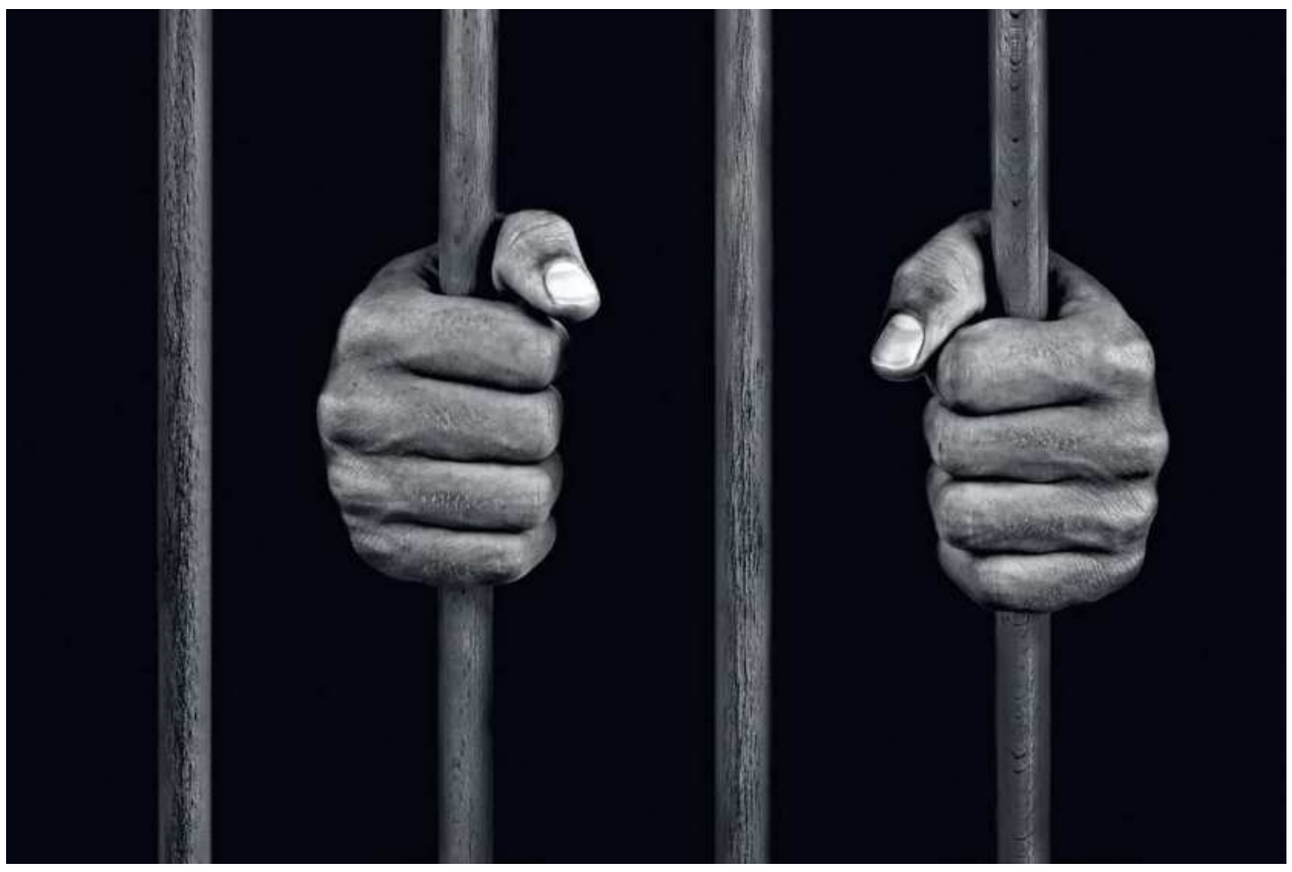
"ALL CITIZENS ARE EQUAL BEFORE LAW AND ARE ENTITLED TO EQUAL PROTECTION OF LAW"-ARTICLE 27 OF THE CONSTITUTION OF THE PEOPLE'S REPUBLIC OF BANGLADESH ● dslawdesk@yahoo.co.uk

RIGHTS ADVOCACY

Preventing wrongful imprisonment: The importance of introducing digitalised biometric identification

SHISHIR MANIR



Zahir Uddin is the vice-principal of a madrassa with no criminal record. He was shocked when one fine day the police raided his house and harassed him. He was informed that a court warrant was issued in his name for violating conditions of the bail bond and absconding. Upon inquiry, he came to know that a man named Moddasher impersonated himself as Zahir Uddin when he was being arrested by the Police on a complaint. After being enlarged on bail, "Zahir Uddin" (Moddasher) had absconded and fled abroad.

Zahir Uddin's vigilant and courageous step to ascertain the identity of the person who falsely impersonated him by applying to the relevant authority for conducting an inquiry may have saved him from languishing in jail for years. However, this is not the case for many other unfortunate ones. In the socio-economic reality of Bangladesh, the poor are plausibly the worst sufferers of such kind of wrongful imprisonment. Bablu Sheikh, a day labourer, had to spend 17 years behind the bars instead of Sri Babu because of mistaken identity. Jahalam was a jute mill worker, who spent three years in jail because the Anti-Corruption Commission officials mistakenly identified him as Abu Salek. These are

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not isolated incidents, and it is very common to erroneously arrest innocent persons by the law enforcement agencies.

In recent years, at least 26 incidents were reported in national dailies, which highlight the incidents of wrongful imprisonment of innocent persons where the accused persons introduce themselves to be someone else, or the accused and the arrested share a similar or same name. This issue has been raised before the Supreme Court of Bangladesh on many occasions. In *Rezaul Karim* v *The State & Others* (2007), the Court issued *suo moto* rule against the investigation officer who submitted charge sheet against Shah Alam Babu instead of Babul on mistaken identity. In *Md. Matin Mia* v *Government of Bangladesh*, the Court directed immediate release of Matin Mia, who was wrongly imprisoned instead of convict Abdul Majid.

In *Bangladesh Jatiyo Mahila Anijibi Somity* v *Government of Bangladesh*, the Apex Court observed that remedy for detainees of wrongful imprisonment is only available at the High Court Division under section 491 of the Code of Criminal Procedure, which is not easily accessible for poor victims. The Court directed the Government to make appropriate legal provisions to ensure that a quick and less expensive remedy is made available to the victims.

Wrongful imprisonment for mistaken identity causes serious human rights violations. It violates Article 32 of the Constitution of Bangladesh, which says, "[n]o person shall be deprived of life or personal liberty saves in accordance with law". Wrongful imprisonment without legal sanction curtails 'freedom of movement' guaranteed under Article 36. It also violates Article 31 that states, "[..] in particular, no action detrimental to the life, liberty, body, reputation or property of any person shall be taken except in accordance with law." Despite having many constitutional protections, wrongful imprisonment is rampant in the country.

The Identification of Prisoners Act, 1920 and the Jail Code are not adequate to underscore the prison population. The 1920 Act is a sketchy law with a few details. It requires recording finger and footprint impressions as prisoner identification mechanism. The Jail Code prescribes registering body shape, colour, particular marks, marks of injury, for the identification purposes of prisoners.

Prescribed methods for the identification of an accused in these laws are century old. These outdated identifying methods rely on human sense to identify an accused by their physical appearance and lineage, which results in mistaken identification.

With the scientific-technological revolution, crime data management systems have evolved with much accuracy. Most of the countries use digitalised biometric identification for identifying the criminal. The United States Federal Bureau of Investigation (FBI) has been using an integrated automated fingerprint identification system since 1999. Since then, biometric systems have fundamentally changed as to how authorities around the world approach successful identification of suspects and investigation of crimes and criminal activities.

Biometrics is the most suitable tool to identify and authenticate individuals. The term "biometrics" includes fingerprints, palm prints, irises, and facial recognition. A biometric system compares the physical aspect of a person presented for authentication against the data that had already been stored. For example, the finger is placed on a fingerprint reader for comparison against the stored samples. If the fingerprint matches the stored samples, the authentication is successful. The successful identification of criminals means protecting the innocent.

Digitalised biometric identification process is not new in Bangladesh. Different government and non-government bodies use it widely. The Election Commission of Bangladesh stores fingerprint, iris, and facial recognition data when it issues national identity cards for the citizens. The Commission uses fingerprints to identify authentic voters in the election process. The Ministry of Home Affairs also requires the same kind of data when it issues passports. Even telecommunication companies use digitalised biometric identification for their services.

Our policing did not evolve keeping pace with the technological advancements. Still, the police have to bear the brunt of paperwork and rely on human senses mostly. Introducing digitalised biometric identification in police stations will substantially change the process of accused identification.

The police need to take necessary fingerprints, facial recognition data when they first arrest an accused and store it centrally. When a suspected accused is apprehended by the police, they can easily cross-check the data to ensure authenticity with a single click. The Department of Prisons should follow the same procedure to authenticate prisoners. The law enforcement agencies must collaborate with the existing national citizen registration database that delivers identity verification services to qualified public and private organisations.

There are 651 police stations and 68 prisons in Bangladesh. Implementation of a digitalised biometric identification system in these places will not be an economic burden. The price of the equipment for biometric data collection is inexpensive and readily available. The Supreme Court recently provided a direction to introduce digitalised biometric identification in police stations and prisons with an integrated data management system, which can eradicate wrongful imprisonment of innocent persons. With prompt administrative support, it is time to say goodbye to such kinds of miscarriages of justice.

THE WRITER IS AN ADVOCATE, SUPREME COURT OF BANGLADESH AND HEAD OF CHAMBERS, LAW LAB.

LAW WATCH

Bangladesh needs rules on odourised LPG

M S SIDDIQUI

The explosion at Moghbazar at a mosque in Narayanganj and numerous incidents of fire and explosions at home and other establishments have given rise to concerns about the use of different gases. Usually, other countries have regulation on the use of odorants to identify leakage in pipelines or cylinders. Bangladesh has no such rule on odourisation of gases.

In Bangladesh, Liquefied Petroleum Gas (LPG) was introduced as a cooking fuel in September 1978 with the production of about 16,000 tons of the gas by Eastern Refinery Ltd. (ERL). ERL transferred it to LP Gas Limited for bottling and it was then passed to the three state-owned oil marketing companies for distribution. Later, the government adopted the National Energy Policy 1996 allowing private sector to import, store, bottle, and distribute Liquefied Natural Gas (LNG). Currently, there are around 25 companies in the private sector with a total capacity of supplying two million tons of LPG against a local demand of around one million ton per annum. Government also decided to promote the use of LNG as Autogas. The policy facilitates the setting up of Autogas Refueling Station, Conversion Workshop Setting up and Operation adopted in 2016 by the Energy and Mineral Resources Division of the Ministry of Energy and Power.

Consumption of LPG has been increased from 50,000 tons in 2008, the quantity of LPG consumed in the country was 1.02 million tons in 2020, and is expected to rise to 2 million tons in 2030. Till now, 85 percent of LPG is consumed for domestic use; total number of households using LPG is about 3.8 million. However, per capita consumption of LPG is the lowest among the countries in Asia-pacific region.

LPG forms a flammable mixture with air in concentrations of 2% to 10%. It can, therefore, be a fire and explosion hazard if stored or used incorrectly. LPG is by itself odourless and explosive, which is a

fatal combination. It may leak and accumulate in any household, office or factory and get ignited when someone enters the area and flips on a light switch. It is impossible to detect the leak because of the lack of odour. This has led different countries to enact new regulations that require gas suppliers to odourise LPG. Those laws direct that any leaks should readily be detectable when the concentration of gas reaches 1/5 of the lower explosive limit. Moreover, the leaks must be detectable by anyone with a normal sense of smell. The odorant is typically a blend of various organosulfur or non-sulfur compounds. Over many years, a class of organosulfur compounds known as mercaptans, and some non-sulfur compounds became the standard chemicals to odourise gases.

In many countries, LPG is also distributed through gas pipe for domestic, commercial, and industrial consumption, just as Titas gas distribution system in Bangladesh. The important points to consider are which pipelines require odourisation, the detectable limits of gas odour, odourants, and odourising considerations, and monitoring a pipeline system to ensure that the odourisation programme is meeting the regulatory requirements.

Bangladesh may include a provision of odourisation of LPG through amendment of the relevant laws and make it mandatory to establish odour injection system as early as possible to ensure that it has a distinctive odour. Thus, the gas-related accidents may be prevented.

THE WRITER IS A LEGAL ECONOMIST.

FOR YOUR INFORMATION

Consumer redress in e-commerce transactions

LAW DESK

Digital commerce platform Evaly was noted amongst customers for its frequent, and generous discounts and cashback offers. However, complaints eventually started piling up regarding delay in delivery as well as non-delivery of products. Owing to the diverse catalogue of products offered on evaly, the losses incurred by consumers are also varying from small to rather significant amounts.

This raises concerns regarding the state of e-commerce regulations and the legal framework on providing redress to aggrieved consumers. The primary law that deals with the redress for aggrieved consumers is the Consumer Rights Protection Act, 2009. Section 45 of the 2009 Act penalises non-delivery of products. The section reads that if any person (including company, society, partnership firm, statutory or other organization) does not sell or deliver properly any goods or service promised in consideration of money, he shall be punished with imprisonment for a term not exceeding 1 (one) year, or with fine not exceeding Taka 50 (fifty) thousands, or with both.

Apart from the 2009 Act, remedy of non-delivery of goods is also available under the Sale of Goods Act, 1930. In July this year, the Ministry of Commerce issued the Digital Commerce Operation Guidelines, 2021 which lays down the rule that for orders where price is paid, the product must be handed over for delivery within 48 hours and must be delivered within 5 days (within the same city) or the highest of 10 days (outside the city). Paragraph 3.5 also provides that the payment must be refunded within 10 days in case of failure to deliver a product and also provides that money offered as cashback cannot be retained in the digital wallet of the e-commerce platform.

However, the 2021 Guidelines is an executive instrument; although the Guidelines provide those complaints may be filed under the Consumer Rights Protection Act, the 2009 Act itself does not create specific requirements for timely delivery or payment refund in case of online transactions as has been done under the Guidelines. As the Guidelines themselves are not legislative instruments, how far they can be enforced or applied is unclear. Moreover, the Guidelines have been put into effect on the date of publication and whether they apply to transactions preceding their enactment is a question that must be asked. To sum it up, it can be said that a robust system of clear, enforceable rules which creates obligations on the e-commerce platforms to adhere to a set of uniform rules on payment and delivery is necessary to ensure that such large-scale grievance is not repeated.

YOUR ADVOCATE

Understanding the gratuity scheme

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, family law, labor law, land law, constitutional law, criminal law, and IPR.

QUERY

I work in the Human Resource Department of a reputed multinational company. I am not very sure about the gratuity scheme and associated income tax benefits, as I hear different opinions from within my peer group. We would appreciate if you can enlighten us on the matter.

Jafrul Islam, Dhaka

RESPONSE

Thank you for your query. Gratuity is a discretionary monetary benefit scheme offered by an employer upon completion of service of an employee. For every type of separation, the employee becomes entitled to an amount as either 'compensation' or 'gratuity' (if any), whichever is higher as stated in the relevant provisions under the Bangladesh Labour Act, 2006 (hereinafter referred to as "BLA"). If an organisation does not have any gratuity scheme, the employer is liable to pay compensation – as per the BLA – at the time of separation. Gratuity or compensation payment shall be in addition to any payment of wage/salary in lieu of notice due to separation of service of an employee on different grounds.

An employee will be entitled to gratuity only when he has been in uninterrupted service for more than one year with the organisation. The definition of gratuity stated in section 2(10) of the BLA under which more than six months is considered as a full year. It is worth noting that completion of more than six months of service will be deemed as one year from the second year.

The amount of gratuity depends upon the duration of service. The amount

of gratuity increases with the length of the service of an employee. Gratuity is calculated at the mentioned rate as per section 2(10) of the BLA based on the employees' latest basic wages received for every completed year of service'. Withholding of gratuity payment is permissible only in case of dismissal of an employee for misconduct under sections 23(4)(b) and 23(4)(g) of the BLA and not otherwise.

It is noted that by adopting a gratuity scheme within an organisation, an organisation can claim tax rebate against the gratuity fund as well as the employee need not pay income tax on the amount either. It may be also mentioned that as per the Income Tax Ordinance 1984 (hereinafter referred to as "ITO"), gratuity amount up to BDT 2,50,00,000.00 (Taka Two Crore and Fifty Lac) only is not taxable.

However, to avail such income tax benefit, as per section 2(5A) of the ITO, the gratuity scheme needs to be recognised by the National Board of Revenue (NBR) in accordance with the provisions of Part C of the First Schedule of ITO. For such recognition, the organisation needs to create a separate gratuity fund, manage the fund by a board of trustees. To do so, firstly the organisation has to form a trust and an application is to be made in writing by the trustees to the NBR through a prescribed procedure, along with the copy of the instrument (i.e. Trust deed and rules) and other necessary documents as specified in the schedule. The Board, subject to fulfilling the conditions, approves the gratuity fund within three months of the receipt of such application. The auditor shall have to audit the fund account annually as per rules of the fund. The fund will be treated as completely separate from the fund of the organisation. Hence, as per the provisions of the Schedule, income derived from investments or deposits of an approved gratuity fund and any capital gains arising from the transfer of capital assets of such fund shall be exempted from payment of income tax.