or tribunal, or the International Crimes Tribunal constituted under the International Crimes Tribunal Act, 1973, orders for the accused to be sentenced to imprisonment till their natural death, they will not be entitled to any remission of their sentence.

Extending the limitation period to file cases

In *Md. Fazlul Haque Sarder v Grameen Phone Limited*, the Attorney General (AG) informed the AD of the sufferings of the COVID-19 pandemic brought to litigants since they were unable to come to courts to file their cases. He submitted the precedent of the Indian SC lifting the limitation periods for all kinds of proceedings, including those particularly stipulated in the special laws till further notice (*Suo Motu Writ (Civil) 3/2020*) and asked for a similar safeguard measure. Terming the pandemic as an act of God, the AD extended the limitation period 'for filing petitions/applications/suits/appeals/revisions/all other proceedings in civil, criminal or administrative matters under the general or special laws which expired on or after [March 26, 2020 till May 31, 2020]'

Ordering compensation for wrongful imprisonment

Due to having similarity with the father's name of one Shahabuddin, a convict in a narcotics case, one Md. Arman was wrongfully imprisoned by police for four years. Afterward, Law and Life Foundation filed a *habeas corpus writ* (Writ Petition No. 7297/2019) asking for his release. Upon hearing, the HCD in December asked the jail authorities to release Arman immediately and directed the Inspector General of Police to pay him BDT 20 lacs as compensation within 30 days.

Issuing a contempt of court rule against the Health Secretary and the Director-General (DG) of the Directorate General of Health Services (DGHS)

In 2016, Bangladesh Legal Aid and Services Trust (BLAST) filed a writ petition asking to ensure emergency medical treatment for road accident victims and legal protection for those offering assistance to such injured victims. The HCD then asked the respondents to circulate guidelines on these issues to the hospitals via gazette notification. As they failed to comply with this order for over two years, the HCD issued a contempt of court rule against the Health Secretary and the DG of DGHS in the Contempt

Petition (H) 209/2020 asking why it should not take action against them for their failure.

Directing to protect dolphins in Halda River

Barrister Md. Abdul Qaium filed the first-ever writ petition in virtual court seeking the HCD's directives after newspapers reported the killing of 24 dolphins in the Halda River. The HCD directed the Deputy Commissioner of Chattogram to form a committee to prevent the killing of dolphins and mother fishes and to protect the biodiversity of the river. Meanwhile, another dolphin was killed, raising the death toll to 25. Hence, during the next hearing, the HCD asked the committee to submit a report on the measures they had taken to stop such killings. It also asked the committee to share details of the dolphin that was killed during the pendency of the writ.

Establishing Hindu woman's right to husband's agricultural lands

In a Civil Revision Petition, the HCD held that our courts, till now, had been erroneously interpreting the Hindu Women's Rights to Property Act, 1937 in the light of a 1941 Indian Federal Court judgment, even after our independence in 1971. It clarified this interpretative error and ruled that the terms 'any property' in section 3 of the 1937 Act includes both non-agricultural and agricultural lands. Hence, it established the right of Hindu widows over both non-agricultural and agricultural lands of their deceased husbands.

Releasing four children arrested for rape on bail

On 8 October, Somoy TV reported that after the police arrested four children aged 10–11 years for raping a girl aged 6 years and produced them before the concerned Senior Judicial Magistrate (SJM), the SJM rejected their bail petition and sent them to the Jashore Juvenile Detention Centre. Thereafter, an HCD bench sat on that very night and ordered the Nari O Shishu Nirjatan Daman Tribunal, Barishal, to release the children instantly on bail and hand them over to their parents in the *Suo Motu* Rule 16/2020. The tribunal complied with the order immediately after receiving it via email.

Establishing jurisprudence for cheque dishonour cases

In *Md. Abul Kaher Shahin v Emran Rashid*, the AD held that if the conditions under an agreement for which a drawer issued a cheque are not fulfilled or if there is no consideration for providing a cheque; it creates no liability upon the drawer of the cheque under section 43 of the Negotiable Instruments (NI) Act, 1881. Owing to the amendment to section 138 in 2000, a payee did not have to prove that a drawer owed him money or that a drawer drew the cheque in the payee's favour to pay for any debt or liability. However, after this verdict, a payee has to prove that the consideration under section 43 still exists and has not yet failed, and that he fulfilled the terms and conditions of the agreement under which a drawer has issued the cheque.

The writer is the Bangladesh Junior Legal Analyst of iProbono.

