

GOVERNMENT OF THE PEOPLE'S REPUBLIC OF BANGLADESH

THE LAW COMMISSION

-SUBJECT-

**REPORT ON PROPOSAL FOR ENHANCEMENT OF PUNISHMENTS
OF CERTAIN OFFENCES UNDER PENAL CODE, 1860, AND PUBLIC
GAMBLING ACT, 1867 AND MAKING SOME OF THEM NON-
BAILABLE NOT-COMPOUNDABLE**

OFFICE OF THE LAW COMMISSION

OLD HIGH COURT BUILDING
DHAKA-1000

AUGUST 14, 2002

Preface

Law Commission received a reference from the Ministry of Law, Justice and Parliamentary Affairs by on 30/03/2002 to obtain its opinion for implementation of decision on items 17 and 19 taken in the conference of the Deputy Commissioners held in 2001. In item 17 it has been suggested to raise the amount of fine of certain offences of the Penal Code, 1860 and the Public Gambling Act, 1867, while in item 19 it has been suggested to make certain offences of the Penal Code non-bailable and non-compoundable.

After receipt of the reference the Research Officers of the Commission examined the matters under the guidance of the Senior most Member of the Commission Justice Naimuddin Ahmed. The report, along with recommendations, prepared thereon was approved in Commission's meeting dated 08/08/2002 for sending to the government.

Ikteder Ahmed
Secretary
Law Commission

Report on Proposals For Enhancement of Punishments of Certain Offences Under Penal Code, 1860, and Public Gambling Act, 1867 and Making Some of Them Non-bailable and Not-Compoundable.

By this reference under section 6 (Ena) of the Law Commission Act, 1996, the Government have sought opinion of the Law Commission on the suggestions made in a Conference of the Deputy Commissioners of the country held in 2001 for enhancing the measures of punishments of certain offences under the Penal Code, 1860 and the Public Gambling Act, 1867 and also to make some of the offences under these enactments not-compoundable/compoundable with the permission of the court and non-bailable. An extract of the copy of the proceedings of the said Conference of the Deputy Commissioners has also been sent with the reference.

The following tables will show the present position of the offences in question under the two enactments and the suggestions made in respects thereto in the Conference of the Deputy Commissioners.

Table-1
The Penal Code, 1860 (Act XLV of 1867)

Section	Offence	Whether bailable or not	Whether compoundable or not	Punishment	Proposal
1	2	3	4	5	6
186	Committing a public nuisance	Bailable	Not compoundable	Fine of 200 taka	Enhancement of fine to 2000 taka
148	Rioting armed with a deadly weapon	Ditto	Compoundable when permission is given by the court before which prosecution is pending	Imprisonment of either description for 3 years, or fine, or both.	Should be made non-bailable and not-compoundable.
290	Obstructing public servant in discharge of his public functions	Ditto	Not compoundable	Imprisonment of either description for 3 months, or fine of 500 taka, or both.	Should be made non-bailable and not-compoundable.
304B	Causing of death by rash driving or riding on a public way	Ditto	Ditto	Imprisonment of either description for 3 years, or fine, or both.	Should be made non-bailable and not-compoundable.
324	Voluntarily causing hurt by dangerous weapons or means	Ditto	Compoundable when permission is given by the court before which the prosecution is pending	Imprisonment of either description for 3 years, or fine, or both.	Should be made non-bailable and not-compoundable.
325	Voluntarily causing grievous hurt	Ditto	Ditto	Imprisonment of either description for 7 years, or fine.	Should be made non-bailable and not-compoundable.
354	Assault or use of criminal force to a	Ditto	Ditto	Imprisonment of either description for 2 years, or fine, or both.	Should be made non-bailable and not-compoundable.

	woman with intent to outrage her modesty				
420	Cheating and thereby dishonestly inducing delivery of property, or the making, alteration or destruction of a valuable security.	Ditto	Ditto	Imprisonment of either description for 7 years, or fine	Should be made non-bailable and not-compoundable.
458	Lurking house-trespass or house-breaking by night, after preparation for causing hurt	Ditto	Not compoundable	Imprisonment of either description for 14 years, and fine	Should be made non-bailable and not-compoundable.
497	Adultery	Ditto	Compoundable	Imprisonment of either description for 5 years, or fine, or both	Should be made non-bailable and not-compoundable.
506	Criminal intimidation.	Ditto	Ditto	Imprisonment of either description for 2 years, or fine, or both	Should be made non-bailable and not-compoundable.
	If threat be to cause death or grievous hurt, etc.	Ditto	Not compoundable	Imprisonment of either description for 7 years, or fine, or both	Should be made non-bailable and not-compoundable.

The Public Gambling Act, 1867 (Act XVI of 1867)

Section	Offence	Punishment	Proposal
1	2	3	4
4	Found in common gaming house	Fine not exceeding one hundred taka or imprisonment of either description not exceeding one month	Enhancement of fine to five thousand taka
3	Owning or keeping, or having charge of common gaming house	Fine not exceeding two hundred taka or imprisonment of either description not exceeding three months.	Ditto
11	Gaming and setting birds and animals to fight in public streets	Fine not exceeding fifty taka or imprisonment of either description not exceeding one calendar month.	Has proposed punishment under a misconception that no punishment is prescribed.

The Penal Code, 1860 (Act XLV of 1867)

In their Conference, the Deputy Commissioners proposed to make the offences under sections 148, 185, 304B, 324, 325, 354, 420, 458, 497, and 506 of the Penal Code, 1860 non-bailable and not-compoundable offences although out of these the offences under sections 304B, 458 and the second part of section 506 are already not-compoundable and the offences under sections 148, 324, 325, 354 and 420 are

compoundable only with the permission of the court where the prosecution is pending.

Apart from the fact that the participants in the Conference did not even care to look into Schedule II of the Code of Criminal Procedure, 1898 in order to ascertain as to whether some of the offences were already not- compoundable or compoundable with the permission of the court and similarly, the Ministry of Law, Justice and Parliamentary Affairs preferred simply to act as a post office while seeking the opinion of the Law Commission, neither of these agencies appended any reasons for the proposed changes in the law. It has not also been stated as to whether any practical problems are being faced in administering and enforcing these penal provisions and if so, what are these problems. The Conference having taken place in 2001 and the reference being sent in the middle of 2002, there was enough time to collect the above informations from the Deputy Commissioners who proposed these suggestions and then forward the same to the Commission so that an over-all study might be made to convince ourselves as to whether there was any justification necessitating the proposed changes.

The offences under sections 148, 186, 304B, 324, 325, 354, 420, 458, 497, and 506, first part, of the Penal Code, 1860 are bailable offences. The proposal is to make all these offences non-bailable and while making the proposal no reason or justification for doing so has been, except in the case of an offence under section 304B, assigned. The nature of all these offences has been described in Table No. 1 above. Of these offences, we have not been able to find any justifiable reason to make the offences under sections 148, 186, 324,325,420, 458, 497, and 560 of the Penal Code, 1860, non-bailable. These offences are bailable offences for nearly 150 years and the Deputy Commissioners have not advanced any reason as to why they should be made non-bailable now. We have also not been able to discover any cogent reason as to why an well established practice followed for more than a century should be suddenly disturbed, particularly when the practice has apparently not given rise to any problem.

Moreover, under our legal system based on the English common law system an accused is presumed to be innocent unless and until his guilt is established beyond all reasonable doubts after a fair trial. The same principle is reiterated in the International Bill of Human Rights to which Bangladesh is a signatory.⁴⁶ To curtail the chance of liberty of a person who is presumably innocent, by making the privilege of getting bail difficult which has so long been enjoyed by him as of right, will, unless some practical necessity demands it, militate against this principle. We are, therefore, not in favour of making these offences non-bailable offences.

So far as the offence under section 304B of the Penal Code, 1860, is concerned, the participants in the Conference of the Deputy Commissioners were of opinion that rash and negligent driving of motor vehicles on public roads by reckless drivers has been

⁴⁶ See Article 14 (2), International Covenant on Civil and Political Rights to which Bangladesh is a signatory since 6 September, 2000.

the cause of many tragedies including many deaths of innocent persons resulting in irreparable loss to their families and dependants. There is certainly substantial truth and justification in the views expressed by the Deputy Commissioners. In fact, the legislature also became concerned about the rising incidence of death and other injuries inflicted on public roads by reckless driving and inserted a new section in the Penal Code, 1860, being section 304B making the causing of death by rash or negligent driving on any public road punishable with 14 years' imprisonment and also a non-bailable offence⁴⁷. An agitation by bus-owners, truck-owners, drivers, etc. followed and by another enactment the offence was made bailable⁴⁸. The incidence of death and destruction due to rash, reckless and negligent driving have, however, been going on unabated. Our country has not been able to adopt modern measures to check this menace of rash and illegal driving. Almost all countries of the world have adopted modern techniques to detect illegal driving of motor vehicles and to punish the offenders thereby minimising road accidents. Until such measures are adopted, there may be some effects if the offence is made non-bailable. We will, accordingly, recommend to make the offence under section 304 B of the Penal Code, 1860 non – bailable.

Regarding the offence under section 354 of the Penal Code, 1860, it is an offence against women. It appears that this offence is covered by the offence under section 10 of the Nari-O-Shishu Nirjatan Daman Ain 2000 (brix I wki wbh©vZb `gb AvBb, 2000) (Act VIII of 2000) which is non-bailable. This is a special law and under this law, which being a special law prevailing over the Penal Code, 1860, the offence similar to the offence under section 354 of the Penal Code, 1860 has already been made non-bailable. Prosecution for this offence takes place under the latter Act and as such, the amendment of the Code of Criminal Procedure, 1898, for making the offence under section 354 of the Penal Code, 1860 non-bailable will be redundant and is not likely to serve any practical purpose. So, this provision may remain as it is.

In the next place, it has been proposed to make the offences under sections 148, 186, 304B, 324, 325, 354, 420, 458, 497, and 506 of the Penal Code, 1860, not-compoundable. The offences under sections 186, 304B, 458, and 506 Part II of the Penal Code, 1860 are already not-compoundable offences. The offences under sections 148, 324, 325, 354 and 420 of the Penal Code, 1860 are compoundable with the permission of the court where the prosecution is pending. The offences under sections 497 and 506 Part I alone are compoundable. These things were not noticed by the participants in the Conference of the Deputy Commissioners nor by the officers concerned in the Ministry of Law, Justice and Parliamentary Affairs. Be that as it may, we do not find any reasons to make the offences under sections 148, 324, 325, 354 and 420 of the Penal Code, 1860, which are compoundable only with the permission of the court, not-compoundable. These are offences mostly affecting

⁴⁷ See the Penal Code (Amendment) Ordinance, 1982 (Ordinance No. X of 1982), section 5 and the Code of Criminal Procedure (Amendment) Ordinance, 1982 (Ordinance IX of 1982) section 3 (d)

⁴⁸ See the Code of Criminal Procedure (Amendment) Ordinance, 1984 (Ordinance XXII of 1984), section 2 (a) (i).

persons individually having adverse effects on society in a lesser degree than the offences which have been made not-compoundable because of their adverse impact on society on a much greater degree. The participants in the Conference of the Deputy Commissioners have not adduced any reason as to why the necessity of making these offences and also the other offences mentioned in the reference not-compoundable was felt by them. We do not find any necessity for introducing any change in this respect.

Lastly, the proposal for enhancing the amount of fine of Taka 200/- for an offence under section 290 of the Penal Code, 1860 to Taka 2000/- may be accepted for the simple reason that the value of money has depreciated to a very great extent since enactment of the provision in 1860.

The Public Gambling Act, 1867 (Act XVI of 1867)

It has been proposed that the amount of fines for the offences under sections 3 and 4 of the Public Gambling Act, 1867 from Taka 200/- and Taka 100/- respectively may be enhanced to Taka 5000/- for each of these offences. In our opinion, for maintaining uniformity with the proposal regarding the offence under section 290 of the Penal Code, 1860, the amount of fine for the offences under sections 3 and 4 of the Public Gambling Act, 1867, may be enhanced to Taka 2000/- and Taka 1000/- respectively, for the same reason as in the case of the offence under section 290 of the Penal Code, 1860.

The offence under section 11 of the Public Gambling Act, 1867 being already a punishable offence, no interference therewith is called for except that the amount of fine of Taka 50/- prescribed therefor may be enhanced to Taka 500/-

Recommendations

We, accordingly, make the following recommendations:-

The offence under section 304B of the Penal code, 1860 (Act XLV of 1860) may be made non-bailable by making suitable amendment of column 5, section 304B, Schedule II, of the Code of Criminal Procedure, 1898 (Act V of 1898)

The amount of fine for the offence under section 290 of the Penal Code, 1860, (Act XLV of 1860) may be enhanced to Taka 2000/- by suitable amendment of the said section and consequential amendment may be made in columns 7 and 8, section 209, Schedule II, of the Code of Criminal Procedure, 1898, (Act V of 1898)

The amount of fine for the offence under section 3 of the Public Gambling Act, 1867, (Act XVI of 1867) may be enhanced to Taka 2000/- by suitable amendment of the said section.

The amount of fine for the offence under section 4 of the Public Gambling Act, 1867 (Act XVI of 1867) may be enhanced to Taka 1000/- by suitable amendment of the said section.

The amount of fine for the offence under 11 of the Public Gambling Act, 1867, (Act XVI of 1867) may be enhanced to Taka 500/- by suitable amendment of the said section.

The other proposals of the reference need not be implemented.

Justice A.K.M. Sadeque
Member
Law Commission

Justice Naimuddin Ahmed
Member
Law Commission

Justice A.T.M. Afzal
Chairman
Law Commission