

LAW WATCH

Media Trial: Prejudicing the Rights of the Parties in Criminal Cases

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Freedom of press is a fundamental right which is guaranteed under article 39 of the Constitution of Bangladesh. However, this freedom is not absolute and can be exercised subject to a reasonable restrictions imposed by law in the interests of state security, friendly relations with foreign States, public order, decency or morality. Similarly, limitations to this right can be characterised by contempt of court, defamation or incitement to an offence. In addition, freedom of press does not allow the mass media to conduct the trial of a case. But in many instances, media has been accused of conducting the trial of

presumption of innocence by proving all the elements of offences beyond every reasonable doubt. Sometimes, it happens that the media prejudices the accused as convict and covers news on criminal incidents. But in criminal proceedings, after completion of investigation, an accused may be discharged or even after full trial he may also be acquitted. So, reporting on pending criminal cases always involves a serious risk of prejudicing the rights of an accused. Moreover, journalists publish photographs, previous crime records and self-incriminating statement of the accused which not only interfere with the justice delivery system but also intrude upon the privacy of the

to the public that the accused has confessed his guilt, so he must be punished. This type of media publicity also increases the risk of biasness and influences the trial judges' sense of impartiality. In consequence, the mandate of article 35(3) of the Constitution gets affected. Article 35(3) of the Constitution states that every person accused of a criminal offence shall have the right to a public trial by an impartial court.

When a journalist is reporting on an under-trial case, he/she has to comply with the professional ethics as enshrined in the Code of Conduct, 1993 which provides, 'it is the responsibility of the newspapers to publish news relating to case

It will amount to contempt of court if any writing or reporting is published to obstruct or interfere with the due course of justice or the lawful process of the courts such as commenting on a case pending in a court.

Press Council Regulation, 1980). After conducting inquiry, if the Council finds the news is against the journalistic ethics may warn the concerned journalist or newspaper (Section 12, The Press Council Act, 1974). In *Motiur Rahman, Editor The Daily ProthomAlo v Prof. Dr. Syed Anwar Hossain, Editor, The Daily Sun & Others*, the Press Council discharged the complaint issuing a warning against the Daily Sun to follow and maintain the standard of journalistic ethics (Bangladesh Press Council Complaint No.3/2012).

At this moment, there is no Code of Conduct for the broadcasting media (i.e. radio, television) journalists in Bangladesh. In 2014, the government approved National Broadcasting policy to ensure transparency and accountability in broadcasting media. In order to establish a national broadcasting commission and to punish for unauthorised broadcasting, the Broadcasting Act, 2016 was drafted which has not been passed by the Parliament yet. Moreover, to provide guidelines for online based news portals, the National Online Mass Media Policy is still in its preparatory stage.

From the above discussion, it becomes clear that media trial on cases has huge negative impacts on the administration of justice. Effective rules and regulations are required to guide the broadcasting media journalists for delimitation of issues of pending cases on which they can report. The journalist covering legal news must be aware of the anonymity provisions and the professional ethics. The Press Council should be more vigilant to ensure the compliance of Code of Conduct by the journalists at the time of reporting on pending cases. The court can also exercise contempt procedures to prevent the interference of media with the due process of justice.

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the accused and creating a widespread perception of guilt or innocence before or after a verdict has been handed down by a court. This type of media trial impinges upon the well-established principle of criminal law that a person is presumed innocent until proven guilty.

As the burden of proof lies on the prosecution, so it is the duty of the prosecution to disprove the

persons involved.

No statements made in the custody of the police officer shall be proved as against the accused, as per section 25 of the Evidence Act, 1872. Only a statement made before Magistrate fulfilling the requirements of section 164 Cr.P.C. will be admissible in the court of law. Ultimately, a media report containing different statements of the accused gives an impression

under trial and to publish the final judgment of the court to reveal the actual picture of issues relating to trial. But a journalist shall refrain from publishing such comment or opinion as is likely to influence an under-trial case, until the final verdict is announced' (Rule 16). It will amount to contempt of court if any writing or reporting is published to obstruct or interfere with the due course of justice

or the lawful process of the courts such as commenting on a case pending in a court. So, the guilt or innocence of an accused will be determined by the court, media report will not indicate anything on this issue.

Specific restrictions can be found in relevant legislation not to publish the name and identity of the victims. The publicity of particulars will have detrimental effect on the process of reintegration of victims in the society. Section 14(1) of the Suppression of Oppression of Women and Children Act, 2000 prohibits the publication of the name of a victim of sexual offence. Non-compliance with this sub-section will lead to the imprisonment for a period of maximum two years or fine not exceeding two lacs taka or both. There is a special provision for children in the Children Act, 2013 which imposes restriction on reporting in any newspaper which shall disclose any particulars of any case or proceeding in which a child is involved and which leads directly or indirectly to the identification of such child (Section 28).

If a journalist publishes an objectionable report, a petition of complaint can be lodged against him/her to the Chairman of the Press Council (Regulation 8:1 of the

FOR YOUR INFORMATION

Marks to be Registered as Trademarks in Bangladesh

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The importance of protecting Intellectual Property (hereinafter "IP") rights is evidently unquestionable. In this era, the psychology of a consumer is to find out which company's product is appropriate for him and the consumer usually does some market research in this regard. Here comes the value of brand name or mark. Now-a-days, creating a brand value is mostly important for a company or enterprise and the process starts with registering trademarks. In Bangladesh, the registration procedure is not complex and one can complete the registration within the shortest possible period of time. But for this purpose one has to know what types of marks are registrable and also the requirements for a mark to be registered as trademark. A trademark can be used even if it is not registered and such use has some legal consequences. But a registered trademark is eligible to get all types of legal protection.

Internationally, the following marks are recognised as trademarks: word mark, figurative mark/logotype, three-dimensional mark, sound mark, motion mark, multimedia mark, hologram mark, position mark, pattern mark. In Bangladesh, the Trademarks Act, 2009 (hereinafter "the Act") is applicable and chapter 2 of this Act contains provisions relating to marks which are registrable. As per section 5 of the Act, a trademark may be registered in respect of certain class of goods or service by complying with the requirements determined for the respective class or classes.

Section 2(23) provides that "mark" includes a device, brand, heading, label, ticket, name, signature, word, letter, symbol, numeral, figurative elements, combination of colours or any combination thereof. Section 2(10) provides that "name" includes any abbreviation or initials of a name. However, other words as provided in section 2(23) have not been defined. However, we find a list of marks which are registrable as trademark in Bangladesh. It is clear that the following marks are not registrable in Bangladesh: 3-D mark, sound mark, motion mark, multi-media marks, hologram marks etc.

Section 6 of the Act provides that a

trademark shall not be registered unless it contains or consists of at least one of the following essential particulars: (a) the name of a company, individual, or firm, represented in a special or particular manner; (b) the signature of the applicant for registration or some predecessor in his business; (c) one or more invented words; (d) one or more words having no direct reference to the character or quality of the goods or services, and not being, according to its ordinary signification, a geographical name or a surname or a personal name or any common abbreviation thereof or the name of a sect, caste or tribe in Bangladesh; (e) any other distinctive mark.

Therefore, a word, be it the name of a company, individual or firm in a special or particular manner or invented word, having no direct reference to the character or quality of the goods or services and



also not a geographical name or surname or a personal name or any common abbreviation or the name of a sect, caste or tribe in Bangladesh is eligible to registration. Point to be noted that as per section 2(23) "name" can be regarded as marks and be eligible for registration but section 6 puts some restrictions on types of name which cannot be registered. For example, "powerful", "best" or "strong" etc. cannot be registered as a mark or part of mark. Also, if an intended mark is phonetically similar or as much similar to create confusion with other registered trademarks then that intended mark is not registrable.

Moreover, sections 8, 9, 10, 11, 14 and 67 of the Act provide criteria for registration of certain marks and the instances when a mark is prohibited to register. Section 8 of the Act provides that no mark or part of a mark shall be registered as a trademark-

(a) which comprises or consists of any scandalous or obscene matter; or (b) the use of which would be contrary to any law for the time being in force; or (c) the use of which would be likely to deceive or cause confusion; or (d) which contains any matter likely to hurt the religious susceptibilities of any class of the citizens of Bangladesh; (e) which is identical with, or is an imitation of, or contains as an element, an armorial bearing, flag or other emblem, a name or abbreviation or initials of the name of, or official sign or hallmark adopted by, any state or international organization created by an international convention, charter or other instruments, unless authorised by the competent authority of that state or organization; or (f) which would otherwise be disentitled to protection in a court; (g) the application is made in bad intention and faith.

Section 9 of the Act provides prohibition on registration of names of chemicals. Section 10(1) of the Act imposes prohibition of registration of identical or deceptively similar trademark to a registered trademark of goods or description of goods or in respect of the same services or description of services, as the case may be. However, sub-section (4) provides that no trademark shall be registered in respect of any goods or services if it is identical with, or confusingly similar to, or constitutes a translation or a mark or trade description which is well-known in Bangladesh for identical or similar goods or services of another enterprise. Section 11 of the Act provides criteria on use of names of living persons or dead persons. Section 12 of the Act says about registration of parts of trademarks and of trademarks as a series. Section 67 of the Act provides restriction on registration of textile goods.

From experience, it might be said that some ground works are needed to be done before submitting an application for registration. There is a search option which helps to find out the eligibility of a mark for registration. Therefore, before registration of a mark, the applicant needs to check all the sections in order to get the mark registered without any difficulty.

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LAW LETTER

Is the nature really healing amid COVID-19 pandemic?

That due to coronavirus, the world is healing is arguably the only modest condolence coming our way out of the devastation brought about by the ongoing pandemic. Analysing the real context of the global *status quo*, it is somewhat true that the world, amid lockdowns, do get to get over some of its wounds. But, if we consider a third world country- for example, Bangladesh- there lies the actual dilemma. The question on whether coronavirus is helping the environment or damaging it more, necessitates scrutiny and analyses.

Since the beginning, despite initiating a lot of programs, the government somehow failed to discourage the citizens from coming out to the streets and do their daily activities; and this includes people who do not really need to come out in the streets in a daily basis as such. A bunch of humble lockdowns have been given since March 19, 2020, but as usual, people were reluctant to follow any of these. As a result, there was always acute traffic jam on the streets, the mills and factories were always running in full swing. As a consequence, the availability of toxic molecules and gases was never lesser in the air, comparing with that of the past in the pre-COVID world. In addition to this, due to lockdown, the garbage management of the country also went haywire. In the capital, Both DNSC and DNCC have failed to come up with an updated policy framework to cope up with a huge amount of wastes during the pandemic.

From an in-depth report of Lancet, it is seen that during COVID-19, approximately 206 tons of medical waste is produced in Dhaka city alone. The report also says, in the first month of COVID-19 infection, at least 14500 tons of waste was collected from 5709 hospitals. But the waste management was not satisfactory. According to the Local Government (City Corporation) (Amended) Act, 2011, the cleaners are instructed to collect waste from every house and hospital within a fixed time frame. But, reportedly, during the lockdown, the number of operational waste collectors declined by almost 50% in Dhaka.

Another interesting rise during the pandemic is online shopping. Online

shopping is helpful and time-saving, no doubt, but it gives birth to some real concerns too. Keeping pace with the rise of online shopping, the number of plastic package materials has also undergone manifold increases. In this regard, there is no clear legal mechanism or policy scheme of the government so far.

In Bangladesh, the Department of Environment (DoE) is the statutory authority to deal with environmental problems with the cooperation and collaboration of other relevant sectors. But, from the very beginning, the structure of DoE is not so praiseworthy. In lockdown also, they have maintained their fuzzy characteristics. The Environment Conservation Act 1995, the Environment Conservation Rules 1997 and the Environment Court Act 2010 are there to



support the Department of Environment (DoE). Despite having adequate laws for the proper performance of the Department of Environment, actual sync between the law and authority is found absent.

Understanding the *status quo*, it will be a caulk to say, nature is healing. The harsh reality is, nature is not healing, at least, not in Bangladesh. What we are seeing now is the much worse treatment of the environment than in the past. If the behaviour, habit, and responsibility of the people and concerned authority never change, if the legal ambiguities are never resolved, the melancholic tag of 'Polluted Country' will never erase from the fate of Bangladesh.

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