

LAW INTERVIEW

Bangladesh should recognise the right to vote as a fundamental right in its Constitution

Kawser Ahmed is qualified to practise as a lawyer before the High Court Division of the Supreme Court of Bangladesh. In addition, he has served the Ministry of Foreign Affairs as consultant on matters relating to human rights since 2012. In this course, Mr. Ahmed drafted the state party reports of Bangladesh for the 2nd and 3rd Universal Periodic Review (UPR). Besides, he drafted the initial state party reports of Bangladesh on ICCPR, ICESCR and the UNCAT. Recently Law Desk, *The Daily Star* talks to him on the following issues.

Law Desk (LD): The parliament has recently amended law to impose death penalty for rape. The question that has remained largely undiscussed is to what extent this amendment is consistent with the human rights obligation of Bangladesh? What is your opinion in this regard?

Kawser Ahmed (KA): If you check the 2nd Cycle UPR report of Bangladesh, you will find that death penalty was reported to have been restricted to most serious and heinous crimes. In its 3rd Cycle UPR report, Bangladesh again categorically stated that it was gradually edging out death penalty. Despite the aforesaid stance, Bangladesh has consistently refused to accept any recommendation to

the Human Rights Committee's line of interpretation in regard to capital punishment. But, sadly enough this isn't the case right now. Of course, Bangladesh is not the only country in this bracket. Earlier, India and Egypt adopted laws providing for death penalty for crimes not resulting in direct and intentional death (A/HRC/42/28). Ironically, Egypt recommended to Bangladesh during the 2nd Cycle UPR in 2013 to maintain its good practice of restricting death penalty to the most serious crimes. We know that the general comments are not legally binding on states. Therefore, my presumption is that states which have not yet abolished death penalty will take more time to appreciate the General Comment No. 36.

LD: In the last few years, Bangladesh extensively engaged with the UN treaty body mechanisms. Between 2015 and 2019, Bangladesh submitted three initial state party reports respectively on the ICCPR, the ICESCR and the UNCAT - which remained overdue for quite a long time. How is Bangladesh benefitting from this engagement?

KA: During the 2nd Cycle UPR, Bangladesh accepted the recommendation that it would improve cooperation with the UN human rights mechanisms and submit the outstanding reports to the treaty bodies. In follow-up to this recommendation, the government submitted five initial state party reports including those you have just mentioned from 2015 onward. The two other initial reports were on the ICRMW and the ICRPD. At the same time the government continued to submit periodic reports on other human rights treaties. Preparation of any kind of treaty body reports or UPR reports require a massive engagement of different ministries and authorities of the government. Numerous workshops, seminars and consultative meetings are held in connection therewith. These engagements have a cumulative sensitising effect within the

government. Today, we frequently hear the head of the state or the head of the government make reference to human rights in their speeches. Furthermore, consideration of Bangladesh's initial reports on the ICCPR or the UNCAT received wide newspaper coverage. I believe this has contributed towards raising human rights awareness at least among certain classes of people. I can give one example. After submission of the initial report on the UNCAT in 2019, the newspapers increasingly featured incidents of torture and custodial deaths. During 2019-2020, the total number of cases filed for torture or custodial deaths is more than that of any time before. In the end, I would like to say that the National Human Rights Commission

(NHRC), CSOs and NGOs should find out more ways and means to better utilise the state party reports and the treaty body recommendations.

LD: In your last interview with the Daily Star, you said that the concluding observations and recommendations of the UPR or any treaty bodies should be placed before the parliament for policy guidance. Apart from the parliament, which institution can take positive steps in this regard and how?

KA: The National Human Rights Commission (NHRC) can play a significant role in this regard. In fact, as an institution mandated to oversee the overall human rights

situation in the country, the NHRC has a legal obligation to assist in implementing the UPR and treaty body recommendations. We shouldn't forget that the NHRC itself takes part in the review process, be it UPR or treaty body consideration, submits shadow reports and its opinion is duly taken account of. After each UPR or treaty body consideration, the NHRC can draw up reports detailing the action plan as to how to implement the recommendations. The NHRC in collaboration with the CSOs and the NGOs can identify what measures to be taken to implement the recommendations, transmit them to the government for consideration, and also can lobby with the government to facilitate the implementation process on the ground.

LD: The initial state party report of Bangladesh on the ICCPR makes the impression that the Constitution, among others, gives effect to the ICCPR provisions in Bangladesh. However, the Constitution does not incorporate all of the ICCPR rights. If given options, which of the left-out ICCPR rights would you prefer to see as fundamental rights?

During the 2nd Cycle UPR, Bangladesh informed that an anti-discrimination law was in the offing to protect the rights of the socially marginalised groups. In 2017, this issue again came up during consideration of the initial report on the ICCPR. The Human Rights Committee while recommended for adoption of an anti-discrimination legislation also emphasised that such a legislation should protect against direct and indirect discrimination in the public and private sphere based on a comprehensive list of grounds for discrimination. Again in 2018, during the 3rd Cycle UPR Bangladesh accepted the recommendation concerning adoption of an anti-discrimination legislation. It is quite disappointing that the anti-discrimination bill is not yet ready to be placed before the parliament. The Constitution of Bangladesh envisages creation of a just and egalitarian society. Discriminations in the private sphere are the main stumbling blocks to achieve this goal. Hence, there is no alternative to a comprehensive anti-discrimination legislation.

LD: Thank you so much.

KA: You are welcome.



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become a party to the Second Optional Protocol to the ICCPR on the abolition of death penalty. Meanwhile, on 30 October 2018 the Human Rights Committee adopted the General Comment No. 36 on article 6 of the ICCPR that deals with right to life. In this general comment, the Human Rights Committee defines 'the most serious crimes' as the crimes of extreme gravity involving intentional killing. Crimes which do not result in direct and intentional death, for example, sexual offences, although serious in nature, were not deemed to serve as the basis for the imposition of the death penalty. Having regard to Bangladesh's earlier stance on capital punishment, one would naturally expect that Bangladesh will follow

BOOK REVIEW

To understand Company Law thoroughly

JALAL UDDIN AHMED

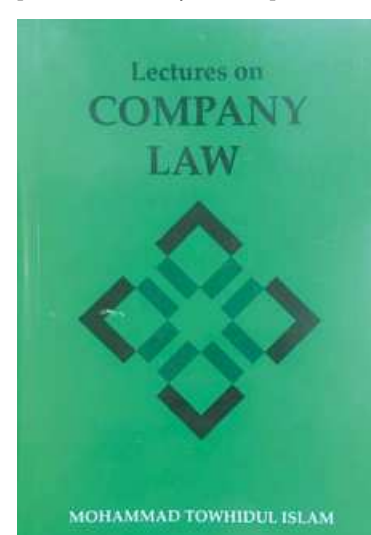
LECTURES on Company Law by Mohammad Towhidul Islam, PhD is the amalgamation of his lecture notes which he had prepared in the course of his teaching the subject during the early years of his career. The book has been published in 2019 by the Centre for Human Rights and Legal Research - Bangladesh. Mohammad Towhidul Islam, is a Professor at the Department of Law, University of Dhaka, best known for his book *Land Law: Texts, Cases and Materials*, and as a leading authority on intellectual property law in Bangladesh.

Company law is a very important subject - be it for law students or business students. Despite its importance, due to the short span of time in a semester, the subject cannot be taught in detail. Additionally, as the author points out, the Companies Act, 1994 is one of the longest statutes and there is a huge amount of judicial and regulatory development that come with it. Therefore, a book was required which would provide an overall idea of company law in detail to the students.

The book covers the major areas of law relating to corporate and non-corporate organisations. It also covers the areas with regard to lifting the corporate veil and minority protection. The chapters are designed in such a way that each chapter includes an introductory history and theory, practical issues, and procedure, along with perspectives of the author as well as a practitioner.

The chapters conclude with best practices and questions which would further enable discussions amongst the readers. Although the targeted audience for the book is law and business students, the author has taken the assistance of several prominent practitioners and judges whose ideas have also complemented the book. The book also makes great use of internationally authored books on the subject-matter thus making it an ideal textbook for the subject.

The book is divided into seven parts and twenty-six chapters.



Part one containing two chapters puts forward an introduction of company law and development of company legislation from England down to the period of British Raj in the Subcontinent, the Pakistan period and post-independent Bangladesh. Part two provides an idea of corporate and non-corporate organisation. Part three discusses pre-registration

activities and registration activities of a company. It also discusses the memorandum of association and articles of association along with the effects of registration of company focusing on the lifting of corporate veil. Part three ends with a chapter discussing the methods of conversion of companies.

The book in part four talks of company officers and their decision-making powers, company members, company directors, and company meetings. This part also talks of corporate social responsibility and its legal regime in the country. In part five, the concept of prospectus, share capital, debentures and company charges are discussed at length. Additionally, the concept of insider trading is discussed with laws of Bangladesh, India and the USA. Part six talks about external administration, reporting and disclosure, amalgamation and winding up. It also has a chapter dedicated on arbitration and compromise. The topics of part seven deal with the overall concept of company law. Chapter 25 discusses the Law of Partnerships and the last chapter discusses the Law of Banking Companies.

The author has tailored this book in such a fashion that beginners will get a working idea on the company legislation and the applicable principles. Along with the case references and direct linkage with the Companies Act, 1994, this book will help law as well as business students with the basics required.

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LAW WATCH

Workplace death and injuries in 2020



LAW DESK

A 2020 report by Bangladesh Institute on Labour Studies shows that 729 workers suffered from workplace death of which 384 were employed in the transport sector, 84 in construction sector and 67 in agriculture. The report also states that there were 433 instances of workplace injury. The numbers were lower than those of the previous year - in 2019, almost 1200 workers suffered from workplace death and there were 695 cases of workplace injuries. The number of workplace deaths remained the highest in both 2019 and 2020.

Workplace safety in Bangladesh has been a matter of great concern since the Rana Plaza incident that took over thousand lives. Subsequent to the incident, Bangladesh Labour Act 2006 was amended to incorporate more comprehensive provisions on workplace safety. Chapter 6 of the Act lays down provisions regarding safety at workplaces. Under Section 61 of the Act, the Labour Inspector may direct in writing for the employer to take necessary

measures regarding the safety of the workplace or prohibit the use of any machinery, road or plant which may pose risk to the safety of the workers. Furthermore, workplaces are required to undertake precautions for fire and in use of various machineries as laid out under the sections of the Labour Act.

In Chapter XII of the Bangladesh Labour Act 2006, procedures are laid down for the provision of compensation in case of workplace deaths or injuries. The amount of compensation is to be determined as per the Fifth Schedule to the Labour Act 2006 which states that in case of death, the amount of compensation payable shall be Tk 1,00,000 in case of death and in case of permanent disablement, the amount shall be Tk 1,25,000. For temporary disablement, the amount will be payable for one year on the rates laid down in the Schedule. Compensation shall be payable upon the order of the court or under an agreement between the worker and the employer. However, if the worker institutes a civil suit against the employer for such injury, they shall not be entitled to compensation and similarly, if the

worker makes an application before the Labour Court for compensation or reaches an agreement with the employer for compensation, they shall not file a civil suit before any court regarding such injury. Any such claim for compensation must be made within two years of the occurrence of the accident or death of the worker.

The aforesaid study also found that 44 domestic workers faced torture in 2020, 16 died and 4 committed suicide. Domestic workers are not covered under the provisions of Bangladesh Labour Act 2006 - as they are engaged in informal labour, their working hours, wages etc. are not being addressed under any law. This, along with the fact that most domestic workers are females and a significant portion of them are below the age of 18, makes them vulnerable to heightened risks of abuse. The Government issued the Domestic Workers Welfare Policy in 2015 wherein directions were provided as to the working hours, rest and wages for the domestic workers. However, the policy does not have the force of law and remains largely ineffective.