Regd. DA-23

Mobile : 017-1168-8860
Tel : 831-5193; 935-6928
831-2503

Vol. LXVI December & Index 2014

THE DHAKA LAW REPORTS

(A MONTHLY LAW JOURNAL)

Founder Editor : Late Obaidul Huq Chowdhury

Editor : Md Khurshid Alam Khan, Advocate, Supreme Court

Reporter : Md Nawab Ali, Advocate, Supreme Court

Kazi Md Arifur Rahman, Advocate, Supreme Court, High Court Division

Twelfth Issue & Index

Cit 66 DLR (AD); 66 DLR etc

CONTENTS

Editorial and Journal	-	Bangladesh Statutes:	
Appellate Division	289-320	Acts, Ordinances, etc.	169-176
High Court Division	641-664		

	DLR PUBLICATIONS :	White Print Taka	News Print Taka
1	**Stamp Act** (3rd Edition) 2014	300	*
2	**Contract Act** (4th Edition) 2014	500	*
3	**Civil Reference** (2005-2013) 2014	500	*
4	**Transfer of Property Act** (4th Edition) 2013	700	*
5	**24-Year Criminal Digest** (1988-2011) 2012	600	*
6	**Limitation Act** (3rd Edition) 2009	700	*
7	**Code of Criminal Procedure** (1st Edition) 2009	1,200	*
8	**Code of Civil Procedure** (1st Edition) 2008	1,000	*
9	**General Clauses Act** (3rd Edition) 2007	150	*
10	**Specific Relief Act** (5th Edition) 2007	300	*
11	**Statutory Laws on Service** (2nd Edition) 2006	500	*
12	**Criminal Reference** (2000-2005) 2006	200	*
13	Hand Book of Muslim Family Laws (6th Edition) 2005	550	*
14	20-Year Civil Digest 2005	700	*
15	Registration Act (3rd Edition) 2005	500	*
16	Evidence Act (4th Edition) 2004	500	*
17	Penal Code (1st Edition) 2003	800	*
18	Law on Bail (3rd Edition) 2003	250	*
19	Special Powers Act & Anti-Corruption Commission Act (8th Edition), 2007	650	*
20	Arbitration Act (3rd Edition) 2001	200	*

For 2014 : (1) Annual subscription paid in advance is Taka 600 for 12 issues (2) Annual subscription not paid in advance is Taka 700 for 12 issues. (3) For direct delivery price of current single issue is Taka 50.

(3B) of the Code allows for further investigation and submission of a further report with further evidence, oral or documentary in respect of an offence, even after a report had been forwarded to the Magistrate under section 173(1) of the Code. Hence, in this case, if it is felt necessary, a further investigation may be carried out and any other person or persons implicated as accused for the offence, if *prima-facie* evidence is found against him/her/them.

With the above observations, this criminal petition for leave to appeal is disposed of.

Ed.

APPELLATE DIVISION
(Criminal)

Md Muzammel Hossain CJ
Surendra Kumar Sinha J
Md Abdul Wahhab Miah J
Syed Mahmud Hossain J
AHM Shamsuddin Choudhury J

Judgment
December 12th, 2013.

Abdul Quader Mollah .....Petitioner
(In both the cases)

vs

Chief Prosecutor, International Crimes Tribunal, Dhaka.....
.....Respondent
(In both the cases)

International Crimes (Tribuanl) Act (XIX of 1973)
Review

The review petitions are maintainable. A review petition should not be equated with an appeal. In criminal matters, the power of review must be limited to an error which have a material, real ground on the face of the case. The finality attached to a judgment at the apex level of the judicial hierarchy upon a full fledged hearing of the parties should be re-examined in exceptional cases and a review is not permissible to embark upon a reiteration of the same points. .....(77)

Review is maintainable

A review of judgment in a case is a serious step and the court is reluctant to invoke its power—it is only where a glaring omission or patent mistake or grave error has crept in by judicial fallibility. Despite there being no provision in the Act of 1973 for review from the judgment of this Division on appeal, securing ends of justice a review is maintainable in exercise of the inherent powers from the judgment of this Division subject to the condition that where the error is so apparent and patent that review is necessary to avoid miscarriage of justice and not otherwise, and the execution of a sentence shall be suspended till the disposal of the review petition if the same is filed within the period. .....(28)

Period of Limitation is 15 days

The period of limitation is fifteen days and the review petition should be disposed of on priority basis. If a warrant of death for execution is communicated to the jail authority after it is confirmed or imposed by this Division, the condemned prisoner should be afforded an opportunity to file a mercy petition and he should also be afforded an opportunity to meet his near ones before the execution of the sentence. If the jail authority fixes a date for execution of the sentence, the same cannot be taken as has been done hurriedly.

Sentence cannot be executed

If any review or mercy petition is filed or

*Criminal Review Petition Nos. 17-18 of 2013.

(From the judgment and order dated 17-9-2013 passed by the Appellate Division in Criminal Appeal Nos.24-25 of 2013)

pending, the sentence cannot be executed unless the petitions are disposed of. .....(77)

Period of limitation for filing review

Since the scheme and object of the law manifest that the proceedings shall be concluded expeditiously, the period of limitation for filing such review petition shall be as early as possible. As per rules of this Division review petitions shall be filed within thirty days but this period of limitation is not only inconsistent with the provisions of the Act but also not applicable. Fifteen days' time will be a reasonable time. This will secure the ends of justice. .....(27)

Right of Appeal

When a right of appeal is conferred by a statute it becomes a vested right. The right of appeal, where it exists, is a matter of substance, not of procedure. There is inherent right to a litigant to a judicial proceeding and it requires no authority of law, to see the correctness of the judgment.

If the law contains no specific provisions to meet the necessity of the case the inherent power of a court merely saves by expressly preserving to the court which is both a court of equity and law, to act according to justice, equity and good conscience and make such orders as may be necessary for ends of justice or to prevent the abuse of the process of the court. It is an enabling provision by virtue of which inherent powers have been vested in a court so that it does not find itself helpless for administering justice. The court can use its inherent powers to fill up the lacuna left by the legislature while enacting law or where the legislature is unable to foresee any circumstance which may arise in a particular case. There is a power to make such order as may be necessary for the ends of justice and to prevent the abuse of the process of the Tribunal. The inherent powers of a Tribunal are in addition to and complementary to the powers expressly conferred upon it by other provisions of the Act of 1973. They are not intended to enable the Tribunal to create rights for the parties, but they are meant to enable the Tribunal to pass such orders for ends of justice as may be necessary. Considering the rights which are conferred upon the parties by substantive law to prevent abuse of the process of law, it is the duty of all Tribunals to correct the decisions which run counter to the law. .....(11 & 14)

Constitution of Bangladesh, 1972
Article 104

Article 104 can be invoked to do complete justice only in a situation where justice cannot be effectively and appropriately dispensed with by the existing provisions of law. It is now established that where the question in dispute can be settled only through the provisions of a statute, its inherent powers cannot be exercised--it is a corrective as well as residuary, supplementary and complementary to the powers specially conferred by the statute. ...(24)

Jail Code (IX of 1894)
Rule 979

This Division passed the death sentence and after the judgment, the Tribunal communicated the sentence. There is no provision in this rule that if the communication of the sentence is made by an inferior Tribunal, it will be illegal or void. This is merely an irregularity and this will not be said to be ineffective. The legislature has used the expression *'will be'* in respect of communication of the sentence. So, if the inferior Tribunal communicates the warrant as per direction of this Division, it cannot be said that the warrant was inoperative. This is a mere technical formality. .....(76)

AP vs LVA Dikshitulu, AIR 1979 SC 193; CIT vs National Jaj Traders, AIR 1980 SC 485; East Pakistan vs Sarafatullah, PLD 1970 (SC) 514; India vs Pradeep Kumari, AIR 1995 SC 2259; Mahadeo Lal vs Administrator General of West Bengal, AIR 1960 SC 936; AIR Karmachari Sangha vs AIR Ltd., AIR 1988 SC 1325; Seraj Uddin Ahmed vs AKM Saiful Alam, 56 DLR (AD) 41; M. Amir Khan vs Collector Estate Duty, 14 DLR (SC) 276; Northwest Frontier Province vs Suraj Narain Anand, PLD 1949 PC 1; Poonam vs Sumit Tanwar, (2010) 4 SCC 460; Pakistan vs Akhlaque Hossain, 17 DLR (SC) 545; Major Bazlul Huda vs State, 63 DLR (AD) 62; Messrs Thungabhandra Industries Limited vs The Government of Andhra Pradesh, AIR 1964 SC 1372; Sheonandan Paswan vs State of Bihar, AIR 1983 SC 1125; Secretary, Ministry of Finance vs Md Masdar Hossain, 21 BLD (AD) 126 = 7 BLC (AD) 92; Ershad Ali Shikder vs State, 56 DLR (AD) 87; Ekushey Television Ltd. vs Dr Chowdhury Mahmood Hasan, 55 DLR (AD) 26; Mohd. Amin Khan vs Controller of Estate Duty, PLD 1962 (SC) 335; Zulfiqur Ali Bhutto vs State, PLD 1979 SC 741; Mohd. Hussain vs Ahamad Khan, 1971 SCMR 29; Fazle Karim vs Government of Bangladesh, 48 DLR (AD) 178; Tarique Rahman vs Government of Bangladesh, 63 DLR (AD) 162; Modern India Caterers vs Lieutenant Governor, 1980 SC 674; GL Gupta vs DN Mehta, AIR 1971 SC 2162; Ram Narain vs State of UP, 1970 (3) SCC 493 and Madho Ram vs State of UP, AIR 1973 SC 467 ref.

Khandker Mahbub Hossain, Senior Advocate (with Abdur Razzaq, Senior Advocate, instructed by Zainul Abedin, Advocate-on-Record—For the Petitioner. (In both the cases)

Mahbubey Alam, Attorney-General (with MK Rahman, Additional Attorney-General, Murad Reza, Additional Attorney-General and Momtaz Uddin Fakir, Additional Attorney-General, instructed by Syed Mahbubur Rahman, Advocate-on-Record—For the Respondent. (In both the cases)

Judgment

Surendra Kumar Sinha J: These petitions under Article 105 of the Constitution are for review of the judgments of this Division in Criminal Appeal Nos.24 and 25 of 2013. The former appeal was preferred by the Government against inadequacy of sentence passed by the International Crimes Tribunal No.2, Dhaka in ICT-BD Case No.2 of 2012, and acquittal in respect of charge No.4; the latter appeal was preferred by the convict Abdul Quader Mollah against his conviction and sentence passed by the said Tribunal.

2. Abdul Quader Mollah was arraigned before the said Tribunal to face six counts of charges. Charge No.1 is in respect of killing of Pallab, a resident of Taltala, Block-B, Section-11, Mirpur and a student of Mirpur Bangla College; charge No.2 was for the murder of poet Meherunnessa and other members of her family; charge No.3 was for the killing of Khandaker Abu Taleb, an imminent journalist and a lawyer, who is a resident of Section-1, Block-D, Road No.2, Plot No.13, Mirpur; charge No.4 was relating to mass killing at Bhawal Khan Bari and Ghotarchar (Shahid Nagar) of unarmed innocent civilians; charge No.5 was also relating to mass killing of 344 civilians of village Alubdi, (Pallabi, Mirpur) and the last charge was for the killing of Hazrat Ali Laskar, his wife Amena and two minor daughters Khadiza and Tahmina, rape of his three daughters and the killing of his two years old son. All the above incidents took place when the people of the country were fighting against the occupation army of Pakistan for liberation of the country. The petitioner, an activist of Islamic Chhatra Sangha not only collaborated with the anti-liberation force but also directly participated in the killing, rape and other nefarious activities with the occupation army and the local Biharis, a community of Urdu speaking minority, ostensible tools of

their fellow Urdu Speakers of West Pakistani army backed Pakistani occupation army and involved in the atrocities.

3. These offences were perpetrated in Bangladesh following the onslaught of 'Operation Search Light' from the night following 25th March, 1971 to 16th December, 1971, by the Pakistani occupation army and their collaborators after the declaration of independence of the country by late Sheikh Mujibur Rahman. There were wide spread atrocities like killing of three million people, rape, arson and looting of unarmed civilians, forcing 10 million people to take shelter in the neighbouring country, India. The massacre ravaged Dhaka and other areas of Bangladesh, a display of stark cruelty, more merciless than the massacres by Genghis Khan or at Jallianwala Bagh by the British General Dyer. They did not spare the university teachers, intellectuals and the minority community at large. The International Crimes (Tribunals) Act, 1973 (XIX of 1973) was promulgated for the purpose of detention, prosecution and punishment of persons committing atrocities during this period. The prosecution has examined twelve witnesses and the defence examined six. The Tribunal convicted the petitioner in respect of charge Nos.1, 2, 3, 5 and 6 and sentenced him to 15 years rigorous imprisonment in respect of charge Nos.1, 3 and 5 and imprisonment for life in respect of other counts. It, however, found the petitioner not guilty of charge No.4 and acquitted him accordingly.

4. This Division upon hearing the appeals held that Criminal Appeal No.24 of 2013 was maintainable, but allowed it by majority by setting aside the judgment and order of acquittal of charge No.4, and found him guilty of the said charge and sentenced him to imprisonment for life. It also sentenced him to death by majority in respect of charge No.6. This Division also dismissed the other appeal filed by the petitioner Abdul Quader Mollah unanimously and maintained his conviction in respect of charge No.6. It, however, maintained his conviction and sentence in respect of charge Nos.1, 2, 3 and 5 by majority.

5. In the petitions though the learned counsel has taken ground Nos.9 and 12 respectively, he has pressed only three points presumably realizing that it would rather be a futile attempt to press other points since those points were raised and decided by this Division while disposing of the appeals. The first point urged is that this Division has committed error of law on the face of the record in failing to appreciate the material contradictions between the depositions of the witnesses and their statements made to the investigation officer of the case and that if such contradictions are taken into consideration, the conviction of the petitioner could not be sustained, not to speak of awarding him a sentence of death. The second point urged on behalf of the petitioner is that the warrant for execution of the sentence was issued by the Tribunal in violation of rule 979 of the Jail Code, inasmuch as, the sentence was given by this Division and therefore, the sentence could not be executed unless it was communicated by an officer of this Division, which is an error of law. The other point raised on behalf of the petitioner is that in exercise of its inherent powers under Article 104, this Division ought to have afforded the petitioner an opportunity to file a mercy petition in accordance with rule 991(I) and 991(VI) of the Jail Code.

6. Upon hearing the learned counsel it appears that the learned counsel has practically taken only one point from the impugned judgment of this Division and other points are consequences flowing therefrom, such as, the privileges that are available to the petitioner under the Jail Code, and a technical point as to the Tribunal's propriety in communicating the warrant to execute the sentence. Before entering into the merit of the matter,

the learned Attorney General has raised a preliminary point about the maintainability of review petitions. According to him, in view of Article 47A(2) of the Constitution, review petitions are not maintainable from the judgment of this Division, in the absence of any provision for review in the Act XIX of 1973. It is contended that against a conviction or sentence or an order of acquittal or inadequacy of sentence, there is only one remedy of appeal available to a convicted person and the Government and the informant and the complainant, as the case may be, can prefer an appeal under section 21 of the Act of 1973 before this Division. After the disposal of the appeals, the judgment has attained finality and it cannot be challenged by resorting to the constitutional provision, which has totally been ousted by the Constitution (Fifteenth Amendment) Act, 2011 and the Constitution (First Amendment) Act, 1973 respectively. It is added that no person to whom the Act of 1973 applies shall have the right to move this Division for any of the remedies available under the Constitution other than the one provided in the Act of 1973. On the other hand, the learned counsel for the petitioner has submitted that the review petition is maintainable in view of Article 105 of the Constitution read with Order XXVI of the Supreme Court of Bangladesh (Appellate Division) Rules, 1998.

7. When a preliminary objection is raised about the maintainability of a petition or appeal, the court is required to dispose of that point before entering into the merit of the matter. It is because if the petition for review is not maintainable, it would be a futile attempt to enter into the merit of the matter causing wastage of the valuable times of the Court. There is no doubt that the Act of 1973 is a special law, but it is distinguishable from other special laws in operation because this piece of legislation has been protected in respect of detention, prosecution and punishment of any person, who is a member of any armed or defence or auxiliary forces or any individual, group of individuals or organization who is a prisoner of war for Genocide, Crimes against Humanity or War Crimes and other crimes under International Law. Under the Act-such person cannot challenge the legality of the proceedings on any of the grounds contained in Articles 26, 27, 28, 31, 35, 44 by resorting to Article 102 or other provisions of the Constitution. Sub-clause (2) of Article 47A debars an accused person who is being prosecuted or punished under the Act of 1973 to move the High Court Division for any of the relief(s) available under the Constitution other than the one provided in the Act.

8. The intention of safeguarding this law is obvious, it is promulgated for trial of a person who has committed offences of Crimes against Humanity or War Crimes and other crimes under International Law. There is however, no prohibition either expressly or by implication to move a review petition from the judgment of this Division on appeal from the judgment of the Tribunal. A plain reading of this non-obstante clause of the Constitution will manifest that a review petition from the judgment of this Division passed on appeal from the judgment of the Tribunal has not been ousted. Alternatively, it may be said that the power of this Division as the appellate forum to review its judgment has not been ousted either directly or indirectly by Article 47A(2). This will be evident from a close scrutiny of this provision and the Act of 1973.

9. A subtle analysis of the relevant provisions of the Act of 1973 is relevant for our consideration. Sub-section (3) of section 11 provides that the Tribunal shall—

a) confine the trial to an expeditious hearing of the issues raised by the charges.

b) take measures to prevent any action which may cause unreasonable delay, and

rule out irrelevant issues and statements.

10. This provision clearly manifests that the trial of a case should be concluded expeditiously, and the Tribunal shall guard that any irrelevant issue or statement should not be allowed to be raised which may cause unreasonable delay in the disposal of a case. Section 13 of the Act restricts adjournment of the trial of a case unless the Tribunal is of the opinion that the adjournment is necessary in the interest of justice, that is to say, the Tribunal shall not allow any unnecessary adjournment of the trial of a case. Even a time limit for disposal of an appeal has been specifically mentioned. Of course, this time limit is not mandatory. A combined reading of these provisions suggests the intention of the legislature that the trial of offences specified in the Act of 1973 should be concluded as early as possible. The object is obvious. There is already delay in undertaking the trial of the offenders of Crimes against Humanity, Genocide, War Crimes etc. because of political polarization in the country after the killing of Sheikh Mujibur Rahman. People of the country want that the perpetrators of these heinous offences should be brought to justice and that the real story of our liberation struggle should be reflected in our nation's history without distortion.

11. An appeal against a conviction or sentence or an order of acquittal is essentially continuation of the original proceedings and all provisions applicable to the trial of the proceedings are also applicable in an appeal. It is because a vested right in the categories of the persons mentioned in section 21 to avail of the remedy of appeal is given. This is a statutory right and the appeal is one in which the question will be whether the judgment of the Tribunal from which the appeal is sought was right on the materials which the Tribunal had before it. When a right of appeal is conferred by a statute it becomes a vested right. The right of appeal, where it exists, is a matter of substance, not of procedure. To say otherwise, it cannot be said that the appellate court cannot invoke its inherent power if it finds necessary to meet the ends of justice or to prevent the abuse of the process of the court. There is inherent right to a litigant to a judicial proceeding and it requires no authority of law, to see the correctness of the judgment.

12. In an appeal entire proceedings are before the appellate authority and it has power to review the entire materials on record subject to limitations prescribed. It has been observed in an unreported case in *Shiv Shakti Coop. Housing vs M/s. Swaraj Developers, Civil Appeal No.3489* of 2003 by the Supreme Court of India that 'an appeal is continuation of the proceedings; in effect the entire proceedings are before the appellate authority and it has power to review the evidence subject to statutory limitations prescribed ..... A right of appeal carries with it a right of rehearing in some way, as has been done in second appeals arising under the Code'. I find no reason to depart from the above view. If a party is affected by an order or judgment of the court, in the absence of specific provision for review, the court has inherent power to review its order or judgment. This Division can exercise inherent power as well. It is now established that inherent powers of the court can be exercised by a court of law at any stage of the proceedings.

13. We cannot overlook the fact that the primary function of the judiciary is to do justice between the parties who bring their causes before it. If the primary function of the court is to do justice in respect of causes brought before it, then on principle, it is difficult to accede to the proposition that in the absence of specific provision the court will shut its eyes even if a wrong or an error is detected in its judgment. To say otherwise, courts are meant for doing justice and must be

deemed to possess as a necessary corollary as inherent in their constitution all the powers to achieve the end and undo the wrong. It does not confer any additional jurisdiction on the court; it only recognises the inherent powers which it already possesses.

14. If the law contains no specific provisions to meet the necessity of the case the inherent power of a court merely saves by expressly preserving to the court which is both a court of equity and law, to act according to justice, equity and good conscience and make such orders as may be necessary for ends of justice or to prevent the abuse of the process of the court. It is an enabling provision by virtue of which inherent powers have been vested in a court so that it does not find itself helpless for administering justice. The court can use its inherent powers to fill up the lacuna left by the legislature while enacting law or where the legislature is unable to foresee any circumstance which may arise in a particular case. There is a power to make such order as may be necessary for the ends of justice and to prevent the abuse of the process of the Tribunal. The inherent powers of a Tribunal are in addition to and complementary to the powers expressly conferred upon it by other provisions of the Act of 1973. They are not intended to enable the Tribunal to create rights for the parties, but they are meant to enable the Tribunal to pass such orders for ends of justice as may be necessary. Considering the rights which are conferred upon the parties by substantive law to prevent abuse of the process of law, it is the duty of all Tribunals to correct the decisions which run counter to the law.

15. We are not unmindful that the duty of the Court is not to enlarge the scope of the legislation. A court of law cannot rewrite, recast, or reframe the legislation for the very good reason that it has no power to legislate. The power to legislate has not been conferred on a Tribunal or a Court. It cannot add words to a statute or read words into it which are not there. A Court shall decide what the law is and what it should be. A Court of course adopts a construction which will carry out the presumed intention of the legislature but cannot legislate itself.

16. The courts should not give beneficial construction where by giving such construction the court would virtually re-legislate a provision either by addition, alteration or substitution of words where the words used in a statute are capable of only one meaning from which the court may not depart; and when the provision is plain, unambiguous and does not give rise to any doubt as to its meaning. It has been observed in Chief Justice of *AP vs LVA Dikshitulu, AIR 1979 SC 193,* that where two alternative constructions are possible, the court must choose the one which would be in accord with other parts of the statute and ensure smooth, harmonious working and eschew the other which leads to absurdity, confusion or fiction, contradiction and conflict between its various provisions, or undermines or tends to defeat or destroy the basic scheme and purpose of the enactment.

17. There is a presumption that the authors of statutes intend results that are both rational and coherent and that human behaviour is guided by reason and purpose and seldom bizzare. It is, therefore, necessary to apply the principles of logic, both deductive and inductive, particularly in excluding from consideration facts and circumstances which are not relevant for determination of issues raised. ("The Role of Logic" in Reed Dickerson's 'The Interpretation and Application of Statutes'). Where, by use of clear and unequivocal language, capable of only one meaning, anything is enacted by the legislature, it may be enforced however harsh or absurd or contrary to common sense the result may be. However, where literal construction would defeat the obvious

intention of the legislature and would produce a wholly unreasonable reason, the court must do violence to the words so as to achieve that obvious intention and produce a rational result. *(CIT vs National Jaj Traders, AIR 1980 SC 485)* It is because, it may be presumed that the legislature does not intend any absurd result. If two interpretations of a provision is possible, the court will lean in favour of that construction which avoids absurdity and ensures smooth working of the system which the statute seeks to regulate.

18. It has been held in *East Pakistan vs Sarafatullah, PLD 1970 (SC) 514* that it is an established rule that the courts will adopt that construction which will remove the lacuna and advance the purpose and object of the statute. Purpose and policy of law cannot be defeated by dry literal construction of a provision of law. An interpretation which promotes justice and equity should be preferred such construction which would advance the policy of the legislation to extend the benefit rather than the one that curtails the benefit *(India vs Pradeep Kumari, AIR 1995 SC 2259)*. Where the usual meaning of the words do not convey the object or the intention of the legislature, a more extended meaning may be given to them. If in a legislation, the general object of which is to benefit a particular class of persons, any provision is ambiguous so that it is capable to two meaning, one of which is to preserve the benefit and the other to take away the benefit, the meaning which preserves the benefit should be adopted. References in this connection are the cases of *Mahadeo Lal vs Administrator General of West Bengal, AIR 1960 SC 936* and *AIR Karmachari Sangha vs AIR Ltd, AIR 1988 SC 1325.*

19. Mr. Razzaq submits that even if it is assumed that there is no provision under the Act or the Rules to file a review petition from the judgment of this Division, it can review its judgment for doing complete justice under Article 104 of the Constitution, and in appropriate cases, in order to meet the ends of justice or to prevent abuse of the process of the court, it can exercise its inherent powers. He has further submitted that apart from Article 104, this Division can invoke its inherent powers to review its judgment on the principle of justice, equity and good conscience. In support of his contention he has referred to the cases of *Seraj Uddin Ahmed vs AKM Saiful Alam, 56 DLR (AD) 41* and *M. Amir Khan vs Collector Estate Duty, 14 DLR (SC) 276.*

20. In the above cited case of Seraj Uddin Ahmed, a writ petition was filed challenging an order of cancellation of lease in respect of a plot of land in Mohammadpur Housing Estate and allotting the same to writ respondent Nos.7 and 8. The High Court Division upon hearing the parties made the rule absolute declaring the order of cancellation to have been issued without lawful authority. The allotees filed review petitions against the judgment of the High Court Division whose right to the plot was said to have been affected by the judgment. The High Court Division rejected the review petitions summarily observing that petitions for review from judgment passed in writ jurisdiction were not maintainable. This Division was of the view that the High Court Division was in error in holding the above view, inasmuch as, the court is competent to exercise its discretion in a case where party seeking review of the judgment of a particular court upon placing materials which if would have been before the court the same would have not been the one the court has made and, in such a situation, "the court for dispensation of justice is quite competent to recourse to a procedure, of which the same is the master, to advance the cause of justice as well as on the ground of equity and good conscience." The above view supports the views we have expressed in the preceding paragraphs.

21. In M. Amir Khan (supra), the question was whether a review petition is available in the absence of any guiding principles. The facts are that, five review petitions were filed under Article 161 of Pakistan's late Constitution. No Act has been passed nor the Supreme Court made any Rules to define or limit its power of review when the petitions were filed during the relevant time. The language of sub-article (3) of Article 163 of the late Constitution was couched in wide terms of the full extent of the power of review contemplated by the Constitution as under:

> "The Supreme Court shall have power to issue such directions, orders, decrees or writs as may be necessary for doing complete justice in any cause or matter pending before it.....".

22. It was held by Cornelius, CJ. that if the Supreme Court is vested with full power for doing complete justice, there is no reason why the exercise of that power would not be applicable only in respect of a matter coming up before the Supreme Court in the form of a decision by a High Court. There is no reason why that power in its full scope, should not also be applicable for the purpose of reviewing a judgment delivered by the Supreme Court itself; provided that there be necessity within the meaning of the expression 'complete justice' in exercise of that power. If any material irregularity, is found, and yet "there be no substantial injury consequent thereon, the exercise of the power of review to alter the judgment would not necessary be required. The irregularity must be of such a nature as converts the process from being one in aid of justice to a process that brings about justice". His lordship then approving a dictum of the Judicial Committee of the *Privy Council in Northwest Frontier Province vs Suraj Narain Anand, PLD 1949 PC 1,* held that the ascertainment of a breach by a mode of interpretation will not in all cases furnish good grounds for interference. For the interpretation of the Constitution and the laws is a function which is vested specifically in the superior courts of the country and while it is true that in doing so they will follow the generally recognized principles applicable to statutory interpretation, in elaboration of the rules contained in the interpretation of statutes. With the above findings, the review petitions were dismissed.

23. In appropriate cases, this Division on the doctrine of *ex debito justitiae* may pass any order by correcting mistakes in the judgment but inherent powers of this Division may be invoked only when there does not exist any other provision in that behalf. However, in presence of specific provisions, it cannot invoke its inherent powers under Article 104. This Division can invoke its inherent powers, since the exercise of such powers have not been prohibited by Article 47A(2). Though the Constitution has given wide power to this Division, it generally does not pass any order in contravention of or ignoring neither the statutory provisions nor the power is exercised merely on sympathy. This power is to be exercised sparingly in cases which cannot be effectively and appropriately tackled by the existing provisions of law or when the existing law cannot bring about complete justice between the parties.

24. Article 104 of the Constitution can be invoked to do complete justice only in a situation where justice cannot be effectively and appropriately dispensed with by the existing provisions of law. It is now established that where the question in dispute can be settled only through the provisions of a statute, its inherent powers cannot be exercised-it is a corrective as well as residuary, supplementary and complementary to the powers specially conferred by the statute. There is no doubt that this Division has ample power to give such directions as are necessary for ends of justice. This power has been recognized and exer-

cised, by issuing necessary directions to fill in the vacuum till such time the legislature steps in to cover the gap. This power is not restricted by statutory enactments but it should be used sparingly.

25. So this Division cannot ignore the substantive provisions of statute and pass orders concerning an issue which can be settled only through a mechanism prescribed in another statute. It is not to be exercised in a case where there is no basis in law which can form an edifice for building up a super structure. This power cannot be used to supplant the applicable provision to the case. The Supreme Court of India in *Poonam vs Sumit Tanwar, (2010) 4 SCC 460* held that in exercise of its powers for doing complete justice the court generally should not issue any direction to waive the statutory requirement. The courts are meant to enforce the law and therefore, are not expected to issue a direction in contravention of law or to direct the statutory authority to act in contravention of law.

26. Article 104 of the Constitution will have no application in this case for, the Act of 1973 is a protected law. Clause (2) of Article 47A takes away the right to move the Supreme Court for any of the remedies under the Constitution to a person to whom a law specified in clause (3) of Article 47 applies. What's more, the right of appeal of a convicted person is given by the Act of 1973 and not by Article 103 of the Constitution. Therefore, if Article 103 is not applicable, Articles 104 and 105 will not also be applicable to review a judgment of this Division passed by it against the judgment of the Tribunal established under the Act of 1973. Naturally, the Supreme Court (Appellate Division) Rules, 1988 will also not be applicable.

27. Now the question is whether what would be period of limitation for filing a review petition from the judgment of this Division passed against a judgment of the Tribunal set up under the Act of 1973. In the Act as observed above, the trial of a case before the Tribunal shall be held expeditiously without undue delay. Since the scheme and object of the law manifest that the proceedings shall be concluded expeditiously, the period of limitation for filing such review petition shall be as early as possible. As per rules of this Division review petitions shall be filed within thirty days but this period of limitation is not only inconsistent with the provisions of the Act but also not applicable. We are also not unmindful that the convicted person should be given a reasonable time to file a review petition. What is reasonable time is a matter to be considered in the context of the matter. There is no hard and fast rule in this regard. An aggrieved party can file a review petition against any order of the Tribunal within seven days as per Rules framed by it. In the courts of small causes a period of fifteen days limitation is provided for filing review petition from its judgment. This has been done with a view to secure finality of litigation. In some cases it has been observed that if this bar of time is not placed on the power of review it would mean that a judgment can never become final. Taking into consideration the surrounding circumstances it is our considered view that fifteen days' time will be a reasonable time. This will secure the ends of justice.

28. It must be borne in mind that, by assumption, every judgment passed by a court is a considered and solemn decision on all points arising out of the case, and further that every reason compels towards the grant of finality in respect of such judgments delivered by a court which sits at the apex of the judicial system. A review cannot be equated with an appeal. It does not confer a right in any way to a litigant. It is now settled point of law that a review of an earlier order is not permissible unless the court is satisfied that material error manifest on the face of the order under-

mines its soundness or results in miscarriage of justice. A review of judgment in a case is a serious step and the court is reluctant to invoke its power-it is only where a glaring omission or patent mistake or grave error has crept in by judicial fallibility. Despite there being no provision in the Act of 1973 for review from the judgment of this Division on appeal, securing ends of justice a review is maintainable in exercise of the inherent powers from the judgment of this Division subject to the condition that where the error is so apparent and patent that review is necessary to avoid miscarriage of justice and not otherwise, and the execution of a sentence shall be suspended till the disposal of the review petition if the same is filed within the period as above. In view of what is stated above, we find that the review applications are maintainable. This disposes of the preliminary point.

29. So after the finality of the judgment, if the jail authority fixes a date for the execution of the sentence in accordance with the orders of the government, the execution of the sentence be postponed till the disposal of the review petition if filed in the meantime. If a review petition is not filed, it can be filed within fifteen days from the date of intimation to the accused about judgment of this Division or from the date of receipt a certified copy of the judgment whichever is earlier. Even if no review petition is filed, ends of justice demands that the death row convict should be informed that he has a remedy for review, and if he expresses his desire to file such petition, fixation of the date for execution of the sentence be made giving him a reasonable time to file the review petition. There is no prescribed rule or law to fix a date for execution of the sentence after the intimation about the confirmation or imposition of death sentence by the highest Tribunal of the country. The jail authority shall fix the date in accordance with the orders of the Government as per subsection (3) of section 20 keeping a reasonable time so that the review petition is disposed of. The jail authority should also afford the prisoner an opportunity to file a mercy petition and to inform him about the opportunity of filing a mercy petition.

30. Mr Razzaq has submitted that the jail authority in violation of Rule 991(1) and 991(VI) of the Jail Code hurriedly fixed a date for the execution of the sentence without affording the petitioner necessary time required for filing review and mercy petitions as per law. Sub-rule (1) provides that immediately 'on receipt of a warrant for execution consequent on the confirmation by the High Court Division of a sentence of death, the Jail Superintendent shall inform the convict concerned that if he desires to submit a petition for mercy, it must be submitted in writing within seven days of the date of such intimation'. Sub-rule (VI) provides that after intimation is received 'by government of the rejection by the Privy Council of an application for special leave to appeal or the dismissal of an appeal which has been admitted or if proof is not furnished before the date fixed that necessary papers, instructions and also funds have been sent to a firm of solicitors in England on behalf of the condemned prisoner, the District Magistrate and the Su-perintendent of the Jail will be informed by telegram and the Superintendent of the Jail will be authorized to fix the date of execution not less than twenty one days or more than twenty-eight days ahead of the date on which he receives such intimation'.

31. Rule 991 of the Jail Code is an enabling provision providing the procedures for dealing with a prisoner whose sentence of death has been confirmed by the High Courts. Under these provisions a condemned prisoner has been given the privilege to file a mercy petition to the Governor-General or His Majesty the King Emperor and also a leave petition to the Privy Council after a death sentence is confirmed by the High Courts. If

the convict files a mercy petition, the jail authority will communicate it to the authority and the execution of sentence will be postponed pending a reply from the competent authority is received. If a leave petition is filed through jail, the Superintendent of Jail would communicate the same with a covering letter reporting the date fixed for the execution. The leave petition would be dispatched to England for disposal. The communication and the procedure of filing of such petitions would take some time. Pending a decision on both counts, the execution of sentence by the jail authority was considered to be in violation of the principles of natural justice. The leave petition had to be communicated to UK and the mercy petition to Calcutta (Kolkata). Considering that aspect of the matter, time limit of seven and twenty one days was mentioned in both sub-rules for getting the result of those petitions. The position then prevailing has been changed. Under the changed circumstances the distance for communicating those petitions has shortened considerably, but no corresponding amendment has been made in the Jail Code. Under the prevailing laws, in respect of all penal offences other than the Act of 1973, even after the confirmation of sentence by the High Court Division, the condemned prisoner's right to file an appeal before this Division is guaranteed. Under the Act of 1973, the finality to a sentence is attained after the disposal of an appeal.

32. These Rules were framed in 1936 and considering the then prevailing facilities, the topographical and geographical conditions of this region, the said time limit of seven days and twenty one days has been mentioned in these provisions. The present condition is totally different. If one looks at the purpose for which these time limit has been mentioned in the Rules, it can be inferred that it is only to afford all privileges to a condemned prisoner to file a mercy or a leave petition to the competent authority after the confirmation of death sentence by the High Courts for ends of justice.

33. When a sentence of death is passed, the condemned prisoner is confined in a secluded place without waiting for the confirmation of sentence, a cell, apart from all other prisoners. He is kept in isolation and the facilities that are given to a prisoner are restricted to him. The jailor shall have the prisoner stripped and searched-takes every article of private clothing and other articles from him-gives him a suit of jail clothing. Even visitation by his near ones is also restricted. Naturally a condemned prisoner would pass time with much mental agony and physical restraints. The moment a condemned prisoner is put in such cell, psychologically he is put on mental stress and agony. This mental agony is reached to such an extent that, sometimes some prisoners suffer a stroke and some of them suffer a mental sickness, resulting in loss of life before they are put to gallows. This is why, the Supreme Court of Bangladesh simplified the rules for preparation of paper book and gives special attention to hear death references on priority basis. Rules 979 to 1009 are applicable to such prisoners.

34. If a death sentence is confirmed by this Division, the prisoner is put on further mental pressure under peril of death. It is not desirable to keep a person in such inhuman condition for indefinite period. He should be informed of his privileges to file a review or a mercy petition, as the case may be, as soon as the intimation about the confirmation of sentence is received by the jail authority and to fix a short date for execution until the existing rules are amended. The petition of review and mercy should be disposed of expeditiously as soon as possible. If the prisoner does not choose to avail of the privileges, the sentence should be executed on the date so fixed without delay, which have become ineffective under prevailing changed circumstances.

35. Learned Attorney General submitted that after the communication of the warrant for execution of sentence to the jail authority, two Executive Magistrates in presence of the jail authority intimated the petitioner of his privilege to file a mercy petition to the President but, the petitioner declined to file such mercy petition. According to him, the plea of mercy is taken only to delay the execution of the sentence. Mr Razzaq does not dispute the submission of the learned Attorney General. His only grievance is that the jail authority is trying to execute the sentence hurriedly. So, before fixation of a date for the execution of the sentence, the petitioner was informed about his privilege to file a mercy petition. Though sub rule (VI) of Rule 991 authorizes the Superintendent of Jail to fix a date for execution of the sentence not less than twenty one days ahead of the date on which he receives such intimation, this rule has rendered ineffective now.

36. This time limit of twenty one days mentioned in the rule is for the purpose of enabling the condemned petitioner to move a leave petition before the Privy Council. In this case the appeals have already been disposed of by this Division. The question of disposal of a leave petition does not arise. After the disposal of the appeals, the authority has afforded him opportunity to file a mercy petition. Section 20(3) of the Act provides that the sentence awarded under the Act of 1973 shall be carried out in accordance with the orders of the Government. Death row convict has a privilege to make a mercy petition and to make a review petition-these are neither constitutional nor statutory rights. However, as a last resort, the convict should not be deprived of these privileges. If he avails of the privileges, the execution of the sentence be postponed until those petitions are disposed of.

37. On the other point raised by the learned counsel, it would be pertinent to examine some provisions of the Act. Section 6 of the Act enjoins the Government to set up one or more Tribunals, each consisting of a Chairman and not less than two and not more than four other members. The procedure provided for trial of offences under the general or other special laws applicable to Bangladesh are completely different from those provided in the Act of 1973, which is also a special law. Under the Act, the Chief Prosecutor or a Prosecutor appointed by the Government is entrusted with all the powers of investigation of a case with the assistance of an investigation agency and to conduct the prosecution against any person in respect of offences specified in section 3(2). Section 8(4) lays down the powers of the investigation officer. An investigation officer making an investigation in respect of any of the offences committed under the Act may examine orally any person who appears to be acquainted with the facts and circumstances of the case. The investigation officer may reduce into writing such statement made to him in course of examination under section 8(4) of the Act-he is not bound to record any statement made to him. Chapter II under the heading 'Powers and Functions of the Investigation Agency', of the Rules framed by the Tribunal deals with the procedure for investigation in respect of any offences specified in section 3(2) of the Act. Rule 4 provides that the investigation officer shall act and work in accordance with the provisions of sections 8(1), 8(3), 8(4), 8(5), 8(6) and 8(7) of the Act while investigating a case.

38. Rule 6 empowers an investigation officer to investigate the facts and circumstances of the case and if necessary take steps for discovery and arrest of the accused. The investigation officer shall also maintain a case diary for each case until completion of such investigation but the said case diary can be used by such officer at the time of his deposition before the Tribunal and the Tribunal has also right to peruse the case diary for clarifi-

cation or understanding any fact transpired at the time of investigation. The investigation officer may apply through the prosecutor to the Tribunal to commit any accused person in his custody for the purpose of interrogation for proper investigation of the case. Rule 18(2) provides that the investigation officer shall work with the prosecutor and shall assist the prosecutor in formulating a formal charge against an accused person.

39. Rule 19 enjoins the Chief Prosecutor to hold further investigation or to stop the investigation being conducted by the investigation officer if the latter does not find *prima facie* case against an accused person. These provisions show that the powers of the investigation officer in conducting the investigation are to be supervised and regulated by the Chief Prosecutor. So the powers exercisable by the investigation agency are completely distinct from those which are being exercised by an investigation officer under the Code of Criminal Procedure or under any other special laws. More so, the provisions of the Code of Criminal Procedure and the Evidence Act are not applicable to the proceedings under the Act, 1973.

40. Under the Evidence Act the previous statement of a witness can be used (i) under section 145 to contradict the witness, (ii) under section 155 to impeach his credit, and (iii) under section 157 to corroborate his testimony. Section 162 of the Code of Criminal Procedure provides that no statement made by a person to a police officer in course of investigation under Chapter XIV shall be used for any purpose except by the accused for the purpose of contradicting the witness. Under the Evidence Act, if the accused intends to contradict a witness, his attention must be drawn to that part of the previous statement by which it is indented to contradict him. There is no corresponding procedure in the Act of 1973 or the Rules. Naturally the procedures of contradicting a witness by a previous inconsistent statement of a witness under the rules of the Evidence Act are not applicable in the proceedings before the Tribunal. Rule 53 (ii) of the Rules state specifically that the cross-examination shall be strictly limited to the subject matter of the examination-in-chief of a witness.

41. Now the question is in view of sub-section (2) of section 19, the Tribunal can take judicial notice of any statements recorded by an investigation officer which are inconsistent with the statements made in examination-in chief before it. Section 19 of the Act and Rule 53(ii) are relevant to address the point raised at the Bar. These provisions read as under:

> "19. (1) A Tribunal shall not be bound by technical Rules of evidence; and it shall adopt and apply to the greatest possible extent expeditious and non-technical procedure, and may admit any evidence, including reports and photographs published in newspapers, periodicals and magazines, films and tape-recordings and other materials as may be tendered before it, which it deems to have probative value.
>
> (2) A Tribunal may receive in evidence any statement recorded by a Magistrate or an Investigation Officer being a statement made by any person who, at the time of the trial, is dead or whose attendance cannot be procured without an amount of delay or expense which the Tribunal considers unreasonable.
>
> (3) A Tribunal shall not require proof of facts of common knowledge but shall take judicial notice thereof.
>
> (4) A Tribunal shall take judicial notice of official governmental documents and reports of the united Nations and its subsidiary agencies or other international bodies including nongovernmental organizations."

Rule 53(ii) states;

"The cross-examination shall be strictly limited to the subject matter of the examination-in-chief of a witness but the party shall be at liberty to cross-examine such witness on his credibility and to take contradiction of the evidence given by him".

42. Section 19(2) shows that the statement recorded by an investigation officer in course of investigation can be used as evidence under two eventualities only-in case of death of the person whose statement has been recorded or when his attendance cannot be procured even after taking necessary measures and the Tribunal is of the opinion that the delay to secure his attendance would be unreasonable. The expression 'common knowledge' used in sub-section (3) of section 19 denotes facts that are commonly accepted or universally known, such as general facts of history or geography or the laws of the nature. When there is no direct evidence to connect the accused with a particular incident even though the common knowledge points fingers towards the accused, the Tribunals are given liberty to accept secondary sources, such as reports, articles, books, video interviews treating them as corroborating evidence without attempting to collect primary sources of evidence because the lapse of time impacts on the quality of evidence.

43. The statements of the witnesses are recorded by the investigation officers in the most haphazard manner. Officers conducting the investigation not unnaturally record what seem in their opinion material to the case at that stage and omit many matters equally material and, it may be, of supreme importance as the case develops. Besides, in most cases they are not experts of what is and what is not evidence. The statements are recorded hurriedly subject to frequent interruptions and suggestions from by-standers. All they cannot in any sense be termed depositions for, they are not prepared in the way of depositions, they are not read over to nor are they signed by the makers of the statements. There is no guarantee that they do not contain much more or much less than what the witness has said. Normally during investigation, it is the question posed to the witness that triggers the witness' mind and memory. The witness hardly ever produces information spontaneously. Suppose an incident lasted for about 5/6 hours or even more. The situation was so complex that it would have been easy to write a book about that episode alone. The witness disclosed about what he was asked pinpointing a particular fact. Obviously further questioning is necessary to reticence all information from him. So leading questions which have not been banned at Tribunals are not only suggestive because the answer is included in it-the witness will then narrate by memorizing the old facts.

44. Reading section 19(2) and rule 53(ii), a conclusion that can be arrived at is that statement of a witness recorded by an investigation officer could be admitted in evidence if his presence before the Tribunal could not be procured or that he is not alive, otherwise not. Contradicting the statements of a witness can be drawn subject to the condition that it must be strictly limited to the subject-matter of the examination-in-chief only. Apart from contradiction of his earlier statements made to an investigation officer, a witness' credibility can be impeached by extracting his knowledge about the subject on which he deposed, his motives to depose in the case, his interest, his inclination, his means of obtaining a correct facts to which he deposes, the manner in which he has used those means, his powers of discerning facts in the first instance, his capacity for retaining and describing them etc. The witness may also be cross-examined for the purpose of ascertaining his credibility.

45. It is to be remembered that the object of cross-examination is to bring out desirable facts

of the case modifying the examination-in-chief. The other object of cross-examination is to bring out facts which go to diminish or impeach the trustworthiness of the witness. In examination-in-chief a witness discloses only a part of the necessary facts, not merely because the witness is a partisan of the party calling him but also his evidence is given only by way of answers to specific questions, and the prosecuting counsel producing him usually calls for nothing but the facts favourable to his party. Cross-examination then has for its utility, the extraction of the remaining qualifying circumstances of the testimony given by the witness in his examination-in-chief.

46. Mr. Razzaq argued that the expressions "the party shall be at liberty to cross-examine such witness on his credibility" are sufficient to infer that the Rules have not debarred the Tribunal to take into consideration the statements of any witness made in the course of investigation to the investigation officer. The law as it stands, it is difficult to accept his contention. The basic principles of interpretation of statutes is that laws should be construed to carry out the intention of the legislature. The function of the court is to interpret a statute according to its intent. When the words are clear and unambiguous, it would not be open to courts to adopt any hypothetical construction. *(Pakistan vs Akhlaque Hossain, 17 DLR (SC) 545).*

47. It should be borne in mind that apart from contradiction, the credibility of a witness may be determined by way of cross-examination in respect of his integrity, his ability to disclose facts, his consistency in his statement. This follows that in determining the credit of a witness various considerations have to be looked at by the Tribunal. In every case it is seen, a witness mixes a certain amount of untruth in his evidence even when he gives to substantiate a correct account. Part of this admixture of falsehood may be the result of inadvertence and may be the very natural vagaries of observation and memory. Obviously they should not affect the credibility of a witness at something by way of exaggeration, but even an exaggeration that is intentional could be discouraged without impairing the acceptability of the rest of the evidence provided that these super additions did not go to the root of the matter.

48. Where the only witness, alleged to be an eye witness, is found to be highly interested in the prosecution, these facts are not by themselves sufficient for holding that he has also lied while narrating the principal events because the maxim *"falsus in uno, falsus in omnibus"*, has not been universally accepted by the jurists of this sub-continent. One American author has stated that 'the maxim is in itself worthless; first in point of validity .... and secondly, in point of utility because it merely tells the jury what they may do in any event, not what they must do or must not do, and therefore, it is superfluous form of words'. Where on the scrutiny of evidence, one finds that on the whole the evidence is more false than true, it would be dangerous to act upon it. A witness is normally to be considered independent, unless he springs from sources which are likely to be tainted and he has no enmity against the accused to wish to implicate him falsely. The testimony of an eye witness which is natural as to the occurrence and whom one would expect to have seen the occurrence, cannot be doubted only because he happens to be related, or otherwise, to the party on whose behalf he gives evidence.

49. An eye witness who is a relative of the victim is a competent witness but his evidence cannot be accepted without close and careful examination if it is found that other witnesses were present at the scene of crime but the prosecution has withheld them without any reasonable explanation, or unless the evidence of this witness is shaken by cross-examination or his demeanour

is such as to lead one to the inevitable conclusion that he has perjured himself no court is entitled to discard evidence which are merely speculative. In order to judge the credibility of a witness the court is not confined only to observe the way in which the witness has deposed or the demeanour of the witness. It is open to the court to look into the surrounding circumstances as well as probability so that it may form a correct idea of the trustworthiness of a witness. The truthfulness or reliability of a witness must be tested by surrounding circumstances brought out in evidence.

50. If there is any matter against a witness, no adverse inference can be drawn against him unless he has been given an opportunity to explain it. But in respect of crimes committed under the Act of 1973, because of the influx of time, most of the eye witnesses are not available and in some cases the witnesses are not willing to depose for fear or reprisal or for any other cause or the witness has lost interest by efflux of time. In respect of charge No.6, PW 3 is the only surviving witness of the family. There was no scope to witness the incident by anyone other than this witness. The defence failed to shake her testimony in any manner. Mr. Razzaq finds it difficult to point out any inconsistency in her statements in the course of cross-examination. He, however, submitted that it was due to the fault of the defence counsel. PW 3 was thoroughly cross-examined by the defence for two days but the defence failed to extract any inconsistency from her statements made in the Tribunal in any manner.

51. A witness can be held unreliable or his testimony can be deemed not credible if; (a) his statement is inherently improbable or contrary to the course of nature, that is to say, he says that he has identified the accused by face in darkness, or that he has recognized his voice from a mile away, or that he has seen the accused killing the deceased with a dao whereas the medical evidence proved that the deceased succumbed to bullet injury; (b) his deposition is contradictory or inconsistent i.e. at one place he says that "X" was the murderer but in another breath, he says it was 'Y'; (c) if he is found to be biased or partial in relation to the parties in the cause; (d) his demeanour, whilst under examination, is found abnormal or unsatisfactory. None of the above conditions is present in this case.

52. Apart from what is stated above, in the case in hand there are some uncontroverted, incriminating circumstantial evidence which corroborated the testimony of PW 3. Therefore, there is no scope under the rules of evidence to infer contradiction in the statements of the witnesses with what they have stated to the investigation officer. This Division on a thorough assessment of the evidence of the witnesses came to a definite conclusion by majority that the witnesses are reliable and natural. There is no scope to infer otherwise in a review petition. In view of what is stated above, we are of the view that this Division has committed no error of law in holding that the cross-examination of a witness shall be strictly confined to the subject matter of the statements made in examination-in-chief of a witness. There is thus no merit in the contention of the learned counsel for the petitioner.

53. The Tribunal, as per law, is not bound to follow the rules of evidence which are normally applicable in proof of a fact. It may admit a photograph or a newspaper reporting or an article in a magazine in proof of a fact, if such fact is relevant to connect the accused with the incident for which he is being tried. The technical rules for admitting digital evidence are also not applicable and it can take films and tape recording statements, even a statement recorded by the investigation officer of any witness, who is dead or whose presence cannot be procured without delay and if the Tribunal feels that his statement is relevant to corroborate a

fact in issue or which it deems to have probative value. This is because the trials are being held at a belated stage; most of the material evidence are lost in many cases; most of the members of the family were killed and the neighbouring witnesses escaped to avoid similar eventuality; the surviving witnesses are not interested to disclose the real incident because of the harrowing incidents of brutalities perpetrated against unarmed innocent people of the country by an organized armed force with the help of Razakars, Al Badr, Al-shams and Peace Committee members for causes mentioned above.

54. Criminal law generally, whether municipal or international do not recognize the doctrine of limitation for trial of persons for War Crimes, Genocide and Crimes against Humanity. For this reason some serious violations that occurred in World War-II in 1940s and in Indonesia in 1960s are being investigated and prosecuted now after lapse of time. In Bangladesh and Cambodia, the incidents occurred in 1970 and 1971. The perpetrators are old, victims and their family members are also old although their wounds have not been healed up-the younger generation have limited knowledge of the atrocities caused by the perpetrators. Thus the focus is on the use of old evidence in respect of these crimes. Alphos MM Orie, a Judge of the International Criminal Tribunal for the former Yugoslavia wrote in an article titled 'Adjudicating Core International Crimes Cases in which Old Evidence is introduced', that if someone gives testimony in court, it is quite hard to say whether it is old or fresh evidence. The legal approach does not produce a fully satisfactory answer to the challenges encountered when dealing with old evidence about events that have long since passed. The meaning of the word 'evidence' differs from one legal system to another. In case of inconsistent testimony with prior statements it was observed in some cases that this was due to 'societal pressure on the witnesses'.

55. The memory of the witnesses who are still alive may be affected. They have spoken extensively with other victims or potential witnesses. Archives where these documents have been preserved have been destroyed by the interested persons taking advantage of change of political scenario. Potential witnesses have moved on to such an extent in their lives that they do not wish to reopen a traumatic past by co-operating with the prosecuting agency. So, witnesses' evidence may be compromised by memory loss, a re-characterization of what happened helped along by express or implicit pressure from peers and interested groups, or unavailability. The prosecution banks upon one or two witnesses, reports, analyses, commentaries and documentaries approaching the problems from all angles. Upon consideration of these factors this Division in its majority opinion observed:

> "There is no provision either in the Act or the Rules affording guidance for the investigating officers similar to those provided under sections 161 and 162 of the Code of Criminal Procedure (the Code) and rule 265 of Bangladesh Police Regulations, Part One, for recording statements of witnesses in course of investigation of a case. Under section 161 of the Code, a police officer may examine orally any person supposed to be acquainted with the facts and circumstances of the case and he may reduce into writing such statement made to him, and if he does so he shall make a separate record of the statement. Similarly rule 265 enjoins the police officers to record or note the statement of any witness examined by them. It further provides that the investigating officer should record statements in the language of the witness and it should be in full containing all the relevant facts connected with the case. During the trial 'the court shall refer to these statements at the

request of the defence and shall also furnish with the copies thereof'.

"According to proviso of section 162 of the Code, when a witness is called for, the prosecution in the trial, any part of his statement, if duly proved, may be used by the accused and with the permission of the court by the prosecution, to contradict such witness in the manner provided by section 145 of the Evidence Act. This enables the prosecution to explain the alleged contradiction by pointing out that if any part of the statement used to contradict be read in the context of any other part, it would give a different meaning; and if so read, it would explain away alleged contradiction. If one could guess the intention of the Legislature in framing section 162 of the Code in the manner it did in 1923, it would be apparent that it was to protect the accused against the user of the statements of witnesses made before the police during the investigation at the trial presumably on the assumption that the said statements were not made under circumstances inspiring confidence.

"This provisions of the Code are not applicable in view of section 23 of the Act, 1973, which debarred from applying the provisions of the Code and the Evidence Act in the proceedings under the said Act. The Rules are totally silent as to the manner of examination of a witness by the investigating officer. It may be either orally or in writing. Even if it is in writing, there is nothing in the Rules therein guiding the procedure and the manner of use of the earlier statement of such witness in course of the trial. Sub-rule (ii) of rule 53, speaks of 'contradiction of the evidence given by him'. This word 'contradiction' is qualified by the word 'examination-in-chief' of a witness. So, the contradiction can be drawn from the statements made by a witness in his 'examination-in-chief' only, not with respect to a statement made to the investigating officer of the case in course of investigation."

56. The next question for consideration is whether there is error apparent on the face of the record which calls for interference of the impugned judgment. It is an established jurisprudence that a review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only against patent error of law. Where without any elaborate argument one could point to the error and say that here is a substantial point of law which stares one in the face, and there could reasonably be no two opinions to be entertained about it, a clear case of error apparent on the face of the record would be made out. It is only a clerical mistake or mistake apparent on the face of the record that can be corrected but does not include the correction of any erroneous view of law taken by the Court.

57. Further, it has now been settled that an error is necessary to be a ground for review but it must be one which is so obvious that keeping it on the record will be legally wrong. The moot point is, a party to a litigation is not entitled to seek a review of judgment merely for the purpose of rehearing or a fresh decision of the case. The power can be extended in a case where something obvious has been overlooked-some important aspects of the matter has not been considered, the court can reconsider the matter. There are exceptional cases where the court can remedy its judgment. In the alternative, it may be said that the error must also have a material real ground on the face of the case. A petition over ineffectually covered ground or minor mistakes of inconsequential import does not call for review.

58. This Division has repeatedly held that the court should not be oblivious of the theme that when the finality is attached to the judgment delivered by a court, particularly the judgments at the apex level of the judicial hierarchy, upon a

full-fledged hearing of the parties, a review petition being neither in the nature of a rehearing of the whole case nor being an appeal against judgment, review is not permissible only to embark upon a reiteration of the same contention which were advanced at the time of hearing of the appeal, but were considered and repelled in the judgment under review. It was also expressed that while dispensing justice, it is the duty of the court to resolve the issue of law properly brought before it and once it is done, the finality is reached and then a review cannot be made on any grounds whatsoever. It is because of the fact that an opinion pronounced by this Division which stands at the apex of the judicial hierarchy should be given finality and any departure from that opinion will be justified only when circumstances of a substantial and compelling character make it necessary to do so. A finality of the judgment will not be reopened except where a glaring omission or patent mistake or grave error apparent on the face of the record has crept in by judicial fallibility.

59. Thus, the powers of review can be exercised sparingly within the limits of the statute. In the realm of law the courts and even the statues lean strongly in favour of finality of decisions legally and properly made. If the cases are reopened on flimsy grounds which have already been addressed by the courts then there will be no end to the litigation. That is why, the power of review is restricted by given guidelines of the apex courts of the sub-continent. The above views have been expressed in the cases of *Major Bazlul Huda vs State, 63 DLR (AD) 62, Messrs Thungabhandra Industries Limited vs The Government of Andhra Pradesh, AIR 1964 SC 1372, Sheonandan Paswan vs State of Bihar, AIR 1983 SC 1125, Secretary, Ministry of Finance vs Md. Masdar Hossain, 21 BLD (AD) 126 = 7 BLC (AD) 92, Ershad Ali Shikder vs State, 56 DLR (AD) 87, Ekushey Television Ltd. vs Dr Chowdhury Mahmood Hasan, 55 DLR (AD) 26, Mohd. Amin Khan vs Controller of Estate Duty, PLD 1962 (SC) 335 = 13 DLR (SC) 105; Zulfiqur Ali Bhutto vs State, PLD 1979 SC 741, Mohd. Hussain vs Ahamad Khan, 1971 SCMR 29, Fazle Karim vs Government of Bangladesh, 48 DLR (AD) 178, Tarique Rahman vs Government of Bangladesh, 63 DLR (AD) 162, Modern India Caterers vs Lieutenant Governor, 1980 SC 674* and *GL Gupta vs DN Mehta, AIR 1971 SC 2162.* We find no error of law in the judgment that call for review of the same.

60. The power of the President to commute any sentence though is not subject to any constitutional or judicial restraints. It is intended to afford relief from undue harshness arising out of evident mistake. This is an executive power. The proceedings for commutation of sentence by the President being an executive character, a condemned prisoner has no right to insist on an oral hearing. The manner of consideration of such petition lies within the discretion of the President. Death row convicts are afforded such privilege of filing of a mercy petition as a last resort on humanitarian consideration, but it cannot be equated with a right of appeal which is a statutory right. The President may or may not commute the sentence but in respect of an appeal, the appellate court can set-aside the conviction on a reappraisal of the evidence afresh. It is in rarest of the rare cases a mercy petition or a review petition is allowed.

61. A right is a protection that cannot be taken away, but a privilege is different. They generally are limited in scope, and can sometimes be overborne or waived by other considerations. Rights are legal, social, or ethical principles of freedom or entitlement; that is, rights are the fundamental normative rules about what is allowed of people or owed to people, according to some legal system, social convention, or ethical theory. Rights are of essential importance in such disci-

plines as law and ethics, especially theories of justice and deontology. There are different categories of rights, of them, we are concerned with legal rights, which are based on a society's customs, laws, statutes or actions by legislature. Legal rights are sometimes called civil rights or statutory rights and are culturally and politically relative since they depend on a specific societal context to have meaning. On the other hand, a privilege is a special entitlement to immunity granted by the State or another authority to a restricted group, either by birth or on a conditional basis. It can be revoked in certain circumstances. In modern democratic states, a privilege is conditional and granted only after birth. By contrast, a right is an inherent, irrevocable entitlement held by all citizens or all human beings from the moment of birth.

62. While arguing about the applicability of Jail Code in respect of a convict under the provisions of Act, 1973, a subtle point was raised at the Bar as to whether Bengal Jail Code has any force of law. This is totally based on a wrong notion and this Code is very much holds the field until a new legislation is promulgated under the changed circumstances. This Code has all trappings of law and it is being followed by the jail authorities. The expression "Code" means a collection or system of laws. It comes from Roman Law; the collection of laws and constitutions made by order of Emperor Justinian is distinguished by application of 'The Code' by way of eminence; (Jowitt, "The Dictionary of English Law, 1959, Vol.I, page-399"). But etymologically it is derived from Latin Codex, the stock or stem of tree- originally it meant the board covered with Wax on which the ancients originally wrote. It is usually used for the body of laws established by the legislative authority of the State and designated to regulate completely, so far as a statute may, the subject to which it relates. It is, therefore, a law-there is no dispute about it, for example; the Code of Criminal Procedure; the Code of Civil Procedure; the Penal Code etc.

63. It is stated that the following Acts and Regulations regulate the establishment and management of jails, the confinement and treatment of persons therein, and the maintenance of discipline amongst them; (a) The Prisons Act, No.IX of 1894, as amended, (b) The Prisoners Act No.V of 1871 as amended (section 15), (c) The Prisoners Act, No.III of 1900, as amended, (d) Regulation No.III of 1818 (Bengal Code) for the confinement of State prisoners, (e) Act XXIV of 1855, an Act to substitute penal servitude for the punishment of transportation in respect of European and American convicts, and to amend the law relating to the removal of such convicts; (f) Act VIII of 1897, the Reformatory School Act, as amended; ((g) Act IV of 1912, the Lunacy Act, as amended; (h)Act IV of 1909, the Whipping Act, as amended; (i) Bengal Act, No.II of 1922, the Bengal Children's Act, as amended; (j) Act XXV of 1934, the Factories Act, as amended etc. are compiled in it.

64. In the preamble it is provided that the provisions of the Civil Procedure Code (Act V of 1908), the Code of Criminal Procedure (Act V of 1898) as amended and the Penal Code (Act XLV of 1860) as amended, which relate to the confinement of prisoners, the execution of sentences, appeals, lunatics, and the like, must also be compiled with in connection with prison administration. Though in the Act of 1973, the provisions of Code of Criminal Procedure and the Evidence Act are made inapplicable by section 23, it is totally silent about the inapplicability the Bengal Jail Code. This Bengal Jail Code being a compilation of previous laws for the superintendence and management of jails is the only piece of rules on the subject prevailing and is being followed by jails throughout the country.

65. The prisoners either under trial or convicted are dealt with in accordance with these

Rules. There is no doubt that it is practically an obsolete Rule but in the absence of anything to govern the practices of the jails, it is no doubt applicable to jails subject to certain limitations. The provisions of the Penal Code which are not inconsistent with the provisions of Act of 1973, are applicable to the proceedings of the Tribunal. What is more, the Act of 1973 and the Rules made thereunder provide for the jurisdiction of the Tribunals; the liability for the crimes; the constitution of the Tribunals; the appointment of the prosecutors and the investigation officers; the commencement of the proceedings; the procedure of trial; the powers of Tribunals; the provision for defence of an accused person; the restriction on adjournments; the mode of use of statements or confessions of accused persons; the procedure for pardon of an approver; the framing of charge; the right of accused person during trial; the protection of the witnesses; the rules of evidence; the judgment and sentence; the right of appeal, the powers of the Tribunals to frame Rules and the execution of sentence etc. But it is totally silent about the management, confinement and treatment of prisoners. In absence of any provisions in the Act of 1973 and the Rules framed thereunder in respect of the confinement and treatment of both under trial and convicted prisoners. After the conviction and sentence, a warrant of sentence is issued and a copy is communicated to jail authority. Naturally the jail authority will arrange his confinement in jail in accordance with the Jail Code. Thus there is no doubt that the provisions of the Jail Code will hold the field subject to certain limitations. It is provided that the provisions of the Act of 1973 shall have effect notwithstanding anything inconsistent therewith contained in any other laws for the time being in force. The Rules framed thereunder are merely the detailed provisions to carry out the purposes of the Act. As there is no provision in the Act dealing with the under trial and convicted prisoners. Therefore, the provisions of the Act and the Rules are supplementary to the Jail Code. The question of inconsistency does not arise at all since the Act does not provide any provisions to regulate the maintenance and confinement of a prisoner after arrest or conviction.

66. On the question of sentence the learned counsel raised two points. Firstly, it is contended that natural justice equity and ends of justice demands that the sentence should be commuted to life since the sentence of death has been awarded relying upon a single witness. This submission is devoid of substance. In respect of charge No.6, it is true that there is one eyewitness but, there are strong circumstantial evidence to corroborate the evidence of PW 3. It was found that this witness is trustworthy, natural and wholly reliable one and that there was strong circumstantial evidence to corroborate her testimony. Considering the brutality of the incidents we awarded the sentence of death, which according to us, was proportionate to the gravity of the crimes. It was contended that the sentence was harsh. What is fair play, moral, humane or inoffensive or harsh to the conscience in one country is not necessarily so in another values, standards, and principles. They vary from place to place and from time to time. The penalty of cutting off hands and feet for theft has been abolished as contrary to humanity by European community and our country. The philosophy behind it is that it is a violation of the principles of natural justice or human rights. On the other hand, the death penalty for murder and other heinous crimes have been retained by Asian and Africa countries including Bangladesh and some states in the United States. According to our standards, the cutting off of hands and feet is an inhuman punishment while breaking of the neck is not.

67. There is no doubt that murder is a worse crime than theft and no argument is advanced for or against the retention of the death penalty. The

point is not, however, whether the punishment is permissible as being in accordance with the standards of humanity, and the problem is thus to decide what is human punishment and what is not. Our law says hanging is humane but the European countries, which have abolished death penalty, might say that it is not. It is thus evident that all standards are relative, and that in deciding what punishment is contrary to humanity, the standards of Bangladeshi Law and of Bangladesh Cons-titution are to be applied. The conclusion that can be arrived at is that natural justice, equity and good conscience, morality and humanity in the contexts referred above must mean Bangladeshi as to what those virtues comprise as interpreted by our laws; and not some absolute platonic 'Form', that is superhuman, eternal and international.

68. Secondly, it is contended that this Division committed error of law in imposing death sentence to the petitioner without any finding that the sentence awarded by the Tribunal was "manifestly inadequate" and "unduly lenient". In this connection, learned counsel has referred to two cases, *Ram Narain vs State of UP, 1970 (3) SCC 493* and *Madho Ram vs State of UP, AIR 1973 SC 467.*

69. In Ram Narain, eight accused persons forming an unlawful assembly with the common object of killing the deceased Bitta committed the murder. The trial court sentenced them to imprisonment for life. Complainant took a revision petition for enhancement of the sentence in respect of three accused persons who were assailants according to him and the appellants before the Supreme Court. The High Court allowed the revision and enhanced the sentence to one of death. The High Court observed that the murder was cold blooded and a premeditated one and that three appellants inflicted fatal injuries to Bitta and deserved the extreme penalty of death. In the context of the matter, the Supreme Court held that in the case of murder, the discretion is limited to two alternatives for the sentence that could be either death or imprisonment for life. The proper exercise of discretion is to be exercised on a proper consideration of all the relevant facts and circumstances keeping in view of the broad objective of sentence being neither too severe nor lenient. "It is only when the sentence appears on the facts and circumstances of the case to be so manifestly inadequate as to have resulted in failure of justice that enhancement of sentence may be justified by the appellate court". The court observed. Under the existing law in cases of murder "it is necessary for the court to give reasons for not imposing the extreme penalty of death and the discretion of the court in awarding the lesser penalty is, therefore, wider than before the amendment of the law in this respect". The Supreme Court interfered with the sentence mainly on the reasoning that the exercise of discretion by the High Court could not be described to be contrary to the recognized principle, and the State did not consider that the ends of justice required enhancement of the sentence but, the High Court interfered with at the instance of the informant.

70. In the latter case, similar views have been expressed. It was observed "it is no doubt true that the question of a sentence is a matter of discretion and when that discretion has been properly exercised along accepted judicial lines, an appellate court should not interfere to the detriment of an accused person except for very strong reasons which must be disclosed on the face of the judgment. If a substantial punishment has been given for the offence of which a person is guilty, after taking due regard to all relevant circumstances normally there should be no interference by an appellate court. On the other hand, interference will be justified when the sentence is manifestly inadequate or unduly lenient in the particular circumstances of the case". In that case it was found that the appellant suddenly without any

warning attacked the deceased who was unarmed. From the nature of the injury described in the post mortem report, it was observed that the blow must have been inflicted by the accused with considerable force. The trial court sentenced the accused to imprisonment for life. The High Court did not agree with the lesser sentence in the circumstances of the case and was of the view that the sentence imposed by the trial court was 'unduly lenient' and 'manifestly inadequate' and enhanced the sentence to one of death. The Supreme Court affirmed the sentence of death.

71. The statement of law argued in those cases is not applicable since the law in India has been amended on the question of awarding a sentence of death to a person. Section 354(3) of the Indian Code of Criminal Procedure provides 'in the case of sentence of death, special reasons for such sentence' should be given. Whereas, in our corresponding provision the language used in section 367(5) is quite distinct which provides, "If the accused is convicted of an offence punishable with death or, in the alternative, with imprisonment for life or imprisonment for a term of years, the court shall in its, judgment state the reasons for the sentence awarded". The language used in sub-section (2) of section 20 of the Act is in parimateria with section 367(5) of the Code. It is not stated that in case of awarding sentence of death special reasons should be assigned by the court. Under the sentencing principles of India, the imposition of lesser sentence is the rule and the imposition of the maximum sentence is an exception and therefore, while awarding the maximum sentence the court is required to assign special reasons. In those cases the trial courts on proper assessment of evidence was of the view that they were fit cases for awarding a sentence of imprisonment for life, which was the rule. In exceptional cases only a death sentence may be awarded on assigning special reasons. Even then the Supreme Court maintained the death sentence in the later case. In respect of the Act of 1973, the language is couched in the similar manner which states '(2) upon conviction of an accused person, the Tribunal shall award sentence of death or such other punishment proportionate to the gravity of the crime as appears to the Tribunal to be just and proper'.

72. The language is so clear that in convicting the accused person death sentence is the proper one, and if the Tribunal feels that a lesser sentence is to be awarded, it shall assign reasons therefor and in such case, it shall consider the gravity of the crime and the culpability of such accused person. The Tribunal has totally ignored the above principles and the position of law and imposed the lesser sentence on assigning a reason which does not carry the true intent of the sentencing principle. The principles of sentencing procedure, are uniform in our country and the court while awarding a sentence shall consider (a) the nature of the offence, (b) the culpability of the offender, (c) the circumstances of its commission, (d) the age and character of the offender, (e) the injury to individuals or to society, (f) effect of the punishment on the offender, amongst many other factors which would ordinarily be taken in mind.

73. Considering the nature of the offence and culpability of the petitioner in respect of charge No.6, this Division observed that while deciding just and appropriate sentence to be awarded for any of the offences to any accused person, the aggravating and mitigating factors and circumstances in which the crimes have been committed are to be balanced in a proportionate manner. The petitioner, it was observed, has committed worst and barbarous types of Crimes against Humanity. He took active role in the killing of almost the entire family except one, and participated in the incident of rape of innocent victims. His acts are comparable to none. Entire world raised voice against the barbaric Crimes against Humanity

perpetrated in Bangladesh. Justice demands that it should impose a sentence befitting to the perpetration of the crime so that it reflects public abhorrence of crime. Cases of murders in a cold and calculated manner without provocation cannot but shock the conscience of the society which must abhor such heinous crime committed on helpless innocent persons. Moreso, the accused expressed no repentance for his conduct at any stage. His direct participation in the incident was cruel and brutal. Considering the nature of the offence, this Division by majority was of the view that the sentence of death was just and proper proportionate to the gravity of the crime.

74. It was further observed that while considering the punishment to be given to an accused person, the court should be alive not only to the right of the perpetrator, but also rights of the victims of the crime and the society's reasonable expectation from the court for the proportionate deterrent punishment conforming to the gravity of the offence and consistent with the public abhorrence for the heinous crime committed by the accused person. This Division observed:

> "We noticed the atmosphere that was prevalent during the recording of the evidence of PW 3 from the note sheet of the tribunal. She was narrating the events of brutal killing of her mother and siblings; two of them were so much ravished that they fell into the jaws of death and the other-a child of two years was dashed to death. She was lamenting at the time of deposing as evident from the remarks noted by the tribunal like a baby, and then lost her sense. A pathetic heart-breaking atmosphere seized the proceedings of the tribunal. If one reads her testimony it will be difficult to control emotion. The murders were extremely brutal, cold blooded, diabolical, revolting so as to arouse intense and extreme indignation of the community. It was perpetrated with motive. On a close reading of the evidence of PW 3 one can instantaneously arrive at a conclusion that there is something uncommon about the incidents of murder which render sentence of imprisonment for life inadequate and deserve for a death sentence.
>
> "The term of Crimes against Humanity has come to mean anything atrocious committed on a large scale. These crimes are committed against civilian population during war; or persecution on political or racial or religious grounds in execution of any crime. These offences by nature are heinous. In the instant case, the appellant along with his cohorts attacked the house of Hazrat Ali Laskar, killed his wife, raped two minor daughters and then killed them with a minor son only because he supported the Awami League and was an admirer of Sheikh Mujibur Rahman. These nefarious acts were perpetrated in a preplanned manner and in doing so, the appellant, who led the team exceeded all norms of humanity. He was involved in Islami Chhatra Sangha and Jamat-e-Islami politics from before the 1970 general election at Mirpur and accordingly, he had harboured grudge against Hazrat Ali Lasker. The aim of the perpetrators was to wipe out the family of Hazrat Ali Lasker, but incidentally PW 3 survived. The horrible picture of the carnage that had been unleased was so brutal that the sentence of death is to be taken as the proper sentence. If no such sentence is passed in the facts of the case, it will be difficult to inflict a death sentence in other cases. The appellant participated in the incident in a planned and concerted manner with his cohorts and therefore, he cannot escape the maximum sentence for the offence he committed despite finding that the offences committed by the appellant are predominantly shocking the conscience of

mankind.

"The appellant did not show any sort of repentance any point of time for his acts and deeds. The learned counsel for the appellant also did not pray for awarding the minimum sentence in case the Government's appeal against the sentence is found maintainable. There is no cogent ground to take lenient view in awarding the sentence. Therefore, the sentence of imprisonment of life awarded to the appellant in respect of charge No.6 is based on total non-application of mind and contrary to the sentencing principle. Awarding of a proper sentence in the facts of a given case is to assist in promoting the equitable administration of the criminal justice. Punishment is designed to protect society by deterring potential offenders. PW 3 is a natural witness and it is only possible eyewitness in the circumstances of the case who cannot be said to be interested. In such incident, death sentence is the only proper sentence.

'While awarding the sentence of imprisonment for life, the tribunal was of the view that the 'sentences must reflect the predominant standard of proportionality between the gravity of the offence and the degree of responsibility of the offender'. This finding is inconsistent and not inconformity with law. If the gravity of the offence is taken as the basis for awarding sentence to the appellant, it is one of the fittest case to award the appellant the highest sentence in respect of the charge no.6 in which the killing and rape were brutal, cold blooded, diabolical and barbarous. If the tribunal does not award the maximum sentence considering the gravity of the charge, it will be difficult to find any other fit case to award such sentence'.

75. It is feebly contended by Mr Razzaq that the sentence of death having been awarded by this Division, the warrant of execution of the sentence ought to have been issued and served by this Division, and in this case since the warrant having been issued by the Tribunal in violation of law, the sentence cannot be legally executed. In this connection he has drawn our attention to rule 979 of the Jail Code. The execution of the sentence should be postponed till a fresh warrant is communicated by an officer of this Division, it is finally contended.

76. Rule 979 provides that when a prisoner is sentenced to death, the police officer who attends the trial shall at once inform the Superintendent of Jail in writing of the sentence that has been passed by the court, and, if the sentence is passed by the Sessions Judge, that officer will issue a warrant of commitment pending confirmation of sentence by the High Court Division. When the sentence has been confirmed by the High Court Division or passed by it a warrant for execution of the sentence will be transmitted by the Sessions Judge or an officer of the High Court Division, as the case may be, to the Superintendent of Jail in which the person for sentence is confined. So this provision shows that in both the cases, where the sentence has been confirmed by the High Court Division or the sentence has been given by it, the warrant of execution shall be transmitted by the Sessions Judge or an officer of the High Court Division, as the case may be. In this case, this Division passed the death sentence and after the judgment, the Tribunal communicated the said sentence. There is no provision in this rule that if the communication of the sentence is made by an inferior Tribunal, it will be illegal or void. This is merely an irregularity and this will not be said to be ineffective. The legislature has used the expression 'will be' in respect of communication of the sentence. So, if the inferior Tribunal communicates the warrant as per direction of this Division, it

cannot be said that the warrant was inoperative. This is a mere technical formality.

77. From the above conspectus we sum up our opinion as under. The review petitions are maintainable. A review petition should not be equated with an appeal. In criminal matters, the power of review must be limited to an error which have a material, real ground on the face of the case. The finality attached to a judgment at the apex level of the judicial hierarchy upon a full fledged hearing of the parties should be re-examined in exceptional cases and a review is not permissible to embark upon a reiteration of the same points. The period of limitation provided in the Appellate Division rules will not be applicable in respect of a review petition from a judgment on appeal under the Act of 1973. The period of limitation is fifteen days and the review petition should be disposed of on priority basis. If a warrant of death for execution is communicated to the Jail authority after it is confirmed or imposed by this Division, the condemned prisoner should be afforded an opportunity to file a mercy petition and he should also be afforded an opportunity to meet his near ones before the execution of the sentence. If the jail authority fixes a date for execution of the sentence, the same cannot be taken as has been done hurriedly. If any review or mercy petition is filed or pending, the sentence cannot be executed unless the petitions are disposed of. So, the period of seven days or twenty one days mentioned in sub-rules (I) and (VI) of rule 991 of the Jail Code have no force of law under the changed conditions.

For the reason stated above, we find no merit in these review petitions. The petitions are accordingly dismissed on merit.

Ed.

APPELLATE DIVISION
(Civil)

Nazmun Ara Sultana J
Syed Mahmud Hossain J
Muhammad Imman Ali J

Judgment
May 28th, 2014.

Asad Ali (Md) and another.....Appellants

vs

Golam Sarwar and others...Respondents*

Non Agricultural Tenancy Act (XXIII of 1949) **Section 24**

In a proceeding under section 24 of the Act the question of co-sharership in the holding or tenancy is immaterial, however, the question of co-sharership in the 'land' is material. After partition by metes and bounds of the land or a holding or even of a plot or plots among its co-sharers each of such co-sharers loses their co-sharership in all other land of the holding or the plot or plot excepting his own share only even if the holding or tenancy remains intact and he, therefore, cannot claim pre-emption under section 24 of the Act if any share or portion thereof of any other owner of holding or plot is transferred.

It is evident that this section 24 of the Non-Agricultural Tenancy Act does not say about the right of pre-emption of co-sharers of a holding but it says about the right of pre-emption of the sharers of the land. **"Land"** means land. **'Land'** does not mean 'holding' or 'tenancy'. Land can be divided by partition, holding can be divided by separation of 'joma'. After partition of any land by metes and bounds a co-sharer remains no more co-sharer of the land and loses all his right, title and interest in that land save and except his own share only even if the original holding/tenancy remains intact and there is no division

*Civil Appeal No 67 of 2004.

(From the judgment and order dated 16-10-2001 passed by the High Court Division in Civil Revision No.3271 of 1997.)

or separation of tenancy. Section 24 of the Non-Agricultural Tenancy Act has given the right of pre-emption to the co-sharer tenants of the non-agricultural land while section 96 of the State Acquisition and Tenancy Act has given the right of pre-emption to the co-sharer tenants of the holding. To seek pre-emption under section 24 of the Non-Agricultural Tenancy Act the petitioner does not require to be co-sharer of the holding, but he requires to be co-sharer of the land. The High Court Division, obviously, has failed to take into consideration the distinction between land and holding. .....(15 & 17)

Mahbubey Alam, Senior Advocate instructed by Chowdhury Md Zahangir, Advocate-on-Record—For the Appellants.

Sufia Khatun, Advocate-on-Record—For Respondent Nos.1 and 2.

None represented—Respondent Nos. 3-45.

Judgment

Nazmun Ara Sultana J: This Civil Appeal by leave, at the instance of the pre-emptees, is directed against the judgment and order dated 16-10-2001 passed by the High Court Division in Civil Revision No.3271 of 1997 discharging the rule and thereby affirming the judgment and order dated 24-6-1997 passed by the learned District Judge, Pirojpur in Miscellaneous Appeal No.5 of 1997 reversing those dated 4-2-1997 passed by the learned Senior Assistant Judge, Pirojpur in Miscellaneous Case No.40 of 1994 disallowing the same.

2. The preemptor-respondents herein filed the above mentioned Miscellaneous Case No.40 of 1994 under section 24 of the Non-Agricultural Tenancy Act against the pre-emptee-appellants and others stating, *inter-alia,* that they are co-sharers by inheritance in the case khatian. That the vendor opposite party No.3 Azimunnessa sold the case land by two kabalas dated 23-6-1994 to the pre-emptee-opposite party Nos.1 and 2 of whom the opposite party No.1 is a stranger purchaser and the opposite party No.2 is a co-sharer of the case khatian. That the pre-emptor-petitioners filed this case for pre-emption in respect of the share of the opposite party No.1 within the statutory period of limitation on depositing the requisite amount.

3. The pre-emptee opposite party Nos.1 and 2 contested that case by filing written objection stating, *inter-alia,* that the pre-emptor-petitioners are not co-sharers of the land transferred. That the lands of plot Nos.487,488 and 489 of RS Khatian No.197 corresponding SA Khatian No.60 was partitioned amongst the co-sharers by a sole-decree of Title Suit No.397 of 1920 and the lands of plot Nos.487 and 488 fell in the share of Abdul Wazed, the father of the opposite party No.2 and Abdur Rahman and the land of plot No.489 fell in the share of Aftabuddin and Anwar Uddin the predecessors of the pre-emptors. That the pre-emptors are not co-sharers of the lands of plot Nos.487 and 488. That the land transferred being lands of plot Nos.487 and 488 the pre-emptors are not entitled to get pre-emption of this land under section 24 of the Non-Agricultural Tenancy Act.

4. Further case of the pre-emptee opposite parties was that the pre-emptee opposite party No.2, who is admittedly a co-sharer of the case land, purchased the entire case land by 2 kabalas from the opposite party No.3; that the opposite party No.2 took loan of Taka 10,000 from the opposite party No.1 and as security of that loan he showed the opposite party No.1 as one of the recipients in those kabalas and the opposite party No.1, subsequently, on getting back that Taka 10,000 from the opposite party No.2, disowned his claim by executing a nadabipatra in favour of the opposite party No.2 and that the opposite party No.2 being a co-sharer in the case land the application for pre-emption is not maintainable.

5. The trial court dismissed the case for pre-emption taking a wrong view that pre-emption was sought for the share of opposite party No.2 who is an admitted co-sharer. The appellate court below set-aside the judgment of the trial court and allowed the pre-emption case making observations to the effect that the opposite party Nos.1 and 2 failed to establish that the land of the case holding had been partitioned by metes and bounds and after such partition the predecessor of the pre-emptors had no subsisting interest in the land transferred and holding that the pre-emptor-petitioners are not only co-sharers of the case holding, but they are also co-sharers of the land transferred and, therefore, they have right to preempt the land under section 24 of the Non-Agricultural Tenancy Act. The appellate court below did not believe the case of the pre-emptees that the pre-emptee-opposite party No.2 alone-the admitted co-sharer-purchased the entire land by the 2 kabalas,

6. The High Court Division affirmed the judgment of the appellate court below making observation thus:—

> ".....if it is conceded that the decree was acted upon, and the land was partitioned between the parties by metes and bounds even then it cannot be said that there was a division or separation of the tenancy."

7. The High Court Division took the view that unless there is mutation or division of the holding creating new tenancy in the revenue office for the purpose of payment of rent separately the co-sharers do not lose their co-shareship and also right of pre-emption.

8. Being aggrieved by the judgment and order of the High Court Division the pre-emptee opposite parties filed Civil Petition for Leave to Appeal No.321 of 2002 before this Division and this Division granted leave to appeal to consider the submissions of the learned Counsel for the leave-petitioners to the effect that High Court Division erred in holding that since original tenancy has not been divided the pre-emptors are still co-sharers in the land and have not lost their right of pre-emption ignoring the facts that the case for pre emption was under section 24 of the Non-Agricultural Tenancy Act and the land in question having been partitioned by metes and bounds long before the pre-emptors did not remain co-sharers of the land transferred and, therefore they had no right to pre-empt the land transferred under section 24 of the Non-Agricultural Tenancy Act and that the High Court Division failed to make distinction between holding and the land, and that land can only be divided either by decree or by any document and not by separating 'jama'.

9. Mr Mahbubey Alam, the learned Senior Advocate appearing for the pre-emptee-appellants has made submissions to the effect that in this case it has been proved sufficiently by the documentary evidence filed by the pre-emptee opposite parties that the lands of the original plots was partitioned among its co-sharers by the sole decree of the year 1920 and by that sole decree the land of plot Nos.487 and 488 fell in the saham of the predecessors of the purchaser and the vendor-the opposite party Nos.2 and 3 and the land of plot No.489 fell in the saham of the predecessors of the pre-emptor-petitioners and thus the predecessors of the preemptor-petitioners lost their entire right, title and interest in the lands of plot Nos.487 and 488. Mr Mahbubey Alam has made submissions to the effect that this fact, that the land of the original plots was partitioned by metes and bounds among its co-sharers, was admitted by both the parties in a subsequent suit being Title Suit No.69 of 1987 filed by the 1st party against the second party of that sole decree for permanent injunction and in that suit both the parties categorically admitted about the sole decree and also about their right, title and possession according to that sole decree since passing of that sole decree.

The learned Counsel has argued that in spite of all these evidence the appellate court below held most erroneously that there was no proof that the land of the original khatian was partitioned by metes and bounds among its co-sharers. The learned Counsel has argued also that the High Court Division committed serious error of law also in holding that since there was no division of the holding by creating new tenancy and separation of joma the pre-emptor-petitioners remained co-sharers of the holding and, as such, they are entitled to get pre-emption. The learned Counsel has argued that the High Court Division did not take into consideration the fact that this case for pre-emption was under section 24 of the Non-Agricultural Tenancy Act which mentions co-sharer of land and not co-sharer of tenancy or holding; that for seeking pre-emption under section 24 of the Non-Agricultural Tenancy Act the pre-emptor-petitioner requires to be the co-sharer of the land transferred and not co-sharer of the holding; that in the present case it has been proved sufficiently that the pre-emptor-petitioners are not co-sharers of the land transferred. The learned Counsel for the appellants has contended that the High Court Division has failed to make distinction between holding and land and thus came to the wrong finding and decision.

10. Mrs. Sufia Khatun, the learned Advocate-on-Record for the respondent Nos.1 and 2 has made some submissions supporting the impugned judgment and order of the High Court.

11. We have considered the submissions of the learned Advocates of both the sides and gone through the impugned judgment and order of the High Court Division, those of the appellate court below and the trial court and also the evidence-both oral and documentary-adduced by both the parties in this case.

12. It appears that the documentary evidence adduced by the contesting opposite party Nos. 1 and 2 have proved sufficiently that the lands of the original plots was partitioned by metes and bounds among its co-sharers by the sole decree in Partition Suit No.397 of 1920 of the 3rd Court of Munsif, Pirojpur, District-Bakergonj. The exhibits-'Ka', 'Kha' and 'Ga' the orders and the sole decree passed in that Partition Suit No.397 of 1920 prove that the land of the original CS Plot Nos.301 and 301/084 was partitioned by metes and bounds and was divided into 2 blocks and the 1st party, i.e. Aftabuddin Ahmed and Anwaruddin Ahmed, both sons of late Yasin Ahmed, got the southern block in their 9 anas share and the 2nd party, i.e. Munshi Abdul Wajed and Abdur Rahman-both sons of late Mohammad Naimuddin got the northern block in their 7 anas share and both these 2 blocks (sahams) of land were demarcated well in that sole decree. The exhibit-'Ja' and exhibit-'Jha'-the judgment of Title Suit No.69 of 1987 of the court of Sub-Judge, Pirojpur and the judgment of Title Appeal No. 50 of 1988 of the Court of Additional District Judge, Pirojpur prove sufficiently that the successors-in-interest of both the 1st party and 2nd party of that sole decree of Partition Suit No.397 of 1920 categorically admitted about this partition of their land by metes and bounds by the sole decree of Partition Suit No.397 of 1920. The Title Suit No.69 of 1987 was filed by the successors-in-interest of 1st party against successors-in-interest of the 2nd party of that sole decree for permanent injunction and the Title Appeal No.50 of 1988 was filed against the judgment passed in that Title Suit No.69 of 1987. From these judgments-the exhibits-'Ja' and Jha' it appears that in that suit both the parties categorically admitted that the lands of the original plots were partitioned among its co-shares by metes and bounds by the sole decree of Partition Suit No.397 of 1920 and both the parties have been possessing their respective saham separately since that sole decree. The plot index-the exhibits 2 and

'Chha' prove that the land of original plot Nos.301 and 301/084 which was partitioned by that sole decree of Partition Suit No.397 of 1920-have been recorded in the new plot Nos.487, 488 and 489. So, all these documentary evidence viz., the exhibits-'Ka', 'Kha', 'Ga', the exhibits-'Ja' and 'Jha' and the exhibits 2 and 'Chha' prove sufficiently that the land of the original plots was partitioned by metes and bounds among its co-shares long before in the year 1920 and the co-sharers have been possessing their respective share according to this partition since 1920.

13. The pre-emptors, admittedly, are the heirs of Aftabuddin Ahmed and Anwaruddin Ahmed-the 1st party-who got their 9 anas share in the southern block and the vendor and the purchaser opposite party, admittedly, are the heirs of Abdul Wazed and Abdur Rahman-the 2nd party-who got their 7 anans share in the northern block according to that sole decree. So the pre-emptors are the co-sharers of the land of the southern block and they are not co-sharers of the land of northern block. Admittedly, the land transferred appertains to northern block. So, the pre-emptor-petitioners, being not the co-sharers of the land transferred cannot get pre-emption of this land under section 24 of the Non-Agricultural Tenancy Act.

14. Section 24 of the Non-Agricultural Tenancy Act provides:

> "If a portion or share of the non-agricultural land held by a non-agricultural tenant is transferred, one or more co-sharer tenants of such land may, within four months of the service of notice issued under section 23 and, in case no notice had been issued or served, then within four months from the date of knowledge of such transfer, apply to the court for such portion or share to be transferred to himself or to themselves as the case may be."

15. It is evident that this section 24 of the Non-Agricultural Tenancy Act does not say about the right of preemption of co-sharers of a holding but it says about the right of pre-emption of the sharers of the land. "Land" means land. 'Land' does not mean 'holding' or 'tenancy'. Land can be divided by partition, holding can be divided by separation of joma'. After partition of any land by metes and bounds a co-sharer remains no more co-sharer of the land and loses all his right, title and interest in that land save and except his own share only even if the original holding/tenancy remains intact and there is no division or separation of tenancy. Section 24 of the Non-Agricultural Tenancy Act has given the right of pre-emption to the co-sharer tenants of the non-agricultural land while section 96 of the State Acquisition and Tenancy Act has given the right of pre-emption to the co-sharer tenants of the holding. To seek pre-emption under section 24 of the Non-Agricultural Tenancy Act the petitioner does not require to be co-sharer of the holding, but he requires to be co-sharer of the land. The High Court Division, obviously, has failed to take into consideration the distinction between land and holding.

16. By filing the plot index the exhibit-2 and exhibit-'Chha' it has been contended that the land of 9 anas share of the original plot Nos.301 and 301/084 has been recorded in new plot No.489 and the land of 7 anas share has been receded in new plot Nos.487 and 488. It appears that the appellate court below did not accept this contention. The appellate court below made observation to the effect that there was no proof that these new plot Nos.487, 488 and 489 have been created pursuant to that alleged partition among the co-sharers. However we do not think that in this case for pre-emption there is any necessity of proving that these plot Nos.487, 488 and 489 were created pursuant to that partition among the co-sharers. In this case it has been proved sufficiently that there was a partition by metes and bounds among the

co-sharers of the land of original plots and pursuant to that partition the predecessors of the pre-emptor-petitioners remained no more co-sharers in the land fell in the saham of the predecessors of the vendor and the purchaser opposite parties. The land transferred, admittedly, appertains to the share of the predecessors of the vendor and the purchaser opposite parties. The pre-emptor-petitioners are not co-sharers of this land transferred and, as such, they cannot get pre-emption of this land under section 24 of the Non-Agricultural Tenancy Act.

17. In a proceeding under section 24 of the Non-Agricultural Tenancy Act the question of co-sharership in the holding or tenancy is immaterial the question of co-sharership in the 'land' is material. After partition by metes and bounds of the land or a holding or even of a plot or plots among its co-sharers each of such co-sharers loses their co-sharership in all other land of the holding or the plot or plot excepting his own share only even if the holding or tenancy remains intact and he, therefore, cannot claim pre-emption under section 24 of the Non-Agricultural Tenancy Act if any share or portion thereof of any other owner of this holding or plot is transferred.

18. However, from the above discussion, it is evident, that the High Court Division has committed wrong in allowing the case for pre-emption under section 24 of the Non-Agricultural Tenancy Act holding that inspite of partition the pre-emptors are still co-sharers of the land transferred since the original holding was not divided and the original tenancy also was not separated. These findings and decision of the High Court Division require to be set-aside.

Hence, this appeal be allowed on contest without any order as to cost. The impugned judgment and order of the High Court Division and also that of the appellate court below are set-aside and the case for pre-emption be dismissed.

Ed.

End of Volume LXVI (2014)

33(7) of the Act has, along with the other two Petitioners, attempted to achieve the same result in the present Writ Petition praying for a recall of that very Order. The Bank accordingly, submits that this Writ Petition is liable to be discharged by constructive *res-judicata.*

7. Arguments placed before this Court on behalf of the Petitioners and the Added Respondent No. 3 emphasize that while admittedly the issues in Writ Petition No. 4591 of 2012 and the instant case remain substantially the same and that both the Writ Petitions remain same in substance, the question primarily determinable by this Court, however, is whether the issues in Writ Petition No. 4591 of 2012 had in fact been finally decided and disposed of. It is argued that the issuance of the Rule Nisi in Writ Petition No. 4591 of 2012 is evidence that the Court in that instance found merit *prima-facie* in the petitioner's case and issued the same with certain conditions attached. Further, the Judgment and Order of 14-3-2013 in Writ Petition No. 4591 of 2012 discharging the Rule notwithstanding, the Petitioners and the added Respondent No. 3 argue, the *prima-facie* satisfaction as was the basis of that Rule Nisi never in fact matured into and got reflected in a final Order of disposal, By that reason, it is submitted, that the DSO of 2-5-2012 did not give rise to a final adjudication on 14-3-2013 notwithstanding this Court's findings and observations that the Rule was being discharge solely on the grounds of that petitioner's failure to comply with specific conditions imposed by the Court.

8. It is accepted by this Court as a given that all proceedings under Article 102 of the Constitution, be these in the form of Writs in Certiorari, Prohibition, *Mandamus* or *Quo Warranto,* are seemingly in the nature of civil proceedings. That said, however, this Court also holds that the extent and degree of application of the provisions of the Code of Civil Procedure ("Code") in matters of exercise of Special Original Jurisdiction by the High Court Division under the Constitution has to be tempered further with an appreciation of proceedings in Writ Jurisdiction significantly being summary in ambit, intent and mode of disposal. It is the view of this Court that summary proceedings by their very nature are declaratory of the need to be proceeded with and disposed of rapidly without strict adherence to certain formalities otherwise constituting the essential characteristic of plenary proceedings.

9. This Court holds that the argument of the Petitioners and the added Respondent No.3 as to the intent, purport and consequences flowing from the DSO is countered by reference to the Appellate Division's Judgment in *Moni Begum vs RAJUK* reported in *46 DLR (AD) 154* that recognizes this Court's inherent capacity and absolute discretion in Writ Jurisdiction to do as necessary in the interest of "justice, equity and good conscience". It in that context that the Appellate Division in the *Moni Begum Case*, in fact declares this Court to be the absolute master of procedural innovation, if need be, subject only to the qualification of such innovation serving the interest of "justice, equity and good conscience".

10. It is in that light that this Court has examined the true nature and purport, in particular, of the DSO in Writ Petition No. 4591 of 2012 and this Court's disposal of the same on 14-3-2013. It is found that while as in Writ Petition No. 4591 of 2012 and in many other instances the ex parte Rule Nisi issued on any number of respondents reflects a *prima-facie* satisfaction of a petitioner's case against the respondents, the Rule issuing Order is, at times, also predicated on a *prima-facie* satisfaction of the need for a settlement of an underlying dispute or, in loan default cases, of the disputed claim, i.e. a need for the financial claim against the petitioner to be settled at the earliest. Satisfied that the claim against the petitioner should in the facts and circumstances not be

allowed to remain outstanding further, the Court in summary Writ Jurisdiction, therefore, at times issues certain directions demanding strict compliance. Such directions serve as indicators to all parties that the Court in summary jurisdiction in the interest of justice and equity has formed a *prima-facie* view of the case encompassing all its facets concerning the petitioner in general which in juxtaposition with the petitioner's particular case against the respondents outweighs the latter in terms of demanding the Court's immediate concern and attention. Avenues as otherwise available or not for alternative resolution of such dispute at the initial stages of litigation before for, e.g., a statutory tribunal are, therefore, at discretion seized upon by the Writ Court with a sense of urgency and addressed specifically and, accordingly, to the party to the dispute presently before the Court, i.e. the petitioner. A combination of factors including expedited disposal of the conflict/dispute to the satisfaction of all, the necessity felt to place a time limit on how far financial obligations (often acknowledged and admitted by a petitioner) may reasonably and practicably be permitted to remain in abeyance and outstanding, and indeed affording the petitioner a leeway to settle his/her obligations/ liabilities within a time frame declared and accepted in open Court (albeit ex parte the respondent bank or financial institution), are readily weighed, reflected upon and elaborated in the Rule issuing Order itself in the form of a primary issue of the case itself and resultantly substantively ordered upon. It is this Court's view that such directions are intended to be and in fact partake of the nature of substantive orders with specific and express outcomes flowing from the same of which a default order is an extreme but nevertheless often a necessary and a common manifestation. This Court opines that in such circumstances it would indeed be foolhardy for any addressee of such order and direction to ignore the same, because to do so would amount to acting at his/her peril.

11. Given this Court's view as above in this regard and the submissions made by the Petitioners and the Added Respondent No.3 on the interpretation of the DSO of 2-5-2012 in Writ Petition No. 4591 of 2012, the arguments against the substantive effect of the DSO are found, therefore, to be wholly unacceptable to this Court. It is found in that regard that upon a clear reading of the DSO of 2-5-2012 the satisfaction of the petitioner's outstanding liabilities to the Respondent Bank in its totality was sought in the manner and within the time frame specifically ordered upon by this Court on that date.

12. All three Petitioners in this case notably admit to a failure to comply with the Order of 2-5-2012. Given, therefore, that admission of non-compliance, the Judgment and Order of 14-3-2013 in Writ Petition No. 4591 of 2012 aptly, and inevitably, found on such default and discharged the Rule. This Court finds that such Order discharging the Rule cannot by any view or interpretation of this Court's jurisdiction but be viewed as a final disposal of that Rule Nisi in its entirety and substantively on the merits of that case. To the extent, therefore, that the Petitioners in the present Writ Petition seek a quashment of any Order of the Adalat relating to the issuance of the section 33(7) Certificate, be that in the form of challenging the legality of the Certificate issuing Order or by an indirect method in seeking to have that Order recalled, this Court holds that they are now barred to so invoke this Court's capacity and authority the second time around to retry the same issue.

13. There is yet another aspect to the case before us. It has not escaped, this Court's attention that in issuing the Rule Nisi in Writ Petition No. 4591 of 2012 this Court in that earlier instance required of the petitioner Mrs Showkat Ara Begum an initial payment of Taka 1,00,00,000 to be followed up by instalment payments of the outstanding balance due and claimed by the Bank. By

directing such payments to be made this Court in that earlier Writ had in fact acknowledged the said petitioner's right of redemption of the mortgage being alive and extant as on the date of the Rule issuing Order on 2-5-2012 notwithstanding the issuance of Certificate of Title under section 33(7) of the Act. Crucially, the acknowledgement of that right of redemption being still retained by the Petitioners, or rather the Petitioner No. 3 before us, i.e. Mrs Showkat Ara Begum, also comes across in this Court's Rule issuing Order in this Writ Petition dated 30-7-2013 given that this Court required of the Petitioners a specific Affidavit of preparedness to meet the entire claim of the Bank understood to stand at Taka 4,02,61,866.

14. The issue of the right of redemption, it is found, considered within the four corners of the Act itself finds express reference and mention in section 5(4) thus:

> "...নিলাম বিক্রয় হওয়া মাত্রই উক্ত প্রাথমিক ডিক্রী চূড়ান্ত ডিক্রী হিসাবে গণ্য হইবে, এবং বিক্রয় চূড়ান্ত ও ক্রয় বৈধ গণ্য হইবে এবং অতঃপর উক্ত সম্পত্তি পুনরুদ্ধার করিবার কোনরূপ অধিকার (Right to redeem) বিবাদী-দায়িকের থাকিবে না।

15. It is evident that under section 5(4) in the case of suit for sale on the basis of a mortgage, as is the case in the present instance, a preliminary decree shall become final upon an auction sale taking place and concomitantly the right to redemption shall be deemed to come to an end at that point in time. It is clear from the law that until such auction sale and final decree, the right to redeem remains intact. Applied in conjunction with section 33(7), however, that deeming provision of section 5(4) may very well be argued to meet its limitation in the circumstances envisaged in section 33(7) given that the fact or concept of on auction sale does not arise in a section 33(7) scenario. In that scenario, the very issuance of a section 33(7) Certificate of Title and its registration thereof may be construed as in itself tantamounting to a finality, thereby, extinguishing a right of redemption at the point of such issuance. The Petitioners and the Added Respondent No. 3 respond to that line of thinking by satisfactorily stressing that the right to redeem is in fact a substantive right to property which ought not to be extinguished by mere implication given that section 33(7) remains silent on the extinguishment of the capacity to redeem inherent in any mortgagor. It is pointed out that this question of redemption could also have been better understood should section 5(4) have borne express reference to the status of a right of redemption in the context of section 33(7). But clearly section 5(4) bears no such reference to section 33(7). It is, accordingly, aptly argued that absent the specific declaration of the law extinguishing the right of redemption on the issuance of a section 33(7) Certificate of Title, it would be misconceived to expressly find on such extinguishment to the detriment of a mortgagor and this would go beyond the rules of either statutory interpretation or construction. This Court finds merit in these submissions as also explain the rationale behind this Court's Orders both of 2-5-2012 in Writ Petition No. 4591 of 2012 and of 30-7-2013 in the present Writ Petition. These two Orders properly read are found, accordingly, to extend to the Petitioners an opportunity to redeem the mortgage upon satisfaction of the Bank's outstanding claims in its totality.

16. This Court is of the view that a transfer of title under section 33(7) does not indeed envisage the right of foreclosure. In the scheme of the Act, foreclosure in the sense of a limitation on the right of redemption can only arise when associated with an auction sale contemplated in section 5(4). Beyond that, section 37(7) appears to this Court to operate independently of section 5(4) and the provisions in section 33(7) in not contemplating a transfer by sale must be found also not to envisage

the existence of the corresponding right of foreclosure. This Court finds that resultantly, therefore, the fight of redemption under section 33(7) is always found to be alive and extant. It is that understanding of the law that this Court finds informs all relevant Orders of this Court in both these Writ Petitions seeking the Petitioners' initiative to meet the Bank's outstanding claims to the fullest notwithstanding the issuance of a section 33(7) Certificate of Title.

17. On a matter of pure statutory construction it is also relevant to note that section 33(9) of the Act speaks of a final disposal of an execution case on, *inter-alia*, issuance of a section 33(7) Certificate of Title. That provision, however, remains qualified by certain amendments introduced into the Act in 2010 adding sections 33(7ক) and (7খ) facilitating delivery of possession to the property as coursed by the Certificate of Title. These letter provisions, as are to be read as independent and self-contained provisions in section 33, are declaratory of the legislative intent to revive an execution case on certain specified grounds, if need be, even after a court's declaration of conclusion of an execution process under section 33(9).

18. Indeed, section is 33(7ক) and (7খ) have no bearing on the question of the right of redemption but these go to establish the fact that even upon a section 33(7) Certificate of Title being issued the executing court does not necessarily become functus officio immediately thereafter. That view facilitates a better understanding, therefore, of the effect of Order No. 42 of 14-11-2010 in this case by which the court declared Execution Case No. 48 of 2004 to be finally disposed of under section 33(9) upon registration of the Certificate of Title granted. Indeed in the present instance the court assumed jurisdiction under section 33(7ক) at the Bank's initiative to secure possession of the property of the Petitioner No.3. These developments under section 33(9) and section, 33(7ক) notwithstanding, it is this Court's view that the right of redemption of mortgage has never stood extinguished at any material time. Accordingly, it was always upon to the Petitioner No. 3 in particular in the facts and circumstances to seek to redeem her mortgage upon a settlement arrived at with the bank or financial institution concerned. There is, of course, additionally the sanction under section 57 of the Act to have recourse to the court/Adalat's residuary power to do substantive justice. In exercising that power the Adalat must subscribe to the core objective of the Act which is to facilitate recovery of money. Accordingly, once the loan repayment is forthcoming, the Adalat will correspondingly find it within its power to permit such repayment and recovery of loan, thereby, doing that which is right and just as contemplated in section 57.

19. This understanding of the law and the positioning of rights and responsibilities of the parties in the context of section 33(7) leads this Court to hold that the Petitioners before us remain barred from challenging the legality or otherwise of the issuance of the section 33(7) Certificate as commonly raised in this Writ Petition as well as in the earlier Writ Petition. Given also this Court's understanding that the Judgment and Order of 14-3-2013 in discharging the Rule in Writ Petition No. 4591 of 2012 disposed of that Rule in its entirety and substantively on the merit of the case, that fact of disposal does not, however, in our view automatically translate into the fact that at any material time the Petitioners' right of redemption of mortgage came also to be concomitantly extinguished. That right of redemption that the Petitioner No. 3 evidently failed to exercise even at this Court's intervention facilitating its exercise remains intact notwithstanding the Judgment and Order of 14-3-2013 and has subsequently and appropriately found acknowledgement in the Rule issuing Order in this Writ Petition of 30-7-2013

20. It is in that context that this Court is now inclined to direct the Petitioners to fully and effectively meet the outstanding claim of the Bank within a period of 1(one) month from the date of receipt of a certified copy of this Judgment and Order.

21. In this regard, the Petitioners shall be deemed to be bound by facts asserted in the Affidavit-in-Compliance 16-9-2013 of the preparedness of the Petitioner No. 3 to meet such liability to the fullest extent as also substantiated in the facts and assertions evident in the application for addition of party made by the Added Respondent No. 3. The Petitioners are put on notice that such liability shall have to be met in conformity with the Artha Rin Decree subject only to the express provisions of the law.

22. Correspondingly, it shall be incumbent upon the Respondent No. 2 Bank to facilitate and ensure the due redemption of the mortgage of the Petitioner No. 3 in accordance with law upon receipt of full and effective payment of all its outstanding claim.

23. The Petitioners in general and the Petitioner No. 3 in particular are also expressly put on notice that any failure to comply with the directions above shall automatically entitle the Respondent No. 2 Bank to proceeded to deal in and with the properly in question in accordance with law in exercise of the Bank's rights and interests stemming from the Certificate of Title.

24. In the result the Rule Nisi is disposed of with the observations and directions above. The *ad-interim* Order of *status quo* as initially granted on 30-7-2013 is, hereby, recalled and vacated.

There is no Order as to costs.

Communicate this Order at once.

Ed.

HIGH COURT DIVISION
(Special Original Jurisdiction)

Farah Mahbub J
Kazi Md Ejarul Haque Akondo J

Judgment
May 5th, 2014.

AKM Khurshid Hossain & anothers.....Petitioner
(In WP No.10725 of 2012)

vs

Anti-Corruption Commission and others.....
.....Respondents*

Anti-Corruption Commission Act (V of 2004)
Sections 19 and 20

No where within the four corners of the notice the respective petitioner has been indentified as "অভিযোগের সহিত সংশ্লিষ্ট কোন ব্যক্তি" hence, he has been called upon by the Commission to appear as a witnesses in connection with an inquiry "অনুসন্ধানের স্বার্থে". As such, it is a notice under section 19(1) of the Ain and a mere quoting of section 20 of the Ain, will not go to vitiate the effect of the notice.

As to the contention of the petitioners that on the matter in question the Customs authority has conducted an inquiry and submitted a detail report (Annexure-A); as such, initiating a separate inquiry by the Commission without taking into consideration of the said report is not tenable, is a misconceived one, for inquiry by the Commission under the Ain, 2004 is independent and distinct from the inquiry so conducted by the Customs authority. Further, it shall embark upon an inquiry, which is merely a fact finding process, either on it's own motion or on receipt of a complaint on the subject of "দুর্নীতি এবং দুর্নীতিমূলক কাজ" and that there is no bar in the eye of law to conduct such an inquiry by the Commission. .....(38 & 40)

Santa Kumari De vs Nanda Kumar De, 3 DLR (1951) 267; Kanaiyalal Kripa Sankar Bijoy Sankar Gobinda Sankar Dikshit Firm vs Shah Mahmud Palwan, 11 DLR

*Writ Petition Nos. 10725, 11116, 10726, 10987, 11326 and 2012.

(1959) 327; James Finlay and Co. Ltd. vs Chairman Second Labour Court, Dacca, 1981 BLD (AD) 21 = 33 DLR (AD) 58; Pramatha Nath Chowdhury vs Kamir Mondal, 17 DLR (SC) 392; Brett (1826) 162 ER 456; AG HRH Prince Ernest Augustus of Hanover (1957) 1 All England Report 49; State Bank of India vs Yougendra Srivastava (1987) 3 SCC 10: AIR 198 7 (SC) 1399 and Md Shahidullah Miah vs Bangladesh, 1 CLR (HCD) 331= 66 DLR 444 ref.

Ahsanul Karim, amd M Ataul Gani, Advocates —For the Petitioners. (in writ petition Nos. 10725, 11116, 10726, 10987, 11326 all of 2012)

Sheikh Habibul Alam, Advocate—For the Respondent No.1 (in writ petition No. 10725, 10726, 10987, 11326 all of 2012)

Ahmed Sohel, Advocate—For the Respondent No.1 (in petition No. 11116 of 2012)

Judgment

Farah Mahbub J: Since common question of law and facts are involved in all the Rules Nisi and, as such, those have been heard together and are being disposed of by this single judgment.

2. In these Rules Nisi, issued under Article 102 of the Constitution of the People's Republic of Bangladesh, the respondents have been called upon to show cause as to why the impugned proceedings so have been initiated under Nothi No. দুদক/বিঃঅনুঃ ও তদন্ত-১/২৩১-২০১১ dated 19-7-2012 and the notice so issued subsequent thereto vide Memo Nos. 19442, 19446, 19445, 19443,19439, 19454, 19457, 19458, 19456 all dated 19-7-2012 and Memo No. 13034/1(2) dated 24-5-2012 by the respondent No. 3(Annexure-D) requesting the respective petitioners to appear before the respondent No. 1 regarding the proceedings in question, should not be declared to have been passed without lawful authority and hence, of no legal effect.

3. In all the writ petitions the petitioners are the respective officers working with the National Board of Revenue(in short, NBR) who are rendering their services in their respective departments without any objection from any quarter whatsoever.

4. However, on 14-12-2011, a news item had been published in a national daily newspaper namely "Dainik Jugantor" under the heading "দেড়শ কোটি টাকার শুল্ক আত্মসাৎ" On the same date a Division Bench of the High Court Division issued a *Suo Moto Rule* upon the Secretary, Ministry of Finance and the Chairman, NBR regarding the alleged evaded customs duty by forging documents and misappropriation of funds and other irregularities, with direction to take disciplinary action against the concerned officials of NBR in accordance with law upon forming a high powered enquiry committee to enquire into the aforesaid allegations and identify the concerned persons within 2(two) months from date. Pursuant thereto the Board of Revenue formed a high powered inquiry committee; the said committee upon conclusion of enquiry submitted a report to the concerned Member (Customs) of the NBR on 26-6-2012 (Annexure- A) opining, *inter alia,*—

"১৭১ টি পন্য চালানের মধ্যে যেগুলোতে সিআরএফ হারিয়ে যাওয়া নানা কৌশলে পরিবর্তন, আমদানি দলিলাদির ফোল'ডার/নথি গায়েব, এ্যাসেসমেন্ট নোটিশ/রিলিজ অর্ডার গায়েব ইত্যাদিসহ জালিয়াতর সংগে যুক্ত আমদানিকারক সিএন্ডএফ এজেন্ট এবং কর্মকর্তাদের বিরুদ্ধে ফোজদারী মামলা দায়ের করা হয়নি। যে সকল বি/ই তে জালিয়াতি সংগঠিত হয়েছে তার মধ্যে কয়েকটি বি/ই শুল্কায়নের সাথে সংশ্লিষ্ট কর্মকর্তার বিরুদ্ধে কারণ দর্শানো নোটিশ জারী করা হলেও বিরুদ্ধে শাস্তিমূলক ব্যবস্থা গ্রহণ করা হয়নি। কাজের ধরন এবং চাপ বিবেচনায় নমনীয় মনোভাব পোষন করে কাস্টম হাউস, চট্টগ্রামের তৎকালীন কমিশনার কর্মকর্তাগনকে আনিত অভিযোগ হতে অব্যহতি প্রদান করেন।

কাস্টম হাউস চট্টগ্রাম থেকে জানানো হয়েছে তদন্তাধীন ১৭১ টি বি/ই তে মোট ফাঁকিকৃত শুল্ককরের পরিমান ২৩,৮৩,০৯,৪৪২ (তেইশ কোটি তিরাশি লক্ষ নয় হাজার চারশত বিয়াল্লিশ), টাকা দাবীনামা জারিকৃত টাকার পরিমান

২৩,৮৩,০৯,৪৪২ (তেইশ কোটি তিরাশি লক্ষ নয় হাজার চারশত বিয়াল্লিশ), আরোপিত দণ্ডের পরিমান ১৯,০০,৮০,০০০ (উনিশ কোটি আশি হাজার) টাকা আদায়কৃত রাজস্ব ও অর্থদণ্ডের পরিমান ৭,২০,৪৯,৭৫৫ (সাত কোটি বিশ লক্ষ উনপঞ্চাশ হাজার সাতশত পঞ্চান্ন) টাকা। জারিকৃত দাবীনামাসমূহের বিপরীতে সংশ্লিষ্ট আমদানিকারকগন কর্তৃক মাননীয় হাইকোর্ট বিভাগের ৫২(বায়ান্ন) টি রীট মামলা দায়ের করা হয়েছে।"

And recommended, amongst others—

"সুপারিশঃ

.....(ছ) বিবেচ্য পন্যচালানসমূহ জালিয়াতির সংশ্লিষ্ট সিএন্ডএফ এজেন্টগন সরাসরি সংশ্লিষ্ট বিধায় তাদের বিরুদ্ধে আইনানুগ ব্যবস্থা গ্রহন করা যায়। অপরাধের গুরুত্ব বিবেচনায় নিয়ে প্রযোজ্য ক্ষেত্রে ফৌজদারী মামলা দায়ের করা যায়।

....."

5. After submitting the said report, the NBR formed another high powered committee for examining the said inquiry report, which is awaiting final decision (Annexure-B). It has been stated that prior to issuance of the *Suo Moto Rule* as well as forming of the respective inquiry committee, the Chittagong Customs Authority found irregularities regarding the evaded customs duty to the tune of Taka 23,83,09,442 and upon initiating proceedings under the Customs Act, 1969 against the importers of the said consignments ultimately, had been able to realize Taka 7,20,49,755. However, the realization of the rest amount had been withheld on the count of pending litigations before the Tribunal as well as in connection with the respective writ petitions so had been preferred before the High Court Divisions, by the importers (Annexure-C).

6. It has been contended that during the pendency of the said *Suo Moto Rule* as well as various litigations pending before the Tribunal as well as the High Court Division the respondents had started inquiry against the petitioners and some other officials of the Chittagong Customs Authority. Pursuant thereto the respondent No. 3, the Deputy Director, Anti-Corruption Commission issued the impugned notice bearing Memo No. 19456 dated 19-7-2012 (Annexure-D) requesting the petitioners to appear before the respondent No. 1 pursuant to the proceedings so had been initiated under Nothi No. দুদক/বিঃঅনুঃ ও তদন্ত-১/২৩১-২০১১ in order to "আপনার বক্তব্য শ্রবণ ও গ্রহন করা প্রয়োজন" for proper inquiry "সুষ্ঠু অনুসন্ধানের স্বার্থে" in exercise of power as provided under sections 19 and 20 of the Ani-Commission Ain, 2004 (in short, the Act) read with rule 20 of the Anti-Corruption Commission Rules, 2007 (in short, the Rules, 2007) along with section 160 of the Code of Criminal Procedure (in short, the Code) on the allegation of "২০০৯ সাল থেকে ২০১১ সাল পর্যন্ত জাল দলিল সৃজনের মাধ্যমে শুল্ক কর্মকর্তাদের সহায়তায় চট্টগ্রাম শুল্ক ভবনের ১৭১টি পন্য চালানে ১৬৩ কোটি টাকা রাজস্ব ফাঁকির অভিযোগ।"

7. Being aggrieved by and dissatisfied with the respective petitioners have preferred the instant applications and obtained the present Rules Nisi.

8. The respective arguments which have been advanced by the petitioners in support of the Rules Nisi are that the impugned notices do not speak whether the same accuses the petitioners; however, if the impugned notices implicate the petitioners as accused the same is prohibited under sections 19 and 20 of the Ain of 2004; nor does it speak whether the petitioners have been called upon as witnesses; it also does not specify the allegations so as to give effective representation; it is vague and unspecific and does not mention any specific document enabling the petitioners to give any effective and meaningful representation; it does not give any particular or any idea as to what interrogatories they are likely to face; it is such a nature that any innocent person is likely to be a victim and that pursuant to the said impugned notices the petitioners are likely to be compelled to be witnesses against themselves; thus, are violative of Article 35(4) of the Constitution of the People's Republic of Bangladesh.

9. In this regard, drawing attention to sec-

tions 19 and 20 of the Ain, 2004 Mr. Ahsanul Karim, the learned Advocate appearing for the petitioners in all the writ petitions submits that on a close reading of section 19(1) in particular clause (ka), (ga) and (uma) it becomes abundantly clear that it applies only to a witness, not accused; whereas under section 19(2) of the Ain the Commission may direct either witness or an accused to supply information "তথ্য সরবরাহের জন্য নির্দেশ দিতে পারিবেন" in connection with an inquiry or investigation, of which he has knowledge or possession. In other words, under sub-section (2) the Commission has no authority to hear the incumbent concern and that the information, so has been asked for, must be tangible informations "হেফাজতে রক্ষিত উক্ত তথ্য"; however, sub-section (3) of section 19 contain penal provision for non-compliance of the direction so given under sub-section (1). Conversely, he submits, section 20 of the Ain provides power to the Commission to conduct investigation as to it's schedule offence pursuant to lodging First Information Report. Accordingly, he goes to submit that power of the Commission under sections 19 and 20 are relating to 2(two) distinct arena and, as such, while issuing notice under section 19 it cannot be amalgamated with section 20 and that it should clearly specify that it is being issued upon the incumbent concern on the standing of a witness upon stating specific and definite allegations, pursuant to which he has been called upon, in order to give effective representation and also to gather an idea as to what interrogatories he is likely to face. In this connection referring to the impugned notices he goes to argue that the same does not disclose whether the petitioners have been called upon as witnesses or as accused, neither it provides the particulars basing on which his/their statements are required to be heard. Consequently, he/they may easily be misled in giving statements implicating himself/themselves with the allegations; thus, it is violative of Article 35(4) of the Constitution of the People's Republic of Bangladesh. However, in this regard he also draws attention to rule 20 of the Rules, 2007 and submits that said provision has been framed in order to execute the functions of the Commission as provided under section 19(1) of the Ain.

10. So far personal hearing of the accused person is concerned he further contends that section 22 of the Ain provides, *inter-alia,*

> "অভিযুক্ত ব্যক্তির শুনানি গ্রহন-দুর্নীতি বিষয়ক কোন অভিযোগের অনুসন্ধান বা তদন্ত চলাকালে কমিশন যদি মনে করে যে, অভিযোগের সহিত সংশ্লিষ্ট কোন ব্যক্তির বক্তব্য শ্রবন করা প্রয়োজন, তাহা হইলে কমিশন উক্ত ব্যক্তিকে শুনানির যুক্তিসংগত সুযোগ প্রদান করিবে।"

11. Accordingly, he goes to submit that the power to hear an accused person has been provided under section 22 of the Ain which can only be exercised by the Commission itself, for it is not subject to delegation and that said power is not in the nature of interrogation. Further, he submits that section 22 in clear terms provides that the Commission, if deems necessary shall provide reasonable opportunity to the accused to place his stand both during the course of inquiry as well as investigation. Moreover, rules 8 and 11 of the Rules of 2007 have enunciated as to how and in which manner the Commission may hear an accused; however, those provisions do not contain consequence to be followed if the accused remains silent during the course of hearing. As such, he submits that if the incumbent is suspected as an accused he cannot be directed to appear by the Commission exercising it's power under section 19 of the Ain. Accordingly, he submits that the impugned notices being bad notices in the eye of law, are liable to be declared to have been passed without lawful authority and hence, of no legal effect.

12. M. ASM Kamal Amroohi Chowdhury with Mr AKM Fazlul Hoque and Mr MA Halim the learned Advocates on behalf of the Anti-Corruption Commission by filing affidavit-in-opposition co-jointly submit that not a single special criminal law in the Republic or any where in criminal jurisdiction a distinction has been drawn with regard to pre-proceeding or pre-prosecution

notice to be framed differently for 'accused person' and for 'witness'. In this regard he goes to argue that the word 'witness' used in sub-section 19(1) includes the word 'accused' because under section 340 of the Code of Criminal Procedure an "accused person" is a competent witness. However, he goes to argue, if notices framed under sections 19 and 22 are to be differentiated and differently designed, that differentiation would be the matter of degree only in the process of inquiry and investigation, but never a matter substance. This is because if such difference is to be drawn and notices are to be designed separately, it will be impossible for the Anti-Corruption Commission (in short, the Commission) to identify an accused person. Moreover, if an accused person cannot be called to be present vide the said notice, the Commission will not be in a position to determine who is the suspected accused and who is not. Accordingly, he submits that these Rules being devoid of any substance are liable to be discharged.

13. Previously with a view to constitute a Bureau for Bangladesh for inquiry into and investigation of offences relating to corruption and certain other offences and for making provision for inquiry into pecuniary resources of certain persons for more effective prevention of corruption and certain other purposes the Legislature had promulgated Anti-Corruption Act, 1957 (Act No.XXVI of 1957). Later, upon repealing the said Act the Legislature further promulgated Anti-Corruption Commission Ain, 2004 (Act No. V of 2004) with the object "যেহেতু দেশে দুর্নীতি এবং দুর্নীতিমূলক কার্য প্রতিরোধের লক্ষে দুর্নীতি এবং অন্যান্য সুনির্দিষ্ট অপরাধের অনুসন্ধান এবং তদন্ত পরিচালনার জন্য একটি স্বাধীন দুর্নীতি দমন কমিশন প্রতিষ্ঠা এবং আনুষাঙ্গিক বিষয়াদি সম্পর্কে বিধান করা সমীচীন ও প্রয়োজনীয়" i.e., to constitute an independent Anti-Corruption Commission for inquiry into and investigation of offences relating to corruption and certain other offences for prevention of corruption and actions relating to corruption. However, the Legislature having used the words "দুর্নীতি এবং দুর্নীতিমূলক কার্য প্রতিরোধের লক্ষ্যে....." appears to have extended the periphery of the jurisdiction of the Anti-Corruption Commission Ain.

14. In this regard, it is the emphatic contention of the petitioners that in view of section 2(Uma) "corruption" has been defined as "এই আইনের তফসিলে উল্লিখিত অপরাধসমূহ" and thus, Commission is not empowered to inquire into or investigation of offences not covered in the schedule, which is a part of the statute. In support the learned Advocate has referred the case of *Santa Kumari De vs Nanda Kumar De* reported in *3 DLR 267* observing, *inter-alia,*

> "The general principles of construction of a statute is that if a word is defined in the statute as bearing a meaning, the Legislature intended that the said word shall bear the same meaning wherever it occurs in that statute."

15. Further, in *Kanaiyalal Kripa Sankar Bijoy Sankar Gobinda Sankar Dikshit Firm vs Shah Mahmud Palwan* reported in *11 DLR (1959) 327* it has been observed, *inter alia,-*

> "It is one of the cardinal rules of interpretation of statutes that the same word used in different places of the name statute should ordinarily receive the same meaning. This rule of interpretation of statutes applies with greater force when the same word is used in different places in the same section of the statute."

16. Also, in the case of *James Finlay and Co. Ltd. vs Chairman Second Labour Court, Dacca* reported in *1981 BLD (AD) 21= 33 DLR (AD) 58* it has been observed, *inter-alia,*

> "If a word occurring in an enactment which requires to be interpreted has already been defined in the enactment itself, the Court will adhere to the meaning of such word as is given in the definition unless there is any contrary in the context. There is no necessity to travel elsewhere or to other enactments for the purpose of defining that word or discovering its proper meaning."

17. Also, the case of *Pramatha Nath Chowdhury vs Kamir Mondal* reported in *17 DLR (SC) 392* observing, *inter-alia,*

> "Normally a definition has the effect of a declaratory provision and governs all cases coming within its ambit."

18. The preamble of the statute like the long title is a part of the Act and is an admissible aid to construction. In the case of Brett vs *Brett (1826) 162 ER 456 PP. 458 and 459 Sir John Nicholl* observed, *inter-alia,*

> "It is to the preamble more specially that we are to look for the reason or spirit of every statute, rehearsing these, as it ordinarily does, the evil's sought to be remedied, or the doubts purported to be removed by the statute, and so evidencing, in the best and most satisfactory manner, the object or intention of the Legislature in making or passing the statute itself."

19. In the case of *Sussex Peerage* reported in *(1844) 11C1* and *F 85,* particularly at page 143 also it has been observed, *inter alia,—*

> "If any doubt arise from the terms employed by the Legislature, it has always been held a safe means of collecting the intention to call in aid the ground and cause of making the statute, and to have re-course to the preamble, which according to Chief Justice Dyer as observed in the case of *Stowel vs Lord Zouch (1569)1 Plowd page 353 particularly at page 369* is a "key to open the minds of the makers of the Act and the mischief's which they intended to redress."

20. Referring to the question as to how far the enacting provisions are controlled or restricted by the preamble *Lord Norman* in the case of *AG HRH Prince Ernest Augustus of Hanover (1957)1 All England Report 49* particularly *at page 54, 55* has observed as under-

> "There may be no exact correspondence between preamble and enactment, and the enactment may go beyond, or it may fall short of, the indications that may be gathered from the preamble. Again the preamble cannot be of much, or any, assistance in construing provisions which embody qualifications or exceptions from the operation of the general purpose of the Act. It is only when it conveys a clear and definite meaning in comparison with relatively obscure or indefinite enacting words that the preamble may legitimately prevail."

21. Also, in *State Bank of India vs Yougendra Srivastava (1987) 3 SCC 10* particularly at page 21: *AIR 198 7 (SC)1399* it has been observed—

> "Repugnancy of a definition arises only when the definition does not agree with the subject or context; any action not in conformity with the definition will not obviously make it repugnant to subject or context of the provision containing the term defined under which such action is purported to have been taken. When the application of the definition to a term in a provision containing that term makes it unworkable and otiose, it can be said that the definition is not applicable to that provision because of contrary context."

22. Anti-Corruption Commission Ain, 2004 has been promulgated with the object "দেশে দুর্নীতি এবং দুর্নীতিমূলক কার্য প্রতিরোধের লক্ষে... and that having included the words "এবং দুর্নীতিমূলক কার্য" with the word "দুর্নীতিঃ goes to reflect the intention of the Legislature authorizing the Commission to combat corruption as well as the matter which leads to corruption.

23. However, the word corruption "দুর্নীতি" has been defined in section 2(Uma) of the Ain, 2004 but the word "দুর্নীতিমূলক কার্য" has not been so defined; however, in view of the submissions of the learned Advocate for the petitioners if we give literal interpretation to the word "দুর্নীতি" means to be confined within the schedule offence so far the inquiry is concerned the whole purpose of promulgating the Anti-Corruption Commission Ain, 2004 will be frustrated.

24. Admittedly, while exercising power under section 17(ga) of the Ain the Commission is authorized to inquire into allegation, not only of corruption as defined in section 2(Uma) of the Ain i.e., the schedule offence, but also touching those matters which comes within the ambit of "দুর্নীতিমূলক কার্য". The said view of ours find support in the case of *Md Shahidullah Miah vs Government of Bangladesh and others* reported in *1 CLR (HCD) 331= 66 DLR 444* (in which one of us was a party) where it has been observed *inter alia,—*

"However, in the definition clause of "inquiry" the framers of the Rules of 2007 appears to have restricted the arena of complaint "....আইনের তফসিলভুক্ত কোন অপরাধ সংক্রান্ত অভিযোগ....." within which the inquiry is to be confined, as claimed by the petitioner, and thus, makes it contrary to the context of the statute i.e., section 17(1)(ga) of the Ain, 2004 "দুর্নীতি সম্পর্কিত কোন অভিযোগ". In *Knights Bridge Estates Trust Ltd. vs Byrne, (1940)AC 613:(1940)2 All ER 401* it has been observed, *inter alia,*

..... where the context makes the definition given in the interpretation clause inapplicable, a defined word when issued in the body of the statute may have to be given a meaning different from that contained in the interpretation clause; all definitions given in an interpretation clause are therefore normally enacted subject to the qualification-"unless there is anything repugnant in the subject or context; or "unless the context otherwise requires".

It is to be remembered that a statute is an edict of the Legislature and the conventional way of interpreting or construing a statute is to seek the 'intention' of its maker, as has been observed in *Chief Justice, Andhra Pradesh V LVA Dikshitula, AIR 1979 SC 193, Page 205.* As such, when the application of the definition to a term in a provision containing that term makes it unworkable and otiose, it can be said that the definition is not applicable to that provision because of contrary context; as has been observed in *Special Officer and Competent Authority Urban Land Ceilings Hyderabad vs PS Rao, AIR 2000 SC843 page 844.*

Considering the use of words in the statute, its context, the collocation and the object of such words relating to the matter in question i.e., inquiry by the Commission, which is a fact finding process with a view to find out the *prima facie* correctness of the allegation, "উক্ত অভিযোগের প্রাথমিক সত্যতা উদঘাটনের লক্ষ্যে" a clear analogy can be drawn to the effect that so far the schedule offence is concerned can only be investigated by the Commission; however, vide selections 17 clause (ga) and 19(1) the Commission is authorized to enquire any complaint whatsoever on corruption, "দুর্নীতি সম্পর্কিত কোন অভিযোগ" even if it is not covered in the schedule to the Ain, 2004."

25. However, the observations and findings so have been given in the said case is still in operation.

26. Now, the second most important argument, which has been advanced by the learned Advocate for the petitioners, is that in view of sections 20 and 22 of the Ain section 19 cannot be exercised by the Commission with regard to a person who is an accused of an offence, but to a witness.

27. In order to appreciate the said argument let us first have a look at sections 19 and 20 of the Ain, 2004, and rule 20 of the Rules, 2007 which are quoted below—

"১৯। অনুসন্ধান বা তদন্তকার্যে কমিশনের বিশেষক্ষমতা। (১) দুর্নীতি সম্পর্কিত কোন অভিযোগের অনুসন্ধান বা তদন্তের ক্ষেত্রে, কমিশনের নিম্নেরূপ ক্ষমতা থাকিবে, যথাঃ

(ক) সাক্ষীর সমন জারি ও উপস্থিতি নিশ্চিতকরণ এবং শপথের মাধ্যমে সাক্ষীকে জিজ্ঞাসাবাদ করা।

(খ) কোন দলিল উদঘাটন এবং উপস্থাপন করা।

(গ) শপথের মাধ্যমে সাক্ষ্য গ্রহন।

(ঘ) কোন আদালত বা অফিস হইতে পাবলিক রেকর্ড বা উহার অনুলিপি তলব করা।

(ঙ) সাক্ষীর জিজ্ঞাসাবাদ এবং দলিল পরীক্ষা করার জন্য পরোয়ানা জারি করা এবং

(চ) এই আইনের উদ্দেশ্যে পূরণকল্পে, নির্ধারিত অন্য যে কোন বিষয়।

(২) কমিশন, যে কোন ব্যক্তিকে অনুসন্ধান বা তদন্ত সংশ্লিষ্ট বিষয়ে কোন তথ্য সরবরাহ করিবার জন্য নির্দেশ দিতে পারিবে এবং অনুরুপভাবে নির্দেশিত ব্যক্তি তাহার হেফাজতে রক্ষিত উক্ত তথ্য সরবরাহ করিতে বাধ্য থাকিবেন।

(৩) কোন কমিশনার বা কমিশন হইতে বৈধ ক্ষমতাপ্রাপ্ত কোন কর্মকর্তাকে উপ-ধারা (১) এর অধীন ক্ষমতা প্রয়োগে কোন ব্যক্তি বাধা প্রদান করিলে বা উক্ত উপ-ধারার অধীন প্রদত্ত কোন নির্দেশ ইচ্ছাকৃতভাবে কোন ব্যক্তি অমান্য করিলে উহা দণ্ডনীয় অপরাধ হইবে এবং উক্ত অপরাধের জন্য সংশ্লিষ্ট ব্যক্তি অনুর্ধ ৩(তিন) বৎসর পর্যন্ত যে কোন মেয়াদের কারাদণ্ডে বা অর্থদণ্ডে বা উভয় প্রকার দণ্ডে দণ্ডনীয় হইবেন।

২০। তদন্তের ক্ষমতা।-(১) ফৌজদারি কার্যবিধিতে যাহা কিছুই থাকুক না কোন এই আইনের অধীন ও উহার তফসিলে বর্ণিত অপরাধসমূহ কেবলমাত্র কমিশন কর্তৃক তদন্তযোগ্য হইবে।

(২) উপ-ধারা (১) এ উল্লিখিত অপরাধসমূহ তদন্তের জন্য কমিশন, সরকারি গেজেটে প্রজ্ঞাপন দ্বারা, উহার অধঃস্তন কোন কর্মকর্তাকে ক্ষমতা প্রদান করিতে পারিবে।

(৩) উপ-ধারা (২) এর অধীন ক্ষমতাপ্রাপ্ত কর্মকর্তার অপরাধ তদন্তের বিষয়ে থানার ভারপ্রাপ্ত একজন কর্মকর্তার ক্ষমতা থাকিবে।

(৪) উপ-ধারা (২) ও (৩) এর বিধান সত্ত্বেও কমিশনারগনেরও এই আইনের অধীন অপরাধ তদন্তের ক্ষমতা থাকিবে।"

28. Section 19(1) of the Ain provides necessary power to the Commission to exercise the same while conducting an inquiry or investigation of an allegation on any of the following grounds namely:

(a) to issue summons upon a witness and to ensure his presence or attendance and to interrogate him;

(b) to discover documents and take necessary steps for it's presence

(c) to take evidence on oath;

(d) to ask production of public records or it's copy from any Court or office concern;

(e) to issue notice for interrogation of a witness and examination of documents and

(f) any other specified matter, as required to fulfill to object of the Ain.

29. However, under section 19(2) the Commission may direct any person "যে কোন ব্যক্তি" to supply information lying within his knowledge and or possession in connection with the matters relating to inquiry or investigation.

30. On a comparative analysis of sub-sections (1) and (2) of section 19 it becomes clear that under section 19(1) in particular clause (ka), (ga) and (uma) the Commission is empowered/ authorized to interrogate or even record evidence of a witness "সাক্ষী", but not an accused.

31. In this regard, rule 2(ka) and (chaa) of Rules, 2007 have defined the words "inquiry" and "investigation". Rule 2(ka) and (chaa) of the Rules, 2007 are quoted below—

"২(ক) অনুসন্ধান অর্থ আইনের তফসিলভুক্ত কোন অপরাধসংক্রান্ত অভিযোগ প্রাপ্ত বা জ্ঞাত হইবার পর উহা কমিশন কর্তৃক তদন্ত অনুষ্ঠানের জন্য গৃহীত ও লিপিবদ্ধ হইবার পূর্বে উক্ত অভিযোগের প্রাথমিক সত্যতা উদ্‌ঘাটনের লক্ষে কমিশন বা তৎকর্তৃক ক্ষমতাপ্রাপ্ত কোন ব্যক্তি কর্তৃক পরিচালিত কার্যক্রমে।ঃ

"২(ছ) 'তদন্তস্ব অর্থ আইনের তফসিলভুক্ত কোন অপরাধ কোন ব্যক্তি কর্তৃক সংঘটিত হইবার বিষয়ে কোন তথ্য, অভিযোগ হিসেবে, ফৌজদারী কার্যবিধির ১৫৪ ধারা অথবা এই বিধিমালার তফসিলের ফরম-১ এর বিধান ও পদ্ধতি কিংবা অনুরুপ বিধান ও পদ্ধতি অনুসারে কোন থানা দুর্নীতি দমন কমিশনের কোন কার্যালয়ে গৃহীত ও লিপিবদ্ধ হইবার পর উক্ত অভিযোগের বিষয়ে উপযুক্ত আদালতে বিচারার্থ মামলা দায়ের করিবার লক্ষ্যে সাক্ষ্য-প্রমানাদি সংগ্রহের উদ্দেশ্যে কমিশন বা কমিশন হইতে ক্ষমতাপ্রাপ্ত অন্য কোন ব্যক্তি কর্তৃক পরিচালিত

কার্যক্রম।"

32. Under the Anti-Corruption Commission Ain, 2004 "inquiry" is a fact finding process being adopted by the Commission either on it's own motions or on receipt of complaint, in order to find out the correctness of the allegations so brought against. Here, the person who has been called upon to interrogate as a witness, is a witness not in connection with criminal proceedings but a witness who is assisting the Commission to find out whether there is any basis to the allegations. Moreover, the statements so are given during the course of inquiry cannot be used as evidence in connection with criminal case. Hence, the incumbent concern has no reason to be prejudiced at all. In fact, the process of inquiry prior to lodging FIR (First Information Report) under section 154 of the Code of Criminal Procedure (in short, the Code) is rather protecting the interest of the prospective accused, for if the Commission finds any basis to the allegations so brought forth during the course of inquiry it is always at liberty to lodge FIR under section 154 of the Code and collect materials during the course of investigation under section 20 of the Ain. Accordingly, the Commission may call upon the accused under section 22 of the Ain to give personal hearing, which may or may not lead his name to be included in the police report. Thus, it appears that the process of inquiry, as enunciated in Chapter 3 of the Rules of 2007, so has been resorted to prior to lodging an FIR works as a check point pursuant to which the genuinity of the allegations is being verified and thereby the person, be he a public servant or a private citizen, who is responsible for the commission of the schedule offence shall be prosecuted in accordance with law.

33. Conversely, vide sub-section (2) of section 19 of the Ain the Commission may ask either the witness or the accused "যে কোন ব্যক্তি" to supply information relating to the matters concern in connection with inquiry or investigation. However, for non-compliance of the instructions so given under sub-section (1) and for creating impediment in proper exercise of power under sub-section (1) the incumbent concern may face imprisonment or fine or both.

34. So far the accused person is concerned the Commission, if deems necessary, has power under section 22 of the Ain to call upon the accused "অভিযোগের সহিত সংশ্লিষ্ট কোন ব্যক্তি" during the course of inquiry or investigation and provide reasonable opportunity of hearing, which runs as under:

> "অভিযুক্ত ব্যক্তির শুনানি গ্রহন-দুর্নীতি বিষয়ক কোন অভিযোগের অনুসন্ধান বা তদন্ত চলাকালে কমিশন যদি মনে করে যে, অভিযোগের সহিত সংশ্লিষ্ট কোন ব্যক্তির বক্তব্য শ্রবন করা প্রয়োজন, তাহা হইলে কমিশন উক্ত ব্যক্তিকে শুনানির যুক্তিসংগত সুযোগ প্রদান করিবে।"

35. On a close examination of sections 19, 20 and 22 of the Ain it is apparent that vide section 19(1) read with rule 20 of the Rules of 2007 the Commission is empowered to interrogate a person as a "witness" in connection with an inquiry or investigation. *Per contra,* in view of section 20 read with section 22 the Commission is authorized to called upon an accused, if deems necessary, in connection with an inquiry or investigation and provide him adequate opportunity of hearing "শুনানীর যুক্তি সংগত সুযোগ প্রদান" .

36. In the instant case, on the allegations of "২০০৯ সাল থেকে ২০১১ সাল পর্যন্ত জাল দলিল সৃজনের মাধ্যমে শুল্ক কর্মকর্তাদের সহায়তায় চট্টগ্রাম শুল্ক ভবনের ১৭১টি পন্য চালানে ১৬৩ কোটি টাকা রাজস্ব ফাঁকির ....." the petitioners have been called upon by the Deputy Director of Anti-Corruption Commission vide order dated 19-7-2012 (Annexure-D) for "সুষ্ঠ অনুসন্ধানের স্বার্থে আপনার বক্তব্য শ্রবন ও গ্রহন করা প্রয়োজন" in exercise of power as provided under sections 19 and 20 of the Ain read with rule 20 of the Rules, 2007 and section 160 of the Code of Criminal Procedure.

37. Relevent portion of Memo dated 19-7-2010 (Annexure-D) in connection with writ petition No. 10725 of 2012, is quoted herein below—

> "(কমিশন আইনের ১৯ ও ২০ ধারা ও কমিশন

বিধিমালার ২০ বিধিসহ ফৌজদারী কার্যবিধির ১৬০ ধারা মতে)

সূত্রঃ নথি নং-দুদক/বিঃঅনুঃ ও তদন্ত-১/২৩১-২০১১

এতদ্বারা জানানো যাচ্ছে যে, নিম্নলিখিত অভিযোগ বিষয়ে অনুসন্ধানপূর্বক প্রতিবেদন দাখিলের জন্য নিম্নস্বাক্ষরকারীকে অনুসন্ধানকারী কর্মকর্তা হিসেবে নিয়োগ করা হয়েছে।

অভিযোগের সংক্ষিপ্ত বিবরণঃ ২০০৯ সাল থেকে ২০১১ সাল পর্যন্ত জাল দলিল সৃজনের মাধ্যমে শুল্ক কর্মকর্তাদেরকে সহায়তায় চট্টগ্রাম শুল্ক ভবনের ১৭১টি পন্য চালানো ১৬৩ কোটি টাকা রাজস্ব ফাঁকির অভিযোগ।

সুষ্ঠু অনুসন্ধানের স্বার্থে আপনার বক্তব্য শ্রবন ও গ্রহন করা প্রয়োজন।

বিধায়, উল্লিখিত অভিযোগ বিষয়ে আগামী ৩০-৭-২০১২ ইং তারিখ সকাল ১৪-০০ টার সময়ে নিম্নস্বাক্ষরকারীর কার্যালয়ে হাজির হবার জন্য আপনাকে অনুরোধ করা হল। নির্ধারিত সময়ে আপনি উপস্থিত হতে ব্যর্থ হলে আইনানুগ ব্যবস্থা গ্রহন কার্যক্রম পরিচালিত হবে।"

38. No where within the four corners of the said notice the respective petitioner has been indentified as "অভিযোগের সহিত সংশ্লিষ্ট কোন ব্যক্তি" hence, he has been called upon by the Commission to appear as a witnesses in connection with an inquiry "অনুসন্ধানের স্বার্থে". As such, it is a notice under section 19(1) of the Ain and a mere quoting of section 20 of the Ain, 2004 will not go to vitiate the effect of the said notice. Further, since the petitioners will appear before the Commission as witnesses pursuant to Memo dated 19-7-2012 (Annexure-D) and that the subject matter of interrogation has been clearly spelt out therein; hence, question of violation of Article 35(4) of the Constitution does not arise.

39. However, so far as giving warning upon the petitioners to initiate process under law for default to appear before the Commission "নির্ধারিত সময়ে আপনি উপস্থিত হতে ব্যর্থ হলে আইনানুগ ব্যবস্থা গ্রহন/কার্যক্রম পরিচালিত হবে।", is tenable in view of section 19(3) where it clearly provides—

"19(3)—(৩) কোন কমিশনার বা কমিশন হইতে বৈধ ক্ষমতাপ্রাপ্ত কোন কর্মকর্তাকে উপ-ধারা (১) এর অধীন ক্ষমতা প্রয়োগে কোন ব্যক্তি বাধা প্রদান করিলে বা উক্ত উপ-ধারার অধীন প্রদত্ত কোন নির্দেশ ইচ্ছাকৃতভাবে কোন ব্যক্তি অমান্য করিলে উহা দণ্ডনীয় অপরাধ হইবে এবং উক্ত অপরাধের জন্য সংশ্লিষ্ট ব্যক্তি অনুর্ধ ৩(তিন) বৎসর পর্যন্ত যে কোন মেয়াদের কারাদণ্ডে বা অর্থদণ্ডে বা উভয় প্রকার দণ্ডে দণ্ডনীয় হইবেন।"

40. As to the contention of the petitioners that on the matter in question the Customs authority has conducted an inquiry and submitted a detail report (Annexure-A); as such, initiating a separate inquiry by the Commission without taking into consideration of the said report is not tenable, is a misconceived one, for inquiry by the Commission under the Ain, 2004 is independent and distinct from the inquiry so conducted by the Customs authority. Further, it shall embark upon an inquiry, which is merely a fact finding process, either on it's own motion or on receipt of a complaint on the subject of "দুর্নীতি এবং দুর্নীতিমূলক কাজ" and that there is no bar in the eye of law to conduct such an inquiry by the Commission. Accordingly, the references so have been given by the petitioners in support of the Rules Nisi cannot be made applicable in the facts and circumstances of the instant case.

41. In view of the above observations and findings, the respective petitioners are accordingly directed to appear before the Commission as witnesses in compliance of the impugned Memos all dated 19-7-2012 (Annexure-D) within a period of 15(fifteen) days from the date of receipt of the copy of this judgment and order.

In this regard, the Commission is hereby directed to fix up a particular date upon giving due notice to all the petitioners concern to that effect.

Accordingly, all the Rules Nisi are disposed of.

There will be no order as to costs.

Ed.

HIGH COURT DIVISION
(Criminal Miscellaneous Jurisdiction)

Md Imman Ali J
Md Abu Tariq J

Judgment
February 25th, 2010.

Nurul Alam @ Shaheb Miah...
....Accused-Petitioner (on bail)

vs

State, represented by the Deputy Commissioner, Chittagong.....Opposite Party*

Bench and Bar

The Bench and the whole judicial structure depend so much on the integrity and alertness of the learned advocates of the Bar. Learned advocates must refrain from putting their signature identifying persons whom they do not know. .....(14)

Affidavit

In view of the existence of National ID Card for all adult citizens of the country, we would suggest that the Rules may be changed in order to enable the Affidavit Commissioner to verify the identity of the deponents standing before them by insisting upon production of their National ID card or any other official means of identification, and an attested copy of such identification may be kept with the petition. .....(16)

Md Ziaur Rahman, Advocate—For the Petitioner.

Lokman Karim, and Afroza Nazneen Akther, Advocates—For the Added Opposite Party.

Purabi Shaha, AAG—For the State.

Judgment

Md Imman Ali J: This Rule was issued upon an application under section 561(A) of the Code of Criminal Procedure calling upon the Deputy Commissioner, Chittagong to show cause as to why the proceedings of GR case No. 387 of 2006 arising out of Bakulia Police Station Case No. 5 dated 6-6-2006 under sections 406, 420 and 109 of the Penal Code now pending in the Court of Chief Metropolitan Magistrate Chittagong should not be quashed.

2. The facts of the case, relevant for disposal of the Rule, in brief, are that Nurul Alam alias Shaheb Miah was accused in GR No. 387 of 2006 arising out of Bakulia PS Case No.5 dated 6-6-2006 under sections 406/420/109 of the Penal Code and 138 of the Negotiable Instrument Act. A split charge-sheet had been submitted by the investigation officer. The accused, who had issued the cheques were charged under section 138 of the Negotiable Instruments Act and the accused petitioner was charge-sheeted separately for an offence under sections 406/420/109 of the Penal Code. At the time of issuance of the Rule, the proceedings of GR No. 387 of 2006 was stayed in its entirety. When this matter was brought to the notice of the trial Court, an application was made on 25-1-2009 by one Nurul Alam alias Shaheb Miah for adding him as party in the instant Criminal Miscellaneous case stating that he was the real Nurul Alam, who was accused in that case and that he did not file the Criminal Miscellaneous Case before this Court upon which the Rule was issued. On 10-2-2009 the learned advocate who filed the Criminal Miscellaneous application, filed an application for withdrawing his power, which he had filed on behalf of the accused petitioner. By order dated 12-2-2009 another Bench of this Hon'ble Court was pleased to vacate the order of stay. The said order further indicates that the learned advocate Mr Md Ziaur Rahman, who had filed the Criminal Miscellaneous Petition, had informed the Court that he had sent his clerk to the address given by the tadbirkar but no one was found at that address and the tadbirkar was not available. By the same order, the matter was adjourned for 3 weeks for learned advocate Mr Md Ziaur Rahman to contact his client in order to

*Criminal Miscellaneous Case No. 14221 of 2007.

ascertain the fact which has come into controversy and to inform this Court in this regard. From a subsequent order dated 2-7-2009 it appears that the learned advocate Mr Md Ziaur Rahman reported that he had written a letter to the tadbirkar and send it by registered post, but there was no reply and that his clerk had also gone to the address of the tadbirkar, but could not find any one named Md Shafiqur Rahman (which is the name of the tadbirkar). On the other hand, it transpires that Nurul Alam alias Shaheb Miah (the applicant to be added as party) alleged that Md Shafiqur and Md Abdus Salam, having forged his signature, used his name in filing the instant Criminal Miscellaneous Case before the High Court Division.

3. The learned advocate Ms. Afroza Nazneen Akhter, who had filed the application for addition of party on behalf of Nurul Alam alias Shaheb Miah informed the Court that instruction had been withdrawn from her and filed an application to surrender her power. The learned advocate Mr Lokman Karim filed a fresh power annexing a no objection certificate from Afroza Nazneen Akhter, to conduct the case on behalf of the application to be added as opposite party.

4. From the said order of this Court, it further transpired that Artha Rin Suit No. 27 of 2006 was the subject matter in Writ Petition No. 2223 of 2007, 1171 of 2009 which is still pending and Writ Petition No. 11 of 2006 also related to the same loan.

5. In view of the above anomalies this Court directed the Additional Registar-2 to inquire into the matter regarding the identity and genuineness of the accused petitioner Nurul Alam alias Shaheb Miah.

6. After due inquiry the Additional Registrar-2 submitted his report after taking oral evidence from Nurul Alam alias Shaheb Miah and all the learned Advocates, who had been engaged by him in the past to conduct the various matters. Nurul Alam alias Shaheb Miah was identified by the witnesses at the inquiry, including the Principal Officer of Islami Bank Ltd. Agrabad Branch, Chittagong who filed the Artha Rin Suit No.27 of 2006 and GR No.387 of 2006. Nurul Alam denied having engaged learned advocate Md Ziaur Rahman. The sum and substance of the report is that the learned advocate Md Ziaur Rahman accepted the brief from one Md Shafiqur Rahman (tadbirkar) whom he did not know personally and he had no way of knowing the signature on the Vokalatnama of the person named Nurul Alam. It is further stated that Md Shafiqur Rahman and Md Abdus Salam were not available to be examined in the inquiry. The Additional Registrar could not come to any conclusion as to whether the person before him claiming to be Nurul Alam alias Shaheb Miah, who is accused in GR No. 387 of 2006 is in fact the same Nurul Alam alias Shaheb Miah, who filed the Criminal Miscellaneous case No. 14221 of 2007 either by himself or it was filed by someone else, who had forged his signature.

7. The learned advocate Mr Md Ziaur Rahman appearing before us submits that in view of the allegation of false personification he had withdrawn his power. He had no scope to verify the signature of the accused appearing on the Vokalatnama and did not know the tadbirkar personally. He submits that, as is the practice, he accepted the brief from the tadbirkor on good faith and had no knowledge of the false personation by the said tadbirkar.

8. The learned advocate Mr Lokman Karim appearing in support of the application for addition of party confirmed before us that he is the engaged lawyer for Nurul Alam alias Shaheb Miah in GR No. 387 of 2006 and that his client did not file the Criminal Miscellaneous case numbered as Criminal Miscellaneous case No. 14221 of 2007.

9. While dealing with this matter we have perused the records relating to Writ Petition No. 11 of 2006, Writ Petition No. 2223 of 2007 and Writ Petition No. 1171 of 2009, we have also perused the Criminal Miscellaneous Case No. 10425 of 2006, which was filed by Nurul Alam alias Shaheb Miah praying for *ad-interim* anticipatory bail in connection with GR No. 387 of 2006.

10. There is no denial, it appears, that Nurul Alam alias Shaheb Miah is one of the accused in GR No 387 of 2006 and is defendant No. 4 in Artha Rin Suit No. 27 of 2006 and that Writ Petition No. 11 of 2006 was filed by him challenging the auction sale of his property, which he had mortgaged with the plaintiff bank. Writ Petition No. 2223 of 2007 was filed by him challenging the profit and compensation of murabaha loan transaction. Both the Rules issued in those Writ petitions have been discharged finding that the petitioner was indeed a mortgagor and that the loan transaction was in accordance with law. Writ Petition No.1171 of 2009 challenged an order by which the applications filed by the petitioner had been either rejected or not considered by the trial Court. That Rule has also been discharged by judgment and order dated 24-2-2010.

11. It appears therefore, that the petitioner has, by filing the various Writ Petitions, managed to delay the proceedings of Artha Rin Suit No. 27 of 2006 till 24-2-2010.

12. In the absence of Md Shafiqur Rahman, who was the tadbirkar in the instant Criminal Miscellaneous case, it is not possible to ascertain the motive behind filing it. It is also not possible to find out at whose behest the Criminal Miscellaneous case was filed.

13. Be that as it may, the stay having been vacated and the accused Nurul Alam alias Shaheb Miah confirming that he did not file the Criminal Miscellaneous case, the Rule is infructuous and accordingly it is discharged.

14. Before we part with this matter, we must put on record the activities of the learned advocates of the Bar in taking instruction from tadbirkars without ascertaining their identity. This is not expected from learned members of the Bar and is totally unacceptable. We find from the petition in the instant case that Mr Md Ziaur Rahman, learned advocate identified the deponent namely the tadbirkar of the case as being known to him and identified by him. The learned advocate Md Ziaur Rahman candidly submits before us that the tadbirkar was not personally known to him and that he did not verify his identification. This is a mockery of the system. Such activity of the learned advocate is highly deprecated. He is warned that this type of action will not be tolerated and he must be more careful in future. The Bench and the whole judicial structure depend so much on the integrity and alertness of the learned advocates of the Bar. Learned advocates must refrain from putting their signature identifying persons whom they do not know.

15. Since all the adult citizens of the country are now in possession of National ID cards, learned advocates must take steps to ensure that the identity of the persons before them is correct as stated by verifying the identity with their National ID cards or with some other official means of identification.

16. We are well aware of the frequency with which false personation is being practiced before the Courts. This must be stemmed. The High Court Rules do not provide with any requirement for the Affidavit Commissioner to ascertain the identity of the deponent before him and he simply relies upon the identification of the deponent as identified by the learned advocate. Again, in view of the existence of National ID Card for all adult citizens of the country, we would suggest that the Rules may be changed in order to enable the Affidavit Commissioner to verify the identity of

the deponents standing before them by insisting upon production of their National ID card or any other official means of identification, and an attested copy of such identification may be kept with the petition.

17. With the above observations the Rule is discharged.

Let a copy of this judgment be communicated to the Chairman of the Bar Council, President of the Supreme Court Bar Association and Registrar of the Supreme Court at once for necessary action.

Ed.

HIGH COURT DIVISION
(Civil Revisional Jurisdiction)

Md. Rezaul Hasan J

Judgment
May 30th, 2013.

Maleka Nasreen Banu and others.....Petitioners

vs

Esrarul Huq Chowdhury & ors...Opposite parties*

Code of Civil Procedure (V of 1908)
Order VII, rule 11(d)

Question as to whether the plaint is liable to be rejected or not is to be decided solely with reference to the statements made in the plaint. .....(12)

Order VII, rule 11(d)

The grounds taken in the petition for rejection of plaint are mainly matters of evidence that would be taken into consideration at the time of trial of suit. .....(13)

Md. Serajul Haque, Advocate with Md.Asrarul Hoque, Advocate—For the Petitioners

Md.Khurshid Alam Khan, Advocate—For opposite party No.1

*Civil Revision No. 852 of 2011.

Judgment

This Rule under section 115(4) of the Code of Civil Procedure (CPC) has been issued, with leave of the court calling upon opposite party No.1 to show cause as to why the judgment and order dated 30-6-2010 passed by the learned Additional District Judge 8th Court Dhaka in Civil Revision No. 277 of 2009 affirming those dated 7-7-2009 passed by the learned Senior Assistant Judge 9th Court, Dhaka in Title Suit No. 1220 of 2008 should not be set-aside and or pass such other or further order or orders as to this court may seem fit and proper.

2. In this revisional application the judgment and order dated 30-6-2010 passed by the Additional District Judge, 8th Court, Dhaka in Civil Revision No. 277 of 2009, disallowing the revision and affirming the Judgment and Order dated 7-7-2009 passed by the Senior Assistant Judge, 9th Court, Dhaka in Title Suit No. 1120 of 2008 has been challenged.

3. The learned Advocate Mr Md Serajul Haq, appearing along with the learned Advocate Mr Md Asrarul Hoque, appearing for the defendant-petitioners, having placed the petition and materials on record, submits that as would be apparent from the cause title of the plaint, the plaintiff remains for away from the suit property and, as such, there is no likelihood to obstruct enjoyment of his property by the defendants. He further submits that if there is any unauthorized construction in the schedule property then RAJUK will demolish the same, but the petitioner has no personal interest in this matter. Hence injunction cannot be granted in this matter as per provision of section 56, clause (k) of the Specific Relief Act. He further submits that there is no specific allegations in the plaint and that there is no cause of action to file this suit. Hence, the plaint is liable to be rejected. But the court below has committed error of law in passing the impugned order by rejecting the revisional application filed

before the court, thereby confirming the rejection of the petition filed under Order VII, rule 11 of the Code of Civil Procedure. Accordingly, he prayed for making the Rule absolute.

4. The learned Advocate Mr Md Khurshid Alam Khan, appearing for the plaintiff-opposite party, on the other hand submits that the plaint is liable to be rejected under Order VII, rule 11 on 4(four) grounds, but there was no such ground stated in the petition. He next submits that the question of *locus-standi* does not come under Order VII, rule 11 of the Code of Civil Procedure (CPC). Besides, he further submits that the question as to the application of section 56 and 58 and maintainability of the suit under those sections is a question of merit that can be decided by the trial court upon framing issue in the suit and at the time of disposal of the suit. He finally submits that the petitioner has filed written statements and is contesting in this suit and therefore he has no scope to file this petition under Order VII, rule 11 at this stage and the plaintiff as well as the defendants are entitled to adduce evidence, if any, in support of their respective case at the time of hearing of the suit. Accordingly, he concludes, that the court below has committed no error of law resulting in any error of decision or in occasioning failure of justice. Hence the Rule is liable to be discharged.

5. Heard the learned Advocates perused the plaint annexed to the revisional application, as annexure-A, the application filed under Order VII, rule 11 (annexure-C) and the impugned order passed on 30-6-2010 in Civil Revision No. 277 of 2009 by the learned Additional District and Sessions Judge, 8th Court, Dhaka.

6. The facts of the case need not be repeated.

7. I have taken into notice the contents of the plaint of the petition filed under Order VII, rule 11 and impugned order dated 30-6-2010. It will suffice to record here that the suit has been filed for permanent injunction by the plaintiff as one of the users of the public road that has passed, keeping the schedule property to its north side, towards the house of the plaintiff and other persons living in the neighbourhood. The main allegation in the petition is that the defendants/petitioners are constructing a multi-storied apartment building in violation of the approved plan of RAJUK and that because of the veranda having been extended towards the passage, in violation of the RAJUK plan, the plaintiff and others persons using the road are facing obstruction in their movement.

8. In the plaint RAJUK has been impleaded defendant No.5.

9. The defendants-petitioners have filed written statement under Order VII, rule 11 on 9-2-2009 (Annexure-B) and mainly alleging that there was no cause of action for filing this plaint and that the plaintiff has filed the suit in public interest, but he is not a public representative, nor he has obtained any sanction under Order I, rule 8 of the Code of Civil Procedure. Hence the plaint is liable to be rejected for having no cause of action. It appears that their petition filed under Order VII, rule 11 was rejected by the learned Assistant Judge 9th Court, Dhaka on 7-7-2009 and the order of the trial court was affirmed by the lower revisional court.

10. Being aggrieved thereby they have filed Civil Revision No. 277 of 2009 before the Additional District and Sessions Judge, 8th Court, Dhaka.

11. In the aforesaid Civil Revision, by an order dated 30-6-2010 the revisional court has rejected the prayer on the recording that

"বাদী দাবী করেন যে, বিবাদীর বাড়ীর রাস্তার অপরপার্শ্বেই তাদের বাড়ী এবং উক্ত রাস্তার উপর বিবাদীগন বারান্দা বর্দ্ধিত করায় বাদী সহ এলাকার লোকজনের চলাচলের

before the court, thereby confirming the rejection of the petition filed under Order VII, rule 11 of the Code of Civil Procedure. Accordingly, he prayed for making the Rule absolute.

4. The learned Advocate Mr Md Khurshid Alam Khan, appearing for the plaintiff-opposite party, on the other hand submits that the plaint is liable to be rejected under Order VII, rule 11 on 4(four) grounds, but there was no such ground stated in the petition. He next submits that the question of *locus-standi* does not come under Order VII, rule 11 of the Code of Civil Procedure (CPC). Besides, he further submits that the question as to the application of section 56 and 58 and maintainability of the suit under those sections is a question of merit that can be decided by the trial court upon framing issue in the suit and at the time of disposal of the suit. He finally submits that the petitioner has filed written statements and is contesting in this suit and therefore he has no scope to file this petition under Order VII, rule 11 at this stage and the plaintiff as well as the defendants are entitled to adduce evidence, if any, in support of their respective case at the time of hearing of the suit. Accordingly, he concludes, that the court below has committed no error of law resulting in any error of decision or in occasioning failure of justice. Hence the Rule is liable to be discharged.

5. Heard the learned Advocates perused the plaint annexed to the revisional application, as annexure-A, the application filed under Order VII, rule 11 (annexure-C) and the impugned order passed on 30-6-2010 in Civil Revision No. 277 of 2009 by the learned Additional District and Sessions Judge, 8th Court, Dhaka.

6. The facts of the case need not be repeated.

7. I have taken into notice the contents of the plaint of the petition filed under Order VII, rule 11 and impugned order dated 30-6-2010. It will suffice to record here that the suit has been filed for permanent injunction by the plaintiff as one of the users of the public road that has passed, keeping the schedule property to its north side, towards the house of the plaintiff and other persons living in the neighbourhood. The main allegation in the petition is that the defendants/petitioners are constructing a multi-storied apartment building in violation of the approved plan of RAJUK and that because of the veranda having been extended towards the passage, in violation of the RAJUK plan, the plaintiff and others persons using the road are facing obstruction in their movement.

8. In the plaint RAJUK has been impleaded defendant No.5.

9. The defendants-petitioners have filed written statement under Order VII, rule 11 on 9-2-2009 (Annexure-B) and mainly alleging that there was no cause of action for filing this plaint and that the plaintiff has filed the suit in public interest, but he is not a public representative, nor he has obtained any sanction under Order I, rule 8 of the Code of Civil Procedure. Hence the plaint is liable to be rejected for having no cause of action. It appears that their petition filed under Order VII, rule 11 was rejected by the learned Assistant Judge 9th Court, Dhaka on 7-7-2009 and the order of the trial court was affirmed by the lower revisional court.

10. Being aggrieved thereby they have filed Civil Revision No. 277 of 2009 before the Additional District and Sessions Judge, 8th Court, Dhaka.

11. In the aforesaid Civil Revision, by an order dated 30-6-2010 the revisional court has rejected the prayer on the recording that

"বাদী দাবী করেন যে, বিবাদীর বাড়ীর রাস্তার অপরপার্শ্বেই তাদের বাড়ী এবং উক্ত রাস্তার উপর বিবাদীগন বারান্দা বর্দ্ধিত করায় বাদী সহ এলাকার লোকজনের চলাচলের

অসুবিধা হচ্ছে। বাদীর বক্তব্যে উক্তরুপ বিষয়াদি মূল মামলার সাক্ষ্য প্রমানের উপর নির্ভরশীল হলেও বাদীর মামলা আনয়নের নালিশের কারণ বিদ্যমান দেখা যায়। বাদী প্রতিনিধিত্বমূলক মামলা না করলেও তার একক ও সমূহ ক্ষতি হওয়ায় তিনি উক্তরুপে চিরস্থায়ী নিষেধাজ্ঞার মামলা আনয়ন করতে পারেন। নালিশী জমিতে বাদীর স্বত্ব দখল না থাকলেও বিবাদীর নির্মানাধীন বারান্দা দ্বারা তার চলাচলের অসুবিধা হলে নিষেধাজ্ঞার আকারে বাদী প্রতিকার পেতে পারেন। যদিও বাদীর মামলা বাদীকেই প্রমান করতে হবে, কিন্তু দেওয়ানী কার্য বিধি আইনের অর্ডার ৭ রুল ১১ এর ৪টি বিধান মতে বাদীর আরজিটি এক্ষনে খারিজ যোগ্য নহে। বিধায় বিজ্ঞ নিম্ন আদালত তর্কিত আদেশটিতে যথাযথ ভাবেই আরজি খারিজের দরখাস্তটি নামঞ্জুর করেছেন। *(empasis added).*

12. In the background recorded herein above, I have considered the impugned order. It is a cardinal principle of law that the question as to whether the plaint is liable to be rejected or not is to be decided solely with reference to the statements made in the plaint. The learned Additional District Judge, while passing the impugned order, has taken into consideration all the legally relevant facts, as quoted above, and rejected the Civil Revision and thereby affirmed the order dated 7-7-2009 passed in Title Suit No. 1120 of 2008, rejecting the petition filed under Order VII, rule 11 of the Code of Civil Procedure has been affirmed.

13. Having considered the impugned order, I find that in passing the impugned order the learned court below has committed no error of law and that the impugned order has not resulted in any error in the decision, nor the same has occasioned any failure of justice. In order to succeed in a revision, the defendants-petitioners ought to have proved these 3 (three) ingredients to justify interference by the revisional court, which they have failed to do in this case. Besides, I have also found that the plaintiff has personal interest in the matter and by virtue of his own right he is entitled to file the suit, as has rightly been pointed out by the revisional court below. Besides the Authorized officer of RAJUK is defendant No. 5 in this case. The grounds taken in the petition for rejection of plaint are mainly matters of evidence that would be taken into consideration at the time of trial of suit. Besides, the question as to whether there is a cause of action is to be decided upon taking evidence in this particular case, whereas it is settled law that the cause of action is a bundle of facts.

14. The plaintiff is entitled to prove his case. I also find substance in the submission made by the learned Advocate for the defendant-petitioners that the question as to the maintainability of the suit is a question relating to merit of the suit, which can be decided by the trial court. Besides, this is a long pending case of 2008. So this matter should be disposed of within the soonest practicable time.

15. Before parting of, it should be recorded that the plaintiffs' right to sue is a cause separate from RAJUK's obligation to inspect such site and to take action under the Building Construction Act, 1952. Even if RAJUK or its inspector or authorized officer does not make any objection to and overlooks the violation, as has been done in the case of RANG's Building (Tejgaon) demolished in 2007/2008 and in the case of many other such buildings, it will, in no way, impair right of the aggrieved persons to take action according to the law of the land. The bar (imposed out of judicial prudence) of having alternative remedy, efficient or not, is not applicable in the matter of filing civil suit. Moreover, it is RAJUK's own duty to ensure compliance of the Building Construction Act, 1952. RAJUK is not a forum like a court, to entertain and resolve disputes.

16. In view of the foregoing deliberation, I find no merit in this Rule.

17. In the result this rule is discharged without any order as to costs.

18. The trial court is directed to decide the case as soon as possible.

The order of stay passed at the time of issuing the Rule shall stand vacated.

Ed.

HIGH COURT DIVISION
(Civil Revisional Jurisdiction)

Moyeenul Islam Chowdhury J

Divisional Forest Officer, Village-12, Mohakhali, Dhaka and others.....Petitioners

vs

Md Abul Hossen @ Amir Hossen and others.....Opposite-Parties*

Judgment
July 3rd, 2014.

Limitation Act (IX of 1908)
Section 5

Although the Government is not entitled to any special privilege in the matter of condonation of delay, yet some consideration may be given thereto depending upon the facts and circumstances of each case where the Government appears as a litigant. It is true that each day's delay has not been explained away in the application for condonation of delay in the case before us. But this is not an absolute rule. In such a landscape, no strait-jacket formula can be laid down in this regard. Condonation of delay depends upon the facts and circumstances of each case. .....(16)

Bangladesh vs Jahiruddin, 1986 BLD (AD) 180; Circle Officer, Sutrapur vs Mohammad, 43 DLR 84; Abul Quasem vs Government of Bangladesh, 6 MLR 73= 6 BLC 259; Ata Ullah Malik vs Custodian of Evacuee Property, 16 DLR (SC) 298; Chairman, Rajdhani Unnayan Kartipakkha vs Rokeya Begum, 6 MLR (AD) 295; Abul Quasem vs Government of Bangladesh, 6 MLR 73 =6 BLC 259 ref.

Zahirul Haque Zahir, DAG with Mahmuda Parveen, AAG—For the Petitioners.

Humayun Kabir Sikder, Advocate—For the Opposite-Party Nos. 1-5.

*Civil Rule No. 805 (Con) of 2006

Judgment

This Rule was issued calling upon the opposite-party Nos. 1-5 to show cause as to why the delay of 336 days in filing the revisional application under section 115(1) of the Code of Civil Procedure should not be condoned and/or such, other or further order or orders passed as to this Court may seem fit and proper.

2. The petitioners filed the revisional application against the impugned judgment and decree dated 16-5-2005 passed by the Additional Joint District Judge, Gazipur in Title Appeal No. 84 of 2002 reversing the judgment and decree dated 24-6-2002 passed by the Assistant Judge, Sreepur, Gazipur in Title Suit No. 153 of 2001. The revisional application is out of time by 336 days. Hence the Rule.

3. Mrs Mahmuda Parveen, learned Assistant Attorney-General appearing on behalf of the petitioners, submits that the lower Appellate Court passed the impugned judgment and decree dated 16-5-2005 in Title Appeal No. 84 of 2002 and an application for its certified copy was submitted on 23-5-2005 and the petitioners received the same on 25-7-2005 and thereafter on 17-4-2006, the Forest Department of Gazipur sent the case record to their Dhaka Office and the Dhaka Office of the Forest Department in its turn sent the case record to the office of the Solicitor, Dhaka on 25-4-2006 and the Solicitor's Office sent the case record to the office of the learned Attorney-General on 31-5-2006 and the learned Attorney-General request-

ed the learned Deputy Attorney-General concerned to make a draft of the revisional application on 5-6-2006 and the learned Deputy Attorney-General drafted the revisional application on 13-6-2006 which was typed on 20-6-2006 and the final revisional application was sent to the office of the Solicitor on 22-6-2006 and an affidavit was sworn on 17-7-2006 with a view to filing the revisional application in the High Court Division and in the process, a delay of 336 days occurred in filing the revisional application which was unintentional and in that view of the matter, the delay of 336 days should be condoned.

4. Mrs. Mahmuda Parveen also submits that it goes without saying that the Government machinery is a slow-moving machinery and before filing any appeal or revision, as the case may be, the Government has to obtain opinions of various authorities concerned and that being so, it usually takes time in obtaining their opinions and in the process, some delay occurs in filing the revisional application or the appeal and in this perspective, some consideration is always given to condonation of delay where the Government appears as a litigant. In support of this submission, Mrs. Mahmuda Parveen has drawn my attention to the decision in the case of *Bangladesh vs Jahiruddin* reported in *1986 BLD (AD) 180.*

5. Mrs. Mahmuda Parveen next submits that it has been held in the decision in the case of the *Circle Officer, Sutrapur vs Mohammad* reported in *43 DLR 84* that in dealing with an application under section 5 of the Limitation Act, in the case of the Government, public interest has to be duly considered and various authorities, formalities and complications are involved and, as such, the Government requires a longer time in making its decision and acting on it and if, on behalf of the Government, a reasonable explanation of delay is given, there is no reason why it should not be accepted.

6. Mrs. Mahmuda Parveen also submits that there was no laches on the part of the petitioners in filing the revisional application and the delay of 336 days occurred because of various communications between the different officers and offices of the Forest Department and there was sufficient cause for not preferring the revisional application within the given time-frame and as such, the delay in filing the revisional application should be condoned.

7. *Per contra,* Mr Humayun Kabir Sikder, learned Advocate appearing on behalf of the opposite-party Nos.1-5, submits that indisputably the judgment and decree of the lower Appellate Court was rendered on 16-5-2005 and an application for obtaining its certified copy was submitted on 23-5-2005 and the certified copy was received on 25-7-2005; but curiously enough, it took about 9(nine) months on the part of the Forest Department of Gazipur to send the case record to its Dhaka Office on 17-4-2006 and this long period of about 9(nine) months has not been explained away in the application for condonation of delay and this being the state of affairs, the Rule should be discharged.

8. Mr Humayun Kabir Sikder also submits that the delay in filing the revisional application was inordinate and there was no sufficient cause for not preferring the revisional application within the given time-frame and if the High Court Division condones the inordinate delay of 336 days, that will amount to putting a premium upon the negligence and laches of the petitioners which cannot be countenanced in any view of the matter. To buttress up this submission, Mr Humayun Kabir Sikder relies upon the decision in the case of the *Chairman, Rajdhani Unnayan Kartipakkha vs Rokeya Begum* reported in *6 MLR (AD) 295.*

9. Mr Humayun Kabir Sikder next submits that the law of limitation enjoins that the Government and the public litigant stand on equal footing and every day's delay is to be explained satisfactorily and as the petitioners have failed to

explain away every day's delay in filing the revisional application, the delay of 336 days in filing the same should not be condoned and consequently, the Rule should be discharged. In this connection, Mr Humayun Kabir Sikder adverts to the decision in the case of *Abul Quasem vs Government of Bangladesh* reported in *6 MLR 73= 6 BLC 259.*

10. I have heard the submissions of the learned Assistant Attorney-General Mrs. Mahmuda Parveen and the counter-submissions of the learned Advocate Mr Humayun Kabir Sikder and perused the application under section 5 of the Limitation Act filed by the petitioners.

11. In order to set the controversy at rest, section 5 of the Limitation Act, 1908 may be quoted below verbatim:

> "5. Any appeal or application for a revision or a review of judgment or for leave to appeal or any other application to which this may be made applicable by or under any enactment for the time being in force, may be admitted after the period of limitation prescribed thereof, when the appellant or applicant satisfies the Court that he had sufficient cause for not preferring the appeal or making the application within such period."

12. The word "sufficient" means "adequate", "enough" and the expression "sufficient cause" implies presence of adequate reason. It is the circumstance beyond the control of the party including negligence to the extent of which it can be regarded as human, but excluding gross negligence. This is the well-accepted definition as affirmed by the Supreme Court of Pakistan in the case of *Ata Ullah Malik vs Custodian of Evacuee Property* reported in *16 DLR (SC) 298.*

13. In the decision in the case of *Bangladesh vs Jahiruddin* reported in *1986 BLD (AD) 180* relied on by the learned Assistant Attorney-General Mrs. Mahmuda Parveen, it has been held that in the matter of condonation of delay, the Government does not enjoin any special privilege; yet the fact remains that due to the necessity to obtain opinions of various authorities concerned before filing an appeal, some time may reasonably be expected to elapse which in the case of any individual does not happen and so on consideration in appropriate circumstances may, therefore, be extended to the Government appearing as a litigant.

14. From the decision in the case of the *Chairman, Rajdhani Unnayan Kartipakkha vs Rokeya Begum* reported in *6 MLR (AD) 295* referred to by the learned Advocate Mr Humayun Kabir Sikder, it transpires that the petitioner moved the High Court Division with an application under section 115(1) of the Code of Civil Procedure which was out of time by 1,345 days and since the inordinate delay was not at all explained away, the High Court Division summarily rejected it as being barred by limitation and thereafter the petitioner presented a Civil Petition For Leave To Appeal to the Appellate Division and the Appellate Division did not interfere with the order of the High Court Division on the ground that any indulgence regardless of the settled principles of law and practice will only give a premium to negligence or want of due diligence in public office which is not desirable.

15. In the decision in the case of *Abul Quasem vs Government of Bangladesh* reported in *6 MLR 73 =6 BLC 259* adverted to by the learned Advocate Mr Humayun Kabir Sikder, it has been held that the law of limitation enjoins that the Government and public litigants stand on equal footing and every day's delay is to be explained satisfactorily; but it is not always an absolute rule and the nature of explanation depends on the facts and circumstances of each case. It has been further held in the said decision that though the Government cannot claim any special privilege, yet some consideration may be given in view of

the Government functionaries' working in a time-consuming process while condoning delay in an appropriate case.

16. The upshot of the above discussions is that although the Government is not entitled to any special privilege in the matter of condonation of delay under section 5 of the Limitation Act, yet some consideration may be given thereto depending upon the facts and circumstances of each case where the Government appears as a litigant. This is because the Government machinery moves at a snail's pace and the Government functionaries work in a time-consuming process. However, it is true that each day's delay has not been explained away in the application for condonation of delay in the present case before us. But this is not an absolute rule. In such a landscape, no strait-jacket formula can be laid down in this regard. What I am driving at boils down to this: condonation of delay under section 5 of the Limitation Act depends upon the facts and circumstances of each case.

17. It seems that the learned Advocate Mr Humayun Kabir Sikder has rightly submitted that there was a delay of about 9(nine) months in sending the case record to the Dhaka Office of the Forest Department from its Gazipur Office after receiving the certified copy of the judgment and decree of the lower Appellate Court on 25-7-2005. Although it has been mentioned in the application for condonation of delay that the Forest Department of Gazipur sent the case record to its Dhaka Office on 17-4-2006, yet no explanation for such delay of 9(nine) months has been given in so many words therein. I have already stated that the petitioners are to explain away each day's delay; but that is not an absolute rule. In the matter of condonation of delay, the public interest cannot be brushed aside at all. I have also stated earlier that the Government machinery moves at a snail's pace and the Government functionaries work in a time-consuming process. It appears that due to the time-consuming process, the Forest Department of Gazipur took about 9(nine) months time in sending the case record to its Dhaka Office on 17-4-2006.

18. Having considered the various aspects of the case and in view of the discussions made above, I am led to hold that there was sufficient cause for not making the revisional application within the given time-frame. So I find merit in the Rule, the Rule, therefore, succeeds.

Accordingly, the Rule is made absolute without any order as to costs. Consequently, the delay of 336 days in filing the revisional application by the petitioners is condoned.

Ed.

End of Volume LXVI (2014)

(২) উপ-ধারা (১) এর অধীন কোন শিশুকে জামিনে মুক্তি প্রদানের ক্ষেত্রে সংশ্লিষ্ট অপরাধ জামিনযোগ্য বা জামিন অযোগ্য কি না তাহা শিশুবিষয়ক পুলিশ কর্মকর্তা বিবেচনায় লইবেন না।

(৩) উপ-ধারা (২) এ যাহা কিছুই থাকুক না কেন, অপরাধের প্রকৃতি গুরুতর বা ঘৃণ্য প্রকৃতির হইলে বা জামিন প্রদান করা হইলে উহা শিশুর সর্বোত্তম স্বার্থের পরিপন্থী হইলে বা জামিন প্রদান করা হইলে সংশ্লিষ্ট শিশু কোন কুখ্যাত অপরাধীর সাহচর্য লাভ করিতে পারে বা নৈতিক বিপদের সম্মুখীন হইতে পারে বা জামিন প্রদান করা হইলে ন্যায় বিচারের উদ্দেশ্য ব্যাহত হইবার আশঙ্কা থাকিলে শিশুবিষয়ক পুলিশ কর্মকর্তা সংশ্লিষ্ট শিশুকে জামিন বা মুক্তি প্রদান করিবেন না।

(৪) গ্রেফতারকৃত শিশুকে উপ-ধারা (৩) এর অধীন জামিনে মুক্তি প্রদান করা না হইলে শিশুবিষয়ক পুলিশ কর্মকর্তা, গ্রেফতারের পর আদালতে উপস্থাপনের জন্য প্রয়োজনীয় ভ্রমণ সময় ব্যতীত, ২৪(চব্বিশ) ঘন্টার মধ্যে সংশ্লিষ্ট শিশুকে নিকটস্থ শিশু-আদালতে হাজির করিবার ব্যবস্থা গ্রহণ করিবেন।

(৫) থানা হইতে জামিনপ্রাপ্ত হয় নাই এমন কোন শিশুকে শিশু-আদালতে উপস্থাপন করা হইলে শিশু-আদালত তাহাকে জামিন প্রদান করিবে বা নিরাপদ স্থানে বা শিশু উন্নয়ন কেন্দ্রে আটক রাখিবার আদেশ প্রদান করিবে।

৫৩। আইনের সংস্পর্শে আসা শিশু সম্পর্কে অবহিত করিবার দায়িত্ব।—কোন ব্যক্তি যদি যুক্তিসঙ্গতভাবে বিশ্বাস করেন যে, কোন শিশু অপরাধমূলক ঘটনার শিকার বা কোন অপরাধের সাক্ষী তাহা হইলে তিনি উহা শিশুবিষয়ক পুলিশ কর্মকর্তা, প্রবেশন কর্মকর্তা বা সমাজকর্মীকে অবহিত করিবেন এবং উক্ত ক্ষেত্রে সংশ্লিষ্ট শিশুবিষয়ক পুলিশ কর্মকর্তা, প্রবেশন কর্মকর্তা বা সমাজকর্মী উক্ত শিশুর সার্বিক নিরাপত্তার বিষয়ে প্রয়োজনীয় ব্যবস্থা গ্রহণ করিবেন।

৫৪। আইনের সংস্পর্শে আসা শিশুর ক্ষেত্রে বিশেষ ব্যবস্থা ও সুরক্ষা।—(১) বিচার প্রক্রিয়ার সকল পর্যায়ে আইনের সংস্পর্শে আসা শিশুর মর্যাদার প্রতি শ্রদ্ধা প্রদর্শন, পারিপার্শ্বিক অবস্থা, বয়স, লিঙ্গ এবং অক্ষমতা ও পরিপক্কতার বিষয়সমূহ বিবেচনায় লইতে হইবে।

(২) শিশুবিষয়ক পুলিশ কর্মকর্তা কর্তৃক বিশেষ শিশুবান্ধব পরিবেশে আইনের সংস্পর্শে আসা শিশুর সাক্ষাৎকার গ্রহণ করিতে হইবেঃ

তবে শর্ত থাকে যে, মেয়ে শিশুর ক্ষেত্রে উক্ত শিশুর মাতা-পিতা অথবা তাহাদের অবর্তমানে তত্ত্বাবধায়ক অভিভাবক বা কর্তৃপক্ষ অথবা আইনানুগ বা বৈধ অভিভাবক বা বর্ধিত পরিবারের সদস্য এবং প্রবেশন কর্মকর্তার, যাহাদের উপস্থিতিতে শিশু সাক্ষাৎকার প্রদানে রাজি থাকে বা স্বাচ্ছন্দ্যবোধ করে, উপস্থিতিতে একজন মহিলা পুলিশ কর্মকর্তা কর্তৃক সাক্ষাৎকার গ্রহণ করিতে হইবে।

(৩) আইনের সংস্পর্শে আসা শিশুর সর্বোত্তম স্বার্থ বিবেচনা করিয়া শিশুর সুরক্ষা ও গোপনীয়তা নিশ্চিত করিবার জন্য শিশু-আদালত নিম্নবর্ণিত এক বা একাধিক পদক্ষেপ গ্রহণ করিবার নিমিত্ত আদেশ প্রদান করিতে পারিবে, যথাঃ—

(ক) বিচার প্রক্রিয়ার সহিত সংশ্লিষ্ট আইনের সংস্পর্শে আসা শিশুর সকল তথ্য গোপন রাখা এবং এমন কোন তথ্য প্রকাশ না করা, যাহার মাধ্যমে সংশ্লিষ্ট শিশুটিকে শনাক্ত করা যায়;

(খ) সাক্ষ্য প্রদানকারী শিশুর ছবি বা দৈহিক বর্ণনা গোপন করিবার উদ্যোগ গ্রহণ অথবা শিশুর ক্ষতি প্রতিরোধ করিবার জন্য, প্রাপ্যতা সাপেক্ষে, নিম্নবর্ণিত পদ্ধতিতে শিশুর সাক্ষ্য গ্রহণ করাঃ—

(অ) পর্দার আড়ালে;

(আ) শুনানির পূর্বে শিশু-সাক্ষীর ভিডিওকৃত সাক্ষ্য গ্রহণের মাধ্যমে, তবে উক্ত ক্ষেত্রে সাক্ষ্য গ্রহণকালে আসামীপক্ষের আইনজীবীর উপস্থিতি এবং সংশ্লিষ্ট শিশুকে জেরা করিবার সুযোগ প্রদান করিতে হইবে;

(ই) একজন যোগ্যতাসম্পন্ন ও উপযুক্ত মধ্যস্থতাকারীর মাধ্যমে;

(ঈ) দ্বারবদ্ধ (Camera Trial) অধিবেশন পরিচালনার মাধ্যমে; বা

(উ) ভিডিও লিংকেজ পদ্ধতি চালু হইলে উক্ত পদ্ধতিতে;

(গ) আসামীর উপস্থিতিতে শিশু সাক্ষ্য প্রদানে অসম্মতি জ্ঞাপন করিলে বা যদি এইরূপ প্রতীয়মান হয় যে, উক্ত ব্যক্তির উপস্থিতিতে শিশুটি সত্য কথা বলিতে বাধাগ্রস্ত হইতে পারে, তাহা হইলে আসামীকে সাময়িকভাবে পুলিশের হেফাজতে আদালত পরিত্যাগের আদেশ প্রদান করা; তবে উক্ত ক্ষেত্রে আসামী পক্ষের আইনজীবীকে আদালত কক্ষে উপস্থিত থাকিতে এবং শিশুকে প্রশ্ন করিবার সুযোগ প্রদান করিতে হইবে;

(ঘ) শিশুর সাক্ষ্য গ্রহণের সময় বিরতির সুযোগ প্রদান করা;

(ঙ) শিশুর বয়স ও পরিপক্কতার সহিত সামঞ্জস্যপূর্ণ দিন ও তারিখে শুনানির সময়সূচি নির্ধারণ করা; এবং

(চ) মামলার সাক্ষী বা ভিকটিম হিসাবে সাক্ষ্য প্রদানকালে, সাক্ষ্য প্রদানের পূর্বে ও পরে শিশুকে তাহার অভিভাবকসহ প্রয়োজনীয় নিরাপত্তা প্রদান করা; বা

(ছ) শিশুর সর্বোত্তম স্বার্থ এবং আসামীর অধিকার বিবেচনায় আনিয়া আদালত যেইরূপ বিবেচনা করিবে, সেইরূপ অন্য কোন পদ্ধতি অবলম্বন করা।

(৪) উপ-ধারা (৩) এ যাহা কিছুই থাকুক না কেন, আইনের সংস্পর্শে আসা শিশুর সর্বোত্তম স্বার্থ বিবেচনা করিয়া শিশুর সুরক্ষা নিশ্চিত করিবার জন্য শিশু-আদালত পদ্ধতি নির্ধারণপূর্বক বিকল্প পদ্ধতিতে বিরোধ মীমাংসার জন্য আদেশ প্রদান করিতে পারিবে।

সপ্তম অধ্যায়
আইনগত প্রতিনিধিত্ব ও সহায়তা

৫৫। আইনগত প্রতিনিধিত্ব, ইত্যাদি।—(১) আইনের সহিত সংঘাতে জড়িত শিশু এবং আইনের সংস্পর্শে আসা শিশুর পক্ষে

আইনগত প্রতিনিধিত্ব ব্যতীত কোন আদালত কোন মামলার বিচার কার্য পরিচালনা করিবে না।

(২) শিশু তাহার আইনগত প্রতিনিধিকে নিজের ভাষায় এবং, ক্ষেত্রমত, ব্যাখ্যাকারীর সাহায্যে প্রয়োজনীয় মতামত প্রদান করিবার অধিকার সংরক্ষণ করিবে।

(৩) শিশুর মাতা-পিতা এবং তাহাদের উভয়ের অবর্তমানে তত্ত্বাবধানকারী অভিভাবক বা কর্তৃপক্ষ অথবা আইনানুগ বা বৈধ অভিভাবক বা, ক্ষেত্রমত, বর্ধিত পরিবারের সদস্য কর্তৃক কোন আইনজীবী নিয়োগ করা না হইলে অথবা মাতা-পিতা অথবা তাহাদের অবর্তমানে তত্ত্বাবধানকারী অভিভাবক বা কর্তৃপক্ষ অথবা আইনানুগ বা বৈধ অভিভাবক বা বর্ধিত পরিবারের সদস্য না থাকিলে অথবা আইনজীবী নিয়োগের আর্থিক সামর্থ্য না থাকিলে, শিশু-আদালত জেলা আইনগত সহায়তা প্রদান কমিটি বা, ক্ষেত্রমত, সুপ্রিম কোর্ট' এর তালিকাভুক্ত বা প্যানেলভুক্ত আইনজীবীগণের মধ্য হইতে একজন উপযুক্ত আইনজীবীকে মামলার কার্যক্রম পরিচালনার জন্য দায়িত্ব প্রদান করিবার লক্ষ্যে আইনগত সহায়তা প্রদান আইন, ২০০০ এবং উহার অধীন প্রণীত বিধিমালা, প্রবিধানমালা ও নীতিমালা অনুসারে যথাযথ ব্যবস্থা গ্রহণ করিবে।

৫৬। আইনগত প্রতিনিধির উপস্থিতি।—(১) ধারা ৫৫ এর উপ-ধারা (৩) এর অধীন শিশুর পক্ষে নিযুক্ত আইনজীবীকে সংশ্লিষ্ট মামলার সকল শুনানীতে অবশ্যই হাজির থাকিতে হইবে এবং যুক্তিসঙ্গত কোন কারণে তিনি মামলা পরিচালনা করিতে অপারগ হইলে উক্ত অপারগতার কারণসহ বিষয়টি লিখিতভাবে, যুক্তিসঙ্গত সময়ে, তাহার প্রতিনিধি, শিশুর মাতা-পিতা অথবা তাহাদের উভয়ের অবর্তমানে তত্ত্বাবধানকারী অভিভাবক বা কর্তৃপক্ষ অথবা আইনানুগ বা বৈধ অভিভাবক বা ক্ষেত্রমত, বর্ধিত পরিবারের সদস্য বা প্রবেশন কর্মকর্তার মাধ্যমে সংশ্লিষ্ট আদালতকে অবহিত করিতে হইবে।

(২) কোন আইনজীবী উপ-ধারা (১) এর অধীন তাহার অপারগতার বিষয়টি আদালতকে অবহিত করিলে, উক্ত ক্ষেত্রে একজন নূতন আইনজীবী নিযুক্ত না হওয়া পর্যন্ত, সংশ্লিষ্ট মামলার শুনানি স্থগিত থাকিবে ঃ

তবে শর্ত থাকে যে, নূতন আইনজীবী নিয়োগের ক্ষেত্রে সংশ্লিষ্ট জেলা'র জেলা আইনগত সহায়তা কমিটি কোনক্রমেই ৩০ (ত্রিশ) দিনের অতিরিক্ত সময় অতিক্রান্ত করিবে না।

(৩) শিশুর পক্ষে শিশুর মাতা-পিতা অথবা তাহাদের উভয়ের অবর্তমানে তত্ত্বাবধানকারী অভিভাবক বা কর্তৃপক্ষ অথবা আইনানুগ বা বৈধ অভিভাবক বা, ক্ষেত্রমত, বর্ধিত পরিবারের সদস্য কর্তৃক আইনজীবী নিয়োগ করা হইলে সংশ্লিষ্ট আইনজীবীকে সংশ্লিষ্ট মামলার সকল শুনানীতে অবশ্যই হাজির থাকিতে হইবে ঃ

তবে শর্ত থাকে যে, সংশ্লিষ্ট আইনজীবী, প্রয়োজনে, যুক্তিসঙ্গত কারণে, শিশু আদালতের অনুমতি সাপেক্ষে, মামলার শুনানী হইতে অব্যাহতি যাচিতে পারিবেন।

৫৭। অপর্যাপ্ত আইনগত প্রতিনিধিত্ব ও অসদাচরণ।—শিশুর পক্ষে নিয়োগপ্রাপ্ত আইনজীবী যুক্তিসঙ্গত কারণ ব্যতীত বারংবার আদালতে অনুপস্থিত থাকিলে বা মামলা পরিচালনায় তাহার সুস্পষ্ট গাফিলতি পরিলক্ষিত হইলে শিশু-আদালত তাহাকে উক্ত মামলা পরিচালনার দায়িত্ব হইতে অব্যাহতি প্রদান করিয়া বিষয়টি অসদাচরণ গণ্যে যথাযথ আইনগত ব্যবস্থা গ্রহণের জন্য জেলা আইনগত সহায়তা প্রদান কমিটির চেয়ারম্যানকে এবং, ক্ষেত্রমত, বাংলাদেশ বার কাউন্সিল ও সংশ্লিষ্ট আইনজীবী সমিতিকে নির্দেশনা প্রদান করিবে এবং উক্তরূপ নির্দেশনার আলোকে গৃহীত ব্যবস্থা সম্পর্কে আদালতকে নির্দেশনা প্রদানের তারিখ হইতে অনধিক ৩০(ত্রিশ) দিনের মধ্যে অবহিত করিবার বিষয়টি উল্লেখ করিবে।

৫৮। সুরক্ষামূলক পদক্ষেপ।—বিচার প্রক্রিয়ার যেকোন পর্যায়ে আইনের সংস্পর্শে আসা শিশু বা, ক্ষেত্রমত, আইনের সহিত সংঘাতে জড়িত শিশুর ক্ষতির সম্ভাবনা রহিয়াছে বলিয়া প্রতীয়মান হইলে সংশ্লিষ্ট শিশুর তত্ত্বাবধানকারী কর্তৃপক্ষ উক্ত শিশুর জন্য নিম্নবর্ণিত নিরাপত্তামূলক ব্যবস্থা গ্রহণ করিবে, যথাঃ—

(ক) সংশ্লিষ্ট শিশুর সহিত অভিযুক্ত ব্যক্তির সরাসরি সাক্ষাৎ পরিহার করা;

(খ) পুলিশ বা অন্য সংস্থার মাধ্যমে সংশ্লিষ্ট শিশুর নিরাপত্তা বিধান এবং উক্ত শিশু কোথায় অবস্থান করিতেছে তাহা গোপন রাখা;

(গ) আদালত বা পুলিশের নিকট সংশ্লিষ্ট শিশুর এবং প্রয়োজনে, শিশুর পরিবারের সদস্যদের সকল পর্যায়ে যথোপযুক্ত নিরাপত্তার জন্য আবেদন করা।

অষ্টম অধ্যায়

শিশু উন্নয়ন কেন্দ্র এবং প্রত্যয়িত প্রতিষ্ঠান

৫৯। শিশু উন্নয়ন কেন্দ্র প্রতিষ্ঠা ও প্রত্যয়ন।—(১) সরকার, বিচার প্রক্রিয়ায় আটকাদেশপ্রাপ্ত শিশু এবং বিচারের আওতাধীন শিশুর আবাসন, সংশোধন ও উন্নয়নের লক্ষ্যে, লিঙ্গভেদে, প্রয়োজনীয় সংখ্যক শিশু উন্নয়ন কেন্দ্র প্রতিষ্ঠা ও রক্ষণাবেক্ষণ করিবে।

(২) উপ-ধারা (১) এর প্রাসঙ্গিকতাকে ক্ষুণ্ন না করিয়া সরকার, যেকোন সময়, উহার যেকোন ইনস্টিটিউট বা প্রতিষ্ঠানকে শিশু অপরাধীদেরকে অবস্থানের জন্য উপযুক্ত মর্মে প্রত্যয়ন করিতে পারিবে।

(৩) সরকার উপ-ধারা (১) এর অধীন প্রতিষ্ঠিত বা, ক্ষেত্রমত, উপ-ধারা (২) এর অধীন প্রত্যয়িত প্রতিষ্ঠানে আগত ও অবস্থানরত শিশুদের আবাসন, সংশোধন, উন্নয়ন, রক্ষণাবেক্ষণ এবং পরিচালনার নিমিত্ত নীতিমালা প্রণয়ন বা, সময় সময়, পরিপত্র জারি করিবে।

৬০। বেসরকারি উদ্যোগে প্রত্যয়িত প্রতিষ্ঠান।—সরকার, সরকারি গেজেটে প্রজ্ঞাপন দ্বারা, কোন ব্যক্তি, প্রতিষ্ঠান বা সংস্থাকে বিধি দ্বারা নির্ধারিত পদ্ধতি বা নীতিমালার আলোকে, এই আইনের উদ্দেশ্যপূরণকল্পে প্রত্যয়িত প্রতিষ্ঠান হিসাবে বেসরকারি প্রতিষ্ঠান স্থাপন ও পরিচালনা করিবার লক্ষ্যে, নির্ধারিত শর্তপূরণ সাপেক্ষে, অনুমতি প্রদান করিতে পারিবে।

৬১। বৈধ প্রত্যয়নপত্র ব্যতীত প্রতিষ্ঠান পরিচালনার দণ্ড।—বৈধ প্রত্যয়নপত্র ব্যতীত ধারা ৬০ এ উল্লিখিত কোন প্রতিষ্ঠান পরিচালনা করা বা বিধি দ্বারা নির্ধারিত শর্ত পূরণ করিতে ব্যর্থ কোন প্রত্যয়িত

প্রতিষ্ঠানের পরিচালনা অব্যাহত রাখা এই আইনের অধীন অপরাধ হিসাবে গণ্য হইবে এবং উক্তরূপ অপরাধের জন্য সংশ্লিষ্ট প্রতিষ্ঠানের মালিক, পরিচালক বা কর্মকর্তা ৫(পাঁচ) মাস পর্যন্ত কারাদণ্ড বা ৫০,০০০ (পঞ্চাশ হাজার) টাকা অর্থদণ্ডে দণ্ডিত হইবেন।

৬২। **প্রত্যয়িত প্রতিষ্ঠানের অবস্থানরত শিশুদের বিষয়ে অধিদপ্তরকে অবহিতকরণ**।—ধারা ৫৯ এবং ৬০ এর অধীন সরকারি বা, ক্ষেত্রমত, বেসরকারিভাবে প্রতিষ্ঠিত ও পরিচালিত প্রত্যেক প্রতিষ্ঠান প্রতিটি শিশুর নাম, লিঙ্গ, বয়স ও উক্ত প্রতিষ্ঠানে শিশুকে গ্রহণ করিবার কারণসহ গ্রহণের তারিখ, বিধি দ্বারা নির্ধারিত ফরমে লিপিবদ্ধ করিয়া, অধিদপ্তরকে প্রতি মাসের ১৫ তারিখের মধ্যে অবহিত করিবে এবং অধিদপ্তরের চাহিদা অনুযায়ী অন্যান্য সকল তথ্য অধিদপ্তরকে সরবরাহ করিতে বাধ্য থাকিবে।

৬৩। **পরিচর্যার ন্যূনতম মানদণ্ড (Minimum Standards of Care)**।—(১) সরকার, সময় সময়, অফিস আদেশ বা নির্দেশনা জারির মাধ্যমে প্রত্যয়িত প্রতিষ্ঠানে অবস্থানরত শিশুদের যথাযথ পরিচর্যার জন্য ন্যূনতম মানদণ্ড নির্ধারণ করিবে এবং প্রত্যয়িত প্রতিষ্ঠানসমূহ উক্ত আদেশ বা নির্দেশনা অনুযায়ী পরিচর্যার ন্যূনতম মানদণ্ড বজায় রাখিবে।

(২) প্রত্যয়িত প্রতিষ্ঠানে অবস্থানরত শিশুদের অপরাধের মাত্রা, ধরন ও বয়স বিবেচনায় লইয়া বিভিন্ন শ্রেণিতে বিভক্ত করিয়া রাখিতে হইবে ঃ

তবে শর্ত থাকে যে, উল্লিখিত শ্রেণি বিভাগের সময় বিশেষভাবে লক্ষ্য রাখিতে হইবে যেন, ৯(নয়) বৎসরের উর্ধ্বের কোন শিশুর সহিত ১০(দশ) বৎসরের এবং ১০(দশ) বৎসরের উর্ধ্বের কোন শিশুর সহিত ১২(বার) বৎসরের উর্ধ্বের শিশুকে একত্রে একই কক্ষে এবং ফ্লোরে রাখা না হয়;

আরও শর্ত থাকে যে, ১২(বার) বৎসর এবং তদূর্ধ্ব বয়সের বয়স্ক শিশুর ক্ষেত্রে অপরাধের মাত্রা, শিশুর বাড়ন্ত শারীরিক কাঠামো, সবলতা, ইত্যাদি বিষয় বিবেচনায় লইয়া তাহাদের আবাসনের বিষয়টি সতর্কভাবে খেয়াল রাখিতে হইবে এবং যতদূর সম্ভব, তাহাদের পৃথক পৃথক কক্ষে রাখিবার ব্যবস্থা করিতে হইবে।

(৩) দণ্ডবিধির ধারা ৮২ এর উদ্দেশ্যপূরণকল্পে ৯ (নয়) বৎসর বয়সের কম বয়সী কোন শিশুকে কোন প্রত্যয়িত প্রতিষ্ঠানে রাখা যাইবে না ঃ

তবে শর্ত থাকে যে, কোন কারণে ৯ (নয়) বৎসর বয়সের কম বয়সী অভিভাবকহীন কোন শিশুকে কোথাও পাওয়া গেলে তাহাকে অধিদপ্তর বা উহার নিকটস্থ কোন কার্যালয়ে প্রেরণ করিতে হইবে এবং অধিদপ্তর বিষয়টি সংশ্লিষ্ট বোর্ডের গোচরীভূত করতঃ সংশ্লিষ্ট শিশুকে সুবিধাবঞ্চিত শিশু গণ্যে, ক্ষেত্রমত, ধারা ৮৪ বা ধারা ৮৫ এর বিধান অনুযায়ী পরবর্তী প্রয়োজনীয় ব্যবস্থা গ্রহণ করিবে।

(৪) প্রত্যয়িত প্রতিষ্ঠানসমূহ, উক্ত প্রতিষ্ঠানে অবস্থানকারী, প্রত্যেক শিশুর সর্বোত্তম স্বার্থ রক্ষা এবং তাহাদের সার্বক্ষণিক পর্যবেক্ষণ, মানবিক আচরণ এবং যথোপযুক্ত শিক্ষাসহ কারিগরি শিক্ষা নিশ্চিত করিবে।

৬৪। **সরকার বা উহার প্রতিনিধি কর্তৃক প্রত্যয়িত প্রতিষ্ঠান পরিদর্শন**।—সরকার বা তদ্‌কর্তৃক ক্ষমতাপ্রাপ্ত কোন প্রতিনিধি এবং অধিদপ্তরের মহাপরিচালক বা তদ্‌কর্তৃক অনুমতিপ্রাপ্ত কোন ব্যক্তি বা প্রতিষ্ঠান, দাপ্তরিক বা বিশেষ কোন প্রয়োজনে তথ্য সংগ্রহের উদ্দেশ্যে, যেকোন প্রত্যয়িত প্রতিষ্ঠান পরিদর্শন করিতে পারিবে এবং প্রাপ্ত তথ্যের ভিত্তিতে প্রয়োজনীয় ব্যবস্থা গ্রহণের জন্য সরকারকে পরামর্শ প্রদান করিতে পারিবে।

৬৫। **বিভিন্ন প্রতিষ্ঠানের মধ্যে স্থানান্তর**।—অধিদপ্তর, বিশেষ প্রয়োজনে, একটি শিশুকে এক প্রত্যয়িত প্রতিষ্ঠান হইতে অন্য প্রত্যয়িত প্রতিষ্ঠানে স্থানান্তরের আদেশ প্রদান করিতে পারিবে।

৬৬। **অন্য প্রতিষ্ঠানে হস্তান্তর**।—কোন প্রতিষ্ঠানের প্রত্যয়িত মর্যাদা লোপ পাইলে এই আইনের বিধানাবলী সাপেক্ষে অধিদপ্তরের মহাপরিচালকের আদেশক্রমে উক্ত প্রতিষ্ঠানে অবস্থানরত শিশুদের অন্য কোন প্রত্যয়িত প্রতিষ্ঠানে বদলি বা স্থানান্তর করা যাইবে।

৬৭। **সরকারের প্রত্যয়নপত্র প্রত্যাহারের ক্ষমতা**।—কোন প্রত্যয়িত প্রতিষ্ঠান উক্ত প্রতিষ্ঠানে অবস্থানরত শিশুদের যথাযথ পরিচর্যার জন্য, ধারা ৬৩ এর অধীন, সরকার কর্তৃক নির্ধারিত পরিচর্যার ন্যূনতম মানদণ্ড বজায় রাখিতে ব্যর্থ হইলে, সরকার উক্ত প্রতিষ্ঠানের প্রতি নোটিশ জারি করিয়া নোটিশে উল্লিখিত তারিখ হইতে সংশ্লিষ্ট প্রত্যয়ন প্রত্যাহার করা হইল মর্মে ঘোষণা করিতে পারিবে ঃ

তবে শর্ত থাকে যে, এইরূপ নোটিশ জারির পূর্বে, প্রত্যয়নপত্র কেন প্রত্যাহার করা হইবে না তাহার কারণ দর্শাইবার জন্য সংশ্লিষ্ট প্রত্যয়িত প্রতিষ্ঠানের ব্যবস্থাপককে যুক্তিসঙ্গত সুযোগ প্রদান করিতে হইবে।

৬৮। **শিশুর ওপর জিম্মাদারের নিয়ন্ত্রণ**।—এই আইনের বিধানাবলীর অধীন কোন ব্যক্তি বা প্রত্যয়িত প্রতিষ্ঠানের তত্ত্বাবধানে কোন শিশুকে সোপর্দ করা হইলে উক্ত ব্যক্তি বা প্রতিষ্ঠান উক্ত শিশুকে তাহার মাতা-পিতার ন্যায় নিয়ন্ত্রণ, সুরক্ষা, যত্ন-পরিচর্যা ও উন্নয়ন নিশ্চিত করিবার জন্য দায়ী থাকিবেন এবং সংশ্লিষ্ট শিশুর মাতা-পিতা বা অন্য কোন ব্যক্তি দাবী করা সত্ত্বেও শিশু-আদালত বা বোর্ড বা অন্য কোন আদালত কর্তৃক নির্ধারিত সময় পর্যন্ত শিশুটিকে অব্যাহতভাবে তাহার তত্ত্বাবধানে রাখিবেন।

৬৯। **পলাতক শিশু সম্পর্কে করণীয়**।—(১) আপাতত বলবৎ অন্য কোন আইন এবং এই আইনের অন্যান্য বিধানে ভিন্নরূপ যাহা কিছুই থাকুক না কেন, কোন পুলিশ কর্মকর্তা প্রত্যয়িত প্রতিষ্ঠান অথবা যে ব্যক্তির তত্ত্বাবধানে থাকিবার জন্য শিশুকে নির্দেশ প্রদান করা হইয়াছিল, তাহার তত্ত্বাবধান হইতে কোন শিশু পলায়ন করিলে উক্ত পলাতক শিশুকে বিনা পরোয়ানায় গ্রেফতার করিতে পারিবেন এবং উক্ত শিশুর কোন অপরাধ নথিভুক্ত না করিয়া বা তাহার বিরুদ্ধে পৃথক মামলা দায়ের না করিয়া তাহাকে সংশ্লিষ্ট প্রতিষ্ঠান বা ব্যক্তির নিকট ফেরত পাঠাইবেন ঃ

তবে শর্ত থাকে যে, এইরূপ পলাতক হইবার কারণে উক্ত শিশু কোন অপরাধ করিয়াছে বলিয়া গণ্য হইবে না।

(২) উপ-ধারা (১) এ উল্লিখিত পলাতক কোন শিশুকে গ্রেফতার

করা হইলে তাহাকে সংশ্লিষ্ট প্রতিষ্ঠান বা ব্যক্তির নিকট ফেরৎ প্রদানের পূর্ব পর্যন্ত নিরাপদ স্থানে রাখিতে হইবে।

নবম অধ্যায়

শিশু সংক্রান্ত বিশেষ অপরাধসমূহের দণ্ড

৭০। শিশুর প্রতি নিষ্ঠুরতার দণ্ড।—কোন ব্যক্তি যদি তাহার হেফাজতে, দায়িত্বে বা পরিচর্যায় থাকা কোন শিশুকে আঘাত, উৎপীড়ন, অবহেলা, বর্জন, অরক্ষিত অবস্থায় পরিত্যাগ ব্যক্তিগত পরিচর্যার কাজে ব্যবহার বা অশালীনভাবে প্রদর্শন করে এবং এইরূপভাবে আঘাত, উৎপীড়ন, অবহেলা, বর্জন, পরিত্যাগ ব্যক্তিগত পরিচর্যা বা প্রদর্শনের ফলে উক্ত শিশুর অহেতুক দুর্ভোগ সৃষ্টি হয় বা স্বাস্থ্যের এইরূপ ক্ষতি হয়, যাহাতে সংশ্লিষ্ট শিশুর দৃষ্টিশক্তি বা শ্রবণশক্তি নষ্ট হয়, শরীরের কোন অঙ্গ বা ইন্দ্রিয়ের ক্ষতি হয় বা কোন মানসিক বিকৃতি ঘটে, তাহা হইলে তিনি এই আইনের অধীন অপরাধ করিয়াছেন বলিয়া গণ্য হইবে এবং উক্ত অপরাধের জন্য তিনি অনধিক ৫ (পাঁচ) বৎসর কারাদণ্ড অথবা অনধিক ১(এক) লক্ষ টাকা অর্থদণ্ড অথবা উভয় দণ্ডে দণ্ডিত হইবেন।

৭১। শিশুকে ভিক্ষাবৃত্তিতে নিয়োগের দণ্ড।—কোন ব্যক্তি যদি কোন শিশুকে ভিক্ষার উদ্দেশ্যে নিয়োগ করেন বা কোন শিশুর দ্বারা ভিক্ষা করান অথবা শিশুর হেফাজত, তত্ত্বাবধান বা দেখাশুনার দায়িত্বে নিয়োজিত কোন ব্যক্তি যদি কোন শিশুকে ভিক্ষার উদ্দেশ্যে নিয়োগদানে প্রশ্রয়দান করেন বা উৎসাহ প্রদান করেন বা ভিক্ষার উদ্দেশ্যে প্রদান করেন, তাহা হইলে তিনি এই আইনের অধীন অপরাধ করিয়াছেন বলিয়া গণ্য হইবে এবং উক্ত অপরাধের জন্য তিনি অনধিক ৫ (পাঁচ) বৎসর কারাদণ্ড অথবা অনধিক ১ (এক) লক্ষ টাকা অর্থদণ্ড অথবা উভয় দণ্ডে দণ্ডিত হইবেন।

৭২। শিশুর দায়িত্বে থাকাকালে নেশাগ্রস্ত হইবার দণ্ড।—শিশুর দেখাশুনার দায়িত্বে থাকাকালে কোন ব্যক্তিকে যদি প্রকাশ্য স্থানে নেশাগ্রস্ত অবস্থায় পাওয়া যায় এবং এই কারণে যদি তিনি শিশুটির যথাযথ তত্ত্বাবধান করিতে অসমর্থ হন, তাহা হইলে তিনি এই আইনের অধীন অপরাধ করিয়াছেন বলিয়া গণ্য হইবে এবং উক্ত অপরাধের জন্য তিনি অনধিক ১ (এক) বৎসর কারাদণ্ড অথবা অনধিক ৫০ (পঞ্চাশ) হাজার টাকা অর্থদণ্ড অথবা উভয় দণ্ডে দণ্ডিত হইবেন।

৭৩। শিশুকে নেশাগ্রস্তকারী মাদকদ্রব্য কিংবা বিপজ্জনক ঔষধ প্রদানের দণ্ড।—যদি কোন ব্যক্তি অসুস্থতা বা অন্য কোন জরুরী কারণে উপযুক্ত যোগ্যতাসম্পন্ন ডাক্তারের আদেশ ব্যতীত কোন শিশুকে নেশাগ্রস্তকারী মাদকদ্রব্য বা ঔষধ প্রদান করে বা করায়, তাহা হইলে তিনি এই আইনের অধীন অপরাধ করিয়াছেন বলিয়া গণ্য হইবে এবং উক্ত অপরাধের জন্য তিনি অনধিক ৩ (তিন) বৎসর কারাদণ্ড অথবা অনধিক ১ (এক) লক্ষ টাকা অর্থদণ্ড অথবা উভয় দণ্ডে দণ্ডিত হইবেন।

৭৪। মাদকদ্রব্য কিংবা বিপজ্জনক ঔষধ বিক্রয়ের স্থানসমূহে প্রবেশের অনুমতিদানের দণ্ড।—যদি কোন ব্যক্তি কোন শিশুকে মাদক বা বিপজ্জনক ঔষধ বিক্রয়ের স্থানে লইয়া যায় অথবা এইরূপ স্থানের স্বত্ত্বাধিকারী, মালিক বা দায়িত্বপ্রাপ্ত ব্যক্তি যদি কোন শিশুকে অনুরূপ স্থানে প্রবেশের অনুমতি প্রদান করে অথবা কোন ব্যক্তি যদি অনুরূপ স্থানে কোন শিশুর গমনের কারণ সৃষ্টি করেন, তাহা হইলে সংশ্লিষ্ট ব্যক্তি এই আইনের অধীন অপরাধ করিয়াছেন বলিয়া গণ্য হইবে এবং উক্ত অপরাধের জন্য তিনি অনধিক ৩ (তিন) বৎসর কারাদণ্ড অথবা অনধিক ১(এক) লক্ষ টাকা অর্থদণ্ড অথবা উভয় দণ্ডে দণ্ডিত হইবেন।

৭৫। শিশুকে বাজি ধরিতে বা ঋণ গ্রহণে উসকানি প্রদানের দণ্ড।—যদি কোন ব্যক্তি মৌখিকভাবে, লিখিত শব্দ দ্বারা, কোন প্রকার ইঙ্গিত দ্বারা বা অন্য কোনভাবে কোন শিশুকে কোন বাজি ধরিতে বা পণ রাখিতে অথবা কোন বাজি বা পণভিত্তিক লেনদেনে অংশ গ্রহণ করিতে বা শেয়ার লইতে উসকানি প্রদান করে বা প্রদানের চেষ্টা করে অথবা অনুরূপভাবে কোন শিশুকে ঋণ গ্রহণ করিতে বা ঋণ গ্রহণমূলক লেনদেনে অংশগ্রহণ করিতে উসকানি প্রদান করে, তাহা হইলে উক্ত ব্যক্তি এই আইনের অধীন অপরাধ করিয়াছেন বলিয়া গণ্য হইবে এবং উক্ত অপরাধের জন্য তিনি অনধিক ২(দুই) বৎসর কারাদণ্ড অথবা অনধিক ৫০(পঞ্চাশ) হাজার টাকা অর্থদণ্ড অথবা উভয় দণ্ডে দণ্ডিত হইবেন।

৭৬। শিশুর নিকট হইতে দ্রব্যাদি বন্ধক গ্রহণ বা ক্রয় করিবার দণ্ড।—কোন ব্যক্তি কোন শিশুর নিকট হইতে কোন দ্রব্য, তাহা উক্ত শিশুর পক্ষ হইতে বা অন্য কোন ব্যক্তির পক্ষ হইতে প্রদেয় হউক না কেন, বন্ধক গ্রহণ করিলে উহা এই আইনের অধীন অপরাধ হিসাবে গণ্য হইবে এবং উক্ত অপরাধের জন্য সংশ্লিষ্ট ব্যক্তি অনধিক ১(এক) বৎসর কারাদণ্ড অথবা অনধিক ২৫(পঁচিশ) হাজার টাকা অর্থদণ্ড অথবা উভয় দণ্ডে দণ্ডিত হইবেন।

৭৭। শিশুকে যৌনপল্লীতে থাকিবার অনুমতিদানের দণ্ড।—(১) ৪(চার) বৎসরের অধিক বয়সের কোন শিশুকে যৌনপল্লীতে বাস করিতে কিংবা গমনাগমন করিতে সুযোগ বা অনুমতি প্রদান করা যাইবে না ঃ

তবে শর্ত থাকে যে, ৪(চার) বৎসর বয়স অতিক্রান্ত হইবার পর সংশ্লিষ্ট কর্তৃপক্ষ উক্ত শিশুকে সুবিধাবঞ্চিত শিশু গণ্যক্রমে, ক্ষেত্রমত, ধারা ৮৪ বা ধারা ৮৫ এর অধীন প্রয়োজনীয় ব্যবস্থা গ্রহণের জন্য অধিদপ্তরের বা উহার নিকটস্থ কার্যালয়ে প্রেরণের ব্যবস্থা করিবেন।

(২) কোন ব্যক্তি উপ-ধারা (১) এর বিধান লঙ্ঘন করিলে উহা এই আইনের অধীন অপরাধ হিসাবে গণ্য হইবে এবং উক্ত অপরাধের সহিত সংশ্লিষ্ট ব্যক্তি অনধিক ২(দুই) বৎসর কারাদণ্ড অথবা অনধিক ৫০(পঞ্চাশ) হাজার টাকা অর্থদণ্ড অথবা উভয় দণ্ডে দণ্ডিত হইবেন।

৭৮। শিশুকে অসৎ পথে পরিচালনা করানো বা করিতে উৎসাহদানের দণ্ড।—(১) কোন ব্যক্তি কোন শিশুর প্রকৃত দায়িত্বসম্পন্ন হইয়া বা তাহার তত্ত্বাবধানকারী হইয়া তাহাকে অসৎ পথে পরিচালিত করিলে কিংবা যৌনবৃত্তিতে প্রবৃত্ত করিলে বা তজ্জন্য উৎসাহ প্রদান করিলে অথবা স্বামী ব্যতীত অন্য কোন ব্যক্তির সহিত তাহার যৌন সঙ্গম করাইলে বা তজ্জন্য উৎসাহ প্রদান করিলে, উহা এই আইনের অধীন অপরাধ হিসাবে গণ্য হইবে এবং উক্ত অপরাধের জন্য সংশ্লিষ্ট ব্যক্তি অনধিক ৫ (পাঁচ) বৎসর কারাদণ্ড অথবা অনধিক ১ (এক) লক্ষ টাকা অর্থদণ্ড অথবা উভয় দণ্ডে দণ্ডিত হইবেন।

(২) কোন ব্যক্তির নালিশের পরিপ্রেক্ষিতে যদি আদালতের নিকট প্রতীয়মান হয় যে, কোন শিশু তাহার মাতা-পিতা অথবা তাহাদের উভয়ের অবর্তমানে তত্ত্বাবধানকারী অভিভাবক বা কর্তৃপক্ষ অথবা

আইনানুগ বা বৈধ অভিভাবক বা, ক্ষেত্রমত, বর্ধিত পরিবারের সদস্যের জ্ঞাতসারে বা অজ্ঞাতসারে অসৎ পথে পরিচালিত হইতেছে বা যৌনবৃত্তিতে লিপ্ত হইবার ঝুঁকির সম্মুখীন হইতেছে, তাহা হইলে আদালত এইরূপ শিশুর বিষয়ে উপযুক্ত সতর্কতা অবলম্বন এবং তদারকি করিবার জন্য একটি মুচলেকা সম্পাদন করিতে, ক্ষেত্রমত, সংশ্লিষ্ট মাতা-পিতা, তত্ত্বাবধানকারী অভিভাবক বা কর্তৃপক্ষ, আইনানুগ বা বৈধ অভিভাবক বা বর্ধিত পরিবারের সদস্যকে নির্দেশ প্রদান করিতে পারিবে।

[ব্যাখ্যাঃ এই ধারার উদ্দেশ্যে সেই ব্যক্তি কোন শিশুকে অসৎ পথে বা যৌনবৃত্তিতে পরিচালিত করাইয়াছেন বা তজ্জন্য উৎসাহ প্রদান করিয়াছেন বলিয়া গণ্য হইবেন, যদি উক্ত ব্যক্তি শিশুটিকে কোন যৌনকর্মী কিংবা ভ্রষ্ট চরিত্র বলিয়া জ্ঞাত ব্যক্তির সহিত বাস করিতে বা তাহার অধীন চাকুরিতে নিয়োজিত হইতে বা থাকিতে জ্ঞাতসারে অনুমতি প্রদান করিয়া থাকেন।]

৭৯। শিশুর দ্বারা আগ্নেয়াস্ত্র বা অবৈধ ও নিষিদ্ধ বস্তু বহন এবং সন্ত্রাসী কার্য সংঘটনের দণ্ড।—(১) যদি কোন ব্যক্তি কোন শিশুর দ্বারা আগ্নেয়াস্ত্র বা অবৈধ ও নিষিদ্ধ বস্তু বহন করান বা পরিবহন করান, তাহা হইলে সংশ্লিষ্ট ব্যক্তি এই আইনের অধীন অপরাধ করিয়াছেন বলিয়া গণ্য হইবে এবং উক্ত অপরাধের জন্য তিনি অনধিক ৩(তিন) বৎসর কারাদণ্ড অথবা অনধিক ১(এক) লক্ষ টাকা অর্থদণ্ড অথবা উভয় দণ্ডে দণ্ডিত হইবেন।

(২) কোন ব্যক্তি শিশুর প্রকৃত দায়িত্বসম্পন্ন বা তত্ত্বাবধানকারী হউক, বা না হউক, কোন শিশুকে সন্ত্রাস বিরোধী আইন, ২০০৯ (২০০৯ সনের ১৬ নং আইন) এর ধারা ৬ এ উল্লিখিত কোন সন্ত্রাসী কার্যে নিয়োজিত করিলে বা ব্যবহার করিলে তিনি স্বয়ং উক্ত সন্ত্রাসী কার্য সংঘটনের অপরাধ করিয়াছেন বলিয়া গণ্য হইবে এবং তজ্জন্য তিনি উক্ত ধারায় উল্লিখিত দণ্ডে দণ্ডিত হইবেন।

৮০। শিশুকে শোষণের দণ্ড।—(১) শিশু-আদালত কর্তৃক শিশুর জিম্মাদার, রক্ষণাবেক্ষণকারী, প্রতিপালনের দায়িত্বপ্রাপ্ত ব্যক্তি বা অন্য কোন ব্যক্তি যদি কোন শিশুকে ভৃত্যের চাকরি বা শ্রম আইন, ২০০৬ এর বিধান মোতাবেক কোন কারখানা কিংবা অন্য প্রতিষ্ঠানে কাজে নিয়োগের কথা বলিয়া হস্তগত করে, কিন্তু কার্যতঃ শিশুকে নিজ স্বার্থে শোষণ করে, আটকাইয়া রাখে অথবা তাহার উপার্জন ভোগ করে, তাহা হইলে উহা এই আইনের অধীন অপরাধ হিসাবে গণ্য হইবে এবং উক্ত অপরাধের জন্য সংশ্লিষ্ট ব্যক্তি অনধিক ২(দুই) বৎসর কারাদণ্ড অথবা অনধিক ৫০ (পঞ্চাশ) হাজার টাকা অর্থদণ্ড অথবা উভয় দণ্ডে দণ্ডিত হইবেন।

(২) শিশু-আদালত কর্তৃক শিশুর জিম্মাদর, রক্ষণাবেক্ষণকারী বা প্রতিপালনের দায়িত্বপ্রাপ্ত ব্যক্তি বা অন্য কোন ব্যক্তি যদি কোন শিশুকে ভৃত্যের চাকুরী বা শ্রম আইন, ২০০৬ এর বিধান মোতাবেক কোন কারখানা কিংবা অন্য প্রতিষ্ঠানে কাজে নিয়োগের কথা বলিয়া হস্তগত করে, কিন্ত কার্যতঃ শিশুকে অসৎ পথে চালিত করে বা যৌনকর্ম কিংবা নীতি-গর্হিত কোন কাজে লিপ্ত হইবার ঝুঁকির সম্মুখীন করে, তাহা হইলে উহা এই আইনের অধীন অপরাধ হিসাবে গণ্য হইবে এবং উক্ত অপরাধের জন্য সংশ্লিষ্ট ব্যক্তি ৫(পাঁচ) বৎসর কারাদণ্ড অথবা অনধিক ১ (এক) লক্ষ টাকা অর্থদণ্ড অথবা উভয় দণ্ডে দণ্ডিত হইবেন।

(৩) কোন ব্যক্তি উপ-ধারা (১) বা (২) এ উল্লিখিত পদ্ধতিতে শোষিত বা কাজে লাগানো শিশুর শ্রমের ফল ভোগ করিলে অথবা নৈতিকতা বিরোধী বিনোদনের কাজে শিশুকে ব্যবহার করিলে তিনি সংশ্লিষ্ট দুষ্কর্মের সহায়তার জন্য দায়ী হইবেন।

৮১। সংবাদ মাধ্যম কর্তৃক কোন গোপন তথ্য প্রকাশের দণ্ড।—(১) এই আইনের অধীন বিচারাধীন কোন মামলা বা বিচার কার্যক্রম সম্পর্কে প্রিন্ট বা ইলেকট্রনিক মাধ্যম অথবা ইন্টারনেটের মাধ্যমে কোন শিশুর স্বার্থের পরিপন্থী এমন কোন প্রতিবেদন, ছবি বা তথ্য প্রকাশ করা যাইবে না, যাহার দ্বারা শিশুটিকে প্রত্যক্ষ বা পরোক্ষভাবে শনাক্ত করা যায়।

(২) কোন ব্যক্তি উপ–ধারা (১) এর বিধান লঙ্ঘন করিলে উহা এই আইনের অধীন অপরাধ হিসাবে গণ্য হইবে এবং উক্ত অপরাধের জন্য সংশ্লিষ্ট ব্যক্তি অনধিক ১(এক) বৎসর কারাদণ্ড অথবা অনধিক ৫০(পঞ্চাশ) হাজার টাকা অর্থদণ্ড অথবা উভয় দণ্ডে দণ্ডিত হইবেন।

(৩) কোন কোম্পানী, সমিতি, সংস্থা বা প্রতিষ্ঠান উপ-ধারা (১) এর বিধান লঙ্ঘন করিলে সংশ্লিষ্ট কোম্পানী, সমিতি, সংস্থা বা প্রতিষ্ঠানের নিবন্ধন অনধিক ২ (দুই) মাসের জন্য স্থগিত রাখাসহ উহাকে অনধিক ২(দুই) লক্ষ টাকা জরিমানা আরোপ করা যাইবে।

৮২। শিশুকে পলায়নের সহায়তার দণ্ড।—কোন ব্যক্তি, জ্ঞাতসারে প্রত্যক্ষ বা পরোক্ষভাবে, প্রত্যয়িত প্রতিষ্ঠান, নিরাপদ স্থান বা বিকল্প পন্থার দায়িত্বপ্রাপ্ত ব্যক্তির তত্ত্বাবধান হইতে কোন শিশুকে,—

(ক) পলায়ন করিতে সাহায্য করিলে বা প্রলুব্ধ করিলে; অথবা

(খ) পলায়ন করিবার পর আশ্রয় প্রদান করিলে, লুকাইয়া রাখিলে বা পুনরায় উক্ত স্থান বা ব্যক্তির নিকট প্রত্যাবর্তন করিতে বাধা প্রদান করিলে বা বাধা প্রদানে সাহায্য করিলে,—

তিনি এই আইনের অধীন অপরাধ করিয়াছেন বলিয়া গণ্য হইবে এবং উক্ত অপরাধের জন্য সংশ্লিষ্ট ব্যক্তি অনধিক ১ (এক) বৎসর কারাদণ্ড অথবা অনধিক ৫০ (পঞ্চাশ) হাজার টাকা অর্থদণ্ড অথবা উভয় দণ্ডে দণ্ডিত হইবেন।

৮৩। মিথ্যা তথ্য প্রদানের ক্ষতিপূরণ।—কোন ব্যক্তি এই আইনের অধীন কোন মামলার কার্যক্রমে কোন আদালতে কোন শিশুর সম্পর্কে যদি এমন কোন তথ্য প্রকাশ করেন যাহা মিথ্যা, বিরক্তিকর বা তুচ্ছ প্রকৃতির তাহা হইলে আদালত, প্রয়োজনীয় তদন্ত সাপেক্ষে কারণ লিপিবদ্ধ করিয়া, যাহার বিপক্ষে উক্ত তথ্য প্রদান করা হয় তাহার অনুকূলে ২৫(পঁচিশ) হাজার টাকার উর্ধ্বে যেকোন পরিমাণ অর্থ ক্ষতিপূরণ বাবদ প্রদান করিবার জন্য সংশ্লিষ্ট তথ্য প্রদানকারীর প্রতি নির্দেশ প্রদান করিতে এবং অনাদায়ে অনধিক ৬(ছয়) মাস বিনাশ্রম কারাদণ্ড প্রদান করিতে পারিবে ঃ

তবে শর্ত থাকে যে, ক্ষতিপূরণ প্রদানের আদেশ প্রদানের পূর্বে, তথ্য প্রদানকারীর বিরুদ্ধে কেন ক্ষতিপূরণ প্রদান করিবার আদেশ প্রদান করা হইবে না তদ্‌মর্মে কারণ দর্শাইবার জন্য নোটিশ প্রদান করিতে হইবে এবং তথ্য প্রদানকারী কোন কারণ প্রদর্শন করিলে তাহা বিবেচনায় লইতে হইবে।

দশম অধ্যায়
বিকল্প পরিচর্যা, ইত্যাদি

৮৪। বিকল্প পরিচর্যা (alternative care)।—(১) সুবিধাবঞ্চিত শিশু এবং আইনের সংস্পর্শে আসা শিশু, যাহাদের বিশেষ সুরক্ষা, যত্ন-পরিচর্যা ও উন্নয়ন নিশ্চিত করা প্রয়োজন, তাহাদের পারিবারিক, সামাজিক, সাংস্কৃতিক, আর্থিক, নৃতাত্ত্বিক, মনস্তাত্ত্বিক ও শিক্ষাগত পটভূমি বিবেচনাপূর্বক, সার্বিক কল্যাণ ও সর্বোত্তম স্বার্থ নিশ্চিতকল্পে, বিকল্প পরিচর্যার (alternative care) উদ্যোগ গ্রহণ করা যাইবে;

তবে শর্ত থাকে যে, বিকল্প পরিচর্যার প্রেরণের পূর্বে ধারা ৯২ অনুযায়ী শিশুর যাচাই (assessment) সংক্রান্ত পূর্ণাঙ্গ প্রতিবেদন বিবেচনা করিতে হইবে।

(২) বিকল্প পরিচর্যার উপায় ও ধরন নির্ধারণ করিবার সময় শিশুর মাতা-পিতার সহিত পুনঃএকীকরণের (re-integration) বিষয়টিকে অগ্রাধিকার ভিত্তিতে বিবেচনা করিতে হইবে ঃ

তবে শর্ত থাকে যে, মাতা-পিতার মধ্যে বিবাহ বিচ্ছেদ ঘটিয়া থাকিলে বা অন্য কোন কারণে তাহার পৃথকভাবে বসবাস করিলে, যতদূর সম্ভব, শিশুর মতামতকে প্রাধান্য প্রদানপূর্বক, মাতা-পিতার মধ্যে যে কোন একজনের সহিত পুনঃএকীকরণ করিতে হইবে ঃ

আরও শর্ত থাকে যে, মতামতকে প্রাধান্য প্রদানের পূর্বে মাতা-পিতার পৃথকভাবে বসবাসের কারণসহ তাহাদের চারিত্রিক বৈশিষ্ট্য সম্পর্কে নিশ্চিত হইতে হইবে।

(৩) উপ-ধারা (২) এর বিধান অনুযায়ী মাতা-পিতার সহিত পুনঃএকীকরণ সম্ভব না হইলে, বর্ধিত পরিবারের সহিত পুনঃএকীকরণ করা যাইবে, অথবা মাতা-পিতার অবর্তমানে তত্ত্বাবধানকারী অভিভাবক বা কর্তৃপক্ষ অথবা আইনানুগ বা বৈধ অভিভাবক বা অন্য কোন উপযুক্ত ব্যক্তির নিকট সমাজ ভিত্তিক একীকরণের (community based integration) উদ্দেশ্যে প্রেরণ করা যাইবে।

(৪) উপ-ধারা (২) ও (৩) এ উল্লিখিতভাবে ব্যবস্থা গ্রহণ করা সম্ভব না হইলে সংশ্লিষ্ট শিশুকে ধারা ৮৫ তে উল্লিখিত কোন প্রতিষ্ঠানে প্রেরণ করা যাইবে।

(৫) উপ-ধারা (২) এ যাহা কিছুই থাকুক না কেন, কোন যুক্তিসঙ্গত কারণে যদি এইরূপ প্রতিয়মান হয় যে, শিশুর মাতা-পিতা শিশুকে কোন অনৈতিক বা বেআইনী কোন কাজে নিয়োজিত করিতে পারে তাহা হইলে, উক্ত মাতা-পিতার উক্তরূপ অবস্থা পরিবর্তন না হওয়া পর্যন্ত সময়ের জন্য, শিশুকে ধারা ৮৫ তে উল্লিখিত কোন প্রতিষ্ঠানে প্রেরণ করিতে হইবে এবং শিশুটিকে যাহাতে তাহার মাতা-পিতার সহিত পুনঃএকীকরণ করা যায় তদ্‌লক্ষ্যে সরকার সংশ্লিষ্ট মাতা-পিতাকে পুনর্বাসনের কার্যকরী ব্যবস্থা গ্রহণ করিবে।

(৬) বিকল্প পরিচর্যার প্রক্রিয়া, পদ্ধতি ও আনুষঙ্গিক বিষয়াবলী বিধি দ্বারা নির্ধারিত হইবে।

৮৫। সুবিধাবঞ্চিত শিশুদের জন্য প্রাতিষ্ঠানিক পরিচর্যা।—সুবিধাবঞ্চিত যে সকল শিশুর জন্য ধারা ৮৪ এর উপ-ধারা (২) ও (৩) অনুযায়ী মাতা-পিতা কেন্দ্রিক পরিচর্যা বা অ-প্রাতিষ্ঠানিক পরিচর্যা নিশ্চিত করা যাইবে না, অধিদপ্তর, এতদুদ্দেশ্যে সরকার প্রণীত নীতিমালার আলোকে, নিম্নরূপ প্রতিষ্ঠানের মাধ্যমে তাহাদের জন্য প্রাতিষ্ঠানিক পরিচর্যা নিশ্চিত করিবে, যথাঃ—

(ক) সরকারি শিশু পরিবার;

(খ) ছোটমণি নিবাস;

(গ) দুঃস্থ শিশুদের প্রশিক্ষণ ও পুনর্বাসন কেন্দ্র;

(ঘ) সরকারি আশ্রয় কেন্দ্র; এবং

(ঙ) সরকার কর্তৃক নির্ধারিত অন্যান্য প্রতিষ্ঠান।

৮৬। বিকল্প পরিচর্যা নির্ধারণকারী।—শিশু কল্যাণ বোর্ড বা প্রবেশন কর্মকর্তা শিশুর সর্বোত্তম স্বার্থ বিবেচনায় আনিয়া শিশুর জন্য সবচাইতে উপযুক্ত পরিচর্যার উপায় নির্ধারণ করিবেন।

৮৭। অধিদপ্তর কর্তৃক বিকল্প পরিচর্যা ব্যবস্থা প্রতিষ্ঠা।—অধিদপ্তর এই আইনের অধীন বিকল্প পরিচর্যার নিমিত্ত নিম্নরূপ ব্যবস্থা গ্রহণ করিবে, যথাঃ—

(ক) শিশুর যথাযথ পরিচর্যা নিশ্চিত করিবার জন্য তাহার মাতা-পিতা এবং তাহাদের উভয়ের অবর্তমানে তত্ত্বাবধানকারী অভিভাবক বা কর্তৃপক্ষ অথবা আইনানুগ বা বৈধ অভিভাবক বা, ক্ষেত্রমত, বর্ধিত পরিবারের সদস্যকে কাউন্সেলিংসহ প্রয়োজনীয় আর্থিক ও অন্যান্য সহায়তা প্রদানের জন্য প্রকল্প বা কর্মসূচি গ্রহণ;

(খ) শিশুর বৃত্তিমূলক প্রশিক্ষণ, জীবিকা অর্জনের উপায় নির্ধারণ এবং মাতা-পিতার সহিত পুনঃএকীকরণের লক্ষ্যে কাউন্সেলিংসহ যথাযথ ও যুক্তিসঙ্গত পদক্ষেপ গ্রহণ;

(গ) দফা (ক) এবং (খ) তে বর্ণিত বিষয়সমূহের বাস্তব অবস্থা ও তথ্যাদি সম্পর্কে নিশ্চিত হইবার জন্য বিধি দ্বারা নির্ধারিত পদ্ধতিতে মনিটরিং এর ব্যবস্থা গ্রহণ।

(ঘ) এই আইনের উদ্দেশ্য পূরণকল্পে প্রাসঙ্গিক অন্য যেকোন পদক্ষেপ গ্রহণ।

৮৮। বিকল্প পরিচর্যার মেয়াদ ও অনুসরণ (Follow-up)।—(১) শিশুর সর্বোত্তম স্বার্থ সংরক্ষণে বিকল্প পরিচর্যার মেয়াদ স্বল্প বা দীর্ঘমেয়াদি হইতে পারিবে।

(২) প্রবেশন কর্মকর্তা শিশু এবং তাহার পরিবারের অভিমত বিবেচনায় লইয়া গৃহীত বিকল্প পরিচর্যা নির্দিষ্ট বিরতিতে পুনর্বিবেচনা করিবেন।

(৩) নির্দিষ্ট বিরতিতে পুনর্বিবেচনার অংশ হিসাবে প্রবেশন কর্মকর্তা শিশুর বিকল্প পরিচর্যা নিয়মিত পরিদর্শন করিবেন এবং ক্ষেত্রমত, জেলা বা উপজেলা শিশুকল্যাণ বোর্ড বা অধিদপ্তরকে উক্ত বিষয়ে অবহিত করিবেন।

(৪) উপ-ধারা (২) এ উল্লিখিত পুনর্বিবেচনার ওপর ভিত্তি করিয়া প্রবেশন কর্মকর্তা প্রয়োজনে, এই আইনের অধীন অন্য কোন যথাযথ ব্যবস্থা গ্রহণের বিষয় বিবেচনার জন্য অধিদপ্তরের নিকট সুপারিশ করিতে পারিবেন।

৮৯। **সুবিধাবঞ্চিত শিশু**।—(১) এই আইনের উদ্দেশ্য পূরণকল্পে, নিম্নবর্ণিত শিশুগণ সুবিধাবঞ্চিত শিশু হিসাবে গণ্য হইবে, যথাঃ—

(ক) যে শিশুর মাতা-পিতার যেকোন একজন বা উভয় মৃত্যুবরণ করিয়াছে;

(খ) আইনানুগ বা বৈধ অভিভাবকহীন শিশু;

(গ) নির্দিষ্ট কোন গৃহ বা আবাসস্থলহীন এবং জীবনধারণের জন্য দৃশ্যমান অবলম্বনহীন কোন শিশু;

(ঘ) ভিক্ষাবৃত্তি বা শিশুর মঙ্গলের পরিপন্থী কোন কার্যে লিপ্ত শিশু;

(ঙ) কারাভোগরত মাতা-পিতার ওপর নির্ভরশীল বা কারাভোগরত মাতার সহিত কারাগারে অবস্থানরত শিশু;

(চ) যৌন নির্যাতন বা হয়রানির শিকার শিশু;

(ছ) যৌনবৃত্তি বা সমাজবিরোধী বা রাষ্ট্রবিরোধী কার্যে নিয়োজিত কোন ব্যক্তি বা অপরাধীর বাসস্থান বা কর্মস্থলে অবস্থানকারী বা গমনাগমনকারী শিশু;

(জ) যে কোন ধরনের প্রতিবন্ধী শিশু;

(ঝ) মাদক বা অন্য কোন কারণে অস্বাভাবিক আচরণগত সমস্যাযুক্ত শিশু;

(ঞ) অসৎ সঙ্গে পতিত বা নৈতিক অবক্ষয়ের সম্মুখীন হইতে পারে অথবা অপরাধ জগতে প্রবেশের ঝুঁকির সম্মুখীন শিশু;

(ট) বস্তিতে বসবাসকারী শিশু;

(ঠ) রাস্তা-ঘাটে বসবাসকারী গৃহহীন শিশু;

(ড) হিজড়া শিশু;

(ঢ) বেদে ও হরিজন শিশু;

(ণ) এইচআইভি-এইড্‌স এ আক্রান্ত (infected) বা ক্ষতিগ্রস্ত (affected) শিশু; অথবা

(ত) শিশু-আদালত বা বোর্ড কর্তৃক বিবেচিত কোন শিশু, যাহার বিশেষ সুরক্ষা, যত্ন-পরিচর্যা ও উন্নয়ন নিশ্চিত করা প্রয়োজন।

(২) সরকার সুবিধাবঞ্চিত শিশুর বিশেষ সুরক্ষা, যত্ন-পরিচর্যা ও উন্নয়ন নিশ্চিত করিবার লক্ষ্যে, বিধি দ্বারা নির্ধারিত পদ্ধতিতে, প্রয়োজনীয় পদক্ষেপ গ্রহণ করিতে পারিবে।

৯০। **ব্যক্তি বা সংস্থা কর্তৃক শিশুকে প্রেরণ, ইত্যাদি**।—(১) কোন ব্যক্তি বা সংস্থা সুবিধাবঞ্চিত শিশু, আইনের সংস্পর্শে আসা শিশু বা আইনের সহিত সংঘাতে জড়িত শিশুকে বা, ক্ষেত্রমত, এতদ্‌সংক্রান্ত কোন সংবাদ প্রাপ্ত হইলে, উক্ত ব্যক্তি বা সংস্থা সংশ্লিষ্ট শিশুকে বা উক্ত সংবাদ—

(ক) নিকটস্থ থানায়, প্রবেশন কর্মকর্তা বা সমাজকর্মীর নিকট প্রেরণ করিবেন; অথবা

(খ) অধিদপ্তর বা উহার নিকটস্থ কার্যালয়ে প্রেরণ করিবেন।

(২) প্রবেশন কর্মকর্তা বা সমাজকর্মী সুবিধাবঞ্চিত শিশু, আইনের সংস্পর্শে আসা শিশু বা আইনের সহিত সংঘাতে জড়িত শিশুকে বা, ক্ষেত্রমত, এতদ্‌সংক্রান্ত কোন সংবাদ প্রাপ্ত হইলে, উক্তরূপ প্রাপ্তি সংক্রান্ত তথ্য বিধি দ্বারা নির্ধারিত ফরমে লিপিবদ্ধ করিবেন এবং—

(ক) আইনের সংস্পর্শে আসা শিশু ও আইনের সহিত সংঘাতে জড়িত শিশুকে বা, ক্ষেত্রমত, উহার সংবাদ সংশ্লিষ্ট থানার শিশুবিষয়ক-পুলিশ কর্মকর্তার নিকট প্রেরণ করিবেন; এবং

(খ) সুবিধাবঞ্চিত শিশুকে বা, ক্ষেত্রমত, উহার সংবাদ অধিদপ্তর বা উহার নিকটস্থ কার্যালয়ে প্রেরণ করিবেন।

(৩) অধিদপ্তর বা উহার কোন কার্যালয় সুবিধাবঞ্চিত শিশু, আইনের সংস্পর্শে আসা শিশু বা আইনের সহিত সংঘাতে জড়িত শিশুকে বা, ক্ষেত্রমত, এতদ্‌সংক্রান্ত কোন সংবাদ প্রাপ্ত হইলে, উক্তরূপ প্রাপ্তি সংক্রান্ত তথ্য বিধি দ্বারা নির্ধারিত ফরমে লিপিবদ্ধ করিবে এবং—

(ক) আইনের সংস্পর্শে আসা শিশু ও আইনের সহিত সংঘাতে জড়িত শিশুকে বা, ক্ষেত্রমত, উহার সংবাদ সংশ্লিষ্ট থানার শিশুবিষয়ক পুলিশ কর্মকর্তার নিকট প্রেরণ করিবে; এবং

(খ) সুবিধাবঞ্চিত শিশুর বিষয়ে, ক্ষেত্রমত, ধারা ৮৪ এবং ধারা ৮৫ এর বিধান অনুযায়ী প্রয়োজনীয় ব্যবস্থা গ্রহণ করিবে।

৯১। **পুলিশ কর্তৃক শিশুকে প্রেরণ**।—(১) কোন পুলিশ কর্মকর্তা সুবিধাবঞ্চিত শিশু, আইনের সংস্পর্শে আসা শিশু বা আইনের সহিত সংঘাতে জড়িত শিশুকে বা, ক্ষেত্রমত, এতদ্‌সংক্রান্ত কোন সংবাদ প্রাপ্ত হইলে, উক্ত পুলিশ কর্মকর্তা সংশ্লিষ্ট শিশুকে সংশ্লিষ্ট থানার শিশুবিষয়ক পুলিশ কর্মকর্তার নিকট প্রেরণ করিবেন।

(২) উপ-ধারা (১) এর অধীন কোন শিশুকে প্রাপ্ত হইলে শিশুবিষয়ক পুলিশ কর্মকর্তা আইনের সংস্পর্শে আসা শিশু এবং আইনের সহিত সংঘাতে জড়িত শিশুর ক্ষেত্রে এই আইনের বিধান অনুযায়ী ব্যবস্থা গ্রহণ করিবেন এবং সুবিধাবঞ্চিত শিশুর ক্ষেত্রে, ক্ষেত্রমত, ধারা ৮৪ এবং ধারা ৮৫ এর বিধান অনুযায়ী, প্রয়োজনীয় ব্যবস্থা গ্রহণের জন্য তাহাকে অধিদপ্তর বা উহার নিকটস্থ কার্যালয়ে প্রেরণ করিবেন।

৯২। **শিশুর যাচাই (Assessment)**।—(১) এই আইনের অধীন প্রাপ্ত শিশুকে ধারা ৮৫ তে উল্লিখিত প্রতিষ্ঠান বা অন্য কোন 'নিরাপদ স্থানে' রাখিয়া প্রবেশন কর্মকর্তা বা সমাজকর্মী, বিধি দ্বারা নির্ধারিত পদ্ধতিতে, যাচাই করিবেন এবং তাহার সামগ্রিক উন্নয়ন নিশ্চিতকল্পে এই আইনের বিধান অনুযায়ী প্রয়োজনীয় ব্যবস্থা গ্রহণ করিবেন।

(২) প্রবেশন কর্মকর্তা বা সমাজকর্মী শিশুর প্রকৃত অবস্থাসহ শিশুর মাতা-পিতা এবং তাহাদের উভয়ের অবর্তমানে তত্ত্বাবধানকারী অভিভাবক বা কর্তৃপক্ষ অথবা আইনানুগ বা বৈধ অভিভাবক বা, ক্ষেত্রমত, বর্ধিত পরিবারের সদস্যকে খুঁজিয়া বাহির করিবেন।

৯৩। **শিশুকল্যাণ বোর্ড-এ তথ্য উপস্থাপন**।—(১) শিশুর সর্বোত্তম স্বার্থ নিশ্চিতকল্পে প্রবেশন কর্মকর্তা উহার নিকট রক্ষিত ও প্রাপ্ত সকল তথ্য নিয়মিতভাবে বোর্ড' এর সদস্য-সচিবের মাধ্যমে সংশ্লিষ্ট শিশুকল্যাণ বোর্ড-এ উপস্থাপন করিবেন এবং উহার একটি অনুলিপি অধিদপ্তরের মহাপরিচালক বরাবরে প্রেরণ করিবেন।

(২) জেলা এবং ক্ষেত্রমত, উপজেলা শিশুকল্যাণ বোর্ড উপ-ধারা (১) এর অধীন প্রাপ্ত তথ্য পর্যালোচনা করিবে এবং শিশুর সার্বিক কল্যাণার্থে সংশ্লিষ্ট কর্তৃপক্ষকে সুপারিশ প্রদান করিবে।

৯৪। বোর্ড কর্তৃক শিশু-আদালতে প্রেরণ।—(১) কোন শিশুর সর্বোত্তম স্বার্থে তাহাকে তাহার মাতা-পিতা এবং তাহাদের উভয়ের অবর্তমানে তত্ত্বাবধানকারী অভিভাবক বা কর্তৃপক্ষ অথবা আইনানুগ বা বৈধ অভিভাবক বা ক্ষেত্রমত, বর্ধিত পরিবারের সদস্য বা শিশুটির পরিচর্যা ও নিয়ন্ত্রণের দায়িত্বে নিয়োজিত অন্য কোন ব্যক্তির নিকট হইতে অপসারণ করা প্রয়োজন মর্মে বোর্ড' এর নিকট প্রতীয়মান হইলে, বোর্ড বিষয়টি সম্পর্কে ব্যবস্থা গ্রহণের জন্য উহা শিশু-আদালতে প্রেরণ করিতে পারিবে।

(২) উপ-ধারা (১) এর অধীন কোন বিষয় শিশু-আদালতে প্রেরণ করা হইলে এবং তদ্‌প্রেক্ষিতে কোন শিশুকে শিশু-আদালতে হাজির করা হইলে, উক্ত আদালত সংশ্লিষ্ট তথ্যাদি পরীক্ষা করিয়া উহার সারমর্ম লিপিবদ্ধ করিবে এবং বিষয়টির অধিকতর তদন্ত করিবার পর্যাপ্ত কারণ থাকিলে তদুদ্দেশ্যে তারিখ ধার্য করিবে।

(৩) উপ-ধারা (২) এর অধীন তদন্তের জন্য ধার্য তারিখে শিশু-আদালত এই আইনের অধীন যে ব্যবস্থা গ্রহণ করা যাইতে পারে উহার পক্ষে বা বিপক্ষে সকল প্রাসঙ্গিক সাক্ষ্য ও শুনানি গ্রহণ ও লিপিবদ্ধ করিবে এবং বিধি দ্বারা নির্ধারিত পদ্ধতিতে শিশুর পরিচর্যার উপায় নির্ধারণপূর্বক যেইরূপ যথার্থ মনে করিবে সেইরূপ সময় পর্যন্ত শিশুকে বিকল্প পরিচর্যার প্রেরণের জন্য আদেশ প্রদান করিতে পারিবে।

(৪) উপ-ধারা (৩) এর অধীন কোন শিশুকে বিকল্প পরিচর্যায় প্রেরণের আদেশ প্রদানকালে শিশু-আদালত প্রবেশন কর্মকর্তাকে শিশুর কল্যাণ নিশ্চিত করিবার এবং শিশুকে সৎ ও কর্মঠ জীবন-যাপনের সুযোগ প্রদান করিবার শর্তে, জামানতসহ বা বিনা জামানতে, আদালতে যেইরূপ প্রয়োজনীয় মনে করিবে, সেইরূপ অঙ্গীকারনামা সম্পাদনের নির্দেশ প্রদান করিবে।

(৫) এই ধারার বিধান অনুযায়ী শিশুকে বিকল্প পরিচর্যার প্রেরণ করা হইলে শিশু-আদালত প্রবেশন কর্মকর্তাকে উক্তরূপ পরিচর্যার আদেশ যথাযথভাবে প্রতিপালিত হইতেছে কি না তাহা পর্যবেক্ষণের দায়িত্ব প্রদান করিবে এবং তদ্‌বিষয়ে ত্রৈমাসিক ভিত্তিতে আদালতে দাখিল করিবার জন্য নির্দেশ প্রদান করিবে।

একাদশ অধ্যায়
বিবিধ বিধানাবলী

৯৫। বিধি প্রণয়নের ক্ষমতা।—সরকার এই আইনের উদ্দেশ্য পূরণকল্পে, সরকারি গেজেটে প্রজ্ঞাপন দ্বারা, বিধি প্রণয়ন করিতে পারিবে।

৯৬। আইনের কার্যকর বাস্তবায়নে সরকারের দায়িত্ব।—সরকার এই আইনের কার্যকর বাস্তবায়নের নিমিত্ত প্রয়োজনীয় সকল ব্যবস্থা গ্রহণ করিবে এবং এতদ্‌বিষয়ে, প্রয়োজনে, নির্দেশনা জারি করিতে পারিবে।

৯৭। অস্পষ্টতা দূরীকরণ।—এই আইনের কোন বিধান কার্যকর করিবার ক্ষেত্রে কোন অস্পষ্টতা দেখা দিলে সরকার, সরকারি গেজেটে প্রজ্ঞাপন দ্বারা, এই আইনের বিধানাবলীর সহিত সঙ্গতিপূর্ণ হওয়া সাপেক্ষে, উক্তরূপ অস্পষ্টতা দূর করিতে পারিবে।

৯৮। সরল বিশ্বাসে কৃত কাজকর্ম রক্ষণ।—এই আইন বা তদধীন প্রণীত বিধির অধীন সরল বিশ্বাসে করা হইয়াছে বা করিবার উদ্দেশ্য ছিল বলিয়া বিবেচিত কোন কার্যের জন্য কোন ব্যক্তি ক্ষতিগ্রস্ত হইলে তিনি সংশ্লিষ্ট ব্যক্তির বিরুদ্ধে কোন দেওয়ানী বা ফৌজদারী মামলা বা অন্য কোন প্রকার আইনগত কার্যধারা রুজু করিতে পারিবেন না।

৯৯। ইংরেজীতে অনূদিত পাঠ প্রকাশ।—(১) এই আইন কার্যকর হইবার পর সরকার, প্রয়োজনবোধে, সরকারি গেজেটে প্রজ্ঞাপন দ্বারা, এই আইনের ইংরেজীতে অনূদিত একটি নির্ভরযোগ্য পাঠ (Authentic English Text) প্রকাশ করিতে পারিবে।

(২) এই আইনের বাংলা ও ইংরেজী পাঠের মধ্যে বিরোধের ক্ষেত্রে বাংলা পাঠ প্রাধান্য পাইবে।

১০০। রহিতকরণ ও হেফাজত।—(১) এই আইন কার্যকর হইবার সঙ্গে সঙ্গে Children Act, 1974 (Act No. XXXIX of 1974), অতঃপর উক্ত Act বলিয়া উল্লিখিত, রহিত হইবে।

(২) উপ-ধারা (১) এর অধীন রহিত হওয়া সত্ত্বেও উক্ত Act এর অধীন—

(ক) কৃত কাজ-কর্ম বা গৃহীত ব্যবস্থা এই আইনের অধীন কৃত বা গৃহীত হইয়াছে বলিয়া গণ্য হইবে;

(খ) এই আইন কার্যকর হইবার তারিখে অনিষ্পন্ন কার্যাদি, যতদূর সম্ভব, এই আইনের বিধান অনুসারে নিষ্পন্ন করিতে হইবে;

(গ) নিষ্পন্নাধীন মামলার ধারাবাহিকতায় প্রত্যয়িত প্রতিষ্ঠানে (certified institute or remand home) অবস্থানরত শিশুর অবস্থান এই আইনের বিধান অনুসারে পূর্বের ন্যায় একইরূপে অব্যাহত থাকিবে;

(ঘ) দায়েরকৃত অনিষ্পন্নাধীন মামলাসমূহ যে সকল কিশোর আদালতে বিচারাধীন রহিয়াছে উক্ত মামলাসমূহ উক্ত শিশু-আদালতসমূহের মাধ্যমেই এমনভাবে নিষ্পন্ন করিতে হইবে যেন উক্ত Act রহিত ও বিলুপ্ত হয় নাই;

(ঙ) প্রতিষ্ঠিত কিশোর উন্নয়ন কেন্দ্র, কিশোরী উন্নয়ন কেন্দ্র বা নিবাসসহ অন্যান্য সকল প্রতিষ্ঠান, যে নামেই প্রতিষ্ঠিত হউক না কেন, পরবর্তী নির্দেশ প্রদান না করা পর্যন্ত, এমনভাবে উহার কার্যক্রম অব্যাহত রাখিবে যেন উহারা এই আইনের অধীন প্রতিষ্ঠিত বা প্রত্যয়িত হইয়াছে;

(চ) মাতা-পিতার অবাধ্য কোন শিশুকে শিশু উন্নয়ন কেন্দ্র বা প্রত্যয়িত প্রতিষ্ঠানে আটক রাখা হইলে এবং তাহারা আটকাবস্থায় থাকিলে, যে মেয়াদের জন্য তাহাদের আটক রাখা হইয়াছে সেই মেয়াদ উত্তীর্ণ হইবার সঙ্গে সঙ্গে তাহাদিগকে মাতা-পিতা বা অভিভাবকের নিকট ফেরত প্রদান করিতে হইবে।

End of Volume LXVI (2014)

Regd DA-23
Dhaka Law Reports

Vol. LXVI
2014

The

DHAKA LAW REPORTS

(A MONTHLY LAW JOURNAL)

Cit. 66 DLR (AD); 66 DLR etc.

Founder Editor : Late Obaidul Huq Chowdhury

Editor : Md Khurshid Alam Khan, *Advocate, Supreme Court*

Reporter : Md Nawab Ali, *Advocate, Supreme Court*

: Kazi Md Arifur Rahman, *Advocate, Supreme Court, High Court Division*

Dhaka Law Reports
264 Malibagh, Dhaka-1217

Bangladesh Supreme Court

Chief Justice

Mr Justice Md Muzammel Hossain

Justices of the Appellate Division

Mr Justice Surendra Kumar Sinha
Mr Justice Md Abdul Wahhab Miah
Madam Justice Nazmun Ara Sultana
Mr Justice Syed Mahmud Hossain
Mr Justice Muhammad Imman Ali
Mr Justice Mohammad Anwarul Haque (upto 8-4-2014)
Mr Justice Hasan Foez Siddique
Mr Justice AHM Shamsuddin Chowdhury

Justices of the High Court Division

1 Mr Justice Nozrul Islam Chowdhury
2 Mr Justice Syed Md Dastagir Husain
3 Mr Justice Mirza Hussain Haider
4 Mr Justice Sharif Uddin Chaklader
5 Mr Justice Md Mizanur Rahman Bhuiyan
6 Mr Justice Syed AB Mahmudul Huq
7 Mr Justice Tariq-ul-Hakim
8 Madam Justice Salma Masud Chowdhury
9 Mr Justice AFM Ali Asgar
10 Mr Justice Farid Ahmed
11 Mr Justice Shamim Hasnain
12 Mr Justice AFM Abdur Rahman
13 Mr Justice Md Abu Tariq
14 Madam Justice Zinat Ara
15 Mr Justice Muhammad Abdul Hafiz
16 Mr Justice Syed Refaat Ahmed
17 Mr Justice ATM Fazle Kabir
18 Mr Justice Md Miftah Uddin Choudhury
19 Mr Justice AKM Asaduzzaman
20 Mr Justice Md Ashfaqul Islam
21 Mr Justice Zubayer Rahman Chowdhury
22 Mr Justice Shahidul Islam
23 Mr Justice Md Abdul Hye
24 Mr Justice Quamrul Islam Siddiqui
25 Mr Justice Md Fazlur Rahman
26 Mr Justice Moyeenul Islam Chowdhury
27 Mr Justice Md Emdadul Huq
28 Mr Justice Md Rais Uddin

29 Mr Justice Md Emdadul Haque Azad
30 Mr Justice Md Ataur Rahman Khan
31 Mr Justice Syed Md Ziaul Karim
32 Mr Justice Md Rezaul Haque
33 Mr Justice Sheikh Abdul Awal
34 Mr Justice SM Emdadul Hoque
35 Mr Justice Mamnoon Rahman
36 Madam Justice Farah Mahbub
37 Mr Justice Md Abdur Razzaque
38 Mr Justice Md Nizamul Huq
39 Mr Justice Md Bazlur Rahman
40 Mr Justice AKM Abdul Hakim
41 Mr Justice Borhanuddin
42 Mr Justice M Moazzam Husain
43 Mr Justice Soumendra Sarker
44 Mr Justice Abu Bakar Siddiquee
45 Mr Justice Md Nuruzzaman
46 Mr Justice Md Moinul Islam Chowdhury
47 Mr Justice Obaidul Hassan
48 Mr Justice M Enayetur Rahim
49 Madam Justice Naima Haider
50 Mr Justice Md Rezaul Hasan
51 Mr Justice Md Faruque (M Faruque)
52 Mr Justice Md Shawkat Hossain
53 Mr Justice FRM Nazmul Ahsan
54 Mr Justice Krishna Debnath
55 Mr Justice ANM Bashirullah
56 Mr Justice Abdur Rob
57 Mr Justice Dr Quazi Reza-ul Hoque
58 Mr Justice Md Abu Zafor Siddique
59 Mr Justice AKM Zahirul Hoque
60 Mr Justice Jahangir Hossain
61 Mr Justice Sheikh Md Zakir Hossain
62 Mr Justice Md Habibul Gani
63 Mr Justice Gobinda Chandra Tagore
64 Mr Justice Sheikh Hassan Arif
65 Mr Justice JBM Hassan
66 Mr Justice Md Ruhul Quddus
67 Mr Justice Md Khasruzzaman
68 Mr Justice Farid Ahmed
69 Mr Justice Md Nazrul Islam Talukder
70 Mr Justice Bhabani Prasad Singha
71 Mr Justice Anwarul Haque
72 Mr Justice Md Akram Hossain Chy
73 Mr Justice Md Ashraful Kamal
74 Mr Justice SH Md Nurul Huda Jaigirdar
75 Mr Justice KM Kamrul Kader
76 Mr Justice Md Mozibur Rahman Miah
77 Mr Justice Mustafa Zaman Islam
78 Mr Justice Mohammad Ullah
79 Mr Justice Md Khurshid Alam Sarker
80 Mr Justice AKM Shahidul Huq
81 Mr Justice Shahidul Karim
82 Mr Justice Md Jahangir Hossain
83 Mr Justice ATM Saifur Rahman
84 Mr Justice Ashish Ranjan Das
85 Mr Justice Mahmudul Hoque
86 Mr Justice Md. Badruzzaman
87 Mr Justice Zafar Ahmed
88 Mr Justice KM Ejarul Haque Akondo
89 Mr Justice Shahinoor Islam
90 Madam Justice Kashefa Hossain

Registrar

Mr SM Quddus Zaman

Law Officers

Attorney-General

Mr Mahbubey Alam

Additional Attorneys-General

Mr Murad Reza

Mr Md Mamtaz Uddin Fakir

Deputy Attorneys-General

1 Mr Razik-al-Jalil
2 Mr Zahirul Haque Zahir
3 Mr Abdus Salam Mondal
4 Ms Shakila Rowsan
5 Mr Farhad Ahmed
6 Ms Promila Biswas
7 Ms Karunamoy Chakma
8 Mr Gautam Kumar Roy
9 Mr Shasanka Shekher Sarker
10 Mr Biswajit Roy
11 Mr Motahar Hossain (Sazu)
12 Mr Bhishma Dev Chakroborty
13 Mr MA Mannan Mohan
14 Mr Md Sohrawardi
15 Mr Bishawjit Debnath
16 Mr Md Salim
17 Mr Md Shahidul Islam
18 Mr KM Zahid Sarwar
19 Mr Md Mosharrof Hossain Sarder
20 Mr Abdullah-al-Mamun
21 Mr Tapash Kumar Biswas
22 Mr Sardar Md Rashed Jahangir
23 Ms Rona Nahrin
24 Mr Md Mokleshur Rahman
25 Mr Md Moniruzzaman (Rubel)
26 Mr Md Al-Amin Sarker
27 Mr ASM Nazmul Haque
28 Mr Khandaker Dilir-uz-zaman
29 Mr Amit Talukder
30 Mr SM Maniruzzaman
31 Ms Kazi Zinat Hoque
32 Mr Md Ekramul Haque
33 Mr Nazibur Rahman
34 Ms Anwara Shahjahan
35 Mr AKM Zahirul Huq
36 Mr Md Jahangir Alam
37 Mr Md Abdul Hye
38 Mr Md Fazlur Rahman Khan
39 Mr Md Haroon-ur-Rashid
40 Mr Bhabesh Chandra Sarker
41 Mr Khazir Hayet
42 Mr Khorshedul Alam
43 Mr Shafiul Bashar Bhandari
44 Mr Sheikh AKM Monir-uz-zaman Kabir
45 Mr Manzur Kader
46 Ms Israt Jahan
47 Mr Delowar Hossain Somadder
48 Mr Md Masud Hasan Chowdhury
49 Ms Amatul Karim
50 Mr Dr Md Bashir Ullah

Assistant Attorneys-General

1 Ms Noajis Ara Begum
2 Ms Mahfuza Begum
3 Mr Shoyeb Khan
4 Mr Mamunor Rashid
5 Ms Salma Rahman
6 Ms Farida Yesmein
7 Mr Md Abdul Khaleque
8 Mr ABM Mahbub

9 Ms Suchira Hossain
10 Md Shahidul Islam Khan
11 Ms Syeda Rabia Begum
12 Ms Ambia Bulbul Reza (Bulbul)
13 Mr Bashir Ahmed
14 Mr Gopal Chandra Saha
15 Mr Md Nurul Islam Matubbor
16 Ms Nasrin Parvin (Shefalee)
17 Mr SM Asadullah Tarique
18 Ms Purabi Rani Sharma
19 Mr Mia Shirajul Islam
20 Mr M Masud Alam Chowdhury
21 Ms Purabi Rani Saha
22 Mr Shah Abdul Hatem
23 Mr Nizamul Haque (Nizam)
24 Mr Abul Kalam Azad Khan
25 Ms Jesmin Sultana (Shamsad)
26 Mr Swapan Kumar Das
27 Ms Mahmuda Parveen (Popy)
28 Ms Zannatul Ferdoushi (Rupa)
29 Ms Rahima Khatun
30 Mr Khondker Modarresh Elahi
31 Mr Gazi Md Mamunur Rashid
32 Mr Md Jahangir Alam
33 Mr Kazi Bazlur Rashid
34 Mr Md Ali Jinnah
35 Mr Md Eunus Ali
36 Mr Arobinda Kumar Roy
37 Mr Shafquat Hussain
38 Mr Atiqul Haque
39 Mr Md Mozammal Haque Rana
40 Mr SM Quamrul Hasan
41 Mr Md Jashim Uddin
42 Mr Md Mahabub-ul-Alam
43 Mr Samarendra Nath Biswas
44 Ms Sharmina Haque
45 Mr Sukumar Biswas
46 Ms Nurun Nahar
47 Mr ARM Hasanuzzaman Uzzal
48 Ms Shahida Begum
49 Mr Saikat Basu
50 Mr Pratikar Chakma
51 Mr Abdur Rokib (Montu)
52 Mr KM Masud Rumy
53 Mr Md Khalilur Rahman
54 Mr Md Jaber
55 Mr Md Ensan Uddin Sheikh
56 Mr Titus Hillol Rema
57 Mr Md Zakir Hossain (Ripon)
58 Ms Shahida Khatoon
59 Mr Md Asaduzzaman
60 Mr Sk Shaifuzzaman (Zaman)
61 Ms Khairun Nessa
62 Mr Kazi Ebadoth Hossain
63 Mr Dipayan Chandra Saha
64 Mr Shafiquel Islam Siddique
65 Mr ASM Fazle Rabbi Khan
66 Mr Shahidul Islam Khan
67 Ms Towhida Khatoon (Rina)
68 Mr KM Mahmudul Karim
69 Mr Md Yousuf Mahmud Morshed
70 Ms Yesmin Begum (Bithi)
71 Ms Monzu Naznin (Rosy)
72 Mr Md Ashaque Momin
73 Mr Md Aminur Rahman Chowdhury
74 Ms Beadura Ansary
75 Ms Sucharita Sen Gupta
76 Mr Bahauddin Ahmed
77 Mr Md Abdur Rahman Howlader
78 Mr Bibhuti Bhuson Biswas
79 Mr Md Monowar Hossain
80 Mr Md Nurul Haque
81 Mr Mian Md Shamim Ahsan
82 Mr Md Abdul Bari
83 Mr Md Sohrawardi
84 Mr Md Motiur Rahman Howlader
85 Ms Bilkis Fatema
86 Ms Anwara Khanam
87 Ms Yeadia Zaman
88 Mr Md Osman Goni Khan
89 Ms Nusrat Jahan
90 Ms Samira Tarannum Rabeya
91 Ms Delwara Begum Bela
92 Mr MA Kamrul Hasan Khan (Aslam)
93 Mr Sadhan Kumar Banik
94 Mr Shamsuddoha Talukder
95 Mr Sarup Kanti Deb

List of the Cases in which decisions of the High Court Division and Administrative Appellate Tribunal have been reversed

66 DLR (AD) 1 — Esrarul Huq Chowdhury vs Md. Amir Hossain, Advocate reversed the judgment and order dated 20-3-2006 passed by the High Court Division in FMA No.199 of 2005 by Civil Appeal No. 323 of 2008.

66 DLR (AD) 19 — AA Engineering Limited vs University of Khulna, represented by its Vice-Chancellor reversed the judgment and order dated 6-11-2000 passed by the High Court Division in Writ Petition No.3426 of 1999by Civil Appeal No. 326 of 2002.

66 DLR (AD) 33 — State vs Md Ibrahim Ali reversed the judgment and order dated 2nd of July, 2003 passed by the High Court Division in Criminal Appeal No. 2907 of 1999 by Criminal Appeal No. 22 of 2004.

66 DLR (AD) 100 — Monir Hossain Md (Moni) vs Md Yousuf reversed the judgment and order dated 20-8-2000 passed by the High Court Division in Civil Revision No.2948 of 1999 by Civil Appeal No. 271 of 2002.

66 DLR (AD) 169 — SM Redwan vs Md Rezaul Islamreversed the judgment and order dated 9-2-2003 passed by the High Court Division in Criminal Miscellaneous Case Nos. 2 788 of 2000 and 5752 of 1999 by Criminal Appeal Nos. 30 and 31 of 2004.

66 DLR (AD) 176 — Delipjan being dead her heirs: Fazal Haque vs Shahed Badsha reversed the judg ment and order dated 20-8-2006 passed by the High Court Division in Civil Revision No.1104 of 1993 by Civil Appeal No.153 of 2008.

66 DLR (AD) 180 Zahidul Islam vs Md Kamal Hossain reversed the judgment and order dated the 25th day of March, 2009 passed by the High Court Division in Criminal Miscellaneous Case No.6908 of 2008 by Criminal Appeal No. 2 of 2011.

66 DLR (AD) 253 Aftab Uddin (Md) vs Chairman, Court of Settlement reversed the judgment and order dated 19th of March, 1998 passed by the High Court Division in Writ Petition No. 561 of 1989 by Civil Appeal No. 40 of 2002.

66 DLR (AD) 315 Asad Ali (Md) vs Golam Sarwar reversed the judgment and order dated 16-10-2001 passed by the High Court Division in Civil Revision No.3271 of 1997 by Civil Appeal No 67 of 2004.

Statute Index, 2014

Appellate Division

of the Supreme Court of Bangladesh

Abandoned Buildings (Supplementary Provision) Ordinance [LIV of 1985]

Acquisition & Requisition of Immovable Property Ordinance [II of 1982]

Anti-Corruption Commission Act [V of 2004]

Anti-Corruption Commission Rules, 2007

Artha Rin Adalat Ain [VIII of 2003]

Bangladesh Legal Practitioners and Bar Council Order [PO 46 of 1972]

Children Act [XXXIX of 1974]

Code of Civil Procedure [V of 1908]

Code of Criminal Procedure [V of 1898)

Constitution of Bangladesh, 1972

Criminal Law Amendment Act [XL of 1958]

Evidence Act [I of 1872]

Government Servants (Discipline and Appeal) Rules, 1985

Income Tax Ordinance [XXXVI of 1984]

International Crimes (Tribuanl) Act [XIX of 1973]

Jail Code [IX of 1894]

Land Reforms Ordinance [X of 1984]

Nari-o-Shishu Nirjatan (Bishesh Bidhan) Ain [XVIII of 1995]

Nari-o-Shishu Nirjatan Daman Ain [VIII of 2000]

Negotiable Instruments Act [XXVI of 1881]

Non Agricultural Tenancy Act [XXIII of 1949]

Penal Code [XLV of 1860]

Premises Rent Control Act [III of 1991]

Specific Relief Act [I of 1877]

State Acquisition & Tenancy Act, 1950 [XXVIII of 1951]

Supreme Court of Bangladesh (Appellate Division) Rules, 1988

Transfer of Property Act [IV of 1882]

Value Added Tax Act [XXII of 1991]

Words and Phrases

The

Dhaka Law Reports

Table of Cases of the **Appellate Division**
of the Supreme Court of Bangladesh

Volume LXVI
2014
January—December

Civil Jurisdiction

AA Engineering Limited vs University of Khulna, represented by its Vice-Chancellor 19
Abdul Hakim (Md) vs Md Nazrul Islam 157
Abu Safa (Md) vs Abdul Momen Chowdhury 17
Aftab Uddin (Md) vs Chairman, Court of Settlement 253
Ali Amjad Khan (Md) vs Md. Habibullah Dawn 28
Ali Garments Limited vs Commissioner of Taxes... 243
Asad Ali (Md) vs Golam Sarwar 315
Ayub Hossain Khan (Md) vs Bangladesh 215
Bakhrabad Gas System Limited vs Al Masud-ar-Noor 187
Bibi Joynab Begum Chowdhury vs Osi Mia 190
British American Tobacco Bangladesh Company Ltd vs Begum Shamsun Nahar ... 80
Chittagong Steel Mills Ltd vs MEC, Dhaka 246
Delipjan vs Shahed Badsha 176
Esrarul Huq Chowdhury vs Md. Amir Hossain, Advocate 1
Executive Chairman, BEPZA vs Abdul Mannan 86
Gias Uddin Chowdhury (Md) vs Bangladesh, Secretary, Ministry of Law... ... 213
Government of Bangladesh vs Dr Md Nazrul Islam Bhuiyan 255

Government of Bangladesh vs Md Abdul Karim 251
Government of Bangladesh, Secretary, Ministry of Education vs SM Humayun Kabir... 279
Government of Bangladesh, Secretary, Ministry of Land vs Sharifun Nessa ... 274
Lakshmi Bala Sen vs Tarun Tapan Dutta @ Tapan Kumar Dutta 162
Moklesur Rahman (Md) vs Government of Bangladesh 207
Monir Hossain Md (Moni) vs Md Yousuf 100
Ramesh Chandra Adhikari vs Bulbuli 104
Rana Kaiser Siddiq vs Bangladesh Chemical Industries Corporation 31
Ruksana Huq vs AK Faizul Huq (Raju) 240
Shamsul Kabir Huma yun Reza vs Anwarul Hasan 37
SN Kabir vs Fatema Begum 193
Zakir Hossain vs Md Shahnewaz 98

Criminal Jurisdiction

Abdul Quader Mollah vs Chief Prosecutor, International Crimes Tribunal, Dhaka ... 289
Abul Bashar Chowkidar vs Abdul Mannan @ Khademul Islam... 286
Ahmed Lal Mia vs State 204
Anti-Corruption Commission vs Iqbal Hasan Mahmood 185
Anti-Corruption Commission vs Dr. Khandaker Mosharraf Hossain... 92
Mehedi Hasan @ Modern (Md) vs State 111
Nazrul Islam (Md) vs State... 199
Sarwar Hossain Moni (Md) vs State 283
SM Redwan vs Md Rezaul Islam 169
Sohel Rana Shippon (Md) vs State 160
State vs Faisal Morshed Khan... 236
State vs Md Ibrahim Ali... 33
State vs Robin... 272
State vs Romana Begum alias Noma... 183
Sukur Mahmood vs State... 167
Tapan vs State... 174
Zahidul Islam (Md) vs Md Kamal Hossain (Criminal)... 180

The

Dhaka Law Reports

Index of Cases of the **Appellate Division**
of the Supreme Court of Bangladesh

Vol. LXVI
2014

January—December

Abandoned Buildings (Supplementary Provision) Ordinance (LIV of 1985)

Section 5(1)(b)—Court of Settlement did not discuss the veracity, value, weight or otherwise of the original documents produced earlier by the appellant, the matter be sent on remand to the Court of Settlement to assess the documentary evidence produced in this case and then to come to a decision in accordance with law. *Aftab Uddin (Md) vs Chairman, Court of Settlement (Civil) 66 DLR (AD)* 253

Acquisition & Requisition of Immovable Property Ordinance
(II of 1982)

Sections 7 and 10—The compensation has already been deposited with the office of the Deputy Commissioner but the respondents could not receive the compensation because of pending litigations. The respondents cannot take the plea of non-payment of compensation. Gazette notification has already been published and, as such, the disputed land vested in the Government free from all encumbrances. Government can only lease out the acquired land to the original owners at present market price. *Government of Bangladesh, represented by the Secretary, Ministry of Land vs Sharifun Nessa (Civil) 66 DLR (AD) 274*

Anti-Corruption Commission Act
(V of 2004)

Section 27—Section 27 is an independent provision and for initiation of a proceeding against any person under the provision, no notice is required to be served. If the prosecution can establish that any person has acquired or amassed wealth which is beyond his known source of income, he may be prosecuted and convicted under section 27(1). *Anti-Corruption Commission vs Iqbal Hasan Mahmood (Criminal) 66 DLR (AD)* 185

Section 27—The findings made in the impugned judgment and also in the case of Mohiuddin Khan Alamgir *[15 BLC 107, Para 97]* shall be deemed to have been modified in respect of the assessment made by the PWD officials in

that the assessment of valuation of any property made by PWD officials shall have evidentiary value when no such assessment is made and accepted as correct by another independent department of the Government authorized in that behalf. *State vs Faisal Morshed Khan (Criminal) 66 DLR (AD) 236*

Section 27—There may be a situation when there is no assessment of valuation by any competent authority of the Government exercising power in that behalf and in such a case, the Anti-Corruption Commission has no other option but to take the assistance of the PWD officials in making assessment of the valuation of any property. Therefore, it cannot be said that the assessment of valuation made by the PWD officials does not have any evidentiary value in all situations. *State vs Faisal Morshed Khan (Criminal) 66 DLR (AD) 236*

Anti-Corruption Commission Rules, 2007

Rule 10—Anticipatory bails shall not survive post charge-sheet stage. *Durnity Daman Commission vs Dr. Khandaker Mosharraf Hossain (Criminal) 66 DLR (AD) 92*

Artha Rin Adalat Ain
(VIII of 2003)

Section 32(2)—The language of sub-section (2) is absolutely mandatory in nature as consequence of non-deposit of such security has been provided therein and since the petitioners did not deposit security equivalent to 25% of the decretal amount, their application was incompetent. *Gias Uddin Chowdhury (Md) vs Bangladesh, represented by the Secretary, Ministry of Law (Civil) 66 DLR (AD) 213*

Section 32(2)—A mere reading of sub-section (2) of section 32 shows that it is the precondition to deposit security equivalent to 25% of the decretal amount in order to lay claim to an immovable property involved in an execution case, but admittedly in this case. *Gias Uddin Chowdhury (Md) vs Bangladesh, represented by the Secretary, Ministry of Law (Civil) 66 DLR (AD) 213*

Bangladesh Legal Practitioners and Bar Council Order (PO 46 of 1972)

Article 34(8)(4)(6)—*Professional Conduct and Etiquette*—A review lies where an error apparent on the face of the record exists. It is not the re-hearing of the main appeal. In a review a Court is not empowered to change the decision taken in the main judgment. It is only meant for correction of clerical error or mistake on the face of the record. *Esrarul Huq Chowdhury vs Md. Amir Hossain, Advocate (Civil) 66 DLR (AD) 1*

Article 44(g)—*Professional Misconduct*—The expression "professional misconduct" has not been defined in the Bangladesh Legal Practitioners and Bar Council Order, 1972. Article 44(g) of the PO No. 46 of 1972 adopted the Canons of Professional Conduct and Etiquette with the object of releasing ideal justice to all citizens, the equal protection of law and thereby secures to them the enjoyment of their lives, property and honour and an indispensable condition of such protection of the rights of citizens is the existence in society of a community of Advocates, men learned in the law and respected as models of integrity, imbued with the spirit of public service and dedicated to the task of upholding the rule of law and defending at all times, without fear or favour, the rights of citizens and in order effec-

tively to discharge these high duties Advocates must conform to certain norms of correct conduct in their relations with members of the profession, their clients, the courts and the members of the public generally and accordingly the Bangladesh Bar Council has formulated such norms of correct conduct into a set of Canons of Professional Conduct and Etiquette. *Esrarul Huq Chowdhury vs Md. Amir Hossain, Advocate (Civil) 66 DLR (AD)* 1

Children Act
(XXXIX of 1974)

Sections 2(f) and 66—An accused will be entitled to the benefits of the provisions of the Children Act if he can establish that he was a child *on the date of commission of the offence* and that it is the duty of the Court to initiate an inquiry before the commencement of the trial to determine the age of the accused in order to establish jurisdiction of the Court and ensure the due rights of the accused in accordance with law. *(Per Md Imman Ali J, minority) Mehedi Hasan @ Modern (Md) vs State (Criminal) 66 DLR (AD)* 111

Section 51—There is no doubt that the accused have committed a heinous offence. However, where any special law gives specific benefit to an accused, then he deserves to be treated in accordance with such beneficial provisions. Under the second proviso to section 51, an accused found guilty of any offence, even one carrying the sentence of death or life imprisonment, may be sentenced in exceptional circumstances to imprisonment for a maximum period of ten years. Even upon conviction under section 7 of the Ain, accused Asha may not be sentenced to 14 years in prison. The sentence that may be lawfully imposed is a maximum of ten years' imprisonment. *(Per Muhammad Imman Ali J, minority) Mehedi Hasan @ Modern (Md) vs State (Criminal) 66 DLR (AD)* 111

Section 51—When any offender is a child the law requires that s/he must be dealt with in accordance with the provisions of the Act, no matter how serious or heinous the offence might be. The same principle is applicable in cases of offences under special laws. *(Per Muhammad Imman Ali J, minority) Mehedi Hasan @ Modern (Md) vs State (Criminal) 66 DLR (AD)* 111

Section 66—I am of the firm view that the interpretation of law in the cases of *Abdul Monem Chowdhury alias Momen vs State, Bimal Das vs State and Mona alias Zillur Rahman vs State* were not correct so far as it relates to the duty of the Court to determine the age of the accused and the occasion on which the age of the accused is relevant. Hence it is the duty of this Division to revisit those earlier decisions and, to the extent necessary, overrule them. *(Per Muhammad Imman Ali J, mijority) Mehedi Hasan @ Modern (Md) vs State (Criminal) 66 DLR (AD)* 111

Section 66—The accused claimed to be about 16 years of age on the date of recording of his confessional statement and, therefore, he was below 16 years of age *on the date on which he is alleged to have committed the offence.* This assertion was part of the record and neither the Court nor the prosecution took any steps to act in accordance with section 66 of the Act, which in my humble opinion is a mandatory and most salutary provision of law for the purpose of the rights of youthful offenders. *(Per Muhammad Imman Ali J, minority) Mehedi Hasan @ Modern (Md) vs State (Criminal) 66 DLR (AD)* 111

Section 66(1)—Criminal Court shall be under an obligation to make an inquiry as to the age of a person who is brought before it whether

charged with an offence or not, otherwise than for the purpose of giving evidence as mandated in section 66(1) of the Act, if it appears to it that the person so brought is a child. *(Per Md Abdul Wahhab Miah J, majority). Mehedi Hasan @ Modern (Md) vs State (Criminal) 66 DLR (AD) 111*

Section 66(1)—This Division rightly interpreted the provisions of section 66(1) of the Act, in the cases of *Abdul Momen Chowdhury @ Momen vs State (supra)* and *Bimal Das vs State (supra)* in taking the view that under the section, it is for the Court to consider whether a person charged with an offence and brought before it for trial appears to be a child or not and then to proceed accordingly and if it does not so appear to a Court that the person so brought is a child, it has no duty to ascertain the age of that person. Question of revisiting those decisions as opined by the learned brother does not arise at all. Neither at the hearing of the leave petition nor at the final hearing of the appeal, submission was made by the learned counsel for the appellants that the decision of this Court in the said two cases were wrong and those need to be revisited or reconsidered. *(Per Md Abdul Wahhab Miah J, majority)Mehedi Hasan @ Modern (Md) vs State (Criminal) 66 DLR (AD) 111*

Section 66(1)—Since the word "appear" has not been defined in the definition given in section 2 of the Act, we are to fall back upon the dictionary meaning of the same and that is permissible. *(Per Md Abdul Wahhab Miah J, majority) Mehedi Hasan @ Modern (Md) vs State (Criminal) 66 DLR (AD) 111*

Section 66(1)—resumption/assumption/ formation of opinion by the Court whether the person brought before it is a child or not, as envisaged in sub-section (1) of section 66, may be from his physical appearance or with reference to papers and documents produced by the parties concerned and may be in consideration of both. And to presume/assume/ form such a first hand idea by a Court, it need not be a doctor or a medical expert and no radiological or bone ossification report is necessary. Even after inquiry the Court shall record a finding as to the age of the person so brought "as nearly as may be." *(Per Md Abdul Wahhab Miah J, majority). Mehedi Hasan @ Modern (Md) vs State (Criminal) 66 DLR (AD) 111*

Code of Civil Procedure
(V of 1908)

Sections 96 and 97—If an appeal is filed against the preliminary decree and if the preliminary decree is modified or set-aside then the final decree falls through. *Zakir Hossain vs Md Shahnewaz (Civil) 66 DLR (AD) 98*

Section 141—Section 141 of the Code has provided that the procedure provided in the Code of Civil Procedure in regard to suits shall be followed, as far as it can be made applicable, in all proceedings in any court of civil jurisdiction. A succession case, in all consideration, is a proceeding in a court of civil jurisdiction. *Ruksana Huq vs AK Faizul Huq (Raju) (Civil) 66 DLR (AD) 240*

Section 151—In the Code, there is no specific provision to allow a party in a suit or a civil proceeding to adopt evidence adduced by him in another suit or proceeding heard simultaneously or analogously, but section 151 of the Code has given inherent power to the Court to pass any such order to secure the ends of justice. *Shamsul Kabir Huma yun Reza vs Anwarul Hasan (Civil) 66 DLR (AD) 37*

Order I, rule 10(2)—Of course, generally the courts will not allow transposition of defendants as plaintiffs after striking the names of the original plaintiffs or after transposing them as defendants. But in appropriate case the court should not be reluctant to make such transposition of the parties for the ends of Justice or to prevent abuse of the process of the court. *Ruksana Huq vs AK Faizul Huq (Raju) (Civil) 66 DLR (AD) 240*

Order VII, rule 11—Where the existence of the cause of action is required to be determined by adducing evidence, plaint cannot be rejected under Order VII, rule 11. *British American Tobacco Bangladesh Company Ltd vs Begum Shamsun Nahar (Civil) 66 DLR (AD) 80*

Order VII, rule 11—A plaint cannot be rejected for defect of parties because such an exigency has not been contemplated under Order VII, rule 11 of the Code. Defect of parties can be cured by the plaintiff by impleading the concerned employees of the defendant company in the plaint. *British American Tobacco Bangladesh Company Ltd vs Begum Shamsun Nahar (Civil) 66 DLR (AD) 80*

Order XXI, rules 99 & 101—A transferee *pendente lite* is not entitled to the benefit of the procedure under Rules 99 and 101 of Order XXI of the Code. *Ali Amjad Khan (Md) vs Md. Habibullah Dawn (Civil) 66 DLR (AD) 28*

Order XLI, rule 31—When no appeal is preferred against the final decree and only the preliminary decree is appealed against but a copy of the final decree has been placed on the record of the appeal it is the duty of the appellate Court in dealing with the appeal to give necessary and consequential directions regarding the final decree. *Zakir Hossain vs Md Shahnewaz (Civil) 66 DLR (AD) 98*

Order XLI, rule 33—Neither the arbitrator nor the trial Court granted interest, the High Court Division in exercise of power conferred upon it under Order XLI, rule 33 of the Code can grant interest. In the suit, interest was prayed for from 7-6-1995 which is the date of the pronouncement of the award till realization and this interest was neither pre-reference period interest nor pendente lite interest but future interest, i.e., from the date of award till realization of the money and this prayer appears to be in accordance with justice and fairness. *Chittagong Steel Mills Ltd vs MEC, Dhaka (Civil) 66 DLR (AD) 246*

Code of Criminal Procedure
(V of 1898)

Sections 173 and 498—Anticipatory bails shall not survive post charge-sheet stage. *Durnity Daman Commission vs Dr. Khandaker Mosharraf Hossain (Criminal) 66 DLR (AD) 92*

Section 173(1)(3B)—Section 173(1)(3B) of the Code allows for further investigation and submission of a further report with further evidence, oral or documentary in respect of an offence, even after a report had been forwarded to the Magistrate under section 173(1) of the Code. *Abul Bashar Chowkidar vs Abdul Mannan @ Khademul Islam (Criminal) 66 DLR (AD) 286*

Section 222—Merely because charge has been framed against the accused, the case is not proved against him and it is the prosecution which has to prove its case beyond reasonable doubt, and the accused shall have all the right to take his defence by cross-examining the prosecution witnesses and also by examining his own witnesses, if he so desires. *Ahmed Lal Mia vs State (Criminal) 66 DLR (AD) 204*

Sections 222(2) and 234(1)—Any number of offences punishable under the Criminal Law Amendment Act irrespective of the period over which the offence was committed, may be tried at one trial. All the offences committed over any length of period of time could be tried in one trial upon framing one charge. *State vs Md Ibrahim Ali (Criminal) 66 DLR (AD) 33*

Sections 227(1)(2)—If ingredients of an offence are disclosed the charge may be altered at any time or a new charge may be framed at any time up to the pronouncement of judgment, giving opportunity to the accused to put in his defence against the new or altered charge. But in no way can he be acquitted if the evidence against him proved his guilt in commission of an offence. *State vs Md Ibrahim Ali (Criminal) 66 DLR (AD) 33*

Section 342—Ends of justice will be met if the case is remanded to the trial Court for giving an opportunity to the respondent to cross-examine the prosecution witnesses, if he so desires and also in order that the Court may examine the accused under section 342 of the Code. We find from the record that the victim, as informant, lodged the First Information Report naming the accused respondent as one of the perpetrators involved in abducting and raping her. She maintained her story of abduction and rape in her deposition before the Court. The trial Court upon assessment of the evidence convicted and sentenced the respondent along with others, although the trial took place in the absence of all the accused persons. *State vs Robin (Criminal) 66 DLR (AD) 272*

Section 374—As there is no conclusive evidence as regards the principal assailant, ends of justice would be met if the sentence of the petitioners is commutated to imprisonment for life. *Tapan vs State (Criminal) 66 DLR (AD) 174*

Sections 374 and 376—Condemned-prisoner spent about 4 years in the condemned cell, and 13 years have elapsed since the judgment of the High Court Division, which commuted her sentence of death to imprisonment for life. *State vs Romana Begum alias Noma (Criminal) 66 DLR (AD) 183*

Section 376—The convict has now been in the condemned cell for more than $9^{1}/_{2}$ years due to no fault of his own. The length of period by now can be taken as a circumstance, when there are other extenuating circumstances, to commute the sentence of death of imprisonment for life". *Nazrul Islam (Md) vs State (Criminal) 66 DLR (AD) 199*

Section 498—Anticipatory Bail—After the implementation of the Masdar Hussain judgment *[52 DLR (AD) 82]*, transfer, promotion of the Magistrates are in the hands of the High Court Division, and as such bail petitioners' political assimilation cannot *ipso facto* ignite any apprehension of unfairness or impropriety. *Durnity Daman Commission vs Dr. Khandaker Mosharraf Hossain (Criminal) 66 DLR (AD) 92*

Section 498—Anticipatory Bail—Criteria —The following criteria shall follow while disposing of anticipatory bail applications;

To open the jurisdictional door they shall satisfy themselves that reasons for apprehension have specifically, explicitly, plausibly, credibly and with sufficient clarity been assigned, instead of relying on any generalised pretension. That must be treated as the precursor.

Political threshold of the petitioner or claimed rivalry, by itself, without further ado, shall not be a ground for entertaining an application.

Non-bailability of the offence cited in the FIR cannot be a reason for the High Court Division's intervention for even the Magistrates/lower court/tribunal Judges are competent enough to enlarge on bail a person accused of non-bailable offences in deserving cases.

Effect of the accused's freedom on the investigation process must not be allowed to float on obfuscation.

The High Court Division must scrutinise the text in the FIR with expected diligence and shall ordinarily be indisposed to grant anticipatory bail where the allegations are of heinous nature, keeping in mind the ordains figured at paragraph 19 of the case reported in *51 DLR (AD) 242.*

Interest of the victim in particular and the society at large must be taken into account in weighing respective rights.

If satisfied in all respects, the High Court Division shall dispose of the application instantaneously by enlarging the accused on a limited bail, not normally exceeding four weeks, without issuing any Rule. It must be conspicuously stated in the bail granting order that in the event of any filance of bail application, the Court below will consider the same using its own legal discretion without reference to the High Court Division's anticipatory bail order.. *Durnity Daman Commission vs Dr. Khandaker Mosharraf Hossain (Criminal) 66 DLR (AD)* 92

Section 561A—Stop Payment—Since the cheques were returned by bank with the endorsement "payment stopped by the drawer" it is to be presumed that those were returned unpaid because the amount of money standing to the credit of that account was insufficient to honour of the cheque as envisaged in section 138 of the Act. Of course this is a rebuttable presumption. The defence can be considered at the time of holding trial and not in an application under section 561 A of the Code. *SM Redwan vs Md Rezaul Islam (Criminal) 66 DLR (AD)* 169

Section 561A—Legislature has not created any absolute bar in filing a petition of complaint before expiry of thirty days of the receipt of the notice issued under clause (b) of the proviso to section 138 as created in case of filing a petition of complaint after expiry of one month of the date on which the cause of action arises under clause (c) of the proviso to section 138. Prematurity shall be cured the moment the period of thirty days expires and the payment of the dishonoured cheque is not made within the said period. *Zahidul Islam (Md) vs Md Kamal Hossain (Criminal) 66 DLR (AD)* 180

Constitution of Bangladesh, 1972

Articles 23, 24 and 102(2)—Legitimate Expectation—The expectation, if any, died a natural death when the authorities resolved to convert the subject property into an archive to preserve *Shuchitra Sen's* memory, i.e. when a permanent decision had been taken on this vested property. Expectation, if any, (and indeed reliance on promissory estoppel) must have been a stale one even from the inception from the legal perspective as well, because *Ayub Hossain Khan (Md) vs Bangladesh (Civil) 66 DLR (AD)* 215

Article 35—If the offences under the Ain, 2000 and those under the Penal Code were tried together then at the time of sentencing certain norms would have been followed. *Sohel Rana Shippon (Md) vs State (Criminal) 66 DLR (AD)* 160

Article 102(2)—Writ petitioner submitted tender knowing full well that the authority reserved the right to accept the offer or part thereof or reject the tender and that the decision of the authority was final and that even if the writ petitioner has any right he could seek remedy before the civil Court, not in the writ petition. *Rana Kaiser Siddiq vs Bangladesh Chemical Industries Corporation (Civil) 66 DLR (AD)* 31

Article 102(2)—Legitimate Expectation —Protection of legitimate expectation does not require the fulfillment of the expectation where an overriding public interest surfaces with greater accentuation. A change in policy can defeat a substantive legitimate expectation provided it can be justified on *Wednesbury reasonableness. Ayub Hossain Khan (Md) vs Bangladesh (Civil) 66 DLR (AD)* 215

Article 102(2)—Legitimate Expectation —A legitimate expectation can arise when the public authority concerned, by a promise or a representation, whether verbal or written, or by conduct or continuous practice, ignites an expectation in the mind of the promisee or the representee that the promise, representation or the practice would be followed. *Ayub Hossain Khan (Md) vs Bangladesh (Civil) 66 DLR (AD)* 215

Article 102(2)—Promissory Estoppel and Legitimate Expectation—The most important difference between a promissory estoppel and legitimate expectation is that while detriment suffered by the promisee is a *sine qua non* for a promissory estoppel, no such detriment is necessary to erect a claim on legitimate expectation. *Ayub Hossain Khan (Md) vs Bangladesh (Civil) 66 DLR (AD)* 215

Article 102(2)—Legitimate Expectation —Legitimate expectation is an extended form of fairness, designed to prevent abuse of power and the same is liable to fall through if, amongst other factors, interest of the society so warrants. *Ayub Hossain Khan (Md) vs Bangladesh (Civil) 66 DLR (AD)* 215

Article 102(2)—Principle legitimate expectation—The court would interfere only if the decision taken by the authority was found to be arbitrary, unreasonable or in gross abuse of power or in violation of principles of natural justice and not taken in public interest. *Government of Bangladesh vs Dr Md Nazrul Islam Bhuiyan (Civil) 66 DLR (AD)* 255

Article 102(2)—Legitimate Expectation —The legitimate substantive expectation merely permits the Court to find out if the change in policy which is the cause for defeating the legitimate expectation is irrational or perverse or one which no reasonable person could have made. *Government of Bangladesh vs Dr Md Nazrul Islam Bhuiyan (Civil) 66 DLR (AD)* 255

Article 102(2)—The decision taken by the Inter-Ministerial meeting does not contravene any of the provision relating to the acquisition of immoveable property. *Government of Bangladesh, represented by the Secretary, Ministry of Land vs Sharifun Nessa (Civil) 66 DLR (AD)* 274

Article 103—Appeal was filed by non-genuine person upon using imaginary name of a person and that upon using fabricated papers. Such manner of filing a case is highly deprecable one and, as such, strongly disapproved by the Court. *Abu Safa (Md) vs Abdul Momen Chowdhury (Civil) 66 DLR (AD)* 17

Article 104—In order to do complete justice, we invoke our power under article 104 of the Constitution and dispose of the appeal finally

without sending the case back on remand for trial afresh by the concerned Tribunal, under the Ain, 2000. *(Per Md Abdul Wahhab Miah J, majority) Mehedi Hasan @ Modern (Md) vs State (Criminal) 66 DLR (AD)* 111

Article 104—It a proper case to alter their conviction in exercise of powers under Article 104 of the Constitution for ends of justice. As regards the plea of minority of the appellants, I endorse the views of my learned brother Md Abdul Wahhab Miah J. The nature of the offence deserves imposition of maximum period of sentence upon the appellants. We noticed that all the appellants were tender aged boys below the age of 20 years. They had suffered in the condemned cell for more than 9 years. Considering their age and the mental agony of death sentence they faced, I feel it proper to award the appellants the minimum sentence provided in the section. *(Per SK Sinha J, agreeing with Md Abdul Wahhab Miah J majority) Mehedi Hasan @ Modern (Md) vs State (Criminal) 66 DLR (AD)* 111

Article 104—It a fit case to invoke the power conferred upon this Court by the Constitution for doing complete justice Because of the direction given by this Court in CMP No.745 of 2010, the judgment-debtor-petitioners have paid the decretal amount and the decree-holder-Bank accepted the payment made by the judgment-debtor-petitioners and that pursuant to the order of this Division, the Bank asked the judgment-debtor-petitioners to pay a sum of Taka 19,80,787 (nineteen lac, eighty thousand and seven hundred eighty seven) only within the fixed time (নির্ধারিত সময়ের মধ্যে) though the said CMP was filed against a *nonest* order allegedly passed in writ petition. The judgment-debtor-petitioners made the payment of the decretal amount for more than 3 (three) years and 4 (four) months before and the leave petition could not be heard earlier though it was fixed for hearing. The decree giving rise to this leave petition was passed as far back as on 6-5-2004 and the execution case in question was levied on 28-10-2004, i.e. by now almost 10 (ten) years elapsed from the date of passing of the decree. *Moklesur Rahman (Md) vs Government of Bangladesh (Civil) 66 DLR (AD)* 207

Article 104—Article 104 can be invoked to do complete justice only in a situation where justice cannot be effectively and appropriately dispensed with by the existing provisions of law. It is now established that where the question in dispute can be settled only through the provisions of a statute, its inherent powers cannot be exercised—it is a corrective as well as residuary, supplementary and complementary to the powers specially conferred by the statute. *Abdul Quader Mollah vs Chief Prosecutor, International Crimes Tribunal, Dhaka (Criminal) 66 DLR (AD)* 289

Article 105—It is true that in the judgment sought to be reviewed, there has been no detailed discussions as to the point raised before the High Court Division that the respective petition of complaint having been filed before expiry of the statutory period as stipulated in clause (c) of the proviso to section 138(1) of the Act, was barred by law, this Division having affirmed the judgment and order passed by the High Court Division which took the view that though the respective petition of complaint was filed before expiry of thirty days from the date of receipt of the notice issued under clause (b) of the proviso to section 138, was maintainable in law, in fact, gave the answer. *Sarwar Hossain Moni (Md) vs State (Criminal) 66 DLR (AD)* 283

Criminal Law Amendent Act
(XL of 1958)

Section 6(1B)—Any number of offences punishable under the Criminal Law Amendment Act irrespective of the period over which the offence was committed, may be tried at one trial. All the offences committed over any length of period of time could be tried in one trial upon framing one charge. *State vs Md Ibrahim Ali (Criminal) 66 DLR (AD)* 33

Evidence Act
(I of 1872)

Sections 33—A party should not be allowed to change its position as per its own sweet will and cannot be allowed to make a summer sault or make a 'U' turn after the disposal of the suit. *Shamsul Kabir Huma yun Reza vs Anwarul Hasan 66 DLR (AD) (Civil)* 37

Sections 33—One of the stringent conditions to take recourse to the section on the ground of incapability of a witness of giving evidence has to be proved. *Shamsul Kabir Huma yun Reza vs Anwarul Hasan 66 DLR (AD) (Civil)* 37

Section 45—The findings made in the impugned judgment and also in the case of Mohiuddin Khan Alamgir *[15 BLC 107, Para 97]* shall be deemed to have been modified in respect of the assessment made by the PWD officials in that the assessment of valuation of any property made by PWD officials shall have evidentiary value when no such assessment is made and accepted as correct by another independent department of the Government authorized in that behalf. *State vs Faisal Morshed Khan (Criminal) 66 DLR (AD)* 236

Section 45—There may be a situation when there is no assessment of valuation by any competent authority of the Government exercising power in that behalf and in such a case, the Anti-Corruption Commission has no other option but to take the assistance of the PWD officials in making assessment of the valuation of any property. Therefore, it cannot be said that the assessment of valuation made by the PWD officials does not have any evidentiary value in all situations. *State vs Faisal Morshed Khan (Cri) 66 DLR (AD)* 236

Sections 63 and 65—Secondary evidence—Admissibility of secondary evidence is regulated by section 63 of the Act. Secondary evidence may be given of the existence, condition or contents of a document when the original is shown or appears to be in possession or power of the person against whom the document is sought to be proved or of any person legally bound to produce it, or when the existence, condition or contents of the original have been proved to be admitted in writing by the person against whom it is proved or by his representative in interest. *Executive Chairman, Bangladesh Export Processing Zones Authority (BEPZA) 66 DLR (AD) vs M/s. Abdul Mannan (Civil) 66 DLR (AD)* 86

Section 115—Promissory Estoppel and Legitimate Expectation—The most important difference between a promissory estoppel and legitimate expectation is that while detriment suffered by the promisee is a *sine qua non* for a promissory estoppel, no such detriment is necessary to erect a claim on legitimate expectation. *Ayub Hossain Khan (Md) vs Bangladesh (Civil) 66 DLR (AD)* 215

Section 115—Estoppel—Conduct of the appellants legitimate expectation arose in the mind of the respondent on full-time basis as Assistant Professors of the College and, as such, the appellants should be estopped from denying the regularization of the service of the respondents. *Government of Bangladesh vs Dr Md Nazrul Islam Bhuiyan (Civil) 66 DLR (AD)* 255

Section 115—Estoppel—The argument of promissory estoppel cannot be invoked when a permission was given to construct the building over 60 feet in violation or contravention of any law and that the sanction given for construction of a 22 storey building is void being contrary to the permissible limit provided in the Rules and to the extent such permission contrary to the statutory provision is void and therefore is not permission in the eye of law and could not operate as promissory estoppel. There can be no estoppel against statute. *Government of Bangladesh vs Dr Md Nazrul Islam Bhuiyan (Civil) 66 DLR (AD) 255*

Government Servants (Discipline and Appeal) Rules, 1985

Rule 25(1)—The purpose of section 25(1) of the Rules is to enable the authority to impose appropriate penalty on the delinquent employee taking into consideration the punishment, if any, imposed on that delinquent employee in the criminal case. *Government of Bangladesh vs Md Abdul Karim (Civil) 66 DLR (AD) 251*

Rule 25(1)—Imposition of punishment in the departmental proceeding will remain stayed only until disposal of the criminal case. After disposal of the criminal case the authority will have no bar in imposing any punishment on the delinquent employee in the departmental proceeding. *Government of Bangladesh vs Md Abdul Karim (Civil) 66 DLR (AD) 251*

Income Tax Ordinance
(XXXVI of 1984)

Sections 160 and 161(2)—Under section 161(2) the High Court Division is required only to hear and decide the question of law raised and, thereafter, deliver its judgment stating the grounds on which the decision is founded. With regard to the submission of learned Counsel for the appellant that the High Court Division itself could have formulated a point of law in the manner suggested, we are of the view that section 160 of the Ordinance does not provide for any such action. Clearly it is for the assessee to formulate any point of law and make the reference to the High Court Division in the prescribed form. Under section 161(2) the High Court Division is required only to hear and decide the question of law raised and, thereafter, deliver its judgment stating the grounds on which the decision is founded. *Ali Garments Limited vs Commissioner of Taxes (Civil) 66 DLR (AD) 243*

International Crimes (Tribuanl) Act
(XIX of 1973)

Review—The review petitions are maintainable. A review petition should not be equated with an appeal. In criminal matters, the power of review must be limited to an error which have a material, real ground on the face of the case. The finality attached to a judgment at the apex level of the judicial hierarchy upon a full fledged hearing of the parties should be re-examined in exceptional cases and a review is not permissible to embark upon a reiteration of the same points. *Abdul Quader Mollah vs Chief Prosecutor, International Crimes Tribunal (Criminal) 66 DLR (AD) 289*

Jail Code
(IX of 1894)

Rule 979—This Division passed the death sentence and after the judgment, the Tribunal communicated the sentence. There is no provision in this rule that if the communication of the sentence is made by an inferior Tribunal, it will be illegal or void. This is merely an irregularity and

this will not be said to be ineffective. The legislature has used the expression *'will be'* in respect of communication of the sentence. So, if the inferior Tribunal communicates the warrant as per direction of this Division, it cannot be said that the warrant was inoperative. This is a mere technical formality. *Abdul Quader Mollah vs Chief Prosecutor, ICT, (Criminal) 66 DLR (AD) 289*

Land Reforms Ordinance
(X of 1984)

Sections 5—There is no scope for reading the words 'rural area' in section 5 of the Ordinance. The preamble cannot be used to control the enactments themselves where they are expressed in clear and unambiguous terms. The aid of preamble can only be taken when the meanings of the words to be interpreted are not clear and unambiguous. The words 'immoveable property' occurring in section 5 of the Ordinance include both agricultural and non-agricultural properties. There is no scope for encroaching upon the domain of legislature by importing the words 'rural area' in section 5 and addition of such words will amount to legislation by the judiciary which is not at all permissible. *SN Kabir vs Fatema Begum (Civil) 66 DLR (AD) 193*

Nari-o-Shishu Nirjatan (Bishesh Bidhan) Ain (XVIII of 1995)

Section 22—Statement of victim—The doctor as to age is belied by the fact that his report shows the taking place of menarche one year back. In context of development of girls in Bangladesh the age stated by the victim would be more commensurate with menarche having started one year previously. *Sukur Mahmood vs State (Criminal) 66 DLR (AD) 167*

Nari-o-Shishu Nirjatan Daman Ain
(VIII of 2000)

Sections 2(Ka), 5, 7 and 30—No doubt that the act of the appellants attracts the definition of 'অপহরণ' defined in section 2(Kha) of the Ain, and therefore, they have committed an offence punishable under section 7 of the Ain. Besides, section 30 of the Ain relates to the abetment or instigate the offence punishable under the Ain. The conjunction 'or' has been used before the expression 'অপরাধটি সংঘটনেরর চেষ্টা করা'. This use of conjunction 'or' before the said expression 'অপরাধটি সংঘটনের চেষ্টা করা' makes it clear that the said expression is used in disjunctive. Therefore, the appellants Md Shahin and Ariful Islam Asha had abetted the offence of abduction.*(Per SK Sinha J, agreeing with Md Abdul Wahhab Miah J majority) Mehedi Hasan @ Modern (Md) vs State (Criminal) 66 DLR (AD) 111*

Sections 2(Ka) and 7—After school hours, Trisha was going home, but was prevented by the appellants from going there and she had to go to Khapara lane because of the chase led by the appellants and thus, she was compelled to go from one place to other within the meaning of section 2(Kha) of the Ain and chasing definitely involved the element of threat within the meaning of definition of "অপহরণ". The appellants committed the offence under section 7 of the Ain. High Court Division suffered from the intuition that "কোন স্থান হইতে কোন ব্যক্তিকে অন্যত্র যাইতে বাধ্য করা" must be a far place. High Court Division was obsessed with the definition of abduction as given in section 362 of the Penal Code in coming to the finding that there had been no abduction, but there was an attempt to abduct. *(Per Md Abdul Wahhab Miah J, majority).Mehedi Hasan @ Modern (Md) vs State (Criminal) 66 DLR (AD) 111*

Section 7—There is no doubt that the accused have committed a heinous offence. However, where any special law gives specific benefit to an accused, then he deserves to be treated in accordance with such beneficial provisions. Under the second proviso to section 51, an accused found guilty of any offence, even one carrying the sentence of death or life imprisonment, may be sentenced in exceptional circumstances to imprisonment for a maximum period of ten years. Even upon conviction under section 7 of the Ain, accused Asha may not be sentenced to 14 years in prison. The sentence that may be lawfully imposed is a maximum of ten years' imprisonment. *(Per Muhammad Imman Ali J, minority) Mehedi Hasan @ Modern (Md) vs State (Criminal) 66 DLR (AD)* 111

Section 7—In order to do complete justice, we invoke our power under article 104 of the Constitution and dispose of the appeal finally without sending the case back on remand for trial afresh by the concerned Tribunal, under the Ain, 2000. *(Per Md Abdul Wahhab Miah J, majority) Mehedi Hasan @ Modern (Md) vs State (Criminal) 66 DLR (AD)* 111

Section 7—Crime against humanity—There is no doubt that the trial is without jurisdiction but, by the same time, it cannot be ignored that the act committed by the appellants is barbarous one. Their act shakes the conscience of the people at large. The act of the accused is not only a crime against humanity but also barbaric. *(Per SK Sinha J, agreeing with Md Abdul Wahhab Miah J majority) Mehedi Hasan @ Modern (Md) vs State (Criminal) 66 DLR (AD)* 111

Section 27(3)—If the offences under the Ain, 2000 and those under the Penal Code were tried together then at the time of sentencing certain norms would have been followed. *Sohel Rana Shippon vs State (Criminal) 66 DLR (AD)* 160

Negotiable Instruments Act
(XXVI of 1881)

Section 138—Stop Payment—Since the cheques were returned by bank with the endorsement "payment stopped by the drawer" it is to be presumed that those were returned unpaid because the amount of money standing to the credit of that account was insufficient to honour of the cheque as envisaged in section 138 of the Act. Of course this is a rebuttable presumption. The defence can be considered at the time of holding trial and not in an application under section 561A of the Code. *SM Redwan vs Md Rezaul Islam (Criminal) 66 DLR (AD)* 169

Section 138—The cheque was dishonoured with the endorsement "payment stopped by the drawer", a clear *prima-facie* case of the commission of the offence punishable under section 138 of the Act, has been made out against the accused. *Ahmed Lal Mia vs State (Criminal) 66 DLR (AD)* 204

Section 138—It is true that in the judgment sought to be reviewed, there has been no detailed discussions as to the point raised before the High Court Division that the respective petition of complaint having been filed before expiry of the statutory period as stipulated in clause (c) of the proviso to section 138(1) of the Act, was barred by law, this Division having affirmed the judgment and order passed by the High Court Division which took the view that though the respective petition of complaint was filed before expiry of thirty days from the date of receipt of the notice issued under clause (b) of the proviso to section 138, was maintainable in law, in fact, gave the

answer. *Sarwar Hossain Moni (Md) vs State (Criminal) 66 DLR (AD)* 283

Section 138(b)(c)—Legislature has not created any absolute bar in filing a petition of complaint before expiry of thirty days of the receipt of the notice issued under clause (b) of the proviso to section 138 as created in case of filing a petition of complaint after expiry of one month of the date on which the cause of action arises under clause (c) of the proviso to section 138. Prematurity shall be cured the moment the period of thirty days expires and the payment of the dishonoured cheque is not made within the said period. *Zahidul Islam (Md) vs Md Kamal Hossain (Criminal) 66 DLR (AD)* 180

Non Agricultural Tenancy Act
(XXIII of 1949)

Section 24—In a proceeding under section 24 of the Act the question of co-sharership in the holding or tenancy is immaterial, however, the question of co-sharership in the 'land' is material. After partition by metes and bounds of the land or a holding or even of a plot or plots among its co-sharers each of such co-sharers loses their co-sharership in all other land of the holding or the plot or plot excepting his own share only even if the holding or tenancy remains intact and he, therefore, cannot claim pre-emption under section 24 of the Act if any share or portion thereof of any other owner of holding or plot is transferred. *Asad Ali (Md) vs Golam Sarwar (Civil) 66 DLR (AD)* 315

Penal Code
(XLV of 1860)

Sections 302/201/34—If the offences under the Ain, 2000 and those under the Penal Code were tried together then at the time of sentencing certain norms would have been followed. *Sohel Rana Shippon (Md) vs State (Criminal) 66 DLR (AD)* 160

Sections 302 and 362—Crime against humanity—There is no doubt that the trial is without jurisdiction but, by the same time, it cannot be ignored that the act committed by the appellants is barbarous one. Their act shakes the conscience of the people at large. The act of the accused is not only a crime against humanity but also barbaric. *(Per SK Sinha J, agreeing with Md Abdul Wahhab Miah J majority) Mehedi Hasan @ Modern (Md) vs State (Criminal) 66 DLR (AD)* 111

Section 362—After school hours, Trisha was going home, but was prevented by the appellants from going there and she had to go to Khapara lane because of the chase led by the appellants and thus, she was compelled to go from one place to other within the meaning of section 2(Kha) of the Ain and chasing definitely involved the element of threat within the meaning of definition of "অপহরণ". The appellants committed the offence under section 7 of the Ain. High Court Division suffered from the intuition that "কোন স্থান হইতে কোন ব্যক্তিকে অন্যত্র যাইতে বাধ্য করা" must be a far place. High Court Division was obsessed with the definition of abduction as given in section 362 of the Penal Code in coming to the finding that there had been no abduction, but there was an attempt to abduct. *(Per Md Abdul Wahhab Miah J, majority).Mehedi Hasan @ Modern (Md) vs State (Criminal) 66 DLR (AD)* 111

Premises Rent Control Act
(III of 1991)

Section 10—If a tenant becomes defaulter by failing to comply with the mandatory provision of law, he always remains defaulter unless the landlord expressly waive that default, and once a tenant is found to be defaulter, he is liable to be evicted. *Monir Hossain Md (Moni) vs Md Yousuf (Civil) 66 DLR (AD)* 100

Specific Relief Act
(I of 1877)

Section 3—Plaintiff did not have any possession in schedule land to the plaint. Unless the plaintiff could prove his possession in the schedule land he could not avail of the benefit of the illustration-'h' to section 3 of the Act. *Bibi Joynab Begum Chowdhury vs Osi Mia (Civil) 66 DLR (AD)* 190

Section 42—Proviso—Where the plaintiffs are out of possession and the defendants are in possession, the "further relief" would be recovery of possession and the suit for declaration of title without prayer for recovery of possession is hit by the proviso to section 42 of the Act. *Delipjan being dead her heirs: Fazal Haque vs Shahed Badsha (Civil) 66 DLR (AD)* 176

State Acquisition & Tenancy Act, 1950
(XXVIII of 1951)

Section 95A—The condition giving right of repurchase survived when President's Order No.88 of 1972 came into effect and, as such, the sale in the case had become a complete usufructuary mortgage within the meaning of section 95A of the Act. *Lakshmi Bala Sen vs Tarun Tapan Dutta @ Tapan Kumar Dutta (Civil) 66 DLR (AD)* 162

Section 96—It is well settled that the pre-emptor must have interest in the case holding until the case is finally disposed of. *Abdul Hakim (Md) vs Md Nazrul Islam (Civil) 66 DLR (AD)* 157

Supreme Court of Bangladesh (Appellate Division) Rules, 1988

Order XII, rule 4—Appeal was filed by non-genuine person upon using imaginary name of a person and that upon using fabricated papers. Such manner of filing a case is highly deprecable one and, as such, strongly disapproved by the Court. *Abu Safa (Md) vs Abdul Momen Chowdhury (Civil) 66 DLR (AD)* 17

Order XX, rule 5—We are not inclined "to revisit" the decision in the case of *Mona @ Zillur Rahman vs State 23 BLD (AD) 187 = 9 BLC (AD) 125* as opined by him. However, in an appropriate case, the question may be looked into with notice to the State. *(Per Md Abdul Wahhab Miah J, majority) Mehedi Hasan @ Modern (Md) vs State (Criminal) 66 DLR (AD)* 111

Transfer of Property Act
(IV of 1882)

Section 106—If a tenant becomes defaulter by failing to comply with the mandatory provision of law, he always remains defaulter unless the landlord expressly waive that default, and once a tenant is found to be defaulter, he is liable to be evicted. *Monir Hossain Md (Moni) vs Md Yousuf (Civil) 66 DLR (AD)* 100

Value Added Tax Act
(XXII of 1991)

Sections 3(3) and 3(5)—The burden of the tax has been temporarily fixed on the service renderer for the facility of collection of tax and prevent avoidance of tax and there is no bar in the service renderer in the absence of contract to the contrary to reimburse it from service receiver who has to ultimately bear the burden. *AA Engineering Limited vs University of Khulna, represented by its Vice-Chancellor (Civil) 66 DLR (AD) 19*

Section 5(4)—To avoid determination of the value of the service rendered in every case, the NBR in exercise of its power under section 5(4) of the Act has determined that VAT will be realized at the rate of 4.5% of the total amount billed by the construction contractor. *AA Engineering Limited vs University of Khulna, represented by its Vice-Chancellor (Civil) 66 DLR (AD) 19*

Section 6(4)—The service receiver in a construction contract is liable to make its arrangement for payment of VAT from its own fund. Even if the unlikely view is taken that the office memorandum is not to be treated as one issued under the provisions of the Act and the Rules made there under, it has got it weight in interpretation as being the executive interpretation while administering a statute. *AA Engineering Limited vs University of Khulna, represented by its Vice-Chancellor (Civil) 66 DLR (AD) 19*

Words and Pharases

Advocate—Officer of the Court—An Advocate is not only a professional but he is an officer of the Court and his obligations as an officer of the Court are paramount. *Esrarul Huq Chowdhury vs Md. Amir Hossain, Advocate (Civil) 66 DLR (AD) 1*

Anticipatory Bail—An omnibus statement that he is a political personage and the Magistrates or the lower court/tribunal Judges, as the case may be are controlled by the government (which has neither factual nor legal basis these days) is not enough. Equally well, the Judges of the High Court Division concerned must also assign reason for their satisfaction on this primordial point, which must be reckoned to be the door opener. *Durnity Daman Commission vs Dr. Khandaker Mosharraf Hossain (Criminal) 66 DLR (AD) 92*

Bar Council—Bar Council can take disciplinary action against any Advocate who is found to be guilty of professional or other misconduct. The term 'misconduct' has not been defined in the Bangladesh Legal Practitioners and Bar Council Order, 1972 or the Rules framed thereunder. 'Misconduct' means "A dereliction of duty; unlawful or improper behaviour." Affirmative misconduct means an affirmative act of misrepresentation or concealment of a material fact. *Esrarul Huq Chowdhury vs Md. Amir Hossain, Advocate (Civil) 66 DLR (AD) 1*

Benami Transaction—Because of benami transactions, multifarious litigations crop up across the country. Moreover, the persons having the possession of black money take advantage of benami transactions by purchasing property in the names of their nearest relatives and such transactions increase corruption in the society. So, the legislative authority had the intention to say goodbye to benami transactions once and for all. *SN Kabir vs Fatema Begum (Civil) 66 DLR (AD) 193*

Codification of Hindu Law—An uniform and comprehensive system governing all Hindus containing a series of coherent provisions

carefully considered after having gone through by eminent pundits and researchers and law commission a codification of Hindu Law of marriage and succession should be enacted. Time has come for the legislators to think about the codification of the Hindu Law of Marriage and Succession in Bangladesh. *Ramesh Chandra Adhikari vs Bulbuli. (Civil) 66 DLR (AD)* 104

Conduct and Etiquette—Conduct of the respondent No.1 is highly immoral, reprehensible and beyond the dignity, ethics and morality. The respondent No.1 committed gross professional misconduct which is unbecoming of a member of the noble profession of Advocates. *Esrarul Huq Chowdhury vs Md. Amir Hossain, Advocate (Civil) 66 DLR (AD)* 1

Co-sharer—A co-sharer means a person whose interest subsists throughout the course of the application to pre-empt and not a person who held such an interest in the beginning, but lost it before its disposal. *Abdul Hakim (Md) vs Md Nazrul Islam (Civil) 66 DLR (AD)* 157

Doctrine of legitimate expectation—Doctrine of legitimate expectation may arise where the decision of administrative authority affects a person either by altering rights or obligations of that person which are enforceable by or against him in private law or by depriving him of some benefit which he has in the past been permitted by the decision maker to enjoy and which he can legitimately expect to be permitted to continue to do until some rational ground for withdrawing it has been communicated to him and he has been given an opportunity to comment thereon. *Government of Bangladesh vs Dr Md Nazrul Islam Bhuiyan (Civil) 66 DLR (AD)* 255

Duty of the Advocate—The primary duty of the Advocate is to inform the Court as to the law and facts of the case and to aid the Court to do justice by arriving at correct conclusion. Since the Court acts on the basis of what is presented by the Advocates, the Advocates are under the obligation to be absolutely fair to the Court. *Esrarul Huq Chowdhury vs Md. Amir Hossain, Advocate (Civil) 66 DLR (AD)* 1

Ejusdam Generis—Even if the expression "other tax" would not be qualified by the expression 'on income' even the expression 'other tax' would not include VAT because of the doctrine of ejusdam generis applicable in interpretation of statutes and documents. This doctrine is not only applicable in construction of statutory terms but also applicable in respect of terms used in contacts and other non-statutory term. *AA Engineering Limited vs University of Khulna, represented by its Vice-Chancellor (Civil) 66 DLR (AD)* 19

Hindu Marriage—Marriage under the traditional Hindu Law is a holy union for the performance of religious duties. It is a sacrament for the purification of the body from inherited taint. It is not a contract. Of course the marriage is necessarily the basis of social organization and the foundation of important legal rights and obligations. *Ramesh Chandra Adhikari vs Bulbuli. (Civil) 66 DLR (AD)* 104

Hindu Law of Marriage and Succession—Time has come for the legislature to think about this burning issue to find out correct solution to the problem by proper enactment or codification of Hindu Law of marriage and succession. If the codification of the Hindu Law is made, most of the matrimonial problems now being faced by both the parties can be resolved or minimized with least trouble. *Ramesh Chandra Adhikari vs Bulbuli. (Civil) 66 DLR (AD)* 104

Lawyer—A lawyer is obliged to observe the norms of behaviour expected of him, which make him worthy of confidence of the community in him as an officer of the Court. *Esrarul Huq Chowdhury vs Md. Amir Hossain, Advocate (Civil) 66 DLR (AD)* 1

Legal Profession—Legal profession cannot be considered like any other profession, or trade or business. It is a noble profession, which is intended to serve the cause of "justice". *Esrarul Huq Chowdhury vs Md. Amir Hossain, Advocate (Civil) 66 DLR (AD)* 1

Legitimate Expectation—The legitimate expectation has to be determined not according to the claimant's perception but in larger public interest wherein other more important considerations may outweigh what would otherwise have been the legitimate expectation of the claimant. *Government of Bangladesh vs Dr Md Nazrul Islam Bhuiyan (Civil) 66 DLR (AD)* 255

Legitimate Expectation—The protection of legitimate expectation is at the root of the constitutional principle of the rule of law, which requires regularity, predictability and certainty in government's dealings with the public. *Government of Bangladesh vs Dr Md Nazrul Islam Bhuiyan (Civil) 66 DLR (AD)* 255

Misconduct—Misconduct envisages any instance of breach of discipline. It means improper behaviour, intentional wrongdoing or deliberate violation of a rule of standard of behaviour. The term "misconduct" is incapable of a precise definition. *Esrarul Huq Chowdhury vs Md. Amir Hossain, Advocate (Civil) 66 DLR (AD)* 1

Misconduct—"Misconduct" would cover any activity or conduct which his professional brethren of good repute and competency would reasonably regard as disgraceful or dishonourable. The scope of "misconduct" is not restricted by technical interpretations of rules of conduct. *Esrarul Huq Chowdhury vs Md. Amir Hossain, Advocate (Civil) 66 DLR (AD)* 1

Observations—While disposing of a matter, a Judge must confine himself to the pleadings of the parties and answer the issues which would emerge from the pleadings in the light of the evidence adduced and materials placed before it and the law governing the field. *The observations /comments and remarks cannot remain as part of the judgment. Shamsul Kabir Huma yun Reza vs Anwarul Hasan 66 DLR (AD) (Civil)* 37

Observations—The Judges should not be swayed by emotion as that may impair even handed justice. In a criminal proceedings where accusation is made against an accused as to the commission of an offence under any law, be it the Penal Code or other law, the Court is to see whether the evidence adduced by the prosecution in the case proved the accusation and if so to hand down the punishment on the accused as per the dictate of the law, no matter how serious or heinous the offence might be. *(Per Md Abdul Wahhab Miah J, majority) Mehedi Hasan @ Modern (Md) vs State (Criminal) 66 DLR (AD)* 111

Other Taxes and Income—The expression "other taxes" is qualified by further expression "on income" and it must be read as "other taxes on income". Tax on income is a direct tax and VAT not being a direct tax and far less a tax on income, the expression "other taxes on income" cannot cover VAT. *AA Engineering Limited vs University of Khulna, represented by its Vice-Chancellor (Civil) 66 DLR (AD)* 19

Period of Limitation is 15 days—The period of limitation is fifteen days and the review petition should be disposed of on priority basis. If a warrant of death for execution is communicated to the jail authority after it is confirmed or imposed by this Division, the condemned prisoner should be afforded an opportunity to file a mercy petition and he should also be afforded an opportunity to meet his near ones before the execution of the sentence. If the jail authority fixes a date for execution of the sentence, the same cannot be taken as has been done hurriedly. *Abdul Quader Mollah vs Chief Prosecutor, International Crimes Tribunal, Dhaka (Criminal) 66 DLR (AD)* 289

Period of limitation for filing review—Since the scheme and object of the law manifest that the proceedings shall be concluded expeditiously, the period of limitation for filing such review petition shall be as early as possible. As per rules of this Division review petitions shall be filed within thirty days but this period of limitation is not only inconsistent with the provisions of the Act but also not applicable. Fifteen days' time will be a reasonable time. This will secure the ends of justice.*Abdul Quader Mollah vs Chief Prosecutor, International Crimes Tribunal, Dhaka (Criminal) 66 DLR (AD)* 289

Preamble—The preamble cannot control the meaning and expression when the meaning of the expression is clear and ambiguous. The aid of the preamble can be taken if the meanings of the words to be interpreted are not clear and ambiguous. *SN Kabir vs Fatema Begum (Civil) 66 DLR (AD)* 193

Promise—A promise, a representation, whether oral or written or a continuous conduct or practice may ignite an expectation based right if relied on by the promisee, representee. The expectation can be procedural or substantive. *Ayub Hossain Khan (Md) vs Bangladesh (Civil) 66 DLR (AD)* 215

Promissory Estoppel—Appellants have failed to show any overriding public interest that may be served by not appointing the honorary teachers to the permanent post of the college. There is no bar for the application of doctrine of promissory estoppel against the appellants. *Government of Bangladesh vs Dr Md Nazrul Islam Bhuiyan (Civil) 66 DLR (AD)* 255

Promissory Estoppel—The doctrine of promissory estoppel is an equitable conception. If a person makes to another a clear and unambiguous representation of fact intending that the other would act on it and if the representation transpires to be untrue, and the other does act upon it to his detriment, the representor is prevented or estopped from denying its truth. *Government of Bangladesh vs Dr Md Nazrul Islam Bhuiyan (Civil) 66 DLR (AD)* 255

Remand—The case is remanded to the trial Court so far as it relates to accused respondent Robin with the direction to allow the accused to cross-examine the witnesses, if he so desires and to conclude the trial in accordance with law. The accused respondent Robin be enlarged on bail to the satisfaction of the trial Court till conclusion of the trial. *State vs Robin (Criminal) 66 DLR (AD)* 272

Review is maintainable—A review of judgment in a case is a serious step and the court is reluctant to invoke its power—it is only where a glaring omission or patent mistake or grave error has crept in by judicial fallibility. Despite there being no provision in the Act of 1973 for review from the judgment of this Division on appeal, securing ends of justice a review is main-

tainable in exercise of the inherent powers from the judgment of this Division subject to the condition that where the error is so apparent and patent that review is necessary to avoid miscarriage of justice and not otherwise, and the execution of a sentence shall be suspended till the disposal of the review petition if the same is filed within the period. *Abdul Quader Mollah vs Chief Prosecutor, International Crimes Tribunal, Dhaka (Criminal) 66 DLR (AD)* 289

Right of Appeal—When a right of appeal is conferred by a statute it becomes a vested right. The right of appeal, where it exists, is a matter of substance, not of procedure. There is inherent right to a litigant to a judicial proceeding and it requires no authority of law, to see the correctness of the judgment. *Abdul Quader Mollah vs Chief Prosecutor, International Crimes Tribunal, Dhaka (Criminal) 66 DLR (AD)* 289

Role of Advocates—The role of Advocates as officers of the Court is to assist the Court in the administration of justice. Advocates collect materials relating to a case and thereby assist the Court in arriving at a correct judgment. Being a responsible officer of the Court and an important adjunct of the administration of justice, the Advocate also owes a duty to the Court as well as the opposite side. Advocates, as members of the Bar and officers of the Court, have the responsibility of "keeping the stream of justice pure and unsullied" so also to enable it to administer justice fairly and to the satisfaction of all concerned. *Esrarul Huq Chowdhury vs Md. Amir Hossain, Advocate (Civil) 66 DLR (AD)* 1

Sentence cannot be executed—If any review or mercy petition is filed or pending, the sentence cannot be executed unless the petitions are disposed of. *Abdul Quader Mollah vs Chief Prosecutor, International Crimes Tribunal, Dhaka (Criminal) 66 DLR (AD)* 289

Service Matter—Resignation tendered by a government official can be withdrawn before it is accepted by the competent authority. Government servant continued with his service till his resignation was accepted or in other words his service was terminated on the day when his resignation was accepted by the Government. *Government of Bangladesh, represented by the Secretary, Ministry of Education vs SM Humayun Kabir (Civil) 66 DLR (AD)* 279

Service Rules—Appointing authority enjoys the power and the authority to frame new rules to regulate the service of its employees , but that in no way, can take away the accrued/vested rights of its employees. *Bakhrabad Gas System Limited vs Al Masud-ar-Noor (Civil) 66 DLR (AD)* 187

Sexual Harassment—A person can be liable for tort as well and damages may be claimed against him for such wrong doing as well as against an organization or establishment if it fails to ensure the prevention of sexual harassment and bullying to a woman, where she can work with honour and dignity and without being harassed or disturbed by her male boss or other male colleagues. *British American Tobacco Bangladesh Company Ltd vs Begum Shamsun Nahar (Civil) 66 DLR (AD)* 80

Vicarious liability—Question of vicarious liability is a question of fact to be proved adducing evidence. *British American Tobacco Bangladesh Company Ltd vs Begum Shamsun Nahar (Civil) 66 DLR (AD)* 80

Statute Index, 2014

High Court Division
of the Supreme Court of Bangladesh

Abandoned Building (Supplementary Provisions) Ordinance [LIV of 1985]

Anti-Corruption Commission Act [V of 2004]

Anti-Corruption Commission Rules, 2007

Artha Rin Adalat Ain [VIII of 2003]

Articles of Associations

Bangladesh Bank Order [PO 127 of 1972]

Bangladesh Biman Corporation Employees (Service) Regulations, 1979

Bangladesh House Building Finance Corporation [PO No 7 of 1973]

Bangladesh Labour Law Act [XLII of 2006]

Bangladesh Supreme Court (High Court Division) Rules, 1973

Bank Company Act [XIV of 1991]

Code of Civil Procedure [V of 1908]

Code of Criminal Procedure [V of 1898]

Companies Act [XVIII of 1994]

Constitution of Bangladesh, 1972

Constitution of Jamaat-e-Islam

Contempt of Court

Evidence Act [I of 1872]

Income Tax Ordinance [XXXVI of 1984]

International Crime (Tribunal) Act [XIX of 1973]

Interpretation of Statutes

Land Appeal Board Act [XXIV of 1989]

Legal Remembrancer's Manual, 1960

Limitation Act [IX of 1908]

Money Laundering Protirodh Ain [VIII of 2009]

Muslim Marriages and Divorce (Registration) Act [LII of 1974]

Muslim Marriages and Divorce (Registration) Rules, 2009

Nari-o-Shishu Nirjatan Daman Ain [VIII of 2000]

Negotiable Instruments Act [XXVI of 1881]

Penal Code [XLV of 1860]

Prevention of Corruption Act [II of 1947]

Public Amusement Act, 1933

Public Gambling Act (III of 1867)

Public Procurement Act [XXIV of 2006]

Public Procurement Rules, 2008

Public Servant (Retirement) Act [XII of 1974]

Representation of People Order [PO 155 of 1972]

Securities Exchange Commission (Insider Trading Restriction) Rules, 1995

Specific Relief Act [I of 1877]

State Acquisition and Tenancy Act, 1950 [XXVIII of 1951]

Trade Mark Act [XIX of 2009]

Transfer of Property Act [IV of 1882]

Value Added Tax Act [XXII of 1991]

Waqf Ordinance [I of 1962]

Words and Phrases

The

Dhaka Law Reports

Table of Cases of the **High Court Division**
of the Supreme Court of Bangladesh

Volume LXVI
2014
January—December

Civil Jurisdiction

Abdul Hakim Miah vs Agrani Bank 300

Abedin & Company vs Bangladesh National Federation of the Deaf... 631

AKM Waliullah vs Secretary, Ministry of Housing and Public Works... 186

AR Elahi & Co. vs Shahadat Hossain... 120

Bangladesh, represented by the DC, Comilla vs Abdul Mazid... 435

Begum Mariam vs Sk. Lal Mohammad... 216

Bimol Rosario vs Barbara Rosario 122

Binoda Sundori Pal vs Chandan Chandra Pal 635

Chairman, Upazila Parishad, Kahalu, Bogra vs Md Zahedur Rahman 554

Divisional Forest Officer, Village-12 vs Md Abul Hossen @ Amir Hossen ... 661

Ismail Hossain vs Hanif Mia... 214

Khulna Zilla Parishad vs Kamol Kumar Chakrabarti 182

Lokman Sikder vs A Wares Sikder 529

Maleka Nasreen Banu vs Esrarul Huq Chowdhury 658

Mohsin-al-Mehedi (Md) vs Khukumoni Khatun 589

Moklesuddin Ahmed vs Rezia Khatun 209

Nazrul Islam (Md) & ors vs Mahfuzur Rahman 126

Ranju Chandra Das vs Sree Radha Krishana Gour Netai Prova Jagabondhu Sundr ... 117

Sadharan Bima Corporation vs Golden Twisting Factory 224

Shamsul Islam (Md) vs Sonali Bank 222

SM Sirajul Islam vs Janata Bank, WAPDA Branch 119

Sunny Fish Agency and Trading vs Bangladesh Catfish Ltd 355

Surjat Ali Fakir (Md) vs Md Kasum Ali Fakir 587

Syed Raihan Hasan Ali Chowdhury vs Syed Hamde Ali Chowdhury 5

Criminal Jurisdiction

Abdul Azid alias Azid Dacoit vs State 605

Abdur Razzak (Md) vs Shamsul Hoque 573

Abdur Razzak Liton (Md) vs State 334

Akbar Ali Lalu alias Roni vs State 134

Dr Shyamal Baidya vs Islami Bank Bangladesh Ltd. 547

Hasina Akhtar vs Md Raihan 298

Mafruza Sultana vs State 280

Mahmudur Rahman vs State 609

Mohammad Ali Fatik vs State 228

Mohidul Islam (Ripon) (Md) vs State 108

Mostafa Kamal vs State 534

Nurul Alam @ Shaheb Miah vs State, represented by the DC, Chittagong... ... 655

Shanik Chandra Barmon vs State 114

State vs Bidhan Chandra Roy 500

State vs Jabed Jahangir 579

State vs Md Tohurul Islam @ Azizul Haque 386

State vs Sujon Deb 324

State vs Zalal @ Zillu 167

Younus-uz-zaman (Badal) vs State 249

Special Original Jurisdiction

Abdul Momen Chowdhury vs Bangladesh 9

Abdul Mukid (Md) vs Artha Rin Adalat, Khulna 211

Abhimunnyo Singha vs Shauli Shumon 197

ABM Liton vs Bangladesh 207

AKM Khurshid Hossain vs Anti-Corruption Commission 645

Ali Hamza Mhalader (Md) vs Government of Bangladesh 575

Alvi Spinning Mills Ltd vs Government of Bangladesh 558

Apex Weaving Finishing Mills Ltd vs Government of Bangladesh ... 592

Ayub Hossain (Md) vs Government of the People's Republic of Bangladesh ... 597

Bangladesh Development Bank Limited vs Judge, Artha Rin Adalat, Jessore ... 1

Concord Pragatee Consortium Ltd vs BPDB 475

Doel Apparels Ltd vs Judge Artha Rin Adalat 341

Durjoy Dev vs Khulna University of Engineering & Technology, Khulna 189

Faruk Abdullah vs Rhairman, Rajdhani Unnayan Kartipakha (RAJUK) 457

Golam Sarwar vs Commissioner of Taxes 350

Jafar Ullah (Md) vs Secretary, Ministry of Home Affairs 380

Jamal Uddin (Md) vs Major General Abdus Salam (Retired) 362

Jasmine Rahman vs Shanta Properties Ltd 440

Mahbubur Rahman vs Bangladesh, Secretary, Ministry of Post & Tele-Communications 615

Maulana Syed Rezaul Haque Chadpuri vs Bangladesh Jamaat-e-Islami 14

Mehreen Asaf vs Chairman, First Labour Court, Dhaka 256

Mohammad Saheed vs Government of Bangladesh 254

Moon Construction Company Limited vs Government of Bangla desh 193

Mr Baker Cake and Pastry Shop vs Commissioner, Customs, Excise and VAT ... 359

Nurun Nabi vs National Board of Revenue 514

Pubali Bank Ltd vs Bangladesh 317

Rana Awan vs Bangladesh 269

Saiful Islam (Md) vs Bangladesh 310

Shafi A Choudhury vs Government of Bangladesh 344

Shahidullah Miah (Md) vs Government of Bangladesh 444

Sheikh Md Rafiqul Islam (Babul) vs Manager, Uttara Bank Limited... 131

SM Abdur Rouf vs Government of the People's Republic of Bangladesh 308

WDS Naushad Ali Khan vs Government of Bangladesh 276

World Resources Limited vs Artha Rin Adalat No. 3, Dhaka 637

Statutory Original Jurisdiction

Baghdad Vegetable Oil Industries Ltd vs Van Den Heghs... 450

Hafiz Ahmed Mazumder vs Pubali Bank Limited 234

Sayem Sobhan vs Registrar of Joint Stock Companies & Firms 461

Standard Chartered Bank vs Commissioner of Taxes 302

The

Dhaka Law Reports

Index of Cases of the **High Court Division**
of the Supreme Court of Bangladesh

Vol. LXVI
2014
January—December

Abandoned Building (Supplementary Provisions) Ordinance [LIV of 1985]

Section 10—Court of Settlement—Abandoned Property—Court of Settlement has a limited jurisdiction only to look into whether a particular property answers to the definition of abandoned property or not. But for that purpose it has jurisdiction also to see whether the applicant has *locus standi* to claim the property in question. *AKM Waliullah vs Secretary, Ministry of Housing and Public Works (Civil) 66 DLR* 186

Anti-Corruption Commission Act
[V of 2004]

Section 19—On the allegation of corruption on any subject matter as well as on the allegation of commission of schedule offences the Commissioner or the officers of the Commission entrusted with the power to enquire is empowered under section 19 of the Ain, 2004 read with rules 8 and 20 of the Rules, 2007 to direct the person, against whom a complaint is made, to appear before the Commission to give explanation either orally or in writing, with a view to find out the correctness of the allegation. Issuance of the order directing the petitioner and 4 (four) others to appear before the Commission to record their statements does not suffer from any illegality requiring interference by this court. *Shahidullah Miah (Md) vs Government of Bangladesh (Spl Original) 66 DLR* 444

Sections 19 and 20—No where within the four corners of the notice the respective petitioner has been indentified as "অভিযোগের সহিত সংশ্লিষ্ট কোন ব্যক্তি" hence, he has been called upon by the Commission to appear as a witnesses in connection with an inquiry "অনুসন্ধানের স্বার্থে". As such, it is a notice under section 19(1) of the Ain and a mere quoting of section 20 of the Ain, will not go to

vitiate the effect of the notice. *AKM Khurshid Hossain vs Anti-Corruption Commission (Spl Original) 66 DLR* 645

Section 26(2)(Ka)—*14 BLC* is not applicable in the case as there is no order of stay relating to proceedings by the Hon'ble Appellate Division. Moreover, this Division directed the court below to conclude trial of the case as expeditiously as possible. There is no legal bar in continuation of the proceeding against this petitioner rather it is obligatory upon the trial court to implement the judgment and order according to the provisions of Article 111 of the Constitution. *Mahmudur Rahman vs State (Criminal) 66 DLR* 609

Section 27(1)—There is scope for the accused-petitioner to explain about the matter and rectify the mistake in calculating assets, even if any, at the time of trial as required under section 27(1) of the Act. Prosecution must also be given opportunity to prove the allegation by adducing evidence. The disputed facts are not supposed to be resolved without taking aid of the evidence to be adduced by the parties before the trial court. *Mohidul Islam (Ripon) (Md) vs State (Criminal) 66 DLR* 108

Anti-Corruption Commission Rules, 2007

Rule 13(3)—The petition of complaint containing specific allegation against an employee of the Grameen Bank under section 408 of the Code should not be thrown away for legal defect giving opportunity to the offender to go scot-free. The Magistrate shall send the petition of complaint to the Commission in accordance with procedure laid down under Rules 13(3) of the Bidhimala to deal with in accordance with law. *Shanik Chandra Barmon vs State (Criminal) 66 DLR* 114

Rules 8 and 20—On the allegation of corruption on any subject matter as well as on the allegation of commission of schedule offences the Commissioner or the officers of the Commission entrusted with the power to enquire is empowered under section 19 of the Ain, 2004 read with rules 8 and 20 of the Rules, 2007 to direct the person, against whom a complaint is made, to appear before the Commission to give explanation either orally or in writing, with a view to find out the correctness of the allegation. Issuance of the order directing the petitioner and 4 (four) others to appear before the Commission to record their statements does not suffer from any illegality requiring interference by this court. *Shahidullah Miah (Md) vs Government of Bangladesh (Spl Original) 66 DLR* 444

Artha Rin Adalat Ain

[VIII of 2003]

Section 2—After enactment of the Act of 2003 all the execution cases arising out of the decree relates to a financial institution are liable to be transferred to the Artha Rin Adalat. The entire proceeding is illegal and without lawful authority. *Shamsul Islam (Md) vs Sonali Bank (Civil) 66 DLR* 222

Sections 4(7) and 41—Artha Rin Adalat can only be constituted by Joint District Judge alone. If due to illness or for any other reason or the court is in vacation the Adalat cannot function with its regular work the District Judge will appoint temporarily a Joint District Judge to continue function of Artha Rin Adalat. For the purpose of functioning of Adalat to be more particular to hold the trial jurisdiction lies with the Joint District Judge. Section 41 of Ain clearly says that the District Judge and the Additional District Judge are the appellate authority to dispose of the

appeal against the judgment and order passed by the Joint District Judge in the capacity of Artha Rin Adalat Judge. *Sheikh Md Rafiqul Islam (Babul) vs Manager, Uttara Bank Limited (Spl. Original) 66 DLR 131*

Section 5—Since the Adalat in question did not have jurisdiction to entertain or to proceed with the application the whole proceeding before the Adalat were entertained and continued before the Adalat without jurisdiction and, as such, the same are nullity in the eye of law. *Abdul Mukid (Md) vs Artha Rin Adalat, Khulna (Spl Original) 66 DLR 211*

Section 5(1)—Once a case has already brought under Article 27 of the PO No. 7 of 1973 there automatically arises a bar to transfer the proceedings to the Artha Rin Adalat under the garb of a suit. Proceedings initiated under PO 7 of 1973 at all times remain special in their nature and format and cannot midway, by the device of a transfer to an Artha Rin Adalat, automatically acquire the character and nature of a suit which the Artha Rin Adalat is uniquely equipped to proceed with under section 5(1) of the Act. *Ayub Hossain (Md) vs Government of the People's Republic of Bangladesh (Spl Original) 66 DLR 597*

Section 5(10)—There is a specific provision for transfer of the Artha Rin case and it has been specifically provides that the Artha Rin Adalat dealt with the matter in accordance with the law Ain, 2003 nor under the any other law. Although the District Judge has the jurisdiction to transfer the Artha Cases from one Court to another Court of competent jurisdiction not under the Code but under the provisions of Ain, 2003. *SM Sirajul Islam vs Janata Bank, WAPDA Branch (Civil) 66 DLR 119*

Section 19(2)—Section 19(2) of the Ain does not expressly prescribe for issuance of any notice upon the decree-holder to show cause in determining the correctness of the date of knowledge but it is the established principle of law that even when a statute is silent, notice has to be given if any person is sought to be affected in his right, interest, property or character. *Pubali Bank Ltd vs Bangladesh (Spl Original) 66 DLR 317*

Section 19(2)—Unless the other requirement as to limitation under section 19(2) of the Ain is complied with, the Adalat has no scope to allow the application, irrespective of the fact that the defendant deposited 10% of the decretal dues. *Pubali Bank Ltd vs Bangladesh .(Spl Original) 66 DLR 317*

Sections 19(2)(3)—The Adalat has to be satisfied that the application has been filed properly within the limitation as prescribed in section 19(2) of the Ain and also in compliance with section 19(3) of the Ain (deposit of 10% of the decretal dues) and that in determining such limitation period particularly the correctness of the date of knowledge as per requirement of section 19(2) of the Ain, notice has to be served upon the plaintiff. *Pubali Bank Ltd vs Bangladesh .(Spl Original) 66 DLR 317*

Sections 19(3)(4)—A bare reading of the provisions of Ain gives a clear understanding that right after passing of the exparte decree or from the date of knowledge of the exparte decree if within 30 days as per sub-section (3) of section 19 by depositing 10% of the decreetal amount an application is filed for restoration of the suit after setting-aside the exparte decree, the suit will automatically restored in terms of section 19(4) of Ain. *Bangladesh Development Bank Limited vs Judge, Artha Rin Adalat, Jessore (Spl Original) 66 DLR 1*

Section 19(4)—Legislature never intended that by operation of section 19(4) of Ain application of this kind can also be restored without deciding the question of knowledge in a given situation. *Bangladesh Development Bank Limited vs Judge, Artha Rin Adalat, Jessore (Spl Original) 66 DLR* 1

Section 33(7)—Transfer of title under section 33(7) does not indeed envisage the right of foreclosure. In the scheme of the Act, foreclosure in the sense of a limitation on the right of redemption can only arise when associated with an auction sale contemplated in section 5(4). Beyond that, section 37(7) appears to this Court to operate independently of section 5(4) and the provisions in section 33(7) in not contemplating a transfer by sale must be found also not to envisage the existence of the corresponding right of foreclosure. The right of redemption under section 33(7) is always found to be alive and extant. *World Resources Limited vs Artha Rin Adalat No. 3, Dhaka (Spl Original) 66 DLR* 637

Section 34(1)— It was the responsibility of the Adalat to take initiatives for auction sale of those moveable properties first before invoking power under section 34(1) of the Ain. In the absence of the process issuance of the order of warrant of arrest is palpably illegal for being passed in violation of section 34(9) of the Ain. *Mohammad Saheed vs Government of Bangladesh (Spl Original) 66 DLR* 254

Section 34(9)—Since the Bank and the Adalat proceeded against the petitioner before exhausting all the processes against the main borrower, the orders of arrest as well as the refusal of bail should not sustain in the eye of law. *ABM Liton vs Bangladesh (Spl Original) 66 DLR* 207

Section 57—The order of rectifying the decretal amount under section 57 of the Adalat read with section 152 of the Code cannot be declared illegal and without lawful authority since a writ jurisdiction where there is a scope of appeal where appellate court having sufficient authority will decide the matter with the help of evidence. *Doel Apparels Ltd vs Judge Artha Rin Adalat (Spl Original) 66 DLR* 341

Articles of Associations

Articles 48 and 49—The company cannot exist or run or be managed as a going concern by the existing board of directors, clearly divided into two groups and each group holding equal number of shares. *Sayem Sobhan vs Registrar of Joint Stock Companies & Firms (Statutory Original) 66 DLR* 461

Bangladesh Bank Order

[PO 127 of 1972]

Section 42—By bringing the elementary principle of company law as it has been stated the settled provision of Banking Companines Act cannot be given a go by. *Shafi A Choudhury vs Government of Bangladesh (Spl Original) 66 DLR* 344

Bangladesh Biman Corporation Employees (Service) Regulations, 1979

Regulation 11—Since the employees of Biman are public servants within the meaning of the Act, therefore the provisions of the Act will be applicable from the date of its amendment i.e. since the petitioners were in service of Biman and did not reach the age of 59 years when the amended was made, therefore they will be entitled to get advantage of the amended statutory provision.

WDS Naushad Ali Khan vs Government of Bangladesh (Spl Original) 66 DLR 276

Bangladesh House Building Finance Corporation [PO No 7 of 1973]

Article 27—Application under Article 27 cannot be equated with a suit, does not in fact give rise to proceedings of the nature of a category of a suit and, therefore, constitutes but a special provision for realization of loan exclusively and uniquely within the confines of PO 7 of 1973. Proceedings under Article 27 do not comprise of any of the requirements or the features of a suit in a conventional sense. *Ayub Hossain (Md) vs Government of the People's Republic of Bangladesh (Spl Original) 66 DLR 597*

Article 27—Once a case has already brought under Article 27 of the PO No. 7 of 1973 there automatically arises a bar to transfer the proceedings to the Artha Rin Adalat under the garb of a suit. Proceedings initiated under PO 7 of 1973 at all times remain special in their nature and format and cannot midway, by the device of a transfer to an Artha Rin Adalat, automatically acquire the character and nature of a suit which the Artha Rin Adalat is uniquely equipped to proceed with under section 5(1) of the Act. *Ayub Hossain (Md) vs Government of the People's Republic of Bangladesh (Spl Original) 66 DLR 597*

Bangladesh Labour Law Act

[XLII of 2006]

Section 307—Under the provisions of section 307, the Labour Court straightaway issues warrant against the employers without even providing them with any opportunity to defend and that may lead to misusing of this provisions, as such, it should be used strictly in accordance with law as provided in the Code. *Mehreen Asaf vs Chairman, First Labour Court, Dhaka (Spl Original) 66 DLR 256*

Sections 307 and 310—If it is found that *bonafide* dispute raised by the employer is true that can also be taken care of in a criminal proceeding. And he may also be directed to comply and settle the dispute but if it is found that his action tantamounts to violation of or non-compliance with the provision of the Act then appropriate action can be taken against him. *(Per Nizamul Hua J, minority) Mehreen Asaf vs Chairman, First Labour Court, Dhaka (Spl Original) 66 DLR 256*

Bangladesh Supreme Court (High Court Division) Rules, 1973

Chapter V, rule 1—It very difficult to agree with the basic ratio as intended to be settled or expressed in the *Sayeed Ahmed's* case *(63 DLR 212)* and *Kazi Rokanuddin's* case (*63 DLR 382).* Therefore, the writ petitions should be referred to the Hon'ble Chief Justice for decision by a Full Bench as per the provisions of Chapter-VI, Rule 1 of the High Court Division Rules. (*Per Md Bazlur Rahman J and Sheikh Hassan Arif J) Mehreen Asaf vs Chairman, First Labour Court, Dhaka (Spl Original) 66 DLR 256*

Bank Company Act

[XIV of 1991]

Section 2—When the provisions of the Act will be in derogation to other provisions of other laws, then the provisions specifically provided in the Act shall have to be followed only. *Shafi A Choudhury vs Government of Bangladesh (Spl Original) 66 DLR 344*

Sections 5 KaKa and 27 KaKa—If all these provisions are read together one and only inference that could be made is that if any person or a company is indebted to in any manner with any financial institution and the debt remains unpaid, it is the duty of the Bangladesh Bank in its turn to enlist the name of the incumbent in the CIB list nothing more nothing less. With the amendment of section 5 GaGa the definition as it could be found now contains a wider version of the category of persons to be included as defaulter borrower. *Shafi A Choudhury vs Government of Bangladesh (Spl Original) 66 DLR* 344

Section 15(9)—Independent director—In interpreting an 'independent director' and thereby purporting to bring a share holder director, within the confine of 'independent director', is not permissible in law. BSEC cannot publish any notification by resorting to any fiction, nor can it modify, nullify or override the specific provision of law by attributing a perverse, absurd or conflicting meaning of the expression 'independent director'. It therefore has no force of law. *Hafiz Ahmed Mazumder vs Pubali Bank Limited (Statutory Original) 66 DLR* 234

Section 45—Section 45 of the Act gives a clear indication, as to which situation Bangladesh Bank shall act and the petitioners failed to show us any legal right under section 45 of the Act which imposed a legal duty upon the Bangladesh Bank. The petitioners are not entitled to seek any relief under section 45 of the Act. *Alvi Spinning Mills Ltd vs Government of Bangladesh (Spl Original) 66 DLR* 558

Code of Civil Procedure

[V of 1908]

Section 2(2)—Decree is divine sacred and holy which cannot be altered, varied, modified and amended by the same court at the wish of any one. *Sunny Fish Agency and Trading vs Bangladesh Catfish Ltd (Civil) 66 DLR* 355

Section 11—To bring the case within the ambit of section 11 of the Code the issues in the former suit and the subsequent suit shall be the same, the suit should be between the same parties and the subject matter should be same and the former suit should be finally decided. *Surjat Ali Fakir (Md) vs Md Kasum Ali Fakir (Civil) 66 DLR* 587

Section 24—There is a specific provision for transfer of the Artha Rin case and it has been specifically provides that the Artha Rin Adalat dealt with the matter in accordance with the law Ain, 2003 nor under the any other law. Although the District Judge has the jurisdiction to transfer the Artha Cases from one Court to another Court of competent jurisdiction not under the Code but under the provisions of Ain, 2003. *SM Sirajul Islam vs Janata Bank, WAPDA Branch (Civil) 66 DLR* 119

Section 107(2)—At any stage of the proceeding of the suit any party can pray for amendment of the pleadings even at the appellate stage. *Binoda Sundori Pal vs Chandan Chandra Pal (Civil) 66 DLR* 635

Section 115(1)—Court will not help a party who will always sleep over the matter with unclean hands. *Lokman Sikder vs A Wares Sikder (Civil) 66 DLR* 529

Section 115(4)—Petitioner is adopting dilatory tactics one after another to cause delay in executing the decree obtained 17 years back adopting unfair measures since long. *AR Elahi & Co. vs Shahadat Hossain (Civil) 66 DLR* 120

Section 115(4)—This Court while exercis-

ing its revisional power under section 115(4) of the Code is not competent to interfere with the judgment and order of the first revisional court on the ground of mere misreading or non-consideration of the material evidence on record unless the revisional court below appears to have committed an error of an important question of law resulting in erroneous decision occasioning failure of justice. Section 115(4) of the Code can be invoked only for correcting error of an important question of law resulting in erroneous decision occasioning failure of justice. *Surjat Ali Fakir (Md) vs Md Kasum Ali Fakir (Civil) 66 DLR* 587

Sections 115(4) and 151—Ends of justice would be best served if the operation of the judgment and decree of the former suit be stayed for a specific period directing the trial Court to dispose of the suit within such period and that will be the best option for both the parties. *Khulna Zilla Parishad vs Kamol Kumar Chakrabarti (Civil) 66 DLR* 182

Section 151—If the appeal is not re-admitted to its original file and number the appellants will suffer irreparable loss and also would be deprived from substantive justice which should not be happened in the case in hand. *Moklesuddin Ahmed vs Rezia Khatun (Civil) 66 DLR* 209

Section 152—The order of rectifying the decretal amount under section 57 of the Adalat read with section 152 of the Code cannot be declared illegal and without lawful authority since a writ jurisdiction where there is a scope of appeal where appellate court having sufficient authority will decide the matter with the help of evidence. *Doel Apparels Ltd vs Judge Artha Rin Adalat (Spl Original) 66 DLR* 341

Order I, rule 8—Whether the plaintiffs have/had any legal character and locus standi to file public litigation or whether the plaintiffs prior to filing of the suit served notice upon the defendants is a mixed question of law and fact, which can be decided only at the trial on taking evidence. *Chairman, Upazila Parishad, Kahalu, Bogra vs Md Zahedur Rahman (Civil) 66 DLR* 554

Order VI, rule 17—Amendment of the pleadings is always justified if the same is found to be necessary for the purpose of determining the real question of controversy between the parties. Since in the suit, the real controversy between parties appears to be as to from when the defendants were inducted into possession of the suit land is the subject matter of the amendment, so if the suit is remanded back that will serve the purpose of the ends of justice. *Nazrul Islam (Md) vs Mahfuzur Rahman (Civil) 66 DLR* 126

Order VI, rule 17 and Order XLI, rule 3(3)—At any stage of the proceeding of the suit any party can pray for amendment of the pleadings even at the appellate stage. *Binoda Sundori Pal vs Chandan Chandra Pal (Civil) 66 DLR* 635

Order VII, rule 11—Even after filing of written statement application for rejection of the plaint can be filed. Application for rejection of plaint is to be filed within earliest opportunity. 'Earliest' do not mean afterthought, after filing written statement and after framing of issues. When defendant appeared in the suit, he appeared with the knowledge of plaint case as such defendant having all the knowledge of plaint should decide whether to bury the suit at earliest opportunity, not denying the plaint case and making out a case of real or actual fact.*Syed Raihan Hasan Ali Chowdhury vs Syed Hamde Ali Chowdhury (Civil) 66 DLR 66 DLR* 5

Order VII, rule 11(d)—Question as to whether the plaint is liable to be rejected or not is to be decided solely with reference to the statements made in the plaint. *Maleka Nasreen Banu vs Esrarul Huq Chowdhury (Civil) 66 DLR 658*

Order VII, rule 11(d)—The grounds taken in the petition for rejection of plaint are mainly matters of evidence that would be taken into consideration at the time of trial of suit. *Maleka Nasreen Banu vs Esrarul Huq Chowdhury (Civil) 66 DLR 658*

Order XXI, rule 58(2)—The Joint District Judge has stayed further proceedings of the execution case in view of the filing of the application under Order XXI rule 58 of the Code by the 3rd party but in doing so the Joint District Judge did not assign any reason which was expected of him rather in a slipshod manner the order has been passed presumably in view of sub-rule (2) of Rule 58 of Order XXI. *Ranju Chandra Das vs Sree Radha Krishana Gour Netai Prova Jagabondhu Sundr Bigraha (Civil) 66 DLR 117*

Code of Criminal Procedure

[V of 1898]

Section 5(2)—Section 5(2) of the Code itself expressly has ousted jurisdiction when special procedure has been prescribed in the special law itself. *(Per M Enayetur Rahim J) Mafruza Sultana vs State (Criminal) 66 DLR 280*

Section 35A(1)—Total period the appellants have been in custody before conviction in connection with offence shall be deducted from the sentence of imprisonment awarded to them. *Abdul Azid alias Azid Dacoit vs State (Criminal) 66 DLR 605*

Section 164(3)—Once a confessional statement is taken to be voluntary and true, belated retraction has no value. *State vs Md Tohurul Islam @ Azizul Haque (Criminal) 66 DLR 386*

Section 173—It is a settled principle of law that the ownership or title to a certain property cannot be decided by any Criminal Court. Besides, the investigation officer has no authority to decide the ownership of the excavator merely by submitting an enquiry report. The Chief Metropolitan Magistrate and the Additional Metropolitan Sessions Judge acted beyond their jurisdiction in handing over the possession of the excavator in favour of the informant basing on the report of the investigating officer. *Abdur Razzak Liton (Md) vs State (Criminal) 66 DLR 334*

Section 188—There is no scope to hold that the sanction of the Government is mandatory to make inquiry of the offence of the case as per section 188 of the Code. *(Per Enayetur Rahim J) Mafruza Sultana vs State (Criminal) 66 DLR 280*

Section 188—The provisions of section 188 of the Code is not at all applicable in this particular case; rather it is inconsistent with the provisions of section 20(1) and 32 of the Anti-Corruption Act, 2004 and section 4(4) and 6(1) of the Criminal Law Amendment Act, 1958. *(Per M Enayetur Rahim J) Mafruza Sultana vs State (Criminal) 66 DLR 280*

Section 188—Neither in the Anti-Corruption Act, 2004 nor in the Criminal Law Amendment Act, 1958, has any provision been made requiring the sanction of the Government to take cognizance or enquire into the offences under these Acts by a Special Judge. As per sub-section 4 of section 4 of the Criminal Law Amendment Act, 1958 offences being committed outside Bangladesh, shall be deemed to have been committed within the territorial limits of the jurisdic-

tion of the Special Judge in Bangladesh in which the person, committing the offence is found or was ordinarily residing before he left Bangladesh. *(Per M Faruque J) Mafruza Sultana vs State (Criminal) 66 DLR 280*

Section 342—Not only did the Judge fail to bring the incriminating evidence adduced by the prosecution witnesses to the notice of the accused persons, but he also did not care to write the answers given by the accused persons to the questions. More importantly, the concerned Judge also did not bother to sign the form. Such callous and reckless conduct of the Judge has not only prejudiced the accused persons, but has also vitiated the judgment. *Abdur Razzak (Md) vs Shamsul Hoque (Criminal) 66 DLR 573*

Section 374—Condemned Prisoner—Condemned prisoners are supposed to walk to the gallows but unfortunately they are not getting opportunity to defend themselves properly. Walking to the gallows without an opportunity of being defeded by a competent lawyer is the worst form of *violation of human rights. State vs Md Tohurul Islam @ Azizul Haque (Criminal) 66 DLR 386*

Section 374—Ends of justice demand that the accused Saiful be awarded the extreme penalty of death. *Akbar Ali Lalu alias Roni vs State (Criminal) 66 DLR 134*

Section 374—In sentencing process, two important factors come out which shall shape appropriate sentence (i) Aggravating factor and (ii) Mitigating factor. These two factors control the sentencing process to a great extent. But it is always to be remembered that the object of sentence should be to see that the crime does not go unpunished and the society has the satisfaction that justice has been done and court responded to the society's cry for Justice. *State vs Bidhan Chandra Roy (Criminal) 66 DLR 500*

Section 428—Before holding the trial news paper publication was made regarding the absconding accused and that news paper publication is lying with the record. After arrest by the police, convict was sent to Jail, wherefrom he filed the Jail Appeal putting his signature in the Vokalatnama. The signature of convict in his Vokalatnama and the signature put in the admit card are same and identical and, as such, there is no doubt that the admit card belongs to convict. *State vs Jabed Jahangir (Criminal) 66 DLR 579*

Section 561A—Defence materials as submitted by the accused-petitioner cannot be considered in a quashing proceeding. *Mohidul Islam (Ripon) (Md) vs State (Criminal) 66 DLR 108*

Section 561A—Allegations brought against the accused-petitioner are factual matters which require to be resolved on taking evidence. Since the excavator was in possession of the accused-petitioner prior to filing of the case and since it was recovered from the possession of the accused-petitioner, justice will be met if it remains with the accused-petitioner until the allegations brought against him are proved on evidence. *Abdur Razzak Liton (Md) vs State (Criminal) 66 DLR 334*

Companies Act

[XVIII of 1994]

Section 83—The provisions of section 83, requiring a company limited by shares or having a share capital, to hold the 'the statutory meeting' and to prepare "statutory report" is not applicable to a private company. *Sayem Sobhan vs Registrar of Joint Stock Companies & Firms (Statutory Original) 66 DLR 461*

Sections 241 and 245—A case of total dead lock in running and managing the affairs of the company as a commercial concern has been made out, on facts and from the circumstances revealed from the averments made by the parties as well as from the materials on record, and no device has been kept in these articles to over come such dead lock either by forming quorum or by using casting vote, while the intention for separation in both groups is obvious from the fact of filing this petition. *Sayem Sobhan vs Registrar of Joint Stock Companies & Firms (Statutory Original) 66 DLR* 461

Sections 241 and 245—Because of supervening impossibility resulted from and due to the total dead lock in managing the affairs of the company and owing to mismanagement and withdrawal of money from the accounts of the company the allottees are not bound to further perform their obligations, with reference to the terms and conditions of the allotment letters issued in their favour and they are entitle to receive their entire money back. *Sayem Sobhan vs Registrar of Joint Stock Companies & Firms (Statutory Original) 66 DLR* 461

Sections 241 and 245—It was one time held that the power to winding up under clause-vi was a power only exercisable upon grounds of the same class as those specified in preceding clauses. But this view is not prevailed and the reasons for holding 'just and equitable' to winding up are not to be considered ejusdem generis with the reasons given in the preceding clauses of the section. *Sayem Sobhan vs Registrar of Joint Stock Companies & Firms (Statutory Original) 66 DLR* 461

Constitution of Bangladesh, 1972

Article 2A—রাষ্ট্রের দায়িত্ব হলো সকল নাগরিকের ধর্মীয় অধিকারসহ সকল মৌলিক অধিকার সমূহ নিশ্চিত করা। নিজ নিজ ধর্ম পালনে সমান সুযোগ ও নিরাপত্তা প্রদান করা। রাষ্ট্রের দায়িত্ব শুধু মসজিদ রক্ষা করা নয়; বরং মন্দির, গির্জা, প্যাগোডা সহ সকল ধর্মের উপাসনালয়ের সার্বিক নিরাপত্তা নিশ্চিত করা।

মহান আল্লাহর বাণীসমূহ হতে এটা অত্যন্ত পরিস্কার যে, তিনি মানুষকে তাঁর সন্তুষ্টি অর্জনের জন্য নামাজ কায়েম, যাকাত আদায়, রোজা ও হজ্জ পালনে, যা ইসলামের মূল ভিত্তি, এবং সমাজের অন্যান্য মানুষের প্রতি 'হক' আদায়ের আদেশ দিয়েছেন। রাষ্ট্রের জন্য নামাজ, রোজা, হজ্জ, যাকাত কোনটিই পালনীয় নয়। বেহেশত-দোযখ মানুষের পুরস্কার ও শাস্তি হিসেবে শেষ বিচারে মহান আল্লাহ কর্তৃক নির্ধারীত হবে। রাষ্ট্রের জন্য কোন ইবাদত নেই; বিচারও নেই। রাষ্ট্র বেহেশতেও যাবে না, দোযখেও যাবে না; যাবে মানুষ। রাষ্ট্র প্রধান কিংবা সরকার প্রধান অথবা কোন দলীয় প্রধান বা আমীর শেষ বিচারের দিন রাষ্ট্রের কোন নাগরিক বা দলীয় অনুসারী কাউকেই বেহেশ্‌তে নেয়ার জন্য মহান আল্লাহ নিকট সুপারিশ করার ক্ষমতা রাখেন না, সে ক্ষমতা একমাত্র রাখেন সর্বশেষ নবী মুহাম্মাদুর রাসূল্লাহ (সাঃ)। *(Per Enayetur Rahim J agreeing with Quazi Reza-ul Hoque J) Maulana Syed Rezaul Haque Chadpuri vs Bangladesh Jamaat-e-Islami (Spl Original) 66 DLR* 14

Articles 2A, 8 & 12—Fifth and Eighth Amendment—আপীল বিভাগের রায়সমূহের আলোকে সংবিধানের প্রস্তাবনার অন্যতম মূলনীতি 'ধর্মনিরপেক্ষতার নীতি' এবং সংবিধানের অনুচ্ছেদ ৮ এবং ১২-এর সাথে আমরা যদি সংবিধানের অনুচ্ছেদ '২ক' বিবেচনা ও বিশ্লেষন করি তাহলে নিঃসংকোচে বলা যেতে পারে সংবিধানের ঐ অনুচ্ছেদ, বর্তমান (পঞ্চদশ সংশোধনী মূলে) এবং পূর্ববর্তী (অষ্টম সংশোধনী মূলে) যাই হোক না কেন, যেখানে 'রাষ্ট্র ধর্মের' বিধান সন্নিবেশিত করা হয়েছে তা সংবিধানের প্রস্তাবনার সাথে অ-সামঞ্জস্যপূর্ণ এবং অ-আপোষযোগ্য। *(Per Enayetur Rahim J agreeing with Quazi Reza-ul Hoque J) Maulana Syed Rezaul Haque Chadpuri vs Bangladesh Jamaat-e-Islami (Spl Original) 66 DLR* 14

Article 3—A person may be destructively treated not only by action, but also by inaction and

inaction may contravene the Article, when it is arbitrary and unreasonable. *Moon Construction Company Limited vs Government of Bangla desh (Spl Original) 66 DLR* 193

Article 7(1)—যে কোন আইন প্রণয়নের সময়ে আমাদের আইন প্রণেতাদের সংবিধানের অনুচ্ছেদ ৭ অবশ্যই স্মরণ এবং বিবেচনা করা প্রয়োজন। সংবিধানের অনুচ্ছেদ ৭-এ উল্লেখ আছে যে, "প্রজাতন্ত্রের সকল ক্ষমতার মালিক জনগণ; এবং জনগণের পক্ষে সেই ক্ষমতার প্রয়োগ কেবল এই সংবিধানের অধীন ও কর্তৃত্বে কার্যকর হইবে।" *(Per Enayetur Rahim J agreeing with Quazi Reza-ul Hoque J) Maulana Syed Rezaul Haque Chadpuri vs Bangladesh Jamaat-e-Islami (Spl Original) 66 DLR* 14

Article 12(c)—একটি রাজনৈতিক দলের নিবন্ধনের জন্য যে সকল শর্তসমূহ উল্লেখ করা হয়েছে সেখানে এমন কোন শর্ত সুনির্দিষ্টভাবে উল্লেখ নেই যে, কোন রাজনৈতিক দল ধর্মের অপ-ব্যবহার কিংবা অপ-ব্যাখ্যা করলে ঐ দলটিকে নিবন্ধন দেয়া যাবে না। *(Per Enayetur Rahim J agreeing with Quazi Reza-ul Hoque J) Maulana Syed Rezaul Haque Chadpuri vs Bangladesh Jamaat-e-Islami (Spl Original) 66 DLR* 14

Articles 12(c) and 65—যদিওবা সংবিধানের অনুচ্ছেদ ১২(গ)-এ রাষ্ট্র পরিচালনার একটি উল্লেখযোগ্য মূলনীতি হলো-'রাজনৈতিক উদ্দেশ্যে ধর্মীয় অপব্যবহার' বিলোপ করা-ধর্ম নিরপেক্ষতার নীতি বাস্তবায়নের জন্য। আদালত রাষ্ট্রপরিচালনার মূলনীতি সমূহ বলবঃ করতে পারে না। রাষ্ট্রকেই মূলনীতি সমূহের আলোকে কার্য সম্পন্ন করতে হয় এবং হবে। সে কারনে বিদ্যমান আইনের দূর্বলতা দূর করার দায়িত্ব রাষ্ট্রের তথা আইন সভা-*'জাতীয় সংসদ'*-এর। *(Per Enayetur Rahim J agreeing with Quazi Reza-ul Hoque J) Maulana Syed Rezaul Haque Chadpuri vs Bangladesh Jamaat-e-Islami (Spl Original) 66 DLR* 14

Article 31—A person may be destructively treated not only by action, but also by inaction and inaction may contravene the Article, when it is arbitrary and unreasonable. *Moon Construction Company Limited vs Government of Bangla desh (Spl Original) 66 DLR* 193

Article 31—In order to invoke Artcle 31 of the Constitution there must be a clear case of not treating the petitioner as per law inasmuch as there may be violation of law in dealing with the petitioner's matter but it is not capable of attracting Article 31 of the Constitution, for instances, (i) when a worker is not treated by his employer, he is to seek redress in the Labour Court, (ii) when a person's property is refused illegally to be mutated by the Assistant Commissioner of land, he is to appeal before the ADC, (iii) when a government servant is declined to enjoy his service benefits, he is to approach Administrative Tribunal and so on. *Concord Pragatee Consortium Ltd vs BPDB (Spl. Original) 66 DLR* 475

Articles 32 and 102(2)—The very disentitlement of the petitioner to his MPO as of November 1997 and the continuance of such disentitlement up until May 2005 has indeed been arbitrary and irregular. Such arbitrariness is made all the more blatant given by the evident violation of the petitioner's right to receive adequate and meaningful information at all material dates on decisions that were made to operate against him and to his prejudice for an unduly long period of time, thereby depriving him effectively of the opportunity to earn a livelihood and live in dignity as is an essential component of the right to life. *Ali Hamza Mhalader (Md) vs Government of Bangladesh (Spl Original) 66 DLR* 575

Article 40—Article 40 being a qualified right its violation can be agitated only when an aggrieved person shall make out a successful case that despite the fact that the law, by which one's profession or business is to be dealt with, has declared a right to enjoy something but due to the authority's particular action, omission, decision or order she has been deprived of the same. *Concord Pragatee Consortium Ltd vs BPDB (Spl.*

Original) 66 DLR 475

Article 66(4)—After declaration made by this Court that respondent No.1 is a disqualified person to perform function as a Member of Parliament, provisions laid down in Article 66(4) shall come in to operation and, accordingly, the office of the Hon'ble Speaker may be notified about the outcome of this case. *Jamal Uddin (Md) vs Major General Abdus Salam (Retired) (Spl Original) 66 DLR 362*

Article 66(4)—The very purpose of the enactment of this piece of legislation was to put the 'loan defaulter' class away from election but if the said 'loan defaulter' people get chance to contest in the election by abusing the process of the Court, the legislation is rendered nugatory. *Jamal Uddin (Md) vs Major General Abdus Salam (Retired) (Spl Original) 66 DLR 362*

Article 65—বর্তমান আইনে মানবতা বিরোধী অপরাধে জড়িত কিংবা ১৯৭১ সালের মহান মুক্তিযুদ্ধের বিরোধীতাকারী কোন দলকে নিবন্ধন দেওয়া যাবে না মর্মে কোন সুস্পষ্ট ও সুনির্দিষ্ট বিধান রাখা হয়নি, সেহেতু, শুধুমাত্র উপরোক্ত কারণে নির্বাচন কমিশন কর্তৃক নিবন্ধন আবেদন অগ্রাহ্য করার কোন সুযোগ নেই। সেক্ষেত্রে আইনটিকে আরো সুনির্দিষ্ট ও সুস্পষ্ট করা প্রয়োজন। সার্বভৌম জনগণের প্রতিনিধি হিসেবে জাতীয় সংসদকেই এ বিষয়ে চূড়ান্ত সিদ্ধান্ত গ্রহন করতে হবে; কারণ, সার্বভৌম জনগণের ইচ্ছা-অনিচ্ছার প্রতিফলন ঘটাতে পারে একমাত্র জাতীয় সংসদ-সুনির্দিষ্ট ও সুস্পষ্ট আইন প্রণয়নের মাধ্যমে। *(Per Enayetur Rahim J agreeing with Quazi Reza-ul Hoque J) Maulana Syed Rezaul Haque Chadpuri vs Bangladesh Jamaat-e-Islami (Spl Original) 66 DLR 14*

Article 102—The reasonableness and rationality can be read together in the case, wherein the EC was given the responsibility to act fairly, diligently and reasonably in applying the law. It never had the authority to override the metes and bounds of law, which it did. Legitimate expectation cannot be defeated by a public/constitutional body, which is set by law to be followed by a public functionary. *(Per Quazi Reza-ul Hoque J majority) Maulana Syed Rezaul Haque Chadpuri vs Bangladesh Jamaat-e-Islami (Spl Original) 66 DLR 14*

Article 102—Public Interest Litigation—It is quite reasonable on part of certain number of citizens to expect from a constitutional body of the State to act 'reasonably' and 'rationally' on certain issue(s), which involves a national issue for which they sought their interference through applications, i.e. by making objections against providing registration to the BJI. Although, the petitioners in the petition have invoked jurisdiction of this Court on *'public interest'*, however, their claims are overlapping and both deserves audience. *(Per Q. Reza-ul Hoque J majority) Maulana Syed Rezaul Haque Chadpuri vs Bangladesh Jamaat-e-Islami (Spl Original) 66 DLR 14*

Article 102—The prayer made in writ petition is legitimate one and this court can allow it and direction sought for may be allowed. *Abdul Momen Chowdhury vs Bangladesh (Spl Original) 66 DLR 9*

Article 102—Respondent No. 2 is hereby directed to seek information from the candidates on affidavits sworn in by the candidates furnishing the information along with the nomination papers for the election to the house of the Nation. *Abdul Momen Chowdhury vs Bangladesh (Spl Original) 66 DLR 9*

Article 102—In absence of any contrary intention appearing in law, such interpretation of limitation clauses is bound to lead to absurdity. Firstly because, the authority in seisin of the matter in such cases will find itself bereft of evidence as to time the document was filed. Secondly, it would be difficult for the authority to take action

on the delayed filing, if the law so requires. *(Per M Moazzam Husain J dissenting) Maulana Syed Rezaul Haque Chadpuri vs Bangladesh Jamaat-e-Islami (Spl Original) 66 DLR* 14

Article 102—Common concern—The subject matter of the writ petition comes within the purview of 'common concern' of the commoners in that the post of Member of Parliament, whose primary duty is to legislate the law, should not be portrayed to the general people that a law maker is holding the portfolio by violating the law. *Jamal Uddin (Md) vs Major General Abdus Salam (Retired) (Spl Original) 66 DLR* 362

Article 102(1)(2)—This Court in past has never hesitated or shall not be shaky in future to entertain writ petitions in fit and proper cases, for example, where an action taken or order passed by a Government or any statutory body or even any Constitutional body is ex facie illegal, malafide, or the same suffers from malice-in-law or *quorum non-judice* in carrying out its functions within administrative capacity, inspite of the existence of other alternative forums. *Concord Pragatee Consortium Ltd vs BPDB (Spl. Original) 66 DLR* 475

Article 102(1)(2)—Review Panel is equally efficacious forum for adjudication of the grievance of the petitioner, the Rule is liable to be discharged only on the ground of maintainability without embarking upon other issues under the law of contract for examination.*Concord Pragatee Consortium Ltd vs BPDB (Spl. Original) 66 DLR* 475

Article 102(1)(2)—The fundamental difference between two sub-Articles of Article 102 of the Constitution is that while Article 102(1) can be invoked directly if an aggrieved person can make out a case of infringement of fundamental rights, however, in order to qualify to be an applicant under Article 102(2), the aggrieved person must satisfy the Court that *'there is no other equally efficacious remedy'* to redress his grievance. *Concord Pragatee Consortium Ltd vs BPDB (Spl. Original) 66 DLR* 475

Article 102(2)—The case is sent back to the Adalat to hear and decide the application for restoration of the treating the same as a proper miscellaneous case after hearing both sides forthwith. *Bangladesh Development Bank Limited vs Judge, Artha Rin Adalat, Jessore (Spl Original) 66 DLR* 1

Article 102(2)—Petitioners are representing the majority, almost all, the citizens of the country those who have lost their near and dear our during the liberation war; 1 million violated women who lost their virginity at the hand of Pakistani Army and their allies. *(Per Quazi Reza-ul Hoque J majority) Maulana Syed Rezaul Haque Chadpuri vs Bangladesh Jamaat-e-Islami (Spl Original) 66 DLR* 14

Article 102(2)—*Locus Standi*—রীট দায়েরের আইনগত অধিকার দরখাস্তকারীগণের আছে। অধিকন্তু, তাঁদের অনেকেই সংক্ষুব্ধ ব্যক্তি হচ্ছেন; কেননা নির্বাচন কমিশন তর্কিত নিবন্ধনটি প্রদানের সময় দরখাস্তকারীগণের অনেকেই গণ-শুনানীতে অংশ গ্রহন এবং দলিলাদি দাখিলক্রমে নিবন্ধনের বিরুদ্ধে জোরালো আপত্তি উত্থাপন করেছিলেন *(Per Enayetur Rahim J agreeing with Quazi Reza-ul Hoque J) Maulana Syed Rezaul Haque Chadpuri vs Bangladesh Jamaat-e-Islami (Spl Original) 66 DLR* 14

Article 102(2)—Article 102(2) restricts access to judicial review by inserting the rider "if no other equally efficacious remedy is provided by law". With the peculiar jurisdictional restrictions Supreme Court of Bangladesh did not lag far behind in its bid to reach justice to the poor and the underprivileged in times of their need. *(Per M*

Moazzam Husain J dissenting) Maulana Syed Rezaul Haque Chadpuri vs Bangladesh Jamaat-e-Islami (Spl Original) 66 DLR 14

Article 102(2)—No party is bound by a void contract and by the same token no declaration of invalidity of a void contract is necessary as either party can refuse to be bound by it without any adverse consequence ensuing. *(Per M Moazzam Husain J dissenting) Maulana Syed Rezaul Haque Chadpuri vs Bangladesh Jamaat-e-Islami (Spl Original) 66 DLR 14*

Article 102(2)—Public Interest Litigation —The basic concept of PIL is 'bleeding heart', which means whose 'heart bleeds' for the cause of the others. *(Per Quazi Reza-ul Hoque J majority) Maulana Syed Rezaul Haque Chadpuri vs Bangladesh Jamaat-e-Islami (Spl Original) 66 DLR 14*

Article 102(2)—There is nothing on records to show that there is existence of any public wrong or injury in their technical sense or there is any occasion for people determinate or indeterminate in number to suffer any wrong, public or private, on account of violation of any constitutional or legal obligations by the State or any public authority. *(Per M Moazzam Husain J dissenting) Maulana Syed Rezaul Haque Chadpuri vs Bangladesh Jamaat-e-Islami (Spl Original) 66 DLR 14*

Article 102(2)—The Commission instead sat idle on the issue and virtually allowed the matter to be dragged years together. *(Per M Moazzam Husain J dissenting) Maulana Syed Rezaul Haque Chadpuri vs Bangladesh Jamaat-e-Islami (Spl Original) 66 DLR 14*

Article 102(2)—The registration process is still pending before the Commission for final decision and, thus, I have no hesitation to say that the writ petition is not maintainable as being premature. *(Per M Moazzam Husain J dissenting) Maulana Syed Rezaul Haque Chadpuri vs Bangladesh Jamaat-e-Islami (Spl Original) 66 DLR 14*

Article 102(2)—Embarking upon an inquiry into the power of the Commission to cancel registration of a political party is uncalled for and is tantamount to usurping the power of a constitutional body without due deference to its jurisdiction. *(Per M Moazzam Husain J dissenting) Maulana Syed Rezaul Haque Chadpuri vs Bangladesh Jamaat-e-Islami (Spl Original) 66 DLR 14*

Article 102(2)—Without availing the appropriate forum and adopting a shortcut way of seeking remedy from the ADC (Rev) cannot be an appropriate forum and thereafter invoking Article 102 instead of a court which has jurisdiction and can ascertain document and entitlement and even the possession on the disputed land, the individual ought to have sought her entitlement before claiming a mutation and demarcation of the land by filing writ petition to settle some disputed question of facts. This court cannot adjudicate disputed facts, the writ petition is not maintainable. *Rana Awan vs Bangladesh (Spl Original) 66 DLR 269*

Article 102(2)—The order of rectifying the decretal amount under section 57 of the Adalat read with section 152 of the Code cannot be declared illegal and without lawful authority since a writ jurisdiction where there is a scope of appeal where appellate court having sufficient authority will decide the matter with the help of evidence. *Doel Apparels Ltd vs Judge Artha Rin Adalat (Spl Original) 66 DLR 341*

Article 102(2)—Writ of *Quo warranto* and *Certiorari*—We do not find any scope to convert the present *quo warranto* proceeding into the *certiorari* for the reason that the petitioner is not an 'aggrieved person' but 'any person'. *Jamal Uddin (Md) vs Major General Abdus Salam (Retired) (Spl Original) 66 DLR* 362

Article 102(2)—Jurisdiction under Article 102(2), as a whole, is known as an extraordinary jurisdiction and the same is to be availed of only when there is *'no other equally efficacious remedy'* available. The framers of the Constitution have intended that the people, at first, must search for and approach an appropriate legal forum other than the Constitutional Court. It is only then the Constitutional Court should be availed of when the citizen will find that the state has not created any legal forum for them for vindication of their right and getting the desired remedy. Thereafter, subject to the *'satisfaction'* of this Court, a writ petition may be entertained. *Concord Pragatee Consortium Ltd vs BPDB (Spl. Original) 66 DLR* 475

Article 102(2)—The clear and unambiguous words of our Constitution 'if satisfied' mandates this Court to undertake the scrutiny as to the competency of invoking this 'special original jurisdiction' before issuance of any Rule given that carrying out of the examination thereto after issuance of a Rule may cause sufferings for the parties of the case in addition to wasting valuable time of this Court in the event of discharging the Rule on this ground. *Concord Pragatee Consortium Ltd vs BPDB (Spl. Original) 66 DLR* 475

Article 102(2)—Since the genuineness of letters of credit have been questioned by the issuing bank, therefore, under Article 102 we cannot entertain complicated disputed question of the fact as to whether the letters of credit annexed herein in the writ petitions are genuine or not. *(Per Md Ashraful Kamal, J) Alvi Spinning Mills Ltd vs Government of Bangladesh (Spl Original) 66 DLR* 558

Article 102(2)—Land in the city, purchased for educational institution for disabled or retarded children cannot be allowed to use for construction of commercial and residential building only to earn money on the plea of maintenance of the institution causing mischief to the institutions educational environment of the institution. *Faruk Abdullah vs Rhairman, Rajdhani Unnayan Kartipakha (RAJUK) (Spl. Original) 66 DLR 457*

Article 102(2)—Truth or otherwise of the allegation whatsoever branded against the parties shall have to be decided of course on evidence and in the court of origin i.e. in the trial court. This Court in summary jurisdiction under Article 102 while exercising its discretion will be loath to interfere with and give a decision in such a situation. *Alvi Spinning Mills Ltd vs Government of Bangladesh (Spl Original) 66 DLR* 558

Article 102(2)—When there is specific provision to take appropriate actions for any illegal payment of cash incentives and other benefits, we do not see anything on record or in the affidavits of the concerned parties that they have proceeded against the petitioner or Sonali Bank in compliance with the circular. The entire exercise by the Sonali Bank through their impugned actions being fraught with illegalities, the same should not sustain. *Apex Weaving Finishing Mills Ltd vs Government of Bangladesh (Spl Original) 66 DLR* 592

Article 102(2)—'No show cause clause' without initiating any proceedings or giving him

an opportunity to explain his position which is not only illegal and a fraud on the law but also unjust, arbitrary and oppressive. *Mahbubur Rahman vs Bangladesh, Secretary, Ministry of Post and Tele-Communications (Spl Original) 66 DLR 615*

Article 102(1)(a)—The word 'interest' is used in qualified sense under law. Any person aggrieved can maintain an action but any person interested may not have locus standi to file a petition. *(Per M Moazzam Husain J dissenting) Maulana Syed Rezaul Haque Chadpuri vs Bangladesh Jamaat-e-Islami (Spl Original) 66 DLR 14*

Article 102(2)(a)—Mere protest raised against a possible decision of a public authority does not *ipso facto* qualify the protesters as persons aggrieved. *(Per M Moazzam Husain J dissenting) Maulana Syed Rezaul Haque Chadpuri vs Bangladesh Jamaat-e-Islami (Spl Original) 66 DLR 14*

Article 102(2)(a)(i)—In order to get a Rule of *mandamus* the petitioner must show that his claim is rooted in the statute or statutory Rule. *(Per Md Ashraful Kamal, J) Alvi Spinning Mills Ltd vs Government of Bangladesh (Spl Original) 66 DLR 558*

Article 102(2)(a)(ii)—University should have afforded an opportunity to the petitioner to get a copy of inquiry report and showed have afforded him with the opportunity to appear before the inquiry committee to defend himself and/or controvert the allegation as raised by the University. University have seriously failed to maintain the minimum requirement of fairness before such action taken against the petitioner. *Durjoy Dev vs Khulna University of Engineering & Techno logy, Khulna (Spl Original) 66 DLR 189*

Article 108—One should not forget that the hands of the Courts are long enough to catch hold of wrong doers wherever they hide. This is an unfettered and inbuilt right attached to this Court. *Abhimunnyo Singha vs Shauli Shumon (Spl Original) 66 DLR 197*

Article 108—Article 108 gives a power to the Supreme Court to inflict punish for any contempt which is exercisable by any bench of this Division irrespective of any designated Bench for so doing. Many contempt applications which are being filed against the *ad-interim* order passed by this Division even when that Division is in *seisin* of the case with the same jurisdiction having authority to apply Article 108 of the Constitution, —this propensity we deprecate. *Jasmine Rahman vs Shanta Properties Ltd (Spl. Original) 66 DLR 440*

Article 111—*14 BLC* is not applicable in the case as there is no order of stay relating to proceedings by the Hon'ble Appellate Division. Moreover, this Division directed the court below to conclude trial of the case as expeditiously as possible. There is no legal bar in continuation of the proceeding against this petitioner rather it is obligatory upon the trial court to implement the judgment and order according to the provisions of Article 111 of the Constitution. *Mahmudur Rahman vs State (Criminal) 66 DLR 609*

Article 112—Under Article 112 of the Constitution all authorities, executives and judicial, in the Republic shall act in aid of the Supreme Court. *(Per Md Ashraful Kamal , J) Abhimunnyo Singha vs Shauli Shumon (Spl Original) 66 DLR 197*

Article 119—Election commission has been given a plenary power of superintendence direction and control of the preparation of the electoral

rolls for elections and therefore whatever power is necessary for the purpose must be presumed to be there unless there is an ouster by express provisions. Since law is silent on this matter there is no difficulty on the part of this Court to provide for proper guideline. *Abdul Momen Chowdhury vs Bangladesh (Spl Original) 66 DLR* 9

Constitution of Jamaat-e-Islam

Article 6(6)—জামায়াতের প্রতিষ্ঠাতা মাওলানা মওদুদী ও তাঁর জামায়াত-এর 'আক্বীদাগত কিছু বিষয়ে' এই উপমহাদেশ ও বাংলাদেশের হাক্কানী আলেমগন অগ্রহনযোগ্য এবং ঈমান ও ইসলাম পরিপন্থী হিসেবে অভিহিত করে মওদুদীর ভ্রান্ত মতবাদ ও তাঁর সৃষ্ট জামায়াত-কে প্রত্যাখান ও বর্জন করার আহ্বান জানিয়ে এসেছেন। *(Per Enayetur Rahim J agreeing with Quazi Rezaul Hoque J) Maulana Syed Rezaul Haque Chadpuri vs Bangladesh Jamaat-e-Islami (Spl Original) 66 DLR* 14

Contempt of Court

If such an apology were to be accepted, as a Rule, and not as an exception, we would in fact be virtually issuing a 'licence' to commit contempt of court with impunity. *Abhimunnyo Singha vs Shauli Shumon (Spl Original) 66 DLR* 197

—Since this is her First Offence and she has solemnly promised never to do any act of omission in defiance of or in disobedience to any order/direction of this Court or any other Court of law we have taken a view and seriously censor and warn her for her conduct and if she repeat such kind of act in future she will be severely dealt with. *(Per Md Ashraful Kamal, J) Abhimunnyo Singha vs Shauli Shumon (Spl Original) 66 DLR* 197

Evidence Act

[I of 1872]

Sections 3 and 8—Unexplained abscondence of the accused is a supporting circumstance which must be considered along with the substantive evidence on record, if any, forthcoming against the accused. *Akbar Ali Lalu alias Roni vs State (Criminal) 66 DLR* 134

Section 8—Abscondence—Abscondence itself is not the conclusive proof of guilt of the accused in absence of legal evidence. Only because of abscondence accused could not held responsible for committing the offence. *State vs Md Tohurul Islam @ Azizul Haque (Criminal) 66 DLR* 386

Section 10—Conspiracy is done in secret. It is not possible to prove conspiracy by direct evidence. It has to be proved by circumstantial evidences. *State vs Zalal @ Zillu. (Criminal) 66 DLR* 167

Section 30—Confession of a co-accused is not substantive evidence and such confession cannot be the sole basis of conviction of a co-accused in the absence of independent and corroborative evidence. *State vs Md Tohurul Islam @ Azizul Haque (Criminal) 66 DLR* 386

Section 30—Confession of a co-accused is not evidence, it can only lend assurance to other evidence. *State vs Md Tohurul Islam @ Azizul Haque (Criminal) 66 DLR* 386

Section 73—Expert's opinion is not a conclusive evidence which enables the court to come to a satisfactory conclusion, though the said opinion is not binding upon the Court. The Court itself can compare any signature or LTI of any concerned person under section 73 of the Act and

come to a decision in accordance with law *Bimol Rosario vs Barbara Rosario (Civil) 66 DLR 122*

Section 73—Section 73 of the Act permits the Court to make a comparison of signature or writings and so adoption of such a method cannot be termed as hazardous or dangerous and therefore the finding as to the genuineness of Exhibit 14 cannot be questioned only on this account. *Abdul Hakim Miah vs Agrani Bank, Purana Paltan Branch, Dhaka (Civil) 66 DLR 300*

Section 106—If any incident or circumstance is particularly within the special knowledge of any party to the case, in accordance with section 106 of the Act the burden to prove that particular incident or circumstance lies on the party who raises it. Since the defence raise the plea of alibi, the onus was on them to prove it either by leading evidence or from other evidence on record. But they clearly failed to discharge the said onus. *Begum Mariam vs Sk. Lal Mohammad (Civil) 66 DLR 216*

Section 114(g)—Suspicion—Mere conjectures and probabilities cannot take the place of proof. The Court of law has to dispense justice in accordance with law and not according to the moral conviction of the Judge with regard to the occurrence. *Akbar Ali Lalu alias Roni vs State (Criminal) 66 DLR 134*

Section 134—Evidence of close relations of the victim cannot be discarded more particularly when close relations does not impair the same. Straight forward evidence given by witness who is related to deceased cannot be rejected on sole ground that they are interested in prosecution. Ordinarily close relation will be last person to screen real culprit and falsely implicate a person. *State vs Sujon Deb (Criminal) 66 DLR 324*

Income Tax Ordinance

[XXXVI of 1984]

Section 29(1)(xviiiaa)—The intention of legislature is to allow 3% of total outstanding loan including interest thereon or the amount of actual provision for such classified bad and doubtful debts and the interest thereon in the books of the assessee, which ever is less and the proviso is meant for the later part of clause (xviiiaa) and any other interpretation of the proviso would not proper. *Standard Chartered Bank vs Commissioner of Taxes (Statutory Original) 66 DLR 302*

Section 92(1)(2)(b)—Under section 92(l)(2)(b) of the Ordinance any proceeding which could have been taken against the deceased, if he had not died, may be taken against the legal representative and all the provisions of Ordinance shall, so far as may be, apply accordingly. Assessee will be liable to pay taxes on the income of the deceased proportionate to his shares for all assessment years. *Golam Sarwar vs Commissioner of Taxes (Spl Original) 66 DLR 350*

Sections 93(2), (3)(a)(b) and 94(2)—It appears from section 94(2) of the Ordinance 1984 that the limitation of two years have been provided in the said section meaning thereby that the provision of section 93(3)(a) and (b) of the Ordinance is applicable both for ordinary and the Self Assessment Scheme and in case of Self Assessment Scheme the same became barred after the elapse of two years and the provision of section 93(3)(a) and (b) cannot be invoked after the assessment barred by limitation under the provision of section 94(2) of the Ordinance. Because, the Self Assessment Scheme is a privilege and from the issuance of the receipt by the DCT concern as to receiving of a compliant return the same became finalized which become absolute after the elapse of two years, as provided in section 94(2)

of the Income Tax Ordinance 1984. The provision of section 93(2) being applicable for ordinary assessment will remain applicable as against five years of any assessment made in ordinary manner. *Nurun Nabi vs National Board of Revenue (Spl. Original) 66 DLR* 514

International Crime (Tribunal) Act
[XIX of 1973]

Section 3—মূল আইনে মানবতা বিরোধী অপরাধের জন্য কোন দল বা গোষ্ঠীকে বিচারের সম্মুখীন করার বিধান না থাকলেও আইনটি সংশোধনের মাধ্যমে মানবতা বিরোধী অপরাধের সাথে জড়িত দলকে (organisation) বিচারের সম্মুখীন করার বিধান করা হয়েছে *(Per Enayetur Rahim J agreeing with Quazi Reza-ul Hoque J) Maulana Syed Rezaul Haque Chadpuri vs Bangladesh Jamaat-e-Islami (Spl Original) 66 DLR* 14

Interpretation of Statutes

Infinite variety of human conditions and exigencies hardly admit of any uniform rule to regulate all possible human conduct and exigencies so is the case with interpretation of law. Strict literalism in interpretation of law, therefore, is gradually being replaced by purposive interpretation intended to carry out the objective of law tampered with rule of expediency and public policy. *(Per M Moazzam Husain J dissenting) Maulana Syed Rezaul Haque Chadpuri vs Bangladesh Jamaat-e-Islami (Spl Original) 66 DLR* 14

—It is a well accepted principle of interpretation that where different language is used in the same statute different intention is to be presumed unless there is in the context anything to hold to the contrary. *Syed Raihan Hasan Ali Chowdhury vs Syed Hamde Ali Chowdhury (Civil) 66 DLR 66 DLR* 5

Land Appeal Board Act
[XXIV of 1989]

Sections 2 and 4—Original appeal was purportedly heard in *coram non-judice,* considering the subsequent application as a review petition was void equally well. The appeal the petitioner preferred could only be heard and adjudicated upon by the Land Appeal Board, which, according to section 2, read with section 4 of the Land Appeal Board Act 1989, is composed of the chair thereof, plus, no less than two other members. So, the purported initial decision, taken by a single member, was in *coram non-judice,* as he, on his own, not being the Full Board, was incompetent to dispose of the appeal. The fact that the initial appeal was heard by an incompetent person, necessarily follows that there could, in law, be no review, simply because, review presupposes review of an earlier decision taken by a properly constituted body, the Board in the instant case. In so far as the original appeal was purportedly heard in *coram non-judice,* considering the subsequent application as a review petition was void equally well. *SM Abdur Rouf vs Government of the People's Republic of Bangladesh (Spl. Original) 66 DLR* 308

Legal Remembrancer's Manual, 1960

Chapter XII—State Defence Lawyers—It is high time to revise the GO fixing the fees of the state defence lawyer without further delay. The state defence lawyers are doing the sacred job of saving the neck of a human being. There is no scope to take the matter lightly, rather it should be taken into consideration with utmost seriousness. *State vs Md Tohurul Islam @ Azizul Haque (Criminal) 66 DLR* 386

Limitation Act
[IX of 1908]

Section 5—Although the Government is not entitled to any special privilege in the matter of condonation of delay, yet some consideration may be given thereto depending upon the facts and circumstances of each case where the Government appears as a litigant. It is true that each day's delay has not been explained away in the application for condonation of delay in the case before us. But this is not an absolute rule. In such a landscape, no strait-jacket formula can be laid down in this regard. Condonation of delay depends upon the facts and circumstances of each case. *Divisional Forest Officer, Village-12 vs Md Abul Hossen @ Amir Hossen (Civil) 66 DLR* 661

Section 5—Government having knowledge of the limitation and without sufficient cause slept over the matter years together and allowed the period of limitation to run out. If this sort of negligence is condoned by the Court then the litigant public will be at the mercy of the state functionary since in this application the Government has utterly failed to explain the inordinate delay. Court will not help a party who is always sleep over the matter. *Bangladesh, represented by the Deputy Commissioner, Comilla vs Abdul Mazid (Civil) 66 DLR* 435

Article 86(b)—The law of limitation runs from the cause of action of a suit and that should be in all cases for 3 (three) years not from the date of occurrence. *Sadharan Bima Corporation vs Golden Twisting Factory (Civil) 66 DLR* 224

Money Laundering Protirodh Ain
[VIII of 2009]

Section 9—Offence under Money Laundering Protirodh Ain, 2002 or Ain, 2009 is deemed to be (অপরাধ গন্য) in the schedule of Anti-Corruption Commission Act, 2004 and the offence will be tried under the Criminal Law Amendment Act, 1958. *(Per M Enayetur Rahim J) Mafruza Sultana vs State (Criminal) 66 DLR* 280

Muslim Marriages and Divorce [Registration) Act [LII of 1974]

Section 4—Section 4 of the Act gives the Government discretionary power to extend, curtail or otherwise to alter the limits of an area for which a Nikah Registrar has been licensed. But such power has legal limitation by restrictive principles of reasonableness and fair play, and in some cases by that of natural justice. *The power is, therefore, not absolute. Saiful Islam (Md) vs Bangladesh (Spl Original) 66 DLR* 310

Section 4—A Nikah Registrar is known as a Kazi by profession, he commands respect and enjoys social status in his locality because of holding the licence. Presumably he maintains his livelihood from the earning of marriage and divorce registration fees left with him after payment of a fixed amount therefrom to the Government. This aspect should be considered in curtailment of an area, for which a Nikah Registrar has already been licensed. *Saiful Islam (Md) vs Bangladesh (Spl Original) 66 DLR* 310

Section 4—Curtailment, extension or change of territorial jurisdiction—Any decision of the Government regarding curtailment, extension or change of territorial jurisdiction of a Nikah Registrar must be justified with the test of reason-

ableness and fair play. *Saiful Islam (Md) vs Bangladesh (Spl Original) 66 DLR* 310

Muslim Marriages and Divorce (Registration) Rules, 2009

Rule 13—Area mentioned in rule 13 of the newly framed Rules, 2009 cannot be curtailed every now and then at the sweet will of the licensing authority. There must be some valid reasons for such curtailment, and in that case the incumbent Nikah Registrar should be given prior intimation and option as to which area he would choose to keep under his license subject to fulfilment of the other conditions provided in the Rules. *Saiful Islam (Md) vs Bangladesh (Spl Original) 66 DLR* 310

Nari-o-Shishu Nirjatan Daman Ain
[VIII of 2000]

Section 9(3)—Since offence of murder punishable under section 302 of the Code was carried to the door of convict-appellants they can be very much convicted for offence of section 302 of the Code and, as such, we convert the offence of section 9(3) of the Ain to offence of section 302 of Code. *State vs Bidhan Chandra Roy (Criminal) 66 DLR* 500

Negotiable Instruments Act
[XXVI of 1881]

Section 138—The cheque was drawn some time in 2004 and it was presented in the Bank in the month of September, 2007 i.e. beyond the period of six months from the date on which it was drawn. A cheque receiving in the year 2004, filling up the various columns later on, at the sweet will of the complainant, if presented in the Bank after a long gap of 3/4 years, undoubtedly the same is a fraud upon the drawer of the cheque and if Court allow to continue such practice, that would be sheer indulgence to the creditors to be more oppressive to the debtors. *Mohammad Ali Fatik vs State (Criminal) 66 DLR* 228

Section 138—Whenever a cheque is drawn by a person in order to make payment of any amount, the amount must be given in it by the drawer of the cheque. Since the amount was not given by the drawer of the cheque having no intention for making any payment, such a cheque cannot be considered as a cheque to serve the purpose of section 138 of the Act. *Dr Shyamal Baidya vs Islami Bank Bangladesh Ltd. (Criminal) 66 DLR* 547

Sections 138 & 140—Petitioner was Managing Director of the Company at the time of offence committed and all acts are committed or done within his knowledge. He is responsible for the conduct of the business of the company and in such situation when the Managing Director of the Company is made party, there is no necessity for making the Company a party. *Younus-uz-zaman (Badal) vs State (Criminal) 66 DLR* 249

Penal Code
[XLV of 1860]

Section 34—Actively participated in the killing in furtherance of common intention, which is enough to bring him under the preview of section 34 of the Code. *State vs Zalal @ Zillu . (Criminal) 66 DLR* 167

Section 120B—Conspiracy is done in secret. It is not possible to prove conspiracy by direct evidence. It has to be proved by circumstantial evidences. *State vs Zalal @ Zillu. (Criminal) 66 DLR* 167

Sections 161 and 167—Criminal misconduct—Section 5(1) of the Act defines criminal misconduct. Charge does not refer to misappropriation of money, but the words "above mentioned acts" contained in the charge necessarily imply the offence of criminal breach of trust. The charge specifically refers to the offences under sections 161 and 167 of the Penal Code. *Mostafa Kamal vs State (Criminal) 66 DLR 534*

Section 167—In order to convict the accused under section 167 of the Code, the prosecution must prove that the accused was entrusted with preparation of the document in question. The prosecution did not produce any document before the Court in order to support the charge. There is no incriminating evidence or circumstances to sustain the conviction under section 167 of the Code. *Mostafa Kamal vs State (Criminal) 66 DLR 534*

Section 294A—Lotter—Lottery' is a form of gambling punishable under section 294A of the Code with exceptions provided therein. *Jafar Ullah (Md) vs Secretary, Ministry of Home Affairs (Spl Original) 66 DLR 380*

Section 300—Since offence of murder punishable under section 302 of the Code was carried to the door of convict-appellants they can be very much convicted for offence of section 302 of the Code and, as such, we convert the offence of section 9(3) of the Ain to offence of section 302 of Code. *State vs Bidhan Chandra Roy (Criminal) 66 DLR 500*

Section 302—In sentencing process, two important factors come out which shall shape appropriate sentence (i) Aggravating factor and (ii) Mitigating factor. These two factors control the sentencing process to a great extent. But it is always to be remembered that the object of sentence should be to see that the crime does not go unpunished and the society has the satisfaction that justice has been done and court responded to the society's cry for Justice. *State vs Bidhan Chandra Roy (Criminal) 66 DLR 500*

Section 302—Under section 302 of the Code, though discretion has been conferred upon the Court to award two types of sentences, death or imprisonment for life, the discretion is to be exercised in accordance with the fundamental principle of criminal justice. *State vs Bidhan Chandra Roy (Criminal) 66 DLR 500*

Section 302—Before holding the trial news paper publication was made regarding the absconding accused and that news paper publication is lying with the record. After arrest by the police, convict was sent to Jail, wherefrom he filed the Jail Appeal putting his signature in the Vokalatnama. The signature of convict in his Vokalatnama and the signature put in the admit card are same and identical and, as such, there is no doubt that the admit card belongs to convict. *State vs Jabed Jahangir (Criminal) 66 DLR 579*

Section 391—In order to commit 'dacoity', there must be at least five persons as contemplated by section 391 of the Code. Naturally a question arises as to whether the four accused, can be convicted and sentenced under section 396 of the Code. There is an illuminating decision in the case of *Abdul Wahed vs State, 8 DLR 50. Akbar Ali Lalu alias Roni vs State (Criminal) 66 DLR 134*

Section 396—The measure of punishment in a given case must depend upon the atrocity of the crime; the conduct of the criminal and the defenceless and unprotected state of the victim. *Akbar Ali Lalu alias Roni vs State (Criminal) 66 DLR 134*

Section 405 and 409—The word 'entrustment' is not necessarily a term of law and may have different implications in different context. Once entrustment is proved, it is for the accused to explain as to how he dealt with money. If explanation is not acceptable, the offence under section 409 stands proved. *Mostafa Kamal vs State (Criminal) 66 DLR* 534

Section 408—The petition of complaint containing specific allegation against an employee of the Grameen Bank under section 408 of the Code should not be thrown away for legal defect giving opportunity to the offender to go scot-free. The Magistrate shall send the petition of complaint to the Commission in accordance with procedure laid down under Rules 13(3) of the Bidhimala to deal with in accordance with law. *Shanik Chandra Barmon vs State (Criminal) 66 DLR* 114

Section 409—Principle of vicarious liability cannot be imported in a charge for offence of criminal breach of trust. *Mostafa Kamal vs State (Criminal) 66 DLR* 534

Prevention of Corruption Act

[II of 1947]

Section 5(1)—Criminal misconduct—Section 5(1) of the Act defines criminal misconduct. Charge does not refer to misappropriation of money, but the words "above mentioned acts" contained in the charge necessarily imply the offence of criminal breach of trust. The charge specifically refers to the offences under sections 161 and 167 of the Penal Code. *Mostafa Kamal vs State (Criminal) 66 DLR* 534

Public Amusement Act, 1933

Section 2—If the program is for public amusement it needs be held in the "place of public amusement" as defined under section 2 of the of the Act and the place needs be notified as such by the Government and no person can open or keep open places of public amusement without, or otherwise than in conformity within the condition of, a license to be granted by the Deputy Commissioner. *Jafar Ullah (Md) vs Secretary, Ministry of Home Affairs (Spl Original) 66 DLR* 380

Public Gambling Act

(III of 1867)

Section 3—Owning, keeping or having charge of common gaming-house as contemplated under section 3 of the Act, is an offence and punishable under the law. *Jafar Ullah (Md) vs Secretary, Ministry of Home Affairs (Spl Original) 66 DLR* 380

Public Procurement Act

[XXIV of 2006]

Section 4—Section 4 of the PPA, 2006 heralds that it is a special law having overriding effect on other laws and the Review Panel being constituted with 3 (three) highly knowledgeable adjudicators, one having experience from the field of administration, one from judiciary and the third one from technical field of relevant procuring staff, the forum appears to be one of the most competent and best forum any statute has ever created in our country for speedy and complete disposal of complicated grievances. *Concord Pragatee Consortium Ltd vs BPDB (Spl. Original) 66 DLR* 475

Sections 29 and 30—In an open tender under Rule 56(11) of the PPR, 2008 ("দুর্নীতি বা

চক্রান্তমুলক কার্যকলাপ সম্পর্কে সন্দেহ হইলে") if there is any suspicion of any malafide activities in the process of any public procurement and under Rule 56(12) of the PPR, 2008 ("ত্রুটিপূর্ণ বা অন্যায়ভাবে চুক্তি সম্পাদন করা হইয়াছে বলিয়া ধারনা করিবার সঙ্গত কারন থাকিলে") if there is reason to believe that the contract has been sealed unfairly, anyone can take recourse to sections 29 and 30 of the PPA, 2006. *Concord Pragatee Consortium Ltd vs BPDB (Spl. Original) 66 DLR* 475

Section 30—From a plain reading of the Rules 59 and 60, it appears that the forum created by the statute namely PPA, 2006 under section 30 of the same is amply empowered to adjudicate upon any sort of complaint or grievance related to arising out of procurement by a public body with the public money inasmuch as there are abundant provisions for passing interim order restraining the purchasing entity from entering into the contract until disposal of the complaint or appeal. *Concord Pragatee Consortium Ltd vs BPDB (Spl. Original) 66 DLR* 475

Public Procurement Rules, 2008

Rule 56(11)—In an open tender under Rule 56(11) of the PPR, 2008 ("দূর্নীতি বা চক্রান্তমুলক কার্যকলাপ সম্পর্কে সন্দেহ হইলে") if there is any suspicion of any malafide activities in the process of any public procurement and under Rule 56(12) of the PPR, 2008 ("ত্রুটিপূর্ণ বা অন্যায়ভাবে চুক্তি সম্পাদন করা হইয়াছে বলিয়া ধারনা করিবার সঙ্গত কারন থাকিলে") if there is reason to believe that the contract has been sealed unfairly, anyone can take recourse to sections 29 and 30 of the PPA, 2006. *Concord Pragatee Consortium Ltd vs BPDB (Spl. Original) 66 DLR* 475

Rules 56 and 60—From a plain reading of the Rules 59 and 60, it appears that the forum created by the statute namely PPA, 2006 under section 30 of the same is amply empowered to adjudicate upon any sort of complaint or grievance related to arising out of procurement by a public body with the public money inasmuch as there are abundant provisions for passing interim order restraining the purchasing entity from entering into the contract until disposal of the complaint or appeal. *Concord Pragatee Consortium Ltd vs BPDB (Spl. Original) 66 DLR* 475

Public Servant (Retirement) Act

[XII of 1974]

Section 4—Since the employees of Biman are public servants within the meaning of the Act, therefore the provisions of the Act will be applicable from the date of its amendment i.e. since the petitioners were in service of Biman and did not reach the age of 59 years when the amended was made, therefore they will be entitled to get advantage of the amended statutory provision. *WDS Naushad Ali Khan vs Government of Bangladesh (Spl Original) 66 DLR* 276

Representation of People Order

[PO 155 of 1972]

Articles 90A, 90B, 90C and 90D—This admittedly not being a case of registration simpliciter and a case of registration provisionally or temporarily given the Commission, if necessary, might see its power lying in its general power to rescind without reverting to the 'cancellation clause'. It is neither necessary nor expedient, at this stage, to loose confidence in the wisdom of a co-ordinate branch of the Government. *(Per M Moazzam Husain J dissenting) Maulana Syed Rezaul Haque Chadpuri vs Bangladesh Jamaat-e-Islami (Spl Original) 66 DLR* 14

Articles 90A, 90B, 90C and 90D—Question of legal competence apart, any attempt to pick and choose by the Commission in terms of degree of disqualification at the material time was well-nigh impossible, without jeopardizing the main objective it was striving to achieve. *(Per M Moazzam Husain J dissenting) Maulana Syed Rezaul Haque Chadpuri vs Bangladesh Jamaat-e-Islami (Spl Original) 66 DLR* 14

Articles 90B and 90C—গুরুত্বপূর্ণ আবশ্যকীয় শর্ত প্রতিপালিত না হওয়া সত্বেও নির্বাচন কমিশন আইন ভঙ্গ করে জামায়াতে ইসলামীকে নিবন্ধন প্রদান করে অবৈধ ও ক্ষমতা বহির্ভূত কাজ করেছে। একটি সুষ্ঠু নির্বাচন অনুষ্ঠানের যুক্তি দেখিয়ে কোন দলকে অবৈধ ও অনৈতিক সুবিধা প্রদান একটি সাংবিধানিক প্রতিষ্ঠানের নিকট কাম্য হতে পারে না। *(Per Enayetur Rahim J agreeing with Quazi Reza-ul Hoque J) Maulana Syed Rezaul Haque Chadpuri vs Bangladesh Jamaat-e-Islami (Spl Original) 66 DLR* 14

Articles 90B and 90C—একটি রাজনৈতিক দলের নিবন্ধনের জন্য যে সকল শর্তসমূহ উল্লেখ করা হয়েছে সেখানে এমন কোন শর্ত সুনির্দিষ্টভাবে উল্লেখ নেই যে, কোন রাজনৈতিক দল ধর্মের অপ-ব্যবহার কিংবা অপ-ব্যাখ্যা করলে ঐ দলটিকে নিবন্ধন দেয়া যাবে না। *(Per Enayetur Rahim J agreeing with Quazi Reza-ul Hoque J) Maulana Syed Rezaul Haque Chadpuri vs Bangladesh Jamaat-e-Islami (Spl Original) 66 DLR* 14

Articles 90B, 90C and 90D—EC neither had the authority to register BJI with such a non-compliant constitution, nor it ever had the authority to request BJI to amend its constitution to make it compliant since its registration from its inception was done without any lawful authority. *(Per Quazi Reza-ul Hoque J majority) Maulana Syed Rezaul Haque Chadpuri vs Bangladesh Jamaat-e-Islami (Spl Original) 66 DLR* 14

Articles 90B(1)B(ii), and 90C(1)(A)(B)—রীট মোকদ্দমাটি দায়েরের উদ্দেশ্য ছিল নির্বাচন কমিশনের উপর মনস্তাত্বিক চাপ সৃষ্টি করা। *(Per Enayetur Rahim J agreeing with Quazi Reza-ul Hoque J) Maulana Syed Rezaul Haque Chadpuri vs Bangladesh Jamaat-e-Islami (Spl Original) 66 DLR* 14

Article 90C—যেহেতু সাময়িক গঠনতন্ত্রটি (provisional constitution) নিবন্ধনকালীন সময়ে গণপ্রতিনিধিত্ব আদেশ এর অনুচ্ছেদ ৯০ সি-এর শর্তসমূহ পূরন করে দাখিল করা হয়নি, সুতরাং নির্বাচন কমিশন বে-আইনী ও আইন বহির্ভূতভাবে তর্কিত নিবন্ধনটি প্রদান করেছে; যা আইনসংগত কর্তৃত্ব ব্যতিরেকে করা হয়েছে এবং এর কোন আইনগত কার্যকারিতা নেই। *(Per Enayetur Rahim J agreeing with Quazi Reza-ul Hoque J) Maulana Syed Rezaul Haque Chadpuri vs Bangladesh Jamaat-e-Islami (Spl Original) 66 DLR* 14

Articles 90C and 90D—We could not find any provision in the RPO to accord provisional registration and on the other hand in the 'registration certificate' itself there is no such stipulation that it is a provisional certificate. The stipulation was that complying the mandatory requirements. *(Per Quazi Reza-ul Hoque J majority) Maulana Syed Rezaul Haque Chadpuri vs Bangladesh Jamaat-e-Islami (Spl Original) 66 DLR* 14

Articles 90C and 90D—EC neither had the authority to register BJI with such a non-compliant constitution, nor it ever had the authority to request BJI to amend its constitution to make it compliant since its registration from its inception was done without any lawful authority. *Maulana Syed Rezaul Haque Chadpuri vs Bangladesh Jamaat-e-Islami (Spl Original) 66 DLR* 14

Article 90H(f)—নির্বাচন কমিশন নবম জাতীয় সংসদের প্রথম বৈঠকের বারো মাস অতিক্রান্ত হওয়ার পর গণপ্রতিনিধিত্ব আদেশ-এর অনুচ্ছেদ ৯০ এইচ (এফ)-এর বিধান অনুযায়ী সাময়িক গঠনতন্ত্রের ভিত্তিতে জামায়াতে ইসলামীকে প্রদত্ত নিবন্ধনটি বাতিলের কার্যক্রম গ্রহন না করে সাংবিধানিক ও আইনগত দায়িত্ব পালনে বিরত থেকে প্রতিনিয়তই সংবিধান ও আইন ভঙ্গ করে চলেছে; যা একটি সাংবিধানিক প্রতিষ্ঠানের কাছে কাম্য নয় এবং উক্ত

নিষ্ক্রিয়তার বিষয়টি জ্ঞাত হয়ে সাংবিধানিক আদালত তার উপর অর্পিত দায়িত্ব পালনে বিরত থাকতে পারে না। *(Per Enayetur Rahim J agreeing with Quazi Reza-ul Hoque J) Maulana Syed Rezaul Haque Chadpuri vs Bangladesh Jamaat-e-Islami (Spl Original) 66 DLR* 14

Securities Exchange Commission (Insider Trading Restriction) Rules, 1995

Rule 4(2)—With reference to and in continuation of the notification has required holding of minimum 2% shares or to acquire the said quantity of shares within the next 6 months and in order to facilitate such acquisition it has exempted the directors, who are holding shares less than minimum required numbers, from application of sub-rule 2 of Rule. *Hafiz Ahmed Mazumder vs Pubali Bank Limited (Statutory Original) 66 DLR* 234

Specific Relief Act

[I of 1877]

Section 42—Whether the plaintiffs have/had any legal character and locus standi to file public litigation or whether the plaintiffs prior to filing of the suit served notice upon the defendants is a mixed question of law and fact, which can be decided only at the trial on taking evidence. *Chairman, Upazila Parishad, Kahalu, Bogra vs Md Zahedur Rahman (Civil) 66 DLR* 554

State Acquisition & Tenancy Act, 1950

[XXVIII of 1951]

Section 96—All the co-sharers must be impleaded to a preemption proceeding and when this mandate was not complied with the right of pre-emption conferred under section 96 of the Act then it is not available. *Mohsin-al-Mehedi (Md) vs Khukumoni Khatun (Civil) 66 DLR* 589

Trade Mark Act

[XIX of 2009]

Section 42—Provisions did not mention about the user of registered trade mark within the territory of Bangladesh yet the scheme and object of Act indicates that unless the registered trade mark is used within the territory of Bangladesh for the purpose of business by affixing the mark on the body of the product and marketing the same within the territory of Bangladesh, then the registered trade mark cannot be treated to have been in use within the meaning of section 71 of the Act. *Managing Director, Baghdad Vegetable Oil Industries Ltd vs Van Den Heghs (Statutory Original) 66 DLR* 450

Value Added Tax Act

[XXII of 1991]

Sections 37 and 55—After the amendment of the Act in the year 2010 section 55 of the Act has taken a new look. Now the offences under section 37 can be dealt with by giving notice but under section 55 of the Act. By no means it can be said that the amendment has changed the settled proposition of law. *Mr Baker Cake and Pastry Shop vs Commissioner, Customs, Excise and VAT (Spl Original) 66 DLR* 359

Transfer of Property Act

[IV of 1882]

Section 52—During pendency of a case no property can be transferred as per the provision of section 52 of the Act and that reconveyance made during pendency of a pre-emption proceeding

cannot take away the right of pre-emption by the co-sharer. *Ismail Hossain vs Hanif Mia (Civil) 66 DLR 214*

Waqf Ordinance

[I of 1962]

Section 50—Whether a particular property is waqf property or not shall be decided by the administrator when the property is to be taken over or enlisted the property within this section. *Syed Raihan Hasan Ali Chowdhury vs Syed Hamde Ali Chowdhury (Civil) 66 DLR 66 DLR 5*

Words and Phrases

Affidavit—In view of the existence of National ID Card for all adult citizens of the country, we would suggest that the Rules may be changed in order to enable the Affidavit Commissioner to verify the identity of the deponents standing before them by insisting upon production of their National ID card or any other official means of identification, and an attested copy of such identification may be kept with the petition. *Nurul Alam @ Shaheb Miah vs State, represented by the DC, Chittagong (Criminal) 66 DLR 655*

Alternative remedy—Alternative forum is open to the petitioners to place their grievances seeking remedy before the civil court. *(Per Md Ashraful Kamal, J) Alvi Spinning Mills Ltd vs Government of Bangladesh (Spl Original) 66 DLR 558*

Bench and Bar— The Bench and the whole judicial structure depend so much on the integrity and alertness of the learned advocates of the Bar. Learned advocates must refrain from putting their signature identifying persons whom they do not know. *Nurul Alam @ Shaheb Miah vs State, represented by the DC, Chittagong (Criminal) 66 DLR 655*

Cancellation of Bail—There are five cases where a person granted bail may have the bail cancelled and recommitted to jail—

◊ Where the person on bail during the period of bail commits the very same offence for which he is being tried or has been convicted.

◊ If he hampers the investigation.

◊ If he tempers with the evidence.

◊If he runs away to a foreign country or goes underground or beyond the control of his sureties and

◊ If he commits acts of violence or revenge. *Hasina Akhtar vs Md Raihan & another (Criminal) 66 DLR 298*

Circumstantial Evidence—The circumstances should form a chain so complete that there is no escape from the probability that the crime was committed by the accused and no one else. *Akbar Ali Lalu alias Roni vs State (Criminal) 66 DLR 134*

Company Law and Banking Law—There is no denying that the elementary principle of company law is that the company is a legal entity distinct from of its members. We distinctly observe that though the Company Law governs its field with all the trappings of its own but at the same time the Banking Companies Act is also an independent Special law that rules with authority altogether the different aspect related with the banking matter and stands absolutely on a different footing. *Shafi A Choudhury vs Government of Bangladesh (Spl Original) 66 DLR 344*

Contract—contract being made for an unlawful purpose is *void ab initio* and is unenforceable. *Jafar Ullah (Md) vs Secretary, Ministry of Home Affairs (Spl Original) 66 DLR 380*

Defaulter—To get the protection of law it must be proved that the tenant is not a defaulter in payment of rent. *Abedin & Company vs Bangladesh National Federation of the Deaf (Civil) 66 DLR 631*

Falsus in uno, falsu in omnibus—The admixture of falsehood in the evidence relating to direct demand of money by the appellant is of such nature that it is impossible for us to separate the grains of truth from the mass of chaff. The maxim *"Falsus in uno, falsu in omnibus"* meaning "false in one thing false in everything" although not a rule of law but merely a rule of caution, applies to the case and therefore, we reject the entire evidence of PWs on this point. *Mostafa Kamal vs State (Criminal) 66 DLR 534*

Fraud—Fraud vitiates everything and in most cases it originates when a commercial party contracts with a rouge. *(Per Md Ashraful Kamal, J) Alvi Spinning Mills Ltd vs Government of Bangladesh (Spl Original) 66 DLR 558*

Fraud—জামায়াতে ইসলামী তর্কিত নিবন্ধনটি হাসিলের জন্য নির্বাচন কমিশনে প্রবঞ্চনা বা প্রতারণার আশ্রয় নিয়েছিল। অতএব, ঐ নিবন্ধনটি অশুদ্ধ ও অকার্যকর। *(Per Enayetur Rahim J agreeing with Quazi Reza-ul Hoque J) Maulana Syed Rezaul Haque Chadpuri vs Bangladesh Jamaat-e-Islami (Spl Original) 66 DLR 14*

Interim Order—There having an order of the High Court Division staying operation of notice the neutral chairman appointed by the court to preside over 30th AGM of the Bank, had no scope sit in appeal over the interim order passed by this court. *Hafiz Ahmed Mazumder vs Pubali Bank Limited (Statutory Original) 66 DLR 234*

Islam and Jamaat-e-Islam—উপ-মহাদেশের মানুষ ইসলাম ধর্ম গ্রহনের জন্য কোন বিশেষ রাজনৈতিক দলের জন্ম বা সৃষ্টি'র অপেক্ষায় ছিল না; নিজ প্রয়োজনে ও তাগিদে এ অঞ্চলের মানুষ ইসলাম ধর্মে উদ্বুদ্ধ ও দীক্ষিত হয়েছিল জামায়াত-ই-ইসলামী হিন্দু নামক রাজনৈতিক দলটি সৃষ্টির হাজারো বছর পূর্বে। *(Per Enayetur Rahim J agreeing with Quazi Reza-ul Hoque J) Maulana Syed Rezaul Haque Chadpuri vs Bangladesh Jamaat-e-Islami (Spl Original) 66 DLR 14*

Jamaat-e-Islam—এদেশের জনগন মহান মুক্তিযুদ্ধে জামায়াতে ইসলামী'র বাংলাদেশ বিরোধী সশস্ত্র অবস্থান ও মানবতা বিরোধী ভূমিকা প্রত্যক্ষ করেছে এবং ইতিহাস এর উজ্জ্বল সাক্ষ্য বহন করছে। *(Per Enayetur Rahim J agreeing with Quazi Reza-ul Hoque J) Maulana Syed Rezaul Haque Chadpuri vs Bangladesh Jamaat-e-Islami (Spl Original) 66 DLR 14*

Legitimate Expectation—A legitimate expectation cannot be defeated by a public/constitutional body, which is set by law to be followed by a public functionary. *(Per Quazi Reza-ul Hoque J majority) Maulana Syed Rezaul Haque Chadpuri vs Bangladesh Jamaat-e-Islami (Spl Original) 66 DLR 14*

Legitimate Expectation—The duty cast upon a public authority that tantamount to a promise, denial of which gives rise to legitimate expectation of a citizen, if his personal or social right as a whole is infringed. *(Per Quazi Reza-ul Hoque J majority) Maulana Syed Rezaul Haque Chadpuri vs Bangladesh Jamaat-e-Islami (Spl Original) 66 DLR 14*

Legitimate Expectation—Legitimate expectation prevails over a general principle of accruing any benefit, as they would never expect

such perpetrators to transgress rights again in the same soil. *(Per Quazi Reza-ul Hoque J majority) Maulana Syed Rezaul Haque Chadpuri vs Bangladesh Jamaat-e-Islami (Spl Original) 66 DLR* 14

Malafide—In order to successfully make out a case on the basis of malafide, the petitioner is required to categorically state the grudge against her, if any, or to produce the proof/evidence of naked favour by the respondents to another party. Allegations of malafide on vague or general terms is beyond the scope of consideration by this Court. *Concord Pragatee Consortium Ltd vs BPDB (Spl. Original) 66 DLR* 475

PIL—The basic thrust of PIL has always been to protect fundamental freedom and basic rights of the backward and less fortunate section of the people but at times PIL surpassed its narrow frontiers and developed in other dimensions of public causes. *(Per M Moazzam Husain J dissenting) Maulana Syed Rezaul Haque Chadpuri vs Bangladesh Jamaat-e-Islami (Spl Original) 66 DLR* 14

PIL—Every wrong or injury is not a public wrong or injury in PIL sense. Public wrong or injury as opposed to public sentiment, emotion or curiosity is relatable to public interest. *(Per M Moazzam Husain J dissenting) Maulana Syed Rezaul Haque Chadpuri vs Bangladesh Jamaat-e-Islami (Spl Original) 66 DLR* 14

PIL—Since the concept of 'public wrong' or 'public injury' and 'private wrong' or 'private injury' has assumed technical meanings in PIL literature those concepts must of necessity be seen in that context. *(Per M Moazzam Husain J dissenting) Maulana Syed Rezaul Haque Chadpuri vs Bangladesh Jamaat-e-Islami (Spl Original) 66 DLR* 14

PIL—Mere sentimental grievance or injury, however genuine or grave, does not confer standing in law to maintain *pro bono* action. *(Per M Moazzam Husain J dissenting) Maulana Syed Rezaul Haque Chadpuri vs Bangladesh Jamaat-e-Islami (Spl Original) 66 DLR* 14

PIL—The "heart" of every Bangladeshi, who by heart feels for the independence of Bangladesh "bleeds", and therefore all the petitioners have the locus standi to move the writ petition. *(Per Quazi Reza-ul Hoque J majority) Maulana Syed Rezaul Haque Chadpuri vs Bangladesh Jamaat-e-Islami (Spl Original) 66 DLR* 14

PIL as a tool—With the progress of PIL in our jurisdiction, as in India, many publicity-mongers, interlopers and ill-advised self seekers turned ambitious and took up PIL as a tool for serving their hidden purposes. *(Per M Moazzam Husain J dissenting) Maulana Syed Rezaul Haque Chadpuri vs Bangladesh Jamaat-e-Islami (Spl Original) 66 DLR* 14

Political Party—কোন রাজনৈতিক দল-কে তাদের দলীয় তহবিল সংগ্রহ এবং দলীয় নেতা-কর্মীদের কল্যাণের লক্ষ্যে *'যাকাত'* ও *'উশর'* সংগ্রহ এবং এর ব্যয় অনুমোদন দেয়া যায় না। কারণ, প্রতিটি রাজনৈতিক দলকে যদি এ ধরণের যাকাত সংগ্রহের অনুমোদন দেয়া হয় তাহলে এক্ষেত্রে বিশৃংখলা সৃষ্টি হতে পারে। কেননা পবিত্র কুরআন অনুযায়ী যাকাত সংগ্রহ এর সাথে সংশ্লিষ্ট ব্যক্তিবর্গও এর হকদার (সুরা তাওবাঃ আয়াত ৬০)। কোন রাজনৈতিক দল যেন *'যাকাত'* বা *'উশর'* এর অর্থ সংগ্রহের মাধ্যমে দলীয় তহবিল গঠন করতে না পারে এ বিষয়ে নির্বাচন কমিশনকে আইনানুগ ব্যবস্থা গ্রহনের নির্দেশ প্রদান করা হলো। *(Per Enayetur Rahim J agreeing with Quazi Reza-ul Hoque J) Maulana Syed Rezaul Haque Chadpuri vs Bangladesh Jamaat-e-Islami (Spl Original) 66 DLR* 14

Presumtion of Validity of Acts—Even in case of total lack of jurisdiction *(coram non*

judice), malafide or malice in law where the action taken by the public authority is generally considered to be a nullity and no decision in the eye of law the same is still not void or void *ab initio* and need be challenged by an appropriate person in an appropriate proceedings and in appropriate time for declaring the same null and void. *(Per M Moazzam Husain J dissenting) Maulana Syed Rezaul Haque Chadpuri vs Bangladesh Jamaat-e-Islami (Spl Original) 66 DLR 14*

Principle of Natural Justice—Charge of misconduct itself implies stigma on the service career which is followed by punishment, if proved. No employee, therefore, can be punished for misconduct without a proceedings initiated and prior notice given allowing him reasonable opportunity to explain his position. *Mahbubur Rahman vs Bangladesh, Secretary, Ministry of Post and Tele-Communications (Spl Original) 66 DLR 615*

Quantum Sentences—Most difficult task of a Judge is to decide what would be the quantum of sentene to be awarded upon an accused for committing an offence. It is not possible to lay down any cut and dry formula for imposition of sentence upon the accused. *State vs Md Tohurul Islam @ Azizul Haque (Criminal) 66 DLR 386*

Ratio decidendi—*Ratio decidendi* of two cases have lost their force so far as it relates to the issue of maintainability of a writ petition on the grievance of public procurement after the enactment of the PPA, 2006 and, as such, the same is not applicable in the case at hand. *Concord Pragatee Consortium Ltd vs BPDB (Spl. Original) 66 DLR 475*

Role of Bank—The role of the Bank does not appear to be good than that of the oppressive and cruel creditors. The creditors in many cases used to travel even earth to heaven to collect their debts leaving no stone untouched and the Bank also behaving like the same after obtaining the judgment in the case for Taka 9,84,918 which has already been deposited by the accused by the order of the Court again filed the case under the provision of Artha Rin Adalat Ain, 2003 against the appellant. *Dr Shyamal Baidya vs Islami Bank Bangladesh Ltd. (Criminal) 66 DLR 547*

Role of BJI—জামায়াত ইসলামী শুধু ১৯৭১-এ স্বাধীনতা সংগ্রাম ও মুক্তিযুদ্ধে বিরোধীতা করেই ক্ষান্ত হয়নি স্বাধীনতার পর স্বাধীন বাংলাদেশকে বিভিন্ন মুসলিম রাষ্ট্র যাতে স্বীকৃতি প্রদান না করে সে বিষয়ে বিশ্বব্যাপী প্রচারণা অব্যাহত রেখেছিল। জনাব গোলাম আযমের নাগরিকত্ব সংক্রান্ত মামলায় সরকার কর্তৃক দাখিলকৃত হলফনামায় সুস্পষ্টভাবে উল্লেখ করা হয়েছিল যে, জনাব গোলাম আযম ১৯৭২ সালে 'পূর্ব পাকিস্তান পুনরুদ্ধার কমিটি' সংগঠিত করে পাকিস্তান, লন্ডন এবং বিভিন্ন ইসলামীক দেশে বাংলাদেশ বিরোধী ব্যাপক প্রচারণা চালান। *(Per Enayetur Rahim J agreeing with Quazi Reza-ul Hoque J) Maulana Syed Rezaul Haque Chadpuri vs Bangladesh Jamaat-e-Islami (Spl Original) 66 DLR 14*

Unconditional Apology—Simply begging unconditional apology by itself does not purge an action of contempt. *(Per Ashfaqul Islam, J) Abhimunnyo Singha vs Shauli Shumon (Spl Original) 66 DLR 197*

পবিত্র কাবাঘরের অবমাননা—জনাব গোলাম আযম এবং ২নং প্রতিবাদী '৭১-সালে মুক্তিযুদ্ধ চলাকালে বিভিন্ন বক্তব্য ও বিবৃতিতে পাকিস্তানকে আল্লাহর ঘর বলে মূলত পাকিস্তানকে কাবা শরীফের সমপর্যায়ে নিয়ে এসে প্রকারান্তে পবিত্র কাবাঘরের সুমহান মর্যাদা ও ভাবমূর্তিই কেবল ক্ষুন্ন করেনি বরং তাঁদের এই বিশ্বাস ইসলামের আক্বীদার পরিপন্থী এবং পবিত্র কাবাঘরের চরম অবমাননা। *(Per Enayetur Rahim J agreeing with Quazi Reza-ul Hoque J) Maulana Syed Rezaul Haque Chadpuri vs Bangladesh Jamaat-e-Islami (Spl Original) 66 DLR 14*

.....

The

Dhaka Law Reports

Index of Bangladesh Statutes

Volume LXVI

2014

January—December

Act 2012

Restoration of Vested Property (Amendment) Act, 2012	Act No. 22 of 2012	1
Pratijogita Ain, 2012	Act No. 23 of 2012	2
Commodity Producing State-owned Industries Workers (Conditions of Service) Act, 2012	Act No. 24 of 2012	14
Dhaka Transport Co-ordination Authority (Amendment) Act, 2012	Act No. 25 of 2012	15
Finance Act, 2012 *[Not Printed]*	Act No. 26 of 2012	22
Appropriation Act, 2012 *[Not Printed]*	Act No. 27 of 2012	22
Bangabandhu Sheikh Mujib Medical University (Amendment) Act, 2012	Act No. 28 of 2012	16
Public University Teacher (Retirement) (Special Enactment) Act, 2012	Act No. 29 of 2012	20
Wild-life (Preservation and Safety) Act, 2012	Act No. 30 of 2012	22
Jagannath University (Amendment) Act, 2012	Act No. 31 of 2012	22
Comilla University (Amendment) Act, 2012	Act No. 32 of 2012	23
National Poet Kazi Nazrul Islam University (Amendment) Act, 2012	Act No. 33 of 2012	23
Disaster Management Act, 2012	Act No. 34 of 2012	24
Power-of-Attorney Act, 2012	Act No. 35 of 2012	40
Code of Civil Procedure (Amendment) Act, 2012	Act No. 36 of 2012	44
Code of Criminal Procedure, (Amendment) Act, 2012	Act No. 37 of 2012	48
Members of the Bangladesh Public Service Commission (Terms and Conditions of Service) (Amendment) Act, 2012	Act No. 38 of 2012	49
Vested Property Return Act (Second Amendment) Act, 2012	Act No. 39 of 2012	50
Hindu Marriage Registration Act, 2012	Act No. 40 of 2012	53
Registration (Amendment) Act, 2012	Act No. 41 of 2012	55
Grameen Bank (Amendment) Act, 2012	Act No. 42 of 2012	55
International Crimes (Tribunals) (Second Amendment) Act, 2012	Act No. 43 of 2012	56
Bangladesh Legal Practitioners and Bar Council (Amendment) Act, 2012	Act No. 44 of 2012	57
Securities and Exchange Commission (Amendment) Act, 2012	Act No. 45 of 2012	58

Securities and Exchange (Amendment) Act, 2012	Act No. 46 of 2012	60
Value Added Tax and Supplementary Tax Act, 2012 *[Not Printed]*	Act No. 47 of 2012	63
Durable and Renewal Energy Development Authority Act, 2012	Act No. 48 of 2012	63
Electricity and Fuel Quick Supply Enhancement (Special Enactment) (Amendment) Act, 2012	Act No. 49 of 2012	69

Act 2013

Co-operative Societies (Amendment) Act, 2013	Act No. 1 of 2013	69
Bangladesh Labour Welfare Foundation (Amendment) Act, 2013	Act No. 2 of 2013	77
International Crimes (Tribunals) (Amendment) Act, 2013	Act No. 3 of 2013	79
Contempt of Courts Act, 2013	Act No. 4 of 2013	79
Waqf (Property Transfer & Development) Special Law Act, 2013	Act No. 5 of 2013	81
Effectiveness (Special Enactment) of some Ordinances Proclaimed from 15th August 1975 to 9th April 1979	Act No. 6 of 2013	88
Effectiveness (Special Enactment) of some Ordinances Proclaimed from 24th March 1982 to 11th November 1986	Act No. 7 of 2013	92
President's (Remuneration and Privileges) (Amendment) Act, 2013	Act No. 8 of 2013	97
Public Servants (Retirement) (Amendment) Act, 2013	Act No. 9 of 2013	97
Islamic Foundation (Amendment) Act, 2013	Act No. 10 of 2013	98
Speaker and Deputy Speaker (Remuneration and Privileges) (Amendment) Act, 2013	Act No. 11 of 2013	99
Statistics Act, 2013	Act No. 12 of 2013	104
Bangladesh Silk Development Board Act, 2013	Act No. 13 of 2013	104
Bangladesh Water Act, 2013	Act No. 14 of 2013	108
Exchanges Demutualisation Act, 2013	Act No. 15 of 2013	120
Smoking and Usage of Tabocco-related Product (Control) (Amendment) Act, 2013	Act No. 16 of 2013	128
Voter Talika (Amendment) Act, 2013	Act No. 17 of 2013	131
Waqfs (Amendment) Act, 2013	Act No. 18 of 2013	131
Bangladesh Rubber Board Act, 2013	Act No. 19 of 2013	133
Smoking and Usage of Tabocco-related Product (Control) (Amendment) Act, 2013	Act No. 16 of 2013	128
Voter Talika (Amendment) Act, 2013	Act No. 17 of 2013	131
Waqfs (Amendment) Act, 2013	Act No. 18 of 2013	131
Bangladesh Rubber Board Act, 2013	Act No. 19 of 2013	133
Vested Property Return (Amendment) Act, 2013	Act No. 20 of 2013	137
Appropriation Act, 2013 [Not Printed]	Act No. 21 of 2013	141
Santrosh Berodi (Amendment) Act, 2013	Act No. 22 of 2013	142
Bangladesh Film and Television Institute Act, 2013	Act No. 23 of 2013	153
Children Act, 2013	Act No. 24 of 2013	156

The

Dhaka Law Reports

Index of Journal (Legal Discussions, News and Informations)

Volume LXVI

2014

January—December

Justice Chowdhury ATM Masud: A chequered life
—*Md Khurshid Alam Khan,*
Editor, DLR ... 1

Citizenship and the Rule of Law
—*MI Farooqui*
Senior Advocate ... 3

ইট পোড়ানো (নিয়ন্ত্রণ) আইন, ১৯৮৯ ও অনিয়ন্ত্রিত ইটভাটা প্রসঙ্গে
—আনিস উল হক
অ্যাডভোকেট, জজ কোর্ট, নীলফামারী ... 7

Justice Muhammad Habibur Rahman: An Extra-ordinary Personality
—*Md Khurshid Alam Khan,*
Editor, DLR ... 9

Judges & Judiciary: Rule of Law & Supremacy of the Constitution
—*Justice Md. Rezaul Hasan (MR Hasan)*
Judge, Supreme Court of Bangladesh,
High Court Division ... 10

Justice Mohammad Anwarul Haque laid down the Robes ... 17

গত ৮-৪-২০১৪ ইং তারিখে অনুষ্ঠিত বিদায় সম্বর্ধনায় আপীল বিভাগের
মাননীয় বিচারপতি মোহাম্মদ আনোয়ার উল হকের প্রদত্ত লিখিত বক্তব্য। ... 18

Former Chief Justice Muhammad Habibur Rahman
—*MI Farooqui*
Senior Advocate ... 19

'আমার চেনা এক দ্যুতিময় বিচারপতি'
—*বিচারপতি মোঃ আশফাকুল ইসলাম,*
বাংলাদেশে সুপ্রীম কোর্ট, হাইকোর্ট বিভাগ, ঢাকা। ... 21

Feminine Jurisprudence :A new concept
—*A K Roy,*
Senior District & Sessions Judge ... 23

Arbitration & Mediation
—Justice Latifur Rahman
Former Chief Justice of Bangladesh ... 25

Parliament in Functions: British Experience
—*AK Roy*
Senior District & Sessions Judge ... 28

Miranda Rights : A right to remain silent in custodial interrogation
—*Bodiuzzaman Khan*
Advocate, Supreme Court ... 31

বিকল্প বিরোধ নিষ্পত্তি (এডিআর)
—*রফিকুর রহমান পাটওয়ারী*
সাবেক জেলা ও দায়রা জজ,
অ্যাডভোকেট বাংলাদেশ সুপ্রিম কোর্ট, ... 33

Legal Divergence in Child Age:
A Foremost Barricade to Dispense Apt Justice for the Children in Bangladesh.
—*Sk.M.Tofayel Hasan,*
Joint Metropolitan Sessions Judge, Chittagong... 36

Reference & Adjournment—প্রাসঙ্গিক ভাবনাঃ
—*মোঃ আব্দুস ছাত্তার (২)*
এ্যাডভোকেট, জজ কোর্ট,
রাজশাহী ও হাইকোর্ট ডিভিশন। ... 39

.....