

LAW OPINION

The evolving role of corporate legal teams in business success

Acknowledging the pivotal contribution of in-house legal counsel to corporate governance and compliance is crucial for organisational success. It is imperative that regulatory bodies and the government proactively take steps to establish comprehensive guidelines for corporate legal practices.

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In the realm of day-to-day legal matters within private organisations, the traditional practice of appointing in-house legal counsel has been the norm, and a vast number of lawyers and advocates are actively engaged in this domain. At present, corporate lawyers are actively playing vital role in shaping decision-making processes in such private enterprises. Amid the dynamic corporate governance landscape, legal teams are no longer solely seen as guardians of compliance; they actively contribute to the mitigation of legal consequences and the enforcement of established norms. This shift is attracting more law students and apprentice lawyers toward envisioning their professional futures within corporate legal practice.

Generally, corporate legal teams provide quality legal advice, protect the business from risk, and enable enterprise goals, etc. However, merely accomplishing these goals falls short of portraying the legal department as a true partner actively driving the business forward.

Some legal teams, trapped in a conventional mindset, grapple with rigid adherence to precedent, hindering their agility in offering tailored solutions to the diverse challenges of the modern business landscape. Simultaneously, certain organisations or business teams prioritise business objectives over compliance, creating obstacles for legal teams trying to integrate effectively.

Today's lawyers are navigating complex and uncertain times as their profession rapidly transforms. If a corporate legal team is only sharing metrics around spending, then it is promoting itself primarily as a cost centre, understating its true worth, and undermining its function as a strategic partner to the rest of the business. The Future Ready Lawyer Survey 2023, conducted by Wolters Kluwer finds the legal industry navigating a period of unprecedented change, in which social and technological trends are transforming it like never before. According to the survey, key trends expected to have a significant impact on legal organisations in the next few years are growing complexity within compliance areas, increasing importance of legal technology, the growing impact of generative AI, coping with increased volume and complexity of information and meeting changing client/company leadership expectations.

According to the survey conducted by



the Thomson Reuters Institute, the delivery of legal advice is crucial. Corporate legal team operating with a more commercial mindset are proactive in ensuring that advice is presented as a course of action, rather than as one option among many, delivered in business-ready language, and presented in the context of the wider business goals. Most importantly, the legal department is sufficiently embedded in the business so they can proactively suggest new legal opportunities and strategies to their business colleagues. Crucially, corporate legal teams need to demonstrate their success to senior leadership and the board.

Corporate legal teams must acknowledge that in an era of rapid change and complex challenges, relying solely on traditional approaches can impede the legal system's adaptability. In *The Bramble Bush: On Our Law and Its Study*, the author, Karl N. Llewellyn, underscores the importance of understanding the underlying principles and purposes of the law rather than just memorising rules,

using the metaphor of the "bramble bush" to convey the multifaceted nature of legal issues, highlighting the need for a flexible and analytical approach to understanding law. The 2021 UK Supreme Court ruling in *Uber Technologies, Inc. v Aslam & Others.*, classifying drivers as workers, further highlights the need for contextual analysis.

Acknowledging the pivotal contribution of in-house legal counsel to corporate governance and compliance is crucial for organisational success. It is imperative that regulatory bodies and the government proactively take steps to establish comprehensive guidelines for corporate legal practices. Adhering to the High Court Division's guidance to amend the Company Act 1994, by mandating companies to appoint a permanent legal officer and a consultant experienced in company law could be a vital stride towards reinforcing the evolving role of corporate legal teams in fostering business prosperity.

The writer is corporate legal practitioner.



ANIMAL RIGHTS

Navigating the petition on cruelty against elephants

AFFAN ABRAR AMIN

A petition to ban elephant cruelty in Bangladesh has sparked much legal and ethical debates. In this write-up, the writer addresses and maps the relevant legal discussions relating to cruelty to elephants, and other animals in general.

Broadly, the Animal Welfare Act 2019 and the Wildlife (Conservation and Security) Act 2012 govern animal welfare in Bangladesh. Despite this, questions remain about insufficient enforcement and frequent violations of these laws. That is why the People for Animal Welfare (PAW) foundation and actor Jaya Ahsan filed this writ petition to put an end to cruelty to elephants.

The petition seeks to restrict the use of elephants in social events, street extortion, and circuses by identifying ethical problems and potential violations of the existing laws. Of late,

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after preliminary hearing of the petition, the HCD has issued a rule asking why steps should not be taken to stop cruelty to animals in the name of animal training. The court also stayed the issuance of new licenses and renewal of old licenses for rearing wild animals and elephants in the interim period and asked why the same should not be declared illegal.

Indeed, riding on elephants must be prohibited since elephants' backs are not meant to support substantial weight. As a result, pressure from riders, especially when saddles and other equipment are used can cause pain, arthritis, and spinal curvature to the animal. Elephants' normal movements and socialising, swimming, and foraging are restricted when carrying humans, which negatively affects the elephants' general well-being. Elephants that are raised for riding are frequently young, prematurely taken from their mothers, and put through rigorous training that injures them both physically and mentally.

Now, we may look at other countries' judicial developments relating to elephants' rights. Firstly, in 2018, the Supreme Court of India banned the use of *ankush* (sharp hooks) on elephants in circuses and performances, citing animal cruelty concerns and violations of the Prevention of Cruelty to Animals Act 1960. In Sri Lanka, in 2019, the Sri Lankan government banned the use of elephants in parades and other public events, citing concerns about stress and fatigue caused by long journeys and loud noises. In Nepal, the Supreme Court banned the use of elephants in street begging in 2017, citing violations of their Animal Welfare Act. In Thailand in the year 2015, following a series of lawsuits and public pressure, elephant riding tours were banned in Chiang Mai province due to concerns about animal welfare and exploitation. The same year in Tanzania, a government task force recommended phasing out elephant riding in national parks due to concerns both about animal welfare and the potential for injuries to tourists.

Now, to play the role of devil's advocate, despite the case's focus on legal interpretations, alternative views must be acknowledged. Elephant owners may be economically dependent on these cultural behaviors and traditions since they are deeply rooted in society. While adjudicating on this case, all relevant matters must be considered properly.

To conclude, this writ petition has the potential of influencing future legal challenges and legislative reviews pertaining to animal welfare and responsible human-elephant relations. It can have substantial impact shaping the jurisprudence pertaining to animal rights as well as interpretations of laws that are already in place. Almost half of the total number of elephants are in captivity in Bangladesh. Their fate is inextricably linked with the petition's fate.

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FOR YOUR INFORMATION

Negligence in medical sector and the legal remedies

IFAT TASNIM

In Bangladesh, medical negligence is a day-to-day instance now from wrong diagnoses to surgical failures frequently harming or even killing patients. Public outrage has been prompted by several recent occurrences, including the unfortunate deaths of a five-year-old child at United Hospital after his circumcision, Mahbuba Akter Akhi, an expectant mother, at Central Hospital, and Rafida Khan Raifa, a patient at Max Hospital in Chittagong. The list keeps getting longer, and the situation is made worse by the healthcare personnel's lack of responsibility, profit-driven mentality, the growth of



Medical negligence in Bangladesh is increasing due to the lack of accountability among healthcare professionals. Patients face challenges accessing justice, including the discharging of burden of proof, lengthy legal processes, and limited resources for legal assistance. To get rid of these challenges, a comprehensive legislation is required defining medical negligence and establishing compensation standards and updates to existing laws and regulations.

unlicensed clinics, and the presence of incompetent practitioners.

To simplify, medical malpractice or negligence refers to any action or inaction on the part of a licensed health care provider that deviates from the generally recognised standard of care and results in harm or death to the patient.

To prove medical negligence, the plaintiff must show four things: (1) the physician had a duty of care, (2) the physician failed to meet the standard of care, (3) the patient suffered an injury, and (4) the injury was directly caused by the physician's actions or inactions. It is the plaintiff's responsibility to prove these points in a malpractice lawsuit.

Bangladesh has laws covering healthcare, but victims seeking remedies in court face difficulties as there is no single statute that specifically deals with medical negligence. People now seek remedies through writ petitions, invoking the torts channel. However, there are several laws that are related to medical negligence, and we can use them to get remedies as well.

Patients or their relatives in Bangladesh have the option to file cases for medical negligence concerning negligently causing death (section 304A), causing a miscarriage (section 312), and sections 336 to 338 of the Penal Code 1860. When it comes to complaints of medical negligence, medical professionals in Bangladesh may face a maximum sentence of seven years in prison. Yet, provisions like section 88, which discharges them of liability if harm was done by accident, in honesty, and with the victim's consent, often protect them from legal action.

Furthermore, to recover damages for medical negligence, civil court lawsuits may also be brought. Patients' rights are covered under the Consumers' Right Protection Act 2009, which considers patients as consumers. Particularly focusing on medical negligence, section 53 of the Act imposes penalties such as fines and jail imprisonment. On the other hand, the magistrate can only act if a charge sheet is filed within 90 days, and complaints must be filed with the designated person within 30 days.

Furthermore, The Bangladesh Medical and Dental Council Act, 2010 makes the following offenses punishable: (i) making false claims to be medical or dental professionals; (ii) using names or symbols that could lead one to believe they are professionals; and (iii) prescribing medication that has not been authorised by the government.

There are several legal routes via which medical negligence in Bangladesh can be addressed. By recognising medical care as a contractual deal, patients who experience harm because of a doctor's negligence may seek remedy under the Contract Act 1872 as well.

For medical negligence situations in Bangladesh, the High Court Division of Supreme Court of Bangladesh is a significant remedy route, allowing victims to bring Public Interest Litigation (PIL) or other writ petitions before the High Court Division (HCD) under Article 102 of the Constitution. There are still issues, such as the need for *locus standi* to seek a remedy, and the lack of willingness of the government to cooperate with the court during a proceeding. Judicial review facilitates group action in resolving medical malpractice matters despite these obstacles.

To conclude, medical negligence in Bangladesh is increasing due to the lack of accountability among healthcare professionals. Patients face challenges accessing justice, including the discharging of burden of proof, lengthy legal processes, and limited resources for legal assistance. To get rid of these challenges, a comprehensive legislation is required defining medical negligence and establishing compensation standards and updates to existing laws and regulations.

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