

NEWSLETTER

**2024 NEW YEAR
SPECIAL**

A.S & Associates
Every Legal Help

Looking Back into 2023:
Twinkles of Hope in a Challenging Year



Looking Back into 2023: *Some Twinkles of Hope in a Challenging Year*

As 2023 came to an end, we at A.S & Associates look at some of the milestones that Bangladesh has achieved in the passing year, while also taking into considering some of the areas where we as a nation could have done something slightly different.

Rupee trade with India initiated:

Bangladesh and India launched the settlement of bilateral trade in the Indian rupee in July in an effort to cut over-reliance on the US dollar to carry out transactions and give some respite to importers since they will be able to open letters of credit in the currency to source a portion of the products from India.

Minimum wage for garment workers increases:

The minimum wage board set Tk 12,500 as the minimum salary for the millions of garment workers in the country. Workers, however, had demanded Tk 23,000 in the minimum wage from Tk 8,000 fixed in 2018.

New Bank Company Law passed:

The Bank Company (Amendment) Bill 2023 was approved in June amid a huge outcry over the last-minute increase in the bank directors' tenure from nine years to 12 years, a move that would tighten their grip on the financial institutions. The number of members from a single family who can sit in the board simultaneously has been reduced to three from four.

First elevated expressway in Dhaka launched:

The long-awaited Dhaka Elevated Expressway opened to the public in September. The 11.5km section from the Airport to Farmgate is serving as an alternative route to and from the airport road, one of the busiest in the city.

Padma rail link inaugurated:

The 82-kilometre rail line from Dhaka to Bhanga via the Padma Bridge was inaugurated in early October, opening a new horizon for rail connectivity in the southwestern region of the country.



Bangladesh now top knitwear supplier to EU:

Bangladesh became the top knitwear exporter in the European Union for the first time, overtaking China, thanks to the duty facility available under the bloc's generous Everything but Arms scheme. It came as the EU's import from Bangladesh exceeded the share of any other country in the January-September period of 2023, both in US dollar terms and in volume.

Universal Pension Scheme launched:

In August, the government of Bangladesh launched a universal pension scheme to bring the common people of the country under the facility. Every Bangladeshi citizen aged under 50 years is eligible to register for the pension scheme. Four different schemes have been introduced as part of the plan.

Default loans hit an all-time high:

Non-performing loans hit a new record in June as withdrawal of a relaxed central bank policy, slowdown in business sales and deliberate non-payments pushed up the volume of bad loans to Tk 1,56,039 crore.

Stock market remains bearish:

The stock market of Bangladesh ended in a bearish mood for the second year in a row amid earnings fall, deepening uncertainty and the continuation of the floor price, which kept many investors at bay since most stocks were not traded.

Sentencing Policy in Bangladesh



Upon getting arrested and charged accordingly, if the defendant pleads guilty in the Court or is found guilty through trial, he then gets sentenced accordingly. The purpose is to punish the offender, protect public from repetition of such crimes, re-shape the offender's behaviors to prevent future offences and do justice to the victims or their families.

Sentencing can be of many forms. Currently in Bangladesh, the available punishments are – death penalty, imprisonment for life, rigorous or simple imprisonment for a specified term, forfeiture of property, and fine. Unfortunately, the prisons in Bangladesh are getting extremely over-crowded. Crime rates are also not going down. Clearly, one of the main purposes of imposing sentence, i.e. to prevent future occurrence of offences, is not fulfilled in Bangladesh. This leads to the question, what went wrong in the Sentencing policy here?

We do not have provisions for sentencing hearing. We do not have any obligation to submit the defendant's pre-sentence report (i.e. report containing reason for committing the offence, how defendant currently feels about his actions, his background, family and work circumstances) before determining his punishment. The laws here provide for a number of sentencing options without specifying any stratification of offence level. For example, as per s.79 of the Penal Code 1860, "Whoever commits theft shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both". Clearly, the maximum punishment here is three years of imprisonment, with fine.

However, it fails to specify the factors which should lead to this max level of punishment or those which would help reduce it. It fails to clarify, how differently should a 10 years old boy, who stole a bread to meet his hunger, be punished from the an

adult offender, who stole a box full of 50 bread packets with an intention to sell. In absence of a clear scale, the judges are frequently left with no other choice but to use their own judicial mind and sense of moral principles and ethics, applying their judicial discretion to determine the level and nature of penalties. As a result, we often get to witness different sentencing decisions for same category of offences committed by different people. This leads to a sense of dissatisfaction on parts of both the victims and the accused.

In *Rokia Begum v. State* 4 SCOB [2015] AD 20, the Appellate Division also acknowledged the "difficult task" they are required to perform while determining the most appropriate sentence as a lack of sympathy may lead to more harm than good, while lack of a certain level of rigidity may lead to lack of public confidence in the efficiency of law.

Unfortunately, despite the Supreme Court of Bangladesh recognizing this problem, little efforts have been put in forming a proper sentencing guideline. Till this date, neither do we have any specific statutory sentencing policy nor do we get to enjoy the benefits of having a separate sentencing statute.

Another Problem with the current criminal justice system is that our sentencing policy is not of reformatory nature. It simply attempts to strike fear of punishment into the heart if the offenders but ends up leading them to a more revengeful path due to failure to maintain appropriate environment in the jail. Our sentencing practice, therefore, should make more room for "non-custodial sentences including verbal sanction, conditional discharge, probation order, community service order, victim compensation order" etc.

Glimpse of NEW YEAR CELEBRATION at A.S & Associates



LEGISLATIVE UPDATES

National Disability Development Foundation Act 2023

One of the notable progresses in the legislative area of 2023 is the enactment of the National Disability Development Foundation Act, 2023 (NDDFA 2023). Parliament approved this bill with the goal of integrating disabled individuals into society's mainstream and providing them with access to the nation's most recent technological advancements.

The National Disability Development Foundation was first formed in 1997 under the Societies Registration Act 1860. The foundation was later restructured in 2007; however in 2016, the then Govt. revoked that re-structuring process and brought the original structure back. All these back and forth shaping/re-shaping of the foundation pointed out the necessity to bring it under a proper legal framework. As a result National Disability Development Foundation Act 2023 came into force.

The purpose of this Act was to turn the Foundation into a statutory body having "perpetual succession and a common seal", having the "power to acquire, hold and transfer property, both immovable and movable" within the scope provided by the "provisions of this Act and the rules made thereunder", and also having the power to sue on behalf, as well as, against itself (s.3 of NDDFA 2023). For the purposes of this Act, the Foundation shall ensure performance of certain duties including the followings (s.5 of NDDFA 2023)

- I. Protection of rights and safety of differently abled people;
- II. providing them with grants, loans, education and employment;
- III. providing financial and administrative assistance to organizations that works for and with disabled people;

- IV. providing therapy and rehabilitation facilities;
- V. Conducting research on identification and elimination of causes of disability;
- VI. taking special measures in radio, television, newspapers and mass communication media, etc.

The general management and administration of the Foundation shall be vested in the Board of Directors, which will consist a Managing Director (who shall be appointed from amongst the officers of the rank of Additional Secretary engaged in the work of the Republic), and a Chairman (Secretary of Ministry of Social Welfare) along with few other members including but not limited to Director General of Directorate of Social Services, Director General-1 of Prime Minister's Office, an officer of the rank of Joint Secretary nominated by the Ministry of Social Welfare, An officer of the rank of Joint Secretary or below, nominated by the Department of Health Education and Family Welfare, and 3 (three) representatives nominated by the Government from registered private organizations working in the service and protection of persons with disabilities, organizations of persons with disabilities or organizations managed by persons with disabilities, at least one of whom shall be a woman.

There are provisions allowing the foundation to form Board "as it may think fit for the efficient performance of its functions and may by general or special order prescribe the composition", and duties.

CASE UPDATE

Bangladesh Legal Aid Services and Trust (BLAST) v. The State, WP No. 7117 of 2019

Fact:

Bangladesh Legal Aid Services and Trust (BLAST) confirmed that according to a survey held by Bangladesh Institute of Development Studies, in the year of 2004, the number of cesarean operations that took place in Bangladesh was 3.99%. However, within less than two decades from then, in 2021, The Bangladesh Urban Health Survey confirmed that the cesarean birth rate in Bangladesh had increased alarmingly to 31%.

BLAST further submitted that according to the World Health Organization (WHO) however, there is no justification for a country's cesarean operation rate to be more than 10-15% as such operations are only supposed to take place in special and urgent situations with the primary aim to save the life of the mother and her child.

BLAST then submitted another report by the WHO which states that currently the rate of c-sections in private hospitals of Bangladesh is 83%, while 35% in government hospitals and 39% in NGO-run hospitals. Aggrieved by the failure of the respondents to take effective action to stop the unnecessary cesarean operations conducted by public and private clinics, hospitals and doctors providing maternal health services, the petitioner filed this Public Interest Litigation.

Issue:

- Whether the decision to opt for a C-section are taken based on what is best for or may save the lives of the mother and child;
- If not then is this a result of collective failure on part of the Secretary of Ministry of Health and Family Welfare, Director General of Directorate of Health Services, and President of Bangladesh Medical and Dental Council, i.e. the respondents, to regulate these maternity health care/service providers properly.

Held:

On 30 June 2019, the Honorable High Court issued a rule upon respondents to show cause as to why their failure to regulate private and public hospitals, clinics and medical practitioners to prevent medically unnecessary C-sections should not be declared to be without any lawful authority and of no legal effect.

In October 2023, the Court gave recognition to the policy submitted by the Ministry of Health in prevention of unnecessary caesarean operations in the medical field by making it part of the judgment by virtue of art.111 of the Constitution of Bangladesh. The judgment also directed to take necessary steps to widely publicize the policy within the next 06 months.

The policy submitted by the Ministry of Health has shed light on several issues including the followings:

1. The steps taken by the Ministry of Health and Family Welfare, Directorate of Health and Bangladesh Medical and Dental Council to stop unnecessary caesarean operations have been divided into three periods - short term, medium term and long term. Reviewing the existing legal infrastructure is set under the long-term plans with an aim of identifying the root problems and bringing necessary amendments swiftly.
2. Run campaigns aimed at raising awareness at the national level;
3. Inclusion of the topic of Normal Vaginal Delivery in undergraduate curriculum;
4. Conducting regular counseling and training to improve/enhance the ethical standards of doctors;
5. Ensuring necessary legal protection of health care providers through formation of Medical Defense Unit;
6. Keeping records and over watching data storage and protection;
7. Inclusion of a list of internationally recognized situations under which a c-section can be performed;
8. In the case of Elective Caesarean, the patient should be informed and consented; Consent obtained by providing otherwise incomplete or incorrect information shall not be admissible in the eyes of law; It will be considered a crime.



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