

LAW ANALYSIS

# The Evidence (Amendment) Bill 2022: An appraisal

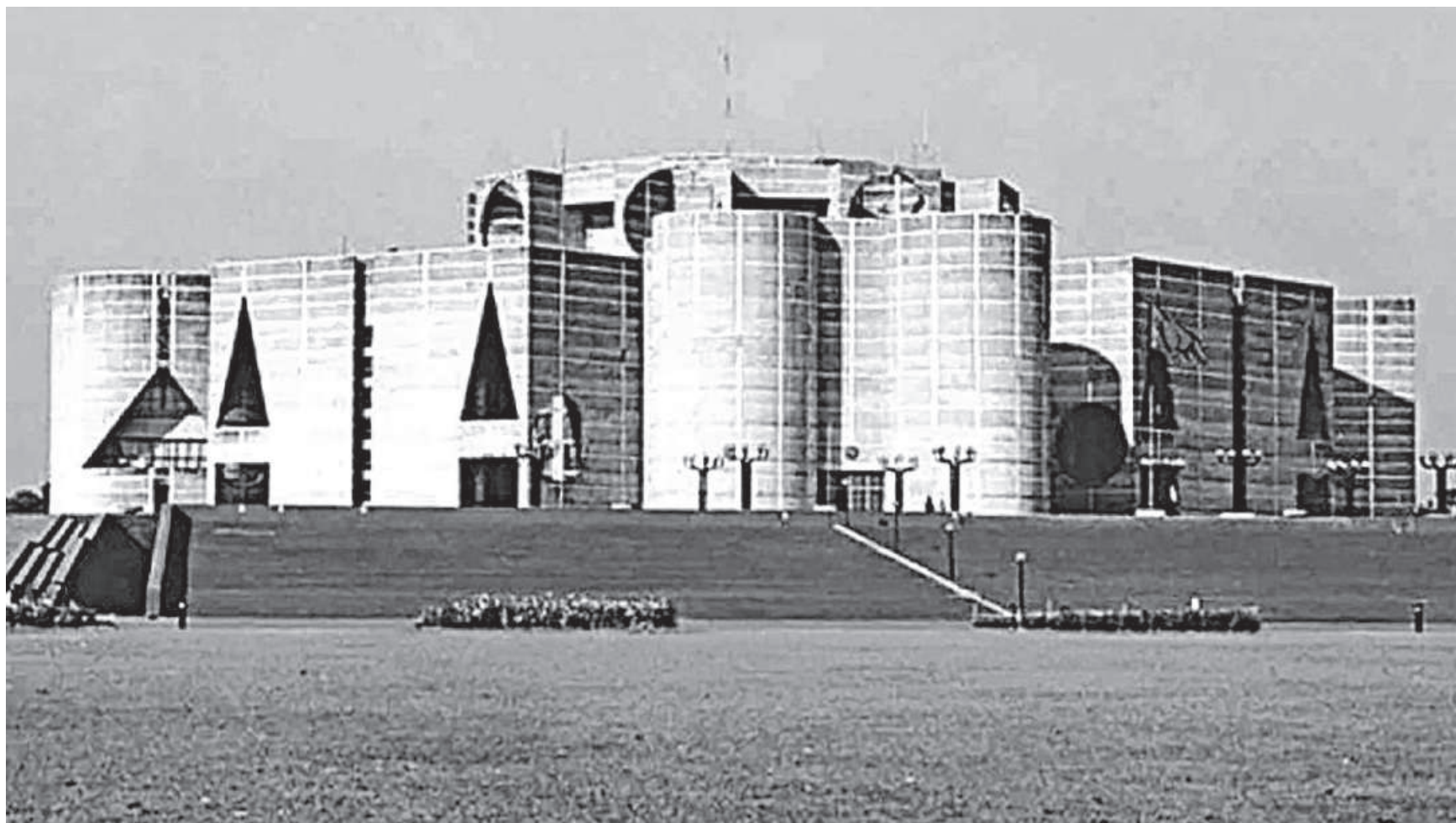
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ABUZAR GEFARI

On August 31, 2022, the Evidence (Amendment) Bill was introduced before the parliament. This Bill will be an Act only after completing some legislative procedures. Under the Bill, any digital record has been included in the definition of 'document' in section 3. The definition of 'digital record' has been added in the same section which implies that any data or information generated, prepared, sent, received, or stored in magnetic or electro-magnetic, optical, computer memory, micro film, computer generated microfiche including audio, video, DVD and all records of CCTV, Drone, Cell phone, hardware, software, and all other digital devices, are to be considered as digital record.

At present, we are completely dependent on digital devices. So, it is usual that in many, if not all, cases, evidences are digital or electronic. For instance, video recording or CCTV footage can play a vital role in criminal cases. In this regard, it has been essential to make digital records admissible as evidence. The term 'digital record' has been added to sections 17, 34, 35, 36, and 39 in the Bill. Besides, section 22A says that the oral admission of digital evidence would be inadmissible unless the genuineness of the digital record is in question. For example, if the opposing party raises any question regarding the authenticity of the video footage, only then the oral admission of the witness regarding the video footage can be admissible in the court.

The term 'digital signature' has also been added to the Bill. Section 3 provides that the definition of the term 'digital signature' prescribed in the Information and Communication Technology Act, 2006 will be applicable. Section 2(l) of the Act of 2006 says that 'digital signature' means the data in an electronic form which can satisfy affixing the signatory uniquely, capable of identifying the signatory, created in sole control of the signatory, etc. The Bill also contains another provision in sections 67A and 47A so that nobody can defraud the court by only adding the digital signature. Rather, under these sections, the digital signature of the subscriber must be proved in court.



Moreover, if the court is in doubt, it may take help from the opinion of the certifying authority which gives the authorisation of such signature.

The second point introduced in the Bill is the extension of the scope of the opinion of the expert in the court. Now, under section 45 of the Evidence Act, 1872 only the opinion of persons specially skilled in science, arts, foreign law, the identity of handwriting or finger impressions are called 'expert opinion' which is admissible in the court when the court has to form an opinion regarding those matters. Along with the aforementioned subjects, the definition of 'expert opinion' was expanded by the Bill to cover a wide range of areas. It says that persons specially skilled in physical or forensic evidence or digital record, footprint, palm impression, typewriting, usage of trade, technical term, the identity of person or animal

also are experts. Their opinion when necessary will be admitted in the court. For instance, if the court has to form an opinion regarding the trade of vehicles, the opinion of persons specially skilled in the trade of vehicles can be admissible as evidence. The opinion of the 'certifying authority' on the identification of 'digital signature' can also be considered as the 'expert opinion'.

The third point proposed in the bill is the protection of the victims of rape cases from questioning her character. In this regard, section 146(3) is proposed to be amended so that no question in cross-examination can be made as to the general immoral character or previous sexual behaviour of the victim. Besides, section 155 under which the prosecutrix of the rape case can be shown as of generally immoral character is proposed to be omitted.

This provision will protect the women from humiliating and embarrassing questions during rape trial.

Some provisions should be amended because of their outdated and irrelevant nature which remained untouched in this Bill. Among these, sections 82, 89, and 166 immediately need to be revisited.

Section 82 deals with the procedure for proving a document in Bangladesh that is recognised as a public document under the laws of England and Ireland. Such a document will be recognised as admissible without showing evidence of a seal, stamp, or signature when it is presented before any Bangladeshi court. The court will assume that the seal, stamp, or signature is genuine. It was enacted for the convenience of the English Rulers in the Indian Subcontinent. There is no practical utility of this provision at present and

therefore it needs to be omitted.

Section 89 says '[t]he Court shall presume that every document, called for and not produced after notice to produce, was attested, stamped and executed in the manner required by law.' It means that the judicial presumption of a document might take place only if notice is given, even though the document is not produced before the court. The document, not stamped, is presumed to be stamped and attested by this provision. Consequently, it is an unreasonable presumption that goes completely against natural justice. Furthermore, section 166 discusses the power of a jury or assessors. This is an outdated provision because there is no jury system in Bangladesh at present.

The writer is a Student of Law, the University of Dhaka.

RIGHTS ADVOCACY

## Right of the taxpayers to protect personal data

MS SIDDIQUI

Data protection and privacy are recognised as fundamental rights. An individual's 'private life' includes the protection of his or her personal data. Personal data, in principle, is information that identifies an individual, or is related to the individual. Most of the countries in the world includes a right of privacy in their Constitutions. In many countries, international instruments that recognise privacy rights such as the International Covenant on Civil and Political Rights or the European Convention on Human Rights have been adopted into domestic law.

The Finance Act 2022-23

makes compulsory submission of income tax return and obtaining of acknowledgement receipt having information of income, assets and total tax paid etc. for obtaining registration of co-operative society; obtaining or renewal of license or enlistment as a surveyor of general insurance; obtaining registration, by a resident, of the deed of transfer, obtaining or maintaining a credit card; obtaining or continuing the connection of electricity in a city corporation or cantonment board. The acknowledgement receipt form issued by the National Board of Revenue (NBR) is the proof of income tax return submission before a certificate is ready, and it reveals the taxpayer's gross wealth, taxable income

**The Constitution of Bangladesh under article 43 grants every citizen the right, subject to any reasonable restrictions imposed by law in the interests of the security of the state, public order, public morality, or public health, to the privacy of his/her correspondence and other means of communication.**

and tax paid, inadvertently disclosing such confidential information to third parties. Experts opined that this is a violation of the Income Tax Ordinance, 1984 and the draft Income Tax Law 2021. This compulsion of disclosure of private information is against many laws of the country.

The Constitution of Bangladesh under article 43 grants every citizen the right, subject to any reasonable restrictions imposed by law in the interests of the security of the state, public order, public morality, or public health, to the privacy of his/her correspondence and other means of communication. The Constitution does not expressly grant the fundamental right to privacy. There are many laws and rules for security of personal data of the citizens, and the government has drafted a Data Protection Law and asked for opinion of different stakeholders. This was recognised by the High Court Division of the Supreme Court of Bangladesh in the *State v Oli* (2019), where the court observed that 'every citizen was entitled to the right to privacy under the Constitution'.

Sections 7(h),(i),(j) and (r) of the Right

to Information Act provide that any information which may offend the privacy of one's life, any information which may endanger life or physical safety of any person, any information given secretly to assist the law enforcing agencies, or any personal information protected by any law, are not subject to mandatory disclosure by government and certain private organisations. That means anybody cannot get any information regarding privacy or personal data.

On the other hand, the information collected by Government is a resource of the citizen and managed on their behalf by Government. There is no general right for people to see the information held by government departments. People should be able to obtain access to these resources and to participate in government policy development and decision making.

Freedom of information and privacy Act or Rule aims to ensure that the information collected about people by government agencies is accurate and not misused. People do not have any obligation to disclose their financial situation to even their close ones, but the new finance Act is compelling taxpayers to disclose such sensitive information to unauthorised third parties.

The Income Tax Ordinance 1984, under section 163(l) restricts that all particulars or information contained in the following shall be confidential and shall not be disclosed, namely: (a) any statement made, return furnished or accounts or documents produced under the provisions of this Ordinance; (b) any evidence given, or affidavit or deposition made, in the course of any proceedings under this Ordinance other than proceedings under Chapter XXI; (c) any record of any assessment proceedings or any proceeding relating to the recovery of demand under this

Ordinance. Although the tax payer may disclose and sections 163-6 shall not be construed as prohibiting the voluntary disclosure of any particulars referred to in sub-section (l) by the person by whom the statement was made, return furnished, accounts or documents produced, evidence given or affidavit or deposition made, as the case may be.

The draft Income Tax Law in chapter 19 and section 297(l) gives priority itself over other laws of the country and declares all the information related to income, expenditure and asset disclosure as prohibited. Even the court is not as such allowed to instruct for presentation of these information under the Evidence Act, 1872. Under section 297(3)(a), the court may requestor that information in accordance with the Penal Code, 1860 and the Foreign Exchange Regulation Act, 1947.

Moreover, the National Board of Revenue (NBR) has launched a digital system to verify the authenticity of tax-return submissions and expedite service delivery by the authorities concerned. Its income-tax wing officially opened the 'tax return verification module' on August 21, 2022. Anyone from across the country can verify the authenticity of the return submission by inserting Taxpayers Identification Number (TIN) in the module, available on the NBR's website. Any other authorities may come into an arrangement with NBR to verify the acknowledgement receipt without disclosing the private data and abide by the different laws ensuring the right to private data of the citizens.

It appears that the Finance Act 2022-23 is contradictory to Income Tax Ordinance 1984 and other laws, and this is why, the Finance Act should be amended to protect the private information of the taxpayers.

The writer is Non-Government Adviser, Bangladesh Competition Commission.

