

GOVERNMENT OF THE PEOPLE'S REPUBLIC OF BANGLADESH

THE LAW COMMISSION

- SUBJECT -

RECOMMENDATIONS OF THE COMMISSION ON THE PROPOSED
LEGISLATION TITLED “মিথ্যা সাক্ষর (প্রতিরোধ ও প্রতিকার) আইন, ২০০১”

OFFICE OF THE LAW COMMISSION
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APRIL 19, 2001

Preface

On a reference from the Ministry of Law Justice and Parliamentary Affairs, the Law Commission received a draft bill on a proposed enactment entitled, মিথ্যা মামলা (প্রতিরোধ ও প্রতিকার) আইন, ২০০১ on 28/03/2001. After receipt of the draft the Commission thoroughly examined it and in course of examination it also took note of earlier report on the allied subject submitted to the Ministry on January 18, 2001.

The recommendations of the Commission as given in the report are reflective of the similar stand of the Commission as of the before hand in the context of geo-political and socio-economic scenario of the society.

The report as well as recommendations after being prepared, was placed before the Commission's meeting held on April 18, 2001 under the Chairmanship of Mr. Justice B.B. Roy Choudhury, Acting Chairman attended by Mr. Justice Naimuddin Ahmed, Member and other Officials of the Commission.

Ikteder Ahmed
Secretary

This is a reference by the Government for examining a draft bill entitled “মিথ্যা মামলা (প্রতিরোধ ও প্রতিকার) আইন, ২০০১”।

The Law Commission examined the draft bill.

On a perusal of the bill it appears that the objectives of the proposed enactment are to (1) prevent filing of false cases in the civil and criminal courts and (2) provide for punishments for filing such cases.

The proposed bill is divided into four chapters containing a total of twenty-five sections. The first chapter is the introductory chapter dealing with short title, extent, application, definitions, etc. The second chapter deals with filing of false civil cases and remedy therefor. The third chapter is similar to the second chapter but dealing with filing of false criminal cases. The fourth and last chapter contains miscellaneous provisions.

Clause (ka) (ক) of sub-section (3) of section 1 of the proposed Act seeks to exclude the cases filed under the Artha Rin Adalat Ain, 1990, from the ambit of the Act. Similarly, clause (kha) (খ) of the same sub-section excludes the police personnel, government officials and officials of statutory bodies from the jurisdiction of the proposed Act.

An examination of the procedures for proceeding for filing a false civil case in a civil court as laid down in section 4 of the proposed Act shows that if any party to a civil proceeding raises an objection that the other party has filed a false claim, the court in which the proceeding is pending shall frame an issue to that effect and after hearing record a finding whether the claim is false. It has further been provided that if the court is satisfied that the claim is false, it will award “compensatory fine” (ক্ষতিপূরণমূলক

জরিমানা) payable by the claimant making the false claim to the other party. Detailed procedures have also been proposed as to when and how the plea regarding false claim may be raised and how and when such plea may be opposed etc. Provision has also been proposed regarding the procedure for realization, and the consequence of non-payment, of the “compensatory fine”.

Provision for appeal against the order of the court for payment of the “compensatory fine” has also been proposed (see sections 4 to 10 of the proposed Act).

In cases of filing false criminal cases, punishments in the forms of imprisonment and/or fine have been proposed. It has also been proposed that the criminal court (any Magistrate or Sessions Judge or Tribunal exercising the power of a Court of Sessions) where the case is pending should be empowered to take cognizance, hear, record finding and impose punishment in case of filing of the false case. Procedures have also been proposed as to when and how the plea of filing the false case can be raised and opposed. Extensive and detailed procedures for hearing, production of witness, application of the Code of Criminal Procedure, 1898, etc. have also been laid down (see sections 11 to 23 of the proposed Act).

The exclusion of the creditors/debtors of cases under the Artha Rin Adalat Ain, 1990, police personnel, government officials and officials of statutory bodies, from the ambit of the proposed Act, apart from creating discrimination between persons committing the same offence, is likely to give rise to arbitrariness among the police, government officials and officials of statutory bodies at the cost of accountability of these functionaries. This

concept also appears to be inconsistent with the equality and equal protection of law clauses as enshrined in Article 27 of the Constitution.

The proposed procedures are likely to increase the work-load of the court manifold for deciding an issue (the issue of false claim) which will be hardly relevant to the main dispute before the court and thus the side issue of false claim will clog the decision of the main dispute.

Lastly, the proposed Act may discourage people from taking genuine cases, both civil and criminal, to courts. Steps likely to stifle genuine proceedings should not be encouraged.

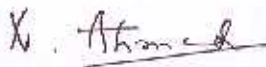
It may be added that sometimes back, on a reference from the Government, the Law Commission considered various aspects relating to filing of false cases and giving of false evidence and was of opinion that some amendments of the Code of Criminal Procedure, 1898 (Act V of 1898) will meet the objectives sought in the proposed Act.

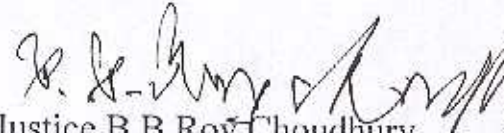
We would like to refer to our observation made in the said report:- "It appears to us that the purposes expressed in the draft bill may be achieved by amendment of one or two provisions of the Code of Criminal Procedure, 1898. As such, it is not advisable to enact a separate law when the existing law is sufficient to achieve those purposes, because, more than one law on the same issue often results in conflict of laws which should better be avoided."

Recommendations

We, accordingly, recommend that an enactment in accordance with the proposed bill may not be necessary.

The Government may, however, consider the report of the Law Commission dated 18 January, 2001, on the subject, if it is deemed fit.


Justice Naimuddin Ahmed
Member 19/4/2001


Justice B.B. Roy Choudhury
Chairman (Acting) 19/4