

YEAR-END LAW REVIEW

Looking Back at the Laws ENACTED IN 2023

A total of 50 new laws were enacted by the parliament on a wide range of areas in 2023. Law making in 2023 was by and large characterised by a reform spirit (i.e., reforming old laws), devising welfare schemes, and defining new offences. Few notable ones are discussed in this piece.

RAFID AZAD SAUMIK

2023 was a year filled with new legislation. A total of 50 new laws were enacted by the parliament on a wide range of areas. Law making in 2023 was by and large characterised by a reform spirit (i.e., reforming old laws), devising welfare schemes, and defining new offences. Few notable ones are discussed in this piece.

Family Courts Act 2023

The new Act, much like its predecessor, the Family Courts Ordinance 1985, regulates the procedures of the family courts in matters relating to divorce, restitution of conjugal rights, dower, maintenance, and guardianship and custody of children as per section 5 of the Act. In terms of significant changes, the new Act allows for amendment of the plaint and written statement under section 9. Moreover, family appellate courts have been established under section 18 consisting of a District Judge in each court.

Cyber Security Act 2023

Cyber Security Act 2023 (CSA) was passed to replace the much criticised Digital Security Act 2018 (DSA). However, the Act hardly brought any significant change or addressed the major concerns pertaining to the DSA. Some of the offences have been made bailable like the offence of hurting religious sentiment (section 28 of both Acts), and the penalties of certain offences have been reduced e.g., the highest punishment for defamation (section 29 of both Acts) is now a maximum fine of 25 lac taka, which previously was 3 years imprisonment, fine not exceeding 5 lac takas, or both. Unfortunately, the most controversial aspects of the DSA remain the same in the new Act e.g., law enforcement agency's discretionary authority to search and arrest without a warrant (section 42 of CSA).

Bank Company (Amendment) Act 2023

This Act was enacted to amend the Bank Company Act 1991 (BCA). Firstly, as per section 15AA, no person can occupy the seat of a director of a bank-company for more

than 12 years consecutively. Previously, the highest tenure was nine years. Secondly, the amendment created a special category of defaulter borrowers, namely, 'willful defaulter borrower' under section 5AAAA of the BCA. Moreover, section 27B of the BCA mandates that every bank company or financial institution shall send the list of 'willful defaulter borrowers' to the Bangladesh Bank.

Land Crime Prevention and Remedy Act 2023

The fundamental purpose of enacting this Act is to ensure the rights of the actual owner of land and dispose of land-related issues rapidly. The new legislation has prescribed punishments for certain acts defined as offences. For instance, if someone performs any fraudulent act related to land, the highest punishment prescribed for it is 7 years imprisonment and fines as per section 4 of the Act. Whereas the punishment for land-related forgery is again 7 years imprisonment and fines as per section 5. A controversial aspect of this Act is that it empowered the executive magistrates to perform judicial functions under sections 8 and 22 of the Act.

Universal Pension Management Act 2023

The purposes of the Act, amongst others, are to bring the elderly population of the country under a social safety net and thereby safeguard their well-being. Every citizen of the country, including expatriates, aged 18-50, and even people aged above 50 (under special considerations) can participate in the universal pension scheme as per section 14(l) (a). Moreover, section 14(l)(b) mandates that contributors (*chadadata*) have to contribute (*chada*) for at least ten years before they qualify to receive the monthly benefit starting from when they become 60. However, if the contributor dies before contributing for at least ten consecutive years, the nominee of the contributor will receive the contributed amount with interest (section 14(l)(l)).

Land Development Tax Act 2023

Firstly, the new Act is effective across the

entire country except the three Hilly Districts of Chittagong (section 1(2)). Secondly, section 3(3) mandates that for agricultural lands, the land development tax rate and conditions will remain the same—irrespective of where the land is situated. Moreover, as per section 3(2), no tax needs to be given if a person or his family does not own more than 25 bighas of agricultural land. On the other hand, section 4 mentions that to determine the land development tax rate of non-agricultural lands, they can be divided into multiple categories based on their value/quality (*maan*) and usage.

Income-tax Act 2023

One of the most significant changes was brought this year by the new Tax Act repealing Income-tax Ordinance 1984. The new Act brought an array of significant changes to laws relating to tax and gave rise to discussions both in their favour and against. Out of the many significant changes, one example is that as per section 174, where any assessee fails to fulfil his obligation to submit the tax return within Tax Day, a delay interest at the rate of 4% per month will be imposed on him, which previously stood at only 2% (73A of the ITO).

Land Reforms Act 2023

Section 4 of the new Act forbids ownership of new agricultural land by any individual or family who already owns more than sixty bighas of agricultural land subject to a few exceptions. Moreover, those who own less than sixty bighas of agricultural land can only acquire so much as not to exceed sixty bighas. However, if any person purchases any new agricultural land violating the provision, such land will be acquired by the government without any compensation. Additionally, section 19 prescribes a punishment of a maximum one lac taka fine, one month of simple imprisonment, or both for violation of any provision of the Act.

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NEW LAW

Analysing the Universal Pension Management Act 2023

LAW DESK

Social safety net programmes to protect the vulnerable population are not a new concept. However, in the context of Bangladesh, the Universal Pension Management Act 2023 is quite a novel (and laudable) initiative. In this write-up, we will focus on the important aspects of the Act as well as compare it with the International Labour Organisation's (ILO) multi-tier pension model.

The essential purpose of the Act, according to the preamble, is to create a sustainable and well-organised safety net for the elderly population of the country. Firstly, section 14(l) mentions that any citizen of the country, including expatriates, can choose to participate in the scheme as long as he is aged between 18-50 years. Even those aged above 50 years, can participate in the scheme under special considerations and will start receiving the monthly pension after contributing (providing '*chada*') for at least 10 years (section 14(l)(a)). However, section 14(2) has excluded from the scheme those who work at governmental, semi-governmental, or autonomous institutions, until a notification in the official gazette is published by the government.

Secondly, another requirement for availing the benefits is that the pensioner must contribute consecutively for at least 10 years before receiving the monthly benefits as per section 14(l)(b). Section 14(l)(l) further explains that if a pensioner dies before contributing for at least 10 consecutive years, the nominee will receive the money contributed thus far with interest.

Thirdly, generally, the pensioner will start receiving the pension benefits after he turns 60 and will continue to receive the same until he dies. However, in case he dies before turning 75, his nominee will continue to receive the benefits until the pensioner would have become 75 if he were alive (section 14(l)(k)).

Additionally, if a pensioner wants to withdraw the money at once, section 14(l)(m) provides that he can take a loan of, at best, 50% of the deposited money and pay it back with fixed fees. Another interesting fact about the monthly pension is that no tax needs to be paid on it (section 1(l)(n)).

Currently, four packages have been launched – Progoti, Surokkha, Samata, and Prabash. The packages are for private sector employees, self-employed and informal sector workers, people living below the poverty lines, and expatriate Bangladeshi workers, respectively. The amount of monthly pension that will be given depends on which package the pensioner picks or qualifies for, the amount of monthly contribution (*chada*), and for how long he contributes.

Although such an initiative is certainly applaudable, it is not without concerns. According to ILO's recommendation, a multi-tier pension system, which is different from that of ours, is ideal because it incorporates within the safety net those people who cannot be expected to make any monthly contribution. Such a plan suggests, amongst others, that all persons, irrespective of their contribution, shall be given at least some pension benefits. This way the prime objective of such schemes can be truly realised.



YEAR-END JUDGMENT REVIEW

Notable Decisions of the Supreme Court of Bangladesh

PARBAN CHAKMA and SADIKHA NOUSHEEN

In view of the end of 2023, the write-up compiles certain landmark decisions that were handed down by the Supreme Court of Bangladesh last year.

Mothers to be recognised as legal guardians of children

On 24 January 2023, the High Court Division (HCD) delivered a landmark decision on legal guardianship of the children. It is now sufficient to fill out the Student Information Forms (SIF) by providing mother's name only. Bangladesh Legal Aid and Services Trust, Bangladesh Mahila Parishad and Nari Paksha jointly filed a writ petition against the state citing public interest. The court further ordered the education boards to submit a report laying out where mentioning both parents name is compulsory and what measures have been taken if eligible students

are unable to mention their father's names.

Ensuring prisoners' right to health care

The HCD observed that inmates have the right to receive healthcare, and it is imperative to furnish them with necessary services in this regard. This holding was handed down on 24 January 2023. Deciding on a writ petition challenging the unfilled positions of physicians in prisons, the HCD directed the relevant authorities to recruit physicians for the unoccupied positions in prisons nationwide. The Court also expressed discontent with the tardiness in the recruitment of doctors in prisons.

Disclosing marital status of students

On 16 February 2023, the HCD declared that students should not be forced by the authority to reveal their marital status during admission in educational institutions. The decision followed a writ petition inspired by an incident where a survivor of gender-based violence



was unable to fill out the admission form without disclosing her marital status. The court further directed the government to take necessary steps and formulate policies regarding the matter.

Setting up breastfeeding corners in public places

The HCD on 2 April 2023, delivered a landmark verdict by ordering the concerned government ministries to take immediate actions to set up breastfeeding corners in public places e.g., railway stations, bus

stops, airports, workplaces etc. The HCD emphasised the Prime Minister's 2009 directive to establish breastfeeding corners in all public and private workplaces to ensure flexible and safe environment for mothers and babies alike.

Police accountability to explain in cases of custodial torture

In July 2023, the HCD noted that in cases when an individual sustains injuries while in police custody, it is the responsibility of the police officer to provide an explanation for

how an uninjured person came to be harmed while under their care. The court further underlined that torture committed while in police custody is the most grievous form of criminal act within a civilised society. When acts of wrongdoing are permitted to continue without consequences, it serves as an incentive for criminals and leads to deterioration of society's trust in the legal and justice system.

Directions to implement anti-bullying policy

In August 2023, the HCD ordered the relevant authorities to disseminate and enforce the anti-bullying policy, published by the education ministry, in order to safeguard children from bullying at all educational institutions. The Education Secretary was instructed to distribute the gazette, which contains the Policy for the Prevention of Bullying and Ragging in Educational Institutions 2023 to all educational institutions. The court has instructed the education ministry to promptly establish an anti-bullying committee and assign a counsellor to each academic institution within a six-month timeframe. The purpose of this initiative is to mitigate instances of verbal bullying, physical abuse, and cyberbullying in educational institutes.

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