

LAW OPINION

Business through Internet: A Quest for Legal Framework

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In absence of proper and up-to-date legal framework in place, administrative regulations seem to be governing the digital commerce operations in Bangladesh. Most of the transactions-related rules now in force in the country are derived either from Bangladesh Bank Guidelines or Guidelines of the Ministry of Commerce. On 4 July 2021 the Ministry of Commerce issued the 'The Digital Commerce Operations Guidelines, 2021' (hereinafter referred to as Guidelines, 2021). One of the aims of the Guidelines, 2021 is to ensure transparency and accountability of the mushrooming e-commerce operators. Chapter 3 of the Guidelines, 2021 provides that all the existing concerned laws of the country will apply to the digital commerce operations. As such, it seems that the government has no plans to enact a separate statute any time soon to regulate digital commerce operations. But the existing laws that govern commercial operations in Bangladesh are not sufficient to meet the demand of the current situation.

The Guidelines, 2021 render the responsibility to the marketplace authority to take proper steps against allegation brought by a consumer regarding goods or

contract or for commission of fraudulent act online, the prosecution will have difficulty in proving the ingredients of the offence. This is because provisions of online transactions are yet to be incorporated in the relevant sections of the concerned laws.

Furthermore, Money Laundering Prevention Act, 2012 may be used to curb the swindle of money against transactions made via payment gateways platforms. However, the law is not designed in such a way so that it can be applied against defaulters of e-transaction processes. Section 23 of the Digital Security Act, 2018 allows fake ID related offences to be tried in Cyber Tribunals. The government has raised the number of Cyber Tribunals from 1 to 8 this year to try cyber offences at division level. But the fact is that criminal justice system in Bangladesh is a time-consuming, lengthy and tiresome process which often frustrates the victims of online frauds. This coupled with the difficulty of proving online frauds before court eventually demoralises a victim to file a case against the offender or persuade him to opt in for alternative measures e.g. out-of-court settlement with the offender or defaulter, wherever possible. Therefore, it is vital to find out ways for speedy disposal of disputes arising out of digital commerce

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Bank approved escrow service may be used. The Guidelines, 2021 made provisions for refund of advance payment made by a consumer in e-commerce in cases of non-delivery of goods or services. However, it is pertinent to mention here that paperless payment system has been in operation in Bangladesh under the Bangladesh Bank approvals. The existing legal framework authorises Bangladesh Bank to issue rules, procedures, guidelines, operating directives or specific permissions to introduce online payment systems. Bangladesh Automated Clearing House (BACH) includes Bangladesh Automated Cheque Processing System (BACPS), and Bangladesh Electronic Fund Transfer Network (BEFTN). These modern payment systems have brought significant change in the interbank fund transfer mechanisms of the country. But it is noticeable that these significant and major changes brought about in the payment systems are made only through issuance of directives and guidelines by the Bangladesh Bank. No statutory law consolidating all the rules, regulations and directives regarding payment systems has so far been passed by the Parliament. Though the government once took an initiative to introduce the Payment System Act, 2015, the proposed bill is yet to see the light of the day.

To sum up, it transpires that administrative guidelines and central bank regulations are the only basis of control and management of digital commerce operations these days in Bangladesh. But scattered guidelines and regulations cannot be an alternative to establishment of a well-planned and comprehensive legal framework by the Parliament to regulate and monitor digital commerce operations in the country. It cannot be gainsaid that we will certainly see further acceleration of digital commerce in the days ahead. The urgency of enactment of a statutory law consolidating all the rules, regulations and directives regarding control and management of digital business operations and online payment systems can hardly be ignored these days.

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RIGHTS WATCH

Hindu women's right to inheritance



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Dayabhaga and Mitakshara are two schools of Hindu inheritance law. Hindus in India's West Bengal, Assam, and Bangladesh mainly follow the Dayabhaga school. Non-Bengali society, on the other hand, i.e., Mumbai, Madras, Punjab, Benares, Maharashtra, and other locations, follow the Mitakshara doctrine. These two schools were established in response to Hindu scriptures and Samhitas that chronicle the practices that Hindus must follow in their personal lives. In imitation of the Hindu inheritance distribution system, daughters are not usually given a share in the father's property while the sons are still alive. Although it is not explicitly mentioned in the commentary, this practice has been going on for ages. As a result of this social norm, women are usually deprived of their father's wealth.

However, following the landmark case of *Danamma vs. Amar* in 2018, India has amended its Hindu Inheritance Act, 1956. The Supreme Court of India ruled in this case that under the reformed Hindu Succession Act, 2005, a daughter has equal property rights with their male counterparts. Again, the Supreme Court of India reiterated their verdict, stating that a woman can now claim an equivalent portion in the family property as a coparcener under Section 6 of the Hindu Inheritance Act, which was reinstated in 2005 to give women equal inheritance rights.

According to Articles 27 and 28 of the Constitution of Bangladesh, all citizens are equal in the eyes of the law. Even though the Indian Hindu inheritance Act of 1956 was modified in 2005 and 2007 to realise women's rights, the Hindu inheritance law in Bangladesh remains unchanged.

Also, Hindus in our country are usually provided with legal recourse under British Law. One of the reasons for this is that Hindu Dayabhaga law is not well-represented in our country, and most Hindus are unaware of the Dayabhaga law of Hindu schools, which has less practical implications. Even though Bangladesh has a Hindu Inheritance Act of 1929, it only applies to Mitakshara practitioners, where most people in Bangladesh follow the Dayabhaga school of Law. So, it is regrettable for the policymakers of Bangladesh that they have not yet been able to ensure law which is applicable for the larger Hindu population.

The Law Commission has recommended amendments to the Hindu Inheritance Act in order to provide Hindu women in Bangladesh equal rights to their father's property. In 2012, it proposed a new law to revamp the Hindu Inheritance Act which

included nine provisions emphasising equal property rights for women. However, the government was unable to take any further action due to the resistance of some Hindu scholars. The national alliance Hindu Ain Pronoyoney Nagorik Udyog has proposed the Hindu Inheritance Act 2020 containing 17 sections.

Some arguments against reform include the perception that the social system of Bangladesh is not conducive to Hindu law reform because Bangladesh is a predominantly Muslim country. On top of that, scholars argue because neighboring India and Nepal are Hindu-majority countries, Hindu law in these countries has been changed long ago to meet the needs of the time. Moreover, the democratic systems of India and Bangladesh are not analogous, and law reform will exacerbate the complexity of Hindu property distribution. Scholars also contend that if such legislation is enacted, no one will agree to marry a girl who does not own property, and dowry will become more common. Besides this, as is frequently seen in numerous family court cases, such property allotment will increase the level of violence against women.

In general, Hindu women receive *Stridhana* as a gift from their father during their marriage. Since Hindu marriages do not require registration, when a woman divorces, she is usually unable to file a claim for maintenance and other benefits. As per the Hindu Women's Rights to Property Act, 1937, women did not inherit any property. The 1943 Act later amended it, and after 83 long years, in 2020, the High Court Division ruled in the case of *Jyotindranath Mandal vs. Gouri Dasi* that Hindu women would get an allotment in their husband's property. Reviewing the history of Hinduism, it is seen that during the Vedic period, women were in a very respectable and high position, but their rights began to erode over time. Later, after the Vedic period, there were many changes in various treatise where women's property rights were utterly abolished. Indisputably, this is not acceptable in today's socio-economic context because women are now leading worldwide. Women's inheritance includes more than simply a property and economic rights. Women's positions in the family, society, and state are strengthened by legacy. In conclusion, there is no alternative to give equal rights to women to build a modern social system. In this context, Hindu scholars and policymakers must come forward to reform the Hindu law so that equal rights for women are established in society.

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services. It states that each digital commerce establishment shall appoint a compliance officer whose duty will be to communicate and coordinate with the Directorate of Consumer Rights Protection and other concerned organisations. But without bringing about necessary amendment in this connection to the Consumer Rights Protection Act, 2009 this provision will be ineffective. The Guidelines 2021 manifest that consumer can also lodge complaints in concerned regular courts.

Cases of fraud, misrepresentation etc. may be remedied with recourse to the punitive laws like – the Penal Code, 1860, the Money Laundering Prevention Act, 2012, the Digital Security Act, 2018 etc. But existing provisions enunciated in these laws may not suffice to deal with offences relating to e-commerce operations. For example, if an e-commerce operator is charged with cheating under the Penal Code, 1860 for breach of online

operations. Moreover, in addition to ensuring punishment of the offenders, the government should put more emphasis on the redressal of victims of online fraud through adequate compensation.

The Guidelines, 2021 do not contain any express provision for the protection of the rights of the sellers. However, they can seek remedy under the provision of Contract Act, 1872 or through the Sale of Goods Act, 1930 - neither law has been updated in a long time. Therefore, for expeditious disposal of commercial disputes raised both by buyer and seller, the government may mull over enacting separate legislation and establishment of separate specialised courts in the country.

The Guidelines, 2021 acknowledge advance payment and refund of advance money through debit card, credit card, bank transfer, mobile banking etc. It provides that for digital commerce transactions Bangladesh

REVIEWING THE VIEWS

Citizenship of the Rohingya in Myanmar: A historical account

MID KHALID RAHMAN

While the international stakeholders and the Government of Bangladesh have tried for their safe and dignified voluntary return of the Rohingya refugees as per the agreement between Bangladesh and Myanmar, the citizenship issue became one of the crucial contesting conditions. Unfortunately, no government of Myanmar, after the mischievous power-grabbing of the then Burma by the military government led by General Ne Win has responded positively to the citizenship issue of the Rohingya. The present article argues that the citizenship crisis is rooted in the British colonial era that consequently gained momentum through the political demarcation and marginalisation of different ethnicity including Rohingya.

It is believed that, during post-colonial periods, the Rohingya Muslims and the Rakhine/Arakan Buddhists lived harmoniously. After the colonisation by the British and the First Anglo-Burmese War in 1825, there was a paradigm shift in the politics and thus change the notion of the people of these two groups which silently created division and distance. This situation further extended during the Second World War, when the Rohingya declared their loyalty to the British while the Arakanese/Rakhine sided with the Japanese. In response, the Rohingya population was targeted jointly by both the Rakhine

Buddhists and the Burma Independence Army, killing 100,000 Rohingya and exiling a further 50,000 towards the border to the then East Bengal. The situation worsened in 1947 when some Rohingya had been negotiating with West Pakistan about incorporating Maungdaw and Buthidaung of the northern Arakan region into East Pakistan which subsequently failed due to strong objections from Aung San and Nehru.

The structure of the 1948 Burmese Constitution stands on the foundation of federal polity based on the Panglong Agreement signed by General Aung San, the chief architect of Burma's independence, on behalf of the majority Burmese with Shan, Kachin, and Chin ethnic nationalities who considered Burma as their home. However, the unfortunate assassination of Aung San settled the Burmese Constitution in favor of the Buddhist beliefs repudiating the tolerant integration of different ethnicity including Rohingya Muslims as it became deeply associated with "Burmese-ness".

After the independence of Burma from the British in 1948, the 'Constitution of the Union of Burma and the Union Citizenship Act' together deemed as legal document encompasses guidelines for Rohingya towards Burmese citizenship. Harmonious reading of these two documents contended the constitution's intention of making citizenship inclusive rather than limiting access to citizenship rights for both



Buddhists and Muslims. U Nu, the longest-serving civilian Prime minister of Burma, declared Rohingya as one of the ethnic races and acknowledged nationality of Rohingya with Kachin, Kayah, Karen, Mon, Rakhine and Shan. Burma's first president, Sao Shwe Thaik, and independent Burma's second prime minister, U Ba Swe, reiterated similar attitudes about the Rohingya's equal status of nationality.

Unfortunately, after the *coup d'état* in 1962, all the process of implementing citizenship rights of Rohingya have been deferred, even the government rejected official documents that had recognised Rohingya citizenship – effectively making them stateless. The five decades that

followed saw the military in continual conflict with the country's ethnic minorities and these ongoing domestic conflicts have been labeled the world's longest-running civil war. In Ne Win's regime, the citizenship standing of the military government was practiced differently, especially by denying citizenship rights, forced official exercise, and silent changes in the contemporary domestic understandings about *Taingyintha* or "sons of the soil" ideology of ethnicity.

In the 1974 Burmese Constitution, which has been adopted based on a socialist manifesto by the military-led government, the ethnic groups had lost their special recognition. In 1978 the first military

campaign, codenamed "Dragon King", was carried out forcing about 200,000 Rohingya to cross the border into Bangladesh refuting Rohingya as a citizen of Burma. However, the government of Myanmar took back the Rohingya under pressure from UNHCR and Muslim countries in 1979.

With the enactment of the Citizenship Law in 1982, the Rohingya were denied all forms of citizenship i.e., full, associate, and naturalised though they had strong proof of their existence in Burma before 1823.

From 1978 to 2017, there were several expulsions of Rohingya in different consecutive years. There was a nationwide campaign in April 2013 carried out by Buddhist monks that demanded anti-Muslim legislation. However, the 2008 constitution was very delicate in denying the Rohingya citizenship by drastically narrowing down the grounds of acquiring citizenship by the Rohingya. Moreover, the Thein Sein government repetitively address Rohingya as "illegal migrants of Bangladesh" and Suu Kyi-led government stands on the same footing make the situation worse. Therefore, all these systematic incidents in these years could be narrowed down to one arguable conclusion - structuring the denial mechanism of Rohingya citizenship by making the Rohingya stateless in their own country.

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