

LAW REVIEW

Looking back at the laws enacted in 2022

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2022 has been a busy year with a plethora of new legislations enacted. The Jatiyo Sangsad ("Parliament") enacted a total of 21 legislations and amendments regulating different sectors. A notable few have been discussed below for the readers.

APPOINTMENT OF THE CHIEF ELECTION COMMISSIONER AND OTHER ELECTION COMMISSIONERS ACT 2022

The first bill of the year was passed in the parliament seeking to give a legal shield to the current and previous Election Commissions formed through search committees. According to the Act, the qualification of Chief Election Commissioner ("CEC") and other election commissioners shall include Bangladeshi citizenship, minimum 50 years of age, and minimum work experience of 20 years in important government, semi-government, private, judicial, autonomous and other institutions. The Act disqualifies a person for the post CEC who had previously served the same or the position of Chief Justice. Among other provisions, the Act mentions that the previous search committees, their functions and appointments of the CEC and other commissioners made following their recommendations will be deemed valid.

BANGLADESH PATENTS ACT 2022

The enactment of this Act is an attempt to replace the patent-related provisions of the Patents and Designs Act 1911 and make the provisions more time-befitting and ensure compliance with the Trade-related Aspects of Intellectual Property (TRIPS) Agreement. According to the Act, the validity period of patents shall be extended from 16 years to 20 years. The Act also qualifies any technological products to be patentable while it excludes inventions, scientific theories and mathematical methods, business methods, rules or methods of performing purely mental work or sport and any such computer programme from patent protection.

TRADE ORGANIZATION ACT 2022

The Act was enacted as a replacement for the Trade Organizations Ordinance 1961 with several new provisions to ensure discipline among different types of trade organizations and also ensure proper representation of people from various trading organizations and the government. The Act also includes provisions for women entrepreneurs and inter-country joint chambers of commerce alliances.

ZILA PARISHAD (AMENDMENT) ACT 2022

The Act, originally enacted in 2000, was amended in 2022 to incorporate a provision for appointing an administrator on the expiry of the five-year tenure of the district-level local

government body. Hence, the Zila Parishad chairman and members shall not remain in their respective positions once the specified duration is over and will be replaced by an administrator appointed by the government to carry on the local activities until the next Parishad is formed. The administrator will be allocated a 180-day tenure for the task and cannot be appointed as the same more than once.

BANGLADESH PARJATAN CORPORATION (AMENDMENT) ACT 2022

The law was amended with a view to strengthen the corporation and expand its scope to develop sustainable tourism. According to the newly added definition, a person shall be considered as a tourist if he/she spends not

more than one year for leisure or recreation. The provisions of the Act also set out specifications for offices and centers, the activities of the corporation, and the guidance given by the board of directors.

BANGLADESH OIL, GAS AND MINERAL CORPORATION ACT 2022

This Act has sought to replace the 1985 ordinance. The Act has given the status of 'Public Servants' to the Chairman, Directors, other officers and employees of the Corporation while performing their duties. The Act has given the power to the authority to sell or transfer the share of the corporation subject to the approval of the government.

EVIDENCE (AMENDMENT) ACT 2022

The Act has been amended in light of growing needs to allow digital evidence and to prevent questioning the character of rape victims in trials. The inclusion of digital evidence is a timely move

from the parliament and it has widened the meaning of evidence; under this amended legislature, both the prosecution and defence have the opportunity to produce digital evidence before the court to establish their arguments.

INTERNATIONAL CENTRE FOR DIARRHOEAL DISEASE RESEARCH, BANGLADESH ACT 2022

It has been decided by the parliament to abolish the pre-existing International Centre for Diarrhoeal Research, Bangladesh Ordinance 1978 as per direction of the apex court that ordinances passed in the military regime have to be reformed. The Act has allowed the authority of the center to export and import biological materials and pharmaceuticals solely for research purposes. In this Act, a provision for the formation of a board of 15 members has been made to administer the center.

The Writers work with Law Desk, The Daily Star.



COURT CORRIDOR

Notable Supreme Court Decisions of 2022

The HCD gave a landmark judgment on 23 November 2022 whereby it barred banks and other financial institutions from filing cases related to dishonour of cheques for defaulted loans under the Negotiable Instruments Act 1881. It also ruled in the court that all the pending cases of cheque dishonour filed by banks and other financial institutions before different criminal courts will be stayed.

SADMAN RIZWAN APURBO, RAFID AZAD SAUMIK

In view of the end of the year, this write-up comprises notable pronouncements made by the High Court Division (HCD) and the Appellate Division (AD) of the Supreme Court (SC) of Bangladesh in 2022.

GUIDELINES ON THE IMPOSITION OF TRAVEL BAN

The Anti-Corruption Commission (ACC) imposed a travel ban on Tafsir Mohammad Awal, a reputed businessman, on the allegation of corruption. Thereafter, Mr. Tafsir moved the HCD with a writ petition. On 24 February 2022, the HCD disposed of the petition and held that the right to leave the country as enshrined in article 36 of the constitution is not absolute. However, the restriction must be imposed by law with the object of preventing escape from due process of law and not by executive order. Therefore, an order of travel ban by the ACC officials shall not be valid unless it is approved by the appropriate court beforehand. In the present case, the HCD declared the travel ban on Mr. Tafsir illegal due to the lack of judicial affirmation of the order made by the ACC officials.

SEEKING A REPORT ON THE IMPLEMENTATION OF GUIDELINES REGARDING SEXUAL HARASSMENT IN THE WORKPLACE

In 2009, the HCD provided some guidelines with regard to the prevention of sexual harassment at the workplace. Last year, Ain o Salish Kendra filed a writ petition for the lack of implementation of those guidelines. Consequently, on 9 January 2022, the HCD issued a direction to the Cabinet Secretary, Law Secretary, Public Administration Secretary and Family Planning Secretary to submit a report containing the steps taken to implement those guidelines in the governmental and non-governmental institutions.



QUESTIONING THE CONSTITUTIONALITY OF PUTTING DEATH ROW PRISONERS IN CONDEMNED CELL

On 5 April 2022, the HCD questioned the legality of keeping the death row prisoners in the condemned cell before the confirmation of the sentence. This was in response to a writ petition filed by three convicts who were awaiting their sentences in condemned cells. The court issued a rule asking why Regulation 980 of the Bangladesh Jail Code which allows death row convicts to be put in condemned cells should not be declared unconstitutional being violative of article 35 of the Constitution. The court also directed

the Inspector General of the Prison to submit a report regarding the facilities provided in the condemned cell.

DIRECTING TO FORMULATE A GUIDELINE ON POLYGAMY

The HCD, on 5 January 2022, while disposing of a writ petition filed by Advocate Ishrat Hasan, issued a rule asking the government to explain why section 6 of the Muslim Family Law Ordinance 1961 should not be declared to be unconstitutional. Section 6 of the ordinance allows polygamy of the husband with prior permission from an arbitration council. The court further asked both the secretaries of the divisions of the Ministry of Law, Justice, and Parliamentary Affairs and the Ministry of Religious Affairs to

answer why they should not be asked to formulate a guideline regarding polygamy to ensure equal rights for women.

REMOVING THE REQUIREMENT OF PRIOR PERMISSION IN ARRESTING GOVERNMENT OFFICIALS

An HCD bench on 25 August 2022 declared section 41(l) of the Government Service Act 2018 as unconstitutional. This section prohibits the arrest of any public servant on any criminal charge without prior approval of the concerned authority. According to the bench, the aforementioned provision violates articles 26, 27, and 31 of the constitution of Bangladesh. Moreover, the provision makes it extremely difficult to arrest

government officials and creates ample scope for their immunity. The HCD bench further stated that 'If this provision remains in place, there will be no ending to criminal cases against public servants.' The AD, however, stayed the HCD verdict on 1 September 2022.

DIRECTING CHEQUE DISHONOUR CASES TO BE FILED IN CIVIL COURT

The HCD gave a landmark judgment on 23 November 2022 whereby it barred banks and other financial institutions from filing cases related to dishonour of cheques for defaulted loans under the Negotiable Instruments Act 1881. It also ruled in the court that all the pending cases of cheque dishonour filed by banks and other financial institutions before different criminal courts will be stayed. Furthermore, it directed the criminal courts of the country not to take cognizance of any case of cheque dishonour and directed the banks and financial institutions to file civil suits before the Artha Rin Adalat for recovery of defaulted loans instead. The Appellate Division stayed the HCD order for 2 months on 1 December 2022.

JUDGMENT ON ELECTION PROCEEDINGS

In May of this year, the AD of the SC upheld the verdict of the HCD relating to an order of the Election Commission (EC) for a re-poll in an election centre at Durgapur. The EC had given that order after allegations of irregularities was reported by the Returning Officer during the Union Council election at Durgapur, Netrokona. The HCD declared that the EC has no jurisdiction to direct re-poll after the result has been announced in an election unless it is satisfied that the interference in the election is of such extent that the election result cannot be determined. The EC shall not cancel the announced result and declare a re-poll for allegations of irregularities alone.

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