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LAW REVIEW

Rethinking the effectiveness of laws controlling sight pollution

Undoubtedly, creative graffiti showcases innovative minds and enhances the beauty of a place, but often, they may create nuisance and damage the natural beauty and aesthetics of a place.

TASNIM NUSRAT REZA

In comparison with more known forms of pollution, the concept of sight pollution is relatively unconventional. But its impact on the environment is neither negligible nor unknown. Sight pollution can be defined as the pollution caused to the visual aspect of the environment damaging its aesthetic beauty and impairing the ability of individuals to relish the same. Posters, advertisements, billboards, electric wires, antennas, to name a few, are the main contributors of sight pollution. In Dhaka and other urban regions of Bangladesh, uncontrolled use of posters and graffitis are major causes of sight pollution.

The Graffiti Writing and Poster Sticking Control Act 2012 ("2012 Act") penalises the act of sticking posters on walls and doodling graffiti without authorisation. Section 4 of the 2012 Act allows the local authority to specify places for the purpose of sticking posters and doodling graffiti. Any poster glued or graffiti done in places not specified under section 4 is a punishable offence. Person responsible for unauthorised posters and graffiti may be fined with an amount between BDT 5000 and BDT 10,000. Unfortunately, these provisions have had no effect whatsoever in reality. Moreover, the Bangladesh Environmental Conservation Act, 1995 ("BEC Act") is absolutely silent regarding the issue of sight pollution although sight pollution has an immediate connection with other forms of pollution addressed in BEC Act.

Papers add a severe toll to waste management - without the proper mechanism of recycling and reusing papers, the situation gets worsened. Both the local authority and the concerned people are lax in ensuring proper removal and disposal of posters. Production of posters in large volumes requires an inconceivable amount of deforestation every year thereby contributing to climate change. Paper production also requires emission of deadly components including carbon dioxide, nitrogen dioxide and sulphur dioxide which are reportedly responsible for global warming.

There is hardly any place, mostly in the urban areas, bereft of posters and graffiti; and in most of the instances they are unauthorised. Due to the negligence and reluctance of the concerned local authority and excessive advertisements, the culture of posting unnecessary posters and graffiti is exacerbating. Undoubtedly, creative graffiti showcases innovative minds and enhances the beauty of a place, but often, they may create nuisance and damage the natural beauty and aesthetics of a place.

The proper implementation of the 2012 Act would have an enormous prospect in reducing the pollution generating from papers: firstly, it can ensure that posters are not being glued unnecessarily and minimise the use of paper; secondly, the 2012 Act can also sensitise the people regarding their duty to refrain from environmental pollution. There is no denying the fact that every time a paper is not printed, in one way or another, the environment is being protected. Had there been positive compliance of the 2012 Act, thousands, if not millions, of trees would have been protected from being cut down for paper manufacturing.

Though the 2012 Act had the noble potential to reduce the unnecessary use of posters, it has failed to come to any aid. It has been ten years since the 2012 Act was passed, but unfortunately, people at large are unaware of it. The 2012 Act provides the provisions of penalty for its non-compliance and unauthorised posters, but there is hardly any instance that shows its practical application. Further, use of electronic and paper-free means has long been established as an effective alternative for advertisement purposes and accordingly, the 2012 Act may need to be revisited to accommodate these developments.

With the upcoming general elections in 2024 which is likely to overflow the whole country with posters, it is high time we assessed the utility and effectiveness of the 2012 Act. This decade-old law needs to be revisited and rearranged for proper efficacy. Joint efforts from both the government and the citizens are required for its implementation. Awareness regarding the deleterious impacts of mindless use of posters on the environment can also play a crucial role in this regard.

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RIGHTS ADVOCACY

On price hike and legal redress

ADIBA TAHSIN RAHA AND MD. NOMANUL ISLAM

In our country, unusual price hike for essential commodities has been used as a magic wand by the business class. They exploit the situation by creating an artificial crisis and making a profit at the expense of ordinary people's hard-earned money. Foodstuffs are sold according to the whimsical will of the profit makers who are paying no heed to the price fixed by the government. The ongoing state is creating a hopeless situation for the ordinary people of our country who are struggling to manage their daily expenses. At present, 35% of the population of Bangladesh remains food insecure. Furthermore, a new class of poor is created due to massive price hike which is an estimated 18.54% of the total population, according to a report by Power and Participation Research Centre and Brac Institute of Governance and Development.

Foodstuffs fall within the definition of essential commodity as per section 2 of the Control of Essential Commodities Act 1956. Under this Act, the government of Bangladesh is given the responsibility of equitable distribution of essential commodities at fair prices. As per section 3 of the Act, the government of Bangladesh has the power to control the price at which any essential commodity may be bought or sold. Section 6 of the same Act has a provision for imprisonment or fine or both

for the contravention of the order of the government by any person. In spite of these provisions, we see no strict action by the government to improve the situation. On the other hand, consumers are barely aware of their rights as consumers. Section 38 of the Consumer Rights Protection Act, 2009 obliges the seller to display the prices of products to the buyers as per the government order and adds penalties for any omission. Section 40 of the same Act provides penalties for those who sell products at a higher price than the actual price. Also, section 76 of the Act includes the provision of making complaints to the authority regarding any violation of the rights of the consumers. These mean that people have legal protection against the unjustified rise in prices but they are not benefitted because of the poor implementation of these laws.

Food is a basic necessity of life and the right to food is closely intertwined with our human existence. This very existence is threatened when prices of foodstuffs go beyond our purchasing power. Thus, this is high time the government played a sincere role in controlling the prices of foods.

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LAW ANALYSIS

Why the Arbitration Act 2001 is not exhaustive

KAIUM AHMED

Arbitration has emerged as the pre-eminent mode of dispute resolution in domestic and international trade. Its absence could jeopardise the stability of the safe international business and commercial trade structures. Even a less developed country like Bangladesh has great potential in utilising arbitration as a mode of dispute resolution.

The whole procedure of commercial or non-commercial arbitration is controlled by Arbitration Act 2001 ("the Act"). As per section 3(1) of the Act, it is applicable whenever the place of arbitration is in Bangladesh. Although the Act has tried to touch all the pertinent areas, it still has many shortcomings. For example, there is no provision in the Act explaining how the arbitrators will be paid or what will be the criteria for determining their fees. Without having a fixed procedure in an arbitral sitting, arbitrators may charge higher amounts without proper consideration of the subject-matter.

Further, according to section 12 of the Arbitration Act 2001, if the parties fail to appoint the arbitrators, the learned district judge court may appoint the panel of arbitrators after a petition of a party. In practice, only retired district judges or retired justices of the supreme court are appointed as arbitrators. It is important to note here that appeal or revision is not allowed against the order of appointment of arbitrators. However, if any of the parties to arbitration during the arbitration hearing finds that the arbitrator is partial, biased, prejudiced against them, they can challenge the appointment of such arbitrator under this act.

Since it has less formality, the arbitrator tribunal can give its verdict within the shortest amount of time. However, the verdict can be challenged before the concerned local district judge court. Suppose, an arbitrator tribunal (which may be constituted by retired justices of the supreme court) decided a case and delivered an award. After their verdict, the petition goes back to the same district judge court for implementation under section 44 of the Act. Section 42 (1), on the other hand, provides that the court may set aside any award under this Act other than an award made in international commercial arbitration, on the application of a party within sixty days from the date of granting the award. Regarding the court, section 2(b) states that court here means District Judge Court. Now the main question is whether a district judge of the lower court can adjudicate on the validity of a judgment given by the ex-chief justice or other justices of the Supreme Court of Bangladesh. To address these concerns, the law may be amended so that the appeal against the decision of the arbitral tribunal lies before the High Court Division.

According to section 48 of the Act, an appeal shall lie before the High Court Division against the order of the district Judge Court. This procedure prolongs the whole arbitration mechanism. People use a huge amount of money in arbitration tribunal but this arbitral award falls under the jurisdiction of the same court. Moreover, it is also the same court where the parties seek remedy against, or on behalf of an arbitral award given by the arbitrators through a process similar to regular court process. This gap weakens the spirit of quick and easy remedies.

Although emergency arbitration has emerged as a turning tide for granting urgent interim reliefs throughout the world, it has not been able to develop a strong ground in Bangladesh. Many arbitral institutions around the world have started providing for rules governing emergency arbitrations wherein the parties have an opportunity to seek interim relief prior to the constitution of the arbitral tribunal. This is done keeping in mind the needs of parties that require urgent interim relief, the issuance of which can be an important factor in the outcome of the arbitral proceedings.

For these ambiguities and loopholes in the arbitration procedure, people are losing their confidence in alternative dispute procedures.

The Parliament should amend the Arbitration Act 2001 to expressly allow our courts to issue interim remedies in cases of foreign-seated arbitrations, institute a separate court system only for arbitration, and accept foreign arbitral awards without unnecessary intervention. Otherwise, the reputation that Bangladesh is trying to develop as an arbitration-friendly country will be nipped in the bud.

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